# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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Thomas B. Plunkett, III
Clerk

No. 24-30241

UNITED STATES OF AMERICA,

*Plaintiff—Appellee*,

*versus*

JEREMIAH MICAH DEARE,

*Defendant—Appellant*.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:21-CR-212-1

Before HAYNES, HO, and OLDHAM, *Circuit Judges*.

PER CURIAM:

Jeremiah Deare was indicted for conspiracy to engage in the business of dealing firearms without a federal firearms license in violation of 18 U.S.C. § 922(a)(1) and for making false statements with respect to records of licensed firearms dealers. Deare then filed a motion to dismiss the indictment, broadly challenging the constitutionality of § 922(a)(1)'s licensure requirement and related record-keeping requirements.

The district court denied his motion to dismiss, holding that federal licensing and record-keeping requirements are not implicated by the Second

Amendment because such requirements do not affect an individual's right to keep or bear arms. The court further held that, even if federal licensing requirements are implicated by the Second Amendment, such requirements are consistent with our Nation's historical tradition of firearm regulation.

Following trial, a jury convicted Deare on all counts. The district court sentenced him to 97 months' imprisonment. Deare now appeals.

"We review de novo a district court's denial of a motion to dismiss an indictment, including any underlying constitutional claims." *United States v. Parrales-Guzman*, 922 F.3d 706, 707 (5th Cir. 2019).

Deare primarily challenges the district court's denial of his motion to dismiss the indictment.[1] Specifically, he argues that the Second Amendment's plain text covers firearm sales, and that § 922(a)(1)'s licensure requirement and related record-keeping requirements are inconsistent with our Nation's history of firearm regulation.

The plain text of the Second Amendment covers the sale of firearms. As we noted in *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583 (5th Cir. 2025), "the right to 'keep and bear arms' surely implies the right to purchase them." *Id.* at 590. During oral argument, the government conceded that the Second Amendment applies to the commercial sale of firearms. Oral Arg. at 20:00–10.

Accordingly, we vacate the district court's order denying Deare's motion to dismiss the indictment and remand to the district court for further proceedings.

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[1] Deare also brings three other challenges: (1) that § 922(a)(1)'s statutory language is unconstitutionally vague and that the district court erroneously relied on agency interpretation of that language; (2) that his sentence is substantively unreasonable; and (3) that there is insufficient evidence to sustain his conviction.

JAMES C. HO, *Circuit Judge*, concurring:

It's gratifying that our court today reaffirms what we should have long understood—that the Second Amendment right to "keep and bear Arms" plainly encompasses the *sale* of arms as well. It seems obvious that constitutional rights are meaningless if the Government can simply prohibit the means by which citizens are able to exercise those rights.

Our dissenting colleague theorizes that 18 U.S.C. § 922(a) is not about constitutional rights, but about commercial regulation. It's the same view expressed by the district court below: "§ 922(a)(1) is a modest regulation of the commercial activity of selling/transferring firearms to others. . . . [F]ederal licensure and record keeping requirements do not affect an individual's rights to possess firearms. . . . [T]hese requirements affect only the seller. As such, Defendants have failed to persuade this Court that these commercial licensure and recordkeeping requirements implicate the Second Amendment." *United States v. Deare*, 2023 WL 4732568, *2 (W.D. La.).

Or as the dissent puts it simply, "the Second Amendment . . . doesn't mention sellers," so "I do not think that the sellers of guns are covered."

By that logic, the First Amendment doesn't mention sellers, so presumably booksellers aren't covered by the First Amendment, either. But that can't be right.

Constitutional rights are constitutional rights, regardless of whether they're compensated—as I've noted on a number of occasions. And if that's true under the First Amendment, then it should be equally true in Second Amendment challenges to § 922(a) as well. *See*, *e.g.*, *Mance v. Sessions*, 896 F.3d 390, 399 (5th Cir. 2018) (Ho, J., dissenting from the denial of rehearing en banc) ("The ban on interstate handgun sales [under § 922(a)] demonstrably burdens the ability of countless law-abiding citizens . . . to obtain a handgun."); *id.* at 405 ("Constitutional rights must not give way to

hoplophobia. The ban on interstate handgun sales fails."). *See also*, *e.g.*, *Villarreal v. City of Laredo*, 94 F.4th 374, 420 (5th Cir. 2024) (Ho, J., dissenting) ("There is no pro bono requirement to the freedom of speech.") (collecting cases for the proposition that the First Amendment covers booksellers); *Hershey v. Bossier City*, 165 F.4th 292, 303 (5th Cir. 2025) (Ho, J., concurring in the denial of rehearing en banc) ("[T]hose who preach the gospel *should* receive their living from the gospel.") (quoting 1 Corinthians 9:14 (emphasis added)). I'm delighted to be joined by my concurring colleague in reaffirming this principle today.

Our dissenting colleague responds by offering a textual distinction between the First and Second Amendments. At bottom, the dissent theorizes that the "freedom of speech" contemplates sales, whereas "the right of the people to keep and bear Arms" does not. But with respect, I don't see the textual distinction that she sees. The theory is also hard to square with what we saw in *Villarreal*. *See* 94 F.4th at 382 (denying First Amendment right to plaintiff because she engaged in speech "to propel her reputation and career").

So I concur in the court's decision today to vacate the district court's order denying the motion to dismiss the indictment, and remand to the district court for further proceedings.

And as for what the district court should do on remand, I agree with my concurring colleague that our prior precedent in *United States v. Peterson*, 161 F.4th 331 (5th Cir. 2025), is not only mistaken—it involves a different statutory scheme in any event, and therefore does not govern this case.

ANDREW S. OLDHAM, *Circuit Judge*, joined by HO, *Circuit Judge*, concurring in the judgment:

I agree that the district court's decision must be vacated and that the case must be remanded for further proceedings. Restricting the sale of firearms obviously "infringe[s]" the right to keep and bear arms. U.S. CONST. amend. II. So the question is whether our history and tradition permit such a restriction. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). I write separately to explain that *United States v. Peterson*, 161 F.4th 331 (5th Cir. 2025), was wrong and should be overturned. And at a bare minimum, it should not be extended to the sale of firearms under 18 U.S.C. § 922(a).

I

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. As the Supreme Court has explained, the Second Amendment protects an individual's right to possess firearms for historically lawful purposes. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The first question presented is whether restrictions on the sale of firearms burden the Second Amendment rights of American citizens. They do—in at least two ways. First, such restrictions directly burden the seller's right to keep and bear arms. And second, they burden the prospective buyer's right to keep and bear arms, because the right to keep an item always includes the right to acquire it.

Start with the constitutional text. The Second Amendment does not just prohibit the government from *denying* the right to keep and bear arms. Instead, it says that the right cannot be "infringed." U.S. CONST. amend. II. And at the Founding, "infringe" meant "violate," "destroy," or "hinder." 1 SAMUEL JOHNSON, DICTIONARY OF THE ENGLISH

LANGUAGE (4th ed., rev. 1773). Thus, the government cannot hinder the people's rights to keep and bear arms.

Restrictions on sale hinder both the seller's and buyer's right to keep and bear arms. Start with the seller's right to possess firearms. The Second Amendment guarantees the right to keep guns for personal use, and the seller is an individual who can lawfully possess guns. *Heller*, 554 U.S. at 579–92. And it's hornbook property law that the right to possess an article "includes the right to acquire, use, and *dispose* of it." *Buchanan v. Warley*, 245 U.S. 60, 74 (1917) (emphasis added); *see also Bartemeyer v. Iowa*, 85 U.S. (18 Wall.) 129, 137 (1874) (FIELD, J., concurring) (similar). So the right to keep a gun must include the right to dispose of that gun as the owner sees fit. This is not an independent "right to sell." Rather, my point is that governmental interference with the right to sell a firearm is itself a burden on the seller's existing property right in that firearm. It hinders and hence infringes the seller's rights.

The same logic applies to the buyer. The buyer's ability to keep and bear arms is certainly "infringed" by regulations that hinder the purchase of arms. After all, the Supreme Court has explained that inherent in "property" is the "right to *acquire*, use, and dispose of it." *Buchanan*, 245 U.S. at 74 (emphasis added); *Holden v. Hardy*, 169 U.S. 366, 391 (1898) (similar). In other words, a restriction on the sale of weapons obviously impacts the buyer's constitutional rights to acquire weapons. As one scholar has explained it:

> Because one cannot 'keep' or 'bear' something without acquiring it, the act of acquiring arms must be included in the Second Amendment's 'right to keep and bear arms.' This is true for the same reason that the right to speak would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise. For there

> comes a point at which the regulation of action intimately and unavoidably connected with a right is a regulation of the right itself.

Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 ST. MARY'S L.J. 35, 41 (2023) (quotations and footnotes omitted).

This principle is not limited to the Second Amendment context. For example, consider the neighboring First Amendment. The Free Speech Clause "afford[s] the public access to discussion, debate, and the dissemination of information and ideas"—and thus clearly protects the right to sell and distribute speech, including speech written or produced by others. *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978). And it protects the recipient's right to receive information and ideas. *Willis v. Town of Marshall*, 426 F.3d 251, 260 (4th Cir. 2005); *Conant v. Walters*, 309 F.3d 629, 643 (9th Cir. 2002) (KOZINSKI, J., concurring) ("[T]he right to hear and the right to speak are flip sides of the same coin."). Without a right to provide speech, there is no right to receive information and ideas.

Likewise, consider the Free Exercise Clause. "[T]he text of the Free Exercise Clause gives a specific group of people (those who wish to engage in the 'exercise of religion') the right to do so without hindrance." *Fulton v. City of Philadelphia*, 593 U.S. 522, 568–69 (2021) (ALITO, J., concurring in the judgment). It is axiomatic that the right to free exercise of religion includes the right to practice it with others in, for example, houses of worship. Shutting down houses of worship is an obvious First Amendment violation for many reasons—not the least of which is that it prevents the faithful from communing with each other and with church leaders who provide teaching, holy sacraments, and other sacred traditions. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) ("Catholics who watch a Mass at home cannot receive communion, and there are important religious traditions in the Orthodox Jewish faith that require personal attendance.").

Thus, the right to exercise religion includes a First Amendment freedom to participate in religious services with—and provide religious services to—others. *Ibid.*

These examples demonstrate clear principles. A right to property, free speech, corporate worship, and firearms includes the right to provide these things. And to acquire them.

## II

Finally, a few words of guidance for the district court on remand. "The Second Amendment's plain text makes explicit reference only to the 'keeping' and 'bearing' of arms, but it is well established in the American legal tradition that the right to keep firearms logically entails the right to purchase them as well." *Elite Precision Customs LLC v. ATF*, 191 F.4th 733, 738 (5th Cir. 2026). To that end, the district court should be guided by our decision in *Elite Precision*, which enjoined enforcement of certain provisions of 18 U.S.C. § 922(a).

By contrast, the district court should ignore our decision in *Peterson*. In a supplemental brief to our court, the Government contended that *Peterson* renders § 922(a) "presumptively constitutional." DOJ Supp. Br. at 12–13. *Peterson* was gravely mistaken and should be overruled at the earliest opportunity. But in any event, *Peterson* has nothing at all to do with § 922(a).

Peterson was indicted for possessing an unregistered suppressor. *Peterson*, 161 F.4th at 335; *see* 26 U.S.C. § 5841 (imposing registration requirements for certain "firearms"); *id.* § 5845(a)(7) (defining "firearm" to include suppressors). A panel of this court held that *Bruen* imposes a "presumption of constitutionality for shall-issue licensing regimes." *Peterson*, 161 F.4th at 341. *Peterson* boldly declared that this presumption comes from footnote nine in *Bruen*. *Id.* at 339. The panel said that the National Firearms Act ("NFA") creates a "shall-issue licensing regime."

*Ibid*. Then, it said that defendants challenging such regimes must show that they have been "put toward abusive ends through exorbitant fees or lengthy wait times in processing license applications." *Id.* at 340 (quotation omitted). A careless reader might think § 922(a) likewise creates a "shall-issue licensing regime" subject to *Peterson*'s dicta and hence is "presumptively constitutional." *See* DOJ Supp. Br. at 12 (contending the NFA regime and § 922(a) are "comparable").

This is wrong coming and going and coming back again. Start with *Bruen*'s ninth footnote. It says only that "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes." *Bruen*, 597 U.S. at 38 n.9. Neither the word "presumption" nor any variant of it appears anywhere in this footnote. And nothing in this footnote creates a presumption of any kind.

Moreover, *Peterson* wrenches footnote nine from context. *Bruen* concerned a so-called "may-issue regime" for concealed-carry permits. In a "may-issue" jurisdiction like New York, "authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license." *Bruen*, 597 U.S. at 14–15. The Supreme Court held such may-issue laws violate the Second Amendment. But it said *nothing* about the constitutionality of shall-issue laws. Footnote nine merely "clarified that shall-issue licensing regimes are not necessarily unconstitutional just because may-issue regimes are." *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 242 (4th Cir. 2024) (en banc) (RICHARDSON, J., dissenting).

And in any event, the regimes at issue in *Bruen* and in *Peterson* are fundamentally different. The former involved licenses to carry. States vary in how they license law-abiding Americans to carry their firearms. But in

general, States "require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force." *Bruen*, 597 U.S. at 80 (KAVANAUGH, J., concurring). (These are the general requirements in all States; may-issue States previously required more, before *Bruen* held may-issue regimes unconstitutional.) Law-abiding Americans who satisfy these requirements are entitled to a license, which authorizes them to carry their firearms in non-prohibited places and in non-prohibited ways.

*Peterson*, by contrast, did not involve licenses. It involved the NFA's registration regime. No part of the NFA's registration regime concerns training or proficiency. And no part of the NFA licenses *people* at all. It requires the relevant "firearm" to be registered in a database administered by the Bureau of Alcohol, Tobacco, Firearms[,] and Explosives ("ATF"). And it restricts the alienation of registered NFA firearms. *See, e.g.*, *Silencer Shop Found. v. ATF*, No. 6:25-CV-056-H, 2026 WL 2255460, at *2–4 (N.D. Tex. Aug. 5, 2026) (HENDRIX, J.). Such firearm-registration requirements are fundamentally different in scope and purpose from the citizen-licensing requirements at issue in *Bruen*. I suppose you could say that both carry licenses and firearm registrations require law-abiding Americans to file paperwork with the government. But that level of generality is unhelpful. It could also be said that football and baseball both involve balls, but no one would say they're the same sport.

Finally, even reading *Peterson* for all that it's worth, it should not be extended to this case. Assume for the sake of discussion that the NFA's registration regime is "presumptively constitutional" as *Peterson* says. That tells us nothing about § 922(a) and the Gun Control Act's limitations on firearm sales. Nothing in § 922(a) requires registration of anything. And nothing in § 922(a) says anything about ATF databases. Had we applied *Peterson* as the Government urged, we would have taken a footnote about

carry licenses, extended it to firearm registration, and then extended it again to firearm sales. We'd have moved from football to baseball to ballroom dance.

* * *

One of my concerns with our court's approach to precedent is that we take words from an opinion, wrench them from context, apply them with rough justice, and then repeat the process until the ultimate conclusion bears no relationship to the original source. It would be a grave mistake to rely on *Peterson* for any purpose, and it would be graver still to extend it to § 922(a).

HAYNES, *Circuit Judge*, dissenting:

I respectfully dissent. I appreciate the majority opinion's discussion of the Second Amendment in our prior decisions. While I do not think that the sellers of guns are covered by the Second Amendment (which doesn't mention sellers),[1] I am respectful of the majority opinion on that given our prior cases and what the government said. So, even assuming arguendo the sellers are covered, I see nothing in this case that shows that the rules for the sellers in this context are inappropriate and, therefore, unconstitutional. Also, to me, since Deare did not properly challenge the relevant rules to show that they are abusive, I do not see a need to remand on that. To me, the relevant rules as to him are sufficient and proper, so I would simply affirm.

[1] Second Amendment is quite different from the First Amendment mentioned in the concurrence. The First Amendment states "freedom of speech" and lists people in general which is quite large whereas the Second Amendment says "the right of people to keep and bear Arms" not mentioning selling Arms or all situations.