PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-4065

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARKEL TREVON SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:24-cr-00065-REP-1)

Argued: March 20, 2026 Decided: August 25, 2026
Amended: August 25, 2026

Before GREGORY, AGEE, and BENJAMIN, Circuit Judges.

Affirmed in part, reversed in part, vacated, and remanded by published opinion. Judge Benjamin wrote the majority opinion, in which Judge Gregory joined. Judge Agee wrote an opinion concurring in part and dissenting in part.

ARGUED: Lauren Price Whitley, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia, for Appellant. James Reed Sawyers, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. **ON BRIEF:** Geremy C. Kamens, Federal Public Defender, Salvatore M. Mancina, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Erik S. Siebert, United States Attorney, Daniel J. Honold, Assistant United States Attorney, Ellen H. Theisen, Assistant United States Attorney, OFFICE OF THE

UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

DEANDREA GIST BENJAMIN, Circuit Judge:

After responding to a report of theft, police officers recovered multiple firearms from Markel Trevon Smith's vehicle, including a Glock Model 45, 9mm caliber pistol with a machinegun-conversion device. That firearm had three serial numbers, two of which had been modified such that only one digit of the seven-digit serial number was visible to the unaided eye. Smith was charged and pled guilty for the unlawful possession of a machinegun.

The district court calculated Smith's Sentencing Guidelines range, imposing, among other things, a four-level serial number enhancement pursuant to *U.S. Sentencing Guidelines Manual* § 2K2.1(b)(4)(B)(i) (2024). That section increases a defendant's total offense level "[i]f . . . any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." *Id*. Based on its Guidelines calculation, the district court sentenced Smith to 57 months' imprisonment.

Smith now appeals both his conviction and sentence, first arguing his conviction violated the Second Amendment and, alternatively, that the district court erred in applying the serial number enhancement because only two of the three serial numbers on Smith's firearm were modified.

We disagree that Smith's conviction violated the Second Amendment. But we agree with Smith that the district court erred by imposing the serial number enhancement. Accordingly, we affirm Smith's conviction, reverse the district court's application of the

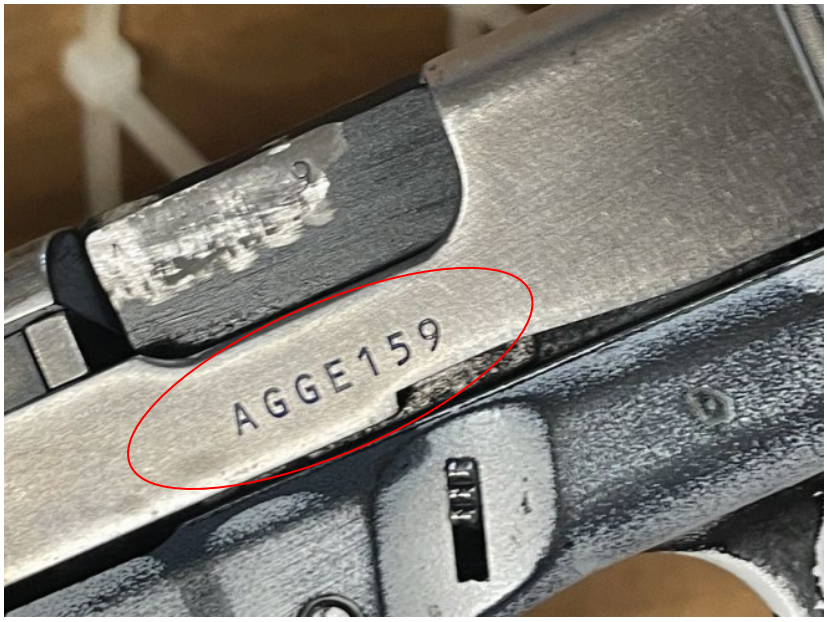
enhancement, vacate Smith's sentence, and remand for resentencing without the enhancement.

I.

A.

The Chesterfield County Police Department responded to a report of two individuals suspected of theft at a local Jiffy Mart. On arrival, the officers detained the two individuals, later identified as Smith and his codefendant, Trevor Rhodes. The officers searched the vehicle Smith and Rhodes drove to the Jiffy Mart and found four firearms, including a Glock Model 45 9mm caliber pistol.

The Glock bore a serial number in three locations; two of the serial number markings were modified, and one was unmodified. The unmodified serial number was located on the slide of the firearm and read "AGGE159."



J.A. 247.[1]

One of the modified serial numbers was located on the underside of the frame and had been scratched off such that only the final digit, a "9," remained legible.

J.A. 247.

The other modified serial number was located on the barrel chamber and had been scratched off such that only the first letter, an "A," and the final digit, a "9," remained legible.

[1] Citations to "J.A." refer to the joint appendix filed by the parties. The J.A. contains the record on appeal from the lower court. Page numbers for citations to the J.A. utilize the "J.A.#" numbering at the bottom of the page on each document.

J.A. 246.

The Glock also had a conversion device, colloquially referred to as a "switch," attached to it. A switch is designed to convert a weapon into a machinegun by allowing it to rapidly fire multiple rounds with one function of the trigger and therefore is considered a machinegun as defined by 26 U.S.C. § 5845(b).

B.

Based off his possession of the Glock, Smith was indicted for possession of a machinegun in violation of 18 U.S.C. § 922(o).[2]

Smith moved to dismiss his machinegun charge arguing that § 922(o) violated the Second Amendment to the United States Constitution. The district court denied his motion, holding that § 922(o) was constitutional. Smith then pled guilty without a plea agreement.

[2] Smith was also indicted for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(l), but that charge was voluntarily dismissed by the Government and is therefore not relevant for this appeal.

The United States Probation Office prepared a presentence report (PSR) to assist the district court at Smith's sentencing. In calculating Smith's offense level, the PSR applied, among other things, a serial number enhancement pursuant to USSG § 2K2.1(b)(4)(B)(i) (the "serial number enhancement"). That subsection provides for a four-level enhancement "[i]f . . . any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." § 2K2.1(b)(4)(B)(i). And according to the PSR, Smith's offense involved a firearm where some of the serial numbers on the firearm were modified. Combined with a criminal history category of III, Smith's Guidelines range was 57–71 months of imprisonment.

Smith objected to the serial number enhancement, arguing that the Glock was still traceable because only two of the three serial numbers on the firearm were modified. For support, Smith cited a 2024 amendment to the language of the serial number enhancement.[3] That amendment changed the enhancement language from applying to any firearm that "had an altered or obliterated serial number" to apply to any firearm that "had a serial number that was modified such that the original information is rendered illegible or

[3] The 2023 Guidelines were used to calculate Smith's Guidelines range. His sentencing, however, took place in January 2025 after the Sentencing Guidelines had been amended on November 1, 2024. Therefore, the 2024 Sentencing Guidelines applied to Smith's sentencing, unlike his codefendant Rhodes who had been sentenced earlier on and raised this same objection under the 2023 Guidelines. And importantly, that amendment was intended by the Sentencing Commission to resolve a split among our sister circuits "as to whether the serial number must be illegible for this enhancement to apply and as to what test for legibility should be employed" when interpreting "altered" and "obliterated." *See* USSG App. C, amend. 828 (effective Nov. 1, 2024). As discussed in detail below, the Sentencing Commission adopted the "naked eye" approach taken by the Second and Sixth Circuits and rejected the "less legible" approach taken by our circuit and others.

unrecognizable to the unaided eye." *Compare* USSG § 2K2.1(b)(4)(B)(i) (2023), *with* USSG § 2K2.1(b)(4)(B)(i) (2024). Smith argued this amendment was indicative of the Commission's intent to say that all serial numbers must have been modified for the enhancement to apply.

The district court disagreed with Smith and concluded that the enhancement should apply for two reasons. First, the district court relied on an Eleventh Circuit case decided before the 2024 amendments, *United States v. Warren*, 820 F.3d 406 (11th Cir. 2016). *Warren* found that 'a' or 'an' is synonymous with 'any' or 'one' when interpreting the language "an altered or obliterated serial number" in the 2023 Guidelines. *Id*. at 408. The district court adopted *Warren*'s reasoning in interpreting the 2024 Guidelines, which applies to firearms that have "*a* serial number that was modified." J.A. 372. Second, the district court found that "the purpose and intent underlying the enhancement" was addressing the difficulty in tracing firearms with modified serial numbers and the increased market for unmarked firearms. J.A. 370. It concluded that this purpose supported the enhancement's application when some, but not all, serial numbers are modified. After overruling Smith's objection, the district court sentenced Smith to 57 months of imprisonment to be followed by three years of supervised release.

Smith now appeals both his conviction and his sentence. He asserts that § 922(o) is unconstitutional facially and as applied to him because machineguns are in common use for a common purpose. For his sentence, Smith argues the district court erred by applying the serial number enhancement because only some of the serial numbers on the Glock were modified, meaning the firearm was still traceable. We disagree that § 922(o) is

unconstitutional but agree that applying the serial number enhancement was reversible error.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

II.

"When reviewing the denial of a defendant's motion to dismiss an indictment, we review the district court's legal conclusions de novo and its factual findings for clear error." *United States v. Skinner*, 70 F.4th 219, 223 (4th Cir. 2023).

The Second Amendment protects "the right of the people to keep and bear Arms." U.S. CONST. amend. II. But this right is not unlimited. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 21 (2022). In *Bruen*, the Supreme Court created a two-step history and tradition test—rooted in its prior decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008)—to determine whether a government regulation of certain conduct unconstitutionally burdened Second Amendment rights. 597 U.S. at 17. First, the court considers whether the Second Amendment extends to the type of conduct at issue. *Id.* at 24. If it does not, then the inquiry ends there. *United States v. Price*, 111 F.4th 392, 398 (4th Cir. 2024). However, if the Second Amendment does encompass said conduct, then the Government maintains the burden to " 'justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.' " *Id.* (quoting *Bruen*, 597 U.S. at 24).

Smith argues that § 922(o) is facially unconstitutional, but his facial challenge fails at step 1 of the *Bruen* test. We have repeatedly held that "short-barreled shotguns and

machineguns are not in common use for a lawful purpose." *Price*, 111 F.4th at 403; *see also Bianchi v. Brown*, 111 F.4th 438, 445 (4th Cir. 2024) (holding that AR-15 assault rifles may be banned as they are like the M16 machinegun, both "weapons that are most useful in military service" (quoting *Heller*, 554 U.S. at 627)); *United States v. Taylor*, No. 24-4392, 2025 WL 2784820, at *1 (4th Cir. Sept. 30, 2025), *cert. denied*, No. 25-6817, 2026 WL 795067 (U.S. Mar. 23, 2026) (rejecting a facial and as applied challenge to § 922(o) because a machinegun was at issue). If a weapon "is not in common use for a lawful purpose, it can be permissibly excluded from the Second Amendment's protection based on the tradition of regulating 'dangerous and unusual' arms." *Price*, 111 F.4th at 405. We find no reason to diverge from clear precedent and find that § 922(o) is facially constitutional.

Smith also challenges § 922(o)'s constitutionality as applied to the particular facts of his case. But Smith concedes that his firearm affixed with a switch qualifies as a machinegun as defined by § 5845(b), a weapon deemed to be outside the ambit of the Second Amendment. *See Price*, 111 F.4th at 403. Therefore, we conclude that § 922(o) is constitutional as applied to Smith's conduct. Accordingly, we affirm the district court's denial of Smith's motion to dismiss the indictment.

III.

Smith challenges the district court's application of the serial number enhancement pursuant to USSG § 2K2.1(b)(4)(B)(i). He argues the enhancement should not apply

because one of the three serial numbers on the Glock was unmodified and thus the firearm was still traceable.

For the reasons outlined below, we agree with Smith. We hold that the modified serial number enhancement only applies where a firearm is no longer traceable. And because the Glock was still traceable, the application of the serial number enhancement is reversible error.

A.

The court reviews sentencing decisions for reasonableness. *United States v. Booker*, 543 U.S. 220, 261 (2005). "Reasonableness review has procedural and substantive components." *United States v. Elboghdady*, 117 F.4th 224, 233 (4th Cir. 2024) (internal quotation marks omitted) (quoting *United States v. Hargrove*, 701 F.3d 156, 160) (4th Cir. 2012)).

Here, Smith only challenges the procedural reasonableness of his sentence. "A district court commits procedural error by failing to calculate (or improperly calculating) the Guidelines range." *Elboghdady*, 117 F.4th at 235 (internal quotation marks omitted) (quoting *United States v. Smith*, 75 F.4th 459, 464 (4th Cir. 2023)). When reviewing the district court's calculation of a defendant's advisory Guidelines range, we review legal conclusions de novo and findings of fact for clear error. *United States v. Mitchell*, 78 F.4th 661, 667 (4th Cir. 2023) (citing *United States v. Hampton*, 628 F.3d 654, 659 (4th Cir. 2010)).

We " 'interpret the Sentencing Guidelines according to the ordinary rules of statutory construction' and 'give a [G]uideline its plain meaning, as determined by

examination of its language, structure, and purpose.' " *Skinner*, 70 F.4th at 230 (4th Cir. 2023) (quoting *United States v. Strieper*, 666 F.3d 288, 293–94 (4th Cir. 2012)).

B.

We begin with the language of the Guideline. We "customarily" look to dictionary definitions to determine a Guideline's plain meaning. *See Blakely v. Wards*, 738 F.3d 607, 611 (4th Cir. 2013) (citing *Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 289 (4th Cir.1998)).

As stated above, the serial number enhancement increases a defendant's total offense level by four "[i]f . . . any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." § 2K2.1(b)(4)(B)(i).

We first determine the meaning of the words "any," "a," and "modified" from the first phrase of the Guideline text. When referring to a "singular count noun[,]" such as, firearm, "any" "refer[s] to an unspecified number or quantity of a thing or things" or "some." *Any*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (last modified June 2026). We know that "when 'a' or 'an' is followed by a restrictive clause or modifier, this typically signals that the article is being used as a synonym for either 'any' or 'one.' " *Warren*, 820 F.3d at 808; *see also A*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (last modified June 2026) ("[A]n indefinite noun phrase referring to something not specifically identified (and, frequently, mentioned for the first time) but treated as one of a class: one, some, any."). "Modify" though used here in the past tense, means "[t]o make somewhat different." *Modify*, BLACK'S LAW DICTIONARY (12th ed. 2024). Thus, we know the enhancement

applies at minimum when some firearm has at least one serial number that was made somewhat different "such that the original information is rendered illegible or unrecognizable to the unaided eye." § 2K2.1(b)(4)(B)(i).

Turning to the qualifying clause beginning with "such that," we determine the meaning of the terms "original definition" and "illegible." Original is defined as "the origin or source of something" or the source "from which something springs, proceeds, or is derived." *Original*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (last modified June 2026). Commonly, the "primary" source. *Id.* And information is "knowledge communicated concerning some particular fact, subject, or event" or "that of which one is apprised or told." *Information*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (last modified June 2026). Therefore, original information would be: the source from which knowledge communicated concerning some particular fact is derived. The knowledge communicated concerning a particular fact, relevant here, is the serial number printed on the firearm at issue. And the source of any marking of a serial number is the unique sequence of digits assigned to that a particular weapon to identify it.[4]

[4] Manufacturers are only required to print a firearm's unique serial number once—on the frame of the firearm. But manufacturers are also free to print the serial numbers on other components on a firearm. For example, here, the manufacturer of the Glock printed a serial number on the frame of the firearm as legally required, but also the barrel chamber and slide of the firearm at its own discretion. *See* 18 U.S.C. § 923(i) ("Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer."): *see also* 27 C.F.R. § 478.92(a)(1)(i) ("[L]icensed manufacturers and licensed importers of firearms must legibly identify each firearm they manufacture or import as follows: Serial number, name, place of business[:] By engraving, casting, (Continued)

Something is illegible when it is "not clear enough to read" or "difficult to make out." *Illegible*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (last modified Sept. 2025). Based on the meaning of "original information," it seems the enhancement applies when a firearm has at least one serial number where a modification renders the *unique sequence of digits assigned to that firearm* to identify it difficult to read with the unaided eye. This makes sense because there are some scenarios, similar to Smith's, where a firearm has one or more serial number markings that are modified but another that remains unaltered. There, it is clear the firearm could still be identified and thus the original information—the unique sequence of digits identifying the firearm—is still legible on another part of the weapon.[5] In other words, the enhancement does not apply if the unique sequence of digits assigned to the firearm remain legible elsewhere on the firearm, because in that circumstance the "original information" has not been rendered illegible or unrecognizable.

In sum, looking to the dictionary definitions here, it is apparent that the enhancement applies where a firearm has at least one serial number bearing a modification that renders the unique sequence of digits assigned to that firearm to identify it as difficult to read by the unaided eye.

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stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or otherwise placed on the frame or receiver thereof, an individual serial number, in a manner not susceptible of being readily obliterated, altered, or removed.").

[5] There is a separate statute concerned with punishing the possession of a weapon with a "removed, obliterated, or altered" serial number. *See* 18 U.S.C. § 922(k).

The Government asks us to interpret the enhancement's text differently. It contends that the Guideline text warrants application of the enhancement when any firearm has at least one serial number that is modified such that the *specific marking* is illegible or unrecognizable to the unaided eye. Only one other circuit has reached the same conclusion.

In *United States v. Craddock*, the Third Circuit opined on this exact issue and concluded that only "a single modified serial number that is illegible or unrecognizable to the naked eye" is required for the enhancement to apply. No. 25-2573, 2026 WL 1890718 at *3 (3d Cir. July 1, 2026). The court held that some of the text's terms—any, a, modified, and illegible—were dispositive in ascertaining the plain meaning of the Guideline. *Id.* at 2. It acknowledged but disagreed with the defendant's argument that "any firearm" and "original information" in the amended Guideline meant the enhancement could not apply "when a firearm as a whole bears a complete and accurate serial number." *Id.* at 3 (cleaned up). But notably, *Craddock* did not address competing interpretations of "original information." It only determined that original information did not mean "complete and accurate information," and ultimately held that the Guideline applies when a serial number marking is modified such that the modified serial number itself is rendered illegible.

In one view, it is reasonable to interpret, like *Craddock* did, that "original information" means the information contained in the serial number marking that was modified. But, and as shown above, it is also reasonable to interpret "original information" to mean the unique sequence of digits assigned to that firearm. We conclude therefore that this Guideline is ambiguous at best. *Comacho v. Texas Workforce Comm'n*, 408 F.3d 229, 234 (5th Cir. 2005) (concluding that when a statute is " 'capable of being understood in

two or more possible senses or ways,' " the language of an enhancement is ambiguous (quoting *Chickasaw Nation v. United States*, 534 U.S. 84, 90 (2001))).

To resolve that ambiguity, we review the Guideline's amendment history, the practical use of serial numbers in identifying and recovering firearms, and the Guideline Commentary. *See United States v. Campbell*, 22 F.4th 438, 445 (4th Cir. 2022) (permitting courts to look to Guideline Commentary when a Guideline is genuinely ambiguous); *United States v. Singh*, 291 F.3d 756, 761 (11th Cir. 2002) (holding that "where the Guidelines provide no indication as to a particular application, the [c]ourt looks to the language and purpose of the Sentencing Guidelines for instruction") (cleaned up); *see also United States v. Fox*, 926 F.3d 1275, 1278 (11th Cir. 2019) (noting that first, we look to the plain language of a Guideline but that "we may [also] look to the amendment history behind the [G]uidelines for guidance about their interpretation" (citing *United States v. Gordillo*, 920 F.3d 1292, 1297–98 (11th Cir. 2019))). After consulting those sources, the purpose of the enhancement is clear—deterring the flow of untraceable firearms. And the Sentencing Commission's 2024 amendment reiterates that this is not a broad enhancement, but a narrow one. *See* USSG app. C, amend. 828 (effective Nov. 1, 2024). Therefore, a narrow reading of the enhancement requires that it only applies where the modification of a firearm's serial numbers renders it fully untraceable.

As of 2023, the enhancement increased a defendant's total offense level by four "[i]f . . . any firearm had an altered or obliterated serial number." § 2K2.1(b)(4)(B)(i) (2023). But in 2024, the Sentencing Commission amended the serial number enhancement to reflect the current language of the enhancement, increasing the total offense level by four

"[i]f . . . any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." § 2K2.1(b)(4)(B)(i).

That amendment sought to resolve a split among our sister circuits "as to whether the serial number must be illegible for this enhancement to apply and as to what test for legibility should be employed" when interpreting "altered" and "obliterated." *See* USSG app. C, amend. 828 (effective Nov. 1, 2024). There were two competing views of the degree of legibility required for the enhancement to apply: the "naked eye" test, championed by the Second and Sixth circuits, compared with the "less legible" test adopted by our circuit, along with the Fifth and Eleventh circuits.

The naked eye test, or unaided eye test, instructed district courts that "a serial number that has been defaced but is still visible to the naked eye is not 'altered or obliterated' under § 2K2.1(b)(4)(B)." *United States v. Sands*, 948 F.3d 709, 711 (6th Cir. 2020); *see also United States v. St. Hilaire*, 960 F.3d 61, 66 (2d Cir. 2020). The less legible test held that the serial number enhancement applied where a serial number "is made less legible" because it is "made different and therefore is altered." *United States v. Harris*, 720 F.3d 499, 501 (4th Cir. 2013*); see also United States v. Perez*, 585 F.3d 880, 884–85 (5th Cir. 2009) (applying the enhancement where "the serial number of the firearm . . . had been materially changed in a way that made its accurate information less accessible"); *United States v. Millender*, 791 F. App'x 782, 783–84 (11th Cir. 2019).

The Sentencing Commission adopted the more narrow of the two tests, the naked eye test, requiring the serial number be "modified such that the original information is

rendered illegible or unrecognizable to the unaided eye." § 2K2.1(b)(4)(B)(i). It rejected the less legible test to "ensure uniform application" and to remain "consistent with the Commission's recognition in 2006 of 'both the difficulty in tracing firearms with altered and obliterated serial numbers, and the increased market for these types of weapons.' " *See* USSG app. C, amend. 828 (effective Nov. 1, 2024) (citing USSG app. C, amend. 691 (effective Nov. 1, 2006)).

Following the Sentencing Commission's lead, we take the narrower approach to the question before us. The less legible test, a test this court previously utilized, was too broad to "ensure uniform application" because it encapsulated conduct *not* consistent with the Guideline's purpose. Often, when the less legible test was applied, a firearm was still traceable. *See e.g.*, *Harris*, 720 F.3d at 501 (4th Cir. 2013) (finding a firearm was traceable because a police report determined that a serial number was still legible); *United States v. Jones*, 927 F.3d 895, 896 (5th Cir. 2019) (finding a firearm was traceable because even though a serial number was modified on the frame of the firearm, it was still traced based on a legible serial number on the slide of the firearm).

Because our use of the less legible test was deemed too broad by the Sentencing Commission, we similarly regard the Government's argument as too broad. When only one iteration of a serial number is modified on a weapon, but two other serial numbers remain unaltered, that weapon is clearly traceable. But in that instance, the Government argues the enhancement should still apply. That argument leads to absurd results. Though courts have previously concluded "a serial number need not be scientifically untraceable for the enhancement to apply[,]" that does not mean weapons that are otherwise traceable

should be encompassed by the enhancement. Primer on Firearms Offenses, U.S.S.C. (May 1, 2024), (pp. 19–20) [https://perma.cc/DYX8-RV9M].

Our colleague in dissent insists that the pre-amendment decisions of our sister circuits determining that only one serial number must be modified for the enhancement to apply are persuasive. Diss. Op. at 27–28; *see e.g., United States v. Thigpen*, 848 F.3d 841, 846 (8th Cir. 2017) (holding the enhancement applies " 'when the serial number on the frame of a firearm is obliterated even if other serial numbers on the firearm . . . are unaltered' " (alteration in original) (quoting *Serrano-Mercado*, 784 F.3d at 850)); *St. Hilaire*, 960 F.3d at 65 (same); *Jones*, 927 F.3d at 897 & n.13; *Sands*, 948 F.3d at 713 (6th Cir. 2020); *Warren*, 820 F.3d at 408. But all those cases rested on an interpretation of the Guideline where the enhancement applied simply if a firearm had "an altered or obliterated serial number." § 2K2.1(b)(4)(B)(i) (2023).

As discussed above, the Sentencing Commission's revision of the Guideline to apply when a serial number is "modified such that the original information is rendered illegible or unrecognizable to the unaided eye" creates a narrower application of the Guideline. § 2K2.1(b)(4)(B)(i). Of course, the 2024 amendment does not explicitly create a requirement that all serial numbers must be illegible for the enhancement apply. But the stated goal of the serial number enhancement is traceability. To remain in step with the Sentencing Commission's narrowing of the enhancement and goal of traceability, we conclude that the Guideline only applies where the firearm at issue is no longer traceable.

The role serial numbers play in identifying and tracing firearms also affirms the enhancement's purpose in addressing the flow of untraceable firearms. Serial numbers

affixed on weapons afford law enforcement a means to trace any weapons involved in criminal activity or that are otherwise reported lost. The Bureau of Alcohol, Tobacco, Firearms, and Explosives maintains the National Tracing Center ("NTC"), the United States' only crime gun tracing facility, to "provide[] critical information to assist domestic and international law enforcement agencies investigate and solve firearms crimes; detect firearms trafficking; and track the intrastate, interstate and international movement of crime guns." National Tracing Center, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, (last visited June 23, 2026) [https://perma.cc/N59N-B9VV]. The NTC also maintains an obliterated serial number program which "allows law enforcement agencies to identify recovered firearms whose origins have been masked by serial number" modification by providing "serialization and other firearms identification forensics expertise to assist in the positive identification of firearms." *Id.* When the NTC receives a trace request, it "uses [a] firearm's markings to identify its original manufacturer or importer" to trace the firearm "to the last known retail purchaser." Fact Sheet - National Tracing Center, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, (last visited June 23, 2026) [https://perma.cc/XAH5-ZBAV].

The Commentary also places traceability at the center of the enhancement's application. In fact, the Commentary describes the serial number enhancement as akin to a strict liability provision. The enhancement does not ask whether the defendant knew that the firearm had a modified serial number but instead the enhancement "applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible

or unrecognizable to the unaided eye." § 2K2.1 cmt. n.8. Rather, it is independently unlawful to modify the serial number on a firearm or knowingly possess a firearm with a modified serial number. *See* 26 U.S.C. § 5861(g), (h); 18 U.S.C. § 922(k). If the Government seeks to penalize those who alter the serial number on a weapon, federal law provides a criminal statute under which it may charge said individuals. That means the serial number enhancement is not concerned with merely punishing those who altered serial number markings, but instead the increased risk the firearm poses due to those alterations.[6]

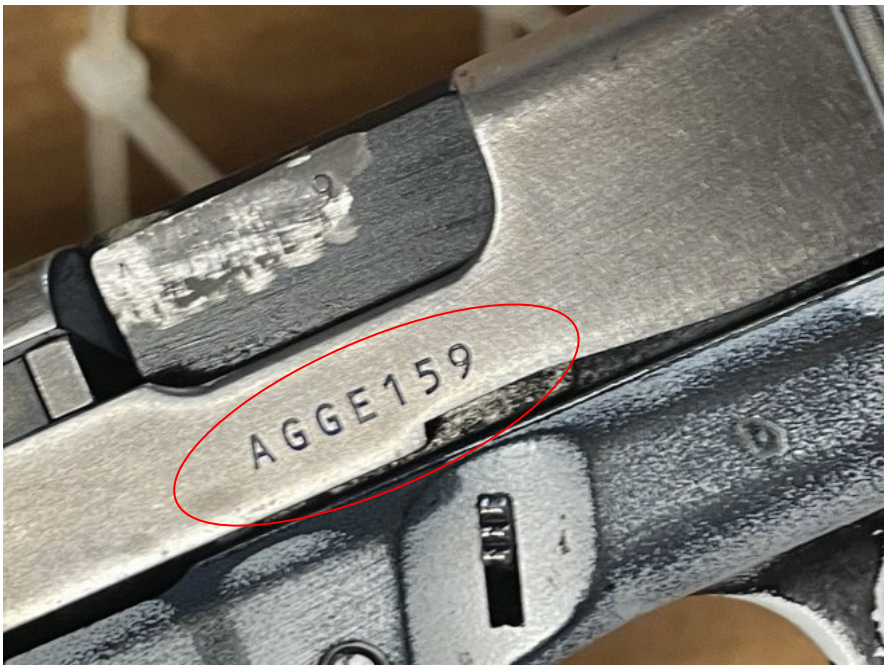
This enhancement therefore may only apply after the district court engages in an independent inquiry as to whether the firearm in question was in fact traceable. In other words, to prove the enhancement applies, the Government must show by a preponderance of the evidence that a firearm's serial numbers were modified such that the firearm was no longer traceable.

C.

[6] The Sentencing Guidelines have always contained an enhancement addressing firearms with modified serial numbers. The enhancement serves a function distinct from analogous criminal statutes that punish serial number modification. Those statutes require proof of particular conduct or knowledge. *See* § 922(k) ("It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.") The enhancement does not duplicate those statutes by imposing additional punishment only on defendants who altered a serial number or knowingly possessed an altered firearm. Instead, it accounts for an aggravating circumstance present in any offense involving a firearm with modified serial numbers: the defendant possessed a firearm whose traceability had been compromised.

Here, the Government cannot meet its burden. *See United States v. Simmons*, 143 F.4th 200, 208 (4th Cir. 2025) (holding the "[G]overnment bears the burden of establishing by a preponderance of the evidence that a sentencing enhancement is applicable").

Even though two of the three serial numbers on the firearm were modified, the Government was still able to trace Smith's firearm. The Glock had one fully legible serial number, reading "AGGE159," that was used to trace the firearm.



J.A. 247.

And to assist in law enforcement's investigation, each of the two modified serial numbers still bore digits of the original serial number. One of the modified serial numbers had been scratched off such that only the final digit, a "9," remained legible,

J.A. 247, while the other modified serial number had been scratched off such that only the first letter, an "A," and the final digit, a "9," remained legible.

J.A. 246.

The district court determined that the firearm was still traceable because all these firearm components were together, not severed, and the two modified serial numbers had matching digits to the one legible serial number. *See* J.A. 307–15. We hold that the record in this case is sufficient to conclude Smith's firearm was traceable; thus, the enhancement should not apply.

IV.

Accordingly, we affirm Smith's conviction, reverse the district court's application of the enhancement, vacate Smith's sentence, and remand for resentencing without the enhancement.

AFFIRMED IN PART, REVERSED IN PART, VACATED, AND REMANDED

AGEE, Circuit Judge, concurring in part and dissenting in part:

This appeal presents two issues. First, whether 18 U.S.C. § 922(o)—which prohibits the possession and transfer of machineguns—is constitutional. And second, whether U.S.S.G. § 2K2.1(b)(4)(B)(i)'s modified serial number enhancement applies when the relevant firearm has at least one illegible serial number, notwithstanding the presence of other legible stamps of the serial number on the firearm.

The district court answered both questions "yes." On appeal, we all agree with its § 922(o) conclusion. *See* Maj. Op. 9–10 (Section II). So while I concur in the majority opinion as to § 922(o)'s constitutionality, our consensus ends there.

The majority's strained reading of § 2K2.1(b)(4)(B)(i) ignores the enhancement's plain text and, in its place, inserts an atextual traceability test. *See* Maj. Op. 10–24 (Section III). Under that new and contrived test, the majority holds that the enhancement does not apply because one of the three serial numbers on Smith's firearm remained legible. *Id.* at 18–20. Not only does this analysis stray from the Guideline's plain language, but it also places this Court on an island—every other circuit to address this issue has rejected the conclusion reached by the majority today. Accordingly, I dissent from the portion of the majority's opinion analyzing Smith's sentencing challenge and would affirm his conviction and sentence in full.

I.

Section 2K2.1(b)(4)(B)(i) provides for a four-level sentencing enhancement if the defendant's offense involved "any firearm ha[ving] *a* serial number that was modified such

that the original information is rendered illegible or unrecognizable to the unaided eye." (emphasis added) The parties' arguments as to the applicability of this enhancement here are semantic: does "*a* serial number" mean that *all* serial numbers on the firearm must be rendered illegible for the enhancement to apply? Or is it enough for just *one* to be illegible? Smith—and the majority—maintain that it's the former. But § 2K2.1(b)(4)(B)(i)'s text and the nation's Courts of Appeals tell another story.

A.

The first step in interpreting a Sentencing Guideline "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *United States v. Mitchell*, 120 F.4th 1233, 1241 (4th Cir. 2024) (cleaned up). If it does, our inquiry ends where it began—with the text. *See id.* (noting that "[i]f a Guideline is not genuinely ambiguous . . . then [it] just means what it means—that the court must give it effect, as the court would any law"); *see United States v. Hawley*, 919 F.3d 252, 255 (4th Cir. 2019) (noting that the Court's interpretation of a Guideline provision "begins with the text" (quoting *United States v. Ashford*, 718 F.3d 377, 382 (4th Cir. 2019)). Such is the case here.

Section 2K2.1(b)(4)(B)(i)'s plain language establishes that it applies when the firearm in question has at least one illegible or unrecognizable serial number. The meaning of the terms "any," "a," "modified," and "illegible" confirms as much.

To start, "'[a]ny' connotes breadth and, when paired with a singular noun like 'firearm,' most naturally 'refer[s] to an unspecified number of a particular class.'" *United States v. Craddock*, 179 F.4th 156, 158 (3d Cir. 2026) (quoting *Any*, *Oxford English*

Dictionary (2d ed. 1989) (last modified June 2026)); *see also Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) ("[R]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997))).

"A," meanwhile, is an indefinite article that's "used as a function word before *singular nouns* when the referent is unspecified." *A*, *Merriam-Webster Dictionary* (last accessed July 30, 2026) https://www.merriam-webster.com/dictionary/a (emphasis added). "A" also means "one, some, [or] any," particularly when used—as here—"in an indefinite noun phrase referring to something not specifically identified." *Craddock*, 179 F.4th at 158 (quoting *A, Oxford English Dictionary* (2d ed. 1989) (last modified Mar. 2026)); *accord United States v. Warren*, 820 F.3d 406, 408 (11th Cir. 2016) (per curiam) ("[I]n common terms, when 'a' or 'an' is followed by a restrictive clause or modifier, this typically signals that the article is being used as a synonym for either 'any' or 'one.'" (quoting *United States v. Alabama*, 778 F.3d 926, 932 (11th Cir. 2015))).

Given these definitions, we know that § 2K2.1(b)(4)(B)(i) textually encompasses all firearms with *at least one* serial number ("*a* serial number").[1] § 2K2.1(b)(4)(B)(i) (emphasis added); *Craddock*, 179 F.4th at 159. But that doesn't resolve the inquiry because a restrictive clause follows those first few terms: "a serial number that *was modified* such

[1] Guns are "usually manufactured with matching iterations of one serial number on different components, such as the frame and the slide." *United States v. St. Hilaire*, 960 F.3d 61, 64 (2d Cir. 2020). Smith's firearm is no exception. Its serial number is printed on three different locations: the slide, the underside of the frame, and the barrel chamber. *See* Maj. Op. 4–6.

that the original information is *rendered illegible or unrecognizable* to the unaided eye." § 2K2.1(b)(4)(B)(i) (emphases added). "[W]as modified" and "rendered illegible or unrecognizable" both refer to "a serial number." "[M]odify," for its part, means "[t]o make somewhat different." *Modify*, *Black's Law Dictionary* (12th ed. 2024). And "illegible" means "not clear enough to read" and "difficult to make out," *Illegible (adj.)*, *Oxford English Dictionary* (last modified Sept. 2025), while "unrecognizable" means "[n]ot recognizable" and "not able to be recognized or identified from previous encounters," *Unrecognizable*, *Oxford English Dictionary* (2d ed. 1989) (last modified 2014).

Pulling this all together, the plain meaning of § 2K2.1(b)(4)(B)(i) comes clearly into focus. It applies to "any" firearm with at least one ("a") serial number that has been changed ("modified") in such a way as to render *that* serial number ("the original information") unreadable to the naked eye ("illegible or unrecognizable"). § 2K2.1(b)(4)(B)(i). All agree that Smith possessed a handgun with multiple serial numbers that fit this bill. That resolves this appeal. "Under any reading of § 2K2.1(b)(4)(B)(i), [Smith] possessed a firearm with *a* serial number that was [modified] to the point of illegibility." *Craddock*, 179 F.4th at 159 (emphasis added). Section 2K2.1(b)(4)(B)(i) means what it says: if a firearm has *a* serial number that's been rendered illegible—even just one—that's enough to trigger the four-level enhancement.

B.

Given how straightforward the analysis is here, it's unsurprising that *every other circuit* to encounter this issue has reached the same conclusion. *See Id.* at 159 n.3 (collecting cases from an additional six circuit courts); *St. Hilaire*, 960 F.3d at 65 ("The

Enhancement applies if a single iteration of a gun's serial number has been altered or obliterated notwithstanding that another is perfectly legible. The wording references 'an' altered . . . serial number; it does not require that *all* of the gun's serial numbers be so affected." (cleaned up)); *United States v. Jones*, 927 F.3d 895, 897 (5th Cir. 2019) ("We join the First, Eighth, and Eleventh Circuits in holding that the applicable guideline 'requires only that one serial number be altered or obliterated, even if others are clearly legible.'" (quoting *United States v. Thigpen*, 848 F.3d 841, 845–46 (8th Cir. 2017))); *United States v. Sands*, 948 F.3d 709, 713 (6th Cir. 2020) ("If a weapon has multiple serial numbers, only one of them needs to be altered or obliterated for the enhancement to apply."); *Thigpen*, 848 F.3d at 845–46 ("Based on the plain language of section 2K2.1(b)(4)(B), it applies 'when the serial number on the frame of a firearm is obliterated even if other serial numbers on the firearm . . . are unaltered.'" (quoting *United States v. Serrano-Mercado*, 784 F.3d 838, 850 (1st Cir. 2015))); *Warren*, 820 F.3d at 408 ("We have said in other contexts that . . . when 'a' or 'an' is followed by a restrictive clause or modifier, this typically signals that the article is being used as a synonym for either 'any' or 'one.' . . . Read in that fashion, the § 2K2.1(b)(4)(B) enhancement applies either when *any* serial number on a gun has been altered or obliterated or when *just one* serial number has been altered or obliterated." (cleaned up)); *Serrano-Mercado*, 784 F.3d at 849–50 (similar).

While all but one of those decisions (*Craddock*) predate the 2024 amendment to § 2K2.1(b)(4)(B)(i), they remain persuasive. To understand why, one needs to look no further than the substance of that amendment. The prior version of § 2K2.1(b)(4)(B)(i)

required that the firearm in question have "an *altered or obliterated* serial number." § 2K2.1(b)(4)(B)(i) (2023) (emphasis added). By contrast, the current version requires that the firearm have "a serial number *that was modified such that the original information is rendered illegible or unrecognizable*." § 2K2.1(b)(4)(B)(i) (2024) (emphasis added).

In short, the amendment changed the enhancement's "altered or obliterated" language to give courts clearer guidance on what *degree* of modification triggers the enhancement. Such changes were necessary given the burgeoning circuit split on that issue. *Compare, e.g.*, *St. Hilaire*, 960 F.3d at 66–68 (holding that the serial number must be illegible to the naked eye to qualify), *and Sands*, 948 F.3d at 715–719 (same), *with, e.g.*, *United States v. Harris*, 720 F.3d 499, 503 (4th Cir. 2013) (holding that "a serial number that is *less legible* or *less conspicuous*, but not illegible, is also covered"), *and United States v. Perez*, 585 F.3d 880, 884–85 (5th Cir. 2009) (similar).

But these 2024 Guideline changes did not change the enhancement's clear directive on *how many* of the firearm's serial numbers need to be altered or obliterated to trigger the enhancement. After all, the Sentencing Commission didn't materially alter the portion of § 2K2.1(b)(4)(B)(i) most relevant to *that* question—i.e., the article that precedes "serial number." *See Warren*, 820 F.3d at 408. The only change to that portion of the enhancement is the substitution of "a" for "an." And as other courts have recognized, "[a]" and "an" are interchangeable, and when they're followed by another clause, it "typically signals that [they are] being used as a synonym for 'any' or 'one.'" *Id.*; *see Serrano-Mercado*, 784 F.3d at 850 (using "a" and "an" interchangeably, and holding that the enhancement "requires

only *an* altered or obliterated serial number"—"not [] that *all* of the gun's serial numbers be so affected" (cleaned up)).

All that's to say, the voluminous and unanimous pre-2024 amendment body of case law on this issue remains persuasive and unaffected by the amendment, at least as to the number (one) of obliterated serial numbers necessary to trigger it. The only post-amendment case so far—*Craddock*—recognized as much and joined the pre-amendment consensus on this question. *See Craddock*, 179 F.4th at 159 & n.3 (holding that § 2K2.1(b)(4)(B)(i) "applies to firearms with at least one serial number that has been at least partially changed to make the serial number unreadable or difficult to read," and noting that its "holding accords with at least six of [its] sister circuits"). We should have taken this opportunity to do the same. Instead, the majority makes two critical mistakes that leave us on an island among our sister circuits.

1.

The majority's first mistake comes in its parsing of the enhancement's language. *See* Maj. Op. 12–14. After defining a few of the relevant terms, the majority initially acknowledges that "the enhancement applies at minimum when some firearm has at least one serial number that was made somewhat different 'such that the original information is rendered illegible or unrecognizable to the unaided eye.'" *Id.* at 12–13 (quoting § 2K2.1(b)(4)(B)(i)). So far, so good.

But the majority then engages in linguistic confusion when discussing the term "original information": "Based on the meaning of 'original information,' it seems the enhancement applies when a firearm has at least one serial number where a modification

renders the *unique sequence of digits assigned to that firearm* to identify it difficult to read with the unaided eye." *Id.* at 14 (emphasis in original); *accord id.* at 13 ("[O]riginal information would be: the source from which knowledge communicated concerning a particular fact is derived. The knowledge communicated . . . here[] is the serial number printed on the firearm at issue. And the source [or origin] of any marking of a serial number is the unique sequence of digits assigned to that [] particular weapon to identify it.").

The problem is, by the time the majority finishes analyzing this term, it's completely lost sight of the bigger picture—and the text. Read in context, "original information" cannot be referring to the serial number associated with the firearm *in the abstract* as the majority suggests. *See* Maj. Op. 14 (defining "original information" as "the unique sequence of digits identifying the firearm"). The enhancement's language reveals as much: it applies if "any firearm had *a* serial number that was modified such that the original information is rendered illegible . . . to the unaided eye." § 2K2.1(b)(4)(B)(i) (emphasis added). The "original information" is "*a serial number*" that's printed on "*any firearm*." *Id.* (emphases added). And it's *that* original information that must be "modified" so as to be "illegible or unrecognizable" for the enhancement to apply. *Id.*

Put differently, the enhancement's language operates in the physical world. It contemplates modifications to "a serial number" that make the "original information"—i.e., the information originally conveyed by *a specific, physical iteration of the serial number*—"illegible or unrecognizable." *Id.* Indeed, the Sentencing Commission could not have understood "original information" to mean what the majority claims. That's because "the unique sequence of digits assigned to [a] firearm," Maj. Op. 14, cannot be "modified"

outside of their physical manifestation(s) on a firearm, *see* § 2K2.1(b)(4)(B)(i). So the enhancement must be referring to the physical iterations of the serial number on the firearm. And again, only one of those manifestations ("*a* serial number") needs to be impermissibly modified to trigger § 2K2.1(b)(4)(B)(i).

What's more, the Sentencing Commission could have adopted the majority's viewpoint when it amended the enhancement two years ago. But it didn't. By then, six circuits had interpreted § 2K2.1(b)(4)(B)(i) to apply where only a single iteration of the firearm's serial number had been altered or obliterated. *See supra* Part I.B (collecting cases). That the Commission declined to adopt the majority's preferred reading—even though it went out of its way to correct several circuits' interpretations of "altered or obliterated"—is telling. *See* Maj. Op. 7 n.3 (acknowledging that the 2024 amendment to § 2K2.1(b)(4)(B)(i) "was intended by the Sentencing Commission to resolve a split among our sister circuits 'as to whether the serial number must be illegible for this enhancement to apply and as to what test for legibility should be employed' when interpreting 'altered' and 'obliterated'" (quoting U.S.S.G. App. C, amend. 828 (effective Nov. 1, 2024))). Put simply, we should not add words into the enhancement where the Commission did not.

2.

The majority's second mistake comes in its analysis of § 2K2.1(b)(4)(B)(i)'s purpose. After claiming that the enhancement is "ambiguous at best"—a finding made possible only by adopting an atextual interpretation at odds with every other circuit to address this issue—the majority spills much ink discussing the purposes underlying § 2K2.1(b)(4)(B)(i). Maj. Op. 15; *see id.* at 13–15, 15–21. But in doing so, it strays even

further from the text of the enhancement, effectively substituting its own judgment for that of the Sentencing Commission.

To start, there's no need to go beyond § 2K2.1(b)(4)(B)(i)'s plain text. That's because the first step "in analyzing the meaning of [a] Guideline [provision] is whether it is genuinely ambiguous." *Mitchell*, 120 F.4th at 1240. If it is not, then the Guideline "just means what it means—and the court must give it effect." *Id.* at 1241 (cleaned up). Such is the case here. Section § 2K2.1(b)(4)(B)(i) clearly applies so long as at least one serial number on the firearm in question has been rendered illegible or unrecognizable. *See supra* Part I.A–I.B. The analysis can—and should—end there. *See Mitchell*, 120 F.4th at 1240–41. The majority errs by going beyond the enhancement's text.

And even assuming that we *could* peek beyond § 2K2.1(b)(4)(B)(i)'s text to consider its purpose, the majority's analysis remains flawed. True, the enhancement seeks to "discourage the use of untraceable weaponry," *St. Hilaire*, 960 F.3d at 65 (quoting *United States v. Carter*, 421 F.3d 909, 914 (9th Cir. 2005)). But despite what the majority personally may consider better public policy, "[t]hat goal 'is advanced not only by punishing those who possess untraceable firearms, but also by punishing those who possess firearms that are more difficult, though not impossible, to trace." *Id.* (quoting *Carter*, 421 F.3d at 914); *see Serrano-Mercado*, 784 F.3d at 850 ("[T]his plain reading of the text—that the obliteration of 'a[]' serial number is enough—accords with the intent of [] § 2K2.1(b)(4), which is to 'discourag[e] the use of untraceable weaponry.' . . . Applying an enhancement for firearms that have a single totally obscured serial number may serve as a deterrent to tampering, even when incomplete." (quoting *Carter*, 421 F.3d at 914));

Thigpen, 848 F.3d at 845–46 ("The First and Eleventh Circuits recently held that section 2K2.1(b)(4)(B) requires only that one serial number be altered or obliterated, even if others are clearly legible. . . . [This] reasoning accords with the intent of Guideline § 2K2.1(b)(4), which is to discourage the use of untraceable weaponry." (cleaned up)). Indeed, "a gun with an indecipherable serial number on a single interchangeable part is just a swap or two away from being untraceable." *St. Hilaire*, 960 F.3d at 65. So, far from promoting § 2K2.1(b)(4)(B)(i)'s purpose, the majority's interpretation of that provision actively *undermines* it.

Finally, the majority's discussion of the enhancement's 2024 amendment is problematic. It claims that "the Sentencing Commission's 2024 amendment reiterates that this is not a broad enhancement, but a narrow one." Maj. Op. 16. It then uses that unsupported claim as a springboard to hold that the "enhancement . . . only applies where the modification of a firearm's serial numbers renders it fully untraceable." *Id.*; *see also id.* at 20 ("This enhancement . . . may only apply after the district court engages in an independent inquiry as to whether the firearm in question was in fact traceable."). But that language is in neither the amendment nor the commentary appended to it. *See* § 2K2.1(b)(4)(B)(i); U.S.S.G. app. C, amend. 828 (effective Nov. 1, 2024).

Instead, the Commission stated that the amendment's purpose was to "resolve[] [a] circuit conflict by amending the enhancement to adopt the holdings of the Second and Sixth Circuits." U.S.S.G. app. C, amend. 828. It continued: "This amendment is consistent with the Commission's recognition . . . of 'both the difficulty in tracing firearms with altered and obliterated serial numbers, and the increased market for these types of

weapons.' . . . By employing the 'unaided eye' test for legibility, the amendment also seeks to resolve the circuit split and ensure uniform application." *Id.* Nowhere did the Commission say it was trying to, in effect, create a "traceability" test like that solely devised by the majority here. *See generally id.* Nor did the Commission ever suggest that its purpose in amending the enhancement was to narrow its scope. Rather, its goal was simple: to resolve a circuit split and ensure uniform application of the enhancement. Nothing more, nothing less. We should not lightly assume that the Commission sought to further an additional, unstated goal to narrow § 2K2.1(b)(4)(B)(i) when it amended that provision.

II.

Section 2K2.1(b)(4)(B)(i) plainly applies if even a single iteration of a gun's serial number has been altered or obliterated. Yet the majority holds otherwise. And in doing so, it ignores the enhancement's plain text in favor of a "traceability" test that it concocts out of whole cloth. The majority also misconstrues § 2K2.1(b)(4)(B)(i)'s stated purpose and disagrees with the *seven other circuits* to have addressed this issue.[2] While it may have

[2] This Court's continued insistence on taking outlier stances is a troubling trend. *See Clark v. Sweeney*, 607 U.S. 7, 8–10 (2025) (per curiam) (reversing, summarily, this Court's decision in an ineffective assistance of counsel case because it had "departed dramatically from the principle of party presentation"); *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. ---, 146 S. Ct. 1285, 1286–89 (per curiam) (same, in a Civil Service Reform Act case); *United States v. Melvin*, --- F.4th ---, 2026 WL 2147881, at * 10 (4th Cir. 2026) (Agee, J., dissenting) (collecting cases, and explaining how the majority's decision requiring resentencing in that case "create[d] [an] even greater drift between this Court and [the reasoning] of our sister circuits").

public policy concerns related to this enhancement, the proper place to raise those concerns is with the Commission or Congress. *Cf. Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233, 241 n.12 (4th Cir. 2025) ("We traffic in law, not policy."). The majority has no license to do so in a judicial decision.

For all these reasons, I respectfully concur in part and dissent in part. Specifically, I concur in the portion of the Court's judgment affirming Smith's 18 U.S.C. § 922(o) conviction. But I dissent from the Court's § 2K2.1(b)(4)(B)(i) analysis and its vacatur of Smith's sentence.