

**08-1569 UNITED STATES V. O'BRIEN**

DECISION BELOW:542 F.3d 921

LOWER COURT CASE NUMBER: 07-2312

**QUESTIONS PRESENTED:**

Section 924(c)(1) of Title 18 of the United States Code provides for a series of escalating mandatory minimum sentences depending on the manner in which the basic crime (viz., using or carrying a firearm during and in relation to an underlying offense, or possessing the firearm in furtherance of that offense) is carried out. The question presented is whether the sentence enhancement to a 30-year minimum when the firearm is a machinegun is an element of the offense that must be charged and proved to a jury beyond a reasonable doubt, or instead a sentencing factor that may be found by a judge by the preponderance of the evidence.

CERT. GRANTED 9/30/2009