[ORAL ARGUMENT REQUESTED]

No. 19-4036

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

W. CLARK APOSHIAN,

Plaintiff-Appellant,

v.

WILLIAM P. BARR, et al.

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Utah
District Court Case No. 2:19-cv-37 (Judge Jill N. Parrish)

BRIEF FOR APPELLEES

JOSEPH H. HUNT
Assistant Attorney General

JOHN W. HUBER
United States Attorney

MARK B. STERN
MICHAEL S. RAAB
ABBY C. WRIGHT
BRAD HINSHELWOOD
Attorneys, Appellate Staff
Civil Division, Room 7256
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-7823

TABLE OF CONTENTS

Page

STATEMENT OF RELATED APPEALS

INTRODUCTION 1

STATEMENT OF JURISDICTION 2

STATEMENT OF THE ISSUE 2

PERTINENT STATUTES AND REGULATIONS 3

STATEMENT OF THE CASE 3

A. Statutory Background 3

B. Prior Classifications of Devices that Convert Semiautomatic Weapons into Machineguns 5

C. The 2018 Rule 7

D. Procedural History 11

SUMMARY OF ARGUMENT 14

STANDARD OF REVIEW 16

ARGUMENT 17

I. The Rule Correctly Applies The Terms “Single Function of the Trigger” And “Automatically” To Conclude That Bump Stocks Fall Within The Definition Of “Machinegun” 17

A. A “Single Function of the Trigger” Is a “Single Pull of the Trigger” and Analogous Motions 19

B. A Rifle Equipped with a Bump Stock Fires “Automatically” Because It Fires “As the Result of a Self-Acting or Self-Regulating Mechanism” 28

II. Plaintiff’s Remaining Arguments Are Without Merit 30

III. The Other Preliminary Injunction Factors Also Weigh Decisively Against A Preliminary Injunction 42

CONCLUSION 45

REQUEST FOR ORAL ARGUMENT

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF DIGITAL SUBMISSION

CERTIFICATE OF SERVICE

ADDENDUM

TABLE OF AUTHORITIES

Cases: **Page(s)**

Abramski v. United States,
134 S. Ct. 2259 (2014) 26, 34, 40

Akins v. United States,
312 F. App'x 197 (11th Cir. 2009) 7, 12, 24, 26, 37, 38-39
No. 8:08-cv-988, slip op. (M.D. Fla. Sept. 23, 2008) 6, 24

Babbitt v. Sweet Home Chapter of Cmtys. for a Greater Or.,
515 U.S. 687 (1995) 40, 41

Callanan v. United States,
364 U.S. 587 (1961) 35

Chevron, U.S.A. v. Natural Res. Def. Council, Inc.,
467 U.S. 837 (1984) 36

Dalton v. Specter,
511 U.S. 462 (1994) 44

Davis v. Mineta,
302 F.3d 1104 (10th Cir. 2002) 17

Diné Citizens Against Ruining Our Env't v. Jewell,
839 F.3d 1276 (10th Cir. 2016) 16-17

Edelman v. Lynchburg Coll.,
535 U.S. 106 (2002) 36-37

Federal Power Comm'n v. Florida Power & Light Co.,
404 U.S. 453 (1972) 35

Fish v. Kobach,
840 F.3d 710 (10th Cir. 2016) 16, 42

Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives,
356 F. Supp. 3d 109 (D.D.C. 2019) 12
920 F.3d 1 (D.C. Cir. 2019) 25, 30, 32, 38, 40, 42

Long Island Care at Home, Ltd. v. Coke,
551 U.S. 158 (2007) 39

Loving v. United States,
517 U.S. 748 (1996) 40

Maracich v. Spears,
570 U.S. 48 (2013) 35

Sig Sauer, Inc. v. Brandon,
826 F.3d 598 (1st Cir. 2016)..35

Staples v. United States,
511 U.S. 600 (1994) 20

United States v. Atandi,
376 F.3d 1186 (10th Cir. 2004)..40

United States v. Bishop,
926 F.3d 621 (10th Cir. 2019).. 20, 31

United States v. Camp,
343 F.3d 743 (5th Cir. 2003) 21, 26, 31

United States v. Carter,
465 F.3d 658 (6th Cir. 2006) 21

United States v. Denny,
441 F.3d 1220 (10th Cir. 2006)..43

United States v. Evans,
978 F.2d 1112 (9th Cir. 1992)... 22, 25, 26

United States v. Fleischli,
305 F.3d 643 (7th Cir. 2002) 21, 22, 26

United States v. Grimaud,
220 U.S. 506 (1911) 41

United States v. Jokel,
969 F.2d 132 (5th Cir. 1992) 21, 25

United States v. Oakes,
564 F.2d 384 (10th Cir. 1977) 20

United States v. Olofson,
563 F.3d 652 (7th Cir. 2009) 12, 22, 25, 28

York v. Secretary of Treasury,
774 F.2d 417 (10th Cir. 1985) 34

Statutes:

Firearms Owners' Protection Act,
Pub. L. No. 99-308, 100 Stat. 449 (1986) 4

Gun Control Act of 1968,
Pub. L. No. 90-618, 82 Stat. 1213 3

National Firearms Act of 1934,
Pub. L. No. 73-474, § 1(b), 48 Stat. 1236 30-31
26 U.S.C. ch. 53: 3
§ 5841(c) 4
§ 5845(b) .... *passim*

Public Safety and Recreational Firearms Act,
18 U.S.C. § 921(a)(30) (2002) 5

15 U.S.C. § 78n(e) 40

16 U.S.C. § 1540(b)(1) 41

16 U.S.C. § 1540(f) 41

18 U.S.C. § 921(a)(23) 4

18 U.S.C. § 922(g) 40

18 U.S.C. § 922(m) 41

18 U.S.C. § 922(o) 4, 17, 41

18 U.S.C. § 923 41

18 U.S.C. § 926(a) 4, 11, 36, 41, 42

26 U.S.C. § 7801(a)(2)(A) 4, 11

26 U.S.C. § 7805(a) 4, 11, 36, 41, 42

28 U.S.C. § 1292(a)(1) 2

28 U.S.C. § 1331 2

Regulations:

27 C.F.R. § 447.11 9

27 C.F.R. § 478.11 9

27 C.F.R. § 479.11 9

28 C.F.R. § 0.130 4

Rule:

Fed. R. App. P. 4(a)(1)(B) 2

Legislative Materials:

H.R. 9741, 73d Cong. (1934) 20

H.R. Rep. No. 73-1780 (1934) 20

H.R. Rep. No. 90-1956 (1968) (Conf. Rep.) 3, 32

H.R. Rep. No. 99-495 (1986), *reprinted in*
1986 U.S.C.C.A.N. 1327 4

National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways & Means, 73rd Cong. 40 (1934) 20, 21, 32, 33

S. Rep. No. 73-1444 (1934) 20

S. Rep. No. 90-1501 (1968) 31, 33

Other Authorities:

ATF, *National Firearms Act Handbook* (April 2009), https://go.usa.gov/xVgqB 4, 5

DOJ, *Department of Justice Announces Bump-Stock Type Devices Final Rule* (Dec. 18, 2018), https://go.usa.gov/xEDrx 9

82 Fed. Reg. 60,929 (Dec. 26, 2017) 8-9, 9

83 Fed. Reg. 7949 (Feb. 20, 2018) 9

83 Fed. Reg. 13,442 (Mar. 29, 2018) 9

83 Fed. Reg. 66,514 (Dec. 26, 2018) .... *passim*

84 Fed. Reg. 9239 (Mar. 14, 2019) 9

Oxford English Dictionary (1933) 28

Webster's New International Dictionary (2d ed. 1934) 28

STATEMENT OF RELATED APPEALS PURSUANT TO CIR. R. 28.2(C)(3)

Counsel for appellees is not aware of any prior or related appeals.

INTRODUCTION

In 2017, a gunman in Las Vegas, Nevada killed 58 people and wounded 500 more using legally obtained semiautomatic rifles that he had turned into automatic weapons by attaching commercially available devices known as bump stocks. These devices enable a shooter to fire hundreds of rounds per minute with a single pull of the trigger. In the wake of the Las Vegas shooting, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reconsidered whether bump stocks are "machineguns" within the meaning of the National Firearms Act and the statutory bar on possession or sale of machineguns.

The agency concluded that bump stocks fall within the plain terms of the statute. *Bump-Stock Type Devices*, 83 Fed. Reg. 66,514 (Dec. 26, 2018) (Rule). The statutory ban applies to weapons that permit a shooter to fire "automatically more than one shot, without manual reloading, by a single function of the trigger," 26 U.S.C. § 5845(b). Plaintiff contends that bump stocks are not machineguns for two reasons. First, plaintiff argues that bump stocks do not operate by a "single function of the trigger" because the weapon moves back and forth, causing the trigger to repeatedly "bump" the shooter's stationary finger after an initial pull on the trigger. But Congress used the capacious term "function" in the statutory definition of machinegun precisely to foreclose such attempts to circumvent the statute. Plaintiff further contends that bump stocks do not operate "automatically" because a shooter must maintain pressure on the front of the gun to continue the firing cycle. But, as

plaintiff recognizes, even as to weapons all agree are machineguns a shooter must maintain continued pressure on the weapon to enable automatic firing. Plaintiff's argument is therefore squarely at odds with decisions of this Court and other courts that have recognized that individuals cannot evade Congress's ban on machineguns by devising novel ways of generating an automatic firing sequence.

STATEMENT OF JURISDICTION

Plaintiff invoked the district court's jurisdiction to adjudicate his constitutional and statutory claims under 28 U.S.C. § 1331. The district court denied a preliminary injunction on March 15, 2019. App. 127. Plaintiff filed a timely notice of appeal on March 18. *See* Dkt. No. 32; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUE

Plaintiff contends that the Rule sets forth an erroneous interpretation of the term "machinegun" as used in the National Firearms Act and that he may lawfully possess bump stocks. Plaintiff asked the district court to enjoin enforcement of the Rule.

The question presented is whether the district court correctly denied plaintiff's request for a preliminary injunction because plaintiff failed to demonstrate a likelihood of success on the merits and because the balance of the equities militates against injunctive relief.

PERTINENT STATUTES

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

The National Firearms Act of 1934, 26 U.S.C. Chapter 53, the first major federal statute to regulate guns, imposed various requirements on persons possessing or engaged in the business of selling certain firearms, including machineguns. The Act, in its present form, defines a "machinegun" as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). The definition also encompasses parts that can be used to convert a weapon into a machinegun. A "machinegun" thus includes "the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." *Id.*[1]

In 1986, Congress generally barred the sale and possession of new machineguns, making it "unlawful for any person to transfer or possess a

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[1] *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1231; H.R. Rep. No. 90-1956, at 34 (1968) (Conf. Rep.) (noting that the bill expanded the definition of "machinegun" to include parts).

machinegun" unless a governmental entity is involved in the transfer or possession. 18 U.S.C. § 922(o). In enacting the ban, Congress incorporated the definition of "machinegun" in the National Firearms Act. *Id.* § 921(a)(23); *see* Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986); *see also* H.R. Rep. No. 99-495, at 2, 7 (1986), *reprinted in* 1986 U.S.C.C.A.N. 1327, 1328, 1333 (describing the machinegun restrictions as "benefits for law enforcement" and citing "the need for more effective protection of law enforcement officers from the proliferation of machine guns").

Congress has vested in the Attorney General the authority to prescribe rules and regulations to enforce the National Firearms Act and other legislation regulating firearms. 18 U.S.C. § 926(a); 26 U.S.C. § 7805(a); *see id.* § 7801(a)(2)(A). The Attorney General has delegated that responsibility to ATF, a bureau within the Department of Justice. 28 C.F.R. § 0.130.

Although there is no statutory requirement that manufacturers do so, ATF encourages manufacturers to submit novel weapons or devices to ATF for a classification of whether the weapon or device qualifies as a machinegun or other firearm under the National Firearms Act. *See* ATF, *National Firearms Act Handbook*, § 7.2.4 (Apr. 2009)[2]; *cf.* 26 U.S.C. § 5841(c) (noting that manufacturers must "obtain authorization" before making a covered firearm and must register "the manufacture

[2] Available at https://go.usa.gov/xVgqB.

of a firearm"). The classification process enables ATF to provide manufacturers with "the agency's official position concerning the status of the firearms under Federal firearms laws" to assist manufacturers with "avoid[ing] an unintended classification and violations of the law" before a manufacturer "go[es] to the trouble and expense of producing" the weapon or device. *National Firearms Act Handbook*, §§ 7.2.4, 7.2.4.1. ATF has made clear, however, that "classifications are subject to change if later determined to be erroneous or impacted by subsequent changes in the law or regulations." *Id.* § 7.2.4.1.

B. Prior Classifications of Devices that Convert Semiautomatic Weapons into Machineguns

Since the expiration in 2004 of the federal ban on certain semiautomatic "assault weapons,"[3] ATF has received increasing numbers of classification requests for various types of bump stock devices. 83 Fed. Reg. at 66,516. Inventors and manufacturers seek to produce "devices that permit shooters to use semiautomatic rifles to replicate automatic fire," but do so "without converting these rifles into 'machineguns.'" *Id.* at 66,515-16; *see also id.* at 66,516 ("Shooters use [these devices] with semiautomatic firearms to accelerate the firearms' cyclic firing rate to mimic automatic fire.").

[3] These weapons had been subject to the Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. § 921(a)(30) (2002).

ATF first encountered this type of device in 2002, when it received a classification request for the "Akins Accelerator." 83 Fed. Reg. at 66,517. The Akins Accelerator, which attached to a standard semiautomatic rifle, used a spring to harness the recoil energy of each shot, causing "the firearm to cycle back and forth, impacting the trigger finger" repeatedly after the first pull of the trigger. *Id.* Thus, by pulling the trigger once, the shooter "initiated an automatic firing sequence" that was advertised as firing "approximately 650 rounds per minute." *Id.* ATF initially determined that the Akins Accelerator was not a machinegun because it "interpreted the statutory term 'single function of the trigger' to refer to a single movement of the trigger." *Id.*

In 2006, ATF revisited this determination, concluding that "the best interpretation of the phrase 'single function of the trigger' includes a 'single pull of the trigger.'" 83 Fed. Reg. at 66,517. The agency explained that the Akins Accelerator created "a weapon that '[with] a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.'" Accordingly, ATF reclassified the device as a machinegun under the statute. *Id.* (quoting *Akins v. United States*, No. 8:08-cv-988, slip op. at 5 (M.D. Fla. Sept. 23, 2008)).

Expecting further classification requests for devices designed to increase the firing rate of semiautomatic weapons, ATF also published a public ruling announcing its interpretation of "single function of the trigger," reviewing the National Firearms

Act and its legislative history to explain that the term denoted a "single pull of the trigger." Add. 2-4.

When the inventor of the Akins Accelerator challenged ATF's action, the Eleventh Circuit upheld the determination, explaining that interpreting "single function of the trigger" as "'single pull of the trigger' is consonant with the statute and its legislative history," and rejecting a vagueness challenge because "[t]he plain language of the statute defines a machinegun as any part or device that allows a gunman to pull the trigger once and thereby discharge the firearm repeatedly." *Akins v. United States*, 312 F. App'x 197, 200, 201 (11th Cir. 2009) (per curiam).

C. The 2018 Rule

1. The type of bump stock at issue in this case is an apparatus used to replace the standard stock on an ordinary semiautomatic firearm, and it converts an ordinary semiautomatic firearm into a weapon capable of firing hundreds of bullets per minute with a single pull of the trigger. Unlike a regular stock, a bump stock channels the recoil from the first shot into a defined path, allowing the weapon contained with the stock to slide back a short distance—approximately an inch and a half—and shifting the trigger away from the shooter's trigger finger. 83 Fed. Reg. at 66,532. This separation allows the firing mechanism to reset. *Id.* When the shooter maintains constant forward pressure on the weapon's barrel-shroud or fore-grip, the weapon slides back along the bump stock, causing the trigger to "bump" the shooter's

stationary finger and fire another bullet. *Id.* Unlike Akins Accelerator-type bump stocks, these devices do not depend on the action of an internal spring.

When it reclassified the Akins Accelerator, ATF advised that "removal and disposal of the internal spring . . . would render the device a non-machinegun under the statutory definition," because the device would no longer operate "automatically." 83 Fed. Reg. at 66,517. ATF soon received classification requests for other bump stock devices that did not include internal springs. In a series of classification decisions between 2008 and 2017, ATF concluded that some such devices were not machineguns based on the premise that in the absence of internal springs or similar mechanical parts that would channel recoil energy, the bump stocks did not enable a gun to fire "automatically." *Id.*

2. In 2017, a shooter armed with semiautomatic weapons and bump stock devices killed 58 people and wounded 500 more in Las Vegas. 83 Fed. Reg. at 66,516. The bump stock devices did not have internal springs and were therefore not of the type that ATF then believed fell within the definition of "machinegun."

At the urging of members of Congress and other non-governmental organizations, the Department of Justice and ATF undertook a review of the prior analysis of the terms used to define "machinegun" in 26 U.S.C. § 5845(b), and published an advance notice of proposed rulemaking in the Federal Register in December 2017. *Application of the Definition of Machinegun to "Bump Fire" Stocks and Other*

Similar Devices, 82 Fed. Reg. 60,929 (Dec. 26, 2017). Public comment on the advance notice concluded on January 25, 2018. *Id.* at 60,929.

On February 20, 2018, the President issued a memorandum concerning bump stocks to then-Attorney General Jefferson B. Sessions III. *See* 83 Fed. Reg. 7949 (Feb. 20, 2018). The memorandum instructed the Department of Justice, working within established legal protocols, "to dedicate all available resources to complete the review of the comments received [in response to the advanced notice], and, as expeditiously as possible, to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns." *Id.*

On March 29, 2018, the Department published a notice of proposed rulemaking, proposing amendments to the regulations in 27 C.F.R. §§ 447.11, 478.11, and 479.11 regarding the meaning of the terms "single function of the trigger" and "automatically." *See Bump-Stock-Type Devices*, 83 Fed. Reg. 13,442 (Mar. 29, 2018). The notice elicited over 186,000 comments. *See* 83 Fed. Reg. 66,519.

3. The final rule was published in the Federal Register on December 26, 2018. *Department of Justice Announces Bump-Stock-Type Devices Final Rule* (Dec. 18, 2018).[4] The Rule amended regulations issued under the National Firearms Act and the Gun Control Act to address the terms "single function of the trigger" and "automatically" as used in the statutory definition of "machinegun." Consistent with the amended

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[4] Available at https://go.usa.gov/xEDrx. The Rule was later ratified by Attorney General Barr. *See Bump-Stock-Type Devices*, 84 Fed. Reg. 9239 (Mar. 14, 2019).

regulation, the Rule rescinded the agency's prior, erroneous classification letters treating certain bump stocks as unregulated firearms parts. *See* 83 Fed. Reg. at 66,514, 66,516, 66,523, 66,530-31, 66,549. In explaining to members of the public that bump stocks are machineguns, the agency provided instructions for "current possessors" of bump stocks "to undertake destruction of the devices" or to "abandon [them] at the nearest ATF office" to avoid liability under the statute.

In amending its regulations, the agency explained, as it had previously, that the phrase "single function of the trigger" means a "single pull of the trigger" and clarified that the term also includes "analogous motions." 83 Fed. Reg. at 66,515. The Rule further explained that the term "automatically" means "as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger." *Id.* at 66,519.

The agency explained that bump stocks enable a shooter to engage in a firing sequence that is "automatic." 83 Fed. Reg. at 66,531. As the shooter's trigger finger remains stationary on the ledge provided by the design of the device and the shooter applies constant forward pressure with the non-trigger hand on the barrel-shroud or fore-grip of the rifle, the firearm's recoil energy can be directed into a continuous back-and-forth cycle without "the need for the shooter to manually capture, harness, or otherwise utilize this energy to fire additional rounds." *Id.* at 66,532. A bump stock thus constitutes a "self-regulating" or "self-acting" mechanism that allows the

shooter to attain continuous firing after a single pull of the trigger, and is therefore a machinegun. *Id.*; *see also id.* at 66,514, 66,518.

D. Procedural History

Plaintiff—an individual who possessed a bump stock at the outset of this litigation—brought this suit on January 16, 2019, asserting that the Rule violated the Administrative Procedure Act as contrary to law, in excess of the agency's authority, and arbitrary and capricious, App. 32-40, and also advancing various constitutional claims, App. 25-32. Plaintiff sought a preliminary injunction based on his arguments that the Rule was inconsistent with the statute and otherwise arbitrary and capricious. App. 42.

The district court denied plaintiff's request for a preliminary injunction on March 15, 2019. App. 127. The court first rejected plaintiff's argument that the Attorney General did not have rulemaking authority under the National Firearms Act and the Gun Control Act, observing that both statutes explicitly grant such authority to the Attorney General. App. 132-33, 132 n.7; *see* 18 U.S.C. § 926(a); 26 U.S.C. §§ 7801(a)(2)(A), 7805(a). The court noted that in its view the Attorney General "has been implicitly delegated interpretive authority to define ambiguous words or phrases in the" National Firearms Act and the Gun Control Act, but it recognized that it "need not confront" whether deference was due to the interpretation advanced in the Rule "because the Final Rule's clarifying definitions reflect the best interpretation of the statute." App. 133 & 133 n.8.

The district court then explained its conclusion that the Rule stated the "best interpretation" of the statutory terms. The court rejected plaintiff's argument that the term "single function of the trigger" "refers to the mechanical movement of the trigger," and that a bump stock was not a machinegun because it "operate[s] through multiple movements of the trigger." App. 134. The court explained that "'single pull of the trigger' is the best interpretation of 'single function of the trigger,'" and that this result was in accord with other courts to have considered the question. *Id.* (citing *Akins v. United States*, 312 F. App'x 197, 200 (11th Cir. 2009), and *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 356 F. Supp. 3d 109, 130 (D.D.C. 2019)). The court observed that "it makes little sense that Congress would have zeroed in on the mechanistic movement of the trigger in seeking to regulate automatic weapons," and that the term "'function' was likely intended by Congress to forestall attempts by weapon manufacturers or others to implement triggers that need not be pulled, thereby evading the statute's reach." App. 134-35.

The court likewise concluded that the Rule likewise provides the "best interpretation" of the term "automatically." App. 136. The court noted that the Rule's definition "is borrowed, nearly word-for-word, from dictionary definitions contemporaneous to the [National Firearms Act]'s enactment" and "accords with past judicial interpretation." App. 135 (citing *United States v. Olofson*, 563 F.3d 652, 658 (7th Cir. 2009)). The court construed plaintiff's "difficult to follow" argument regarding the meaning of "automatically" as asserting that "[b]ecause bump-stock-type devices

require constant forward pressure by the shooter's non-trigger hand on the barrel or shroud of the rifle," the weapon "does not fire 'automatically.'" App. 135-36. In rejecting this argument, the court explained that "even weapons uncontroversially classified as machine guns require at least some ongoing effort by an operator," and noted that plaintiff "does not argue that the constant rearward pressure applied by a shooter's trigger finger in order to *continue* firing a machine gun means that it does not fire 'automatically.'" App. 136. The court concluded that this "atextual line" between weapons "that require some, but not too much, ongoing physical actuation" had no basis in the statutory definition or the contemporaneous understanding of the term "automatically." *Id.*

The court also rejected plaintiff's contentions that the Rule should be set aside because it represented a change of agency position and was, in plaintiff's view, impermissibly politically motivated. App. 136. The court concluded that the reclassification "easily" satisfied the standard for reasoned decisionmaking under the Administrative Procedure Act by "unambiguously acknowledg[ing] that the ATF is changing its position with respect to certain bump-stock-type devices, and explain[ing] that the ATF's prior rulings excluding those devices from the definition of machine gun" were erroneous. App. 137. And, recognizing that "the definitions leading to the classification changes are permissible under, and in fact represent the best interpretation of, the statute," the court explained that "neither the alleged political

genesis of the Final Rule nor the fact that it reflects a change in policy serve to undermine the Final Rule's validity." *Id.*

Plaintiff filed a notice of appeal and sought an injunction pending appeal from this Court. On April 30, 2019, this Court denied an injunction pending appeal. Order of Apr. 30.

SUMMARY OF ARGUMENT

Federal law defines a "machinegun" as a weapon that shoots "automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). A weapon shoots "automatically" when it operates by "a self-acting or self-regulating mechanism." 83 Fed. Reg. at 66,519. It is not disputed that by attaching a bump stock to a semiautomatic weapon, a shooter can fire hundreds of bullets per minute simply by pulling the trigger once, stabilizing the trigger finger, and maintaining pressure on the front of the weapon. There is no support for the notion that Congress would have intended to omit such a weapon from the statutory definition of machinegun.

And Congress did not do so. As the Rule explains—and as ATF has long recognized—the term "single function of the trigger" describes a shooter's "single pull of the trigger" for most weapons. Congress employed the broad term "function" in the statute to ensure that the definition of "machinegun" sweeps in the full range of actions a shooter can take to initiate a firing sequence, thus precluding creative attempts to evade the ban on machineguns. And the Rule explains that the term

"automatically" refers to "a self-acting or self-regulating mechanism that allows the firing of multiple rounds." 83 Fed. Reg. at 66,554. Given these definitions, a bump stock—which enables a shooter to produce a continuous firing cycle through a single pull of the trigger—falls squarely within the scope of the statute.

Plaintiff's argument to the contrary turns on the mistaken premise that a weapon cannot be a "machinegun" if the trigger mechanism on the weapon mechanically operates each time a bullet is discharged. The relevant question is whether the shooter initiates automatic firing with a single pull of the trigger, not whether the trigger continues to move automatically after that single pull. Plaintiff's contrary interpretation finds no support in the statutory text, legislative history, or decisions interpreting the statute, which demonstrate that Congress sought to prevent precisely this sort of effort to circumvent the restrictions of the National Firearms Act through the creation of novel ways of producing and maintaining an automatic firing sequence. Indeed, plaintiff's cramped reading of the statute would mean that a range of devices long recognized to be machineguns—including the Akins Accelerator, an early bump stock understood to be a machinegun for over a decade—would no longer qualify as machineguns, contrary to Congress's clear intent.

Plaintiff's other arguments fare no better. Plaintiff suggests, for example, that no weapon designed to function semiautomatically can ever qualify as a machinegun. But the statute specifically contemplates that a semiautomatic weapon may be converted into a machinegun through the addition of parts like a bump stock.

Plaintiff's reliance on ATF's past erroneous classifications similarly misses the mark. As the district court noted, ATF carefully explained that its prior classifications reflected a misapplication of the statute, and the agency expressly recognized that it was rescinding prior misclassifications. Finally, plaintiff's discussion of *Chevron* deference has no bearing on the disposition of this suit. The district court correctly determined that deference is unnecessary because the Rule reflects the best interpretation of the statutory text.

The balance of the remaining preliminary injunction factors likewise tips decisively against a preliminary injunction. Against the overwhelming interest in protecting the public from the dangers posed by machineguns, plaintiff musters only the harm of a delay in using bump stocks for recreational purposes while his claims proceed to final judgment.

STANDARD OF REVIEW

This Court reviews the denial of a preliminary injunction for abuse of discretion, examining its underlying legal conclusions de novo and any factual determinations for clear error. *Fish v. Kobach*, 840 F.3d 710, 723 (10th Cir. 2016). "In order to receive a preliminary injunction, the plaintiff must establish the following factors: (1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest." *Diné Citizens Against Ruining Our*

Env't v. Jewell, 839 F.3d 1276, 1281 (10th Cir. 2016) (quoting *Davis v. Mineta*, 302 F.3d 1104, 1111 (10th Cir. 2002)).

ARGUMENT

I. The Rule Correctly Applies The Terms "Single Function of the Trigger" And "Automatically" To Conclude That Bump Stocks Fall Within The Definition Of "Machinegun"

Federal law bans the possession and transfer of "machinegun[s]," 18 U.S.C. § 922(o), defined in the National Firearms Act as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). The definition also includes "any part designed and intended solely and exclusively . . . for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." *Id.*

A bump stock replaces the standard stock on an ordinary semiautomatic firearm "for the express purpose of allowing 'rapid fire' operation of the semiautomatic firearm to which [it is] affixed," 83 Fed. Reg. at 66,516, and converts an ordinary semiautomatic rifle into a weapon capable of firing hundreds of bullets per minute with a single pull of the trigger.

Unlike a regular stock, a bump stock channels the recoil from the first shot into a defined path, allowing the contained weapon to slide back a short distance—approximately an inch and a half—and shifting the trigger away from the shooter's

trigger finger. 83 Fed. Reg. at 66,532. This separation allows the firing mechanism to reset. *Id.* When the shooter maintains constant forward pressure on the weapon's barrel-shroud or fore-grip, the weapon slides back along the bump stock, causing the trigger to "bump" the shooter's stationary finger and fire another bullet. *Id.* Each successive shot generates its own recoil, which in turn causes the weapon to slide along the bump stock in conjunction with forward pressure, returning to "bump" the shooter's trigger finger each time, initiating another cycle in turn.

To assist the shooter in holding a stationary position with the trigger finger and sustain the firing process, bump stocks are fitted with an "extension ledge." 83 Fed. Reg. at 66,516, 66,532. The shooter places the trigger finger on the extension ledge, ensuring that it is positioned to be "bumped" with each successive cycle. *Id.* at 66,532. This continuous cycle of fire-recoil-bump-fire lasts until the shooter releases the trigger, the weapon malfunctions, or the ammunition is exhausted. *Id.* at 66,518. The question in this case is whether a bump stock converts a semiautomatic firearm into a "machinegun" by enabling a shooter to initiate and maintain a continuous process that "automatically" fires hundreds of rounds per minute by a "single function of the trigger." 26 U.S.C. § 5845(b). Because it does, plaintiff has no likelihood of success on the merits.

A. A "Single Function of the Trigger" Is a "Single Pull of the Trigger" and Analogous Motions

Two terms in the statutory definition are relevant to the disposition of plaintiff's contentions. The definition of machinegun encompasses any weapon that shoots (1) "automatically more than one shot" (2) "by a single function of the trigger." 26 U.S.C. § 5845(b). As the Rule explains, the term "automatically" asks whether the weapon or device is a self-acting or self-regulating mechanism, while the term "single function of the trigger" asks whether the shooter is able to initiate that self-acting or self-regulating process by a single pull of the trigger or other analogous single step.

1. The Rule explains that the phrase "single function of the trigger" means "a single pull of the trigger and analogous motions." 83 Fed. Reg. at 66,553. This definition reflects the plain meaning of the statutory terms and Congress's intent in banning the possession of machineguns.

a. For over a decade, ATF has recognized that the phrase "single function of the trigger" includes a "single pull of the trigger." *See* 83 Fed. Reg. at 66,517; Add. 2-4. This reflects the common-sense understanding of how most weapons are fired: by the shooter's pull on a curved metal trigger. Courts have frequently applied this straightforward understanding of the term. For example, the Supreme Court has observed that the National Firearms Act treats a weapon that "fires repeatedly with a single pull of the trigger" as a machinegun, in contrast to "a weapon that fires only

one shot with each pull of the trigger." *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994); *accord United States v. Bishop*, 926 F.3d 621, 625 (10th Cir. 2019) (quoting *Staples*). Similarly, this Court has recognized that a weapon qualified as a machinegun where it could be fired automatically "by fully pulling the trigger." *United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977).

That the statute is concerned with the shooter's act of pulling the trigger is confirmed by the legislative history of the National Firearms Act. In explaining the definition of "machinegun" in the bill that ultimately became the National Firearms Act, *see* H.R. 9741, 73d Cong. (1934), the House Committee on Ways and Means report stated that bill "contains the usual definition of machine gun as a weapon designed to shoot more than one shot without reloading and *by a single pull of the trigger*." H.R. Rep. No. 73-1780, at 2 (1934) (emphasis added); *see* S. Rep. No. 73-1444 (1934) (reprinting House's "detailed explanation" of the provisions, including the quoted language). Indeed, the then-president of the National Rifle Association used precisely the same terminology in proposing that a machinegun should be defined as a weapon "which shoots automatically more than one shot without manual reloading, by a single function of the trigger." *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways & Means*, 73rd Cong. 40 (1934) (statement of Karl T. Frederick, President, National Rifle Association of America) (*NFA Hearings*). Explaining this proposal, he stated that "[t]he distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition."

Id. Thus, any weapon "which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun," while "[o]ther guns [that] require a separate pull of the trigger for every shot fired . . . are not properly designated as machine guns." *Id.*

b. The question under the statute is thus whether the shooter initiates the automatic firing with a single function, not whether the trigger or other parts of the firearm move after the shooter's single function. In *United States v. Carter*, 465 F.3d 658 (6th Cir. 2006) (per curiam), for example, the Sixth Circuit applied the statutory definition to a modified weapon that had "no mechanical trigger" at all. *Id.* at 665. Instead, the gun fired automatically when a shooter put a magazine in the weapon, "held it at the magazine port, pulled the bolt back and released it." *Id.* As this Court explained, the weapon was a machinegun because "the manipulation of [an ATF expert's] hands on the assembled weapon initiated a reaction, namely the firing of the gun and two automatic successive firings," and "[t]his manual manipulation constituted a trigger for purposes of the weapon's operation." *Id.*

Other courts have applied similar reasoning, recognizing that a trigger serves "to initiate the firing sequence" of a weapon, however accomplished. *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (per curiam); *accord United States v. Fleischli*, 305 F.3d 643, 655 (7th Cir. 2002). Courts have thus routinely rejected efforts by criminal defendants to argue that weapons with novel designs do not qualify as machineguns under the Act. *See, e.g.*, *United States v. Camp*, 343 F.3d 743, 744-45 (5th Cir. 2003)

(holding that a rifle modified with a "switch" that activated a "motor connected to the bottom of a fishing reel" that rotated within the trigger guard causing "the original trigger to function in rapid succession" qualified as a machinegun); *Fleischli*, 305 F.3d at 655-56 (holding that a minigun fired by "an electronic switch" was a machinegun).

These cases underscore that, given the range of possible ways of initiating an automatic firing cycle, Congress used the phrase "single function of the trigger" to "describe[] the action that enables the weapon to 'shoot . . . automatically . . . without manual reloading,' not the 'trigger' mechanism," *United States v. Evans*, 978 F.2d 1112, 1113 n.2 (9th Cir. 1992); *accord United States v. Olofson*, 563 F.3d 652, 658 (7th Cir. 2009) (noting that "a single function of the trigger" "set[s] in motion" the automatic firing of more than one shot). The Rule thus states that a "single function of the trigger" encompasses "a single pull of the trigger and analogous motions" like pressing a button, flipping a switch, or otherwise initiating the firing sequence without pulling a traditional trigger, 83 Fed. Reg. at 66,553, recognizing "that there are other methods of initiating an automatic firing sequence that do not require a pull," *id.* at 66,515; *accord id.* at 66,534; *see id.* at 66,518 n.5 (observing that many machineguns "operate through a trigger activated by a push").

c. Bump stocks are "machineguns," because they permit a shooter to automatically fire more than one shot "by a single function of the trigger." With respect to the typical protruding curved trigger on a semiautomatic rifle, the action that initiates the firing sequence is the shooter's pull on the trigger. On an

unmodified semiautomatic weapon, that single pull results in the firing of a single shot. For a subsequent shot, the shooter must release his pull on the trigger so that the hammer can reset. But on a machinegun—including a weapon equipped with a bump stock—that same single pull of the trigger initiates a continuous process that fires bullets until the ammunition is exhausted. Once the trigger has performed its function of initiating the firing sequence in response to the shooter's pull, the weapon fires "automatically more than one shot, without manual reloading," 26 U.S.C. § 5845(b).

The Rule's conclusion that bump stocks permit firing through a "single function of the trigger" is consistent with the agency's long-held understanding of that statutory term. ATF applied precisely this understanding in reclassifying the Akins Accelerator in 2006. Like the bump stocks at issue here, the Akins Accelerator enabled the weapon to recoil within the stock, "permitting the trigger to lose contact with the finger and manually reset. Springs in the Akins Accelerator then forced the rifle forward, forcing the trigger against the finger" in a back-and-forth cycle that enabled continuous firing. 83 Fed. Reg. at 66,517. The Akins Accelerator "was advertised as able to fire approximately 650 rounds per minute." *Id.*

After reviewing the Akins Accelerator "based on how it actually functioned when sold," ATF corrected its erroneous earlier decision classifying the device as not a machinegun. 83 Fed. Reg. at 66,517. In doing so, it relied in part on the legislative history of the National Firearms Act to conclude "that the phrase 'single function of

the trigger' . . . was best interpreted to mean a 'single pull of the trigger.'" *Id.*; *see* Add. 2-4. The agency concluded that installing the Akins Accelerator on a semiautomatic rifle "resulted in a weapon that '[w]ith a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.'" 83 Fed. Reg. at 66,517 (quoting *Akins v. United States*, No. 8:08-cv-988, slip op. at 5 (M.D. Fla. Sept. 23, 2008)).

In rejecting a subsequent challenge by the inventor of the Akins Accelerator to ATF's reclassification of the device, the Eleventh Circuit upheld the agency's understanding of the definition of "machinegun," holding that interpreting "single function of the trigger" as "'single pull of the trigger' is consonant with the statute and its legislative history," and that "[t]he plain language of the statute defines a machinegun as any part or device that allows a gunman to pull the trigger once and thereby discharge the firearm repeatedly." *Akins v. United States*, 312 F. App'x 197, 200, 201 (11th Cir. 2009) (per curiam). And on multiple occasions since 2006, ATF has applied the "single pull of the trigger" interpretation to bump-stock-type devices, and on other occasions to "other trigger actuators, two-stage triggers, and other devices." 83 Fed. Reg. at 66,517; *see id.* at 66,518 n.4 (listing examples of other ATF classifications using the definition).

2. In arguing that bump stocks do not allow a semiautomatic rifle to fire continuously by means of a "single function of the trigger," plaintiff insists that the term refers to "how [the trigger] mechanically operates," and that "'a semiautomatic

rifle equipped with a bump stock *cannot* fire more than one round with a *single* function of the trigger' because 'the trigger of a semiautomatic rifle must release the hammer for each individual discharge.'" Br. 21-22, 26 (quoting *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 47 (D.C. Cir. 2019) (per curiam) (Henderson, J., concurring in part and dissenting in part)); *see also* Br. 27 (describing a "real machinegun" as a weapon for which the trigger "remains depressed and the trigger never has to move forward and backward again in order to reset and fire"). As courts have consistently recognized, however, "[f]unction" is not constrained to the precise mechanical operation of a specific type of trigger, but instead looks to the "action that enables the weapon to 'shoot . . . automatically . . . without manual reloading,' not the 'trigger' mechanism." *Evans*, 978 F.2d at 1113 n.2; *accord Olofson*, 563 at 658 (noting that "a single function of the trigger" "set[s] in motion" the automatic firing of more than one shot).

Plaintiff does not dispute that the shooter's initial pull of the trigger "initiate[s] the firing sequence" of the weapon, *Jokel*, 969 F.2d at 135, and he likewise does not dispute that the shooter's trigger finger remains stationary on the bump stock's extension ledge after the initial shot while the weapon continues to discharge in a continuous cycle. As the Rule explains, a shooter using a bump stock can "maintain a continuous firing cycle after a single pull of the trigger" by keeping the trigger finger stationary and positioned to be repeatedly "bumped," "without repeated manual manipulation of the trigger by a shooter." 83 Fed. Reg. at 66,532. And to conclude

otherwise permits precisely the sort of circumvention of the National Firearms Act that Congress intended to prevent. *See Camp*, 343 F.3d at 745; *Fleischli*, 305 F.3d at 655; *Evans*, 978 F.2d at 1113 n.2; *cf. Abramski v. United States*, 134 S. Ct. 2259, 2270 (2014) (rejecting interpretation of criminal statute that would have "enable[d] evasion of the firearms law").

The apparent premise of plaintiff's argument is that no aftermarket device could convert an AR-15 or similar semiautomatic rifle into a "machinegun," as long as it permits the weapon's trigger mechanism to operate as originally designed. A rifle equipped with the Akins Accelerator, for example, would no longer qualify as a machinegun, notwithstanding the Eleventh Circuit's contrary ruling, *Akins*, 312 F. App'x at 200, because each shot fired requires that the trigger separate from the shooter's finger, allowing the firing mechanism to reset, before the weapon is propelled forward by the internal spring in the device to "bump" the shooter's stationary finger, *see* 83 Fed. Reg. at 66,517. Indeed, even a device that mechanically and automatically pulled and released the trigger on an AR-15 rifle on the shooter's behalf at the flip of a switch would not qualify as a machinegun under plaintiff's theory, because each bullet fired would require that the weapon's original trigger "move backward to precisely the same point in order to reset the trigger and fire the next shot." Br. 32. The weapon in *Camp*, for example—which used a motor activated by a switch to repeatedly pull and release the weapon's trigger, 343 F.3d at 744-45—would not fall within plaintiff's proposed definition of machinegun. The fact that the

shooter produces a continuous firing cycle by taking only one step—flipping the switch—would be immaterial.

Plaintiff's proposed understanding would remove from the scope of the statute a variety of devices that ATF has treated as machineguns. As the Rule notes, ATF has addressed a host of devices that enable shooters to create and sustain a continuous firing cycle. 83 Fed. Reg. at 66,517-18. For example, in 2016, ATF classified "LV-15 Trigger Reset Devices" as machinegun parts. *Id.* at 66,518 n.4; *see* Add. 11-21. These devices attached to an AR-15 rifle and used a battery-operated "piston that projected forward through the lower rear portion of the trigger guard" to push the trigger forward, enabling the shooter to pull the trigger once and "initiate and maintain a firing sequence" by continuing the pressure while the piston rapidly reset the trigger. 83 Fed. Reg. at 66,518 n.4. ATF took the same approach to another device—a "positive reset trigger"—that used the recoil energy of each shot to push the shooter's trigger finger forward. *See id.*; Add. 5-10. Yet another example is the "AutoGlove," a glove with a battery-operated piston attached to the index finger that pulled and released the trigger on the shooter's behalf when the shooter held down a plunger to activate the motor. Add. 22-28. Under plaintiff's definition, such devices would not qualify as machineguns even though they operated, from the shooter's perspective, identically to a machinegun and produce the same results. It is thus unsurprising that plaintiff identifies no case adopting his reading of the statutory text.

Plaintiff goes even further afield in asserting that the Rule "elevates one specific movement—a 'pull of the trigger'—to a determinate place," thereby preventing the definition of machinegun from reaching firearms that employ other means of activating a trigger. Br. 25-26. In so asserting, plaintiff simply misreads the Rule, which is explicit that the term "single function" includes "a single pull of the trigger *and analogous motions*" like flipping a switch or pushing a button. 83 Fed. Reg. at 66,553 (emphasis added).

B. A Rifle Equipped with a Bump Stock Fires "Automatically" Because It Fires "As the Result of a Self-Acting or Self-Regulating Mechanism"

1. As the Rule explains, "'automatically' is the adverbial form of 'automatic,' meaning '[h]aving a self-acting or self-regulating mechanism that performs a required act at a predetermined point in an operation.'" 83 Fed. Reg. at 66,519 (quoting *Webster's New International Dictionary* 187 (2d ed. 1934); citing 1 *Oxford English Dictionary* 574 (1933) (defining "automatic" as "[s]elf-acting under conditions fixed for it, going of itself.")). Thus, a weapon fires "automatically" when it fires "as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds." 83 Fed. Reg. at 66,554; *see Olofson*, 563 F.3d at 658 ("automatically" in § 5845(b) means "as the result of a self-acting mechanism").

A rifle equipped with a bump stock plainly fits within the ordinary meaning of "automatically." The bump stock "performs a required act at a predetermined point" in the firing sequence by "directing the recoil energy of the discharged rounds into the

space created by the sliding stock," ensuring that the rifle moves in a "constrained linear rearward and forward path[]" to enable continuous fire. 83 Fed. Reg. at 66,532. This process is also "[s]elf-acting under conditions fixed for it." The shooter's positioning of the trigger finger on the extension ledge and application of pressure on the barrel-shroud or fore-stock with the other hand provide the conditions necessary for the bump stock to repeatedly perform its basic purpose: "to eliminate the need for the shooter to manually capture, harness, or otherwise utilize th[e] [recoil] energy to fire additional rounds." *Id.*

2. Plaintiff's precise objection to this definition is difficult to determine. Plaintiff recognizes, as he must, that words should generally be given their ordinary meaning at the time they were enacted, Br. 17, and nowhere objects to the definition of "automatically" employed in the Rule, which, as the district court recognized, is "borrowed, nearly word-for-word, from dictionary definitions contemporaneous to the [National Firearms Act]'s enactment," App. 135.

Plaintiff's argument thus appears to turn on the assertion that "[i]f a firearm equipped with a bump stock requires separate physical input for each shot, even if not directed to the trigger mechanism, this still precludes the firing of each successive shot from being 'automatic.'" Br. 24; *see* Br. 22, 28. The district court correctly rejected that argument, and plaintiff does not take issue with the court's observation that "even weapons uncontroversially classified as machine guns require at least some ongoing effort by an operator," such as by "constant rearward pressure applied by a

shooter's trigger finger in order to *continue* firing a machinegun." App. 136; *see Guedes*, 920 F.3d at 30. And he makes no apparent effort to explain why the statutory text and the contemporary understanding of the term "automatically" compel the conclusion that a weapon that requires continued pressure on the trigger is a machinegun, but a weapon that allows the shooter to fire continuously by maintaining pressure elsewhere on the weapon is not. The distinctive feature of a bump stock is simply that it relocates the focus of that pressure; the shooter applies continuous pressure to the front of the weapon to enable continuous "bumping" of the stationary trigger finger. That difference is immaterial: Congress did not ban machineguns only to have that ban be circumvented merely by a shift in the locus of a shooter's pressure on the weapon. Indeed, many weapons require a shooter to use their off hand to bear the weight of the weapon or otherwise exert pressure on the gun while firing, and no one contends that a weapon is not a machinegun because of that manual input.

II. Plaintiff's Remaining Arguments Are Without Merit

A. Plaintiff devotes much of his brief to contending that a weapon originally designed to operate as a semiautomatic rifle cannot, under any circumstances, be a machinegun under the statutory definition. Br. 14-17, 24-25. Plaintiff rests this conclusion not on current statutory text, but on the original National Firearms Act of 1934, which defined a machinegun as "any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger." Pub. L. No. 73-474, § 1(b), 48 Stat.

1236, 1236. Plaintiff observes that in enacting the Gun Control Act in 1968, Congress removed the term "or semiautomatically," Br. 16, and from this concludes that no semiautomatic rifle can ever be covered by the statute, whether modified or not, Br. 24-25, 35-36.

This conclusion is both factually and legally erroneous. As a factual matter, it cannot seriously be disputed that some after-market parts can convert a semiautomatic firearm into one that can fire automatically. *See, e.g.*, *Bishop*, 926 F.3d at 624-25 (affirming convictions for machinegun possession and manufacturing a machinegun without a license where defendant sold a "machinegun conversion device" for an AR-15 rifle); *Camp*, 343 F.3d at 744-45 (concluding that a semiautomatic rifle fitted with a motor-operated device that pulled and released the trigger was a machinegun).

As a legal matter, plaintiff fails to recognize that the 1968 Gun Control Act's revisions of the definition of "machinegun" were designed to expand the statute's coverage, not constrict it. The Gun Control Act amended the definition of machinegun to include any part or parts "designed and intended solely and exclusively" to "convert[] a weapon into a machinegun," 26 U.S.C. § 5845(b). The point of the amendment was precisely to proscribe machinegun parts (like a bump stock) that can convert an otherwise semiautomatic weapon into a weapon capable of firing "automatically more than one shot, without manual reloading, by a single function of the trigger." *Id.*; *see* S. Rep. No. 90-1501, at 46 (1968) (describing the

amendment as "an important addition to the definition of 'machinegun'"); H.R. Rep. No. 90-1956, at 34 (describing the amendments as part of the "[e]xtension of the scope of the National Firearms Act"). For the same reasons, plaintiff is wrong to assert that the Rule unsettles '"the longstanding distinction between "automatic" and "semiautomatic"' firearms." Br. 24 (quoting *Guedes*, 920 F.3d at 44-45 (Henderson, J., concurring part and dissenting in part)). The relevant question is whether the addition of a bump stock to an otherwise semiautomatic rifle converts it into a machinegun; unmodified semiautomatic rifles remain outside the statutory definition.

Plaintiff also makes the puzzling assertion that the original definition contained in the National Firearms Act banned weapons like "the ordinary repeating rifle" that would fire "only one shot" with each pull of the trigger. Br. 24 (quoting *NFA Hearings* at 41). Plaintiff urges that the 1968 amendment took such weapons outside the scope of the definition of machinegun and therefore took bump stocks outside the scope of the definition as well. This contention is wrong in all respects. "Repeating rifles"—a term generally used to refer to rifles capable of carrying multiple rounds of ammunition in a magazine—have never been treated as machineguns under the statute, because many require manual reloading (through operating a lever or pulling on a bolt) and none fire more than one shot by a "single function of the trigger." Indeed, that is clear from the testimony cited in plaintiff's brief. That testimony refers to repeating rifles in describing the term "single function of the trigger" because their distinguishing feature is that they, like other weapons not

classed as machineguns, "require[] a separate pull of the trigger for every shot fired." *NFA Hearings*, at 41. Then and now, such weapons would qualify as "machineguns" only if modified to meet the statutory definition.

Plaintiff's argument also disregards the legislative history of the 1968 amendment, which confirms that Congress did not view the removal of the phrase "or semiautomatically" as having substantive effect on the weapons covered by the statute. *See* S. Rep. No. 90-1501, at 45 (observing that the sentence defining a machinegun as a weapon which shoots "automatically more than one shot" reflected "existing law"). And, apart from the series of errors underlying plaintiff's analysis, it is entirely unclear why a change in the scope of the definition as applied to repeating rifles in 1968 has any bearing on whether bump stocks meet the statutory definition.

B. Plaintiff stresses that ATF had previously concluded that the bump stock he possessed should not be classified as a machinegun. *See, e.g.*, Br. 19-20, 39-40. In rescinding that classification, ATF explained the nature of its error in detail. The agency explained that it had premised its earlier determinations on the mistaken premise that the term "automatically" in 26 U.S.C. § 5845(b) required the presence of springs or similar mechanical parts. That past classifications reached an incorrect result does not, as plaintiff appears to suggest (Br. 39-40), preclude the agency from correcting its classification errors or require that this Court adopt an incorrect reading of the statutory term. *See* App. 137 (recognizing that the "Rule unambiguously acknowledges that the ATF is changing its position," corrects "prior rulings," and

adopts "the best interpretation of" the statutory terms); *cf. Abramski*, 134 S. Ct. at 2274 (observing that "[w]hether the Government interprets a criminal statute too broadly . . . or too narrowly" does not change the meaning of the statute).

Plaintiff likewise errs in believing it significant that a shooter can "bump fire" weapons by other means, such as through the use of a rubber band or belt loop. Br. 19-20. As the Rule explains, an item like a rubber band does not operate "automatically" because it is "not a 'self-acting or self-regulating mechanism'": "[w]hen such items are used for bump firing, no device is present to capture and direct the recoil energy; rather, the shooter must do so." 83 Fed. Reg. at 66,533. Thus, a shooter must manually "harness the recoil energy" and "control the distance that the firearm recoils and the movement along the plane on which the firearm recoils." *Id.* By contrast, a bump stock "direct[s] the recoil energy of the discharged rounds into the space created by the sliding stock . . . in constrained linear rearward and forward paths," relieving the shooter of these tasks and enabling "a continuous firing cycle." *Id.* at 66,532.

To the extent that plaintiff intends to suggest that the Rule (unlike past classifications) rests on incorrect factual premises, that suggestion is without merit. The agency's understanding of how a firearm operates is entitled to deference because it reflects the agency's broad experience and technical expertise. *See York v. Secretary of Treasury*, 774 F.2d 417, 420 (10th Cir. 1985) (rejecting factual challenge to ATF's classification of a weapon as a machinegun); *see generally Federal Power Comm'n v. Florida*

Power & Light Co., 404 U.S. 453, 463 (1972) (noting that courts should defer to an agency's analysis of "purely factual question[s]" that "depend[] on 'engineering and scientific' considerations" in light of "the relevant agency's technical expertise and experience"); *see also Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 603 (1st Cir. 2016) (explaining that review of a silencer was "within [ATF's] special competence" and required "a high level of technical expertise," entitling the agency to deference). Plaintiff has identified nothing in the factual underpinnings of the Rule that approaches error under this standard, or any other.

C. Plaintiff devotes a substantial portion of his brief to invoking various interpretive doctrines, none of which advances his case. Plaintiff invokes the rule of lenity (Br. 38-40), but that doctrine applies only where, "after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended." *Maracich v. Spears*, 570 U.S. 48, 76 (2013). As the district court held, the Rule's application of the terms used to define "machinegun" in the National Firearms Act is correct, and there is no ambiguity, let alone grievous ambiguity, in the statute. As the Supreme Court has explained, "[t]he rule [of lenity] comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Maracich*, 570 U.S. at 76 (quoting *Callanan v. United States*, 364 U.S. 587, 596 (1961)).

Plaintiff's assertion that the district court "conclud[ed] that the definition of a machinegun was ambiguous," Br. 33, seriously misunderstands the court's opinion. Nowhere in its analysis did the district court refer to the statutory terms as "ambiguous"; instead, it applied the traditional tools of statutory interpretation and concluded that the interpretations identified in the Rule constituted the "best interpretation" of each of the relevant statutory terms. App. 133 n.8, 134, 136. The district court observed that agencies generally have delegated authority to define undefined terms in a statute, but made clear that this was not the basis for its conclusion that the Rule is lawful. App. 133 & n.8. And, contrary to plaintiff's assertion (Br. 40), the Attorney General's express authority to issue regulations under the National Firearms Act and the Gun Control Act does not turn on the existence of an ambiguity. *See* 18 U.S.C. § 926(a); 26 U.S.C. § 7805(a); *see also* App. 132 n.7 (rejecting plaintiff's argument because "the Attorney General has indeed been granted rulemaking authority under the [National Firearms Act]" and "the Attorney General's rulemaking authority under the [Gun Control Act] is beyond question").

Plaintiff's discussion of deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), has no bearing on the resolution of this case. Br. 40. As noted, the district court specifically declared that it was unnecessary to determine whether deference to the agency's statutory interpretation was appropriate, because the Rule provides "the best interpretation of the statute" and "is merely interpretive in nature." App. 132 n.7, 133 n.8; *see Edelman v. Lynchburg Coll.*, 535 U.S.

106, 114 (2002) (observing that "there is no occasion to defer and no point in asking what kind of deference, or how much" would apply where the agency has adopted "the position [the court] would adopt" when "interpreting the statute from scratch").

As the district court recognized, nothing in the Rule suggests that its legality depends on the application of *Chevron* deference, or that the agency believed *Chevron* deference was required to uphold the Rule. The Rule repeatedly emphasizes that it is announcing the "best interpretation" of the statutory terms used to define a machinegun. *See* 83 Fed. Reg. at 66,517, 66,518, 66,521; *accord id.* at 66,527 (stating the interpretations in the Rule "accord with the plain meaning" of the terms), and explains that the Rule is necessary because of the Department's belief "that bump-stock-type devices must be regulated because they satisfy the statutory definition of 'machinegun,'" *id.* at 66,520. The Rule revokes erroneous classification letters that concluded that bump stocks were not machineguns within the statutory definition—an action already within the agency's authority. *See id.* at 66,516, 66,530, 66,531; *Akins*, 312 F. App'x at 200. The Rule also makes "clarify[ing]" amendments to the term "machinegun" in regulations governing manufacturers, importers, dealers, and collectors, as well as registration provisions, to make it clear on the face of the regulation that bump stocks are within the statutory definition. 83 Fed. Reg. at 66,519. And the Rule further serves to notify possessors of bump stocks of the Department's understanding of the relevant statutory terms and to provide

appropriate methods for disposal within a specified timeframe to avoid criminal liability.

Plaintiff's suggestion that "the Final Rule itself rejects the notion that it reflects what the statute has always meant" because it provides an "'effective date'" for the Rule, Br. 46 (quoting *Guedes*, 920 F.3d at 20), is likewise mistaken. Before mentioning an "effective date," the Rule is explicit that ATF had "misclassified some bump-stock-type devices and therefore initiated this rulemaking," which was "specifically designed to notify the public about changes in ATF's interpretation of the [National Firearms Act] and [Gun Control Act] and to help the public avoid the unlawful possession of a machinegun." 83 Fed. Reg. 66,523; *accord id.* (stating that the Rule is designed to "ensur[e] that the public is aware of the correct classification of bump-stock-type devices under the law"); *id.* at 66,531 (observing that the agency has "authority to reconsider and rectify its classification errors" (quotation marks omitted)); *id.* at 66,516 (same). In explaining that classifications were "errors," the agency clearly recognized that those devices were machineguns at the time of classification. And, in any event, whether conduct occurring before the "effective date" could be prosecuted is irrelevant to resolving this case, given the Department's decision not to enforce the statute against such conduct.

Other aspects of the Rule confirm its interpretive character. The Department could have revoked its prior classification letters through a letter ruling, as it has done in the past, including when it reclassified the Akins Accelerator. *See Akins*, 312 F.

App'x at 200; Add. 2-4. The Department likewise need not have amended its regulatory definitions of the term "machinegun," but could instead have simply begun applying the regulatory requirements to bump stocks without altering the definitions—again, as it did with the Akins Accelerator. That the Department used a more public process to raise awareness of its corrected interpretation and to put the public on notice of the status of bump stocks is a virtue, but does not alter the basic effect of the Rule. *See* App. 132 ("Although the Attorney General and ATF promulgated their interpretations through the more laborious, formal notice-and-comment process, the use of that procedure does not alter the Final Rule's interpretive character.").

In any event, *Chevron* deference applies where Congress has delegated to an agency the authority to fill gaps in a statute or engage in interpretations that will have the force of law. The relevant threshold question is therefore "whether *Congress* would have intended, and expected, courts to treat an agency's rule, regulation, application of a statute, or other agency action as within, or outside, its delegation to the agency of 'gap-filling' authority." *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 173 (2007); *see Chevron*, 467 U.S. at 843-44 (deference appropriate where "Congress has explicitly left a gap for the agency to fill" or where there is an "implicit" "legislative delegation to an agency on a particular question").

The D.C. Circuit believed that Congress gave the Attorney General the authority to make possession of a bump stock unlawful even if it were not illegal

under the plain terms of the statute. *See Guedes*, 920 F.3d at 19. Yet as a general matter, "criminal laws are for courts, not for the Government, to construe." *Abramski*, 134 S. Ct. at 2274. Congress, of course, can delegate substantial authority to Executive Branch agencies to engage in rulemaking that may lead to criminal consequences. For example, Congress has delegated to the Securities and Exchange Commission the authority to "define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent" in connection with tender offers. 15 U.S.C. § 78n(e); *see also Loving v. United States*, 517 U.S. 748, 768 (1996) (noting that the Supreme Court has regularly "upheld delegations whereby the Executive or an independent agency defines by regulation what conduct will be criminal"). And those agency determinations, where issued pursuant to delegated authority, receive deference no less than agency determinations reached in purely civil contexts. *See Babbitt v. Sweet Home Chapter of Cmtys. for a Greater Or.*, 515 U.S. 687, 704 n.18 (1995); *Guedes*, 920 F.3d at 24-27.[5]

As we have explained, a court should defer to the agency's technical expertise in classifying a particular weapon. *See supra* pp. 34-35. The statutory scheme does

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[5] In *United States v. Atandi*, 376 F.3d 1186, 1189 (10th Cir. 2004), this Court concluded that an ATF regulation was entitled to "some deference" for its interpretation of a provision of 18 U.S.C. § 922(g), further observing that the regulation at issue was consistent with decisions of other courts of appeals that had ascribed the same meaning to the statutory language. Similarly here, ATF's interpretation is the best reading of the statute and consistent with other courts of appeals' understanding of the statutory terms, and this Court need not reach that conclusion by according Chevron deference.

not, however, appear to provide the Attorney General the authority to engage in "gap-filling" interpretations of what qualifies as a "machinegun." Congress has provided a detailed definition of the term "machinegun," and attached serious criminal consequences to the unlawful possession of such a weapon. *See* 18 U.S.C. § 922(o); 26 U.S.C. § 5845(b). In contrast to other statutes, Congress did not expressly task the Attorney General with determining the scope of the criminal prohibition on machinegun possession. And although Congress has specifically attached criminal consequences to the violation of the Attorney General's regulations governing licensing for firearms manufacturers, importers, dealers, and collectors, *see* 18 U.S.C. §§ 922(m), 923, it has not done so with respect to regulations issued pursuant to his general authority to make rules for carrying out the National Firearms Act and the Gun Control Act, *see id.* § 926(a); 26 U.S.C. § 7805(a), in contrast to other statutes that specifically criminalize the failure to comply with a regulation issued pursuant to an agency's general rulemaking authority under a statute. *Cf.* 16 U.S.C. § 1540(b)(1), (f) (authorizing the Secretary of the Interior to "promulgate such regulations as may be appropriate to enforce" the Endangered Species Act and imposing criminal penalties on any person who "knowingly violates . . . any regulation issued in order to implement" designated parts of the Act); *Sweet Home*, 515 U.S. at 704 n.18 (affording deference to a regulation interpreting the Endangered Species Act, despite its criminal applications); *United States v. Grimaud*, 220 U.S. 506, 517-19 (1911) (statute criminalizing "any violation of the provisions of this act or such rules and

regulations" issued under the act "indicated [the] will" of Congress to "give to those who were to act under such general provisions 'power to fill up the details' by the establishment of administrative rules and regulations, the violation of which could be punished" in the manner prescribed by Congress).

In any event, were this Court to agree with the D.C. Circuit that the purpose and effect of the Rule is to prescribe prospective criminal liability, and that Congress delegated authority to the Attorney General to promulgate such a regulation through the Gun Control Act and the National Firearms Act, *see* 18 U.S.C. § 926(a); 26 U.S.C. § 7805(a), plaintiff would not be entitled to a preliminary injunction. For the same reasons that the Rule represents the correct understanding of the statutory text, the Rule at a minimum reflects a *permissible* reading of the statutory terms. *See Guedes*, 920 F.3d at 31-32.

III. The Other Preliminary Injunction Factors Also Weigh Decisively Against A Preliminary Injunction

As plaintiff has failed to demonstrate a likelihood of success on the merits, this Court need not address the remaining preliminary injunction factors. But the remaining factors—irreparable harm, the harm to others from an injunction, and the public interest, *Fish v. Kobach*, 840 F.3d 710, 723 (10th Cir. 2016)—decisively weigh against a preliminary injunction.

Implementation of the Rule promotes the public interest by protecting the public from the danger posed by machine guns prohibited by federal law. *See* 83 Fed.

Reg. at 66,520 ("[T]his rule reflects the public safety goals of the [National Firearms Act] and [Gun Control Act.]"). In addition, implementation of the Rule reflects a particularized interest in advancing the safety of law enforcement personnel because "[a] ban [on bump stocks] ... could result in less danger to first responders when responding to incidents." 83 Fed. Reg. at 66,551. The "public[] interest in the safety of . . . law enforcement officials is both legitimate and weighty." *United States v. Denny*, 441 F.3d 1220, 1225-26 (10th Cir. 2006) (internal quotation omitted). As with the interest in public safety, this interest would be disserved by an injunction, and this further tips the balance of the equities against the grant of injunctive relief. Plaintiff's suggestion (Br. 50-51) that he should be exempt from the general requirements of federal law during the pendency of this litigation because he is not personally a threat to public safety misses the point; Congress has prohibited plaintiff, no less than any other individual, from owning a machinegun.

Against this clear public interest, Aposhian asserts that he faces "irreparable harm" from the "constitutional injury" of having to comply "with a rule that was issued in violation of constitutional limits." Br. 48. Aposhian appears to mean only that because he believes the Rule is inconsistent with the statute, he has suffered an injury rooted in "the separation of powers." Br. 47. As explained above, this challenge to the Rule presents only a question of statutory interpretation, and the Supreme Court has rejected "the proposition that every action by the President, or by another executive official, in excess of his statutory authority is *ipso facto* in violation of

the Constitution." *Dalton v. Specter*, 511 U.S. 462, 472 (1994). Under Aposhian's contrary understanding, irreparable harm would be shown in every statutory-interpretation case involving government action, insofar as a plaintiff could always claim that an action that went beyond statutory authorization would be "in violation of constitutional limits." Br. 49. As the district court observed, there is no support for the proposition that "a generalized separation-of-powers violation gives rise to an injury on the part of an individual citizen." App. 131 n.4.

Properly understood, plaintiff's injury is simply that he is unable to use or obtain a bump stock for recreational purposes unless and until he prevails in this litigation. This temporary inability to use or obtain a particular device for sporting purposes cannot come close to outweighing Congress's long-stated goal of ensuring public safety by keeping machineguns out of the hands of the public.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JOHN W. HUBER
United States Attorney

MARK B. STERN
MICHAEL S. RAAB
ABBY C. WRIGHT

s/ Brad Hinshelwood
BRAD HINSHELWOOD
Attorneys, Appellate Staff
Civil Division, Room 7256
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-7823
bradley.a.hinshelwood@usdoj.gov

August 2019

REQUEST FOR ORAL ARGUMENT

Plaintiff has asked this Court to enjoin a rule addressing the scope of Congress's ban on the possession and transfer of new machineguns by the public. The government believes that oral argument would assist the Court in addressing the important issues raised by this appeal.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 11,218 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Brad Hinshelwood
Brad Hinshelwood

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that (1) all required privacy redactions have been made; (2) any paper copies of this document submitted to the Court are exact copies of the version filed electronically; and (3) the electronic submission was scanned for viruses and found to be virus-free.

s/ Brad Hinshelwood
Brad Hinshelwood

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Brad Hinshelwood
Brad Hinshelwood

ADDENDUM

TABLE OF CONTENTS

26 U.S.C. § 5845(b) A1

ATF Ruling 2006-2 .... A2

ATF Classification Letter, "Positive Reset Trigger" (Apr. 13, 2015) A5

ATF Classification Letter, "LV-15 Trigger Reset Devices" (Oct. 7, 2016) A11

ATF Classification Letter, "AutoGlove" (Sept. 11, 2017) A22

26 U.S.C. § 5845(b)

§ 5845. Definitions

(**b) Machinegun.**--The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

18 U.S.C. 922(o): Transfer or possession of machinegun
26 U.S.C. 5845(b): Definition of machinegun
18 U.S.C. 921(a)(23): Definition of machinegun

The definition of machinegun in the National Firearms Act and the Gun Control Act includes a part or parts that are designed and intended for use in converting a weapon into a machinegun. This language includes a device that, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until the finger is released or the ammunition supply is exhausted.

ATF Rul. 2006-2

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has been asked by several members of the firearms industry to classify devices that are exclusively designed to increase the rate of fire of a semiautomatic firearm. These devices, when attached to a firearm, result in the firearm discharging more than one shot with a single function of the trigger. ATF has been asked whether these devices fall within the definition of machinegun under the National Firearms Act (NFA) and Gun Control Act of 1968 (GCA). As explained herein, these devices, once activated by a single pull of the trigger, initiate an automatic firing cycle which continues until either the finger is released or the ammunition supply is exhausted. Accordingly, these devices are properly classified as a part "*designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun"* and therefore machineguns under the NFA and GCA.

The National Firearms Act (NFA), 26 U.S.C. Chapter 53, defines the term "firearm" to include a machinegun. Section 5845(b) of the NFA defines "machinegun" as *"any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person."* The Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, defines machinegun identically to the NFA. 18 U.S.C. 921(a)(23). Pursuant to 18 U.S.C. 922(o), machineguns manufactured on or after May 19, 1986, may only be

transferred to or possessed by Federal, State, and local government agencies for official use.

ATF has examined several firearms accessory devices that are designed and intended to accelerate the rate of fire for semiautomatic firearms. One such device consists of the following components: two metal blocks; the first block replaces the original manufacturer's V-Block of a Ruger 10/22 rifle and has attached two rods approximately ¼ inch in diameter and approximately 6 inches in length; the second block, approximately 3 inches long, 1 ⅜ inches wide, and ¾ inch high, has been machined to allow the two guide rods of the first block to pass through. The second block supports the guide rods and attaches to the stock. Using ¼ inch rods, metal washers, rubber and metal bushings, two collars with set screws, one coiled spring, C-clamps, and a split ring, the two blocks are assembled together with the composite stock. As attached to the firearm, the device permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock when fired. A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

As noted above, a part or parts designed and intended to convert a weapon into a machinegun, *i.e.*, a weapon that will shoot automatically more than one shot, without manual reloading, by a single function of the trigger, is a machinegun under the NFA and GCA. ATF has determined that the device constitutes a machinegun under the NFA and GCA. This determination is consistent with the legislative history of the National Firearms Act in which the drafters equated "single function of the trigger" with "single pull of the trigger." *See, e.g., National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066*, 73rd Cong., at 40 (1934). Accordingly, conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.

Held, a device (consisting of a block replacing the original manufacturer's V-Block of a Ruger 10/22 rifle with two attached rods approximately ¼ inch in diameter and approximately 6 inches in length; a second block, approximately 3 inches long, 1 ⅜ inches wide, and ¾ inch high, machined to allow the two guide rods of the first block to pass through; the second block supporting the guide rods and attached to the stock; using ¼ inch rods; metal washers; rubber and metal bushings; two collars with set screws; one coiled spring; C-clamps; a split ring; the two blocks assembled together with the

composite stock) that is designed to attach to a firearm and, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, is a machinegun under the National Firearms Act, 26 U.S.C. 5845(b), and the Gun Control Act, 18 U.S.C. 921(a)(23).

Held further, manufacture and distribution of any device described in this ruling must comply with all provisions of the NFA and the GCA, including 18 U.S.C. 922(o).

To the extent that previous ATF rulings are inconsistent with this determination, they are hereby overruled.

Date approved: December 13, 2006

Michael J. Sullivan
Director

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

907020:MRC
3311/302558

APR 1 3 2015

[redacted] Ruble
[redacted]

Dear Mr. Ruble:

This refers to your recent correspondence and submission of a physical sample along with a power point to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB), Martinsburg, West Virginia. Specifically, you ask FTISB to evaluate your prototype design and determine its classification under Federal law.

The Gun Control Act of 1968 (GCA), 18 U.S.C. Section 921(a)(3), defines the term "firearm" as follows: "...(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm."

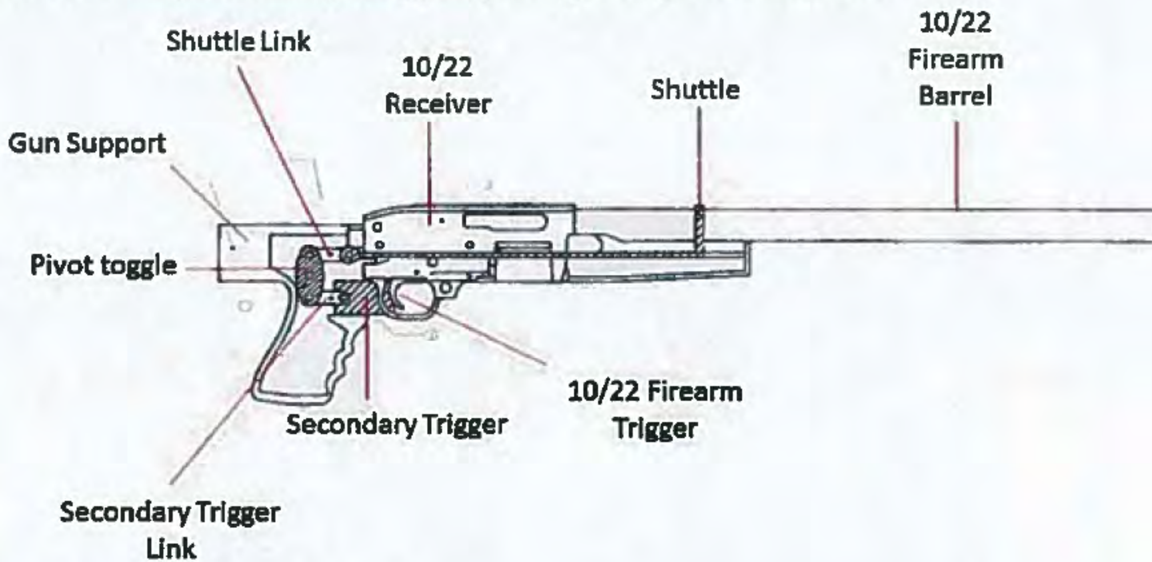
Additionally, the National Firearms Act (NFA), 26 U.S.C. Section 5845(b), defines "machinegun" as—

"...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person."

You have submitted to FTISB a prototype AR-style rifle with newly designed fire control components that you describe as a "positive reset trigger." In your submission you identify the following fire control components:

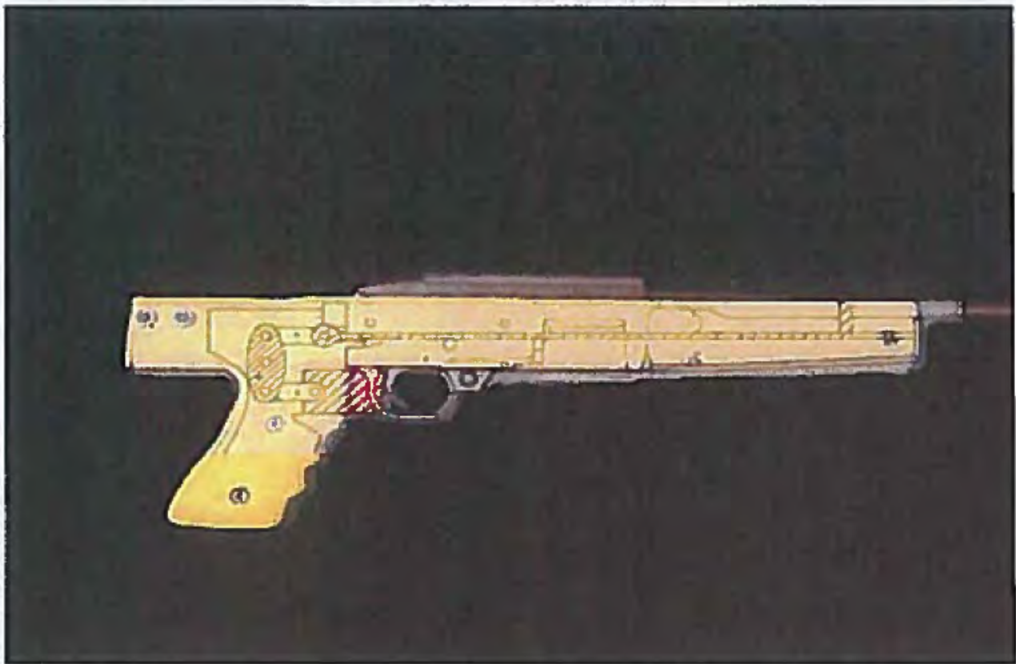
- Gun support/gun stock
- Secondary trigger
- Secondary trigger link
- Pivot toggle
- Shuttle link
- Shuttle

The internal components comprising your prototype design are shown here:



You provided the prototype shown here:

The internal components are shown here as they would exist inside the prototype.



The cycle of operation of your prototype is shown below.

After the trigger is pulled, a projectile is expelled and the firearm barrel and receiver recoil, moving each backward (step 1, below). The shuttle, also attached to the barrel, moves backward in concert (step 2). The backward movement of the shuttle pushes the shuttle link and the top end of the pivot

toggle (step 3). The pivot toggle rotates, pushing the secondary trigger link forward (step 5). Finally, the secondary trigger is pushed forward, moving the trigger finger forward as well. Each of these steps happens automatically as a result of the recoil energy generated from firing a projectile.

In step 6 above, the forward movement of the secondary trigger pushes the finger forward countering the constant rearward pressure applied by the shooter. The 10/22 trigger moves forward as well.

In the normal operation of the 10/22, the trigger would move forward only when the shooter releases the trigger. However, the prototype design utilizes recoil energy to move the trigger finger. In this way, the shooter can maintain constant pressure through a single pull of the trigger.

Once the recoil energy has dissipated, the shooter's constant rearward pressure pushes the secondary trigger backward (step 1, below). In turn, this moves the secondary trigger link (step 2), rotates the pivot toggle (step 3), and pushes the shuttle link and shuttle forward (step 4). The shuttle moves the receiver and barrel forward.

At this point the 10/22 receiver is capable of firing a second projectile (see below). The constant rearward pressure applied by the shooter's trigger finger fires the subsequent projectile, and the process repeats itself until the shooter finally releases the rearward pressure.

As stated above, the NFA defines machinegun, in relevant part, as "any weapon which shoots...automatically more than one shot, without manual reloading, by a single function of the trigger." ATF has long held that a "single function of the trigger" is a single "pull" or, alternatively, a single "release" of the trigger. Therefore, a firearm that fires a single projectile upon a pull of the trigger, and fires a single projectile upon the release of that trigger would not be classified as a "machinegun" under Federal law.

Upon review, we find that your prototype permits a shooter to fire automatically, more than one shot, without manual reloading, by a single function of the trigger. Your design utilizes recoil energy to move the shooter's finger and permits the firearm to reset. However, your prototype actually utilizes the single pull of the trigger to accomplish this. In this way, the prototype design uses a single

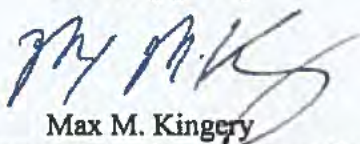
function of the trigger to operate the design and causes an otherwise semiautomatic firearm to fire more than a single projectile automatically.

ATF has long held that a single function of the trigger results from a single action by the shooter to initiate the firing sequence, whether it is a push or a pull movement.

Based on our evaluation and provisions of Federal law cited above, FTISB concludes that the prototype design is a combination of parts designed and intended for use in converting a weapon into a machinegun. It is therefore a "machinegun" as defined in the above-cited § 5845(b).

We thank you for your inquiry and trust that the foregoing has been responsive.

Sincerely yours,



Max M. Kingery
Acting Chief, Firearms Technology Industry Services Branch

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

907010: RKD
3311/303845

OCT 0 7 2016

Saint Kings Technologies, LLC.

Dear Mr. Santos-Reis:

This is in reference to your submission and accompanying correspondence to, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB), which is accompanied by two AR-15 type rifles equipped with what is described as LV-15 Trigger Reset Devices (see enclosed photos).

As you know, the National Firearms Act (NFA), 26 U.S.C. § 5845(b), defines the term "**machinegun**" as—

...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, *automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon,* ***any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun****, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.*

The submitted devices, are described as "trigger reset devices." You further describe the design and function of the devices as "*a trigger actuating device that aids the user of an AR type rifle in pulling the trigger faster*." As a part of this description, you note that the submitted device is "*an electronic device that used a rechargeable battery. The principle of the device is as follows: After the trigger is pulled and the rifle fired, the device pushes the trigger forward rapidly to reset the trigger, so that the user can pull the trigger faster.*"

The first sample examined by FTISB personnel consists of a Bushmaster model XM15-E2S .223-5.56 caliber AR-15 pattern rifle, serial number L476739, which is equipped with the following items:

- A self-contained trigger mechanism within an aluminum housing, being equipped with an electrical connection.
- A modified two position semiauto AR-15 type selector lever.
- An 11.1V 1200MAH rechargeable battery pack.
- A grip assembly with trigger guard having electrical connections and a piston which projects forward through the lower rear portion of the trigger guard and pushes the trigger forward as the firearm cycles.
- A grip attachment screw/bolt and straight pin.
- Several extra battery assemblies and a "Tenergy" charging assembly.
- One extra LV-15 trigger/grip/selector assembly.

The second sample, submitted at a later date, consists of an Anderson Manufacturing model AM-15, 5.56 caliber AR-15 pattern rifle, serial number 15272793, equipped with a similar "improved" version of the device. This version was noted to incorporate a three position selector rather than the two position selector featured on the first sample.

The written correspondence received with the samples provided the following statements in steps 4 thru 9, offering a description of how the device differed in function from that of a standard unmodified AR-15 pattern rifle:

4. "*The fourth step is where the process first differs from a normal AR-15 trigger group. As the hammer is reset and engaged past the disconnector, it also engages the sensor that is mounted behind the trigger group. This sends a signal to the control circuit and will continue sending that signal until it is released. For now, the control circuit, will not do anything, it waits until it stops receiving the signal.*"

5. "*As the bolt-carrier starts moving forward, it reaches a point where it releases the hammer and allows the hammer to be captured by the disconnector. Around the point where the hammer is allowed to rest on the disconnector is when it disengages the sensor. Once the sensor is disengaged and stops sending the signal to the control circuit, the control circuit begins a timer which lasts about 35 milliseconds.*"

6. "*With the timer still counting down, the bolt carrier group finishes travelling forward, having chambered a round, and the rifle is now in battery and ready to fire.*"

7. "*The seventh step occurs when the timer finishes counting down that 25 millisecond delay. Once the count-down is over, it turns on the solenoid for 15 milliseconds. As the solenoid turns on, the solenoid rod is going to try to push forward on the trigger, pushing it back to the firing position. However, the solenoid can only exert so much force. Therefore, the trigger will only reset if the user allows it to, by not exerting more than 12 pounds of force during said 15 millisecond interval.*"

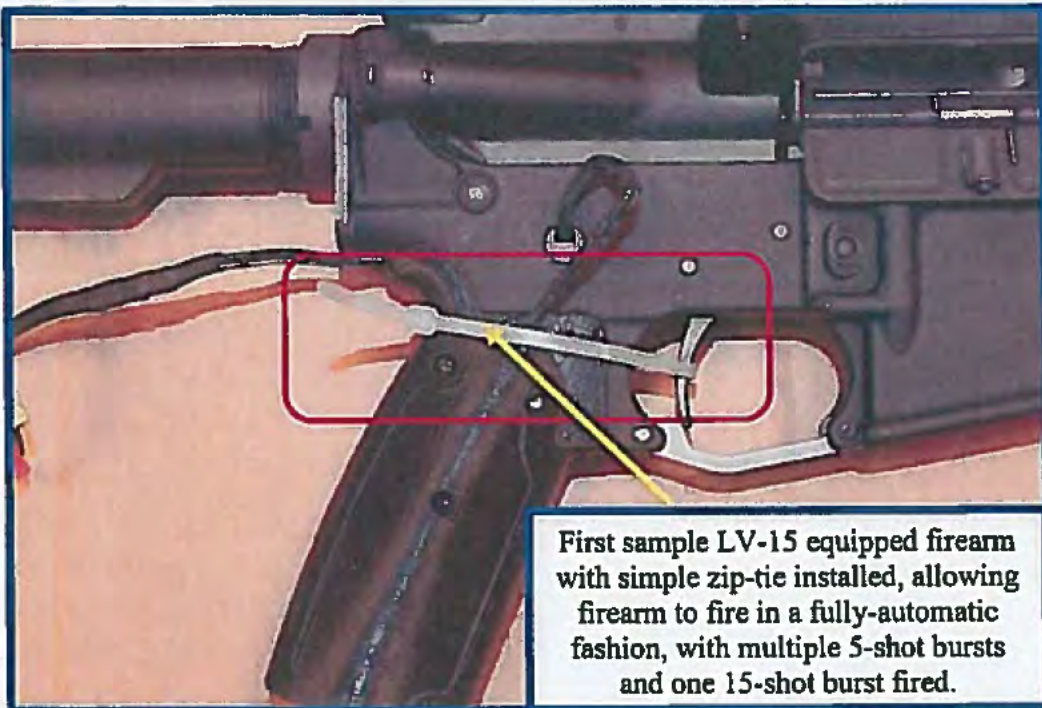
8. "*The final step takes place once the user has allowed the trigger to move forward enough, at which time the disconnector will release the hammer and allow it to set on the main sear, again just like in any AR-15. While the user must still allow the trigger to physically move forward to reset, the only difference is that here the user is being assisted in order to reset the trigger faster.*"

9. "*After the trigger has reset the rifle does not continue to shoot automatically, as the trigger is forced back into the ready/cocked position, the user, as in all mechanical reset devices, must consciously pull the trigger if he/she desires to fire another round. Each pull of the trigger represents a separate and conscious decision by the operator to fire another round. If the user does not pull the trigger again, the rifle will not fire again.*"

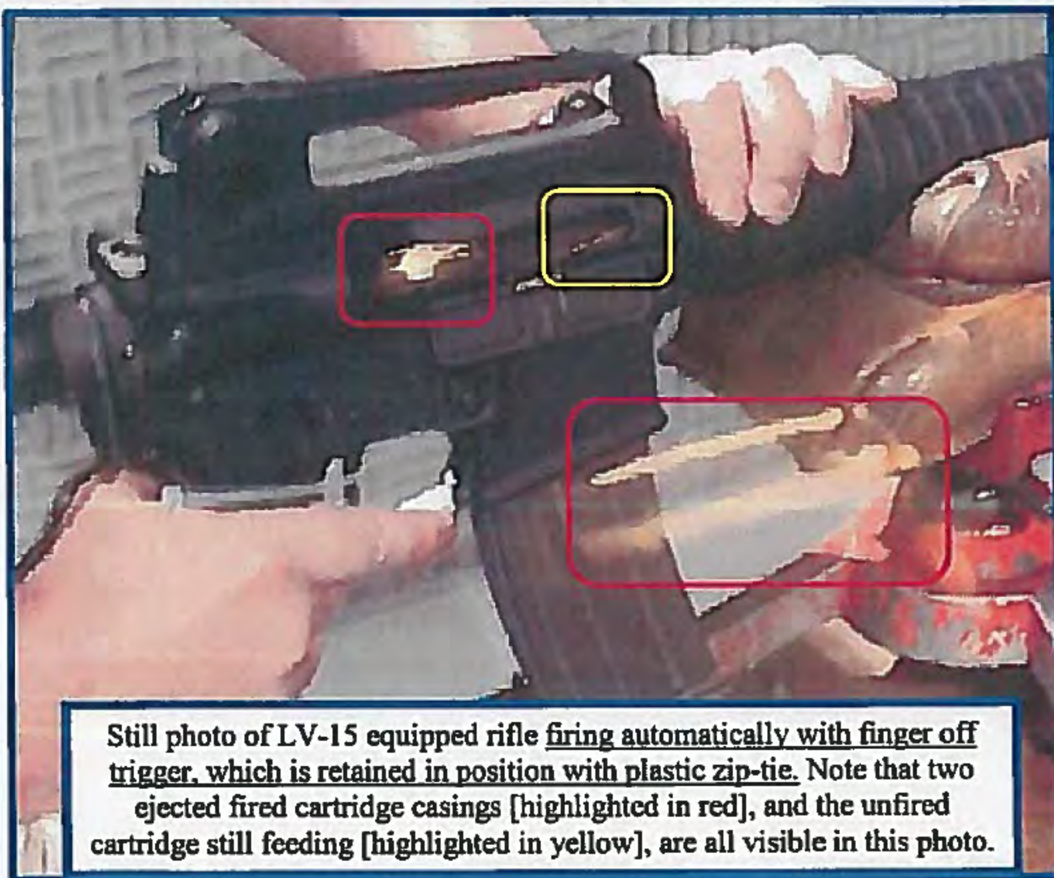
When the trigger was pulled slowly and retained in a position at which the hammer was just release with the device actuated during manual field testing, a condition resembling automatic cycling was observed on several occasions, during field testing of the LV-15 equipped firearm. Actual test firing with live ammunition replicated this same condition.

In order to ensure that the LV-15 equipped firearm was actually firing more than one shot, without manual reloading, with a single function of the trigger, rather than firing a single shot with each function of the trigger, the following procedure was followed.

- A common 9-3/4 inch zip-tie was installed around the rear of the grip and the front of the sample's trigger.
- The zip-tie was gradually tightened until the trigger was retracted just enough to allow the hammer to fall.
- With the trigger retained in this position, the bolt assembly was retracted and retained in an open position, with the aid of the bolt catch.
- A five-round ammunition load was placed into the sample's magazine and the magazine was inserted into the firearm.
- Without touching the trigger (which was being retained in a fixed position by the plastic zip-tie), the bolt catch was depressed allowing the firearms bolt to travel forward and chamber a cartridge. Upon chambering the cartridge the weapon fired the entire five-round ammunition load automatically without the trigger being repeatedly pulled and released.
- This same test was repeated several times with a five- round ammunition load and once with a fifteen-round ammunition load. In all instances, the LV-15 equipped firearm discharged its entire ammunition load upon initiating the firing sequence by depressing the bolt release, thus allowing the bolt assembly to move forward and both chamber and fire cartridges repeatedly.



First sample LV-15 equipped firearm with simple zip-tie installed, allowing firearm to fire in a fully-automatic fashion, with multiple 5-shot bursts and one 15-shot burst fired.



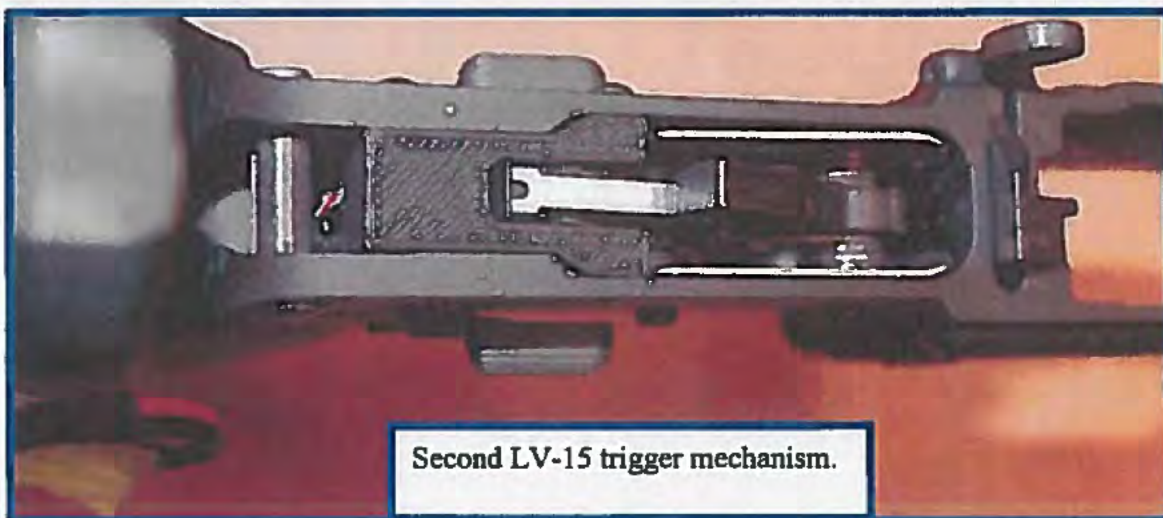
Still photo of LV-15 equipped rifle <u>firing automatically with finger off trigger, which is retained in position with plastic zip-tie.</u> Note that two ejected fired cartridge casings [highlighted in red], and the unfired cartridge still feeding [highlighted in yellow], are all visible in this photo.

FTISB testing with the trigger of the LV-15 equipped firearm pictured on the previous page, retained in the static position shown with a plastic zip-tie, revealed that the LV-15 device could allow a semiautomatic AR-15 type firearm to fire automatically more than one shot, without manual reloading, by a single function of the trigger.

First LV-15 device submission.

FTISB next proceeded with an examination of the second LV-15 equipped firearm, which was submitted on April 6, 2016. This second prototype is described as being functionally identical to the previous model pictured above, featuring "*small improvements that have come as the result of further development since the original submission.*" The LV-15 device equipped rifle initially manually field tested and appeared to operate similarly to the first version of the LV-15 examined. Shortly after testing began, the LV-15 device ceased operating. Both recharging the original battery and substituting a different recharged battery failed to return the device to operational status. Due to the aforementioned deficiency, FTISB personnel terminated testing of the submitted device.

Second LV-15 prototype.



Second LV-15 trigger mechanism.

Although testing of the second device could not be completed because of the malfunction, it is designed, and operates, in the same way as the first submitted device. As a result of the subject test weapon firing more than one shot, without manual reloading, by a single function of the trigger with the submitted device installed, the submitted LV-15 devices are classified as a combination of parts designed and intended, solely and exclusively, for use in converting a weapon into a machinegun and thus a "**machinegun**" as defined in 26 U.S.C. § 5845(b). This classification is based on an evaluation of the item as submitted and that the item converts a weapon to fire automatically, regardless of how reliably it shoots automatically more than one shot, without manual reloading, by a single function of the trigger.

As stated above, Federal law defines "machinegun," in relevant part, as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger" as well as a "combination of parts designed and intended, for use in converting a weapon into a machinegun." Legislative history for the NFA indicates that the drafters equated a "single function of the trigger" with "single pull of the trigger." National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066, 73rd Cong., at 40 (1934). Therefore, ATF has long held that a single function of the trigger is a "single pull" or, alternatively, a single release of a trigger. Therefore, a firearm is not a machinegun if a projectile is expelled when the trigger is pulled and a second projectile is expelled when the trigger is released.

To initiate firing using the LV-15, a shooter must simply pull the trigger (photo 1—note that the solenoid rod is inside the firearm. These photos show the approximate location of the rod in the firearm. This is done simply to explain the functioning of the device). After firing, and when the bolt has loaded a second round of ammunition (photo 2-3), the mechanical-electrical operation of the LV-15 trigger device utilizes a "solenoid rod" to push the trigger forward as if the shooter had released the trigger (photo 4). Although the trigger is pushed forward the shooter never releases the trigger. Pursuant to your explanation, the shooter must merely maintain a pull that exerts "not more than 12 pounds of force during said 15 millisecond interval." If the shooter maintains this pressure, a second shot is fired (photo 5). As stated above, firing requires so little input from the shooter—a single pull with constant pressure—that a zip tie can effectively fire a weapon utilizing the LV-15 until the ammunition source is exhausted. A shooter need only pull the trigger once to initiate firing, and the LV-15 then operates automatically to continue firing.

Photo 1 obtained from customer supplied video of rifle utilizing CMMG .22LR conversion device.

Photo 2 obtained from customer supplied video of rifle utilizing CMMG .22LR conversion device.

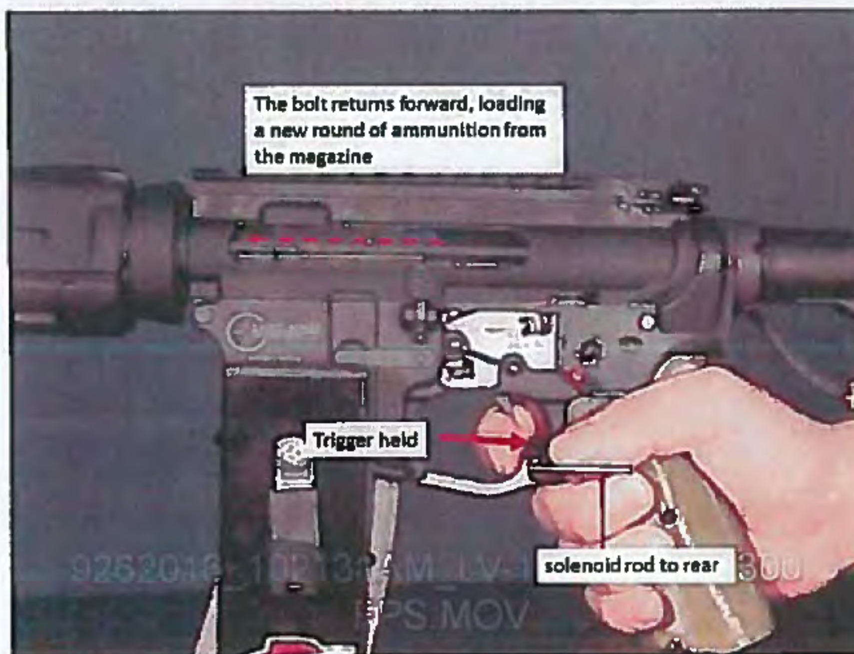


Photo 3 obtained from customer supplied video of rifle utilizing CMMG .22LR conversion device.

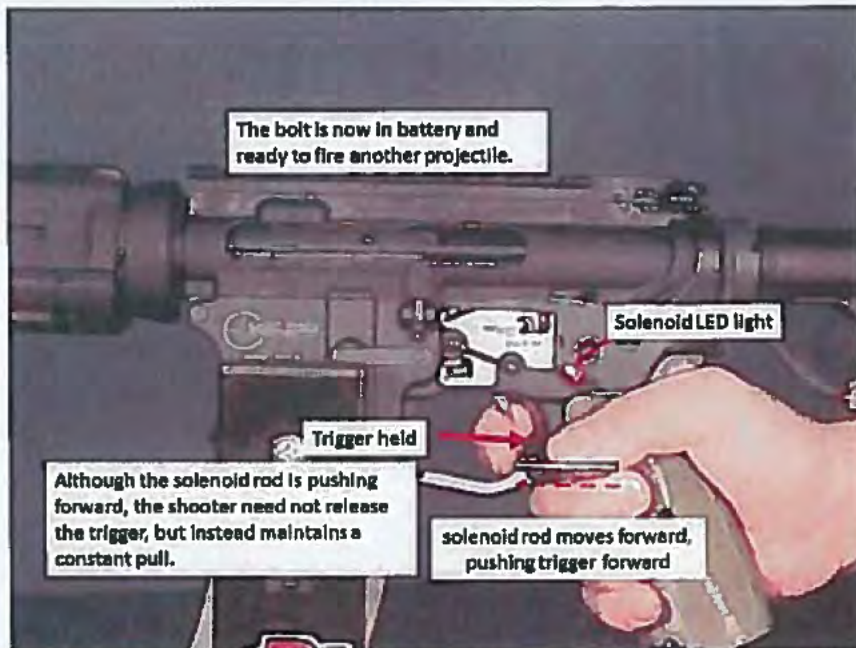


Photo 4 obtained from customer supplied video of rifle utilizing CMMG .22LR conversion device.

Photo 5 obtained from customer supplied video of rifle utilizing CMMG .22LR conversion device.

This Branch has previously approved certain devices sometimes known as "bump fire" stocks in which a shooter pulls the trigger and applies forward pressure with the non-

trigger hand to fire additional projectiles. To function as designed, the trigger must be pulled and held without release. After it fires the first projectile, the firearm recoils and pushes rearward, sliding back in the stock. Although the shooter maintains constant pull on the trigger, the backward movement of the firearm relative to the trigger causes the trigger to reset, as if the trigger had been released. The firing sequence will stop at this point unless the shooter maintains forward pressure on the firearm with his non-shooting hand. This forward pressure moves the firearm forward relative to the trigger and causes a second projectile to fire. Whereas, in the case of typical firearms, a trigger must be pulled backward to fire a projectile, in the case of bump fire stock, the second and subsequent shots operate by keeping the trigger in place and moving the firearm forward.

This Branch approved these devices, but this was in spite of the fact that the devices utilize a "single function of the trigger." As was explained in those classification letters, these items were not classified as machineguns because the stocks had no automatically functioning mechanical parts or springs and performed no automatic mechanical function when installed. A weapon is a machinegun if it shoots, is designed to shoot, or can be readily restored to shoot, ***automatically*** more than one shot, without manual reloading, by a single function of the trigger. Because the shooter was required to provide the forward pressure with his hand, the firearm did not function "automatically." The LV-15 does operate automatically, as it uses an electrical-mechanical device to automatically cycle the trigger forward against the initial trigger pull, thus allowing the LV-15 equipped firearm to automatically fire.

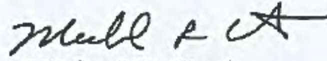
Please be aware, our Branch has also evaluated similar devices which have prevented the trigger from positively resetting and resulted in a "hammer-follow" scenario. A device designed to prevent the hammer from positively resetting could cause a firearm to shoot automatically more than one shot, without manual reloading, by a single function of the trigger, and would also be classified as a combination of parts designed and intended, solely and exclusively, for use in converting a weapon into a machinegun; thus a "**machinegun**" as defined in 26 U.S.C. § 5845(b).

FTISB finds that the host AR-type firearms, Bushmaster AR-type receiver serial number L476739, and Anderson Manufacturing AR-type receiver serial number 15272793, not having any modifications made which would cause them to fire automatically, or incorporating the frame or receiver of a machinegun, are not "machineguns" as defined in 26 U.S.C. § 5845(b).

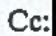
The subject Bushmaster and Anderson Manufacturing firearms will be returned to you as soon as our Branch has received either a FedEx account number, or a FedEx or alternate carrier prepaid return label. Please advise our Branch within 60 days of receipt of this letter regarding the disposition of these firearms. The submitted LV-15 devices, which are classified as "machineguns" as defined in 26 U.S.C. § 5845(b), cannot be returned to you unless you are a licensed firearms manufacturer who has paid the Special Occupational Tax (SOT).

We trust the foregoing has been responsive to your current evaluation request and regret that our written response was delayed due to FTISB's current workload.

Sincerely yours,



Michael R. Curtis
Chief, Firearms Technology Industry Services Branch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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Firearms Technology Industry Services Branch

Martinsburg, WV

www.atf.gov

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AutoGlove USA, LLC

This refers to your correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB), which accompanied your submitted sample of an "AutoGlove" device. Specifically, you requested an examination and classification of this sample with regard to the amended Gun Control Act of 1968 (GCA) and the National Firearms Act (NFA).

As background, the GCA, 18 U.S.C. § 921(a)(23), defines the term "**machinegun**" as...

"The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b))."

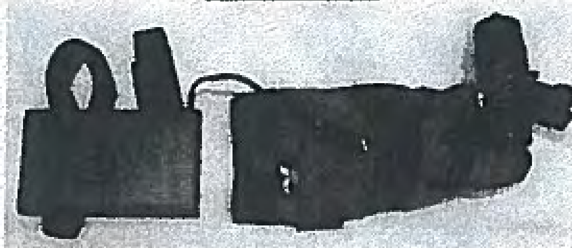
Further, the NFA, 26 U.S.C. § 5845(a), defines the term "**firearm**" to include *"(6) a machinegun."*

Additionally, the NFA, 26 U.S.C. § 5845(b), defines "**machinegun**" to mean:

...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, <u>any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun</u>, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

The physical characteristics and identity of the submitted sample are provided below:

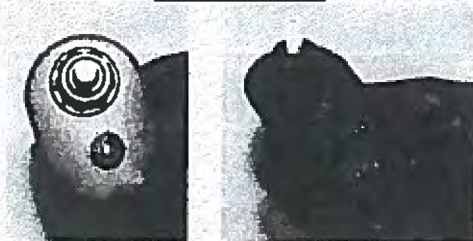
Submitted Sample:



The submitted sample is a right-handed glove containing a "braced" pointer finger with an attached solenoid, and an "activation plunger" located on the middle finger. Included with the sample is a "simplified" battery control pack, which has only an ON/OFF setting.

Solenoid with Actuator Arm:

Activator Plunger:



The basic premise of your submitted design is what you label a patent pending "Trigger Assist Device (TAD)." The TAD uses an "activator plunger" to turn on a solenoid which pushes an "actuator arm" in and out engaging a firearm trigger.

The term "*trigger*" is a term generally applied by a manufacturer to that part of a firing mechanism which is manually operated to cause the firearm to discharge a projectile, usually by the release of a sear, hammer, firing pin, or striker. However, the "trigger" of a firearm under the GCA and NFA is defined in a context-specific manner. U.S. Courts of Appeals have defined the term "trigger" as "*anything that...cause[s] the weapon to fire. A trigger may be either a traditional small projecting tongue in the firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon, any mechanism used to initiate a firing sequence, or anything that serves as a stimulus and initiates or precipitates a reaction or series of reactions.*" U.S. v Carter, 465 F.3d 658 (6th Cir 2006). In both practical and legal terms, the "trigger" of a firearm is whatever is used to initiate the firing sequence.[1]

When used in conjunction with a firearm, the AutoGlove replaces the traditional "trigger" of that weapon.

This shows the device in position and ready to fire. To fire, the shooter will move the selector to "fire," then press and hold the white activator plunger with his thumb. The firearm will fire until the thumb is released.

This shows the back side of the device when it is in position and ready to fire. Note that the traditional "trigger finger" is used merely to hold the device in place.

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[1] See also United States v. Evans, 978 F.2d 1112 (9th Cir. 1992) (As used in § 5845(a), "by a single function of the trigger" describes the action that enables the weapon to "shoot . . . automatically . . . without manual reloading," not the "trigger" mechanism. The argument that the plain meaning of trigger in 28 U.S.C. § 5845(a)(6) is a curved metal trigger is out of context and without merit. It would lead to the absurd result of enabling persons to avoid the NFA simply by using weapons that employ a button or switch mechanism for firing.); United States v. Jokel, 969 F.2d 132 (5th Cir. 1992) (defined a trigger, as used in 26 U.S.C. § 5845(d) (shotguns), as any "mechanism . . . used to initiate the firing sequence"); United States v. Fleischli, 305 F.3d 643 (7th Cir. 2002) (concerning machine gun, approving of Jokel's definition).

The AutoGlove changes the shooter's interaction with the firearm's traditional trigger in that it incorporates the traditional trigger as a part of the firing sequence, but removes it as the part that initiates firing. Instead, the activator plunger acts as the actual trigger.

The below pictures show the functioning of the Actuator Arm.

Here the actuator arm is shown fully retracted.

Here the actuator arm is shown fully extended.

ATF has held a consistent position with regard to electrically-driven trigger devices, going back more than 30 years.

An excerpt from a 1982 letter reads:

> *"An electric motor attached to a firearm, in such a manner that turning the motor on causes the weapon to fire repeatedly until the motor is switched off, would be a machinegun as defined."*

Additionally, a 1988 letter reads:

> *"The Bureau of Alcohol, Tobacco and Firearms has previously determined a semiautomatic firearm having an electronic solenoid attached to the trigger and fired by means of a switch meets the definition of a machinegun as contained in the National Firearms Act (NFA)."*

A separate 1988 letter reads:

> *"Your device, an electrically powered trigger actuator would fall within the purview of the NFA....A weapon on which a device such as you describe has been affixed would fire more than one shot, without manual reloading, by a single function of the electrical switch(trigger) and therefore meets the definition of a machinegun as defined.*
> *Further, section 5845(b), Title 26, U.S.C. also states the term "machinegun" shall also included...any part designed and intended solely and exclusively, or combination of parts*

> *designed and intended for use in converting a weapon into a machinegun. Therefore, a device such as you describe would meet that definition even if it were not attached to any firearm."*

Electrically-driven trigger devices are considered **"machineguns"** because they are a "combination of parts designed and intended, for use in converting a weapon into a machinegun." Because these electric devices use a switch/button to activate the drive motor to initiate the firing sequence, that switch/button is the firearm's trigger. Since the weapon fires more than one round for each single function of its trigger (a single press on the AutoGlove's Activator Plunger), it would be a **"machinegun"** as defined.

In your correspondence, you highlight two "major differences" in your AutoGlove device, which you claim should cause the device to not be classified as a **"machinegun."** First, your primary argument is that the AutoGlove does not permanently attach to a firearm, even while being utilized. Second, you claim that the actuator arm on the solenoid does not actually engage a firearms trigger on its own because a "micro-trigger" pull is required.

FTISB will discuss this second claim first. Your correspondence states:

"Second, although the AutoGlove has an activation plunger/switch to begin activation of the Trigger Activation Device (TAD), the TAD does not activate the trigger without additional human interaction. The person's trigger finger must still pull the TAD rearward and must use the TAD to take up slack/slop in the trigger. Then when the trigger is ready to break, and fire the gun, the person must begin making "micro-trigger pulls even with the TAD activated. Without such actions on the person's behalf, the TAD will only vibrate inside the trigger guard and possibly not even come into contact with the trigger."

FTISB personnel test-fired a semiautomatic AR-type firearm from the National Firearms Collection (NFC), utilizing the AutoGlove, to test the validity of this statement. Trigger pull on the NFC firearm was measured before the test-fire, and found to consistently break between 2-1/2 and 2-3/4 pounds of pressure. FTISB used commercially available, Federal brand, 55-grain .223 caliber ammunition for the test-fire.

Instead of making the "micro-trigger" pulls, which you claim are necessary, the solenoid was held against the front trigger guard with *forward* pressure (away from the traditional firearm trigger) applied during the test. When the activator plunger was pressed and held, the firearm fired automatically and continuously until the ammunition supply was exhausted. The test was repeated two additional times, with the same results.

The result of the test-fire leads FTISB to conclude that your claim of needing "micro-trigger" pulls to fire a firearm using the AutoGlove is not accurate. In fact, a shooter need not move his finger at all, but only hold the AutoGlove in place because the actuator arm provides all of the movement necessary to fire the weapon.

Your primary basis for reasoning that the AutoGlove should not be classified as a "**machinegun**" appears to be predicated on the belief that being "not permanently attached" excludes it from such classification. Unfortunately, the requirement that a device be "permanently attached" is found nowhere in the definition of a machinegun, and is thus not a requirement. As we stated in 1988, any part designed and intended solely and exclusively, or combination of parts designed and intended for use in converting a weapon into a machinegun would meet that definition even if it were not attached to any firearm." Therefore, this argument is immaterial to a final classification.

Consequently, the submitted device is a "**machinegun**" as defined in the NFA. It is also a "**firearm**" as defined in the NFA, and is subject to all NFA provisions.

Further, since May 19, 1986, the GCA permits only properly licensed manufacturers and importers to register new machineguns; private, unlicensed individuals may not do so.

An unregistered machinegun is a contraband firearm, and possession of such a weapon is unlawful. The submitted firearm is not registered in accordance with the provisions of the NFA and it cannot be returned to you.

Instead, FTISB is obliged to request forfeiture of the unregistered AutoGlove sample you have submitted.

We trust that the foregoing has been responsive to your request. If we can be of any further assistance, you may contact us at any time.

Sincerely yours,

Michael R. Curtis
Chief, Firearms Technology Industry Services Branch