

No. 22-4609

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
APPELLANT,

v.

RANDY PRICE,
APPELLEE.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

**BRIEF OF THE DISTRICT OF COLUMBIA,
THE STATES OF CALIFORNIA, COLORADO, CONNECTICUT,
DELAWARE, HAWAII, IDAHO, ILLINOIS, MAINE, MARYLAND,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW JERSEY, NEW
MEXICO, NEW YORK, NORTH CAROLINA, OHIO, OREGON,
PENNSYLVANIA, RHODE ISLAND, AND WASHINGTON, AND THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
AS AMICI CURIAE IN SUPPORT OF APPELLANT**

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INTRODUCTION AND INTEREST OF AMICI STATES

The District of Columbia, the States of California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, and Washington, and the Commonwealth of the Northern Mariana Islands (collectively, the “Amici States”), file this brief as amici curiae in support of appellant the United States of America, which is defending its statutory prohibition on possessing firearms with obliterated serial numbers. *See* 18 U.S.C. § 922(k). Amici States have an interest in ensuring that laws regulating firearm serial numbers, like Section 922(k), remain valid and effective. Such laws assist state and local law enforcement officials in tracing firearms used in criminal activity and are thus crucial “in investigating serious crimes.” *Abramski v. United States*, 573 U.S. 169, 180 (2014). Accordingly, the vast majority of states and territories have enacted laws like Section 922(k) regulating firearm serial numbers. The district court’s sweeping decision holding Section 922(k) unconstitutional under *New York State Rifle and Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), undercuts these laws and the criminal investigation purposes they serve.

Serial numbers are vital to tracing the origin and owner of a firearm. When law enforcement officials recover a gun in the aftermath of a crime, one of their first investigative steps is to submit a “trace request” to the Bureau of Alcohol, Tobacco,

Firearms and Explosives (“ATF”). The trace request relays to ATF the gun’s identifying details, including—crucially—its serial number. The serial number, in combination with the model, manufacturer, and caliber, makes “any given firearm uniquely identifiable and traceable.” Identification Markings Placed on Firearms, 66 Fed. Reg. 40596, 40597 (Jan. 30, 2002) (codified at 27 C.F.R. pts. 178, 179). Using this information, ATF is able to trace the firearm’s chain of custody from the initial manufacturer or importer to the first retail purchaser. *Id.*

These ATF traces are “an integral part of any investigation involving the criminal use of firearms”—and states have a critical interest in the efficacy of criminal investigations. *Id.* As courts have recognized, “the serial number of a firearm recovered in a crime” is what makes it possible “to trace and identify [the firearm’s] owner and source.” *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010). “The systemic tracking of firearms from the manufacturer or U.S. importer to the first retail purchaser enables law enforcement agencies to identify suspects involved in criminal violations, determine if the firearm is stolen, and provide other information relevant to an investigation.” 66 Fed. Reg. at 40597. Trace data also “provides agencies with vital criminology statistics,” including information about where trafficked guns tend to come from. *Marzzarella*, 614 F.3d at 100. Notably, as gun violence has escalated across the country, the number of serialization-based trace requests has too. *See* Simone Weichselbaum et al., *It’s just*

insanity': *ATF Now Needs 2 Weeks To Perform a Routine Gun Trace*, NBC News (Aug. 19, 2022), <https://tinyurl.com/s6suxxcb> (“The trace requests now pour in at an unprecedented rate . . .”).

Section 922(k) plays a crucial role in preserving serial numbers and, in turn, solving violent crimes. This Section criminalizes transporting and possessing guns with serial numbers that are “removed, obliterated, or altered.” 18 U.S.C. § 922(k). The statute thus “discourag[es] the possession and use of firearms that are harder or impossible to trace.” *Marzzarella*, 614 F.3d at 101.

An overwhelming majority of jurisdictions across the country—forty-one states, the District of Columbia, and the Commonwealth of the Northern Mariana Islands—have enacted serial number laws that resemble those of the United States. Like the United States, some states prohibit the possession of a firearm with obliterated serial numbers. Other states prohibit the act of obliteration itself. As the primary actors charged with defining and enforcing criminal laws, *see Torres v. Lynch*, 578 U.S. 452, 464 n.9 (2016), states have an interest in ensuring that these laws, along with Section 922(k), remain permissible methods of preserving firearm serial numbers and investigating crimes committed with guns. These provisions, many of which have been enacted by states that otherwise generously protect gun rights, reflect an uncommon democratic consensus on how states can and should

regulate firearms. The district court's boundless reading of *Bruen* threatens this consensus and should be reversed.

SUMMARY OF ARGUMENT

1. At least forty-three jurisdictions in the United States regulate firearm serial numbers. All these jurisdictions recognize the indispensable value of serial numbers in investigating gun crimes. Accordingly, each has enacted laws banning either the possession of firearms with obliterated serial numbers or the act of obliterating the numbers. A decision striking down Section 922(k) could threaten these myriad state laws.

2. As Amici States know, serial numbers play a crucial role in investigating gun crimes. State and local law enforcement officials rely on serial numbers to trace guns to their initial purchaser. Such gun traces enable officials to identify shooters, traffickers, and straw purchasers, and to disrupt the flood of illegal guns into their communities. Trace information also reveals broader criminal trends, such as the average time between the purchase of a firearm and its use in a violent crime. Traces are especially important in the aftermath of mass shootings, when identifying the owner and seller of a gun is essential to maintaining public safety. Without serial numbers, it is nearly impossible to trace a gun to its user. The district court's decision—which makes the obliteration of serial numbers more likely—vitiates a critical tool for solving and combatting violent crime.

3. The Supreme Court’s recent decision in *Bruen* does not call into question the constitutionality of serial number laws. As the Court explained, the Second Amendment is not a right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Bruen*, 142 S. Ct. at 2128 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). Here, the district court incorrectly concluded that serial number laws violate the Second Amendment. They do not. As the Third Circuit—the only other court of appeals to address the constitutionality of Section 922(k)—has indicated, serial number requirements do not burden the Second Amendment; at a minimum, guns with obliterated serial numbers are not in common use by law-abiding citizens for lawful purposes, and thus fall outside the scope of the right that the Second Amendment preserves. Instead, an obliterated serial number is an unmistakable indication that the firearm has been illegally trafficked for unlawful purposes. *Bruen* provides no reason to strike down Section 922(k).

ARGUMENT

I. Like The United States, A Vast Majority Of Jurisdictions Regulate Firearm Serial Numbers.

Section 922(k) prohibits the transportation and possession of guns with obliterated serial numbers. 18 U.S.C. § 922(k). It makes it illegal for “any person knowingly to transport, ship, or receive . . . any firearm which has had the [serial number] removed, obliterated, or altered or to possess or receive any firearm which

has had the [serial number] removed, obliterated, or altered.” *Id.* Those who violate the provision face up to five years in prison. *Id.* § 924(a)(B).

Section 922(k) reflects the commonsense understanding that intact serial numbers are a crucial component of investigating gun crimes. *See infra* Part II. It thus seeks to punish those who transport or possess a gun “whose principal means of tracing origin and transfers in ownership—its serial number—has been deleted or made appreciably more difficult to make out.” *United States v. Adams*, 305 F.3d 30, 34 (1st Cir. 2002).

In harmony with the purpose of Section 922(k), at least forty-one states, the District of Columbia, and the Commonwealth of the Northern Mariana Islands directly regulate serial number obliteration in some manner. Like the United States, twenty-nine jurisdictions prohibit the possession of firearms with obliterated serial numbers.¹ *See, e.g.*, La. Rev. Stat. § 40:1792 (providing that no person shall

¹ Ala. Code § 13A-11-64; Alaska Stat. § 11-61-200; Ariz. Rev. Stat. § 13-3102; Ark. Code Ann. § 5-73-107; Cal. Penal Code § 23920; Colo. Rev. Stat. § 18-12-103; Del. Code Ann. tit. 11 § 1459; Fla. Stat. § 790.27; Ga. Code Ann. § 16-9-70; 720 Ill. Comp. Stat. § 5/24-5; Ind. Code § 35-47-2-18; Ky. Rev. Stat. Ann. § 527.050; La. Rev. Stat. § 40:1792; Md. Code Ann., Pub. Safety § 5-703(b)(2); Me. Stat. tit. 17-A § 705(1)(E); Minn. Stat. § 609.667; Mo. Rev. Stat. § 571.050; Mont. Code Ann. § 45-6-326; 2016 N. Mar. I. Code § 10310; Neb. Rev. Stat. § 28-1207; Nev. Rev. Stat. § 202.277; N.J. Stat. Ann. § 2C:39-3; N.Y. Penal Law § 265.02; N.C. Gen. Stat. § 14-160.2; Ohio Rev. Code Ann. § 2923.201; 18 Pa. Cons. Stat. § 6110.2; 11 R.I. Gen. Laws § 11-47-24; S.C. Code Ann. § 16-23-30(C); S.D. Codified Laws § 22-14-5.

“possess . . . any firearm . . . from which the serial number” has been “intentionally obliterated, altered, removed, or concealed”). Thirty-seven jurisdictions ban the act of obliteration itself.² *See, e.g.*, Colo. Rev. Stat. § 18-12-104 (providing that anyone who “knowingly removes, defaces, covers, alters, or destroys [a serial number] of a firearm” is guilty of a misdemeanor). And at least one of the remaining eight states without a specific serial number regulation has a generic obliteration statute that applies to all manufactured products.³ These provisions and their text are organized in an appendix at the end of this brief.

Importantly, these laws are routinely enforced as part of states’ law enforcement efforts. As a sampling, over the last decade, California has made 8,009 arrests and obtained 527 convictions under its statutes prohibiting the obliteration of firearm serial numbers and possession or transfer of firearms with obliterated serial

² Ala. Code § 13A-11-64; Alaska Stat. § 11-61-200; Ariz. Rev. Stat. § 13-3102; Ark. Code Ann. § 5-73-106; Cal. Penal Code § 23900; Colo. Rev. Stat. § 18-12-104; Conn. Gen. Stat. § 29-36; D.C. Code § 22-4512; Fla. Stat. § 790.27; Haw. Rev. Stat. § 134-10; Idaho Code § 18-2410; 720 Ill. Comp. Stat. § 5/24-5; Ind. Code § 35-47-2-18; Kan. Stat. Ann. § 21-6306; Ky. Rev. Stat. Ann. § 527.030; Mass. Gen. Laws Ann. ch. 269 § 11C; Me. Stat. tit. 17-A § 705(1)(E); Mich. Comp. Laws § 750.230; Minn. Stat. § 609.667; Mo. Rev. Stat. § 571.045; Mont. Code Ann. § 45-6-326; 2016 N. Mar. I. Code § 10310; Neb. Rev. Stat. § 28-1208; Nev. Rev. Stat. § 202.277; N.H. Rev. Stat. Ann. § 159:13; N.J. Stat. Ann. § 2C:39-9; N.Y. Penal Law § 265.10; N.C. Gen. Stat. § 14-160.2; N.D. Cent. Code § 62.1-03-05; Ohio Rev. Code Ann. § 2923.201; Okla. Stat. tit. 21 § 1550; Or. Rev. Stat § 166.450; 18 Pa. Cons. Stat. § 6117; 11 R.I. Gen. Laws § 11-47-24; Utah Code Ann. § 76-10-522; Va. Code Ann. § 18.2-311.1; Wash. Rev. Code § 9-41-140.

³ Tex. Penal Code Ann. § 31.11.

numbers.⁴ Oregon has made 424 arrests for violations of its serial number provision since 2012.⁵ And Rhode Island, for its part, has brought 165 cases under its statute since 2017.⁶ *See also, e.g., State v. Ruiz*, No. 2 CA-CR 2019-0115, 2020 WL 4188025 (Ariz. Ct. App. July 21, 2020) (involving a charge for possession of a defaced deadly weapon under Ariz. Rev. Stat. § 13-3102); *State v. Stout*, No. A-5799-17T4, 2020 WL 2212316 (N.J. Sup. Ct. App. Div. May 7, 2020) (involving a charge for possessing a firearm with an obliterated serial number under N.J. Stat. Ann. § 2C:39-3); *People v. Salgado*, 147 N.E.3d 188 (Ill. App. Ct. 2019) (involving a charge for defacing a firearm under 720 Ill. Comp. Stat. § 5/24-5); *State v. Dow*, No. A18-1856, 2019 WL 4594236 (Minn. Ct. App. Sept. 23, 2019) (involving a charge for possessing a firearm with an altered or removed serial number under Minn. Stat. § 609.667); *Waters v. State*, 131 A.3d 309 (Del. 2016) (involving a charge for possessing a firearm with an obliterated serial number under Del. Code Ann. tit. 11 § 1459); *K.D.T. v. State*, 128 So. 3d 254 (Fla. Dist. Ct. App. 2013) (involving a charge for possessing a firearm with an obliterated serial number under Fla. Stat. § 790.27); *State v. Heater*, No. 34366, 2008 WL 9468401 (Idaho Ct. App.

⁴ Data on file with the California Department of Justice (current as of December 21, 2022).

⁵ Data on file with the Oregon Department of Justice (current as of December 20, 2022).

⁶ Data on file with the Rhode Island Office of the Attorney General (current as of December 9, 2022).

May 19, 2008) (involving a charge for obliterating a serial number under Idaho Code § 18-2410). In short, in partnership with the United States’ laws, the states’ laws and the cases brought under them further the important goal of “limiting the availability of untraceable firearms.” *Marzzarella*, 614 F.3d at 98.

The ubiquity of serial number laws distinguishes them from the laws that the Supreme Court held unconstitutional in *Heller*, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Bruen*. “Few laws in the history of our Nation” imposed such a “severe restriction” on the Second Amendment right to keep and bear arms for self-defense as those that the Supreme Court held unconstitutional in *Heller* and *McDonald*. *Heller*, 554 U.S. at 629; *see also Bruen*, 142 S. Ct. at 2161 (Roberts, C.J. & Kavanaugh, J., concurring) (noting that laws requiring individuals to show “proper cause” or “good cause” to secure a permit were “unusual” and “outlier[s]”). By contrast, the vast majority of states have serial number laws like Section 922(k). The broad consensus among the states—some of which otherwise have much more permissive gun regulations—supports the conclusion that serial number regulations are “constitutionally permissible.” *Bruen*, 142 S. Ct. at 2162 (Roberts, C.J. & Kavanaugh, J., concurring).

II. Serial Number Regulations Are Crucial To Solving Crime.

The ubiquity of serial number regulations makes sense given the critical law enforcement purposes they serve. For law enforcement officials investigating a gun

crime, “Step One” after recovering a gun is to determine where it came from, or in other words, to “trace” it. See Jeanne Marie Laskas, *Here’s How Cops Actually Trace a Gun*, Bus. Insider (Sept. 3, 2016), <https://tinyurl.com/mvycvbf>. Serial numbers are the linchpin of this effort. Once officials determine the gun’s serial number, they relay that information to the ATF’s National Tracing Center (“NTC”)—the only agency in the United States that is authorized to trace guns in criminal investigations. *Id.* The NTC possesses serial numbers and other identifying information for guns manufactured in or imported into the United States. Melissa Block, *The Low-Tech Way Guns Get Traced*, NPR (May 20, 2013), <https://tinyurl.com/yypwxe2a>. Using their records and the serial numbers they receive from local, state, and federal law enforcement, “NTC is able [to] track [firearms] through the wholesale and resale distribution chain to [their] first retail purchaser.” Bureau of Alcohol, Tobacco, Firearms & Explosives, Nat’l Tracing Ctr., *Fact Sheet* (June 2020), <https://tinyurl.com/yw8hk94z>.

Trace information, which depends entirely on having a legible serial number, assists law enforcement in solving individual crimes. It “can identify possible suspects or traffickers and link them to specific firearms found in criminal investigations.” *Id.* The “jackpot” of information that a trace reveals “could help solve a murder case, or exonerate [someone innocent] on death row or, as happens frequently, open unexpected investigative leads.” Laskas, *supra*. Traces “spark

leads,” and although they do not “always lead directly to a perpetrator,” investigators can “interview a gun’s buyer to see whom he or she gave or sold it to and then follow the chain of custody.” Brian Freskos, *How a Gun Trace Works*, Trace (July 8, 2016), <https://tinyurl.com/2t4capet>.

Beyond solving individual cases, trace data based on firearm serial numbers informs law enforcement about broader statistics in gun trafficking and violent crime. It helps detect “international trafficking patterns” as well as “local trends in the sources and types of crime guns.” *Fact Sheet, supra*. The data also allows officials to identify repeat straw purchasers and disrupt the flow of illegal guns from traffickers into local communities. *See, e.g.*, Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 37-38 (June 2000) (providing examples). And it provides rich “‘time-to-crime’ statistics which measure the time between a firearm’s initial retail sale and its recovery in a crime.” *Marzzarella*, 614 F.3d at 100. Time-to-crime data enables agencies and the public to decipher overarching trends in violent crime, like the increased rates of gun violence that the United States has experienced over the past two years. *See* John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, Pew Rsch. Ctr. (Feb. 3, 2022), <https://tinyurl.com/yt5vx6y4>. Indeed, as gun violence has increased across the country, so have trace requests. In 1995, the ATF processed “fewer than 80,000” trace requests. Freskos, *supra*. By 2015, that number

was 373,000. *Id.* And last year, the agency processed 548,000 requests. Bureau of Alcohol, Tobacco, Firearms & Explosives, *Fact Sheet eTrace* (May 2022), <https://tinyurl.com/bdh7aazv>.

Finally, although the ATF usually processes routine trace requests within seven to ten business days, in urgent situations it can determine who originally purchased a retail firearm within twenty-four hours, and oftentimes, within hours or minutes, thus aiding law enforcement officials conducting sensitive and urgent investigations. Zak Dahlheimer, *Behind-the-scenes Look at the Bureau of Alcohol, Tobacco, Firearms and Explosives National Tracing Center*, WTKR (Oct. 13, 2021), <https://tinyurl.com/nhnxcuy4>. Urgent traces are especially critical in the wake of mass murder and public violence, when officials, victims, and citizens demand immediate information about how the shooters acquired their firearms and whether there continues to be a threat of violence. *See* Block, *supra* (describing how the ATF conducted urgent traces after the Gabby Giffords and Newtown shootings); Sari Horwitz, *Gun Used in San Bernardino Shooting Were Purchased Legally from Dealers*, Wash. Post (Dec. 3, 2015), <https://tinyurl.com/5bsxs9k> (noting that the ATF conducted an urgent trace on the firearms used in the San Bernardino shooting “within two hours of their recovery”).

Invalidating serial number regulations will thwart this critical law enforcement practice of tracing guns used in criminal activity. Obliterated serial numbers

remain uncommon “partly because under federal law someone in possession of such a gun faces between five to 10 years in prison.” NOLA.com, *Whose Gun Is It?*, Times-Picayune (Aug. 16, 2016), <https://tinyurl.com/325xypz3>. But without serial number laws like Section 922(k), the number of guns with obliterated serial numbers will inevitably spike. Gun traffickers will be emboldened to obliterate even more serial numbers with the purpose of making it “impossible to trace the firearms” back to them. *See Following the Gun, supra*, at 5. Law enforcement, in turn, can expect more unsuccessful traces that impede criminal investigations. *See United States v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992) (explaining that “a chain of custody for a firearm greatly assists in the difficult process of solving crimes” and that when serial numbers are obliterated, “it is *virtually impossible*” to determine this chain (emphasis added)). By prohibiting the United States—and individual states—from punishing those who carry guns with obliterated serial numbers, the district court’s decision risks depriving law enforcement officials of one of the most important methods that they have to investigate gun crimes.

III. Serial Number Regulations Remain Constitutional After *Bruen*.

Section 922(k) and the ubiquitous provisions discussed above remain constitutional even after the Supreme Court’s decision in *Bruen*, 142 S. Ct. 2111. *Bruen* held that under the test established in *Heller*, 554 U.S. 570, “the Second Amendment protects the right of law-abiding people to carry a gun outside the home

for self-defense and that [New York’s law], which makes that virtually impossible for most New Yorkers, is unconstitutional.” *Bruen*, 142 S. Ct. at 2159 (Alito, J., concurring). However, neither *Bruen* nor *Heller* invalidated longstanding prohibitions on the possession of firearms by felons, the carrying of firearms in sensitive places, conditions on the commercial sale of arms, or limitations on dangerous and unusual weapons. *Id.* at 2162 (Roberts, C.J. & Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-27). Nor did the Supreme Court invalidate other “presumptively lawful regulatory measures,” *id.*, like serial number regulations.

The district court erred by holding otherwise. In its view, a prohibition on possessing guns with obliterated serial numbers was the “definition of an infringement on one’s right to possess a firearm.” *Op.* at 6. And the district court did not limit its logic to possession of guns with obliterated numbers alone; it further hinted that the conduct of an otherwise “law-abiding citizen” who “purchases a firearm from a sporting goods store” and “removes the serial number” would be protected by the Second Amendment too. *Id.* And after concluding that none of the historical examples in the record were sufficiently analogous to serial number regulations, the district court held Section 922(k) unconstitutional.

The district court’s far-reaching reading of *Bruen* is wrong. As the Supreme Court has explained, the Second Amendment does not protect the “right to keep and

carry *any weapon whatsoever in any manner whatsoever and for whatever purpose.*” *Bruen*, 142 S. Ct. at 2128 (quoting *Heller*, 554 U.S. at 626-27) (emphasis added). The Second Amendment protects the right to keep and bear arms that are “‘in common use’ today” for lawful purposes like self-defense, *id.* at 2134—not those that are “dangerous and unusual” or that are *not* commonly used for lawful purposes. *Id.* at 2128 (quoting *Heller*, 554 U.S. at 627); *see also Heller*, 554 U.S. at 624 (explaining that the Second Amendment only protects those arms “‘in common use at the time’ for lawful purposes like self-defense”). At a bare minimum, guns with obliterated serial numbers are dangerous, unusual, and not commonly used by law-abiding citizens for self-defense—which places them outside of the historical scope of the Second Amendment.

Guns with obliterated serial numbers, as a class, are not commonly used by law-abiding citizens for lawful purposes today. *See United States v. Reyna*, No. 3:21-CR-41, 2022 WL 17714376, at *5 (N.D. Ind. Dec. 15, 2022) (concluding that guns with obliterated serial numbers are outside the Second Amendment’s scope). An obliterated serial number on a gun is a “clear indicator” that the gun has been illegally trafficked. *Following the Gun, supra*, at 26. This is unsurprising, given that “a gun that is impossible to trace has greater value in the underground market that supplies criminals.” Philip J. Cook et al., *Some Sources of Crime Guns in Chicago: Dirty Dealers, Straw Purchasers, and Traffickers*, 104 J. Crim. L. &

Criminology 717, 750 (2015). Guns with obliterated serial numbers thus have “particular value” to those who break the law. *Marzzarella*, 614 F.3d at 98-99. And conversely, there is “no compelling reason why a law-abiding citizen would prefer an unmarked firearm” to one carrying its original serial numbers. *Id.* Guns with obliterated serial numbers are therefore “not typically possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625. Accordingly, they do not receive Second Amendment protection.

Moreover, as a practical matter, preventing the use of these dangerous and unusual firearms does not prevent law-abiding citizens from exercising their right to armed self-defense, which is the “central component” of the Second Amendment. *Bruen*, 142 S. Ct. at 2133 (quoting *Heller*, 554 U.S. at 599); see *United States v. Holton*, -- F. Supp. 3d ----, 2022 WL 16701935, at *5 (N.D. Tex. 2022); Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 UCLA L. Rev. 1443, 1549 (2009). Unlike the proper-cause requirement in *Bruen*, which “prevent[ed] [those] with ordinary self-defense needs from exercising their right to keep and bear arms,” 142 S. Ct. at 2158, serial number requirements do not impose restrictions on when, where, or why citizens can carry guns. Nor do serial number requirements “impair the use or functioning of a weapon.” *Marzzarella*, 614 F.3d at 94. Serial number laws thus do not in operation prevent law-abiding citizens from using arms to protect themselves.

The Third Circuit—the only other court of appeals to consider the constitutionality of Section 922(k)—has strongly suggested (without outright deciding) that laws prohibiting the possession of guns with obliterated serial numbers do not violate the Second Amendment. *Id.* at 94-95. And although that case was decided before *Bruen*, it remains persuasive following the Supreme Court’s decision. Moreover, post-*Bruen*, two district courts have upheld the constitutionality of Section 922(k). *See Reyna*, 2022 WL 17714376; *Holton*, 2022 WL 16701935. That outcome is correct. This Court should accordingly reverse the contrary holding in this case.

CONCLUSION

This Court should reverse the district court’s order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2022, I electronically filed the foregoing amicus brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the type-volume limitation in Federal Rule of Appellate Procedure 32(a)(7)(B) because the brief contains 4,085 words, excluding exempted parts. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

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Statutory Appendix

State	Provision	Provision Type	Text
Alabama	Ala. Code § 13A-11-64	Obliteration, possession	A person who either: (1) Changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number or other mark or identification of any firearm, or (2) Possesses, obtains, receives, sells, or uses a firearm after the maker, model, manufacturer's number or other mark or identification has been changed, altered, removed, or obliterated, is guilty of a Class C felony.
Alaska	Alaska Stat. § 11-61-200	Obliteration, possession	A person commits the crime of misconduct involving weapons in the third degree if the person . . . (5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; (6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.
Arizona	Ariz. Rev. Stat. § 13-3102	Obliteration, possession	A person commits misconduct involving weapons by knowingly . . . 6. Defacing a deadly weapon; or 7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced[.]
Arkansas	Ark. Code Ann. §§ 5-73-106, 5-73-107	Obliteration, possession	106: A person commits the offense of defacing a firearm if he or she knowingly removes, defaces, mars, covers, alters, or destroys the manufacturer's serial number or identification mark of a firearm. 107: A person commits the offense of possession of a defaced firearm if he or she knowingly possesses a firearm with a manufacturer's serial number or other

			identification mark required by law that has been removed, defaced, marred, altered, or destroyed.
California	Cal. Penal Code §§ 23900, 23920	Obliteration, possession	<p>23900: Any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal shall be punished by imprisonment</p> <p>23920: (a) [A]ny person who, with knowledge of any change, alteration, removal, or obliteration described in this section, buys, receives, disposes of, sells, offers for sale, or has in possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the manufacturer's number or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, changed, altered, removed, or obliterated, is guilty of a misdemeanor. (b) [A]ny person [who] knowingly possesses any firearm that does not have a valid state or federal serial number or mark of identification is guilty of a misdemeanor.</p>
Colorado	Colo. Rev. Stat. §§ 18-12-103, 18-12-104	Obliteration, possession	<p>103: A person commits a class 1 misdemeanor if he knowingly and unlawfully possesses a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed, defaced, altered, or destroyed, except by normal wear and tear.</p> <p>104: A person commits a class 1 misdemeanor if such person knowingly removes, defaces, covers, alters, or destroys</p>

			the manufacturer's serial number or any other distinguishing number or identification mark of a firearm.
Connecticut	Conn. Gen. Stat. § 29-36	Obliteration	No person shall remove, deface, alter or obliterate the name of any maker or model or any maker's number, unique serial number or other mark of identification on any firearm
Delaware	Del. Code Ann. tit. 11 § 1459	Possession	No person shall knowingly transport, ship, possess or receive any firearm or firearm frame or receiver with the knowledge that the importer's or manufacturer's serial number has been removed, obliterated or altered in a manner that has disguised or concealed the identity or origin of the firearm.
District of Columbia	D.C. Code § 22-4512	Obliteration	No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun.
Florida	Fla. Stat. § 790.27	Obliteration, possession	(1)(a) It is unlawful for any person to knowingly alter or remove the manufacturer's or importer's serial number from a firearm with intent to disguise the true identity thereof (2)(a) It is unlawful for any person to knowingly sell, deliver, or possess any firearm on which the manufacturer's or importer's serial number has been unlawfully altered or removed.

Georgia	Ga. Code. Ann. § 16-9-70	Possession	A person commits the offense of criminal use of an article with an altered identification mark when he or she . . . has in his or her possession a . . . firearm . . . from which he or she knows the manufacturer's name plate, serial number, or any other distinguishing number or identification mark has been removed for the purpose of concealing or destroying the identity of such article.
Hawaii	Haw. Rev. Stat. § 134-10	Obliteration	No person shall wilfully alter, remove, or obliterate the name of the make, model, manufacturer's number, or other mark of identity of any firearm or ammunition.
Idaho	Idaho Code § 18-2410	Obliteration	Any person who, with intent to deceive or defraud others, shall deface, alter, remove, cover, destroy or obliterate the manufacturer's serial or identification number on any item of property shall be guilty of a felony.
Illinois	720 Ill. Comp. Stat. § 5/24-5	Obliteration, possession	(a) Any person who shall knowingly or intentionally change, alter, remove or obliterate the name of the importer's or manufacturer's serial number of any firearm commits a Class 2 felony. (b) A person who possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated commits a Class 3 felony.
Indiana	Ind. Code § 35-47-2-18	Obliteration, possession	No person shall: (1) remove, obliterate, or alter the importer or manufacturer's serial number on any firearm; or (2) possess any firearm on which the importer or manufacturer's serial number has been removed, obliterated, or altered.
Kansas	Kan. Stat. Ann. § 21-6306	Obliteration	(a) Defacing identification marks of a firearm is intentionally changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

			(b) Defacing identification marks of a firearm is a severity level 10, nonperson felony.
Kentucky	Ky. Rev. Stat. Ann. §§ 527.030, 527.050	Obliteration, possession	030: A person is guilty of defacing a firearm when he intentionally defaces a firearm. 050: A person is guilty of possession of a defaced firearm when he knowingly possesses a defaced firearm unless he makes a report to the police or other appropriate government agency of such possession prior to arrest or authorization of a warrant by a court.
Louisiana	La. Rev. Stat. § 40:1792	Possession	No person shall intentionally receive, possess, carry, conceal, buy, sell, transfer, or transport any firearm which has been illegally obtained or from which the serial number or individual identifying mark . . . has been intentionally obliterated, altered, removed, or concealed.
Maine	Me. Stat. tit. 17-A § 705(1)(E)	Obliteration, possession	With intent to defraud or to prevent identification: (1) The person alters, removes or obscures the manufacturer's make, model or serial number on any firearm. A violation of this subparagraph is a Class C crime; or (2) The person possesses a firearm altered as set out in sub-paragraph (1) or intentionally or knowingly transports any such firearm. A violation of this subparagraph is a Class C crime.
Maryland	Md. Code Ann., Pub. Safety § 5-703(b)(2)	Possession	[A] person may not possess a firearm unless: . . . the firearm is required by federal law to be, and has been, imprinted by a federally licensed firearms manufacturer, federally licensed firearms importer, or other federal licensee authorized to provide marking services, with a serial number in compliance with all federal laws and regulations applicable to the manufacture and import of firearms.

Massachusetts	Mass. Gen. Laws Ann. ch. 269 § 11C	Obliteration	Whoever, by himself or another, removes, defaces, alters, obliterates or mutilates in any manner the serial number or identification number of a firearm, or in any way participates therein . . . shall be punished by a fine of not more than two hundred dollars or by imprisonment for not less than one month nor more than two and one half years.
Michigan	Mich. Comp. Laws § 750.230	Obliteration	A person who shall wilfully alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identity of a pistol or other firearm, shall be guilty of a felony
Minnesota	Minn. Stat. § 609.667	Obliteration, possession	Whoever commits any of the following acts may be sentenced [to imprisonment or a fine]: (1) obliterates, removes, changes, or alters the serial number or other identification of a firearm; (2) receives or possesses a firearm, the serial number or other identification of which has been obliterated, removed, changed, or altered; or (3) receives or possesses a firearm that is not identified by a serial number.
Missouri	Mo. Rev. Stat. §§ 571.045, 571.050	Obliteration, possession	045: A person commits the crime of defacing a firearm if he knowingly defaces any firearm. 050: A person commits the crime of possession of a defaced firearm if he knowingly possesses a firearm which is defaced.

Montana	Mont. Code Ann. § 45-6-326	Obliteration, possession	A person commits the offense of obscuring the identity of a machine if the person: (a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any . . . firearm; or (b) possesses with the purpose to conceal, misrepresent, or transfer any . . . firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.
Northern Mariana Islands	2016 N. Mar. I. Code § 10310	Obliteration, possession	Whoever commits any of the following acts may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both: (1) obliterates, removes, changes, or alters the serial number or other identification of a firearm; (2) receives or possesses a firearm, the serial number or other identification of which has been obliterated, removed, changed, or altered[.]
Nebraska	Neb. Rev. Stat. §§ 28-1208, 28-1207	Obliteration, possession	1208: Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm. 1207: Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.
Nevada	Nev. Rev. Stat. § 202.277	Obliteration, possession	(a) A person shall not intentionally change, alter, remove or obliterate the serial number upon any firearm. . . . 2. A person shall not knowingly possess a firearm on which the

			serial number has been intentionally changed, altered, removed or obliterated.
New Hampshire	N.H. Rev. Stat. Ann. § 159:13	Obliteration	No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification on any pistol or revolver. . . .
New Jersey	N.J. Stat. Ann. §§ 2C:39-3, 2C:39-9	Obliteration, possession	3: Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree. 9: Any person who defaces any firearm is guilty of a crime of the third degree. . . .
New York	N.Y. Penal Law §§ 265.02, 265.10	Obliteration, possession	.02: A person is guilty of criminal possession of a weapon in the third degree when: . . . Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun. .10: Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm is guilty of a class D felony.
North Carolina	N.C. Gen. Stat. § 14-160.2	Obliteration, possession	(a) It shall be unlawful for any person to alter, deface, destroy, or remove the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark from any firearm with the intent thereby to conceal or misrepresent the identity of the firearm. (b) It shall be unlawful for any person knowingly to sell, buy, or be in possession of any firearm on which the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark has been altered, defaced, destroyed, or

			removed for the purpose of concealing or misrepresenting the identity of the firearm.
North Dakota	N.D. Cent. Code § 62.1-03-05	Obliteration	A person may not change, alter, remove, or obliterate any mark of identification on a firearm, including the name of the maker, model, or manufacturer's number or knowingly possess a firearm on which these alterations have been made.
Ohio	Ohio Rev. Code Ann. § 2923.201	Obliteration, possession	(A) No person shall do either of the following: (1) Change, alter, remove, or obliterate the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on a firearm. (2) Possess a firearm knowing or having reasonable cause to believe that the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on the firearm has been changed, altered, removed, or obliterated.
Oklahoma	Okla. Stat. tit. 21 § 1550	Obliteration, possession during felony	A. Any person who, while in the commission or attempted commission of a felony, has in his possession or under his control a firearm, the factory serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner, upon conviction, shall be guilty of a felony B. Any person who removes, defaces, alters, obliterates or mutilates in any manner the factory serial number or identification number of a firearm, or in any manner participates therein, upon conviction, shall be guilty of a misdemeanor
Oregon	Or. Rev. Stat § 166.450	Obliteration	Any person who intentionally alters, removes or obliterates the identification number of any firearm for an unlawful purpose, shall be punished upon conviction by imprisonment in the custody of the Department of Corrections for not more than five years.

Pennsylvania	18 Pa. Cons. Stat. §§ 6117, 6110.2	Obliteration, possession	6117: No person shall change, alter, remove, or obliterate the manufacturer's number integral to the frame or receiver of any firearm 6110.2: No person shall possess a firearm which has had the manufacturer's number integral to the frame or receiver altered, changed, removed or obliterated.
Rhode Island	11 R.I. Gen. Laws § 11-47-24	Obliteration, possession	(a) No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or if there is no name of the maker, model, or manufacturer's number then any other mark of identification on any firearm. (b) No person shall, absent recertification paperwork, knowingly receive, transport, or possess any firearm which has had the name of the maker or manufacturer's serial number removed, altered, or obliterated, or if there is no name of the maker, model, or manufacturer's number then any other mark of identification on any firearm.
South Carolina	S.C. Code. Ann. § 16-23-30(C)	Possession	A person shall not knowingly buy, sell, transport, pawn, receive, or possess any [handgun] from which the original serial number has been removed or obliterated.
South Dakota	S.D. Codified Laws § 22-14-5	Possession	Any person who possesses any firearm on which the manufacturer's serial number has been changed, altered, removed, or obliterated is guilty of a Class 6 felony.
Texas	Tex. Penal Code Ann. § 31.11	Generic obliteration / possession	A person commits an offense if the person: (1) knowingly or intentionally removes, alters, or obliterated the serial number or other permanent identification marking on tangible personal property; or (2) possesses, sells, or offers for sale tangible personal property and: (A) the actor knows that the serial number or other permanent identification marking has been removed, altered, or obliterated; or (B) a reasonable

			person in the position of the actor would have known that the serial number or other permanent identification marking has been removed, altered, or obliterated.
Utah	Utah Code Ann. § 76-10-522	Obliteration	Any person who changes, alters, removes, or obliterates the name of the maker, the model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Public Safety, on any pistol or revolver, without first having secured written permission from the Department of Public Safety to make the change, alteration, or removal, is guilty of a class A misdemeanor.
Virginia	Va. Code Ann. § 18.2-311.1	Obliteration	Any person, firm, association or corporation who or which intentionally removes, defaces, alters, changes, destroys or obliterates in any manner or way or who or which causes to be removed, defaced, altered, changed, destroyed or obliterated in any manner or way the name of the maker, model, manufacturer's or serial number, or any other mark or identification on any pistol, shotgun, rifle, machine gun or any other firearm shall be guilty of a Class 1 misdemeanor.
Washington	Wash. Rev. Code § 9-41-140	Obliteration	No person may change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm. . . . This section also shall not apply if the changes do not make the firearm illegal for the person to possess under state or federal law.