IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 2:22-cr-47
	)	
PATRICK TATE ADAMIAK,	)	
	)	
Defendant.	)	

POSITION OF UNITED STATES WITH RESPECT TO SENTENCING FACTORS

The United States of America – by and through its attorneys – hereby represents that it has reviewed the Probation Office's Presentence Investigation Report (hereinafter "PSR"), including its addenda, and that it does not object to any of the facts or conclusions therein. For the reasons to follow, and the reasons to be offered during the resentencing hearing on June 25, 2026, the United States respectfully requests the Court reimpose the twenty-year sentence the defendant received on June 13, 2023, which is just below the recalculated advisory guideline range.

Notwithstanding the remand of this case by the Court of Appeals, this is still a case about the unlawful receipt, possession and sale of dangerous firearms, including machineguns and destructive devices, by a former military service member who well understood the regulated nature of the weapons in which dealt (and the reasons for such caution) but exercised no similar restraint in those with whom he dealt. The defendant brushed aside any warnings or guidance he received as to the requirements to engage in lawful conduct and sold to any willing buyer. A sentence of twenty years remains necessary to promote respect for the law, serve deterrence, and account for the seriousness of the crimes of conviction as well as the defendant's conduct and failure to accept responsibility.

PROCEDURAL HISTORY

On June 23, 2022, a grand jury in the Norfolk Division returned a superseding indictment, charging the defendant with five counts – Counts One, Three, Four and Five charged the defendant with Receive and Possess an Unregistered Machine Gun or Destructive Device, in violation of 26 U.S.C. §§ 5841, 5845, 5861(d) and 5871. Count Two charged the defendant with Unlawful Possession and Transfer of a Machinegun, in violation of 18 U.S.C. § 922(o). Counts One[1] and Two pertained to a PPSh-41 machinegun the defendant sold to confidential informant (CI) "Rick Hayes" in March 2022. Counts Three, Four, and Five pertained to an M209 grenade launcher, an M203 grenade launcher, and two RPG-7 anti-tank missile launchers, respectively, found at the defendant's house.

Before trial, the defendant moved to dismiss the superseding indictment, arguing that it failed to sufficiently allege the elements of the charged offenses and that the charged provisions were unconstitutionally vague and violated the Second Amendment. (ECF No. 37). The Court denied this motion. (ECF No. 46).

The defendant then proceeded to a jury trial, which commenced on October 18, 2022. He was found guilty by a jury of all five counts in the superseding indictment. Sentencing originally occurred on June 13, 2023. (ECF No. 100). The Court addressed various objections by the parties and sentenced the defendant to twenty years total, running ten-year consecutive sentences on Counts One and Two, and concurrent ten-year sentences on Counts Three through Five. (ECF No. 106). Following the sentencing, the Court set forth its analysis of the objections in a comprehensive written order. (ECF No. 104).

[1] Pursuant to the remand of this case from the Court of Appeals, the Court vacated Count One on December 30, 2025. (ECF No. 130).

The defendant appealed his convictions and sentence. On October 14, 2025, the Court of Appeals issued an unpublished opinion that affirmed in part and remanded with instructions. *See United States v. Adamiak*, (Doc. 128, No. 23-4451) (4th Cir. Oct. 14, 2025). On appeal, the defendant contended that one of his convictions violated the Double Jeopardy Clause of the Fifth Amendment. He further objected to the adequacy of the indictment, the sufficiency of the evidence, the jury instructions and his sentence. Although the defendant obtained relief on his Double Jeopardy claim, his remaining arguments failed. With respect to the sentencing issues after a fulsome review of the record and consideration of the defendant's arguments, the Court of Appeals concluded that "the district court committed no error in sentencing." *Id.* at *8.

OFFENSE CONDUCT

The Court and the parties are well familiar with the factual conduct underlying the instant offenses, through trial, sentencing and appeal, which is well summarized in the PSR and prior sentencing pleadings. *See* PSR at ¶¶ 5 – 40; (ECF Nos. 76-91, 94, 97, 99). Relying on this familiarity and the extensive record, the United States provides just a summary of the facts herein. The defendant developed extensive knowledge of firearms through his service in the United States Navy. He started a business, Black Dog Arsenal, and sold unregistered firearms and firearm parts over the Internet for several years. In late 2021 and early 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) conducted a series of controlled buys of machinegun receivers and a complete PPSh-41 machinegun from the defendant for approximately $2,000-$3,000 each. The defendant indicated that the receivers sold faster than he could produce them. ATF then executed a search warrant on the defendant's house, where agents found an M79 grenade launcher, an M203 grenade launcher, and two RPG-7 anti-tank missile launchers. These firearms were not registered to the defendant. Agents

also found property belonging to the United States and designs and order lists for hundreds of MAC flats, which are used in assembling firearms. PSR at ¶¶ 28-29.

The machinegun receivers sold by the defendant had single saw cuts that were easy to reassemble. Substantial circumstantial evidence, including the defendant's extensive knowledge of firearms, his business selling expensive firearms in an unregulated market, his possession of firearms operating manuals and diagrams, and the multiple warnings he received about unregistered destructive devices, supported the inference that the defendant certainly knew the characteristics of the firearms he sold. Evidence revealed that the defendant received thousands of dollars for these controlled purchases.

Beyond the evidence produced at trial, at and in preparation for the June 2023 sentencing, the United States produced evidence and exhibits (including hundreds of text messages and contacts) demonstrating the more extensive and historical nature of the defendant's dealing in firearms - including straw purchases and discussions concerning ghost guns, burner phones and international contacts. (ECF Nos. 78-91, 94). Evidence produced also revealed that the defendant set in motion events that exposed witnesses to stress and fear for their safety and exposed the names of ATF agents and Court personnel to internet dissemination.

THE DEFENDANT'S BACKGROUND

The defendant's background is also well-covered in the PSR (*see generally* ¶¶ 65-82), including reference to recent records from the Bureau of Prisons demonstrating the defendant's coursework while in the BOP. PSR at ¶¶ 108-109. And certainly, the defendant's background is that of a young man who had many advantages in his family, upbringing and career. But that background also relates to the offense conduct, as the defendant had extensive training in firearms, security and the rules and regulations attending to both. As the Court observed in the first

sentencing, at some point in 2016, the defendant began the slide into increasingly aggravating illegal conduct.

THE DEFENDANT'S CONDUCT SINCE HIS FIRST SENTENCING

From the information provided, the defendant has performed and adjusted well in the Bureau of Prisons. The United States understands that the defendant may present further information on this front and, certainly, given the defendant's past service and skills, it is not surprising that he would adapt well to his current surroundings. This is laudable. Yet, balanced against any such evidence of rehabilitation and growth is the defendant's continuous course of conduct in continuing to insist that he did nothing wrong; that the United States and its agencies worked to fabricate the evidence that resulted in his convictions; and that he has suffered an injustice and is a blameless victim in the events that led to his conviction and sentencing.

Of course, the defendant was entitled to a jury trial of his peers; he had that. A jury reviewed the evidence of his possession and transfer of illegal firearms and his extensive familiarity with the characteristics of such weapons. The Court properly instructed the jury as to the law and elements that must be applied to the evidence. And a unanimous jury, based on properly admitted evidence and correct instructions of the law, found the defendant guilty of all charges.

The defendant was also entitled to advocate for his sentencing and present mitigation; he did so. He was entitled to appeal his convictions and sentence; he did and prevailed on his Double Jeopardy claim. But beyond making his case in the appropriate legal forum and through appropriate legal means, the defendant (and others on his behalf) have continued to make allegations in the public sphere in an effort to cast doubt on the fair treatment he has received. Some examples (defendant attributed statements in bold):

- **"I never sold a single item that qualifies as a firearm or requires an FFL I only sold non-regulated gun parts,"** Adamiak said this week. **"It's my opinion and my family's that the ATF realized they messed up after they didn't come up with a single illegal weapon, so they completely reinterpreted the statutes and implemented new rules to spin the jury and get a conviction. They manufactured crimes [to] convict me."**

https://saf.org/how-patrick-tate-adamiak-received-a-20-year-prison-sentence , May 20, 2026, visited June 5, 2026.

- The defendant's father recently stated the following on the defendant's pending transfer for resentencing.

  "I am livid! This should have been fixed. Now my son has to drive around for months in a fu—ing van. They're playing dirty pool. That's how they roll. It's not about what's true. It's so freaking horrible. I learned about it just an hour ago. For the first time ever, I couldn't even talk to Tate. I was so boiling! His legal team has been looking at his case for three years now. There are a dozen ways he could get out. It's horrible! We even laid off the pressure a bit. How many people have to call out how stupid their decisions are? All they have to do is drop Tate's case! They don't even want to help. It's amazing they could bull—it us for so long. It's horrible to have an innocent person in prison for four years and everybody knows the truth. They could put a hold on him. That would show some good faith, at least. Nothing's materialized. On TV they're saying they're going to fix all of these Biden problems. Tate ranks right up there with Malinowski. The only difference is they didn't kill Tate. He would not be where he is without these damn blue-state judges with too much power. Damn blue state judges. They disregard the First and Second Amendments. How is this America? What happened to this country? We need to get him out by whatever means we can. They need to admit they screwed up. They need to go after [ATF Firearms Enforcement Officer Jeffrey R.] Bodell. He's the problem here. He made up all of this. Tate does not need to be on anyone's back burner. This is horrible. He's on notice and they're not doing jack," Dave Adamiak said.

https://saf.org/breaking-tate-adamiak-to-receive-50-days-of-diesel-therapy-punishment/ (May 6, 2026 – visited June 6, 2026).

- On May 8, 2026, the defendant authored a letter to the new ATF Director where, among other things, he claimed **"No American should have to guess where legality ends and a felony begins;"** and leveled complaints against the ATF and the integrity of the investigation and also claimed he possessed non-functional, incomplete or legally exempt items.

https://thegunwriter.substack.com/p/tate-adamiaks-letter-to-the-new-atf (visited June 6, 2026).

- In another recent interview, the defendant made the following statements:
  - **"To be clear, I never sold a single item that qualifies as a firearm or requires an FFL (Federal Firearm License). Only non-regulated gun parts,"** Adamiak said.
  - In reference to proposed defense expert Daniel O'Kelly, the article stated "The prosecutors knew that O'Kelly would make mincemeat of their charges, so they reindicted Adamiak, charging him with possession of one machinegun and four destructive devices." The defendant was quoted as saying: **"They knew we'd make them look like fools at trial with Dan's testimony, so the AUSA filed motions to block his expert testimony saying, 'Any testimony about the definition of a frame or receiver of a machinegun would be both irrelevant and confusing to the jury.'"** Adamiak explained.
  - His trial, he said, was **"literally theatrical." "The AUSA absolutely twisted every fact, cherry-picked messages to completely change the whole narrative, and blatantly lied about everything to make me look bad,"** he said.

  https://saf.org/special-report-atf-lied-to-convict-sailor-now-serving-20-years-in-prison-for-selling-legal-gun-parts/ (visited June 6, 2026).

- In another article, the defendant was asked about the investigators:
  - I asked Adamiak what he thinks should happen to the ATF staffers whose misdeeds got him arrested, which led to his 20-year sentence. **"That's a good question," he said. "They should be immediately fired, and I think they should be investigated for perjury."**

  https://saf.org/opinion-what-should-happen-to-the-atf-staff-who-wrongfully-imprisoned-adamiak/ (visited June 9, 2026)

- In a June 2025 article, the author claimed that "Clearly the DOJ and the ATF went to unheard of lengths to put Adamiak behind bars."
  - The following statements are attributed to the defendant in the article – **"I think it was politically motivated prosecutors trying to further their careers with a 'big bust.' It was also the ATF trying to bring something to the table, to make it appear like they're actually doing something,"** Adamiak said. **"They**

> **manufactured the crime. They built my case off of nothing. They manipulated evidence by adding parts – something I didn't have. The judge maliciously shut me up. They took ATF at their word[.]"**

https://thegunwriter.substack.com/p/judge-unknowingly-admits-patrick (visited June 10, 2026).

This messaging extends beyond the defendant's individual statements in articles and has encouraged supporters to argue and protest against what they claim is an unjust conviction. Scant references are made in such messaging to the fair trial, actual evidence admitted, thorough sentencing hearing and appeal that the defendant was entitled to and did pursue, all with no findings supportive of his claims. As an example, at the initial sentencing, the Court discussed the defendant communicating with Mrgunsngear, who operated a Youtube channel. It is clear that this is still a source of advocacy for the defendant. *See*

https://www.bing.com/videos/riverview/relatedvideo?q=mr+guns+and+gear+adamiak&mid=868BEB0B83C7B6F9104E868BEB0B83C7B6F9104E&churl=https%3a%2f%2fwww.youtube.com%2fchannel%2fUCvtuPgvFmA--W404WkST8GA&mmscn=stvo&FORM=VIRE (visited on June 9, 2026).

The narrative that the defendant has pushed is also exemplified in the following quote: "Tate Adamiak was a gun collector who only sold legal gun parts until a paid ATF informant—who was facing his own felony charges—falsely reported that he had a Mk-19 grenade launcher. The informant's lies led to the search warrant and ridiculous charges." https://saf.org/its-been-four-long-years-since-atf-arrested-patrick-tate-adamiak/ (visited June 6, 2026). Although a certain frustration by a convicted defendant is to be expected, this torrent of protest is different in kind. It is a regrettably false narrative, utterly belied by the substantial court record in this case – at trial, at sentencing and on appeal. That fulsome record reveals that:

- The defendant was trafficking firearms – specifically, firearms that could be easily and readily used as machine guns – he earned significant sums in doing so;

- The defendant was very knowledgeable about firearms and firearm restrictions and fully knew of the characteristics of these weapons;
- The defendant was engaged in this conduct from 2016 (when he had another Navy service member straw purchase some 21 AR-15 receivers for him);
- In 2021, the defendant received stolen property from the Navy;
- The defendant sourced firearm parts from an international contact;
- The defendant engaged in a series of abhorrent post-trial actions resulting in the naming of witnesses and Court staff and other acts of deceit.

See also (ECF No. 104 at 16-19) (summarizing defendant's text conversations).

Clearly, this reality of the record is at odds with the defendant's Dorian Gray-esque visage of innocent ignorance. Throughout all of this outpouring, some directly stated by the defendant and certainly encouraged by him, the defendant essentially raises the same ignorance of the law defense that he was precluded from raising in his trial. (ECF Nos. 36, 48). It is in the same vein as the course of conduct that resulted in stress and fear by witnesses in the first sentencing.

The defendant claimed at the time of the first sentencing that he never meant for anyone to feel unsafe and appeared to express some remorse at this – the Court credited him for that. But such expressions are difficult to reconcile with the above statements. (ECF No. 117 at 179). The defendant has every right to insist upon his opinion of his innocence, but he is not entitled to his own facts and the record in this case contrasts with claims of crimes manufactured and manipulated evidence.

What is also concerning to the United States is that this same culture of accusation and protest has continued to intersect with the participants in the criminal justice system who are merely doing their jobs. Documents related to the defendant's appeal have been published and the September date of the appeal was discussed in an article that described rallies in support of the defendant. *See* https://x.com/Mrgunsngear/status/1905719728645308547;

https://www.shootingnewsweekly.com/atf/support-pours-in-for-patrick-adamiaks-appeal-and-pardon-campaign/ (stating "unless some actions are taken [relating to requests for a pardon or clemency], the ATF and prosecutors will likely victimize Adamiak one last time with more false testimony and rule breaking.") (both visited June 10, 2026). The United States makes reference and citation to the above in anticipation of the defendant's claims that the Court should consider his post-sentencing conduct and rehabilitation. But the defendant's attitude clearly remains the same as it was in 2023.

GUIDELINES

The defendant's guidelines from his original sentencing in 2023 have been reduced four levels due to the change in the guidelines from 2021 to 2025 that resulted in the removal of a four-level firearm trafficking enhancement. The defendant is currently assessed as a Level 39/I, with an advisory range of 262 to 327 months. This results from a base offense level 18 (U.S.S.G. § 2K2.1(a)(5)); a six-level increase for the offense involving between 25 to 99 firearms (U.S.S.G. § 2K2.1 (b)(1)(D); and a fifteen-level increase for the offense involving a destructive device that is a device for use in launching a portable rocket. (U.S.S.G. § 2K2.1 (b)(3)(A)).

In this resentencing, the defendant raises a number of objections to the PSR. Two impact the guidelines; he renews his objections to both the number of firearms and the destructive device. These were also raised and addressed in 2023 and in the course of the defendant's appeal. The United States responds to these objections herein but also incorporates its prior arguments as to the appropriateness of these enhancements. (ECF Nos. 77, 94). In view of the repeated nature of these objections, the United States observes that at the first sentencing, the Court underscored that it would have imposed the same sentence regardless of the outcome of the objections. (ECF No. 104, n.1, 32).

The United States addresses the anticipated objections herein and may respond more fully upon review of the arguments tendered by the defendant in his Position Paper.[2]

UNRESOLVED OBJECTION TO NUMBER OF FIREARMS

The United States understands that the defendant will object to the six-level firearms enhancement for the number of firearms falling between 25-99 firearms. *See* U.S.S.G. § 2K2.1(b)(1)(C). This objection was litigated both in the initial sentencing and raised on appeal. The United States agrees with the determination made by the Court at the June 2023 sentencing, which considered: (1) the seven firearms sold to the CI (Government Exhibits 4-5, 9-13, 17); (2) the four destructive devices found in course of the search warrants (Government Exhibit 121); (3) the trial testimony of FEO Bodell as to Government Exhibits 33-45 and 121; (4) and the examination report of FEO Bodell (ECF No. 86). *See also* (ECF No. 104).

It should also be noted that the number of firearms in this PSR calculation does not consider anything that was not sold or seized before 2021. Thus, the various firearms the defendant obtained in 2016 via straw purchase and in violation of the law were not counted against him. In the view of the United States the number of 25 to 99 firearms is a conservative number premised on those firearms reviewed just during the pendency of the investigation.

At trial, the government called ATF Firearms Enforcement Officers (FEOs), who testified as experts in firearm classification and identification. These FEOs examined the PPSh-41 and explained the conclusion that the firearm was a machinegun. Additionally, an FEO examined 32 items recovered from the defendant's house and explained his conclusions that the M79 grenade launcher, the M203 grenade launcher, and the RPG-7 anti-tank missile launchers were destructive

[2] In its January 12, 2026, Order related to the resentencing, the Court directed the parties to file their position papers fourteen days prior to the resentencing, which would permit time for any responses to be filed. (ECF No. 131 at 3).

devices and other firearms were machineguns (Government Exhibits 33-45). The jury also heard testimony regarding Adamiak's familiarity with firearms, belying his then and current claims that he was simply ignorant of the features of the firearms at issue.

Additionally, in support of its sentencing position in 2023, the United States submitted a second report prepared by the FEO, who determined that twenty-three of the uncharged items recovered from the defendant's house qualified as firearms. (ECF No. 86). Although a number of these were machinegun "frames" or "receivers" that had been "saw cut," they are properly considered as machine guns under the National Firearms Act. *See,* 26 U.S.C. § 5845(b); *see also United States v. One TRW, Model M14, 7.62 Caliber Rifle*, 441 F.3d 416, 422–23 (6th Cir. 2006) (holding that a firearm which would require "a maximum of six hours to convert to fire automatically, 'can be readily restored' under the NFA"); *United States v. Pena-Lora*, 225 F.3d 17, 31 (1st Cir. 2000) (holding that an UZI that "had been damaged and/or clogged at some time in the past, and could not be fired until repaired," qualified as a "machinegun"); *United States v. Smith*, 477 F.2d 399, 400–01 (8th Cir. 1973) (substantial evidence established that the submachinegun could be readily restored to shoot automatically based on ATF officer's testimony that it could be made to function in "an 8-hour working day in a properly equipped machine shop"); *see also United States v. Willis*, 992 F.2d 489, 491 n.2 (4th Cir. 1993) (rejecting the argument that an inoperable firearm is not a "firearm" under 18 U.S.C. § 921(a)(3)).

As the Supreme Court recently identified in *Bondi v. VanDerStok*, 604 U.S. 458, 468 (2025), the Gun Control Act of 1968 (GCA) "authorizes ATF to regulate 'any weapon (included a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of any explosive.'" *Id.* The Supreme Court noted that this may include unfinished and inoperable weapons that may take time to readily convert or assemble. *See* i*d*. at 470-74. It may

also include unfinished or inoperable "frames" and "receivers." *See id.* at 479 (noting that "frame" and "receiver" like "weapon" are artifact nouns that may sometimes describe not-yet-completed objects). "[F]or decades, the agency [ATF] has consistently interpreted subsection [921(a)(3)](B) to reach some unfinished frames and receivers." *Id.* 480. This consistent interpretation by the executive branch can "provide evidence of the law's meaning." *Id.* (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024)).

The statutory definitions of "machinegun" and "destructive device" enacted by Congress are quite broad. A "machinegun" is not just a weapon which actually "shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). By the plain language of the statute, a "machinegun" also includes a weapon which "can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." *Id.*

Based on trial testimony that the seven receivers were receivers of weapons which could be readily restored to shoot automatically and FEO Bodell's report classifying 22 firearms recovered from Adamiak's house as machineguns, clearly the over 25 firearm threshold is met in this case. Thus, all the firearms were NFA firearms relevant to the defendant's possession of an unregistered machinegun and unregistered destructive devices. Accordingly, this objection should be overruled.

UNRESOLVED OBJECTION TO THE 15-LEVEL ENHANCEMENT FOR DESTRUCTIVE DEVICE

The United States understands that the defendant also intends to object to the enhancement for a destructive device, pursuant to U.S.S.G. § 2K2.1(b)(3), which provides for a 15-level enhancement if the offense involved "a destructive device that is a portable rocket, a missile, or a device for use in launching a portable rocket or a missile[.]" Again, the record in this case amply

establishes the basis for this enhancement. At trial, the FEO testified that all the destructive devices were readily restorable to full function, noting that he had test-fired them. The FEO further explained that because of how much damage each of these weapons would inflict if test fired with the corresponding grenade or rocket, he had found an alternative way to test fire the destructive devices. In the initial sentencing, the Court applied the enhancement but indicated that it would consider certain mitigating factors raised by defense counsel. (ECF No. 117, p. 137). This objection was also litigated on appeal, where the Court of Appeals found no error in the Court's determination that the enhancement applied.

A "destructive device" is not just "(1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device." 26 U.S.C. § 5845(f). The statute also defines a "destructive device" as "any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter." *Id* at (f)(2).

At the trial of the defendant, the FEO examined the RPG-7 anti-tank missile launchers that formed the basis for Count Five of the superseding indictment and determined that both devices had bore diameters greater than one-half an inch. The RPG-7s were missing five components, which are commercially available. Although each RPG-7 had a small hole, approximately 0.39 inch in diameter, the FEO opined that this did not prevent the weapon from functioning. After installing three components, the FEO test-fired the RPG-7s using an RPG training device.

In determining that this enhancement applied, the Court relied upon the jury verdict and testimony of the FEO and also cited a number of cases in determining that the fact that the RPG

did not have every component was not determinative. (ECF No. 104, pp. 24-25). This finding is in keeping with the language of the enhancement, which identifies a "a device for use." The plain language, thus, focuses on intended application, not demonstrated operation. As the Court of Appeals recently opined when considering a challenge to a non-functioning silencer –

> First, the definition includes "any device for silencing, muffling, or diminishing the report of a portable firearm." *Id.* The word "for" is an important clue. Dictionary definitions from around 1986 when Congress enacted this definition reveal that "for" is "a function word to indicate purpose," "an intended goal" or "suitability or fitness." *For*, WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1983). Purpose and intended goal suggest that our inquiry is guided by what the device is designed to do—not current functionality. True, suitability or fitness suggest a device's function is relevant. But those words do not suggest that only the device's current function matters.

United States v. Hatchet Speed, No. 23-4308, Doc. 111, *13 (4th Cir. May 5, 2026) (emphasis added). For these reasons, the United States submits that the fifteen-level enhancement is appropriately applied.

NOTICE OF INTENT TO CALL WITNESSES

Consistent with the Court's sentencing order (ECF No. 131), the United States hereby provides notice it may make two witnesses available for sentencing: ATF Special Agent Will Hairston and an FEO witness.[3] This FEO witness would be presented only if necessary to rebut any evidence or testimony offered by the defendant.

NOTICE OF POSSIBLE OBJECTION TO DEFENSE EXPERT

On June 5, 2026, the defendant provided the United States with a report from Daniel O'Kelly, a former ATF agent, who previously testified about the MAC flats at issue in the initial sentencing hearing. The United States is still evaluating this report, but essentially, Mr. O'Kelly

[3] This would likely be FEO Jeffrey Bodell who also testified in the June 2023 sentencing. The United States is working to confirm Mr. Bodell's availability and will update the Court and counsel if a different FEO needs to be present in Mr. Bodell's place. Mr. Bodell advised the United States that he was in court this week, so the United States has not had the opportunity to discuss some of these issues raised by the defendant's noticed expert.

claims that none of the devices that were found in the defendant's residence are weapons, firearms or NFA devices. Some portions of this report appear to be contrary to the jury's findings; other portions seem to spill the banks of appropriate expert opinion testimony and trend toward improper advocacy and/or interpreting the law. It does not appear that any exams were done on the actual firearms by Mr. O'Kelly. Prior to trial, the United States previously moved, *in limine*, to exclude or appropriately limit the testimony of Mr. O'Kelly. (ECF No. 55). The United States is in the process of assessing whether a similar objection is warranted or whether its concerns can be better addressed through cross-examination. At this point, the United States merely reserves the right to object to all or portions of Mr. O'Kelly's report that purports to reflect his anticipated testimony.

<u>POSITION ON SENTENCING AND ARGUMENT</u>

The United States recognizes that a sentencing court may not presume that a sentence within the advisory guideline range is reasonable; however, the guidelines remain a significant and pivotal component of the sentencing process. The Court "must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U.S.C. § 3553(a), explaining any variance from the former with reference to the latter." *Nelson v. United States*, 129 S. Ct. 890, 891-92 (2009). Title 18, United States Code, Section 3553(a)(1) provides that, in determining a sentence, courts must consider the nature and circumstances of the offense, as well as the history and characteristics of the defendant. The United States respectfully requests that the Court impose a sentence of twenty years, which is actually slightly below the recalculated advisory range of 262 to 327 months.

This is the same sentence that the Court indicated it would have imposed regardless of the outcome of the objections (including both objections referenced herein). (ECF No. 104 at 32). Even though the guidelines have been reduced four-levels through the removal of the trafficking

enhancement and the defendant raises other objections anew, in the prior sentencing the Court concluded that the defendant's "conduct would have warranted upward variances had the enhancements not been applied." *Id.* at 33. The Court went on to explain that "[t]he serious nature of [his] convictions and conduct require a sentence of at least 20 years' imprisonment." *Id.* at n.1. This same sentence, which reflected a careful consideration of the offense conduct as well as the defendant's background reflects the Section 3553(a) factors.

The Court can accomplish this same sentence by running the sentence on Count Two consecutive to that on Counts Three through Five. The Fourth Circuit affirmed a district court's decision in a similar resentencing posture in *United States v. Ventura*, 864 F.3d 301 (4th Cir. 2017). In that case, the Fourth Circuit initially held that Ventura's Section 924(c) conviction lacked a valid predicate, so the Court vacated that conviction and remanded for resentencing. *See id.* at 307. On remand, after vacating the 60-month consecutive sentence on the § 924(c) count, the district court reimposed an aggregate sentence of 420 months by increasing the sentence on one of the remaining counts. Ventura appealed from the resentencing, and the Fourth Circuit rejected his argument that the district court had violated the mandate rule. *See id.* at 308.

As the Court noted in 2023, it is important to focus on "the overall picture in this case, which is that the defendant ran a firearms parts business engaged in high volume sales, purchases, and trades without regard for the law." (ECF No. 104 at 33). In doing so, the defendant "likely released an unknown number of firearms into illegal streams of conscious." *Id.* The defendant's immediate post-conviction attitude and actions also resulted in fear and stress to witnesses in the case. This sentence is reasonable for the following additional reasons:

First, as the Court noted in 2023, the nature and circumstances of this offense are extremely serious and occurred over an extended period of time. The machineguns and destructive devices

that the defendant owned and sold "are a highly regulated industry for a reason: they are designed as killing machines capable of causing immense destruction and loss of life." *Id.* This was not aberrant behavior by an individual well-trained in firearms and security who just overlooked a form. The defendant deliberately drove through multiple cautionary checkpoints to acquire and sell these devices for profit.

This conduct began at least in 2016 through the defendant having another service member make straw purchases of firearms for him. (ECF No. 117 at 189,190). As the text messages that the United States previously provided to the Court confirmed, this behavior went back years and was consistent with the criminal intent or willful blindness the defendant continues to insist he did not have. *Id.* at 190. The texts referenced ghost guns, burner phones and contacts with individuals in other countries – all in an effort to make money. *Id.* at 190.

Second, these weapons are dangerous, and the defendant spread that danger to a wider community. The ripple effects of this conduct are truly unknown. The defendant's efforts to characterize these weapons as unfinished, or replicas for a planned museum misses the mark that the defendant was taking these very dangerous weapons and sending them out to many buyers in an utterly non-discriminating manner. As the Court observed at the first sentencing, "you would have to be blind, dead, and living in a hole not to realize what these types of weapons are doing to our country." *Id.* at 194. The record reveals that the defendant would sell to anyone. As the Court previously noted, "[t]he volume of dubious sales between Defendant and these individuals without any type of identification verification and with indications of Defendant's disregard for firearms rules and regulations support the inference that Defendant knew that his customer base likely included individuals who would unlawfully dispose of the firearms." (ECF No. 104 at 19).

Third, there is an amount of leniency already baked into this guideline range and sentencing request. The guidelines do not consider any of the firearms the defendant obtained or sold prior 2021; they do not consider the hundreds of MAC flats the defendant ordered; they do not consider that the defendant appeared poised to switch from selling to manufacturing; they do not consider the post-sentencing conduct engaged in by the defendant or the harm it caused witnesses. And though the trafficking enhancement has been removed, the conduct of selling to other prohibited individuals is certainly aggravating. Finally, at least some of what the defendant possessed certainly appears from the record to have been obtained, if not purloined, from the United States. PSR at ¶ 28. At the first sentencing, a Master Chief testified that he recognized items from the Navy that the defendant had in his residence. (ECF No. 117, pp. 32-36). Though the defendant claimed to have "correspondence and transaction letters" for every item, the United States has not seen that information in any record. (ECF No. 117 at 173).

Fourth, the defendant's lack of acceptance of responsibility is aggravating. It is one matter for the defendant to disagree with the verdict and maintain his innocence on appeal and, even, resentencing. It is quite another, however, for the defendant to publicly insist both personally and through various online surrogates that he is a victim of manufactured evidence and that his convictions and sentence were the product of targeted fabrication.

The initial sentencing in this matter lasted some six hours in June 2023, covering 203 pages of transcript. (ECF No. 117). The Court spent some twenty pages of transcript detailing its carefully constructed sentence (ECF No 117, pp. 180-202), and then issued a thirty-five page order further elaborating on the reasoning behind its rulings and the basis for the sentence. (ECF No. 104). For the defendant to continue to make the claims he has reveals a complete lack of remorse and acceptance for his actions. It is the defendant's choices that brought him before this Court –

not any external factors.

Fifth, and relatedly, the Court should again consider deterrence as it did at the initial sentencing. Although the defendant apparently cannot be deterred and continues to claim that what he did was perfectly legal, a wider message should be sent to others that the laws pertaining to firearms must be respected and followed to promote public safety. Nor should individuals be able to profit from their repeated disregard of such laws.

CONCLUSION

For the foregoing reasons and others to be provided during the resentencing hearing, the United States respectfully requests the Court impose a sentence of 240 months of incarceration.

Respectfully submitted,

Todd W. Blanche
Acting Attorney General

By: /s/

Brian J. Samuels
Assistant United States Attorney
Virginia State Bar No. 65898
Eastern District of Virginia
Newport News Division
Fountain Plaza Three, Suite 300
721 Lakefront Commons
Newport News, Virginia 23606
Tel. (757) 591-4000
Fax: (757) 591-0866
brian.samuels@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send an electronic notification of such filing to counsel of record. I also sent a true and correct copy of the foregoing to the following by electronic mail:

Joshua A. Coleman
Senior U.S. Probation Officer
600 Granby St., Suite 200
Norfolk, Virginia 23510

/s/

Brian J. Samuels
Assistant United States Attorney
Eastern District of Virginia
Newport News Division
Fountain Plaza Three, Suite 300
721 Lakefront Commons
Newport News, Virginia 23606
Tel. (757) 591-4000
Fax: (757) 591-0866
Brian.samuels@usdoj.gov