



**ABRAMSKI**  
**v.**  
**UNITED STATES**  
**SUPREME COURT OF THE UNITED STATES**  
**June 16, 2014**  
**[5 – 4]**  
**[ELL Rating = J/R = Ⓢ/0]**

As soon as this case hit the press, gun controllers hailed it case as a 2<sup>nd</sup> Amendment victory. Ignorance abounds! Although this case does involve gun control, it does NOT involve the Constitution. There are no challenges, here, to the 2<sup>nd</sup> Amendment. This case, not unlike most Supreme Court decisions, is about statutory interpretation. It is also wrongly decided.

**OPINION: KAGAN/KENNEDY/GINSBURG/BREYER/SOTOMAYOR...Before a federally licensed firearms dealer may sell a gun, the would-be purchaser must provide certain personal information, show photo identification, and pass a background check. To ensure the accuracy of those submissions, a federal statute imposes criminal penalties on any person who, in connection with a firearm's acquisition, makes false statements about "any fact material to the lawfulness of the sale." In this case, we consider how that law applies to a so-called straw purchaser—namely, a person who buys a gun on someone else's behalf while falsely claiming that it is for himself. We hold that such a misrepresentation is punishable under the statute, whether or not the true buyer could have purchased the gun without the straw.**

IA

Federal law has for over 40 years regulated sales by licensed firearms dealers, principally to prevent guns from falling into the wrong hands. Under §922(g), certain classes of people—felons, drug addicts, and the mentally ill, to list a few—may not purchase or possess any firearm.

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And to ensure they do not, §922(d) forbids a licensed dealer from selling a gun to anyone it knows, or has reasonable cause to believe, is such a prohibited buyer...

The statute establishes a detailed scheme to enable the dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun. Section 922(c) brings the would-be purchaser onto the dealer's "business premises" by prohibiting, except in limited circumstances, the sale of a firearm "to a person who does not appear in person" at that location. Other provisions then require the dealer to check and make use of certain identifying information received from the buyer. Before completing any sale, **the dealer must "verify the identity of the transferee by examining a valid identification document" bearing a photograph.** In addition, the dealer must procure the buyer's "**name, age, and place of residence.**" And finally, the dealer must (with limited exceptions not at issue here) submit that information to the National Instant Background Check System (NICS) to determine whether the potential purchaser is for any reason disqualified from owning a firearm.

The statute further insists that the dealer **keep certain records**, to enable federal authorities both to enforce the law's verification measures and to trace firearms used in crimes. A dealer must maintain the identifying information mentioned above (*i.e.*, name, age, and residence) in its permanent files. **In addition, the dealer must keep "such records of . . . sale or other disposition of firearms . . . as the Attorney General may by regulations prescribe."** And the Attorney General (or his designee) may obtain and inspect any of those records "in the course of a bona fide criminal investigation" to "determine the disposition of 1 or more firearms."

**To implement all those statutory requirements, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) developed Form 4473 for gun sales.** The part of that form to be completed by the buyer requests his name, birth date, and address, as well as certain other identifying information (for example, his height, weight, and race). The form further lists all the factors disqualifying a person from gun ownership, and asks the would-be buyer whether any of them apply (*e.g.*, "have you ever been convicted . . . of a felony?"). Most important here, Question 11.a. asks (with bolded emphasis appearing on the form itself):

"Are you the actual transferee/buyer of the firearm(s) listed on this form?  
**Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you."**

The accompanying instructions for that question provide:

**"Question 11.a. Actual Transferee/Buyer:** For purposes of this form, you are the actual transferee/buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself . . . . You are also the actual transferee/buyer if you are legitimately purchasing the firearm as a gift for a third party. **ACTUAL TRANSFEREE/BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE ACTUAL TRANSFEREE/BUYER** of the firearm and must answer "**NO**" to question 11.a."

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After responding to this and other questions, the customer must sign a certification declaring his answers "true, correct and complete." That certification provides that the signator "understands that making any false . . . statement" respecting the transaction—and, particularly, "answering 'yes' to question 11.a. if he is not the actual buyer"—is a crime "punishable as a felony under Federal law."

Two statutory provisions, each designed to ensure that the dealer can rely on the truthfulness of the buyer's disclosures in carrying out its obligations, criminalize certain false statements about firearms transactions. First and foremost, **§922(a)(6), provides as follows:**

**"It shall be unlawful . . . for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed dealer knowingly to make any false or fictitious oral or written statement . . . , intended or likely to deceive such dealer with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter."**

That provision helps make certain that a dealer will receive truthful information as to any matter relevant to a gun sale's legality. **In addition, §924(a)(1)(A) prohibits "knowingly making any false statement or representation with respect to the information required by this chapter to be kept in the records" of a federally licensed gun dealer. The question in this case is whether, as the ATF declares in Form 4473's certification, those statutory provisions criminalize a false answer to Question 11.a.—that is, a customer's statement that he is the "actual transferee/buyer," purchasing a firearm for himself, when in fact he is a straw purchaser, buying the gun on someone else's behalf.**

## B

The petitioner here is Bruce Abramski, a former police officer who offered to buy a Glock 19 handgun for his uncle, Angel Alvarez. (Abramski thought he could get the gun for a discount by showing his old police identification, though the Government contends that because he had been fired from his job two years earlier, he was no longer authorized to use that card.) Accepting his nephew's offer, Alvarez sent Abramski a check for \$400 with "Glock 19 handgun" written on the memo line. Two days later, Abramski went to Town Police Supply, a federally licensed firearms dealer, to make the purchase. There, he filled out Form 4473, falsely checking "Yes" in reply to Question 11.a.—that is, asserting he was the "actual transferee/buyer" when, according to the form's clear definition, he was not. He also signed the requisite certification, acknowledging his understanding that a false answer to Question 11.a. is a federal crime. After Abramski's name cleared the NICS background check, the dealer sold him the Glock. Abramski then deposited the \$400 check in his bank account, transferred the gun to Alvarez, and got back a receipt. Federal agents found that receipt while executing a search warrant at Abramski's home after he became a suspect in a different crime.

A grand jury indicted Abramski for...falsely affirming in his response to Question 11.a. that he was the Glock's actual buyer. Abramski moved to dismiss both charges. He argued that his misrepresentation on Question 11.a. was not "material to the lawfulness of the sale" under §922(a)(6) because Alvarez was legally eligible to own a gun. And he claimed that the false statement did not violate §924(a)(1)(A) because a buyer's response to Question 11.a. is not

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"required . . . to be kept in the records" of a gun dealer. After the District Court denied those motions, Abramski entered a conditional guilty plea, reserving his right to challenge the rulings. The District Court then sentenced him to five years of probation on each count, running concurrently.

The Court of Appeals for the Fourth Circuit affirmed the convictions. It noted a division among appellate courts on the question Abramski raised about §922(a)(6)'s materiality requirement: Of three courts to have addressed the issue, one agreed with Abramski that a misrepresentation on Question 11.a. is immaterial if "the true purchaser [here, Alvarez] can lawfully purchase a firearm directly." The Fourth Circuit, however, thought the majority position correct: "The identity of the actual purchaser of a firearm is a constant that is always material to the lawfulness of a firearm acquisition under §922(a)(6)." The court also held that Abramski's conviction under §924(a)(1)(A) was valid, finding that the statute required a dealer to maintain the information at issue in its records.

We granted certiorari...In this Court, Abramski renews his claim that a false answer to Question 11.a. is immaterial if the true buyer is legally eligible to purchase a firearm. But Abramski now focuses on a new and more ambitious argument, which he concedes no court has previously accepted. In brief, he alleges that a false response to Question 11.a. is *never* material to a gun sale's legality, whether or not the actual buyer is eligible to own a gun. We begin with that fundamental question, next turn to what has become Abramski's back-up argument under §922(a)(6), and finally consider the relatively easy question pertaining to §924(A)(1)(a)'s separate false-statement prohibition. On each score, we affirm Abramski's conviction.

## II

Abramski's broad theory (mostly echoed by the dissent) is that federal gun law simply does not care about arrangements involving straw purchasers: So long as the person at the counter is eligible to own a gun, the sale to him is legal under the statute. That is true, Abramski contends, irrespective of any agreement that person has made to purchase the firearm on behalf of someone else—including someone who cannot lawfully buy or own a gun himself. Accordingly, Abramski concludes, his "false statement that he was the Glock 19's 'actual buyer,'" as that term was "defined in Question 11.a., was not material"—indeed, was utterly irrelevant—"to the lawfulness of the sale." In essence, he claims, Town Police Supply could legally have sold the gun to him even if he had truthfully answered Question 11.a. by disclosing that he was a straw—because, again, all the federal firearms law cares about is whether the individual standing at the dealer's counter meets the requirements to buy a gun.

At its core, that argument relies on one true fact: Federal gun law regulates licensed dealers' transactions with "persons" or "transferees," without specifically referencing straw purchasers. Section 922(d), for example, bars a dealer from "selling or otherwise disposing of" a firearm to any "person" who falls within a prohibited category—felons, drug addicts, the mentally ill, and so forth. See...§922(b)(5) (before selling a gun to a "person," the dealer must take down his name, age, and residence); §922(t)(1) (before selling a gun to a "person," the dealer must run a background check). Similarly, §922(t)(1)(C) requires the dealer to verify the identity of the "transferee" by checking a valid photo ID. See...§922(c) (spelling out circumstances in which a "transferee" may buy a gun without appearing at the dealer's premises). **Abramski contends**

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that Congress's use of such language alone, *sans* any mention of "straw purchasers" or "actual buyers," shows that "it is not illegal to buy a gun for someone else."

But that language merely raises, rather than answers, the critical question: In a straw purchase, who *is* the "person" or "transferee" whom federal gun law addresses? Is that "person" the middleman buying a firearm on someone else's behalf (often because the ultimate recipient could not buy it himself, or wants to camouflage the transaction)? Or is that "person" instead the individual really paying for the gun and meant to take possession of it upon completion of the purchase? Is it the conduit at the counter, or the gun's intended owner? In answering that inquiry, we must (as usual) interpret the relevant words not in a vacuum, but with reference to the statutory context, "structure, history, and purpose." All those tools of divining meaning—not to mention common sense, which is a fortunate (though not inevitable) side-benefit of construing statutory terms fairly—demonstrate that §922, in regulating licensed dealers' gun sales, looks through the straw to the actual buyer.

The overarching reason is that Abramski's reading would undermine—indeed, for all important purposes, would virtually repeal—the gun law's core provisions. As noted earlier, the statute establishes an elaborate system to verify a would-be gun purchaser's identity and check on his background. It also requires that the information so gathered go into a dealer's permanent records. The twin goals of this comprehensive scheme are to keep guns out of the hands of criminals and others who should not have them, and to assist law enforcement authorities in investigating serious crimes. And no part of that scheme would work if the statute turned a blind eye to straw purchases—if, in other words, the law addressed not the substance of a transaction, but only empty formalities.

To see why, consider what happens in a typical straw purchase. A felon or other person who cannot buy or own a gun still wants to obtain one. (Or, alternatively, a person who could legally buy a firearm wants to conceal his purchase, maybe so he can use the gun for criminal purposes without fear that police officers will later trace it to him.) Accordingly, the prospective buyer enlists an intermediary to help him accomplish his illegal aim. Perhaps he conscripts a loyal friend or family member; perhaps more often, he hires a stranger to purchase the gun for a price. The actual purchaser might even accompany the straw to the gun shop, instruct him which firearm to buy, give him the money to pay at the counter, and take possession as they walk out the door...What the true buyer would *not* do—what he would leave to the straw, who possesses the gun for all of a minute—is give his identifying information to the dealer and submit himself to a background check. **How many of the statute's provisions does that scenario—the lawful result of Abramski's (and the dissent's) reading of "transferee" and "person"—render meaningless?**

Start with the parts of §922 enabling a dealer to verify whether a buyer is legally eligible to own a firearm. That task, as noted earlier, begins with identification—requesting the name, address, and age of the potential purchaser and checking his photo ID. And that identification in turn permits a background check: The dealer runs the purchaser's name through the NICS database to discover whether he is, for example, a felon, drug addict, or mentally ill person. All those provisions are designed to accomplish what this Court has previously termed Congress's "principal purpose" in enacting the statute—"to curb crime by keeping 'firearms out of the hands

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of those not legally entitled to possess them." **But under Abramski's reading, the statutory terms would be utterly ineffectual, because the identification and background check would be of the wrong person. The provisions would evaluate the eligibility of mere conduits, while allowing every criminal (and drug addict and so forth) to escape that assessment and walk away with a weapon.**

But, as of this date, 06/23/2014), federal laws are utterly and unquestionably ineffectual with respect to background checks upon after purchase donees, after purchase purchasers and after purchase raffle winners. Why? Because there is no federal legal requirement that a background check be performed after the initial purchase from a dealer on the recipient of a subsequent gift, the buyer of a subsequent sale or the winner of a subsequent raffle!

Similarly, Abramski's view would defeat the point of §922(c), which tightly restricts the sale of guns "to a person who does not appear in person at the licensee's business premises." Only a narrow class of prospective buyers may ever purchase a gun from afar—primarily, individuals who have already had their eligibility to own a firearm verified by state law enforcement officials with access to the NICS database. And even when an individual fits within that category, he still must submit to the dealer a sworn statement that he can lawfully own a gun, as well as provide the name and address of the principal law enforcement officer in his community. The dealer then has to forward notice of the sale to that officer, in order to allow law enforcement authorities to investigate the legality of the sale and, if necessary, call a stop to it. The provision thus prevents remote sales except to a small class of buyers subject to extraordinary procedures—again, to ensure effective verification of a potential purchaser's eligibility. Yet on Abramski's view, a person could easily bypass the scheme, purchasing a gun without ever leaving his home by dispatching to a gun store a hired deliveryman. Indeed, if Abramski were right, we see no reason why anyone (and certainly anyone with less-than-pure motives) would put himself through the procedures laid out in §922(c): Deliverymen, after all, are not so hard to come by.

And likewise, the statute's record-keeping provisions would serve little purpose if the records kept were of nominal rather than real buyers. As noted earlier, dealers must store, and law enforcement officers may obtain, information about a gun buyer's identity. That information helps to fight serious crime. When police officers retrieve a gun at a crime scene, they can trace it to the buyer and consider him as a suspect. Too, the required records enable dealers to identify certain suspicious purchasing trends, which they then must report to federal authorities. See §923(g)(3) (imposing a reporting obligation when a person buys multiple handguns within five days). But once again, those provisions can serve their objective only if the records point to the person who took actual control of the gun(s). Otherwise, the police will at most learn the identity of an intermediary, who could not have been responsible for the gun's use and might know next to nothing about the actual buyer...**Abramski's view would thus render the required records close to useless for aiding law enforcement: Putting true numbskulls to one side, anyone purchasing a gun for criminal purposes would avoid leaving a paper trail by the simple expedient of hiring a straw.**

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Justice Kagan, surely you know there is nothing government can do to insure a paper trail to a criminal will ever exist!

**To sum up so far: All the prerequisites for buying a gun described above refer to a "person" or "transferee." Read Abramski's way ("the man at the counter"), those terms deny effect to the regulatory scheme, as criminals could always use straw purchasers to evade the law. Read the other way ("the man getting, and always meant to get, the firearm"), those terms give effect to the statutory provisions, allowing them to accomplish their manifest objects. That alone provides more than sufficient reason to understand "person" and "transferee" as referring not to the fictitious but to the real buyer.**

And other language in §922 confirms that construction, by evincing Congress's concern with the practical realities, rather than the legal niceties, of firearms transactions. For example, §922(a)(6) itself bars material misrepresentations "in connection with the *acquisition*," and not just the purchase, of a firearm. That broader word, we have previously held, does not focus on "legal title"—let alone legal title for a few short moments, until another, always intended transfer occurs. Instead, the term signifies "coming into possession, control, or power of disposal," as the actual buyer in a straw purchase does. Similarly, we have reasoned that such a substance-over-form approach draws support from the statute's repeated references to "the sale *or otherwise disposition*" of a firearm. §922(a)(6); see §922(d) (making it unlawful to "sell *or otherwise dispose of*" a gun to a prohibited person). That term, we have stated, "was aimed at providing maximum coverage." We think such expansive language inconsistent with Abramski's view of the statute, which would stare myopically at the nominal buyer while remaining blind to the person exiting the transaction with control of the gun...

**Abramski, along with the dissent, objects that such action is no circumvention—that Congress made an intentional choice, born of "political compromise," to limit the gun law's compass to the person at the counter, even if merely acting on another's behalf. As evidence, Abramski states that the statute does not regulate beyond the initial point of sale. Because the law mostly addresses sales made by licensed dealers, a purchaser can (within wide limits) subsequently decide to resell his gun to another private party. And similarly, Abramski says, a purchaser can buy a gun for someone else as a gift. Abramski lumps in the same category the transfer of a gun from a nominal to a real buyer—as something, like a later resale or gift, meant to fall outside the statute's (purported) standing-in-front-of-the-gun-dealer scope.**

But Abramski and the dissent draw the wrong conclusion from their observations about resales and gifts. Yes, Congress decided to regulate dealers' sales, while leaving the secondary market for guns largely untouched...And yes, that choice (like pretty much everything Congress does) was surely a result of compromise. But no, straw arrangements are not a part of the secondary market, separate and apart from the dealer's sale. In claiming as much, Abramski merely repeats his mistaken assumption that the "person" who acquires a gun from a dealer in a case like this one is the straw, rather than the individual who has made a prior arrangement to pay for, take possession of, own, and use that part of the dealer's stock. For all the reasons we have already given, that is not a plausible construction of a statute mandating that the dealer identify and run a background check on the person to whom it is (really, not fictitiously) selling a gun. The

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individual who sends a straw to a gun store to buy a firearm *is* transacting with the dealer, in every way but the most formal; and that distinguishes such a person from one who buys a gun, or receives a gun as a gift, from a private party. The line Congress drew between those who acquire guns from dealers and those who get them as gifts or on the secondary market, we suspect, reflects a host of things, including administrative simplicity and a view about where the most problematic firearm transactions—like criminal organizations' bulk gun purchases—typically occur. **But whatever the reason, the scarcity of controls in the secondary market provides no reason to gut the robust measures Congress enacted at the point of sale.**

Abramski claims further support for his argument from Congress's decision in 1986 to amend §922(d) to prohibit a private party (and not just, as originally enacted, a licensed dealer) from selling a gun to someone he knows or reasonably should know cannot legally possess one. **According to Abramski, the revised §922(d) should be understood as Congress's exclusive response to the potential dangers arising from straw purchases. The amendment shows, he claims, that "Congress chose to address this perceived problem in a way other than" by imposing liability under §922(a)(6) on a straw who tells a licensed dealer that he is the firearm's actual buyer.**

But Congress's amendment of §922(d) says nothing about §922(a)(6)'s application to straw purchasers. **In enacting that amendment, Congress left §922(a)(6) just as it was, undercutting any suggestion that Congress somehow intended to contract that provision's reach.** The amendment instead performed a different function: Rather than ensuring that a licensed dealer receives truthful information, it extended a minimal form of regulation to the *secondary* market. The revised §922(d) prevents a private person from knowingly selling a gun to an ineligible owner no matter when or how he acquired the weapon: It thus applies not just to a straw purchaser, but to an individual who bought a gun for himself and later decided to resell it. At the same time, §922(d) has nothing to say about a raft of cases §922(a)(6) covers, including all the (many) straw purchases in which the frontman does not know that the actual buyer is ineligible. Thus, §922(d) could not serve as an effective substitute for §922(a)(6). And the mere potential for some transactions to run afoul of both prohibitions gives no cause to read §922(d) as limiting §922(a)(6) (or vice versa).

Abramski's principal attack on his §922(a)(6) conviction therefore fails. Contrary to his contention, the information Question 11.a. requests—"are you the actual transferee/buyer?" or, put conversely, "are you acquiring the firearm(s) on behalf of another person?"—is relevant to the lawfulness of a gun sale. **That is because, for all the reasons we have given, the firearms law contemplates that the dealer will check not the fictitious purchaser's but instead the true purchaser's identity and eligibility for gun ownership.** By concealing that Alvarez was the actual buyer, Abramski prevented the dealer from transacting with Alvarez face-to-face, recording his name, age, and residence, inspecting his photo ID, submitting his identifying information to the background check system, and determining whether he was prohibited from receiving a firearm. In sum, Abramski thwarted application of essentially all of the firearms law's requirements. We can hardly think of a misrepresentation any more material to a sale's legality.

### III



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Abramski also challenges his §922(a)(6) conviction on a narrower ground. For purposes of this argument, he assumes that the Government can make its case when a straw hides the name of an underlying purchaser who is legally ineligible to own a gun. But, Abramski reminds us, that is not true here, because Alvarez could have bought a gun for himself. In such circumstances, Abramski claims that a false response to Question 11.a. is not material. Essentially, Abramski contends, when the hidden purchaser is eligible anyway to own a gun, all's well that ends well, and all should be forgiven.

**But we think what we have already said shows the fallacy of that claim: Abramski's false statement was material because had he revealed that he was purchasing the gun on Alvarez's behalf, the sale could not have proceeded under the law—even though Alvarez turned out to be an eligible gun owner.** The sale, as an initial matter, would not have complied with §922(c)'s restrictions on absentee purchases. If the dealer here, Town Police Supply, had realized it was in fact selling a gun to Alvarez, it would have had to stop the transaction for failure to comply with those conditions. Yet more, the sale could not have gone forward because the dealer would have lacked the information needed to verify and record Alvarez's identity and check his background. Those requirements, as we have explained, pertain to the real buyer; and the after-the-fact discovery that Alvarez would have passed the background check cannot somehow wipe them away. Accordingly, had Town Police Supply known Abramski was a straw, it could not have certified, as Form 4473 demands, its belief that the transfer was "not unlawful."

**An analogy may help show the weakness of Abramski's argument. Suppose a would-be purchaser, Smith, lawfully could own a gun. But further suppose that, for reasons of his own, Smith uses an alias (let's say Jones) to make the purchase. Would anyone say "no harm, no foul," just because Smith is not in fact a prohibited person under §922(d)? We think not. Smith would in any event have made a false statement about who will own the gun, impeding the dealer's ability to carry out its legal responsibilities. So too here.**

Abramski objects that because Alvarez could own a gun, the statute's core purpose—"keeping guns out of the hands" of criminals and other prohibited persons—"is not even implicated." But that argument (which would apply no less to the alias scenario) misunderstands the way the statute works. As earlier noted, the federal gun law makes the dealer "the principal agent of federal enforcement." It is that highly regulated, legally knowledgeable entity, possessing access to the expansive NICS database, which has the responsibility to "ensure that, in the course of sales or other dispositions . . . , weapons are not obtained by individuals whose possession of them would be contrary to the public interest." Nothing could be less consonant with the statutory scheme than placing that inquiry in the hands of an unlicensed straw purchaser, who is unlikely to be familiar with federal firearms law and has no ability to use the database to check whether the true buyer may own a gun. And in any event, keeping firearms out of the hands of criminals is not §922's only goal: The statute's record-keeping provisions, as we have said, are also designed to aid law enforcement in the investigation of crime. **Abramski's proposed limitation on §922(a)(6) would undercut that purpose because many would-be criminals remain legally eligible to buy firearms**, and thus could use straws to purchase an endless stream of guns off-the-books. See, *e.g.*, *Polk* (eligible gun buyer used straw purchasers to secretly accumulate an "arsenal of weapons" for a "massive offensive" against the Federal Government).

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In addition, **Abramski briefly notes that until 1995, the ATF took the view that a straw purchaser's misrepresentation counted as material only if the true buyer could not legally possess a gun.** We may put aside that ATF has for almost two decades now taken the opposite position, after reflecting on both appellate case law and changes in the statute. **The critical point is that criminal laws are for courts, not for the Government, to construe...**We think ATF's old position no more relevant than its current one—which is to say, not relevant at all. Whether the Government interprets a criminal statute too broadly (as it sometimes does) or too narrowly (as the ATF used to in construing §922(a)(6)), a court has an obligation to correct its error. Here, nothing suggests that Congress—the entity whose voice *does* matter—limited its prohibition of a straw purchaser's misrepresentation in the way Abramski proposes.

#### IV

Finally, Abramski challenges his conviction under §924(a)(1)(A), which prohibits "knowingly making any false statement . . . with respect to the information required by this chapter to be kept in the records" of a federally licensed dealer. That provision is broader than §922(a)(6) in one respect: It does not require that the false statement at issue be "material" in any way. At the same time, §924(a)(1)(A) includes an element absent from §922(a)(6): **The false statement must relate to "information required by this chapter to be kept in a dealer's records."** Abramski notes that the indictment in this case charged him with only one misrepresentation: his statement in response to Question 11.a. that he was buying the Glock on his own behalf rather than on someone else's. And, **he argues, that information (unlike the transferee's "name, age, and place of residence," which he plausibly reads the indictment as not mentioning) was not required "by this chapter"—but only by Form 4473 itself—to be kept in the dealer's permanent records.**

We disagree. Included in "this chapter"—Chapter 44 of Title 18—is a provision, noted earlier, requiring a dealer to "maintain such records of . . . sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe." Because of that statutory section, the information that the Attorney General's regulations compel a dealer to keep is information "required by this chapter." And those regulations (the validity of which Abramski does not here contest) demand that every licensed dealer "retain . . . as a part of its required records, each Form 4473 obtained in the course of" selling or otherwise disposing of a firearm. Accordingly, a false answer on that form, such as the one Abramski made, pertains to information a dealer is statutorily required to maintain.

#### V

No piece of information is more important under federal firearms law than the identity of a gun's purchaser—the person who acquires a gun as a result of a transaction with a licensed dealer. Had Abramski admitted that he was not that purchaser, but merely a straw—that he was asking the dealer to verify the identity of, and run a background check on, the wrong individual—the sale here **could not have gone forward.** That makes Abramski's misrepresentation on Question 11.a. material under §922(a)(6). And because that statement pertained to information that a dealer must keep in its permanent records under the firearms law, Abramski's answer to Question 11.a. also violated §924(a)(1)(A). Accordingly, we affirm the judgment of the Fourth Circuit.

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**DISSENT:** SCALIA/ROBERTS/THOMAS/ALITO...Bruce Abramski bought a gun for his uncle from a federally licensed gun dealer, using money his uncle gave him for that purpose. Both men were legally eligible to receive and possess firearms, and Abramski transferred the gun to his uncle at a federally licensed gun dealership in compliance with state law. When buying the gun, Abramski had to fill out Form 4473 issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In response to a question on the form, Abramski affirmed that he was the "actual/transferee buyer" of the gun, even though the form stated that he was not the "actual transferee/buyer" if he was purchasing the gun for a third party at that person's request and with funds provided by that person.

**The Government charged Abramski with two federal crimes...: making a false statement "material to the lawfulness of the sale" and making a false statement "with respect to information required by the Act to be kept" by the dealer. On both counts the Government interprets this criminal statute to punish conduct that its plain language simply does not reach. I respectfully dissent from the Court's holding to the contrary.**

I. Section 922(a)(6)

A

Under §922(a)(6), it is a crime to make a "false . . . statement" to a licensed gun dealer about a "fact material to the lawfulness of" a firearms sale. Abramski made a false statement when he claimed to be the gun's "actual transferee/buyer" as Form 4473 defined that term. But **that false statement was not "material to the lawfulness of the sale" since the truth—that Abramski was buying the gun for his uncle with his uncle's money—would not have made the sale unlawful.** See *Kungys v. United States* (materiality is determined by asking "what would have ensued from official knowledge of the misrepresented fact")...Therefore, Abramski's conviction on this count cannot stand.

Several provisions of the Act limit the circumstances in which a licensed gun dealer may lawfully sell a firearm. Most prominently, the Act provides that no one may "sell or otherwise dispose of" a firearm to a person who he knows or has reasonable cause to believe falls within one of nine prohibited categories (such as felons, fugitives, illegal-drug users, and the mentally ill). But the Government does not contend that either Abramski or his uncle fell into one of those prohibited categories. And **no provision of the Act prohibits one person who is eligible to receive and possess firearms (e.g., Abramski) from buying a gun for another person who is eligible to receive and possess firearms (e.g., Abramski's uncle), even at the other's request and with the other's money.**

The Government's contention that Abramski's false statement was material to the lawfulness of the sale depends on a strained interpretation of provisions that mention the "person" to whom a dealer "sells" (or "transfers," or "delivers") a gun. A dealer may not "sell or deliver" a firearm to a "person" without recording "the name, age, and place of residence of such person." He may not, without following special procedures, "sell" a firearm to a "person" who does not appear in person at the dealer's business. He may not "transfer" a firearm to a "person" without verifying that person's identity and running a background check. And he may not "sell or deliver" a firearm to a "person" who he knows or has reasonable cause to believe resides in a different State.

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**The Government maintains that in this case *Abramski's uncle* was the "person" to whom the dealer "sold" the gun,** and that the sale consequently violated those provisions. It bases that assertion on the claim that the Gun Control Act implicitly incorporates "principles of agency law." Under those principles, it contends, the individual who walks into a dealer's store, fills out the requisite forms, pays the dealer, and takes possession of the gun is not necessarily the "person" to whom the dealer "sells" the gun. Instead, it says, we must ask whether that individual bought the gun as a third party's common-law agent; if so, then the third party is the "person" to whom the dealer "sells" the gun within the meaning of the relevant statutory provisions. The majority agrees: Although it never explicitly mentions agency law, it declares that if an individual is "buying a firearm on someone else's behalf," the "someone else" is the "person" to whom the dealer "sells" the gun within the meaning of the statute.

I doubt that three of the four provisions at issue here would establish the materiality of Abramski's falsehood *even if* Abramski's uncle were deemed the "person" to whom the dealer "sold" the gun. But §922(b)(3) would unquestionably do so, since it prohibits a dealer from selling a gun to a person who resides in another State, as Abramski's uncle did. That is of no moment, however, because **Abramski's uncle was not the "person" to whom the gun was "sold."**

The contrary interpretation provided by the Government and the majority founders on the plain language of the Act. We interpret criminal statutes, like other statutes, in a manner consistent with ordinary English usage. In ordinary usage, a vendor sells (or delivers, or transfers) an item of merchandise to the person who physically appears in his store, selects the item, pays for it, and takes possession of it. So if I give my son \$10 and tell him to pick up milk and eggs at the store, no English speaker would say that the store "sells" the milk and eggs to me. And even if we were prepared to let "principles of agency law" trump ordinary English usage in the interpretation of this criminal statute, those principles would not require a different result...

*Huddleston v. United States*, on which the majority relies, does not suggest otherwise. There we addressed the *types* of transactions covered by the statutory term "acquisition" in §922(a)(6) (a term whose meaning is not at issue here), holding that they were not limited to "sale-like transactions" but included a "pawnshop redemption of a firearm." We said nothing about the distinct question of *to whom* a dealer "sells," "transfers," or "delivers" a firearm in a given transaction. Nor does the case stand, as the majority believes, for "a substance-over-form approach." We said the term "acquisition" was "aimed at providing maximum coverage," not because substance over form demands that, nor because everything in the Act must be assumed to provide maximum coverage, but because "the word 'acquire' is defined to mean simply 'to come into possession, control, or power of disposal of,'" which gives "no intimation . . . that title or ownership would be necessary."

Contrary to the majority's assertion that the statute "merely raises, rather than answers, the critical question" of whether Abramski or his uncle was the "person" to whom the dealer "sold" the gun, the statute speaks to that question directly. Giving the text its plain, ordinary meaning, **Abramski, not his uncle, was that "person." That being so, the Government has identified no reason why the arrangement between Abramski and his uncle, both of whom were eligible to receive and possess firearms, was "material to the lawfulness of" the sale.**

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## B

The majority contends, however, that the Gun Control Act's "principal purpose" of "curbing crime by keeping firearms out of the hands of those not legally entitled to possess them" demands the conclusion that Abramski's uncle was the "person" to whom the dealer "sold" the gun. But "no law pursues its purpose at all costs" and the "textual limitations upon a law's scope" are equally "a part of its 'purpose.'" **The majority's purpose-based arguments describe a statute Congress reasonably might have written, but not the statute it wrote.**

**The heart of the majority's argument is its claim that unless Abramski's uncle is deemed the "person" to whom the gun was "sold," the Act's identification, background-check, and record-keeping requirements would be "rendered meaningless." That vastly overstates the consequences. Perhaps the statute would serve the purpose of crime prevention *more effectively* if the requirements at issue looked past the "man at the counter" to the person "getting, and always meant to get, the firearm." But ensuring that the person taking possession of the firearm from the dealer is eligible to receive and possess a firearm, and recording information about that person for later reference, are by no means worthless functions. On the contrary, they indisputably advance the purpose of crime prevention by making it harder for ineligible persons to acquire guns and easier for the Government to locate those guns in the future; they simply do not advance that purpose to the same degree as a more exacting law might have done.**

**That the Act's focus on the "man at the counter" in this situation does not render its requirements "meaningless" is confirmed by the Government's concession that the Act has a similar focus in many comparable situations where the gun's immediate purchaser is—to use the majority's phrase—a "mere conduit" for a contemplated transfer of the gun to a different person who will "take possession of, own, and use" it. Consider the following scenarios in which even the Government regards the man at the counter as the "person" to whom the dealer "sells" the gun:**

- ***Guns Intended as Gifts.*** In the Government's view, an individual who buys a gun "with the intent of making a gift of the firearm to another person" is the gun's "true purchaser." ATF, Federal Firearms Regulations Reference Guide. The Government's position makes no exception for situations where the gift is specifically requested by the recipient (as gifts sometimes are). So long as no money changes hands, and no agency relationship is formed, between gifter and giftee, the Act is concerned only with the man at the counter.
- ***Guns Intended for Resale.*** Introducing money into the equation does not automatically change the outcome. The Government admits that the man at the counter is the true purchaser even if he immediately sells the gun to someone else. And it appears the Government's position would be the same even if the man at the counter purchased the gun with the *intent* to sell it to a particular third party, so long as the two did not enter into a common-law agency relationship.
- ***Guns Intended as Raffle Prizes.*** The Government considers the man at the counter the true purchaser even if he is buying the gun "for the purpose of raffling it at an event"—in which case he can provide his own information on Form 4473

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and "transfer the firearm to the raffle winner without a Form 4473 being completed or a background check being conducted" on the winner.

**If the statute's requirements were "rendered meaningless" by treating Abramski rather than his uncle as the true purchaser, then they would be every bit as meaningless in the scenarios just described. The Government's concession that the statute is operating appropriately in each of those scenarios should cause the majority to reevaluate its assumptions about the type and degree of regulation that the statute regards as "meaningful." The majority, it is clear, regards Abramski's interpretation as creating a loophole in the law; but even if that were a fair characterization, why is the majority convinced that a statute with so many *admitted* loopholes does not contain this *particular* loophole?**

The majority's answer to this argument is that "the individual who sends a straw to a gun store to buy a firearm is transacting with the dealer, in every way but the most formal." That certainly distinguishes that individual from the intended subsequent donee or purchaser; so would the fact that he has orange hair. But it does not establish why that individual, any more than the others, should be thought to be covered by statutory language (the "person" to whom a dealer "sells" a gun) that does not naturally apply. **The only thing which can justify *that* leap is the false imperative to make the statute as effective as possible, rather than as effective as the language indicates Congress desired.**

What the scenarios described above show is that the statute typically *is* concerned only with the man at the counter, even where that man is in a practical sense a "conduit" who will promptly transfer the gun to someone else. Perhaps that is because Congress wanted a rule that would be easy to understand and to administer, which the Government's proposed agency test—and the majority's apparent adoption of that test *sans* any mention of agency law—certainly is not. (When counsel for the Government was pressed about hypothetical situations not giftwrapped as neatly as this case, he said, frankly but unhelpfully, that they would turn on the "factual question" of "whether the purchase was made on behalf of someone.")

Or perhaps Congress drew the line where it did because the Gun Control Act, like many contentious pieces of legislation, was a "**compromise**" among "highly interested parties attempting to pull the provisions in different directions." Perhaps those whose votes were needed for passage of the statute *wanted* a lawful purchaser to be able to use an agent. A statute shaped by political tradeoffs in a controversial area may appear "imperfect" from some perspectives, but "our ability to imagine ways of redesigning the statute to advance one of Congress' ends does not render it irrational." We must accept that Congress, balancing the conflicting demands of a divided citizenry, "wrote the statute it wrote"—meaning, a statute going so far and no further." **That Abramski's reading does not render the Act's requirements "meaningless" is further evidenced by the fact that, for decades, even ATF itself did not read the statute to criminalize conduct like Abramski's. After Congress passed the Act in 1968, ATF's initial position was that the Act did not prohibit the sale of a gun to an eligible buyer acting on behalf of a third party (even an ineligible one). A few years later, ATF modified its position and asserted that the Act did not "prohibit a dealer from making a sale to a person who is actually purchasing the firearm for another person" *unless* the other person was "prohibited from receiving or possessing a firearm," in which case the dealer could be**

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guilty of "unlawfully aiding the prohibited person's own violation." The agency appears not to have adopted its current position until the early 1990's.

The majority deems this enforcement history "not relevant" because the Government's reading of a criminal statute is not entitled to deference. But the fact that the agency charged with enforcing the Act read it, over a period of roughly 25 years, not to apply to the type of conduct at issue here is powerful evidence that interpreting the Act in that way is natural and reasonable and does not make its requirements "meaningless."

## C

Even if the statute were wrongly thought to be ambiguous on this point, the rule of lenity would defeat the Government's construction. It is a "familiar principle" that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Skilling v. United States*. **That principle prevents us from giving the words of a criminal statute "a meaning that is different from their ordinary, accepted meaning, and that disfavors the defendant." And it means that when a criminal statute has two possible readings, we do not "'choose the harsher alternative'" unless Congress has "spoken in language that is clear and definite." For the reasons given above, it cannot be said that the statute unambiguously commands the Government's current reading. It is especially contrary to sound practice to give this criminal statute a meaning that the Government itself rejected for years.**

The majority does not mention the rule of lenity apart from a footnote, responding to this dissent. The footnote concedes that "the text creates some ambiguity" but says that "context, structure, history, and purpose resolve it." But for the reasons given above, context and structure do not support the majority's interpretation, history refutes it by showing that the Government itself interpreted the statute more leniently for many years, and "purpose" supports it only if one imputes to the statute a crime-fighting purpose broader than the text discloses (a practice that would nullify the rule of lenity in all cases). If lenity has no role to play in a clear case such as this one, we ought to stop pretending it is a genuine part of our jurisprudence.

**Contrary to the majority's miserly approach, the rule of lenity applies whenever, after all legitimate tools of interpretation have been exhausted, "a reasonable doubt persists" regarding whether Congress has made the defendant's conduct a federal crime—in other words, whenever those tools do not decisively dispel the statute's ambiguity.** "Where text, structure, and history fail to establish that the Government's position is unambiguously correct . . . we apply the rule of lenity and resolve the ambiguity in the defendant's favor." *United States v. Granderson*. It cannot honestly be said that the text, structure, and history of the Gun Control Act establish as "unambiguously correct" that the Act makes Abramski's conduct a federal crime.

By refusing to apply lenity here, the majority turns its back on a liberty-protecting and democracy-promoting rule that is "perhaps not much less old than construction itself." *United States v. Wiltberger* ("**Penal statutes must be construed strictly**"). As Chief Justice Marshall wrote, the rule is "founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department." It forbids a court to criminalize an act simply because the court deems that act "of equal atrocity, or of kindred character, with those which are enumerated." Today's majority disregards that foundational principle.

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## II. Section 924(a)(1)(A)

Under §924(a)(1)(A), it is a crime to make a "false statement . . . with respect to the information **required by this chapter** to be kept in the records of" a federally licensed gun dealer. "This chapter" refers to chapter 44 of title 18 of the United States Code, which contains the Gun Control Act. The question Abramski answered falsely was whether he was buying the gun for someone else. **Did the Act itself require the dealer to record this information? It did not; it simply required him to record "the name, age, and place of residence" of the "person" to whom the firearm was "sold or delivered."** As explained above, that "person" was Abramski, not his uncle. But, the majority says, the Act also directs dealers to "maintain such records . . . as the Attorney General may by regulations prescribe." **So did a regulation require this information to be recorded? Again, no. The relevant regulation provides that a dealer shall obtain a Form 4473 from the transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; the transferee's country of citizenship; the transferee's INS-issued alien number or admission number; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce."**

**The long list of information that this regulation requires to be kept in the dealer's records does not include whether the transferee is buying the gun for an eligible third party.**

**But wait! the majority says: Another provision of the regulation requires a dealer to "retain . . . as part of its required records, each Form 4473 obtained in the course of" selling or disposing of a firearm. Therefore, according to the majority, any "false answer on that Form"—even an answer to a question that is not among those enumerated in the regulation—necessarily "pertains to information a dealer is statutorily required to maintain."**

That carries the text of the statute a bridge too far. On the majority's view, if the bureaucrats responsible for creating Form 4473 decided to ask about the buyer's favorite color, a false response would be a federal crime. That is not what the statute says. **The statute punishes misstatements "with respect to information required to be kept," not with respect to "information contained in forms required to be kept."** Because neither the Act nor any regulation requires a dealer to keep a record of whether a customer is purchasing a gun for himself or for an eligible third party, that question had no place on Form 4473—any more than would the question whether the customer was purchasing the gun as a gift for a particular individual and, if so, who that individual was. And the statute no more criminalizes a false answer to an ultra vires question on Form 4473 than it criminalizes the purchaser's volunteering of a false e-mail address on that form. Information regarding Abramski's status as a "straw purchaser" was not "information required to be kept," and that is an end of the matter. In my view, that is the best—indeed, the only plausible—interpretation of §924(a)(1)(A). But at a minimum, the statute is ambiguous, and lenity does the rest.



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The Court makes it a federal crime for one lawful gun owner to buy a gun for another lawful gun owner. Whether or not that is a sensible result, the statutes Congress enacted do not support it—especially when, as is appropriate, we resolve ambiguity in those statutes in favor of the accused. I respectfully dissent.