IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE GUN OWNERS OF AMERICA, INC., *ET AL.*	**Case No. 19-1268**

OPPOSITION TO EMERGENCY PETITION FOR A WRIT OF MANDAMUS AND FOR A STAY OF AGENCY ACTION

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INTRODUCTION AND SUMMARY

Petitioners challenge a final rule promulgated by the Department of Justice (DOJ) in the wake of the Las Vegas mass shooting that provides the agency's interpretation of the definition of "machinegun," as used in the National Firearms Act. *See Bump-Stock Type Devices*, 83 Fed. Reg. 66,514 (Dec. 26, 2018) (Rule). Petitioners contend that the "bump stocks" they possess should not be prohibited as machine guns and seek to enjoin the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from implementing the Rule.

Because the district court has yet to act on petitioners' request for a preliminary injunction, petitioners now file a petition for writ of mandamus in this Court asking this Court to "direct[] the court to enjoin implementation of Defendants' Final Rule until such time as the district court issues its opinion." Mot. 1. But the grant of mandamus is a "drastic" remedy, and petitioners must demonstrate a clear and indisputable right to the relief they seek, which they cannot do. Petitioners are no more successful in their argument that this Court should grant what they characterize as a "stay pending appeal."[1] What they in fact seek is an injunction pending this Court's consideration of their petition for writ of mandamus. But that relief can only

[1] This Court has held that a plaintiff faces the same burden with respect to demonstrating entitlement to a stay pending appeal as it does with respect to injunctive relief pending appeal. *Philip Randolph Inst. v. Husted*, 907 F.3d 913, 918 (6th Cir. 2018) ("With respect to the fact that the emergency motion seeks an injunction rather than a stay, this does not change the Plaintiffs' burden in this case.").

be granted if petitioners demonstrate a likelihood of success on the merits of their mandamus petition, which they cannot do, as no court that has examined the statutory definition of "machinegun" has adopted petitioners' reading of its terms, and each district court to consider a challenge to the Rule has refused to grant a preliminary injunction.

STATEMENT

A. Regulatory Background

1. Over the last century, Congress has imposed increasingly strict regulations on the manufacture, sale, and possession of machine guns. The National Firearms Act of 1934, 26 U.S.C. Chapter 53, imposed various requirements on persons possessing or engaged in the business of selling particular "firearms" (including machine guns), such as requiring that each maker of a regulated firearm shall "obtain authorization" before manufacture. 26 U.S.C. § 5841(c).

The National Firearms Act 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). Since 1968, the statute has also applied to parts that can be used to convert a weapon into a "machinegun." *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1231. The definition 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." 26 U.S.C. § 5845(b).

In 1986, Congress largely banned machine guns as part of the Firearm Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449. Under 18 U.S.C. § 922(o) it is generally "unlawful for any [private] person to transfer or possess a machinegun."

The Attorney General has authority to prescribe rules and regulations to enforce the National Firearms Act and subsequent legislation. 18 U.S.C. § 926(a); 26 U.S.C. § 7805(a); *see id.* § 7801(a)(2)(A).

2. Since Congress prohibited machine guns, "inventors and manufacturers [have developed] firearms, triggers, and other devices that permit shooters to use semiautomatic rifles to replicate automatic fire." 83 Fed. Reg. at 66,515-16. This litigation involves "bump-stock-type" devices—which "[s]hooters use . . . to mimic automatic fire," 83 Fed. Reg. 66,516—and ATF's interpretation of the terms "automatically" and "single function of the trigger" as used in the definition of "machinegun," 26 U.S.C. § 5845(b).

ATF first encountered this type of device in 2002, when it received a classification request for the "Akins Accelerator," which operated by means of an internal spring. 83 Fed. Reg. at 66,517. Although ATF initially opined that the prototype it tested was not a machine gun, 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. 66,517. The Eleventh Circuit

affirmed this understanding, holding that interpreting "single function of the trigger" as "'single pull of the trigger' is consonant with the statute and its legislative history." *Akins v. United States*, 312 F. App'x 197, 200 (11th Cir. 2009) (per curiam). ATF soon received classification requests for other bump-stock-type devices that did not include internal springs. In a series of classification decisions between 2008 and 2017, ATF concluded that such devices were not machine guns based on an erroneous belief that in the absence of mechanical parts that would channel recoil energy, the bump stocks did not enable a gun to fire "automatically." *See id.*

3. 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. At the urging of members of Congress and other non-governmental organizations, DOJ decided to revisit its prior analysis of the terms used to define "machinegun" in 26 U.S.C. § 5845(b). As an initial step, DOJ published an advance notice of proposed rulemaking in the Federal Register. *Application of the Definition of Machinegun to "Bump Fire" Stocks and Other Similar Devices*, 82 Fed. Reg. 60,929 (Dec. 26, 2017).

On February 20, 2018, the President issued a memorandum concerning bump stocks instructing 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." *See Definition of Machinegun*, 83 Fed. Reg. 7949 (Feb. 20, 2018).

On March 29, 2018, DOJ published a notice of proposed rulemaking, proposing changes to the regulations in 27 C.F.R. §§ 447.11, 478.11, and 479.11 that would interpret 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 final rule was published on December 26, 2018. *Bump-Stock Type Devices*, 83 Fed. Reg. 66,514.

The Rule sets forth the agency's interpretations of the terms "single function of the trigger" and "automatically," clarifies for members of the public that bump stocks are machine guns, and overrules ATF's prior, erroneous classification decisions treating certain bump stocks as unregulated firearms parts. *See* 83 Fed. Reg. at 66,514, 66,516, 66,531. The Rule further instructs "current possessors" of bump stocks "to undertake destruction of the devices" or to "abandon [them] at the nearest ATF office" by the Rule's effective date. *Id.* at 66,549. Current owners of bump stocks therefore have until March 26, 2019 to comply with the Rule in order to "avoid criminal liability." *Id.* at 66,530.

B. Procedural History

Petitioners challenged the Rule and sought a preliminary injunction. *See* Mot. 4. The district court heard oral argument on March 6, 2019, after full briefing, but has yet to rule on petitioners' request for a preliminary injunction. Although petitioners contend (Mot. 1) that they asked the district court to enjoin implementation of the Rule pending their mandamus filing in this Court, they do not appear to have done so

separately from their underlying preliminary injunction motion and request for expedition.

Similar cases were brought in district courts nationwide. On February 25, 2019, the United States District Court for the District of Columbia denied a request for a preliminary injunction, *see Guedes v. ATF*, 2019 WL 922594 (D.D.C. Feb. 25, 2019), *appeal docketed*, Consolidated Case Nos. 19-5042, 19-5043, 19-5044 (D.C. Cir. Feb. 26, 2019); the plaintiffs in that case appealed and sought an extremely expedited schedule permitting resolution of the entire appeal by March 26, 2019. Oral argument is scheduled to be heard before the D.C. Circuit on March 22, 2019.[2] In addition, on March 15, the United States District Court for the District of Utah ruled in the government's favor, denying a similar request for a preliminary injunction. *See Aposhian v. Barr*, No. 19-cv-37 (D. Utah Mar. 15), slip op. at 9, *appeal docketed*, No. 19-4036 (10th Cir. Mar. 18, 2019). Plaintiff in that case has requested an injunction pending appeal from the district court and the Tenth Circuit.

[2] Petitioners correctly note (Mot. 9) that the government opposed the expedited briefing schedule and observed that the appropriate *procedural mechanism* for such relief was an injunction pending appeal. The government did not concede that such *relief* would be appropriate in the D.C. Circuit cases.

ARGUMENT

"The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations where the petitioner can show a clear and indisputable right to the relief sought." *In re Richard*, 914 F.2d 1526, 1527 (6th Cir. 1990). Petitioners ask this Court to direct the district court to enjoin implementation of the Rule. Petitioners also ask this Court to enter injunctive relief pending its disposition of their petition for writ of mandamus. In order to demonstrate their entitlement to the "extraordinary remedy" of injunctive relief pending this Court's resolution of their mandamus petition, petitioners must show that they are likely to succeed on their claim that they have a clear and indisputable right to issuance of an injunction in the district court and that issuing the preliminary injunction will prevent irreparable harm that is not outweighed by harm to third parties and the public interest. *See Philip Randolph Inst. v. Husted*, 907 F.3d 913, 917 (6th Cir. 2018) (citing *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)). Petitioners cannot satisfy that stringent standard.[3]

[3] Even if petitioners had asked only that this Court direct the district court to rule on their preliminary injunction request, they would still not be entitled to the issuance by *this Court* of injunctive relief without a demonstration that they would be independently entitled to such relief. For the reasons explained, *infra*, petitioners would be unable to do so.

I. As Every Court to Consider the Issue Has Concluded, the Rule Is Lawful, and Therefore Petitioners Have Demonstrated No Likelihood of Success on the Merits

Federal law bans the possession and transfer of "machineguns," 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." *Id.*

A bump stock is an apparatus used to replace the standard stock on an ordinary semiautomatic firearm that is designed "for the express purpose of allowing 'rapid fire' operation of the semiautomatic firearm to which [it is] affixed," 83 Fed. Reg. at 66,518, and converts an ordinary semiautomatic rifle into a weapon capable of firing at a rate of 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." *Id.* at 66,516, 66,532. The shooter maintains constant rearward pressure on the extension ledge, ensuring that the trigger finger 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 parties disagree on 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).

It does. When Congress enacted the National Firearms Act, it described the Act as including "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). Consistent with this understanding, ATF has recognized since 2006 that the statutory phrase "single function of the trigger" is most naturally read to mean a "single pull of the trigger," at least where a weapon is equipped with a standard trigger. And after a shooter used AR-15 semiautomatic rifles equipped with bump stocks in an attack on a crowd of concertgoers in Las Vegas, DOJ revisited its previously inconsistent definitions of "automatically" and determined that the best

reading of that term includes a device which allows a single function of the trigger to initiate a self-regulating cycle of continuous fire.

Because the Rule provides the correct reading of the terms "automatically" and "single function of the trigger," petitioners have no likelihood of success on their claims, and this Court should deny their request for injunctive relief. *See Guedes v. ATF*, 2019 WL 922594 (D.D.C. Feb. 25, 2019), *appeal docketed*, Consolidated Case Nos. 19-5042, 19-5043, 19-5044 (D.C. Cir. Feb. 26, 2019); *Aposhian v. Barr*, No. 19-cv-37 (D. Utah Mar. 15), at slip op. 9, *appeal docketed*, No. 19-4036 (10th Cir. Mar. 18, 2019).

A. A "Single Function of the Trigger" Is a "Single Pull of the Trigger" for a Weapon Equipped with a Standard Trigger

1. For over a decade, ATF has recognized that the phrase "single function of the trigger" means a "single pull of the trigger" for a weapon equipped with a standard trigger. *See* 83 Fed. Reg. at 66,517. The function of a trigger is "to initiate the firing sequence" of a weapon. *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (per curiam). Read in its full context, the phrase "'by a single function of the trigger' describes 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); *United States v. Carter*, 465 F.3d 658, 664-65 (6th Cir. 2006).

With a normal trigger, the "action" that initiates this process is the shooter's pull on the trigger. On a standard 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 fully automatic weapon—and on a weapon equipped with a bump stock—that same pull of the trigger initiates a continuous process that fires bullets until the trigger is released or ammunition is exhausted, without requiring that the shooter release his pull. Once the trigger has performed its function of initiating the firing sequence, the weapon fires "automatically more than one shot, without manual reloading," 26 U.S.C. § 5845(b), until the shooter releases the trigger.

Because not all firearms use a traditional pull trigger, Congress in the National Firearms Act and DOJ in the Rule used language designed to capture the full range of possible trigger devices. By employing the term "single *function* of the trigger," Congress ensured that it could cover weapons that use triggers activated by pushing a paddle, pressing a button, flipping a switch, or otherwise initiating the firing sequence without pulling a traditional trigger. *See*, *e.g.*, *United States v. Fleischli*, 305 F.3d 643, 655-56 (7th Cir. 2002) (holding that a minigun fired by "an electronic switch" was a machine gun). Indeed, at the time of the enactment of the National Firearms Act, many machine guns used push triggers to fire. *See* 83 Fed. Reg. at 66,519 n.5 (listing examples of machine guns that "operate through a trigger activated by a push," including Maxim and Vickers machine guns). By focusing on whether the shooter's

"single function of the trigger" initiates an automatic process that discharges multiple bullets, Congress ensured that individuals could not "avoid the [National Firearms Act] simply by using weapons that employ a button or switch mechanism for firing." *Evans*, 978 F.2d at 1113 n.2. For the same reasons, the Rule states that a "single function of the trigger" encompasses "a single pull of the trigger and analogous motions," 83 Fed. Reg. at 66,533, 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.

Legislative history confirms that the Congress that enacted the National Firearms Act understood that in the normal course, a "single function of the trigger" equated to the shooter's single pull of the trigger. In explaining the definition of "machinegun" in the bill that ultimately became the National Firearms Act, *see* H.R. 9741, 73rd 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 (emphasis added); *see* S. Rep. No. 73-1444 (1934) (reprinting House's "detailed explanation" of the provisions, including the quoted language).

Subsequent judicial interpretations of the phrase "single function of the trigger" further confirm that, when a standard trigger is involved, the ordinary meaning of the phrase looks to the shooter's action in pulling the trigger. 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 machine gun, 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). Similarly, the Tenth Circuit recognized that a weapon qualified as a machine gun where it could be fired automatically "by fully pulling the trigger." *United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977). And the Fifth Circuit held that a modified rifle was a machine gun because it "required only one action—pulling the switch [the defendant] installed—to fire multiple shots" instead of requiring the shooter "to separately pull . . . each time the weapon is fired." *United States v. Camp*, 343 F.3d 743, 745 (5th Cir. 2003). The court held that § 5845(b) "expressly contemplate[s]" this distinction by focusing on "a single function of the trigger." *Id.* (emphasis in original).

And in litigation challenging the Rule, the two district courts to consider the issue have both agreed that "single function of the trigger" equates to "single pull of the trigger." In *Aposhian v. Barr*, No. 19-cv-37 (D. Utah Mar. 15), at slip op. 9, *appeal docketed*, No. 19-4036 (10th Cir. Mar. 18, 2019), the district court explained that plaintiff had failed to demonstrate a likelihood of success on the merits because the Rule states the "best interpretation" of the terms "automatically" and "single function of the trigger." Op. 7 & n.8, 8, 10, 11. The court rejected plaintiff's interpretation of "single function of the trigger" as "refer[ing] to the mechanical movement of the trigger" in favor of the Rule's "shooter-focused interpretation." Op. 8. 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." *Id.*

Instead, the term "function" serves "to forestall attempts by weapon manufacturers or others to implement triggers that need not be pulled, thereby evading the statute's reach." Op. 8-9.

The district court in *Guedes v. ATF*, 2019 WL 922594, at *10 (D.D.C. Feb. 25, 2019), *appeal docketed*, Consolidated Case Nos. 19-5042, 19-5043, 19-5044 (D.C. Cir. Feb. 26, 2019), similarly concluded that the agency "acted reasonably in defining the phrase 'single function of the trigger' to mean a 'single pull of the trigger and analogous motions'" in light of "contemporaneous dictionary definitions and court decisions." *Id.* at *10 (quoting 83 Fed. Reg. at 66,553). The district court further observed that "a bump stock operates with a single 'pull' of the trigger because a bump stock permits the shooter to discharge multiple rounds by, among other things, 'maintaining the trigger finger on the device's extension ledge with constant rearward pressure.'" *Id.* at *11 (quoting 83 Fed. Reg. at 66,532).

2. Petitioners largely ignore the ordinary meaning of the term "single function of the trigger," 26 U.S.C. § 5845(b), and the interpretation of that language by Congress, the courts, and ATF. Petitioners insist that a bump stock "does not fire more than one round by 'a single function of the trigger,'" because in petitioners' view a "single function" occurs as long as the trigger itself moves, without regard to the shooter's actions. *See* Mot. 11. But this cramped definition defies statutory text and common sense. Petitioners' theory is that an aftermarket device could not convert an

AR-15 or similar semiautomatic rifle into a "machinegun," as long as it permits the hammer to operate as originally designed. A rifle equipped with the Akins Accelerator, for example, would no longer qualify as a machine gun, despite the Eleventh Circuit's contrary ruling. *Akins*, 312 F. App'x at 200. And even a motorized device that mechanically and automatically pulled and released the part originally designed as the trigger on an AR-15 rifle at the flip of a switch would not qualify as a machine gun, because the internal mechanical operation would be unchanged. That the shooter produces a continuous firing cycle by taking only one step—flipping the switch—is entirely irrelevant under petitioners' theory.

"Function" is therefore not constrained to the precise mechanical operation of a specific type of trigger or firearm. On the contrary, given the range of possible trigger mechanisms and devices, the broad term "function" ensures that ingenious individuals cannot engineer around the restrictions of the National Firearms Act "simply by using weapons that employ a button or switch mechanism for firing." *Fleischli*, 305 F.3d at 655 (quoting *Evans*, 978 F.2d at 1113 n.2). Nor are such concerns hypothetical. As the Rule notes, ATF has applied the "single pull of the trigger" understanding to a host of devices that assist shooters in creating and sustaining a continuous firing cycle. 83 Fed. Reg. at 66,517-18. For example, in 2016, ATF classified "LV-15 Trigger Reset Devices" as machine gun parts. *Id.* at 66,518 n.4. These devices attached to an AR-15 rifle and used a battery-operated "piston that projected 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.

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. The Rule gives the term "automatically" its ordinary meaning. 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.")). And the Rule straightforwardly adopts this definition, stating that 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 ("[A]utomatically" in § 5845(b) means "as the result of a self-acting mechanism."). As the district court in the District of Columbia correctly held, the Rule's definition of "automatically" "correctly" defines the term and is "[c]onsistent with these contemporaneous dictionary definitions and the Seventh Circuit's decision in *Olofson*." *Guedes v. ATF*, 2019 WL 922594, at *10; *see also Aposhian v. Barr*, No. 19-cv-37 (D. Utah Mar. 15), slip op. at 9.

As the Rule explains, a rifle equipped with a bump stock fits comfortably 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 maintenance of continuous pressure on the extension ledge with the trigger finger and on the barrel-shroud or fore-stock with the other hand provides 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.* at 66,532.

2. In arguing that the agency's interpretation of "automatically" is erroneous, petitioners fail to engage with the dictionary definitions and other sources relied on by the Rule, the Seventh Circuit in *Olofson*, and the district courts that denied injunctive relief. Instead, petitioners assert that bump stocks do not function as a result of a "self-acting or self-regulating mechanism" because the shooter must maintain pressure on the barrel-shroud or fore-stock of the rifle and the bump stock is not a "mechanism" that channels recoil energy. Mot. 12. But as the district court in the *Guedes* observed, a device need not "operate spontaneously without any manual input" to properly be described as operating "automatically." *Guedes v. ATF*, 2019 WL

922594, at *11. Rather, a device is ordinarily described as operating "automatically" where it "perform[s] parts of the work formerly or usually done by hand" or "produce[s] results otherwise done by hand." *Id.* at *10 (quoting *Webster's New International Dictionary* (1933) and 1 *Oxford English Dictionary* (1933), respectively). And this understanding is reflected in ordinary usage: "[a]n automatic sewing machine, for example, still requires the user to press a pedal and direct the fabric." *Id.* at *11. Because a bump stock performs "two tasks the shooter would ordinarily have to perform manually"—"control[ing] the distance the firearm recoils and ensur[ing] that the firearm moves linearly"—a bump stock allows for an automatic continuous firing cycle. *Id.*

Petitioners erroneously conflate the terms "automatically" and "single function of the trigger" by arguing that because bump stocks (in petitioners' view) require more than a single function of the trigger they must not be automatic under the definition. *See* Mot. 12. But under this reading, the term "automatically" serves no purpose in the statute: the only relevant question would be whether a gun fires "more than one shot" by "a single function of the trigger"—on petitioners' view, a single release of the hammer. *See Ford Motor Co. v. United States*, 768 F.3d 580, 587 (6th Cir. 2014) (explaining that courts "must interpret statutes as a whole, giving effect to each word" (internal quotation omitted)).

Finally, petitioners' reliance (Mot. 12-13) on ATF's erroneous past interpretations of the term "automatically" fails to advance their claim. ATF's prior

interpretations cannot change the plain meaning of the statutory term "automatically." That ATF previously applied an incorrect interpretation of the term "automatically" in classifying bump-stock-type devices is why the Department promulgated the Rule to give notice to the public and provide guidance to ensure consistent future classifications.

II. The Public Interest Weighs In Favor of Denying Injunctive Relief

The protection of the public and law enforcement officers from the proliferation of firepower in criminal hands is a bedrock foundation of federal firearms legislation, including the National Firearms Act, the Gun Control Act, and the Firearm Owners Protection Act. Implementation of the Rule promotes that public interest by protecting the public from machine guns prohibited by federal law. *See* 83 Fed. Reg. at 66520 ("[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 66551. The "public[] interest in the safety of . . . law enforcement officials is both legitimate and weighty." *U.S. v. Denny*, 441 F.3d 1220, 1225-26 (10th Cir. 2006) (quoting *Penn. v. Mimms*, 434 U.S. 106, 110 (1977)). 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.

In response to the clear public interest at stake, petitioners offer only the baseless

assertion that bump stocks may not have been used in the Las Vegas shooting at all, along with their contention that banning bump stocks will have no impact on the public interest because other dangerous weapons remain on the market. Mot. 14. Those conclusory assertions cannot outweigh the substantial public interests at stake, especially when weighed against the limited harm to petitioners: at most, petitioners will be required to surrender or destroy their bump stocks and will be unable to obtain new bump stocks unless and until they prevail in this litigation and a court accepts their reading of the statute.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of mandamus and petitioners' request for an injunction pending resolution of the petition.

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MARCH 2019

CERTIFICATE OF COMPLIANCE

The foregoing complies with Fed. R. App. P. 27 because it contains 5,086 words. This brief also complies with the typeface and type-style requirements of Rule 27 because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Brad Hinshelwood
Brad Hinshelwood

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Brad Hinshelwood
Brad Hinshelwood