

No. 12-1493

---

IN THE  
**Supreme Court of the United States**

BRUCE JAMES ABRAMSKI, JR.,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

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

---

**BRIEF OF THE STATES OF HAWAII,  
CONNECTICUT, DELAWARE, ILLINOIS,  
MARYLAND, NEW HAMPSHIRE, NEW YORK,  
AND OREGON, THE COMMONWEALTH OF  
MASSACHUSETTS, AND THE DISTRICT OF  
COLUMBIA AS AMICI CURIAE  
IN SUPPORT OF RESPONDENT**

---

DAVID M. LOUIE  
*Attorney General*  
GIRARD D. LAU  
*Solicitor General*  
KIMBERLY T. GUIDRY  
*First Deputy*  
*Solicitor General*  
DEPARTMENT OF THE  
ATTORNEY GENERAL  
425 Queen Street  
Honolulu, HI 96813

CHARLES C. LIFLAND  
*(Counsel of Record)*  
clifland@omm.com  
RICHARD W. BUCKNER  
SUSAN ROEDER  
MEAGHAN VERGOW  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 430-6000

*Counsel for Amicus Curiae State of Hawaii*  
*Additional Counsel Listed on Inside Cover*

---

GEORGE JEPSEN  
*Attorney General*  
STATE OF CONNECTICUT  
55 Elm Street  
Hartford, CT 06106

JOSEPH R. BIDEN III  
*Attorney General*  
STATE OF DELAWARE  
820 North French Street  
Wilmington, DE 19801

LISA MADIGAN  
*Attorney General*  
STATE OF ILLINOIS  
100 W. Randolph Street  
Chicago, IL 60601

DOUGLAS F. GANSLER  
*Attorney General*  
STATE OF MARYLAND  
200 St. Paul Place,  
20th Floor  
Baltimore, MD 21202

MARTHA COAKLEY  
*Attorney General*  
COMMONWEALTH OF  
MASSACHUSETTS  
One Ashburton Place  
Boston, MA 02108

JOSEPH A. FOSTER  
*Attorney General*  
STATE OF NEW HAMPSHIRE  
33 Capitol Street  
Concord, NH 03301

ERIC T. SCHNEIDERMAN  
*Attorney General*  
STATE OF NEW YORK  
120 Broadway  
New York, NY 10271

ELLEN F. ROSENBLUM  
*Attorney General*  
STATE OF OREGON  
1162 Court Street NE  
Salem, OR 97301

IRVIN B. NATHAN  
*Attorney General*  
TODD S. KIM  
*Solicitor General*  
LOREN L. ALIKHAN  
*Deputy Solicitor General*  
DISTRICT OF COLUMBIA  
One Judiciary Square  
441 Fourth Street, NW  
Suite 1145S  
Washington, DC 20001

## **QUESTIONS PRESENTED**

1. Whether petitioner's statement that he was the actual buyer of a firearm on a Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473 was a false statement "material to the lawfulness of the sale" under 18 U.S.C. § 922(a)(6), where petitioner purchased the firearm for his uncle and both he and his uncle were eligible to purchase a firearm.

2. Whether the identity of the actual buyer of a firearm is information that is required to be kept in the records of a federal firearms dealer under 18 U.S.C. § 924 (a)(1)(A).

## TABLE OF CONTENTS

|   | <b>Page</b> |
|---|-------------|
| QUESTIONS PRESENTED .....   | i           |
| TABLE OF AUTHORITIES .....  | iv          |
| INTEREST OF AMICI CURIAE .....  | 1           |
| SUMMARY OF ARGUMENT.....  | 4           |
| ARGUMENT .....  | 7           |
| I. GUN TRAFFIC FROM STATES WITH WEAKER GUN LAWS IS A MAJOR LAW ENFORCEMENT CHALLENGE FOR STATES SEEKING TO ENFORCE STRICTER GUN LAWS..... | 7           |
| A. Interstate Gun Traffic Substantially Consists Of Firearms Flowing From Weaker-Regulation States To Stronger-Regulation States .....    | 7           |
| B. Federal Law Is Specifically Concerned With Curbing Gun Traffic From Weak-To Strong-Regulation States.....                              | 13          |
| II. FEDERAL LIMITATIONS ON STRAW PURCHASES ARE NECESSARY TO STATES' EFFORTS TO COMBAT GUN VIOLENCE BY LIMITING GUN TRAFFICKING.....       | 16          |
| A. Straw Purchases Are One Of The Most Significant Sources Of Guns Used In Crime .....  | 16          |

**TABLE OF CONTENTS**  
(continued)

|   | <b>Page</b> |
|---|-------------|
| B. Petitioner’s Construction Of The Statutes Would Undermine The Benefit Of Background Checks And Frustrate The Ability Of States To Combat Interstate Gun Trafficking..... | 22          |
| C. The Near-Uniform Constructions Given To The Statutes By The Courts Of Appeals Impose No Serious Burdens On States Or Their Citizens .....                                | 29          |
| CONCLUSION .....  | 35          |

## TABLE OF AUTHORITIES

|  | <b>Page(s)</b> |
|--|----------------|
| <b>CASES</b>   |                |
| <i>Arizona v. Gant</i> ,<br>556 U.S. 332 (2009).....                     | 29             |
| <i>Barrett v. United States</i> ,<br>423 U.S. 212 (1976).....            | 14, 25         |
| <i>County of Riverside v. McLaughlin</i> ,<br>500 U.S. 44 (1991).....    | 1              |
| <i>Davis v. United States</i> ,<br>512 U.S. 452 (1994).....              | 28             |
| <i>Dickerson v. New Banner Inst., Inc.</i> ,<br>460 U.S. 103 (1983)..... | 22             |
| <i>District of Columbia v. Heller</i> ,<br>554 U.S. 570 (2008).....      | 30             |
| <i>Huddleston v. United States</i> ,<br>415 U.S. 814 (1974).....         | 13, 22, 25     |
| <i>Markham v. Cabell</i> ,<br>326 U.S. 404 (1945).....                   | 25             |
| <i>McDonald v. City of Chicago</i> ,<br>130 S. Ct. 3020 (2010).....      | 10             |
| <i>Ohio v. Roberts</i> ,<br>448 U.S. 56 (1980).....                      | 1              |

## TABLE OF AUTHORITIES

|   | <b>Page(s)</b> |
|---|----------------|
| <i>Richmond Boro Gun Club, Inc. v. City of New York</i> ,<br>896 F. Supp. 276 (E.D.N.Y. 1995) ..... | 9              |
| <i>United States v. Bass</i> ,<br>404 U.S. 336 (1971).....  | 28             |
| <i>United States v. Biswell</i> ,<br>406 U.S. 311 (1972).....                                       | 3, 14, 27      |
| <i>United States v. Bramblett</i> ,<br>348 U.S. 503 (1955).....                                     | 29             |
| <i>United States v. Dupree</i> ,<br>388 F. App'x 164 (3d Cir. 2010).....                            | 20             |
| <i>United States v. Edge Broad. Co.</i> ,<br>509 U.S. 418 (1993).....                               | 32             |
| <i>United States v. Ferro</i> ,<br>252 F.3d 964 (8th Cir. 2001).....                                | 33             |
| <i>United States v. Frazier</i> ,<br>605 F.3d 1271 (11th Cir. 2010).....                            | 20, 26         |
| <i>United States v. Hensley</i> ,<br>469 U.S. 221 (1985).....                                       | 28             |
| <i>United States v. McIntosh</i> ,<br>380 F.3d 548 (1st Cir. 2004) .....                            | 33             |
| <i>United States v. Moore</i> ,<br>109 F.3d 1456 (9th Cir. 1997).....                               | 20             |

## TABLE OF AUTHORITIES

|  | <b>Page(s)</b> |
|--|----------------|
| <i>United States v. Morales</i> ,<br>687 F.3d 697 (6th Cir. 2012)..... | 20             |
| <i>United States v. Polk</i> ,<br>118 F.3d 286 (5th Cir. 1997).....    | 26             |
| <i>United States v. Sargent</i> ,<br>98 F.3d 325 (7th Cir. 1996).....  | 21             |
| <i>Younger v. Harris</i> ,<br>401 U.S. 37 (1971).....                  | 30             |
| <b>STATUTES AND REGULATIONS</b>  |                |
| 720 Ill. Comp. Stat. 5/24-3(A)(g).....                                 | 10             |
| 18 U.S.C. § 922 note.....  | 3              |
| 18 U.S.C. § 922(a)(6) .....  | passim         |
| 18 U.S.C. § 922(b)(1) .....  | 29, 30         |
| 18 U.S.C. § 922(d).....  | 4, 5, 24, 25   |
| 18 U.S.C. § 922(d)(1) .....  | 24             |
| 18 U.S.C. § 922(d)(6) .....  | 24             |
| 18 U.S.C. § 922(d)(8) .....  | 24             |
| 18 U.S.C. § 922(d)(9) .....  | 24             |
| 18 U.S.C. § 922(s).....  | 15, 22         |

## TABLE OF AUTHORITIES

|   | <b>Page(s)</b> |
|---|----------------|
| 18 U.S.C. § 923(g)(1)(A) .....  | 15             |
| 18 U.S.C. § 924(a)(1)(A) .....  | passim         |
| 22 C.F.R. § 51.21 .....   | 32             |
| Cal. Penal Code § 26815(a) .....  | 10             |
| Cal. Penal Code § 27540(a) .....  | 10             |
| Cal. Penal Code § 30365(a) .....  | 10             |
| Combat Methamphetamine Epidemic Act of<br>2005, Pub. L. No. 109-177, 120 Stat. 192..... | 32             |
| Conn. Gen. Stat. § 53-202c(a) .....   | 10             |
| Conn. Gen. Stat. § 53-202c(b) .....   | 10             |
| Conn. Gen. Stat. § 53-202c(c) .....   | 10             |
| D.C. Code Ann. § 22-4508 .....  | 10             |
| D.C. Code § 7-2502.02(a)(6) .....   | 10             |
| Fla. Stat. Ann. § 790.0655(1) .....   | 10             |
| Gun Control Act of 1968, Pub. L. 90-618,<br>§ 101, 82 Stat. 1213 (1968) .....           | 14             |
| Haw. Rev. Stat. Ann. § 134-2(e) .....   | 10             |
| Haw. Rev. Stat. Ann. § 134-8(a) .....   | 10             |

**TABLE OF AUTHORITIES**

|  | <b>Page(s)</b> |
|--|----------------|
| Iowa Code § 724.20 .....                 | 10             |
| Iowa Code § 724.29 .....                 | 10             |
| Mass. Gen. Laws ch. 140, § 131M .....    | 10             |
| Md. Code Ann., Crim. Law § 4-303(a)..... | 10             |
| Md. Code Ann., Pub. Safety § 5-123.....  | 10             |
| Md. Code Ann., Pub. Safety § 5-124.....  | 10             |
| Md. Code Ann., Pub. Safety § 5-125.....  | 10             |
| Minn. Stat. § 624.7132, subd. 4.....     | 11             |
| Minn. Stat. § 624.7132, subd. 12.....    | 11             |
| N.J. Stat. Ann. § 2C:39-5f.....          | 10             |
| N.J. Stat. Ann. § 2C:58-2a(5)(a) .....   | 11             |
| N.Y. Penal Law § 265.02(7) .....         | 10             |
| N.Y. Penal Law § 265.10.....             | 10             |
| R.I. Gen. Laws § 11-47-35.2.....         | 11             |
| R.I. Gen. Laws § 11-47-35(a)(1) .....    | 11             |
| W. Va. Code § 60-3A-25a .....            | 32             |
| Wis. Stat. § 175.35(2)(d).....           | 11             |

## TABLE OF AUTHORITIES

|  | <b>Page(s)</b> |
|--|----------------|
| <br><b>LEGISLATIVE MATERIALS</b>   |                |
| 114 Cong. Rec. 13,647 (1968).....  | 13             |
| H.R. Rep. No. 90-1577 (1968), <i>reprinted in</i><br>1968 U.S.C.C.A.N. 4410 .....  | 15, 22         |
| S. Rep. No. 90-1097 (1968), <i>reprinted in</i> 1968<br>U.S.C.C.A.N. 2112 .....  | 9, 14, 15      |
| <br><b>OTHER AUTHORITIES</b>   |                |
| Anthony A. Braga et al., <i>Interpreting the<br/>Empirical Evidence on Illegal Gun Market<br/>Dynamics</i> , 89 J. Urban Health: Bulletin of<br>the N.Y. Academy of Medicine 779 (2012) ...  | 18, 19         |
| Anthony A. Braga & Glenn L. Pierce,<br><i>Disrupting Illegal Firearms Market in<br/>Boston: The Effects of Operation Ceasefire<br/>on the Supply of New Handguns to<br/>Criminals</i> , 4 Criminology & Pub. Pol. 717<br>(2005)..... | 27             |
| Bureau of Alcohol, Tobacco and Firearms,<br>United States Dep't of Treasury, <i>Crime<br/>Gun Trace Reports (1999)</i> (2000) .....  | 17, 18         |
| Bureau of Alcohol, Tobacco, and Firearms,<br>United States Dep't Of Treasury,<br><i>Following The Gun: Enforcing Federal<br/>Laws Against Firearms Traffickers</i><br>(2000).....  | 16, 17, 18, 27 |

## TABLE OF AUTHORITIES

|  | <b>Page(s)</b> |
|--|----------------|
| Bureau of Justice Statistics, United States<br>Dep't of Justice, <i>Firearm Use By Offenders</i><br>(2001).....  | 17             |
| CeaseFirePA, <i>Straw Purchaser Gets 60 Days<br/>Drug Treatment</i> (Sept. 18, 2013).....  | 31             |
| Christopher S. Koper, <i>Purchase of Multiple<br/>Firearms as a Risk Factor for Criminal<br/>Gun Use: Implications for Gun Policy and<br/>Enforcement</i> , 4 <i>Criminology &amp; Pub. Pol.</i><br>749 (2005).....  | 27             |
| Congr. Res. Serv., <i>Gun Control: Statutory<br/>Disclosure Limitations on ATF Firearms<br/>Trace Data and Multiple Hand-gun Sales<br/>Reports</i> (2009) .....  | 17             |
| Daniel W. Webster et al., <i>The Case for Gun<br/>Policy Reforms in America</i> (Oct. 2012) .....  | 8              |
| Div. of Crim. Justice, State of Connecticut,<br><i>Report of the State's Attorney for the<br/>Judicial District of Danbury on the<br/>Shootings at Sandy Hook Elementary<br/>School and 36 Yogananda Street,<br/>Newtown, Connecticut on December 1, 2012</i><br>(2013)..... | 17             |

## TABLE OF AUTHORITIES

|  | <b>Page(s)</b> |
|--|----------------|
| Garen J. Wintemute, <i>Frequency of and Responses to Illegal Activity Related to Commerce in Firearms; Findings from the Firearms Licensee Survey, Injury Prevention</i> , Mar. 11, 2013 ..... | 7              |
| Mark Kraft, <i>Firearms Trafficking 101 or Where Do Crime Guns Come From?</i> , 50 Project Safe Neighborhoods (Jan. 2002) .....  | 12, 20         |
| Mayors Against Illegal Guns, <i>Inside Straw Purchasing: How Criminals Get Guns Illegally</i> (Apr. 2008) .....  | 7, 22, 31      |
| Mayors Against Illegal Guns, <i>Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking</i> (Sept. 2010) .....  | 10, 12         |
| NGVAC, <i>Fact Sheet: Illegal gun trafficking arms criminals &amp; youth</i> .....   | 8              |
| Phil Ray, <i>Judge Upholds Banning Straw Buys</i> , Altoona Mirror, Oct. 24, 2013 .....  | 21             |
| <i>Report of Governor Bill Owens' Columbine Review Commission</i> (2001) .....   | 18             |

**TABLE OF AUTHORITIES**

|  | <b>Page(s)</b> |
|--|----------------|
| <i>Rochester Woman Who Acted as Straw Buyer of Guns Used by William Spengler in Webster Shooting Is Busted for Lying About Who Would Own the Weapons</i> , N.Y. Daily News, Dec. 28, 2012..... | 19             |
| Violence Policy Center, <i>Where'd They Get Their Guns? An Analysis of the Firearms Used in High-Profile Shootings, 1963 to 2001</i> (2001).....   | 18             |

**BRIEF OF THE STATES OF HAWAII,  
CONNECTICUT, DELAWARE, ILLINOIS,  
MARYLAND, NEW HAMPSHIRE, NEW YORK,  
AND OREGON, THE COMMONWEALTH OF  
MASSACHUSETTS, AND THE DISTRICT  
OF COLUMBIA AS AMICI CURIAE  
IN SUPPORT OF RESPONDENT**

This brief is submitted on behalf of Hawaii, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Hampshire, New York, Oregon, and the District of Columbia as amici curiae in support of respondent.<sup>1</sup>

**INTEREST OF AMICI CURIAE**

Amici curiae are States committed to reducing the consequences of gun violence for their citizens. The widespread use of guns in America comes at a high price. Dozens of people are killed with guns every day. Tens of thousands more are injured every year. Amici and their citizens shoulder extraordinary social and monetary costs on account of gun violence, and they have determined that those costs may be reduced through regulatory action. In service of their “strong interest[s]” in “protecting public safety,” *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991), and in “effective law enforcement,” *Ohio v. Roberts*, 448 U.S. 56, 65 (1980), amici rely on a combination of state and federal laws to reduce the use

---

<sup>1</sup> No counsel for any party has authored this brief in whole or in part, and no person other than amici or their counsel has made any monetary contribution intended to fund the preparation or submission of this brief. Under Rule 37.4, amici are not required to submit a motion for leave to file this brief.

of guns in crime and to identify the perpetrator when gun crimes are committed.

Federally required background checks prevent guns from getting into the hands of felons, fugitives, and other persons whose possession of firearms would pose a serious danger. Amici—indeed, all States—have an interest in minimizing the use of firearms by dangerous persons. Yet petitioner and his amici advance a construction of federal law that would directly undermine that interest: if felons and other ineligible persons can easily use straw purchases to avoid background checks, they will have greater access to firearms.

Federal law also underpins the States' efforts to enforce their own gun laws. States have adopted a variety of regulatory strategies to tackle the problem of gun violence within their borders. Some States have enlarged the class of prohibited purchasers (to include violent misdemeanants, for example), and expressly forbid straw purchases on behalf of ineligible persons. Some impose waiting periods in order to complete gun purchases, or limit the sale of certain types of firearms, such as assault weapons. States have also variously established handgun safety standards, required gun licenses, required the recording of ballistics information about firearms, or specified how firearms should be stored and where they may be carried. Alone or in combination, these regulatory efforts typically have the effect of reducing freely available firearms for use in crime.

Therein, for purposes of this case, lies the rub: would-be criminals within amici's jurisdictions are driven to go elsewhere to acquire guns. Not all

States have determined that gun violence warrants a strong regulatory response, as the other state amicus brief in this case shows—some States have relatively weak gun laws that do little to independently constrain criminals’ access to guns. *See generally* Brief of Amici Curiae State of West Virginia, 25 Other States, and Guam in Support of Petitioner (“W. Va. Br.”). Data show that the traffic of guns between States largely flows from so-called “weak regulation” States to “strong regulation” States, very often through straw purchases. Here, federal law is the floor. To limit illegal gun trafficking across their borders, amici depend on federal law regulating gun sales nationwide. If the federal limits on straw purchases are eroded, amici will be hamstrung in their efforts to enforce their own laws which, in amici’s considered judgment, reduce gun violence, promote public safety, and support law enforcement. *See United States v. Biswell*, 406 U.S. 311, 315 (1972) (“close scrutiny” of “interstate traffic in firearms” is “undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders” (citing 18 U.S.C. § 922 note)).

Petitioner’s state amici argue that the federal statutes at issue here impede their flexibility to respond to gun violence as they see fit. W. Va. Br. 16. Quite the opposite: a weakened federal scheme would force the lowest common denominator on every State, because the reality of interstate gun traffic means that one State’s efforts to regulate gun purchases can be neutralized by would-be criminals’ unregulated access to guns in neighboring States. Properly construed, § 922(a)(6) and § 924(a)(1)(A)

protect against that outcome by forbidding a gun purchaser to lie about the actual buyer of the gun when asked, whether or not the actual buyer is legally ineligible to make the purchase or wishes to conceal his or her identity. Because the federal false statement prohibitions are indispensable to amici's own efforts to deny prohibited persons access to firearms, combat gun trafficking, and aid law enforcement, amici have a strong interest that these prohibitions be enforced to the full extent of Congress's design.

### SUMMARY OF ARGUMENT

States have not responded uniformly to the problem of gun violence. Some, including amici, have implemented detailed, carefully crafted schemes aimed at reducing the availability of guns for use in crime. Others have taken a laxer view, regulating gun sales and possession little, if at all. But *all* States are beneficiaries of the background checks by federally licensed firearms dealers that keep guns out of the hands of felons and other dangerous persons. The safeguards provided by that background check scheme would be gutted if petitioner's construction of the federal gun laws were adopted.

Sections 922(a)(6) and 924(a)(1)(A) forbid a gun purchaser to falsely state the identity of the true buyer when purchasing a gun from a federally licensed dealer, ensuring that the dealer runs a background check on the right person. Petitioner proposes instead that only § 922(d)'s distinct prohibition of knowing transfers to ineligible persons constrains straw purchases, such that a buyer can lie to a dealer about a preexisting arrangement to transfer the

gun to another without violating federal law, so long as the buyer does not know that the actual purchaser is ineligible to possess a firearm. But, as Congress recognized in enacting § 922(a)(6) and § 924(a)(1)(A), it is not enough to rely on a straw purchaser's assessment of the lawfulness of a sale: straw purchasers are often unaware of the actual buyer's criminal record, mental health history, and other disqualifying characteristics. Section 922(d) thus fails to capture many prohibited transfers that only a background check run through law enforcement channels will catch. By requiring the truthful disclosure of the actual buyer's identity at the point of sale, § 922(a)(6) and § 924(a)(1)(A) meaningfully limit straw purchases in a way that preserves the use of background checks to keep firearms away from prohibited persons.

These provisions are also essential to combating illegal interstate gun traffic. The varying state gun-law regimes have predictable real-world consequences: guns flow from weaker-regulation States to stronger-regulation States, where they are used in crime. Countering this interstate crime gun traffic requires regulation at the federal level, as the Congresses that enacted the federal gun laws understood. Indeed, in many States—including many of petitioner's state amici—federal law is the *only* regulatory constraint on sales by federally licensed dealers. When strict local laws drive would-be criminals outside their States to purchase guns, they still must contend with federal regulations requiring the dealer to verify the buyer's identity, confirm the buyer's eligibility to purchase the gun, and record material details about the sale. In this way, the federal laws

help slow the flow of guns to prohibited persons and support law-enforcement efforts to identify guns used in crime.

Even now, straw purchases are frequently used to circumvent the federal requirements. Some straw purchases conceal an actual buyer who is ineligible to possess a gun, of course, but others conceal actual buyers who wish to withhold their identities for other reasons—to obscure a high volume of gun purchases, for example, or to avoid being traced to the gun after it is used in a planned crime. If federal law prohibiting false statements in purchases from federally licensed dealers is rolled back to *permit* a straw purchaser to conceal the true nature of the sale, would-be criminals will be able to acquire and transport untraceable firearms across state lines with relative ease, defeating amici’s intrastate efforts to reduce gun violence.

The scope of the federal regulation of firearm sales, including the false-statement prohibitions, is limited: private intrastate sales are unaffected, as are gifts. But giving up the sale-level safeguards of § 922(a)(6) and § 924(a)(1)(A) would significantly undermine the state laws that amici have judged necessary to support law enforcement and promote public safety within their borders. Measured against these important state interests, the reasons advanced by petitioner’s amici for leaving straw purchases unregulated are insubstantial. The reasonable regulation of gun sales does not implicate the Second Amendment rights of purchasers who may acquire firearms simply by being truthful. The need to curtail unlawful interstate gun traffic is not outweighed by individual considerations of convenience

or price. And federal limitations on straw purchases do not encumber the differentiated array of state-level regimes.

Prohibiting false statements about the actual identity of a gun buyer limits the opportunity for would-be criminals to evade detection by law enforcement and to circumvent regulations barring certain dangerous persons from owning guns. The federal prohibitions should be left intact.

## ARGUMENT

### I. GUN TRAFFIC FROM STATES WITH WEAKER GUN LAWS IS A MAJOR LAW ENFORCEMENT CHALLENGE FOR STATES SEEKING TO ENFORCE STRICTER GUN LAWS

#### A. Interstate Gun Traffic Substantially Consists Of Firearms Flowing From Weaker-Regulation States To Stronger-Regulation States

1. The devastation from gun violence in this country is well documented. In 2011, there were nearly 480,000 gun-related violent crimes nationwide. Garen J. Wintemute, *Frequency of and Responses to Illegal Activity Related to Commerce in Firearms; Findings from the Firearms Licensee Survey*, Injury Prevention, Mar. 11, 2013, at 1. Of these, more than 11,000 were homicides and more than 55,000 were assaults requiring emergency room treatment. *Id.* Between 1993 and 2005, nearly five million Americans were victims of violent crimes committed with firearms. Mayors Against Illegal Guns, *Inside Straw Purchasing: How Criminals Get Guns Illegally* 3 (Apr. 2008) (“Inside Straw Purchas-

ing”). Indeed, since President Kennedy was assassinated fifty years ago, more Americans have been shot and killed on American soil than in all the wars of the twentieth century combined. NGVAC, *Fact Sheet: Illegal Gun Trafficking Arms Criminals & Youth* (“NGVAC Fact Sheet”), available at <http://gunvictimsaction.org/fact-sheet/fact-sheet-illegal-gun-trafficking-arms-criminals-and-youth>.

Straw purchases—where one person buys a gun on behalf of another, undisclosed person—contribute heavily to this intolerable gun violence. *See infra* at 16-22. Guns end up in the hands of criminals notwithstanding laws aimed at keeping firearms away from dangerous persons: the “vast majority” of gun murders and non-fatal shootings “are committed by people who have no legal right to a gun.” NGVAC Fact Sheet. The steadfast enforcement of those laws is necessary to reduce gun violence, as the data show. *See* Daniel W. Webster et al., *The Case for Gun Policy Reforms in America* 8 (Oct. 2012), available at [http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper102512\\_CGPR.pdf](http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper102512_CGPR.pdf) (enforcing ineligibility prohibitions is associated with lower rates of violence).

2. In this action, the United States prosecuted petitioner Bruce Abramski for his role in purchasing a Glock firearm on his uncle’s behalf. Petitioner purchased the gun from a federally licensed dealer in Virginia, and falsely answered “Yes” to the following question in ATF Form 4473: “Are you the actual transferee/buyer of the firearm(s) listed on this form?” Petitioner did so even though (a) he had already agreed to purchase the gun for his uncle, (b)

he had already received a check from his uncle to pay for the gun, and (c) ATF Form 4473 expressly stated, in bold type, “**Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person.**” Petitioner then took the gun to Pennsylvania, where he transferred it to his uncle as they had agreed beforehand.

Petitioner’s state amici argue that in prosecuting petitioner for his violations of federal law, the United States improperly seeks to regulate private intrastate transfers between eligible purchasers. W. Va. Br. 2. That is obviously not the case. This action does not involve a “private intrastate firearms transfer.” *Id.* Petitioner purchased the gun at issue from a federally licensed seller, not from a private individual. He transported it across state lines, from Virginia to Pennsylvania, by prearranged agreement. Moreover, the federal laws at issue here would not have impinged on even a truly *intrastate* private transfer (if petitioner’s uncle had also resided in Virginia), if petitioner had bought a gun genuinely for *himself*, and only *later* decided to sell it to his uncle. But federal law does legitimately regulate *straw* purchases from federally licensed dealers as part of a regulatory scheme designed both to help keep guns out of the hands of those not legally entitled to possess them and to assist State law enforcement efforts to combat violent crime. S. Rep. No. 90-1097, at 28 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112.

3. Each State, in the exercise of its police power and subject to constitutional constraints, is free to enact whatever gun control legislation it deems best, including none at all. *See, e.g., Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285

(E.D.N.Y. 1995), *aff'd*, 97 F.3d 681 (2d Cir. 1996). Many States and the District of Columbia have enacted laws aimed at preventing harm to their citizens from guns. *See McDonald v. City of Chicago*, 130 S. Ct. 3020, 3135 (2010) (Breyer, J., dissenting). Some of those laws prohibit straw purchases of firearms, falsifying purchaser information, or failing to conduct a pre-sale background check. Others require universal background checks on all handgun sales, require permits for handgun purchases, limit concealed carry permits, prohibit gun possession by violent misdemeanants, require owners to report all lost or stolen guns, allow local control of gun regulations, or authorize inspections of gun dealers. *See Mayors Against Illegal Guns, Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 28 (Sept. 2010) (“Trace the Guns”).<sup>2</sup>

---

<sup>2</sup> States alone regulate some issues. For example, some States and localities stepped in to regulate semi-automatic, military-style weapons after Congress allowed the federal assault weapon ban to expire in 2004. *See, e.g.*, Cal. Penal Code § 30365(a); Conn. Gen. Stat. § 53-202c(a)-(c); D.C. Code § 7-2502.02(a)(6); Haw. Rev. Stat. Ann. § 134-8(a); Iowa Code § 724.29; Md. Code Ann., Crim. Law § 4-303(a); N.J. Stat. Ann. § 2C:39-5f; N.Y. Penal Law §§ 265.02(7), 265.10; *see also* Mass. G.L. c. 140, § 131M (enacted by Mass. St. 1996, c. 180, § 47).

Similarly, federal law does not require a waiting period before completing a firearm purchase, but many States do. *See, e.g.*, Cal. Penal Code §§ 26815(a), 27540(a) (ten days); D.C. Code Ann. § 22-4508 (ten days); Fla. Stat. Ann. § 790.0655(1) (three days for a handgun, excluding weekends and legal holidays); Haw. Rev. Stat. Ann. § 134-2(e) (fourteen days, but waiting period inapplicable to subsequent purchases of long guns during the year following an initial purchase); 720 Ill. Comp. Stat. 5/24-3(A)(g) (three days for handguns, one day for long guns); Iowa Code § 724.20 (three days for a handgun); Md. Code Ann., Pub. Safety §§ 5-123 – 5-125 (seven days for a

Many States have much less regulation. Several of petitioner’s state amici, for example, have not enacted any of the foregoing provisions regulating guns.

4. Predictably, the divergent approaches to gun control in the various States produce real interstate consequences. States that regulate guns strictly export crime guns to other States at relatively low rates; conversely, States with lax gun laws export crime guns at much higher rates. *Id.* at 3.

The reason crime guns flow from States with less gun regulation to States with more is simple economics:

Firearms trafficking is profitable because of the disparity in firearm laws in different jurisdictions. In cities like Washington, Chicago or New York, local statutes heavily restrict handgun acquisition and possession, but violent crime fuels the demand for easily concealable weapons. The basic law of supply and demand takes effect. For a firearms trafficker who is willing to break the law and exploit the criminal demand for firepower, these are “market areas.” By contrast, “source areas” are places where guns are plentiful and more easily obtained. In a “source area” there are numerous gun shops and less restrictive state and local laws regarding firearms possession

---

handgun); Minn. Stat. § 624.7132, subds. 4, 12. (seven days for handguns and assault weapons); N.J. Stat. Ann. § 2C:58-2a(5)(a) (seven days for a handgun); R.I. Gen. Laws §§ 11-47-35(a)(1), 11-47-35.2 (seven days); Wis. Stat. § 175.35(2)(d) (two days for a handgun).

and acquisition. Guns purchased in “source areas” can be easily sold on the street in a “market area” for two to three times as much as the trafficker paid for the gun.

Mark Kraft, *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, 50 Project Safe Neighborhoods 6, 6-7 (Jan. 2002), *available at* [www.justice.gov/usao/eousa/foia\\_reading\\_room/usab5001.pdf](http://www.justice.gov/usao/eousa/foia_reading_room/usab5001.pdf) (“Firearms Trafficking 101”).

The empirical data on interstate gun trafficking confirm what the economic incentives predict. One study found that “[i]n 2009, just ten states supplied nearly half—49%—of the guns that crossed state lines before being recovered in crimes.” Trace the Guns 2 (emphasis omitted). And the ten States that export crime guns at the highest rates (most of whom joined petitioner’s state amicus brief) do so at more than “seven times the rate of the ten states with the lowest crime gun export rates.” *Id.* (emphasis omitted).

Most of these States responsible for the interstate gun trafficking supply—both in sheer numbers and in export rates—have joined the West Virginia Brief, which asserts a theoretical burden on intrastate gun transfers not in issue in this case (because buying guns genuinely for oneself, and *later* deciding to sell, is not affected). In contrast, the amici submitting this brief bear the consequences of the supply of crime guns coming from their weaker-regulating neighbors. The federal law prohibiting false statements about an actual buyer’s identity in a firearm sale by a federally licensed dealer combats the un-

lawful gun traffic fed by straw purchases, and it is crucial to amici's law enforcement efforts.

**B. Federal Law Is Specifically Concerned With Curbing Gun Traffic From Weak- To Strong-Regulation States**

Prosecutions targeting interstate firearms transactions, as this action does, implicate a core purpose of the Gun Control Act of 1968: preventing one State's weaker gun laws from creating extrajurisdictional harm that another State's stricter local laws seek to avoid.

As then-Senator Tydings explained:

This concealed weapons amendment does not violate any State's right to make its own gun laws. Quite the contrary, title IV provides the controls on interstate gun traffic which only the Federal Government can apply, and without which no State gun law is worth the paper it is written on.... Without such Federal assistance, any State gun law can be subverted by any child, fugitive, or felon who orders a gun by mail or buys one in a neighboring State which has lax gun laws.

*Huddleston v. United States*, 415 U.S. 814, 832 n.11 (1974) (quoting 114 Cong. Rec. 13,647 (1968)).

Petitioner and his state amici ignore that enforcement of federal law (and particularly the bar against straw purchases) is essential to achieving the interests of States with strong gun laws. It is true that one objective of § 922(a)(6) and § 924(a)(1)(A) is to help "keep firearms out of the hands of those not legally entitled to possess them."

*Barrett v. United States*, 423 U.S. 212, 220 (1976). As explained, petitioner’s construction of the provisions undermines that important objective by helping prohibited persons bypass background checks.

But the federal gun laws have another, equally important purpose: to “assist the States in regulating the firearms traffic within their borders.” *Biswell*, 406 U.S. at 315. As the Gun Control Act of 1968 itself recites, Congress broadly sought to “provide support to Federal, State, and local law enforcement officials in their fight against crime and violence.” Gun Control Act of 1968, Pub. L. 90-618, § 101, 82 Stat. 1213 (1968). To that end, the Act aimed not only “to aid in making it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency,” but also “to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States.” S. Rep. No. 90-1097, at 2.

Congress and the Attorney General both recognized at the time of the Act’s passage that one of its critical functions would be to help prevent interstate gun trafficking from subverting State and local gun control laws. As the Senate Report explained:

The existing Federal controls over interstate and foreign commerce in firearms are not sufficient to enable the States to effectively cope with the firearms traffic within their own borders through the exercise of their police power. Only through adequate Federal control over interstate and foreign commerce in firearms, and over all persons engaging in the

business of importing, manufacturing, or dealing in firearms, can this problem be dealt with, and effective State and local regulation of the firearms traffic be made possible.

S. Rep. No. 90-1097, at 2.

Likewise, the then-Attorney General testified: “By recognizing the Federal responsibility to control the indiscriminate flow of firearms and ammunition across States borders, this bill will give States and local communities the capacity and the incentive to enforce effectively their own gun control laws.” H.R. Rep. No. 90-1577, at 19 (1968), *reprinted in* 1968 U.S.C.C.A.N. 4410, 4425.

In enacting the Gun Control Act of 1968, Congress recognized that solely state-level gun regulation is inadequate to protect the interests of States desiring to enforce strong gun control laws as a means of preventing gun violence, and sought to do something about it. Among the most critical nationwide protections Congress provided are those implicated by the violations prosecuted in this case: the requirement that federally licensed firearms dealers conduct background checks on gun purchasers (§ 922(s)), the requirement that such dealers maintain records of firearms sales (§ 923(g)(1)(A)), and the prohibitions of false statements in gun sales (§ 922(a)(6), § 924(a)(1)(A)). If those requirements are not enforced nationally, it will dramatically undermine amici’s ability to protect their citizens from gun violence and will permit the gun laws they have enacted to be circumvented, contrary to Congress’s expressed intent.

## II. FEDERAL LIMITATIONS ON STRAW PURCHASES ARE NECESSARY TO STATES' EFFORTS TO COMBAT GUN VIOLENCE BY LIMITING GUN TRAFFICKING

Data from multiple sources demonstrate that many crime guns travel indirectly but quickly from federally licensed dealers into the hands of criminals. Federal gun laws, including the requirement that the actual buyer be revealed and recorded, provide important and legitimate obstacles to the ability of and incentives for would-be criminals to traffic guns across state borders.

### A. Straw Purchases Are One Of The Most Significant Sources Of Guns Used In Crime

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) traces guns recovered in criminal investigations to the original retail seller and buyer, and also investigates criminal trafficking in firearms. These ATF tracing and trafficking investigations provide a wealth of data on the movement of crime guns. Based on that data, the ATF has concluded that “straw purchasers represent a significant overall crime and public safety problem.” Bureau of Alcohol, Tobacco, and Firearms, United States Dep’t Of Treasury, *Following The Gun: Enforcing Federal Laws Against Firearms Traffickers* 18 (2000) (“ATF Following the Gun”), available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).<sup>3</sup>

---

<sup>3</sup> Per the ATF, criminal gun trafficking encompasses “the illegal market supplied by a variety of sources,” including unli-

In nearly 9 out of 10 crime gun traces where the gun possessor and purchaser were known, the original purchaser was not the person who used it in the crime. Bureau of Alcohol, Tobacco and Firearms, United States Dep't of Treasury, *Crime Gun Trace Reports (1999)*, at 8 (2000) ("ATF Crime Gun Trace Reports"), available at <https://www.atf.gov/sites/default/files/assets/pdf-files/ycgii-report-1999-general-findings.pdf>.<sup>4</sup> Information obtained from criminals themselves corroborates this ATF finding. A 1997 Bureau of Justice Statistics survey of more than 18,000 state and federal prison inmates found that more than 86% of state inmates who had used a gun in a crime had acquired it from somewhere other than a retail outlet (retail store, pawn-shop, flea market, or gun show). Bureau of Justice Statistics, United States Dep't of Justice, *Firearm Use By Offenders* 6 (2001), available at <http://www.bjs.gov/content/pub/pdf/fuo.pdf>. Close to 40% of state inmates surveyed reported that they instead relied on family and friends to supply them with guns. *Id.*<sup>5</sup>

---

censed sellers, fences, corrupt dealers, and straw purchasers. ATF Following the Gun, at ix.

<sup>4</sup> The available ATF data come largely from the 1990s because since 2000, the so-called Tiahrt Amendments in various congressional spending bills have restricted ATF's ability to collect and disseminate national tracing data. See Congr. Res. Serv., *Gun Control: Statutory Disclosure Limitations on ATF Firearms Trace Data and Multiple Hand-gun Sales Reports* (2009), available at <https://www.fas.org/sgp/crs/misc/RS22458.pdf>.

<sup>5</sup> The shooters in several notorious mass shootings, including the Newtown and Columbine school shootings, obtained their weapons through family members or friends. See Div. of Crim. Justice, State of Connecticut, *Report of the State's Attorney for the Judicial District of Danbury on the Shootings*

Tracing data also establish that crime guns are disproportionately new compared to guns in the general firearms pool. About 25% of the crime guns recovered in 1999 for which a time-to-crime (“TTC”) could be computed had a TTC of twelve months or less, and another nine percent had a TTC of between one and two years. ATF Crime Gun Trace Reports 24; *see also* Anthony A. Braga et al., *Interpreting the Empirical Evidence on Illegal Gun Market Dynamics*, 89 J. Urban Health: Bulletin of the N.Y. Academy of Medicine 779, 787 (2012) (“Interpreting Empirical Evidence”) (guns produced between 1996 and 1998 constituted more than 35% of the traced crime guns recovered in 1999). To put these numbers in context, a 1994 survey of gun owners showed that they had owned their firearm an average of thirteen years. ATF Crime Gun Trace Reports 24. ATF treats rapid TTC as an indicator that the firearm in question has been trafficked. ATF Following the Guns 25.

2. Although guns are diverted from the legal market to the illegal market by several means, “[t]he most frequent type of trafficking channel identified in ATF investigations is straw purchasing from federally licensed firearms dealers.” ATF Following the Guns 10.

---

*at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 1, 2012*, at 2 (2013), available at [http://cbsnewyork.files.wordpress.com/2013/11/sandy\\_hook\\_final\\_report.pdf](http://cbsnewyork.files.wordpress.com/2013/11/sandy_hook_final_report.pdf); *Report of Governor Bill Owens’ Columbine Review Commission*, at 23 nn.58-59 (2001); *see also* Violence Policy Center, *Where’d They Get Their Guns? An Analysis of the Firearms Used in High-Profile Shootings, 1963 to 2001* (2001), available at <http://www.vpc.org/graphics/where.pdf>.

An ATF study of 1,530 firearms trafficking investigations conducted during the period July 1996 to December 1998 found that straw purchasing was the most common channel of illegal gun trafficking: straw purchases were involved in 46% of all trafficking investigations and were associated with nearly 26,000 illegally trafficked firearms. *Id.* at ix, xi. The number of trafficking incidents involving straw purchases was more than double the number attributable to the next largest source of trafficking (trafficking by unlicensed sellers). *Id.* at 11. Straw purchases represented approximately one-third of all illegally diverted firearms in this study. *Id.* at 13.<sup>6</sup>

3. Both prohibited and non-prohibited actual purchasers use guns obtained through straw purchases to commit crimes. In a recent example, Dawn Nguyen faces criminal charges for buying a semiautomatic rifle and a shotgun for her neighbor, William Spengler, who was ineligible to possess a gun because he had a prior criminal conviction for killing his grandmother. Spengler used those weapons to ambush firefighters lured to a blaze he had set at his home, killing two people and wounding three others. *Rochester Woman Who Acted as Straw Buyer of Guns Used by William Spengler in Webster Shooting Is Busted for Lying About Who Would Own the Weapons*, N.Y. Daily News, Dec. 28, 2012, <http://www.ny>

---

<sup>6</sup> A follow-up study of 2,608 ATF gun trafficking investigations conducted between January 1, 1999 and December 31, 2002 yielded similar results: a plurality (41.3%) of trafficking investigations involved straw purchases from federally licensed dealers, and those investigations were associated with 38,032 firearms. Once again, straw purchases were by far the largest single pathway of illegal trafficking. Interpreting Empirical Evidence 782-83.

[dailynews.com/new-york/woman-pleads-guilty-n-y-christmas-eve-firefighter-shootings-article-1.1291934](http://dailynews.com/new-york/woman-pleads-guilty-n-y-christmas-eve-firefighter-shootings-article-1.1291934).

In another notorious case, Bennie Lee Lawson, a convicted felon under investigation for a triple homicide, obtained an automatic rifle through a straw purchase in Alabama. He used the rifle in Washington, D.C. to kill a police officer and two FBI agents and to wound another in 1994. See Firearms Trafficking 101; see also, e.g., *United States v. Dupree*, 388 F. App'x 164, 166 (3d Cir. 2010) (straw purchase on behalf of a felon, who used the firearm in a shootout with police officers after stealing a car); *United States v. Moore*, 109 F.3d 1456, 1458-59 (9th Cir. 1997) (en banc) (straw purchase on behalf of a fourteen-year-old boy, who used the gun to kill a police officer).

Criminals without prior records who would not be prohibited from purchasing a gun directly also procure firearms through straw purchases and then use those weapons to commit crimes, including violent crimes and gun trafficking. For such persons, the use of straw purchasers is a means to avoid identifying themselves to authorities as the owners of crime guns. In *United States v. Frazier*, 605 F.3d 1271 (11th Cir. 2010), for example, defendant Frazier was eligible to purchase firearms, but he nonetheless employed straw purchasers, presumably to avoid calling attention to his stockpiling of firearms. *Id.* at 1279. Frazier then exported the stockpile of weapons he had procured through the straw purchases to Canada, resulting in his conviction for illegally exporting firearms. *Id.* at 1281; see also *United States v. Morales*, 687 F.3d 697 (6th Cir. 2012) (defendant who was eligible to purchase firearms instead at-

tempted to procure them through straw purchases as part of a conspiracy to illegally export firearms to Guatemala); Phil Ray, *Judge Upholds Banning Straw Buys*, Altoona Mirror, Oct. 24, 2013, <http://www.altoonamirror.com/page/content.detail/id/575959/Judge-upholds-banning-straw-buys.html?nav=742> (man bought a pistol he was eligible to possess through a straw purchaser, and then used the gun to shoot three people).

Gangs are also notorious for using straw purchasers—whether a gang member or other third party with a clean criminal record—to obtain mass quantities of guns. Petitioner’s interpretation of the federal statute provides street gangs and criminal organizations with an easy means of obtaining guns for the many members who are prohibited from buying guns because they have criminal records or are underage. *See, e.g., United States v. Sargent*, 98 F.3d 325 (7th Cir. 1996) (straw purchaser bought forty-seven guns for his gang).

4. As these statistics and examples illustrate, straw purchases are strongly linked to crime, regardless of whether the actual purchaser was eligible to purchase the firearms directly. The West Virginia Brief, which emphasizes purportedly “legitimate reasons” for straw purchases of firearms such as convenience and price discounts, simply ignores the strong nexus between straw purchases, interstate gun trafficking, and crime. *See* W. Va. Br. 5. Petitioner’s amici have presented no statistics—and amici are aware of none—to support a conclusion that a significant percentage of straw purchases are motivated by “legitimate reasons.” Nor do they attempt to explain why so many straw purchasers buy

multiple firearms in a single transaction. *See* Inside Straw Purchasing 13-15 (finding, based on a review of more than 1,000 gun-related prosecutions concerning the sale of more than 14,000 firearms in over 4,000 separate transactions, that many traffickers have straw purchasers buy more than one gun per visit). The strong link between straw purchases and crime guns gives amici submitting this brief a compelling interest in ensuring that the federal statutes at issue here are enforced.

**B. Petitioner’s Construction Of The Statutes Would Undermine The Benefit Of Background Checks And Frustrate The Ability Of States To Combat Interstate Gun Trafficking**

1. Petitioner and his amici advance interpretations of § 922(a)(6) and § 924(a)(1)(A) that would substantially undermine the federal scheme regulating firearm purchases. The core purposes of federal gun regulation are “to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them,’” *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 118 (1983) (quoting *Huddleston*, 415 U.S. at 824), and to prevent the subversion of state gun laws by “a deadly interstate traffic in firearms and ammunition.” H.R. Rep. No. 90-1577, at 19; *see supra* at 13-15. The “principal agent of federal enforcement is the dealer,” *Huddleston*, 415 U.S. at 824. By requiring the inspection and recording of a buyer’s identity at the point of sale by a federally licensed dealer, the federal system confirms with relative accuracy that the purchaser is in fact eligible to own the firearm and aids law enforcement in the event the gun is someday used in a crime. *See* 18

U.S.C. § 922(s) (requiring the dealer to “verify the identity” of the purchaser; keep a record of the purchaser’s “name, address, and date of birth”; and confirm through one of various methods that the purchaser’s possession of the handgun would not violate “Federal, State, or local law”). The lawfulness of a sale through a licensed dealer always depends on the completion of that process, and if the process has been adulterated by a false statement about the buyer’s identity, the sale is no longer lawful and the straw buyer has violated both § 922(a)(6) and § 924(a)(1)(A).

Petitioner offers an extreme counterinterpretation of federal law: a gun purchaser can freely and lawfully lie about the existence of a preexisting arrangement to transfer the gun to someone else for consideration. Pet. Br. 21-22. The brief for the United States demonstrates why this interpretation is wrong as a matter of statutory construction. Amici can attest that it would be disastrous as a matter of policy. Petitioner’s construction would eviscerate the federal regulation of gun sales, including the most basic background check requirement preventing felons and other prohibited persons from buying firearms. And as discussed above, the flow of guns from weaker-regulation States to stronger-regulation States is both significant and substantially driven by straw purchases on behalf of individuals who either cannot legally purchase a firearm or wish to conceal their identities. The current system confirms with the best-available level of accuracy that the transferee is eligible to purchase the gun, and it facilitates law enforcement efforts in the event the gun is later used in a crime. Federal law requiring confirmation

of the identity of the buyer and a background check at the point of sale thus provides an important—perhaps the most important—enforcement tool for preventing guns from ending up in the hands of dangerous persons and from traveling across state lines for use in crime.

2. Petitioner accepts that federal law prohibits knowing transfers to ineligible purchasers, and argues that the law need go no further. *See* Pet. Br. 27-28; 18 U.S.C. § 922(d). But a system that relies solely on the straw purchaser’s personal knowledge of the actual buyer’s eligibility to purchase a gun would inevitably fail to capture a considerable number of prohibited transactions that a simple background check would disclose. The straw purchaser may not know the actual buyer well, if at all. And even a close friend or relative of a buyer may not know that the buyer “is under indictment,” § 922(d)(1), or was dishonorably discharged from the Armed Forces, § 922(d)(6); she may not know that he is under a restraining order for stalking, § 922(d)(8); she may not know that he has been convicted of domestic violence, § 922(d)(9), and she may not even know he is a convicted felon, § 922(d)(1). She also may not know whether his possession of a gun is prohibited by state laws specific to his place of residence, as a background check could confirm. The actual buyer likely would not want the straw purchaser to know any of these things, and the straw purchaser might well not want to know them herself, in order to avoid prosecution. After all, under petitioner’s interpretation, the straw purchaser has committed no violation even if it turns out the actual buyer *is* a prohibited

person, if the straw purchaser lacks the mens rea required by § 922(d).

The exception petitioner demands thus allows firearms to end up in the hands of prohibited persons because the straw purchaser did not know, or have reason to believe, the actual buyer was a prohibited person. But the system actually enacted by Congress uses data-based background checks at the point of sale, rather than largely speculative or uninformed beliefs of transferors, to preclude sales to prohibited purchasers. Petitioner's contention that a straw purchaser may lawfully misidentify the true purchaser of a firearm in a sale by a federally licensed dealer would thus create a gaping loophole in the federal background check system—contrary to Congress's twin goals of "keeping firearms out of the hands of categories of potentially irresponsible persons," *Barrett*, 423 U.S. at 220, and supporting the law enforcement efforts of States that regulate gun possession and sales. See *Huddleston*, 415 U.S. at 832 n.11; see also *Markham v. Cabell*, 326 U.S. 404, 409 (1945) ("The policy as well as the letter of the law is a guide to decision.... The process of interpretation also misses its high function if a strict reading of a law results in the emasculation or deletion of a provision which a less literal reading would preserve").<sup>7</sup>

---

<sup>7</sup> In this case, petitioner places much weight on the fact that his uncle cleared a later background check. Pet. Br. 12. But petitioner's construction would have wrongfully protected him even if the uncle had been a prohibited person (given any mens rea requirement). Petitioner easily could have been ignorant of criminal or mental health information about his uncle that a background check would have revealed. And even where

3. Excusing the falsification of the actual buyer's identity at the point of sale would not only gut the background check requirement designed to prevent sales of guns to ineligible purchasers, but would also deprive law enforcement officers of information that may be critical to solving crimes. Some purchasers may wish to evade the identification and recordkeeping requirements for sales by federally licensed dealers because they *intend* to use the purchased gun in a crime and do not wish it to be traced back to them. They may accordingly use a straw purchaser regardless whether they would be eligible to purchase the gun directly. Some would-be criminals use straw purchases to keep stockpiles of weapons secret from law enforcement authorities. The defendant in *United States v. Polk*, for example, was lawfully permitted to possess guns, but amassed an arsenal of weapons through straw purchases in order to obscure his plans to blow up the IRS building in Austin, Texas. *See* 118 F.3d 286, 289-91 (5th Cir. 1997); *see also Frazier*, 605 F.3d at 1274-76 (defendant was legally permitted to acquire guns but bought them through straw purchases in aid of his gun smuggling operation that delivered large quantities of firearms to Canada in exchange for money or drugs); *supra* at 20-21.

For these types of transactions, the use of a straw purchaser both conceals the scale of the weapons acquisition and disrupts the ability to trace guns used

---

an additional background check on the uncle is performed before the last transfer is made, as occurred here, if his uncle had failed the check, petitioner would have been left with a gun he did not wish to own, possibly could not afford, and had a strong motive to sell, legally or otherwise.

in a crime—since straw purchasers may know little to nothing about the actual buyer, the trail often goes cold with them. Allowing straw purchases at the point of sale would undermine law enforcement’s ability to monitor troubling weapon acquisition patterns and hinder law enforcement’s ability to trace crime guns back to the actual buyers. *See* ATF Following the Gun, at x (firearm trace data and firearm sales records can be used to gain information on recovered crime guns, but “there is no effective way to track a gun beyond the first retail sale”).<sup>8</sup>

For these reasons, petitioner’s proposed alternative construction forbidding false statements to the dealer only when the actual buyer is a prohibited person is no better than his preferred construction allowing false statements regardless of the eligibility of the actual buyer. Because the federal oversight of firearm sales has independent value *even when* the true sale is to a lawful buyer, permitting purchasers to knowingly deceive dealers about the actual buyer of a firearm significantly undermines a core purpose of the firearms laws to aid law enforcement. *See Biswell*, 406 U.S. at 315-16 (observing that the fed-

---

<sup>8</sup> *See also* Christopher S. Koper, *Purchase of Multiple Firearms as a Risk Factor for Criminal Gun Use: Implications for Gun Policy and Enforcement*, 4 *Criminology & Pub. Pol.* 749, 749 (2005) (tracking of multiple-gun purchases by law enforcement is important because they are associated with an elevated risk of illegal activity); Anthony A. Braga & Glenn L. Pierce, *Disrupting Illegal Firearms Market in Boston: The Effects of Operation Ceasefire on the Supply of New Handguns to Criminals*, 4 *Criminology & Pub. Pol.* 717, 717, 741-42 (2005) (analyzing data suggesting that “supply-side strategies [employing tracing data] can be used to good effect in shutting down direct pipelines of illegal guns to criminals).

eral scheme is concerned with “assur[ing] that weapons are distributed through regular channels and in a traceable manner[,] ...the prevention of sales to undesirable customers and the detection of the origin of particular firearms”); *United States v. Hensley*, 469 U.S. 221, 229 (1985) (recognizing the “strong government interest in solving crimes and bringing offenders to justice”).

4. Petitioner’s state amici contend that pinning violations of § 922(a)(6) and § 924(a)(1)(A) to a purchaser’s resale intentions at the time of sale makes the statute difficult to administer and likely to deter legal conduct. W. Va. Br. 12-13. This argument misstates the issue. Federal law is not concerned with intent to resell the firearm in the future, but with a present *agreement* to transfer the gun to another person for consideration. An agreement to purchase a gun on another’s behalf is ascertainable and capable of objective proof, as it was in this case, where the straw purchase was memorialized in a writing. Pet. App. 4a-5a. In contrast, petitioner’s proposed case-by-case analysis of the straw purchaser’s knowledge of the actual buyer’s eligibility to possess a handgun under federal, state or local law will typically depend on subjective evidence that is *irrelevant* to the distinctly wrongful act of making a false statement when buying a firearm from a federally licensed dealer. A bright-line rule that forbids buyers to lie about preexisting straw purchase arrangements is clear, easy to apply, and easy to comply with. See *Davis v. United States*, 512 U.S. 452, 461 (1994); see also *United States v. Bass*, 404 U.S. 336, 351 (1971) (“[C]anons of clear statement and strict construction do ‘not mean that every criminal stat-

ute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature.” (quoting *United States v. Bramblett*, 348 U.S. 503, 510 (1955)); *Arizona v. Gant*, 556 U.S. 332, 344 (2009) (recognizing that the State’s law enforcement interests include an “interest in a bright-line rule”). And because it is both clear and easy to comply with, it is also a fairer rule.

**C. The Near-Uniform Constructions Given To The Statutes By The Courts Of Appeals Impose No Serious Burdens On States Or Their Citizens**

Petitioner’s state amici recite a litany of burdens purportedly imposed by the application of federal law in this case. The complaints ring hollow when balanced against the important law enforcement interests discussed above, and none comes close to justifying the use of straw purchases to circumvent federal background check and recordkeeping requirements.

1. *Prohibiting false statements about the actual buyer of a gun does not implicate the Second Amendment.* Under § 922(b)(1), 18-to-20-year-olds may not lawfully purchase handguns from a federally licensed firearms dealer, and can thus acquire those types of firearms only through private sales or gifts, as permitted by state law. Petitioner’s state amici argue that the prohibition of § 922(b)(1) violates the Second Amendment and that the federal straw purchase prohibitions infringe Second Amendment rights by chilling sales or gifts of handguns to young persons in this age range. This argument is misguided for multiple reasons. To begin

with, nothing about the false statement prohibitions limits private sales or gifts, which still may be made to 18-to-20 year-olds where allowed by state law. Moreover, in the case of sales by federally licensed dealers, the false statement prohibitions operate independently of § 922(b)(1). They do not specify who may purchase a gun, but rather require that purchaser's identity be truthfully disclosed and recorded.

Amici notably do not argue that the requirement of truthful statements in a gun purchase violates the Second Amendment, since the federal laws at issue here are “presumptively lawful” regulatory measures “imposing conditions and qualifications on the commercial sale of arms.” *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008). And their argument that these laws have a constitutionally cognizable “chilling effect” is simply incorrect. Quite apart from the absence of *any* effect on private gun sales and gifts, there is no precedent for construing the Second Amendment to forbid regulations having a chilling effect on gun rights. Even in the First Amendment context, “the existence of a ‘chilling effect’ ... has never been considered a sufficient basis, in and of itself, for prohibiting state action.” *Younger v. Harris*, 401 U.S. 37 (1971).

2. *Prohibiting false statements about the actual buyer of a gun does not burden private intrastate gun sales.* As petitioner admits to the Court, under the construction given the federal laws below, private intrastate resales of guns purchased through a federal dealer—even immediate resales—remain permissible. Pet. Br. 22. Individuals can still transfer guns to purchasers out of State through a registered

dealer. *Id.* And if a purchaser later changes her mind and decides to get rid of the gun, the false statement prohibitions do not stand in her way. What is *not* permitted is the purchase of a gun, from a federally licensed dealer, under a *preexisting arrangement* to purchase the gun for an undisclosed other person. That prohibition closes a significant loophole in sales that are federally regulated, is clearly ascertainable, and reaches a distinct set of transactions. Moreover, many straw purchasers are desperate for drugs or money and could not afford to traffic in firearms if they were not doing so on another's behalf. *See, e.g.,* Inside Straw Purchasing 9-10; CeaseFirePA, *Straw Purchaser Gets 60 Days Drug Treatment* (Sept. 18, 2013), *available at* <http://www.ceasefirepa.org/court-watch/2013-09-straw-purchaser-gets-60-days-drug-treatment>. At the same time, a substantial portion of lawful gun commerce, especially intrastate, is not regulated by federal law, and properly construing the federal false statement prohibitions to forbid misrepresenting the identity of the actual buyer of a firearm to a federally licensed dealer does nothing to impair that trade.

3. *Prohibiting false statements about the actual buyer of a gun does not burden the States.* As discussed above, *supra* at 9-11, the various States have enacted a multiplicity of gun-law regimes. Private intrastate gun sales are subject to state law, which may regulate them strictly or not at all. These state law variations have produced a demonstrable flow of guns from weak-regulation States, where guns are freely available, to strong-regulation States, threatening to force on the strong-regulation States the lowest common denominator of gun regulation em-

braced by their neighbors. In this context, enforcing federal gun laws applicable in all States equally imposes no undue burden on weak-regulation States like West Virginia and its amici. States forgoing rigorous gun oversight have no special prerogative to override as a practical matter the stricter gun regulation of States whose citizens have deemed stronger laws “necessary and appropriate.” W. Va. Br. 2; *see also United States v. Edge Broad. Co.*, 509 U.S. 418, 428 (1993) (recognizing that Congress has a substantial governmental interest in balancing the interests of States that regulate conduct to different degrees).

4. *Prohibiting false statements about the actual buyer of a gun does not unnecessarily inconvenience people.* Petitioner’s amici contend that straw purchases should not be prohibited at the point of sale because people legitimately may wish to purchase guns for another as a matter of convenience. W. Va. Br. 5. But “convenience” does not overcome the significant public safety and law enforcement interests served by the federal regulation of gun sales, particularly when a lawful buyer could simply purchase the gun herself. In fact, there are many circumstances in modern society when confirmation of identity is required to complete a transaction—to purchase certain over-the-counter medicines, for example, or to purchase alcohol, or to get a passport. *See, e.g.*, Combat Methamphetamine Epidemic Act of 2005, Pub. L. No. 109–177, 120 Stat. 192 (codified as amended in scattered sections of Title 21, among others)); W. Va. Code § 60-3A-25a; 22 C.F.R. § 51.21. In each of these instances, a person’s ability to transact through a proxy is limited or forbidden to serve legitimate governmental interests. There can be no serious ques-

tion that the governmental interest in reducing gun violence by confirming a purchaser's eligibility to possess a gun at the point of sale and recording the purchaser's identity to aid future law enforcement efforts is as legitimate as the interest in verifying and recording a person's identity when purchasing medicine or other regulated products.

5. *Prohibiting false statements about the actual buyer of a gun does not unnecessarily burden individual interests in getting a bargain.* Petitioner's amici's asserted interest in helping their citizens "save money," W. Va. Br. 5, is misconceived for similar reasons. A person's interest in getting a good deal hardly outweighs the interest in preventing access to firearms by felons and other dangerous persons, mitigating illegal gun trafficking, and facilitating law enforcement's ability to trace crime guns, particularly since the federal regime allows resales provided they are conducted consistent with state and federal law. Moreover, the practice of transferring one's discount to an undisclosed buyer ineligible for the discount may not even be legal in many instances—see, e.g., *United States v. McIntosh*, 380 F.3d 548, 550 (1st Cir. 2004) (fraud prosecution for purchase of computer equipment for resale using university discount); *United States v. Ferro*, 252 F.3d 964 (8th Cir. 2001) (fraud prosecution for discounted pharmaceutical purchases misrepresented to be for the buyer's own use). There is certainly no reason the government should stand down its efforts to combat crime in order to aid such transactions.

6. *Prohibiting false statements about the actual buyer of a gun does not burden gift-giving.* The prohibitions of § 922(a)(6) and § 924(a)(1)(A) are clearly

and specifically concerned with sales by federally licensed dealers, not gifts by private individuals. ATF Form 4473 likewise clearly and expressly does not forbid the purchase of guns as gifts. The distinction between straw purchases and gifts is perfectly logical. When a person buys a gun intending to make a gift of it, she is the purchaser in fact, not the intended recipient's agent, and there is no false disclosure. *Cf.* U.S. Br. 16-17, 20 n.4. No data show that criminals commonly receive the guns they use in crime as gifts. Indeed, if a gun given as a gift is later used in a crime, the investigative trail is far more likely to connect the purchaser to the recipient. And there is no reason to believe that gift-giving contributes in any significant way to the transportation of guns across States lines for use in crimes. The distinction drawn by federal law is plain, sensible, and crystal-clear. Individuals purchasing guns as gifts have no reason to fear prosecution under federal straw purchase prohibitions, and there is no reason to think that the straw purchase prohibitions deter such purchases.

\* \* \*

The false statement prohibitions are a valid exercise of federal legislative power tailored to serve a powerful interest in reducing interstate gun trafficking and possession of firearms by persons ineligible to own them. Those interests in turn help amici implement their own regulatory efforts aimed at reducing gun violence, in service of their interests in public safety and law enforcement. Petitioner's convictions for violating § 922(a)(6) and § 924(a)(1)(A) are valid, and must be upheld.

**CONCLUSION**

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

DAVID M. LOUIE  
*Attorney General*

GIRARD D. LAU  
*Solicitor General*

KIMBERLY T. GUIDRY  
*First Deputy  
Solicitor General*

DEPARTMENT OF THE  
ATTORNEY GENERAL  
425 Queen Street  
Honolulu, HI 96813

CHARLES C. LIFLAND  
*(Counsel of Record)*

clifland@omm.com

RICHARD W. BUCKNER

SUSAN ROEDER

MEAGHAN VERGOW

O'MELVENY & MYERS LLP

400 South Hope Street

Los Angeles, CA 90071

(213) 430-6000

*Counsel for Amicus Curiae State of Hawaii*

December 30, 2013

GEORGE JEPSEN  
*Attorney General*  
 STATE OF CONNECTICUT  
 55 Elm Street  
 Hartford, CT 06106

JOSEPH R. BIDEN III  
*Attorney General*  
 STATE OF DELAWARE  
 820 North French Street  
 Wilmington, DE 19801

LISA MADIGAN  
*Attorney General*  
 STATE OF ILLINOIS  
 100 W. Randolph Street  
 Chicago, IL 60601

DOUGLAS F. GANSLER  
*Attorney General*  
 STATE OF MARYLAND  
 200 St. Paul Place,  
 20th Floor  
 Baltimore, MD 21202

MARTHA COAKLEY  
*Attorney General*  
 COMMONWEALTH OF  
 MASSACHUSETTS  
 One Ashburton Place  
 Boston, MA 02108

JOSEPH A. FOSTER  
*Attorney General*  
 STATE OF NEW HAMPSHIRE  
 33 Capitol Street  
 Concord, NH 03301

ERIC T. SCHNEIDERMAN  
*Attorney General*  
 STATE OF NEW YORK  
 120 Broadway  
 New York, NY 10271

ELLEN F. ROSENBLUM  
*Attorney General*  
 STATE OF OREGON  
 1162 Court Street NE  
 Salem, OR 97301

IRVIN B. NATHAN  
*Attorney General*  
 TODD S. KIM  
*Solicitor General*  
 LOREN L. ALIKHAN  
*Deputy Solicitor General*  
 DISTRICT OF COLUMBIA  
 One Judiciary Square  
 441 Fourth Street, NW  
 Suite 1145S  
 Washington, DC 20001