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IN THE SUPREME COURT OF THE UNITED STATES

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 BRUCE JAMES ABRAMSKI, JR., :
 Petitioner : No. 12-1493
 v. :
 UNITED STATES :
 - - - - - x

Washington, D.C.
 Wednesday, January 22, 2014

The above-entitled matter came on for oral
 argument before the Supreme Court of the United States
 at 11:06 a.m.

APPEARANCES:
 RICHARD D. DIETZ, ESQ., Winston-Salem, North Carolina;
 on behalf of Petitioner.
 JOSEPH R. PALMORE, ESQ., Assistant to the Solicitor
 General, Department of Justice, Washington, D.C.; on
 behalf of Respondent.

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P R O C E E D I N G S

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 12-1493, Abramski v. United States.

Mr. Dietz?

ORAL ARGUMENT OF RICHARD R. DIETZ

ON BEHALF OF THE PETITIONER

MR. DIETZ: Mr. Chief Justice, and may it please the Court:

In 2009, Bruce Abramski went to a gun store at his home in Virginia and purchased a firearm. When he did so, he filled out all the required Federal paperwork providing his own name and identifying information and passing a background check. He then traveled to his uncle's home in Pennsylvania and delivered the firearm to a licensed gun dealer there. That gun dealer required Mr. Abramski's uncle to fill out the exact same Federal paperwork and pass his own background check before taking possession of the firearm.

But despite doing precisely what Congress established as the process to buy a firearm, intending to sell or give it to a lawful gun owner in another State, the government charged Mr. Abramski with falsely stating that he was the actual buyer of the firearm when

1 he acquired it. And that term "actual" --

2 JUSTICE SOTOMAYOR: What would happen if two
3 people walk into the gun store, one person hands the
4 money to the other and says, buy me that gun?

5 MR. DIETZ: Yes, Your Honor.

6 JUSTICE SOTOMAYOR: Is that not actionable,
7 according to your theory?

8 MR. DIETZ: Your Honor, the circumstance
9 where there are two lawful gun owners, that is
10 permissible. And I think a good way to illustrate that
11 is to consider the government's concession that in that
12 hypothetical, if the two people walked into the gun
13 store and the person looked and said, I'd like that gun
14 and points to the counter and then the person
15 standing --

16 JUSTICE SOTOMAYOR: What's -- what's
17 truthful about saying you're the buyer --

18 JUSTICE SCALIA: Please finish what you were
19 saying. I -- I didn't understand what your point was.

20 MR. DIETZ: Yes, Your Honor.

21 In that circumstance, if the person standing
22 at the counter then says, I'd like to buy that firearm,
23 that the person indicated, I'm going to give it to that
24 person, then even the government concedes that in that
25 circumstance, everything about that sale is perfectly

1 lawful and the buyer can take the gun, hand it to that
2 person standing next to them, who would leave the gun
3 store with the gun dealer and the government having
4 absolutely no idea who that person is or where the gun
5 is going.

6 JUSTICE KAGAN: I'm sorry. So you're saying
7 that in that case, the gun dealer runs the background
8 check on the person who hands the gun dealer the credit
9 card as opposed to the person who will be the actual
10 recipient of the gun? Is that what you're saying the
11 statute requires?

12 MR. DIETZ: That's correct, Your Honor. I
13 think the government concedes that as well in gift
14 circumstance at least, and there's certainly nothing in
15 the Gun Control Act that suggests that Congress was
16 distinguishing between those two circumstances at all.

17 JUSTICE ALITO: Well, in the gift -- in the
18 gift situation. But Congress requires certain
19 information from the buyer, whatever that means; right?

20 MR. DIETZ: Yes, Your Honor.

21 JUSTICE ALITO: The -- the dealer has to
22 record the name of the buyer; right?

23 MR. DIETZ: Yes, Your Honor.

24 JUSTICE ALITO: And the address of the
25 buyer?

1 MR. DIETZ: Yes, sir.

2 JUSTICE ALITO: And do an instant check on
3 the buyer?

4 MR. DIETZ: Yes, Your Honor.

5 JUSTICE ALITO: Now, why would -- why would
6 Congress have wanted those things with respect to the
7 person who was just the straw purchaser and not the
8 person -- the person who's actually going to acquire the
9 weapon?

10 MR. DIETZ: The reason, Your Honor, is that
11 this legislation, the way Congress designed it, is not
12 focused on sort of the end point. It's not concerned
13 about where a gun is actually going. Who's ultimately
14 going to receive it. What Congress was concerned about
15 was the starting point, because as part of the key
16 political compromise of the Gun Control Act, there were
17 two competing interests that needed to be accommodated.

18 JUSTICE ALITO: Why wouldn't they be
19 concerned about the starting point? Let's say there's a
20 man, Mr. Straw, and he holds himself out as a gun buyer,
21 puts, you know, a website, creates a website. He puts
22 something in the Yellow Pages under "Straw Man." And he
23 says: You want to acquire a gun and you don't want the
24 dealer to record your name and you don't want to have an
25 instant check on you, you come to me. And so these

1 people come to him and whenever they do, he goes to
2 Joe's gun shop and -- with the other person. He says, I
3 want to buy a gun, but this fellow with me is going to
4 do all the talking. So the guy who's with him talks
5 with Joe about different types of guns, costs and
6 everything.

7 After that's done, the person who's done all
8 the talking says, now, my friend, Mr. Straw, is going to
9 buy this gun. He gives Mr. Straw the money, Mr. Straw
10 buys the gun, and the dealer writes down Mr. Straw's
11 name for the fifteenth time that month, his address,
12 does another instant check on it. What sense does that
13 make?

14 MR. DIETZ: Your Honor, I think, to your
15 first point about why, why starting points, the reason
16 is because all that Congress wanted is to provide law
17 enforcement with a way to trace the firearm. If you
18 have truthful, accurate information about the first
19 initial purchaser, the person who walks out of a gun
20 store with a gun in their hand, then law enforcement has
21 that starting point if they need to trace the firearm.

22 JUSTICE SCALIA: I suppose that your answer
23 to what sense it makes is that was the compromise, that
24 there was strong opposition to any gun control law, and
25 the condition was you get the buyer and you don't make

1 the buyer promise not to give it to somebody else. He
2 could immediately give it to somebody who's unqualified
3 to own the gun, couldn't he? Would that be a violation?

4 MR. DIETZ: Your Honor, that would -- that
5 would violate other laws because Congress in the Firearm
6 Owners Protection Act clarified that -- or amended the
7 provision to provide that a private citizen who
8 transfers a firearm to someone they know or have
9 reasonable cause to believe is prohibited, that's a
10 crime.

11 JUSTICE SCALIA: What about somebody,
12 somebody who is qualified to own a firearm? Can I take
13 a firearm that I own and say, you know, it's yours?

14 MR. DIETZ: Yes, Your Honor, and I think the
15 government has conceded that if it's someone in your own
16 State, there's --

17 JUSTICE SCALIA: Don't have to register it?
18 I don't have to go through a firearm dealer, right?
19 It's my gun and I can give it to somebody else who's
20 qualified.

21 MR. DIETZ: That's correct, Your Honor. And
22 in cases like Mr. Abramski's case, where his uncle lived
23 in another State, Congress provided a path for those
24 people as well and that is they have to deliver the
25 firearm to another dealer in that State before finishing

1 the transfer.

2 JUSTICE SCALIA: So you're never going to
3 know who the end user is once the gun is sold, whether
4 you take the, you know, the straw buyer's name or the --
5 or the other person's name or both. You don't know
6 where the gun is going to end up, do you?

7 MR. DIETZ: Yes, sir. That's right, Your
8 Honor. And that's because that -- that was the key
9 compromise --

10 JUSTICE BREYER: Language matters in a
11 statute. I mean, I do believe that. And here the
12 relevant language seems to me, what is material to the
13 government says -- is the statute about selling or
14 delivering. Now, did this person -- was he the buyer,
15 your client? Was he somebody that they sold or
16 delivered it to? Well, he's a straw. A straw purchaser
17 is someone who doesn't purchase.

18 The person who purchases is the person who
19 uses the straw. Now, you can't say that about a giver,
20 a benefactor is -- the person who's the beneficiary of
21 the benefactor is not the purchaser. But the straw
22 purchaser is not the purchaser. And it comes from
23 "straw bail" where someone else put up the bail and it
24 was called straw because the people who made a career of
25 that used to wear straw in their shoes. Interesting.

1 But in terms of -- in terms of this case,
2 the straw --

3 JUSTICE SCALIA: He made that up.

4 (Laughter.)

5 JUSTICE BREYER: No, I didn't. I thought it
6 came from the Wizard of Oz, but it doesn't --

7 (Laughter.)

8 JUSTICE BREYER: The fact is that is where
9 it comes from. I think in every legal context it means
10 someone who is not the real. So who is the real? In
11 this case it is the person for whom the straw purchased.

12 So we fit that within the language. We
13 can't fit the beneficiary of a gift within the language
14 and that's the reason for the distinction, and so why
15 not do it that way?

16 MR. DIETZ: With respect, Your Honor, I
17 think that the principle you described of a straw man or
18 straw purchases in the context, historical context you
19 described it, I don't believe is a criminal context.
20 We've not been able to find any case in which the
21 criminal law has ever recognized that sort of civil
22 agency law principle, that when there is a
23 principal-agent relationship, this fiduciary duty,
24 that because the principal controls the agent or the
25 straw man, that everything that the agent does is really

1 an act of the principal.

2 And Congress -- there were historically
3 criminal common law principles of agency. Congress
4 codified those principles in Title 18 United States Code
5 Section 2. Those are things like aiding and abetting,
6 principals and accessories. That's not the principle on
7 which the government relies today. The government --

8 JUSTICE ALITO: You still have not explained
9 what purpose is served by obtaining the name of the
10 straw purchaser and doing an instant check on the straw
11 purchaser. You said that it allows the tracing of the
12 weapon, but that's not going to be true in the case of a
13 straw purchaser, because the person, the straw
14 purchaser, isn't necessarily and probably in the vast
15 majority of cases isn't going to get the name or any
16 information about the actual recipient. That's the
17 whole purpose of having a straw purchaser. So then what
18 purpose is served by this? It's just meaningless.

19 MR. DIETZ: With respect, Your Honor, I
20 disagree. And I think the reason is again that the
21 intent of Congress in the Gun Control Act was not to
22 trace or track where firearms were going. So in every
23 case, because private sales have no recordkeeping or
24 background check requirements, in every case where
25 there's a trace of a firearm the government has to go

1 all the way back to the beginning. They go to the
2 manufacturer with the serial number and follow the gun
3 through the stream of commerce until find that gun
4 dealer where the gun was first sold, and then they --

5 JUSTICE ALITO: So they find the gun dealer
6 and the gun dealer says, I sold it to Mr. Straw. And
7 then they go to Mr. Straw and Mr. Straw said: My client
8 took it. Okay, who's your client? I have no idea. He
9 came into my store. He contacted me. I didn't ask his
10 name. He didn't give me his name. And that's the end
11 of it. So no purpose is served by putting down the
12 name, the address, doing the check on the straw
13 purchaser.

14 MR. DIETZ: But, Your Honor, again Congress
15 understood that that's how the statute worked because,
16 for example --

17 JUSTICE ALITO: Well, what you're saying is
18 they did a meaningless thing. That was the compromise.
19 They would do something that's utterly meaningless.

20 MR. DIETZ: No, Your Honor. And the reason
21 is, consider for example a circumstance where, instead
22 of buying firearm with intent to resell it, five minutes
23 after the purchase, walking out of the gun store, a
24 stranger approaches you and says: That's a nice looking
25 gun, I'd like to buy it from you. It's perfectly legal

1 under the Gun Control Act to sell the gun to that
2 stranger, who then will leave and again in the tracing
3 process, the government's trace will stop with that
4 first purchaser. And Congress understood that that's
5 how the process would work and that was part of the
6 compromise. What Congress wanted was accurate
7 information about the initial person who acquires the
8 firearm so at least they can try to do that trace. And
9 Congress understood that in many circumstances --

10 JUSTICE SCALIA: And in some cases they can
11 track it all the way. In this case, unlike the
12 hypothetical that Justice Alito gave you, if they went
13 to the straw, to the straw purchaser, he would say: Oh,
14 I actually bought it from my uncle. And he'd give the
15 uncle's name, and then the uncle would say, you know,
16 where else the firearm went from him.

17 MR. DIETZ: Yes, Your Honor. And, in fact,
18 in this case the government received all the
19 recordkeeping and background check information that they
20 could possibly have received. They got full Federal
21 paperwork from both Mr. Abramski and his uncle and ran a
22 background check on both.

23 JUSTICE KENNEDY: Your position is that this
24 is not a material misstatement; is that correct?

25 MR. DIETZ: Yes, Your Honor.

1 JUSTICE KENNEDY: Why isn't it material in
2 light of the fact that it was a question that was on the
3 government form that was promulgated, that was directed
4 by regulations?

5 MR. DIETZ: The reason, Your Honor -- I
6 think this is a critical concession by the government.
7 It's on pages 35 and 36 of their brief. The government
8 acknowledges that the statements on the form are just an
9 interpretive rule and not even sort of ordinary
10 interpretive rule that this Court may encounter with
11 agency interpretations where they are looking at the
12 statute, and although they have not been delegated with
13 authority to rule make, they are interpreting the text
14 of the statute. Here the government acknowledges that
15 the statement is an interpretation of the case law about
16 the straw purchaser doctrine.

17 And the problem with that is that there's a
18 split in the circuits about what that case precedent
19 should be, and the government's suggesting that this
20 Court should somehow defer to the statement on the form
21 that it has the power of law, that people should
22 acknowledge it.

23 But, of course, when you have a case law
24 question like this where there's a split, this Court is
25 the authority that decides what the law should be. And

1 it's not required to defer at all to the statements on
2 the form.

3 JUSTICE KAGAN: Mr. Dietz, can we go back to
4 the question that Justice Alito raised. The primary
5 object of this statute is to keep guns out of hands of
6 felons, of people with mental illness and so forth.

7 Now, it's absolutely true, as you have said,
8 that Congress didn't do everything it could have to
9 achieve that result, right? That there are many kinds
10 of resales that are allowable, that there are gifts that
11 are allowable.

12 It's one thing to say that. It's another
13 thing to say that at the initial point of sale, which is
14 where the entire system is set up, right, with the gun
15 dealer doing the automatic checks, that at that initial
16 point of sale, which is the centerpiece of this statute,
17 that we will -- that we will essentially disregard
18 fronts, that we -- you know, that we don't care that the
19 person standing at the counter is a front.

20 I mean, that goes far beyond the other kinds
21 of resale possibilities that you're talking about. And
22 I guess what I want to know is why you think a Congress
23 that was geared towards this object of keeping guns out
24 of the hands of dangerous people and set up a mechanism
25 that had the gun seller be the kind of enforcer, at the

1 point of sale, would have thought, oh, it's fine if a
2 front, if a straw walks in the door.

3 MR. DIETZ: The reason, Your Honor, is
4 because Congress understood that private sales -- that
5 there was an importance to private sales between
6 citizens. And in a straw purchase like this or -- or
7 someone who's purchasing a gun intending to resell it to
8 someone else, that is precisely what's happening is that
9 second sale is a private transaction between two private
10 citizens and Congress did not want any regulation of
11 those types of sales. And that was part of the
12 political compromise in the law.

13 So yes, Your Honor, I acknowledge that you
14 could certainly describe this as -- as not a
15 comprehensive regime. There are holes in the
16 legislation. But remember, too, that Congress was not
17 operating in a vacuum. It understood that, although
18 there might not be a national consensus about some of
19 these issues and, therefore, the regime that Congress
20 chose may have some holes in it. But the States could
21 fill those holes if there was a State-wide consensus on
22 that issue. And many States have done that. Some
23 States have -- Hawaii, for example -- what is really a
24 complete gun registration system. And others, like West
25 Virginia, believe that there should be virtually no

1 regulation of these sorts of private sales at all.

2 And so I think the system is working
3 precisely as Congress intended. And if there are
4 problems, Congress will come back and fix it. And we've
5 seen, for example, in the Firearm Owners Protection Act
6 and in the Brady Act that -- this is an area where
7 Congress is continuing to observe what's going on in the
8 nation and making changes to the law as necessary.

9 CHIEF JUSTICE ROBERTS: In -- in the
10 situation that Justice Alito hypothesized of the person
11 who's doing this several times a month and has the ad in
12 the Yellow Pages, is that -- is that person subject to
13 regulation as a dealer?

14 MR. DIETZ: Yes, Your Honor. I wanted to
15 make that point. And that is that, of course, if you
16 engage in the business of purchasing firearms to sell to
17 others, then you will at some point be subject to the
18 licensing requirements that Congress created.

19 So, again, this is not a system that has
20 some obvious loophole where people can begin to engage
21 in their own sort of sale of guns to others. This is a
22 situation where Congress wanted to leave open the option
23 for private citizens, like Mr. Abramski, to purchase
24 guns for other lawful gun owners like family members,
25 neighbors and friends --

1 JUSTICE GINSBURG: But this -- this family
2 member, the uncle, residing in Pennsylvania, he could
3 not have purchased that gun in Virginia, isn't that
4 right, because he's a nonresident?

5 MR. DIETZ: With respect, Your Honor, I
6 disagree. It's true that he could not have walked into
7 the gun store and left the gun store in Virginia with --
8 with the gun. But he could have purchased it there.
9 Congress created a means in the statute for the gun to
10 then be shipped to a gun dealer in Pennsylvania, and he
11 would have to pick up the gun and again fill out the
12 Federal forms and undergo a background check at that gun
13 dealer in his home in Pennsylvania.

14 JUSTICE GINSBURG: But wouldn't he --
15 wouldn't he have to comply with the 552(c), which says
16 how somebody who doesn't show up in person can purchase
17 a gun? And none of those requirements were satisfied
18 here. So it seems to me that what you're asking is just
19 an end run around what Congress said. If you're out of
20 State and you want to buy it, this is how you have to do
21 it.

22 MR. DIETZ: With respect, Your Honor, I
23 don't think that's what Congress meant in Section
24 922(c), which is the provision that deals with absent
25 buyers. And the concern there was Congress wanted to

1 leave open two paths for gun buyers. One is to
2 physically be present at the gun store and fill out the
3 papers yourself for the gun dealer. As you're writing
4 your name and age and your height and eye color on the
5 forms, there's a person there looking at you.

6 And there was also an option that Congress
7 provided for people to purchase a gun, for example, by
8 telephone or mail or over the Internet without ever
9 actually being present, with no person being present in
10 the gun store. And it was in that circumstance that
11 Congress said we think we need a little bit more
12 recordkeeping in those cases. So that's why they
13 required the affidavit, for example, and the -- the
14 waiting period to provide extra time for local law
15 enforcement and the background check.

16 But that's not the situation here.
17 Mr. Abramski was physically present at the gun store and
18 so that provision of the statute is not even implicated
19 here.

20 Another point, Your Honors, is that the
21 plain text interpretation of the statute is one that the
22 agency, ATF, had adopted initially. In 1979, the Agency
23 sent a circular to gun dealers that took the -- the
24 precise position that -- that Petitioner is taking here,
25 which is that a purchase of a gun for another lawful gun

1 owner is permissible. And in doing so, the -- the
2 Agency said that that was an interpretation of the text
3 of the Gun Control Act.

4 JUSTICE SCALIA: What is the government's --
5 I guess I should ask the government, but does the
6 government contend that there are two buyers now?
7 Both -- is the real buyer the person who sends in the
8 straw man so that it's only his information that you
9 have to give? Or are there two buyers?

10 MR. DIETZ: Your Honor, I don't know the
11 government's position, but our position is that there's
12 one buyer, and that's the person who's actually paying
13 for the gun, filling out the forms, undergoing a
14 background check, and leaving the gun -- leaving the gun
15 store with the gun in their hand. And Congress didn't
16 use terms like "true buyer" or "true purchaser" or
17 "actual buyer" because they are not concerned about the
18 ultimate recipients of firearms or what happens to a gun
19 after it leaves the gun store.

20 The focus of the Gun Control Act is on that
21 initial purchase and making sure that that purchase --

22 JUSTICE SOTOMAYOR: What -- what position
23 are you taking here? Are you arguing that it doesn't
24 matter whether it's a straw purchaser or not; a buyer is
25 a buyer is a buyer? It's the person who puts the money

1 down on the counter? Or are you arguing, as a -- as a
2 backup or as your main point -- I don't understand --
3 that if it's a lawful buyer using a straw man, that
4 that's not actionable?

5 MR. DIETZ: Yes, Your Honor. We are
6 arguing, yes, that the person who pays for the gun, the
7 person that's there in the gun store, pays for the
8 firearm is the buyer. That is the -- or the -- in fact,
9 the term "buyer" isn't even used in the Gun Control Act.

10 JUSTICE SOTOMAYOR: Even if their intent is
11 to sell it to a prohibited person?

12 MR. DIETZ: That's correct, Your Honor.
13 And -- and in those circumstances -- again, I think this
14 is an important point -- is that Congress provided a
15 number of means to prosecute illegal straw purchasers.
16 And all of those provisions are still available to the
17 government, even if this Court was to disapprove the
18 straw purchaser doctrine in all its applications.

19 JUSTICE ALITO: If we disagree with you on
20 the first point about the straw purchaser, would you --
21 would you lose on the grounds that Mr. Abramski's uncle
22 could not have lawfully purchased the gun at that store
23 because he wasn't a resident of the State?

24 MR. DIETZ: No, Your Honor. Two points
25 there: First, as I mentioned, it would have been

1 possible for Mr. Abramski's uncle to purchase the gun in
2 Virginia. He could have gone to that gun store and
3 said, this is the gun I want and paid the money. He
4 would have had to go back -- the gun would have had to
5 have been shipped to Pennsylvania, and he would have had
6 to take possession of it in Pennsylvania after filling
7 out additional paperwork and --

8 JUSTICE ALITO: But he couldn't have taken
9 possession of it in -- in Pennsylvania.

10 JUSTICE GINSBURG: In Virginia.

11 JUSTICE ALITO: In Virginia.

12 MR. DIETZ: That's correct, Your Honor.
13 But, again, I don't think that that changes the
14 materiality analysis, because, again, the question is
15 not whether Mr. Abramski's uncle could have picked up or
16 bought the gun in Virginia. The question is, if
17 Mr. Abramski had told the gun dealer the truth, that
18 yes, I plan to buy this gun, but I'm going to take it up
19 to Pennsylvania and give it to my uncle after I deliver
20 it to a gun dealer there, the way that Congress wrote
21 the Gun Control Act, the gun dealer still could have
22 sold the gun to Mr. Abramski. And that's why --

23 JUSTICE ALITO: But would it have been a
24 lawful sale if the gun had been delivered to him on the
25 spot?

1 MR. DIETZ: To Mr. Abramski's uncle?

2 JUSTICE ALITO: Yes. He could not --

3 Mr. Abramski is out of the picture and the uncle goes
4 in, buys the gun, puts down a Pennsylvania address. The
5 dealer gives him the gun and walks out of the store.
6 That -- would that be a lawful sale?

7 MR. DIETZ: No, Your Honor. No.

8 Mr. Abramski's uncle could not take -- could not have
9 bought the gun in another State and taken possession of
10 it. But, again, for the materiality question, the way
11 this Court has described that standard in *Kungys* is
12 whether -- if Mr. Abramski had provided the truthful
13 information, if that would have been capable of
14 influencing the outcome in that case --

15 JUSTICE KENNEDY: In describing what
16 happened here, you -- you -- you said that Abramski went
17 in and then went to Pennsylvania and gave the gun to his
18 uncle. That's not quite correct. He -- he transferred
19 it to him for consideration. I had thought, and this
20 was -- goes back to Justice Scalia's question --
21 question about if there's one buyer here or two. I had
22 thought that it might be possible that you can -- to
23 construct a case where Abramski tells his uncle, I'm
24 going to buy the gun, and then I'm going to sell it to
25 you, and I'm going to sell it to you in Pennsylvania at

1 a gun dealer's store so we can fill out the necessary
2 forms. Would the government then have objected to what
3 happened here?

4 MR. DIETZ: Your Honor --

5 JUSTICE KENNEDY: I mean, we can ask the
6 government --

7 MR. DIETZ: Yes.

8 JUSTICE KENNEDY: -- as Justice Scalia
9 indicates, but under -- as you understand their case.

10 MR. DIETZ: Yes, Your Honor. I think the
11 reason is that the government's position is that you
12 cannot buy a gun intending to sell it to another lawful
13 gun owner. That is the government's position.

14 But just one point of clarification is, to
15 the extent it's relevant, Mr. Abramski did not receive
16 consideration for the purchase of the firearm. The
17 record indicates that his uncle sent him a check to
18 cover the cost of the gun. This was, in all respects,
19 someone doing a favor for a family member.

20 JUSTICE SCALIA: Could -- could you address
21 the other -- the other point here, which is the one I
22 have more trouble with, to tell you the truth, Count 2?

23 MR. DIETZ: Yes, Your Honor. That count --
24 the language of the Congress was that one cannot "make a
25 false statement about information required by this

1 chapter to be kept," "this chapter" meaning chapter 44,
2 the Gun Control Act itself. And the Gun Control Act
3 contains -- it actually references a provision, and
4 that's 922(b)(5), where Congress says this is the
5 information that uses that term, "required to be kept."
6 And it lists three things: The name, age, and place of
7 residence of the person acquiring the gun from the gun
8 dealer. And then ATF has promulgated regulations that
9 have added an additional layer of information that must
10 be included on the forms.

11 But the government's position -- of course,
12 this question 11, who is the actual buyer, that's not
13 one of the things that's included either in the text of
14 the Gun Control Act or in ATF's regulations. And what
15 the government has said in this case is, well, that's
16 right, but we view the authorization of Congress to
17 create the form as sort of a blanket authorization to
18 put -- ask whatever we want in the form and make
19 anything that we ask in the form information required to
20 be kept.

21 JUSTICE SCALIA: Can you lie in -- in
22 answering questions that the government has no technical
23 right to answer? I mean, let's assume I agree with you
24 that, in fact, this information was -- the government
25 was not authorized to obtain this information, and

1 therefore, it was not required to be kept. But
2 nonetheless they asked it, and your client didn't just
3 say, I won't answer. He lied.

4 Now, can you -- can you lie, so long as the
5 question is improper?

6 MR. DIETZ: Your Honor, I think the key in
7 this case is that Congress included a materiality
8 element for almost every false statement that would
9 occur in this context. And they enacted a separate
10 statute that did not have that materiality requirement.

11 And the reason was Congress wanted to be
12 sure that that provision that did not have the
13 materiality requirement only applied to the false
14 statements that Congress thought were the very important
15 ones, and therefore they delineated what those -- that
16 category of statements was. And the question on the
17 form is not one of them. And that, Your Honor, is the
18 reason why Mr. Abramski cannot be convicted under that
19 provision.

20 I'd like to reserve the remainder of my time
21 for rebuttal.

22 CHIEF JUSTICE ROBERTS: Thank you, counsel.
23 Mr. Palmore.

24 ORAL ARGUMENT OF JOSEPH R. PALMORE
25 ON BEHALF OF THE RESPONDENT

1 MR. PALMORE: Thank you, Mr. Chief Justice,
2 and may it please the Court:

3 I think it would be helpful if I could, at
4 the outset, frame what I see as the issues here because,
5 as some of the questioning revealed, Petitioner is
6 making two separate arguments. His first argument is,
7 in a sense, that there is no such thing as a straw
8 purchaser doctrine. I take that actually as a falsity
9 argument.

10 He's saying when I answered that I was the
11 purchaser, that was a true statement because I'm the
12 only purchaser who counted for purposes of the statute,
13 because I was the one standing there and I was the one
14 filling out the form.

15 His second argument is an alternative
16 argument, as I understand it, and he says, even assuming
17 I'm wrong about the first argument and that this
18 statement was false, that that falsehood was not
19 material because my uncle was legally eligible to
20 possess a firearm. So I'd like to take those two
21 arguments in -- in order.

22 JUSTICE SCALIA: As to the first, are there
23 two buyers in your view?

24 MR. PALMORE: I think, in a sense, you could
25 understand there to be two buyers. The buyer who counts

1 under the statute, though, is the actual buyer.

2 JUSTICE SCALIA: Well, what does -- what
3 does the person who's buying for somebody else -- he has
4 to provide both names or just the name of the real
5 buyer?

6 MR. PALMORE: Justice Scalia, if you -- if
7 you hypothesize the situation in which two roommates
8 wanted to buy a firearm together -- firearms are
9 expensive; they can't each afford their own, but they
10 want one for personal protection. And if one went into
11 the store and said, I'm buying this firearm for myself
12 and my roommate who's not here, that transaction could
13 not lawfully go forward, because the two buyers of the
14 firearm weren't in the store and they weren't physically
15 present and they didn't go through all the statutory
16 screening processes.

17 JUSTICE SCALIA: And both of them had to
18 take possession, right?

19 MR. PALMORE: In that, right.

20 JUSTICE SCALIA: But that's not the case
21 here. The person who paid took possession, was
22 authorized to take position.

23 MR. PALMORE: In the straw purchaser cases
24 the person takes possession in an ephemeral sense. They
25 are merely the conduit. The whole -- the purpose and

1 effect of the transaction is to deliver that firearm to
2 someone else.

3 CHIEF JUSTICE ROBERTS: Where in this -- I'm
4 sorry.

5 JUSTICE SCALIA: So there are two buyers and
6 both of them have to be on the form.

7 MR. PALMORE: If there are two buyers, the
8 two people, the roommates, are buying, they would each
9 need to --

10 JUSTICE SCALIA: I can understand you saying
11 the real buyer is the person who put up the money.

12 MR. PALMORE: Well, of course the form tells
13 you who the real buyer is, and it's a substance over
14 form inquiry. And we think this is supported by not
15 only the text, but also the structure and purpose of the
16 Gun Control Act.

17 CHIEF JUSTICE ROBERTS: Where in the Act
18 does -- is the basis for the requirement on the form?
19 The form says, you know, if you're not the actual,
20 you're buying for somebody else. Where is that in the
21 statute?

22 MR. PALMORE: That is ATF's reasonable
23 interpretation of the statute and I was just going to
24 get to that.

25 JUSTICE SCALIA: Its current one. It used

1 to have a different one.

2 MR. PALMORE: That's the current one, and
3 it's been consistent for the last 20 years, Justice
4 Scalia.

5 So the statute, we think the text and
6 structure and purpose support this view. The text is
7 most readily identifiable in Section 922(a)(6) itself,
8 which this Court in *Huddleston* --

9 CHIEF JUSTICE ROBERTS: (A)(6)?

10 MR. PALMORE: 922(a)(6), which is the count
11 1 of the conviction. It's the false statement provision
12 at issue here, and this is quoted on pages 1 through 2
13 of the government's brief.

14 So the provision says: "It shall be
15 unlawful for any person in connection with the
16 acquisition or attempted acquisition of a firearm," and
17 it goes on, and it talks -- and at the end it talks
18 about the "lawfulness of the sale or other disposition
19 of such firearm."

20 This case isn't the first one in which the
21 Court has had occasion to interpret those terms. In
22 *Huddleston* the Court looked at those terms, in
23 particular "acquisition" and "disposition," and it said
24 several things about those terms that are relevant here.
25 It said those terms are meant to have a practical,

1 common sense meaning in terms of who will come into
2 possession and control of a firearm as the result of a
3 transaction with a federally regulated dealer, and they
4 don't turn on formal notions of legal title; and that
5 with respect to "disposition" in particular that
6 Congress meant to give broad effect to this term.

7 And so we think that the same kind of
8 practical common sense inquiry is applicable here. When
9 looking at the transaction the question is what is the
10 ultimate purpose and effect of this transaction. Is it
11 to have someone else acquire the firearm.

12 JUSTICE BREYER: That's awfully broad. It
13 isn't the language, I think. The statute, it has to be
14 material to the lawfulness of the sale. Now, we look to
15 see what section is it material to, and you say in your
16 brief it's material to the section that says -- you have
17 two of them, but they come to the same thing -- selling
18 or delivering any firearm to any person.

19 All right. Now, he says did they sell or
20 deliver this firearm to what you call the real
21 purchaser. No. They sold or delivered it to the straw,
22 and that's the end of the matter. And at least the
23 statute is open to this interpretation, and it's a
24 criminal statute. And besides, the ATF for a long time
25 interpreted it that way. So what we should do is

1 interpret it strictly.

2 Now, that's I think the basis of their
3 argument if I understand it. And so you have to get
4 those words "sale" and "deliver" and explain how in a
5 criminal statute they apply to what you're calling the
6 real purchaser.

7 MR. PALMORE: Right, Justice Breyer. The
8 statute uses a number of different terms to connote what
9 we take to be a substance over form inquiry into the
10 actual possession and control of the firearm. So in
11 922(a)(6), as we were just talking about, it was talking
12 about acquisition, sale, or disposition.

13 JUSTICE BREYER: But you also quote
14 "material," the need for it to be material to the lawful
15 ness of the sale.

16 MR. PALMORE: Correct.

17 JUSTICE BREYER: You seem to concede that in
18 the brief. It has to be material, and there are two
19 sections and both come to the same thing, which is what
20 I said.

21 MR. PALMORE: So this is where we get back
22 to the fact that there are two different issues in this
23 case. If I convince you that there was a false
24 statement here because Petitioner's uncle was the actual
25 purchaser --

1 JUSTICE BREYER: If he was -- if he then --
2 if he is the actual purchaser, then he falls within the
3 term of a person to whom the firearm was sold or
4 delivered. That's your argument.

5 MR. PALMORE: And his name wasn't put on the
6 farm.

7 JUSTICE BREYER: Oh, there's no question
8 about that.

9 MR. PALMORE: Right. If I could just finish
10 one other thought on this first issue of falsity. As
11 Justice Sotomayor and Justice Alito's hypotheticals
12 demonstrated, under Petitioner's view of the statute I
13 could approach someone in a parking lot outside of a
14 licensed dealer. I could say, would you like to make a
15 quick buck; please come in with me. I could point to
16 the firearm I want. I could hand him the money. I
17 could look over his shoulder as he fills out Form 4473
18 in his own name. I could watch the dealer run that
19 person's name and identity through the criminal
20 background check, and as we leave the shop together he
21 could hand me that firearm.

22 JUSTICE SCALIA: Why is that -- why is that
23 any more horrible than the notion that as soon as I buy
24 it I walk out of the store and I meet this guy in the
25 parking lot, he says: Hey, that's a nifty looking gun

1 there. How much did you pay for it? He says: You
2 know, I paid 600 dollars. I'll give you 700. Oh, it's
3 yours. Right? I can hand it to him, can't I?

4 MR. PALMORE: You could, Justice Scalia.

5 JUSTICE SCALIA: So the notion that the gun
6 would somehow get into the hands of somebody who, you
7 know, who wasn't registered or who couldn't buy it
8 himself, that's going to happen any way. What you
9 assert does not stop that problem.

10 MR. PALMORE: Justice Scalia, Congress was
11 obviously balancing a number of interests when it
12 enacted these provisions. If you read the text of the
13 statute and the legislative history, it's clear that
14 Congress thought the principal problem was effectively
15 unregulated sales of firearms from dealers. That's the
16 problem it wanted to focus on.

17 And you're right that it didn't want to go
18 further and intrude on private transactions among
19 unlicensed individuals. It drew a line, and it -- but
20 it drew a line at a point where it thought the actual
21 problem was. And that line was up to and including the
22 point of sale.

23 JUSTICE GINSBURG: Mr. Palmore, when the
24 Agency changed its view in 1994, there was no change in
25 the statutory text, was there?

1 MR. PALMORE: There was not, Justice
2 Ginsburg.

3 JUSTICE GINSBURG: And at that time, the
4 interpretation was that you committed the offense if you
5 sold -- if the person, the true buyer, was an
6 unlawful -- a person to whom firearms could not be sold.
7 But if you -- if the ultimate possessor was a lawful
8 possessor, then there was no liability.

9 So the -- the statute has to be open, at
10 least, to either interpretation, no change in the words.
11 The Agency read it one way, and then later changed its
12 mind and read it the other way.

13 MR. PALMORE: That's right, Justice
14 Ginsburg. And I think that takes us to the second issue
15 here, which is the materiality issue. And I think what
16 happened was that the Agency's earlier view of the
17 statute was essentially overtaken by the case law in
18 several respects. And the Agency therefore updated its
19 view and has consistently applied that view for the last
20 20 years.

21 JUSTICE BREYER: Yeah, but still -- look,
22 what I thought was a very good argument on your side is
23 exactly what I said. The narrow interpretation would
24 also apply to a straw man who buys a gun for Al Capone.
25 And so this -- this part of the statute would be

1 virtually worthless. Their response to that is don't
2 worry about that. There are plenty of other provisions
3 that will take care of that. Are there? And if it's so
4 obvious about the Al Capone, why did the ATF decide it
5 their way for 20 years? I mean, how -- how did they get
6 into that?

7 MR. PALMORE: Justice Breyer, I think
8 that -- that the other provisions that Petitioner is
9 referring to is 922(d), which makes it unlawful for
10 anyone, licensed or unlicensed, to transfer a firearm to
11 someone in a prohibited category if the transferor knows
12 or has reasonable cause to believe that the person is in
13 a prohibited category. And that is a completely
14 inadequate substitute for what -- the kind of regulation
15 we're talking here for -- for a variety of reasons. One
16 is mens rea requirement that I just mentioned.

17 So in my -- my hypothetical involving the
18 parking lot, the person -- the straw purchaser doesn't
19 even know my name, much less anything about my
20 background, whether I was dishonorably discharged from
21 the military, whether I have mental health issues.
22 Doesn't know nothing about me. He has no reason to ask.
23 I certainly have no motivation to tell him. And yet
24 that transaction can go forward, and there could be --
25 it would be very difficult to prosecute that straw

1 purchaser for an illegal transfer if it turned out that
2 I was a felon.

3 Second is the whole purpose of this
4 structure of this statute, especially after it was
5 amended in the early '90s, was to not -- was to put in
6 place and reinforce a dealer-based regulatory system in
7 which the eligibility of firearm transferees is
8 determined based on a search through a database. We
9 don't take even the transfer -- transferees say so as to
10 whether or not he's an eligible person. He has to fill
11 out the form.

12 CHIEF JUSTICE ROBERTS: I think it's very --
13 it's very problematic to talk about the overriding
14 purpose when you're dealing with a very sensitive
15 compromise. There's, as far as I can tell, nothing in
16 the language of the statute that talks about straw men
17 or actual buyers or anything like that.

18 MR. PALMORE: You're right, Your Honor, just
19 as there's nothing in the mail or wire fraud statute
20 that talks about Ponzi schemes. That -- a Ponzi scheme
21 is simply a way --

22 CHIEF JUSTICE ROBERTS: Well, but there
23 wasn't -- there wasn't a strong lobby in Congress saying
24 we're the group that supports Ponzi schemes, so maybe it
25 makes more sense to have a broad construction of that

1 provision. This language is fought over tooth and nail
2 by people on the, you know, gun control side and the gun
3 ownership side. And to say -- you look at it and say
4 well, the purpose is this, even though there's no words
5 in the statute that have anything to do with straw
6 purchasers, I think, is very problematic.

7 MR. PALMORE: Your Honor, I think we do have
8 a textual argument, which I referred to before. But
9 there's also -- it's not just a purpose argument. It's
10 a contextual and structural argument. And it's the one
11 that Justice Alito alluded to in response --

12 CHIEF JUSTICE ROBERTS: Well, you agree that
13 in Justice Alito's example, that person is regulated as
14 a gun dealer, right?

15 MR. PALMORE: At a certain point, a person
16 is --

17 CHIEF JUSTICE ROBERTS: The Yellow Pages.

18 MR. PALMORE: Right.

19 CHIEF JUSTICE ROBERTS: They're putting an
20 ad --

21 MR. PALMORE: If they're operating as a
22 seller of firearms, they would have to register.

23 JUSTICE ALITO: Well, I meant my
24 hypothetical. So he doesn't have -- he doesn't put it
25 in the Yellow Pages and he doesn't put it on the

1 Internet. He just hangs around in the parking lot at
2 Joe's to accommodate people who -- and Joe's is near the
3 border, and he wants to accommodate people who may take
4 it -- who wish to employ him as a straw purchaser.

5 JUSTICE SCALIA: You wouldn't think of
6 prosecuting him, would you?

7 (Laughter.)

8 MR. PALMORE: I mean, at a certain point, if
9 the -- if the conduct is so pervasive and regular, if
10 he's acting as a dealer, then you might be able to get
11 him on that separate provision. But you're right.
12 Before that point, you wouldn't necessarily be able to,
13 and that would be a perfectly lawful -- lawful conduct.
14 And it's also important to talk -- we were talking,
15 Justice Breyer, about --

16 JUSTICE SCALIA: Before you got on --

17 MR. PALMORE: Yeah.

18 JUSTICE SCALIA: -- I wanted to get back to
19 the Al Capone hypothetical. As I understand
20 Petitioner's case here, I don't think he's asserting
21 that if Al Capone, if -- if he intended to transfer it
22 to Al Capone, that his statement would not have been
23 material. His position is, since I intended to transfer
24 it to somebody who could lawfully possess it, the
25 statement was immaterial.

1 MR. PALMORE: And my point, Justice Scalia,
2 is that in a straw-purchase context, you're not
3 necessarily going to know you're dealing with Al Capone
4 or someone of his record. These are often cases in
5 which people have an ephemeral relationship. They may
6 not even know each other's names.

7 JUSTICE KAGAN: Well, Mr. Palmore, is that
8 right? I thought that Mr. Dietz's argument went beyond
9 what Justice Scalia just said, that for Mr. Dietz,
10 regarding -- you can -- he might be prosecuted under
11 another statute for selling something to somebody he
12 knows is Al Capone, but that he was -- you know, because
13 he was the guy at the counter and he was buying for
14 somebody else, as to this question of material
15 representation, it does not matter whether the ultimate
16 transferee was Al Capone or somebody else.

17 MR. PALMORE: I think that's right, Justice
18 Kagan. And that's his first argument and what I take to
19 be his main submission is essentially that his statement
20 was true.

21 JUSTICE KAGAN: I think he said that just
22 right in here.

23 MR. PALMORE: Right, he did. It was true,
24 so you don't even get to the materiality question. So
25 that's right. That subsequent transfer might separately

1 be a violation if he knows or has reasonable cause to
2 believe that the transferee is in a prohibited category.
3 I would just point out, though, that that would not have
4 been the case from 1968 to 1986 because 922(d), which
5 prohibits transfers to ineligible transferors -- I'm
6 sorry -- transferees applied only to licensed dealers
7 until 1986. It didn't apply to -- to private
8 individuals. So the kind of straw purchase on behalf of
9 Al Capone, as I understand it under Petitioner's theory,
10 would have been perfectly legal from 1968 to 1986, even
11 if it was knowing.

12 Justice Ginsburg, we talked a little bit
13 before about how ATF's view kind of caught up with the
14 case law. And I think some of that case law is actually
15 quite helpful here for illuminating the materiality
16 question. And it's the Crandall case from the First
17 Circuit that we talk about in the brief. If Petitioner
18 is correct that the materiality of a false statement
19 turns on whether the ultimate -- in this context,
20 whether the ultimate purchaser or the actual transferee
21 of the firearm was eligible or not, it's unclear why
22 a -- someone seeking to buy a gun from a federally
23 regulated dealer couldn't go in, provide a false name
24 and provide a false identification and receive a gun.

25 And then if he's prosecuted for that false

1 statement, he could defend, as the defendant in Crandall
2 tried to defend, saying, well, it didn't really matter
3 because I'm actually eligible. So even if you'd known
4 my true name and had my true nonforged ID, he would have
5 sold me the gun, so it's not material.

6 The courts of appeals and the lower courts
7 have consistently rejected that argument. And what
8 those courts hold is that in all cases, the lawfulness
9 of the sale of a firearm from a regulated dealer is
10 contingent on the recording, confirming, and after 1993,
11 screening of the identity of the purchaser.

12 CHIEF JUSTICE ROBERTS: Now, this -- this --
13 now you're talking about the second question.

14 MR. PALMORE: Correct.

15 CHIEF JUSTICE ROBERTS: And the provision
16 that makes the -- the information that's required, makes
17 it material -- correct me if I'm wrong -- is 922(b)(5),
18 right? That's what requires --

19 MR. PALMORE: That's one of the provisions.

20 CHIEF JUSTICE ROBERTS: Okay. Now, all that
21 says is you have to keep the information of the person
22 to whom you're transferring the firearm. So your
23 argument has to be, when somebody sees the person, they
24 realize that that means not somebody who's buying it for
25 somebody else, right?

1 MR. PALMORE: Right. And if you're with me
2 on the straw purchase idea, that this was a false
3 statement because the purpose and effect of the
4 transaction was to -- for the uncle to acquire the
5 firearm, then that was a false statement, then the
6 actual purchaser name is recorded --

7 CHIEF JUSTICE ROBERTS: Yes. Yes. I know.
8 If I assume -- if I assume you're right, then you're
9 right.

10 MR. PALMORE: If you assume I'm right on
11 issue 1, then I think that the materiality on issue 2
12 follows directly from -- from this provision that you
13 quote in 922(b)(5).

14 CHIEF JUSTICE ROBERTS: Because then
15 "person," you know carries with it the concept of not
16 just the person to whom it's transferred, which is what
17 922(b)(5) says, but the fact that it's -- has to be the
18 actual person who ends up with the gun.

19 MR. PALMORE: Yes. And I think the term
20 needs to be looked at in context. It's not just
21 922(b)(5). There's also 922(t), which is the Brady
22 provisions, and there it talks about a transfer, so we
23 talked before about how there are different terms that
24 are used.

25 CHIEF JUSTICE ROBERTS: Well, 922 --

1 MR. PALMORE: -- (t), which says that you
2 can't --

3 CHIEF JUSTICE ROBERTS: Where -- where is
4 that?

5 MR. PALMORE: This is on page 13.

6 JUSTICE SCALIA: Is that on the appendix to
7 your brief?

8 MR. PALMORE: No, I apologize, Justice
9 Scalia. There's not an appendix, but this is quoted, in
10 relevant part, on page 13 of our brief.

11 So 922(t) says that the -- no transfer of a
12 firearm can take place unless the identity of the -- of
13 transferee is confirmed with a photo identification and
14 unless that identity is screened through a database to
15 ensure that that person is eligible.

16 JUSTICE KAGAN: If you're right on Question
17 1, 922(t) just makes this a slam dunk on Question 2.
18 And there's a question about whether you are right on
19 Question 1. But if you are, (t) says, look, the dealer
20 is supposed to check the transferee, right? And if we
21 assume that when Congress says "the transferee," it's
22 the real transferee, not the fake transferee, the dealer
23 is supposed to check the real transferee. So what does
24 the dealer think is material? I mean, the question is:
25 What does a reasonable dealer think is material? I

1 better know who you are so I can check you. That's
2 material.

3 MR. PALMORE: I think that's right, Justice
4 Kagan.

5 I think that anyone looking at 922(b)(5),
6 Chief Justice Roberts --

7 JUSTICE SCALIA: I can't look at all these
8 things because they are not in your brief. I really --
9 I really resent, especially in statutory cases, not
10 having the statute in front of us. I shouldn't have to
11 flip through your -- your brief to see what page you
12 cite a little snippet from one section on.

13 MR. PALMORE: You're right. You're right,
14 Justice Scalia. I apologize for not including a fuller
15 statutory appendix in this brief.

16 But the point is of 922(b)(5) when it asks
17 for the name of the buyer, one would ask, well, what --
18 what reason -- why is this name relevant? Why is this
19 question being asked? And this goes to Justice Alito's
20 observation about the structure and purpose of the
21 statute. This name is clearly being asked because
22 Congress cared very much about preventing anonymous
23 sales of firearms. It cared very much about having a
24 record of who that first buyer was.

25 JUSTICE KAGAN: Well, it's not just the

1 structure -- it's not just the overriding purpose.
2 922(t) says that the dealer is supposed to check the
3 transferee to find out whether the transferee has a
4 criminal record, to find out whether the transferee has
5 mental illness. So who does he check? Who is the
6 transferee? Well, I need to know who the transferee is
7 to make that check. So, obviously, it's material to
8 know who the transferee is.

9 MR. PALMORE: I -- I agree, because those
10 requirements would be pointless if they could be
11 satisfied.

12 JUSTICE BREYER: But it's going to be the
13 same problem, which is the straw because the transferee,
14 in context, probably refers to the person to whom the
15 dealer transferred the weapon; namely, the buyer.

16 And does it apply, for example, if he knows
17 that the buyer is going to give the -- the weapon to
18 another person? And you will say no. Then he's not the
19 transferee, the other person. You admit that. You say
20 it. And so why is the person to whom -- the one who
21 puts up the cash is going to later transfer the weapon
22 is the same question as to whether he is really the
23 purchaser. I just don't see a difference. And,
24 therefore, I thought -- but you can explain to me why
25 there's a difference. I'd like to know that. And I

1 guess I'd like to bring you back to the -- to that issue
2 and -- and I'd just like to know how the ATF reached the
3 contrary conclusion if it would so undermine the
4 statute.

5 MR. PALMORE: Well, Justice Breyer, a couple
6 of points about this. One, as we talked about before,
7 we think Huddleston suggests that these terms -- and
8 Huddleston was interpret -- was interpreting acquisition
9 and disposition, and it gave -- it was stressed that
10 these had a practical, common sense meaning about who
11 was going to obtain possession or control of the firearm
12 as a result of the transaction, as a direct result of
13 the transaction.

14 JUSTICE BREYER: Then what about the donee?

15 MR. PALMORE: The ATF has never interpreted
16 this provision to -- to prohibit gifts. And a gift
17 recipient is in no sense a party to the gift giver's
18 purchase of the gift. That's just not the way we think
19 of gifts. The purchaser may change his mind. The
20 purchaser is not acting at the direction and control of
21 the gift recipient. And in ATF's experience, there's
22 not a problem with gift recipients.

23 JUSTICE SOTOMAYOR: You don't think
24 that crime bosses --

25 MR. PALMORE: I'm sorry.

1 JUSTICE SOTOMAYOR: You don't think crime
2 bosses look at their underlings, pay them a lot of money
3 for whatever they're doing and just say, go get me a gun
4 and give it to me?

5 MR. PALMORE: Well, I think that that -- I
6 would suggest that that wouldn't be a gift under that
7 scenario, Justice Sotomayor.

8 JUSTICE SOTOMAYOR: Why?

9 MR. PALMORE: That person is working for the
10 crime boss and as part of his duties to go obtain a gun,
11 then he's buying that gun on behalf of the crime boss.

12 JUSTICE SOTOMAYOR: Could you answer Justice
13 Kennedy's question? Is -- is this all contingent on the
14 intent at the moment? I mean, you had a lovely wrapped
15 case here because you had the money transferred before
16 the purchaser, so there's no question that the intent
17 was to purchase for the uncle. But what about the
18 situation where there's a conversation beforehand that
19 says, I'm going to buy the gun and I'll sell it to you
20 afterwards?

21 MR. PALMORE: I think the question -- there
22 could be a factual question in some of these cases. The
23 question would be: Was that purchase made on behalf of
24 someone else? There's no factual issue here. This was
25 a guilty plea, so we have to assume that this

1 transaction was made on behalf of the uncle. As a
2 factual matter, Petitioner disputes whether that matters
3 legally or not and --

4 JUSTICE SOTOMAYOR: I'm not sure what you
5 mean. I gave you a hypothetical. What -- what -- why
6 is it a factual --

7 MR. PALMORE: Right. And in your
8 hypothetical, I think that would be a straw purchase.
9 That purchase was made -- even if the money was going to
10 come later, that purchase was made on behalf of the
11 absent party and it can't proceed for a variety of
12 reasons that --

13 JUSTICE SCALIA: This is a criminal statute.
14 And -- and you're saying that when -- when I buy it and
15 I told somebody I'll sell it to you later, that I am
16 acting as an agent? Wow. It's a criminal statute.

17 MR. PALMORE: Justice Scalia, and Huddleston
18 is helpful in this regard, too. There was a notice rule
19 of lenity argument made there because the person in that
20 case wasn't actually buying the firearm. He had pawned
21 it to the pawn shop and he was redeeming it. And he
22 came in and said, I'm not buying it, I'm just getting my
23 own property back. I'm not buying it or acquiring it.

24 And the court relied, in rejecting that
25 argument, relied in part on Form 4473, because it

1 provided notice that he had to check these boxes and had
2 to truthfully answer the question. I think it's rare
3 that you get a case with this degree of notice. When
4 the -- when the defendant is actually committing the
5 offense and making the false statement, he's told in
6 bold letters right in front of him not to do what he's
7 about to do and it -- and it includes a hypothetical --

8 CHIEF JUSTICE ROBERTS: Well, he's not told
9 that in the statute. He's told that in a form that was
10 quite different from the form that was used before.

11 MR. PALMORE: That's right, Your -- Chief
12 Justice Roberts. It's a form that's been used
13 consistently for -- for 20 years. And for the reasons
14 that we've said, we think that the -- the current view
15 of the ATF and the express instructions on the form are
16 actually the most consistent with the statute, because
17 the statute requires identification of a firearm
18 purchaser to be recorded, confirmed, and screened in
19 every case. That's not contingent on the person turning
20 out to be eligible or not. Congress wanted to prevent
21 anonymous sales of firearms, and it had a purpose,
22 obviously, to keep --

23 JUSTICE KENNEDY: As to whether or not there
24 was a sale, suppose the facts in this case, it was a
25 Glock, I think --

1 MR. PALMORE: Yes.

2 JUSTICE KENNEDY: -- was -- was delivered,
3 and suddenly the -- Abramski finds that it's a valuable
4 collector's item. There were only two or three of these
5 made, had a special trigger or something, and it's now
6 immensely valuable.

7 Could the uncle insist that it be sold to
8 him for the \$700, or for the -- for the agreed price?
9 The \$400 thing?

10 MR. PALMORE: I think it's not clear,
11 Justice Kennedy. There might be -- there might be a
12 contract between --

13 JUSTICE KENNEDY: Well, if it isn't -- if it
14 isn't, then there wasn't -- then there -- there was a
15 subsequent sale.

16 MR. PALMORE: Right. But, of course, here
17 there's no subsequent sale because the check was written
18 beforehand.

19 JUSTICE KENNEDY: Well, I'm asking about
20 that.

21 MR. PALMORE: Right. I think if -- if the
22 Petitioner changed his mind and decided not to actually
23 transfer it, I think, as a technical matter, that
24 wouldn't affect the legality because what mattered was,
25 was he making a purchase on behalf of another and

1 entering a false statement at the time he made it.

2 A fact question could arise in a -- in a
3 situation like that, which a defendant could argue, I
4 wasn't actually making the purchase on behalf of someone
5 else, and that argument is supported by subsequent
6 events.

7 But I think we were -- I was about to say
8 that the one critical purpose of the statute, obviously,
9 was to keep firearms out of the hands of ineligible
10 persons, but another critical purpose was to offer the
11 tracing of firearms and to prevent the anonymous
12 stockpiling of firearms.

13 And with respect to that purpose, I think
14 the facts of some of the cases underlying the circuit
15 split on the second issue of materiality are quite
16 salient. Those are all cases in which eligible parties
17 wanted to anonymously obtain large quantities of
18 firearms for illicit reasons. They were eligible, but
19 they had -- they wanted to not have their name
20 associated with the transaction. So Polk, which is the
21 Fifth Circuit case, which is actually on Petitioner's
22 side, that person wanted to anonymously acquire firearms
23 to create a stockpile to attack an IRS building, to kill
24 police officers, and to assassinate a judge. But he was
25 eligible.

1 In Frazier and Morales, which are the
2 Eleventh and Sixth Circuit cases addressing this
3 materiality issue, there were straw purchases on behalf
4 of eligible buyers, but they were, again, wanting to
5 anonymously stockpile weapons and not have their names
6 associated with them because they were smuggling them
7 out of the country. And the Petitioner's view of the
8 statute in which a straw purchaser can satisfy the
9 requirement that the first transaction, at the point of
10 sale be recorded would completely satisfy the statutory
11 requirements, would greatly impair the ability of ATF to
12 trace firearms and to have an accurate record of who
13 that first purchaser of the firearm was.

14 If there are no further questions, we'd ask
15 that the judgment of the court of appeals be affirmed.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.

17 Mr. Dietz, you have four minutes.

18 REBUTTAL ARGUMENT OF RICHARD D. DIETZ

19 ON BEHALF OF THE PETITIONER

20 MR. DIETZ: Justice Ginsburg, you asked
21 counsel whether this was a case where there were two
22 interpretations of the statute. Counsel conceded that
23 there were. I think that's an important point because,
24 of course, we're dealing with a criminal statute. If
25 there are two interpretations under very well-settled

1 precedent from this Court, the court applies the
2 interpretation that's favorable to the criminal
3 defendant and that's part of the doctrine of criminal
4 law.

5 Justice Kennedy, you -- you mentioned the --
6 the agency situation that existed here between
7 Mr. Abramski and his uncle. And here, I think it's
8 important to note that there wasn't even any
9 consideration. This was truly a purchase that was just
10 a favor for a family member. And the government, in
11 order to advance this straw purchaser theory that
12 historically came from civil common law, there needs to
13 be a relationship between Mr. Abramski and his uncle
14 that is a fiduciary relationship where Mr. Abramski is
15 required to act in his uncle's best interests at all
16 times.

17 And that, for example, if he left the gun
18 store and someone said, hey, did you just pick up a
19 Glock, I'll buy it for you for \$500, that Mr. Abramski
20 could not even enter into that sale without providing
21 his uncle with -- with any money he made from that sale.

22 And there's -- there's a complex set of
23 civil agency law principles that apply here that just
24 don't translate to the straw purchaser doctrine as we've
25 described it. And I think that's a fundamental flaw in

1 the government's theory is that the courts just have
2 never thought through all of the various situations that
3 apply in these fiduciary relationships and how you would
4 apply them to situations where you're just buying a gun
5 for a family member or something of that nature.

6 I also wanted to turn to the gift exception.
7 There's also another exception the government
8 acknowledges and that's for raffles and contests at
9 charities or, you know, political fundraisers. And so
10 in that circumstance, the person who's buying the gun
11 knows that they're giving it to a complete stranger and
12 someone who by random chance wins the right to own the
13 gun.

14 But in those cases, the government says
15 there's no need, at the time that you buy the gun, to
16 take any steps to ensure there's recordkeeping or a
17 background check on that person. And I think that
18 undermines this idea that everyone receiving a gun in
19 the chain from the gun dealer Congress wants to have a
20 background check. Congress is concerned about providing
21 enough information to allow for tracing and nothing
22 more.

23 And as a final point, Your Honors, I think,
24 perhaps, the most important point in this case is if the
25 Court rejects the straw purchaser doctrine as it -- as

1 it applies in this case to a lawful gun owner buying for
2 another, there are really no harmful consequences. The
3 government retains a very robust toolbox of criminal
4 statutes to prosecute illegal straw purchasers, those
5 who buy guns to get them into the hands of prohibited
6 persons, and the government will receive accurate,
7 truthful information about that first sale so they can
8 trace firearms when they're used in the commission of a
9 crime.

10 So the only thing the straw purchaser
11 doctrine in this case really accomplishes is to prohibit
12 law-abiding citizens from buying guns for other
13 law-abiding citizens, and that's something that Congress
14 expressly chose not to do. And we would ask this Court
15 to remain faithful to the statutory scheme actually
16 enacted by Congress.

17 JUSTICE ALITO: Well, if we agreed with you
18 on the -- on the second argument, would the government
19 have to prove that the person to whom the straw
20 purchaser transferred the gun was ineligible or would it
21 be a defense if it was shown that the person was
22 eligible?

23 MR. DIETZ: I think the government would
24 have the burden there, Your Honor. And I think the
25 government has suggested -- they provide an example of a

1 circumstance where the -- the person who bought the gun
2 was buying it for someone named, I believe, Almonio, who
3 they had no idea who that was. But, yes, in that
4 circumstance, the government would need to prove that
5 that person was prohibited.

6 But I think in circumstances like that where
7 you're buying guns for someone you don't even know who
8 that person is, the government may well have evidence in
9 that case that you either knew or had reasonable cause
10 to believe that that person was prohibited from
11 possessing a gun.

12 JUSTICE BREYER: But the other purpose that
13 they said this provision has is to get gun dealers to
14 run checks. And you can't run a check if the name isn't
15 there.

16 MR. DIETZ: That's right, Your Honor. And,
17 of course, you can't run a check on someone who wins the
18 gun in a raffle or --

19 JUSTICE BREYER: Yes. But the other
20 problem -- we're back to the language. The -- there --
21 they say your client, you know, falls within the
22 language and you say he doesn't. Is it -- all right.
23 Forget it.

24 MR. DIETZ: Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

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The case is submitted.

(Whereupon, at 12:04 p.m., the case in the
above-entitled matter was submitted.)

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