

NO. \_\_\_\_\_

---

**IN THE SUPREME COURT OF THE UNITED STATES**

---

**OCTOBER TERM 2024**

---

**GREGORY STUMP, Petitioner,**

**v.**

**UNITED STATES OF AMERICA, Respondent**

---

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

---

L. RICHARD WALKER  
First Assistant  
Federal Public Defender's Office  
For the Northern District of WV  
230 West Pike Street; Suite 360  
Clarksburg, West Virginia 26301  
(304) 622-3823  
*Counsel for Gregory Stump*

## I. QUESTION PRESENTED

Stump asks this Court to determine whether 26 U.S.C. § 5861(h), which prohibits possession of a firearm with an obliterated serial number, violates the Second Amendment on its face and, more narrowly, whether Second Amendment protected “conduct,” for purposes of *Bruen’s* step one, consists of anything other than an individual’s possession or carrying of a bearable firearm.

## II. PARTIES TO THE PROCEEDING

Mr. Gregory Stump is the Petitioner. The United States of America is the Respondent in this matter.

**III. TABLE OF CONTENTS**

I. QUESTION PRESENTED FOR REVIEW ..... 1

II. PARTIES TO THE PROCEEDING ..... 2

III. TABLE OF CONTENTS..... 3

IV. TABLE OF AUTHORITIES ..... 4

V. OPINIONS BELOW ..... 5

VI. JURISDICTION ..... 6

VII. CONSTITUTIONAL PROVISION INVOLVED..... 7

VIII. STATEMENT OF THE CASE..... 8-14

IX. REASON FOR GRANTING THE WRIT ..... 14-19

X. CONCLUSION ..... 20

APPENDIX A – APPEALS COURT OPINION

APPENDIX B – APPEALS COURT JUDGMENT ORDER

APPENDIX C – DISTRICT COURT JUDGMENT ORDER

## IV. TABLE OF AUTHORITIES

### Federal Cases

<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	16,17,18
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010) .....	16
<i>New York State Rifle &amp; Pistol Association, Inc. v. Bruen</i> , 142 S. Ct. 2111 (2022) .....	12,13,14,15,16,17,18,20
<i>United States v. Carter</i> , 750 F.3d 462 (4th Cir. 2014) .....	17
<i>United States v. Chester</i> , 628 F.3d 673, 676 (4th Cir. 2010).....	17
<i>United States v. Hosford</i> , 843 F.3d 161 (4th Cir. 2016).....	17
<i>United States v. Mahin</i> , 668 F.3d 119 (4th Cir. 2012).....	17
<i>United States v. Miller</i> , 307 U.S. 174 (1939) .....	18
<i>United States v. Price</i> , 111 F.4th 392 (4th Cir. 2024) .....	14,16,18,20
<i>United States v. Pruess</i> , 703 F.3d 242 (4th Cir. 2012).....	17
<i>United States v. Gregory Stump</i> , No. 22-431.....	5

### Constitutional Provisions:

U.S. Const., amend. II .....	<i>passim</i>
------------------------------	---------------

### Other Sources:

18 U.S.C. §§ 922(g)(3) .....	7,11,14
18 U.S.C. §§ 924(a)(2) .....	7,11
18 U.S.C. § 3231.....	8
18 U.S.C. § 3742.....	8
26 U.S.C. §§ 5842.....	8,12
26 U.S.C. §§ 5861(h) .....	8,12,14,15
28 U.S.C. § 1254.....	6
28 U.S.C. § 1291.....	8

## V. OPINIONS BELOW

Stump is seeking review of the unpublished opinion by the United States Court of Appeal for the Fourth Circuit, *United States v. Gregory Stump*, No. 22-4431, which is attached to this Petition as Appendix A. The judgment of the United States Court of Appeals for the Fourth Circuit is attached as Appendix B. The final judgment order of the United States District Court for the Northern District of West Virginia is unreported and is attached to this Petition as Appendix C.

## **VI. JURISDICTION**

This Petition seeks review of an unpublished opinion of the United States Court of Appeals for the Fourth Circuit, decided on November 21, 2024. No petition for rehearing was filed. This Petition is filed within 90 days of the date the court's entry of its judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

## **VII. CONSTITUTIONAL PROVISION INVOLVED**

This case requires interpretation and application of the Second Amendment to the U.S. Constitution which provides: “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.”



## VIII. STATEMENT OF THE CASE

### A. Federal Jurisdiction.

This is a single-defendant case involving a two-count indictment for firearms offenses. On July 7, 2021, a federal grand jury indicted Stump in Count One with unlawful possession of a firearm as an unlawful drug user, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2), and in Count Two with possession of a firearm with an obliterated serial number in violation of 26 U.S.C. §§ 5842, 5861(h) and 5871. J.A. 3, 11-12.<sup>1</sup> Because the charges contained in Count One and Count Two of the Indictment constitute offenses against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231.

On March 29-31, 2022, Stump proceeded to trial. A jury found Stump not guilty of Count One and guilty of Count Two. J.A. 485-487. On July 25, 2022, the district court imposed a prison sentence of twenty-seven months, followed by three years of supervised release, and entered its final judgement on July 27, 2022. J.A. 537-543. On August 1, 2022, Stump filed a timely notice of appeal. J.A. 544.

Because the charges constitute offenses against the United States, the district court had jurisdiction pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

---

<sup>1</sup> “J.A.” refers to the Parties’ Joint Appendix submitted in connection with the direct appeal to the Fourth Circuit.

## **B. Factual Background.**

Stump is from Moorefield, West Virginia. J.A. 551. Prior to his arrest, Stump was not a felon and was not otherwise prohibited from possessing a firearm under federal law. J.A. 556-560. His presentence report concludes he has zero criminal history points. *Id.*

Stump stands convicted of possession of a .45 caliber Taurus semi-automatic pistol he purchased at a gun shop near his home. J.A. 553-554. The pistol is ordinary and lawful in every sense, except that it lacked the legible original serial number. J.A. 3, 11-12. Stump did not use this firearm in connection with any other crime for which he was convicted. Rather, Stump carried and used the pistol to defend himself. It is undisputed that an armed woman shot at Stump with a 9 mm pistol while he was seated in his vehicle on a public street in Morgantown, West Virginia. J.A. 553-554.

Prior to this incident, Stump worked at Walmart and attended training sessions at a Walmart location in Fairmont, West Virginia. J.A. 419. In 2017, while in training in Fairmont, Stump met Mariah Akers. J.A. 539, 419. Mariah attended College in Fairmont. J.A. 180. They started a relationship. J.A. 209, 419. To be sure, the relationship was not traditional. J.A. 183-184. Mariah suffered from substance use disorder. J.A. 180-181. Mariah worked in the sex industry. J.A. 183. In addition, there was a notable age difference between the two. J.A. 209. The Government claimed Stump abused, coerced, and threatened Mariah, but Stump was never charged with any other crimes arising out his relationship

with Mariah such as domestic violence or stalking, which were raised and suggested by the Government. J.A. 145-165.

On April 10, 2020, Stump drove from Moorefield to Morgantown to see Mariah. J.A. 553. Stump picked her up at her home at 797 Grand Street, Morgantown, West Virginia. *Id.* They went out for a few hours and Mariah wanted to return home. *Id.* Apparently, the couple had a disagreement at some point and Mariah entered her home and never came out. J.A. 420. Stump remained in his car in the neighborhood, waiting for Mariah. J.A. 420.

At approximately 4 am, Mariah's sister, Dusti Akers, retrieved a firearm from their residence and confronted Stump who was seated in his vehicle. J.A. 553-545. Dusti Akers believed that Stump possessed a firearm based upon her conversations with Mariah. *Id.* Dusti Akers told Stump to leave and further advised that Mariah was not going anywhere with Stump. *Id.* Stump told Dusti Akers he was not leaving without Mariah. Dusti Akers saw a firearm in the Stump's vehicle. *Id.* Dusti Akers fired the handgun she was holding inside Stump's vehicle, penetrating the headrest of Stump's seat, and then Stump fired his firearm at Dusti Akers. *Id.*

A neighbor called 911 and officers from the Morgantown Police Department responded. *Id.* MPD officers obtained a search warrant for the residence on Grand Street and subsequently recovered a Taurus pistol, model G2C, 9mm caliber, serial number TMD66605, from an air vent in which another resident, Tyler Postle, admitted to having hidden the firearm immediately after the shooting. *Id.* Officers

also found a 9mm caliber fired cartridge casing on Grand Street in front of the residence. *Id.* MPD officers arrested Dusti Akers for wanton endangerment. *Id.* Around the same time, MPD officers conducted a traffic stop on Stump's vehicle as he left the scene. Stump admitted to arguing with Mariah Akers, and to having fired his own .45 caliber pistol. *Id.* A pat down of Stump yielded pharmaceutical pills, cocaine, a smoking pipe, two straws containing cocaine, and a subsequent search warrant executed on Stump's vehicle yielded a Taurus pistol, model PT145, .45 caliber, with an obliterated serial number, as well as ammunition. *Id.* In addition, a fired .45 caliber cartridge casing was in the front passenger seat of the vehicle. *Id.*

### **C. Procedural History.**

A federal grand jury in the Northern District of West Virginia returned an indictment on July 7, 2021. J.A. 3. Count One charged that “on or about April 10, 2020, in Monongalia County, in the Northern District of West Virginia, defendant GREGORY STUMP, knowing that he was an unlawful user of and addicted to a controlled substance, that is cocaine, knowingly possessed a firearm, to wit, a Taurus pistol, model PT 145, .45 caliber, with an obliterated serial number, said firearm was in and affecting commerce; in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2).” J.A. 11.

Count Two charged “on or about April 10, 2020, in Monongalia County, in the Northern District of West Virginia, defendant GREGORY STUMP, knowingly received and possessed a firearm, that is a Taurus pistol, model 145, .45 caliber,

which had the serial number as required by chapter 53 of Title 26, obliterated, in violation of Title 26, United States Code, Sections 5842, 5861(h), and 5871.”<sup>2</sup> J.A. 12.

On July 20, 2021, Stump appeared with a summons for an initial appearance held in Clarksburg, West Virginia. J.A. 3. On March 29-31, 2022, Stump appeared with his attorneys for trial by jury in United States District Court, Clarksburg, West Virginia. J.A. 14. On March 31, 2022, the jury found Stump not guilty of the charge contained in Count One of the Indictment and guilty of the charge contained in Count Two of the Indictment. J.A. 485-487.

On June 25, 2022, Chief U.S. District Court Judge Thomas S. Kleeh sentenced Stump to twenty-seven months in prison, followed by a term of supervised release of three years. J.A. 9. The district court issued a judgment in a criminal case on July 27, 2022. J.A. 537-543. Stump filed a timely notice of appeal on August 1, 2022. J.A. 544.

#### **E. The United States Court of Appeals for the Fourth Circuit.**

Stump contended on appeal that 26 U.S.C. § 5861(h) violates the Second Amendment on its face. The Supreme Court changed the game on Second Amendment jurisprudence in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The Supreme Court issued this decision on June 23,

---

<sup>2</sup> In pertinent part, 26 U.S.C. § 5861(h) states, it shall be unlawful for any person “to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed or altered . . . .”

2022, after Stump was found guilty by a jury and two days before he was sentenced to a term of imprisonment. There, the Court set aside the analytical framework federal Courts had adopted for analyzing Second Amendment challenges.

*Bruen's* new framework provides that if the Second Amendment's plain text covered Stump's conduct, then it is presumptively constitutionally protected. To convict Stump for this conduct, Stump argued the Government must affirmatively prove that a total ban on receipt of firearms by without serial numbers is consistent with this nation's historical tradition of firearm regulation. Stump argued the Government cannot meet this burden, even under a plain error standard; thus, the Second Amendment's unqualified command controls and the Fourth Circuit should have reversed Stump's conviction as constitutionally impermissible.

Specifically, at *Bruen's* step one, Stump argued the Second Amendment's "plain text" covers his conduct because (1) the firearm he possessed is an "Arm[]," (2) possessing that firearm constitutes "keep[ing]" it, and (3) he is one of "the people" who enjoy Second Amendment rights. On the last point, he noted that *Heller* construed "the people" as "unambiguously refer[ring] to all members of the political community, not an unspecified subset." He pointed out that *Heller* said "the people" refers to all "persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community," and he explained that *Heller* read "the people" to have the same meaning it has in the First, Fourth, and Ninth Amendments, which protect all

American citizens. Finally, he emphasized that *Heller* held, and *Bruen* reaffirmed, that “the people” protected by Second Amendment comprise “all Americans.”

At *Bruen*’s step two, Stump argued the Government would be unable to show that § 5861(h) squares with America’s tradition of firearms regulation. He explained that the legal requirement of serial numbers did not appear until 1934 and that serial numbers were not broadly required for all firearms manufactured in the United States until 1968.

The Government disagreed with Stump on each of these questions. It argued that (1) § 5681(h) prohibits conduct that is not protected by the Second Amendment’s text; (2) “the people,” as used in the Second Amendment, is limited to “law-abiding, responsible citizens,” and therefore does not include people who use firearms without serial numbers; (3) § 5681(h) is consistent with America’s tradition of firearms regulations; and (4) it is a law that is a presumptively lawful regulatory measure.

The Fourth Circuit agreed with the Government. In its short, unpublished opinion, it held that “[w]e recently considered a similar argument in *United States v. Price*, 111 F.4th 392 (4th Cir. 2024) (en banc). There, we rejected a Second Amendment challenge to 18 U.S.C. § 922(k), which, like 26 U.S.C. § 5681(h), prohibits the possession of a firearm with an obliterated serial number. *Id.* at 396-97, 408. *Price*, we conclude, clearly forecloses Stump’s challenge to the validity of his conviction.” Opinion at 2.

## IX. REASONS FOR GRANTING THE WRIT

**The writ should be granted to determine, when analyzing a challenge to a firearm regulation like 26 U.S.C. § 5861(h), what constitutes Second Amendment protected “conduct” under *Bruen’s* step one. Through a straightforward application of *Heller* and *Bruen*, this should require no more than possession or carrying of a bearable firearm.**

This Petition should be granted to address the important question of constitutional law which has not yet been settled by this Court. *See* Rules of the Supreme Court 10(c). That is, when analyzing a challenge to a firearm regulation under the Second Amendment, does the protected “conduct” needed to meet step one in *Bruen* require anything more than an individual’s possession of a bearable firearm? The Fourth Circuit took this question to an extreme in *Price* and got it wrong, as discussed below. In turn, the Fourth Circuit erred when it relied on *Price* to affirm Stump’s conviction.

This problem will continue until this question is resolved by this Court. Leaving the Fourth Circuit’s ill-conceived *Bruen’s* step-one framework intact is having an impact and it will continue to have an impact within the Fourth Circuit and beyond. It is affecting a large number of people and many litigants involved in the ongoing Second Amendment litigation across the country.

The Fourth Circuit’s construction of *Bruen’s* step one goes well beyond what this Court intended. It is inconsistent with both the Second Amendment’s plain text and this Court’s Second Amendment jurisprudence. This Petition should be granted so this Court may address that compelling issue, correct the problem that



currently exists in the Fourth Circuit after *Price*, give Stump the relief he deserves, and give further guidance to the courts below.

Just over two years ago, this Court held that means-end scrutiny had gone “one step too many” in the Second Amendment context. *New York State Rifle & Pistol - 13 - Ass’n, Inc. v. Bruen*, 597 U.S. 1, 2 (2022). Rather than simply apply *Bruen*’s streamlined text and history framework, in *Price*, the Fourth Circuit did just the opposite and added additional layers of analysis into *Bruen*’s step one. 111 F.4th at 398-408. This significantly skewed the answer to what is merely the preliminary question of what conduct is protected by the Second Amendment. Nothing in the Second Amendment’s plain text, or *Bruen*, contemplates anything like that. Indeed, *increased* Second Amendment deference, *not decreased*, is the intended consequence of *Bruen*. And this increased deference did not just materialize out of thin air in 2022.

Prior to *Bruen*, for fourteen years, Justice Thomas had consistently observed both the states and lower federal courts were resisting this Court’s decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), by failing to protect Second Amendment rights to the same extent they protected other constitutional rights. *Bruen* was the predictable reaction to this problem.

The *Price* majority similarly misapplied *Bruen*’s step one in a manner that imitates intermediate means-end scrutiny by continuing to avoid meaningful historical justification of regulations burdening Second Amendment protections.

111 F.4th at 398-408. The approach of lower courts, in general, and now the Fourth Circuit’s in *Price*, mirrors post-*Heller* Second Amendment litigation when the Courts of Appeals coalesced around intermediate means-end scrutiny. *See, e.g., United States v. Hosford*, 843 F.3d 161 (4th Cir. 2016); *United States v. Carter*, 750 F.3d 462 (4th Cir. 2014); *United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012); *United States v. Mahin*, 668 F.3d 119 (4th Cir. 2012); *United States v. Chester*, 628 F.3d 673, 676 (4th Cir. 2010)(noting *Heller*’s explanation of how rational-basis scrutiny would be inappropriate for analyzing infringements on individual Second Amendment rights).

Under means-end scrutiny, the lower courts created a new vocabulary for “core/noncore” categories of citizens, distinguishing between “law abiding” individuals who enjoyed “full” Second Amendment protections in their homes and everyone else afforded materially diminished Second Amendment protections. The Second Amendment’s plain text never supported this two-tiered approach, nor did anything in *Heller*.

The fact that *Chester*’s framework was adopted by all other Courts of Appeals did not make it analytically correct, as evidenced by *Bruen* itself, which ultimately dispensed with means-ends scrutiny analysis of Second Amendment protections altogether. The Fourth Circuit held that the analysis under *Bruen*’s first step must include an evaluation of the historical scope of the Second Amendment right. *Price*, 111 F.4th at 401. In doing so, the Fourth Circuit went far beyond what this Court required for step one in *Bruen*.

Assuming *arguendo* that the Fourth Circuit’s approach may be correct, then *Bruen*’s second step involving a deep historical analysis becomes not only redundant, but also completely meaningless. That was not this Court’s intent. Historical analysis in *Bruen*’s step one, as done in *Price*, places the burden on the regulation’s challenger and effectively ensure no historical analysis is ever conducted at *Bruen*’s step two. Such was the case with intermediate means-end scrutiny. Simply, the Fourth Circuit in *Price* places defendants and anyone challenging a statute in the position they would be in *before Bruen*. That result cannot be permitted by this Court.

The current approach in the Fourth Circuit is inconsistent with *Bruen*, which squarely places the historical analysis in step two where the Government *must* demonstrate a well-established and representative historical tradition that justifies upholding the challenged regulation. The Fourth Circuit’s reimagining of *Bruen*’s Second Amendment protected “conduct” inquiry is contrary to *Heller*, in which this Court already defined what that “conduct” is: simply keeping and bearing arms. *Heller*, 554 U.S. at 581-593.

In analyzing *United States v. Miller*, 307 U.S. 174 (1939), and the “common use” element of *Bruen*’s step one, the Fourth Circuit correctly perceived that *Heller*’s construction of *Miller* limited Second Amendment protections to “arms in common use at the time for lawful purposes like self-defense.” *Price*, 111 F.4th at 400. The Fourth Circuit, however, surged past this understanding by applying the common use inquiry in *Bruen*’s step one and then focusing only on the non-functional

characteristics of guns with obliterated serial numbers. At which point the “common use for lawful purposes” element becomes completely a circular exercise.

## X. CONCLUSION

For these reasons, Stump respectfully request that this Honorable Court grant a writ of certiorari and review the judgment of the Court of Appeals. Given the substance of the Fourth Circuit's decision below and in *Price*, declining to grant certiorari now will exact a persistently heavy price on individual firearm owners. Likewise, a failure to act now will impede the proper development of the post-*Bruen* Second Amendment jurisprudence. This Court must intervene now and articulate the correct method for identifying protected Second Amendment conduct under *Bruen*'s step one. It is a compelling and extremely important issue which will impact many Second Amendment cases going forward in both state and federal courts.

Respectfully submitted,

**GREGORY STUMP**

By counsel,

/s/ L. Richard Walker  
First Assistant Federal Defender  
230 West Pike Street  
Suite 360  
Clarksburg, West Virginia 26301  
304.622.3823  
Richard\_Walker@fd.org