

No. 22-976

In the Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,
PETITIONERS

v.

MICHAEL CARGILL

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

BRIEF FOR THE PETITIONERS

ELIZABETH B. PRELOGAR

*Solicitor General
Counsel of Record*

BRIAN M. BOYNTON

*Principal Deputy Assistant
Attorney General*

BRIAN H. FLETCHER

Deputy Solicitor General

VIVEK SURI

*Assistant to the Solicitor
General*

MARK B. STERN

MICHAEL S. RAAB

ABBY C. WRIGHT

BRAD HINSHELWOOD

Attorneys

*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Federal law has long restricted access to machineguns. A “machinegun” is defined as “any weapon which shoots, is designed to shoot, or can be readily re-stored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger,” as well as a “part designed and intended solely and exclusively * * * for use in converting a weapon into a machinegun.” 26 U.S.C. 5845(b). A “bump stock” is a device designed and intended to permit users to convert a semiautomatic rifle so that the rifle can be fired continuously with a single pull of the trigger, discharging hundreds of bullets per minute.

The question presented is whether a bump stock is a “machinegun” as defined in 26 U.S.C. 5845(b).

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction..... 1

Statutory provisions involved..... 1

Statement:

 A. Legal background..... 2

 B. Bump stocks 5

 C. Procedural history 11

Summary of argument 14

Argument:

 A. A rifle equipped with a bump stock fires multiple
 shots “by a single function of the trigger” 17

 B. A rifle equipped with a bump stock fires multiple
 shots “automatically” 30

 C. This Court should reject interpretations that
 would permit ready circumvention of the statute 38

 D. The Fifth Circuit’s remaining arguments lack
 merit..... 42

Conclusion 46

Appendix — Statutory and regulatory provisions 1a

TABLE OF AUTHORITIES

Cases:

Abramski v. United States,
573 U.S. 169 (2014)..... 38, 39, 42, 45

Akins v. United States, 312 Fed. Appx. 197
(11th Cir.), cert. denied, 557 U.S. 942 (2009) 8, 27, 43

American Broadcasting Cos. v. Aereo, Inc.,
573 U.S. 431 (2014)..... 38-41

Bank Markazi v. Peterson, 578 U.S. 212 (2016)..... 45

County of Maui v. Hawaii Wildlife Fund,
140 S. Ct. 1462 (2020) 38, 40, 42

The Emily, 9 Wheat. 381 (1824)..... 38, 45

IV

Cases—Continued:	Page
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009).....	44
<i>Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives</i> :	
45 F.4th 306 (D.C. Cir. 2022), petition for cert. pending, No. 22-1222 (filed June 14, 2023)....	5, 24, 41
66 F.4th 1018, 1023 (D.C. Cir. 2023)	40
<i>Gun Owners of America, Inc. v. Garland</i> , 19 F.4th 890 (6th Cir. 2021), cert. denied, 143 S. Ct. 83 (2022)	36
<i>Maracich v. Spears</i> , 570 U.S. 48 (2013).....	44
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	20
<i>National Ass’n for Gun Rights v. Garland</i> , No. 23-cv-830, 2023 WL 6613080 (N.D. Tex. Oct. 7, 2023)	28
<i>New England Power Generators Ass’n v. FERC</i> , 879 F.3d 1192 (D.C. Cir. 2018).....	44
<i>Norwegian Nitrogen Products Co. v. United States</i> , 288 U.S. 294 (1933).....	21
<i>Ocasio v. United States</i> , 578 U.S. 282 (2016).....	44
<i>Springfield Armory, Inc. v. City of Columbus</i> , 29 F.3d 250 (6th Cir. 1994).....	2
<i>Staples v. United States</i> , 511 U.S. 600 (1994).....	2, 14, 21, 25, 32, 33, 36
<i>United States v. Bishop</i> , 926 F.3d 621 (10th Cir. 2019), cert. denied, 141 S. Ct. 115 (2020).....	21
<i>United States v. Camp</i> , 343 F.3d 743 (5th Cir. 2003).....	18, 22, 29
<i>United States v. Carter</i> , 465 F.3d 658 (6th Cir. 2006), cert. denied, 550 U.S. 964 (2007).....	22
<i>United States v. Evans</i> , 978 F.2d 1112 (9th Cir. 1992), cert. denied, 510 U.S. 821 (1993).....	18

Cases—Continued:	Page
<i>United States v. Fleischli</i> , 305 F.3d 643 (7th Cir. 2002), cert. denied, 538 U.S. 1001 (2023).....	18, 22
<i>United States v. Harris</i> , 959 F.2d 246 (D.C. Cir.), cert. denied, 506 U.S. 932, and 506 U.S. 933 (1992).....	21
<i>United States v. Jokel</i> , 969 F.2d 132 (5th Cir. 1992)....	18, 22
<i>United States v. O'Brien</i> , 560 U.S. 218 (2010).....	40
<i>United States v. Olofson</i> , 563 F.3d 652 (7th Cir.), cert. denied, 558 U.S. 948 (2009)	18, 21
<i>United States v. Rare Breed Triggers, LLC</i> , No. 23-cv-369, 2023 WL 5689770 (E.D.N.Y. Sept. 5, 2023).....	28
<i>United States v. Smith</i> , 700 F.2d 627 (11th Cir. 1983).....	21
<i>United States v. Vázquez-Martínez</i> , 812 F.3d 18 (1st Cir. 2016)	21
<i>Wooden v. United States</i> , 142 S. Ct. 1063 (2022).....	45
Statutes and regulation:	
Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449:	
§ 102(9), 100 Stat. 452-453	3
§ 109(a), 100 Stat. 460	4
Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213	3
§ 201, 82 Stat. 1227-1235.....	3
§ 201, 82 Stat. 1231	4
National Firearms Act of 1934, ch. 757, 48 Stat. 1236	2
§ 1(b), 48 Stat. 1236	4
§§ 3-6, 48 Stat. 1237-1238.....	3
18 U.S.C. 921(a)(24).....	4, 1a
18 U.S.C. 922(o)(1).....	3, 1a

VI

Statutes and regulation—Continued:	Page
18 U.S.C. 922(o)(2)(B)	3, 1a
26 U.S.C. 5845(b)	4, 7, 8, 14, 17, 18, 22, 24, 26, 30, 43, 1a
26 U.S.C. 5845(e)	38
27 C.F.R. 479.11	9, 10, 4a

Miscellaneous:

<i>Administration of Liquor Taxing Laws: Hearings on H.R. 8001 Before the House Comm. on Ways and Means, 74th Cong., 1st Sess. (1935)</i>	20
<i>The American Heritage Dictionary of the English Language</i> 1371 (1969)	17, 31
1 George M. Chinn, <i>The Machine Gun</i> 142 (1951).....	22, 33
86 Cong. Rec. 6376 (1940)	20, 21
Defense Logistics Agency, Dep’t of Defense, <i>Small Arms</i> , perma.cc/4HLM-ZDZS.....	5
John Ellis, <i>The Social History of the Machine Gun</i> (1986).....	2
82 Fed. Reg. 60,929 (Dec. 26, 2017)	9
83 Fed. Reg. 66,514 (Dec. 26, 2018)	5-11, 22, 23, 27, 28, 31, 32, 36-38, 41, 43
H.R. Rep. No. 1780, 73d Cong., 2d Sess. (1934)	19
H.R. Rep. No. 1577, 90th Cong., 2d Sess. (1968).....	3
H.R. Rep. No. 495, 99th Cong., 2d Sess. (1986).....	3
<i>National Firearms Act: Hearings on H.R. 9066 Before the House Comm. on Ways and Means, 73d Cong., 2d Sess. (1934)</i>	18, 19
Office of Enforcement Programs & Services, Bureau of Alcohol, Tobacco, Firearms & Explosives, U.S. Dep’t of Justice, <i>ATF National Firearms Act Handbook</i> (rev. Apr. 2009), perma.cc/QQ2Z-ZK5H	4, 5
<i>The Oxford English Dictionary</i> (1933): Vol. 1	31, 32

VII

Miscellaneous—Continued:	Page
Vol. 4	18
Vol. 11	17
<i>Oxford English Dictionary</i> (3d ed. 2023)	33
Rev. Rul. XII-38-7035, S.T. 772, 13-2 C.B. 434 (1934)	21
S. 1970, 76th Cong., 3d Sess. (1940)	20
S. Rep. No. 1444, 73d Cong., 2d Sess. (1934)	3, 19
Antonin Scalia & Bryan A. Garner, <i>Reading Law:</i> <i>The Interpretation of Legal Texts</i> (2012).....	20, 39
<i>Webster’s New International Dictionary of the</i> <i>English Language</i> (1928).....	24, 31-33

In the Supreme Court of the United States

No. 22-976

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,
PETITIONERS

v.

MICHAEL CARGILL

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

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-71a) is reported at 57 F.4th 447. The opinion of the court of appeals panel (Pet. App. 72a-91a) is reported at 20 F.4th 1004. The opinion of the district court (Pet. App. 92a-153a) is reported at 502 F. Supp. 3d 1163.

JURISDICTION

The judgment of the court of appeals was entered on January 6, 2023. The petition for a writ of certiorari was filed on April 6, 2023, and granted on November 3, 2023. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix. App., *infra*, 1a-4a.

STATEMENT

A. Legal Background

1. Under federal law, a “machinegun” is a firearm that “fires repeatedly with a single pull of the trigger.” *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994). In other words, once the shooter depresses the trigger, the machinegun continues to fire until the shooter releases the trigger or exhausts the ammunition. See *ibid.* Such weapons are also commonly called “automatic” or “fully automatic” firearms. See *ibid.*

A machinegun differs from a firearm with a manual action—that is, a firearm that requires the shooter to take a manual step, such as moving a bolt or lever, to eject a spent cartridge and load a new one before firing an additional shot. See *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 252 n.1 (6th Cir. 1994). It also differs from a semiautomatic firearm—that is, a firearm that automatically loads a new cartridge once the previous cartridge has been fired, but that “fires only one shot with each pull of the trigger.” *Staples*, 511 U.S. at 602 n.1. Machineguns facilitate rapid fire by eliminating the manual steps that the shooter would otherwise need to repeat in order to fire multiple shots.

Machineguns were originally developed in the late 19th century for use in battle. See John Ellis, *The Social History of the Machine Gun* 21-45 (1986). But in the late 1920s and early 1930s, gangsters began using them in their criminal activities. See *id.* at 149-165. John Dillinger used machineguns to rob banks, Pretty Boy Floyd used them to ambush policemen, and Al Capone’s henchmen used them to murder rivals in the St. Valentine’s Day Massacre. See *id.* at 154, 157-158.

2. Congress responded with the National Firearms Act of 1934 (National Firearms Act), ch. 757, 48 Stat.

1236. That statute required the registration of machine-guns and taxed their transfer. §§ 3-6, 48 Stat. 1237-1238. Those provisions reflected Congress's judgment that the "gangster as a law violator must be deprived of his most dangerous weapon, the machine gun," and that "there is no reason why anyone except a law officer should have a machine gun." S. Rep. No. 1444, 73d Cong., 2d Sess. 1-2 (1934) (Senate Report).

Congress amended that statute in the Gun Control Act of 1968 (Gun Control Act), Pub. L. No. 90-618, 82 Stat. 1213. The Gun Control Act expanded the National Firearms Act's scope, overhauled its registration requirements, and strengthened its criminal penalties. § 201, 82 Stat. 1227-1235. Those changes were part of Congress's effort to address the "increasing rate of crime and lawlessness and the growing use of firearms in violent crime." H.R. Rep. No. 1577, 90th Cong., 2d Sess. 7 (1968).

Congress further restricted machineguns in the Firearms Owners' Protection Act, Pub. L. No. 99-308, § 102(9), 100 Stat. 452-453. That statute amended Title 18 of the U.S. Code to make it a federal crime "to transfer or possess a machinegun." 18 U.S.C. 922(o)(1). But a grandfather clause exempted machineguns that were lawfully possessed before the date the criminal prohibition took effect. See 18 U.S.C. 922(o)(2)(B). Together, those provisions effectively froze the number of lawful machineguns in private hands at the level that existed in 1986. Congress took that step to provide "more effective protection of law enforcement officers from the proliferation of machine guns." H.R. Rep. No. 495, 99th Cong., 2d Sess. 7 (1986).

3. The National Firearms Act, as amended in 1968 and 1986, defines the term “machinegun” as follows:

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.

26 U.S.C. 5845(b); see 18 U.S.C. 921(a)(24). Congress adopted the first sentence, the core of the definition, in 1934 and amended it to its current form in 1968. See National Firearms Act, § 1(b), 48 Stat. 1236; Gun Control Act, § 201, 82 Stat. 1231. It added the second sentence, under which certain machinegun parts themselves count as “machineguns,” in 1968, and amended it to its current form in 1986. See Gun Control Act, § 201, 82 Stat. 1231; Firearms Owners’ Protection Act, § 109(a), 100 Stat. 460.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), an agency in the Department of Justice, issues guidance about that definition’s scope. ATF encourages manufacturers to submit novel weapons on a voluntary basis so that it can assess whether they qualify as machineguns. See Office of Enforcement Programs & Services, ATF, U.S. Dep’t of Justice, *ATF National Firearms Act Handbook* 41 (rev. Apr. 2009), perma.cc/QQ2Z-ZK5H. That process enables the agency to provide the manufacturer with ATF’s “official

position concerning the status of the firearms under Federal firearms laws.” *Ibid.* Classifications are, however, “subject to change if later determined to be erroneous or impacted by subsequent changes in the law or regulations.” *Ibid.*

B. Bump Stocks

1. A bump stock is a device that modifies a standard semiautomatic rifle. See Pet. App. 103a. A standard semiautomatic rifle fires only one shot each time the shooter pulls the trigger, but a bump stock converts it into a weapon that can discharge hundreds of rounds per minute after a single activating action. Rifles equipped with bump stocks “are estimated to fire between 400 and 800 bullets per minute”—a rate of fire comparable to common military machineguns like the M-14 and M-16. *Guedes v. ATF*, 45 F.4th 306, 316 (D.C. Cir. 2022), petition for cert. pending, No. 22-1222 (filed June 14, 2023).¹

A bump stock replaces a rifle’s stock—*i.e.*, the part of the rifle that rests against the shooter’s shoulder. See 83 Fed. Reg. 66,514, 66,516 (Dec. 26, 2018). Unlike a standard stock, a bump stock allows the rifle’s upper assembly to slide back and forth in the stock. See *ibid.* A bump stock also includes a stationary finger rest (also known as the “extension ledge”) on which the shooter places his finger while shooting. See *ibid.* And it usually comes with a rectangular “receiver module” that guides and regulates the weapon’s recoil. *Ibid.*

¹ See Defense Logistics Agency, Dep’t of Defense, *Small Arms*, perma.cc/4HLM-ZDZS (listing the M-14’s rate of fire as 700-750 rounds per minute and the M-16’s rate of fire as 700-950 rounds per minute).

To initiate a firing sequence with the type of bump stock at issue in this case, the shooter either pulls the firearm's trigger, see 83 Fed. Reg. at 66,516, or slides the firearm forward in the bump stock, pressing the trigger into his trigger finger, see Pet. App. 103a. The bump stock then maintains a continuous firing cycle as long as the shooter keeps his trigger finger stationary on the finger rest and uses his non-trigger hand to maintain constant forward pressure on the rifle's barrel or front grip. See 83 Fed. Reg. at 66,516.

When the trigger first comes into contact with the shooter's finger, the rifle discharges the first shot. See 83 Fed. Reg. at 66,516. As always when a shot is fired, the rifle recoils. See *ibid.* The bump stock ensures that, as a result of the recoil, the rifle slides backward a short distance (approximately an inch and a half) in the stock. See *id.* at 66,518. Because the shooter maintains forward pressure with his non-trigger hand, however, the rifle immediately slides forward again. See *ibid.* The rifle bumps into the shooter's stationary trigger finger once more, causing the firing of another shot. See *ibid.*

That cycle—fire, recoil, bump, fire—results in the rapid firing of multiple shots. See 83 Fed. Reg. at 66,518. The cycle continues until the shooter moves his trigger finger, stops maintaining forward pressure with his non-trigger hand, or exhausts the ammunition. See *id.* at 66,532; Pet. App. 104a.

The record includes several videos and animations that show how a rifle equipped with a bump stock works. See D. Ct. Doc. 59-1 (Oct. 1, 2020); Pet. App. 10a n.3. A promotional video depicts the weapon's assembly and operation.² Another video depicts its operation in slow

² <https://www.youtube.com/watch?v=hCCT8JtwQeI>.

motion.³ And an animation cited by the court of appeals depicts its mechanics close up.⁴

2. ATF first encountered bump stocks in 2002, when it received a classification request for a device known as the “Akins Accelerator.” 83 Fed. Reg. at 66,517. The Akins Accelerator operated much like the type of bump stock at issue here: A shooter would initiate a bump-firing sequence by pulling the trigger once, causing the rifle to fire a shot, recoil, and slide backward in the stock. See *ibid.* Unlike the type of bump stock at issue here, the Akins Accelerator relied on internal springs—rather than on forward pressure maintained with the shooter’s non-trigger hand—to force the rifle to slide forward again. See *ibid.* “The recoil and the spring-powered device thus caused the firearm to cycle back and forth, impacting the trigger finger without further input by the shooter.” *Ibid.* According to its advertisers, the Akins Accelerator enabled a shooter to fire approximately 650 rounds per minute. *Ibid.*

ATF at first declined to classify the Akins Accelerator as a machinegun. See 83 Fed. Reg. at 66,517. The statutory definition asks whether the weapon can shoot “more than one shot * * * by a single function of the trigger,” 26 U.S.C. 5845(b), and the agency read the term “single function of the trigger” to mean “single movement of the trigger,” 83 Fed. Reg. at 66,517. The classification rested on the agency’s understanding of the device’s “theory of operation”; although the agency tried to test-fire a prototype of the Akins Accelerator, the prototype broke during the testing. J.A. 10.

³ <https://www.youtube.com/watch?v=67oxh-KpWeQ>.

⁴ https://www.ca5.uscourts.gov/opinions/pub/20/20-51016_bump_fire_animation.gif.

In 2006, after “further review of the device based on how it actually functioned when sold,” the agency reclassified the Akins Accelerator as a machinegun. 83 Fed. Reg. at 66,517. In the course of doing so, it determined that “the best interpretation of the phrase ‘single function of the trigger’ includes a ‘single pull of the trigger.’” *Ibid.* ATF observed that, when a semiautomatic rifle is equipped with an Akins Accelerator, “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.” *Ibid.* (citation omitted). The device’s inventor sought judicial review, but the Eleventh Circuit upheld ATF’s decision. See *Akins v. United States*, 312 Fed. Appx. 197, 199-200 (per curiam), cert. denied, 557 U.S. 942 (2009).

3. When ATF reclassified the Akins Accelerator in 2006, it advised owners of the device that “removal and disposal of the internal spring * * * would render the device a non-machinegun.” 83 Fed. Reg. at 66,517. The statutory definition asks whether the weapon can shoot “automatically more than one shot.” 26 U.S.C. 5845(b). The agency reasoned that, without the spring, the Akins Accelerator would not function “automatically.” 83 Fed. Reg. at 66,517.

ATF soon received classification requests for bump-stock devices that did not include internal springs, but instead required the shooter to maintain constant forward pressure on the barrel or front grip in order to cause the firearm to slide forward after recoiling. See 83 Fed. Reg. at 66,517. In ten letter rulings between 2008 and 2017, the agency concluded that such devices did not enable a firearm to fire “automatically” and thus did not convert weapons into machineguns. See *ibid.*

4. In October 2017, a gunman used rifles equipped with bump stocks to commit the deadliest mass shooting in American history. See 83 Fed. Reg. at 66,516. In a matter of minutes, the bump-stock devices allowed the shooter to fire more than a thousand shots into a large crowd attending an outdoor concert in Las Vegas. See Pet. App. 71a (Higginson, J., dissenting). At times, the shooter's firing rate reached nine rounds per second. See *ibid.* The attack killed 58 people and wounded approximately 500 more. See 83 Fed. Reg. at 66,516.

After the Las Vegas attack, ATF decided to conduct notice-and-comment rulemaking to reconsider its position on bump stocks. The agency initiated the process by issuing an advance notice of proposed rulemaking seeking information about the devices. 82 Fed. Reg. 60,929 (Dec. 26, 2017). President Trump then issued a memorandum directing ATF to complete the rulemaking process expeditiously, J.A. 90-91, and the agency ultimately published a final interpretive rule in December 2018, see 83 Fed. Reg. at 66,514.

Before the rulemaking, ATF's relevant regulations had simply repeated the statutory definition of the term "machinegun." 83 Fed. Reg. at 66,514. The final rule amended those regulations to reaffirm the agency's view that "'single function of the trigger' means a single pull of the trigger and analogous motions." 27 C.F.R. 479.11; see 83 Fed. Reg. at 66,554. The agency explained that it had interpreted "single function of the trigger" to include a "single pull of the trigger" since reclassifying the Akins Accelerator in 2006, and that it had previously applied that interpretation to classify a variety of other devices as machineguns. See 83 Fed. Reg. at 66,517-66,518 & n.4. The agency then noted that, although many machineguns allow shooters to ini-

tiate the firing sequence by pulling the trigger, some weapons rely on “some other single motion,” such as the push of a button or the flip of a switch. *Id.* at 66,535; see *id.* at 66,534-66,535. The agency thus clarified that the term “single function of the trigger” also encompasses “analogous methods of trigger activation.” *Id.* at 66,534-66,535.

The final rule also amended the agency’s regulations to provide that “the term ‘automatically,’” as used in the definition of a machinegun, “means functioning 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.” 27 C.F.R. 479.11; see 83 Fed. Reg. at 66,554. ATF explained that this definition accorded with the ordinary meaning of the word “automatically” reflected in contemporaneous dictionaries. 83 Fed. Reg. at 66,519.

Applying those definitions, the agency explained that a rifle equipped with a bump stock qualifies as a machinegun. See 83 Fed. Reg. at 66,515. It determined that such a weapon satisfies the “single function of the trigger” requirement because, “when a shooter * * * pulls the trigger, that movement initiates a firing sequence that produces more than one shot.” *Id.* at 66,519; see *id.* at 66,533. “That firing sequence is ‘automatic,’” the agency continued, “because the device harnesses the firearm’s recoil energy as part of a continuous back-and-forth cycle that allows the shooter to attain continuous firing after a single pull of the trigger.” *Id.* at 66,533.

ATF rescinded its previous letter rulings stating that certain bump stocks were not machineguns because they did not shoot “automatically.” See 83 Fed. Reg. at 66,530-66,531. The agency observed that those

letter rulings had not provided any “substantial or consistent legal analysis” of the term “‘automatically,’” and that it had previously erred in focusing on whether the devices contained “‘mechanical parts or springs’” of the kind found in the original Akins Accelerator. *Id.* at 66,518. ATF thus explained that its prior approach “did not reflect the best interpretation” of the statutory definition of a “machinegun.” *Id.* at 66,514. And the agency concluded that, properly interpreted, the relevant statutory provisions “require regulation of bump-stock-type devices as machineguns.” *Id.* at 66,535.

C. Procedural History

1. In April 2018, during the rulemaking process, respondent Michael Cargill bought two bump stocks. See Pet. App. 117a. He surrendered the bump stocks to ATF after it adopted the final rule. See *id.* at 118a. The day he did so, he filed this suit against the Attorney General and the Director of ATF (petitioners here) in the U.S. District Court for the Western District of Texas. See *id.* at 92a-93a. He challenged the rule on various grounds and sought an injunction prohibiting petitioners from enforcing it. See *ibid.*

After a bench trial, the district court entered final judgment in favor of the government. Pet. App. 92a-153a. As relevant here, the court agreed with ATF that “single function of the trigger” means “single pull of the trigger and analogous motions,” and that “automatically” means “the result of a self-acting or self-regulating mechanism.” *Id.* at 139a-140a (citations omitted). Applying those definitions, the court determined that the agency properly classified rifles equipped with bump stocks as machineguns. *Id.* at 143a-145a.

2. A panel of the Fifth Circuit affirmed. Pet. App. 72a-91a. Like the district court, the panel determined

that “bump stocks qualify as machine guns under the best interpretation of the statute.” *Id.* at 73a.

The panel agreed with ATF that the term “single function of the trigger” means “single pull of the trigger and analogous motions.” Pet. App. 80a (citation omitted). The panel observed that, when Congress enacted the definition of machinegun, the terms “‘function’” and “‘pull’” “were used almost interchangeably in the context of firearms.” *Id.* at 80a-81a. And it determined that a rifle equipped with a bump stock satisfies the statutory definition because “a single trigger pull * * * initiates a firing sequence that continues * * * as long as the shooter continues to push forward” on the front of the weapon. *Id.* at 84a.

The panel also agreed with ATF that “automatically” means “functioning as the result of a self-acting or self-regulating mechanism.” Pet. App. 85a (citation omitted). It observed that the agency’s definition was “a nearly word-for-word copy of [a] dictionary definition” of the same term. *Id.* at 86a. And it determined that a rifle modified with a bump stock fires multiple shots as the result of a self-regulating mechanism because the weapon “continue[s] firing until the shooter stops pushing forward with his non-shooting hand or the weapon runs out of ammunition.” *Id.* at 88a.

3. The Fifth Circuit granted rehearing en banc. Pet. App. 154a-155a. The en banc court reversed and remanded by a vote of 13-3, but the judges in the majority offered different rationales for rejecting the agency’s interpretation. *Id.* at 2a n.*.

Judge Elrod delivered the lead opinion. Pet. App. 1a-49a. In a portion of the opinion that spoke for an eight-judge plurality, she determined that the term “single function of the trigger” means a single mechanical “ac-

tion” of the trigger, and that a rifle equipped with a bump stock fires only one shot “each time the trigger ‘acts.’” *Id.* at 20a (citation omitted); see *id.* at 20a-27a. She also concluded that a bump stock does not allow a shooter to fire more than one shot “automatically” because, “to continue firing after the shooter pulls the trigger, he or she must maintain manual, forward pressure on the barrel and manual, backward pressure [with the trigger finger].” *Id.* at 28a-29a; see *id.* at 28a-32a.

In a portion of the lead opinion that spoke for a 12-judge majority, the Fifth Circuit concluded that, at a minimum, the terms “single function of the trigger” and “automatic” are “grievously ambiguous.” Pet. App. 43a. Applying the rule of lenity, the court resolved those perceived ambiguities in Cargill’s favor. *Id.* at 41a-45a.

Judge Haynes, joined by one other judge, concurred in the judgment. Pet. App. 49a. She “reluctantly conclude[d]” that the statute was ambiguous and that the rule of lenity required her to vote to reverse. *Ibid.*

Judge Ho, joined by two other judges, concurred in part and concurred in the judgment. Pet. App. 49a-62a. He acknowledged that a bump stock allows a shooter to “simulate the experience of firing an automatic machinegun” and “achieve the same lethality as fully automatic machineguns.” *Id.* at 52a. He also rejected the plurality’s conclusion that the statutory definition of “machinegun” unambiguously excludes bump stocks. *Id.* at 57a-58a nn.1-2. But he concluded that the competing interpretive arguments stood in “equipoise,” and he accordingly invoked the rule of lenity. *Id.* at 58a.

Judge Higginson, joined by two other judges, dissented “[f]or the reasons stated in the panel opinion.” Pet. App. 63a; see *id.* at 63a-71a. The dissent criticized the en banc majority for invoking the rule of lenity to

“rewrite a vital public safety statute” and to “legalize an instrument of mass murder.” *Id.* at 71a.

4. On remand, the district court entered judgment for Cargill. D. Ct. Doc. 65, at 1 (Mar. 6, 2023). Cargill then filed a motion seeking additional relief, including universal vacatur of the final rule. D. Ct. Doc. 68, at 1, 5-7 (Mar. 28, 2023). After this Court granted certiorari, the district court denied Cargill’s motion, “subject to re-filing * * * after the Supreme Court enters its ruling.” D. Ct. Doc. 78, at 2 (Nov. 8, 2023). Cargill appealed. D. Ct. Doc. 79 (Nov. 21, 2023). That appeal remains pending in the Fifth Circuit.

SUMMARY OF ARGUMENT

Congress has defined the term “machinegun” to include “any weapon which shoots, is designed to shoot, or can readily be restored to shoot, *automatically* more than one shot, without manual reloading, *by a single function of the trigger.*” 26 U.S.C. 5845(b) (emphases added). A semiautomatic rifle modified with a bump stock satisfies that definition.

A. ATF correctly interpreted the term “single function of the trigger” to mean a single volitional motion by the shooter—such as a pull or a push—that activates the trigger and begins the firing sequence. Contemporary sources from the period surrounding the enactment of the National Firearms Act used the terms “function of the trigger” and “pull of the trigger” interchangeably. And this Court has explained that a weapon qualifies as a machinegun if it “fires repeatedly with a single pull of the trigger.” *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994).

A bump stock enables a semiautomatic rifle to fire multiple shots “by a single function of the trigger.” The function of a trigger is to allow some act by the shooter

to initiate a firing sequence. A bump stock allows a shooter to initiate a multi-shot bump-firing sequence with a single motion: either pulling the trigger or sliding the rifle forward in order to press the trigger against the stationary trigger finger. Once that bump-firing sequence begins, the weapon continues to shoot hundreds of rounds per minute without further manipulation of the trigger by the shooter.

The Fifth Circuit plurality emphasized that a rifle equipped with a bump stock fires only one shot each time it bumps into the shooter's stationary trigger finger during a bump-firing cycle. But the statute is most naturally read to focus on the shooter's interaction with the firearm rather than on the firearm's internal mechanics: It addresses the special dangers posed by firearms that allow shooters to fire multiple shots without repeated manual movements. And a shooter need only activate the trigger once in order to fire multiple shots with a bump-stock-equipped rifle—precisely the danger that Congress sought to address.

B. A rifle equipped with a bump stock also operates “automatically”—that is, through a self-acting or self-regulating mechanism. Once the shooter pulls the trigger and initiates a bump-firing cycle, he need not make any other pulling or pushing motions in order to fire additional shots. Rather, the bump stock constrains the rifle's movement and harnesses its recoil in a way that ensures the continuation of the bump-firing cycle.

The Fifth Circuit plurality determined that a rifle equipped with a bump stock does not operate automatically because the shooter can achieve continuous fire only by maintaining constant forward pressure on the rifle's barrel or front grip. But a shooter using a conventional machinegun likewise can achieve continuous

fire only by maintaining constant rearward pressure on the trigger; the firing stops when the shooter stops depressing the trigger. There is no meaningful difference between those two forms of shooter input: Either way, a single motion—a push or a pull—both initiates and maintains continuous fire. Thus, if a conventional machinegun operates “automatically,” so does a rifle with a bump stock.

C. This Court has long recognized that courts should avoid reading statutes in a manner that permits ready evasion of their provisions. The decision below invites such evasion. Congress has banned new machineguns because machineguns facilitate rapid fire by eliminating the manual movements that shooters must otherwise repeat in order to fire repeated shots. As Judge Ho recognized, bump stocks do exactly the same thing with the same deadly results. Holding that rifles equipped with bump stocks are nonetheless lawful would exalt artifice above reality.

D. Finally, the Fifth Circuit invoked the rule of lenity. But that rule comes into operation only if, after the application of all other tools of statutory interpretation, the statute remains grievously ambiguous. No such grievous ambiguity exists here.

ARGUMENT

“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.*” 26 U.S.C. 5845(b) (emphases added). A semiautomatic rifle modified with a bump stock fires multiple shots “by a single function of the trigger” and “automatically.” *Ibid.* Such a weapon thus constitutes a machinegun.⁵

A. A Rifle Equipped With A Bump Stock Fires Multiple Shots “By A Single Function Of The Trigger”

1. In order to constitute a “machinegun,” a weapon must be capable of firing more than one shot “by a single function of the trigger.” 26 U.S.C. 5845(b). ATF correctly interpreted that requirement and correctly determined that a rifle with a bump stock satisfies it.

a. A firearm shoots more than one shot “by a single function of the trigger,” 26 U.S.C. 5845(b), if a single volitional motion, such as a push or a pull, initiates the firing of multiple shots. In general, a “trigger” is a mechanism, such as a “movable catch or lever,” that “sets some force or mechanism in action.” 11 *The Oxford English Dictionary* 357 (1933); see *The American Heritage Dictionary of the English Language* 1371 (1969) (“device used to release or activate a mechanism”). More specifically, as ATF and many courts of appeals have recognized, “the ‘trigger’ of a firearm is whatever is used to initiate the firing sequence.” C.A.

⁵ A bump stock by itself also qualifies as a machinegun under the statutory definition’s second sentence because it is a “part designed and intended solely and exclusively * * * for use in converting a weapon into a machinegun.” 26 U.S.C. 5845(b).

ROA 1075.⁶ And the “function” of an object is “the mode of action by which it fulfills its purpose.” 4 *The Oxford English Dictionary* 602. The term “single function of the trigger” thus means a single initiation of the firing sequence by some act of the shooter.

In particular, a firearm shoots more than one shot “by a single function of the trigger,” 26 U.S.C. 5845(b), if it fires multiple rounds after the shooter pulls the trigger once. The “trigger” of a typical firearm is a small, curved metal lever. See Pet. App. 6a (diagram). Such triggers “typically ‘function’ by means of a shooter’s ‘pull.’” Pet. App. 81a. The term “function of the trigger” accordingly includes a pull of the trigger.

Contemporaneous evidence confirms that Congress and the public understood the term “single function of the trigger” in just that way when Congress first used the term in 1934. That term originated in a proposal offered by Karl T. Frederick, then President of the National Rifle Association and a former Olympic sport shooter. See *National Firearms Act: Hearings on H.R. 9066 Before the House Comm. on Ways and Means*, 73d Cong., 2d Sess. 40 (1934) (*NFA Hearings*). In a committee hearing in 1934, Frederick urged Congress to define a machinegun as a firearm that “shoots automatically more than one shot without manual reloading, by a single function of the trigger,” and Congress adopted his proposal nearly word for word. *Ibid.*

⁶ See *United States v. Olofson*, 563 F.3d 652, 657 (7th Cir.), cert. denied, 558 U.S. 948 (2009); *United States v. Camp*, 343 F.3d 743, 745 (5th Cir. 2003); *United States v. Fleischli*, 305 F.3d 643, 655 (7th Cir. 2002), cert. denied, 538 U.S. 1001 (2003); *United States v. Evans*, 978 F.2d 1112, 1113 n.2 (9th Cir. 1992), cert. denied, 510 U.S. 821 (1993); *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (per curiam).

Frederick repeatedly used “function of the trigger” interchangeably with “pull of the trigger.” He stated that a gun “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 * * * as a machine gun.” *NFA Hearings* 40. He added that the “distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire,” and that guns that “require a separate pull of the trigger for every shot fired * * * are not properly designated as machine guns.” *Ibid.* Explaining why a standard pistol issued by the U.S. Army would not qualify under the proposed definition, he observed that the pistol did not discharge “a stream of bullets with a single pull,” that “with a single pull of the trigger only one shot is fired,” and that “[y]ou must release the trigger and pull it again for the second shot to be fired.” *Id.* at 41. And explaining why another type of pistol would not qualify as a machinegun, he noted that it “requires a separate pull of the trigger for every shot fired.” *Ibid.*

The House and Senate committee reports reflected a similar understanding of the phrase “single function of the trigger.” Each report stated that the statute “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. 1780, 73d Cong., 2d Sess. 2 (1934); Senate Report 2.

Like Frederick’s statements at the committee hearing, those reports are not merely relevant as legislative history, but are also powerful evidence of the contemporaneous understanding of the phrase “function of the trigger.” Like other sources, “[s]tatements by legislators” and others involved in the legislative process can “demonstrate the manner in which the public used or

understood a particular word or phrase.” *McDonald v. City of Chicago*, 561 U.S. 742, 828 (2010) (Thomas, J., concurring in part and concurring in the judgment); see Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 66, at 388 (2012) (accepting the use of legislative history to show “that a particular word or phrase is capable of bearing a particular meaning”).

Members of Congress continued to use “function of the trigger” and “pull of the trigger” interchangeably in the years after the National Firearms Act was enacted. In a 1935 hearing, for example, Representative John Dingell Sr. asked rhetorically, “Is there not a definition * * * in the National Firearms Act as to manual manipulation by a single pull of the trigger? * * * In the [semiautomatic] pistol there is the individual manual pull of the trigger for every shot fired, the recoil being utilized for reloading; whereas in the case of the automatic machine gun, the weapon fires continuously, loading, extracting the spent shell, and firing until the trigger is released.” *Administration of Liquor Taxing Laws: Hearings on H.R. 8001 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. 22 (1935). And in 1940, Senator Robert LaFollette proposed a bill that borrowed the “single function of the trigger” language from the National Firearms Act. S. 1970, 76th Cong., 3d Sess. 4-5. He repeatedly explained in a debate that the language would cover “weapons which when the trigger is once pulled continue to shoot until the magazine is emptied.” 86 Cong. Rec. 6376 (1940); see *ibid.* (“one pull of the trigger, if the trigger is held down, empties the entire load”); *ibid.* (“empty themselves upon one pull of the trigger”); *ibid.* (“empty their magazines upon one pull of the trigger”).

The Executive Branch, too, understood a “single function of the trigger” to include a shooter’s single pull of the trigger. In a revenue ruling issued soon after the passage of the 1934 Act, the Department of the Treasury explained: “A semiautomatic pistol or an autoloading pistol when converted into a weapon which shoots automatically, that is, one capable of discharging the entire capacity of its magazine with one pull of the trigger, ceases to be a pistol and becomes a ‘machine gun.’” Rev. Rul. XII-38-7035, S.T. 772, 13-2 C.B. 434 (1934). That “contemporaneous construction” of the statute provides strong evidence of its meaning. *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 315 (1933).

Judicial opinions confirm that reading. In *Staples v. United States*, 511 U.S. 600 (1994), this Court explained that “a weapon that fires repeatedly with a single pull of the trigger” is a machinegun, while “a weapon that fires only one shot with each pull of the trigger” is (at most) a semiautomatic firearm. *Id.* at 602 n.1. Courts of appeals, too, have “instinctively reached for the word ‘pull’ when discussing the statutory definition of ‘machinegun.’” Pet. App. 80a n.5 (citation omitted).⁷

All that said, the term “single function of the trigger” is not limited to a single pull of the trigger. The term also includes any “other single motion,” such as a push,

⁷ See, e.g., *United States v. Vázquez-Martínez*, 812 F.3d 18, 21 (1st Cir. 2016) (“shoot more than one shot upon a single pull of the trigger”); *Olofson*, 563 F.3d at 659 (“with a single pull of the trigger”); *United States v. Bishop*, 926 F.3d 621, 624 (10th Cir. 2019) (“fire multiple bullets per pull of the trigger”), cert. denied, 141 S. Ct. 115 (2020); *United States v. Smith*, 700 F.2d 627, 630 n.3 (11th Cir. 1983) (“expel more than one bullet by a single pull of the trigger”); *United States v. Harris*, 959 F.2d 246, 257 (D.C. Cir. 1992) (per curiam) (“firing several bullets with one pull on the trigger”), cert. denied, 506 U.S. 932, and 506 U.S. 933 (1992).

“to activate the trigger.” 83 Fed. Reg. at 66,534-66,535. Some automatic firearms that were well known in 1934 used triggers that had to be pushed with the thumb rather than pulled with the index finger. For example, push triggers featured on the Maxim gun (used by colonial powers in the Scramble for Africa in the 1890s), the Vickers gun (used in the First World War), and the M2 Browning (used starting in the 1930s). See *id.* at 66,519 n.5; 1 George M. Chinn, *The Machine Gun* 142, 148, 336-337 (1951). Congress’s use of the more general term “function” rather than “pull” ensured that the statute would also cover those types of automatic firearms.

Since the enactment of the 1934 Act, moreover, courts have encountered firearms that can be activated in still other ways. For example, they have discussed firearms that shoot upon the press of a button, see *United States v. Fleischli*, 305 F.3d 643, 655 (7th Cir. 2002), cert. denied, 538 U.S. 1001 (2003); the flip of a switch, see *United States v. Camp*, 343 F.3d 743, 745 (5th Cir. 2003); the release of a bolt, see *United States v. Carter*, 465 F.3d 658, 662 (6th Cir. 2006) (per curiam), cert. denied, 550 U.S. 964 (2007); and even the insertion of a nail, see *United States v. Jokel*, 969 F.2d 132, 133 (5th Cir. 1992) (per curiam). As those courts recognized, the term “function of the trigger” encompasses those movements as well.

b. A semiautomatic rifle equipped with a bump stock fires multiple shots “by a single function of the trigger.” 26 U.S.C. 5845(b). It allows a shooter to initiate a bump-firing sequence with a single motion—either pulling the trigger, see 83 Fed. Reg. at 66,515, or sliding the rifle forward in order to press the trigger against the trigger finger, see Pet. App. 103a. That single motion sets off a cycle—fire, recoil, bump, fire—that enables the rifle to

fire hundreds of rounds a minute. See *id.* at 104a (“[W]hen a bump stock is used as intended, * * * a single trigger pull * * * initiates a firing sequence.”).

Once that bump-fire cycle begins, the shooter need not make any additional pulling or pushing motions on the trigger in order to continue the firing sequence. Rather, the shooter must keep his trigger finger stationary on the bump stock’s finger rest and maintain constant forward pressure on the barrel or front grip. See Pet. App. 103a (“The shooter does not have to pull rearward to continue firing as long as he keeps his finger on the [finger rest].”). Because the rifle “continue[s] firing without additional physical manipulation of the trigger by the shooter,” 83 Fed. Reg. at 66,515, the rifle fires multiple shots “by a single function of the trigger,” 26 U.S.C. 5845(b).

2. A plurality of the en banc Fifth Circuit rejected that argument. See Pet. App. 20a-27a. It reasoned that a rifle equipped with a bump stock is not a machinegun because its trigger moves back and forth during a bump-firing cycle and because the weapon fires only one shot each time the trigger bumps into the shooter’s trigger finger. See *id.* at 21a-23a. That argument is wrong on multiple levels.

a. The plurality’s interpretation conflicts with the statute’s text, context, and purpose. To start with the text: The “function of the trigger,” by definition, is to allow some input from the shooter to *initiate* a firing sequence. See pp. 17-18, *supra*. In a traditional semi-automatic rifle, the trigger is a small, curved metal lever pulled by the shooter. See Pet. App. 6a (diagram). When a shooter uses a bump stock, that curved metal lever initiates a firing sequence only when the shooter first pulls it or first presses it into his trigger finger.

The curved metal lever does not initiate a firing sequence—but rather continues a sequence that has already begun—when it repeatedly bumps into the shooter’s finger during the bump-firing cycle. As a result, the curved metal lever’s movements during the bump-firing cycle do not qualify as additional “function[s] of the trigger”—*i.e.*, actions that translate volitional input to *initiate* a firing sequence.

Statutory context, too, cuts against the plurality’s reading. The statute asks whether a firearm shoots “more than one shot * * * automatically * * * *by* a single function of the trigger.” 26 U.S.C. 5845(b) (emphasis added). The preposition “by” means through the “means” of or in consequence of, and it indicates that which is “instrument[al].” *Webster’s New International Dictionary of the English Language* 301 (*Webster’s Dictionary*) (1928). Bump stocks satisfy that requirement: The shooter’s initial manipulation of the trigger is the means of initiating a continuous cycle of firing multiple shots. See *Guedes v. ATF*, 45 F.4th 306, 316 (D.C. Cir. 2022), petition for cert. pending, No. 22-1222 (filed June 14, 2023). It makes no statutory difference that, once the shooter has activated the device with a single pull or push, the device automates the movements of the trigger rather than the movement of the weapon’s internal components.

The statute’s evident purpose points in the same direction. As the statutory text confirms, a machinegun is dangerous precisely because it eliminates the manual movements that a shooter otherwise needs to repeat in order to fire multiple shots. Unlike a firearm with a manual action, it fires multiple shots “without manual reloading” between shots. 26 U.S.C. 5845(b). And unlike a semiautomatic firearm, it “fires repeatedly with a

single pull of the trigger.” *Staples*, 511 U.S. at 602 n.1. Because the text makes clear that the “ill sought to be captured” by the statute, Pet. App. 83a (citation omitted), is the ease with which a machinegun allows a shooter to fire multiple shots, a court should read “single function of the trigger” to mean a shooter’s single initiation of a firearm’s continuous firing sequence. A court should not read that term to refer to a single movement of a specific component of the firearm—a feature that lacks any significant bearing on the weapon’s dangerousness.

The plurality insisted that the statute’s text required it to analyze firearms from a “mechanical perspective” rather than “the shooter’s perspective.” Pet. App. 22a-23a. But that dichotomy is misconceived. A “trigger,” by definition, is a mechanism by which the shooter interacts with the firearm. And triggers do not activate firearms on their own; rather, a firearm starts firing only because the shooter does something to the trigger. It is thus natural to read “single function of the trigger” to refer to the shooter’s action on the trigger. Indeed, that reading is so natural that even the plurality slipped into it elsewhere in its opinion. See *id.* at 30a (“[T]he act of pulling and holding the trigger is one function.”). A shooter who is using a bump stock need only perform a single action on the trigger in order to set off a bump-firing cycle that discharges multiple shots.

The plurality asserted that the “grammatical construction” of the phrase “function of the trigger” requires a court to focus on the “movement of the trigger itself.” Pet. App. 22a (citation omitted). But the term “pull of the trigger” shares the same grammatical construction, and it plainly refers to what the shooter does to the trigger. Many other phrases with the same struc-

ture work the same way. For example, “stroke of a key” refers to what the typist does to the key, “throw of the dice” to what the gambler does to the dice, and “swing of the bat” to what the hitter does to the bat. So too for “press of a button,” “touch of a screen,” “flip of a switch,” “toss of a coin,” and “wave of a wand.” And a similar reading is particularly apt here because the “function” of the trigger is not simply to move, but rather to allow some input by the shooter—such as a pull or a push—to initiate a firing sequence. See pp. 17-18, *supra*.

The plurality also argued that the statutory definition as a whole refers only “to the device being made to shoot, not the person or thing doing the shooting.” Pet. App. 23a. But the definition asks whether the firearm can shoot “automatically more than one shot, *without manual reloading*, by a single function of the trigger.” 26 U.S.C. 5845(b) (emphasis added). As the italicized phrase makes clear, the definition refers to the shooter’s interaction with the weapon, not simply to the weapon’s internal mechanics.

Finally, the plurality emphasized that Congress chose to use the phrase “function of the trigger” rather than “pull of the trigger.” Pet. App. 24a. But Congress used the more versatile phrase because it knew that some triggers functioned through pushes rather than pulls. See p. 22, *supra*. Congress did not use the term in order to switch from “the shooter’s perspective” to a “mechanical perspective.” Pet. App. 23a.

b. The plurality’s interpretation also conflicts with longstanding practice. For decades, ATF and courts of appeals have agreed that a firearm can qualify as a machinegun even if its trigger moves during a sequence in which it fires more than one shot.

Akins Accelerators. The Akins Accelerator, the original bump stock, worked much like the device here. See p. 7, *supra*. A single pull of the trigger would initiate a cycle in which the rifle would fire a shot, recoil, slide forward, bump into the trigger finger, and fire again. See 83 Fed. Reg. at 66,517. The Akins Accelerator differed from the device here only in one respect: It relied on an internal spring, rather than on forward pressure maintained with the non-trigger hand, to force the rifle to slide forward after recoiling. See *ibid.* Even though the weapon fired only once each time its trigger bumped into the trigger finger, ATF ultimately classified it as a machinegun, see *ibid.*, and a court of appeals sustained that decision, see *Akins v. United States*, 312 Fed. Appx. 197, 200-201 (11th Cir.) (per curiam), cert. denied, 557 U.S. 942 (2009).

According to the plurality and Cargill, the plurality's reasoning "would not apply to an Akins Accelerator," because "a shooter using an Akins Accelerator need only pull the trigger once to activate the firing sequence." Pet. App. 27a n.8; see Br. in Support of Cert. 24. But the plurality made no effort to square that argument, which focuses on how often the "shooter" needs to "pull the trigger," Pet. App. 27a n.8, with its insistence elsewhere on viewing weapons from a "mechanical perspective" rather than "the shooter's perspective," *id.* at 23a. In any event, that argument fails on its own terms. The bump-stock designs at issue in this case *also* require only a single "pull [of] the trigger to activate the firing sequence." *Id.* at 27a n.8; see p. 6, *supra*. The only arguable difference is that the Akins Accelerator contained a mechanical spring that eliminated the need for the shooter to maintain forward pressure with the non-shooting hand. ATF previously found that distinc-

tion relevant to assessing the separate question whether a weapon fires multiple shots “automatically,” see p. 8, *supra*, but that distinction has nothing to do with whether a device fires multiple shots “by a single function of the trigger.”

Forced reset triggers. Certain devices, known as “forced reset triggers,” allow a shooter to fire multiple shots with a single trigger pull by repeatedly pushing the rifle’s curved lever into the shooter’s stationary trigger finger. See *National Ass’n for Gun Rights v. Garland*, No. 23-11138 C.A. Doc. 12, at 79-91 (5th Cir. Nov. 17, 2023). A district court discussing one such device observed that, “even though a shooter need only consciously pull the trigger * * * once” in order to “fire multiple rounds of ammunition in a fraction of a second,” a viewer can see “in extreme slow motion” that the curved lever “does move slightly back and forth against the shooter’s finger with each shot.” *United States v. Rare Breed Triggers, LLC*, No. 23-cv-369, 2023 WL 5689770, at *6, *17 (E.D.N.Y. Sept. 5, 2023).

Since at least 1975, ATF has classified firearms that work that way as machineguns. See 83 Fed. Reg. at 66,518 n.4; 23-cv-830 Dkt. 64-1, Ex. A (N.D. Tex. Nov. 6, 2023). But a district court in the Fifth Circuit has applied the plurality’s reasoning to conclude that such devices do not constitute machineguns because the curved lever “moves for every shot fired.” *National Ass’n for Gun Rights v. Garland*, No. 23-cv-830, 2023 WL 6613080, at *14 (N.D. Tex. Oct. 7, 2023). And the Fifth Circuit has denied a motion to stay that decision, likewise emphasizing “the movement of the trigger itself.” *National Ass’n for Gun Rights v. Garland*, No. 23-11138 C.A. Doc. 51-2, at 4 (Nov. 30, 2023) (citation omitted).

Motorized trigger devices. Some inventors have built motorized devices that, once switched on by the user, repeatedly pull a semiautomatic firearm's curved lever. In a case in 2003, for example, the Fifth Circuit confronted a contraption that, at the flip of a switch, "supplied electrical power to a motor connected to the bottom of a fishing reel that had been placed" next to the rifle's original trigger. *Camp*, 343 F.3d at 744. The motor caused the fishing reel to rotate, and the rotation in turn "caused the original trigger to function in rapid succession." *Ibid.* The court held that, even though the rifle's "original metal lever/trigger" moved "each time the rifle was fired," the device was a machinegun because it "required only one action" (pulling the switch) "to fire multiple shots." *Id.* at 745. The court's decision was consistent with a line of ATF rulings, going back to 1982, explaining that "[a]n electric motor attached to a firearm, in such a manner that turning the motor on cause[d] the weapon to fire repeatedly * * * would be a machinegun." C.A. ROA 1077.

In 2017, ATF encountered a similar device known as the AutoGlove. See C.A. ROA 1075. The AutoGlove was a mechanized glove that a shooter could wear while using a semiautomatic firearm. See *ibid.* Once the shooter activated the glove, a mechanized piston on the glove would move back and forth, repeatedly pulling and releasing the firearm's curved metal lever. See *id.* at 1078. Even though the curved metal lever moved each time the rifle fired a shot, ATF classified the AutoGlove as a machinegun. *Id.* at 1073-1079.

The plurality sought to distinguish bump stocks from those devices by explaining that a firearm's "trigger" can be "something other than the metal lever." Pet. App. 26a. For example, the plurality stated that the "le-

gally relevant trigger” of the motorized device in *Camp* was the switch that the shooter could use “to initiate the firing sequence.” *Id.* at 27a. But that response undercuts the rest of the plurality’s reasoning. It confirms that the word “trigger” refers to the mechanism by which the shooter initiates a firing sequence rather than to a specific mechanical component of the firearm; that the phrase “single function of the trigger” focuses on how the shooter interacts with the firearm rather than on the firearm’s mechanical details; and, more broadly, that courts should read the statute in a functional rather than a mechanistic way.

c. A hypothetical example highlights the error in the plurality’s analysis. Imagine that an inventor builds two boxes, each of which continuously fires bullets after the operator presses and releases a button. The only difference between the boxes is that one box’s button remains motionless after being pressed, but the other box’s button oscillates up and down (without any further input from the shooter) each time the box fires a shot.

Even though the shooter does exactly the same thing to operate each box—press a button—the plurality’s reasoning would require treating the boxes differently. On its view, the first box would be a machinegun, but the second box would not because its button—that is, its trigger—moves up and down with each shot. It is inconceivable that Congress intended such an arbitrary result.

B. A Rifle Equipped With A Bump Stock Fires Multiple Shots “Automatically”

1. To be a machinegun, a weapon must also be capable of shooting “*automatically* more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. 5845(b) (emphasis added). A rifle

equipped with a bump stock satisfies that requirement as well.

a. The word “automatic” means “self-acting or self-regulating.” *Webster’s Dictionary* 156; see 1 *The Oxford English Dictionary* 574 (“[s]elf-acting under conditions fixed for it, going of itself”); *The American Heritage Dictionary of the English Language* 90 (“[s]elf-regulating”). Consistent with those definitions, ATF concluded that a firearm operates “automatically” if it functions “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.” 83 Fed. Reg. at 66,554.

A rifle modified with a bump stock uses “a self-acting or self-regulating” mechanism to fire multiple shots. Once the shooter pulls the trigger and initiates a bump-firing cycle, he need not make any further pulling or pushing motions on the trigger in order to keep that cycle going. See Pet. App. 103a-104a. The shooter must instead keep his trigger finger stationary on the bump stock’s finger rest and maintain constant forward pressure on the barrel or front grip with his non-trigger hand. See *id.* at 104a. The bump stock takes care of the rest. Its design provides “constrained linear rearward and forward paths” within which the firearm can slide during a bump-firing cycle. 83 Fed. Reg. at 66,518. And its “receiver module” “guid[es] and regulat[es] the recoil of the firearm when fired,” ensuring that the firearm slides backward just the right distance before sliding forward into the shooter’s stationary trigger finger again. *Id.* at 66,516; see *id.* at 66,518.

In short, once the shooter pulls the trigger a single time, “the device harnesses the firearm’s recoil energy in a continuous back-and-forth cycle that allows the

shooter to attain continuous firing.” 83 Fed. Reg. at 66,519. That process is “self-acting or self-regulating” and is thus “automatic.” *Ibid.*

b. Reinforcing that point, English speakers often use the word “automatic” to refer to “devices which perform parts of the work formerly or usually done by hand.” *Webster’s Dictionary* 156; see 1 *The Oxford English Dictionary* 574 (“produce results otherwise done by hand”). For example, an automatic teller machine does work otherwise done by bank employees; an automatic car wash does work otherwise done by car washers; and an automatic sewing machine does work otherwise done by tailors.

English speakers often use the word “automatic” in that way when discussing guns. Before the invention of semiautomatic and fully automatic firearms, a shooter who had already fired a shot would need to do two things to fire the next shot: (1) take a manual step to eject the spent cartridge and load a new one, and (2) pull the trigger again. See p. 2, *supra*. A “semiautomatic” firearm eliminates the first manual step, while a “fully automatic” firearm eliminates both. See *Staples*, 511 U.S. at 602 n.1.

A rifle equipped with a bump stock is “automatic” in that sense as well. The whole point of a bump stock is to eliminate the work that the shooter would otherwise need to perform by hand in order to fire continuously. A bump stock may achieve that result in a novel way, but that does not mean that a rifle equipped with a bump stock is anything less than “automatic.”

2. The Fifth Circuit plurality’s contrary arguments lack merit.

a. The plurality accepted that “automatic” means “self-acting,” Pet. App. 28a (citation omitted), but rea-

soned that a bump stock does not enable continuous firing through a self-acting mechanism because the shooter must “maintain manual, forward pressure” on the barrel or front grip with the non-trigger hand, *id.* at 29a. That rationale is incorrect.

In ordinary usage, the word “automatic” does not connote a complete absence of human involvement. The word instead applies to a device that “perform[s] *parts* of the work formerly or usually done by hand,” *Webster’s Dictionary* 156 (emphasis added), or that operates “with *little* or no direct human control,” *Oxford English Dictionary* (3d ed. 2023) (emphasis added). An automatic teller machine may require manually selecting how much money to withdraw; an automatic car wash may require manually driving the car through the wash; and an automatic sewing machine may require manually feeding fabric into the machine.

Consistent with that ordinary usage, a conventional machinegun is commonly described as “fully automatic” even though it requires a measure of sustained human input. In order to fire continuously with such a weapon, the shooter must not only pull the trigger, but also keep the trigger pressed down. See *Staples*, 511 U.S. at 602 n.1. If the shooter stops depressing the trigger, the weapon stops firing. See *ibid.* Even so, no one doubts that a traditional machinegun fires “automatically.” See Pet. App. 29a.

To be sure, some machineguns can fire continuously without even that level of sustained human input. The Maxim gun, invented in the late 19th century, would start firing once switched on and would then keep firing, “independent of human agency, until all the cartridges had been discharged. Should the man working the gun be killed, the gun would still continue to fire.” Chinn

131. But no one claims that Congress used the word “automatically” in order to limit the statutory definition of “machinegun” to weapons like the Maxim gun. Rather, the definition also encompasses weapons (such as the conventional machinegun) that require a measure of sustained human input (comparable to pressing down the trigger) in order to keep the firing sequence going.

There is “no meaningful difference” between (1) maintaining rearward pressure on the trigger of a conventional machinegun and (2) maintaining forward pressure on the front grip of a rifle with a bump stock. Pet. App. 142a. “In both cases, maintaining pressure in one direction allows shooting to continue from a ‘self-acting or self-regulating mechanism’ until that pressure is released, or the firearm runs out of ammunition.” *Ibid.* (citation omitted). Thus, if a conventional machinegun fires “automatically,” so does a rifle with a bump stock.

b. The plurality next argued that the kind of human input required by a conventional machinegun differs from the kind of human input required by a rifle with a bump stock. It reasoned that sustaining fire with the former requires pulling and holding the trigger with one hand, while sustaining fire with the latter requires pulling the trigger with one hand and pushing forward on the barrel or front grip with the other. See Pet. App. 30a. Because using a rifle with a bump stock involves “an additional human action” beyond the exertion of force upon the trigger, the plurality determined that such a rifle does not operate “automatically.” *Id.* at 31a. That argument is incorrect.

As an initial matter, pulling the trigger is only one way to initiate a bump-firing cycle with a bump stock. A shooter can also initiate a bump-firing cycle by sliding the rifle forward in the stock until he presses the trigger

into his stationary finger. See Pet. App. 104a. When the shooter starts firing in that way, the nature of the shooter's input exactly parallels the shooter's input on a conventional machinegun. With a conventional machinegun, the shooter starts fire by pulling the trigger and sustains fire by continuing to pull backward. See *ibid.* With a bump-stock-equipped rifle, the shooter starts fire by pushing the rifle and then sustains fire by continuing to push forward. See *ibid.* Either way, a single, continuous motion results in continuous fire.

Even putting aside that point, the plurality's theory conflicts with the statutory text. Whether a firearm fires multiple shots "automatically" depends on the degree of human input that it requires. It does not depend on whether that human input comes from the trigger hand rather than the non-trigger hand. Nor does it depend on whether that human input involves exerting force on the trigger rather than the front grip.

The plurality's argument conflicts with the statute's purpose as well. As explained above, machineguns are dangerous because they eliminate the manual movements that the shooter would otherwise need to repeat in order to fire multiple shots. See p. 2, *supra*. A sensible reading of the statute would thus focus on the extent to which a particular weapon eliminates the need to repeat such movements, not on the hand with which those movements are made or the component of the weapon to which those movements are directed.

The plurality's interpretation—under which a rifle does not fire automatically if it requires any "additional human action" beyond the exertion of force upon the trigger, Pet. App. 31a (citation omitted)—would create an enormous and implausible loophole in the statute. Some rifles, such as the U.S. military's M-16 rifle, allow

shooters to switch between semiautomatic and automatic mode by flipping a “selector switch.” *Staples*, 511 U.S. at 603. Imagine that a manufacturer modifies such a rifle so that the shooter can fire in automatic mode, not by flipping a selector switch, but by pressing and holding down a selector button. Under the plurality’s view, that weapon would not fire multiple shots “automatically” because continuous firing would require “additional human action” beyond pulling the trigger (namely, pressing and holding down the button). The plurality’s view would thus “allow gun manufacturers to circumvent Congress’s long-time ban on machineguns by designing parts specifically intended to achieve machinegun functionality with a single pull of the trigger so long as the part also requires some minutia of human involvement” beyond holding the trigger. *Gun Owners of America, Inc. v. Garland*, 19 F.4th 890, 910 (6th Cir. 2021) (en banc) (opinion of Gibbons, J.), cert. denied, 143 S. Ct. 83 (2022).

That cannot be right. Congress did not ban all new machineguns in 1986, only to allow the ban to be circumvented by a trivial shift in the locus of the shooter’s pressure from the trigger to the front grip, the barrel, a button, or any other similar contrivance. Instead, the modified automatic weapon described above would qualify as a machinegun for precisely the same reason as a rifle with a bump stock: A single function of the trigger initiates an automatic sequence of firing more than one shot, even though one condition for that firing sequence is sustained pressure by the shooter’s other hand. The discharge of multiple shots after a single trigger pull occurs as a result of the “self-acting” mechanism of the device itself and therefore happens “automatically.” 83 Fed. Reg. at 66,519.

c. The plurality next asserted that even ordinary semiautomatic rifles would be statutory machineguns under ATF's reading because a shooter can "bump fire" such a rifle even without a bump stock. Pet. App. 31a. But that argument ignores significant differences between unassisted bump firing and using a bump stock. A shooter engaged in unassisted bump firing must control the recoil of each shot—both the path on which the rifle travels and the distance it travels when recoiling. See 83 Fed. Reg. at 66,533. The shooter must also control the rifle's forward motion after recoil—again, both the path on which the rifle travels and the distance it travels when pressed forward. See *ibid.* Finally, while doing all that, the shooter must maintain a stable position with his trigger finger. See *ibid.*

A bump stock automates all that work. The bump stock "guide[s] and regulat[es] the recoil of the firearm when fired," thus eliminating the need for the shooter to control the recoil himself. 83 Fed. Reg. at 66,516. It also forces the rifle to move in "constrained linear rearward and forward paths," thus eliminating the need for the shooter to control the firearm's direction of motion. *Id.* at 66,518. And it includes a finger rest on which the shooter can place his finger, eliminating the need for the shooter to maintain a stable finger position manually. *Id.* at 66,516. All that is left for the shooter to do is push forward. See Pet. App. 142a ("[I]n firing with a bump stock, 'mentally, you're doing nothing but pressing forward.'") (citation omitted). In sum, maintaining continuous fire with a bump stock involves essentially the same degree of human input as using a conventional machinegun, while maintaining continuous fire through unassisted bump firing involves far more. The former process is thus automatic even though the latter is not.

Relatedly, the plurality perceived an inconsistency between ATF’s treatment of bump stocks and its treatment of certain “slam-fire” shotguns. See Pet. App. 29a. No such inconsistency exists. A slam-fire shotgun allows a shooter “to pull the trigger, hold it back, and pump the fore-end. The pump-action ejects the spent shell and loads a new shell that fires as soon as it is loaded.” 83 Fed. Reg. at 66,534. Such a weapon is not a “machinegun” because it requires “manual reloading.” 26 U.S.C. 5845(e). Specifically, the “pump-action design requires that the shooter take action to manually load the firearm for each shot fired.” 83 Fed. Reg. at 66,534. Such a weapon also does not fire “automatically.” 26 U.S.C. 5845(e). It requires a greater degree of shooter input—a separate pumping motion for each shot—than a single continuous pull on the trigger of a conventional machinegun or a single continuous push on the front grip of a rifle with a bump stock. See 83 Fed. Reg. at 66,534.

C. This Court Should Reject Interpretations That Would Permit Ready Circumvention Of The Statute

1. In general, a court should avoid interpretations of a statute that would facilitate “evasion of the law” or “enable offenders to elude its provisions in the most easy manner.” *The Emily*, 9 Wheat. 381, 389, 390 (1824). That principle, known as the “presumption against ineffectiveness,” “follows inevitably from the facts that (1) interpretation always depends on context, (2) context always includes evident purpose, and (3) evident purpose always includes effectiveness.” Scalia & Garner § 4, at 63 (capitalization and emphasis omitted).

Three recent precedents—*Abramski v. United States*, 573 U.S. 169 (2014), *American Broadcasting Cos. v. Aereo, Inc.*, 573 U.S. 431 (2014), and *County of*

Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020)—illustrate that principle. In *Abramski*, a person asked a middleman, a so-called straw purchaser, to buy a gun on his behalf. 573 U.S. at 175-177. In analyzing that transaction, the Court treated the “real buyer,” rather than the straw purchaser, as the firearm’s “transferee” for purposes of the Gun Control Act’s provisions regulating firearms sales. *Id.* at 183; see *id.* at 177-189. It explained that treating the straw purchaser as the “transferee” would “undermine * * * the gun law’s core provisions” by allowing a “felon or other person who cannot buy or own a gun” to “accompany the straw to the gun shop, instruct him which firearm to buy, give him the money to pay at the counter, and take possession as they walk out the door.” *Id.* at 179-180. The Court refused to read the statutory provisions in a manner that would permit such ready “evasion.” *Id.* at 185; see *id.* at 181 (“render meaningless”); *ibid.* (“defeat the point”); *id.* at 182 (“easily bypass the scheme”); *id.* at 184 (“artifice”); *id.* at 185 (“circumvention”).

Aereo involved a federal statute giving a copyright owner the exclusive right to transmit a copyrighted work “to the public.” 573 U.S. at 436 (citation omitted). Everyone agreed that the statute prohibited using a single antenna to capture broadcasts of copyrighted works and then transmitting them to the public without the copyright owner’s permission. *Id.* at 446. A company, however, sought to circumvent that restriction by using a “technologically complex service” involving “thousands of dime-sized antennas housed in a central warehouse.” *Id.* at 436. It argued that, because the service transmitted to each user a “personal copy of the selected program” captured using “an antenna dedicated to him alone,” no single transmission was “to the pub-

lic.” *Id.* at 446. This Court rejected that argument, refusing to allow the company to evade the copyright laws through the expedient of replacing a “large multi-subscriber antenna” with “small dedicated antenna[s].” *Ibid.* “Viewed in terms of Congress’ regulatory objectives,” the Court asked rhetorically, “why should any of these technological differences matter?” *Ibid.*

Finally, *County of Maui* involved a statute that required a permit for the “addition” of a pollutant from a “point source” to “navigable waters.” 140 S. Ct. at 1468 (citation omitted). All agreed that the statute applied to “a pipe that spews pollution directly into coastal waters.” *Id.* at 1473. The Court rejected a reading that would allow a polluter to “avoid the permit requirement” by “mov[ing] the pipe back, perhaps only a few yards, so that the pollution must travel through at least some groundwater before reaching the sea.” *Ibid.* The Court found it implausible that Congress would have left “such a large and obvious loophole.” *Ibid.*

2. The same familiar interpretive principles confirm that rifles with bump stocks are “machineguns” under federal law. Congress has restricted machineguns because they eliminate the manual movements that a shooter would otherwise need to make in order to fire continuously. In contrast to a semiautomatic firearm, which can fire only as fast as the shooter can move his trigger finger, a machinegun can fire hundreds of rounds per minute after just one pull of the trigger. That rapid-fire capability poses an “immense danger” to the public. *United States v. O’Brien*, 560 U.S. 218, 230 (2010).

The same is true of rifles equipped with bump stocks. Bump stocks, too, eliminate the manual movements that a shooter would otherwise need to make in order to fire

continuously—indeed, that is their point. Like other machineguns, rifles equipped with bump stocks have a “prodigious rapid-fire capability upon a pull of the trigger.” *Guedes*, 45 F.4th at 322. A bump stock allows a shooter to fire at rates of up to 800 bullets per minute, comparable to the rates of the conventional machineguns issued to American soldiers. *Id.* at 316; see n.1, *supra*. Indeed, “[o]ne of the manufacturers of bump stocks bragged on its website, ‘Did you know that you can do full-auto firing and it is absolutely legal?’” *Guedes v. ATF*, 66 F.4th 1018, 1023 (D.C. Cir. 2023) (Wilkins, J., concurring in the denial of the petition for rehearing en banc).

Judge Ho thus correctly recognized that a bump stock allows a shooter to “achieve the same lethality” as a conventional machinegun. Pet. App. 52a. Like other machineguns, bump stocks “can empower a single individual to take many lives in a single incident.” 83 Fed. Reg. at 66,520. The Las Vegas mass shooter, for example, “was able to fire several hundred rounds of ammunition in a short period of time,” “killing 58 people and wounding approximately 500” in a matter of minutes. *Id.* at 66,516.

Bump stocks achieve those results through different technological means than other machineguns. But those technological distinctions neither relate to Congress’s “regulatory objectives” nor “significantly alter the [shooting] experience” of gun users. *Aereo*, 573 U.S. at 446. Holding that rifles equipped with bump stocks are nonetheless lawful simply because the curved lever moves back and forth during a bump-firing sequence—or because the shooter must exert pressure on the front grip rather than on the trigger—would “‘exalt artifice above reality’” and “enable evasion” of the federal ma-

chinegun ban. *Abramski*, 573 U.S. at 185 (citation omitted).

Making matters worse, the Fifth Circuit plurality's theory could invite circumvention in other ways as well. The plurality's interpretation of the term "single function of the trigger" could legalize a variety of weapons that have long been considered machineguns, such as Akins Accelerators and firearms with certain forced reset triggers. Nor is that concern merely hypothetical: A district court and a stay panel of the Fifth Circuit have already concluded that the plurality's reasoning compels the conclusion that forced reset triggers are lawful, upsetting an understanding that had prevailed for nearly half a century. See pp. 28-29, *supra*. And the plurality's interpretation of the word "automatically" would allow manufacturers to evade the federal machinegun ban through the simple expedient of requiring the shooter to perform some trivial action with the non-trigger hand, such as pressing a selector button, in order to sustain continuous fire with a single pull of the trigger. See p. 36, *supra*. A reading that permits such "easy evasion of the statutory provision's basic purposes" is "neither persuasive nor reasonable." *County of Maui*, 140 S. Ct. at 1474.

D. The Fifth Circuit's Remaining Arguments Lack Merit

1. The Fifth Circuit plurality emphasized that ATF's current position on bump stocks "is inconsistent with its prior position." Pet. App. 39a. The plurality is correct that the agency's position on bump stocks has changed: From 2002 to 2006, the agency took the view that rifles with bump stocks do not fire multiple shots by a single function of the trigger, and until 2018, it took the view that such rifles do not fire automatically. See

pp. 7-8, *supra*. But those changes in position should not affect this Court’s analysis of the question presented.

First, this case presents a pure question of statutory interpretation: Whether bump stocks satisfy the definition of “machinegun” in 26 U.S.C. 5845(b). See Pet. I. ATF has set forth its position on that question in an interpretive rule, but the government does not contend that the rule has the force and effect of law or that ATF’s interpretation is entitled to deference. See Pet. 30. Accordingly, neither ATF’s changes in position nor any asserted defects in its explanation for those changes have any bearing on the Court’s resolution of the question presented.

Second, and in any event, ATF has acknowledged and reasonably explained its change of position. When the agency determined in 2002 that the Akins Accelerator, the original bump-stock device, could not fire multiple shots by a single function of the trigger, it relied in part on a prototype that “broke during testing.” *Akins*, 312 Fed. Appx. at 198; see J.A. 10. The agency changed position in 2006 after it “undertook further review of the device based on how it actually functioned when sold.” 83 Fed. Reg. at 66,517. Similarly, although the agency issued a series of letter rulings between 2008 and 2017 stating that bump-stock devices lacking internal springs did not operate automatically, those rulings “did not provide substantial or consistent legal analysis regarding the meaning of the term ‘automatically.’” *Id.* at 66,518. The agency undertook a more thorough analysis in the 2018 notice-and-comment rulemaking, and it concluded that those earlier letter rulings “did not reflect the best interpretation of ‘machinegun.’” *Id.* at 66,514. An agency may “change its mind in light of experience, or in the face of new or additional evidence, or further

analysis or other factors indicating that the agency’s earlier decision should be altered or abandoned.” *New England Power Generators Ass’n v. FERC*, 879 F.3d 1192, 1201 (D.C. Cir. 2018); see *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-516 (2009).

2. A majority of the en banc Fifth Circuit concluded that the rule of lenity required interpreting the terms “single function of the trigger” and “automatically” not to encompass rifles with bump stocks. Pet. App. 2a n.*. But the rule of lenity “comes into operation at the end of the process” of statutory interpretation, “not at the beginning as an overriding consideration of being lenient to wrongdoers.” *Maracich v. Spears*, 570 U.S. 48, 76 (2013) (citation omitted). It applies only if a criminal statute contains a “grievous ambiguity”—that is, only if, even after applying all the traditional principles of interpretation, a court “can make no more than a guess as to what Congress intended.” *Ocasio v. United States*, 578 U.S. 282, 295 n.8 (2016) (citation omitted). This case creates no occasion for such a guess. The text of the statutory definition of “machinegun,” read in light of its context and purpose, covers semiautomatic rifles equipped with bump stocks.

Judge Ho invoked the rule of lenity after concluding that, as a matter of “grammar and syntax,” the parties’ competing readings of the statute were “in equipoise.” Pet. App. 54a, 58a (Ho, J., concurring in part and concurring in the judgment). But the rule of lenity does not apply simply because both parties offer linguistically plausible interpretations of a criminal statute. Rather, this Court has “repeatedly emphasized” that the rule of lenity “applies only if, ‘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.’” *Abramski*, 573 U.S. at 188 n.10 (citation omitted); see *Wooden v. United States*, 142 S. Ct. 1063, 1075 (2022) (Kavanaugh, J., concurring) (“[A] court must exhaust all tools of statutory interpretation before resorting to the rule of lenity.”).

Even if the statutory definition of “machinegun” contains a linguistic ambiguity, other interpretive tools—such as context, purpose, and the presumption against ineffectiveness—would resolve that ambiguity in favor of treating bump stocks as machineguns. See *The Emily*, 9 Wheat. at 388 (“In construing a statute, *penal as well as others*, we must look to the object in view, and never adopt an interpretation that will defeat its own purpose, if it will admit of any other reasonable construction.”) (emphasis added). The contrary construction adopted by the Fifth Circuit would transform Congress’s longstanding restrictions on machineguns into a “Maginot Line, easily circumvented by the simplest maneuver,” *Bank Markazi v. Peterson*, 578 U.S. 212, 247 (2016) (Roberts, C.J., dissenting). That implausible consequence further confirms what the natural reading of the statutory text instructs: A bump-stock device is a machinegun.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
*Principal Deputy Assistant
Attorney General*
BRIAN H. FLETCHER
Deputy Solicitor General
VIVEK SURI
*Assistant to the Solicitor
General*
MARK B. STERN
MICHAEL S. RAAB
ABBY C. WRIGHT
BRAD HINSHELWOOD
Attorneys

DECEMBER 2023

APPENDIX

TABLE OF CONTENTS

	Page
Appendix — Statutory and regulatory provisions:	
18 U.S.C. 921(a)(24)	1a
18 U.S.C. 922(o)	1a
26 U.S.C. 5845(b)	1a
27 C.F.R. 447.11	2a
27 C.F.R. 478.11	3a
27 C.F.R. 479.11	4a

APPENDIX

1. 18 U.S.C. 921(a)(24) provides:

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

2. 18 U.S.C. 922(o) provides:

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

3. 26 U.S.C. 5845(b) provides:

(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 ex-

clusively, 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.

4. 27 C.F.R. 447.11 provides in pertinent part:

Meaning of terms.

Machinegun. A “machinegun”, “machine pistol”, “submachinegun”, or “automatic rifle” is a firearm 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. For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning 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; and “single function of the trigger” means a single pull of the trigger and analogous motions. The term “machinegun” includes a bump-stock-type device, *i.e.*, a device that allows a semi-automatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semi-automatic firearm to which it is affixed so that the trigger resets and continues

firing without additional physical manipulation of the trigger by the shooter.

5. 27 C.F.R. 478.11 provides in pertinent part:

Meaning of terms.

Machine gun. 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 machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person. For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning 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; and “single function of the trigger” means a single pull of the trigger and analogous motions. The term “machine gun” includes a bump-stock-type device, *i.e.*, a device that allows a semi-automatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semi-automatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

6. 27 C.F.R. 479.11 provides in pertinent part:

Meaning of terms.

Machine gun. 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 machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person. For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning 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; and “single function of the trigger” means a single pull of the trigger and analogous motions. The term “machine gun” includes a bump-stock-type device, *i.e.*, a device that allows a semi-automatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semi-automatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.