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Comment on the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Proposed Rule on Interstate Transport and Temporary Export of National Firearms Act Firearms

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Interest of Commentor

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Introduction

The Bureau of Alcohol, Tobacco, Firearms, and Explosive’s (ATF) proposal to eliminate the federal permission requirement to transport National Firearms Act (NFA) firearms across state lines is necessary. The current rule—to the extent it regulates short-barreled rifles (SBR)—violates the Second Amendment and exceeds the ATF’s jurisdiction.

Recent executive orders direct federal agencies to review and eliminate unconstitutional rules.² As Executive Order 14206 correctly recognizes,

The Second Amendment is an indispensable safeguard of security and liberty. It has preserved the right of the American people to protect ourselves, our families, and our freedoms since the founding of our great Nation. Because it is foundational to maintaining all other rights held by Americans, the right to keep and bear arms must not be infringed.³

By eliminating the permission requirement for SBRs, ATF’s proposed rule aligns with recent executive orders and minimizes the current rule’s constitutional violations. However, ATF should also rescind its prior statements extending its jurisdiction over this matter and make clear that personal transportation of SBRs never requires ATF’s permission.

¹ See, e.g., **Amicus Curiae Br. of The Buckeye Institute in Support of Pet’rs’**, *Wolford v. Lopez*, No. 24-1046 (U.S. Nov. 24, 2025); **Br. of Amici Curiae The Buckeye Institute et al. in Support of Pet’rs’**, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025) (No. 23-1141); **Amicus Curiae Br. of The Buckeye Institute in Support of Pet’rs’**, *Snope v. Brown*, 145 S. Ct. 1534 (2025) (No. 24-203); **Doe v. Columbus**, buckeyeinstitute.org (last visited May 11, 2026).

² Executive Office of the President, **Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative**, February 25, 2025 (90 Fed. Reg. 10583); Executive Office of the President, **Protecting Second Amendment Rights**, February 12, 2025 (90 Fed. Reg. 9503).

³ Executive Office of the President, **Protecting Second Amendment Rights**, February 12, 2025 (90 Fed. Reg. 9503).

I. Regulatory Background

The Omnibus Crime Control and Safe Streets Act of 1968 (Crime Control Act) restricts the transportation of SBRs—defined in part as rifles with barrels under 16 inches in length⁴—by making it unlawful

for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity.⁵

ATF's implementing regulations provide that "[t]he Director may authorize a person to transport in interstate or foreign commerce" a restricted firearm "if he finds that such transportation is reasonably necessary and is consistent with public safety and *applicable State and local law*."⁶ ATF regulations further provide that:

[a] person who desires to transport in interstate or foreign commerce any such device or weapon shall submit a written request so to do, in duplicate, to the Director. The request shall contain:

- (1) A complete description and identification of the device or weapon to be transported;
- (2) A statement whether such transportation involves a transfer of title;
- (3) The need for such transportation;
- (4) The approximate date such transportation is to take place;
- (5) The present location of such device or weapon and the place to which it is to be transported;
- (6) The mode of transportation to be used (including, if by common or contract carrier, the name and address of such carrier); and
- (7) Evidence that the transportation or possession of such device or weapon is not inconsistent with the laws at the place of destination.⁷

⁴ 26 U.S.C. § 5845(a)(3) and (4).

⁵ 18 U.S.C. § 922(a)(4).

⁶ 27 CFR § 478.28(a) (emphasis added).

⁷ 27 CFR § 478.28(a).

Each year, tens of thousands of NFA-regulated firearms owners apply to transport their firearms across state lines.⁸ Nearly every state allows SBR ownership, usually with few restrictions beyond what federal law requires.⁹

II. ATF's current rule violates the Second Amendment.

The Second Amendment famously states that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”¹⁰ Since the enactment of the Crime Control Act and NFA, the legal landscape for assessing the constitutionality of firearms regulations has changed. In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.”¹¹ As Justice Thomas—*Bruen*’s author—later explained, a challenger meets his burden “if the law at issue ‘regulates’ Americans’ ‘arms-bearing conduct.’”¹² Under *Bruen*, “[t]o justify its regulation, . . . the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.”¹³

A. The Second Amendment protects SBRs.

In *D.C. v. Heller*, the Supreme Court ruled that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.”¹⁴ Justice Scalia noted that the term arms “was applied, then as now, to weapons that [1]were *not specifically designed* for military use *and* [2] were not employed in a military capacity.”¹⁵ Thus, Supreme Court precedent presumptively protects bearable arms that are in common use today for lawful purposes.¹⁶

⁸ Bureau of Alcohol, Tobacco, Firearms and Explosives, **Interstate Transport and Temporary Export of National Firearms Act Firearms**, May 8, 2026 (91 Fed. Reg. 25229) (noting 96,865 applications from January 2020 to May 2025); Bureau of Alcohol, Tobacco, Firearms and Explosives, **Proposed eCollection of eComments; Application To Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms-ATF Form 5320.20**, August 23, 2022 (87 Fed. Reg. 51702) (noting 17,000 applications in 2019 and 20,000 in 2022); Bureau of Alcohol, Tobacco, Firearms and Explosives, **Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application to Transport Interstate or To Temporarily Export Certain NFA Firearms-ATF Form 5320.20**, November 28, 2025 (90 Fed. Reg. 54761) (noting 12,878 in 2025).

⁹ Silencer Shop, *Short Barrel Rifles: How to Buy & SBR Laws* (Feb. 7, 2023).

¹⁰ U.S. Const. amend II.

¹¹ *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022).

¹² *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting from the denial of cert.) (citation omitted).

¹³ *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022).

¹⁴ *D.C. v. Heller*, 554 U.S. 570, 582 (2008).

¹⁵ *D.C. v. Heller*, 554 U.S. 570, 581 (2008) (emphasis added).

¹⁶ See *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 47 (2022).

1. *United States v. Miller* does not preclude Second Amendment protection for SBRs.

In *United States v. Miller*, the Supreme Court upheld Miller’s conviction for possessing an unregistered short-barreled shotgun in violation of the NFA because Miller had not presented evidence that short-barreled shotguns had any particular usefulness for military purposes.¹⁷ *Miller* involved an NFA-regulated firearm but it did not involve SBRs. And whereas Miller proffered no evidence of the short-barreled shotguns’ military usefulness, substantial evidence demonstrates that SBRs are in common use for lawful purposes and were not specifically designed for military use. Although the Seventh Circuit Court of Appeals extended *Miller*’s approval of a ban on short-barreled shotguns to approve bans on SBRs¹⁸, the Supreme Court has limited *Miller* “to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.”¹⁹ The Court later explained in *Caetano v. Massachusetts* that “*Heller* rejected the proposition ‘that only those weapons useful in warfare are protected.’”²⁰

2. SBRs are bearable arms.

By definition, an SBR is a “weapon designed or redesigned, made or remade, and *intended to be fired from the shoulder*.”²¹ Their shorter length compared to rifles, which are also bearable arms,²² confirms that SBRs are intended to be taken into the hands and used for offense or defense.²³

3. SBRs were designed for civilian, not military use.

The NFA defines an SBR as having a barrel less than 16 inches. In the late 1800s, “[v]ery short-barreled carbines”²⁴ “with barrels of just 12 to 18 inches were designed for use by trappers”²⁵ The most popular of these very short-barreled carbines, the Winchester Model 1892, “were carbines with barrel lengths less than the standard 20” inches.²⁶ Versions of the Winchester Model 1892 in 14, 15, and 16 inches are known to exist.²⁷ Contrary to the Winchester Model 1886, which

¹⁷ See *United States v. Miller*, 307 U.S. 174, 178 (1939) (“[I]t is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.”).

¹⁸ *United States v. Rush*, 130 F.4th 633, 639 (7th Cir.), cert. denied, 223 L. Ed. 2d 424 (Dec. 15, 2025).

¹⁹ *D.C. v. Heller*, 554 U.S. 570, 625 (2008).

²⁰ *Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016) (quoting *D.C. v. Heller*, 554 U.S. 570, 624–625 (2008)).

²¹ 26 U.S.C. § 5845(c) (emphasis added).

²² See *Snope*, 145 S. Ct. at 1535 (Thomas, J., dissenting from the denial of cert.) (noting that “AR–15s fall squarely within th[e] category” of Second Amendment “arms”).

²³ See *D.C. v. Heller*, 554 U.S. 570, 581 (2008).

²⁴ Jeff Goodson, *The Hunt for Old Guns: A Short History of Carbines*, guns.com, May 24, 2022.

²⁵ *Id.* See also Joseph G.S. Greenlee, *The Tradition of Short-Barreled Rifle Use and Regulation in America*, Wyoming Law Review, Volume 25 (2025) p. 111, 120–128 (discussing additional trapper models and earlier converted pistols).

²⁶ Rick Hacker, *This Old Gun: Winchester Model 1892 ‘Trapper’*, Americanrifleman.com, Aug. 9, 2022.

²⁷ *Id.*

“was designed for large hunting/military calibers of the 1800s,” the Model 1892 was a more compact “lever rifle suitable for pistol calibers.”²⁸

To say the Model 1892 was an instant hit would be an understatement. Numerous celebrities like Annie Oakley flocked to the new gun for exhibition shooting. Arctic explorer Admiral Robert Peary carried a Model 1892 on his trek to the North Pole. The gun became hugely popular in both South and Central America as that region was being fully explored and developed. Countless others put the '92 to good use in hunting, camping, law enforcement or anywhere that a durable, compact rifle was needed.²⁹

Thus, firearms meeting the NFA-regulated SBR definition were not designed for military use, but were specifically designed for, and used by, trappers, hunters, explorers, peace officers, and ordinary citizens.

4. SBRs are in common use for lawful purposes.

SBRs are commonly owned for lawful purposes. As of May 2024, there are 870,286 NFA-registered SBRs.³⁰ Additionally, ATF recently argued that attaching an arm brace to a pistol converts that pistol into an SBR. ATF has estimated that between 3 million and 7 million pistol braces are in circulation,³¹ with the Congressional Research Service putting “the number much higher at somewhere between 10 and 40 million.”³² As of June 2023, ATF reported that a quarter of a million pistol brace firearms had been registered as SBRs.³³ Whether registered SBRs or pistols that could be deemed as such, SBRs are widely owned for self-defense. Handguns are the most popular choice for self-defense because of their size and ease of use³⁴ but many firearms owners prefer a rifle for self-defense³⁵ for its versatility and recoil management.³⁶ SBRs offer users the compactness of a handgun and the control of a longer rifle.

²⁸ Winchester Repeating Arms, *Model 1892 Short Rifle*, winchesterguns.com (last visited Jan. 9, 2026).

²⁹ Winchester Repeating Arms, *Home News Articles The Legendary Winchester Model 1892 Turns 125!*, winchesterguns.com, January 8, 2017.

³⁰ **Firearms Commerce in the United States Statistical Update 2024**, Alcohol, Tobacco, Firearms and Explosives (2024), p. 12.

³¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, **Factoring Criteria for Firearms With Attached “Stabilizing Braces”**, January 31, 2023 (88 Fed. Reg. 6478).

³² Stephen Gutowski, *ATF Says a Quarter Million Guns Registered Under Pistol-Brace Ban*, TheReload.com, June 2, 2023.

³³ *Id.*

³⁴ *D.C. v. Heller*, 554 U.S. 570, 629 (2008).

³⁵ *Miller v. Bonta*, 699 F. Supp. 3d 956, 967 (S.D. Cal. 2023) (“Of the AR-15 rifle owners surveyed, 61% said one reason they acquired their gun is for home defense.”) (citing William English, **2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned**, Georgetown University, May 13, 2022).

³⁶ Tom McHale, *Rifle vs. Pistol Shooting: Six Fun Facts*, NRABlog, June 8, 2016.

There is no evidence that SBRs are commonly used for criminal activity. Out of the millions of de facto SBRs, ATF has identified only two used in shootings and 105 involved in unspecified investigations.³⁷

* * *

Because SBRs are (1) by definition bearable arms, (2) not specifically designed for military purposes, and (3) in common use for lawful purposes, they are protected arms under the Second Amendment.

B. The Second Amendment covers transporting SBRs across state lines.

The Second Amendment’s plain text protects “the right of the people to keep and bear Arms.”³⁸ To “keep Arms” means “to retain; not to lose,” “to have in custody,” and “to hold; to retain in one’s power or possession.”³⁹ To “bear arms” means “to wear, bear, or carry upon the person or in the clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.”⁴⁰ Thus, the Second Amendment’s plain text covers carrying and possession of a firearm.⁴¹

The Crime Control Act’s prohibition on transporting SBRs across state lines without government permission implicates the Second Amendment because transporting SBRs necessarily includes having custody and possession of a firearm, including carrying it for purposes of self-defense.⁴²

C. No historical tradition of firearm regulation justifies the transportation approval requirement.

Applying *Bruen*, a court “must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, ‘apply[ing] faithfully the balance struck by the founding generation to modern circumstances.’”⁴³ The Supreme Court has explained that:

³⁷ Bureau of Alcohol, Tobacco, Firearms and Explosives, **Factoring Criteria for Firearms with Attached “Stabilizing Braces”**, January 31, 2023 (88 Fed. Reg. 6478).

³⁸ **U.S. Const. amend II**.

³⁹ **United States v. Jackson**, 661 F. Supp. 3d 392, 400 (D. Md. 2023), *aff’d*, 152 F.4th 564 (4th Cir. 2025) (quoting **D.C. v. Heller**, 554 U.S. 570, 582 (2008)).

⁴⁰ **New York State Rifle & Pistol Ass’n, Inc. v. Bruen**, 597 U.S. 1, 32 (2022) (cleaned up) (quoting **D.C. v. Heller**, 554 U.S. 570, 584 (2008)).

⁴¹ See **United States v. Jackson**, 152 F.4th 564, 568 (4th Cir. 2025).

⁴² See **Transport**, Merriam-Webster (last visited Dec. 19, 2025) (as in to send: “to cause to go or be taken from one place to another”; as in to carry: “to support and take from one place to another”); **Transport**, Black’s Law Dictionary (12th ed. 2024) (“To carry or convey (a thing) from one place to another.”). See also **United States v. Gore**, No. 2:23-CR-04, 2023 WL 2141032, at *3 (S.D. Ohio Feb. 21, 2023), *aff’d*, 118 F.4th 808 (6th Cir. 2024) (following same logic to find “prohibition on receiving firearms necessarily includes taking possession of a firearm”); Office of Legal Counsel, **Constitutionality of 18 U.S.C. § 1715**, January 15, 2026, p. 6 (determining that the “Postal Service’s ban on mailing handguns thus stifles the legitimate transportation and carriage of handguns for self-defense or any other lawful purpose”).

⁴³ **United States v. Rahimi**, 602 U.S. 680, 692 (2024) (quoting **New York State Rifle & Pistol Ass’n, Inc. v. Bruen**, 597 U.S. 1, 29 (2022)).

[w]hy and how the regulation burdens the right are central to this inquiry. For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding.⁴⁴

1. Historical state prohibitions on peacefully transporting ordinary firearms do not justify the federal SBR interstate transportation restriction.

There is very little historical evidence of American governments prohibiting the peaceful transporting of ordinary firearms. The first and only true prohibition was in Maryland in 1776. The Maryland resolution provided that “no muskets or rifles, except by the owner thereof on his removal to reside out of this province, or any gun barrels, gun locks, or bayonets, be carried out of this province, without the leave of the council of safety for the time being.”⁴⁵ The next similar restriction on carrying ordinary firearms was not enacted until 1875 in Arkansas. The 1875 Arkansas act prohibited “any person” from wearing or carrying “any pistol of any kind whatever.”⁴⁶ But the 1875 Arkansas statute, specifically exempted persons traveling through the country who were carrying such weapons while on a journey.⁴⁷ The ATF’s restriction on interstate SBR transportation includes no traveler exception, which makes the federal regulation dissimilar to prior state bans.

2. Regulations on concealed carrying ordinary firearms do not justify the SBR interstate transportation restriction.

Historically, some states regulated the concealed carrying of firearms.⁴⁸ But, those historic regulations were not nearly as restrictive as the federal SBR transportation restriction and are therefore inapposite to the ATF’s rule. Like Arkansas’s 1875 ban, many state concealed-carry bans provided travelers’ exemptions.⁴⁹ For example, an 1831 Indiana law provided that “every person, *not being a traveller*, who shall wear or carry a dirk, pistol, sword in a cane, or other dangerous weapon *concealed*, shall upon conviction thereof, be fined.”⁵⁰ By contrast, the SBR transportation

⁴⁴ *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (quoting *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 30 (2022)).

⁴⁵ *Proceedings of the Conventions of the Province of Maryland, Held at the City of Annapolis, in 1774, 1775, & 1776* 142–47 (Baltimore, MD: Lucas & Deaver, 1836).

⁴⁶ *Act of Feb. 16, 1875*, § 1 (Arkansas 1875).

⁴⁷ *Act of Feb. 16, 1875*, § 1 (Arkansas 1875) (“nothing herein contained shall be so construed as to prohibit . . . persons traveling through the country, carrying such weapons while on a journey with their baggage”).

⁴⁸ See *Brief of Amici Curiae Second Amendment Foundation et al.* at 8, *Gardner v. Maryland*, No. 25-5961 (filed Dec. 11, 2025) (examining various state and local laws).

⁴⁹ See *Brief of Amici Curiae Second Amendment Foundation et al.* at 8, *Gardner v. Maryland*, No. 25-5961 (filed Dec. 11, 2025) (examining various state and local laws).

⁵⁰ *An Act relative to Crime and Punishment*, § 58 (Indiana 1831).

restriction prohibits *all* interstate travelers from transporting their SBRs across state lines, whether carried openly or concealed. And when courts have upheld state concealed-carry statutes, they generally have done so as regulations of the manner of carrying firearms (*i.e.*, concealed), not because the type of firearm or the act of carrying it was not constitutionally protected.⁵¹ The SBR transportation restriction, by contrast, does not regulate the manner in which firearms are transported, but whether they may be legally transported at all. Such distinction makes historic concealed-carry regulations irrelevant to the ATF’s SBR transportation rule.

3. Regulations of dangerous individuals do not justify the SBR transportation restriction.

As the Supreme Court explained in *United States v. Rahimi*, in the 1700s and early 1800s, “two distinct legal regimes had developed that specifically addressed firearms violence.”⁵² The first were surety laws by which magistrates could “require individuals suspected of future misbehavior to post a bond. If an individual failed to post a bond, he would be jailed. If the individual did post a bond and then broke the peace, the bond would be forfeit.”⁵³ When those laws “targeted the misuse of firearms”⁵⁴ they also

often offered the accused significant procedural protections. Before the accused could be compelled to post a bond for “go[ing] armed,” a complaint had to be made to a judge or justice of the peace by “any person having reasonable cause to fear” that the accused would do him harm or breach the peace. The magistrate would take evidence, and—if he determined that cause existed for the charge—summon the accused, who could respond to the allegations. Bonds could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some other legitimate reason.⁵⁵

A second legal regime, *Rahimi* elaborated, “provided a mechanism for punishing those who had menaced others with firearms. These were the ‘going armed’ laws, a particular subset of the ancient common-law prohibition on affrays.”⁵⁶ “Whether classified as an affray law or a distinct prohibition, the going armed laws prohibited ‘riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land.’”⁵⁷ Riding or going armed in a manner intended to terrify others “disrupted the ‘public order’ and ‘le[d] almost necessarily to actual

⁵¹ *E.g.*, *Nunn v. State*, 1 Ga. 243, 247–251 (1846) (collecting cases).

⁵² *United States v. Rahimi*, 602 U.S. 680, 694–95 (2024).

⁵³ *United States v. Rahimi*, 602 U.S. 680, 695 (2024) (citing William Blackstone, *Commentaries on the Laws of England*, Volume 4 (10th ed. 1787), p. 251, 253).

⁵⁴ *United States v. Rahimi*, 602 U.S. 680, 696 (2024).

⁵⁵ *United States v. Rahimi*, 602 U.S. 680, 696–697 (2024) (citations omitted).

⁵⁶ *United States v. Rahimi*, 602 U.S. 680, 697 (2024).

⁵⁷ *United States v. Rahimi*, 602 U.S. 680, 697 (2024) (quoting William Blackstone, *Commentaries on the Laws of England*, Volume 4 (10th ed. 1787), p. 149); *see also, e.g.*, *An Act Forbidding and Punishing Affrays* (Virginia 1786) (“[T]hat no man, great nor small, of what condition soever he be [shal] . . . go nor ride armed by night nor by day, in fair or markets, or in other places, in terror of the county . . .”).

violence.”⁵⁸ As such, “the law punished these acts with ‘forfeiture of the arms . . . and imprisonment.’”⁵⁹

In *Rahimi*, the Court noted that both regimes “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.”⁶⁰ Thus, the Court understands going armed laws to require an affray (as most such laws did) and a judicial determination that the accused was a dangerous person and therefore subject to the bond rules. And the Court understands surety laws to require a dangerous determination *before* depriving someone of Second Amendment rights. The SBR transportation restriction, by contrast, does not include a dangerous determination. At best, ATF’s rule focuses on whether an approved SBR transport application would violate state law.

Rahimi addressed whether 18 U.S.C. § 922(g)(8), a federal statute that “prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he ‘represents a credible threat to the physical safety of [an] intimate partner,’ or a child of the partner or individual” is constitutional under the Second Amendment.⁶¹ Citing surety and going armed laws, the Court concluded that “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.”⁶² *Rahimi* thus distinguished the surety law at issue in its case from the law struck down in *Bruen*, which required good cause before a carry permit would be granted.⁶³ The *Rahimi* regime “‘presumed that individuals had a right to . . . carry,’ whereas New York’s law”—rejected in *Bruen*—“effectively presumed that no citizen had such a right, absent a special need.”⁶⁴ The SBR transportation restriction makes the same faulty presumption as the New York law in *Bruen* and fails Second Amendment scrutiny. The SBR transportation restriction presumptively burdens the Second Amendment right until an individual’s travel has been approved by ATF.⁶⁵ Like in *Bruen*, the SBR transportation restriction presumes that no citizen can transport their SBRs across state lines without special permission.

Thus, historic state regulations of dangerous individuals are inapposite to and do not support the Crime Control Act’s SBR transportation restriction.

III. ATF’s interpretation of 18 U.S.C. § 922(a)(4) exceeds its statutory jurisdiction.

The Crime Control Act prohibits transportation of SBRs “*in* interstate or foreign commerce,”⁶⁶ but not transportation *in or affecting* interstate commerce. Alongside its SBR transportation

⁵⁸ *United States v. Rahimi*, 602 U.S. 680, 697 (2024) (quoting *State v. Huntly*, 25 N.C. 418, 421–22 (1843)).

⁵⁹ *United States v. Rahimi*, 602 U.S. 680, 697 (2024) (quoting 4 Blackstone, *supra*, at 149).

⁶⁰ *United States v. Rahimi*, 602 U.S. 680, 699 (2024).

⁶¹ *United States v. Rahimi*, 602 U.S. 680, 684–685 (2024).

⁶² *United States v. Rahimi*, 602 U.S. 680, 702 (2024).

⁶³ *United States v. Rahimi*, 602 U.S. 680, 699–700 (2024).

⁶⁴ *United States v. Rahimi*, 602 U.S. 680, 699–700 (2024) (quoting *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 56 (2022)).

⁶⁵ See *United States v. Rahimi*, 602 U.S. 680, 700 (2024).

⁶⁶ 18 U.S.C. § 922(a)(4) (emphasis added).

restriction, the Act includes other prohibitions explicitly “affecting” commerce. For example, Section 1202 prescribes penalties for any prohibited person “who receives, possesses, or transports in commerce *or affecting commerce*” any firearm.⁶⁷ If Congress wanted to restrict the transportation of SBRs merely affecting interstate commerce, it would have done so.

Omitting “or affecting” is significant. When Congress passed the Crime Control Act, “the phrase ‘engaged in commerce’ had long since become a term of art, indicating a limited assertion of federal jurisdiction.”⁶⁸ The Supreme Court has recognized the importance of jurisdictional hooks in the interstate commerce context. For example, in construing the FTC’s authority to regulate unfair methods of competition in commerce, the Court found that “to read ‘unfair methods of competition in (interstate) commerce’ as though it meant ‘unfair methods of competition in any way affecting interstate commerce’, requires, in view of all the relevant considerations, much clearer manifestation of intention than Congress has furnished.”⁶⁹

The Court’s reluctance to accept contentions that Congress used the words “in commerce” or “engaged in commerce” to regulate to the full extent of its commerce power rests on sound foundation, as it affords objective and consistent significance to the meaning of the words Congress uses when it defines the reach of a statute. . . . The plain meaning of the words “engaged in commerce” is narrower than the more open-ended formulations “affecting commerce” and “involving commerce.”⁷⁰

Even the Crime Control Act’s legislative history makes clear that its purpose was to regulate the “traffic,” “acquisition,” and “sale or other disposition” of firearms, and “persons engaging in the [firearms] businesses.”⁷¹ The SBR transportation restriction included congressional findings, which related to the “traffic,” “acquisition,” and “sale or other disposition” of firearms.⁷² Those findings also discuss the need for federal regulation over “all persons *engaging in the businesses* of importing, manufacturing, or *dealing in*” firearms and “importers, manufacturers, and dealers holding Federal licenses.”⁷³ And—as it would reaffirm when it amended the Crime Control Act through the Gun Control Act of 1968—Congress explained that the Crime Control Act was not intended

to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or

⁶⁷ **Omnibus Crime Control and Safe Streets Act of 1968**, § 1202 (emphasis added).

⁶⁸ **United States v. Am. Bldg. Maint. Indus.**, 422 U.S. 271, 280 (1975).

⁶⁹ **Fed. Trade Comm’n v. Bunte Bros.**, 312 U.S. 349, 355 (1941).

⁷⁰ **Cir. City Stores, Inc. v. Adams**, 532 U.S. 105, 117–18 (2001) (citing **Gulf Oil Corp. v. Copp Paving Co.**, 419 U.S. 186, 195 (1974) (“phrase ‘engaged in commerce’ ‘appears to denote only persons or activities within the flow of interstate commerce’”).

⁷¹ **Omnibus Crime Control and Safe Streets Act of 1968**, § 901(a).

⁷² **Omnibus Crime Control and Safe Streets Act of 1968**, § 901(a).

⁷³ **Omnibus Crime Control and Safe Streets Act of 1968**, § 901(a) (emphasis added).

eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the [Act].⁷⁴

ATF's interpretation of its SBR-transportation authority exceeds its jurisdiction. Although 18 U.S.C. § 922(a)(4) restricts the transportation of SBRs *in* interstate commerce, ATF seeks to regulate “*any* transportation of a firearm across state lines, including transportation by individuals for personal use”⁷⁵—an interpretation well beyond 18 U.S.C. § 922(a)(4)'s jurisdictional hook.

Therefore, ATF should only require government permission for transporting SBRs *in* interstate commerce, and not any time a private citizen carries their firearms across state lines.

Conclusion

ATF's rule change is necessary. The current rule violates the Second Amendment because SBRs are protected by the Second Amendment, and no historic firearms regulations are sufficiently analogous to the SBR interstate transportation restriction. ATF's previous interpretation of the rule exceeds its limited statutory jurisdiction. Therefore, ATF should adopt the proposed rule and clarify that personal, non-commercial transportation of SBRs does not require ATF permission.

⁷⁴ **Omnibus Crime Control and Safe Streets Act of 1968**, § 901(b).

⁷⁵ Bureau of Alcohol, Tobacco, Firearms and Explosives, **Interstate Transport and Temporary Export of National Firearms Act Firearms**, May 8, 2026 (91 Fed. Reg. 25229) (noting 96,865 applications from January 2020 to May 2025) (citing *United States v. Mullen*, 160 F. App'x 711, 713-14 (10th Cir. 2005)).

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