

**United States Court of Appeals
For the Second Circuit**

August Term, 2025

(Argued: May 13, 2026 Decided: September 2, 2026)

Docket No. 25-920-cr

UNITED STATES OF AMERICA,

Appellee,

v.

NICHOLAS DEFELICE,

Defendant-Appellant.

Before:

LOHIER, *Chief Judge*, KEARSE and WALKER, *Circuit Judges*.

Nicholas DeFelice appeals from a judgment of the United States District Court for the District of Connecticut (Shea, C.J.) convicting him of possession of unregistered National Firearms Act (NFA) short-barreled rifles and an unregistered suppressor in violation of 26 U.S.C. §§ 5841, 5845, 5861(d), and 5871, and sentencing him principally to twelve months and a day in prison. DeFelice's conviction followed his guilty plea and the District Court's denial of his motion to dismiss the indictment. First, DeFelice argues that the NFA violates the

Second Amendment. Second, he challenges the procedural and substantive reasonableness of his sentence. We reject both sets of challenges. DeFelice failed to establish that the NFA's registration and taxation requirements as they existed at the time of his offense meaningfully constrained his right to keep and bear arms in a way that implicates the Second Amendment. And we find no error in DeFelice's sentence.

AFFIRMED.

DANIEL M. ERWIN, Assistant Federal Defender, *for*
Terence S. Ward, Federal Defender for the District of
Connecticut, Hartford, CT, *for Defendant-Appellant*.

NATHANIEL J. GENTILE (Elena Lalli Coronado, *on the*
brief), Assistant United States Attorneys, *for* David X.
Sullivan, United States Attorney for the District of
Connecticut, New Haven, CT, *for Appellee*.

PER CURIAM:

Defendant-Appellant Nicholas DeFelice appeals from the April 2, 2025 judgment of the United States District Court for the District of Connecticut (Shea, C.J.) convicting him of possession of unregistered National Firearms Act (NFA) short-barreled rifles and an unregistered suppressor¹ in violation of 26 U.S.C.

¹ The terms "silencer" and "suppressor" refer to the same accessory designed to muffle or diminish firearm sounds. *See United States v. Speed*, 175 F.4th 272, 274 n.1 (4th Cir. 2026). Although DeFelice's indictment and the NFA use the term, "silencer," *see* 26 U.S.C.A. § 5845(a)(7); App'x 15, the parties principally refer to the device as a "suppressor," which more accurately describes the device's effect, Appellant's Br. 22–25; Appellee's Br. 6 n.2; *see United States v. Peterson*, 161 F.4th 331, 335 (5th Cir. 2025) (citing Stephen P. Halbrook, *Firearm Sound Moderators: Issues of Criminalization and the*

§§ 5841, 5845, 5861(d), and 5871, and sentencing him principally to twelve months and a day in prison. DeFelice's conviction followed his guilty plea and the denial of his motion to dismiss the indictment on Second Amendment grounds. On appeal, DeFelice asserts that the NFA as it was amended after he committed his offense violates the Second Amendment. He also claims that his sentence is both procedurally and substantively unreasonable.

We reject DeFelice's arguments. To start, DeFelice lacks standing to challenge the constitutionality of the NFA as amended after he committed his offense. And because DeFelice has not established that the NFA at the time of his offense meaningfully constrained his right to keep and bear arms in a way that implicates the Second Amendment, we affirm the District Court's denial of his motion to dismiss the indictment. Finally, we uphold the District Court's sentencing determination as procedurally and substantively reasonable. Accordingly, we **AFFIRM** the judgment of the District Court.

I

We take our facts from the record, including DeFelice's uncontested presentence report.

Second Amendment, 46 Cumb. L. Rev. 33, 36 (2015)). In this opinion, we adopt the parties' preferred term, "suppressor."

In January 2021 the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) began investigating DeFelice based on a tip that he was running a firearms and manufacturing business out of his basement without a Federal Firearms License. Undercover ATF agents contacted DeFelice and arranged the purchase of a semi-automatic firearm and a 30-round magazine, which DeFelice himself termed “highly [expletive] illegal.” App’x 150. About one year into the investigation, law enforcement officers executed a search warrant for DeFelice’s home and recovered, among other things, two unregistered short-barreled rifles and one unregistered suppressor.

In July 2023 a grand jury indicted DeFelice on one count of engaging in the business of dealing in and manufacturing firearms without a license in violation of 18 U.S.C. §§ 922(a)(1)(A), 923(a), and 924(a)(1)(D) (“Count One”) and one count of possessing unregistered NFA firearms—the two short-barreled rifles and the suppressor recovered from his home—in violation of 26 U.S.C. §§ 5841, 5845, 5861(d), and 5871 (“Count Two”). DeFelice moved to dismiss both counts, arguing that the NFA violates the Second Amendment. The District Court denied the motion and concluded that the plain text of the Second Amendment did not cover the possession of unregistered short-barreled rifles and

suppressors. In October 2024 DeFelice entered a conditional guilty plea to Count Two, which allowed him to appeal the denial of his motion to dismiss and his sentence. He was subsequently sentenced to a term of imprisonment of twelve months and one day. This appeal followed.

II

“We review *de novo* a district court’s denial of a motion to dismiss charges in an indictment” as well as “challenges to the constitutionality of a statute.”

United States v. McCray, 7 F.4th 40, 45 (2d Cir. 2021).

DeFelice’s challenge to the constitutionality of the NFA relies principally on *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).² He also asserts that two intervening legal developments cast doubt on the statute’s constitutionality and warrant reassessment of the District Court’s denial of his motion to dismiss. First, he cites an amendment to the NFA that became effective after his sentencing and eliminated the tax originally imposed for registering certain firearms. Second, he points to the Government’s change of

² DeFelice does not specify whether his challenge is facial or as-applied. No matter. “Because we find that [DeFelice’s] Second Amendment rights were not violated,” we need not address “his arguments about alleged constitutional problems with other potential applications of the statute under which he was convicted.” *United States v. Jimenez*, 895 F.3d 228, 232 (2d Cir. 2018).

litigation strategy in cases involving firearm accessories. Because DeFelice has failed to show that the NFA meaningfully constrained his Second Amendment rights or that the Government's shift in litigation strategy bears on the constitutionality of the NFA as it applies to him, we reject his challenge.

A

Congress enacted the NFA in 1934. National Firearms Act of 1934, ch. 757, 48 Stat. 1236. As the first major federal law regulating the firearms industry, the statute created a taxation and registration scheme to “achieve greater control and regulation of weapons that can be used in violent crimes.” *United States v. Tribunella*, 749 F.2d 104, 109 (2d Cir. 1984); *see* National Firearms Act: Hearing on H.R. 9066 Before the H. Comm. on Ways & Means, 73d Cong. 4, 61 (1934). The NFA bans the receipt or possession of certain firearms that are not registered under the National Firearms Registration and Transfer Record. 26 U.S.C. § 5861(d). In 2021, when DeFelice committed his offense, the NFA required individuals registering firearms to submit an application, *id.* §§ 5812, 5861(d), and pay a \$200 tax, *id.* § 5811(a) (amended 2025). In 2025, however, Congress amended the statute to eliminate the tax on registering certain firearms, including short-barreled rifles and suppressors. *See* Act of July 4, 2025, Pub. L.

No. 119-21, § 70436(a), 139 Stat. 72, 247 (codified as amended at 26 U.S.C. §§ 5811(a), 5821(a)).

DeFelice now claims that the 2025 amendment casts doubt on the constitutionality of the NFA and, therefore, his conviction. We are not persuaded. Assuming without deciding that the amendment repealed the original NFA statute of conviction in this case, “the federal saving statute [nevertheless] preserves the original penalties in effect when [DeFelice] committed the offense” where, as here, Congress did not make the amendment retroactive. *United States v. Smith*, 354 F.3d 171, 173 (2d Cir. 2003) (citation modified); *see* 1 U.S.C. § 109. It is for this reason that we conclude DeFelice cannot show that he suffered an injury that is both “traceable” to the NFA as it was amended after his sentencing and “redressable” by a favorable ruling from a federal court. *N.Y. State Firearms Ass’n v. James*, 157 F.4th 232, 243 (2d Cir. 2025) (citation modified).

Striving to escape the consequences of the federal savings statute, DeFelice argues that the presumption against retroactive legislation does not apply to his conviction because the 2025 statutory amendment legalized his prior criminal conduct. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 255 (1994) (noting that a

“presumption against retroactive legislation” is “deeply rooted in our jurisprudence”). But Congress did not substitute “a right for a crime” when it reduced the tax associated with registering certain firearms from \$200 to \$0. *See Bell v. State of Md.*, 378 U.S. 226, 235 (1964); *Hamm v. City of Rock Hill*, 379 U.S. 306, 314 (1964). We recognize that there are cases, which DeFelice invokes, in which legislation spawned “substantive rights” to engage in previously unlawful conduct. *See, e.g., Hamm*, 379 U.S. at 310 n.3. But the NFA amendment at issue here merely repeals a prerequisite for registering some firearms without conferring an “affirmative right” to carry unregistered firearms. *See Bell*, 378 U.S. at 235.

For these reasons, we conclude, DeFelice lacks standing to challenge the amended NFA as an avenue to attack his conviction.

B

We turn to consider instead DeFelice’s challenge to the constitutionality of the statute “in effect at the time [DeFelice] committed the original offense.” *Smith*, 354 F.3d at 172. To determine whether a statute violates an individual’s Second Amendment rights, we apply *Bruen*’s two-step framework. *See Antonyuk v. James*, 120 F.4th 941, 964 (2d Cir. 2024). “Under the first step of the *Bruen*

analysis,” the party asserting his constitutional rights “bears the burden of demonstrating that the Second Amendment’s plain text covers” his conduct— “namely, to keep and bear arms.” *N.Y. State Firearms Ass’n*, 157 F.4th at 244 (citation modified). If the plaintiff fails to meet this burden, then we may skip the second step, which demands that we consider whether the government’s “firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Antonyuk*, 120 F.4th at 964 (citation modified).

As a prelude to *Bruen*’s first step, we first resolve “how precisely to characterize the conduct that is regulated.” *United States v. Gomez*, 159 F.4th 172, 176 (2d Cir. 2025). DeFelice was convicted of possessing an unregistered suppressor and two unregistered short-barreled rifles. We think that defining DeFelice’s conduct in the way he suggests, as mere “possession” of any short-barreled rifles and suppressors, “characterizes the regulated conduct at too high a level of generality.” *Id.* Instead, we describe the regulated conduct just as the challenged pre-2025 NFA provisions do: the possession of *unregistered* short-barreled rifles and suppressors.

C

With that description in mind, we turn to the merits and assume without deciding that both short-barreled rifles and suppressors are “arms” within the meaning of the Second Amendment. *See United States v. Peterson*, 161 F.4th 331, 339 (5th Cir. 2025).³ Even under this assumption, we conclude that DeFelice has failed to demonstrate that the NFA’s registration requirement implicates the plain text of the Second Amendment. *See id.* (upholding the NFA’s suppressor-registration requirement as a “presumptively constitutional . . . shall-issue regime”); *United States v. Speed*, 175 F.4th 272, 285–86 (4th Cir. 2026) (same); *see also United States v. DeBorba*, 177 F.4th 1005, 1013 (9th Cir. 2026) (same, while also concluding that suppressors are not “firearm[s] covered by the Second Amendment,” *id.* at 1012).

“[T]he Second Amendment does not confer the right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Gomez*, 159 F.4th at 175 (citation modified). “[R]egulations on the means of

³ DeFelice contends that remand is warranted because, after the District Court’s judgment, the Government changed its litigating position on whether suppressors are “arms” covered by the plain text of the Second Amendment. We disagree. The Government’s new arguments on firearm accessories have no effect on our underlying conclusion that the NFA was constitutionally applied to DeFelice.

acquiring, transporting, and storing firearms only implicate the text of the Second Amendment if they *meaningfully constrain* the right to possess and carry arms.” *N.Y. State Firearms Ass’n*, 157 F.4th at 244 (citation modified) (emphasis in original). Regulations that impose “[s]ome burden on the commercial sale of firearms,” *Gomez*, 159 F.4th at 177, without a constraint that “is so restrictive that it threatens a citizen’s right to acquire firearms,” are “presumptively lawful,” *Gazzola v. Hochul*, 88 F.4th 186, 195–96 (2d Cir. 2023) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627 n.26 (2008)). “[R]easonable processing times and the hassle of filling out paperwork” ordinarily do not present such a threat. *N.Y. State Firearms Ass’n*, 157 F.4th at 245. For example, under the NFA’s registration process, an individual seeking to register a firearm must “complete an application identifying the firearm” and “contain[ing] copies of the applicant’s fingerprints and his photograph.” *Peterson*, 161 F.4th at 336; 26 U.S.C. § 5812(a). Nor does “a regulatory fee that is both calibrated to only defray administrative costs *and* is not prohibitively expensive . . . meaningfully constrain an individual’s ability to exercise his Second Amendment rights.” *N.Y. State Firearms Ass’n*, 157 F.4th at 248 (emphasis in original). As DeFelice himself points out, the \$200 tax associated with registering certain NFA firearms was originally

established in 1934 and has remained unchanged over the years, rendering it “something short of a nuisance fee.” Appellant’s Br. 6.

Neither the NFA’s registration requirement, 26 U.S.C. §§ 5812, 5861(d), nor its \$200 tax provision, *id.* at § 5811(a) (amended 2025), meaningfully constrained DeFelice’s Second Amendment right. Indeed, DeFelice has not even argued, let alone established, that the length of time for registering an NFA firearm or the \$200 tax impeded his right to acquire firearms.⁴ See Appellant’s Br. 6; *see also Heller*, 554 U.S. at 626–27 & n.26; *N.Y. State Firearms Ass’n*, 157 F.4th at 248; *Bruen*, 597 U.S. at 38 n.9.

For these reasons, we reject DeFelice’s Second Amendment challenge.

III

As for DeFelice’s challenges to his sentence as both procedurally and substantively unreasonable, we typically apply “a deferential abuse-of-discretion standard” of review. *United States v. Vargas*, 961 F.3d 566, 570 (2d Cir. 2020)

⁴ At oral argument, DeFelice suggested for the first time that he did not comply with the NFA’s requirements because of his financial situation. See Oral Arg. Audio 3:15–4:00 (contending that “the record supports a strong inference” that “the offense was motivated by poverty”); 16:14–47 (conceding that DeFelice “did not brief [the argument] explicitly”). To the extent DeFelice argues that the \$200 tax impaired his ability to keep and bear arms, that argument is both forfeited and abandoned. See *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 132 (2d Cir. 2008); *United States v. Pascarella*, 84 F.3d 61, 73 (2d Cir. 1996).

(citation modified). In assessing procedural reasonableness, we usually ask whether a district court “fails to calculate the Guidelines range, makes a mistake in its Guidelines calculation, treats the Guidelines as mandatory, does not consider the [18 U.S.C.] § 3553(a) factors, or rests its sentence on a clearly erroneous finding of fact.” *United States v. Matta*, 777 F.3d 116, 124 (2d Cir. 2015) (citation modified). Absent procedural error, we ordinarily review substantive reasonableness by asking “whether the District Judge abused his discretion in determining that the § 3553(a) factors supported the sentence imposed.” *United States v. Jones*, 531 F.3d 163, 170 (2d Cir. 2008) (citation modified). Where, as here, however, “a defendant fails to object to an alleged sentencing error before the district court,” we review for “plain error.” *United States v. Davis*, 82 F.4th 190, 196 (2d Cir. 2023). To meet that standard, “the defendant must establish (1) error (2) that is plain and (3) affects substantial rights,” and that (4) “affect[s] the fairness, integrity, or public reputation of the judicial proceedings.” *United States v. Villafuerte*, 502 F.3d 204, 209 (2d Cir. 2007) (citation modified). DeFelice has failed to establish error, let alone plain error.

A

DeFelice argues that his sentence was procedurally unreasonable because the District Court relied on conduct that was illegal under state law but not federal law, and because the amendment to the NFA invalidated general deterrence as a sentencing factor.

The District Court did not err, let alone plainly err, when it considered DeFelice's illegal state conduct at sentencing.⁵ Observing that DeFelice "provided the undercover [officer] with a 30-round magazine" and characterized the item as "highly [expletive] illegal," the District Court explained that while this state law offense was "not . . . part of the charged conduct" under federal law, it evidenced DeFelice's culpable state of mind. App'x 150–52. The District Court was entitled to weigh this information "for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661. The court was also authorized to consider the need for general deterrence, which remains a relevant factor under § 3553(a). *See Davis*, 82 F.4th at 202; 18 U.S.C. § 3553(a)(2)(B). Although Congress has eliminated the \$200 tax for registering suppressors and short-barreled rifles,

⁵ The Government claims that DeFelice waived his challenge to the District Court's consideration of his illegal state conduct at sentencing. We need not decide the issue because we conclude that, in any event, the District Court did not err in considering this conduct.

a registration requirement remains in place, and it was appropriate for the District Court to consider the deterrent effect of its sentence on others who might be tempted to skirt the requirement.

B

DeFelice's challenge to the substantive reasonableness of his sentence fares no better. His claim that the District Court relied "exclusively" on deterrence finds no support in the record. Appellant's Br. 34–35. Moreover, "the weight given to any single [§ 3553(a)] factor is a matter firmly committed to the discretion of the sentencing judge and is beyond our review." *United States v. Capanelli*, 479 F.3d 163, 165 (2d Cir. 2007) (citation modified). At sentencing, the District Court observed that DeFelice "held steady jobs throughout [his] adulthood," was "a family man," App'x 172, and "work[ed]" with his "psychotherapist," App'x 175. It nevertheless determined that a sentence of twelve months and a day was appropriate. *See* App'x 183. The below-Guidelines sentence that the court imposed is neither "shockingly high" nor "otherwise unsupportable as a matter of law." *United States v. DiMassa*, 117 F.4th 477, 482 (2d Cir. 2024) (citation modified).

IV

For the foregoing reasons, the judgment of the District Court is
AFFIRMED.