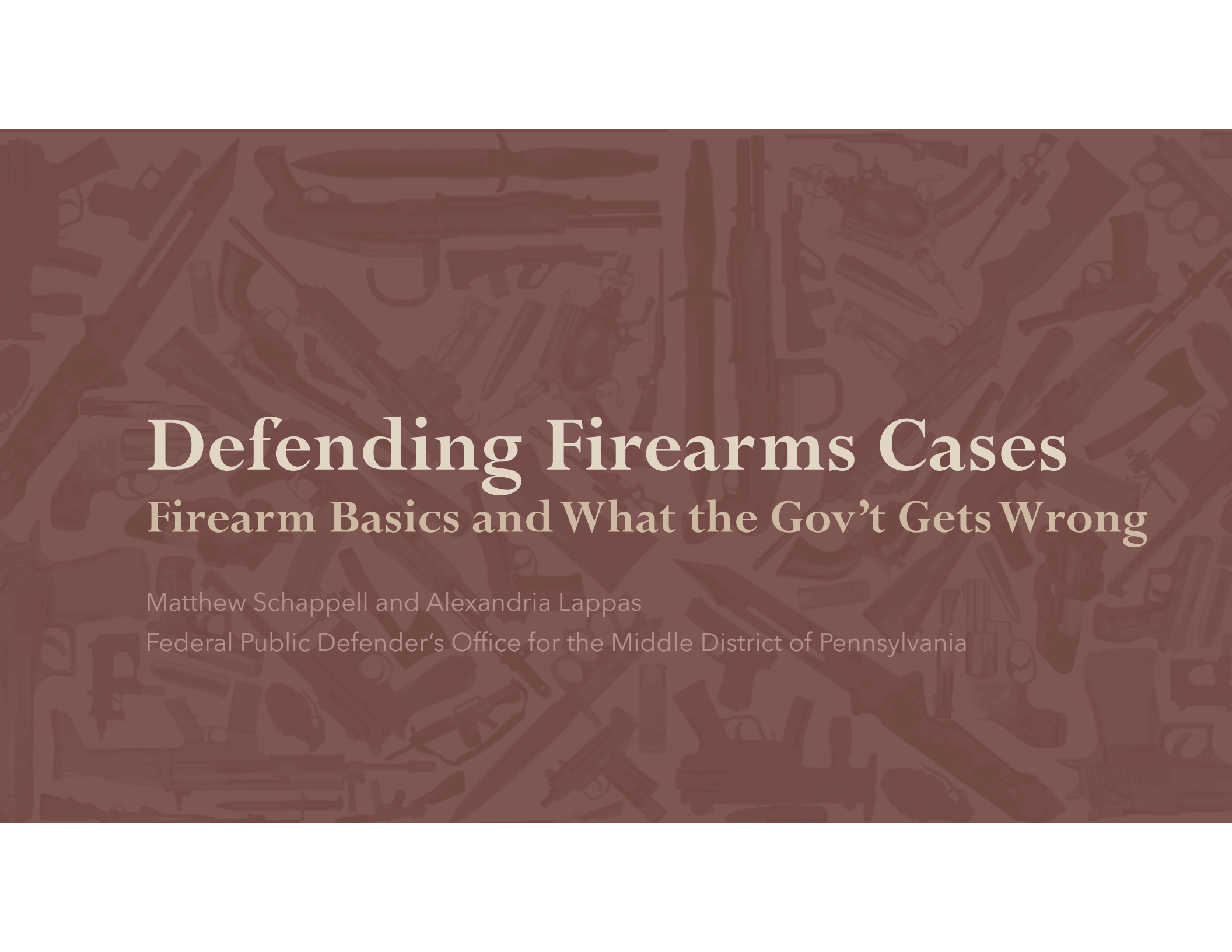




Defending Firearms Cases

Firearm Basics and What the Gov't Gets Wrong

Matthew Schappell and Alexandria Lappas

Federal Public Defender's Office for the Middle District of Pennsylvania

What's so complicated about this anyway?



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and understanding
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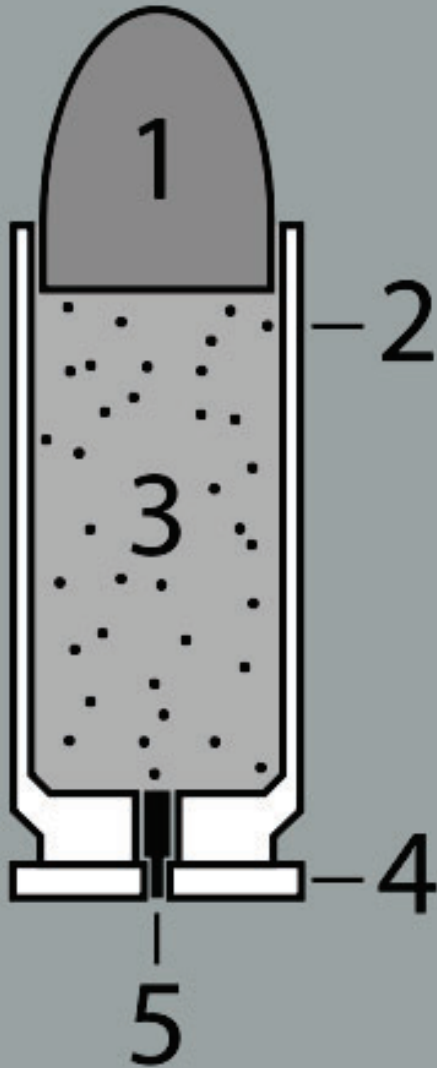


Ammunition



The term **"ammunition"** means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm

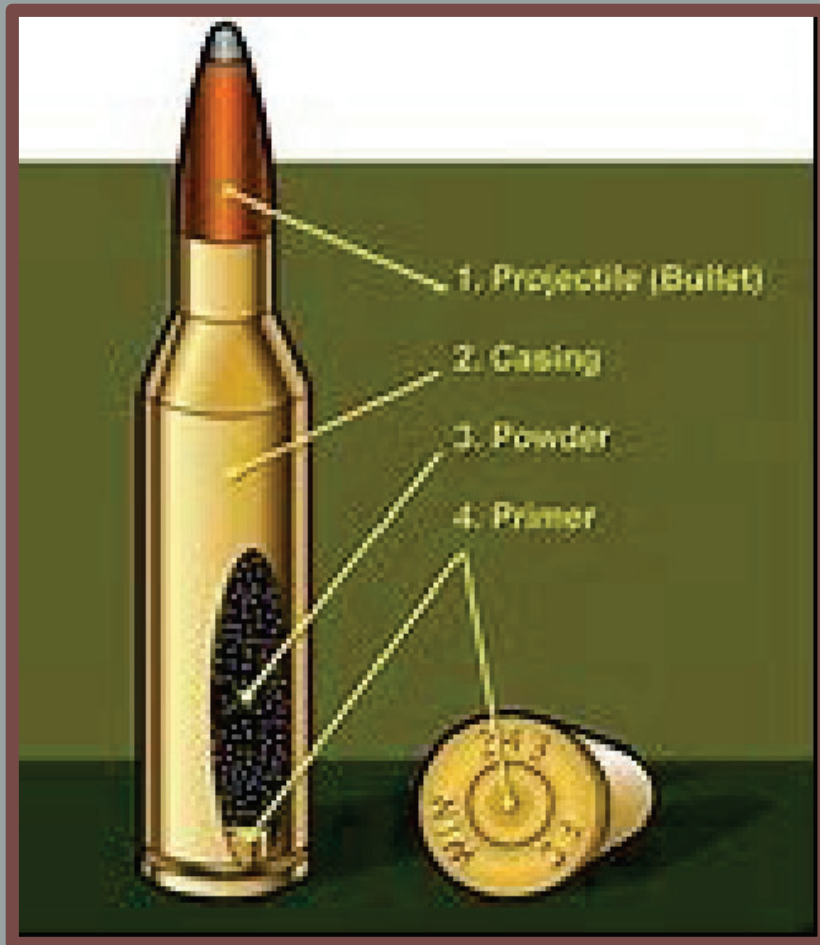
18 USC § 921(a)(17)(A)



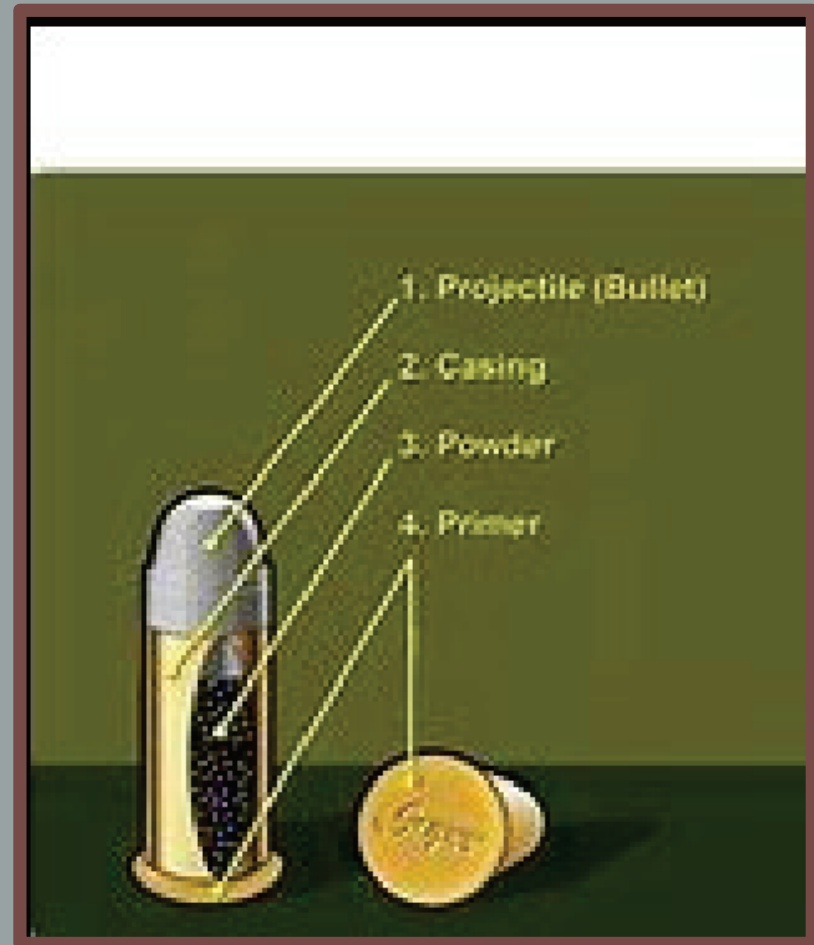
Anatomy of a Cartridge

1. Bullet or projectile
2. Case
3. Propellant powder
4. Rim
5. Primer

Centerfire Cartridge



Rimfire Cartridge



Centerfire Cartridge

- Primer separated from casing
- Ignition caused by striking center

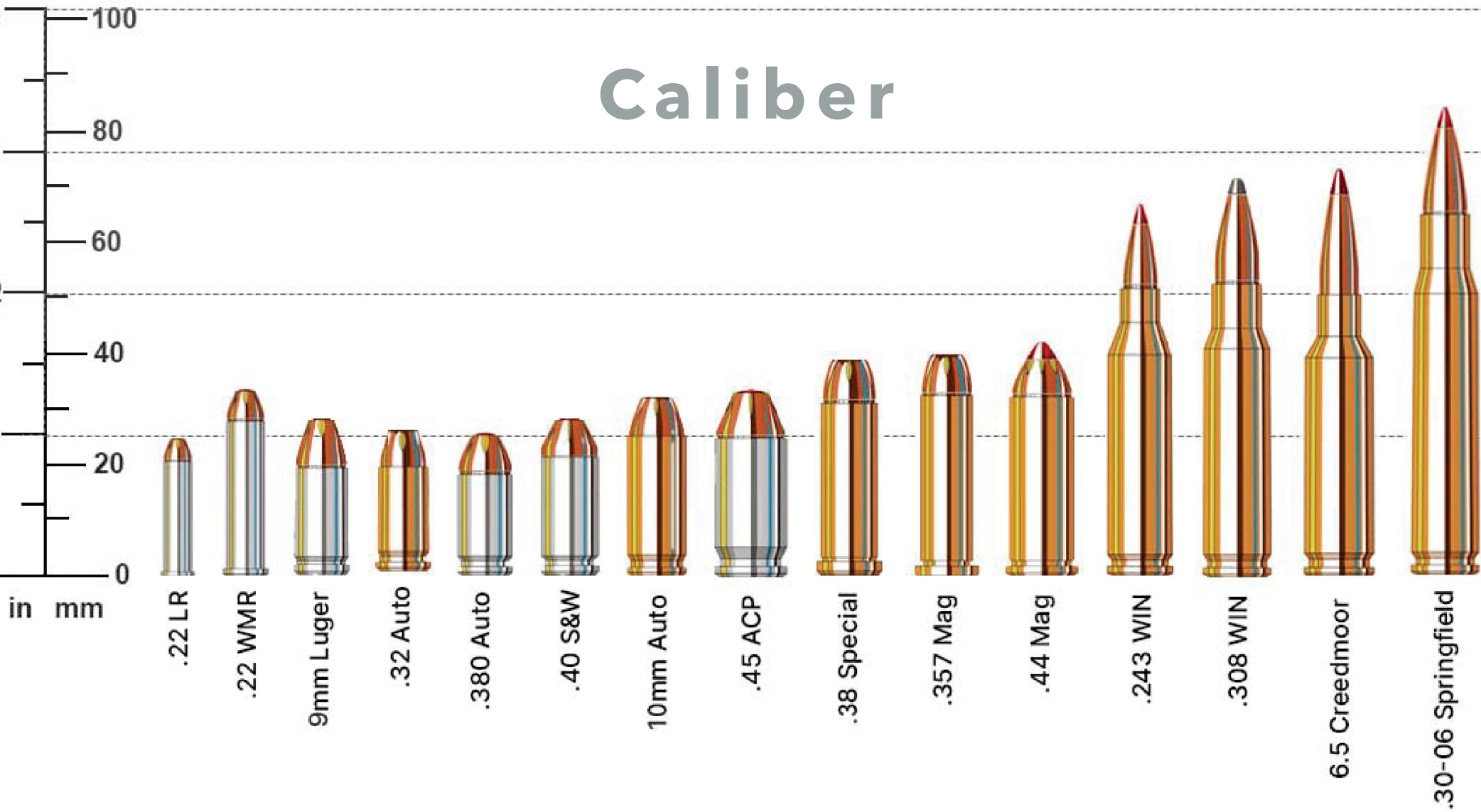


Rimfire Cartridges

- Primer Material is inside the rim. (See the green?)
- Ignition is caused by striking the rim.

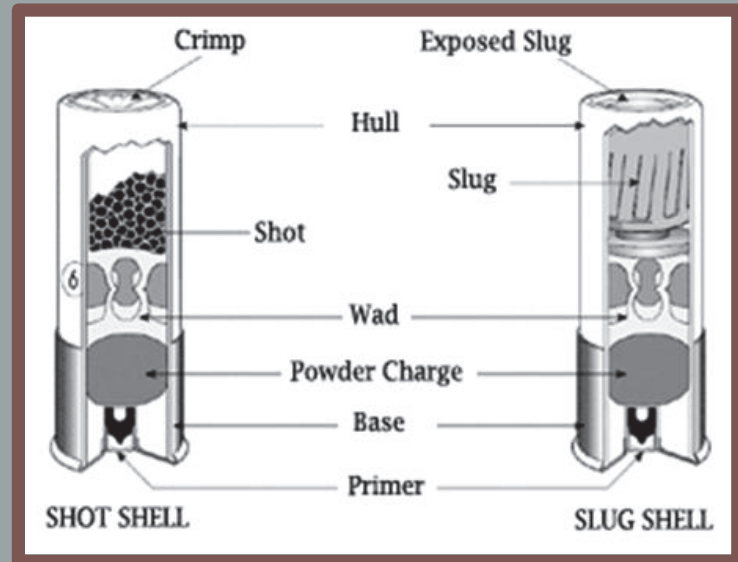


Caliber



Shotgun Cartridges

Typically made of a **metal base** and a **plastic hull** filled with multiple projectile **shot** or single projectile **slugs**.



Shotgun Loads



The government gets
armor piercing ammunition
wrong.

The term **“armor piercing ammunition”** means – (i) projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of **tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium**; or (ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

18 USC § 921(a)(17)(B)

What you need to know about armor piercing ammunition

- Tip color
- Military market versus civilian market
- Specific exemptions



What you need to know about armor piercing ammunition

- Tip color
- Military market versus civilian market
- Specific exemptions



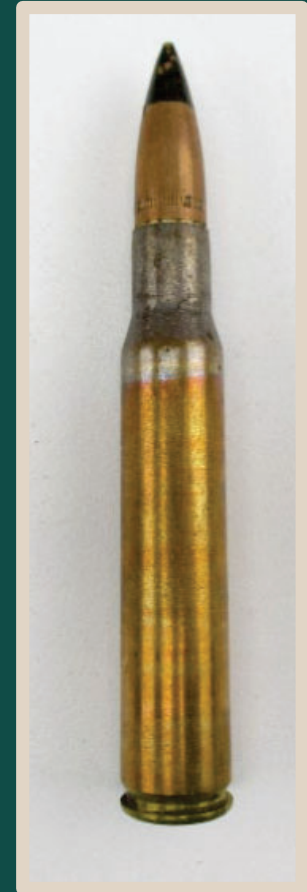
What you need to know about armor piercing ammunition

- Tip color
- Military market versus civilian market
- Specific exemptions



5.56 mm (.233) SS 109 & M855

US .30-06 M2AP



Firearms



The term **"firearm"** means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.

Such term does not include an antique firearm.

18 USC § 921(a)(3)

Antique Firearms are Not “Firearms”

Qualifying as an “Antique Firearm”

1. Any firearm manufactured in or before 1898 – including firearms with primitive ignition systems (e.g., flintlock, matchlock, percussion cap)
2. Any replica of the above if either (a) not designed or redesigned for rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and not ordinarily available in commercial trade
3. Muzzleloading firearms designed to use black powder that cannot accept fixed ammunition

"Primitive Ignition Systems"



Examples of Antique Firearms



Colt Single Action Army (c. 1873)



Colt Navy Revolver (c. 1851)

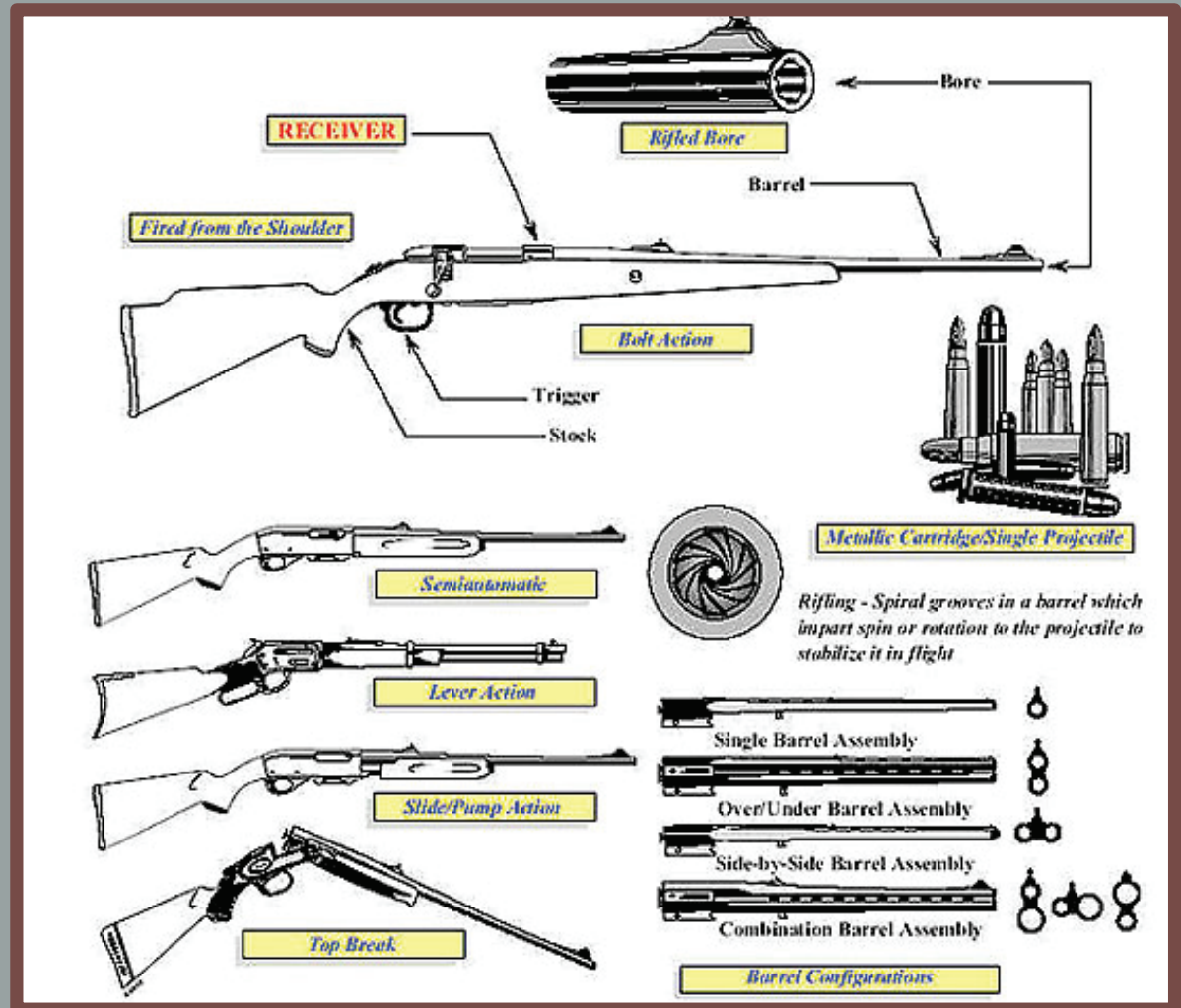


Identifying Different Types of Firearms

Rifles

18 U.S.C. § 921(a)(7)

- Designed, made, or intended **to be fired from the shoulder**
- Fires single projectiles through a **rifled bore** for each single pull of the trigger



Rifles

18 U.S.C. § 921(a)(7)

- Designed, made, or intended **to be fired from the shoulder**
- Fires single projectiles through a **rifled bore** for each single pull of the trigger



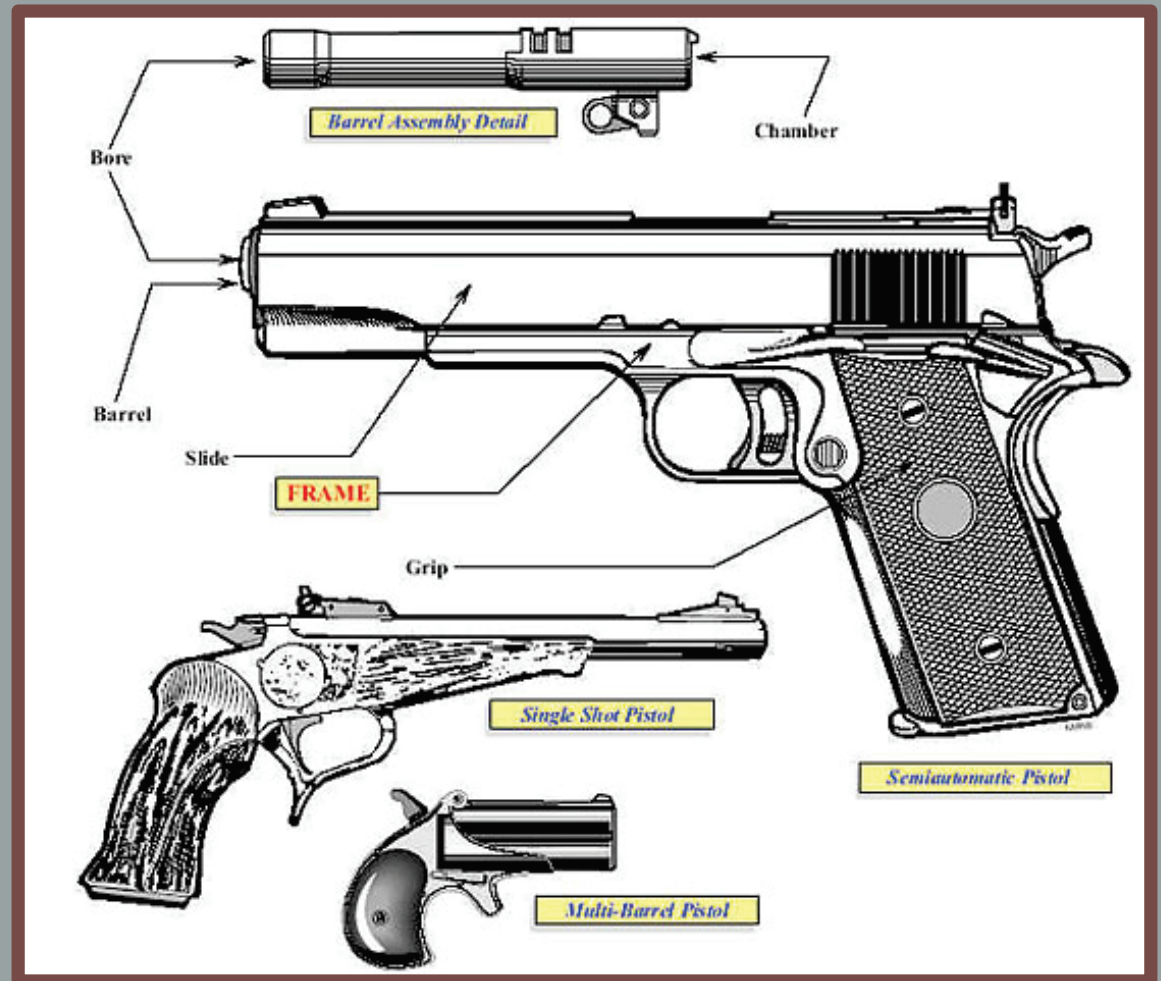
Remington 700 ↑

AR15 ↓



Pistols

- Designed, made, or intended to fire a bullet **when held in one hand**
- Pistols have:
 - A **chamber** as an integral part of or permanently aligned with the bore; and
 - A short stock designed to be gripped by one hand at an angle to and extended below the line of the bore(s)



Pistols

18 U.S.C. § 921(a)(29)

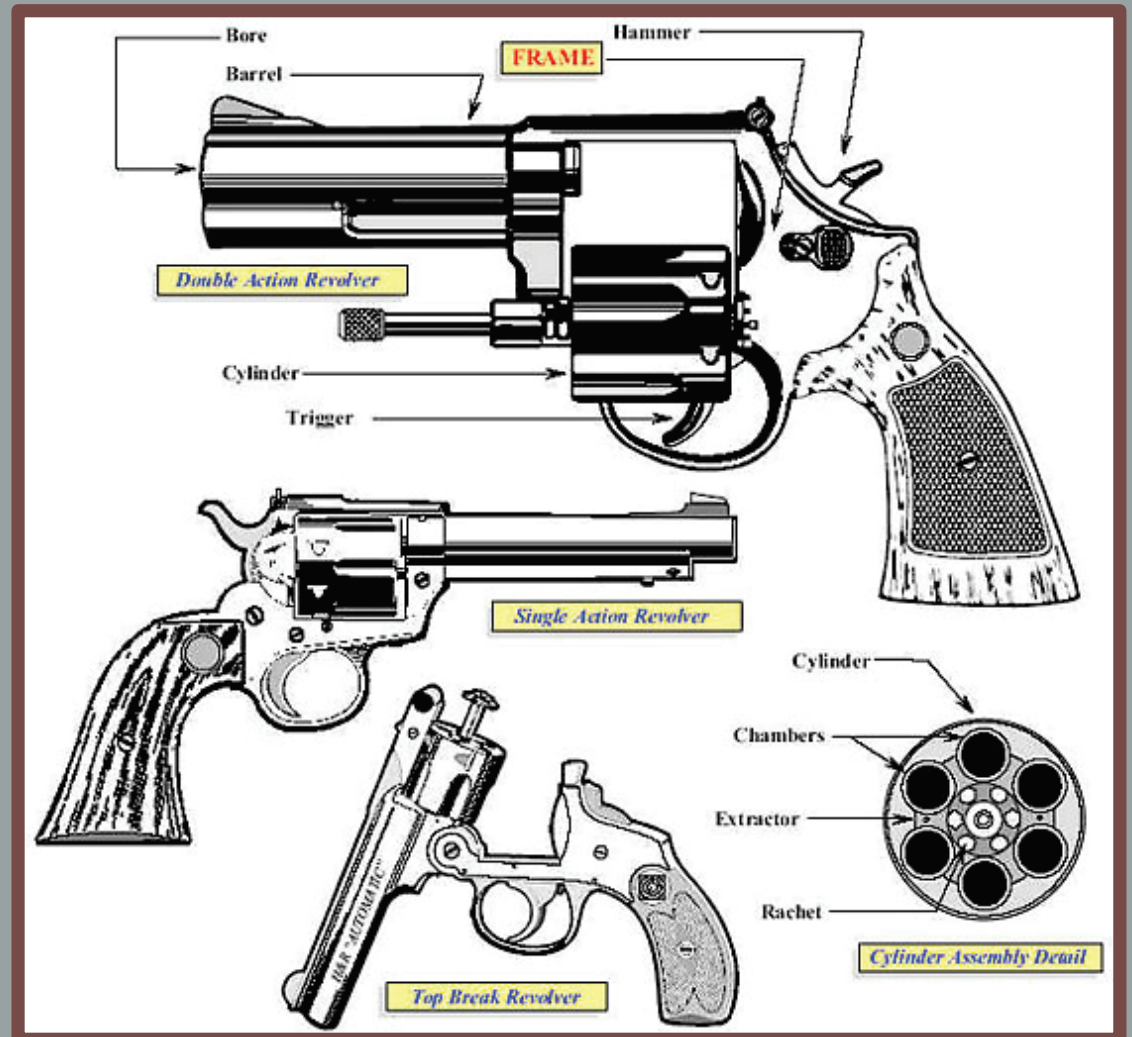
- Designed, made, or intended to fire a bullet **when held in one hand**
- Has:
 - A **chamber** as an integral part of or permanently aligned with the bore; and
 - A short stock designed to be gripped by one hand at an angle to and extended below the line of the bore(s)



...also pistols

Revolvers

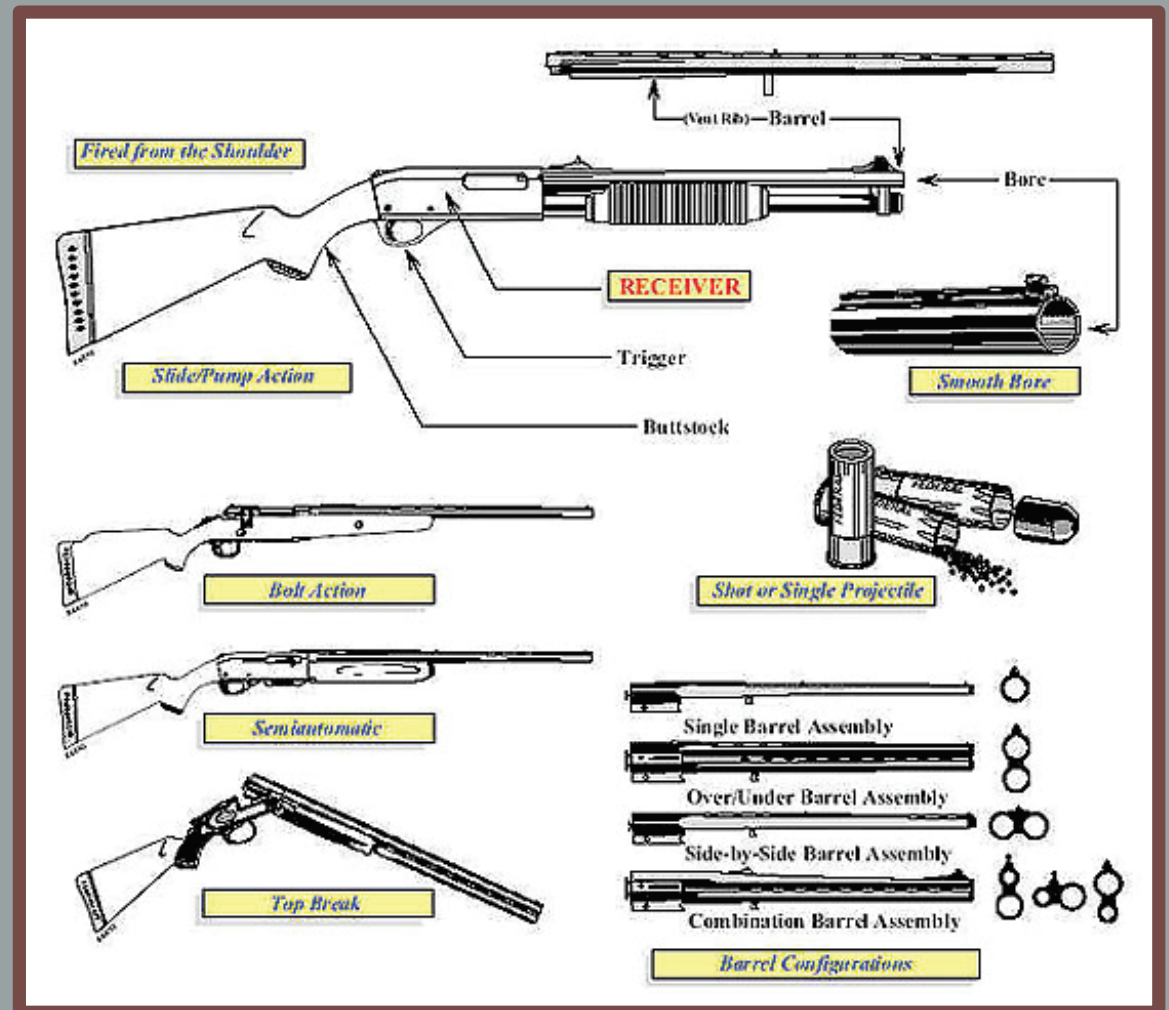
- A projectile weapon of the pistol type that has a **breech loading chambered cylinder**
- Designed so that cocking of the hammer or movement of the trigger **rotates** chamber and brings the next cartridge in line with the barrel for firing



Shotguns

18 U.S.C. § 921(a)(5)

- Designed, made, or intended **to be fired from the shoulder**
- Fires a single shotgun shell filled with shot or single projectile through a **smooth bore** with each pull of the trigger



Shotguns

18 U.S.C. § 921(a)(5)

- Designed, made, or intended **to be fired from the shoulder**
- Fires a single shotgun shell filled with shot or single projectile through a **smooth bore** with each pull of the trigger



Remington 870 ↑

IWI Tavor Semi-Auto Shotgun ↓



Magazines



Magazines

Clips **load** magazines.

Clip ↓



Magazine ↑

Magazines

Clips **load** magazines.



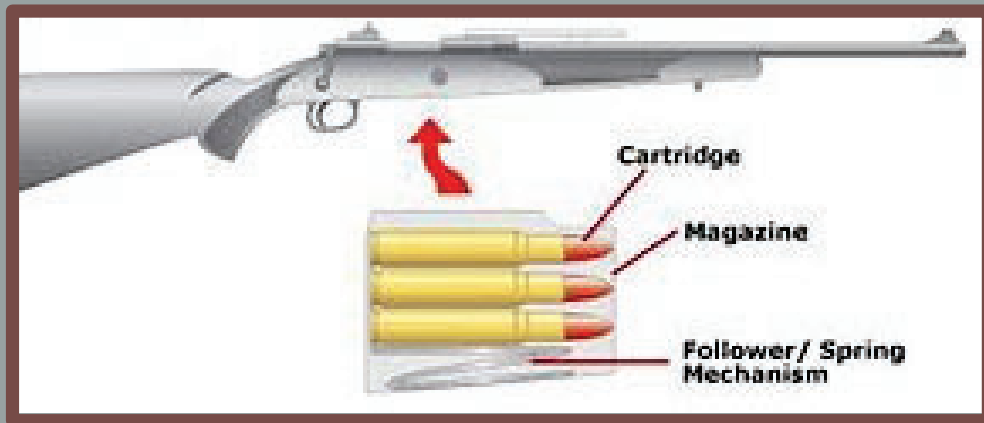
Reloading removable AR15 magazine ↑

Reloading integral Rifle magazine ↓

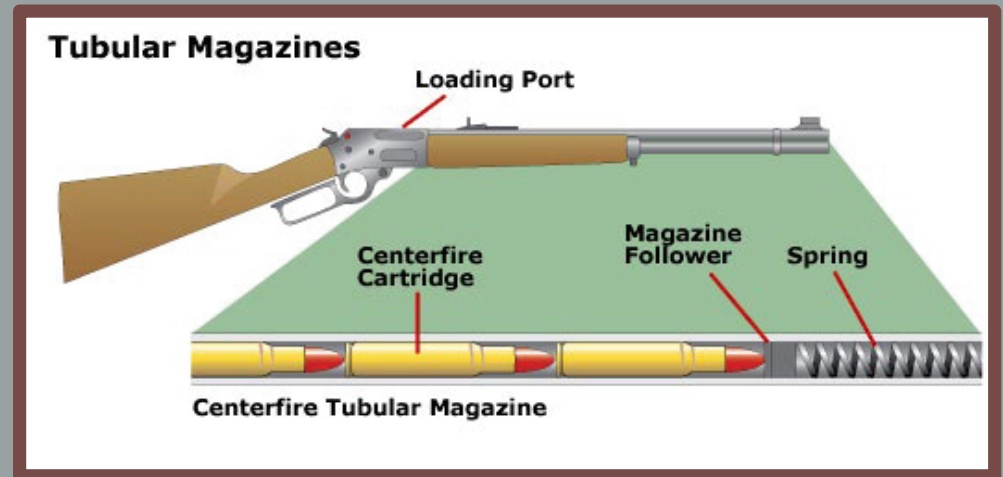


Magazines

In **box magazines** the cartridges are stacked.



In **tubular magazine** the cartridges are in a line.



The government gets
large capacity magazines
wrong.



2K2.1 application note 2

"large capacity magazines" can accept
more than 15 rounds of ammunition

Extended Magazines are not the same as Large Capacity Magazines

No agreed-upon definition of “**extended**”

- Not flush w/ bottom of pistol grip?
- Attached w/ an extension device?
- Longer than “normal”?



Extended Magazines are not the same as Large Capacity Magazines



TAURUS 709 SLIM 9MM 10RD BLUE STEEL PROMAG

~~\$30.99~~ **\$21.59** [+ add to wishlist](#)

Manufacturer: PROMAG	Finish: Blued
Model: 709	Material: STEEL
Caliber: 9MM	SKU: PROTAU22
Capacity: 10	UPC: 708279012754

- 1 + [ADD TO CART](#)

IN STOCK
Only 8 left

Share: [f](#) [t](#)

Kisor challenges?

“Large capacity magazine” is ambiguous. But Note 2 is not entitled to deference because its definition of “large capacity magazine” is not reasonable. **Many firearms are manufactured with standard magazines capable of accepting more than 15 rounds**

Glock G17 Series (17 rounds)
Glock G34 Series (17 rounds)
Glock G47 Series (17 rounds)
S&W M&P 2.0 Full Size Series (17 rounds)
S&W SD 2.0 Series (16 rounds)
S&W M&P 5.7 Series (22 rounds)
S&W M&P 22 Magnum Series (30 rounds)
S&W M&P 15-22 Series rifle (25 rounds)
S&W M&P FPC Series rifle (17; 23 rounds)
S&W M&P 10 Series rifle (20 rounds)

S&W M&P 15 Volunteer Series rifle (30 rounds)
Sig Sauer P395-XMACRO X-Series (17 rounds)
Sig Sauer P226-XFIVE Legion (20 rounds)
Sig Sauer P365-XMACRO (17 rounds)
Sig Sauer P320 AXG Carry (17 rounds)
Sig Sauer P320-AXG Legion (21 rounds)
Sig Sauer P322 (20 rounds)
Sig Sauer P320 Spectre Comp (21 rounds)
Colt M4A1 Carbine Socom 5.56 MM (30 rounds)
Colt M4 Carbine (30 rounds)

Things that are NOT semiautomatic firearms capable of accepting large capacity magazines

2K2.1 Application Note 2:

"This definition does not include a semiautomatic firearm with an attached **tubular device** capable of operating only with .22 caliber **rim fire** ammunition."

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What is the NFA?

Deconstructing the National Firearms Act of 1934 and understanding what gun (and gun parts) require registration for lawful ownership



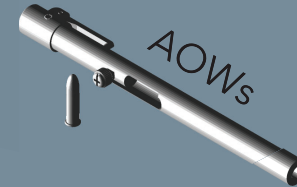
short-barreled rifles



short-barreled shotguns



silencers



AOWs



machine guns

02.

What is the NFA?

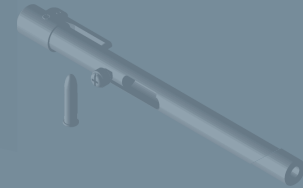
Deconstructing the National Firearms Act of 1934 and understanding what gun (and gun parts) require registration for lawful ownership

Requirements under the NFA

- Obtain approval from the ATF
 - Fingerprints
 - Photograph
- Register the Firearm
- Pay the tax



Short-Barreled Rifles



A **rifle** having one or more **barrels less than 16 inches** in length AND any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an **overall length of less than 26 inches**

18 U.S.C. § 921(a)(8)



Pistol Braces

Introduced by Sig Sauer for disabled shooters and ATF ruled that they did **not** change the classification of a pistol

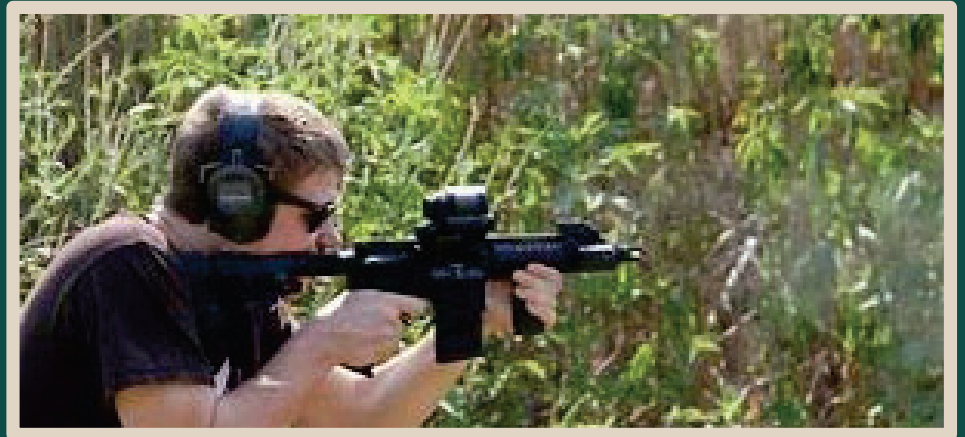
Users discovered they allow a pistol to be shoulder-mounted (like a rifle)



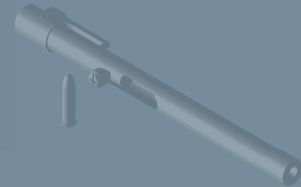
Pistol Braces

But! ATF final Rule 2021R-08F made stabilizing braces **illegal**

- Effective 5/31/2023
- Britto v. ATF (N. District of TX. 2:23-cv-00019) provides a national injunction on 11/8/23.



Short-Barreled Shotguns



A **shotgun** having one or more **barrels less than 18 inches** in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon, as modified, has an **overall length of less than 26 inches**

18 U.S.C. § 921(a)(6)



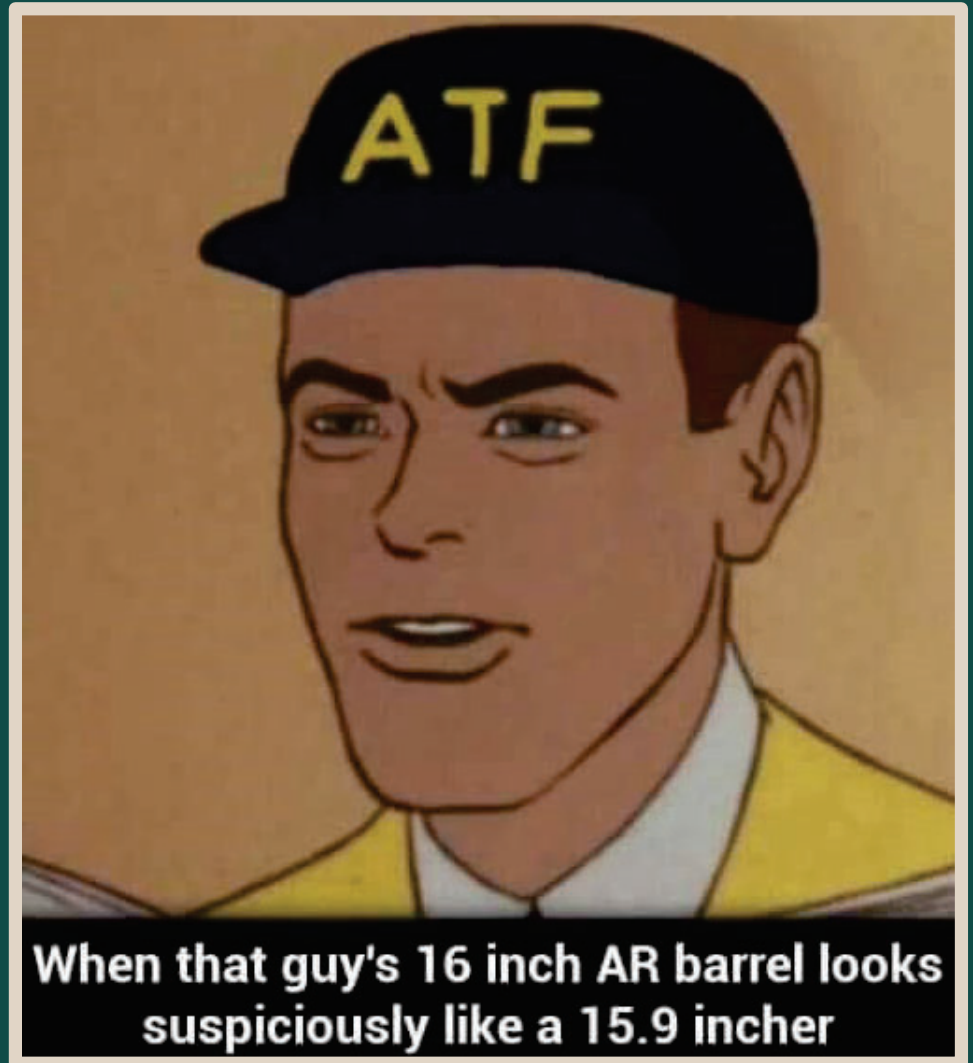
The government measures
barrel length
wrong.

Barrel Length

Proper barrel measurements are **taken from the inside** of the barrel using a dowel or cleaning rod

Barrel length = the breech face (with the action closed on an empty chamber) **to the muzzle**

ATF National Firearms Act
Handbook, Ch. 2



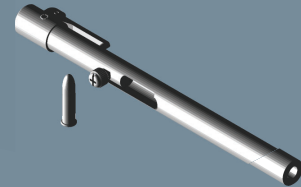
Barrel Length

Muzzle devices (e.g., flash hiders) can only be counted toward barrel length if they are **permanently attached** to the barrel.

ATF National Firearms Act Handbook, Ch. 2



Any Other Weapons



-
- 1) Any weapon or device **capable of being concealed** on the person from which a shot can be discharged through energy of an explosive;
 - 2) Pistol or revolver with a smooth bore (re)designed to fire a **fixed shotgun shell**
 - 3) Weapons with shotgun/rifle barrels 12-18 inches that fire a **single discharge** from either barrel **without manual reloading**

Does not include pistols/revolvers with rifled bore or intended to be fired from the shoulder not capable of firing fixed ammunition

26 U.S. Code § 5845(e)

Models: 1, 2 & 3 (Types I, II & III)
 (also 141, 128 & 625 Canadian)
 Caliber/Gauge: .410 or .28 Ga.
 Barrel Lengths: 8-, 12.25- & 18-inches
NOTE: Available w/Shoulder Stock

H & R Handy Guns

Ithaca Auto-Burglar Guns

Models: A (Flues) & B (N.I.D.)
 (also as Model 1908 & 1926)
 Caliber/Gauge: .20 Ga. (2.5" & 2.75")
 (Also available 16, 20, 28 & .410)
 Barrel Lengths: 10- to 10.25-inches
NOTE: Also Available w/12-inch Barrels

Marble Game Getters

Models: 1908A, 1908B and 1921
 Calibers: .22/.44 or .22/.410
 (also .25-20, 32-20, 32-40 etc.)
 Barrel Lengths: 12-, 15- & 18-inches
NOTE: NFA Exempt w/18" Barrel & Shoulder Stock

Examples of "ANY OTHER WEAPON" include:

Wallet Guns

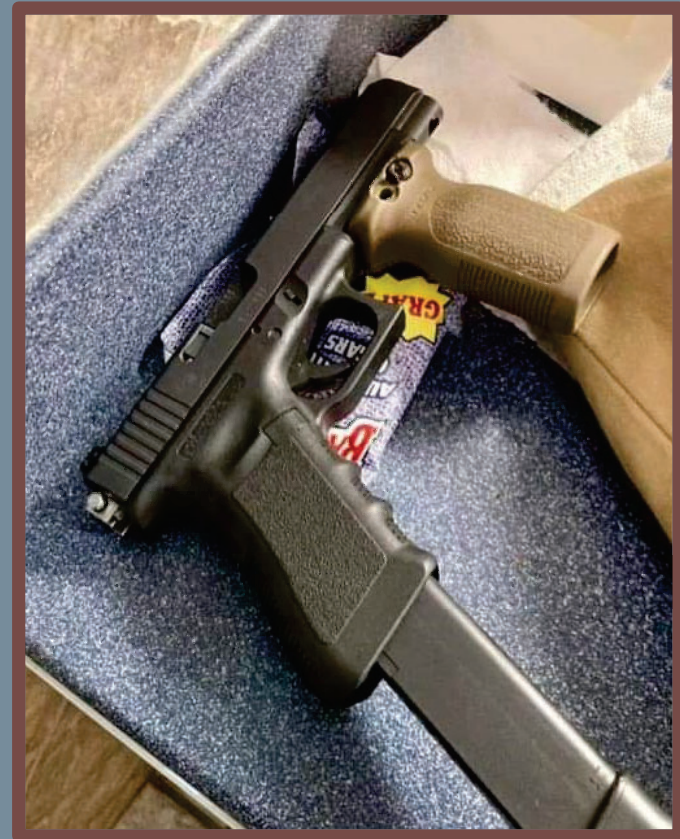
NOTE: The Firearm without the specially designed Wallet is not a Prohibited Weapon

Cane Guns

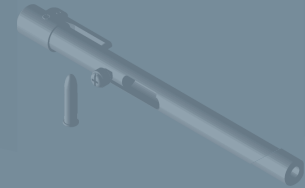
Knife Guns

Pen Guns

The addition of a **vertical grip** to a pistol creates an illegal AOW



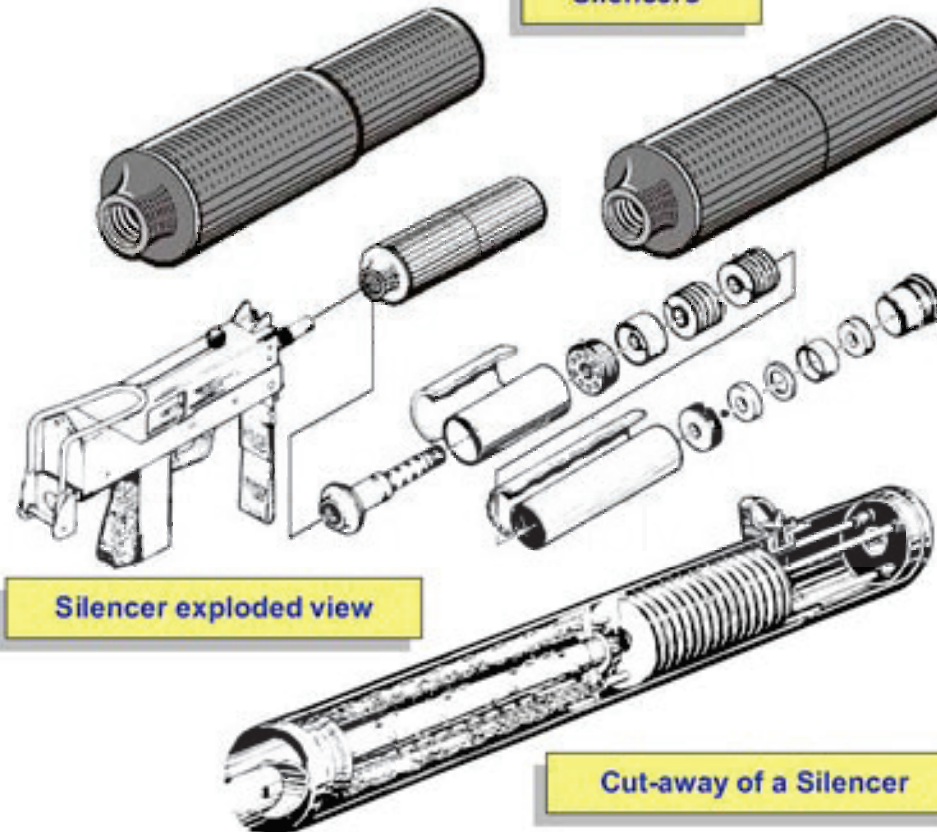
Silencers



Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication

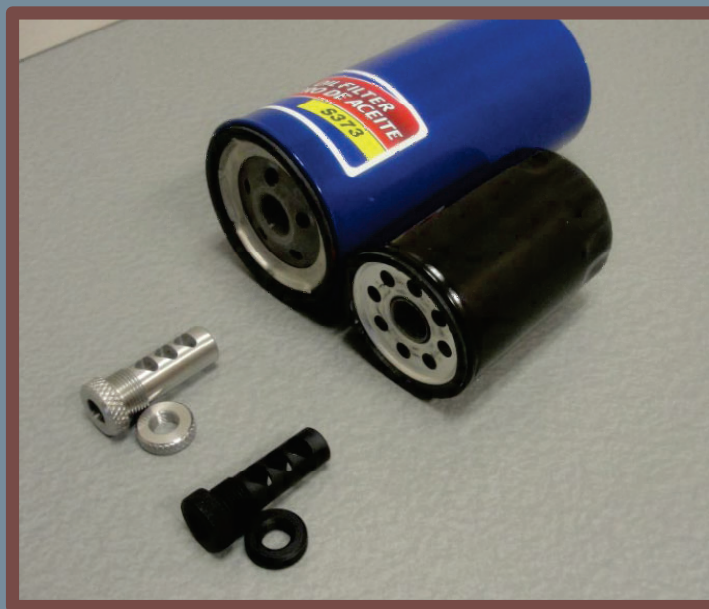
18 U.S.C. § 921(a)(25)

Silencers

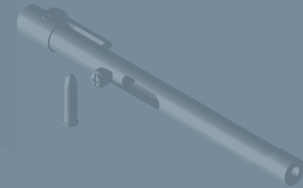


Silencer exploded view

Cut-away of a Silencer



"Fully Automatic" Machine Guns



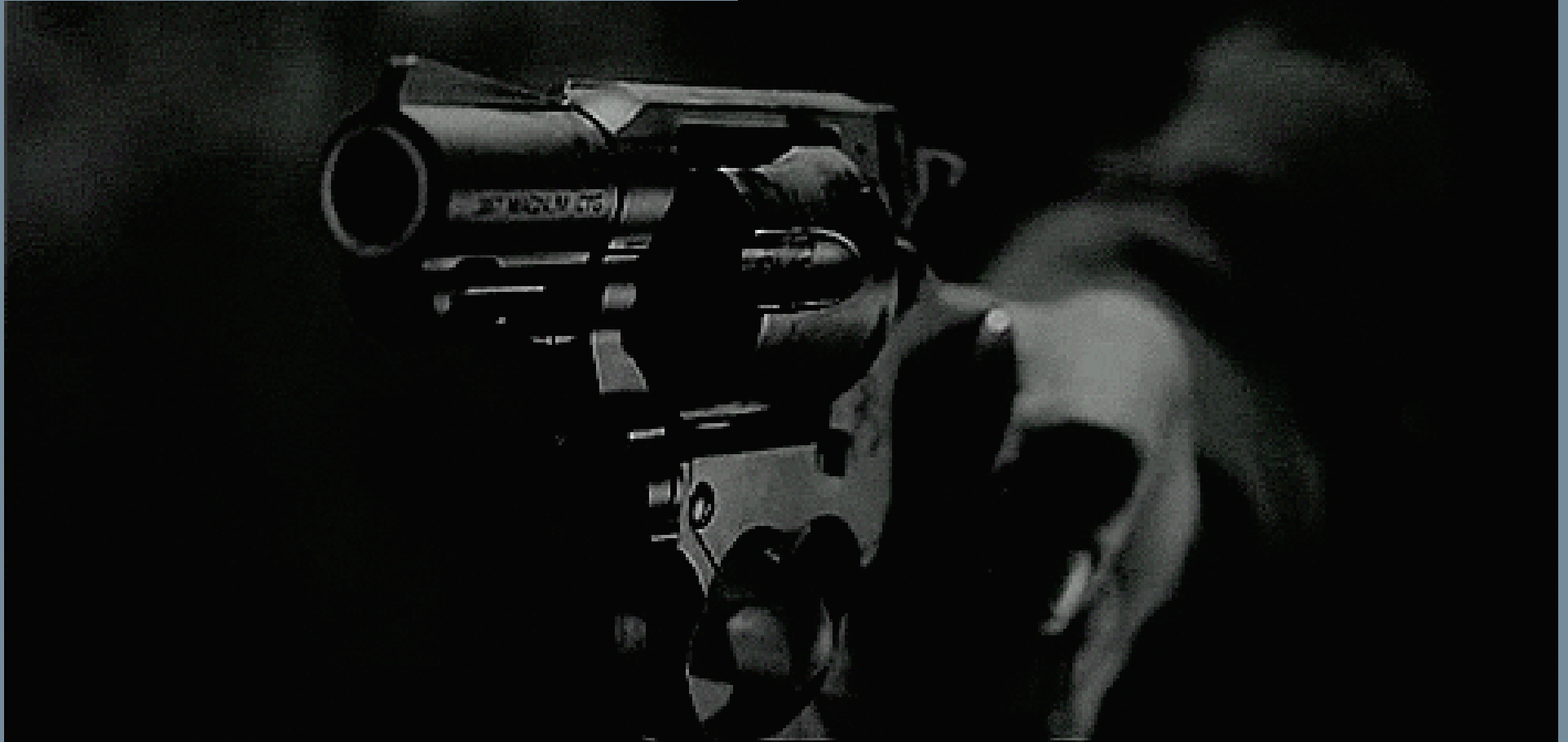
Understanding Action Types

Firearm **action** = the mechanism that handles the ammunition (loads, locks, fires, extracts, and ejects)

- Manually operated actions
- Semi-automatic actions
- Automatic actions



Manually-operated revolvers





Manually-operated bolt action



Manually-operated lever action

Manually-operated pump action



MakeAGIF.com

...also manually operated



Semi-automatic action



After firing, the action unlocks, extracts, ejects, and loads the next round without any manual manipulation.

The trigger must reset to fire the next round.



Automatic action

The gun will fire continuously if the trigger is pressed and held.

A “**machine gun**” is any weapon that shoots, or is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading by single function of the trigger

26 U.S.C. § 5845(b)



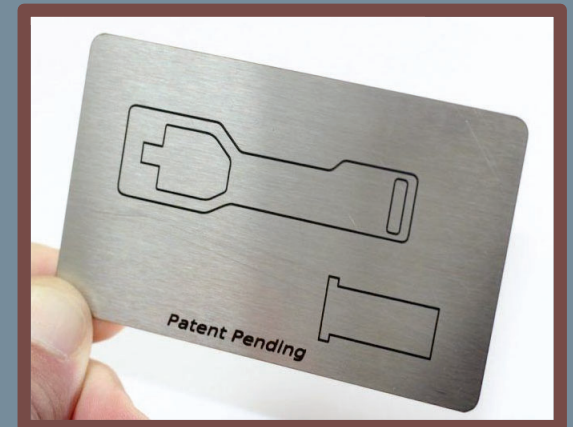
But also includes

- The frame or receiver of any such weapon
- Any part designed and intended solely and exclusively for use in converting a weapon into a machinegun
- Any combination of parts from which a machinegun can be assembled if in the possession or under the control of a person



"Glock" switch ↑

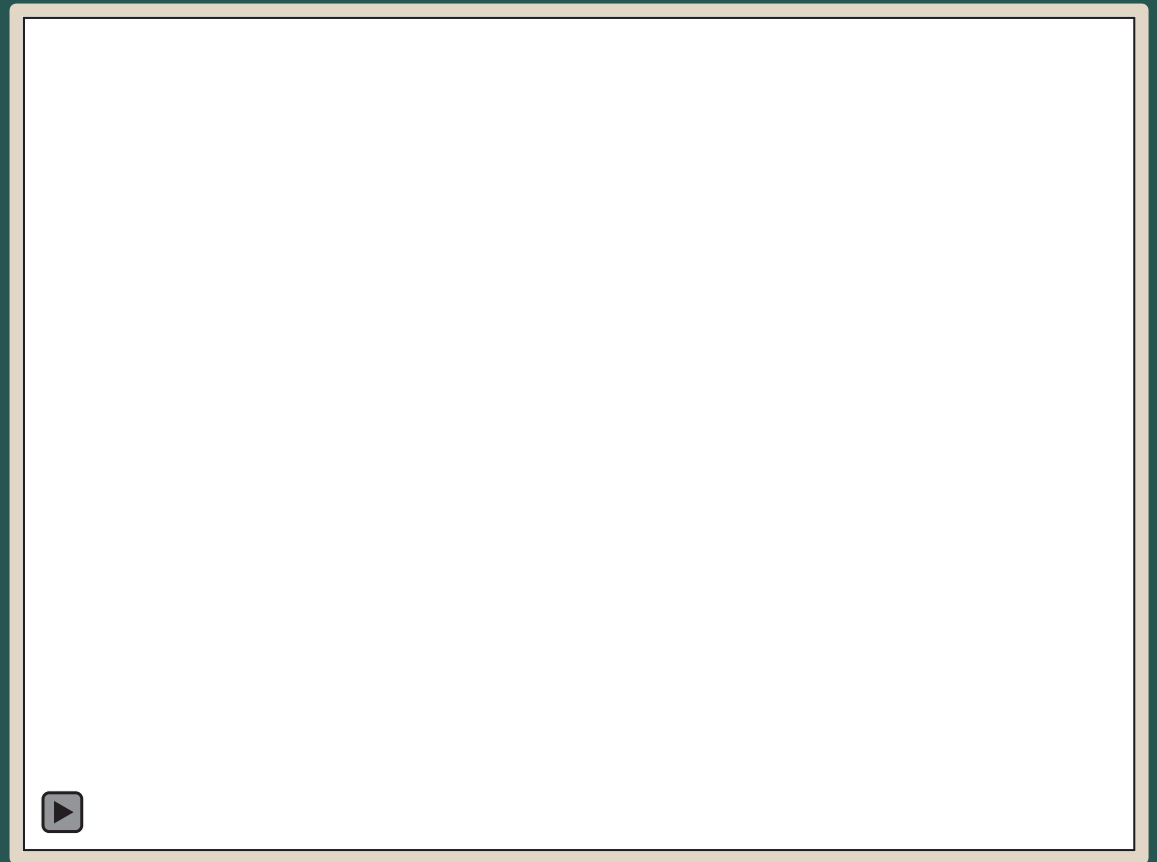
Auto Key Card ↓



The definition of
"fully automatic" machine gun
is changing.

Bump Stocks

Bump firing – verb - the act of using the recoil of a semi-automatic weapon to fire ammunition in rapid succession



Bump Stocks

Assist in rapid fire by
“bumping” the trigger
against a person’s finger

Under the Trump
presidency ATF redefined
these as machine guns,
and they are now illegal to
possess.



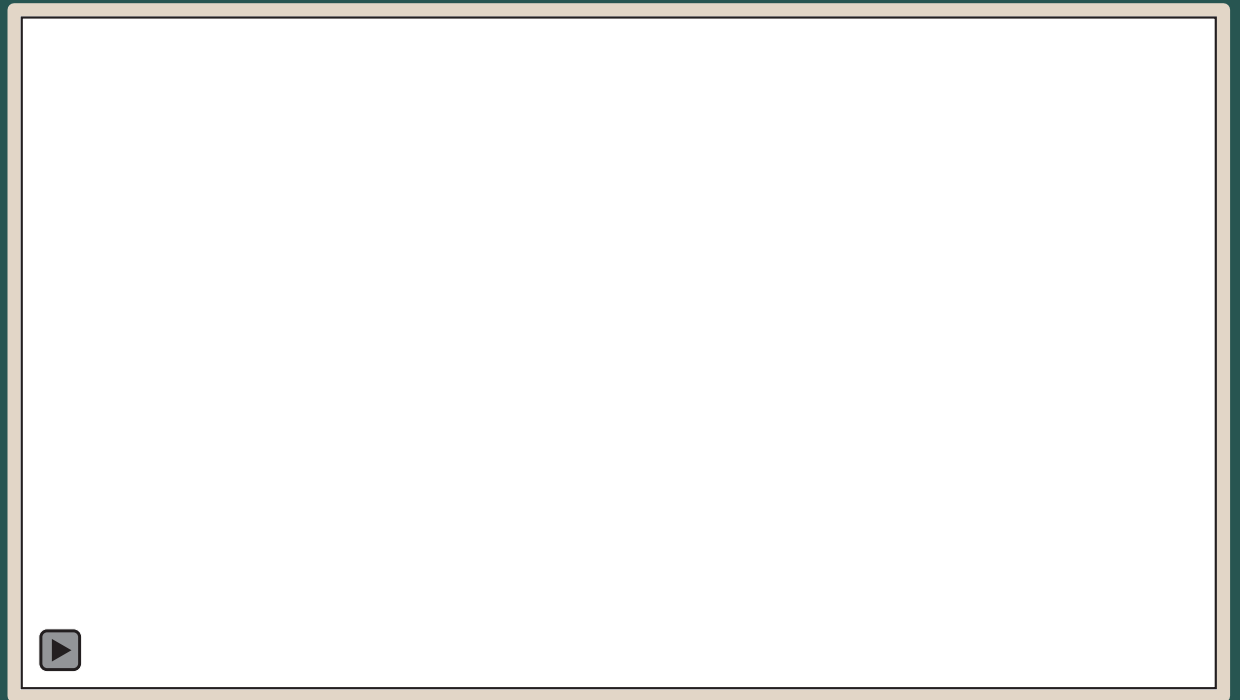
Garland v. Cargill pending before the Supreme Court for the 2023-24 term



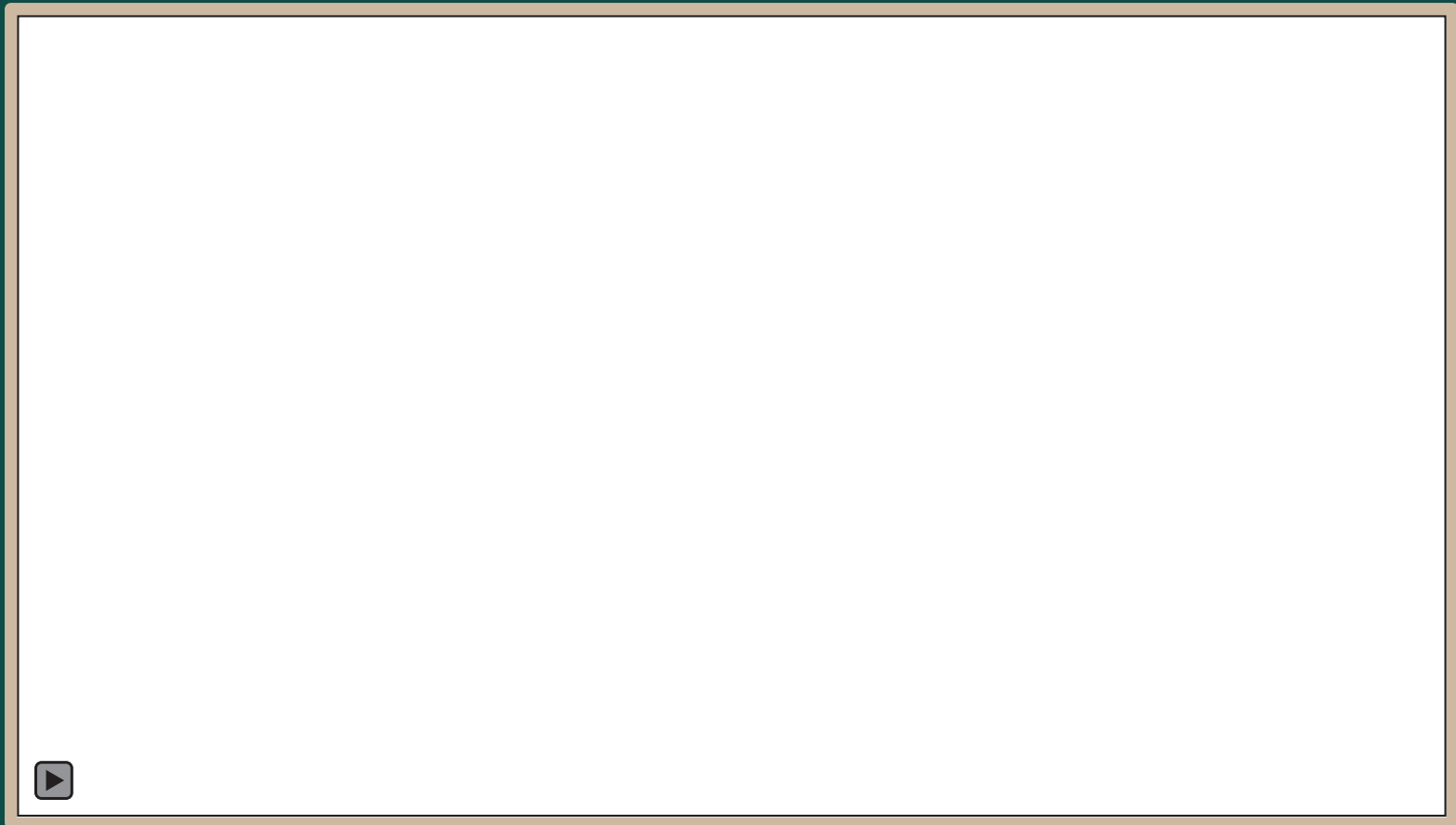
Binary Triggers

Allows a weapon to fire one round when the trigger is pulled and another when the trigger is released

Still legal under the NFA



Rare Breed FRT (forced reset trigger)



Watch this space!

BUMP STOCKS

- **Garland v. Cargill** (SCOTUS)

FORCED RESET TRIGGERS

- **United States v. Rare Breed Triggers** (E.D.N.Y.)

BRACES

- **FRAC v. Garland** (N.D. Tex.)
- **Texas v. ATF** (S.D. Tex.)
- **Mock v. Garland** (N.D. Tex.)
- **Colon v. ATF** (M.D. Fla.)
- **Second Amendment Foundation v. ATF** (N.D. Tex.)
- **Britto v. ATF** (N.D. Tex.)
- **Watterson v. ATF** (E.D. Tex.)

Things that are **not** NFA Firearms:

- 14-inch barrel, not remade from a "shotgun"
- No shoulder stock = neither a "shotgun" or a "short-barreled shotgun"
- Not designed to be fired with one hand = not a pistol
- Overall length greater than 26 inches



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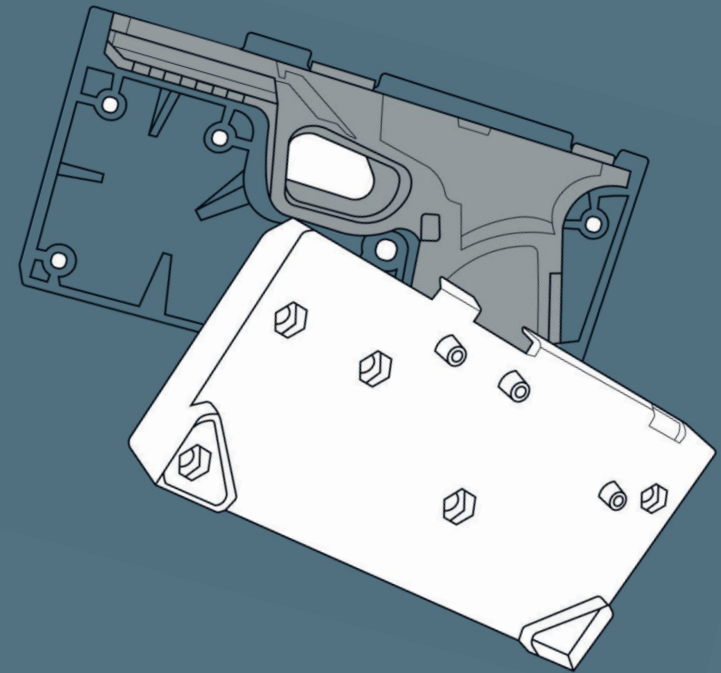
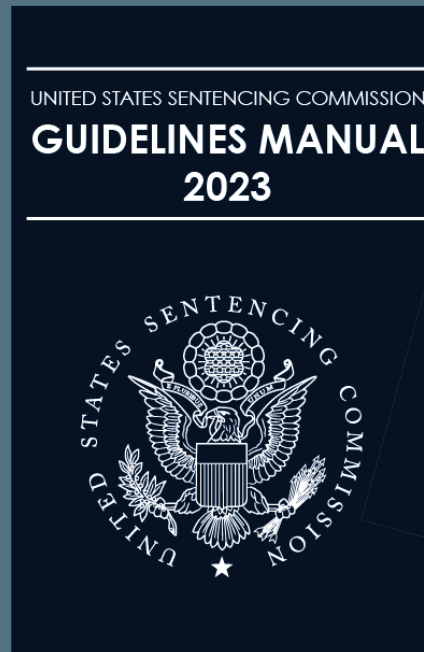
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What is 2K2.1?

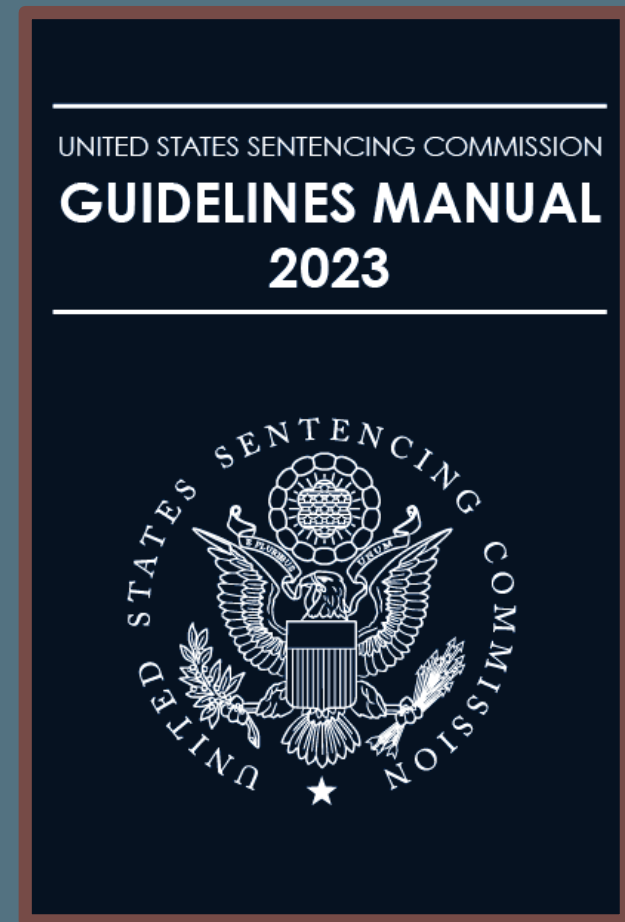
Analyzing changes from the November 2023 Guideline Amendments

§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition



2K2.1 Guideline Amendments

1. Expanded conduct for heightened base offense levels at (a)(4) and (a)(6)
2. New 2K2.1(b)(5) straw purchasing enhancements
3. Expanded conduct for upward departure at App. Note 13
4. New enhancement for use of unserialized ("ghost") guns



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(4) **20**, if—

- (A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or
- (B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. § 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (III) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

- (6) **14**, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; (B) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (C) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

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(5) ~~If the defendant engaged in the trafficking of firearms, increase by 4 levels.~~ (Apply the Greatest) If the defendant—

(A) was convicted under 18 U.S.C. § 933(a)(2) or (a)(3), increase by 2 levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received a firearm or any ammunition as a result of inducing the conduct described in clause (i), increase by 2 levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice

2K2.1 Guideline Amendments

1. Expanded conduct for heightened base offense levels at (a)(4) and (a)(6)
2. New 2K2.1(b)(5) straw purchasing enhancements
3. Expanded conduct for upward departure at App. Note 13
4. New enhancement for use of unserialized ("ghost") guns

Provided, however, that subsection (b)(5)(C)(i)(I) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual met the criteria set forth in the proviso of 18 U.S.C. § 921(a)(33)(C).

2K2.1 Guideline Amendments

1. Expanded conduct for heightened base offense levels at (a)(4) and (a)(6)
2. New 2K2.1(b)(5) straw purchasing enhancements
3. Expanded conduct for upward departure at App. Note 13
4. New enhancement for use of unserialized ("ghost") guns

(8) If the defendant—

(A) receives an enhancement under subsection (b)(5); and

(B) committed the offense in connection with the defendant's participation in a group, club, organization, or association of five or more persons, knowing or acting with willful blindness or conscious avoidance of knowledge that the group, club, organization, or association had as one of its primary purposes the commission of criminal offenses;

increase by **2** levels.

2K2.1 Guideline Amendments

1. Expanded conduct for heightened base offense levels at (a)(4) and (a)(6)
2. New 2K2.1(b)(5) straw purchasing enhancements
3. Expanded conduct for upward departure at App. Note 13
4. New enhancement for use of unserialized ("ghost") guns

(9) If the defendant—

(A) receives an enhancement under subsection (b)(5);

(B) does not have more than 1 criminal history point, as determined under §4A1.1 (Criminal History Category) and §4A1.2 (Definitions and Instructions for Computing Criminal History), read together, before application of subsection (b) of §4A1.3 (Departures Based on Inadequacy of Criminal History Category); and

(C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense; or (ii) was unusually vulnerable to being persuaded or induced to commit the offense due to a physical or mental condition;

decrease by 2 levels.

2K2.1 Guideline Amendments

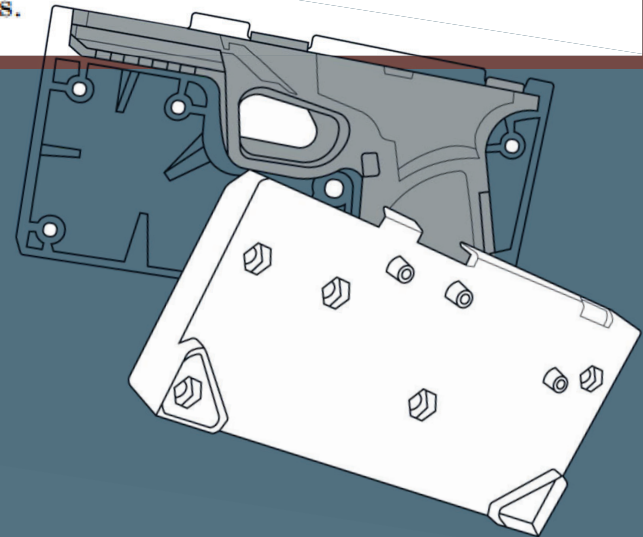
1. Expanded conduct for heightened base offense at (a)(4) and (a)(5)
2. New 2K2.1(b)(5) purchasing enhancements
3. Expanded conduct for upward departure at App. Note 13
4. New enhancement for use of unserialized ("ghost") guns

(CB) Upward Departure Provision.—If the defendant trafficked, transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, substantially more than 25 firearms, an upward departure may be warranted.

2K2.1 Guideline Amendments

1. Expanded conduct for use of a firearm with a heightened base offense level at (a)(4) and (a)(6)
2. New 2K2.1(b)(5) strategy for purchasing enhancements
3. Expanded conduct for upward departure at App. Note 13
4. New enhancement for use of unserialized ("ghost") guns

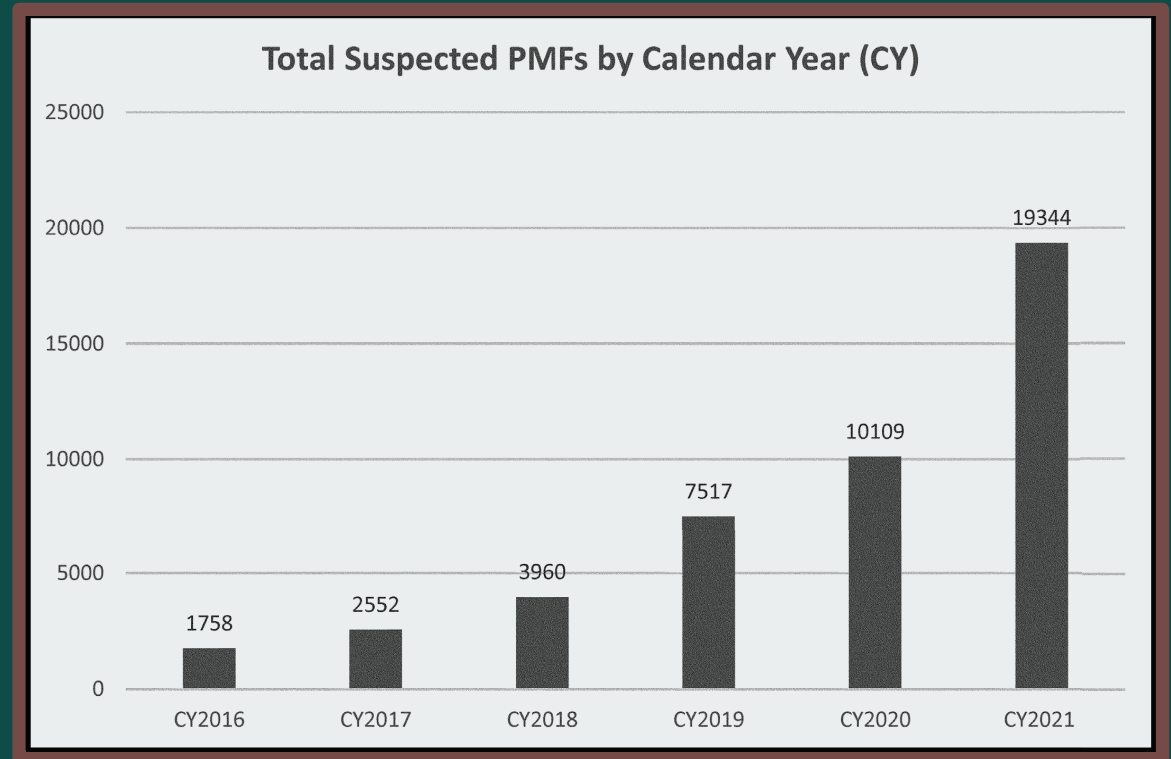
(4) If (A) any firearm ~~(A)~~ was stolen, increase by 2 levels; or (B)(i) any firearm had an altered or obliterated serial number; or (ii) the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by 4 levels.



Ghost Guns

a/k/a “unserialized guns”
“PMFs” “SMUFs” (does not
include firearms made prior
to October 1968)

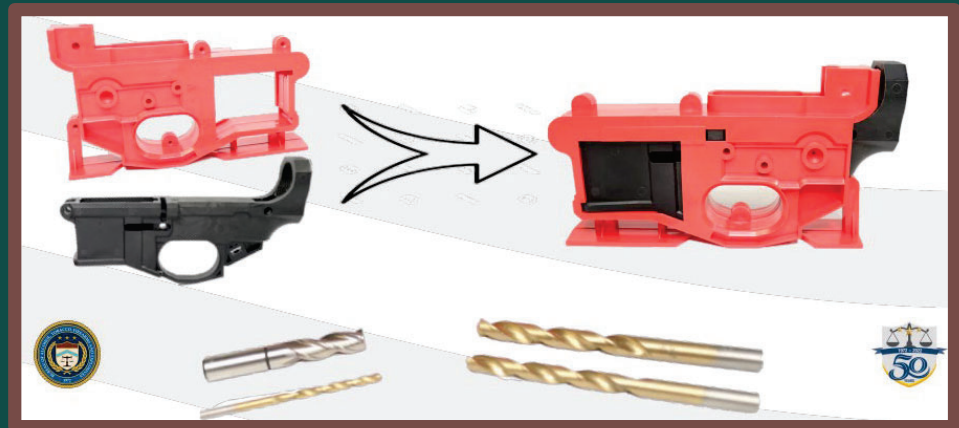
Substantial increase in PMFs
recovered from crime
scenes → ATF final rule
2021R-05F changed
definition of “**frame or
receiver**” to include parts
kits



Ghost Guns

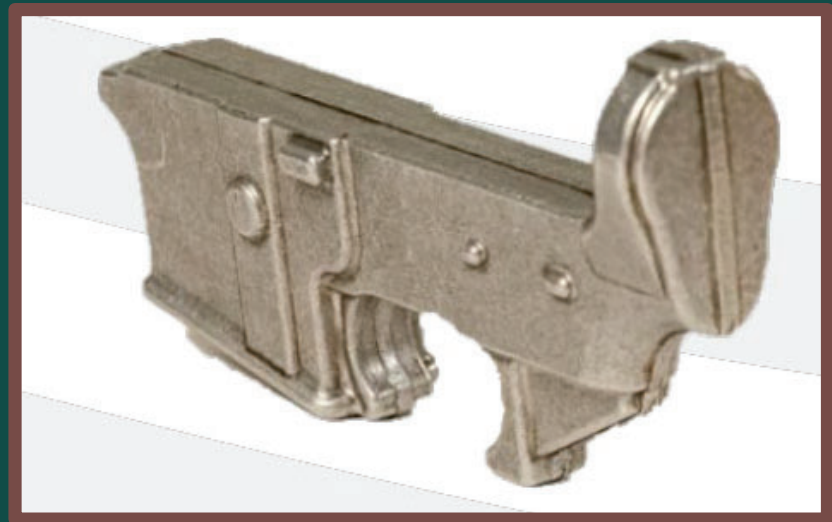
The new rule makes clear that the "frame" or "receiver" **includes a partially complete frame or receiver, including a parts kit** which now

- Requires a serial number
- Must be transferred through an FFL



now defined as frame/receiver ↑

still not a frame/receiver ↓



But, despite 2G2.1(b)(4),
ghost guns
are still legal to own.

PMFs are still legal.

- **Unfinished receiver blanks are not "firearms"** therefore not subject to any provisions of federal firearm law
- **People can legally manufacture a firearm for personal use** as long as they can legally own and possess a firearm
- **PMFs are not required to have serial numbers engraved in the receiver**



Watch this space!

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