No. 23-852

In the Supreme Court of the United States

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

v.

JENNIFER VANDERSTOK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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Congress has long required commercial manufacturers and sellers of firearms and firearm frames and receivers to mark their products with serial numbers, maintain sale records, and conduct background checks to keep guns away from minors, felons, domestic abusers, and other prohibited persons. Those uncontroversial requirements are essential to preventing and solving gun crimes. But in recent years, the manufacturer respondents asserted that they could avoid those requirements altogether by selling firearms as easy-to-assemble kits, or by selling frames and receivers that require a few minutes of work to be made functional—a process they touted as "a small amount of finishing," N.Y. Amici Br. 15 (citation omitted), that is "dummy proof," "ridiculously easy," and capable of completion in as little as "15 minutes," Gun Violence Prevention Grps.

Amici Br. 4-5 (citations omitted). The results were predictable: Guns sold without serial numbers, records, or background checks are uniquely attractive to people who are prohibited from possessing firearms or who plan to use them illegally, and communities around the Nation saw an explosion in crimes committed with untraceable ghost guns. Gov't Br. 7-8; see, *e.g.*, Major Cities Amici Br. 5-37.

The Rule responded to that public-safety crisis by reiterating and clarifying ATF's longstanding view that the plain text of the Gun Control Act does not permit such ready evasion. The parts kits covered by the Rule fall squarely within the Act's definition of a "firearm" because they "may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. 921(a)(3)(A). And a frame or receiver is still a "frame or receiver," 18 U.S.C. 921(a)(3)(B), even if the buyer must remove some superfluous plastic rails or drill a few holes to make it functional.

Respondents have no good answer to that straightforward textual analysis. They do not meaningfully grapple with the ordinary meaning of "readily be converted" and "frame or receiver." They also do not defend key aspects of the Fifth Circuit's analysis, instead focusing on new arguments not accepted by the courts below. Indeed, the VanDerStok respondents devote an entire section of their brief to a never-before-raised challenge to an entirely different provision of the Rule. And none of respondents' arguments provide any reason to question what ordinary usage and common sense make clear: A company that sells kits and parts that can be converted into functional firearms, frames, and receivers in minutes—and that are designed and marketed

specifically for that purpose—is selling firearms, frames, and receivers.

A. The Weapon Parts Kits Covered By The Rule Are "Firearms" Under The Act

Our opening brief explained (at 19-24) that the Rule's treatment of weapon parts kits follows directly from the plain text of the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213.[1] The Act defines a "firearm" to include "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." 18 U.S.C. 921(a)(3)(A). The Rule tracks that definition, confirming that the Act covers parts kits that "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. Respondents do not dispute that completion, assembly, and restoration are types of "conver[sion]" encompassed by the Act. See Gov't Br. 19-20. The Rule thus simply recognizes that a parts kit is a covered firearm if it meets the Act's "readily be converted" standard. Respondents do not defend the Fifth Circuit's conclusion that a collection of parts meets that standard only if it can be assembled into a working firearm in a matter of seconds. See *id.* at 25-27. And respondents' various objections to the Rule's straightforward reading of the Act are unpersuasive.

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[1] Our opening brief (at 2) incorrectly cited the Gun Control Act as Pub. L. No. 90-531, 82 Stat. 225. That is the citation for provisions in the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), an earlier statute that included the same definition (in relevant part) of "firearm" and that the Gun Control Act incorporated and expanded upon. Our brief also inadvertently described (at 3) findings contained in the Omnibus Act as having been contained in the Gun Control Act.

1. Respondents first assert (VanDerStok Br. 34) that "a 'parts kit' is not itself a weapon" and thus is not covered by Section 921(a)(3)(A) even if "it is readily convertible into a firearm." The Fifth Circuit did not rely on that argument, and with good reason. A "weapon" is an "instrument of offensive or defensive combat." *Webster's Third New International Dictionary of the English Language* 2589 (1968) (*Webster's*). Congress used that term to make clear that the Act does not regulate "toys" or "industrial tools," such as cap guns or nail guns. 87 Fed. Reg. 24,652, 24,684 (Apr. 26, 2022). But a firearm need not be assembled or fully functional to be a weapon. Gov't Br. 29. Context makes that especially clear: By including "any weapon" that "may readily be converted to expel a projectile by the action of an explosive," 18 U.S.C. 921(a)(3)(A), Congress specifically contemplated that a covered weapon may require a conversion—that is, a change from "one state" "into another," *Webster's* 499—in order to function.

Respondents insist (VanDerStok Br. 36) that Section 921(a)(3)(A) covers a device only if it functioned as a weapon "*before* it was converted" to expel a projectile using an explosive. They thus maintain that the Act includes "a starter gun" as an example of the covered devices only because Congress was concerned that "unmodified starter pistols" were being "brandished" by "'stickup artists'" pretending they were real guns. *Id.* at 34 (quoting S. Rep. No. 1340, 88th Cong., 2d Sess. 13 (1964) (Senate Report)). But respondents provide no support for their assumption that a device must be functional to be a "weapon," and both ordinary usage and statutory context indicate otherwise. Respondents' interpretation would also render the Act's "readily be converted" language all but superfluous because they

do not identify any device other than a starter gun that would be covered.[2]

Respondents' strained reading is also inconsistent with the Act's obvious design. Congress was not concerned about devices that *look like* guns; it did not, for example, regulate realistic water pistols. Instead, Congress was concerned about devices that can readily be converted to *function as* guns. Congress included some starter pistols because they can readily be modified to shoot live ammunition. Gov't Br. 26. Respondents have offered no plausible reason why Congress would have covered those devices but not kits that can be assembled into functional firearms with comparable speed and ease—and that have no other purpose.

2. Respondents next echo (VanDerStok Br. 34; Defense Distributed Br. 18-19) the Fifth Circuit's conclusion that Section 921(a)(3)(A) cannot cover parts kits because other provisions in the federal firearms laws expressly refer to parts or combinations of parts. But as we have explained (Gov't Br. 25), Congress often uses different language to achieve similar ends. It did so here by including weapons that can "readily be converted" into functional firearms—language that even respondents concede (VanDerStok Br. 37) encompasses some collections of parts, such as a disassembled gun. And unlike the prior statute on which respondents rely, Section 921(a)(3)(A) does not cover "'any part or parts of' a firearm," *id.* at 34 (citation omitted), such as a

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[2] The Senate Report respondents quote (VanDerStok Br. 34) refutes their argument. It repeatedly emphasizes that starter guns are dangerous because they "are convertible to lethal firearms." Senate Report 13; see *id.* at 13-15. The discussion that respondents quote does not mention brandishing and instead refers to using starter guns "to fire at somebody." *Id.* at 13.

trigger, barrel, or magazine. It reaches only parts kits that may readily be converted into functional firearms.

3. Finally, respondents assert (VanDerStok Br. 35) that the Act presupposes that "*every* firearm" covered by Section 921(a)(3)(A) "*will have* 'a frame or receiver'" covered by Section 921(a)(3)(B) and that the Rule improperly attempts to "extend ATF's regulatory authority to cover parts kits that *do not include* a frame or receiver." That is doubly wrong.

First, respondents presume that only complete and functional frames or receivers qualify as frames or receivers under Section 921(a)(3)(B). But that premise is mistaken. See pp. 7-15, *infra*. Just as a complete firearm covered by Section 921(a)(3)(A) will typically include a complete frame or receiver covered by Section 921(a)(3)(B), a weapon parts kit covered by the Rule's interpretation of Section 921(a)(3)(A) will typically include a partially complete frame or receiver covered by the Rule's interpretation of Section 921(a)(3)(B): If the kit can readily be converted into a functional firearm, then it will typically include a part or parts that can readily be converted into a functional frame or receiver. Gov't Br. 30; see *id.* at 23 (parts kit including an incomplete frame).

Second, even if respondents were correct that Section 921(a)(3)(B) covers only complete frames or receivers, that would provide no reason to question the Rule's conclusion that Section 921(a)(3)(A) includes a parts kit that can readily be converted into a functional firearm even if it does not contain a complete frame or receiver (because, for example, a few holes must be drilled to make it functional). Section 921(a)(3)(B) provides that "the frame or receiver" of a weapon described in Section 921(a)(3)(A) is a regulated firearm, but that phrasing

does not imply that every such weapon has a frame or receiver. If, for example, a statute defined a clock to include "(A) any device for telling time, or (B) the hands of any such device," no one would doubt that a digital clock is covered under (A) even though it lacks hands. So too here: A weapon parts kit that can readily be converted to a functional firearm falls within Section 921(a)(3)(A)'s plain text whether or not it includes a frame or receiver covered by Section 921(a)(3)(B).[3]

B. The Frames And Receivers Covered By The Rule Are "Firearms" Under The Act

The Rule interprets the statutory term "frame or receiver" to include "a partially complete, disassembled, or nonfunctional frame or receiver" that is "clearly identifiable as an unfinished component part of a weapon" and that "may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." 27 C.F.R. 478.12(c). Like the Fifth Circuit, respondents suggest that the Rule is invalid because a part is not a frame or receiver unless it is fully complete and functional—meaning that a manufacturer could avoid the Act's requirements merely by leaving a single hole undrilled or adding one superfluous plastic tab. But respondents make little effort to square that implausible view with the ordinary meaning of "frame or receiver." Perhaps recognizing the weakness of that position, the VanDerStok respondents offer a fallback

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[3] Respondents briefly invoke (VanDerStok Br. 35) 18 U.S.C. 923(i), which requires a "firearm" to be marked with a serial number on the "receiver or frame." But as respondents acknowledge (VanDerStok Br. 37), that provision cannot mean that all "firearms" must include a traditional frame or receiver because Congress specifically defined a firearm to include "silencer[s]" and "muffler[s]," which lack any such parts. 18 U.S.C. 921(a)(3)(C); see Gov't Br. 31.

argument urging a return to what they describe as ATF's pre-Rule practice. But respondents mischaracterize ATF's practice: ATF has applied the same basic approach reflected in the Rule for more than half a century.

1. Our opening brief explained (at 32-37) that the Rule's interpretation of "frame or receiver" follows naturally from dictionary definitions and ordinary usage. Neither of those sources of meaning require that a part be complete, operable, or functional in order to be a "frame" or "receiver." To the contrary, a frame or receiver that is missing a few holes or that has some extra pieces of plastic is still a frame or receiver because it is the "main body," *Webster's* 1894, or "basic structure" of a gun, Chester Mueller & John Olson, *Shooter's Bible Small Arms Lexicon and Concise Encyclopedia* 87 (1st ed. 1968) (*Olson's*). The same is true using respondents' preferred definition: A frame or receiver is still "the component of a firearm that 'provides housing for the hammer, bolt or breechlock, and firing mechanism,'" VanDerStok Br. 20 (citation omitted), even if the user must remove some temporary plastic rails and drill a few holes before installing those components. As a matter of ordinary usage, too, it is perfectly natural to describe such an object as a frame or receiver. Respondents themselves have used the terms in precisely that way when marketing their products, describing them as "80% frames" and "80% receivers"—or simply as "frames" and "receivers."[4]

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[4] Respondent Polymer80, for example, sold the relevant products on a section of its website entitled "Pistol Frame[s] and Jigs." Polymer80, *80% Frames and Jigs*, https://perma.cc/DLG5-GRGX. Similarly, respondent BlackHawk marketed "the GST-9" "[f]rame." 80% Arms, *GST-9*, https://perma.cc/4N5Y-YQHM.

That ordinary usage does not treat a part as "both *not yet* a receiver and a receiver at the same time." VanDerStok Br. 20 (citation omitted). Instead, it simply recognizes that—as with a bicycle, a tennis racket, and countless other everyday items—an object can be a frame or receiver even if it is not fully complete or functional. Gov't Br. 32-33. Respondents err in asserting (VanDerStok Br. 20) that the Rule's use of "convert[]" to describe the process of completing a frame or receiver is inconsistent with that understanding: A user who converts an incomplete frame into a complete frame changes it "from one state to another," *Webster's* 499, but the frame is properly described as a frame before the conversion.

2. Respondents object (VanDerStok Br. 21) that Congress included the phrase "readily be converted" in Section 921(a)(3)(A) but did not include similar language in Section 921(a)(3)(B). But as we have explained (Gov't Br. 37-38), there is an obvious reason for the difference: Section 921(a)(3)(A) is part of an express definition of the term "firearm," and limiting that definition to weapons that "*will*" "expel a projectile by the action of an explosive," 18 U.S.C. 921(a)(3)(A) (emphasis added), would have departed from ordinary meaning by including only *functional* firearms. But Congress did not define "frame or receiver," which means that those terms should be interpreted consistent with their ordinary meaning—not artificially limited to "complete" or "functional" products, which would require adding words to the statute. Respondents have no answer to that straightforward textual point.

3. Straying beyond Section 921(a)(3), respondents assert (VanDerStok Br. 21) that "[t]reating conversion as an inherent part of the statutory definition of a

firearm" would "create problems" if the same approach were applied to "other parts" of the federal firearms laws. Again, the Fifth Circuit did not rely on those arguments, and rightly so. The Rule does not treat conversion as an "inherent part" of any statutory term, regardless of context. And the other provisions on which respondents rely materially differ from Section 921(a)(3)(B) and provide no reason to depart from the Rule's natural reading of that provision.

Take the definition of "machinegun" in the National Firearms Act of 1934 (NFA), ch. 757, 48 Stat. 1236. Congress originally defined that term to mean "any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger." *Ibid.* Respondents presume (VanDerStok Br. 21) that under the approach reflected in the Rule, that definition would necessarily include any weapon that could readily be converted to function as a machinegun. And they assert (*ibid.*) that such an understanding would be inconsistent with Congress's subsequent amendment to include the narrower category of weapons that "can be readily restored" to fire more than one shot by a single function of the trigger. 26 U.S.C. 5845(b). But respondents' premise is wrong: The original NFA did not include any weapon that could readily be converted to function as a machinegun because its express definition was limited to a weapon that actually "shoots" (or "is designed to shoot") more than one shot by a single function of the trigger. 48 Stat. 1236. The Rule's approach to the undefined terms "frame or receiver" is entirely consistent with that understanding.

Respondents also note that the NFA defines a "machinegun" to include "the frame or receiver" of a

machinegun. 26 U.S.C. 5845(b). They assert (VanDerStok Br. 22-23) that the Rule's interpretation of "frame or receiver" could treat owners of semiautomatic AR-15s as possessors of machinegun receivers because some AR-15 receivers can be converted into machinegun receivers by drilling a hole to accommodate an automatic sear. But the Rule does not suggest anything of the sort.

Respondents are of course correct that it would be wrong to presume that every statutory reference to a thing necessarily includes any *other* object that can readily be converted into that thing. A pair of pants, for example, can readily be converted into shorts, but one would not naturally describe pants as shorts. But the Rule does not rest on any such presumption. Instead, it recognizes that the term "frame or receiver" includes "a partially complete, disassembled, or nonfunctional frame or receiver" that "is clearly identifiable as an unfinished component part of a weapon" and that can readily be converted "to function as a frame or receiver." 27 C.F.R. 478.12(c).

Nothing in that definition suggests that an AR-15 receiver, without more, is a "frame or receiver" of a machinegun under Section 5845(b). Like a pair of pants, an AR-15 receiver is a complete, functional object in its own right, not a "partially complete" or "disassembled" part. 27 C.F.R. 478.12(c). And an AR-15 receiver—whether complete or incomplete—is not "clearly identifiable as an unfinished component part" of a machinegun. *Ibid.* An AR-15 receiver thus would not qualify as the receiver of a machinegun under the

Rule's approach—and ATF has never suggested otherwise.[5]

4. Although the VanDerStok respondents maintain (Br. 27) that "much in the statute suggests" that the Fifth Circuit correctly held that "an item must be functional to be a frame or receiver," they ultimately retreat to a fallback argument based on their account of ATF's "prior practice." Respondents acknowledge (*id.* at 9-10) that ATF has never construed Section 921(a)(3)(B) to include only complete or functional frames and receivers. But respondents assert that ATF's pre-Rule practice focused on whether a frame or receiver had reached "a critical 'stage of manufacture'" rather than on whether it could readily be completed. *Id.* at 27 (citation omitted). And respondents maintain (*ibid.*) that such a focus "has several advantages" over the Rule. That new fallback argument rests on a mischaracterization of ATF's past practice.

a. As we have explained (Gov't Br. 5-7), ATF classification letters beginning in the 1970s and continuing through the Rule's adoption have considered (1) whether partially complete frames or receivers can be readily converted to a functional condition; (2) the amount and location of additional machining or processing required to complete a frame or receiver; and (3) the length of time necessary to complete a frame or receiver. ATF has thus long understood the "critical stage of manufacture" as another way of describing the stage at which a frame or receiver can be completed "using basic tools in a reasonable amount of time." 87 Fed. Reg. at 24,685

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[5] The result would be different, however, if a manufacturer sold receivers that were indexed to facilitate the drilling of a hole for an automatic sear or were otherwise clearly identifiable as incomplete machinegun parts.

(citation omitted). A 1978 classification letter, for example, concluded that a part was a "frame" because it had "reached a stage of manufacture such that it may readily be converted to functional condition." Pet. App. 209a-210a.

The Rule carries forward the same approach. Like the pre-Rule classification letters, it reaches only a frame or receiver that has "reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon." 27 C.F.R. 478.12(c). Like the pre-Rule letters, it asks whether "a partially complete, disassembled, or nonfunctional frame or receiver" can "readily" be converted to "function as a frame or receiver." *Ibid.* And like the pre-Rule letters, the Rule considers the length of time and additional processes required to determine whether that standard is met. See 27 C.F.R. 478.11 (listing "[t]ime," "[e]ase," and "[s]cope, *i.e.*, the extent to which the subject of the process must be changed to finish it").

Respondents are thus quite wrong to posit a dichotomy between a pre-Rule focus on stage of manufacture and the Rule's focus on ready completion. As ATF explained in adopting the Rule, the agency "has maintained and continues to maintain that a partially complete frame or receiver alone is not a frame or receiver if it still requires performance of certain machining operations" precisely because "it may not readily be completed." 87 Fed. Reg. at 24,668. And although respondents criticize the Rule's focus on ready completion, they fail to offer any other principled yardstick for determining whether a frame or receiver has reached a "critical stage of manufacture." VanDerStok Br. 28.

b. Although the Rule generally reiterates and clarifies the approach ATF has applied for decades, the

agency did make one change to its prior practice: In determining whether a part can readily be converted into a functional frame or receiver, the Rule considers accompanying materials such as templates and jigs. Gov't Br. 10, 39-40. But contrary to respondents' suggestion (VanDerStok Br. 24-27), that refinement did not reflect any dramatic shift in ATF's understanding of the Act: Because templates and jigs serve the same purpose as indexing or partial machining—and therefore may allow a user to quickly and easily complete a frame or receiver—those items are directly relevant to ATF's longstanding readily-converted inquiry.[6]

5. Finally, respondents assert (VanDerStok Br. 29) that "the Government does not fairly depict how 'easily' certain items can be converted to function as firearm frames or receivers." But our account is based on experience showing that many partially complete frames and receivers can be assembled in well under an hour. Gov't Br. 7; see, *e.g.*, Pet. App. 236a-237a; Gun Owners for Safety Amicus Br. 14-16. It is also consistent with respondents' own advertising, which touts assembly

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[6] That refinement in ATF's approach accounts for one of the reclassifications respondents identify. See VanDerStok Br. 25-26. Respondents' other purported reclassification (*id.* at 24-25) was not a reclassification at all. In 2017, ATF concluded that a particular Polymer80 product was not a frame or receiver in part because the "[t]rigger-pin hole" and the "[t]rigger mechanism housing pin" were not "machined or indexed." J.A. 104; see J.A. 101-103. In contrast, the Polymer80 products that ATF concluded were frames and receivers post-Rule included "indexing or material removed from the front or rear fire control cavities for installation of the trigger mechanism and sear," J.A. 267; see J.A. 258-262, which significantly affects the speed and ease with which the products can be made functional, see 87 Fed. Reg. at 24,689. Respondents are simply wrong to assert (VanDerStok Br. 25) that these different devices were "precisely the same product."

that is "ridiculously easy" and capable of completion "in under 15 minutes." Gun Violence Prevention Grps. Br. 4-5 (citations omitted); see *id.* at 4-6 (collecting other examples). And even more to the point, the Rule by its terms is limited to products that can "readily" be completed. 27 C.F.R. 478.12(c). Arguments about hypothetical applications of the Rule to parts that may not satisfy that standard provide no basis for relief in this facial challenge to the Rule. Gov't Br. 27-28.

C. Respondents' Challenge To The Rule's Treatment Of Multi-Piece Frames And Receivers Is Not Properly Presented And Lacks Merit In Any Event

Separate from defending the Fifth Circuit's invalidation of the Rule's provisions governing weapon parts kits and partially complete frames and receivers, the VanDerStok respondents now seek to challenge (Br. 31-33) a separate provision of the Rule addressing split and multi-piece frames and receivers, 27 C.F.R. 478.12(a). That challenge is not properly presented, would not support the judgment below, and lacks merit in any event.

1. Respondents acknowledge (VanDerStok Br. 31 n.4) that they "have not raised" their challenge to Section 478.12(a)'s treatment of split frames and receivers at any prior stage of this litigation. And that challenge is not merely a new "argument" (*ibid.*) supporting respondents' claim challenging the Rule's provisions addressing parts kits and partially complete frames and receivers. Instead, it is an entirely new claim challenging a different provision of the Rule on different grounds. That new claim is not properly presented because it was not "pressed or passed upon below," *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation omitted), and because it is not "fairly included" in the

questions on which this Court granted certiorari, Sup. Ct. R. 14.1(a); see Pet i.

2. Respondents' new claim also does not provide any basis for affirming the judgment below. The Fifth Circuit held that certain provisions in Sections 478.11 and 478.12(c) are inconsistent with the Act and remanded for the district court to determine the appropriate remedy in light of that holding. Pet. App. 31a-32a. Respondents' new challenge to a separate provision of the Rule does not support that judgment, particularly because the Rule includes a "[s]everability" provision directing that if "any provision" "is held to be invalid or unenforceable" "the remainder of" the Rule "shall not be affected." 87 Fed. Reg. at 24,730.

3. In any event, Section 478.12(a) is consistent with the Act. Many modern firearms have a split or multi-piece frame or receiver. 87 Fed. Reg. at 24,652, 24,655. ATF explained that, consistent with its past approach, it was identifying a particular part of such frames and receivers as the regulated "frame" or "receiver"—and thus the part subject to the Act's serialization and other requirements—in order to provide clarity to regulated entities and ensure that those parts do not escape the Act's coverage.

The Rule defines a "frame" as the part of a handgun "that provides housing or a structure for the component (*i.e.*, sear or equivalent) designed to hold back the hammer, striker, bolt, or similar primary energized component prior to initiation of the firing sequence." 27 C.F.R. 478.12(a)(1). And the Rule defines a "receiver" as the housing for the primary breech sealing component of a rifle or shotgun. 27 C.F.R. 478.12(a)(2). Those provisions of the Rule are consistent with dictionary definitions because they ensure that the Act regulates

"the basic structure and principal component of a firearm." *Olson's* 87. And as ATF explained, a contrary approach "could mean that as many as 90 percent of all firearms" would "not have any frame or receiver subject to regulation." 87 Fed. Reg. at 24,652. Respondents provide no basis for this Court to consider their new challenge and invalidate this separate provision of the Rule.

D. Respondents' Interpretation Would Effectively Nullify The Act's Core Requirements

Respondents do not seriously dispute that their reading would permit easy circumvention of the Act's serialization, background-check, and recordkeeping requirements, which play a crucial role in addressing the grave public-safety threat posed by gun crime.

1. Respondents do not deny that their interpretation would allow minors, felons, domestic abusers, and other prohibited persons to circumvent the Act's core requirements by easily buying and quickly assembling firearms without serial numbers, records, or background checks. Indeed, as amici explain, respondents have in fact *promoted* their products by emphasizing that they are sold with "no background checks." Blackwell Amici Br. 12 (citation omitted); see, *e.g.*, N.Y. Amici Br. 16 ("There's no paperwork, no background checks.") (citation omitted).

Against that backdrop, respondents assert (VanDerStok Br. 41-44) that concerns about circumvention have no place in interpreting the Act. But this Court's decisions say exactly the opposite. In *Abramski* v. *United States*, 573 U.S. 169 (2014), for example, the Court rejected a linguistically plausible interpretation because it would have "den[ied] effect to the regulatory scheme" by allowing "criminals" "to evade the law" and rendered

the Act's background-check and recordkeeping requirements "meaningless" or "utterly ineffectual." *Id.* at 181, 183. That approach has deep roots: For centuries, this Court has refused to "adopt an interpretation that will defeat [the statute's] own purpose, if it will admit of any other reasonable construction." *The Emily*, 22 U.S. (9 Wheat.) 381, 388 (1824).

Respondents err in asserting (VanDerStok Br. 42) that the Court's decision in *Garland* v. *Cargill*, 602 U.S. 406 (2024), calls for a different result here. *Cargill* found the anti-circumvention principle inapplicable because the relevant statutory provision merely "dr[ew] a line more narrowly than one of [the statute's] conceivable statutory purposes might suggest." 602 U.S. at 427. Here, in contrast, respondents' reading of the Act would "undermine—indeed, for all important purposes, would virtually repeal—the gun law's core provisions." *Abramski*, 573 U.S. at 179-180. The Court in *Cargill* also discounted ATF's circumvention concerns because the agency had recently changed its position. 602 U.S. at 428. Here, however, the Rule's approach tracks ATF's longstanding practice.[7]

2. Respondents briefly try to suggest (VanDerStok Br. 45-47) that ghost guns have not created a significant public-safety problem. But data from ATF—as well as numerous States and local governments—refutes that suggestion. Tens of thousands of ghost guns are being

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[7] Respondents also invoke (VanDerStok Br. 47-48) various legislative proposals that Congress did not adopt. But such proposals are "a particularly dangerous ground on which to rest an interpretation of a prior statute." *United States* v. *Craft*, 535 U.S. 274, 287 (2002) (citation omitted). That is especially true here because each of the proposals respondents cite differed in material ways from the Rule.

recovered by law enforcement every year—a number that was rapidly increasing in the years leading up to ATF's adoption of the Rule. See Gov't Br. 8, 44. And a chorus of amicus briefs from state and local governments and law-enforcement officers confirms both the rapid proliferation of ghost guns and the tragic costs they have imposed on our Nation's communities. See, *e.g.*, N.Y. Amici Br. 5-6; D.C. Amici Br. 14-18; Major Cities Amici Br. 5-12; Major Cities Chiefs Ass'n Amici Br. 8-11.

Respondents quibble (VanDerStok Br. 45-47) with those statistics at the margins, noting that tracing data is not necessarily representative of guns used in crime. But "tracing is only conducted at the request of a law enforcement agency engaged in a bona fide criminal investigation where a firearm has been used or is suspected to have been used in a crime." J.A. 239. Respondents also note (VanDerStok Br. 46-47) that tracing data does not indicate what percentage of ghost guns were assembled using products covered by the Rule. But the available evidence suggests that such products are responsible for a large percentage of ghost guns used in crime. Respondent Polymer80, for example, produced over 88% of the identifiable ghost guns that were recovered at crime scenes between 2017 and 2021. J.A. 310-311. And according to the City of New York, 65% of ghost guns recovered in that city during the first five months of 2024 "were made from the kinds of home-assembly kits and partially completed frames and receivers that are covered by the Final Rule." N.Y. Amici Br. 5.

E. Respondents' Remaining Arguments Lack Merit

Respondents' appeals to the rule of lenity and the canon of constitutional avoidance provide no basis for invalidating the relevant provisions of the Rule.

1. Respondents acknowledge (VanDerStok Br. 41) that the rule of lenity comes into play only "at the end" "of the interpretive process." It thus has no application here because the Rule's interpretation of the Act is supported by all of the traditional tools of statutory interpretation, including the Act's text and context.

2. Because the relevant provisions of the Act are unambiguous, the canon of constitutional avoidance likewise has no role to play. And in any event, the Rule's interpretation of the Act is wholly consistent with the Second Amendment and the Due Process Clause.

a. Respondents do not dispute that the Act's serialization, background-check, and recordkeeping requirements are "conditions and qualifications on the commercial sale of arms" that are "presumptively lawful" under the Second Amendment. *District of Columbia* v. *Heller*, 554 U.S. 570, 627 & n.26 (2008); see Gov't Br. 46-47. Respondents instead suggest (Defense Distributed Br. 28-32) that applying those requirements to sales of weapon parts kits or partially complete frames and receivers impermissibly regulates at-home gun-making. But the Rule does not prohibit anyone who may lawfully possess a firearm from making one at home (including from a parts kit), and it does not require anyone who personally assembles a firearm to serialize it. Indeed, in over a dozen places the Rule disclaims any intent to regulate at-home gun-making. Gov't Br. 12, 47.

Instead, the Rule simply requires commercial manufacturers and sellers of covered products to comply with routine licensing, serialization, background-check,

and recordkeeping requirements. There is no Second Amendment problem with requiring those manufacturers to follow routine requirements that tens of thousands of licensed manufacturers and dealers comply with every day. See Gov't Br. 12. And other manufacturers of parts kits have no difficulty complying with those requirements, providing a lawful market for individuals who wish to buy and build such a kit. See Gun Violence Prevention Grps. Amici Br. 18 & n.31.

b. Respondents assert (VanDerStok Br. 39) that the Rule's definition of "readily" is unconstitutionally vague. But the same term appears in the Act and the NFA, and respondents do not dispute that the Rule defines the term using a standard dictionary definition supplemented with a list of factors drawn from judicial decisions interpreting those statutes. Gov't Br. 21-22. Respondents also do not suggest that the Act and the NFA as interpreted by the courts are unconstitutionally vague, and they do not explain how the Rule's definition differs in any constitutionally relevant sense from the prevailing judicial interpretation of those terms.

Respondents specifically object (VanDerStok Br. 39-40; Defense Distributed Br. 25-26) to the Rule's clarification that a part is not a frame or receiver if it has not "reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon." 27 C.F.R. 478.12(c). But that provision and the accompanying examples were included at the request of commenters in the firearms industry in order to provide the regulated community with *greater* clarity about parts that are not covered by the Rule, such as unfinished frame or receiver blanks. Gov't Br. 10, 48.

Finally, and relatedly, respondents badly err in asserting (VanDerStok Br. 40) that ATF created a "trap

for the unwary" or sought "to make compliance more difficult." The Act itself relies on terms with an inherent qualitative dimension. It defines a firearm to include a weapon that can "readily" be converted to a functional firearm. 18 U.S.C. 921(a)(3)(A). And it includes a "frame or receiver," 18 U.S.C. 921(a)(3)(B), but is "silent" about "when an item bec[omes]" one, VanDerStok Br. 9. Charged with enforcing that statute, ATF issued a Rule that reiterates and further clarifies the agency's longstanding practice to provide additional guidance to regulated manufacturers and sellers.

To the extent a manufacturer or seller is uncertain about the Act's requirements as applied to a particular product, it can seek and rely upon a classification from ATF. Gov't Br. 5. And any defendant facing a future enforcement action would of course be free to make an as-applied vagueness challenge, or to argue that the Act is not properly construed to reach the defendant's particular conduct—a question that the court would decide de novo. But neither the Fifth Circuit nor respondents have offered any basis for facially invalidating the relevant provisions of the Rule and allowing manufacturers to evade the Act's serialization, background-check, and recordkeeping requirements by selling parts kits and partially complete frames and receivers that can readily be assembled into untraceable ghost guns.

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

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Solicitor General

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