IN THE
SUPREME COURT OF THE UNITED STATES

App. No. ________

GUN OWNERS OF AMERICA, INC., *et al.*,
Applicants,

v.

WILLIAM P. BARR, Attorney General of the United States, *et al.*,
Respondents

EMERGENCY APPLICATION FOR STAY PENDING APPELLATE REVIEW

Directed to the Honorable Sonia Sotomayor
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Sixth Circuit

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March 25, 2019

**EMERGENCY APPLICATION FOR STAY
PENDING APPELLATE REVIEW**

TO THE HONORABLE SONIA M. SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Gun Owners of America, Inc., Gun Owners Foundation, Virginia Citizens Defense League, Matt Watkins, Tim Harmsen, and Rachel Malone ("Applicants") respectfully and urgently request a stay of agency action from this Court. At midnight tonight, a regulation issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") will become effective, and significant and irreparable harm will occur to Applicants, their members and supporters, and hundreds of thousands of other Americans. Last Thursday, March 21, 2019, the U.S. District Court for the Western District of Michigan denied Applicants' motion for a preliminary injunction that had been pending since December 26, 2018. Today at 1:41 PM, in a short, three-page order, the U.S. Court of Appeals for the Sixth Circuit denied Applicants' emergency motion for stay pending appeal. The analysis in the Sixth Circuit's opinion was the following: "[t]he plaintiffs have not shown the likelihood of an abuse of discretion. We also note that two other district courts have denied preliminary relief enjoining the Final Rule." Thus, this Court's intervention is necessary to preserve the status quo until Applicants' appeal can be heard by the Sixth Circuit.

BACKGROUND

A bump stock is a plastic stock that replaces the traditional stock on a semi-automatic rifle such as an AR-15. On an AR-15, the bump stocks slides freely over the rifle's buffer tube, as opposed to a traditional stock which is fixed and unmoving. The bump stock has a protruding piece of plastic known as the "extension ledge," which provides a place where the

shooter's "trigger finger … is stabilized." ECF #48 at 7. As such, the shooter's finger rests on the extension ledge of the bump stock, not the firearm's trigger. The shooter maintains his finger on the extension ledge of the stock, and places his support hand on the foregrip of the rifle. To bump fire a rifle with a bump stock, the shooter pushes the freely moving firearm forward with his support hand, until the trigger contacts and is depressed by the trigger finger (which is resting on the extension ledge). Discharging a shot, recoil counteracts the shooter's forward pressure, and drives the firearm rearward, away from the shooter's finger (which is still resting on the extension ledge). This physical separation between the finger and trigger causes the trigger to "reset," readying it for another shot. At the same time, the shooter's forward pressure overcomes rearward recoil, and again pushes the firearm forward, contacting the trigger with the trigger finger again. This semiautomatic process continues by "bumping" a shooter's finger on and off the trigger, so long as the shooter properly absorbs the recoil and constantly adjusts and applies the appropriate amount of forward pressure for each and every shot.

STATEMENT

This case involves a challenge by Applicants to an ATF regulation classifying so-called "bump fire stocks" as machineguns, banning their private possession, and ordering their destruction. 83 Fed. Reg. 66514 ("Final Rule"). The Final Rule mandates the destruction of over 500,000 firearm accessories known as "bump stocks," owned by hundreds of thousands of law abiding Americans, and valued at over $100 million. The Final Rule reverses well over a decade of consistent ATF classification of bump stocks as unregulated firearm accessories. The Final Rule will transform bump stocks into unregistered machineguns, unlawful to own

pursuant to 18 U.S.C. Section 922(o). For anyone who does not comply, ATF has announced its intent to bring felony prosecution against them, seeking penalties of up to 10 years imprisonment and a $250,000 fine.

This cannot be allowed to happen before the court of appeals has considered Applicants' appeal. Applicants have presented a strong likelihood of success of their challenge to the Final Rule. The district court concluded that Applicants' understanding of the criminal statute is both "reasonable" and supported by case law. 18-1429 ECF # 48 at 14. Nevertheless, the court refused to examine the statutory text and determine its meaning, but instead deferred entirely to the agency pursuant to Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). This was clear error, and something that both parties had asked the court not to do. Moreover, the district court's opinion adopts several factual errors from the Final Rule, without addressing Applicants' considerable evidence to the contrary. Finally, the district court failed entirely to engage with Applicants' arguments that bump stocks do not fit even within the atextual regulation ATF has crafted. Thus, Applicants have raised significant questions of law and fact to the court of appeals; issues that undoubtedly are serious enough to warrant a stay of agency action in this case until their appeal has been heard.

OPINIONS BELOW

The decision of the U.S. District Court for the Western District of Michigan is located in Gun Owners of America, et al. v. Barr, "Opinion and Order Denying Plaintiffs' Motion for a Preliminary Injunction," Docket. No. 18-1429, ECF # 48, March 21, 2019 (W.D. Mi.).

The decision of the U.S. Court of Appeals for the Sixth Circuit is located in Gun Owners of America, et al. v. Barr et al.,Docket No. 19-1298, ECF # 9-2 (March 25, 2019).

JURISDICTION

This Court has jurisdiction over any judgment of the U.S. Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1254 and 2101(f), and has authority under 28 U.S.C. § 1651 to grant the relief sought by the applicants.

REASONS FOR GRANTING THE STAY

1. The Statute Is Unambiguous, and Does Not Apply to Bump Stocks.

The government has conceded the federal statute defining a machinegun is clear and unambiguous.[1] 83 Fed. Reg. 66527; Guedes v. ATF, Brief for Appellees, Docket No. 19-5042 (D.D.C.) at 37 (March 13, 2019) ("Guedes Appellees Brief."). The government has also conceded that the definition — as written — does not apply to bump stocks. Rather, the government has noted only that the statutory definition of machinegun uses terms which "are undefined," and those terms do not "clearly exclude[] bump stocks." Gun Owners of America v. Barr, Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, Docket No. 18-1429 (W.D. Mich.) at 3 (February 11, 2019) ("Brief in Opp."); Gun Owners of America v. Barr, Reply Brief in Support of Plaintiffs' Motion for a Preliminary Injunction, Docket No. 18-1429 (W.D. Mich.) at 1 (February 25, 2019) ("Reply Brief"). This, the government argues, gives it the authority to issue an "expansion of the definition" and a "revision" of the

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[1] The Ninth Circuit has noted that when "the statute is ambiguous, we simply follow the standard course of applying the definition to the facts." United States v. TRW Rifle 7.62x51mm Caliber, 447 F.3d 686, 689 n.4 (9th Cir. 2006).

statute, so that it will now cover bump stocks. Reply Brief at 2. However, just last year, this Court held "[t]he statute's unambiguous … definition, in short, precludes the [agency] from more expansively interpreting that term." Dig. Realty Trust, Inc. v. Somers, 138 S.Ct. 767, 782 (2018).

The Final Rule is the very embodiment of a violation of the separation of powers — Congressional authority being wielded by an administrative agency. What's more, this case does not involve a run-of-the-mill regulatory provision. Rather, the agency has created a new crime — felony ownership of a bump stock — out of whole cloth. And, as of midnight tonight, the agency intends to begin enforcing this new criminal provision.

Presumably recognizing that the ATF has no authority to expand a federal criminal statute, the district court concluded instead that "the statutory terms are ambiguous." Opinion and Order at 1. The district court was clearly wrong.

First, the district court found that "**the word** 'automatically' … is ambiguous" as to "whether **the word** 'automatically' precludes any and all application of non-trigger, manual forces in order for multiple shots to occur."[2] *Id.* at 12-13 (emphasis added). But the issue is not whether **the word** "automatically" might be ambiguous when extracted from the statute in this way. Fortunately, Congress used **many words** to define a machinegun. Indeed, that is how individual words together gain unambiguous meaning. As Justice Cardozo once explained, "the meaning of a statute is to be looked for, not in any single section [or word],

[2] The Court correctly frames the issue as "whether the forward pressure exerted by the shooter using the non-trigger hand requires the conclusion that a bump stock does not shoot automatically." Opinion and Order at 12.

but in all the parts together…." Panama Ref. Co. v. Ryan, 293 U.S. 388, 439 (1935) (Cardozo, J., dissenting). *See also* A. Scalia & B. Garner, Reading Law (West: 2012) at 168, 230-31.

As Appellants have argued, the statutory context makes clear **precisely how much human input is permitted** while still rendering a firearm a machinegun — "automatically … by a single function of the trigger." The district court correctly recognized that bump stocks require more human input than "a single function of the trigger" (Opinion and Order at 13), yet its atextual analysis of "automatically" reads that limitation out of the statute. Contrary to the district court's conclusion below, it is not up to agencies to decide what "automatically" means in the statute, and it is error for courts to defer to them.

Second, the district court found "ambigu[ity] with respect to the phrase 'single function of the trigger.'" Opinion and Order at 13. The court concluded that "[t]he statute does not make clear whether function refers to the trigger as a mechanical device [as Appellants argued] or whether function refers to the impetus for action that ensues [as the government argued]. **Both interpretations are reasonable**." Opinion and Order at 13-14 (emphasis added). The district court looked to legal precedents and dictionary definitions in an attempt to decide. *Id.* at 14. However, it does not appear that the court began with the statute itself. Clearly and unambiguously, "function of the trigger" refers to the mechanical process through which the trigger goes — and, while it is depressed, activates repeated shots automatically. It certainly does not refer to the biological process of setting a mechanical process into motion. The court erred by failing to consider the statute on its own. **Most importantly, however, the district court never concludes that — much less explains how — a bump stock fires even "by a**

single pull of the trigger." As Appellants explained, the trigger is both "functioned" and "pulled" separately, each time a shot is bump fired. The district court offered no way around this reality.

Finally, at oral argument on March 6, 2019, the district court asked the government about Appellants' assertion that, if a previously-unambiguous statute is now declared ambiguous, it must be declared **void for vagueness**. The court queried as to the implications for criminal prosecutions that previously have relied on an unambiguous criminal statute. Yet the district court did not wrestle with those serious issues here. Thus, this Court must carefully consider the ramifications of a declaration that a criminal statute is suddenly ambiguous, after 85 years of being unambiguous.

Indeed, for decades, courts consistently concluded that the statute was unambiguous. *See, e.g.*, U.S. v. Williams, 364 F.3d 556, 558 (4th Cir. 2004); U.S. v. TRW Rifle 7.62x51mm Caliber, One model 14 Serial 593006, 447 F.3d 686, 689 n. 4 (9th Cir. 2006); U.S. v. Olofson, 563 F.3d 652, 660 (7th Cir. 2009); U.S. v. Fleischli, 305 F.3d 643, 655 (7th Cir. 2002). Suddenly now, our separate and jealously independent third branch of government is consistently concluding that the statute is ambiguous. *See* Order and Opinion; Guedes v. ATF, 18-cv-2988 (D.D.C.); Codrea v. ATF, 18-cv-3086; Aposhian v. Barr, 19-cv-37 (D.Utah) (the Utah court does not explicitly find the statute ambiguous, but nevertheless permits the government to "interpret undefined statutory terms," something that would be entirely unnecessary if the statute were unambiguous). In the future, when otherwise-law-abiding bump stock owners inevitably are prosecuted for possession of

unregistered machineguns, will the courts flip back, and conclude that the statute is again unambiguous?

2. The Government Is Due No Deference Here.

In the two related D.C. bump stock cases (currently pending in the U.S. Court of Appeals for the District of Columbia[3]), district Judge Friedrich issued an opinion on February 25, 2019, which began and ended with Chevron deference. Guedes v. ATF, Memorandum Opinion, 18-cv-3086-DLF (D.D.C.) (Feb. 25, 2019). Ignoring the fact that the government had never asked for Chevron deference in its interpretation of this criminal statute, the D.C. court nevertheless found ATF entitled to it.

Recognizing the manifest error in the D.C. opinion, the government immediately filed a Notice of Supplemental Authority in the district court below. *See* Gun Owners of America v. Barr, Government's Notice of Supplemental Authority (Feb. 27, 2019). In it, the government expressly disclaimed Chevron deference, and argued that the ATF is not entitled to "any deference" in this matter. *Id.* at 2. However, ignoring the government's pleas not to base its opinion on Chevron deference, the district court doubled down, claiming that, "[w]hile the parties might like to avoid *Chevron* … this Court cannot." Opinion and Order at 10. Rejecting Appellants' argument that it is the duty of the court — not the agency — to determine the meaning of the criminal statute, and thereby to "say what the law is," the district court

[3] Guedes v. ATF (Docket No. 19-5042) and Codrea v. ATF (Docket No. 19-5044) (D.C. Cir.).

deferred entirely to the agency, even though it admitted Appellants' understanding of the statute is both "reasonable" and supported by case law. *Id.* at 14.[4]

Appellants have raised a serious question whether Chevron deference — indeed, deference of any kind — applies here.[5] If this court of appeals were to conclude it does not, then the district court's opinion is a nullity. To date, neither the district court nor the court of appeals has determined what the statute actually means, and whether it applies to bump stocks. That is a matter that the courts should address before more than a half million bump stocks are ordered destroyed.

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[4] The government in this case have expressly disclaimed that it is entitled to any deference under Chevron v. Nat. Res. Def. Council, 467 U.S. 837 (1984), in interpreting this criminal statute, because of this Court's recent decision in United States v. Apel, 571 U.S. 359 (2014). *See* Government's Notice of Supplemental Authority. *See also* Abramski v. United States, 573 U.S. 169, 191 (2014) ("we have never held that the Government's reading of a criminal statute is entitled to any deference. We think ATF's old position no more relevant than its current one — which is to say, not relevant at all."). As Appellants explained at oral argument to the district court, Apel applies not only to Chevron deference, but to the same "arbitrary and capricious" deference accorded under the APA, 5 U.S.C. § 706. In other words, it is up to the courts to determine what the statute means. So far, the courts have not done that.

[5] At oral argument before the U.S. Court of Appeals for the District of Columbia Circuit on March 22, 2019, government counsel argued that the Final Rule is an interpretive rule (carrying no force of law), with a concurrent exercise of prosecutorial discretion (not to prosecute people until March 26). This seemed to come as quite a shock to the D.C. panel, which noted that the government previously had characterized the Final Rule as a legislative rulemaking (*i.e.*, bump stocks *become* machineguns on March 26), issued pursuant to notice and comment rulemaking, and which amended (rather than interpreted) the text of an existing federal regulation. The government's theory of its authority is now incoherent. Applicants should not be prejudiced here when the government cannot make up its mind. The government's change of horses midstream raises important issues relating to the authority of the agency, deference that is due, *etc.*; issues that Applicants have not yet fully had time to consider in the last three days. *See* United States v. Mead Corp., 533 U.S. 218 (2001); Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199 (2015). At a minimum, these issues should be briefed and argued before the circuit court, before the Final Rule goes into effect.

3. The District Court Ratified ATF's Factual Errors.

Applicants time and again have made clear that the government's factual claims about how a bump stock operates are untrue. Reply Brief at 6-7. Applicants have explained the numerous and repeated factual errors in Defendants' Final Rule and in their briefing, wherein Defendants now suddenly claim bump stocks in 2019 somehow function precisely the opposite than they did a decade before. *Id.* ATF has changed not only its interpretation of the law, but its fundamental recitation of the facts — all designed to reach the result it wishes.

In its opinion below, the district court adopted some of those incorrect factual statements. If the circuit court were to rely on these untrue statements of fact, then it cannot possibly apply the law correctly, because a proper understanding of the actual operation of bump stocks is the lynchpin of this case.[6] Applicants offered the district court exhibits, evidence, videos, personal experience of their counsel, and an expert affidavit, all explaining that the government's current statements as to how bump stocks operate are untrue.[7] In response, the government has produced nothing but its own rule to allege that bump stocks operate any differently than Applicants claim.

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[6] When confronted on its factual errors, the government seeks to redirect, talking about how its past "interpretations **of the [law]**" do not prohibit its taking a new position now. Response to Petition for Mandamus ("Resp.") at 18-19 (emphasis added).

[7] For example, the government cannot explain away this simple distinction between a machinegun and a semi-automatic firearm equipped with a bump stock: While an untrained shooter can fire a machinegun with one hand and no practice, no person could bump fire a semi-automatic weapon with just one hand (the government admits this), and not effectively without significant practice.

Ironically, the district court stated that, "[t]o appreciate how the new interpretation of the definition of machine gun implicates bump-stock devices, one must understand how the device works." Opinion and Order at 7. Yet the court immediately makes clear that it **does not understand** how bump stocks operate. The court adequately describes what a bump stock **is**, but not how it **works**. The court claims that a "bump stock … **harnesses** the rearward recoil energy from the shot **causing** the weapon to slide back…." *Id.* (emphasis added). Not only is this untrue, it doesn't make any sense. Recoil is explained by physics — Newton's Third Law of Motion. When a round is fired from a rifle, the rifle "slides back" into the bump stock all on its own — not because the bump stock "harnesses" the energy or serves any function at all in the process, but simply because that's the direction recoil (and thus the rifle) moves.

The district court also adopts the government's assertion that a bump stock somehow "initiat[es] [a] firing sequence" — as if this sequence is automatic and without additional shooter input. *Id.* at 7. Yet as Applicants have explained, bump fire — with or without a bump stock — is nothing more than rapidly-occurring, semi-automatic fire, that requires

constant and varying degrees of human input in order to continue.[8] Bump fire is a technique that depends on human skill and practice — not on the presence or absence of a plastic stock.

CONCLUSION

The government has failed to contest two of Applicants' basic pronouncements in this matter, which must prove fatal to the government's case as a matter of law. First, the government admits the statutory definition of a machinegun is clear and unambiguous. *See* Mandamus Petition 11. Second, the government admits this unambiguous definition does not apply to bump stocks, at least in part because rifles equipped with bump stocks fire only one shot for every "single function of the trigger." *Id.*

Nevertheless, the government wishes to "expand" the statute. Reply Brief at 2. The government claims it irrelevant that, for well over a decade, ATF concluded bump stocks were perfectly legal under federal law, nothing more than unregulated firearm accessories. Suddenly now, the government insists that the courts must quickly adopt the agency's **current** interpretation on bump stocks, order all bump stocks be destroyed by this coming Tuesday, and sweep all other concerns under the rug. This, because the government believes its current

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[8] The government has admitted that "[t]his litigation involves 'bump stock-type' devices — which '[s]hooters use … to **mimic automatic fire**…." Resp. 3 (emphasis added). Indeed, the government admits that a bump stock does no more than "allow[] '**rapid fire**' operation **of the semiautomatic** firearm to which [it is] affixed." Resp. 8 (emphasis added). But just because something quacks like a duck does not make it a machinegun. Gun Owners of America v. Barr, Brief in Support of Motion for Preliminary Injunction, Docket No. 18-1429 (W.D. Mich.) (Dec. 26, 2018) at 17. The statute clearly contains a mechanical/scientific definition, not a results-oriented one. Congress never banned fast shooting; it banned machineguns. Regardless, it is not up to the ATF to outlaw things that are **like** machineguns — that is for Congress to decide.

understanding is the "best interpretation" of the statute — an interpretation that somehow has remained hidden for 85 years.

Yet the government has no authority to "interpret" a statute unless the statute is ambiguous. But the government never argued that the statute was ambiguous here. The district court, however, jumped to the rescue, declaring the statutory definition unclear. Likewise, the government's tortured and atextual understanding of the statutory terms cannot prevail unless significant deference is afforded the agency. The government argued it should receive no deference, but once again the district court stood ready to defer completely to the agency. Finally, the government's case must fail unless it is permitted to twist the facts, because the operation of bump stocks (properly understood) do not fit even with the regulatory definitions ATF has promulgated. For the reasons above (and others there is simply no time to brief), the district court's opinion below is in clear error, both factually and legally, and this further weighs in favor of the granting of a stay, so that the Court has the time to properly consider Appellants' appeal.

For the foregoing reasons, Applicants hereby respectfully request that this Court stay the effective date of government's Final Rule until a time that is at least 72 hours *after*[9] disposition of their appeal by the court of appeals. Appellants respectfully request that this Court rule on their motion as soon as possible. In the event that no determination can be made

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[9] This period of time will give Applicants the necessary time to seek a further stay and/or review by this Court, should the court of appeals' ruling be unfavorable. This time will also provide bump stock owners an opportunity to learn of the court of appeals' opinion, and make a decision as to their continued possession of bump stocks.

today and a stay is issued after midnight tonight, Applicants request that it be issued *nunc pro tunc* today, March 25, 2019.

Respectfully submitted,

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March 25, 2019

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Applicants Gun Owners of America, Inc., Gun Owners Foundation, and Virginia Citizens Defense League state that they are not publicly held corporations, do not issue stock, and do not have any parent corporations.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Emergency Application for Stay Pending Appellate Review has been made, this 25th day of March, 2019, by depositing the required number of copies thereof in the United States mail, First-Class, postage prepaid, addressed respectively to counsel of record for the parties as follows:

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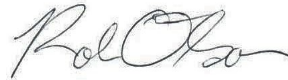

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APPENDIX TO
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Directed to the Honorable Sonia Sotomayor
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Sixth Circuit

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Attachment A: Gun Owners of America v. Barr, No. 19-1298, Order Denying Motion for Stay (Mar. 25, 2019)

No. 19-1298

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 25, 2019
DEBORAH S. HUNT, Clerk

GUN OWNERS OF AMERICA, INC., et al.,)
)
Plaintiffs-Appellants,)
)
v.) ORDER
)
WILLIAM P. BARR, U.S. Attorney General, et al.,)
)
Defendants-Appellees.)

Before: COLE, Chief Judge; KEITH and CLAY, Circuit Judges.

The plaintiffs appeal the denial of their motion for a preliminary injunction in this action challenging the final rule of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") regulating bump stocks. Bump-Stock-Type Devices, 83 Fed. Reg. 66514, 2018 WL 6738526 (Dec. 26, 2018) ("Final Rule"). The Final Rule is effective on March 26, 2019, and the plaintiffs move to stay the effective date pending appeal.

The Final Rule amends ATF regulations

> to clarify that bump-stock-type devices—meaning "bump fire" stocks, slide-fire devices, and devices with certain similar characteristics—are "machineguns" . . . because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. Specifically, these devices convert an otherwise semiautomatic firearm into a machinegun by functioning as a self-acting or self-regulating mechanism that harnesses the recoil energy of the semiautomatic firearm in a manner that allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter. Hence, a semiautomatic firearm to which a bump-stock-type device is attached is able to produce automatic fire with a single pull of the trigger.

Bump-Stock-Type Devices, 83 Fed. Reg. at 66514. The Final Rule provides that current possessors of bump stock-type devices "will be required to destroy the devices or abandon them at an ATF office prior to" the effective date of March 26, 2019. *Id.*

The plaintiffs must demonstrate "that the circumstances justify" the exercise of discretion to grant a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Four factors guide our consideration: (1) whether they have a likelihood of success on the merits; (2) whether they will suffer irreparable harm in the absence of a stay; (3) whether the requested stay will substantially injure other interested parties; and (4) where the public interest lies. *Id*. at 434. The final two stay factors , the harm to others and the public interest, "merge when the Government is the opposing party." *Id*. at 435.

In addressing the plaintiffs' likelihood of success on the merits, we consider the likelihood that they can demonstrate an abuse of discretion by the district court in denying preliminary injunctive relief. *See Mich. St. A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 662 (6th Cir. 2016). The plaintiffs have not shown the likelihood of an abuse of discretion. We also note that two other district courts have denied preliminary relief enjoining the Final Rule. *See Aposhian v. Barr*, 2019 WL 1227934 (D. Utah Mar. 15, 2019), *appeal docketed*, No. 19-4036 (10th Cir. Mar. 18, 2019); *Guedes v. ATF*, 356 F. Supp. 3d 109 (D.D.C. 2019), *appeal docketed*, Nos. 19-5042/5043/5044 (D.C. Cir. Feb. 26, 2019).

The government concedes that the plaintiffs will suffer irreparable harm if the implementation of the Final Rule is not enjoined. However, the public interest in safety supports the denial of a stay pending appeal.

Balancing these factors, we conclude that a stay pending appeal is not warranted. Accordingly, the motion for a stay pending appeal is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk