No. 23-852

In the Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,

Petitioners,

v.

JENNIFER VANDERSTOK, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS VANDERSTOK, ANDREN, TACTICAL MACHINING, FIREARMS POLICY COALITION, INC., AND BLACKHAWK MANUFACTURING GROUP, INC.

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INTRODUCTION

The Gun Control Act of 1968 is the principal federal law regulating the American commercial firearm market. A key provision of the GCA is its definition of "firearm." Items defined as "firearms" are subject to substantial federal statutory requirements, including serialization requirements for manufacturers and background check requirements for retailers and purchasers. Items not within the GCA's definition of "firearm" are not subject to these requirements.

As relevant here, the GCA defines "firearm" as "(A) Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon." The term "frame or receiver" was defined by regulation shortly after enactment of the GCA. Consistent with ordinary meaning, the regulation defined frame or receiver as "that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward position to receive the barrel." This initial regulatory definition remained unchanged until 2022 and said nothing about precursors of frames or receivers or parts kits.

By 2022, Congress had considered several bills to amend the GCA to expressly cover precursors of frames and receivers and parts kits, but none had been enacted. In April 2022, ATF took matters into its own hands by promulgating the challenged Rule. The Rule added to the definition of firearm in two pertinent respects. First, the Rule expanded the definition of frame or receiver to include precursors that "may readily be … converted to function as a frame or receiver." Second, the Rule expanded the definition of

firearm to include weapon parts kits that "may readily be … converted to expel a projectile by the action of an explosive." The Rule also changed the regulatory definition of frame or receiver to require housing only of the breechblock (for receivers) or one component of the firing mechanism (for frames).

These changes are inconsistent with the GCA's definition of firearm. With respect to precursors of frames or receivers, it would be strange to say that an item that must be *converted*—i.e., *transformed*—to function as a frame or receiver *is* a frame or receiver. The interpretative difficulty is enhanced by the immediate statutory context, namely the express *inclusion* of readily converted language in Part (A) of the definition of firearm coupled with its *exclusion* from Part (B). It also is enhanced by the broader statutory context, most pertinently the GCA's treatment of the frames or receivers of machineguns *as* machineguns. Under the Rule, heretofore perfectly legal semiautomatic firearm receivers likely qualify as machineguns because they could be readily converted to machinegun receivers under ATF's standards. ATF's Rule thus risks turning law-abiding firearm owners into felons. And even if this analysis were incorrect, ATF's expansion still would be unlawful because ATF has changed the underlying definition of frame and receiver in a way that departs from the ordinary meaning of those terms.

With respect to parts kits, the GCA covers only *weapons* that can readily be converted into firearms. An incomplete collection of parts is not a "weapon." What is more, the GCA replaced the previous definition of "firearm" under federal law, which had included all firearm parts, with a definition that was

focused on a single part—the frame or receiver. Yet the only marginal difference the weapon parts kit provision makes is to attempt to bring within the definition of "firearms" collections of parts that lack a frame or receiver, however those terms are defined. Such kits are not "firearms" under the GCA.

While the foregoing demonstrates that the Rule exceeds ATF's authority, to the extent that any doubt remains it should be resolved against the Agency. This is required both by the canon of constitutional avoidance and by the rule of lenity.

There is an ongoing policy debate about whether privately made firearms should be regulated by the federal government. ATF insists that they should be, pointing to firearm tracing figures allegedly showing an increase in criminal misuse of such firearms. There are reasons to question ATF's claims, but those claims are not at issue. Rather, the decisive fact in this case is Congress's decision, in the GCA, to focus on the commercial firearm market rather than the private making of firearms for personal use. Accordingly, the GCA does not reach the items used in private firearm making that ATF attempts to regulate. To the extent changed circumstances call for a changed regulatory approach, that change must be made by Congress, not ATF.

STATEMENT

I. Statutory and Regulatory Background

A. Congress enacted the National Firearms Act in 1934 as the first federal statute regulating the firearm industry. The purposes of the NFA were "[t]o provide for the taxation of manufacturers, importers, and dealers in certain firearms and machine guns, to tax

the sale or other disposal of such weapons, and to restrict importation and regulate interstate transportation thereof." National Firearms Act of 1934, ch. 757, 48 Stat. 1236, 1236 (June 26, 1934). The NFA defined "firearm" to include only certain short-barreled shotguns or rifles, machine guns, and firearm silencers or mufflers. *Id.* It "imposed a tax on the making and transfer of firearms defined by the [NFA], as well as a special (occupational) tax on persons and entities engaged in the business of importing, manufacturing, and dealing in [NFA] firearms." *National Firearms Act*, ATF, https://perma.cc/W69T-GGTN (last visited Aug. 8, 2024). Four years later, Congress augmented the NFA with the Federal Firearms Act, which was less restrictive but had a broader scope. The statute defined "firearm" to include "any weapon … designed to expel a projectile or projectiles by the action of an explosive … or any part or parts of such weapon." Federal Firearms Act of 1938, ch. 850, Pub. L. 75-785, 52 Stat. 1250, 1250 (June 30, 1938) (repealed 1968).

For thirty years, Congress occasionally amended the NFA and FFA in response to changes in firearms technology or court decisions. For instance, in the 1960s, the NFA's restriction on short-barreled shotguns was limited to weapons that were capable of "us[ing] the energy of the explosive in a fixed shotgun shell to fire [a projectile]." *United States v. Thompson*, 202 F. Supp. 503, 505 n.3 (N.D. Cal. 1962) (quoting the then-applicable definition from 26 U.S.C. § 5848). After court decisions holding that short-barreled shotguns that were missing a firing pin were not covered by the NFA because they were incapable of firing, *see id.* at 506–07, Congress amended several NFA definitions in 1968 to capture firearms that could be "readily restored" to functionality, *see* Pub. L. 90-618, 82

Stat. 1213, 1231 (Oct. 22, 1968); *see also United States v. Drasen*, 845 F.2d 731, 736 (7th Cir. 1988).

The year 1968 brought the most significant changes to the federal regulation of firearms since 1934, as Congress replaced the FFA with the Gun Control Act, "the first comprehensive federal statute regulating commerce in firearms." *See* FIREARMS LAW DESKBOOK § 2:2 (Oct. 2023). The GCA created a new, four-part definition of "firearm." *See* 18 U.S.C. § 921, *et seq*. As defined in the GCA, and as it has remained since 1968,

> [t]he term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C. § 921(a)(3). While the FFA had treated "any part or parts" of a firearm as a firearm, experience had proven that it was "impractical to have controls over each small part of a firearm. Thus, the [GCA's superseding] definition substitute[d] only the major parts of the firearm; that is, frame or receiver for the words 'any part or parts.' " S. REP. NO. 90-1097 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200.

Congress authorized the Attorney General to make rules under the GCA, and as amended in 1986, that authorization permits the Attorney General to "prescribe *only* such rules and regulations as are necessary to carry out" the GCA. 18 U.S.C. § 926(a) (emphasis added). The restrictive nature of this

authorization is no accident. The 1986 amendments to the GCA were intended to

> reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968, that 'it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms … for lawful purposes.'

An Act to Amend Chapter 44 (Relating to Firearms) of Title 18, United States Code, and for Other Purposes, Pub. L. No. 99-308, §1(b)(2), 100 Stat. 449 (1986). The Attorney General in turn has delegated the authority to administer and enforce the GCA to ATF. *See* 28 C.F.R. § 0.130(a).

Under this authorization, and shortly after the GCA was enacted, ATF[1] by regulation defined "frame or receiver" as "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel." Internal Rev. Serv., Dep't of the Treasury, 33 Fed. Reg. 18,555, 18,558 (Dec. 14, 1968) (to be codified at 26 C.F.R. pt. 178).

To expel a projectile by means of an explosive, all firearms require (1) a mechanism that will initiate that explosion, and (2) a way to seal the firing chamber, located at the rear of the barrel, so that the pressure generated by the explosion will be directed to push the bullet forward through the barrel of the

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[1] In 1968, the Bureau of Alcohol and Tobacco Tax Division, ATF's predecessor, administered this statutory scheme. This brief refers to the relevant agency at any time as "ATF."

firearm. ATF's original definition identified the "frame" or "receiver" of a firearm as the part housing the components that perform those functions. The "hammer" is released when the firing mechanism is engaged, causing the firing pin to initiate the explosion (in many modern firearms, it is replaced with a spring-loaded "striker" that performs the same function). *See* Nicholas J. Johnson, et al., FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY 1978 (3d ed.). The "breechblock" seals the firing chamber to direct the explosion and bullet forward. The "breech" is the rear opening of the barrel of a firearm, opposite the "muzzle" or forward opening. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 163 (1971) ("AMERICAN HERITAGE"). And a "bolt" is a common breechblock in many rifles. *Bolt Action*, BRITANNICA, https://perma.cc/3HFY-HP4U (last visited Aug. 8, 2024).

B. ATF's regulatory definition of frame or receiver was and remains consistent with ordinary meaning. *See, e.g.*, Chester Mueller & John Olson, *Small Arms Lexicon and Concise Encyclopedia*, 87 (1st ed. 1968), *available at* https://perma.cc/7KUM-5YLY (defining "frame" as "the basic structure and principal component of a firearm" and "receiver" as the "part of a gun that houses the breech action and firing mechanism"), *Receiver*, GLOSSARY, SPORTING ARMS & AMMUNITION MFG. INST., *available at* https://perma.cc/WC22-6KMP ("The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. In revolvers, pistols, and break-open guns, it is called the Frame."). This definition was lauded as "very clear" by industry officials. Tr. of Proceedings, Dep't of the Treasury, IRS Determining the Suitability of Proposed Regulations to

Implement Recently Enacted Legislation Concerned with Federal Regulation of Commerce in Firearms and Ammunition, at 133 (Nov. 21, 1968), *available at* https://perma.cc/7KR8-NV4G ("Treasury Hearing Tr.").

The ATF's original regulatory definition was consistent with the GCA's statutory text in critical ways. First, it contemplates that every firearm has one frame or receiver. Just as the GCA refers to "*the* frame or receiver" of a weapon, 18 U.S.C. § 921(a)(3) (emphasis added), and requires that "*a* serial number" be "engraved or cast on *the* receiver or frame" of a weapon, 18 U.S.C. § 923(i) (emphasis added), the 1968 regulatory definition defined the frame or receiver singularly as "*that part* of a firearm" containing the listed critical components, 33 Fed. Reg. at 18,558 (emphasis added). Neither the statute nor the regulation countenanced the possibility of a firearm lacking a "frame or receiver" entirely. Second, the 1968 definition defined a frame or receiver by the function it performs in a firearm.

The regulatory definition remained unchanged until 2022. ATF's practices, however, promptly diverged from the regulation. First, although the GCA speaks about "the frame or receiver" of a firearm, and the 1968 definition required an item to "provide housing for" the critical components of the firearm (the "hammer, bolt or breechblock, and firing mechanism"), some firearms house these components in a part consisting of more than one piece. The AR-15-style rifle, for example, has a "split" receiver consisting of an upper and lower piece. While the lower piece "provides housing … for the hammer and firing mechanism," the "breechblock" is housed in the upper piece.

See Definition of Frame or Receiver and Identification of Firearms, 87 Fed. Reg. 24,652-01, 24,655 (Apr. 26, 2022) (to be codified at 27 C.F.R. pts. 447, 478, and 479). A 1971 ATF internal memorandum acknowledged this issue. In addressing an M-16 receiver, which, like the receiver for the AR-15, is split, the Agency "determined that the lower portion should be considered the receiver," at least for serialization purposes, since that part "comes closest to meeting the definition of frame or receiver, … although both parts were necessary to function as a 'frame or receiver.' " JA-3. Serialization aside, however, because what ATF was calling a "receiver" did not fit either the regulatory or commonly understood definition of that term, ATF recognized it would pose "some difficulty in trying to make cases against persons possessing only the lower part of a receiver." *Id.*

At the same time, ATF began to make decisions about when an item became a frame or receiver, an issue on which the regulation, like the GCA, was silent. ATF's classification letters reflect a gradual change in thinking over time. Older classification letters borrowed the "readily converted" language from the statute's definition of a firearm and determined whether a frame was sufficiently far along the manufacturing path such that the process could be "readily" completed. *See* JA-10 (1994). As time went on, however, the focus shifted to what had been done and later letters reflect a general rule that once certain critical machining operations had begun, the item became a "frame or receiver." For example, "an AR-15 type receiver which has no machining of any kind performed in the area of the trigger/hammer (fire-control) recess (or cavity) might not be classified as a firearm" though it "could have all other machining operations

performed." JA-139 (2013). An item that was not "completely solid and un-machined in the fire-control recess/cavity area," however, had progressed too far in the manufacturing process and was considered a frame or receiver. *Id.* That meant that, even if the machining were incomplete so that the "receiver could not actually expel a projectile by means of an explosive if combined with" the other parts of the firearm, it would be treated by ATF as though it met the definition of a "receiver" anyway. JA-141.

C. The disconnect between the statute and regulations, on one side, and ATF practice, on the other, persisted until the promulgation of the Rule in 2022. The Rule redefines "frame or receiver" to address firearms with split frames or receivers, such as the AR-15. It notes that several district court decisions—consistent with ATF's concerns going back to 1971—had refused to accept that the part ATF called the "receiver" of an AR-15 was a "firearm" because it housed only some of the components that are contained within a "receiver." *See United States v. Rowold*, 429 F. Supp.3d 469, 475–76 (N.D. Ohio 2019); *United States v. Roh*, 8:14-cr-00167-JVS, Doc. 164, Minute Order at 6–7 (C.D. Cal. July 27, 2020, amended July 30, 2020); *United States v. Jimenez*, 191 F. Supp.3d 1038, 1041 (N.D. Cal. 2016), *see* 87 Fed. Reg. 24,655. The Rule alters the definition of both "frame" and "receiver" so that only some of the components are now required. Where before a part had to house both the firing mechanism and the breechblock, now a "frame" of a handgun need only house the energized firing component (e.g., the sear or equivalent), and a long gun "receiver" need only house the breechblock. 27 C.F.R. § 478.12(a)(1) & (2). The Rule exempts from the general definition parts it had previously classified as

a "frame" or "receiver" before promulgation of the Rule, including the "lower part" of the AR-15 "that provides housing for the trigger mechanism and hammer," 27 C.F.R. § 478.12(f)(1)(i), but that *does not* house the breechblock. This grandfathering provision does not extend to any prior determination which found a precursor not to be a frame or receiver. *Id.* § 478.12(f)(2).

The Rule further expands the definition of frame or receiver to "include a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a … frame or receiver, i.e., to house or provide a structure for the primary energized component of a handgun [or] breech blocking or sealing component of a projectile weapon other than a handgun." 27 C.F.R. § 478.12(c) (the "Rule"). The definition excludes any "article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (e.g., unformed block of metal, liquid polymer, or other raw material)." *Id.* And in assessing whether any nonfunctional item that could be turned into a working frame or receiver with additional manufacturing (i.e., a precursor) actually is a "frame or receiver" under the Rule, ATF may consider extrinsic factors including "any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with [or otherwise made available to the owner

of] the item or kit." *Id.*[2] Similarly, in determining whether a precursor may "readily" be converted into a "frame or receiver," the Rule defines "readily" by reference to a nonexclusive eight-factor list that also references the availability of additional parts and tools, as well as the difficulty of the process and the time needed to convert the precursor to a frame or receiver. 27 C.F.R. § 478.11.

Finally, the Rule redefines "firearm" to "include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." *Id.* § 478.11. Because a "weapon parts kit" that contains a frame or receiver already contains a "firearm," the only marginal difference this addition makes is to reach "parts kits" that do not contain a "frame" or "receiver."

II. Proceedings Below

A. The original plaintiffs in this case are two individuals (Jennifer VanDerStok and Michael Andren), one producer and retailer (Tactical Machining, LLC), and one membership organization (Firearms Policy Coalition). Pet.App.74a–75a. Several producers and retailers intervened (BlackHawk Manufacturing Group, Inc. d/b/a 80 Percent Arms, Defense Distributed, Not an LLC d/b/a JSD Supply, and Polymer80,

[2] A jig is an item used to guide the manufacturer (for instance, by indicating where to drill holes). *See* JA-169–71. In the photo on page 26 of this brief, the red plastic item encasing the AR-15 precursor is a jig.

Inc.), as did another membership organization (Second Amendment Foundation). Pet.App.75a–76a.

B. Plaintiffs sued in August 2022, before the Rule took effect, seeking preliminary injunctive relief, which the district court granted. Pet.App.75a & n.14. The preliminary injunction remained in effect until the district court granted Plaintiffs' motion for summary judgment and vacated the Rule. Pet.App.114a.

This Court stayed the judgment pending appeal, Pet.App.179a, and vacated a subsequent injunction pending appeal that the district court had granted to Defense Distributed and Blackhawk Manufacturing, Pet.App.118a.

C. On appeal, the Fifth Circuit affirmed in part and vacated in part the district court's judgment. Pet.App.1a–66a.

1. The court held that ATF's redefinition of "frame or receiver" was an "impermissible extension of the statutory text," Pet.App.16a–19a (cleaned up), because although the GCA's definition of "firearm" specifically included "weapons" that were "designed to or may readily be converted to expel a projectile," 18 U.S.C. § 921(a)(3)(A), "the subsection immediately thereafter, which contains the term 'frame or receiver,' does not include such flexibility," Pet.App.17a. The court also found "a clear logical flaw" in ATF defining "frame or receiver" to include items that had to be converted to become frames or receivers. Pet.App.17a–18a.

2. The court held that ATF's redefinition of "firearm" to include "a weapon parts kit that is designed to or may readily be completed … to expel a projectile by action of an explosive" exceeded the agency's

authority. Pet.App.19a–28a. Given that any kit that contains a "frame or receiver" is already a firearm under the GCA, the only effect of the Rule is to reach "kits" that do not have a frame or receiver but have other firearm parts, tools, or equipment. This, the Fifth Circuit held, ATF cannot do, since "ATF has no authority whatsoever to regulate parts that might be incorporated into a 'firearm' " other than a frame or receiver. Pet.App.20a.

The Fifth Circuit rejected the argument that the GCA covers incomplete combinations of parts that may readily be converted into a firearm. The court explained that "convert" in the statute was limited to " 'any weapon' that 'may readily be converted' into a functional firearm" and that "readily be converted" necessarily excludes a collection of parts that could, if further manufacturing is completed, be converted *into* a weapon. Pet.App.23a–25a.

3. Having found these two provisions of the Rule unlawful, the Fifth Circuit vacated the district court's vacatur of the entire Rule and remanded the case "for further consideration of the remedy, considering this Court's holding on the merits." Pet.App.31a–32a.

4. Judge Oldham concurred "without qualification" and wrote separately "to explore additional problems" with the Rule. Pet.App.33a.

SUMMARY OF ARGUMENT

The Rule's redefinition of "frame or receiver" and "firearm" is irreconcilable with the GCA's plain text and the broader federal statutory scheme regulating firearms. It transgresses the line that Congress drew in enacting the GCA between commerce in firearms, which is regulated, and private making of firearms,

which is not, and it risks upending the regulation of popular semiautomatic firearms.

I. A. The "frame or receiver" of a firearm is itself a "firearm" under the GCA. 18 U.S.C. § 921(a)(3). The Rule, however, goes further and includes precursors that may "readily be converted" to function as frames or receivers. That violates the plain text of the statute, which makes "any weapon" that "may readily be converted" to function as a firearm a "firearm" but omits similar language when discussing the "frame or receiver of any such weapon." The broader statutory context confirms the infirmity of the Government's interpretation. If anything that can be "readily converted" to function as a "frame or receiver" is a "frame or receiver," then Americans who own AR-15 rifles, one of America's "most popular firearms," *see* 87 Fed. Reg. 24,652, run the risk of violating the federal prohibition on unregistered machine guns in the NFA. It generally is possible to convert AR-15 receivers to function as machinegun receivers, and the physical alteration involved in conversion may be as simple as drilling a single hole.

B. The Rule is invalid regardless of whether the GCA is read to include only functional frames or receivers. While statutory text and context support that reading, the Rule also is invalid even if ATF's prior practice of treating as frames and receivers items that had reached a "critical stage of manufacture" is accepted. Though ATF tries to conflate its old practice with the new Rule, its reclassification of several items it previously determined *not* to be a frame or receiver as a "firearm" under the new Rule refutes that argument. While ATF's old practice focused on whether critical machining steps had been taken, under the

Rule ATF instead simply asks how readily an item could be converted from its current state into a functional "frame or receiver." The latter, but not the former, raises practical problems in implementing the GCA and NFA.

C. Even if the Rule is not invalid for treating so-called "readily convertible" precursors as frames or receivers, it is invalid for the independent reason that it defines as "frames" or "receivers" items that are at most half of one of those parts. Under the Rule, frames or receivers need only house the components necessary to complete one of two essential functions which ordinary meaning establishes must take place for an item to be a frame or receiver under the GCA.

II. The Rule is similarly invalid for treating "weapon parts kits" as "firearms." The GCA does not define "firearm" to include any *thing* that may "readily be … converted" to function as a firearm, but rather any "*weapon*" that may readily be converted to do so. A "weapon parts kit," unlike the GCA's example of a "starter pistol," is not a weapon, and so whether it can "readily be … converted" into a functional firearm or not, it is not a "firearm." Furthermore, the GCA has no conception of a "firearm" that lacks a "frame or receiver." Indeed, all firearms must have some part that performs the function of a frame or receiver. And in the GCA Congress changed prior law to eliminate regulation of parts other than a frame or receiver. A kit regulated solely by the Rule's weapon parts kit provision will not have a "frame or receiver" and so cannot be a firearm.

III. The doctrine of constitutional avoidance and the rule of lenity provide further support for finding the Rule invalid. Vague criminal laws are

unconstitutional. The redefinition of "frame or receiver" and the inclusion of "weapon parts kits" in the definition of "firearm" both incorporate ATF's definition of the term "readily." "Readily" is defined by reference to an unweighted, non-exclusive eight-factor list of considerations that ATF appears to have made intentionally vague. And because the GCA is a criminal statute, to the extent any ambiguity exists after employing the traditional tools of statutory interpretation, the rule of lenity requires it to be interpreted against the Government (and against the Rule).

IV. The Government's argument that the GCA is nullified without the Rule is supported neither by the GCA nor by the firearms tracing data the Government uses to support its claim that privately made firearms are an important source of guns for criminals. The evidence suggests that the precursors and weapon parts kits targeted by the Rule are favored by hobbyists, while the vast majority of criminals prefer to get firearms that have been professionally manufactured. In any event, to the extent there is any basis for a federal regulatory response to these items it is up to Congress, not ATF, to make it.

ARGUMENT

I. An item is not the "frame or receiver" of a firearm simply because it "may readily be … converted to function as a frame or receiver."

A. Statutory text and context refute any attempt to include all items that may "readily be converted" into frames or receivers in the definition of "firearm."

The GCA defines "firearm," in relevant part, to mean "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" or "(B) the frame or receiver of any such weapon." 18 U.S.C. § 921(a)(3)(A) & (B).

The first of part of the definition covers items that would, in ordinary parlance, be referred to as "firearms": "weapon[s]" that are able to "expel a projectile by the action of an explosive." *Id*. It also includes items that are not currently capable of functioning as a firearm, as long as they too are "weapons" that were "designed to" do so, as in the case of a firearm that has been modified to make it incapable of firing. *See United States v. Christmann*, 193 F.3d 1023, 1024 (8th Cir. 1999); *United States v. Annis*, 446 F.3d 852, 857–58 (8th Cir. 2006). It further includes weapons that may "readily be converted" to function as firearms—as in the case of the example given by the statute itself, by drilling out the barrel of a starter pistol so that it can fire live ammunition, *see United States v. 16,179 Molso Italian .22 Caliber Winlee Derringer Convertible Starter Guns*, 443 F.2d 463, 466 (2d Cir. 1971).

The second part of the definition, that "the frame or receiver of any such weapon" is itself a "firearm," is not similarly modified. The most straightforward reading of these provisions is also the correct one. Because it is not modified by the same "designed to" or "readily be converted" language from the first part of the definition of "firearm," the second part should not be read to implicitly contain those modifiers. Precursors therefore are not frames or receivers simply because they are designed to or can readily be converted to function as a frame or receiver.

That is the conclusion both the district court and the Fifth Circuit reached below, *see* Pet.App.17a, 103a, and basic principles of statutory interpretation confirm the correctness of their reading. First, statutory terms usually should be accorded their ordinary meaning. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). As the Fifth Circuit noted below, "both a 'frame' and a 'receiver' had set, well-known definitions at the time of the enactment of the GCA in 1968." Pet.App.15a. WEBSTER'S defined a "frame" as "the basic unit of a handgun which serves as a mounting for the barrel and operating parts of the arm" and a "receiver" as "the metal frame in which the action of a firearm [the part of the firearm that loads, fires, and ejects a cartridge] is fitted and to which the breech end of the barrel is attached." WEBSTER'S THIRD INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED, 902, 1894 (1961) ("WEBSTER'S"). And as the Government points out in its own brief, a firearm reference work, published the same year, defined "frame" as "the basic structure and principal component of a firearm," and a "receiver" as "the part of a gun that houses the breech action and firing mechanism." Mueller & Olson, *Small Arms Lexicon*

and Concise Encyclopedia, supra, 87, 157, 168 (emphasis omitted); *see also* Gov't Br. 32. Finally, as this Court recently reaffirmed, "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright v. Raimondo*, 144 S. Ct. 2244, 2262–63 (2024). Here, the original regulatory definition promulgated shortly after the GCA was enacted, which was unchanged for over fifty years, confirms what is apparent from the other sources: a "frame or receiver" is the component of a firearm that "provides housing for the hammer, bolt or breechblock, and firing mechanism," 33 Fed. Reg. at 18,558; *see also* Treasury Hearing Tr. at 133 (praising the definition as "very clear").

An item that must be *converted* into a "frame or receiver" or which is merely "designed to" become a frame or receiver is not naturally included within the ordinary sense of those words. This is shown by the Government's own definition of "convert" as "to change or turn from one state to another: alter in form, substance, or quality: transform, transmute" shows. Gov't Br. 19 (quoting WEBSTER'S 499 (cleaned up); *see also id.* (quoting AMERICAN HERITAGE 291 ("[t]o change into another form, substance, state, or product; transform; transmute"). If a precursor must be "transmuted" or "change[d] into another … product" to be a "frame or receiver," then it is not currently a "frame or receiver." As the Fifth Circuit succinctly explained, "a part cannot be both *not yet* a receiver and a receiver at the same time." Pet.App.17a–18a.

The immediate statutory context confirms that this reading of the GCA is correct. "[W]hen Congress includes particular language in one section of a

statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Collins v. Yellen*, 594 U.S. 1761, 1782 (2021) (quotation marks omitted). Here, Congress used the phrase "readily be converted" in the same *sentence* as "frame or receiver" but conspicuously did not apply it to frames or receivers. To read it in where Congress omitted it "transcends the judicial function." *See Iselin v. United States*, 270 U.S. 245, 251 (1926) (Brandeis, J.).

Treating conversion as an inherent part of the statutory definition of a firearm also would create problems with interpreting and applying other parts of the GCA and NFA. Elsewhere in both statutes, Congress has carefully selected terminology to delineate which items are subject to federal regulation. For example, in defining what qualifies as a machinegun or a short-barreled shotgun, the NFA conspicuously omits the "readily be converted" language from the GCA's definition of a firearm in favor of regulating items that "can be readily restored" to function as a machinegun or a short-barreled rifle. 26 U.S.C. § 5845(b), (d). In the Government's reading, such language *narrows* the ordinary scope of the statute's coverage by limiting it to one type of conversion. But history refutes that idea. "In adding the 'readily restored' clause, Congress specifically intended to overcome [a decision] holding that a firearm with a missing firing pin was not a firearm under the Act." *Drasen*, 845 F.2d at 736 (internal citation omitted). In other words, the statutory change was intended to expand, not narrow, the statute's reach.

Furthermore, just like the general definition of "firearm" in the GCA, the NFA definition of "machinegun" includes "the frame or receiver of any such weapon." 26 U.S.C. § 5845(b). ATF accordingly uses examples of "machinegun" and "firearm" frames and receivers interchangeably in the Rule and in its brief. *See, e.g.*, 27 C.F.R. § 478.12(a)(4)(ix) (illustrating its definition by identifying the receiver of a "Thompson machinegun[]"). But if a "frame or receiver" of a firearm inherently includes anything that can "readily be converted" to function as a frame or receiver, then unbeknownst to courts and the American public, many of the most popular, "commonly available" rifles in the country, *see Garland v. Cargill*, 602 U.S. 406, 430 (2024) (Sotomayor, J., dissenting), contain a machinegun frame or receiver. This fact has the potential to make their owners and sellers "felons-in-waiting," since AR-15 receivers sometimes can be converted to function as machinegun receivers simply by drilling a single hole, *see* Pet.App.52a (Oldham, J.); *see also* Mike Searson, *Turning Your AR-15 into an M-16*, RECOIL (Feb. 13, 2024), https://perma.cc/FZ2M-FZ2C; *AR15 vs M16 vs M4: What's the Difference*, 80 PERCENT ARMS (Mar. 18, 2020), https://perma.cc/A6MT-35DE.[3] Indeed, ATF has acknowledged that the presence or absence of a single hole may be all that distinguishes a semiautomatic receiver from a machinegun receiver. *See* FIREARMS LAW DESKBOOK § 6.9 (*citing* Nick Voinovich, Chief, ATF Firearms Technology Branch (Feb. 13, 1978)). Accepting the Government's redefinition of "frame or receiver" to include

[3] ATF acknowledges the popularity of the AR-15 style rifle in the Rule itself, 87 Fed. Reg. 24,652, and that fact is amply attested by survey data, *see, e.g.*, *Poll of current gun owners* at 1, WASH. POST-IPSOS (2022), https://perma.cc/PA8H-Y32J.

precursors simply because they readily may be converted to function as frames or receivers therefore risks upending the entire federal regulatory scheme distinguishing semiautomatic firearms from automatic firearms.

B. The Government's arguments to the contrary lack merit.

1. The Government criticizes Respondents' reading of the statute as inconsistent with "ATF's decades long practice of applying [the previous] definition to include certain partially complete frames and receivers." Gov't Br. 39. As an initial matter, ATF's practices, not reflected in the agency's regulations before 2022, are entitled to no deference. *See Abramski v. United States*, 573 U.S. 169, 191 (2014). More fundamentally, the new Rule and the old practice are not the same. The Government claims, for instance, that "for the past 55 years ATF has classified a product as a frame or receiver if it can readily be completed to function as a frame or receiver." Gov't Br. 40. While there are examples of ATF reasoning this way in early classification letters, *see* JA-10, by the time the Rule was promulgated, ATF had expressly disclaimed that position:

> the 'designed to' and 'readily be converted' language are only present in the first clause of the statutory definition [of firearm]. Therefore, an unfinished frame or receiver does not meet the statutory definition of 'firearm' simply because it is 'designed to' or 'can readily be converted into' a frame or receiver.

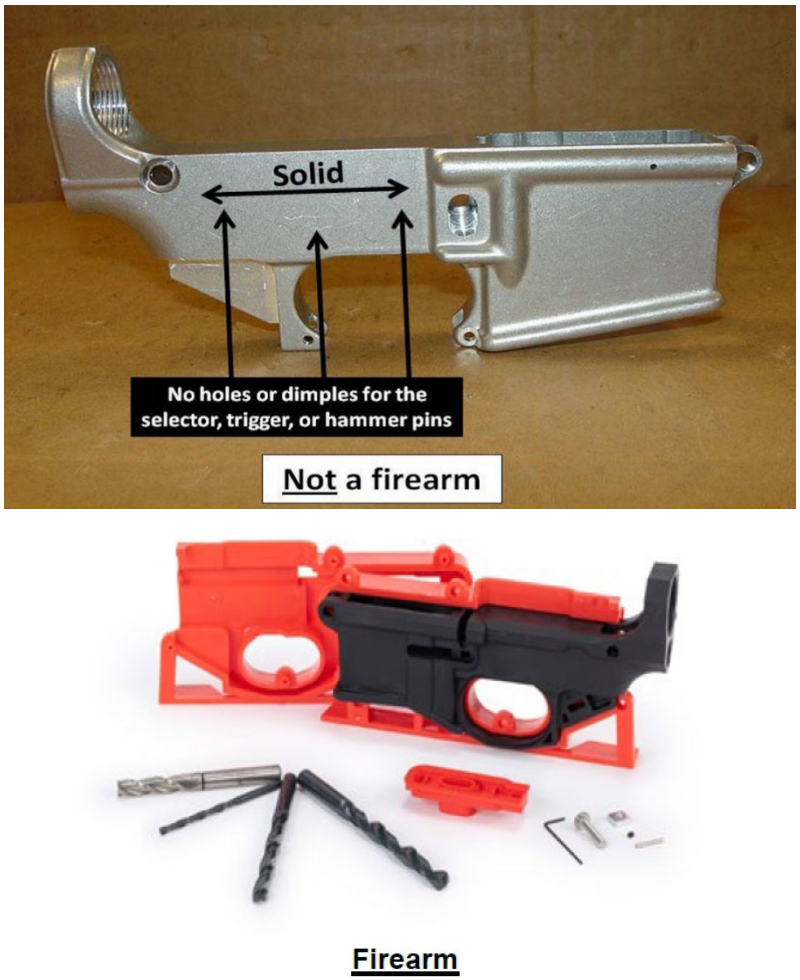
Fed. Defs'. Mem. of Law in Supp. of Mot. for Summ. J., Doc. 98 at 4, *Syracuse v. ATF*, No. 1:20-cv-06885

(S.D.N.Y. Jan. 29, 2021) ("*Syracuse* Br.") (citations omitted).

The argument that ATF's position has remained consistent also is contradicted by ATF's repeated statements that the Rule was necessary "to address the urgent public safety and law enforcement crises posed by the exponential rise of untraceable firearms," Gov't Br. 2, and by ATF's express refusal to "grandfather" in its prior classifications of any "partially complete, disassembled, or nonfunctional frames or receivers … that ATF did not classify as firearm 'frames or receivers' as defined prior to th[e] rule," 87 Fed. Reg. at 24,653. Neither of these positions is intelligible if the Rule merely codified ATF's prior practice. Compared to ATF's pre-Rule understanding of the GCA, ATF has shifted away from focusing on whether certain critical machining operations have been done. *See, e.g.*, JA-23 (2004: ATF "evaluates the level of completion of the submitted sample … and makes a comparison with a sample of a completed firearm of the same type"), JA-32 (2005: listing additional "major machining operations" that would need to be completed to render the item a firearm), JA-72 (2015: a part "has reached a critical 'stage of manufacture' when a possessor takes a vital step in what will ultimately allow the receiver to perform a critical function as defined by the statute"). Instead, ATF now asks how readily the item could *become* a frame or receiver.

ATF's actions since publishing the Rule further demonstrate that ATF has changed its approach. For instance, applying the 1968 definition, ATF determined that a precursor of a Glock-type frame made by Polymer80 was "<u>not</u> sufficiently complete to be

classified as the frame or receiver of a firearm and thus [was] not a 'firearm' as defined in the GCA." JA-104 (emphasis in original). The Government now points to precisely the same product in its brief as an item it deems "entirely natural" to call a "frame." Gov't Br. 35. ATF immediately re-classified the product as a "frame" under the Rule because it purportedly could " 'readily be completed, assembled, restored, or otherwise converted' to a functional frame." JA-255. Similarly, a 2013 ATF Technical bulletin made clear that whether an item had become an AR-style frame or receiver depended in large part on whether "machining of any kind [had been] performed in the area of the trigger/hammer (fire control) recess (or cavity)," JA-139, but now ATF considers items without any machining in that area to be firearms if they are "sold, distributed, or marketed with any associated templates jigs, molds, equipment, tools instructions, or guides." U.S. Dep't of Just., ATF, Open Letter to All Federal Firearms Licensees at 1 (Sept. 27, 2022), https://perma.cc/SKU4-FZL6 ("Open Letter"). For instance, in the pictures below, the two AR-15 receiver precursors are both at the same stage of manufacture. Neither has had machining or indexing done in the key areas. The only difference between them is the presence in the second picture of a jig and drill bits. That difference is dispositive under the Rule, as the second item is considered a firearm while the first is not:



Id. at 3, 6.

In addition to demonstrating the shift that has taken place, this example adds another way that the Rule conflicts with broader federal regulatory scheme for firearms. Where Congress has intended to target items (like the jig pictured above) that are used in converting an item into a weapon, it has done so explicitly. *See, e.g.*, 26 U.S.C. § 5845(b) ("machinegun"

includes "any part designed and intended solely and exclusively … for use in converting a weapon into a machinegun"). In the absence of a similar statutory authorization here, ATF's new position is remarkably inconsistent: the exact same item can be a receiver or not a receiver depending on whether it is sold with other items or singly.

2. The Government argues that the GCA "does not specify that a 'frame' or 'receiver' must be 'complete,' 'operable,' or 'functional' " and that "ordinary usage" of those terms in fact includes nonfunctional and incomplete items. Gov't Br. 32–33. But the question presented is not whether an item must be functional to be a frame or receiver. Rather, the question is whether an item is a frame or receiver simply because it can readily be converted to function as one. Statutory text, context, and history demonstrate that the answer is no. As discussed above, much in the statute suggests that an item must be functional to be a frame or receiver for purposes of the GCA. But the Rule is invalid even if one accepts ATF's prior practice of classifying as a "frame" or "receiver" certain items that are not yet functional but which have "reached a critical 'stage of manufacture.' " JA-72. The prior practice differs from the Rule in that it identifies a point at which sufficient manufacturing has been completed to turn a precursor into a frame or receiver, based on what has already been done to the item, not how difficult it would be to bring the item to functionality.

This reading of the GCA has several advantages over the one put forward in the Rule. If the focus is on whether sufficient work has been done to designate an item as the frame or receiver of a particular type of firearm, for example, there is no risk of accidentally

declaring AR-15 receivers to be "machineguns." Until the hole that is required to turn an AR-15 receiver into a machinegun receiver is drilled, an AR-15 receiver is not identifiable as a machinegun receiver. If the focus is on how readily a conversion can be accomplished, however, the Government itself presents in its brief the drilling of a single hole as the epitome of a ready conversion, which risks collapsing the distinction between semiautomatic and automatic firearms. *See, e.g.*, Gov't Br. 32. This reading also refutes the Government's analogies. *See* Gov't Br. 32–33. If a bicycle without pedals (or an unstrung racquet or untailored pants) is a "bicycle" within the ordinary meaning of that term, it is not because it could be "converted" into one, but because it has reached a "critical stage of manufacture" such that it already can be considered a bicycle. *Cf. Baxter Healthcare Corp. of Puerto Rico v. United States*, 998 F. Supp. 1133, 1145, 1148 (Ct. Int'l Trade 1998) (describing Customs Service determination that for incomplete textile item to have the "essential character" of the finished product its dimensions must "be fixed with certainty").

3. The Government argues that it is natural to call precursors "frames" or "receivers," and claims, "[i]n fact, it is hard to know what else to call" them because of how "easily" they can be turned into "frames" or "receivers." Gov't Br. at 35. But as described above, the items highlighted in ATF's brief which are newly covered under the Rule are nonfunctional and have not reached a critical stage of manufacture to establish their identity as a frame or receiver for a particular firearm. That is presumably why ATF had no difficulty, just a few years ago, recognizing these precursors as something other than a frame or receiver. *Compare* JA-104 *with* JA-255.

What is more, the Government does not fairly depict how "easily" certain items can be converted to function as firearm frames or receivers. In discussing the Glock-style precursor sold by Polymer80, the Government claims that certain blocking tabs "are easily removable by a person with novice skill, using common tools, such as a Dremel rotary tool" and that "anyone can … in minutes" drill the holes necessary to finish the machining work to allow it to be used as part of a firearm. Gov't Br. 35. In fact, as ATF previously acknowledged, this process "require[s] skills, tools, and time," and "care rather than speed." *Syracuse* Br. at 27. Indeed, Polymer80 recommends *against* the use of a Dremel rotary tool because such a "tool in untrained hands can damage your new build extremely fast." JA-167–68. The Government further claims that a handgun can be manufactured from a Polymer80 kit "in as little as 21 minutes." Gov't Br. 7. But the one example it offers of someone completing it so quickly was an automobile mechanic with "previous experience with firearms," and even then, the 21-minute figure did not account for the time spent watching explanatory videos in preparation. *See* Pet.App.236a–237a. Further, at the end of the 21 minutes the mechanic had installed two parts incorrectly. *See id*. By comparison, an ATF agent took 73 minutes to complete another version of the same kit build, not counting two hours to fix a defective part. Pet.App.219a. In the context of precursors to AR-style receivers, the completion of which requires milling out the fire control cavity, one firearms-focused AUSA has explained that even at "the more entry-level end of the spectrum" the machining process calls for "slowly and carefully mill[ing] the cavity" and would necessitate the use of "a jig, a few drill bits, a couple of carbide

end mills, a drill or drill press, eye protection, and cutting fluid or lubricant." JA-140–41. While a potentially arduous and interesting project for a skilled hobbyist, it is hardly a ready alternative to acquiring a commercially manufactured firearm for most.

4. The Government argues that the explicit inclusion of the "readily be converted" language in Part (A) of the definition of "firearm" does not foreclose it being implicit in Part (B). In the Government's view, the phrase only had to be included in Part (A) because the main part of that definition—a weapon that "will … expel a projectile by means of an explosive"— "would have departed from ordinary meaning by including only *functional* weapons." Gov't Br. 38 (emphasis in original). That is wrong for several reasons. The definition of a firearm as an item that "will … expel a projectile by means of an explosive" accords with the ordinary understanding of a "firearm" as an item *that can act as a firearm*. *See* AMERICAN HERITAGE 268 (defining "firearm" as "[a]ny weapon capable of firing a missile, esp. a pistol or rifle."); WEBSTER'S at 854 ("a weapon from which a shot is discharged by gunpowder"). Furthermore, as discussed above, the terms "frame" and "receiver" are also defined *functionally* as a matter of ordinary meaning. If Congress had intended to sweep in items simply because they could be converted into frames and receivers, it would have said so explicitly.

C. Even if the Government's addition of "readily be converted" to the definition of "frame or receiver" is accepted, the new definition still conflicts with the GCA.

As a matter of ordinary meaning, a "frame" or "receiver" of a firearm is the part that houses both the components that initiate the explosion and channel the resulting energy forward through the barrel. *See supra* at 6–7. Even if the Court accepts that items that may only be "readily converted" to perform both of those functions can be frames or receivers within the meaning of the GCA, the Rule still deviates from the statutory meaning of those terms by defining as a "frame" or "receiver" items that house the parts performing only *one* of them.[4] Specifically, the Rule defines as the "frame" the part of the handgun "that provides housing or a structure for the primary energized component designed to hold back the hammer … or similar component" and a "receiver," "the part of a rifle, shotgun or projectile weapon other than a handgun … that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence." 27 C.F.R. §

[4] Respondents have not raised this argument before. However, "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (quotation marks omitted). This argument supports the claim that the Rule exceeds agency authority. It is therefore appropriate for the Court to consider it now. ATF has been on notice of this argument since it was made in comments on the notice of proposed rulemaking. *See, e.g.*, Comments of Stephen P. Halbrook on ATF 2021R-05 Which Would Redefine "Frame or Receiver" and "Serial Number," (Aug. 17, 2021), *available at* https://perma.cc/NB6E-NN3R.

478.12(a)(1) & (2). This change was made, at least in part, due to ATF's recognition that certain firearms, like the AR-15, have a "split or multi-piece receiver where the relevant fire control components are housed by more than one part of the weapon," the so-called "upper receiver" and "lower receiver." 87 Fed. Reg. 24,652. As a result, under the prior regulatory definition, one piece of a split frame or receiver was not a frame or receiver. *See, e.g.*, *Rowold*, 429 F. Supp.3d at 475–76. But this redefinition is inconsistent with the ordinary meaning of the terms "frame" or "receiver," regardless of the degree of completion of the item in question. ATF has effectively decided to define as the "frame" or "receiver" of a weapon items that are only *part* of one.

ATF claims that if it is forced to adhere to the statutory text, then "as many as 90 percent of all firearms (*i.e.*, with split frames or receivers, or striker-fired) in the United States would not have any frame or receiver subject to regulation." 87 Fed. Reg. 24,652. But that need not be the case. A "striker," in, for example, a Glock handgun, performs the same function as a "hammer" in a more traditional pistol, and it would not create any inconsistency with the statute to amend the definition of "frame or receiver" to be "that part of a firearm which provides housing for the hammer *or striker*, bolt or breechblock, and firing mechanism." *Id*. 24,694. Doing so would accommodate modern firearm designs while also requiring that a frame perform *all* of a frame's functions to meet the definition of a "firearm" under federal law. And it is not true that a split-receiver firearm like an AR-15 does not have a "receiver." Rather, it has one receiver that can be split into two pieces. Both pieces together constitute the single receiver, *see Rowold*, 429 F. Supp. 3d

at 475–76, WEBSTER'S, 902, as ATF itself acknowledged in 1971, *see* JA-3.

ATF's follow-on objection, that it would be impossible to sustain prosecutions of individuals possessing only the lower half of a split receiver, cannot support departing from statutory meaning. The GCA considers a "frame" or "receiver" to be a "firearm," but does not treat a single piece of a multi-piece frame or receiver the same way. And in any event, it is far from clear that the Rule resolves this problem. The Rule creates a special carve out for AR-15 lowers, which it declares to be "receivers" because they were previously classified that way. 27 C.F.R. § 478.12(f)(1)(ii). But the AR-15 lower is *not* the part that houses the breechblock—the new, singular criterion for a rifle "receiver." If the new definition of "receiver" is correct and the term in the GCA is meant to refer to the part of a rifle housing the breechblock, it is not clear how a special regulatory declaration that an AR-15 component that *does not* perform that function is nevertheless a "receiver" could support a criminal conviction under the statute.

II. A weapon parts kit is not a firearm simply because it can be readily converted to expel a projectile by the action of an explosive.

The Rule also exceeds ATF's statutory authority by including within its definition of "firearm" "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. § 478.11. This conflicts with the GCA in at least three ways. First, under the GCA it is not enough that *something* is readily convertible to

operate as a firearm; rather, that something must be a "weapon" *before conversion*. 18 U.S.C. § 921(a)(3)(A). That is what the text says, and it is consistent with the "starter guns" example given in the statute. *Id.* While starter guns cannot expel a projectile by means of an explosive, in the lead up to enacting the GCA Congress was informed that they still can be used as weapons, as in the case of "stickup artists" who brandished unmodified starter pistols "in the perpetration of crimes of robbery and assaults." *See* S. REP. NO. 88-1340, at 13 (Aug. 7, 1964). Unlike a starter pistol, a "parts kit" is not itself a weapon, and so regardless of whether it is readily convertible into a firearm, it is not within the GCA's definition of the term.

Second, in the same definition section of Title 18 where one finds the definition of "firearm," "Congress has shown that it knows how to regulate 'parts' of weapons when it so chooses." Pet.App.21a. For instance, a "destructive device" includes any part or parts "intended for use in converting any device into any destructive device." 18 U.S.C. § 921(a)(4)(C). Concerning firearms, in particular, Congress has likewise shown it knows how to include parts of weapons, as it did in defining a "machinegun" to include "any combination of parts from which a machinegun can be assembled," 26 U.S.C. § 5845(b). Such language is absent from the definition of "firearm" in the GCA and Congress specifically removed it in passing that statute. Under its predecessor, "any part or parts of" a firearm *were* regulated, *see* Federal Firearms Act of 1938, ch. 850, Pub. L. No. 75-785, 52 Stat. 1250, 1250 (1938) (repealed 1968), but Congress chose instead to regulate *only* the "frame or receiver" in the GCA because it had "been found that it is impractical to have controls over each small part of a firearm." S. REP. 90-

1097, at 111 (1968). "When Congress acts to amend a statute, [this Court] presume[s] it intends its amendment[s] to have real and substantial effect." *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 140 S. Ct. 768, 779 (2020) (citation omitted). ATF's attempt to expand its regulatory purview by redefining "firearm" to sweep in collections of parts *other than* frames or receivers is incompatible with this foundational rule of interpretation.

Third, the structure of the statutory definition of "firearm" demonstrates that *every* firearm included in the first part of the definition *will have* "a frame or receiver." A firearm is both a weapon that "will … expel a projectile by means of an explosive" and also "*the* frame or receiver of any such weapon." 18 U.S.C. § 921(a)(3) (emphasis added). There therefore is no item captured by the first part of the definition that will not also have a part that is defined as a "firearm" under the second part. This interpretation is supported by the GCA's requirement that all firearms have "a serial number" that is "engraved or cast on the receiver or frame" of the firearm. 18 U.S.C. § 923(i). The only sensible reading of the statute is that the GCA contemplates every "firearm" having one frame or receiver—no more and no less. If a kit contains a frame or receiver, it already includes a "firearm" subject to all the GCA's restrictions. Therefore, the only practical difference the weapon parts kit provision can make is to extend ATF's regulatory authority to cover parts kits that *do not include* a frame or receiver.

The Government's contrary arguments lack merit. Its chief defense is that the process of making a firearm from one of the regulated "weapon parts kits" "fit[s] comfortably within the ordinary meaning of

'convert,' " Gov't Br. 20, and so is a permissible application of the statutory definition which includes "any weapon … which … may readily be converted to expel a projectile by the action of an explosive," 18 U.S.C. § 921(a)(3)(A). But as explained above, the GCA only considers an item a firearm if it was a "weapon" *before* it was converted (like a starter pistol). The GCA also provides that covered weapons have a frame or receiver. A "weapon parts kits" that is not a "weapon" and that lacks a "frame" or "receiver" is not a "firearm."

The Government argues that a kit need not have a frame or receiver to be a "firearm" because some firearms "lack any part resembling a traditional pistol frame or rifle receiver," pointing for example to novelty firearms disguised as lighters, pens, and even a packet of cigarettes. Gov't Br. 31. Furthermore, it notes that some items explicitly defined as "firearms" under federal law, like "any firearm muffler or firearm silencer" and "any destructive device" lack a "frame or receiver," traditionally conceived. *Id*. (quoting 18 U.S.C. § 921(a)(3)(C) and (D)). These arguments are unpersuasive. To say that a weapon that can expel a projectile by means of an explosive lacks a part "resembling a *traditional* … frame or … receiver" is not to say it lacks a frame or receiver. Indeed, to expel a projectile by means of an explosive a weapon presumably needs a part providing housing for the critical firing components and some sort of breechblock, even if it is disguised to look like a pen. *See United States v. One 1980 Chevrolet Corvette I.D. No. 12878AS411361*, 564 F. Supp. 347, 348 (D.N.J. 1983). It is also of no importance that silencers and destructive devices, despite being "firearms" under the GCA, may lack a traditional "frame or receiver." The "frame or receiver"

language in Part (B) points back to the definition in Part (A). Destructive devices and silencers are made "firearms" in Parts (C) and (D), so the statutory context does not as clearly contemplate that they will have a frame or receiver. And in any case, because 18 U.S.C. § 923(i) does suggest that silencers too must be serialized on a "frame" or "receiver," ATF has provided a regulatory classification of such a part, *see* 27 C.F.R. § 478.12(b). Destructive devices are not serialized in the same way as other firearms and so need not have a "frame or receiver" at all. *See* 26 U.S.C. § 5842(a).

The Government also objects that "[c]ourts have long treated [disassembled] firearms and parts kits that can readily be converted into functional firearms as 'firearms' regulated by the [GCA]" and suggests that treating weapon part kits as firearms is no different. Gov't Br. 24. The difference, as already explained, is that kits covered solely by the Rule's parts kit provision are not "weapons" and lack a frame or receiver. A disassembled weapon, on the other hand, is still a weapon and has all the parts necessary to put together a functioning firearm (including a frame or receiver). The cases the Government cites do not advance its position. In *United States v. Ryles*, the shotgun at issue simply had its barrel removed. 988 F.2d 13, 16 (5th Cir. 1993). In *United States v. Wick*, the court merely held that kits "contain[ing] all the necessary components" to assemble a firearm constituted a firearm under the GCA. 697 F. App'x 507, 508 (9th Cir. 2017) (Mem.) The court did not grapple with the question whether the presence of a frame or receiver is necessary for a kit to qualify as a "firearm" under federal law. Finally, in *United States v. Stewart*, the defendant had moved to suppress the fruits of a search warrant executed by an ATF agent, on the grounds

that the rifle kits the defendant sold (and which were named in the search warrant) were not "firearms" under the GCA. 451 F.3d 1071, 1073 n.2 (9th Cir. 2006).The Ninth Circuit concluded in a footnote that the district court had not abused its discretion in denying an evidentiary hearing on the motion to suppress. *Id.* In doing so, the court simply assumed that kits that could readily be converted into rifles fit the GCA's definition of "firearm."

Finally, the Government argues by analogy, suggesting that just as IKEA furniture is still "furniture" even though it is sold in parts, so too a "weapon parts kit" is a firearm even though it is disassembled. Gov't Br. 18. But this analogy runs into the same problem as the Government's other arguments: it ignores that, because the Rule's language covering a "weapon parts kit" only has practical effect insofar as a kit lacks a frame or receiver, a "weapon parts kit," unlike an IKEA bookshelf in a box, is not a complete selection of all the parts necessary to complete a firearm. In fact, the *central* part of the firearm is not included. A better analogy would be a box containing shelves and, instead of a frame to hold them, planks of wood that had to be cut to length and drilled to do so.

III. Constitutional avoidance and the rule of lenity both counsel against the Rule's interpretation of the GCA.

A. The GCA is a criminal statute and "[t]he prohibition of vagueness in criminal statutes … is an essential of due process, required by both ordinary notions of fair play and the settled rules of law." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018) cleaned up). "Vague laws may trap the innocent by not providing fair warning [and] if arbitrary and discriminatory

enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Both the challenged provisions of the rule—the new definition of "frame or receiver" and the inclusion of "weapon parts kits" in the definition of "firearm"—incorporate the ATF's definition of the term "readily" in discussing how easily or quickly an item can be converted to function either as a frame or receiver or as a firearm. 27 C.F.R. § 478.11 ("weapon parts kit"); 27 C.F.R. § 478.12(c) ("frame or receiver"). ATF's definition is hopelessly vague. It points to eight qualitative factors that are "relevant" but not exclusive, controlling, or weighted, to whether an item may "readily" be converted, including "how long it takes to finish the process," "how difficult it is do so," and the availability of other parts. 27 C.F.R. § 478.11. Indeed, ATF admits that under its definition, the same parts may be "firearms" sometimes, but not others, depending on whether they are sold singly or packaged with other products, and on what their instructions say. *See* Open Letter, *supra*, at 4, 6.

Making matters worse, in support of its 8-factor definition's focus on the amount of time it takes to create a functional firearm from a given product, ATF cites a series of cases that found weapons to be "readily" convertible into a functional firearm when they took as little as 12 minutes with a drill and as much as eight hours "in a properly equipped machine shop." 87 Fed. Reg. 24,661 n.43 (citing *Molso Italian*, 443 F.2d at 463 and *United States v. Smith*, 477 F. 2d 399, 400–01 (8th Cir. 1973)). Furthermore, the Government has declared that certain "forgings, castings, printings, extrusions, unmachined bodies, or similar articles that have not yet reached a stage of

manufacture where they are clearly identifiable as unfinished component parts of a weapon" are *not* firearms, without regard to the "readily" standard. 87 Fed. Reg. 24,700. Such unclear and inconsistent rules create a trap for the unwary and invite arbitrary enforcement.

The lack of clarity appears to be *intentional* and the vagueness a feature, not a bug, from ATF's perspective. The Government claims that "ATF has taken care to provide as much clarity as possible" in defining "readily." Gov't Br. 48–49. But this is contradicted by ATF's own statements in the rulemaking that it is not seeking to facilitate "persons structur[ing] transactions to avoid the requirements of the law." 87 Fed. Reg. 24,692. What ATF considers "avoid[ing] the requirements of the law" might more accurately be called "compliance," and ATF's attempt to make compliance more difficult, or at least murkier, leads directly to a constitutional vagueness problem, which is not ameliorated by the opportunity for regulated parties to come to the ATF and ask it how, under its malleable standards, it would categorize a given product.

Nor is it an answer to these charges that "readily" "appears in the act itself." Gov't Br. at 48. "Readily" is not inherently ambiguous. The statutory text gives a straightforward way to judge what "readily" means, by indicating that some starter guns can "readily be converted" to fire live ammunition. Such a conversion can be done in minutes with ordinary tools. *Molso Italian*, 443 F.2d at 464. If the phrase is read to mean that another weapon is "readily" convertible if it can become a firearm in similar time, and with similar difficulty, as a starter pistol, then the GCA is not vague. But ATF's "guidance" on the issue, which eschews

clear benchmarks and fosters uncertainty, creates a vagueness problem that is not inherent in the statute properly interpreted.

B. While the ordinary tools of statutory interpretation demonstrate that the "weapon parts kit" and frame or receiver precursors provisions of the Rule are inconsistent with the GCA, to the extent the Court finds that the GCA is still ambiguous after applying them, that would amount to "grievous ambiguity" triggering the rule of lenity. *See Shaw v. United States*, 580 U.S. 63, 71 (2016). Applying that rule here requires that any ambiguity be resolved against the Government and against the Rule. *See United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 518 (1992) (plurality).

The cases cited by the Government, *see* Gov't Br. 45–46, involved situations in which ambiguity was resolved by applying standard interpretive tools. Those cases do not help the Government here, where Respondents invoke the rule of lenity at the end, not the beginning, of the interpretive process.

IV. The GCA's purpose is not nullified by adopting the best reading of the statute.

Upholding the decision below would not "effectively nullify the [GCA's] core requirements" by "transforming the Act's central definition into an invitation for evasion." Gov't Br. 41. To be sure, the GCA seeks to keep firearms away from criminals and to facilitate criminal investigations through licensing, serialization, and background check requirements. Pub. L. 90-618, Title I, § 101, 82 Stat. 1213, 1213 (Oct. 22, 1968). But Congress also explained that it sought not to overly burden law-abiding firearm users. *Id.*

Balancing these interests, the GCA comprehensively regulates the primary commercial market for firearms while leaving Americans free to make firearms privately for their personal use (and even to make private, noncommercial, sales of firearms). *See* Pet.App.8a. Indeed, the Government acknowledged in promulgating the Rule that "firearms privately made by non-prohibited persons solely for personal use generally do not come under the purview of the GCA." 87 Fed. Reg. at 24,686. While the Government would elevate one purpose above all others and unilaterally expand the scope of the GCA to maximize ATF's regulatory purview, Respondents' interpretation respects the line Congress has drawn. If the Government believes that line is no longer the correct one, it is up to Congress to change it, not ATF. *Cf. Henson v. Santander Consumer USA, Inc.*, 582 U.S. 79, 89 (2017).

This case is similar to *Cargill*, in which this Court found that "[t]he presumption against ineffectiveness cannot do the work that ATF … ask[s] of it." 602 U.S. at 427. The Court explained that "[a] law is not useless merely because it draws a line more narrowly than one of its conceivable statutory purposes might suggest." *Id.* at 427–28. Just as the NFA was not rendered "in great measure nugatory" because it did not reach bumpstocks, *id.*, the GCA is not a dead letter because it permits hobbyists to make their own firearms without participating in its regulatory framework. Indeed, absent the Rule the GCA still reaches the vast majority of firearms produced in this country.

The Government argues otherwise, but its cases are poor comparisons to this one. In *Abramski*, this Court held that it was not the "straw purchaser" but the ultimate recipient of a firearm who was the

"transferee" for purposes of federal firearms law. 573 U.S. at 183–84. The Government suggests that this conclusion was the result of "the Court refus[ing] to read the statutory provisions in a manner that would permit … ready 'evasion' and thereby render the [GCA's] requirements 'meaningless' or 'utterly ineffectual.' " Gov't Br. 42 (quoting 573 U.S. at 181, 185). But *Abramski* expressly rejects that its holding rested on "mere purpose-based arguments." 573 U.S. at 179 n.6. Rather, the Court reached its conclusion primarily by construing the phrase "transferee" "within the broader statutory context." *Id.* As we have explained, doing the same here is fatal to the Government's arguments.

The Government next discusses *Barrett v. United States*, in which this Court held that the GCA covered intrastate transfers of firearms that had previously traveled in interstate commerce. 423 U.S. 212, 216 (1976). The Government claims that "the Court repeatedly relied on anti-circumvention principles" to support its reading. Gov't Br. 42. But those principles merely buttressed the Court's conclusion that the statutory text was "without ambiguity" and plainly applied whenever the firearm "has been shipped or transported in interstate or foreign commerce," regardless of whether it had traveled in interstate commerce to the most recent transferee. 423 U.S. at 216. The Court explained that "the language of § 922(h), the structure of the Act of which § 922(h) is a part, and the manifest purpose of Congress are *all* adverse to petitioner's position." *Id.* (emphasis added). The Government's final case, *Huddleston v. United States*, 415 U.S. 814 (1974), is similar. In *Huddleston*, the Court held that the GCA's prohibition on false statements in connection with acquiring a firearm applied to

redeeming a firearm from a pawnshop. *Id.* at 819–29. Though the Court acknowledged that a contrary reading would be inconsistent with the statute's purpose, that was not the primary basis for its decision. The Court found that "a careful look at the statutory language and at complementary provisions of the [GCA]" demonstrated that "the asserted ambiguity is contrived" and the statute's plain terms covered the conduct at issue. *Id.* at 820.

It is not only the Government's arguments from precedent that are lacking. For one thing, the Government's concern about "evading" the GCA by making a firearm at home is inconsistent with the fact that "[t]he federal government has never required a license to build a firearm for personal use," despite a long tradition of private gunsmithing throughout American history. Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 ST. MARY'S L.J. 35, 66, 80 (2023). Production of the precursors or parts kits targeted by the Rule is not an attempt to arm criminals in evasion of the GCA but rather to make hobbyist firearm manufacturing more accessible in a manner that complies with the GCA. It is similar to a hardware store bundling tools and materials together with plans to make a DIY woodworking project more accessible. *See* JA-134 ("Just as home improvement stores and Web sites have flooded the market to help the do-it-yourself homeowner, businesses are moving to help and profit from the do-it-yourself firearms enthusiast."). By turning to the market for assistance with making firearms, modern do-it-yourselfers are similar to their Founding-era forbears. *See* Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 CALIF. L. REV. 101, 169–70, (forthcoming 2025), *available at* https://perma.cc/H87F-Z68J. The Government's

regulations will make this much more difficult. *See* JA-191–92 (noting the comments ATF had received indicating that "many parts kit manufacturers and dealers will go out of business").

For another, the Government's concerns about the "explosion in the availability and unlawful use of ghost guns" are overstated (and legally irrelevant). *See* Gov't Br. 44. First, privately made firearms are not a substantial source of firearms for criminals. ATF's own data shows that from 2017 to 2021 only 3% of trafficking investigations involved such firearms—compared to 40.7% involving unlicensed dealers, 39.5% involving straw purchasing, and 25.2% involving stolen firearms. ATF, *National Firearms Commerce and Trafficking Assessment,* Vol. III, Part III (Mar. 27, 2024), https://perma.cc/TQJ8-4PLJ. This is consistent with other sources that show that criminals typically acquire firearms through straw purchasers, the black market, or theft. *See* Mariel Alper and Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016* at Tbl. 5, BUREAU OF JUST. STAT., DEP'T OF JUST. (Jan. 2019), https://perma.cc/F39P-DS8Z (just 10.1% of prisoners purchased crime guns at retail, no self-builds reported).

Second, the Government relies on tracing data that it claims shows a soaring increase in the number of privately made firearms being used in crime each year. Gov't Br. 44. But tracing data is a poor proxy for criminal misuse of firearms. Indeed, ATF's tracing report warns against reading too much into its findings:

> [N]ot all firearms used in crimes … are traced. … [F]irearms selected for tracing are not chosen for purposes of determining which

> types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and *should not be considered representative* of the larger universe of all firearms used by criminals, or any subset of that universe.

JA-239 (emphasis added).

Third, the ordinary infirmities of tracing data are accentuated in this case, as ATF has acknowledged that "the substantial increase" in traces of unserialized firearms is the result at least in part of a coordinated "education, outreach, and training" effort ATF undertook to encourage law enforcement to submit more firearms of this type for tracing. JA-283.

Fourth, privately made firearms remain a small portion of the overall universe of trace requests. In 2021 there were 19,273 traces of suspected privately made firearms, constituting about 4.2% of the nationwide total. JA-278, JA-283. Privately made firearms' relatively small share of the overall number of trace requests perhaps explains how ATF can in fact have become *more successful* in tracing generally in recent years. *See* JA-280 (74.7% of traces successful in identifying original purchaser in 2017 compared to 79.5% in 2021).

Fifth, tracing data is a poor guide for yet another reason: as discussed above, the GCA does not restrict the right of Americans to make firearms for their own use, and while many such firearms undoubtedly are made from the sort of precursors and parts kits that the Rule targets, ATFs' tracing data does not demonstrate what percentage of the privately made firearms it has sought to trace were built with the aid of such

materials as opposed to items that remain outside the purview of the Rule.

The Government therefore fails to establish that the parts kits and precursors targeted by the Rule play a significant role in crime. Most people, *including criminals*, prefer to use firearms manufactured and assembled by professionals, for the obvious reason—noted by ATF in responding to comments regarding the Rule—that they are far more reliable. *See* JA-192. Indeed, an ATF agent recently admitted a shift away from privately made firearms by criminals, because "[t]he reliability of those guns is still not as good as your regular[ly] manufactured firearm." Jordan Elder, *Trends for 'ghost guns' are shifting. Here's where experts say they're popping up.*, NEWS4 SAN ANTONIO (July 11, 2024), *available at* https://perma.cc/8FYR-FFM4. It is likely for this reason that "[m]ost of the people that make privately made firearms are just making them for personal use," *id.*; *see also* JA-137 ("Some firearms enthusiasts make their own firearms as a hobby.").

In the final analysis, ATF's assertions about the dangers of privately made firearms may be debatable as a policy matter. But Congress has never subjected the private making of firearms to comprehensive federal regulation. To be sure, technological and market developments since 1968 have made it easier for individuals "to make firearms practically or reliably on their own." 87 Fed. Reg. at 24,688. Whether this calls for a change in federal policy is a question for Congress, not ATF, to answer. And despite several opportunities to do so, Congress has steadfastly declined to pass legislation targeting the same products that are the object of the Rule. *See, e.g.*, *Ghost Guns Are Guns*

Act, H.R. 1278, 115th Cong. (Mar. 1, 2017) (not enacted); *Untraceable Firearms Act of 2018*, H.R. 6643, 115th Cong. § 2(a)(36) (July 31, 2018) (not enacted); *Stopping the Traffic in Overseas Proliferation of Ghost Guns Act*, S. 459, 116th Cong. (Feb. 12, 2019) (not enacted).

CONCLUSION

The Court should affirm the judgment of the Fifth Circuit.

Respectfully submitted,

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