INDEX TO APPENDICES

APPENDIX A	Opinion, *United States v. Speed*, 175 F.4th 272 (4th Cir. 2026) (Published)	002a
APPENDIX B	Judgment Order, 4th Cir, filed May 5, 2026 (Unpublished)	022a
APPENDIX C	E.D.Va. Judgment Order	025a
APPENDIX D.	Rehearing denied, *United States v. Speed*, No. 23-4308, 2026 LX 218080 (4th Cir. June 2, 2026)	032a
APPENDIX E	E.D.Va. Docket Excerpt – CJA/FPD counsel appointed	033a
APPENDIX F	ATF Open Letter New Agency Policy	035a
APPENDIX G	*Silencer Shop Found. v. BATFE*, No. 6:25-CV-056-H, 2026 LX 446909 (N.D. Tex. Aug. 5, 2026)	038a
APPENDIX H	Constitutional Provisions USCS Const. Art. II, § 2, Cl 1 and USCS Const. Amend. 5	076a
APPENDIX I	Presidential Proclamation 10887 of January 20, 2025	078a
APPENDIX J	National Firearms Act (NFA) Statute Sections	080a
APPENDIX K	U.S.A. Supplemental; 4th Cir 23-4308 Doc: 101; 11/07/2025	089a
APPENDIX L	D.D.C. 1:22-cr-00244; Judgment ECF No. 69	109a
APPENDIX M	E.D.Va. docket excerpt shows no supervised release process	117a

APPENDIX A

United States v. Speed

United States Court of Appeals for the Fourth Circuit

December 12, 2025, Argued; May 5, 2026, Decided

No. 23-4308

Judges: Before WILKINSON, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Opinion by: QUATTLEBAUM

Opinion

[*274] QUATTLEBAUM, Circuit Judge:

The National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended in scattered sections of 26 U.S.C.), criminalizes the possession of unregistered firearms. And the NFA defines firearms to include silencers.[1] 26 U.S.C. § 5845(a)(7). The government prosecuted Hatchet M. Speed for possessing three unregistered devices that it felt met the NFA's definition of a silencer. Speed, however, insisted that the devices were not silencers and, as a result, did not have to be registered. He argued that they were "solvent traps," [**2] which are typically used to clean firearms, and that they didn't function as silencers without modifications.

Following a two-day trial, a federal jury found Speed guilty of three counts of unlawful possession of an unregistered silencer. He appeals his conviction, primarily arguing that the district court inaccurately instructed the jury on the definition of a silencer, that there is insufficient evidence that the devices meet that definition and that the government's interpretation of that definition is unconstitutionally vague as applied to him. Alternatively, he argues possession of a silencer is protected by the Second Amendment.

We affirm his conviction. First, the district court's instructions on the statutory definition of a silencer were accurate. Second, the government introduced sufficient evidence for the jury to conclude that, despite being labeled as "solvent traps," Speed's devices were silencers under the NFA. Third, the NFA is not unconstitutionally vague as applied to Speed. Regardless of what other objects might qualify under that definition, Speed's devices plainly do. And finally, Speed has failed to carry his burden on his Second Amendment challenge.

---

[1] "Silencer" and "suppressor" are two terms that are both used to refer to the same device. *See* Stephen P. Halbrook, *Firearm Sound Moderators: Issues of Criminalization and the Second Amendment*, 46 CUMB. L. REV. 33, 34 (2015). In truth, suppressor is likely the better term because these devices only actually "silence" firearms in the movies. *Id.* at 36. "Noise may be muffled or diminished, and maybe by only a few decibels at that, but it can still be heard." *Id.* That said, we use the term "silencer" throughout this opinion because that is the term used in the relevant statute. *See* 26 U.S.C. § 5845(a)(7); *see also* 18 U.S.C. § 921(a)(25).

I.

Before delving into the facts [**3] leading to Speed's conviction, we start by outlining what a silencer is and how it is regulated under the NFA.

[*275] **A**.

Guns are loud. While that is not news to anyone, why guns are loud may not be as widely known. The noise that a gun makes when fired—called its report—is the product of four processes: (1) the firearm's mechanical action, (2) propellant gases rapidly expanding into the atmosphere, (3) a sonic crack and (4) the bullet in flight.[2] Silencers influence the second of these processes by allowing the rapidly expanding propellant gases to expand into a hollow chamber, called an expansion chamber, before cooling and diffusing into the atmosphere.

To explain how this happens and how it affects the sound a gun makes, we will give a little more detail about the mechanics of silencers. A silencer is typically a metal cylinder that is attached to the end of the barrel of a gun. The ends of the cylinder, called the end caps, have holes. The hole in the rear-end cap is often threaded and attaches to the barrel of the firearm. The opposite hole in the front-end cap allows a bullet to pass through. As the bullet passes through the silencer's chamber, gases expand [**4] before they reach the atmosphere. Since the expansion of gases in the atmosphere is one of the reasons firing a gun makes a loud noise, there is less noise if some of the expansion takes place inside the silencer's hollow chamber.

Also, while an expansion chamber is all that is needed for a silencer to accomplish its basic function, silencers often have internal components that improve their effectiveness. A common internal component is a baffle. In essence, a baffle is a wall within the silencer, often shaped like a cup or cone, that divides the hollow chamber to make smaller, individual expansion chambers. The more chambers within the hollow part of the device, the more the gases expand within the chambers and, in turn, the more the sound from firing the gun is suppressed.

B.

The NFA defines "firearm" to include "any silencer."[3] 26 U.S.C. § 5845(a)(7). And the statute incorporates the following definition of silencers:

---

[2] We take the background information on how silencers work from the testimony of Eve Eisenbise of the Bureau of Alcohol, Tobacco, Firearms and Explosives, who qualified at trial, without objection, as an expert in the identification of firearms, including silencers. *See also* Matthew Every, *How Does a Silencer Work*?, FIELD & STREAM (Jan. 23, 2026), https://fieldandstream.com/outdoor-gear/guns-gear/rifles-gear/how-does-a-silencer-work [https://perma.cc/NZB3-YGJW].

[3] In full, the NFA defines "firearm" to mean:

> The terms "firearm silencer" and "firearm muffler" mean any device for 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 or [*276] firearm muffler, and [**5] any part intended only for use in such assembly or fabrication.

18 U.S.C. § 921(a)(25), *incorporated by reference in* 26 U.S.C. § 5845(a).

All NFA-regulated firearms must be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives. 26 U.S.C. §§ 5841(a), 7801(a)(2)(A); 28 C.F.R. § 0.131(d). Section 5861(d) of Title 26 of the United States Code makes it unlawful for any individual "to receive or possess a firearm [**6] which is not registered to him." And 26 U.S.C. § 5871 sets the maximum penalties for violating this provision—a $10,000 fine, 10 years' imprisonment or both.

Before anyone can transfer an NFA-regulated firearm, the transferor must apply to the ATF using ATF Form 4. 26 U.S.C. § 5812(a); 27 C.F.R. § 479.84(a)-(b). Form 4 requires a transferor to, among other things, identify both the transferor and the transferee, describe the firearm and affirm that any applicable tax has been paid. § 479.84(a)-(b). Similarly, an individual wishing to manufacture an NFA-regulated firearm must apply to the ATF using ATF Form 1. 26 U.S.C. § 5822; 27 C.F.R. § 479.62(a)-(b). Form 1 requires a manufacturer to, among other things, identify the applicant, describe the firearm and indicate that any applicable tax has been paid. § 479.62(a)-(b).

C.

Speed is a former software developer and naval reservist from northern Virginia. He was convicted for various charges related to the events at the United States Capitol Building on January 6, 2021.[4] In the months following that incident, he began "panic buying" over $40,000 in firearms and related products. J.A. 933, 1227.

---

(1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

26 U.S.C. § 5845(a).

[4] Speed was sentenced to 48 months of imprisonment for those charges. Judgment at 3, *United States v. Speed*, No. 1:22-cr-00244-TNM-1 (D.D.C. May 15, 2023), ECF No. 69. But President Trump pardoned Speed, among several others, for that crime on January 20, 2025. *See Freedom of Information Act (FOIA) Release - Pardon Certificate Recipients*, U.S. Dep't of Just., Off. of the Pardon Att'y (Mar. 5, 2026), https://www.justice.gov/pardon/freedom-information-act-foia-release-pardon-certificate-recipients [https://perma.cc/567Z-JRRL].

As part of this shopping spree, Speed ordered four silencers from an online firearm retailer called [**7] Silencer Shop—two for a 9mm and two for a .45 caliber firearm.[5] About a month after Speed's purchase, Silencer Shop sent Speed an email stating that his Form 4 application for ATF approval had been submitted and that Silencer Shop was waiting for approval before sending Speed his order.

A few days after receiving that email, Speed ordered 9mm, .45 caliber and .223 caliber "solvent traps" from a company called Hawk Innovative Tech (HIT). J.A. 942-43, 1158. A solvent trap can be used when cleaning a firearm. Cleaning usually involves pouring solvent inside the barrel and then using a rod to push wire brushes or cloth patches through. But when brushes or patches are pushed out the other side of the barrel, solvent and wet patches can spill out of the barrel, creating a mess. A solvent trap is designed to solve this problem. Usually, it consists of a clear piece of plastic that can be attached to the end of a barrel to catch the solvent and patches that are pushed through to the other side. Typically, a solvent trap costs between $10 and $20.

The HIT "solvent traps" that Speed purchased differed from typical solvent traps [*277] in both cost and design. In terms of cost, the HIT devices cost between [**8] $170 and $330—or roughly 10 to 20 times the average cost of a typical solvent trap. As for design, instead of clear plastic, the HIT devices were black titanium cylinders. One end of each device featured a threaded hole or could be attached to an adaptor to be threaded into a gun's barrel, much like a silencer. Inside each device there was a series of cone-shaped parts that looked like baffles. Each baffle had a center hole that was sized and aligned for a bullet corresponding with the device's caliber to pass through. And the other end of each device had another small hole. This hole, like the hole in each baffle, was aligned with the center of each device. But it was only partially drilled. The hole needed to be completely drilled for a bullet to pass through.

In total, Speed paid $887.49 for the HIT devices. Paperwork included with the products labeled the devices as solvent traps and said "[t]he HIT solvent filter/recycler is designed, manufactured, assembled, and sold for the intended purpose as a cleaning device or as a dry container storage." J.A. 1076-77. HIT also instructed customers to use the devices "only as intended." J.A. 1077.

D.

The Federal Bureau of Investigation took [**9] notice of Speed after the events on January 6. Beginning in February 2022, an undercover FBI employee, referred to as "Al," met with Speed on multiple occasions and posed as a friend with like-minded politics. J.A. 839-40. At trial, Al described Speed as having a "grim outlook at the government" and testified that Speed was "[p]repping" for possible civil unrest. J.A. 847. Several of their conversations focused on firearms and firearm accessories. During one meeting, Al asked Speed what he knew about solvent traps that could be converted into silencers. Speed explained to Al that he had purchased some but had

[5] Speed had also previously purchased silencers from Silencer Shop on June 25, 2020, submitting the required ATF registration forms.

not yet converted them. Speed added that, while he did not have the drill required to make the conversion, "the idea [was] to get everything except that, and then you as—you get a good drill press, and you know you're doing, just drill straight through." J.A. 1229.

In a subsequent conversation, Al asked Speed again about Speed's knowledge of how these solvent traps work. Speed replied that the HIT devices would "stay quiet" but reiterated that he had not tried to use his yet. J.A. 1238. Al then asked Speed where he could purchase one. Speed explained that they were available online [**10] but suggested a local retailer because the retailer "kn[ew] why people [we]re buying them" and could explain how to convert the devices into functioning silencers. J.A. 1238. He elaborated,

> [Y]ou can just point to them and just ask them to explain it to you, and they'll say, "Okay."
>
> . . . .
>
> "If you do this and this" and then you have to have a form on there. Of course, they're—they're—they're giving you the—the legal version, which they have to do.
>
> . . . .
>
> And you don't have to—they know that you're—why you're doing it.
>
> . . . .
>
> Uh, you don't have to say, uh, what's it for.

J.A. 1238-39.

Speed told Al how to drill the hole into the HIT device to convert it into a silencer. While he reiterated that he did not have the tools, Speed explained again that it would be easy to figure out how to get [*278] them and complete the task when necessary.

Speed also hinted at his plans to use the HIT devices. Disturbingly, Speed discussed how he could "reach," or get close to, certain people in his neighborhood. J.A. 1231-32. And he contemplated how, when picking a person to "reach," he might conduct his own mock trial for that person by writing down arguments for and against that person and then coming to his own [**11] decision on whether to "put th[at] person on the list." J.A. 1232. He praised the *jihadists* who killed Christians because their methods were effective. Speed believed that if three percent of people "would take action"—by taking out one person and then getting killed or jailed—"we can literally win just on the numbers." J.A. 1234-35. He added that if that were done, "we would manage to leave one percent of true fighters. We'd wipe out the opposition and leave the entire country free to finally live through that."[6] J.A. 1235.

---

[6] The government notes in its brief that Speed was making these comments in the context of his desire to "wipe out" Jewish people. Resp. Br. at 4-5; *see also* J.A. 134. However, the references to Jewish people were redacted from the version of the conversation presented to the jury at trial, so we omit them from our discussion of the facts leading to Speed's conviction.

Tying these comments to the HIT devices, Al asked, "You think at that point your . . . solvent traps would come in handy?" J.A. 1232. And Speed replied, "Yeah. Yeah, that's the idea." J.A. 1232.

Later, FBI agents executed a search warrant at a storage unit rented by Speed. During the search, the FBI seized the HIT devices Speed had purchased. However, the storage unit contained no tools—such as a drill, drill bit or vise—needed to drill the necessary holes.

E.

A federal grand jury in the Eastern District of Virgina indicted Speed for three counts of unlawful possession of an unregistered silencer in violation of 26 U.S.C. §§ 5841, 5861(d) and 5871. Speed moved to dismiss the indictment, [**12] arguing that § 5861(d) and related regulations were unconstitutionally vague as applied to him and that his conviction would violate the Second Amendment. The district court denied his motion. It reasoned that Speed's vagueness challenge was predicated on facts that would be established at trial, so it said Speed could raise that challenge later. And it determined silencers do not meet the definition of "bearable arms" under the Second Amendment because they are not, by themselves, capable of harming or damaging others. J.A. 188.

As trial approached, Speed also objected to proposed jury instructions that stated a device need not be operable to be considered a silencer. The district court overruled that objection. It determined that its instructions were a correct statement of law—because the statutory definition focuses on whether a device was designed to be a silencer—and that they were not redundant—because the instructions helped clarify the statutory definition.

After that, Speed's first trial ended in a mistrial after the jury could not reach a verdict. Speed's second trial ended with the jury finding Speed guilty on all three counts. The district court then sentenced Speed to 36 months of imprisonment. This appeal followed. [**13] [7]

[*279] **II**.

Speed raises several issues on appeal. His challenges largely fall into two buckets. Speed's first bucket involves whether the HIT devices he possessed meet the NFA's definition of a silencer. He argues that they do not. According to Speed, his HIT devices functioned as solvent traps, not silencers. He also argues that the "devices could not be 'assembled' into a silencer without modification or fabrication." Op. Br. at 41. And he adds that he did not have the tools necessary to convert the HIT devices into silencers. Next, Speed argues that the NFA's definition should not be interpreted to include items that function primarily for purposes other than as silencers. Otherwise, he argues, many innocent objects such as "plastic bottles, potatoes, pillows, books, banners, flags, clothing, tools, electronic equipment, etc." could be criminalized as silencers. Op. Br. at 46.

[7] We have jurisdiction over Speed's timely appeal of the district court's final judgment under 28 U.S.C. § 1291.

Because he believes the HIT devices do not meet the NFA's definition, Speed advances three separate, but related, arguments: (1) the district court's jury instructions that a device need not be operable to be considered a silencer were incorrect as a matter of law, (2) the evidence presented at trial was insufficient [**14] to support his conviction and (3) the statutory definition of a silencer is unconstitutionally vague as applied to him.

Speed's second bucket involves the Second Amendment. According to Speed, if the NFA's definition of a silencer includes the HIT devices he possessed, it violates his Second Amendment rights. So, he alternatively argues his conviction should be vacated on that basis. We address Speed's arguments in turn.

A.

Starting with the first bucket, we begin with Speed's challenge to the district court's jury instructions before turning to his sufficiency and vagueness arguments.

1.

Speed argues that the district court's jury instructions incorrectly charged that a silencer need not be operable to support a conviction.[8] And to be sure, the jury instructions said just that:

> Under [the statutory definition of a silencer], the device does not need to be operable to substitute a silencer as long as the purpose of the device [is] to silence, muffle, or diminish the report of a portable firearm. In determining whether the purpose of a device is to silence, muffle, or diminish the report of a portable firearm, you should focus on the objective design features of the device.

J.A. 1126.

To determine whether the instructions [**15] correctly articulated the statutory definition of a silencer, we must examine the statutory language. *See Bufkin v. Collins*, 604 U.S. 369, 379, 145 S. Ct. 728, 221 L. Ed. 2d 192 (2025) ("We start, as always, with the text."). Recall that the statute defines "firearm silencer" and "firearm muffler" as "any device for 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 or firearm muffler, and any part intended only for use in such assembly or fabrication." 18 U.S.C. § 921(a)(25). This definition does not say that a device, or various parts, must be [*280] operable as a silencer. In fact, it suggests the opposite.

[8] While we generally review a district court's jury instructions for abuse of discretion, we review whether the instructions correctly stated the law de novo. *Gautier v. Tams Mgmt., Inc.*, 163 F.4th 786, 794 (4th Cir. 2026).

First, the definition includes "any device for silencing, muffling, or diminishing the report of a portable firearm." *Id.* The word "for" is an important clue. Dictionary definitions from around 1986 when Congress enacted this definition reveal that "for" is "a function word to indicate purpose," "an intended goal" or "suitability or fitness." *For*, WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1983). Purpose and intended goal suggest that our inquiry is guided by what the device is designed to do—not current functionality. True, suitability [**16] or fitness suggest a device's function is relevant. But those words do not suggest that only the device's current function matters. In other words, nothing in the definition suggests the fact that the possessor might have to take the additional step of drilling a hole takes a device or parts outside the NFA's definition.

Had Congress intended to cover only devices currently operating as silencers, it could easily have included such language. But it did not. And this conclusion accords with how our sister circuits have, so far as we are aware, universally approached the issue. *See United States v. Crooker*, 608 F.3d 94, 97 (1st Cir. 2010) ("The statute does not refer either to capability or adaptation; it speaks of a device 'for' silencing or muffling. The ordinary connotation of the word is one of purpose."); *United States v. Carter*, 465 F.3d 658, 667 (6th Cir. 2006) ("The language of the statute focuses on the intended application of a silencer, not its actual demonstrated operation."); *United States v. Syverson*, 90 F.3d 227, 232 (7th Cir. 1996) ("By the language of the definition, Congress has indicated that it intends to regulate all devices purporting to serve as silencers, not just those devices that actually work to silence firearms."); *see also United States v. Taylor*, 100 F. App'x 305, 308 (5th Cir. 2004) ("[C]ontrary to [the defendant's] assertion, the government did not have to prove that the silencers were [**17] in operating condition; it merely needed to prove that they could readily have been put into operating condition."), *cert. granted and judgment vacated on other grounds*, 543 U.S. 1108, 125 S. Ct. 1042, 160 L. Ed. 2d 1034 (2005), *judgment reinstated*, 409 F.3d 675 (5th Cir. 2005).

Second, the statutory silencer definition specifically includes "any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler." § 921(a)(25). To the extent there is any question about whether the device or parts had to be currently operable as a silencer, this language clarifies that they don't. *See id.*; *Syverson*, 90 F.3d at 232; *see also Bondi v. VanDerStok*, 604 U.S. 458, 498, 145 S. Ct. 857, 221 L. Ed. 2d 332 (2025) (Thomas, J., dissenting) (noting that § 921's definition of "silencer" "cover[s] more than finished, operable products"). As written, the statute expressly contemplates parts intended for use in a silencer that must be assembled or fabricated to be used as a silencer. § 921(a)(25). Logically, parts that must be assembled or fabricated are not currently capable of being operated as a silencer.

In sum, the NFA's definition does not require a device to be currently operable as a silencer. In fact, it suggests the opposite. Accordingly, we see no error in the district court's challenged jury instructions.[9]

[9] Relatedly, Speed argues that the district court's jury instructions were in error because the instructions overemphasized the physical features of Speed's devices while deemphasizing Speed's intent. The district court gave the following instructions on motive and intent:

[*281] **2.**

Speed also argues that there was insufficient evidence to support his conviction. A defendant challenging the sufficiency of the evidence supporting his conviction "bears a heavy burden." *United States v. Freitekh*, 114 F.4th 292, 308 (4th Cir. 2024) (quoting *United States v. Beidler*, 110 F.3d 1064, 1067 (4th Cir. 1997)). We review whether there was substantial evidence to support a conviction de novo but view the evidence in the light most favorable to the government and draw all reasonable inferences in the government's favor. *Id.* That means we [**19] do not ask if we agree with the jury's verdict. We only ask if there was evidence from which a reasonable jury could have reached a guilty verdict. *United States v. Smith*, 21 F.4th 122, 139-40 (4th Cir. 2021).

In attempting to meet this standard, Speed emphasizes that the HIT devices were labeled as solvent traps, could operate as solvent traps and could not be used as silencers without modification using tools he did not possess. If Speed were right about the definition of a silencer, he might have a point. But as we just explained, he is not—the NFA's definition of a silencer does not require the device to be currently operable in that capacity. *See* § 921(a)(25); *Crooker*, 608 F.3d at 97; *Carter*, 465 F.3d at 667; *Syverson*, 90 F.3d at 232. Nor is there anything in the definition suggesting that a device is not a silencer simply because it could also operate as another product. *See* § 921(a)(25); *see also Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 603 (1st Cir. 2016) (explaining the fact that a device could function as a muzzle brake was not dispositive of whether it was regulable as a silencer). Rather, the government presented sufficient evidence for a reasonable jury to conclude that the devices were in fact silencers.

To begin, consider the objective characteristics and design features of the devices. *See Sig Sauer*, 826 F.3d at 601-02; *cf. Innovator Enters., Inc. v. Jones*, 28 F. Supp. 3d 14, 25 (D.D.C. 2014) ("To be sure, physical characteristics may be one important factor."). The jury heard [**20] evidence about those characteristics and features. An ATF firearms expert testified at trial that the HIT devices would work well as [*282] silencers with only minor modification. She described how the devices were metal cylinders, that the devices could be threaded into a firearm barrel, that the

---

Motive is not an element of the offense [**18] with which the defendant is charged. Proof of bad motive is not required to convict. Further, proof of bad motive alone does not establish that the defendant is guilty, and proof of good motive alone does not establish that the defendant is not guilty. Evidence of the defendant's motive may, however, help you find the defendant's intent. Intent and motive are different concepts. Motive is what prompts a person to act. Intent refers only to the state of mind with which the particular act is done. Personal advancement and financial gain, for example, are motives for much of human conduct; however, these motives may prompt one person to intentionally do something perfectly acceptable while prompting another person to intentionally do an act that is a crime.

J.A. 1127-28. When read in full, we do not read the district court's jury instructions as deemphasizing the requirement that the government prove criminal intent, and we find that the district court did not abuse its discretion in giving the instructions it did. *See Ward v. AutoZoners, LLC*, 958 F.3d 254, 272 (4th Cir. 2020) ("[W]e simply determine whether the instructions construed as a whole, and in light of the whole record, adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the objecting party." (quoting *Noel v. Artson*, 641 F.3d 580, 586 (4th Cir. 2011))); *Westmoreland v. TWC Admin. LLC*, 924 F.3d 718, 731 (4th Cir. 2019) ("Absent legal error, we review a district court's jury charge under the highly deferential abuse of discretion standard.").

devices contained cone-shaped parts resembling baffles and that there were holes aligned (even if not fully drilled through) with the center of the device that would allow a projectile to pass through. She also explained how she modified one of the devices to make it fully capable of functioning as a silencer. First, she removed the bolt that was covering the partially drilled out hole. Then, she finished drilling out the hole using a vise and a common hand drill that could be purchased at any hardware store—a process which took her five minutes. Following that, she tested the HIT device by attaching it to a pistol and test-firing. And she found that the HIT device reduced the pistol's report by 23.58 decibels, making it an "extremely effective" silencer. J.A. 1022.

In contrast, the expert also testified how these same design features made the devices ill-suited to function as solvent traps for several [**21] reasons. First, the devices were more expensive than most solvent traps. Second, because they were metal, a user could not see when a brush reached the end of the barrel when cleaning a firearm. Third, the "baffles" inside the HIT devices would not only serve no purpose in cleaning firearms but they would also interfere with cleaning by blocking brushes and making it difficult to retrieve patches or solvent once they came out the barrel. J.A. 1039.

Thus, the government produced evidence showing that, regardless of how they were labeled, the features of the HIT devices did not permit them to operate effectively as solvent traps but permitted the devices to operate very well as silencers. Paraphrasing the popular saying, if something walks like a silencer, swims like a silencer and quacks like a silencer, a reasonable jury could have found the device was a silencer.

The jury also heard evidence reflecting Speed's knowledge that the HIT devices were capable of being used as silencers. *See Staples v. United States*, 511 U.S. 600, 619, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994) (holding that, to obtain a conviction for possession of an unregistered machinegun under a different section of the NFA, the government must prove that the defendant knew that his device possessed the [**22] characteristics making it subject to regulation under the NFA). Indeed, the jury heard evidence that Speed intended to use the devices for that purpose.

Speed stated to Al that he started "panic buying" firearms shortly after January 6, 2021. J.A. 1227. In February 2021, Speed first attempted to purchase silencers using the required ATF registration forms. Shortly after being told that it could take a while for his Form 4 application to work through ATF's approval process, Speed purchased the HIT devices. And Speed told Al he "bought a couple of those" in response to Al's question about people who were selling solvent traps as a "way to . . . circumvent suppressors." J.A. 1229. Speed also explained to Al how to drill the hole required to use his devices as silencers. On top of that, when Al asked about where to purchase one of these devices, Speed recommended a local retailer who could help because "they know why people are buying them." J.A. 1238.

In addition, Speed discussed how he intended to use his HIT devices. When Speed began discussing his desire to kill or kidnap certain individuals to bring about political change, Al asked, "your solvent traps would come in handy at that point?" [**23] J.A. 1232. Speed responded, "Yeah. Yeah, that's the idea." J.A. 1232. From this evidence, a reasonable jury could

have [*283] concluded that Speed was aware that his devices were designed to function as silencers and purchased them for that purpose.[10]

In sum, the record contains sufficient evidence for the jury to have reasonably found each device met the statutory definition of a silencer.

3.

Next, Speed appeals the district court's denial of his motion to dismiss the indictment based on his theory that, under the government's interpretation of the definition of a silencer, the NFA is unconstitutionally vague. A penal statute is unconstitutionally vague when it fails to "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983).[11]

Speed insists that, under the government's interpretation, a number of everyday household objects could be used to suppress the sound of firing a gun. As a result, he maintains this interpretation would criminalize the possession of such items, rendering the statute unconstitutionally vague. We disagree.

It could be true that [**24] a plastic bottle, potato or other objects Speed mentions can suppress the report of a firearm.[12] But regardless of what else the NFA could cover, the HIT devices Speed possessed are "clearly proscribed" by the text of the statute. *United States v. Hasson*, 26 F.4th 610, 616 (4th Cir. 2022) (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 18-19, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010)). And when "a law clearly prohibits a defendant's conduct, the defendant cannot challenge, and a court cannot examine, whether the law may be [*284] vague

---

[10] Speed sought to introduce the following statement at trial that he made to Al regarding the HIT "solvent traps": "[O]nce you drill a hole in the end without filling out the Form 1 [required to register silencers], you're a felon." Op. Br. at 27 n.8 (second alteration in original); J.A. 367. The district court excluded the statement, reasoning it showed only that Speed made a mistake of law, which was not relevant and which could have confused the jury under Federal Rule of Evidence 403. On appeal, Speed simultaneously argues that the statement was not a mistake of law and instead shows that Speed did not believe the device he possessed was a silencer—meaning he did not have the mens rea required to sustain his conviction—and that the statutory definition of a silencer makes his offense of conviction a specific-intent crime, for which a mistake of law can be a defense. Like the district court, we do not read this statement as showing Speed did not realize his devices were silencers. We read it as showing Speed was mistaken on what exactly is criminalized, meaning Speed made a mistake of law. Further, unlike in a case like *Rehaif v. United States*, 588 U.S. 225, 228-31, 235, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019), in which some knowledge of the law is an element of the charged offense, this case is much more like *Staples*, 511 U.S. at 614-16, 619, when the Court held that the relevant knowledge requirement under the statute is the defendant's knowledge of the characteristics of his device. And because this statement does not show Speed lacked knowledge of the characteristics of his HIT devices, we find that the district court did not reversibly err in excluding the statement. Moreover, Speed conceded below that mistake of law is not a valid defense.

[11] "We review vagueness challenges de novo." *United States v. Barronette*, 46 F.4th 177, 190 (4th Cir. 2022).

[12] At least in the movies, household objects have been used as silencers. In *The Godfather Part II*, for example, Vito Corleone creates a makeshift silencer by wrapping a towel around his gun. THE GODFATHER PART II (Paramount Pictures 1974).

for other hypothetical defendants."[13] *Hasson*, 26 F.4th at 616-17 (quoting *United States v. Hosford*, 843 F.3d 161, 170 (4th Cir. 2016)). Thus, we affirm the district court's denial of Speed's motion to dismiss the indictment on vagueness grounds.[14]

4.

To sum up our discussion of the issues in bucket one of Speed's appeal, based on the text of the NFA's definition, we find that the district court accurately instructed the jury on the statutory definition of a silencer. Next, we find that, despite the devices he possessed being labeled as "solvent traps," there was sufficient evidence to convict Speed. Last, we reject Speed's argument that the NFA's definition is unconstitutionally vague as applied to him.

B.

We now turn to Speed's second bucket—his Second Amendment challenge. Speed argues that, even if his devices are silencers, his conviction is unconstitutional because [**25] the Second Amendment protects possession of silencers. For its part, the government agrees with Speed's assertion that silencers are protected by the Second Amendment. But the government, nevertheless, maintains that the NFA's regulation of silencers is constitutionally permissible.[15]

The Second Amendment declares, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In *District of Columbia v. Heller*, the Supreme Court recognized that the Second Amendment codified a preexisting right for individuals to possess and carry arms. 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). The Court found that "arms" meant "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Id.* at 581 (citation omitted). This extends "to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Id.* at 582. However, the Court also left room for regulation and stated that "the Second Amendment does not protect those

---

[13] Even so, it is not at all clear that the NFA covers the items Speed claims fall within its definition of a silencer. First, the definition only applies to devices. As just one example, a potato probably isn't a device. Second, the definition applies to devices "*for*" suppressing sound. § 921(a)(25) (emphasis added). The NFA definition may not cover items with objective features that fail to suggest a purpose of silencing a firearm, even if it is possible for someone to use them to suppress the sound of a firearm. *See Crooker*, 608 F.3d at 97 (specifically rejecting a reading of § 921(a)(25) based on whether an object is capable of silencing a firearm because that definition could apply to innocent household objects, including "a potato or a soda bottle"). Fortunately, since the HIT devices clearly fall within the NFA's definition of a silencer, we need not, and do not, define the outer contours of that definition.

[14] Speed also argues that ATF regulations and public guidance must be vague in that they do not give fair notice of what is criminalized. Though he provides no specific examples, he reaches this conclusion because he says his prosecution is not included within the scope of what is criminalized by the statute. But even if facts like his were not listed in those ATF regulations or public guidance, the statute would still clearly cover his conduct.

[15] We review Speed's constitutional challenge de novo. *See United States v. Jacobs*, 166 F.4th 395, 398 (4th Cir. 2026).

weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Id.* at 625.

In *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court established [*285] a two-step inquiry for assessing whether a regulation complies [**26] with the Second Amendment. *See* 597 U.S. 1, 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). At *Bruen* step one, we are to look at whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 24. Though the Supreme Court did not explicitly say so in *Bruen*, the party challenging the regulation has the burden at step one. *See Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 222-23 (4th Cir. 2024) (en banc), *cert. denied* 145 S. Ct. 1049, 220 L. Ed. 2d 381 (2025). If the challenged conduct falls outside the Second Amendment's textual protection, the challenge fails. *Bianchi v. Brown*, 111 F.4th 438, 446 (4th Cir. 2024) (en banc), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534, 222 L. Ed. 2d 1059 (2025). "But if a court finds that the text *does* encapsulate the desired conduct, the analysis moves to the second step, where the burden shifts to the government to 'justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.'" *Id.* (quoting *Bruen*, 597 U.S. at 24).

With that background in mind, Speed must show that silencers are bearable arms under the text of the Second Amendment. We have not addressed this question in a published opinion. In an unreported opinion, we held that they are not. *United States v. Saleem*, No. 23-4693, 2024 U.S. App. LEXIS 31563, 2024 WL 5084523, at *2 (4th Cir. Dec. 12, 2024) ("While a silencer may be a firearm accessory, it is not a 'bearable arm' that is capable of casting a bullet. Moreover, while silencers may serve a safety purpose to dampen sounds and protect the hearing of a firearm user or nearby bystanders, it fails to serve a core purpose in the arm's [**27] function."); *see also United States v. Simmons*, 143 F.4th 200, 207 (4th Cir. 2025) (identifying the question of whether silencers are protected by the Second Amendment but ultimately not reaching the question).

Only two other circuits have addressed whether silencers fall within the scope of the Second Amendment's protection. First, in *United States v. Cox*, the Tenth Circuit found silencers are not bearable arms. 906 F.3d 1170, 1186 (10th Cir. 2018). But that opinion pre-dated *Bruen*. Second, the Fifth Circuit initially held, in a post-*Bruen* opinion, that silencers are not bearable arms but subsequently withdrew that opinion. *See United States v. Peterson* (*Peterson I*), 127 F.4th 941, 946 (5th Cir. 2025), *withdrawn* (*Peterson II*), No. 24-30043, 2025 U.S. App. LEXIS 15181, 2025 WL 1688717 (5th Cir. June 17, 2025), *and superseded* (*Peterson III*), 150 F.4th 644 (5th Cir. 2025), *withdrawn and superseded* (*Peterson IV*), 161 F.4th 305 (5th Cir. 2025), *withdrawn and superseded* (*Peterson V*), 161 F.4th 331 (5th Cir. 2025). When the Fifth Circuit reissued the opinion, it assumed without deciding that silencers are protected by the Second Amendment.[16] *Peterson V*, 161 F.4th at 339. Thus, neither of these cases are instructive.

[16] Speed filed his reply brief after the Fifth Circuit withdrew its decision in *Peterson I* and before the court reissued its opinion. Indeed, aside from *Bruen, Peterson* is the only case he cites in support of his Second Amendment argument in his reply brief. He incorrectly anticipated that, once reissued, the new opinion would help his case.

Ultimately, we need not decide whether silencers are arms protected under the text of the Second Amendment. Even assuming they are, Speed's challenge fails for a separate reason—regulating arms through shall-issue licensing regimes is presumptively constitutional in the Fourth Circuit.

[*286] After *Bruen* found that a New York may-issue licensing regime violated the Second Amendment, we examined the constitutionality of a "shall issue" firearm permitting regime [**28] in *Maryland Shall Issue*, 116 F.4th at 220. Shall issue permitting jurisdictions are those in which "authorities *must* issue . . . licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *Bruen*, 597 U.S. at 13. These regimes "contain only 'narrow, objective, and definite standards' guiding licensing officials, rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion.'" *Id.* at 38 n.9 (citation omitted). In *Bruen*, the Supreme Court said in a footnote that such regimes "do not necessarily prevent law-abiding, responsible citizens from exercising their Second Amendment right." *Id.* But "because any permitting scheme can be put toward abusive ends, [the Court] d[id] not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right[s under the Second Amendment]." *Id.*

From this language, we interpreted *Bruen* to direct that shall-issue permitting requirements "are presumptively constitutional and generally do not 'infringe' the Second Amendment right to keep and bear arms under step one of the *Bruen* framework." *Md. Shall Issue*, 116 F.4th at 222. Thus, [**29] "if a [challenger] fails to rebut this presumption of constitutionality, the . . . challenge to the 'shall-issue' licensing law fails at step one, with no requirement to conduct a historical analysis under step two." *Id.* at 223.

The registration requirements in the NFA and related regulations provide objective criteria for the ATF to use in deciding whether to permit the transfer or manufacture of a silencer. *See* 26 U.S.C. §§ 5812(c), 5822; 27 C.F.R. §§ 479.62(b), 479.84(b); *see also* 28 C.F.R. § 0.131(c) ("*The Director of* [*ATF*] *shall* . . . [o]perate the National Firearms Licensing Center to review applications for firearms licenses; determine the eligibility of applicants; *issue licenses on approved firearms applications*; coordinate with field offices the inspection of applicants and licensees; and maintain a firearms license database . . . ." (emphasis added)). They do not give the ATF discretion about whether to grant or deny a permit if the applicant complies with the regulatory requirements. Thus, the NFA creates a shall-issue permitting regime. *Peterson V*, 161 F.4th at 339; *see also Bruen*, 597 U.S. at 38 n.9.

As a result, these requirements are presumptively constitutional, and Speed bears the burden of overcoming that presumption by showing the regime was abusive. *See Md. Shall Issue*, 116 F.4th at 225-29. But Speed makes no effort to do so. Indeed, [**30] after arguing that silencers are bearable arms protected by the Second Amendment, he presents no argument whatsoever that the NFA's regulatory requirements violate the Constitution.

Thus, even if we assume, without deciding, that silencers are bearable arms under the Second Amendment, Speed's challenge still fails. By presenting no argument on the subject, Speed has simply not carried his burden of showing that the NFA's presumptively constitutional shall-issue permitting requirements are "so abusive as to 'infringe' the Second Amendment right under step one of the *Bruen* framework." *See Md. Shall Issue*, 116 F.4th at 229; *accord Peterson V*, 161 F.4th at 340.

[*287] **III**.

In conclusion, the devices Speed possessed meet the definition of a silencer under 18 U.S.C. § 921(a)(25). We find no error in the district court's jury instructions, we reject Speed's sufficiency of the evidence challenge and we hold the NFA's definition of silencers is not unconstitutionally vague as applied to him. Finally, we conclude that, even if silencers are "bearable arms" under the Second Amendment, Speed has failed to present any argument that the NFA's shall-issue permitting regime is unconstitutional. For these reasons, the judgment of the district court is,

AFFIRMED.

Concur by: WILKINSON, RICHARDSON

Concur

WILKINSON, Circuit Judge, concurring:

The majority opinion ably explains [**31] why Speed's Second Amendment challenge fails. I join it in full. I write separately to share my view that Speed's challenge fails for an additional reason. The people's elected representatives may regulate silencers as they see fit because silencers are categorically unprotected by the Second Amendment.

I.

Bruen step one asks whether the object of a regulation is "cover[ed]" by "the Second Amendment's plain text." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). If the object is not covered by the text, then it falls outside the ambit of the Second Amendment, and the government may regulate it without "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17.

While the Amendment's text is unclear in some ways, it is plain in at least one: it protects the right to keep and bear "Arms." U.S. Const. amend. II. The Supreme Court has made clear that the term "Arms" means "[w]eapons of offence, or armour of defence," or "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *District of Columbia v. Heller*, 554 U.S. 570, 581, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (quoting

dictionaries from 1771 and 1773). To the Founding generation, the quintessential arms were "muskets and sabers." *United States v. Rahimi*, 602 U.S. 680, 692, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024).

Silencers do not fit this definition. They are neither weapons nor armor. "They cannot be fired or discharge [**32] projectiles." *United States v. Ritsema*, 31 F.3d 559, 562 (7th Cir. 1994). They cannot be worn for defense. And they are neither designed nor used by anyone to cast at or strike another person. After all, "you can't hurt anybody with a silencer unless you hit them over the head with it." *United States v. Hasson*, No. GJH-19-96, 2019 U.S. Dist. LEXIS 160498, 2019 WL 4573424, at *2 (D. Md. Sep. 20, 2019).

Instead, silencers are better understood as firearm accessories. This is a designation the Framers would have understood. Many Founding-era sources distinguished "arms" from "accoutrements" and "ammunition." *See, e.g.*, 1785 Va. Acts 12; 1781 Del. Laws 3; 1778 N.J. Laws 45; 1786 N.Y. Laws 38-40; 1786 N.H. Laws 359-62. "[W]eapons themselves [were] referred to as 'arms,' and accessories of weaponry [were] referred to as 'accoutrements.'" *Duncan v. Bonta*, 133 F.4th 852, 867 (9th Cir. 2025) (en banc). "Common accoutrements included flint, scabbards, holsters, and ammunition containers such as cartridge cases and cartridge boxes." *Id.*; *see also, e.g.*, 1781 Del. Laws 3 (referring to "a Musket or Firelock with a Bayonet, a Cart[ridge]-Box . . ., a Priming-Wire, a [*288] Brush and six Flints" as "Arms and Accoutrements").

Like Founding-era accoutrements, silencers have little or no utility without being attached to or accompanied by arms. Even the appellant in this case cannot help but refer to them as "accessories," *see* Opening Br. at 48, 51, and every court of appeals to discuss the question has arrived at the same conclusion, [**33] *Duncan*, 133 F.4th at 867-68; *United States v. Saleem*, No. 23-4693, 2024 U.S. App. LEXIS 31563, 2024 WL 5084523, at *2 (4th Cir. Dec. 12, 2024); *United States v. Cox*, 906 F.3d 1170, 1186 (10th Cir. 2018); *see also United States v. Simmons*, 143 F.4th 200, 207 (4th Cir. 2025); *Ritsema*, 31 F.3d at 562. As mere accessories, silencers fall outside "the Second Amendment's plain text." *Bruen*, 597 U.S. at 24.

II.

The government contends that some accessories—despite falling outside the Amendment's plain text—are protected at *Bruen* step one. It points to a decision long before *Bruen* in which the Supreme Court suggested that Second Amendment protection extends to some items that are not themselves "Arms." *United States v. Miller*, 307 U.S. 174, 180, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939) ("The possession of arms also implied the possession of ammunition . . . .") (quoting 1 Herbert L. Osgood, *The American Colonies in the Seventeenth Century* 499 (1904))).

It is true, as a general matter, that "constitutional rights necessarily protect the prerequisites for their exercise." *Luis v. United States*, 578 U.S. 5, 25, 136 S. Ct. 1083, 194 L. Ed. 2d 256 (2016) (Thomas, J., concurring in the judgment). Without bullets, for example, "the right to bear arms

would be meaningless." *Jackson v. City and Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014).

If this principle were extended too broadly, however, it would vitiate the Framers' careful choices about the scope of the rights they committed to text. They drafted and the people ratified an Amendment that protects "Arms," not "Arms and Accoutrements." For accoutrements or other accessories to receive protection under the Second Amendment, then, they must be necessary prerequisites to the right secured by the Amendment's plain text. [**34] The Sixth Circuit puts it well: the Amendment extends to those things "necessary to the effective exercise" of the right. *Oakland Tactical Supply, LLC v. Howell Twp.*, 103 F.4th 1186, 1193 (6th Cir. 2024). So does the Ninth: the Amendment only protects accessories "necessary to the ordinary operation" of a firearm. *Duncan*, 133 F.4th at 868.

Silencers fall well below this standard. Firearms are "useful and functional without a silencer attached, and a silencer is not a key item for the arm's upkeep and use like cleaning materials and bullets." *Saleem*, 2024 U.S. App. LEXIS 31563, 2024 WL 5084523, at *2. Firearms were widely used before silencers were invented at the turn of the twentieth century, and they continue to be widely used without silencers today. Indeed, while Speed contends there are 2.6 million silencers in the United States, Opening Br. at 51, other estimates suggest the number of firearms is nearly 400 million, Sabrina Tavernise, *An Arms Race in America*, N.Y. Times (May 30, 2021). A silencer's function—muffling the report of a firearm—is wholly superfluous.

The government proposes a legal standard focused on utility rather than necessity, arguing that the Second Amendment should "extend[] to firearm accessories that are *useful* to the exercise of the right." Supp. Br. of the United States at 4 (emphasis added). But an unconstrained utility standard would remake the Second Amendment [*289] as we know it. A [**35] dizzying array of firearm accessories, including dangerous items far removed from the need for "individual self-defense" that is the Amendment's "central component," would be swept into its zone of protection. *Heller*, 554 U.S. at 599 (emphasis omitted).

Consider bump stocks. These firearm accessories can be described as "useful" insofar as their purpose is to increase the rate of fire of semiautomatic rifles. *Garland v. Cargill*, 602 U.S. 406, 411-13, 144 S. Ct. 1613, 219 L. Ed. 2d 151 (2024). But their effect can be devastating. By equipping his firearms with bump stocks, a shooter in Las Vegas was able to kill 58 people and wound 500 more in a matter of minutes. *Id.* Or consider armor-piercing ammunition, sometimes described as "cop-killer bullets." *Kodak v. Holder*, 342 F. App'x 907, 909 (4th Cir. 2009). While armor-piercing ammunition may be useful to a firearm user in an abstract sense, its principal real-world effect is to severely increase the danger faced by law enforcement personnel. In an age defined by technological innovation, these treacherous accessories will soon be eclipsed by items even more lethal. The Framers would be surprised to learn that any of them was afforded constitutional protection.

What is true of bump stocks and armor-piercing ammunition is true of silencers. Utility alone cannot confer protection on a dangerous, [**36] unnecessary accessory. The Second Amendment does not extend that far.

III.

The conclusion that silencers are unprotected by the Second Amendment suggests nothing about what types of silencer laws, if any, are best for society. It suggests only that the question properly belongs in the democratic process—where it has been for the last century—rather than the courts.

When the first silencer was patented in 1908, "[o]bjections to [its] civilian use . . . appeared almost immediately." Robert J. Spitzer, *Gun Accessories and the Second Amendment*, 83 Law & Contemp. Probs. 231, 246 (2020). *Scientific American* reported that its invention had "greatly enlarged the opportunities for the commission of undetected crime" and urged that "it should be made the subject of immediate and very stringent legislation." *The Menace of the Noiseless Gun*, 100 Sci. Am. 218, 218 (1909). Maine banned silencers that year, 1909 Me. Laws 141, and at least fourteen other states imposed restrictions of their own between 1909 and 1936, Spitzer, *supra*, at 248 & n.123. Congress followed suit when it placed a silencer registration requirement in the National Firearms Act of 1934. The impression of many in that era was that silencers were part of "the arsenal of the 'public enemy,' the 'gangster.'" *People v. Brown*, 253 Mich. 537, 235 N.W. 245, 247 (Mich. 1931).

A century later, wholly legitimate reasons continue to motivate silencer restrictions. The sound of a gunshot is an essential and universally employed [**37] detection tool, both for police officers seeking out crime and for innocent victims and bystanders seeking to avoid it. That is true whether a police officer is patrolling the streets on foot or deploying modern acoustic detection technology. *See* Tatiana Schlossberg, *New York Police Begin Using ShotSpotter System to Detect Gunshots*, N.Y. Times (Mar. 16, 2015). The reduction in noise itself—the raison d'être of silencers—is what makes them so "dangerous and unusual." *United States v. McCartney*, 357 F. App'x 73, 76 (9th Cir. 2009).

[*290] Criminals know this. In 2019, a mass shooter in Virginia Beach killed twelve people using a silencer that made his firearm "sound like 'a nail gun.'" Phil McCausland, *Virginia Beach Shooter Killed 12 Using Silencer and High-capacity Magazine. Now, Lawmakers Might Look at Both.*, NBC News (June 4, 2019). In 2023, a gunman in Monterey Park, California used a silencer-equipped firearm to kill eleven. Jeremy White & K.K. Rebecca Lai, *What We Know About the Gun Used in the Monterey Park Shooting*, N.Y. Times (Jan. 26, 2023); Victoria Kim, *All of the Victims of the Monterey Park Shooting Have Now Been Identified*, N.Y. Times (Jan. 25, 2023). So did the man who murdered UnitedHealthcare's CEO in broad daylight in 2024. Corey Kilgannon, [**38] *Pistol Taken from Suspect Was a Fully Homemade Weapon, Officials Say*, N.Y. Times (Dec. 10, 2024).

In fact, we need look no further than this case. As the majority recounts, Speed himself amassed a collection of silencers as part of his plan to "wipe out the opposition and leave the entire country free" of them. J.A. 1235. He hoped to find "[p]eople who don't have bodyguards" and "[p]eople who don't have intel organizations helping them out," and then conduct a "mock trial" to decide which of them to add to "the list." *Id.* 1231-32. He thought his silencers would "come in handy at that point." *Id.*

In the face of this evidence, it is not hard to see why lawmakers have concluded that access to silencers should be circumscribed.

Speed asks us to focus on the fact that silencers help "lawful firearms users" by "protecting [their] hearing." Opening Br. at 50. Speed is assuredly right that they confer some hearing-related benefits. But these benefits are nothing more than one factor among many to be considered by the people and their elected representatives. If Congress or a state legislature concludes that the risks to law enforcement outweigh the hearing benefits to lawful firearm users, it [**39] is not up to a court to tell them otherwise. To do so would be to sideline the democratic process without justification in constitutional text or principle.

Judge Quattlebaum's opinion rightly concludes that the minimal burden imposed by Congress's shall-issue silencer registration requirement is constitutional. In my view, however, Congress's requirement would remain constitutional even if it was a broader one. When it comes to silencers, as with so many other subjects of present-day controversy, we must trust democracy.

RICHARDSON, Circuit Judge, concurring:

Circuit precedent binds me, so I concur in the Court's rejection of Speed's Second Amendment challenge. But the precedent we apply cannot be squared with *Bruen* or the Second Amendment's text, and I write to reiterate why.

All Second Amendment claims must be assessed under *Bruen*'s text-and-history framework. Majority Op. at 22-23; *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022); *see also United States v. Rahimi*, 602 U.S. 680, 691, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024). At step one, we've correctly assumed that suppressors fall within the scope of the Second Amendment's plain text. Majority Op. at 24. But rather than proceeding directly to history and tradition, we stop because Speed failed to show that the National Firearms Act suppressor-licensing scheme was "abusive." Why? Because our Court requires challengers to show that a shallissue regime [**40] that burdens the right to keep and bear arms is "particularly abusive" to establish a *prima facie* case for [*291] Second Amendment protection. *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 240 (4th Cir. 2024) (Richardson, J., dissenting).

Although this half-step between steps one and two is the binding precedent of this circuit, it disregards both the Second Amendment's plain text and Supreme Court precedent. Indeed, it flips *Bruen*'s two-step on its head: The Supreme Court has repeatedly clarified that when the government so much as "regulates arms-bearing conduct, . . . it bears the burden to justify its regulation." *Rahimi*, 602 U.S. at 691 (cleaned up); *see also Maryland Shall Issue*, 116 F.4th at 244

(Richardson, J., dissenting). This circuit's halfstep also lets a judge's assessment of a law's "abusiveness" cut the analysis short by reviving the very interest balancing that *Bruen* rejected.

This error springs from the en banc Court's misreading of *Bruen*'s footnote 9. *See id.* at 242-43; *cf. United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 755 n.6, 143 S. Ct. 1391, 216 L. Ed. 2d 1 (2023) (cautioning against "read[ing] a footnote" to "establish the general rule" for a class of cases); *Rahimi*, 602 U.S. at 701-02 (rejecting lower courts' expansion of the "responsible" citizens dicta from *Heller* and *Bruen* and emphasizing that "such a line [did not] derive from our case law," since "[t]he question was simply not presented" in prior cases). But footnote 9 did not make shall-issue regimes presumptively [**41] constitutional. It clarified only that they were not necessarily unconstitutional, unlike the more burdensome may-issue regime the Supreme Court considered. *See Bruen*, 597 U.S. at 38 n.9. Nowhere does it give courts free rein to assess the degree of burden at the plain-text stage. *See Maryland Shall Issue*, 116 F.4th at 241-42 (Richardson, J., dissenting). The Court warned only against importing *Bruen*'s outcome wholesale to different regimes. It left open that, at step two, the government might identify historical regulations imposing a comparable burden to a shall-issue regime. But where a regime burdens the right *at all*, we must proceed to the second step. That no historical tradition justified the more onerous burden did not foreclose that *some* tradition might justify a lesser one.

Though we have no choice but to follow this circuit's aberrant framework, I remain hopeful that we will one day assess firearm regulations against history and tradition. For now, we've given the government a free pass to erode protected conduct in ways inconsistent with our Nation's historical tradition, so long as it does so . . . nicely?

End of Document

FILED: May 5, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4308, US v. Hatchet Speed
1:22-cr-00165-MSN-1

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's website, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: May 5, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4308
(1:22-cr-00165-MSN-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HATCHET M. SPEED

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA	)	**JUDGMENT IN A CRIMINAL CASE**
	)	
v.	)	Case Number: 1:22-CR-165
	)	
HATCHET M. SPEED,	)	USM Number: 07348-510
	)	Courtney Dixon, Esq. and Brooke Rupert, Esq.
aka Speed, Hatchet; Doe, John; Speed, Daniel A	)	Defendant's Attorney
	)	

The defendant was found guilty on Counts 1-3 after a plea of not guilty.

The defendant is adjudged guilty of these offenses:

Title and Section	Nature of Offense	Offense Ended	Count
26 U.S.C. §§ 5841,5861(d) and 5871	Unlawful Possession of an Unregistered Firearm	9/7/2022	I
26 U.S.C. §§ 5841,5861(d) and 5871	Unlawful Possession of an Unregistered Firearm	9/7/2022	II
26 U.S.C. §§ 5841,5861(d) and 5871	Unlawful Possession of an Unregistered Firearm	9/7/2022	III

The defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 13, 2023
Date of Imposition of Judgment

/s/
Michael S. Nachmanoff
United States District Judge

Signature of Judge

Michael S. Nachmanoff , United States District Judge
Name and Title of Judge

April 13, 2023
Date

Sheet 2 - Imprisonment

Case Number: **1:22-CR-165**
Defendant's Name: **Speed, Hatchet**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of THIRTY-SIX (36) MONTHS on each count, to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on_____.

☐ as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to_____
at_____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Sheet 3 – Supervised Release

Case Number: **1:22-CR-165**
Defendant's Name: **Speed, Hatchet**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of THREE (3) YEARS on each count.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

Sheet 3 – Supervised Release

Case Number: **1:22-CR-165**
Defendant's Name: **Speed, Hatchet**

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov

Defendant's Signature _____ Date

Sheet 3A – Supervised Release

Case Number: **1:22-CR-165**
Defendant's Name: **Speed, Hatchet**

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation officer access to any requested financial information.

2. The defendant shall undergo a mental health evaluation and, if recommended, shall participate in a program approved by the United States Probation Office for mental health treatment. The cost of this program is to be paid by the defendant as directed by the probation officer.

3. The defendant shall waive all right of confidentiality regarding mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.

Sheet 5 – Criminal Monetary Penalties

Case Number: **1:22-CR-165**
Defendant's Name: **Speed, Hatchet**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	**$** 300.00	**$** 0.00	**$** 5,000 as to each count	**$** 0.00	**$** 0.00

Case Number: **1:22-CR-165**
Defendant's Name: **Speed, Hatchet**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $300 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payment for fine can be made upon release from incarceration

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States v. Speed

United States Court of Appeals for the Fourth Circuit

June 2, 2026, Filed

No. 23-4308

Reporter
2026 U.S. App. LEXIS 15999 *; 2026 LX 218080

UNITED STATES OF AMERICA, Plaintiff - Appellee v. HATCHET M. SPEED, Defendant - Appellant

Prior History: United States v. Speed, 175 F.4th 272, 2026 U.S. App. LEXIS 12995, 2026 WL 1217255 (May 5, 2026)

Counsel: [*1] For UNITED STATES OF AMERICA, Plaintiff - Appellee: Amanda St. Cyr, Assistant U. S. Attorney, Danya Elizabeth Atiyeh, Assistant U. S. Attorney, Lindsey Halligan, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, VA; Brian James Samuels, Assistant U. S. Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, VA.

For HATCHET M. SPEED, Defendant - Appellant: Edward Andrew Paltzik, TAYLOR DYKEMA PLLC, Houston, TX; Roger Isaac Roots, JOHN PIERCE LAW P.C., Woodland Hills, CA.

For UNITED STATES OF AMERICA, Plaintiff - Appellee: Amanda St. Cyr, Assistant U. S. Attorney, Danya Elizabeth Atiyeh, Assistant U. S. Attorney, Lindsey Halligan, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, VA; Brian James Samuels, Assistant U. S. Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, VA.

For HATCHET M. SPEED, Defendant - Appellant: Edward Andrew Paltzik, TAYLOR DYKEMA PLLC, Houston, TX; Roger Isaac Roots, JOHN PIERCE LAW P.C., Woodland Hills, CA.

Judges: Judge Wilkinson, Judge Richardson, Judge Quattlebaum.

Opinion

ORDER

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 Wilkinson, [*2] Judge Richardson, Judge Quattlebaum.

End of Document

1:22cr165, USA v. Speed

US District Court Criminal Docket

United States District Court, Virginia Eastern

(Alexandria)

Proceedings

#	Date	Proceeding Text	Source
1	09/06/2022	INDICTMENT as to Hatchet M. Speed (1) count(s) 1-3. (jlan) (Entered: 09/06/2022)	
4	09/06/2022	Redacted Criminal Case Cover Sheet. (jlan) (Entered: 09/06/2022)	
5	09/06/2022	MOTION to Seal by USA as to Hatchet M. Speed. (jlan) (Entered: 09/06/2022)	
6	09/06/2022	ORDER granting 5 Motion to Seal as to Hatchet M. Speed (1). Signed by Magistrate Judge John F. Anderson on 09/06/2022. (jlan) (Entered: 09/06/2022)	
7	09/06/2022	Arrest Warrant Issued in case as to Hatchet M. Speed. (jlan) (Entered: 09/06/2022)	
8	09/07/2022	MOTION to Unseal Case by USA as to Hatchet M. Speed. (jlan) (Entered: 09/07/2022)	
9	09/07/2022	ORDER granting 8 Motion to Unseal Case as to Hatchet M. Speed (1). Signed by Magistrate Judge John F. Anderson on 09/07/2022. (jlan) (Entered: 09/07/2022)	
10	09/07/2022	NOTICE of Filing of Exhibits for Initial Appearance by USA as to Hatchet M. Speed (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Traxler, Thomas) (Entered: 09/07/2022)	
11	09/07/2022	Pretrial Services Bond REPORT (Initial Pretrial Services Bond Report) (SEALED - government and defense counsel) as to Hatchet M. Speed. (Jankovitz, Nicole) (Entered: 09/07/2022)	
	09/07/2022	Arrest of Hatchet M. Speed (wgar,) (Entered: 09/07/2022)	
12	09/07/2022	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Initial Appearance as to Hatchet M. Speed held on 9/7/2022. US appeared through: Thomas Traxler and Amanda Lowe. Deft appeared without counsel - AFPD Courtney Dixon - present. Deft informed of rights, charges, and penalties. Court to appoint counsel. Counsel for the parties and the defendant were orally advised of the disclosure obligations set forth in Brady v. Maryland, 373 U.S. 83 (1963) and its progeny. Gov't is not seeking detention. Deft placed on PR bond with conditions. Arraignment set for 9/22/22 (gov't has contacted MSN Chambers) time - TBD. (Tape #FTR.)(wgar,) (Entered: 09/07/2022)	
13	09/07/2022	ORDER - This matter comes before the Court on its own initiative. Pursuant to Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act, the Court ORDERS the United States to adhere to the disclosure obligations set forth in Brady v. Maryland, 373 U.S. 83 (1963) and its progeny. Brady v. Maryland instructs that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. 373 U.S. at 87. Failure to adhere to this requirement may result in serious consequences, up to and including exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, disciplinary	

#	Date	Proceeding Text	Source
		action, or sanctions by the court. Having given counsel the oral admonition required by the Due Process Protections Act, this Order serves as the reminder of prosecutorial obligation and duties in accordance with Rule 5(f) and the Eastern District of Virginia Standing Order concerning the same as to Hatchet M. Speed. Signed by Magistrate Judge John F. Anderson on 09/07/2022. (wgar,) (Entered: 09/07/2022)	
14	09/07/2022	ORDER Setting Conditions of Release as to Hatchet M. Speed (1) PR BOND. Signed by Magistrate Judge John F. Anderson on 09/07/2022. (wgar,) (Entered: 09/07/2022)	
	09/07/2022	PR Bond Entered as to Hatchet M. Speed. (wgar,) (Entered: 09/07/2022)	
	09/07/2022	ORAL ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Hatchet M. Speed - Brooke Sealy Rupert, Courtney Dixon for Hatchet M. Speed appointed. Entered by Magistrate Judge John F. Anderson on 09/07/2022. (wgar,) (Entered: 09/07/2022)	
	09/08/2022	Arraignment set for 9/22/2022 at 10:00 AM in Alexandria Courtroom 600 before District Judge Michael S Nachmanoff. (lcre,) (Entered: 09/08/2022)	
15	09/09/2022	Consent MOTION to Travel to Attend Medical Appointment by Hatchet M. Speed. (Attachments: # 1 Exhibit Previous Order, # 2 Exhibit Current Order, # 3 Proposed Order Proposed Order)(Dixon, Courtney) (Entered: 09/09/2022)	
16	09/09/2022	ORDER granting re 15 Consent MOTION to Travel to Attend Medical Appointment as to Hatchet M. Speed. Signed by District Judge Michael S Nachmanoff on 9/9/2022. (lcre,) (Entered: 09/09/2022)	
17	09/22/2022	Minute Entry for proceedings held before District Judge Michael S Nachmanoff:Arraignment as to Hatchet M. Speed (1) Count 1-3 held on 9/22/2022. USA appeared through Amanda Lowe and Thomas Traxler. Deft appeared with Brooke Rupert. Deft WFA, PNG, and demanded a trial by jury trial. Protective Order and Discovery Order filed in open court. Jury Trial set for 12/12/2022 at 09:00 AM in Alexandria Courtroom 600 before District Judge Michael S Nachmanoff. Deft continued on previous conditions.(Court Reporter D. Salters.)(lcre,) (Entered: 09/22/2022)	
18	09/22/2022	Agreed Discovery Order as to Hatchet M. Speed. Signed by District Judge Michael S Nachmanoff on 9/22/2022. (lcre,) (Entered: 09/22/2022)	
19	09/22/2022	Protective Order as to Hatchet M. Speed. Signed by District Judge Michael S Nachmanoff on 9/22/2022. (lcre,) (Entered: 09/22/2022)	
20	09/22/2022	WAIVER of Speedy Trial by Hatchet M. Speed (lcre,) (Entered: 09/22/2022)	
21	10/11/2022	Consent MOTION for Extension to File Pretrial Motions by Hatchet M. Speed. (Attachments: # 1 Proposed Order Proposed Order)(Dixon, Courtney) (Entered: 10/11/2022)	
22	10/12/2022	ORDERED that the re 21 Motion for Extension of Time is GRANTED. ORDERED that the pretrial motions in this matter shall be filed no later than October 19, 2022 as to Hatchet M. Speed (1). Signed by District Judge Michael S Nachmanoff on 10/12/2022. (lcre,) (Entered: 10/12/2022)	
23	10/19/2022	MOTION to Dismiss Indictment by Hatchet M. Speed. (Attachments: # 1 Exhibit 2017 ATF Bulletin, # 2 Exhibit Storage Inventory, # 3 Exhibit Letter to Senate, # 4 Exhibit 2019 ATF Bulletin, # 5 Exhibit DOJ Notice Letter)(Dixon, Courtney) (Entered: 10/19/2022)	
	10/25/2022	Status Conference set for 11/3/2022 at 10:00 AM in Alexandria Courtroom 400 before District Judge Michael S Nachmanoff. (lcre,) (Entered: 10/25/2022)	
24	11/02/2022	RESPONSE in Opposition by USA as to Hatchet M. Speed re 23 MOTION to Dismiss Indictment (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7	

APPENDIX F

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms, and Explosives

Office of the Director

October 9, 2026

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES AND THE PUBLIC REGARDING THE NATIONAL FIREARMS ACT MAKING AND TRANSFER REQUIREMENTS FOR CERTAIN FIREARMS AND DEVICES

The purpose of this open letter is to notify all federal firearm licensees (FFLs) and the public of guidance from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding the applicability of certain provisions of National Firearms Act (NFA) to firearms that are no longer taxed pursuant to the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025). Congress reduced the transfer and making taxes to $0 in the One Big Beautiful Bill Act for certain weapons and devices. These include short-barreled rifles, short-barreled shotguns, silencers and "any other weapon[s]" as defined in 26 U.S.C. § 5845(e).

On August 5, 2026, a U.S. district judge in the Northern District of Texas enjoined ATF from enforcing certain provisions of the National Firearms Act (NFA), 26 U.S.C. ch. 53, effective August 12, 2026. *See generally Silencer Shop Found. v. ATF*, No. 6:25-CV-056-H, 2026 WL 2255460 (N.D. Tex. Aug. 5, 2026). Based on the reduction of the tax, the district court held that the NFA's registration and transfer provisions were no longer an exercise of Congress's taxing power with respect to those firearms. *Id.* at *1, *13–14. The district court also held that the challenged NFA provisions could not be upheld as an exercise of Congress's power over interstate commerce because Congress did not rely on its power over interstate commerce when it first passed the NFA in 1934. *Id.* at *18–19.

The district court enjoined ATF from administering a variety of NFA provisions. These include the requirements to approve the making or transfer of firearms, the requirement to register all NFA firearms, and the associated criminal provisions for making, transferring, receiving, or possessing unregistered NFA firearms as applied to the $0 tax items. *Id.* at *30. The injunction applies only to the plaintiffs and to NFA firearms for which the One Big Beautiful Bill Act eliminated existing taxes. *Id.* at *31.

Since the district court's injunction, ATF has received requests for guidance from litigants, Members of Congress, state Attorneys General, the industry, and the general public. Forty-seven Members of the U.S. House and Senate have also requested that ATF apply the ruling nationwide

to all regulated parties.[1] This open letter will provide an overview of the path forward, and it will be accompanied by a "Frequently Asked Questions" on ATF's website that will provide more detail.

Although the district court's injunction applies only to plaintiffs and certain other specified persons, the Department has determined to exercise its enforcement discretion to create greater uniformity, consistent with the Attorney General's statement today. Consequently, effective October 9, 2026, ATF will no longer require individuals to seek ATF approval under the NFA before making or transferring short-barreled rifles, short-barreled shotguns, silencers, and "any other weapon[s]" as defined in 26 U.S.C. § 5845(e). ATF will also no longer require such items to be registered in the National Firearms Registration and Transfer Record. These policies apply uniformly to anyone otherwise subject to these requirements, not just to the plaintiffs in the litigation.

ATF will continue to administer the NFA on a voluntary basis. ATF will accept Form 1 applications to make or register these firearms and devices by those making such items. ATF will also accept Form 3 or Form 4 applications to transfer or register such items. Manufacturers are allowed to report the manufacture of these items on a Form 2.

Interested parties, however, should note five limits of this change in enforcement policy. *First*, the NFA still imposes special (occupational) taxes on any person engaged in the business of manufacturing, importing, or dealing in all NFA firearms and devices, including short-barreled rifles, short-barreled shotguns, silencers, and "any other weapon[s]" as defined in 26 U.S.C. § 5845(e). The district court's injunction does not affect these taxes. Consequently, those engaged in the business must continue to pay applicable taxes on their businesses.

Second, the injunction does not disturb the NFA's application to machineguns and destructive devices. The One Big Beautiful Bill Act maintained the $200 tax on such items. Consequently, all NFA provisions still apply to machineguns and destructive devices.

Third, the district court did not enjoin any provision of the Gun Control Act of 1968 (GCA). The GCA's definition of "firearms" includes all firearms and suppressors and thus extends to short-barreled rifles, short-barreled shotguns, silencers, and "any other weapon[s]." Because these NFA firearms and devices are statutory "firearms" under the GCA, they may not be possessed by prohibited persons, and all recordkeeping and background check requirements under the GCA remain in place. *See, e.g.*, 18 U.S.C. §§ 921(a)(3); *id.* § 922(d), (g), (n), (t); *id.* § 923(g); 27 C.F.R. § 478.121, *et seq*.

Fourth, the district court did not enjoin the GCA's restrictions on the transportation and sale of short-barreled rifles and short-barreled shotguns. *See* 18 U.S.C. § 922(a)(4), (b)(4). Individuals transporting short-barreled rifles and short-barreled shotguns should continue to file Form 20s, even if the firearms are not registered in the National Firearms Registration and Transfer Record. ATF is working as quickly as possible to issue new regulations to authorize federal firearms

[1] *See* Letter from Congressman Andrew S. Clyde, et al., to Attorney General Todd Blanche, Aug. 11, 2026, https://clyde.house.gov/uploadedfiles/clyde_blancheletter_nfaruling_aug26.pdf.

licensees to transfer short-barreled rifles and short-barreled shotguns under the GCA. In the interim, ATF will not enforce the provisions in 18 U.S.C. § 922(b)(4).

Fifth, the district court's injunction and the enforcement policy announced by this Open Letter do not affect state or local laws that govern NFA weapons. Most states have general criminal prohibitions on the possession of some or all NFA items. These laws often have exceptions for those NFA items possessed in compliance with or registered under federal law. Individuals, including dealers, should consult their local law enforcement authorities or seek legal advice for guidance on whether unregistered NFA items are lawful in their jurisdictions. Because interpretations of state law may vary, local authorities should also be contacted, or other advice sought, before transporting an unregistered NFA item into or through another jurisdiction. Additionally, it is unclear whether state courts will apply the safe harbor created by 18 U.S.C. § 926A to interstate transportation of unregistered NFA items. Consequently, individuals should exercise caution before transporting unregistered NFA items through states in which such items are prohibited by law, even if the items are not prohibited in the originating and destination states. The GCA also continues to prohibit federal firearm licensees from transferring statutory firearms in violation of state or local law. 18 U.S.C. § 922(b)(2). The GCA defines "firearm" to include all NFA items for which Congress eliminated the tax, including silencers. 18 U.S.C. § 921(a)(3).

Questions pertaining to this Open Letter should be directed toward ATF's Firearms Industry Programs Branch (FIPB) at fipb@atf.gov.

ROBERT CEKADA
Digitally signed by ROBERT CEKADA
Date: 2026.10.09 11:11:21 -04'00'

Robert Cekada
Director

APPENDIX G

Silencer Shop Found. v. BATFE

United States District Court for the Northern District of Texas, San Angelo Division

August 5, 2026, Decided; August 5, 2026, Filed

No. 6:25-CV-056-H

Reporter
2026 U.S. Dist. LEXIS 174125 *; 2026 LX 446909

SILENCER SHOP FOUNDATION, et al., Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, et al., Defendants.

Counsel: [*1] For Silencer Shop Foundation, Plaintiff: Michael D Faucette, Stephen Joseph Obermeier, LEAD ATTORNEYS, PRO HAC VICE, Wiley Rein LLP, Washington, DC; Boyd Garriott, PRO HAC VICE, Washington, DC; Brandon Wilson Barnett, Payne Powell Truitt and Chandler, Lubbock, TX; Jeremy J Broggi, PRO HAC VICE, Wiley LLP, Washington, DC.

For Gun Owners of America, Inc., Plaintiff: Stephen Dean Stamboulieh, LEAD ATTORNEY, Stamboulieh Law PLLC, Olive Branch, MS; Brandon Wilson Barnett, (See above for address), Bar Status: Admitted/In Good Standing.

For Firearms Regulatory Accountability Coalition Inc, B&T USA, LLC, Palmetto State Armory, LLC, Silencerco Weapons Research, LLC, doing business as, Silencerco, Plaintiffs: Michael D Faucette, Stephen Joseph Obermeier, LEAD ATTORNEYS, PRO HAC VICE, Wiley Rein LLP, Washington, DC; Boyd Garriott, PRO HAC VICE, Washington, DC; Brandon Wilson Barnett, (See above for address), Bar Status: Admitted/In Good Standing,; Jeremy J Broggi, PRO HAC VICE, Wiley LLP, Washington, DC.

For Gun Owners Foundation, Brady Wetz, Plaintiffs: Stephen Dean Stamboulieh, LEAD ATTORNEY, Stamboulieh Law PLLC, Olive Branch, MS; Brandon Wilson Barnett, (See above for address), Bar Status: Admitted/In [*2] Good Standing.

For State of West Virginia, Plaintiff: Michael Ray Williams, LEAD ATTORNEY, PRO HAC VICE, WV Attorney General's Office, Bldg 1 Rm 26E, Charleston, WV.

For State of Idaho, Plaintiff: Michael Adam Zarian, LEAD ATTORNEY, Idaho Office of the Attorney General, Boise, ID.

For State of Wyoming, Plaintiff: Ryan Schelhaas, LEAD ATTORNEY, PRO HAC VICE, Wyoming Attorney General's Office, Cheyenne, WY.

For State of North Dakota, Plaintiff: Philip Jordan Axt, LEAD ATTORNEY, ND Office of the Attorney General, Bismarck, ND.

For State of Indiana, Plaintiff: James A Barta, LEAD ATTORNEY, PRO HAC VICE, Office of IN Attorney General, Indianapolis, IN.

For State of South Dakota, Plaintiff: Grant Michael Flynn, LEAD ATTORNEY, PRO HAC VICE, Office of the Attorney General South Dakota, Pierre, SD.

For State of Kansas, Plaintiff: James Rodriguez, LEAD ATTORNEY, Kansas Attorney General's Office, Topeka, KS.

For State of Georgia, Plaintiff: Elijah J. O'Kelley, LEAD ATTORNEY, PRO HAC VICE, Georgia Office of the Attorney General, Atlanta, GA.

For State of South Carolina, Plaintiff: Thomas T. Hydrick, LEAD ATTORNEY, PRO HAC VICE, Office of the Attorney General of South Carolina, Columbia, SC.

For State of [*3] Oklahoma, Plaintiff: Garry M Gaskins, II, LEAD ATTORNEY, PRO HAC VICE, Oklahoma Attorney General, Tulsa, OK.

For State of Texas, Plaintiff: Munera Al-Fuhaid, LEAD ATTORNEY, Texas Attorney General's Office, Austin, TX; Christina Cella, Thecb, Office of the Ombudsman, Austin, TX; Monroe David Bryant, Jr, Texas Attorney General's Office, (MC-009), Austin, TX.

For State of Utah, Plaintiff: Stanford Purser, LEAD ATTORNEY, Office of the Utah Attorney General, Salt Lake City, UT; Andrew Dymek, PRO HAC VICE, Attorney General, Civil Appeals, Heber Wells Bldg, Salt Lake City, UT.

For State of Montana, Plaintiff: Christian Brian Corrigan, LEAD ATTORNEY, Montana Attorney General's Office, Office of the Attorney General, Helena, MT.

For State of Alaska, Plaintiff: Jenna Lorence, LEAD ATTORNEY, State of Alaska, Anchorage, AK.

For State of Louisiana, Plaintiff: Jorge Benjamin Aguinaga, LEAD ATTORNEY, Louisiana Department of Justice, Baton Rouge, LA.

For Hot Shots Custom LLC, Texas State Rifle Association, John Jensen, Jeremy Neusch, FPC Action Foundation, David Lynn Smith, Citizens Committee for the Right to Keep and Bear Arms, Plaintiffs: R Brent Cooper, LEAD ATTORNEY, Cooper & Scully PC, Dallas, TX; [*4] David H Thompson, PRO HAC VICE, Cooper & Kirk PLLC, Washington, DC; John D. Ohlendorf, Nicholas A. Varone, Peter A Patterson, PRO HAC VICE, Cooper & Kirk, PLLC, Washington, DC.

For Bureau of Alcohol, Tobacco, Firearms and Explosives, Daniel Driscoll, in his official capacity as acting director of the ATF, Pamela J Bondi, in her official capacity as Attorney General of the USA, United States Department of Justice, Defendants: Jody Dale Lowenstein, LEAD ATTORNEY, US Department of Justice, Civil Division, Federal Programs Branch, Washington, DC.

Judges: JAMES WESLEY HENDRIX, UNITED STATES DISTRICT JUDGE.

Opinion by: JAMES WESLEY HENDRIX

Opinion

MEMORANDUM OPINION AND ORDER

Article I of the Constitution gives Congress certain enumerated powers. Among those powers is the authority to "lay and collect Taxes." U.S. Const. art. I, § 8. cl. 1. In 1934, Congress invoked its taxing power to enact the National Firearms Act—a scheme to constrict the market for certain classes of firearms. As passed, the NFA required individuals to pay a tax before transferring or making a covered

firearm. And it included burdensome regulatory provisions to aid the collection and enforcement of those taxes. At that time, the NFA possessed the key feature of any tax: It produced some revenue for the government.

But that is no [*5] longer true. In 2025, Congress eliminated the NFA's transfer and making taxes for four categories of firearms: short-barreled shotguns, short-barreled rifles, silencers, and a final, defined group of miscellaneous firearms. Because today's NFA does not generate any revenue from untaxed firearms, its regulatory provisions cannot be upheld under the taxing power. And there is no sign in the NFA's text, structure, or statutory history that Congress invoked any other power in crafting the NFA provisions at issue. Thus, the regulatory provisions must be enjoined as unconstitutional because they exceed Congress's enumerated powers.

The plaintiffs are a coalition of individuals, businesses, associations, and states. What began as one case is now two: Recently, another judge in this district transferred a related action, *Jensen v. ATF*, No. 6:26-CV-227, to this Court. The Court consolidated *Jensen* with the lead case, *Silencer Shop Foundation v. ATF*, No. 6:25-CV-056, and set both cases for decision on cross-motions for summary judgment. *See* Dkt. Nos. 48; 59; 117; 118. With the NFA's taxes now eliminated, each set of plaintiffs alleges that the NFA's regulatory provisions for untaxed firearms [*6] exceed Congress's Article I enumerated powers. They also claim that those same NFA provisions infringe the Second Amendment right to "keep and bear Arms."

The Court agrees on the first point and need not reach the second. By zeroing out the transfer and making taxes for most NFA firearms, Congress eliminated the constitutional basis for the regulations that formerly supported the taxes for those firearms. No longer can the challenged NFA provisions be justified—as they have been for nearly 90 years—under Congress's taxing power. *See Sonzinsky v. United States*, 300 U.S. 506, 57 S. Ct. 554, 81 L. Ed. 772, 1937-1 C.B. 351 (1937). And because Congress enacted the challenged NFA provisions under the Taxing Clause only, the NFA cannot be retroactively justified under another power that Congress never invoked, such as its authority to regulate interstate commerce. *See* U.S. Const. art. I, § 8, cl. 3. Thus, the challenged NFA provisions exceed Congress's enumerated powers.

With that understanding, the Court accepts the plaintiffs' invitation—offered at the motions hearing—to forgo adjudication of their Second Amendment claims. The Court does not decide constitutional questions unnecessarily, especially when the plaintiffs will receive no less relief than they would get for prevailing under the Second Amendment.

Remedy-wise, the plaintiffs in both cases are entitled to a permanent [*7] injunction barring enforcement of the challenged NFA provisions against them, their members, and their customers. But that is as far as it goes. Federal courts lack power to issue universal injunctions that provide relief to parties not before the Court. *See Trump v. CASA, Inc.*, 606 U.S. 831, 145 S. Ct. 2540, 222 L. Ed. 2d 930 (2025). The Court's remedy is limited in other respects, too. The *Jensen* plaintiffs lack Article III standing to challenge the NFA's regulation of "any other weapon"—the final, defined group of miscellaneous firearms—because they did not establish as much from the start of the case. The Court also declines to issue the requested declaratory judgments because they would provide no further relief.

But to be clear: The challenged NFA provisions are unconstitutional.[1] Congress's choice to eliminate the transfer and making taxes matters, and the defendants cannot save the NFA's regulatory scheme by referring to a power that Congress never invoked. Efforts to render the NFA constitutional must come from Congress, not this Court.

1. Background

A. Legal Framework

i. The National Firearms Act

The National Firearms Act, Pub. L. No. 73-474, 48 Stat. 1236 (1934), is an "interrelated statutory system for the taxation of certain classes of firearms." *Haynes v. United States*, 390 U.S. 85, 87, 88 S. Ct. 722, 19 L. Ed. 2d 923, 1968-1 C.B. 615 (1968). Enacted in 1934, the NFA was Congress's attempt to regulate so-called "gangster [*8] weapons" linked to Prohibition Era violence. *See* Stephen P. Halbrook, *The Power to Tax, the Second Amendment, and the Search for Which "'Gangster' Weapons" to Tax*, 25 Wyo. L. Rev. 149, 153 (2025); *Johnson v. United States*, 576 U.S. 591, 640-41, 135 S. Ct. 2551, 192 L. Ed. 2d 569 & n.9 (2015) (Alito, J., dissenting). But the NFA's definition of "firearm" is "both highly under- and over-inclusive," *Mock v. Garland*, 75 F.4th 563, 567 (5th Cir. 2023), and it does not reflect the word's ordinary meaning. *See United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 507, 112 S. Ct. 2102, 119 L. Ed. 2d 308 (1992) ("The word 'firearm' is used as a term of art in the NFA."). For example, while the NFA regulates "poison gas," "missile[s]," and sawed-off shotguns, it excludes handguns and other widely legal and popular firearms, like a standard AR-15. *See* 26 U.S.C. § 5845(a), (e), (f); *see Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297, 145 S. Ct. 1556, 221 L. Ed. 2d 910 (2025) ("The AR-15 is the most popular rifle in the country.").

NFA "firearm[s]" include short-barreled shotguns, short-barreled rifles, silencers, and "any other weapon[s]" (AOW).[2] 26 U.S.C. § 5845(a). The statutory definition also covers machineguns and destructive devices, which are subject to additional provisions apart from the NFA. *See, e.g.*, 18 U.S.C. § 922(o) (making it "unlawful for any person to transfer or possess a machinegun," with some exceptions).

Those who wish to own or transfer NFA firearms face a strict regulatory regime. Recognizing constitutional limits on its authority to regulate intrastate firearms activities, Congress enacted the NFA as "a [*9] taxing scheme." *United States v. Cox*, 906 F.3d 1170, 1179 (10th Cir. 2018); *see* Halbrook, *supra*

---

[1] The challenged NFA provisions are 26 U.S.C. §§ 5812(a)-(b), 5822, 5841(a)-(c), (e), 5842(b), 5861(b)-(f), (i), 27 C.F.R. §§ 479.62(a)-(d), and 479.84(a)-(d). A few of the NFA provisions—specifically, those dealing with marking regulated firearms—are challenged by the *Jensen* plaintiffs only. *See* 6:26-CV-227, Dkt. No. 26 at 17. The Court's final judgment specifies the provisions from which only the *Jensen* plaintiffs are entitled to relief.

[2] "Any other weapon" is defined as a weapon "capable of being concealed on the person from which a shot can be discharged," "a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell," or a weapon "with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made . . . without manual reloading." 26 U.S.C. § 5845(e); *see United States v. Cheramie*, 520 F.2d 325, 333 & n.18 (5th Cir. 1975) (affirming a conviction where a pen gun was "any other weapon").

at 154-55. The scheme centers on two distinct sets of taxes. First, importers, manufacturers, and dealers of NFA firearms must pay an annual "special (occupational) tax" of $500 or $1,000 depending on the nature of their business. 26 U.S.C. § 5801(a). Second, for most of its history, the statute imposed a $200 tax (roughly $5,000 in today's dollars) on those who transferred or made a listed firearm.[3] *Mock*, 75 F.4th at 569; *see* 26 U.S.C. § 5853(a), (b) (exempting states and their political subdivisions from both taxes). The $200 transfer and making taxes—seen as quite severe in the 1930s—were "explicitly intended to tax [NFA] weapons out of existence," thus achieving Congress's goal of curtailing transactions in disfavored firearms. *Mock*, 75 F.4th at 569 & n.10.

To aid in collecting NFA taxes, Congress imposed "comprehensive requirements" involving registration, reporting, and recordkeeping. *Haynes*, 390 U.S. at 88. To transfer an NFA firearm,[4] the transferor must file a written application, known as a Form 4, with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). 27 C.F.R. § 479.84(a). The transferee must give ATF his fingerprints, photograph, and other private information like his date of birth and home address. *Id.* § 479.84(b); 26 U.S.C. § 5812(a). The application also requires a detailed description of the [*10] firearm at issue, including exact specifications about its caliber, gauge, size, barrel length, serial number, and manufacturer. 27 C.F.R. § 479.84(b)(1), (8). Under ATF regulations, the transferee must then send a copy of the application to the chief local law enforcement officer, *id.* § 479.84(c), who is then asked to contact ATF if he "ha[s] information that may disqualify [the applicant] from acquiring or possessing a firearm." ATF, Application to Transfer and Register NFA Firearm (Tax-Paid) at 2, https://perma.cc/744P-LAU5. Finally, the transferee cannot take possession of the firearm until ATF approves the application, which can take weeks. 26 U.S.C. § 5812(b); ATF, Current Processing Times, https://perma.cc/CWA4-4EAR.

Similar requirements apply to making an NFA firearm.[5] *See* 26 U.S.C. § 5822. A maker must complete a different application, called a Form 1, that requires substantially the same information as a Form 4. 27 C.F.R. § 479.62(a). Besides filing a written application with ATF, providing the necessary information, and notifying local law enforcement, *see id.* § 479.62(b)-(c), a maker must engrave a serial number on his firearm. 26 U.S.C. § 5842(a); 27 C.F.R. § 479.102(a)(1). And again, he must wait until ATF approves his application before taking any action. 27 C.F.R. § 479.64(c).

More broadly, the NFA requires that all covered firearms (except [*11] those belonging to the United States) be registered in the National Firearms Registration and Transfer Record, a central registry maintained by ATF.[6] 26 U.S.C. § 5841(a). The registry lists each NFA firearm, along with the name and address of the person entitled to possess that firearm. *Id.* § 5841(a)(1)-(3). At all times, a person possessing a registered firearm "shall retain proof of registration" that can be made available "upon request." *Id.* § 5841(e). It is illegal for one to "receive or possess a firearm" that was transferred or made

---

[3] One exception: To transfer an AOW, the tax was only $5. *See* 26 U.S.C. § 5811 (1968).

[4] The term "transfer" includes "selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of" an NFA firearm. 26 U.S.C. § 5845(j).

[5] The term "make" includes "manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a[n] [NFA] firearm." 26 U.S.C. § 5845(i).

[6] Historically, the Secretary of the Treasury administered and enforced the NFA. The statute still refers to the "Secretary," even though the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred ATF from the Department of the Treasury to the Department of Justice. Today, the Attorney General administers the NFA, a task delegated to ATF. *See* 26 U.S.C. § 7801(a)(2); 28 C.F.R. § 0.130(a)(1)-(3).

in violation of the statute or which is not registered to him. *Id.* § 5861(b)-(d). And the NFA prohibits transferring or making a firearm without complying with its provisions. *Id.* § 5861(e)-(f).

Unlike the NFA's sister statute, the Gun Control Act, Pub. L. No. 90-618, 82 Stat. 1213 (1968), Congress did not tie the NFA to interstate or foreign commerce. *Cf.* 18 U.S.C. § 922(a)(1)(A) (making it unlawful for any non-licensed person "to engage in the business of importing, manufacturing, or dealing in firearms . . . in interstate or foreign commerce"); *see also Polymer80, Inc. v. Garland*, No. 4:23-CV-029, 2023 U.S. Dist. LEXIS 91311, 2023 WL 3605430, at *1 (N.D. Tex. Mar. 19, 2023) ("The Gun Control Act of 1968 regulates firearms in interstate commerce."). The NFA, in contrast, applies equally to a firearm made in one's home or transferred in a private sale between neighbors (an intrastate activity) and a firearm purchased commercially and shipped [*12] to a customer in another state (an interstate activity).

Lastly, the NFA's restrictions "have teeth." *Mock*, 75 F.4th at 570. Violating the statute carries a potential term of imprisonment of up to ten years, 26 U.S.C. § 5871, a fine of $10,000, *id.*, and seizure and forfeiture of the firearm. 26 U.S.C. § 5872. Because NFA violations may constitute a felony, one could be subject to "a lifetime ban on ownership of firearms." *Mock*, 75 F.4th at 571 (citing 18 U.S.C. § 922(g)(1)).

ii. The One Big Beautiful Bill Act

On July 4, 2025, President Trump signed into law the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025). The Act, among other things, amended the NFA to eliminate the transfer and making taxes on short-barreled shotguns, short-barreled rifles, silencers, and AOWs. 139 Stat. at 247-48. So for those firearms, the current tax rate is "$0," effective January 1, 2026. 26 U.S.C. §§ 5811(a)(2) (transfer), 5821(a)(2) (making). But Congress did not eliminate the $200 transfer and making taxes for machineguns and destructive devices, *see id.* §§ 5811(a)(1), 5821(a)(1), nor did it change the $500 or $1,000 special occupational tax on importers, manufacturers, and dealers of NFA firearms. *See id.* § 5801(a). And most importantly, Congress left in place the "web of regulation" that was originally meant to "aid[] enforcement" of the NFA's now-extinct taxes. *See United States v. Ross*, 458 F.2d 1144, 1145 (5th Cir. 1972). The regulatory requirements are still enforced.

B. The Parties [*13]

Two sets of plaintiffs bring claims against the same defendants: Acting Attorney General Todd Blanche, in his official capacity; the United States Department of Justice; Director of ATF Robert Cekada, in his official capacity; and ATF.[7]

The first set of plaintiffs comes from the lead case, *Silencer Shop Foundation v. ATF*, No. 6:25-CV-056. Brady Wetz is a gun enthusiast and resident of San Angelo who is deterred from making, acquiring, transferring, and possessing NFA firearms because of the statute's onerous registration requirements. Dkt. No. 50 at 7-16. Silencer Shop Foundation is a Texas nonprofit organization that defends and restores Second Amendment rights. *Id.* at 29. It wants to acquire and transfer NFA firearms for demonstrative and educational purposes without having to complete "burdensome, privacy-invasive application[s]." *Id.* at 31.

[7] Acting Attorney General Blanche and Director Cekada are automatically substituted for their predecessors, Pamela Bondi and Daniel Driscoll. *See* Fed. R. Civ. P. 25(d).

Commercial plaintiffs B&T USA, LLC, Palmetto State Armory, LLC, and SilencerCo Weapons Research, LLC, are companies that make, transfer, and possess NFA firearms as part of their businesses. *Id.* at 34-45. They allege injuries from having to expend time and effort to comply with the NFA, as well as the loss of revenue that comes from potential customers being [*14] deterred by the statute's regulatory requirements. *Id.* Three associations—Gun Owners of America, Inc., Firearms Regulatory Accountability Coalition, Inc., and Gun Owners Foundation—sue on behalf of their members: gun owners and firearms manufacturers, retailers, and importers. *Id.* at 25-28, 46-48. All these plaintiffs are joined by 15 states—Texas, Alaska, Georgia, Idaho, Indiana, Kansas, Louisiana, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming—who allege that their agencies and employees are injured by the compliance costs associated with acquiring and possessing NFA firearms for law-enforcement purposes. *See id.* at 49-50; Dkt. Nos. 15 ¶ 54; 49 at 23-24.

The second set of plaintiffs comes from *Jensen v. ATF*, No. 6:26-CV-227, a related case transferred to this Court and consolidated with *Silencer Shop*. Dkt. No. 116. John Jensen, Jeremy Neusch, and David Lynn Smith are Texas firearms owners who wish to avoid the NFA's regulatory requirements as a precondition to making, transferring, and possessing covered firearms. No. 6:26-CV-227, Dkt. No. 19 at 5-15. Hot Shots Custom, LLC, a federally licensed firearms dealer, or FFL, alleges similar [*15] injuries as the commercial plaintiffs in *Silencer Shop*. *Id.* at 16-17. And three associations—Texas State Rifle Association, FPC Action Foundation, and Citizens Committee For The Right To Keep And Bear Arms—look to defend their members from allegedly unlawful firearms restrictions under the associational-standing doctrine, like the associations in *Silencer Shop*. *Id.* at 18-23.

C. Procedural History

The *Silencer Shop* plaintiffs filed suit on July 4, 2025—the same day the President signed the One Big Beautiful Bill Act into law. *See* Dkt. No. 1. They challenge the NFA's regulatory provisions for NFA firearms that are no longer subject to the transfer and making taxes—specifically, short-barreled shotguns, short-barreled rifles, silencers, and AOWs. *See* Dkt. No. 15. They do not contest the provisions' application to machineguns and destructive devices (to which the transfer and making taxes still apply), nor do they target the special occupational tax for importers, manufacturers, and dealers of NFA firearms.

The complaint in *Silencer Shop*, as amended, raises two claims: (1) the NFA's regulatory requirements exceed Congress's Article I enumerated powers, and (2) those same requirements infringe [*16] the Second Amendment. *Id.* ¶¶ 66-75. As the argument goes, the NFA hinges on Congress's taxing power, so the statute's regulatory requirements are no longer constitutional with respect to the untaxed firearms they purport to regulate. *See id.* And the NFA's registration scheme, the complaint alleges, finds no support in the Nation's historical tradition of firearms regulation. *Id.* ¶¶ 62-65. Against that backdrop, the *Silencer Shop* plaintiffs request a universal injunction preventing the defendants from implementing or enforcing the NFA's regulatory requirements for *any* untaxed firearms, including those transferred and made by parties not before the Court. *Id.* ¶¶ 76-77.

The parties agree that the case "presents only pure questions of law" and can be resolved through cross-motions for summary judgment. Dkt. No. 36 at 1. Both sides filed their summary-judgment motions (Dkt. Nos. 48; 49; 59; 60) and accompanying responses (Dkt. Nos. 75; 85; 115). Along the way, the Court

permitted various supplemental filings, as well as briefs from two groups of amici.[8] *See* Dkt. Nos. 78; 89; 91; 111; 112; 113.

Meanwhile, the *Jensen* plaintiffs filed a nearly identical case in the Amarillo Division. *See* No. 2:25-CV-223, Dkt. No. 1. Like the *Silencer [*17] Shop* plaintiffs, the plaintiffs in *Jensen* seek declaratory and injunctive relief on enumerated-powers and Second Amendment claims. *Id.* ¶¶ 81-96. Their arguments are largely the same as those in *Silencer Shop*, but their requested relief is narrower. The Second Amendment claim in *Jensen* only targets the NFA's application to silencers and short-barreled rifles (not short-barreled shotguns and AOWs). *Id.* ¶ 92. And the *Jensen* plaintiffs request a party-specific injunction, not universal relief. *See id.* ¶¶ 87, 96. Otherwise, the procedural history in *Jensen* is like that in *Silencer Shop*, with the parties filing and responding to cross-motions for summary judgment. When briefing was done, the district judge in Amarillo transferred *Jensen* to the San Angelo Division because the issues substantially overlap with those in *Silencer Shop*, which was filed first. *See* No. 6:26-CV-227, Dkt. No. 63; *see Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999) ("Under the first-to-file rule, when related cases are pending before two federal courts, the court in which the case was last filed may refuse to hear it if the issues raised by the cases substantially overlap."). The Court then consolidated *Jensen* with *Silencer Shop*, the lead case, because they "involve a common question of law or fact."[9] Dkt. No. 116 [*18] at 1 (quoting Fed. R. Civ. P. 42(a)).

On July 7, 2026, the Court held an in-person hearing on the cross-motions for summary judgment. Dkt. No. 132. The Court heard oral argument from counsel for both the *Silencer Shop* and *Jensen* plaintiffs, as well as the defendants, and took the cross-motions under advisement. The cross-motions are ripe for decision.

2. Legal Standard

A movant is entitled to summary judgment when there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[S]ummary judgment is appropriate where the only issue before the court is a pure question of law." *Sheline v. Dun & Bradstreet Corp.*, 948 F.2d 174, 176 (5th Cir. 1991).

3. Threshold Issues

The Court must resolve two threshold issues before reaching the merits. Because "[j]urisdiction is always first," the Court starts by assessing the plaintiffs' standing to bring this suit. *Arulnanthy v. Garland*, 17 F.4th 586, 592 (5th Cir. 2021) (quotation omitted). It then considers whether the plaintiffs attack the challenged NFA provisions facially, as applied to their "particular circumstances," or both. *Umphress v. Hall*, 133 F.4th 455, 465 (5th Cir. 2025) (quotation omitted). The latter question affects the scope of review.

---

[8] Amici are the City of Baltimore, Maryland; the City of Columbus, Ohio; Harris County, Texas; the Brady Center to Prevent Gun Violence; Everytown for Gun Safety; and the Giffords Law Center to Prevent Gun Violence. *See* Dkt. Nos. 78; 89.

[9] Because of the commonality, the Court discusses the plaintiffs' and defendants' arguments without distinguishing between the two cases, unless otherwise noted.

A. Standing

Article III of the U.S. Constitution limits federal-court jurisdiction to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. "'One element of the case-or-controversy requirement' is that plaintiffs [*19] 'must establish that they have standing to sue.'" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 818, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997)). One party with standing satisfies Article III's requirement. *See Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439, 137 S. Ct. 1645, 198 L. Ed. 2d 64 (2017) ("[W]hen there are multiple plaintiffs[,] [a]t least one plaintiff must have standing to seek each form of relief requested in the complaint.").

To show Article III standing, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). An injury in fact must be "real" and "particularized," not "abstract" or "generalized." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024). "And when a plaintiff seeks prospective relief such as an injunction, the plaintiff must establish a sufficient likelihood of future injury," *id.*—i.e., that "the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (internal quotation marks omitted) (quoting *Clapper*, 568 U.S. at 414 n.5). Further, "if a plaintiff is an object of the action (or forgone action) at issue, then there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112, 145 S. Ct. 2121, 222 L. Ed. 2d 370 (2025) (internal quotation marks omitted).

Plaintiffs, as the party invoking [*20] federal jurisdiction, bear the burden of proving standing, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992), and they must do so "for each claim that they press" and "for each form of relief that they seek." *Murthy v. Missouri*, 603 U.S. 43, 61, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021)). Standing is assessed "at the time the action commences." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 191, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000); *accord Murthy*, 603 U.S. at 58 (noting that the plaintiff must establish standing at the outset "and maintain[] it thereafter" (quoting *Carney v. Adams*, 592 U.S. 53, 59, 141 S. Ct. 493, 208 L. Ed. 2d 305 (2020))).

With one exception, the defendants do not challenge standing. *See* Dkt. No. 133 at 111:15-17. But even where standing is not challenged, a court "must—where necessary—raise it *sua sponte*." *Ford v. NYLCare Health Plans of Gulf Coast, Inc.*, 301 F.3d 329, 331-32 (5th Cir. 2002). For the sake of thoroughness, the Court briefly considers each element of standing before addressing the one respect in which the defendants dispute jurisdiction.

First, the Court concludes that the plaintiffs are injured by the NFA's regulation of untaxed firearms. The individual, state, and organizational plaintiffs are the objects of the challenged NFA provisions. They must adhere to the statute's burdensome registration requirements—therefore incurring compliance costs—or else face strict penalties for non-compliance. *See, e.g.*, Dkt. No. 50 at 12. This "amounts to an increased regulatory burden," which "typically satisfies the injury in fact requirement." [*21] *Contender*

Farms, LLP v. U.S. Dep't of Agric., 779 F.3d 258, 266 (5th Cir. 2015). The story is the same for the commercial plaintiffs. The NFA provisions at issue not only force the commercial plaintiffs to expend resources; they also deter customers from purchasing NFA firearms from their businesses, thus causing a prototypical "pocketbook injury." *Collins v. Yellen*, 594 U.S. 220, 243, 141 S. Ct. 1761, 210 L. Ed. 2d 432 (2021); *see Czyzewski v Jevic Holding Corp.*, 580 U.S. 451, 464, 137 S. Ct. 973, 197 L. Ed. 2d 398 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'"); Dkt. No. 50 at 36, 40; No. 6:26-CV-227, Dkt. No. 19 at 16-17. Further, complying with the NFA's registration scheme requires the commercial plaintiffs "to divert time and resources away from their regular business," which is a concrete injury. *Book People, Inc. v. Wong*, 91 F.4th 318, 331 (5th Cir. 2024) (citation modified). Thus, the individual, state, and organizational plaintiffs are injured in fact.

The last two elements of standing are easily satisfied. There is little doubt that the above-noted injuries are "fairly traceable" to the challenged NFA provisions. *Spokeo*, 578 U.S. at 338. And the relief the plaintiffs seek—an injunction barring enforcement of the NFA's regulatory requirements for untaxed firearms—would redress their injuries. *All. for Hippocratic Med.*, 602 U.S. at 381 ("If a defendant's action causes an injury, enjoining the action . . . will typically redress that injury."). If the requirements were not in effect, the plaintiffs [*22] could make, transfer, and possess untaxed firearms without having to incur the compliance costs or potential penalties—and they would do so almost immediately. *See, e.g.*, Dkt. No. 50 at 15-16; No. 6:26-CV-227, Dkt. No. 19 at 7, 11, 15. For those reasons, the Court concludes that the individual, state, and organizational plaintiffs have established traceability and redressability and thus have standing to sue under Article III.

The analysis for the associational plaintiffs is different, but similarly straightforward. Under Supreme Court precedent, an association may have standing solely as a representative of its members.[10] To utilize that doctrine, an association must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the [association's] purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977)). The associational plaintiffs here count the individual plaintiffs—who have standing—among their members. *See, e.g.*, Dkt. No. 50 at 8; No. 6:26-CV-227, Dkt. No. 19 at 16, 23. The interests the associations seek to protect are [*23] germane to their purpose of "preserv[ing] and defend[ing] the Second Amendment rights of gun owners." Dkt. No. 50 at 18; *see also Texas v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 737 F. Supp. 3d 426, 437-39 (N.D. Tex. 2024) (recognizing associational standing for the Gun Owners Foundation and Gun Owners of America, Inc., both plaintiffs in *Silencer Shop*); *Firearms Regul. Accountability Coal., Inc. v. Garland*, No. 1:23-CV-003, 2024 U.S. Dist. LEXIS 216969, 2024 WL 4920002, at *2-4 (D.N.D. Apr. 4, 2024) (same for Firearms Regulatory Accountability Coalition, Inc.). Lastly, neither the claims nor relief sought require the participation of individual members because the associations "seek[] a declaration, injunction, or some other form of prospective relief" which, "if granted, will inure to the benefit of th[eir] members." *Hunt*,

[10] Jurists have questioned whether associational standing comports with Article III, considering it allows an association to assert its members' injuries instead of its own. *See All. for Hippocratic Med.*, 602 U.S. at 398-405 (Thomas, J., concurring); *Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 537-42 (6th Cir. 2021) (Murphy, J.). Setting aside those well-reasoned critiques, the Court is bound to apply the associational-standing doctrine here.

432 U.S. at 343 (quoting *Warth v. Seldin*, 422 U.S. 490, 515, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). Accordingly, the associational plaintiffs have standing to sue on their members' behalf.

The defendants do contest standing in one respect, however. They argue that the *Jensen* plaintiffs lack standing to challenge the NFA's regulation of AOWs. *See* No. 6:26-CV-227, Dkt. No. 29 at 20-22. As they see it, the *Jensen* plaintiffs did not argue or submit any evidence at the outset of the case that the NFA's requirements on the making, transfer, and possession of AOWs are injuring them or will soon do so. *Id.* Indeed, the complaint in *Jensen* says nothing about any plaintiffs' intent to make, acquire, or transfer [*24] an AOW. By contrast, the complaint details the plaintiffs' desire to obtain and transfer silencers, short-barreled rifles, and short-barreled shotguns. No. 6:26-CV-227, Dkt. No. 1 ¶¶ 1, 13, 19, 20, 21. The declarations submitted with the summary-judgment motion also omit AOWs as a firearm that a plaintiff would make or transfer but for the NFA. *See* No. 6:26-CV-227, Dkt. No. 19 at 7, Decl. of John Jensen (listing silencers and a short-barreled rifle but no AOWs); *id.* at 11, Decl. of Jeremy Neusch (listing silencers, short-barreled rifles, and short-barreled shotguns but no AOWs), *id.* at 15, Decl. of David Lynn Smith (listing silencers and short-barreled rifles but no AOWs); *id.* at 17, Decl. of Hot Shots Custom LLC (listing silencers, short-barreled rifles, and short-barreled shotguns but not AOWs). Thus, both the complaint and the initial declarations in *Jensen* reveal nothing about those plaintiffs' desire to make or acquire an AOW. That is a problem: At summary judgment, the plaintiffs must point to "'specific facts'" by "affidavit or other evidence" that establish each element of standing. *Lujan*, 504 U.S. at 561 (quoting Fed. R. Civ. P 56(e)). "[G]eneral factual allegations of injury" are not enough. *Tex. State LULAC v. Elfant*, 52 F.4th 248, 255 n.4 (5th Cir. 2022) (quotation omitted)). [*25] The *Jensen* plaintiffs' summary-judgment motion is unsupported by any evidence that they are or will be harmed by the NFA's regulation of AOWs.

Recognizing this defect, four *Jensen* plaintiffs filed supplemental declarations with their combined reply and response describing (for the first time) their intention to make and acquire an AOW if not for the NFA. *See* No. 6:26-CV-227, Dkt. No. 57. That tactic fails. First, and most importantly, standing is assessed at the start of the case. *Friends of the Earth*, 528 U.S. at 191. The supplemental declarations give no indication that the plaintiffs sought to transfer or make an AOW when they filed their complaint. The complaint's reference to the three other categories of untaxed NFA firearms suggests the opposite. And on a more basic level, litigants cannot manufacture standing by claiming new intentions after they are called out for failing to demonstrate injury. Second, while "it is within the trial court's power" to allow a plaintiff to support his standing with evidence submitted mid-litigation, *see Warth*, 422 U.S. at 501, the Court declines to exercise that discretion here. There is no contention—in the supplemental declarations or otherwise—that the *Jensen* plaintiffs intended to make, acquire, or [*26] transfer AOWs when this case began. So, there is no valid basis for considering the supplemental declarations.

Without evidence that the *Jensen* plaintiffs were harmed by the NFA's regulation of AOWs from the start of the case, those plaintiffs lack standing to challenge such regulation. But in all other respects, the plaintiffs in both cases have Article III standing to proceed.

B. Facial vs. As-Applied Challenges

The next question is whether the plaintiffs raised facial or as-applied challenges to the NFA's regulatory requirements. The parties heavily dispute this question, and it is no wonder why: "[C]lassifying a lawsuit as facial or as-applied affects the extent to which the invalidity of the challenged law must be

demonstrated." *Bucklew v. Precythe*, 587 U.S. 119, 138, 139 S. Ct. 1112, 203 L. Ed. 2d 521 (2019). To be sure, "[t]his area of law is murky." *LIA Network v. City of Kerrville*, 163 F.4th 147, 161 (5th Cir. 2025). Courts and litigants regularly dispute "the attributes and analysis necessary for each type of challenge." *Id.*; *see also* Scott A. Keller & Misha Tseytlin, *Applying Constitutional Decision Rules Versus Invalidating Statutes In Toto*, 98 Va. L. Rev. 301, 307 (2012) ("The Supreme Court has explicitly acknowledged that there is much confusion over the definitions and attributes of facial, as-applied, and overbreadth challenges." (citing *United States v. Stevens*, 559 U.S. 460, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010))). But there is some common ground. A facial challenge, all agree, is a claim that the challenged law or policy "is unconstitutional [*27] in all its applications." *Bucklew*, 587 U.S. at 138. An as-applied challenge, by comparison, considers whether a law—though constitutional in some cases—"is nonetheless unconstitutional as applied to [a defendant's] activity." *United States v. Morgan*, 147 F.4th 522, 526 (5th Cir. 2025) (alteration in original) (quoting *Spence v. Washington*, 418 U.S. 405, 414, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974)).

A facial challenge is far harder to win. A plaintiff cannot prevail on a facial challenge "unless he 'establish[es] that no set of circumstances exists under which the [law] would be valid,' or he shows that the law lacks a 'plainly legitimate sweep.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 723, 144 S. Ct. 2383, 219 L. Ed. 2d 1075 (2024) (alterations in original) (first quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987); then quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008)). Put simply, the challenged statute must be "unconstitutional in all of its applications." *Wash. State Grange*, 552 U.S. at 449. With that understanding, "a facial challenge to a statute considers only the text of the statute itself, not its application to the particular circumstances of an individual." *Freedom Path, Inc. v. IRS*, 913 F.3d 503, 508 (5th Cir. 2019) (citation modified). For a facial claim, courts must take care to "consider the circumstances in which" the challenged statute is "most likely to be constitutional" instead of "focus[ing] on hypothetical scenarios where [the statute] might raise constitutional concerns." *United States v. Rahimi*, 602 U.S. 680, 701, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024).

How does a court categorize a claim as facial or as applied? Again, the answer is not always clear-cut: Challenges [*28] may have features of both. But the Fifth Circuit has provided some guidance. Courts should "look to see whether the 'claim and the relief that would follow . . . reach beyond the particular circumstances of the [ ] plaintiffs.'" *Cath. Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 426 (5th Cir. 2014) (alterations in original) (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 194, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010)). "If so, regardless of how the challenge is labeled by a plaintiff, '[t]hey must therefore satisfy [the] standards for a facial challenge to the extent of that reach.'" *Id.* (first alteration in original) (quoting *Reed*, 561 U.S. at 194). This analysis places a premium on the nature of the requested relief. A request for universal relief, for example, indicates that a challenge is facial, not as applied. *See, e.g.*, *Croft v. Perry*, 624 F.3d 157, 164 (5th Cir. 2010) ("Our conclusion that the challenges are facial attacks is confirmed by the relief sought by the plaintiffs: that the pledge be invalidated in its entirety, not merely that it not be applied to them or their children."). And it is "essential" that an as-applied challenge have a "developed factual record" with "[p]articularized facts." *Justice v. Hosemann*, 771 F.3d 285, 292 (5th Cir. 2014).

Before getting into the analysis, the Court adds a disclaimer: As it turns out, the dispute over whether the plaintiffs brought facial claims, as-applied claims, or both is somewhat tangential. As explained [*29] below, the plaintiffs prevail on their enumerated-powers claims no matter how they are understood, and

the plaintiffs' Second Amendment claims are abandoned. More importantly, because the Court tailors its remedy to the parties, *see infra*, Remedy § 5, it effectively grants as-applied relief no matter how the plaintiffs' claims are categorized. That approach—compelled by historical principles of equity and the Supreme Court's decision in *CASA*—tracks the principles underlying the facial/as-applied distinction. As the Supreme Court has explained, the difference between a facial and as-applied challenge ultimately "goes to the breadth of the remedy employed by the Court." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010); *accord Turtle Island Foods, S.P.C. v. Strain*, 65 F.4th 211, 218-19 (5th Cir. 2023). "[S]uccessful facial challenges invalidate the regulation altogether, whereas successful as-applied challenges result in injunctions that protect only the plaintiff." *LIA Network*, 163 F.4th at 162. With that understanding, successful pre-*CASA* facial challenges—which naturally show that a law is unconstitutional in any circumstance—often resulted in universal injunctions that provided relief to parties not before the court. Post-*CASA*, a court may grant equitable relief only to the parties "'actually or constructively before it,'" *CASA*, 606 U.S. at 844 (quotation omitted), and only "to the extent [*30] necessary and appropriate to afford them complete relief." *Id.* at 861; *see United States v. Texas*, 794 F. Supp. 3d 427, 454-55 (W.D. Tex. 2025) (noting how *CASA* transformed the remedial framework for facial challenges). Thus, under *CASA*, even a successful facial challenge will most often result in essentially as-applied relief. *See Healthy Vision Ass'n v. Brown*, 821 F. Supp. 3d 642, 656 (N.D. Tex. 2026) (Hendrix, J.) (imposing a party-specific injunction despite concluding that a state statute was facially unconstitutional under the First Amendment). That narrower remedial focus takes much of the pressure off the facial/as-applied distinction—at least in a case like this one where the bottom-line remedy is the same no matter how the claims are conceived.

That said, the plaintiffs' claims are best understood as facial challenges. Start with *Silencer Shop*. In both their complaint and summary-judgment briefing, the plaintiffs claim and argue that the NFA's regulation of untaxed firearms categorically exceeds Congress's enumerated powers and categorically violates the Second Amendment. *See* Dkt. Nos. 15 ¶ 67 ("The NFA's regulatory requirements pertaining to untaxed firearms exceed Congress's enumerated powers . . . ."); *id.* ¶ 72 ("The NFA's regulatory requirements pertaining to untaxed firearms violate the Second Amendment . . . ."); Dkt. No. 49 at 12 ("Applying the NFA to the now-untaxed [*31] firearms is flatly unconstitutional."). Rarely do the *Silencer Shop* plaintiffs mention their "particular circumstances" or argue that the NFA is unconstitutional with respect to the specific activities that they wish to undertake. *Freedom Path*, 913 F.3d at 508 (quotation omitted). And most notably, they seek, first, two unqualified declarations that the NFA's regulatory requirements for untaxed firearms are unconstitutional and, second, "a blanket ban on the enforcement" of those requirements through a universal injunction. Dkt. No. 49 at 59 (quotation omitted). All those remedies extend well beyond the plaintiffs' circumstances and thus reflect a facial challenge. *See Croft*, 624 F.3d at 164.

The analysis is similar for *Jensen*. While the *Jensen* plaintiffs do not seek a universal injunction, they do request categorical declarations that the NFA's regulatory provisions exceed Congress's enumerated powers and violate the Second Amendment with respect to short-barreled rifles and silencers. No. 6:26-CV-227, Dkt. No. 1 ¶¶ 86, 96. Like a request for a universal injunction, a request for categorical declaratory relief extends to parties not before the court and therefore implicates a facial attack. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931, 95 S. Ct. 2561, 45 L. Ed. 2d 648 (1975) ("[N]either declaratory nor injunctive relief can directly [*32] interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs . . . ."). And like the *Silencer Shop* plaintiffs, the *Jensen* plaintiffs do not tailor their complaint or summary-judgment arguments to their

specific circumstances, arguing that "the NFA is unconstitutional as to the untaxed firearms." *See, e.g.*, No. 6:26-CV-227, Dkt. Nos. 1 ¶ 2; 26 at 26 ("The NFA's regulation of untaxed firearms is unconstitutional because it exceeds Congress's constitutional authority on two separate, independent grounds."). So the claims in *Jensen*, like those in *Silencer Shop*, are properly construed as facial challenges.

Both sets of plaintiffs raise the same counterarguments. First, they note that the complaints ask for relief "both facially and/or as applied." Dkt. No. 15 ¶¶ 70, 75; No. 6:26-CV-227, Dkt. No. 1 ¶¶ 86, 96. But the Supreme Court has been clear: "The label is not what matters." *Reed*, 561 U.S. at 194. What matters instead is the nature of the claim and the relief sought—and here, those considerations point to a facial challenge. *See Cath. Leadership Coal.*, 764 F.3d at 426.

Second, the plaintiffs argue that they must have raised an as-applied challenge because they only challenge the NFA "as [*33] applied to firearms it does not tax." Dkt. No. 75 at 14 (emphasis omitted) (quoting Dkt. No. 49 at 12); *see* No. 6:26-CV-227, Dkt. No. 56 at 31 (similar). But that conclusion does not follow: A plaintiff may facially attack a portion of a statute. *See, e.g.*, *Rahimi*, 602 U.S. at 693 (deciding a facial challenge to 18 U.S.C. § 922(g)(8), a part of the Gun Control Act). Indeed, the Supreme Court addressed a similar situation in *Reed*. There, the plaintiffs challenged referendum petitions under Washington's Public Records Act (PRA) as violative of the First Amendment. 561 U.S. at 191. The Supreme Court noted that the plaintiffs' claim had characteristics of both a facial and as-applied challenge. *Id.* at 194. "The claim [was] 'as applied' in the sense that it [did] not seek to strike the PRA in all its applications, but only to the extent it covers referendum petitions." *Id.* And "[t]he claim [was] 'facial' in that it [was] not limited to [the] plaintiffs' particular case, but challenge[d] application of the law more broadly to all referendum petitions." *Id.* The "important point," the Supreme Court held, was that the "plaintiffs' claim and the relief that would follow"—a universal injunction against any disclosure of referendum petitions to the public—would "reach beyond the particular [*34] circumstances of [the] plaintiffs." *Id.* Thus, the plaintiffs in *Reed* had to satisfy the facial standard. *Id.*

So too here. The plaintiffs' claims are "as applied" in that they only address untaxed firearms. But they are ultimately "facial"—like most enumerated-powers challenges—because they seek relief that extends beyond the plaintiffs' specific activities. *See Tex. Top Cop Shop, Inc. v. Garland*, 758 F. Supp. 3d 607, 636-37 (E.D. Tex. 2024) ("By their very nature, almost all constitutional challenges to specific exercises of enumerated powers, particularly the Commerce Clause, are facial." (quotation omitted)), *stayed pending appeal sub nom. McHenry v. Tex. Top Cop Shop, Inc.*, 145 S. Ct. 1, 220 L. Ed. 2d 427 (2025). *Reed* is indistinguishable.

Third, the plaintiffs note that their summary-judgment arguments on the Commerce Clause largely challenge the NFA's regulation of untaxed firearms "as applied to intrastate possession, transfer, and making." Dkt. No. 49 at 31; *see* No. 6:26-CV-227, Dkt. No. 56 at 34. That, however, is not their claim. Their claim—as stated in both complaints—is that the NFA's regulatory requirements on untaxed firearms categorically exceed Congress's enumerated powers under Article I, not only so far as they apply to intrastate activities. Dkt. No. 15 ¶¶ 66-70; No. 6:26-CV-227, Dkt. No. 1 ¶¶ 81-87. A claim raised for the first time in a summary-judgment [*35] motion "is not properly before the court." *Cutrera v. Bd. of Supervisors of La. State Univ.*, 429 F.3d 108, 113 (5th Cir. 2005). Thus, any suggestion that the plaintiffs brought as-applied claims based on their summary-judgment briefing falls flat.

In sum, the plaintiffs attack the NFA's regulation of untaxed firearms facially, not as applied to their particular activities. So they must show that "no set of circumstances exists" under which the challenged NFA provisions "would be valid." *Salerno*, 481 U.S. at 745. But the effect of that requirement is muted where, as here, the Court must limit relief, even for a successful facial challenge, to the parties before it. *See CASA*, 606 U.S. at 844.

4. Analysis

With the threshold matters resolved, the Court turns to the merits. To recap, the plaintiffs in *Silencer Shop* and *Jensen* contend that the NFA's regulatory requirements for untaxed firearms exceed Congress's enumerated powers under Article I. They argue that the NFA was enacted only pursuant to Congress's enumerated power to tax. And so, the plaintiffs say, when Congress eliminated the transfer and making taxes for short-barreled shotguns, short-barreled rifles, silencers, and any other weapons, it cut off the constitutional foundation for the provisions that helped collect and enforce the transfer and making taxes for those [*36] kinds of NFA firearms. The challenged NFA provisions are, specifically, those mandating registration and other tasks before making, transferring, or possessing NFA firearms, as well as the associated penalties. *See* 26 U.S.C. §§ 5812(a)-(b), 5822, 5841(a)-(c), (e), 5842(b), 5861(b)-(f), (i), 27 C.F.R. §§ 479.62(a)-(d), 479.84(a)-(d). Dkt. Nos. 49 at 18; 133 at 20:8-22; No. 6:26-CV-227, Dkt. No. 26 at 16-17.[11]

The defendants respond that the challenged NFA provisions can still be upheld under the taxing power because they support the collection of the special occupational tax on manufacturers, importers, and dealers of NFA firearms—which Congress left untouched in the One Big Beautiful Bill Act. And they argue that if the taxing power does not support the NFA's regulation of untaxed firearms, the Court should nonetheless uphold the statute based on Congress's power to regulate interstate commerce and its authority under the Necessary and Proper Clause. According to the defendants, the challenged NFA provisions directly regulate, typically, persons and things in interstate commerce, thus defeating the plaintiffs' facial challenge. *See United States v. Lopez*, 514 U.S. 549, 558, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995).

Given Congress's removal of the taxes from the statutory scheme, the Court agrees that the NFA's regulatory requirements for untaxed firearms cannot be sustained under [*37] the taxing power or the Necessary and Proper Clause. Nor can they be sustained under the commerce power because Congress never invoked that power in enacting the NFA. To the contrary, Congress relied clearly and exclusively on its taxing power. Lastly, because the plaintiffs have abandoned their Second Amendment claims under these circumstances, it would go too far to resolve those constitutional questions in this case. The Court addresses each point in turn.

A. The NFA's regulatory requirements exceed Congress's enumerated powers with respect to untaxed firearms.

---

[11] A few of the NFA provisions—specifically, those dealing with marking regulated firearms—are challenged by the *Jensen* plaintiffs only. *See* 6:26-CV-227, Dkt. No. 26 at 17. The Court's final judgment specifies the provisions from which only the *Jensen* plaintiffs are entitled to relief.

The federal government is "one of enumerated powers." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405, 4 L. Ed. 579 (1819). The Constitution embodies that principle by vesting certain limited powers in the legislative branch. U.S. Const. art. I, § 1. Congress may, for instance, "establish Post Offices," "constitute Tribunals inferior to the supreme Court," and "provide and maintain a Navy." U.S. Const. art. I, § 8, cls. 7, 9, 13. The enumeration of powers, however, "presupposes something not enumerated." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 195, 6 L. Ed. 23 (1824). Thus, Congress may only exercise those powers the Constitution expressly vests in it, leaving the rest to the States and the people. *See* U.S. Const. amend. X; *see also Murphy v. NCAA*, 584 U.S. 453, 471, 138 S. Ct. 1461, 200 L. Ed. 2d 854 (2018) ("[A]ll other legislative power is reserved for the States, as the Tenth Amendment confirms."). No matter how much the federal government grows, "it still [*38] must show that a constitutional grant of power authorizes each of its actions." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012) (*NFIB*). This principle, core to our federal system of government, "protects the liberty of the individual from arbitrary power." *Bond v. United States*, 564 U.S. 211, 222, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011).

One power granted to Congress is the authority to "lay and collect Taxes." U.S. Const. art. I, § 8, cl. 1. At the founding, this power was thought to allow Congress to "charge or demand money from taxpayers." *McNutt v. DOJ*, 173 F.4th 204, 215 (5th Cir. 2026). After all, "the essential feature of any tax" is that "[i]t produces at least some revenue for the [g]overnment." *NFIB*, 567 U.S. at 564; *see United States v. Butler*, 297 U.S. 1, 61, 56 S. Ct. 312, 80 L. Ed. 477, 1936-1 C.B. 421 (1936) ("A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the government."). Therefore, without a tax that raises at least some revenue, Congress cannot enact a statute under its taxing power. *See Texas v. United States*, 945 F.3d 355, 390 (5th Cir. 2019), *rev'd on other grounds*, *California v. Texas*, 593 U.S. 659, 141 S. Ct. 2104, 210 L. Ed. 2d 230 (2021). But if Congress does collect some revenue, it may tax activity that it cannot otherwise regulate under a different enumerated power. *NFIB*, 567 U.S. at 537 (citing *License Tax Cases*, 72 U.S. (5 Wall.) 462, 471, 18 L. Ed. 497 (1867)).

Another power is Congress's authority "[t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. Originally understood, that authority only permitted Congress "to regulate the buying and selling of goods and services trafficked across state lines." *United States v. Hemani*, 146 S. Ct. 1677, 1695, 225 L. Ed. 2d 314 (2026) (Thomas, [*39] J., concurring) (quotation omitted). But the Supreme Court's modern Commerce Clause precedents have "drifted far from the original understanding." *Lopez*, 514 U.S. at 584 (Thomas, J., concurring). Today, Congress may use its commerce power to regulate "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "those activities that substantially affect interstate commerce." *United States v. Morrison*, 529 U.S. 598, 609, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000) (quotation omitted). Especially when it comes to the "expansive" third category, courts must avoid reading the Commerce Clause to "creat[e] a general federal authority akin to the police power." *NFIB*, 567 U.S. at 536. Doing otherwise risks "obliterat[ing] the distinction between what is national and what is local." *Morrison*, 529 U.S. at 608 (quotation omitted).

Lastly, under the Necessary and Proper Clause, the Constitution permits Congress to "make all Laws which shall be necessary and proper for" executing its enumerated powers. U.S. Const. art. I, § 8, cl. 18. The Clause "is not itself a grant of power," however. *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 247, 80 S. Ct. 297, 4 L. Ed. 2d 268 (1960). It only confers "authority to enact provisions 'incidental

to [an] [enumerated] power, and conducive to its beneficial exercise." *NFIB*, 567 U.S. at 559 (second alteration in original) (quoting *McCulloch*, 17 U.S. at 418).

i. The taxing power cannot sustain the challenged NFA provisions.

Congress invoked its taxing [*40] power when enacting the NFA in 1934. The Supreme Court held as much in *Sonzinsky v. United States*, endorsing the NFA as a "taxing measure" and noting that its registration provisions were "obviously supportable as in aid of a revenue purpose." 300 U.S. at 513. Since then, the Supreme Court has reaffirmed the NFA's constitutional basis, remarking on the statute's "obviously regulatory" taxes, *NFIB*, 567 U.S. at 567 (citing *Sonzinsky*, 300 U.S. at 513), and its "interrelated statutory system for the taxation of certain classes of firearms." *Haynes*, 390 U.S. at 87. The Fifth Circuit has done the same. *See, e.g.*, *Ross*, 458 F.2d at 1145; *United States v. Ridlehuber*, 11 F.3d 516, 527 (5th Cir. 1993) ("[T]he requirement that a transferee must refuse to accept possession of an unregistered firearm is rationally designed to aid in the collection of taxes imposed by other provisions of the [NFA]." (citation modified)). Here, the question is straightforward: Can the NFA's regulatory requirements still be justified under the taxing power after Congress eliminated the transfer and making taxes for most covered firearms? The answer is no.

a. The NFA's regulatory requirements for untaxed firearms no longer support the collection of any revenue.

By zeroing out the transfer and making taxes on "any firearm" except for "a machinegun or a destructive device," the One [*41] Big Beautiful Bill Act eliminated the constitutional basis for the NFA's regulation of those firearms. *See* 139 Stat. at 247-48. Recall the "essential feature of any tax": It must produce "at least some revenue for the [g]overnment." *NFIB*, 567 U.S. at 564; *see McNutt*, 173 F.4th at 215 ("It is also obvious that the purpose of a tax is to raise revenue for the government."). That principle "follows from the text" of the Taxing Clause, which empowers Congress to "'lay and collect Taxes'" in order "'to pay the Debts and provide for the common Defence and general Welfare of the United States.'" *California*, 593 U.S. at 707 (Alito, J., joined by Gorsuch, J., dissenting) (quoting U.S. Const. art. I, § 8, cl. 1). "A tax cannot assist in paying debts or providing for the general welfare or defense if it raises no money." *Id.*

What's more, the notion that a tax must collect revenue tracks the original public meaning of "lay," "collect," and "tax." *Id.* During the founding era, to "lay" meant to "assess; to charge; to impose." *Id.* (quoting 2 Noah Webster, An American Dictionary of the English Language (1828)). "To 'collect' meant to 'gather money or revenue from debtors; to demand and receive.'" *Id.* (quoting 1 Webster). "And a 'tax' meant '[a] rate or sum of money assessed on the person or property of a citizen by government, for [*42] the use of the nation or state.'" *McNutt*, 173 F.4th at 215 (alteration in original) (quoting 2 Webster). These terms, when read together, confirm that "Congress's authority under the taxing power is limited to requiring an individual to pay money into the Federal Treasury, *no more*." *Id.* at 216 (emphasis in original) (quoting *NFIB*, 567 U.S. at 574).

The challenged NFA provisions do not support the collection of *any* revenue. Put differently, they are no longer "obviously supportable as in aid of a revenue purpose"—the essential requirement for any taxing-power statute. *Sonzinsky*, 300 U.S. at 513; *cf. Texas*, 945 F.3d at 389-90 (holding that the Affordable Care Act's "individual mandate" could not be upheld under the taxing power because Congress set the "shared

responsibility payment"—which the Supreme Court interpreted as a tax in *NFIB*, 567 U.S. at 561-74—at zero);[12] *McNutt*, 173 F.4th at 216 (holding that challenged provisions "exceed[ed]" the taxing power "[p]rimarily" because they did not "raise[] revenue"). Therefore, the NFA's regulatory requirements for transferring, making, and possessing untaxed firearms cannot be sustained under the taxing power.[13]

b. The firearms provisions at issue do not support collection of the special occupational tax—a valid taxing statute.

The defendants disagree that the [*43] One Big Beautiful Bill Act renders the challenged NFA provisions unconstitutional under the taxing power because, in their view, those provisions still aid enforcement of a different tax in another section of the NFA: the special occupational tax on businesses that transact in covered firearms. Dkt. No. 60 at 18-22; *see* 26 U.S.C. § 5801(a). But the regulatory requirements at issue have always been understood to support collection of the now-extinct transfer and making taxes—not the special occupational tax. That tax has its own regulatory scheme, which no one challenges here. *See* 26 U.S.C. § 5802. Thus, the challenged NFA provisions governing *firearms* have no "reasonable relation" to the special *occupational* tax. *United States v. Doremus*, 249 U.S. 86, 93, 39 S. Ct. 214, 63 L. Ed. 493 (1919) (explaining that courts may uphold federal legislation—irrespective of Congress's motives—if it has "some reasonable relation to the exercise of the taxing authority").

Text, structure, and precedent prove the point. The special occupational tax applies to "every importer, manufacturer, and dealer in [NFA] firearms." 26 U.S.C. § 5801(a); *see id.* § 5801(a)(1) ($1,000 for importers and manufacturers); *id.* § 5801(a)(2) ($500 for dealers). ATF enforces this tax through an occupational registration mandate—set out in a different section of the NFA than the [*44] challenged provisions—that tells "each importer, manufacturer, and dealer in firearms" to "register with" the agency. *Id.* § 5802; *see also* 27 C.F.R. § 479.88. Unlike the challenged NFA provisions, *see* 26 U.S.C. §§ 5812, 5822, 5841, the occupational registration mandate does not address transferring, making, or possessing listed firearms; it only governs specific businesses. The NFA thus creates two distinct regulatory pathways: one focused on the transfer and making taxes and another focused on the occupational tax. That is why "[s]eparate taxes are imposed on the making and transfer of [NFA] firearms by persons *other than those obliged to pay the occupational taxes*." *Haynes*, 390 U.S. at 88 (emphasis added). And it explains why businesses that pay the special occupational tax are exempt from the transfer and making taxes, with some exceptions.[14] *See* 26 U.S.C. § 5852(c), (d).

In addition to this text and statutory structure, case law supports treating the two sets of taxes, and their accompanying regulations, as discrete statutory schemes. The Fifth Circuit has often noted that the NFA's regulatory requirements are tied to specific taxes. In *Bezet v. United States*, for example, the court referred

---

[12] Although the Supreme Court reversed the Fifth Circuit's judgment in *Texas* on Article III standing grounds, it did not address the panel's taxing-power analysis. *See California*, 593 U.S. at 666.

[13] At the motions hearing, counsel for the *Silencer Shop* plaintiffs appeared to argue that the taxing power cannot support only the intrastate transfer, making, and possession of NFA firearms. *See* Dkt. No. 133 at 10:15-17. To the extent that argument was raised, the Court disagrees. Nothing in the text or structure of the challenged NFA provisions suggests that they are still constitutional for interstate activities. *See id.* at 51:22 to 52:2 (oral argument from *Jensen* plaintiffs).

[14] The statutory exemption from the transfer tax applies only to transfers of NFA firearms between special occupational taxpayers. 26 U.S.C. § 5852(d).

to Section 5821, "tax[ing] the making of firearms," and Section 5822, "establish[ing] registration and application [*45] requirements for making firearms." 714 F. App'x 336, 338-39 (5th Cir. 2017). Similar language can be found in *United States v. Gresham*, where the court recognized that "[Section] 5861(d) is constitutional because it is 'part of the web of regulation aiding enforcement of the transfer tax provision in [Section] 5811.'" 118 F.3d 258, 262 (5th Cir. 1997) (quoting *Ross*, 458 F.2d at 1145)). Lastly, in *United States v. Matthews*, the court noted that "the [NFA's] registration requirement was . . . designed to aid the collection of tax on any future transfer of the registered [firearm]." 438 F.2d 715, 717 (5th Cir. 1971). The implication is that the NFA's regulatory requirements for transferring, making, and possessing NFA firearms cannot be understood to support collection and enforcement of a tax in another part of the statute.

Properly understood, the NFA's occupational regulations support collection of the occupational tax, while the firearms regulations—the only provisions challenged here—support collection of the transfer and making taxes. *See Sonzinsky*, 300 U.S. at 512 (noting that "[e]ach [NFA] tax is on a different activity and is collectible independently of the other"). But with the transfer and making taxes set at zero, the regulatory requirements for those taxes cannot be justified under the taxing power as "in aid of a revenue purpose." *Id.* at 513. There is simply no [*46] revenue to be had. No amount of references to a different tax in a different section of the statute with different regulatory requirements can change that.

c. The Necessary and Proper Clause does not allow what the taxing power forbids: dressing up the challenged NFA provisions as aids for the special occupational tax.

The defendants also argue that the challenged NFA provisions can still be upheld under the Necessary and Proper Clause—the "last, best hope of those who defend ultra vires congressional action." *Printz v. United States*, 521 U.S. 898, 923, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997). In the defendants' telling, the NFA's regulation of untaxed firearms "assist[s] in collecting and enforcing the NFA's special occupational tax," thus "effectuating" the taxing power.[15] Dkt. No. 60 at 37. More bluntly, the defendants attempt to justify the regulation of now-untaxed firearms because those regulations supposedly aid in the enforcement of an entirely separate tax stemming from an entirely different section of the statute. The Court disagrees.

To be sure, the special occupational tax is itself a valid taxing-power statute. *Sonzinsky*, 300 U.S. at 513-14. And the Necessary and Proper Clause permits laws that "carry[] into Execution" an enumerated power. U.S. Const. art. I, § 8, cl. 18. But that does not mean Congress satisfies the Constitution by slapping the "necessary and proper" label on any provision [*47] that, while not independently sustainable under the taxing power, can be somehow linked to revenue generation. *See, e.g., Hobby Distillers Ass'n v. Alcohol & Tobacco Tax & Trade Bureau*, 740 F. Supp. 3d 509, 529 (N.D. Tex. 2024), *aff'd as modified, McNutt v. DOJ*, 173 F.4th 204 (5th Cir. 2026). Although the Necessary and Proper Clause "give[s] Congress great latitude in exercising its powers," *NFIB*, 567 U.S. at 537, it "does 'not give Congress *cart blanche*.'" *Hobby Distillers*, 740 F. Supp. 3d at 526 (quoting *United States v. Comstock*, 560 U.S. 126, 158, 130 S. Ct. 1949, 176 L. Ed. 2d 878 (2010) (Alito, J., concurring)). Or as Justice Thomas put it, the "Necessary and Proper Clause is not a warrant to Congress to enact any law that bears

[15] The defendants advance the same arguments in defense of the taxing power and the Necessary and Proper Clause. Dkt. No. 60 at 18-22, 37-38. The Court explained why text, structure, and precedent foreclose viewing the challenged NFA requirements as valid taxing-power provisions that assist enforcement of the special occupational tax. *Supra*, Analysis § 4.A.i.b. Thus, the Court addresses the defendants' other arguments in the context of the Necessary and Proper Clause.

some conceivable connection to the exercise of an enumerated power." *Gonzales v. Raich*, 545 U.S. 1, 59-60, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (Thomas, J., dissenting).

Instead, the text of the Clause sets limits on its use. First, a law must be "necessary." The Fifth Circuit recently elaborated on this requirement in *McNutt*. Quoting Chief Justice Marshall in *McCulloch*, the Fifth Circuit noted that "'necessary' does not always mean 'indispensable' and may instead connote 'one thing [that] is convenient, or useful, or essential to another.'" *McNutt*, 173 F.4th at 218 (alteration in original) (quoting *McCulloch*, 17 U.S. at 367, 413-14). The relevant test, the Fifth Circuit held, is whether the challenged law is "plainly adapted" to an enumerated power.[16] *Id.* (quoting *McCulloch*, 17 U.S. at 421); *see NFIB*, 567 U.S. at 537. That is no less true in the taxing context. Indeed, because the taxing power only extends to revenue generation, it "does not give Congress the same degree of control [*48] over individual behavior [as the commerce power]." *NFIB*, 567 U.S. at 573. As another judge in this district explained, "Congress cannot rely on a 'reasonable' or 'rational' connection to an existing tax to regulate *every* individual behavior occurring before that tax obligation becomes effective." *Hobby Distillers*, 740 F. Supp. 3d at 529 (emphasis in original). Put differently, the question is not whether challenged regulations "have a 'reasonable connection' to revenue, but whether they are needful and 'plainly adapted' to executing Congress's taxes." *Id.* (quoting *McCulloch*, 17 U.S. at 324-25, 421).

Second, a law must also be "proper." The founding generation frequently used the term "proper" when "discussing 'the allocation of governmental powers' or the separation of powers." *McNutt*, 173 F.4th at 220 (quoting Gary Lawson & Patricia B. Granger, *The "Proper" Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause*, 43 Duke L.J. 267, 291 (1993)). Thus, a law is not "consist[ent] with the letter and spirit of the [C]onstitution," *McCulloch*, 17 U.S. at 421, and therefore improper, if it infringes on the "system of 'dual sovereignty'" on which our federal structure is based. *Printz*, 521 U.S. at 918 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 457, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991)); *see McNutt*, 173 F.4th at 221. In other words, Congress cannot use the Necessary and Proper Clause to exercise a plenary police power that the Constitution—by enumerating a [*49] set of limited powers for the federal government—reserves to the States. *See Morrison*, 529 U.S. at 618 & n.8.

Here, the challenged NFA provisions are neither necessary nor proper as they relate to the special occupational tax. Arguing otherwise, the defendants point to declarations from an ATF employee indicating that the agency uses the NFA's regulations for untaxed firearms—which only pertain to transfer, making, and possession—to collect and enforce the special occupational tax. *See* Dkt. Nos. 61 at 185-92; 86 at 4-7; 127 at 1-4; No. 6:26-CV-227, Dkt. No. 30 at 185-92. But the evidence does not support the defendants' position.

First, the defendants raise what the plaintiffs call an "anticircumvention theory." *See* Dkt. No. 75 at 21. According to the declarations, ATF reviews transfer and making applications to ensure that those who are supposed to be paying the special occupational tax are in fact doing so. "A sustained increase in the transfer of NFA firearms," for example, "may indicate that an individual is engaged in the business of dealing in firearms and should be licensed and paying" the special occupational tax. Dkt. No. 61 at 190. Relatedly, "the repetitive making of certain firearms by the same individual [*50] may indicate that individual is engaged in the business of manufacturing those firearms," requiring them to pay the special

---

[16] *McNutt* rejected the notion that modern precedent "import[s] some kind of rational basis test into the Necessary and Proper Clause." 173 F.4th at 218 n.12. So while some cases describe the test as one of means-end rationality, *see, e.g., Comstock*, 560 U.S. at 134, *McNutt* counsels that *McCulloch*'s "plainly adapted" formulation—quoted most recently in *NFIB*—still applies.

occupational tax. *Id.* at 191. But even if this rationale holds in some cases, it does not apply in most of them. By the defendants' own admission, "[t]he vast majority of NFA firearms are made by qualified manufacturers that must be FFLs and pay the [special occupational tax]." *Id.* The same goes for transfers. *See id.* at 191-92. For instance, between 2016 and 2020, the following percentages of untaxed firearms were made by qualified manufacturers subject to the special occupational tax: 87.5% of silencers, 88% of short-barreled rifles, 97% of AOWs, and 98.5% of short-barreled shotguns. *Id.* at 191. Thus, the challenged NFA provisions might inform collection of the special occupational tax in only about 1 to 12% of cases—that is, those times when a firearm is made or transferred by one who is *not* subject to the occupational tax regime. *See* Dkt. No. 75 at 21. Because the firearms provisions at issue regulate persons who need not abide by the occupational regime, they are not plainly adapted to collecting or enforcing the special occupational tax.

The defendants respond with statements from its affiant [*51] that ATF "regularly denies applications where a transferor or transferee hasn't properly paid the [special occupational tax]," suggesting that the NFA's application and registration requirements do in fact support enforcement of the occupational tax regime. Dkt. No. 85 at 16 (quoting Dkt. No. 86 at 6). In 2025, ATF disapproved 691 applications due to "issues" with the special occupational tax, "including a transferor's or transferee's failure to properly pay" the tax. *Id.* (quoting Dkt. No. 86 at 6). It is unclear how many of those 691 applications were disapproved for nonpayment. But even if all 691 applications were disapproved for failure to pay the special occupational tax, that is still a drop in the bucket considering the "2,195,034 total NFA weapons [that] were transferred" in 2025, according to ATF statistics. Dkt. No. 61 at 192. The defendants miss the import: At most, 691 defective occupational transfers out of nearly 2.2 million (or 0.03%) could even potentially be linked to the challenged NFA provisions. This "unrebutted evidence" (in the defendants' words) does not establish that the NFA's firearms regulations are plainly adapted to supporting the special occupational tax. [*52] [17] *See* Dkt. No. 85 at 16.

Second, to the extent ATF claims to use the challenged NFA provisions to criminally enforce the special occupational tax, that cannot be true. *See* Dkt. No. 86 at 6 (alleging that the NFA's regulatory requirements for untaxed firearms "support the assessment, collection, and enforcement" of the special occupational tax). Section 5848 of the NFA bars use of firearms registration information in criminal prosecutions. 26 U.S.C. § 5848(a); *see United States v. Freed*, 401 U.S. 601, 606, 91 S. Ct. 1112, 28 L. Ed. 2d 356 (1971) (noting that Section 5848 is a "barrier against us[ing]" NFA-mandated registration information "in a prosecution for prior or concurrent offenses"). As the plaintiffs rightly explain, the statute thus bars the plaintiffs from arguing that the NFA's regulation of untaxed firearms is plainly adapted to at least the criminal enforcement of the special occupational tax. *See* Dkt. No. 75 at 22-23.

Lastly, the challenged NFA provisions are not a "proper" means of collecting the special occupational tax. Again, a law is not "proper" if it encroaches on the States' police power by giving the federal government all-encompassing authority to regulate matters that lack a "plain connection" to an enumerated power.

---

[17] The defendants contend that the plaintiffs' views on this point are "simply beside the point" because they do not rebut the "sworn testimony" in the ATF declarations. Dkt. No. 85 at 14-15 (citing *Collins v. Jackson Pub. Sch. Dist.*, 609 F. App'x 792, 795-96 (5th Cir. 2015) ("Arguments in briefs, like allegations in a complaint, are assertions, not evidence" sufficient to create a genuine factual dispute on summary judgment.)). That contention is a red herring. The plaintiffs do not dispute the facts in the declarations; they argue that the undisputed evidence does not support the assertion that the challenged regulatory requirements can be sustained in relation to the special occupational tax. That is a legal argument, not a factual one. *Cf.* Dkt. No. 60 at 16 (defendants conceding that "the parties dispute no material facts" and agree that only legal questions remain).

McNutt, 173 F.4th at 221. The defendants' theory, however, would do just that. As explained above, [*53] the NFA's text and structure, as well as the case law, demonstrate that Congress enacted the challenged NFA provisions to aid enforcement of the transfer and making taxes—and those taxes alone. *See supra*, Analysis § 4.A.i.b. That was all well and good when those taxes generated revenue. But with those taxes gone, the challenged provisions lack any connection to an enumerated power, not to mention a "plain" one. *McNutt*, 173 F.4th at 221. If the defendants were correct that the provisions can still be sustained under the Necessary and Proper Clause, that theory would open the door to limitless federal regulation. Consider the plaintiffs' hypotheticals. *See* Dkt. No. 75 at 24; No. 6:26-CV-227, Dkt. No. 56 at 23. If, for example, Congress imposed an annual $1 occupational tax on grocers, "anyone wishing to possess broccoli" could be forced to jump through endless federal regulatory hoops—applications, fingerprints, and so on—just to ensure that they are not unlawfully evading the grocer tax. *See* Dkt. No. 75 at 24. If that is outlandish for broccoli, it is no less so for firearms. *See United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. 2024) ("[T]he Second Amendment 'is not a second-class right.'" (emphasis omitted) (quoting *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022))). Without a "limiting principle," the defendants' theory of regulation—nothing less [*54] than a federal police power—stretches far beyond what the Constitution allows. *McNutt*, 173 F.4th at 221.

To summarize: The challenged NFA provisions cannot be sustained under the taxing power. Because of the One Big Beautiful Bill Act, they do not support the collection of any revenue—the "essential feature of any tax." *NFIB*, 567 U.S. at 564. Moreover, because the challenged provisions are only designed to support enforcement of the now-extinct transfer and making taxes, they cannot be upheld in relation to the special occupational tax, either under the taxing power or the Necessary and Proper Clause. Without more, the challenged NFA provisions lack a valid constitutional basis.

ii. The challenged NFA provisions cannot be independently sustained under the Commerce Clause.

That does not end the matter. Aside from the taxing power, the defendants argue that the NFA's regulation of untaxed firearms may be upheld as an exercise of Congress's enumerated power "[t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. In their view, the challenged NFA provisions regulate, typically, the "persons and things" flowing through an interstate firearms market, thus dooming the plaintiffs' facial claims. Dkt. No. 60 at 25 (citing *Lopez*, 514 U.S. at 558). Here is the problem: Congress did not invoke the Commerce Clause in [*55] enacting the NFA. To the contrary, the NFA's text and structure, as well as its role in the larger scheme of federal firearms regulation, show that it is a taxing statute—and a taxing statute only. And although a statute's constitutionality does not depend on express recitals of an enumerated power, courts must be able to discern the constitutional basis on which Congress relied. And there is no sign here that Congress relied on its commerce power to craft the provisions.

Start with first principles. "Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." *Morrison*, 529 U.S. at 607. In assessing whether a statute is rooted in an enumerated power, courts focus primarily on the statute's text, structure, and place in the U.S. Code. *Cf. NFIB*, 567 U.S. at 561-74 (assessing each of these factors in concluding that the Affordable Care Act's individual mandate could be upheld as an exercise of the taxing power). Certainly, the "question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Id.* at 570 (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144, 68 S. Ct. 421, 92 L. Ed. 596 (1948)). In other words, to legislate under any given power, Congress need not say: "This is a

Commerce Clause statute" or "We are enacting [*56] this law pursuant to our power to tax." And it would be wrong for a court to strike down a statute "because Congress used the wrong labels or failed to identify the source of its power." *United States v. Clay*, 128 F.4th 163, 183 (3d Cir. 2025) (internal quotation marks omitted) (Hardiman, J.) (quoting *United States v. Park*, 938 F.3d 354, 363, 443 U.S. App. D.C. 401 (D.C. Cir. 2019)). Consistent with this understanding, "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Gonzales v. Carhart*, 550 U.S. 124, 153, 127 S. Ct. 1610, 167 L. Ed. 2d 480 (2007) (quoting *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575, 108 S. Ct. 1392, 99 L. Ed. 2d 645 (1988)).

But these principles, while deferential to Congress's lawmaking authority, are not a get-out-of-unconstitutionality-free card. Courts must still "be able to discern a basis for Congress's exercise of an enumerated power." *Clay*, 128 F.4th at 183 (quoting *Park*, 938 F.3d at 363). The analysis, rooted in statutory interpretation, seeks to pinpoint the enumerated power, or combination of powers, on which Congress relied. As Alexander Hamilton, writing as Publius, explained, "[t]he propriety of a law, in a constitutional light, must always be determined by the nature of the powers *upon which it is founded*." The Federalist No. 33, at 206 (J. Cooke ed. 1961) (emphasis added). Even in *Woods*, the case most often cited for the notion that Congress need not expressly describe its choice of an enumerated power, the Supreme Court went on to reason [*57] that Congress's chosen power—in that case, its "war power"—was "plain from" the record. *Woods*, 333 U.S. at 144. The same was true in *NFIB*, where the Supreme Court adopted a saving construction under the taxing power, but only after analyzing text, structure, and statutory history to confirm that the taxing power was a "fairly possible" basis for the statute. *See NFIB*, 567 U.S. at 563 (quoting *Crowell v. Benson*, 285 U.S. 22, 62, 52 S. Ct. 285, 76 L. Ed. 598 (1932)).

It follows that the government cannot employ post-hoc justifications to save a statute based on an enumerated power that Congress never invoked. The same goes for the courts. A century ago, the Supreme Court recognized "that it is the duty of a court in considering the validity of an act to give it such reasonable construction as can be reached to bring it within the fundamental law." *Yu Cong Eng v. Trinidad*, 271 U.S. 500, 518, 46 S. Ct. 619, 70 L. Ed. 1059 (1926). At the same time, "amendment may not be substituted for construction," and a court "may not exercise legislative functions to save the law from conflict with constitutional limitation." *Id.* In more modern terms, when Congress is "explicit about invoking its authority" under a specific power, it "precludes consideration of" a different power "as a basis for" the statute. *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 642 n.7, 119 S. Ct. 2199, 144 L. Ed. 2d 575 (1999).

How does one determine what power Congress invoked? The best evidence, as always, [*58] is the statutory text. *See NFIB*, 567 U.S. at 563-64; *cf. Fla. Prepaid*, 527 U.S. at 642 n.7 ("There is no suggestion in the language of the statute itself . . . that Congress had in mind the Just Compensation Clause of the Fifth Amendment."). Thus, the Court turns to the tools of statutory interpretation—text, but also structure—to determine whether the NFA's regulatory requirements can be understood as an invocation of the commerce power.

a. Congress enacted the NFA under the taxing power—and the taxing power only.

The NFA is only a taxing statute. Starting with its preamble, the NFA claims "to tax the sale or other disposal of" "certain firearms and machine guns." Pub. L. No. 73-474, 48 Stat. at 1236; *see Bittner v. United States*, 598 U.S. 85, 98 n.6, 143 S. Ct. 713, 215 L. Ed. 2d 1 (2023) ("A preamble, purpose clause,

or recital is a permissible indicator of meaning." (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 217 (2012))). Subchapter A—titled "Taxes"—has three parts: "Special (Occupational) Taxes," "Tax on Transferring Firearms," and "Tax on Making Firearms." Pub. L. No. 90-618, § 201, 82 Stat. 1213, 1227-28 (1968). Section 5811, the tax on transfers, provides that "[t]here shall be levied, collected, and paid on firearms transferred a tax at the rate of" $0 or $200 for machineguns and destructive devices. 26 U.S.C. § 5811(a). The same language features in Section 5821: the making tax. *Id.* § 5821(a). Next to both provisions are most of the challenged NFA requirements, [*59] which expressly prohibit any transfer or making until the relevant "tax" is paid, among other things. *Id.* §§ 5812(a), 5822. It makes sense, then, why the Supreme Court has held for decades that the NFA is founded on "the taxing power": The statute speaks of taxation through and through. *NFIB*, 567 U.S. at 567 (citing *Sonzinsky*, 300 U.S. at 513); *see also Haynes*, 390 U.S. at 98 & n.12 ("[A]s we have repeatedly indicated . . . [the Supreme] Court must give deference to Congress' taxing powers . . . ." (citing, for example, *Sonzinsky*, 300 U.S. at 506)).

Indeed, the Supreme Court has cited far less tax-centric language as evidence that Congress invoked the taxing power. In *NFIB*, the Supreme Court considered the Affordable Care Act's "[s]hared responsibility payment," which the Act described as a "penalty," not a "tax." 567 U.S. at 563-64. Despite Congress's choice of label, the Supreme Court held that the shared responsibility payment was a valid use of Congress's taxing power because it possessed certain characteristics that made it "look[] like a tax"—including that it generated revenue, could be found in the Internal Revenue Code, and was enforced by the Internal Revenue Service. *Id.* at 563. In reaching this conclusion, the Supreme Court noted several precedents holding that an exaction may fall within the taxing power no matter [*60] what it is called. *Id.* at 564-65 (discussing cases); *cf. Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359, 363, 61 S. Ct. 586, 85 L. Ed. 888 (1941) ("I[n] passing on the constitutionality of a tax law 'we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it.'" (quotation omitted)).

Now consider how much easier the analysis is when, as here, a statute actually speaks of taxation. *See, e.g.*, 26 U.S.C. §§ 5811, 5821. Here, as in all things, the Court "must take Congress at its word" and "presume it meant what it said." *Reed v. Taylor*, 923 F.3d 411, 415 (5th Cir. 2019). The NFA's tax-centric language thus goes to show that Congress invoked its taxing power when enacting the statute.

What Congress did not say is even more telling. The challenged NFA provisions do not mention interstate or foreign commerce. *See, e.g.*, 26 U.S.C. §§ 5812, 5822, 5841. And those provisions have "no express jurisdictional element which might limit [their] reach to a discrete set of [firearms-related activities] that additionally have an explicit connection with or effect on interstate commerce." *Lopez*, 514 U.S. at 562. While not strictly necessary, "including a jurisdictional hook is 'standard operating procedure for Commerce Clause legislation.'" *Smith v. U.S. Dep't of the Treasury*, 761 F. Supp. 3d 952, 967 (E.D. Tex. 2025) (quotation omitted). Without these jurisdictional limits, the NFA's firearms regulations creep into purely intrastate [*61] activities—like crafting a silencer out of household objects or giving away a covered firearm to another in-state resident. *See* Dkt. No. 15-1 at 7, 9-10.

The absence of a jurisdictional hook—and, for that matter, any other interstate-commerce language—indicates that Congress did not employ the Commerce Clause in enacting the challenged NFA provisions. And "[w]hen Congress addresses both the power to regulate and the power to tax, it does so separately and expressly." *Learning Res., Inc. v. Trump*, 607 U.S. 229, 249, 146 S. Ct. 628, 224 L. Ed. 2d 51 (2026); *see also, e.g.*, 2 U.S.C. § 622(8)(B)(i) (defining a "government-sponsored enterprise" to include a

corporate entity that does not have "the power to tax or to regulate interstate commerce"). That drafting standard is no surprise, "as the 'power to regulate commerce' is 'entirely distinct from the right to levy taxes.'" *Learning Res.*, 607 U.S. at 250 (quoting *Gibbons*, 22 U.S. at 201).

Because the challenged NFA provisions focus exclusively on taxation, the only "reasonable construction" is that they are based on the taxing power alone. *Carhart*, 550 U.S. at 153 (quoting *Edward J. DeBartolo Corp.*, 485 U.S. at 575). Therefore, the NFA's "constitutional bedrock," as the Fifth Circuit explained, "is 'the power to tax' rather than 'the commerce power.'" *United States v. Parker*, 960 F.2d 498, 500 (5th Cir. 1992) (quoting *Ross*, 458 F.2d at 1145 & n.3); *see United States v. Lopez*, 2 F.3d 1342, 1348-49 (5th Cir. 1993) ("The National Firearms Act . . . is grounded on Congress' taxing power under Article I, Section 8, Clause 1."), *aff'd*, 514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995).

The NFA's structure confirms this conclusion. [*62] The statute is housed in Title 26, the Internal Revenue Code, and all taxes collected go to the Treasury's general fund. *See* ATF, Fact Sheet - Facts and Figures for Fiscal Year 2024 (Mar. 2025), https://perma.cc/4687-5R2F. Those are signs that "Congress enacted the NFA pursuant to its enumerated taxing power."[18] *United States v. Dodge*, 61 F.3d 142, 145 (2d Cir. 1995); *see NFIB*, 567 U.S. at 563-64 (considering the same factors for the shared responsibility payment).

Also consider that the NFA includes two discrete provisions—unchallenged here—that do explicitly reference interstate or foreign commerce. *See* Dkt. No. 133 at 53:23-25 to 54:1. In contrast to the challenged NFA requirements, these two provisions focus on "importation" and "interstate transportation" of covered firearms. Pub. L. No. 73-474, 48 Stat. at 1236 (preamble). Section 5861(j) makes it unlawful "to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required," and Section 5861(k) prohibits "receiv[ing] or possess[ing] a firearm which has been imported or brought into the United States" in violation of the NFA. That Congress did not include similar commerce language in the challenged NFA provisions suggests an intentional choice: When Congress chooses to invoke the Commerce Clause, it knows how to do so. With that in mind, [*63] courts often "presume[] that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Martinez v. Caldwell*, 644 F.3d 238, 242 (5th Cir. 2011) (quoting *City of Chicago v. Env't Def. Fund*, 511 U.S. 328, 338, 114 S. Ct. 1588, 128 L. Ed. 2d 302 (1994)); *see* Scalia & Garner, Reading Law at 107. Thus, far from making the entire statute about commerce, Congress's jurisdictional references in two distinct NFA provisions indicate that the challenged requirements are not founded on the Commerce Clause. Because those challenged NFA requirements "say[] nothing about interstate commerce," the Court "will not ascribe to Congress an intent to exercise its power under the [C]ommerce [C]lause when it has invoked the taxing power in enacting the legislation." *United States v. Giannini*, 455 F.2d 147, 148 (9th Cir. 1972).

The conclusion that Congress only based the NFA on its taxing power becomes even clearer when considering the NFA's sister statute, the Gun Control Act. The GCA has its roots in the Federal Firearms Act, 52 Stat. 1250 (1938), enacted just four years after the NFA. Unlike the NFA, the FFA applied to all firearms, and it cabined its provisions to interstate commerce. *Lopez*, 2 F.3d at 1349. For example, the FFA prohibited "any manufacturer or dealer" not licensed under the statute from transporting, shipping, or

---

[18] Also remember that the NFA, for most of its history, required individuals to pay taxes to and register their firearms with the Secretary of the Treasury. *See supra*, n.6. "[W]hich agency is responsible for" enforcement bears on "whether something Congress codifies as a tax is, really, a tax." *Hobby Distillers*, 740 F. Supp. 3d at 524 (citing *NFIB*, 567 U.S. at 563-65).

receiving any firearm or ammunition "in interstate or foreign commerce," 15 U.S.C. § 902(a) (1938), and it prohibited "any person" from receiving any [*64] firearm or ammunition "transported or shipped in interstate or foreign commerce in violation of" the statute. *Id.* § 902(b) (1938). *See Lopez*, 2 F.3d at 1349. So "[i]t is clear that in enacting the Federal Firearms Act Congress was exercising the power conferred upon it by the [C]ommerce [C]lause." *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942); *see United States v. Rybar*, 103 F.3d 273, 279 (3d Cir. 1996) ("Although the [NFA] was enacted under the taxing power, four years later Congress used the commerce power to regulate firearms with the passage of the [FFA]. All subsequent federal firearms legislation was enacted under the commerce power." (internal citation omitted)).

The GCA is an outgrowth of the commerce-based FFA. The GCA and the Omnibus Crime Control and Safe Streets Act, Pub. L. No. 90-351, 82 Stat. 197 (1968), "enlarged and extended the Federal Firearms Act." *Barrett v. United States*, 423 U.S. 212, 219-20, 96 S. Ct. 498, 46 L. Ed. 2d 450 (1976). With some limited exceptions, the GCA and the Crime Control Act "maintained the same essential jurisdictional bases" from earlier legislation—specifically, "an express nexus either to interstate commerce or to the conduct of, or dealings with, federally licensed dealers or manufacturers, or to both." *Lopez*, 2 F.3d at 1351, 1353. The statutes also recodified the commerce-based FFA provisions in Title 18 ("Crimes and Criminal Procedure") and left the tax-based NFA provisions in Title 26 ("Internal Revenue Code"). *Id.* at 1350, 1352. The GCA and the Crime Control Act therefore maintained the dual system [*65] of federal firearms regulation that had existed since the 1930s: a taxing scheme for "especially dangerous and unusual" weapons, *Mock*, 75 F.4th at 567 (quotation omitted), and a commerce framework for everything else.

This statutory history, which the defendants do not address, underscores how "the NFA and the GCA are different statutes passed at different times to address different problems using different language." *Bondi v. VanDerStok*, 604 U.S. 458, 483, 145 S. Ct. 857, 221 L. Ed. 2d 332 (2025); *see United States v. Moore*, 71 F.4th 392, 395 (5th Cir. 2023) ("Statutory history, 'the record of enacted changes Congress made to the relevant statutory text over time,' can also provide helpful context." (quoting *Burlington Northern Santa Fe Ry. v. Loos*, 586 U.S. 310, 329, 139 S. Ct. 893, 203 L. Ed. 2d 160 (2019) (Gorsuch, J., dissenting))); *see also Thomas v. Reeves*, 961 F.3d 800, 817 n.45 (5th Cir. 2020) (en banc) (Willett, J., concurring) (distinguishing between statutory history and legislative history).[19] The Fifth Circuit highlighted the dichotomy decades ago, noting that the NFA and GCA address "clearly distinct" subjects and are "contained in wholly different titles of the United States Code." *Parker*, 960 F.2d at 500. The GCA, the Fifth Circuit explained, "has no roots or antecedent in the [NFA] [and] is in no way related or tied to taxation." *Lopez*, 2 F.3d at 1349. Instead, the GCA, as shown by its text and history, is a clear exercise of the commerce power. That "[t]he [NFA] is silent on the score of commerce" confirms that it is [*66] a taxing statute—and a taxing statute alone.[20] *United States v. Tous*, 461 F.2d 656, 657 (9th Cir. 1972).

For these reasons, the challenged NFA provisions may not be sustained under the Commerce Clause. Congress passed the NFA under its taxing power only. And because the NFA's regulation of untaxed

---

[19] The parties discuss the NFA's legislative history in detail. But the Court does not rely on legislative history "for the simple reason that [it is] not law." *United States v. Nazerzadeh*, 73 F.4th 341, 347 (5th Cir. 2023) (alteration in original) (quotation omitted).

[20] For what it's worth, in 1934, enacting the NFA under the Commerce Clause would have almost certainly been viewed as unconstitutional. The modern, expansive view of the commerce power did not begin to rear its head until years later. *See Wickard v. Filburn*, 317 U.S. 111, 127-29, 63 S. Ct. 82, 87 L. Ed. 122 (1942).

firearms can no longer be upheld as supporting a revenue purpose, the challenged provisions therefore exceed Congress's enumerated powers.

b. The defendants' counterarguments are unpersuasive.

The defendants advance several counterarguments for why the Court should evaluate the challenged NFA provisions under the Commerce Clause. *See* Dkt. No. 60 at 31-33; No. 6:26-CV-227, Dkt. No. 29 at 35-37. None have merit.

First, the defendants raise their own textual points, arguing that the "statutory text plainly indicates that Congress sought to regulate commercial actors and commodities that are often part of interstate commerce." Dkt. No. 60 at 33. They point to a few provisions—for example, the NFA's definition of "transfer" which includes "selling" and "leasing"—to support this understanding. *Id.* (quoting 26 U.S.C. § 5845(j)). But the two places in the NFA that explicitly or implicitly refer to interstate or foreign commerce either confirm the Court's interpretation or must be understood in their context. [*67] By invoking its commerce power for two discrete provisions—Section 5861(j), dealing with transporting, delivering, or receiving unregistered firearms in interstate commerce, and Section 5861(k), barring receiving or possessing an unlawful firearm that has been imported or brought into the United States—Congress revealed that it "knew exactly how" to enact the challenged NFA provisions under the Commerce Clause "if [it] [had] wanted to." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364, 138 S. Ct. 1348, 200 L. Ed. 2d 695 (2018). And the NFA's reference to "transfers"—while suggestive of commerce—"cannot be construed in a vacuum." *Sturgeon v. Frost*, 577 U.S. 424, 438, 136 S. Ct. 1061, 194 L. Ed. 2d 108 (2016) (quotation omitted). The "transfer" provisions of the NFA (a.k.a. "Part II—Tax on Transferring Firearms") are found in subchapter A—titled "Taxes." Because words are supposed to be read against the backdrop of the entire statutory scheme, *Sturgeon*, 577 U.S. at 438, "transfers" must be understood in the NFA in relation to taxes, not commerce.

Second, the defendants note that Congress may legislate under more than one enumerated power. Dkt. No. 60 at 31-32. A court, the argument continues, may therefore uphold a statute under a different power than it has before. *Id.* at 32. Fair enough. *See, e.g., Morrison*, 529 U.S. at 607 ("Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution."). But that uncontroverted assertion begs the question here: Did Congress [*68] employ the commerce power in enacting the challenged NFA provisions? That Congress could have legislated pursuant to a particular enumerated power does not answer whether Congress invoked that power in enacting a given statute. And again, the text, structure, and statutory history "do[] not show that Congress, in enacting the [NFA], was invoking the Commerce Clause." *Lopez*, 2 F.3d at 1364 n.45.

Third, contrary to the defendants' suggestion, it matters little that a law "does not depend on recitals of the power which it undertakes to exercise." *Woods*, 333 U.S. at 144; *see* Dkt. No. 60 at 33. Chief Judge Sutton put it perfectly: "In enumerated-power cases, there often will be a question whether Congress invoked its powers under the Commerce Clause . . . or the Taxing Clause." *Thomas More L. Ctr. v. Obama*, 651 F.3d 529, 553 (6th Cir. 2011) (Sutton, J., concurring in part), *abrogated by Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012). The *Woods* principle merely establishes that "congressional recitals provide sufficient grounds for invoking a power but not the exclusive means for doing so." *Id.* Courts must still analyze whether a statute has the distinct substantive traits associated with each enumerated power; they "may not simply label a law something it is not." *Id.*

Woods itself is a prime example. The *Woods* Court, after explaining that Congress need not expressly state its chosen power, then reasoned [*69] that "Congress was invoking its war power" in passing the law under review. *Lopez*, 2 F.3d at 1364 n.45 (quoting *Woods*, 333 U.S. at 143). The Supreme Court then upheld the law under the war power. *Woods*, 333 U.S. at 141-43. So there too the Supreme Court recognized that courts must discern the basis on which Congress legislated. And here, "there is no substantial indication that the commerce power was even invoked." *Lopez*, 2 F.3d at 1364.

Lastly, the defendants rely on a brief discussion in a Fifth Circuit case, *United States v. Ardoin*, 19 F.3d 177 (5th Cir. 1994), that states with little explanation that the NFA may be sustained under the commerce power. But *Ardoin*'s unreasoned statements about the Commerce Clause—which it incorporated by reference from a fact-bound Fourth Circuit decision—do not foreclose the issue here. For one, *Ardoin* came before *Lopez* and *Morrison*, which worked a sea change in modern Commerce Clause doctrine by underscoring constitutional limits on Congress's regulatory power through the application of three discrete categories of permissible regulation. *See Lopez*, 514 U.S. at 558-59; *see also United States v. Bailey*, 115 F.3d 1222, 1233 (5th Cir. 1997) (Smith, J., dissenting) ("*Lopez* is a landmark, signaling the revival of federalism as a constitutional principle, and it must be acknowledged as a watershed decision in the history of the Commerce Clause."). "[W]here an intervening Supreme Court decision fundamentally changes the focus of the relevant analysis," [*70] circuit precedent may be implicitly overruled. *In re Bonvillian Marine Serv., Inc.*, 19 F.4th 787, 792 (5th Cir. 2021) (citation modified) (quoting *Acosta v. Hensel Phelps Constr. Co.*, 909 F.3d 723, 742 (5th Cir. 2018)). Such is the case here, where *Ardoin* never conducted the commerce-power analysis now required by binding Supreme Court precedent. Further, *Ardoin*'s statements about the Commerce Clause are dicta and conflict with prior Fifth Circuit decisions holding that "'the constitutional bedrock for the [NFA]' is 'the power to tax' rather than 'the commerce power.'" *Parker*, 960 F.2d at 500 (quoting *Ross*, 458 F.2d at 1145 & n.3). The Court is not bound by dicta, and when two "panel opinions appear to conflict," the earlier one controls. *H & D Tire & Auto.-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000). For those reasons, too, *Ardoin* does not help the defendants as much as they think.

In *Ardoin*, the Fifth Circuit addressed whether 18 U.S.C. § 922(o)—which amended the Gun Control Act to criminalize the possession of machineguns manufactured after 1986—"implicitly repealed portions of the NFA." 19 F.3d at 179. The defendant argued that he could not be convicted under the NFA for failing to register a machinegun because, after Congress enacted Section 922(o), ATF "refuse[d] to accept applications to register or to pay the tax" on machineguns. *Id.* Thus, the argument went, Section 922(o) implicitly repealed the NFA provisions under which he was charged and ultimately convicted.

The Fifth Circuit rejected that argument by citing a Fourth Circuit case, [*71] *United States v. Jones*, 976 F.2d 176 (4th Cir. 1992). The *Jones* panel held that the NFA's provisions regarding machineguns could still be supported under the taxing power, notwithstanding Section 922(o). *Id.* at 183-84. It then said, almost as an afterthought, that there could be "no serious contention" that the NFA's proscriptions "exceed[] Congress'[s] power to regulate interstate commerce" on the specific facts of the case: "two machine guns which were transported between two states for sale." *Id.* at 184. Despite this fact-bound conclusion, the *Ardoin* majority simply "adopt[ed] the analysis of the Fourth Circuit." 19 F.3d at 180. And it concluded by stating—in much more categorial terms than *Jones* did—that "[t]he NFA can be upheld on the preserved, but unused, power to tax or on the power to regulate interstate commerce." *Id.*

Judge Wiener disagreed with the majority's asides on the Commerce Clause. He explained that the NFA's constitutionality could not "be rescued by incanting—as did the Fourth Circuit in *Jones*—that the [NFA]

'could' be upheld under Congress'[s] power to regulate interstate commerce." *Id.* at 187 (Wiener, J., dissenting in part, concurring in part, and dissenting in the result). The only way the NFA could "be upheld under the Commerce Clause," he explained, was if the statute "were expressly adopted (or now readopted) by Congress [*72] under that clause." *Id.* But the "undeniable fact" is that "Congress *did not* enact the NFA under the Commerce Clause," nor has it "seen fit to re-enact it under that clause in all the decades that have ensued since the NFA's original enactment under Congress'[s] power to tax." *Id.* (emphasis in original). To Judge Wiener, the majority's Commerce Clause comments raised separation-of-powers concerns: Judges may not "uphold[] laws on the basis of enumerated powers that are different from the ones invoked by Congress." *Id.* at 188. Because "Congress expressly passed the NFA pursuant to its power to tax," Judge Wiener resisted any suggestion that "Congress now intends to augment the power and scope of [the NFA] by imbuing it with the authority of the modern Commerce Clause." *Id.*

Indeed, absent from *Ardoin* (and from *Jones*) was any discussion of the Supreme Court's modern approach to Commerce Clause legislation. That makes sense: Both cases were decided before *Lopez* and *Morrison*. Those latter cases "canvassed and clarified" the Supreme Court's Commerce Clause precedents and "provide[d] the proper framework" for analyzing claims that Congress exceeded its commerce power in enacting a particular statute. *See Morrison*, 529 U.S. at 609 (discussing *Lopez*). By delineating three categories of permissible Commerce Clause legislation, *Lopez* and [*73] *Morrison* limited congressional authority to regulate in areas that, historically, have been reserved to the states. And for the broadest and most manipulable category—"'activities that substantially affect interstate commerce'"—the cases identified several "significant considerations" for courts to review. *Id.* (quoting *Lopez*, 514 U.S. at 558-59). These significant considerations include, among others, whether the law is "economic" in nature, whether it contains an "express jurisdictional element" to "limit its reach to" activities with "an explicit connection with or effect on interstate commerce," and whether there are any "express congressional findings regarding the effects upon interstate commerce" of the regulated activity. *Id.* at 610-12; *Lopez*, 514 U.S. at 561-63.

At the very least, *Lopez* and *Morrison* "change[d] the focus of the relevant analysis," thus undercutting *Ardoin*'s precedential basis. *Bonvillian*, 19 F.4th at 792 (internal quotation marks omitted); *accord Hoskins v. Bekins Van Lines*, 343 F.3d 769, 775-76 (5th Cir. 2003) (finding circuit precedent abrogated "[b]ecause the legal landscape surrounding the complete preemption doctrine [had] shifted"). In fact, when it comes to the plaintiffs' argument that the NFA's restrictions on possessing untaxed firearms violate the Commerce Clause, *Lopez* supports their position and contradicts *Ardoin*: Firearm possession "has nothing [*74] to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms." *Lopez*, 514 U.S. at 561; *see also Alvarez v. City of Brownsville*, 904 F.3d 382, 398 (5th Cir. 2018) (en banc) (Ho, J., concurring) (explaining that district courts are not bound by circuit precedent that directly conflicts with Supreme Court precedent). Understandably, the *Ardoin* majority could not have addressed the categories or factors identified in *Lopez* and *Morrison*. Still, because *Ardoin* did not apply *Lopez* and *Morrison*'s test for assessing Commerce Clause challenges, its discussion of the commerce power has been abrogated. *See Bonvillian*, 19 F.4th at 792; *cf. United States v. Barber*, No. 4:20-CR-384, 2023 U.S. Dist. LEXIS 14340, 2023 WL 1073667, at *4 (E.D. Tex. Jan. 27, 2023) (applying *Bruen* as opposed to the Fifth Circuit's pre-*Bruen* precedent and noting the "district courts' obligation to apply intervening Supreme Court precedent that conflicts with circuit authority"). Thus, *Ardoin* does not bind the Court.

Plus, *Ardoin*'s statements about the commerce power cannot be read for more than what they are: dicta. "A statement is dictum if it could have been deleted without seriously impairing the analytical foundations of the holding and being peripheral, may not have received the full and careful consideration of the court that uttered it." *Sarabia v. Noem*, 149 F.4th 554, 563-64 (5th Cir. 2025) (internal quotation marks omitted) (quoting *Int'l Truck & Engine Corp. v. Bray*, 372 F.3d 717, 721 (5th Cir. 2004)); *see also Obiter dictum*, Black's Law Dictionary (12th ed. 2024) (defining dictum as [*75] "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential"). "A statement is not dictum if it is necessary to the result or constitutes an explication of the governing rules of law." *Sarabia*, 149 F.4th at 564 (quoting *Int'l Truck*, 372 F.3d at 721). Here, *Ardoin*'s talk of the commerce power was not necessary to its holding. Before addressing the Commerce Clause, the majority recognized that, under the NFA, "ATF has the authority to tax now-illegal machineguns." *Ardoin*, 19 F.3d at 180. It then said that the NFA "could" be upheld under the Commerce Clause, too. *Id.* But the majority had no reason to reach that point since it had already recognized that the NFA could be sustained under "the taxing power." *Id.* Thus, *Ardoin*'s commerce-power language can be deleted without undermining the case's analysis. That makes it dicta. *See Sarabia*, 149 F.4th at 563-64.

And being a peripheral point, the majority's discussion of the Commerce Clause may not have received full and careful consideration. The opinion suggests as much by simply "adopt[ing]" *Jones*. *Ardoin*, 19 F.3d at 180. *Ardoin* then overstated the Fourth Circuit's holding, which was expressly limited to the NFA's "application in [that] case to two machine guns which were transported between two states for sale." *Jones*, 976 F.2d at 184. *Jones* did not categorically hold [*76] that "[t]he NFA can be upheld . . . on the power to regulate interstate commerce," as *Ardoin* suggests. *Ardoin*, 19 F.3d at 180. *Ardoin*'s loose language about *Jones* further indicates that its discussion of the commerce power was not fully and carefully considered and is therefore dicta.

The same goes for *United States v. Arce*, 118 F.3d 335 (5th Cir. 1997), another case on which the defendants rely. *Arce* was a sentencing appeal that challenged a district court's upward departure for convictions related to making and possessing unregistered silencers and machineguns. *Id.* at 338. In language that was not essential to the outcome, the *Arce* panel remarked that the Fifth Circuit had "recently held that the constitutionality of the NFA can be upheld based on either the taxing power or on the interstate commerce power." *Id.* at 342. But that language was conditional (e.g., how "the NFA *can be* upheld"), and the panel quicky turned to why the departure would be valid "[e]ven if the NFA were based solely on the taxing power." *Id.* (emphasis added). This suggests that the *Arce* panel did not understand *Ardoin* to have conclusively decided the Commerce Clause issue. In fact, about a month after *Arce*, another Fifth Circuit panel noted that the NFA "is a legitimate exercise of the taxing power, so infirmities in the commerce power are beside the point." [*77] *United States v. Solis*, 124 F.3d 192, 192 (5th Cir. 1997) (unpublished). That is an odd thing to say if *Ardoin* had already held that the NFA could be sustained under the Commerce Clause.

Lastly, *Ardoin* clashes with two prior Fifth Circuit decisions recognizing that the NFA's "'constitutional bedrock'" is the taxing power "rather than 'the commerce power.'" *Parker*, 960 F.2d at 500 (quoting *Ross*, 458 F.2d at 1145 & n.3). Oddly, *Ardoin* quoted these two cases. *See* 19 F.3d at 179 n.3. It then contradicted them by concluding that the NFA could be upheld under the Commerce Clause. What happens then? In the Fifth Circuit, when two panel decisions "appear to conflict," the earlier decision prevails. *H & D Tire*, 227 F.3d at 330. Thus, the Fifth Circuit's earlier statements that the NFA is rooted in

the taxing power "rather than" the commerce power supersedes *Ardoin*'s contrary language. For all these reasons, the defendants' reliance on *Ardoin*, like their other counterarguments, fails.

* * *

In sum, the challenged NFA provisions rise and fall on the taxing power. When it enacted the NFA, Congress invoked the Taxing Clause—not its power to regulate interstate commerce. As a result, Congress's later decision to eliminate the transfer and making taxes for most NFA firearms has constitutional consequences. Without revenue generation, the regulatory requirements for those firearms—which were designed to support the transfer [*78] and making taxes—cannot be upheld under the taxing power. The challenged NFA provisions thus exceed Congress's enumerated powers.

B. The plaintiffs abandoned their Second Amendment claims.

Putting aside Article I's enumerated powers, both sets of plaintiffs alleged that the challenged NFA provisions also violate the Second Amendment right to "keep and bear Arms." Dkt. No. 51 ¶¶ 71-75; No. 6:26-CV-227, Dkt. No. 1 ¶¶ 88-97. But at the motions hearing, everyone agreed that the Court can bypass the Second Amendment claims if it concludes—as it does today—that the challenged NFA provisions exceed Congress's enumerated powers in all their applications. Dkt. No. 133 at 22:15 to 23:1; 30:3-7; 62:13-21; 104:5-21. Thus, the Court finds that the plaintiffs abandoned their Second Amendment claims by inviting the Court to avoid them under the circumstances here.

Moreover, in concluding that the Second Amendment claims are abandoned, the Court adheres to the "longstanding principle of judicial restraint" requiring courts to "avoid reaching constitutional questions in advance of the necessity of deciding them." *Camreta v. Greene*, 563 U.S. 692, 705, 131 S. Ct. 2020, 179 L. Ed. 2d 1118 (2011) (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445, 108 S. Ct. 1319, 99 L. Ed. 2d 534 (1988)); *accord Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016) (en banc). The Court's injunction, as detailed below, confers no less relief than the plaintiffs would obtain if they prevailed on their Second Amendment claims. By [*79] encompassing interstate applications of the challenged NFA provisions, the injunction affords the same relief that a successful Second Amendment challenge would entail. Accordingly, the Court need not—and indeed, should not—wade into the parties' Second Amendment arguments.

5. Remedy

Having concluded that the NFA's regulatory provisions for untaxed firearms exceed Congress's enumerated powers, the Court now considers the proper remedy. The plaintiffs seek both injunctive relief and declaratory judgments. As explained below, they are entitled to party-specific injunctions but not declaratory relief.

A. Permanent Injunction

i. The plaintiffs prevail on each of the permanent-injunction factors.

The permanent-injunction standard is "essentially the same" as for a preliminary injunction. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987). "A party seeking a permanent injunction must show: (1) that it has succeeded on the merits; (2) that a failure to grant the injunction will result in irreparable injury; (3) that said injury outweighs any damage that the injunction will cause the opposing party; and (4) that the injunction will not disserve the public interest." *Valentine v. Collier*, 993 F.3d 270, 280 (5th Cir. 2021); *see eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006). The requesting party must "'clearly carr[y] the burden of persuasion' on all four requirements." *Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009) (quotations [*80] omitted).

The plaintiffs have satisfied their burden on each permanent-injunction factor. As noted, the plaintiffs have shown actual success on the merits of their enumerated-powers claims. *See supra*, Analysis § 4.A. They also face irreparable harm without an injunction. For one, compliance with unconstitutional provisions for transferring and making untaxed NFA firearms subjects the plaintiffs to "nonrecoverable compliance costs." *Airlines for Am. v. Dep't of Transp.*, 110 F.4th 672, 677 (5th Cir. 2024) (quoting *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)); *see Rest. L. Ctr. v. United States DOL*, 66 F.4th 593, 597 (5th Cir. 2023) ("[T]he nonrecoverable costs of complying with a putatively invalid regulation typically constitute irreparable harm."). And the government cannot be required to compensate the plaintiffs for those costs, along with the lost profits sustained by the commercial plaintiffs, because the government has "sovereign immunity for any monetary damages." *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021). Lastly, subjection to an unconstitutional law is itself irreparable harm. *See Hobby Distillers*, 740 F. Supp. 3d at 535.

The last two factors—the balance of hardships and the public interest—merge "when the government opposes an injunction." *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 254 (5th Cir. 2024); *see Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). Of course, the defendants have no legitimate interest in enforcing unconstitutional laws, *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021), just as "[t]here is generally no public interest in the perpetuation of unlawful [government] action." [*81] *State v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021) (first alteration in original) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12, 426 U.S. App. D.C. 67 (D.C. Cir. 2016)). The plaintiffs have thus carried their burden on each permanent-injunction factor.

ii. The Court's injunction extends only to the parties.

Now consider the scope of the injunction. The *Silencer Shop* plaintiffs request a "blanket ban" on enforcement of the challenged NFA provisions—a remedy that would necessarily extend to parties not involved in the litigation. Dkt. No. 49 at 59 (quoting *CASA*, 606 U.S. at 853). Alternatively, they seek a party-specific injunction that reaches each of the plaintiffs, including agencies and political subdivisions of each plaintiff state, the commercial plaintiffs' customers, the associational plaintiffs' "individual and [commercial] members and supporters," the customers of the associational plaintiffs' commercial members, and the "resident family members" who live in the same household as those covered by the injunction. *Id.* at 61 (internal quotation marks omitted). Meanwhile, the *Jensen* plaintiffs limit their requested relief to the plaintiffs, the commercial plaintiff's current and future customers, and the associational plaintiffs' individual and commercial members (including their customers). *See* No. 6:26-CV-227, Dkt. No. 26 at 55.

Under [*82] the Supreme Court's decision in *CASA*, the Court may not impose a universal injunction of the kind requested by the *Silencer Shop* plaintiffs. Addressing limitations on injunctive relief under the Judiciary Act of 1789, the *CASA* Court held that federal courts likely lack equitable authority to issue universal injunctions. 606 U.S. at 841-47. That is because the Judiciary Act "encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception"—a category that did not include the universal injunction or any similar form of relief. *Id.* at 841 (quoting *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999)). Rather, at the founding, traditional equitable remedies were typically party specific. *Id.* at 842. Because universal injunctions "lack[] a historical pedigree," the federal courts' power to issue injunctive relief under the Judiciary Act is limited to providing "complete relief to the plaintiffs before the court."[21] *Id.* at 847, 852 (citing *Califano v. Yamasaki*, 442 U.S. 682, 702, 99 S. Ct. 2545, 61 L. Ed. 2d 176 (1979)); *accord Calderon Lopez v. Lyons*, 813 F. Supp. 3d 692, 709 (N.D. Tex. 2025) (Hendrix, J.).

Here, the Court can provide complete relief to the plaintiffs by tailoring its injunction to the parties involved. *See CASA*, 606 U.S. at 851-52. By prohibiting the defendants from enforcing the challenged NFA provisions against the plaintiffs and certain other individuals and entities that are closely associated [*83] with the plaintiffs, the Court can relieve the plaintiffs of the irreparable injury of being subjected to an unconstitutional law.

The *Silencer Shop* plaintiffs raise concerns about workability. In their view, a party-specific injunction is "unworkable" because they seek relief for millions of individual and commercial members, customers, and state officials across the nation. Dkt. No. 49 at 59-60 (quoting *CASA*, 606 U.S. at 853). The implication is that it would be impossible or at least extremely difficult to enforce a party-specific injunction, whereas a "blanket ban" would be easily administrable. *See id.* at 59 (quoting *CASA*, 606 U.S. at 853). The *CASA* Court did not see it that way: *CASA* also involved multiple large plaintiff membership organizations, and yet the Supreme Court intimated that a universal injunction would be inappropriate in that case. 606 U.S. at 852-54; *see also Mock v. Garland*, 697 F. Supp. 3d 564, 591-92 (N.D. Tex. 2023) (limiting injunction in a Second Amendment case to the members of a large gun-rights organization). In any event, if there are practical difficulties with enforcing a party-specific injunction, that is "the National Government's problem, not [the Court's]." *Arizona v. Biden*, 40 F.4th 375, 398 (6th Cir. 2022) (Sutton, C.J., concurring). Under Supreme Court precedent, the Court's remedy may provide complete relief to the plaintiffs—nothing more.

Questions [*84] remain, however. First, the defendants reject the notion that any party-specific injunction should extend to the commercial plaintiffs' customers and the customers of the associational plaintiffs' commercial members. *See* Dkt. No. 60 at 46; *see also* Dkt. No. 49 at 22 (noting that the commercial plaintiffs "assert an Article III injury on behalf of [their] customers"). Because the commercial plaintiffs are injured by the lost profits from enforcement of the challenged NFA provisions, *see, e.g.*, Dkt. No. 50 at 40, the injunction must reach the commercial plaintiffs' customers—both current and future—to provide the commercial plaintiffs with complete, "forward-looking" relief. *See TransUnion LLC*, 594 U.S. at 435. If those customers still confront the NFA's regulatory provisions for untaxed firearms, then they

---

[21] Consider too that imposing a universal injunction would short-circuit review of similar challenges to the NFA pending in other courts. *See Brown v. ATF*, No. 4:25-CV-1162 (E.D. Mo.); *Roberts v. ATF*, No. 2:26-CV-091 (E.D. Ky.). Even if a universal injunction were appropriate, judicial restraint favors allowing the constitutional questions here to percolate through the federal courts. *See Trump v. Hawaii*, 585 U.S. 667, 713, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018) (Thomas, J., concurring); *see also W. Gulf Mar. Ass'n v. ILA Deep Sea Loc. 24*, 751 F.2d 721, 729 (5th Cir. 1985) (noting that district courts should "avoid rulings which may trench upon the authority of sister courts").

will still be deterred from purchasing those firearms from the commercial plaintiffs, thus perpetuating the constitutional injury. *See Mock*, 697 F. Supp. 3d at 592 (extending injunction to enforcement of a challenged ATF rule against a commercial plaintiff "and all of its downstream customers"). The same logic applies to current and future customers of the associational plaintiffs' commercial members. *See Nat'l Ass'n for Gun Rights, Inc. v. Garland*, 697 F. Supp. 3d 601, 634 (N.D. Tex. 2023) (enjoining an ATF rule as to "the [*85] downstream customers of any commercial member of an Organizational Plaintiff"). Those commercial members are no less injured by customers' reluctance to purchase NFA firearms from them because of the challenged NFA provisions. *See* Dkt. No. 50 at 27-28. Thus, to provide complete relief to the commercial members of the associational plaintiffs, the injunction must also encompass their current and future customers.

But to be clear, the Court's injunction does not extend to the above-noted customers in all circumstances. Because the injunction remedies the injuries to the plaintiffs, it only covers current and future customers' transactions with the plaintiffs and their commercial members. The practical benefit to the non-party customers, in other words, "[is] merely incidental." *CASA*, 606 U.S. at 852 (alteration in original) (quoting *Trump*, 585 U.S. at 717 (Thomas, J., concurring)). Therefore, the Court's injunction does not allow a commercial plaintiff's customer (or the customer of an associational plaintiff's commercial member) to avoid the challenged NFA provisions "for *all* NFA firearms they possess, transfer, sell, make, and manufacture." *See* No. 6:26-CV-227, Dkt. No. 60 at 38 (emphasis in original).

Second, the defendants [*86] dispute the *Silencer Shop* plaintiffs' request that the injunction reach "resident family members" who live in the same household as those covered by the injunction. Dkt. No. 49 at 61 (quotation omitted). True, the *Silencer Shop* plaintiffs make no argument for why the injunction should cover resident family members of *any* individual covered by the injunction, including, for example, a customer of a commercial member of an associational plaintiff. *See* Dkt. No. 85 at 32. While the plaintiffs point to *Texas v. BATFE*, 700 F. Supp. 3d 556 (S.D. Tex. 2023), as an example where a court extended an injunction to include resident family members, the plaintiffs there explained why their resident family members needed the injunction's protection. *See Texas v. ATF*, No. 6:23-CV-013 (S.D. Tex. May 30, 2023), Dkt. No. 46 at 7. The party-presentation principle does not permit the Court to inject arguments that the *Silencer Shop* plaintiffs failed to raise. *See Clark v. Sweeney*, 607 U.S. 7, 9, 146 S. Ct. 410, 223 L. Ed. 2d 157 (2025) (citing *United States v. Sineneng-Smith*, 590 U.S. 371, 375, 140 S. Ct. 1575, 206 L. Ed. 2d 866 (2020)).

Third, the defendants contend that the injunction cannot cover the associational plaintiffs' "supporters," as the *Silencer Shop* plaintiffs request. Dkt. No. 49 at 61. It is true that courts have suggested as part of a standing analysis that associational plaintiffs may bring suit on behalf of their "supporters," but only when they possess [*87] sufficient "'indicia of membership.'" *Texas*, 737 F. Supp. 3d at 438 (quoting *Funeral Consumers All., Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 344 n.9 (5th Cir. 2012)). *But see Hunt*, 432 U.S. at 342 (noting that an association "may have standing solely as the representative of its *members*" (emphasis added and quotation omitted)). Here, the associational plaintiffs in *Silencer Shop* give zero indication of what makes someone a "supporter," and "it is not this Court's role to operate on inferences or to impose an arbitrary scope on who those supporters might be." *Texas*, 700 F. Supp. 3d at 567; *see also* Fed. R. Civ. P. 65(d) (requiring that an injunction "state its terms specifically" and "describe in reasonable detail" the conduct "restrained or required"). The Court thus declines to extend its injunction to any associational plaintiff's "supporters."

Fourth, as to the state plaintiffs in *Silencer Shop*, the defendants correctly note that only one state—the State of Texas—provided a declaration describing how the state's law-enforcement agencies must comply with the NFA. Dkt. No. 60 at 46; *see* Dkt. No. 50 at 49-50. According to the defendants, that means the Court has no ground to include the other 14 plaintiff states in its injunction. Dkt. Nos. 60 at 46; 85 at 31.

Not so. Under Federal Rule of Evidence 201, the Court may take judicial notice of reliable, publicly available materials demonstrating that [*88] the other plaintiff states are injured in the same way as Texas. *See, e.g., Bavely v. Panini Am., Inc.*, No. 4:22-CV-093, 2023 U.S. Dist. LEXIS 247722, 2023 WL 12098401, at *6 (E.D. Tex. June 7, 2023) (considering judicially noticed records in assessing the plaintiff's constitutional standing). Here, ATF's website explains that the agency's National Firearms Act Division features a Government Support Branch that "processes all NFA applications from local, *state*, and federal law enforcement and government organizations." ATF, National Firearms Act Division, https://perma.cc/H95N-HBMW (emphasis added). "The Fifth Circuit has determined that courts may take judicial notice of governmental websites." *In re Katrina Canal Breaches Consol. Lit.*, 533 F. Supp. 2d 615, 632 (E.D. La. 2008) (quotation omitted).

Further, "[t]he Court takes judicial notice of ATF's National Firearms Act Handbook," which explains how states and their political subdivisions must comply with the statute. *Colon v. BATFE*, No. 8:23-CV-223, 2024 U.S. Dist. LEXIS 13966, 2024 WL 309975, at *2 n.4 (M.D. Fla. Jan. 26, 2024). The Handbook notes, for instance, that NFA firearms may not "be lawfully possessed by States and political subdivisions of the States" unless they are "registered in the [National Firearms Registration and Transfer Record]." ATF, National Firearms Act Handbook § 3.2.2, *available at* https://perma.cc/P3NL-G35G. And it explains how states and their political subdivisions must comply with the challenged NFA provisions—despite being exempt from the transfer and making taxes, *see* [*89] 26 U.S.C. § 5853(a), (b)—by filing the applicable forms before transferring or making an NFA firearm.[22] *Supra*, Handbook §§ 6.2, 9.4.3.

Based on this judicially noticed information, the Court finds that the other 14 plaintiff states are no less the "object" of the challenged NFA provisions as Texas. *See Diamond Alt. Energy*, 606 U.S. at 112 (quotation omitted). Thus, the Court's injunction will accordingly extend to those states, their agencies, and their political subdivisions.

In sum, the plaintiffs are entitled to a permanent injunction—but only so far as it prohibits the defendants from enforcing the challenged NFA provisions against the plaintiffs and, where applicable, their agencies, political subdivisions, members, and customers—both current and future.

B. Declaratory Judgment

The Declaratory Judgment Act authorizes federal courts to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). "Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." *Id.* Federal courts have "discretion in determining whether and when to

---

[22] To make an NFA firearm, a state entity must complete the same Form 1 as an individual maker. *See supra*, Handbook § 6.2. But when an NFA firearm is transferred to or from a state entity, the transferor must submit a Form 5—a different form that authorizes the tax-exempt transaction. *Id.* § 9.4.3; 27 C.F.R. § 479.90(b). Moreover, if a state entity "acquires for official use a firearm not registered to it," the entity must register the firearm with a Form 10. 27 C.F.R. § 479.104.

entertain an action under the Declaratory Judgment Act," even when the suit satisfies the "jurisdictional prerequisites." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995).

The Court declines to enter declaratory relief here. "Ample precedent [*90] establishes that [a court] should not exercise [its] discretion to extend declaratory relief when a challenged law or policy no longer affects the plaintiff." *Texas v. EEOC*, 933 F.3d 433, 451-52 (5th Cir. 2019). Because the Court enjoins the defendants from enforcing the challenged NFA provisions against the plaintiffs, a declaratory judgment would be redundant and provide no further relief. *Id.* at 451 n.38. *See, e.g., Vaping Dragon LLC v. United States FDA*, No. 1:25-CV-081, 2026 U.S. Dist. LEXIS 20806, 2026 WL 266277, at *19 (N.D. Tex. Feb. 2, 2026) (Hendrix, J.) (declining a request to extend declaratory relief in addition to a permanent injunction).

6. Conclusion

In sum, the Court concludes that the challenged NFA provisions exceed Congress's Article I enumerated powers and are therefore unconstitutional. At the parties' urging, the Court does not reach the plaintiffs' Second Amendment claims. Thus, the Court grants in part and denies in part the cross-motions for summary judgment (Dkt. Nos. 48; 59; 117; 118).

The plaintiffs are entitled to a permanent injunction against the challenged NFA provisions, but not declaratory relief. Accordingly, and as further detailed in the Final Judgment, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Department of Justice, Todd Blanche in his official capacity, Robert Cekada in his official capacity, their divisions, bureaus, agents, [*91] officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, are permanently enjoined from enforcing the challenged NFA provisions as to untaxed firearms against the plaintiffs and, where applicable, the plaintiffs' agencies, political subdivisions, members, and customers—both current and future. The *Jensen* plaintiffs are entitled to relief from two additional NFA provisions that only they challenge. *See supra*, n.10; 26 U.S.C. §§ 5842(b), 5861(i). The Court's permanent injunction does not extend to the NFA's regulation of AOWs as it relates to the *Jensen* plaintiffs, as those plaintiffs lack standing with respect to those firearms.

All other relief not specified here is denied.[23]

The Court stays the effect of this Order for seven days from the date of entry to allow the defendants to seek relief, if any, at the appellate level.

So ordered on August 5, 2026.

/s/ James Wesley Hendrix

JAMES WESLEY HENDRIX

UNITED STATES DISTRICT JUDGE

---

[23] To the extent the plaintiffs seek attorneys' fees, *see* Dkt. No. 15 at 22; No. 6:26-CV-227, Dkt. No. 1 at 31, their request is denied without prejudice to filing an appropriate motion after final judgment.

FINAL JUDGMENT

For the reasons stated in the Court's Memorandum Opinion and Order, Dkt. No. 136, it is hereby ordered, adjudged, and decreed that:

Final judgment is entered in favor of the plaintiffs in *Silencer Shop Foundation v. ATF*, No. 6:25-CV-056, [*92] and *Jensen v. ATF*, 6:26-CV-277, on their enumerated-powers claims. The plaintiffs' Second Amendment claims are dismissed without prejudice as abandoned.

Accordingly, the Court permanently enjoins the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Department of Justice, Todd Blanche in his official capacity, Robert Cekada in his official capacity, their divisions, bureaus, agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, from enforcing the challenged provisions of the National Firearms Act as to untaxed firearms against the plaintiffs and, where applicable, the plaintiffs' agencies, political subdivisions, members, and customers—both current and future. The challenged NFA provisions are:

- 26 U.S.C. § 5812(a)-(b);
- 26 U.S.C. § 5822;
- 26 U.S.C. § 5841(a)-(c), (e);
- 26 U.S.C. § 5861(b)-(f);
- 27 C.F.R. § 479.62(a)-(d); and
- 27 C.F.R. § 479.84(a)-(d).

Further, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Department of Justice, Todd Blanche in his official capacity, Robert Cekada in his official capacity, their divisions, bureaus, agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, are permanently enjoined from enforcing the following [*93] additional challenged NFA provisions as to untaxed firearms against the *Jensen* plaintiffs and, where applicable, their members and customers:

- 26 U.S.C. § 5842(b); and
- 26 U.S.C. § 5861(i).

The Court's permanent injunction does not extend to the NFA's regulation of "any other weapon" as it relates to the *Jensen* plaintiffs. *See* 26 U.S.C. § 5845(a)(5), (e).

All other relief not specified here is denied.

The Court stays the effect of this Final Judgment for seven days from the date of entry to allow the defendants to seek relief, if any, at the appellate level.

The Clerk of Court is directed to close the case.

So ordered on August 5, 2026.

/s/ James Wesley Hendrix

JAMES WESLEY HENDRIX

UNITED STATES DISTRICT JUDGE

End of Document

APPENDIX H

USCS Const. Art. II, § 2, Cl 1

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > ARTICLE II. EXECUTIVE POWER. > Sec. 2.

Cl 1. Commander in Chief—Opinions of department heads—Reprieves and pardons.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

USCS Const. Amend. 5, Part 1 of 18

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

Presidential Documents

APPENDIX I

Proclamation 10887 of January 20, 2025

Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021

By the President of the United States of America

A Proclamation

This proclamation ends a grave national injustice that has been perpetrated upon the American people over the last four years and begins a process of national reconciliation.

Acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I do hereby:

(a) commute the sentences of the following individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021, to time served as of January 20, 2025:

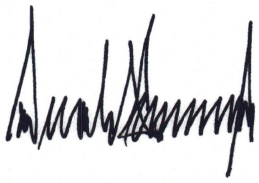
- Stewart Rhodes
- Kelly Meggs
- Kenneth Harrelson
- Thomas Caldwell
- Jessica Watkins
- Roberto Minuta
- Edward Vallejo
- David Moerschel
- Joseph Hackett
- Ethan Nordean
- Joseph Biggs
- Zachary Rehl
- Dominic Pezzola
- Jeremy Bertino

(b) grant a full, complete and unconditional pardon to all other individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021;

The Attorney General shall administer and effectuate the immediate issuance of certificates of pardon to all individuals described in section (b) above, and shall ensure that all individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021, who are currently held in prison are released immediately. The Bureau of Prisons shall immediately implement all instructions from the Department of Justice regarding this directive.

I further direct the Attorney General to pursue dismissal with prejudice to the government of all pending indictments against individuals for their conduct related to the events at or near the United States Capitol on January 6, 2021. The Bureau of Prisons shall immediately implement all instructions from the Department of Justice regarding this directive.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand twenty-five, and of the Independence of the United States of America the two hundred and forty-ninth.



[FR Doc. 2025–01950
Filed 1–28–25; 8:45 am]
Billing code 3395–F4–P

APPENDIX J

26 USCS § 5812

Current through Public Law 119-121, approved October 9, 2026.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle E. Alcohol, tobacco, and certain other excise taxes. (Chs. 51 — 55) > CHAPTER 53. Machine guns, destructive devices, and certain other firearms. (Subchs. A — D) > Subchapter A. Taxes. (Pts. I — III) > Part II. Tax on transferring firearms. (§§ 5811 — 5820)

§ 5812. Transfers.

(a) Application. A firearm shall not be transferred unless (1) the transferor of the firearm has filed with the Secretary a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary; (2) any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form; (3) the transferee is identified in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; (4) the transferor of the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; (5) the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; and (6) the application form shows that the Secretary has approved the transfer and the registration of the firearm to the transferee. Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

(b) Transfer of possession. The transferee of a firearm shall not take possession of the firearm unless the Secretary has approved the transfer and registration of the firearm to the transferee as required by subsection (a) of this section.

History

HISTORY:

Added Oct. 22, 1968, P. L. 90-618, Title II, § 201, 82 Stat. 1228; Oct. 4, 1976, P. L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

APPENDIX J

26 USCS § 5841

Current through Public Law 119-121, approved October 9, 2026.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle E. Alcohol, tobacco, and certain other excise taxes. (Chs. 51 — 55) > CHAPTER 53. Machine guns, destructive devices, and certain other firearms. (Subchs. A — D) > Subchapter B. General provisions and exemptions. (Pts. I — II) > Part I. General provisions. (§§ 5841 — 5850)

§ 5841. Registration of firearms.

(a) Central registry. The Secretary shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States. This registry shall be known as the National Firearms Registration and Transfer Record. The registry shall include—

(1) identification of the firearm;

(2) date of registration; and

(3) identification and address of person entitled to possession of the firearm.

(b) By whom registered. Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor.

(c) How registered. Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect the registration of the firearm required by this section. Each importer, maker, and transferor of a firearm shall, prior to importing, making, or transferring a firearm, obtain authorization in such manner as required by this chapter [26 USCS §§ 5801 et seq.] or regulations issued thereunder to import, make, or transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.

(d) Firearms registered on effective date of this Act. A person shown as possessing a firearm by the records maintained by the Secretary pursuant to the National Firearms Act in force on the day immediately prior to the effective date of the National Firearms Act of 1968 [effective Nov. 1, 1968] shall be considered to have registered under this section the firearms in his possession which are disclosed by that record as being in his possession.

(e) Proof of registration. A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary upon request.

History

HISTORY:

Added Oct. 22, 1968, P. L. 90-618, Title II, § 201, 82 Stat. 1229; Oct. 4, 1976, P. L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

APPENDIX J

26 USCS § 5845

Current through Public Law 119-121, approved October 9, 2026.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle E. Alcohol, tobacco, and certain other excise taxes. (Chs. 51 — 55) > CHAPTER 53. Machine guns, destructive devices, and certain other firearms. (Subchs. A — D) > Subchapter B. General provisions and exemptions. (Pts. I — II) > Part I. General provisions. (§§ 5841 — 5850)

§ 5845. Definitions.

For the purpose of this chapter [26 USCS §§ 5801 et seq.]—

(a) Firearm. The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machinegun. The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle. The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun. The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon. The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an

explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device. The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2), 7685, or 7686 of title 10, United States Code [10 USCS § 7684(2), 7685, or 7686]; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) Antique firearm. The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) Unserviceable firearm. The term "unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) Make. The term "make", and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter [26 USCS §§ 5801 et seq.]), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) Transfer. The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) Dealer. The term "dealer" means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) Importer. The term "importer" means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) Manufacturer. The term "manufacturer" means any person who is engaged in the business of manufacturing firearms.

History

HISTORY:

Added Oct. 22, 1968, P. L. 90-618, Title II, § 201, 82 Stat. 1230; Oct. 4, 1976, P. L. 94-455, Title XIX, § 1906(b)(13)(A), (J), 90 Stat. 1834, 1835; May 19, 1986, P. L. 99-308, § 109, 100 Stat. 460; Aug. 13, 2018, P.L. 115-232, Div A, Title VIII, Subtitle A, Part II, § 809(h)(3), 132 Stat. 1842.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

APPENDIX J

26 USCS § 5861

Current through Public Law 119-121, approved October 9, 2026.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle E. Alcohol, tobacco, and certain other excise taxes. (Chs. 51 — 55) > CHAPTER 53. Machine guns, destructive devices, and certain other firearms. (Subchs. A — D) > Subchapter C. Prohibited acts. (§§ 5861 — 5870)

§ 5861. Prohibited acts.

It shall be unlawful for any person—

(a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 [26 USCS § 5801] for his business or having registered as required by section 5802 [26 USCS § 5802]; or

(b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or

(c) to receive or possess a firearm made in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or

(d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or

(e) to transfer a firearm in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or

(f) to make a firearm in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or

(g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter [26 USCS §§ 5801 et seq.]; or

(h) to receive or possess a firearm having the serial number or other identification required by this chapter [26 USCS §§ 5801 et seq.] obliterated, removed, changed, or altered; or

(i) to receive or possess a firearm which is not identified by a serial number as required by this chapter [26 USCS §§ 5801 et seq.]; or

(j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter [26 USCS §§ 5801 et seq.]; or

(k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844 [26 USCS § 5844]; or

(l) to make, or cause the making of, a false entry on any application, return, or record required by this chapter [26 USCS §§ 5801 et seq.], knowing such entry to be false.

History

HISTORY:

Added Oct. 22, 1968, P. L. 90-618, Title II, § 201, 82 Stat. 1234.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

APPENDIX J

26 USCS § 5871

Current through Public Law 119-121, approved October 9, 2026.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle E. Alcohol, tobacco, and certain other excise taxes. (Chs. 51 — 55) > CHAPTER 53. Machine guns, destructive devices, and certain other firearms. (Subchs. A — D) > Subchapter D. Penalties and forfeitures. (§§ 5871 — 5880)

§ 5871. Penalties.

Any person who violates or fails to comply with any provision of this chapter [26 USCS §§ 5801 et seq.] shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both.

History

HISTORY:

Added Oct. 22, 1968, P. L. 90-618, Title II, § 201, 82 Stat. 1234; Oct. 12, 1984, P. L. 98-473, Title II, § 227, 98 Stat. 2030.

United States Code Service
Copyright © 2026 All rights reserved.

End of Document

APPENDIX K

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4308

UNITED STATES OF AMERICA,

Appellee,

v.

HATCHET M. SPEED,

Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia
at Alexandria
The Honorable Michael S. Nachmanoff, District Judge

SUPPLEMENTAL BRIEF OF THE UNITED STATES

Lindsey Halligan
United States Attorney

Brian J. Samuels
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3700

Attorneys for the United States of America

Table of Contents

Page

Table of Authorities ii

Introduction 1

Argument 2

I. Regulations on firearm suppressors burden the right protected by the Second Amendment. 2

II. The National Firearms Act's restrictions on suppressor possession comply with the Second Amendment. 5

Conclusion 13

Statement Regarding Oral Argument 15

Certificate of Compliance 15

Table of Authorities

Page

Cases

Andrews v. State, 50 Tenn. 165 (1871) 3
Bianchi v. Brown, 111 F.4th 438 (4th Cir. 2024) (en banc) 7
District of Columbia v. Heller, 554 U.S. 570 (2008) 4, 7
Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011) 9
Hill v. Colorado, 530 U.S. 703 (2000) 3
Luis v. United States, 578 U.S. 5 (2016) 3
Md. Shall Issue, Inc. v. Moore, 116 F.4th 211 (4th Cir. 2024) (en banc) 10
Minn. Star & Tribune Co. v. Minn. Comm'r of Revenue, 460 U.S. 575 (1983) 3
Mock v. Garland, 75 F.4th 563 (5th Cir. 2023) 4
N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022) ..... passim
United States v. Miller, 307 U.S. 174 (1939) 4
United States v. Peterson, 150 F.4th 644 (5th Cir. 2025) ..... passim
United States v. Rahimi, 602 U.S. 680 (2024) 6, 7, 9, 13
United States v. Saleem, No. 23-4693, 2024 WL 5084523 (4th Cir. Dec. 12, 2024) (per curiam) 3

Statutes

18 U.S.C. § 922(t) 12
26 U.S.C. § 5811 6
26 U.S.C. § 5812(a) 6
26 U.S.C. § 5822 6
26 U.S.C. § 5841 6
26 U.S.C. § 5861(d) 1, 11

Other Authorities

Congressional Sportsmen's Foundation, *Firearm Suppressors*, https://congressionalsportsmen.org/policy/firearm-suppressors/ 6

Connecticut Office of Legislative Research, *Gun Permit and License Fees*, https://www.cga.ct.gov/2017/rpt/pdf/2017-R-0066.pdf 16

Daniel D. Slate, *Infringed*, 3 J. Am. Const. Hist. 381 (2025).....8

David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223 (2024) 9

Exec. Order No. 14206, Protecting Second Amendment Rights, 90 Fed. Reg. 9503 (Feb. 7, 2025) 2

Lisa Marie Pane, *Did 'Silencer' Make a Difference in Virginia Beach Carnage?*, KRON4 (June 1, 2019), https://www.kron4.com/news/national/did-gunmans-silencer-make-adifference-in-the-carnage/.....10

Marines.mil, *Marine Corps Begins Widespread Fielding of Suppressors*, https://www.marines.mil/News/News-Display/Article/2459549/marine-corps-beginswidespread-fielding-of-suppressors/ 6

Michael Stewart et al., Nat'l Hearing Conservation Ass'n, *NHCA Position Statement:Recreational Firearm Noise* (Mar. 16, 2017), https://www.hearingconservation.org/assets/docs/NHCA_position_paper_on_firea.pdf.....5

Savage Arms, *How Suppressors Work To Reduce Noise and Recoil*, https://savagearms.com/blog/post/how-suppressors-work-to-reduce-noise-and-recoil 6

Silencer Central, *How Much Does a Suppressor Cost?*, https://www.silencercentral.com/blog/how-much-does-a-suppressor-cost/ 15

The Police Foundation, *Police Under Attack: Southern California Law Enforcement Response to the Attacks by Christopher Dorner*, https://www.policinginstitute.org/wp-content/uploads/2015/07/Police-Under-Attack.pdf.....10

U.S. Dep't of Justice, Press Release, *Luigi Mangione Charged with the Stalking and Murder of UnitedHealthcare CEO Brian Thompson and Use of a Silencer in a Crime of Violence* (Dec. 19, 2024), https://www.justice.gov/archives/opa/pr/luigi-mangione-chargedstalking-and-murder-unitedhealthcare-ceo-brian-thompson-and-use 11

William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467 (2024) 8

Wilt Johnson & Bill Hutchinson, *Suspected Virginia Beach Shooter Used Legally-Bought Gun Suppressor*, ABC News (June 4, 2019), https://abcnews.go.com/US/suspectedvirginia-beach-gunman-resigned-personal-reasons-massacre/story?id=63449625 11

Treatises

Thomas Cooley, *Treatise on Constitutional Limitations* (1868).....4

Constitutional Provisions

U.S. Const. amend. II.....2

Introduction

The National Firearms Act, 26 U.S.C. § 5801 et seq. (the "NFA"), establishes a comprehensive framework governing, among other things, the possession, transfer, and registration of firearms. As relevant here, 26 U.S.C. § 5861(d) prohibits any individual from receiving or possessing a firearm which is not registered to him in the National Firearms Registration and Transfer Record (the "NFTR"). A jury found Hatchet Speed guilty of three counts of possessing unregistered firearm suppressors. In this direct appeal, Speed argues, among other claims, that the NFA's prohibition on possessing unregistered suppressors violates the Second Amendment. *See* Def. Br. 48–51.

In its response brief, the United States argued that suppressors are not "bearable arms" protected by the Second Amendment. Gov't. Br. 47-48. The United States further argued that even if suppressors were "bearable arms," they constitute "dangerous and unusual weapons" such that the NFA's prohibition on their unregistered possession does not violate the Second Amendment. Gov't. Br. 48-49. Additionally, the United States maintained that the NFA's registration requirements do not "infringe" on any Second Amendment right. Gov't Br. 50–51. But even if they did, the United States argued, the NFA is consistent with the Nation's historical tradition of firearm regulation. Gov't Br. 51–52.

This case is now fully briefed and calendared for oral argument on December 12, 2025. As part of its broader evaluation of its litigating positions in Second Amendment cases, *see* Exec. Order No. 14206, Protecting Second Amendment Rights, 90 Fed. Reg. 9503 (Feb. 7, 2025), the United States has re-evaluated its position in this case with respect to the nature of the devices at issue. In the view of the United States, the Second Amendment does protect firearm accessories and components such as suppressors. As a result, restrictions on the possession of suppressors burden the right to bear arms, and a ban on the possession of suppressors or other similar accessories would be unconstitutional. The government's earlier arguments to the contrary were incorrect. But, as also argued by the United States in its response brief, the NFA's registration and taxation requirement is constitutional because it imposes a modest burden on a firearm accessory that is consistent with this Nation's historical tradition. Gov't. Br. 50-52. The United States clarifies and explains its position herein.

Argument

I. Regulations on firearm suppressors burden the right protected by the Second Amendment.

The Second Amendment protects the "right to keep and bear Arms." U.S. Const. amend. II. Regardless of whether suppressors themselves constitute "arms," restrictions on suppressors burden the right to "keep and bear Arms" and so must be closely scrutinized to ensure compliance with the Second Amendment. The United

States recognizes that this Court has rejected, in an unpublished, nonprecedential opinion, the proposition that suppressors are "arms" or "reasonably necessary accoutrements" within the scope of Second Amendment protection. *United States v. Saleem*, No. 23-4693, 2024 WL 5084523, at *2 (4th Cir. Dec. 12, 2024) (per curiam). Nonetheless, the United States seeks to preserve its position that suppressors are within the Second Amendment's ambit.

"Constitutional rights . . . implicitly protect those closely related acts necessary to their exercise." *Luis v. United States*, 578 U.S. 5, 26-27 (2016) (Thomas, J., concurring in judgment). In the First Amendment context, for example, a tax on ink and paper burdens the freedom of the press. *Minn. Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 582 (1983). As Justice Scalia observed, "[t]here comes a point . . . at which the regulation of action intimately and unavoidably connected with traditional speech is a regulation of speech itself." *Hill v. Colorado*, 530 U.S. 703, 745 (2000) (Scalia, J., dissenting).

So too, in the Second Amendment context, "[t]he right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair." *Andrews v. State*, 50 Tenn. 165, 178 (1871). Although none of these activities literally involves the "keep[ing]" of "arms," each activity is a fundamental component of the right protected by the Second Amendment. *See United States v.*

Miller, 307 U.S. 174, 180 (1939) ("The possession of arms also implied the possession of ammunition . . . ." (quotation omitted)). The right to bear arms similarly "implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use." *District of Columbia v. Heller*, 554 U.S. 570, 618 (2008) (quoting Thomas Cooley, *Treatise on Constitutional Limitations* 271 (1868)). And the right extends to firearm accessories that are useful to the exercise of the right. *See Mock v. Garland*, 75 F.4th 563, 588 (5th Cir. 2023) (Willett, J., concurring) ("[P]rotected Second Amendment 'conduct' likely includes making common, safety-improving modifications to otherwise lawfully bearable arms.").

"Many commentators have recognized the benefits of suppressors." *United States v. Peterson*, 150 F.4th 644, 648 (5th Cir. 2025). Most importantly, suppressors limit the noise caused by firearms, reducing a firearm's audible muzzle blast by up to 30 decibels.[1] This noise reduction helps shooters avoid permanent hearing damage and facilitates communication with others when engaging in both civilian self-defense and public defense. Indeed, because of the hearing-related benefits of

[1] Michael Stewart et al., Nat'l Hearing Conservation Ass'n, *NHCA Position Statement:Recreational Firearm Noise* 5 (Mar. 16, 2017), https://www.hearingconservation.org/assets/docs/NHCA_position_paper_on_firea.pdf.

suppressors, the U.S. Marine Corps began issuing them to infantry units in 2020.[2] Suppressors appear to improve accuracy and aid in target re-acquisition by reducing recoil and muzzle rise.[3] And suppressors aid in target shooting—an activity protected by the Second Amendment—by reducing noise pollution and providing additional hearing protection beyond personal protective equipment. All these practical benefits demonstrate that suppressors facilitate the constitutional right to keep and bear arms. Accordingly, restrictions on suppressors impose a burden on using firearms that implicates the Second Amendment. *See Peterson*, 150 F.4th at 652 (assuming, without deciding, "that suppressors constitute 'arms' under the Second Amendment").

II. The NFA's restrictions on suppressor possession comply with the Second Amendment.

Although the NFA's restrictions on suppressor possession implicate the right to bear arms, the modest burden they impose does not violate the Second Amendment. Under the NFA, every suppressor must be registered to its possessor

[2] Marines.mil, *Marine Corps Begins Widespread Fielding of Suppressors*, https://www.marines.mil/News/News-Display/Article/2459549/marine-corps-beginswidespread-fielding-of-suppressors/.

[3] *See* Savage Arms, *How Suppressors Work To Reduce Noise and Recoil*, https://savagearms.com/blog/post/how-suppressors-work-to-reduce-noise-and-recoil; Congressional Sportsmen's Foundation, *Firearm Suppressors*, https://congressionalsportsmen.org/policy/firearm-suppressors/.

in the NFRTR. 26 U.S.C. § 5841. As a condition of registration, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) confirms that the transferee is eligible to possess the device under federal, state, and local law. *See* 26 U.S.C. §§ 5812(a), 5822. And the person acquiring the suppressor must pay a $200 tax. 26 U.S.C. § 5811. Although a total ban on suppressors or other similar accessories would be unconstitutional, the NFA's modest regulations pass muster.

When the government regulates the right to keep and bear arms, it bears the burden of showing that the challenged regulation is "consistent with the Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022). That is a rigorous test, not a "regulatory blank check." *Id.* at 30. "Why and how the regulation burdens the right are central to this inquiry." *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

Even if the government can identify a specific historical analogue for a statute, the statute must comply with the broader "principles that underpin [the Nation's] regulatory tradition." *Rahimi*, 602 U.S. at 692. The founding generation distinguished between a valid regulation and an impermissible "infringement" of the right to keep and bear arms. *See* Daniel D. Slate, *Infringed*, 3 J. Am. Const. Hist. 381, 382-87 (2025). A restriction could amount to an unconstitutional infringement if (among other reasons) it served an illegitimate purpose, burdened the right more severely than necessary to serve a valid purpose, or broadly negated the right. *See*

William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1489 (2024).

Our Nation's regulatory tradition shows that the Second Amendment does not guarantee an "unlimited" right "to keep and carry any weapon whatsoever." *Heller*, 554 U.S. at 626. For example, American legislatures have long "prohibited the carrying of 'dangerous and unusual weapons.'" *Bruen*, 597 U.S. at 47 (citation omitted); *see Heller*, 554 U.S. at 627; *Bianchi v. Brown*, 111 F.4th 438, 450 (4th Cir. 2024) (en banc).

Particularly relevant here, American legislatures have also traditionally imposed special taxes on arms that are especially susceptible to criminal misuse. *See* David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 227 (2024). For instance, many 19th-century legislatures taxed weapons such as dueling pistols, sword canes, Bowie knives, Arkansas toothpicks, and dirks. *See id.* at 293-328 (collecting statutes); *see also Bianchi*, 111 F.4th at 466–67.

The NFA's restrictions on suppressors are "'relevantly similar'" to those historical laws in "why" they burden the right to bear arms. *Rahimi*, 602 U.S. at 698 (citation omitted). Suppressors (which do not fully silence a firearm) are susceptible to criminal misuse because they make it harder for law enforcement to identify or detect the source and direction of gunfire, such as in drive-by or mass shootings or

assassination attempts.[4] This is not to say that suppressors are widely used for criminal purposes—their beneficial use is overwhelming in relation to their criminal use—but they do present a niche case for criminal use. For example, Christopher Dorner in 2013 used suppressed weapons to murder two people in a populated area and later to shoot at police officers without revealing his position.[5] DeWayne Craddock used a suppressor during a mass shooting at a Virginia Beach Municipal Center.[6] And Luigi Mangione is alleged to have used a suppressor in the killing of an insurance executive on a busy New York City street.[7] Thus, while suppressors

[4] *See* Lisa Marie Pane, *Did 'Silencer' Make a Difference in Virginia Beach Carnage?*, KRON4 (June 1, 2019), https://www.kron4.com/news/national/did-gunmans-silencer-make-adifference-in-the-carnage/ (quoting former ATF agent's observation that "a suppressor will distort the sound in such a way that it would not immediately be recognizable as gunfire").

[5] The Police Foundation, *Police Under Attack: Southern California Law Enforcement Response to the Attacks by Christopher Dorner* 14, 20, 35-36, https://www.policinginstitute.org/wp-content/uploads/2015/07/Police-Under-Attack.pdf.

[6] Wilt Johnson & Bill Hutchinson, *Suspected Virginia Beach Shooter Used Legally-Bought Gun Suppressor*, ABC News (June 4, 2019), https://abcnews.go.com/US/suspectedvirginia-beach-gunman-resigned-personal-reasons-massacre/story?id=63449625.

[7] *See* U.S. Dep't of Justice, Press Release, *Luigi Mangione Charged with the Stalking and Murder of UnitedHealthcare CEO Brian Thompson and Use of a Silencer in a Crime of Violence* (Dec. 19, 2024), https://www.justice.gov/archives/opa/pr/luigi-mangione-chargedstalking-and-murder-unitedhealthcare-ceo-brian-thompson-and-use.

are beneficial to the exercise of Second Amendment rights, they are also specially adaptable to criminal misuse beyond the mere fact that all weapons (and thus all accessories) can be used in the commission of a crime—a fact that was accounted for in the policy choice made by the People when they adopted the Second Amendment.[8]

The NFA's restrictions on suppressors also resemble historical laws in "how" they burden the right to bear arms. *Rahimi*, 602 U.S. at 698. The NFA imposes only a minor burden on the right of armed self-defense. It regulates a nonessential firearm accessory, so the burden on the Second Amendment is less severe than a taxation or registration requirement applicable to weapons or essential components themselves. And the NFA does not ban suppressor possession; rather, it requires only registration, payment of a modest tax, and a background check. Those burdens are comparable to the burdens imposed by historical laws taxing weapons that pose a special danger of misuse.

[8] Because ordinary firearms, unlike suppressors, are not peculiarly susceptible of criminal misuse, registration laws or taxes targeting such firearms likely would not serve or be proportionate to any legitimate public-safety purpose. *See, e.g.*, *Heller v. District of Columbia*, 670 F.3d 1244, 1291 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) ("requir[ing] registration of individual guns" generally does not serve any legitimate purpose and is usually "aimed at deterring gun ownership"). In addition, a law regulating or taxing the firearm itself would impose a more severe burden on the right to keep and bear arms than regulations on useful but non-essential accessories such as suppressors.

The Supreme Court has determined that other similarly modest burdens are consistent with the Second Amendment. For example, in invaliding a New York law requiring a "special need" to obtain a firearm-carry license, *Bruen* made clear that it was not calling into question the constitutionality of the "shall-issue" licensing regimes in 43 states, which issued permits based on the general desire for self-defense. *Bruen*, 597 U.S. at 38 n.9. The Supreme Court explained that these schemes, "which often require applicants to undergo a background check or pass a firearms safety course," are permissible so long as "lengthy wait times" or "exorbitant fees" do not "deny ordinary citizens their right to public carry." *Id.*

This Court applied "*Bruen*'s clear guidance on 'shall-issue' licensing laws" to uphold a state handgun qualification statute against a facial Second Amendment challenge. *See Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 222 (4th Cir. 2024) (en banc). The statute fell "within the scope of 'shall-issue' licensing laws that the Supreme Court has indicated are presumptively constitutional." *Id.* at 225. And the challengers failed to show that the temporary delay resulting from compliance with the statute, the wait time for obtaining a license, or a separate law requiring another background check infringed the Second Amendment right. *Id.* at 226–29.

As Speed notes in his reply brief (at 19), the Fifth Circuit recently considered a similar Second Amendment challenge to the NFA's suppressor-registration requirement. *See United States v. Peterson*, 150 F.4th 644, 650 (5th Cir. 2025). In

Peterson, as here, the defendant did not purchase the fully completed suppression device from a manufacturer. *Id.* at 647. Instead, he acquired materials and a kit to make it himself. *Id.* Like Speed, the defendant had not registered the device in the NFTR. *Id.*

The Fifth Circuit determined that "the NFA suppressor-licensing scheme is presumptively constitutional because it is a shall-issue licensing regime." *Id.* at 652. The NFA contains "precisely the 'objective[ ] and definite' licensing criterion held permissible under *Bruen*." *Id.* (quoting *Bruen*, 597 U.S. at 38 n.9). And "the NFA enforces its objective shall-issue licensing requirement through prohibiting suppressor possession by unlicensed persons, 26 U.S.C. § 5861(d), as did several of the 'shall-issue' licensing regimes that *Bruen* cited approvingly." *Id.* (citing *Bruen*, 597 U.S. at 13 n.1, 38 n.9).

The Fifth Circuit went on to conclude that the defendant could not overcome the presumption of constitutionality "because the record [did] not reveal that the NFA ha[d] effectively den[ied] him his Second Amendment rights." *Id.* at 654 (quoting *Bruen*, 597 U.S. at 38 n.9). The defendant did not pay the tax or claim that the tax or other application requirements discouraged him from submitting an application to the ATF. *Id.* at 653. Because the defendant 'simply forgot to do the paperwork after' he made the suppressor," the record was "devoid of any facts indicating that the NFA ha[d] been 'put toward abusive ends' as applied to him." *Id.*

Additionally, "Peterson's unsupported claim that applicants must wait eight months on average before they can obtain a suppressor [was] insufficient to overcome *Bruen*'s presumption." *Id.*

In the same way, here, Speed cannot rebut the NFA's presumption of constitutionality. The NFA's $200 transfer tax for suppressors is neither "exorbitant," nor does it deny ordinary citizens the ability to possess and use a suppressor—much less a firearm. *See Peterson*, 150 F.4th at 653 n.3. The $200 fee is generally less than the cost of a suppressor itself, which can range from $350 to $1,500.[9] And the fee is not disproportionate to the licensing fees charged by shall-issue states, which ranged from around $10 to $140 in 2017.[10] The NFA's requirements are no more burdensome than a variety of other constitutional regulations, such as the requirements that a firearm purchaser obtain a background check, *see* 18 U.S.C. § 922(t); or that a person licensed to carry a firearm undergo safety training and pay a reasonable fee, *see Bruen*, 597 U.S. at 13 n.1, 38 n.9. As discussed above, history and tradition permit Congress to impose modest regulations

[9] *See* Silencer Central, *How Much Does a Suppressor Cost?*, https://www.silencercentral.com/blog/how-much-does-a-suppressor-cost/.

[10] *See* Connecticut Office of Legislative Research, *Gun Permit and License Fees*, https://www.cga.ct.gov/2017/rpt/pdf/2017-R-0066.pdf.

on suppressors. The NFA does not prohibit possession of suppressors. It requires only registration, a background check, and a $200 tax that is not indexed to inflation.

The NFA's restrictions on suppressors are also consistent with the broader "principles that underpin [the Nation's] regulatory tradition." *Rahimi*, 602 U.S. at 692; *see Peterson*, 150 F.4th at 654 n.5 (not reaching this issue but collecting cases holding that the NFA's suppressor-registration requirements satisfy *Bruen*'s second step). The restrictions serve the legitimate purpose of regulating nonessential firearm components that are particularly susceptible to criminal misuse; they are not pretextual provisions that seek simply to inhibit the exercise of constitutional rights; and the restriction involved is a modest tax, not a prohibition or other regulation that could "broadly restrict arms use by the public generally." *Rahimi*, 602 U.S. at 698. While a complete ban on suppressors would be unconstitutional, the NFA's restrictions comply with the Second Amendment.

Conclusion

For the foregoing reasons and those stated in the government's response brief, the Court should affirm Speed's convictions.

Respectfully submitted,

Lindsey Halligan
United States Attorney

/s/

Brian J. Samuels
Assistant United States Attorney

Statement Regarding Oral Argument

The Court has calendared this case for oral argument on December 12, 2025.

Certificate of Compliance

I certify that this brief was written using 14-point Times New Roman typeface and Microsoft Word.

I further certify that this brief does not exceed 13,000 words (and is specifically 2911 words) as counted by Microsoft Word, excluding the table of contents, table of authorities, statement regarding oral argument, this certificate, the certificate of service, and any addendum.

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions.

/s/

Brian J. Samuels
Assistant United States Attorney

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

APPENDIX L

UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA
v.
HATCHET SPEED

JUDGMENT IN A CRIMINAL CASE

Case Number: 22-cr-244 (TNM)

USM Number: 07348-510

Courtney Dixon
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) 1, 2, 3, 4, 5 of the Superseding Indictment filed on 1/11/2023 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §§ 1512(c)(2) and 2	Obstruction of an Official Proceeding and Aiding and Abetting	1/6/2021	1s
18 USC § 1752(a)(1)	Entering and Remaining in a Restricted Building	1/6/2021	2s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/8/2023
Date of Imposition of Judgment

Signature of Judge

Trevor N. McFadden, U.S. District Judge
Name and Title of Judge

5/15/23
Date

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1752(a)(2)	Disorderly and Disruptive Conduct in a Restricted Building	1/6/2021	3s
40 USC § 5104(e)(2)(D)	Disorderly Conduct in a Capitol Building	1/6/2021	4s
40 USC § 5104(e)(2)(G)	Parading, Demonstrating, or Picketing in a Capitol Building	1/6/2021	5s

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
FORTY-EIGHT (48) MONTHS on Count 1s, TWELVE (12) MONTHS on Counts 2s and 3s, SIX (6) MONTHS on Counts 4s and 5s. All terms to run concurrently, and consecutively to sentencing in 22-cr-165, from the United States District Court, for the Eastern District of Virginia.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

THIRTY-SIX (36) MONTHS on Count 1s, TWELVE (12) MONTHS on Counts 2s and 3s. All terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

SPECIAL CONDITIONS OF SUPERVISION

Financial Information Disclosure - You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the United States Attorney's Office.

Financial Restrictions - You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.

You must also pay a fine of $10,000 on Count 1.

You are ordered to make restitution to the Architect of the Capitol in the amount of $2000. You must pay the balance of any restitution owed at a rate of no less than $100 a month. Payment of all monetary penalties is a specific condition of your supervised release. Restitution payments shall be made to the Clerk of the Court for the United States District Court, District of Columbia, for disbursement.

The Probation Office shall release the presentence investigation report to all appropriate agencies, which includes the United States Probation Office in the approved district of residence, in order to execute the sentence of the Court.

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 170.00	$ 2,000.00	$ 10,000.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
Architect of the Capitol Office of the Chief Financial Officer Ford House Office Building Room H2-205B Washington, DC 20515		$2,000.00	

TOTALS	$ 0.00	$ 2,000.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HATCHET SPEED
CASE NUMBER: 22-cr-244 (TNM)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 170.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The financial obligations are payable to the Clerk of the Court for the U.S. District Court, 333 Constitution Ave NW, Washington, DC 20001. Within 30 days of any change of address, you shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full.

You must pay the financial obligations owed according to page 6.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Appendix M

1:22cr165, USA v. Speed

US District Court Criminal Docket

United States District Court, Virginia Eastern

(Alexandria)

Header

Date Filed: 09/06/2022
Other Docket: None

Class Code: Closed
Closed: 04/13/2023

Proceedings

#	Date	Proceeding Text	Source
1	09/06/2022	INDICTMENT as to Hatchet M. Speed (1) count(s) 1-3. (jlan) (Entered: 09/06/2022)	
4	09/06/2022	Redacted Criminal Case Cover Sheet. (jlan) (Entered: 09/06/2022)	
5	09/06/2022	MOTION to Seal by USA as to Hatchet M. Speed. (jlan) (Entered: 09/06/2022)	
6	09/06/2022	ORDER granting 5 Motion to Seal as to Hatchet M. Speed (1). Signed by Magistrate Judge John F. Anderson on 09/06/2022. (jlan) (Entered: 09/06/2022)	
7	09/06/2022	Arrest Warrant Issued in case as to Hatchet M. Speed. (jlan) (Entered: 09/06/2022)	
8	09/07/2022	MOTION to Unseal Case by USA as to Hatchet M. Speed. (jlan) (Entered: 09/07/2022)	
9	09/07/2022	ORDER granting 8 Motion to Unseal Case as to Hatchet M. Speed (1). Signed by Magistrate Judge John F. Anderson on 09/07/2022. (jlan) (Entered: 09/07/2022)	
10	09/07/2022	NOTICE of Filing of Exhibits for Initial Appearance by USA as to Hatchet M. Speed (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Traxler, Thomas) (Entered: 09/07/2022)	
11	09/07/2022	Pretrial Services Bond REPORT (Initial Pretrial Services Bond Report) (SEALED - government and defense counsel) as to Hatchet M. Speed. (Jankovitz, Nicole) (Entered: 09/07/2022)	
	09/07/2022	Arrest of Hatchet M. Speed (wgar,) (Entered: 09/07/2022)	
12	09/07/2022	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Initial Appearance as to Hatchet M. Speed held on 9/7/2022. US appeared through: Thomas Traxler and Amanda Lowe. Deft appeared without counsel - AFPD Courtney Dixon - present. Deft informed of rights, charges, and penalties. Court to appoint counsel. Counsel for the parties and the defendant were orally advised of the disclosure obligations set forth in Brady v. Maryland, 373 U.S. 83 (1963) and its progeny. Gov't is not seeking detention. Deft placed on PR bond with conditions. Arraignment set for 9/22/22 (gov't has contacted MSN Chambers) time - TBD. (Tape #FTR.)(wgar,) (Entered: 09/07/2022)	
13	09/07/2022	ORDER - This matter comes before the Court on its own initiative. Pursuant to Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act, the Court ORDERS the United States to adhere to the disclosure obligations set forth in Brady v. Maryland, 373 U.S. 83 (1963)	

#	Date	Proceeding Text	Source
		District of Virginia to represent Hatchet Speed in this case. (dvanm) (Entered: 05/02/2023)	
163	05/16/2023	TRANSCRIPT REQUEST by Hatchet M. Speed for proceedings held on Dec. 7, 2022 (status conference / motions hearing) and Jan. 17, 2023 (jury voir dire) before Judge Nachmanoff, (Pratt, Frances) (Entered: 05/16/2023)	
164	05/17/2023	Transcript Order Acknowledgment from USCA re 159 Notice of Appeal - Final Judgment: Court Reporter/Transcriber Diane Salters. (dvanm) (Entered: 05/17/2023)	
165	05/30/2023	MEMORANDUM OPINION and ORDER denying 146 MOTION for New Trial filed by Hatchet M. Speed. Signed by District Judge Michael S Nachmanoff on 05/30/2023. (see order for details) (dvanm) (Entered: 05/31/2023)	
166	06/23/2023	TRANSCRIPT of status conference proceedings as to Hatchet M. Speed for dates of 12-7-22 before Judge Michael Nachmanoff, re 159 Notice of Appeal - Final Judgment Court Reporter Diane Salters, Telephone number 301-338-8033. NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Does this satisfy all appellate orders for this reporter? y Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 7/24/2023. Redacted Transcript Deadline set for 8/23/2023. Release of Transcript Restriction set for 9/21/2023.(Salters, Diane) (Entered: 06/23/2023)	
167	06/23/2023	TRANSCRIPT of voir dire/prelim instructions, Day 1 Jury Trial proceedings as to Hatchet M. Speed for date of 1-17-23 before Judge Michael Nachmanoff, re 159 Notice of Appeal - Final Judgment Court Reporter Diane Salters, Telephone number 301-338-8033. NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Does this satisfy all appellate orders for this reporter? y Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 7/24/2023. Redacted Transcript Deadline set for 8/23/2023. Release of Transcript Restriction set for 9/21/2023.(Salters, Diane) (Main Document 167 replaced on 7/25/2023) (lcre,). (Entered: 06/23/2023)	
168	09/15/2023	ORDER of USCA as to Hatchet M. Speed re 159 Notice of Appeal - Final Judgment. The court grants the motion to withdraw from further representation on appeal. (dvanm) (Entered: 09/15/2023)	
169	02/26/2024	ORDER of USCA as to Hatchet M. Speed re 159 Notice of Appeal - Final Judgment. For reasons appearing to the court, this case is placed in abeyance pending decisions by this court in Maryland Shall Issue, Inc. v. Wes Moore, No. 21-2017, United States v. Price, No. 22-4609, and Dominic Bianchi v. Anthony G. Brown, No. 21-1255. (dvanm) (Entered: 02/27/2024)	
170	11/13/2024	ORDER of USCA as to Hatchet M. Speed re 159 Notice of Appeal- Final Judgment. For reasons appearing to the court, this case is placed in abeyance pending a decision by the Supreme Court in Garland v. VanDerStok, cert. granted, 144 S.Ct. 1390 (April 22, 2024). (Dest) (Entered: 11/13/2024)	
171	05/05/2026	Published Opinion of USCA, decided 5/5/26 as to Hatchet M. Speed re	

#	Date	Proceeding Text	Source
		159 Notice of Appeal - Affirmed. (lcre,) (Entered: 05/05/2026)	
172	05/05/2026	JUDGMENT of USCA as to Hatchet M. Speed re 159 Notice of Appeal. In accordance with the decision of this court, the judgment of the district court is affirmed. (lcre,) (Entered: 05/05/2026)	
173	05/20/2026	Temporary Stay of Mandate as to Hatchet M. Speed re 159 Notice of Appeal (dzir) (Entered: 05/20/2026)	
174	06/02/2026	ORDER of USCA as to Hatchet M. Speed re 159 Notice of Appeal. The court denies the petition for rehearing and rehearing en banc. (lcre,) (Entered: 06/02/2026)	
175	06/10/2026	USCA Mandate as to Hatchet M. Speed re 159 Notice of Appeal. The judgment of this court, entered May 5, 2026, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (Dest) (Entered: 06/10/2026)	
176	10/23/2026	NOTICE OF ATTORNEY APPEARANCE: Peter Gabor Haller, I appearing for Hatchet M. Speed pro bono (Haller, Peter) (Entered: 10/23/2026)	
177	10/24/2026	First Motion to appear Pro Hac Vice by Carolyn Anne Stewart and Certification of Local Counsel Peter G Haller (Filing fee $ 75 receipt number AVAEDC-11456858.) by Hatchet M. Speed. (Attachments: # 1 Exhibit PHV application, # 2 Proposed Order Proposed Order for Stewart PHV)(Haller, Peter) (Entered: 10/24/2026)	

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.
*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document