In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1165

JOHN ROE,

Plaintiff-Appellant,

v.

STEVEN M. DETTELBACH, in his official capacity as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, and MERRICK B. GARLAND, Attorney General of the United States,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois
No. 3:21-cv-00125 — **J. Phil Gilbert**, *Judge*.

ARGUED SEPTEMBER 22, 2022 — DECIDED JANUARY 27, 2023

Before WOOD, HAMILTON, and ST. EVE, *Circuit Judges*.

WOOD, *Circuit Judge*. This suit is about a person's right to have a gun part called a "drop-in auto sear." John Roe, litigating under a pseudonym to avoid potential criminal liability, filed suit for a judgment declaring that he was entitled to have and keep a drop-in auto sear that he currently possesses. The

district court dismissed the case without prejudice for lack of standing, concluding that federal courts could not redress Roe's injury. The court's action was correct, but not because Roe lacked standing. Instead, he failed to state a claim on which relief may be granted. See FED. R. CIV. P. 12(b)(6). We have modified the judgment to be one with prejudice, and as so adjusted, we affirm.

I

A

Drop-in auto sears can be installed into semi-automatic guns; once in place, they make the weapon fully automatic, meaning the user must pull the trigger only once to fire repeated shots. The National Firearms Act (the Firearms Act) defines a machine gun as any gun that can shoot more than one shot "by a single function of the trigger." 26 U.S.C. § 5845(b). Because an auto sear can transform certain firearms into machine guns as so defined, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) decided in 1981 to define auto sears as machine guns; this definition does not require the auto sear to be installed or even owned in conjunction with a compatible rifle. ATF Ruling 81-4, 27 C.F.R. § 479.11 (hereinafter Ruling 81-4). (This portion of the ATF's regulations was previously codified at 27 C.F.R. § 179.11 and some materials referenced in this opinion continue to refer to part 179.11.) Ruling 81–-4 brought auto sears under the Firearms Act's regulatory scheme, which demands that all machine guns be registered. Before 1981, there were no registration requirements for auto sears; since the 1981 ruling, it is unlawful to possess an unregistered auto sear.

In 1986, Congress amended the Gun Control Act to impose a ban on machine guns. See Firearms Owners Protection Act, Pub. L. No. 99-308, § 102, 100 Stat. 449, 453 (1986). The amendments make it unlawful for "any person to transfer or possess a machine gun," though they do not apply to machine guns lawfully possessed before the effective date. 18 U.S.C. § 922(o). The current Gun Control Act "effectively freezes the number of legal machine guns in private hands at its 1986 level." *United States v. Kenney*, 91 F.3d 884, 885 (7th Cir. 1996). As applied to auto sears, the Act prevents private purchasers from buying new auto sears or registering previously owned auto sears after 1986.

Roe purchased his auto sear in 1979, a time when these devices were not subject to any registration requirements. He contends that the commonly held interpretation of Ruling 81-4 was that it had a grandfathering effect; that is, auto sears that were already manufactured or possessed were thought to be exempted permanently from the taxation and registration requirements of the Firearms Act. On that understanding, Roe never registered his auto sear. He contends, in addition, that there were no meaningful opportunities to register pre-1981 auto sears because everyone believed them to be exempt from the registration requirements.

To understand the basis for Roe's position, it is helpful to look at the text of Ruling 81-4 itself. The ruling reads:

> With respect to the machine gun classification of the auto sear under the National Firearms Act, pursuant to 26 U.S.C. 7805(b), this ruling will not be applied to auto sears manufactured before November 1, 1981. Accordingly, auto sears manufactured on or after

> November 1, 1981, will be subject to all of the provisions of the National Firearms Act and 27 C.F.R. Part 179.

Ruling 81-4. The question is thus what the ATF means when it says that the ruling "will not be applied to auto sears manufactured before November 1, 1981." See *id.*

The ATF asserts that this phrase is not ambiguous. The language "pursuant to 26 U.S.C. 7805(b)," it argues, is a reference to the applicable internal revenue laws. If that is correct, then the Ruling states only that there is a retroactive exemption for *taxes* related to pre-1981 auto sears. That reading is supported by a later statement from the ATF found in an Editor's Note to the Federal Firearms Regulations Reference Guide, published in September 2014:

> Regardless of the date of manufacture of a drop in auto sear (*i.e.*, before or after November 1, 1981) the possession or transfer of an unregistered drop in auto sear (a machinegun as defined) is prohibited by the National Firearms Act (NFA), 26 U.S.C. § 5861, and the Gun Control Act, 18 U.S.C. § 922(o). The last paragraph of ATF Ruling 81-4 only exempts the making, transfer, and special (occupational) taxes imposed by the NFA with respect to the making, manufacture, or transfer of drop in auto sears prior to November 1, 1981.

Id. The ATF insists that this has been the operative interpretation of Ruling 81-4 since it went into effect. It was not, the agency says, an across-the-board exemption for pre-1981 auto sears from the Firearms Act's registration requirements. The result is that *any* presently unregistered auto sear is contraband, and that the 1986 machine gun ban imposed by the Gun

Control Act means that there is no way to register an auto sear.

B

Apparently, Roe forgot for some time that he owned the auto sear, but he remembered it in early 2020 and decided that he wanted to sell it. In its unregistered state, however, the auto sear can neither be lawfully transferred nor lawfully possessed. Hoping to create a path to legal ownership, Roe filed the present action in February 2021, seeking declaratory and injunctive relief that would force the ATF either to exempt his auto sear from the Firearms Act's registration requirements or to permit him to register it. Roe also challenged the ATF's 2014 Editor's Note as an arbitrary and capricious agency decision under the Administrative Procedure Act (APA) and questioned the constitutionality of the Firearms Act as beyond the scope of Congress's Commerce Clause power.

The district court determined that it had subject-matter jurisdiction under 28 U.S.C. § 1331, the Declaratory Judgment Act (28 U.S.C. § 2201), and 26 U.S.C. § 5872, because the threat of civil forfeiture proceedings concretely supported Roe's action. Nonetheless, the court dismissed Roe's complaint on several grounds. First, it held that Roe lacked standing. Because it lacked the authority to issue the requested injunction, it could not redress Roe's claims. Second, the district court found that the constitutionality of the Firearms Act and the Gun Control Act had already been upheld. See *Kenny*, 91 F.3d at 891. Finally, the court concluded that Roe's claim was filed after the APA's six-year statute of limitations ran, see 28 U.S.C. § 2401, and even if it were timely, the Editor's Note was not a final agency action for APA purposes and was therefore not subject to judicial review. This appeal followed.

II

Before we turn to Roe's arguments, we first must pose a question of our own: should we permit Roe to litigate this case under a pseudonym? Our courts are open to the public. One consequence of that fact is that "[t]he use of fictitious names is disfavored." *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997). The Federal Rules of Civil Procedure dictate that "the complaint must name all the parties." FED. R. CIV. P. 10(a). "Judicial proceedings are supposed to be open … in order to enable the proceedings to be monitored by the public. The concealment of a party's name impedes public access to the facts of the case, which include the parties' identity." *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004). That said, in narrow circumstances it is possible to overcome the "presumption that parties' identities are public information, and the possible prejudice to the opposing party from concealment." *Id*. A party seeking to proceed by pseudonym must "show[] that the harm to the [party] … exceeds the likely harm from concealment." *Id*.

Roe alleges that if he uses his real name, he will face possible criminal prosecution, if it turns out that his possession of the auto sear is unlawful. There are shades of a Fifth Amendment self-incrimination assertion in this argument. We have limited anonymity to cases in which there is a danger of retaliation, see *id*., and "when necessary to protect the privacy of children, rape victims, and other particularly vulnerable parties or witnesses." *Blue Cross & Blue Shield United*, 112 F.3d at 872. On the other side, we have refused to allow plaintiffs to proceed anonymously merely to avoid embarrassment. See *Doe v. Village of Deerfield*, 819 F.3d 372, 377 (7th Cir. 2016). We have never had to consider whether the threat of criminal

exposure should be a factor for district courts to weigh when deciding whether to permit a plaintiff to litigate under a pseudonym. One might argue that the danger of retaliation encompasses the threat of criminal prosecution, but this would be breaking new ground. *Cf. City of Chicago*, 360 F.3d at 669 (indicating that we would protect a plaintiff's identity to prevent their sexual orientation from becoming public); *Doe ex rel. Doe v. Elmbrook School Dist.*, 658 F.3d 710, 723–24 (7th Cir. 2011) (protecting plaintiffs' identities to prevent retaliation from the public for religious beliefs), *rev'd en banc*, 687 F.3d 840 (7th Cir. 2012) (vacating on other grounds).

Several of our sister circuits, however, do permit district courts to consider whether "plaintiffs were compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution," when determining whether the plaintiff's privacy interests outweigh the interests of the public and the defendant. See *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981); see also *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004); *Does I thru XXII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000); *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (all citing *Doe v. Stegall* with approval).

This is a delicate issue—one that we need to approach with care. We conclude that this is not the case in which to make any broad pronouncements about criminal exposure. Roe's anonymity was not among the issues that the parties presented and argued on appeal. Granted, the district court ordered Roe to show cause why he could proceed anonymously, and the parties briefed the matter at that level. The district court signaled its skepticism, explaining that "[e]nforcement of the law is not likely to be a kind of harm that would justify allowing a litigant's identity to remain

hidden." It also indicated its intention to comply with our instruction that "the judge has an independent duty to determine whether exceptional circumstances justify such a departure from the normal method of proceeding in federal courts." *Blue Cross & Blue Shield United*, 112 F.3d at 872. But in the end it never formally decided the issue, opting instead to let Roe remain anonymous, though only through the motion-to-dismiss stage.

For good reason, it is unusual for plaintiffs to attempt to litigate in this manner. We in no way encourage it. And even if the public docket reflects a pseudonym, that does not excuse the duty to comply with Circuit Rule 26.1, which requires even an anonymous litigant to disclose her true name on the disclosure statement and file the statement under seal. 7TH CIR. R. APP. P. 26.1(b). This rule is necessary "to enable a judge of this court to determine whether he or she [should recuse] from the case" and protect the impartiality of our proceedings. *Coe v. County of Cook*, 162 F.3d 491, 498 (7th Cir. 1998). We cannot allow Roe's failure to follow Circuit Rule 26.1 to go unremarked. By separate order issued today, we are requiring Roe promptly to comply with that rule and to show cause why he should not be sanctioned for his failure to do so at the time the appeal was docketed.

III

We are now ready to turn to the question whether the district court correctly dismissed Roe's complaint for lack of Article III standing. This is a matter that receives *de novo* consideration. See *Matushkina v. Nielsen*, 877 F.3d 289, 292 (7th Cir. 2017). "A plaintiff has standing only if he can 'allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'"

California v. Texas, 141 S. Ct. 2104, 2113 (2021) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)).

The district court's primary reason for its finding turned on the redressability element of standing. We thus focus on that issue in the analysis that follows.

A

"Redressability turns on the 'connection between the alleged injury and the judicial relief requested.'" *Pavlock v. Holcomb*, 35 F.4th 581, 588 (7th Cir. 2022) (quoting *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984)). Roe's injury stems from the fact that he has been deprived of the value of his auto sear because he may no longer lawfully possess or transfer it. Roe would like us to order the ATF to exempt his auto sear from the Firearms Act's registration requirements or, in the alternative, to create an amnesty period during which owners of pre-1981 auto sears may register them.

The ATF insists that neither remedy is possible. As we noted earlier, it takes the position that Ruling 81-4 does not exempt pre-1981 auto sears from the Firearms Act's registration requirements; it is only a retroactive tax exemption. Further, the ATF argues that it lacks the authority to create the requested amnesty period because any amnesty period must "contribute to the purposes of [the Gun Control Act]." Gun Control Act of 1968, Pub. L. No. 90-618 § 207, 82 Stat. 1213, 1236 (1968). Roe's requested amnesty, it says, flouts congressional intent and the purpose of the Gun Control Act because the 1986 amendments "prohibit[] the private possession of machine guns not lawfully possessed before May 19, 1986." *Farmer v. Higgins*, 907 F.2d 1041, 1044 (11th Cir. 1990). The district court agreed with the ATF that neither requested remedy

was available. Because no order permitted by the law could provide Roe's requested relief, the district court found that Roe's injury was not redressable.

We agree with the district court with respect to the first half of its conclusion: neither of Roe's requested remedies is available. Consistently with our previous analysis from *United States v. Cash*, we conclude that Ruling 81-4 does not exempt pre-1981 auto sears from the Firearms Act's registration requirements:

> [T]he proviso in the fourth paragraph of ATF Ruling 81–4 means only that the Secretary will not collect any tax under 26 U.S.C. §§ 5801, 5811, or 5821 on account of auto sears manufactured or transferred before November 1, 1981. The ruling does not—and cannot—excuse compliance with criminal laws applicable at the time of post–1981 transfers.

149 F.3d 706, 707 (7th Cir. 1998); see also *United States v. Dodson*, 519 F. App'x 344, 349 (6th Cir. 2013) ("While the ATF may retroactively exempt certain weapons from tax and regulation requirements, it cannot exempt those same weapons from prospective application of the law."). Neither we nor the ATF may excuse Roe's compliance with the current criminal laws—laws that have applied to his auto sear since 1981 and render it contraband in its unregistered state.

We also are persuaded that the ATF lacks the authority to create an amnesty period that would increase the number of lawfully owned, privately held machine guns in this country. Not only would such a period undermine the purpose of the Gun Control Act, but the considerations that have weighed in favor of past amnesties are missing here. For example, the

ATF has created limited amnesty periods during which gun owners could show that they were out of the country during previous registration periods and promptly contacted the ATF on their return to register their firearms. See U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Unpublished Memorandum: Eighteen Firearms Seized from George Fassnacht*, Case No. 63452-89-2533M (Jan. 15, 1993) (permitting delayed registration of CIA agent's firearms after 1968 amnesty period ended because he showed he was deployed in Vietnam during the 1968 registration window). These special circumstances do not apply to Roe or to the auto sear that he forgot he owned.

These two conclusions do not support a dismissal of Roe's complaint for lack of standing. The second one—that the ATF lacks the authority to create Roe's requested amnesty period—may reflect the absence of redressability, but the first is merits-based. There would be remedies available if we agreed with Roe's understanding of the governing law. But we have concluded that Ruling 81-4 is not susceptible to Roe's preferred interpretation. This means that we have moved past the threshold question of justiciability and on to the question whether there is a "plausible" right to relief. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

B

Because the government also moved for dismissal under Federal Rule of Civil Procedure 12(b)(6) and preserved its argument on appeal, we may consider those arguments here. We evaluate Roe's complaint by "view[ing] it in the light most favorable to the plaintiff, taking as true all well-pleaded factual allegations and making all possible inferences from the

allegations in the plaintiff's favor." *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011).

We accept that Roe lawfully purchased his auto sear in 1979 and that he genuinely believed he did not have to register it after Ruling 81-4 went into effect. But these facts do not entitle Roe to relief. Ruling 81-4 still requires owners of pre-1981 auto sears to register those parts. Roe provides no basis for the ATF to treat his auto sear as anything other than contraband. Roe's misinterpretation of Ruling 81-4 and his failure to recall that he owned the auto sear do not support relief.

Upon a timely complaint, we might have been able to direct Roe to the Court of Federal Claims so that he could seek compensation under the Tucker Act or the Little Tucker Act. See *Guedes v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 356 F. Supp. 3d 109, 137 (D.D.C. 2019) (explaining that a suit for compensation would adequately remedy the harm done to owners of bump stocks who had the value of their property reduced to zero by the recent bump stock ban). But Roe's claim is far from timely. It had to be filed within six years of accrual, see 28 U.S.C. § 2501, which for Roe would have been in 1981 when his unregistered auto sear became valueless contraband. Even if we dated the claim accrual to 1986 when registration of the auto sear became impossible under the Gun Control Act's machine gun ban, Roe's suit still would be too late.

Without a valid claim for compensation and without a properly stated claim, Roe is unfortunately out of options. His complaint must be dismissed for failure to state a claim. Since we affirm the dismissal of the complaint on 12(b)(6) grounds, we do not reach the question whether Roe's complaint can be construed as a timely challenge to a final agency decision

under the APA. Roe has been required to register his auto sear since 1981 and there is no intervening ATF decision that would provide him with a foothold for relief. Nor do we disturb our well-founded precedent that the Firearms Act and the Gun Control Act are constitutional.

IV

We AFFIRM the district court's decision to dismiss Roe's complaint, although we modify the judgment to reflect a dismissal with prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).