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1 P R O C E E D I N G S

2 (11:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 next in Case 12-1493, Abramski v. United States.

5 Mr. Dietz?

6 ORAL ARGUMENT OF RICHARD R. DIETZ

7 ON BEHALF OF THE PETITIONER

8 MR. DIETZ: Mr. Chief Justice, and may it
9 please the Court:

10 In 2009, Bruce Abramski went to a gun store
11 at his home in Virginia and purchased a firearm. When
12 he did so, he filled out all the required Federal
13 paperwork providing his own name and identifying
14 information and passing a background check.

15 He then traveled to his uncle's home in
16 Pennsylvania and delivered the firearm to a licensed gun
17 dealer there. That gun dealer required Mr. Abramski's
18 uncle to fill out the exact same Federal paperwork and
19 pass his own background check before taking possession
20 of the firearm.

21 But despite doing precisely what Congress
22 established as the process to buy a firearm, intending
23 to sell or give it to a lawful gun owner in another
24 State, the government charged Mr. Abramski with falsely
25 stating that he was the actual buyer of the firearm when

1 he acquired it.

2 And that term, "actual" --

3 JUSTICE SOTOMAYOR: What would happen if two
4 people walk into the gun store, one person hands the
5 money to the other and says, buy me that gun?

6 MR. DIETZ: Yes, Your Honor.

7 JUSTICE SOTOMAYOR: Is that not actionable,
8 according to your theory?

9 MR. DIETZ: Your Honor, the circumstance
10 where there are two lawful gun owners, that is
11 permissible. And I think a good way to illustrate that
12 is to consider the government's concession that in that
13 hypothetical, if the two people walked into the gun
14 store and the person looked and said, I'd like that gun
15 and points to the counter and then the person
16 standing --

17 JUSTICE SOTOMAYOR: What's -- what's
18 truthful about saying you're the buyer --

19 JUSTICE SCALIA: Please finish what you were
20 saying. I -- I didn't understand what your point was.

21 MR. DIETZ: Yes, Your Honor.

22 In that circumstance, if the person standing
23 at the counter then says, I'd like to buy that firearm,
24 that the person indicated, I'm going to give it to that
25 person, then even the government concedes that in that

1 circumstance, everything about that sale is perfectly
2 lawful and the buyer can take the gun, hand it to that
3 person standing next to them, who would leave the gun
4 store with the gun dealer and the government having
5 absolutely no idea who that person is or where the gun
6 is going.

7 JUSTICE KAGAN: I'm sorry. So you're saying
8 that in that case, the gun dealer runs the background
9 check on the person who hands the gun dealer the credit
10 card as opposed to the person who will be the actual
11 recipient of the gun? Is that what you're saying the
12 statute requires?

13 MR. DIETZ: That's correct, Your Honor. I
14 think the government concedes that as well in gift
15 circumstance at least, and there's certainly nothing in
16 the Gun Control Act that suggests that Congress was
17 distinguishing between those two circumstances at all.

18 JUSTICE ALITO: Well, in the gift -- in the
19 gift situation. But Congress requires certain
20 information from the buyer, whatever that means; right?

21 MR. DIETZ: Yes, Your Honor.

22 JUSTICE ALITO: The -- the dealer has to
23 record the name of the buyer; right?

24 MR. DIETZ: Yes, Your Honor.

25 JUSTICE ALITO: And the address of the

1 buyer?

2 MR. DIETZ: Yes, sir.

3 JUSTICE ALITO: And do an instant check on
4 the buyer?

5 MR. DIETZ: Yes, Your Honor.

6 JUSTICE ALITO: Now, why would -- why would this
7 Congress have wanted those things with respect to the
8 person who was just the straw purchaser and not the
9 person who -- the person who's actually going to acquire the
10 weapon?

11 MR. DIETZ: The reason, Your Honor, is that
12 this legislation, the way Congress designed it, is not
13 focused on sort of the end point. It's not concerned
14 about where a gun is actually going, who's ultimately
15 going to receive it.

16 What Congress was concerned about was the
17 starting point because, as part of the key political
18 compromise of the Gun Control Act, there were two
19 competing interests that needed to be accommodated.

20 JUSTICE ALITO: Why wouldn't they be
21 concerned about the starting point? Let's say there's a
22 man, Mr. Straw, and he holds himself out as a gun buyer, he
23 puts -- you know, a website, he creates a website. He puts
24 something in the Yellow Pages under "Straw Man." And he
25 says: You want to acquire a gun and you don't want the

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1 dealer to record your name and you don't want to have an
2 instant check on you, you come to me.

3 And so these people come to him, and
4 whenever they do, he goes to Joe's gun shop and -- with
5 the other person. He says, I want to buy a gun, but
6 this fellow with me is going to do all the talking. So
7 the guy who's with him talks with Joe about different
8 types of guns, costs and everything.

9 After that's done, the person who's done all
10 the talking says, now, my friend, Mr. Straw, is going to
11 buy this gun. He gives Mr. Straw the money, Mr. Straw
12 buys the gun, and the dealer writes down Mr. Straw's
13 name for the fifteenth time that month, his address,
14 does another instant check on it.

15 What sense does that make.

16 MR. DIETZ: Your Honor, I think, to your
17 first point about why, why starting points, the reason
18 is because all that Congress wanted is to provide law
19 enforcement with a way to trace the firearm.

20 If you have truthful, accurate information
21 about the first initial purchaser, the person who walks
22 out of a gun store with a gun in their hand, then law
23 enforcement has that starting point if they need to
24 trace the firearm.

25 JUSTICE SCALIA: I suppose -- I suppose that

1 your answer to what sense it makes is that was the
2 compromise, that there was strong opposition to any gun
3 control law, and the condition was you get the buyer,
4 and you don't make the buyer promise not to give it to
5 somebody else.

6 He could immediately give it to somebody
7 who's unqualified to own the gun, couldn't he? Would
8 that be a violation?

9 MR. DIETZ: Your Honor, that would -- that
10 would violate other laws because Congress, in the
11 Firearm Owners Protection Act, clarified that -- or
12 amended the provision to provide that a private citizen
13 who transfers a firearm to someone they know or have
14 reasonable cause to believe is prohibited, that's a
15 crime.

16 JUSTICE SCALIA: What about somebody --
17 somebody who is qualified to own a firearm? Can I take
18 a firearm that I own and say -- you know, it's yours?

19 MR. DIETZ: Yes, Your Honor, and I think the
20 government has conceded that if it's someone in your own
21 State, there's --

22 JUSTICE SCALIA: Don't have to register it?
23 I don't have to go through a firearm dealer, right?
24 It's my gun, and I can give it to somebody else who's
25 qualified.

1 MR. DIETZ: That's correct, Your Honor. And
2 in cases like Mr. Abramski's case, where his uncle lived
3 in another State, Congress provided a path for those
4 people as well, and that is they have to deliver the
5 firearm to another dealer in that State before finishing
6 the transfer.

7 JUSTICE SCALIA: So you're never going to
8 know who the end user is once the gun is sold, whether
9 you take the -- you know, the straw buyer's name or
10 the -- or the other person's name or both. You don't
11 know where the gun is going to end up, do you?

12 MR. DIETZ: Yes, sir. That's right, Your
13 Honor. And that's because that -- that was the key
14 compromise --

15 JUSTICE BREYER: Language matters in a
16 statute. I mean, I do believe that. And here, the
17 relevant language seems to me -- what is material to the
18 government says -- is the statute about selling or
19 delivering?

20 Now, did this person -- was he the buyer,
21 your client? Was he somebody that they sold or
22 delivered it to? Well, he's a straw. A straw purchaser
23 is someone who doesn't purchase.

24 The person who purchases is the person who
25 uses the straw. Now, you can't say that about a giver,

1 a benefactor is -- the person who's the beneficiary of
2 the benefactor is not the purchaser. But the straw
3 purchaser is not the purchaser.

4 And it comes from "straw bail," where
5 someone else put up the bail, and it was called straw
6 because the people who made a career of that used to
7 wear straw in their shoes. Interesting.

8 (Laughter.)

9 JUSTICE BREYER: But in terms of -- in terms
10 of this case, the straw --

11 JUSTICE SCALIA: He made that up.

12 (Laughter.)

13 JUSTICE BREYER: No, I didn't. I thought it
14 came from the Wizard of Oz, but it doesn't --

15 (Laughter.)

16 JUSTICE BREYER: The fact is that is where
17 it comes from.

18 I think, in every legal context, it means
19 someone who is not the real. So who is the real? In
20 this case, it is the person for whom the straw
21 purchased.

22 So we fit that within the language. We
23 can't fit the beneficiary of a gift within the language
24 and that's the reason for the distinction, and so why
25 not do it that way?

1 MR. DIETZ: With respect, Your Honor, I
2 think that the principle you described of a straw man or
3 straw purchases in the context -- historical context you
4 described it, I don't believe is a criminal context.

5 We've not been able to find any case in
6 which the criminal law has ever recognized that sort of
7 civil agency law principle, that when there is a
8 principal-agent relationship, this fiduciary duty,
9 that because the principal controls the agent or the
10 straw man, that everything that the agent does is really
11 an act of the principal.

12 And Congress -- there were historically
13 criminal common law principles of agency. And Congress
14 codified those principles in Title 18, United States
15 Code, Section 2. Those are things like aiding and
16 abetting, principals and accessories.

17 That's not the principle on which the
18 government relies today. The government --

19 JUSTICE ALITO: You still have not explained
20 what purpose is served by obtaining the name of the
21 straw purchaser and doing an instant check on the straw
22 purchaser. You said that it allows the tracing of the
23 weapon, but that's not going to be true in the case of a
24 straw purchaser because the person -- the straw
25 purchaser, isn't necessarily and probably in the vast

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1 majority of cases isn't going to get the name or any
2 information about the actual recipient.

3 That's the whole purpose of having a straw
4 purchaser. So then what purpose is served by this?
5 It's just meaningless.

6 MR. DIETZ: With respect, Your Honor, I
7 disagree. And I think the reason is again that the
8 intent of Congress in the Gun Control Act was not to
9 trace or track where firearms were going. So in every
10 case, because private sales have no recordkeeping or
11 background check requirements, in every case where
12 there's a trace of a firearm the government has to go
13 all the way back to the beginning.

14 They go to the manufacturer with the serial
15 number and follow the gun through the stream of commerce
16 until they find that gun dealer where the gun was first sold,
17 and then they --

18 JUSTICE ALITO: So they find the gun dealer
19 and the gun dealer says, I sold it to Mr. Straw. And
20 then they go to Mr. Straw and Mr. Straw said: My client
21 took it. Okay, who's your client? I have no idea. He
22 came into my store. You know, He contacted me. I didn't ask his
23 name. He didn't give me his name. And that's the end
24 of it.

25 So no purpose is served by putting down the

1 name, the address, doing the check on the straw
2 purchaser.

3 MR. DIETZ: But, Your Honor, again Congress
4 understood that that's how the statute worked because,
5 for example --

6 JUSTICE ALITO: Well, what you're saying is
7 they did a meaningless thing. That was the compromise.
8 They would do something that's utterly meaningless.

9 MR. DIETZ: No, Your Honor. And the reason
10 is, consider for example a circumstance where, instead
11 of buying firearm with intent to resell it, five minutes
12 after the purchase, walking out of the gun store, a
13 stranger approaches you and says, that's a nice looking
14 gun, I'd like to buy it from you.

15 It's perfectly legal under the Gun Control
16 Act to sell the gun to that stranger, who then will
17 leave and again in the tracing process, the government's
18 trace will stop with that first purchaser. And Congress
19 understood that that's how the process would work and
20 that was part of the compromise. What Congress wanted
21 was accurate information about the initial person who
22 acquires the firearm so at least they can try to do that
23 trace.

24 And Congress understood that in many
25 circumstances --

1 JUSTICE SCALIA: And in some cases, they can
2 track it all the way. In this case, unlike the
3 hypothetical that Justice Alito gave you, if they went
4 to the straw, to the straw purchaser, he would say, oh,
5 I actually bought it from my uncle. And he'd give the
6 uncle's name, and then the uncle would say -- you know,
7 where else the firearm went from him.

8 MR. DIETZ: Yes, Your Honor. And, in fact,
9 in this case the government received all the
10 recordkeeping and background check information that they
11 could possibly have received. They got full Federal
12 paperwork from both Mr. Abramski and his uncle and ran a
13 background check on both.

14 JUSTICE KENNEDY: Your position is that this
15 is not a material misstatement; is that correct?

16 MR. DIETZ: Yes, Your Honor.

17 JUSTICE KENNEDY: Why isn't it material in
18 light of the fact that it was a question that was on the
19 government form that was promulgated, that was directed
20 by regulations?

21 MR. DIETZ: The reason, Your Honor -- I
22 think this is a critical concession by the government.
23 It's on pages 35 and 36 of their brief. The government
24 acknowledges that the statements on the form are just an
25 interpretive rule and not even sort of ordinary

1 interpretive rule that this Court may encounter with
2 agency interpretations where they are looking at the
3 statute, and although they have not been delegated with
4 authority to rule make, they are interpreting the text
5 of the statute. Here, the government acknowledges that
6 the statement is an interpretation of the case law about
7 the straw purchaser doctrine.

8 And the problem with that is that there's a
9 split in the circuits about what that case precedent
10 should be, and the government's suggesting that this
11 Court should somehow defer to the statement on the form
12 that it has the power of law, that people should
13 acknowledge it.

14 But, of course, when you have a case law
15 question like this where there's a split, this Court is
16 the authority that decides what the law should be. And
17 it's not required to defer at all to the statements on
18 the form.

19 JUSTICE KAGAN: Mr. Dietz, can we go back to
20 the question that Justice Alito raised? The primary
21 object of this statute is to keep guns out of the hands of
22 felons, of people with mental illness and so forth.

23 Now, it's absolutely true, as you have said,
24 that Congress didn't do everything it could have to
25 achieve that result, right? That there are many kinds

1 of resales that are allowable, that there are gifts that
2 are allowable.

3 It's one thing to say that. It's another
4 thing to say that at the initial point of sale, which is
5 where the entire system is set up, right, with the gun
6 dealer doing the automatic checks, that at that initial
7 point of sale, which is the centerpiece of this statute,
8 that we will -- that we will essentially disregard
9 fronts, that we -- you know, that we don't care that the
10 person standing at the counter is a front.

11 I mean, that goes far beyond the other kinds
12 of resale possibilities that you're talking about. And
13 I guess what I want to know is why you think a Congress
14 that was geared towards this object of keeping guns out
15 of the hands of dangerous people and set up a mechanism
16 that had the gun seller be the kind of enforcer, at the
17 point of sale, would have thought, oh, it's fine if a
18 front, if a straw walks in the door.

19 MR. DIETZ: The reason, Your Honor, is
20 because Congress understood that private sales -- that
21 there was an importance to private sales between
22 citizens. And in a straw purchase like this or -- or
23 someone who's purchasing a gun intending to resell it to
24 someone else, that is precisely what's happening is that
25 second sale is a private transaction between two private

1 citizens and Congress did not want any regulation of
2 those types of sales. And that was part of the
3 political compromise in the law.

4 So yes, Your Honor, I acknowledge that you
5 could certainly describe this as -- as not a
6 comprehensive regime. There are holes in the
7 legislation. But remember, too, that Congress was not
8 operating in a vacuum.

9 It understood that, although there might not
10 be a national consensus about some of these issues and,
11 therefore, the regime that Congress chose may have some
12 holes in it. But the States could fill those holes if
13 there was a State-wide consensus on that issue. And
14 many States have done that.

15 Some States have -- Hawaii, for example --
16 what is really a complete gun registration system. And
17 others, like West Virginia, believe that there should be
18 virtually no regulation of these sorts of private sales
19 at all.

20 And so I think the system is working
21 precisely as Congress intended. And if there are
22 problems, Congress will come back and fix it. And we've
23 seen, for example, in the Firearm Owners Protection Act
24 and in the Brady Act that -- this is an area where
25 Congress is continuing to observe what's going on in the

1 nation and making changes to the law as necessary.

2 CHIEF JUSTICE ROBERTS: In -- in the
3 situation that Justice Alito hypothesized of the person
4 who's doing this several times a month and has the ad in
5 the Yellow Pages, is that -- is that person subject to
6 regulation as a dealer?

7 MR. DIETZ: Yes, Your Honor. I wanted to
8 make that point. And that is that, of course, if you
9 engage in the business of purchasing firearms to sell to
10 others, then you will at some point be subject to the
11 licensing requirements that Congress created.

12 So, again, this is not a system that has
13 some obvious loophole where people can begin to engage
14 in their own sort of sale of guns to others. This is a
15 situation where Congress wanted to leave open the option
16 for private citizens, like Mr. Abramski, to purchase
17 guns for other lawful gun owners like family members,
18 neighbors and friends --

19 JUSTICE GINSBURG: But this -- this family
20 member, the uncle, residing in Pennsylvania, he could
21 not have purchased that gun in Virginia, isn't that
22 right, because he's a nonresident?

23 MR. DIETZ: With respect, Your Honor, I
24 disagree. It's true that he could not have walked into
25 the gun store and left the gun store in Virginia with --

1 with the gun. But he could have purchased it there.

2 Congress created a means in the statute for
3 the gun to then be shipped to a gun dealer in
4 Pennsylvania, and he would have to pick up the gun and
5 again fill out the Federal forms and undergo a
6 background check at that gun dealer in his home in
7 Pennsylvania.

8 JUSTICE GINSBURG: But wouldn't he --
9 wouldn't he have to comply with the 552(c), which says
10 how somebody who doesn't show up in person can purchase
11 a gun? And none of those requirements were satisfied
12 here. So it seems to me that what you're asking is just
13 an end run around what Congress said. If you're out of
14 State and you want to buy it, this is how you have to do
15 it.

16 MR. DIETZ: With respect, Your Honor, I
17 don't think that's what Congress meant in Section
18 922(c), which is the provision that deals with absent
19 buyers. And the concern there was Congress wanted to
20 leave open two paths for gun buyers.

21 One is to physically be present at the gun
22 store and fill out the papers yourself for the gun
23 dealer. As you're writing your name and age and your
24 height and eye color on the forms, there's a person
25 there looking at you.

1 And there was also an option that Congress
2 provided for people to purchase a gun, for example, by
3 telephone or mail or over the Internet without ever
4 actually being present, with no person being present in
5 the gun store.

6 And it was in that circumstance that
7 Congress said we think we need a little bit more
8 recordkeeping in those cases. So that's why they
9 required the affidavit, for example, and the -- the
10 waiting period to provide extra time for local law
11 enforcement and the background check.

12 But that's not the situation here.
13 Mr. Abramski was physically present at the gun store and
14 so that provision of the statute is not even implicated
15 here.

16 Another point, Your Honors, is that the
17 plain text interpretation of the statute is one that the
18 agency, ATF, had adopted initially. In 1979, the Agency
19 sent a circular to gun dealers that took the -- the
20 precise position that -- that Petitioner is taking here,
21 which is that a purchase of a gun for another lawful gun
22 owner is permissible.

23 And in doing so, the -- the Agency said that
24 that was an interpretation of the text of the Gun
25 Control Act.

1 JUSTICE SCALIA: What is the government's --
2 I guess I should ask the government, but does the
3 government contend that there are two buyers now?
4 Both -- is the real buyer the person who sends in the
5 straw man so that it's only his information that you
6 have to give? Or are there two buyers?

7 MR. DIETZ: Your Honor, I don't know the
8 government's position, but our position is that there's
9 one buyer, and that's the person who's actually paying
10 for the gun, filling out the forms, undergoing a
11 background check, and leaving the gun -- leaving the gun
12 store with the gun in their hand.

13 And Congress didn't use terms like "true
14 buyer" or "true purchaser" or "actual buyer" because
15 they are not concerned about the ultimate recipients of
16 firearms or what happens to a gun after it leaves the
17 gun store.

18 The focus of the Gun Control Act is on that
19 initial purchase and making sure that that purchase --

20 JUSTICE SOTOMAYOR: What -- what position
21 are you taking here? Are you arguing that it doesn't
22 matter whether it's a straw purchaser or not; a buyer is
23 a buyer is a buyer? It's the person who puts the money
24 down on the counter?

25 Or are you arguing, as a -- as a backup or

1 as your main point -- I don't understand -- that if it's
2 a lawful buyer using a straw man, that that's not
3 actionable?

4 MR. DIETZ: Yes, Your Honor. We are
5 arguing, yes, that the person who pays for the gun, the
6 person that's there in the gun store, pays for the
7 firearm is the buyer. That is the -- or the -- in fact,
8 the term "buyer" isn't even used in the Gun Control Act.

9 JUSTICE SOTOMAYOR: Even if their intent is
10 to sell it to a prohibited person?

11 MR. DIETZ: That's correct, Your Honor.
12 And -- and in those circumstances -- again, I think this
13 is an important point -- is that Congress provided a
14 number of means to prosecute illegal straw purchasers.
15 And all of those provisions are still available to the
16 government, even if this Court was to disapprove the
17 straw purchaser doctrine in all its applications.

18 JUSTICE ALITO: If we disagree with you on
19 the first point about the straw purchaser, would you --
20 would you lose on the grounds that Mr. Abramski's uncle
21 could not have lawfully purchased the gun at that store
22 because he wasn't a resident of the State?

23 MR. DIETZ: No, Your Honor. Two points
24 there: First, as I mentioned, it would have been
25 possible for Mr. Abramski's uncle to purchase the gun in

1 Virginia. He could have gone to that gun store and
2 said, this is the gun I want and paid the money. He
3 would have had to go back -- the gun would have had to
4 have been shipped to Pennsylvania, and he would have had
5 to take possession of it in Pennsylvania after filling
6 out additional paperwork and --

7 JUSTICE ALITO: But he couldn't have taken
8 possession of it in -- in Pennsylvania.

9 JUSTICE GINSBURG: In Virginia.

10 JUSTICE ALITO: In Virginia.

11 MR. DIETZ: That's correct, Your Honor.

12 But, again, I don't think that that changes the
13 materiality analysis, because, again, the question is
14 not whether Mr. Abramski's uncle could have picked up or
15 bought the gun in Virginia.

16 The question is, if Mr. Abramski had told
17 the gun dealer the truth, that yes, I plan to buy this
18 gun, but I'm going to take it up to Pennsylvania and
19 give it to my uncle after I deliver it to a gun dealer
20 there, the way that Congress wrote the Gun Control Act,
21 the gun dealer still could have sold the gun to
22 Mr. Abramski. And that's why --

23 JUSTICE ALITO: But would it have been a
24 lawful sale if the gun had been delivered to him on the
25 spot?

1 MR. DIETZ: To Mr. Abramski's uncle?

2 JUSTICE ALITO: Yes. He could not --
3 Mr. Abramski is out of the picture and the uncle goes
4 in, buys the gun, puts down a Pennsylvania address. The
5 dealer gives him the gun and walks out of the store.
6 That -- would that be a lawful sale?

7 MR. DIETZ: No, Your Honor. No.
8 Mr. Abramski's uncle could not take -- could not have
9 bought the gun in another State and taken possession of
10 it. But, again, for the materiality question, the way
11 this Court has described that standard in Kungys is
12 whether -- if Mr. Abramski had provided the truthful
13 information, if that would have been capable of
14 influencing the outcome in that case --

15 JUSTICE KENNEDY: In describing what
16 happened here, you -- you -- you said that Abramski went
17 in and then went to Pennsylvania and gave the gun to his
18 uncle. That's not quite correct. He -- he transferred
19 it to him for consideration. I had thought, and this
20 was -- goes back to Justice Scalia's question --
21 question about if there's one buyer here or two.

22 I had thought that it might be possible that
23 you can -- to construct a case where Abramski tells his
24 uncle, I'm going to buy the gun, and then I'm going to
25 sell it to you, and I'm going to sell it to you in

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1 Pennsylvania at a gun dealer's store so we can fill out
2 the necessary forms. Would the government then have
3 objected to what happened here?

4 MR. DIETZ: Your Honor --

5 JUSTICE KENNEDY: I mean, we can ask the
6 government --

7 MR. DIETZ: Yes.

8 JUSTICE KENNEDY: -- as Justice Scalia
9 indicates, but under -- as you understand their case.

10 MR. DIETZ: Yes, Your Honor. I think the
11 reason is that the government's position is that you
12 cannot buy a gun intending to sell it to another lawful
13 gun owner. That is the government's position.

14 But just one point of clarification is, to
15 the extent it's relevant, Mr. Abramski did not receive
16 consideration for the purchase of the firearm. The
17 record indicates that his uncle sent him a check to
18 cover the cost of the gun. This was, in all respects,
19 someone doing a favor for a family member.

20 JUSTICE SCALIA: Could -- could you address
21 the other -- the other point here, which is the one I
22 have more trouble with, to tell you the truth, Count 2?

23 MR. DIETZ: Yes, Your Honor. That count --
24 the language that Congress chose was that one cannot "make a
25 false statement about information required by this

1 chapter to be kept," "this chapter" meaning chapter 44,
2 the Gun Control Act itself. And the Gun Control Act
3 contains -- it actually references a provision, and
4 that's 922(b)(5), where Congress says this is the
5 information that uses that term, "required to be kept."

6 And it lists three things, the name, age,
7 and place of residence of the person acquiring the gun
8 from the gun dealer. And then ATF has promulgated
9 regulations that have added an additional layer of
10 information that must be included on the forms.

11 But the government's position -- of course,
12 this question 11, who is the actual buyer, that's not
13 one of the things that's included either in the text of
14 the Gun Control Act or in ATF's regulations. And what
15 the government has said in this case is, well, that's
16 right, but we view the authorization of Congress to
17 create the form as sort of a blanket authorization to
18 put -- ask whatever we want in the form and make
19 anything that we ask in the form information required to
20 be kept.

21 JUSTICE SCALIA: Can you lie in -- in
22 answering questions that the government has no technical
23 right to answer? I mean, let's assume I agree with you
24 that, in fact, this information was -- the government
25 was not authorized to obtain this information, and

1 therefore, it was not required to be kept. But
2 nonetheless they asked it, and your client didn't just
3 say, I won't answer. He lied.

4 Now, can you -- can you lie, so long as the
5 question is improper?

6 MR. DIETZ: Your Honor, I think the key in
7 this case is that Congress included a materiality
8 element for almost every false statement that would
9 occur in this context. And they enacted a separate
10 statute that did not have that materiality requirement.

11 And the reason was Congress wanted to be
12 sure that that provision that did not have the
13 materiality requirement only applied to the false
14 statements that Congress thought were the very important
15 ones, and therefore they delineated what those -- that
16 category of statements was. And the question on the
17 form is not one of them. And that, Your Honor, is the
18 reason why Mr. Abramski cannot be convicted under that
19 provision.

20 I'd like to reserve the remainder of my time
21 for rebuttal.

22 CHIEF JUSTICE ROBERTS: Thank you, counsel.

23 Mr. Palmore.

24 ORAL ARGUMENT OF JOSEPH R. PALMORE

25 ON BEHALF OF THE RESPONDENT

1 MR. PALMORE: Thank you, Mr. Chief Justice,
2 and may it please the Court:

3 I think it would be helpful if I could, at
4 the outset, frame what I see as the issues here because,
5 as some of the questioning revealed, Petitioner is
6 making two separate arguments. His first argument is,
7 in a sense, that there is no such thing as a straw
8 purchaser doctrine. I take that actually as a falsity
9 argument.

10 He's saying when I answered that I was the
11 purchaser, that was a true statement because I'm the
12 only purchaser who counted for purposes of the statute,
13 because I was the one standing there and I was the one
14 filling out the form.

15 His second argument is an alternative
16 argument, as I understand it, and he says, even assuming
17 I'm wrong about the first argument and that this
18 statement was false, that that falsehood was not
19 material because my uncle was legally eligible to
20 possess a firearm. So I'd like to take those two
21 arguments in -- in order.

22 JUSTICE SCALIA: As to the first, are there
23 two buyers in your view?

24 MR. PALMORE: I think, in a sense, you could
25 understand there to be two buyers. The buyer who counts

1 under the statute, though, is the actual buyer.

2 JUSTICE SCALIA: Well, what does -- what
3 does the person who's buying for somebody else -- he has
4 to provide both names or just the name of the real
5 buyer?

6 MR. PALMORE: Justice Scalia, if you -- if
7 you hypothesize the situation in which two roommates
8 wanted to buy a firearm together -- firearms are
9 expensive; they can't each afford their own, but they
10 want one for personal protection.

11 And if one went into the store and said, I'm
12 buying this firearm for myself and my roommate who's not
13 here, that transaction could not lawfully go forward,
14 because the two buyers of the firearm weren't in the
15 store and they weren't physically present and they
16 didn't go through all the statutory screening processes.

17 JUSTICE SCALIA: And both of them had to
18 take possession, right?

19 MR. PALMORE: In that, right.

20 JUSTICE SCALIA: But that's not the case
21 here. The person who paid took possession, was
22 authorized to take possession .

23 MR. PALMORE: In the straw purchaser cases
24 the person takes possession in an ephemeral sense. They
25 are merely the conduit. The whole -- the purpose and

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1 effect of the transaction is to deliver that firearm to
2 someone else.

3 CHIEF JUSTICE ROBERTS: Where in this -- I'm
4 sorry.

5 JUSTICE SCALIA: So there are two buyers and
6 both of them have to be on the form.

7 MR. PALMORE: If there are two buyers, the
8 two people, the roommates, are buying, they would each
9 need to --

10 JUSTICE SCALIA: Where's the straw buyer? I can understand you
11 saying
12 the real buyer is the person who put up the money.

13 MR. PALMORE: Well, of course the form tells
14 you who the real buyer is, and it's a substance over
15 form inquiry. And we think this is supported by not
16 only the text, but also the structure and purpose of the
17 Gun Control Act.

18 CHIEF JUSTICE ROBERTS: Where in the Act
19 does -- is the basis for the requirement on the form?
20 The form says -- you know, if you're not the actual,
21 you're buying for somebody else. Where is that in the
22 statute?

23 MR. PALMORE: That is ATF's reasonable
24 interpretation of the statute and I was just going to
25 get to that.

26 JUSTICE SCALIA: Its current one. It used

1 to have a different one.

2 MR. PALMORE: That's the current one, and
3 it's been consistent for the last 20 years, Justice
4 Scalia.

5 So the statute, we think with the text and
6 structure and purpose support this view. The text is
7 most readily identifiable in Section 922(a)(6) itself,
8 which this Court in Huddleston --

9 CHIEF JUSTICE ROBERTS: (A)(6)?

10 MR. PALMORE: 922(a)(6), which is the count
11 1 of the conviction. It's the false statement provision
12 at issue here, and this is quoted on pages 1 through 2
13 of the government's brief.

14 So the provision says: "It shall be
15 unlawful for any person in connection with the
16 acquisition or attempted acquisition of a firearm," and
17 it goes on, and it talks -- and at the end it talks
18 about the "lawfulness of the sale or other disposition
19 of such firearm."

20 This case isn't the first one in which the
21 Court has had occasion to interpret those terms. In
22 Huddleston the Court looked at those terms, in
23 particular "acquisition" and "disposition," and it said
24 several things about those terms that are relevant here.
25 It said those terms are meant to have a practical,

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1 common sense meaning in terms of who will come into
2 possession and control of a firearm as the result of a
3 transaction with a federally regulated dealer, and they
4 don't turn on formal notions of legal title; and that
5 with respect to "disposition" in particular that
6 Congress meant to give broad effect to this term.

7 And so we think that the same kind of
8 practical common sense inquiry is applicable here. When
9 looking at the transaction the question is what is the
10 ultimate purpose and effect of this transaction. Is it
11 to have someone else acquire the firearm.

12 JUSTICE BREYER: That's awfully broad. It
13 isn't the language, his point is I think that the statute, it has to be
14 material to the lawfulness of the sale. Now, we look to
15 see what section is it material to, and you say in your
16 brief it's material to the section that says -- you have
17 two of them, but they come to the same thing -- selling
18 or delivering any firearm to any person.

19 All right. Now, he says did they sell or
20 deliver this firearm to what you call the real
21 purchaser. No. They sold or delivered it to the straw,
22 and that's the end of the matter. And at least the
23 statute is open to this interpretation, and it's a
24 criminal statute. And besides, the ATF for a long time
25 interpreted it that way. So what we should do is

1 interpret it strictly.

2 Now, that's I think the basis of their
3 argument if I understand it. And so you have to get
4 those words "sale" and "deliver" and explain how in a
5 criminal statute they apply to what you're calling the
6 real purchaser.

7 MR. PALMORE: Right, Justice Breyer. The
8 statute uses a number of different terms to connote what
9 we take to be a substance over form inquiry into the
10 actual possession and control of the firearm. So in
11 922(a)(6), as we were just talking about, it talks
12 about acquisition, sale, or disposition.

13 JUSTICE BREYER: But you also quote
14 "material," the need for it to be material to the lawful
15 ness of the sale.

16 MR. PALMORE: Correct.

17 JUSTICE BREYER: You seem to concede that in
18 the brief. It has to be material, and there are two
19 sections and both come to the same thing, which is what
20 I said.

21 MR. PALMORE: So this is where we get back
22 to the fact that there are two different issues in this
23 case. If I convince you that there was a false
24 statement here because Petitioner's uncle was the actual
25 purchaser --

1 JUSTICE BREYER: If he was -- if he then --
2 if he is the actual purchaser, then he falls within the
3 term of a person to whom the firearm was sold or
4 delivered. That's your argument.

5 MR. PALMORE: And his name wasn't put on the
6 form .

7 JUSTICE BREYER: Oh, there's no question
8 about that.

9 MR. PALMORE: Right so if I could just finish
10 one other thought on this first issue of falsity. As
11 Justice Sotomayor and Justice Alito's hypotheticals
12 demonstrated, under Petitioner's view of the statute I
13 could approach someone in a parking lot outside of a
14 licensed dealer.

15 I could say, would you like to make a quick
16 buck; please come in with me. I could point to the
17 firearm I want. I could hand him the money. I could
18 look over his shoulder as he fills out Form 4473 in his
19 own name. I could watch the dealer run that person's
20 name and identity through the criminal background check,
21 and as we leave the shop together he could hand me that
22 firearm.

23 JUSTICE SCALIA: Why is that -- why is that
24 any more horrible than the notion that as soon as I buy
25 it I walk out of the store and I meet this guy in the

1 parking lot, he says: Hey, that's a nifty looking gun
2 there. How much did you pay for it? He says: You
3 know, I paid 600 dollars. I'll give you 700. Oh, it's
4 yours. Right? I can hand it to him, can't I?

5 MR. PALMORE: You could, Justice Scalia.

6 JUSTICE SCALIA: So the notion that the gun
7 would somehow get into the hands of somebody who -- you
8 know, who wasn't registered or who couldn't buy it
9 himself, I mean that's going to happen any way. What you
10 assert does not stop that problem.

11 MR. PALMORE: Justice Scalia, Congress was
12 obviously balancing a number of interests when it
13 enacted these provisions. If you read the text of the
14 statute and the legislative history, it's clear that
15 Congress thought the principal problem was effectively
16 unregulated sales of firearms from dealers. That's the
17 problem it wanted to focus on.

18 And you're right that it didn't want to go
19 further and intrude on private transactions among
20 unlicensed individuals. It drew a line, and it -- but
21 it drew a line at a point where it thought the actual
22 problem was. And that line was up to and including the
23 point of sale.

24 JUSTICE GINSBURG: Mr. Palmore, when the
25 Agency changed its view in 1994, there was no change in

1 the statutory text, was there?

2 MR. PALMORE: There was not, Justice
3 Ginsburg.

4 JUSTICE GINSBURG: And at that time, the
5 interpretation was that you committed the offense if you
6 sold -- if the person, the true buyer, was an
7 unlawful -- a person to whom firearms could not be sold.
8 But if you -- if the ultimate possessor was a lawful
9 possessor, then there was no liability.

10 So the -- the statute has to be open, at
11 least, to either interpretation, no change in the words.
12 The Agency read it one way, and then later changed its
13 mind and read it the other way.

14 MR. PALMORE: That's right, Justice
15 Ginsburg. And I think that takes us to the second issue
16 here, which is the materiality issue. And I think what
17 happened was that the Agency's earlier view of the
18 statute was essentially overtaken by the case law in
19 several respects. And the Agency therefore updated its
20 view and has consistently applied that view for the last
21 20 years.

22 JUSTICE BREYER: Yeah, but still -- look,
23 what I thought was a very good argument on your side is
24 exactly what I said. The narrow interpretation would
25 also apply to a straw man who buys a gun for Al Capone.

1 And so this -- this part of the statute would be
2 virtually worthless. Their response to that is don't
3 worry about that.

4 There are plenty of other provisions that
5 will take care of that. Are there? And if it's so
6 obvious about the Al Capone, why did the ATF decide it
7 their way for 20 years? I mean, how -- how did they get
8 into that?

9 MR. PALMORE: Justice Breyer, I think
10 that -- that the other provisions that Petitioner is
11 referring to is 922(d), which makes it unlawful for
12 anyone, licensed or unlicensed, to transfer a firearm to
13 someone in a prohibited category if the transferor knows
14 or has reasonable cause to believe that the person is in
15 a prohibited category.

16 And that is a completely inadequate
17 substitute for what -- the kind of regulation we're
18 talking here for -- for a variety of reasons. One is
19 mens rea requirement that I just mentioned.

20 So in my -- my hypothetical involving the
21 parking lot, the person -- the straw purchaser doesn't
22 even know my name, much less anything about my
23 background, whether I was dishonorably discharged from
24 the military, whether I have mental health issues.
25 Doesn't know anything about me. He has no reason to ask.

1 I certainly have no motivation to tell him. And yet
2 that transaction can go forward, and there could be --
3 it would be very difficult to prosecute that straw
4 purchaser for an illegal transfer if it turned out that
5 I was a felon.

6 Second is the whole purpose of this
7 structure of this statute, especially after it was
8 amended in the early '90s, was to not -- was to put in
9 place and reinforce a dealer-based regulatory system in
10 which the eligibility of firearm transferees is
11 determined based on a search through a database. We
12 don't take even the transfer -- transferees say so as to
13 whether or not he's an eligible person. He has to fill
14 out the form.

15 CHIEF JUSTICE ROBERTS: I think it's very --
16 it's very problematic to talk about the overriding
17 purpose when you're dealing with a very sensitive
18 compromise. There's, as far as I can tell, nothing in
19 the language of the statute that talks about straw men
20 or actual buyers or anything like that.

21 MR. PALMORE: You're right, Your Honor, just
22 as there's nothing in the mail or wire fraud statute
23 that talks about Ponzi schemes. That -- a Ponzi scheme
24 is simply a way --

25 CHIEF JUSTICE ROBERTS: Well, but there

1 wasn't -- there wasn't a strong lobby in Congress saying
2 we're the group that supports Ponzi schemes, so maybe it
3 makes more sense to have a broad construction of that
4 provision.

5 This language is fought over tooth and nail
6 by people on the -- you know, gun control side and the
7 gun ownership side. And to say -- you look at it and
8 say well, the purpose is this, even though there's no
9 words in the statute that have anything to do with straw
10 purchasers, I think, is very problematic.

11 MR. PALMORE: Your Honor, I think we do have
12 a textual argument, which I referred to before. But
13 there's also -- it's not just a purpose argument. It's
14 a contextual and structural argument. And it's the one
15 that Justice Alito alluded to in his question --

16 CHIEF JUSTICE ROBERTS: Well, you agree that
17 in Justice Alito's example, that person is regulated as
18 a gun dealer, right?

19 MR. PALMORE: At a certain point, a person
20 is --

21 CHIEF JUSTICE ROBERTS: The Yellow Pages.

22 MR. PALMORE: Right.

23 CHIEF JUSTICE ROBERTS: They're putting an
24 ad --

25 MR. PALMORE: If they're operating as a

1 seller of firearms, they would have to register.

2 JUSTICE ALITO: Well, I meant my
3 hypothetical. So he doesn't have -- he doesn't put it
4 in the Yellow Pages and he doesn't put it on the
5 Internet. He just hangs around in the parking lot at
6 Joe's to accommodate people who -- and Joe's is near the
7 border, and he wants to accommodate people who may take
8 it -- who wish to employ him as a straw purchaser.

9 JUSTICE SCALIA: You wouldn't think of
10 prosecuting him, would you?

11 (Laughter.)

12 MR. PALMORE: I mean, at a certain point, if
13 the -- if the conduct is so pervasive and regular, if
14 he's acting as a dealer, then you might be able to get
15 him on that separate provision. But you're right.
16 Before that point, you wouldn't necessarily be able to,
17 and that would be a perfectly lawful -- lawful conduct.
18 And it's also important to talk -- we were talking,
19 Justice Breyer, about --

20 JUSTICE SCALIA: Before you go on --

21 MR. PALMORE: Yeah.

22 JUSTICE SCALIA: -- I wanted to get back to
23 the Al Capone hypothetical. As I understand
24 Petitioner's case here, I don't think he's asserting
25 that if Al Capone, if -- if he intended to transfer it

1 to Al Capone, that his statement would not have been
2 material. His position is, since I intended to transfer
3 it to somebody who could lawfully possess it, the
4 statement was immaterial.

5 MR. PALMORE: And my point, Justice Scalia,
6 is that in a straw-purchase context, you're not
7 necessarily going to know you're dealing with Al Capone
8 or someone of his record. These are often cases in
9 which people have an ephemeral relationship. They may
10 not even know each other's names.

11 JUSTICE KAGAN: Well, Mr. Palmore, is that
12 right? I thought that Mr. Dietz's argument went beyond
13 what Justice Scalia just said, that for Mr. Dietz,
14 regarding -- you can -- he might be prosecuted under
15 another statute for selling something to somebody he
16 knows is Al Capone, but that he was -- you know, because
17 he was the guy at the counter and he was buying for
18 somebody else, as to this question of material
19 representation, it does not matter whether the ultimate
20 transferee was Al Capone or somebody else.

21 MR. PALMORE: I think that's right, Justice
22 Kagan. And that's his first argument and what I take to
23 be his main submission is essentially that his statement
24 was true.

25 JUSTICE KAGAN: I think he said that just

1 right in here.

2 MR. PALMORE: Right, he did. It was true,
3 so you don't even get to the materiality question. So
4 that's right. That subsequent transfer might separately
5 be a violation if he knows or has reasonable cause to
6 believe that the transferee is in a prohibited category.

7 I would just point out, though, that that
8 would not have been the case from 1968 to 1986 because
9 922(d), which prohibits transfers to ineligible
10 transferors -- I'm sorry -- transferees applied only to
11 licensed dealers until 1986. It didn't apply to -- to
12 private individuals.

13 So the kind of straw purchase on behalf of
14 Al Capone, as I understand it under Petitioner's theory,
15 would have been perfectly legal from 1968 to 1986, even
16 if it was knowing.

17 Justice Ginsburg, we talked a little bit
18 before about how ATF's view kind of caught up with the
19 case law. And I think some of that case law is actually
20 quite helpful here for illuminating the materiality
21 question.

22 And it's the Crandall case from the First
23 Circuit that we talk about in the brief. If Petitioner
24 is correct that the materiality of a false statement
25 turns on whether the ultimate -- in this context,

1 whether the ultimate purchaser or the actual transferee
2 of the firearm was eligible or not, it's unclear why
3 a -- someone seeking to buy a gun from a federally
4 regulated dealer couldn't go in, provide a false name
5 and provide a false identification and receive a gun.

6 And then if he's prosecuted for that false
7 statement, he could defend, as the defendant in Crandall
8 tried to defend, saying, well, it didn't really matter
9 because I'm actually eligible. So even if you'd known
10 my true name and had my true nonforged ID, he would have
11 sold me the gun, so it's not material.

12 The courts of appeals and the lower courts
13 have consistently rejected that argument. And what
14 those courts hold is that in all cases, the lawfulness
15 of the sale of a firearm from a regulated dealer is
16 contingent on the recording, confirming, and after 1993,
17 screening of the identity of the purchaser.

18 CHIEF JUSTICE ROBERTS: Now, this -- this --
19 now you're talking about the second question.

20 MR. PALMORE: Correct.

21 CHIEF JUSTICE ROBERTS: And the provision
22 that makes the -- the information that's required, makes
23 it material -- correct me if I'm wrong -- is 922(b)(5),
24 right? That's what requires --

25 MR. PALMORE: That's one of the provisions.

1 CHIEF JUSTICE ROBERTS: Okay. Now, all that
2 says is you have to keep the information of the person
3 to whom you're transferring the firearm. So your
4 argument has to be, when somebody sees the person, they
5 realize that that means not somebody who's buying it for
6 somebody else, right?

7 MR. PALMORE: Right. And if you're with me
8 on the straw purchase idea, that this was a false
9 statement because the purpose and effect of the
10 transaction was to -- for the uncle to acquire the
11 firearm, then that was a false statement, then the
12 actual purchaser name is recorded --

13 CHIEF JUSTICE ROBERTS: Yes. Yes. I know.
14 If I assume -- if I assume you're right, then you're
15 right.

16 MR. PALMORE: If you assume I'm right on
17 issue 1, then I think that the materiality on issue 2
18 follows directly from -- from this provision that you
19 quote in 922(b)(5).

20 CHIEF JUSTICE ROBERTS: Because then
21 "person," you know carries with it the concept of not
22 just the person to whom it's transferred, which is what
23 922(b)(5) says, but the fact that it's -- has to be the
24 actual person who ends up with the gun.

25 MR. PALMORE: Yes. And I think the term

1 needs to be looked at in context. It's not just
2 922(b)(5). There's also 922(t), which is the Brady
3 provisions, and there it talks about a transfer, so we
4 talked before about how there are different terms that
5 are used.

6 CHIEF JUSTICE ROBERTS: Well, 922 --

7 MR. PALMORE: -- (t), which says that you
8 can't --

9 CHIEF JUSTICE ROBERTS: Where -- where is
10 that?

11 MR. PALMORE: This is on page 13.

12 JUSTICE SCALIA: Is that on the appendix to
13 your brief?

14 MR. PALMORE: No, I apologize, Justice
15 Scalia. There's not an appendix, but this is quoted, in
16 relevant part, on page 13 of our brief.

17 So 922(t) says that the -- no transfer of a
18 firearm can take place unless the identity of the -- of
19 transferee is confirmed with a photo identification and
20 unless that identity is screened through a database to
21 ensure that that person is eligible.

22 JUSTICE KAGAN: If you're right on Question
23 1, 922(t) just makes this a slam dunk on Question 2.
24 And there's a question about whether you are right on
25 Question 1. But if you are, (t) says, look, the dealer

1 is supposed to check the transferee, right? And if we
2 assume that when Congress says "the transferee," it's
3 the real transferee, not the fake transferee, the dealer
4 is supposed to check the real transferee.

5 So what does the dealer think is material? I
6 mean, the question is, what does a reasonable dealer
7 think is material? I better know who you are so I can
8 check you. That's material.

9 MR. PALMORE: I think that's right, Justice
10 Kagan.

11 I think that anyone looking at 922(b)(5),
12 Chief Justice Roberts --

13 JUSTICE SCALIA: I can't look at all these
14 things because they are not in your brief. I really --
15 I really resent, especially in statutory cases, not
16 having the statute in front of us. I shouldn't have to
17 flip through your -- your brief to see what page you
18 cite a little snippet from one section on.

19 MR. PALMORE: You're right. You're right,
20 Justice Scalia. I apologize for not including a fuller
21 statutory appendix in this brief.

22 But the point is of 922(b)(5) when it asks
23 for the name of the buyer, one would ask, well, what --
24 what reason -- why is this name relevant? Why is this
25 question being asked? And this goes to Justice Alito's

1 observation about the structure and purpose of the
2 statute.

3 This name is clearly being asked because
4 Congress cared very much about preventing anonymous
5 sales of firearms. It cared very much about having a
6 record of who that first buyer was.

7 JUSTICE KAGAN: Well, it's not just the
8 structure -- it's not just the overriding purpose.
9 922(t) says that the dealer is supposed to check the
10 transferee to find out whether the transferee has a
11 criminal record, to find out whether the transferee has
12 mental illness.

13 So who does he check? Who is the
14 transferee? Well, I need to know who the transferee is
15 to make that check. So, obviously, it's material to
16 know who the transferee is.

17 MR. PALMORE: I -- I agree, because those
18 requirements would be pointless if they could be
19 satisfied.

20 JUSTICE BREYER: But it's going to be the
21 same problem, which is the straw because the transferee,
22 in context, probably refers to the person to whom the
23 dealer transferred the weapon; namely, the buyer.

24 And does it apply, for example, if he knows
25 that the buyer is going to give the -- the weapon to

1 another person? And you will say no. Then he's not the
2 transferee, the other person. You admit that. You say
3 it. And so why is the person to whom -- the one who
4 puts up the cash is going to later transfer the weapon
5 is the same question as to whether he is really the
6 purchaser. I just don't see a difference.

7 And, therefore, I thought -- but you can
8 explain to me why there's a difference. I'd like to
9 know that. And I guess I'd like to bring you back to
10 the -- to that issue and -- and I'd just like to know
11 how the ATF reached the contrary conclusion if it would
12 so undermine the statute.

13 MR. PALMORE: Well, Justice Breyer, a couple
14 of points about this. One, as we talked about before,
15 we think Huddleston suggests that these terms -- and
16 Huddleston was interpret -- was interpreting acquisition
17 and disposition, and it gave -- it was stressed that
18 these had a practical, common sense meaning about who
19 was going to obtain possession or control of the firearm
20 as a result of the transaction, as a direct result of
21 the transaction.

22 JUSTICE BREYER: Then what about the donee?

23 MR. PALMORE: The ATF has never interpreted
24 this provision to -- to prohibit gifts. And a gift
25 recipient is in no sense a party to the gift giver's

1 purchase of the gift. That's just not the way we think
2 of gifts. The purchaser may change his mind. The
3 purchaser is not acting at the direction and control of
4 the gift recipient. And in ATF's experience, there's
5 not a problem with gift recipients.

6 JUSTICE SOTOMAYOR: You don't think
7 that crime bosses --

8 MR. PALMORE: I'm sorry.

9 JUSTICE SOTOMAYOR: You don't think crime
10 bosses look at their underlings, pay them a lot of money
11 for whatever they're doing and just say, go get me a gun
12 and give it to me?

13 MR. PALMORE: Well, I think that that -- I
14 would suggest that that wouldn't be a gift under that
15 scenario, Justice Sotomayor.

16 JUSTICE SOTOMAYOR: Why?

17 MR. PALMORE: That person is working for the
18 crime boss and as part of his duties to go obtain a gun,
19 then he's buying that gun on behalf of the crime boss.

20 JUSTICE SOTOMAYOR: Could you answer Justice
21 Kennedy's question? Is -- is this all contingent on the
22 intent at the moment? I mean, you had a lovely wrapped
23 case here because you had the money transferred before
24 the purchaser, so there's no question that the intent
25 was to purchase for the uncle. But what about the

1 situation where there's a conversation beforehand that
2 says, I'm going to buy the gun and I'll sell it to you
3 afterwards?

4 MR. PALMORE: I think the question -- there
5 could be a factual question in some of these cases. The
6 question would be: Was that purchase made on behalf of
7 someone else? There's no factual issue here. This was
8 a guilty plea, so we have to assume that this
9 transaction was made on behalf of the uncle.

10 As a factual matter, Petitioner disputes
11 whether that matters legally or not and --

12 JUSTICE SOTOMAYOR: I'm not sure what you
13 mean. I gave you a hypothetical. What -- what -- why
14 is it a factual --

15 MR. PALMORE: Right. And in your
16 hypothetical, I think that would be a straw purchase.
17 That purchase was made -- even if the money was going to
18 come later, that purchase was made on behalf of the
19 absent party and it can't proceed for a variety of
20 reasons that --

21 JUSTICE SCALIA: This is a criminal statute.
22 And -- and you're saying that when -- when I buy it and
23 I told somebody I'll sell it to you later, that I am
24 acting as an agent? Wow. It's a criminal statute.

25 MR. PALMORE: Justice Scalia, and Huddleston

1 is helpful in this regard, too. There was a notice rule
2 of lenity argument made there because the person in that
3 case wasn't actually buying the firearm. He had pawned
4 it to the pawn shop and he was redeeming it. And he
5 came in and said, I'm not buying it, I'm just getting my
6 own property back. I'm not buying it or acquiring it.

7 And the court relied, in rejecting that
8 argument, relied in part on Form 4473, because it
9 provided notice that he had to check these boxes and had
10 to truthfully answer the question. I think it's rare
11 that you get a case with this degree of notice.

12 When the -- when the defendant is actually
13 committing the offense and making the false statement,
14 he's told in bold letters right in front of him not to
15 do what he's about to do and it -- and it includes a
16 hypothetical --

17 CHIEF JUSTICE ROBERTS: Well, he's not told
18 that in the statute. He's told that in a form that was
19 quite different from the form that was used before.

20 MR. PALMORE: That's right, Your -- Chief
21 Justice Roberts. It's a form that's been used
22 consistently for -- for 20 years. And for the reasons
23 that we've said, we think that the -- the current view
24 of the ATF and the express instructions on the form are
25 actually the most consistent with the statute, because

1 the statute requires identification of a firearm
2 purchaser to be recorded, confirmed, and screened in
3 every case.

4 That's not contingent on the person turning
5 out to be eligible or not. Congress wanted to prevent
6 anonymous sales of firearms, and it had a purpose,
7 obviously, to keep --

8 JUSTICE KENNEDY: As to whether or not there
9 was a sale, suppose the facts in this case, it was a
10 Glock, I think --

11 MR. PALMORE: Yes.

12 JUSTICE KENNEDY: -- was -- was delivered,
13 and suddenly the -- Abramski finds that it's a valuable
14 collector's item. There were only two or three of these
15 made, had a special trigger or something, and it's now
16 immensely valuable.

17 Could the uncle insist that it be sold to
18 him for the \$700, or for the -- for the agreed price?
19 The \$400 thing?

20 MR. PALMORE: I think it's not clear,
21 Justice Kennedy. There might be -- there might be a
22 contract between --

23 JUSTICE KENNEDY: Well, if it isn't -- if it
24 isn't, then there wasn't -- then there -- there was a
25 subsequent sale.

1 MR. PALMORE: Right. But, of course, here
2 there's no subsequent sale because the check was written
3 beforehand.

4 JUSTICE KENNEDY: Well, I'm asking about
5 that.

6 MR. PALMORE: Right. I think if -- if the
7 Petitioner changed his mind and decided not to actually
8 transfer it, I think, as a technical matter, that
9 wouldn't affect the legality because what mattered was,
10 was he making a purchase on behalf of another and
11 entering a false statement at the time he made it.

12 A fact question could arise in a -- in a
13 situation like that, which a defendant could argue, I
14 wasn't actually making the purchase on behalf of someone
15 else, and that argument is supported by subsequent
16 events.

17 But I think we were -- I was about to say
18 that the one critical purpose of the statute, obviously,
19 was to keep firearms out of the hands of ineligible
20 persons, but another critical purpose was to offer the
21 tracing of firearms and to prevent the anonymous
22 stockpiling of firearms.

23 And with respect to that purpose, I think
24 the facts of some of the cases underlying the circuit
25 split on the second issue of materiality are quite

1 salient. Those are all cases in which eligible parties
2 wanted to anonymously obtain large quantities of
3 firearms for illicit reasons. They were eligible, but
4 they had -- they wanted to not have their name
5 associated with the transaction.

6 So Polk, which is the Fifth Circuit case,
7 which is actually on Petitioner's side, that person
8 wanted to anonymously acquire firearms to create a
9 stockpile to attack an IRS building, to kill police
10 officers, and to assassinate a judge. But he was
11 eligible.

12 In Frazier and Morales, which are the
13 Eleventh and Sixth Circuit cases addressing this
14 materiality issue, there were straw purchases on behalf
15 of eligible buyers, but they were, again, wanting to
16 anonymously stockpile weapons and not have their names
17 associated with them because they were smuggling them
18 out of the country.

19 And the Petitioner's view of the statute in
20 which a straw purchaser can satisfy the requirement that
21 the first transaction, at the point of sale be recorded
22 would completely satisfy the statutory requirements,
23 would greatly impair the ability of ATF to trace
24 firearms and to have an accurate record of who that
25 first purchaser of the firearm was.

1 If there are no further questions, we'd ask
2 that the judgment of the court of appeals be affirmed.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 Mr. Dietz, you have four minutes.

5 REBUTTAL ARGUMENT OF RICHARD D. DIETZ

6 ON BEHALF OF THE PETITIONER

7 MR. DIETZ: Justice Ginsburg, you asked
8 counsel whether this was a case where there were two
9 interpretations of the statute. Counsel conceded that
10 there were. I think that's an important point because,
11 of course, we're dealing with a criminal statute. If
12 there are two interpretations under very well-settled
13 precedent from this Court, the court applies the
14 interpretation that's favorable to the criminal
15 defendant and that's part of the doctrine of criminal
16 law.

17 Justice Kennedy, you -- you mentioned the --
18 the agency situation that existed here between
19 Mr. Abramski and his uncle. And here, I think it's
20 important to note that there wasn't even any
21 consideration. This was truly a purchase that was just
22 a favor for a family member.

23 And the government, in order to advance this
24 straw purchaser theory that historically came from civil
25 common law, there needs to be a relationship between

1 Mr. Abramski and his uncle that is a fiduciary
2 relationship where Mr. Abramski is required to act in
3 his uncle's best interests at all times.

4 And that, for example, if he left the gun
5 store and someone said, hey, did you just pick up a
6 Glock, I'll buy it for you for \$500, that Mr. Abramski
7 could not even enter into that sale without providing
8 his uncle with -- with any money he made from that sale.

9 And there's -- there's a complex set of
10 civil agency law principles that apply here that just
11 don't translate to the straw purchaser doctrine as we've
12 described it. And I think that's a fundamental flaw in
13 the government's theory is that the courts just have
14 never thought through all of the various situations that
15 apply in these fiduciary relationships and how you would
16 apply them to situations where you're just buying a gun
17 for a family member or something of that nature.

18 I also wanted to turn to the gift exception.
19 There's also another exception the government
20 acknowledges and that's for raffles and contests at
21 charities or -- you know, political fundraisers. And so
22 in that circumstance, the person who's buying the gun
23 knows that they're giving it to a complete stranger and
24 someone who by random chance wins the right to own the
25 gun.

1 But in those cases, the government says
2 there's no need, at the time that you buy the gun, to
3 take any steps to ensure there's recordkeeping or a
4 background check on that person. And I think that
5 undermines this idea that everyone receiving a gun in
6 the chain from the gun dealer Congress wants to have a
7 background check. Congress is concerned about providing
8 enough information to allow for tracing and nothing
9 more.

10 And as a final point, Your Honors, I think,
11 perhaps, the most important point in this case is if the
12 Court rejects the straw purchaser doctrine as it -- as
13 it applies in this case to a lawful gun owner buying for
14 another, there are really no harmful consequences.

15 The government retains a very robust toolbox
16 of criminal statutes to prosecute illegal straw
17 purchasers, those who buy guns to get them into the
18 hands of prohibited persons, and the government will
19 receive accurate, truthful information about that first
20 sale so they can trace firearms when they're used in the
21 commission of a crime.

22 So the only thing the straw purchaser
23 doctrine in this case really accomplishes is to prohibit
24 law-abiding citizens from buying guns for other
25 law-abiding citizens, and that's something that Congress

1 expressly chose not to do. And we would ask this Court
2 to remain faithful to the statutory scheme actually
3 enacted by Congress.

4 JUSTICE ALITO: Well, if we agreed with you
5 on the -- on the second argument, would the government
6 have to prove that the person to whom the straw
7 purchaser transferred the gun was ineligible or would it
8 be a defense if it was shown that the person was
9 eligible?

10 MR. DIETZ: I think the government would
11 have the burden there, Your Honor. And I think the
12 government has suggested -- they provide an example of a
13 circumstance where the -- the person who bought the gun
14 was buying it for someone named, I believe, Almonio, who
15 they had no idea who that was. But, yes, in that
16 circumstance, the government would need to prove that
17 that person was prohibited.

18 But I think in circumstances like that where
19 you're buying guns for someone you don't even know who
20 that person is, the government may well have evidence in
21 that case that you either knew or had reasonable cause
22 to believe that that person was prohibited from
23 possessing a gun.

24 JUSTICE BREYER: But the other purpose that
25 they said this provision has is to get gun dealers to

1 run checks. And you can't run a check if the name isn't
2 there.

3 MR. DIETZ: That's right, Your Honor. And,
4 of course, you can't run a check on someone who wins the
5 gun in a raffle or --

6 JUSTICE BREYER: Yes. But the other
7 problem -- we're back to the language. The -- there --
8 they say your client -- you know, falls within the
9 language and you say he doesn't. Is it -- all right.
10 Forget it.

11 MR. DIETZ: Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel.
13 The case is submitted.

14 (Whereupon, at 12:04 p.m., the case in the
15 above-entitled matter was submitted.)

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