SUPREME COURT OF THE UNITED STATES

No. 92–1441

HAROLD E. STAPLES, III, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[May 23, 1994]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

To avoid a slight possibility of injustice to unsophisticated owners of machineguns and sawed-off shotguns, the Court has substituted its views of sound policy for the judgment Congress made when it enacted the National Firearms Act (or Act). Because the Court's addition to the text of 26 U. S. C. §5861(d) is foreclosed by both the statute and our precedent, I respectfully dissent.

The Court is preoccupied with guns that "generally can be owned in perfect innocence." *Ante*, at 11. This case, however, involves a semiautomatic weapon that was readily convertible into a machinegun—a weapon that the jury found to be "`a dangerous device of a type as would alert one to the likelihood of regulation.'" *Ante*, at 3. These are not guns "of some sort" that can be found in almost "50 percent of American homes." *Ante*, at 13.[1] They are particularly dangerous—indeed, a substantial percentage of the unregistered machineguns now in circulation are converted semiautomatic weapons.[2]

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[1]Indeed, only about 15 percent of all the guns in the United States are semiautomatic. See National Rifle Association, Fact Sheet, Semi-Automatic Firearms 1 (Feb. 1, 1994). Although it is not known how many of those weapons are readily convertible into machineguns, it is obviously a lesser share of the total.

[2]See U. S. Dept. of Justice, Attorney General's Task Force

The question presented is whether the National Firearms Act imposed on the Government the burden of proving beyond a reasonable doubt not only that the defendant knew he possessed a dangerous device sufficient to alert him to regulation, but also that he knew it had all the characteristics of a "firearm" as defined in the statute. Three unambiguous guideposts direct us to the correct answer to that question: the text and structure of the Act, our cases construing both this Act and similar regulatory legislation, and the Act's history and interpretation.

Contrary to the assertion by the Court, the text of the statute does provide "explicit guidance in this case." Cf. *ante*, at 4. The relevant section of the Act makes it "unlawful for any person . . . to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record." 26 U. S. C. §5861(d). Significantly, the section contains no knowledge requirement, nor does it describe a common-law crime.

The common law generally did not condemn acts as criminal unless the actor had "an evil purpose or mental culpability," *Morissette* v. *United States*, 342 U. S. 246, 252 (1952), and was aware of all the facts that made the conduct unlawful. *United States* v. *Balint*, 258 U. S. 250, 251–252 (1922). In interpreting

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on Violent Crime: Final Report 29, 32 (Aug. 17, 1981) (stating that over an 18-month period over 20 percent of the machineguns seized or purchased by the Bureau of Alcohol, Tobacco and Firearms had been converted from semiautomatic weapons by "simple tool work or the addition of readily available parts") (citing U. S. Dept. of Treasury, Bureau of Alcohol, Tobacco and Firearms, Firearms Case Summary (Washington: U. S. Govt. Printing Office 1981)).

statutes that codified traditional common-law offenses, courts usually followed this rule, even when the text of the statute contained no such requirement. *Ibid.* Because the offense involved in this case is entirely a creature of statute, however, "the background rules of the common law," cf. *ante*, at 5, do not require a particular construction, and critically different rules of construction apply. See *Morissette* v. *United States*, 342 U. S. 246, 252–260 (1952).

In *Morissette*, Justice Jackson outlined one such interpretive rule:

> "[C]ongressional silence as to mental elements in an Act merely adopting into federal statutory law a concept of crime already . . . well defined in common law and statutory interpretation by the states may warrant quite contrary inferences than the same silence in creating an offense new to general law, for whose definition the courts have no guidance except the Act." *Id.*, at 262.

Although the lack of an express knowledge requirement in §5861(d) is not dispositive, see *United States* v. *United States Gypsum Co.*, 438 U. S. 422, 438 (1978), its absence suggests that Congress did not intend to require proof that the defendant knew all of the facts that made his conduct illegal.[3]

The provision's place in the overall statutory scheme, see *Crandon* v. *United States*, 494 U. S. 152,

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[3]The Seventh Circuit's comment in a similar case is equally apt here: "The crime is possessing an unregistered firearm—not `knowingly' possessing an unregistered firearm, or possessing a weapon knowing it to be a firearm, or possessing a firearm knowing it to be unregistered. . . . . [Petitioner's] proposal is not that we *interpret* a knowledge or intent requirement in §5861(d); it is that we *invent* one." *United States* v. *Ross*, 917 F. 2d 997, 1000 (1990) *(per curiam)* (emphasis in original), cert. denied, 498 U. S. 1122 (1991).

158 (1990), confirms this intention. In 1934, when Congress originally enacted the statute, it limited the coverage
of the 1934 Act to a relatively narrow category of weapons such as submachineguns and sawed-off shotguns—weapons characteristically used only by professional gangsters like Al Capone, Pretty Boy Floyd, and their henchmen.[4] At the time, the Act would have had little application to guns used by hunters or guns kept at home as protection against unwelcome intruders.[5] Congress therefore could reasonably presume that a person found in possession of an unregistered machinegun or sawed-off shotgun intended to use it for criminal purposes. The statute as a whole, and particularly the decision to criminalize mere possession, reflected a legislative judgment that the likelihood of innocent possession of such an unregistered weapon was remote, and far

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[4]"The late 1920s and early 1930s brought . . . a growing perception of crime both as a major problem and as a national one. . . . [C]riminal gangs found the submachinegun (a fully automatic, shoulder-fired weapon utilizing automatic pistol cartridges) and sawed-off shotgun deadly for close-range fighting." Hardy, The Firearms Owners' Protection Act: A Historical and Legal Perspective, 17 Cumb. L. Rev. 585, 590 (1987).

[5]The Senate Report on the bill explained: "The gangster as a law violator must be deprived of his most dangerous weapon, the machinegun. Your committee is of the opinion that limiting the bill to the taxing of sawed-off guns and machineguns is sufficient at this time. It is not thought necessary to go so far as to include pistols and revolvers and sporting arms. But while there is justification for permitting the citizen to keep a pistol or revolver for his own protection without any restriction, there is no reason why anyone except a law officer should have a machinegun or sawed-off shotgun." S. Rep. No. 1444, 73d Cong., 2d Sess., 1–2 (1934).

less significant than the interest in depriving gangsters of their use.

In addition, at the time of enactment, this Court had already construed comparable provisions of the Harrison Anti-Narcotic Act not to require proof of knowledge of all the facts that constitute the proscribed offense. *United States* v. *Balint*, 258 U. S. 250 (1922).[6] Indeed, Attorney General Cummings expressly advised Congress that the text of the gun control legislation deliberately followed the language of the Anti-Narcotic Act to reap the benefit of cases construing it.[7] Given the reasoning of *Balint*, we properly may infer that Congress did not intend the Court to read a stricter knowledge requirement into the gun control legislation than we read into the Anti-Narcotic Act. *Cannon* v. *University of Chicago*, 441 U. S. 677, 698–699 (1979).

Like the 1934 Act, the current National Firearms Act is primarily a regulatory measure. The statute establishes taxation, registration, reporting, and record-keeping requirements for businesses and transactions involving statutorily defined firearms, and requires that each firearm be identified by a serial number. 26 U. S. C. §§5801–5802, 5811–5812, 5821–5822, 5842–

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[6]In the *Balint* case, after acknowledging the general common-law rule that made knowledge of the facts an element of every crime, we held that as to statutory crimes the question is one of legislative intent, and that the Anti-Narcotic Act should be construed to authorize "punishment of a person for an act in violation of law[, even] when ignorant of the facts making it so." *Balint*, 258 U. S., at 251–252. The "policy of the law may, in order to stimulate proper care, require the punishment of the negligent person though he be ignorant of the noxious character of what he sells." *Id.*, at 253.

[7]See National Firearms Act: Hearings on H. R. 9066 before the House Committee on Ways and Means, 73d Cong., 2d Sess., 6 (1934).

5843. The Secretary of the Treasury must maintain a central registry that includes the names and addresses of persons in possession of all firearms not controlled by the Government. §5841. Congress also prohibited certain acts and omissions, including the possession of an unregistered firearm.[8] §5861.

As the Court acknowledges, *ante*, at 7, to interpret statutory offenses such as §5861(d), we look to "the nature of the statute and the particular character of the items regulated" to determine the level of knowledge required for conviction. An examination of §5861(d) in light of our precedent dictates that the crime of possession of an unregistered machinegun is in a category of offenses described as "public welfare" crimes.[9] Our decisions interpreting such offenses clearly require affirmance of petitioner's conviction.

"Public welfare" offenses share certain characteristics: (1) they regulate "dangerous or deleterious devices or products or obnoxious waste

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[8]"Omission of a mental element is the norm for statutes designed to deal with inaction. *Not* registering your gun, *not* cleaning up your warehouse, *United States* v. *Park*, 421 U. S. 658 . . . (1975), and like `acts' are done without thinking. Often the omission occurs because of lack of attention. . . . Yet Congress may have sound reasons for requiring people to investigate and act, objectives that cannot be achieved if the courts add mental elements to the statutes." *Ross*, 917 F. 2d, at 1000.

[9]These statutes are sometimes referred to as "strict liability" offenses. As the Court notes, because the defendant must know that he is engaged in the type of dangerous conduct that is likely to be regulated, the use of the term "strict liability" to describe these offenses is inaccurate. *Ante*, at 7, n. 3. I therefore use the term "public welfare offense" to describe this type of statute.

materials," see *United States* v. *International Minerals & Chemical Corp.*, 402 U. S. 558, 565 (1971); (2) they "heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare," *Morissette*, 342 U. S., at 254; and (3) they "depend on no mental element but consist only of forbidden acts or omissions," *id.*, at 252–253. Examples of such offenses include Congress' exertion of its power to keep dangerous narcotics,[10] hazardous substances,[11] and impure and adulterated foods and drugs[12] out of the channels of commerce.[13]

Public welfare statutes render criminal "a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health or safety." *Liparota* v. *United States*, 471 U. S. 419, 433 (1985). Thus, under such statutes, "a defendant can be convicted even though he was unaware of the circumstances of his conduct that made it illegal." *Id.*, at 443, n. 7 (White, J., dissenting). Referring to the strict criminal sanctions for unintended violations of the food and drug laws, Justice Frankfurter wrote:

"The purposes of this legislation thus touch

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[10]See *United States* v. *Balint*, 258 U. S. 250 (1922).

[11]See *United States* v. *International Minerals & Chemical Corp.*, 402 U. S. 558 (1971).

[12]See *United States* v. *Dotterweich*, 320 U. S. 277 (1943).

[13]The Court in *Morissette*, expressing approval of our public welfare offense cases, stated:

"Neither this Court nor, so far as we are aware, any other has undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not. We attempt no closed definition, for the law on the subject is neither settled nor static." 342 U. S., at 260 (footnotes omitted).

> phases of the lives and health of people which, in the circumstances of modern industrialism, are largely beyond self-protection. Regard for these purposes should infuse construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words. . . . The prosecution . . . is based on a now familiar type of legislation whereby penalties serve as effective means of regulation. Such legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger." *United States* v. *Dotterweich*, 320 U. S. 277, 280–281 (1943) (citing *United States* v. *Balint*, 258 U. S. 250 (1922); other citations omitted).

The National Firearms Act unquestionably is a public welfare statute. *United States* v. *Freed*, 401 U. S. 601, 609 (1971) (holding that this statute "is a regulatory measure in the interest of the public safety"). Congress fashioned a legislative scheme to regulate the commerce and possession of certain types of dangerous devices, including specific kinds of weapons, to protect the health and welfare of the citizenry. To enforce this scheme, Congress created criminal penalties for certain acts
and omissions. The text of some of these offenses—including the one at issue here—contains no knowledge requirement.

The Court recognizes:

> "[W]e have reasoned that as long as a defendant knows that he is dealing with a dangerous device of a character that places him `in responsible relation to a public danger,' *Dotterweich*, *supra*, at 281, he should be alerted to the probability of strict regulation, and we have assumed that in

> such cases Congress intended to place the burden on the defendant to `ascertain at his peril whether [his conduct] comes within the inhibition of the statute.' *Balint*, *supra*, at 254." *Ante*, at 7.

We thus have read a knowledge requirement into public welfare crimes, but not a requirement that the defendant know all the facts that make his conduct illegal. Although the Court acknowledges this standard, it nevertheless concludes that a gun is not the type of dangerous device that would alert one to the possibility of regulation.

Both the Court and JUSTICE GINSBURG erroneously rely upon the "tradition[al]" innocence of gun ownership to find that Congress must have intended the Government to prove knowledge of all the characteristics that make a weapon a statutory "firear[m]." *Ante*, at 10–12; *ante,* at 2–3 (GINSBURG, J., concurring in judgment). We held in *Freed*, however, that a §5861(d) offense may be committed by one with no awareness of either wrongdoing or of all the facts that constitute the offense.[14] 401 U. S., at 607–610. Nevertheless, the Court, asserting that the Government "gloss[es] over the distinction between grenades and guns," determines that "the gap between *Freed* and this case is too wide to bridge." *Ante*, at 9. As such, the Court instead reaches the rather surprising conclusion that guns are more analogous to food stamps than to hand grenades.[15]

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[14]*Freed*, 401 U. S., at 607 (holding that a violation of §5861(d) may be established without proof that the defendant was aware of the fact that the firearm he possessed was unregistered). Our holding in *Freed* is thus squarely at odds with the Court's conclusion that the "defendant must know the facts that make his conduct illegal," *ante*, at 19.

[15]The Court's and JUSTICE GINSBURG's reliance upon *Liparota* is misplaced. *Ante*, at 9–11; *ante,* at 2–3. Although the Court is usually concerned with fine nuances of statutory

Even if one accepts that dubious proposition, the Court founds it upon a faulty premise: its mischaracterization of the Government's submission as one contending that "*all guns* . . . are dangerous devices that put gun owners on notice . . . ." *Ante,* at 8 (emphasis added).[16] Accurately identified, the Government's position presents the question whether guns such as the one possessed by petitioner "`are highly dangerous offensive weapons, no less dangerous than the narcotics'" in *Balint* or the hand grenades in *Freed*, see *ante,* at 8, (quoting *Freed*, 401 U. S., at 609).[17]

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text, its discussion of *Liparota* simply ignores the fact that the food stamp fraud provision, unlike §5861(d), contained the word "knowingly." The Members of the Court in *Liparota* disagreed on the proper interpretation. The dissenters accepted the Government's view that the term merely required proof that the defendant had knowledge of the facts that constituted the crime. See *Liparota*, 471 U. S., at 442–443 (White, J., dissenting) ("I would read §2024(b)(1) . . . to require awareness of only the relevant aspects of one's conduct rendering it illegal, not the fact of illegality"). The majority, however, concluded that "knowingly" also connoted knowledge of illegality. *Id.,* 471 U. S., at 424–425. Because neither "knowingly" nor any comparable term appears in §5861(d), the statute before us today requires even less proof of knowledge than the dissenters would have demanded in *Liparota*.

[16]JUSTICE GINSBURG similarly assumes that the character of "*all guns*" cannot be said to place upon defendants an obligation "to inquire about the need for registration." *Ante*, at 2–3 (emphasis added).

[17]The Government does note that some Courts of Appeals have required proof of knowledge only that "the weapon was `a firearm, within the general meaning of that term,'" Brief for United States 24–25 (citing cases). Contrary to the assertion by the Court *ante*, at 11, n. 5, however, the

Thus, even assuming that the Court is correct that the mere possession of an ordinary rifle or pistol does not entail sufficient danger to alert one to the possibility of regulation, that conclusion does not resolve this case. Petitioner knowingly possessed a semiautomatic weapon that was readily convertible into a machinegun. The "`character and nature'" of such a weapon is sufficiently hazardous to place the

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Government does not advance this test as the appropriate knowledge requirement, but instead supports the one used by other Courts of Appeals. Compare the Court's description of the Government's position, *ibid.*, with the following statements in the Government's brief:

"A defendant may be convicted of such offenses so long as the government proves that he knew the item at issue was highly dangerous and of a type likely to be subject to regulation." Brief for United States 9.

"[T]he court of appeals correctly required the government to prove only that petitioner knew that he possessed a dangerous weapon likely to be subject to regulation." *Id.*, at 13.

"B. The Intent Requirement Applicable To Section 5861(d) Is Knowledge That One Is Dealing With A Dangerous Item Of A Type Likely To Be Subject To Regulation" *Id.*, at 16.

"But where a criminal statute involves regulation of a highly hazardous substance—and especially where it penalizes a failure to act or to comply with a registration scheme—the defendant's knowledge that he was dealing with such a substance and that it was likely to be subject to regulation provides sufficient intent to support a conviction." *Id.*, at 17–18.

"Rather, absent contrary congressional direction, knowledge of the highly dangerous nature of the articles involved and the likelihood that they are subject to regulation takes the place of the more rigorous knowledge requirement applicable where apparently innocent and

possessor on notice of the possibility of regulation. See *Posters `N' Things, Ltd.* v. *United States*, ___ U. S. ___, ___ (1994) (slip op., at 12) (citation omitted).[18] No significant difference exists between imposing upon the possessor a duty to determine whether such a weapon is registered, *Freed*, 401 U. S., at 607–610, and imposing a duty to determine whether that weapon has been converted into a machinegun.

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harmless devices are subject to regulation." *Id.*, at 20. "But the instruction did not require the government to prove that petitioner knew his weapon `possess[ed] every last characteristic [which subjects it] to regulation'; he need only have `know[n] that he [was] dealing with a dangerous device of a type as would alert one to the likelihood of regulation.' Tr. 465.

"That instruction accurately describes the mental state necessary for a violation of Section 5861(d)." *Id.*, at 23.

"[P]roof that a defendant was on fair notice that the item he possessed was highly dangerous and likely to be regulated is sufficient to support a conviction." *Id.*, at 24.

[18]The Court and JUSTICE GINSBURG apparently assume that the outer limits of any such notice can be no broader than the category of dangerous objects that Congress delineated as "firearms." *Ante*, at 11; *ante,* at 2–3. Our holding in *Posters `N' Things*, illustrates the error in that assumption. A retailer who may not know whether certain merchandise is actually drug paraphernalia, as that term is defined in the relevant federal statute, may nevertheless violate
the law if "aware that customers in general are likely to use the merchandise with drugs." ___ U.S., at ___ (slip op., at 11). The owner of a semiautomatic weapon that is readily convertible into a machinegun can certainly be aware of its dangerous nature and the consequent probability of regulation even if he does not know whether the weapon is actually a machinegun. If ignorance of the precise characteristics that render an item forbidden

Cases arise, of course, in which a defendant would not know that a device was dangerous unless he knew that it was a "firearm" as defined in the Act. *Freed* was such a case; unless the defendant knew that the device in question was a hand grenade, he would not necessarily have known that it was dangerous. But given the text and nature of the statute, it would be utterly implausible to suggest that Congress intended the owner of a sawed-off shotgun to be criminally liable if he knew its barrel was 17.5 inches long but not if he mistakenly believed the same gun had an 18-inch barrel. Yet the Court's holding today assumes that Congress intended that bizarre result.

The enforcement of public welfare offenses always entails some possibility of injustice. Congress nevertheless has repeatedly decided that an overriding public interest in health or safety may outweigh that risk when a person is dealing with products that are sufficiently dangerous or deleterious to make it reasonable to presume that he either knows, or should know, whether those products conform to special regulatory requirements. The dangerous character of the product is reasonably presumed to provide sufficient notice of the probability of regulation to justify strict enforcement against those who are merely guilty of negligent rather than willful misconduct.

The National Firearms Act is within the category of public welfare statutes enacted by Congress to regulate highly dangerous items. The Government submits that a conviction under such a statute may be supported by proof that the defendant "knew the item at issue was highly dangerous and of a type likely to be subject to regulation." Brief for United

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should be a defense, items that are likely to be "drug paraphernalia" are no more obviously dangerous, and thus regulated, than items that are likely to be "firearms."

States 9.[19] It is undisputed that the evidence in this case met that standard. Nevertheless, neither JUSTICE THOMAS for the Court nor JUSTICE GINSBURG has explained why such a knowledge requirement is unfaithful to our cases or to the text of the Act.[20] Instead, following the approach of their decision in *United States* v. *Harris*, 959 F. 2d 246, 260–261 (CADC) *(per curiam),* cert. denied, *sub nom. Smith* v. *United States,* 506 U. S. ___ (1992), they have simply explained why, in their judgment, it would be unfair

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[19]As a matter of law, this is the level of knowledge required by the statute. Therefore, contrary to the Court's suggestion *ante*, at 12–13, n. 6, I have not left the determination of the "exact content of the knowledge requirement" to the jury. I only leave to the jury its usual function: the application of this legal standard to the facts. In performing this function, juries are frequently required to determine if a law has been violated by application of just such a "general `standard.'" See, *e.g.*, *Posters `N' Things*, ___ U. S. at ___ (slip op., at 11–12); *Miller* v. *California,* 413 U. S. 15, 24 (1973).

[20]The Court also supports its conclusion on the basis of the purported disparity between the penalty provided by this statute and those of other regulatory offenses. Although a modest penalty may indicate that a crime is a public welfare offense, such a penalty is not, as the Court recognizes *ante*, at 16–17, a requisite characteristic of public welfare offenses. For example, the crime involved in *Balint* involved punishment of up to five years' imprisonment. See *Dotterweich*, 320 U. S., at 285; see also *Morissette*, 342 U. S., at 251, n. 8 (noting that rape of one too young to consent is an offense "in which the victim's actual age was determinative despite defendant's reasonable belief that the girl had reached age of consent"). Moreover, congressional authorization of a range of penalties in some cases—petitioner, for instance, is on probation—demonstrates a recognition that relatively innocent conduct should be punished less severely.

to punish the possessor of this machinegun.

The history and interpretation of the National Firearms Act supports the conclusion that Congress did not intend to require knowledge of all the facts that constitute the offense of possession of an unregistered weapon. During the first 30 years of enforcement of the 1934 Act, consistent with the absence of a knowledge requirement and with the reasoning in *Balint*, courts uniformly construed it not to require knowledge of all the characteristics of the weapon that brought it within the statute. In a case decided in 1963, then-Judge Blackmun reviewed the earlier cases and concluded that the defendant's knowledge that he possessed a gun was "all the scienter which the statute requires." *Sipes* v. *United States*, 321 F. 2d 174, 179 (CA8), cert. denied, 375 U. S. 913 (1963).

Congress subsequently amended the statute twice, once in 1968 and again in 1986. Both amendments added knowledge requirements to other portions of the Act,[21] but neither the text nor the history of either amendment discloses an intent to add any other knowledge requirement to the possession of an

[21]Significantly, in 1968, Congress included a knowledge requirement in §5861(*l*). 26 U. S. C. §5861(*l*) (making it unlawful "to make, or cause the making of, a false entry on any application, return, or record required by this chapter, *knowing* such entry to be false") (emphasis added). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Rodriguez* v. *United States*, 480 U. S. 522, 525 (1987) (internal quotation marks and citations omitted); see also *Lawrence County* v. *Lead-Deadwood School Dist. No. 40–1,* 469 U. S. 256, 267–268 (1985).

unregistered firearm offense. Given that, with only one partial exception,[22] every federal tribunal to address the question had concluded that proof of knowledge of all the facts constituting a violation was not required for a conviction under §5861(d),[23] we may infer that Congress intended that interpretation to survive. See *Lorillard* v. *Pons*, 434 U. S. 575, 580 (1978).

In short, petitioner's knowledge that he possessed an item that was sufficiently dangerous to alert him to the likelihood of regulation would have supported a conviction during the first half century of enforcement of this statute. Unless application of

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[22]*United States* v. *Herbert*, 698 F. 2d 981, 986–987 (CA9), cert. denied, 464 U. S. 821 (1983) (requiring the Government to prove knowledge of all the characteristics of a weapon only when no *external* signs indicated that the weapon was a "firearm"). Not until 1989 did a Court of Appeals adopt the view of the majority today. See *United States* v. *Williams*, 872 F. 2d 773 (CA6).

[23]See, *e.g.*, *United States* v. *Gonzalez*, 719 F. 2d 1516, 1522 (CA11 1983), cert. denied, 465 U. S. 1037 (1984); *Morgan* v. *United States*, 564 F. 2d 803, 805–806 (CA8 1977); *United States* v. *Cowper*, 503 F. 2d 130, 132–133 (CA6 1974), cert. denied, 420 U. S. 930 (1975); *United States* v. *De Bartolo*, 482 F. 2d 312, 316 (CA1 1973); *United States* v. *Vasquez*, 476 F. 2d 730, 732 (CA5), cert. denied, 414 U. S. 836 (1973), overruled by *United States* v. *Anderson*, 885 F. 2d 1248 (CA5 1989) (en banc).

And, as I have already noted, *United States* v. *Freed*, 401 U. S. 601 (1971), was consistent with the Government's position here. Although the Government accepted the burden of proving that Freed knew that the item he possessed was a hand grenade, the possessor of an unfamiliar object such as a hand grenade would not know that it was "a dangerous item of a type likely to be subject to regulation," Brief for United States 16; see also *id.*, at 20, 23, 24, unless he knew what it was.

that standard to a particular case violates the Due Process Clause,[24] it is the responsibility of Congress, not this Court, to amend the statute if Congress deems it unfair or unduly strict.

On the premise that the purpose of the *mens rea* requirement is to avoid punishing people "for apparently innocent activity," JUSTICE GINSBURG concludes that proof of knowledge that a weapon is "`a dangerous device of a type as would alert one to the likelihood of regulation'" is not an adequate *mens rea* requirement, but that proof of knowledge that the weapon possesses "`every last characteristic'" that subjects it to regulation is. *Ante*, at 3–5, and n. 5 (GINSBURG, J., concurring in judgment) (quoting the trial court's jury instruction).

Assuming that "innocent activity" describes conduct without any consciousness of wrongdoing, the risk of punishing such activity can be avoided only by reading into the statute the common-law concept of *mens rea*: "an evil purpose or mental culpability." *Morissette*, 342 U. S. at 252.[25] But even petitioner

[24]Petitioner makes no such claim in this Court.

[25]Our use of the term *mens rea* has not been consistent. In *Morissette*, we used the term as if it always connoted a form of wrongful intent. In other cases, we employ it simply to mean whatever level of knowledge is required for any particular crime. See, *e.g.*, *United States* v. *Bailey*, 444 U. S. 394, 403 (1980). In this sense, every crime except a true strict liability offense contains a *mens rea* requirement. For instance, the Court defined *mens rea* in *Liparota* v. *United States,* 471 U. S. 419, 426 (1985), as "knowledge of illegality." In dissent, however, JUSTICE WHITE equated the term with knowledge of the facts that make the conduct illegal. *Id.*, at 442–443. Today, the Court assigns the term the latter definition, *ante*, at 4–5, but in fact requires proof of knowledge of only some of the

does not contend that the Government must prove guilty intent or intentional wrongdoing. Instead, the "*mens rea*" issue in this case is simply what knowledge requirement, if any, Congress implicitly included in this offense. There are at least five such possible knowledge requirements, four of which entail the risk that a completely innocent mistake will subject a defendant to punishment.

First, a defendant may know that he possesses a weapon with all of the characteristics that make it a "firearm" within the meaning of the statute and also know that it has never been registered, but be ignorant of the federal registration requirement. In such a case, we presume knowledge of the law even if we know the defendant is "innocent" in the sense that JUSTICE GINSBURG uses the word. Second, a defendant may know that he possesses a weapon with all of the characteristics of a statutory firearm and also know that the law requires that it be registered, but mistakenly believe that it is in fact registered. *Freed* squarely holds that this defendant's "innocence" is not a defense. Third, a defendant may know only that he possesses a weapon with all of the characteristics of a statutory firearm. Neither ignorance of the registration requirement nor ignorance of the fact that the weapon is unregistered protects this "innocent" defendant. Fourth, a defendant may know that he possesses a weapon that is sufficiently dangerous to likely be regulated, but not know that it has all the characteristics of a statutory firearm. Petitioner asserts that he is an example of this "innocent" defendant. Fifth, a defendant may know that he possesses an ordinary gun and, being aware of the widespread lawful gun ownership in the country, reasonably assume that

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facts that constitute the violation, *ante*, at 8–9 (not requiring proof of knowledge of the fact that the gun is unregistered).

there is no need "to inquire about the need for registration." *Ante*, at 3 (GINSBURG, J., concurring in judgment). That, of course, is not this case. See *supra,* at 1, and n. 1.[26]

JUSTICE GINSBURG treats the first, second, and third alternatives differently from the fourth and fifth. Her acceptance of knowledge of the characteristics of a statutory "firearm" as a sufficient predicate for criminal liability—despite ignorance of either the duty to register or the fact of nonregistration, or both—must rest on the premise that such knowledge would alert the owner to the likelihood of regulation, thereby depriving the conduct of its "apparen[t] innocen[ce]." Yet in the fourth alternative, a jury determines just such knowledge: that the characteristics of the weapon known to the defendant would alert the owner to the likelihood of regulation.

In short, JUSTICE GINSBURG's reliance on "the purpose of the *mens rea* requirement—to shield people against punishment for apparently innocent activity," *ante*, at 3, neither explains why ignorance of certain facts is a defense although ignorance of others is not, nor justifies her disagreement with the jury's finding that this defendant knew facts that should have caused him to inquire about the need for registration.[27]

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[26]Although I disagree with the assumption that "widespread lawful gun ownership" provides a sufficient reason for believing that there is no need to register guns (there is also widespread lawful automobile ownership), acceptance of that assumption neither justifies the majority's holding nor contradicts my conclusion on the facts of this case.

[27]In addition, contrary to JUSTICE GINSBURG's assumption, if one reads the term "firearm" from the quoted section of the indictment to mean "gun," the indictment still charges an offense under §5861(d) and does not differ from the critical jury instruction. See *ante*, at 3–4. Even if JUSTICE

This case presents no dispute about the dangerous character of machineguns and sawed-off shotguns. Anyone in possession of such a weapon is "standing in responsible relation to a public danger." See *Dotterweich*, 320 U. S., at 281 (citation omitted). In the National Firearms Act, Congress determined that the serious threat to health and safety posed by the private ownership of such firearms warranted the imposition of a duty on the owners of dangerous weapons to determine whether their possession is lawful. Semiautomatic weapons that are readily convertible into machineguns are sufficiently dangerous to alert persons who knowingly possess them to the probability of stringent public regulation. The jury's finding that petitioner knowingly possessed "a dangerous device of a type as would alert one to the likelihood of regulation" adequately supports the conviction.

Accordingly, I would affirm the judgment of the Court of Appeals.

GINSBURG is correct that there is a technical variance, petitioner makes no claim that any such variance prejudiced him. The wording of the indictment, of course, sheds no light on the proper interpretation of the underlying statutory text. Although the repeated use of a term in a *statute* may shed light on the statute's construction, see *Ratzlaf* v. *United States*, 510 U. S. ___ (1993) (slip op., at 8), such use in an indictment is irrelevant to that question.