No. 19-1298

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GUN OWNERS OF AMERICA, INC., et al.

Plaintiffs-Appellants,

GUN OWNERS OF CALIFORNIA, INC.,

Movant-Appellant,

v.

WILLIAM P. BARR, et al.

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Michigan

BRIEF FOR APPELLEES

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STATEMENT REGARDING ORAL ARGUMENT

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

INTRODUCTION

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

The agency concluded that bump stocks fall within the plain terms of the statute. *Bump-Stock Type Devices*, 83 Fed. Reg. 66,514 (Dec. 26, 2018) (Rule). The statutory ban applies to weapons that permit a shooter to fire "automatically more than one shot, without manual reloading, by a single function of the trigger," 26 U.S.C. § 5845(b). Plaintiffs do not seriously contest that bump stocks fire "automatically" within the common understanding of that word. They urge, however, that bump stocks do not operate by a "single function of the trigger." They contend that because the weapon moves back and forth, causing the trigger to repeatedly "bump" the shooter's stationary finger after an initial pull on the trigger, the weapon is not a machinegun. But Congress used the capacious term "function" precisely to foreclose this type of attempt to circumvent the statute. And plaintiffs' argument is squarely at odds with decisions of this Court and other courts that have recognized

that individuals cannot evade Congress's ban on machineguns by devising novel ways of generating an automatic firing sequence.

Because plaintiffs' legal position is incorrect, they are not entitled to the preliminary injunction they seek. Moreover, as the district court recognized in denying an injunction and as this Court recognized in denying a stay pending appeal, the overwhelming interest in protecting public safety far outweighs plaintiffs' asserted injury of being unable to possess bump stocks unless and until they prevail in this litigation.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction over their statutory and constitutional claims under 28 U.S.C. § 1331. The district court denied a preliminary injunction on March 21, 2019. Opinion, RE 48, PageID #453-70. Plaintiffs filed a timely notice of appeal the following day. *See* RE 49, PageID #471; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUE

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

The question presented is whether the district court correctly denied the plaintiffs' request for a preliminary injunction because plaintiffs failed to demonstrate

a likelihood of success on the merits and because the balance of the equities strongly militates against injunctive relief.

STATEMENT OF THE CASE

A. Statutory Background

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

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

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

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

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

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

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

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

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

Since the expiration in 2004 of the federal ban on certain semiautomatic "assault weapons,"[3] ATF has received increasing numbers of classification requests for various types of bump stock devices. 83 Fed. Reg. at 66,516. Inventors and manufacturers seek to produce "devices that permit shooters to use semiautomatic rifles to replicate automatic fire," but do so "without converting these rifles into 'machineguns.'" *Id.* at 66,515-16; *see id.* at 66,516 ("Shooters use [these devices] with semiautomatic firearms to accelerate the firearm's cyclic firing rate to mimic automatic fire"). To determine whether such devices fall within the statutory definition of a "machinegun," 26 U.S.C. § 5845(b), ATF must determine whether they allow a

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

shooter to fire "automatically more than one shot . . . by a single function of the trigger."

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

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

Expecting further classification requests for devices designed to increase the firing rate of semiautomatic weapons, ATF also published a public ruling announcing

its interpretation of "single function of the trigger," reviewing the National Firearms Act and its legislative history to explain that the term denoted a "single pull of the trigger." Add. 2-4.

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

C. The 2018 Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Procedural History

Plaintiffs—three individuals and three associations of gun owners—filed suit on December 26, 2018. Compl., RE 1, PageID #1. Plaintiffs asserted that the Rule violated the Administrative Procedure Act (APA) as contrary to law and in excess of the agency's authority, *id.* at PageID #24-25, and also advanced Fifth Amendment takings and Fourteenth Amendment due process claims, *id.* at PageID #25-26. Plaintiffs sought a preliminary injunction based on their APA claims. Preliminary Injunction Motion, RE 9, PageID #163-65.

The district court denied plaintiffs' motion on March 21, 2019. Affording *Chevron* deference to the Department's interpretations of the statutory terms at issue—because, in the court's view, "[t]he statutory scheme suggests that Congress intended the ATF to speak with the force of law when addressing ambiguity or filling a space in the relevant statutes," Opinion, RE 48, PageID #462—the court rejected plaintiffs' APA challenges.

At the first step of the *Chevron* framework, the district court concluded that "Congress has not directly addressed the precise question at issue." Opinion, RE 48, PageID #464. The court believed that the term "automatically" is ambiguous as "applied to bump stocks," because "the statutory definition of machine gun does not answer" the question "whether the word 'automatically' precludes any and all

application of non-trigger, manual forces in order for multiple shots to occur." *Id.* at PageID #464-65. The district court noted, however, that "many 'automatic' devices require some degree of manual input," and that "machine guns which indisputably shoot automatically often require physical manipulation by the shooter, including constant rearward pressure on the trigger." *Id.* at PageID #465. The court therefore concluded that "ATF's interpretation of the word 'automatically' is a permissible interpretation" and "is consistent with judicial interpretations of the statute." *Id.* (citing *United States v. Olofson*, 563 F.3d 652, 658 (7th Cir. 2009)).

The district court next held that "the statutory definition of machine gun is ambiguous with respect to the phrase 'single function of the trigger'" as between "the external impetus for the mechanical process" of firing the weapon and "the mechanical process which causes each shot to occur." Opinion, RE 48, PageID #467. The district court concluded that the interpretation advanced in the Rule was "a permissible interpretation" that is "consistent with judicial opinions interpreting the statute," and noted that "ATF has been interpreting the disputed phrase in a similar manner at least since 2006." *Id.* at PageID #466.

The district court also rejected plaintiffs' arguments that the Rule was otherwise arbitrary and capricious. The court first observed that the Rule was not arbitrary and capricious simply because "rubber bands and belt loops could be used to increase the rate of fire [of] a semiautomatic weapon." Opinion, RE 48, PageID #467. As the court recognized, "ATF specifically addressed this argument" in the Rule, and

explained that, unlike a bump stock, "rubber bands and belt loops do not harness the recoil energy when a shot is fired." *Id.*

Second, the district court rejected plaintiffs' assertion that the Rule is arbitrary and capricious "because ATF previously concluded that bump stocks were not machine guns." Opinion, RE 48, PageID #468. The court noted that "[t]he standard for reviewing an agency's rule or interpretation of a statute does not change just because the agency reversed course and altered its prior interpretation," so long as the agency provides a reasoned explanation for its action and acknowledges that it is changing positions. *Id.* The court held that the Rule met this standard by "acknowledg[ing] how [the agency] previously treated bump stocks" and "set[ting] forth sufficient reasons for its new interpretations." *Id.*

For these reasons, the district court concluded that plaintiffs had not demonstrated a likelihood of success on the merits. The district court also explained that the remaining preliminary injunction factors did not favor entry of a preliminary injunction, observing that "Congress restricts access to machine guns because of the threat the weapons pose to public safety," and that "[r]estrictions on bump stocks advance the same interest." Opinion, RE 48, PageID #469. Although the district court accepted that plaintiffs could establish irreparable harm, it recognized that plaintiffs' arguments that an injunction was in the public interest largely overlapped with their asserted harms or their claims on the merits, and added nothing that would support entry of a preliminary injunction. *Id.* at PageID #469-70.

2. Plaintiffs appealed the denial of the preliminary injunction and sought a stay of the effective date of the Rule pending appeal in this Court. A unanimous panel of this Court denied the requested stay, concluding that "plaintiffs have not shown a likelihood of an abuse of discretion" in the district court's decision to deny preliminary injunctive relief and that "the public interest in safety supports the denial" of a stay. *Gun Owners of Am., Inc. v. Barr*, 2019 WL 1395502, at *1 (6th Cir. Mar. 25, 2019). Plaintiffs then sought a stay pending appeal from the Supreme Court, which likewise denied the requested relief. *Gun Owners of Am., Inc. v. Barr*, 139 S. Ct. 1406 (2019) (mem.).

SUMMARY OF ARGUMENT

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

And Congress did not do so. As the Rule explains—and as ATF has long recognized—the term "single function of the trigger" describes a shooter's "single

pull of the trigger" for most weapons. Congress employed the broad term "function" in the statute to ensure that the definition of "machinegun" sweeps in the full range of actions a shooter can take to initiate a firing sequence, thus precluding creative attempts to evade the ban on machineguns. A bump stock—which enables a shooter to produce a continuous firing cycle through a single pull of the trigger—falls squarely within the scope of the statute.

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

Plaintiffs' extended discussion of *Chevron* deference and the D.C. Circuit's decision in *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1 (D.C.

Cir. 2019), likewise fails to advance their claims. Deference is unnecessary where, as here, the Rule properly interprets the statute, and nothing in the Rule suggests that the agency adopted anything other than what it perceived to be the best interpretation of the statute. The government thus does not rely on *Chevron* deference, but if this Court were to employ that framework, plaintiffs would still not be entitled to a preliminary injunction.

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

STANDARD OF REVIEW

This Court reviews the denial of a preliminary injunction for abuse of discretion, examining its underlying legal conclusions de novo and any factual determinations for clear error. *Pulte Homes, Inc. v. Laborers' Int'l Union of N. Am.*, 648 F.3d 295, 304 (6th Cir. 2011). A party seeking a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Platt v. Board of Comm'rs on Grievances & Discipline of Ohio Sup. Ct.*, 769 F.3d 447, 453 (6th Cir. 2014) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

ARGUMENT

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

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

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

Unlike a regular stock, a bump stock channels the recoil from the first shot into a defined path, allowing the contained weapon to slide back a short distance—approximately an inch and a half—and shifting the trigger away from the shooter's trigger finger. 83 Fed. Reg. at 66,532. This separation allows the firing mechanism to reset. *Id.* When the shooter maintains constant forward pressure on the weapon's

barrel-shroud or fore-grip, the weapon slides back along the bump stock, causing the trigger to "bump" the shooter's stationary finger and fire another bullet. *Id.* Each successive shot generates its own recoil, which in turn causes the weapon to slide along the bump stock in conjunction with forward pressure, returning to "bump" the shooter's trigger finger each time, initiating another cycle in turn.

To assist the shooter in holding a stationary position with the trigger finger and sustain the firing process, bump stocks are fitted with an "extension ledge." 83 Fed. Reg. at 66,516, 66,532. The shooter places the trigger finger on the extension ledge, ensuring that it is positioned to be "bumped" with each successive cycle. *Id.* at 66,532. This continuous cycle of fire-recoil-bump-fire lasts until the shooter releases the trigger, the weapon malfunctions, or the ammunition is exhausted. *Id.* at 66,518.

The question in this case is whether a bump stock converts a semiautomatic firearm into a "machinegun" by enabling a shooter to initiate and maintain a continuous process that "automatically" fires hundreds of rounds per minute by a "single function of the trigger." 26 U.S.C. § 5845(b). Because it does, plaintiffs have no likelihood of success on the merits.

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

Two terms in the statutory definition are relevant to the disposition of plaintiffs' contentions. The definition encompasses any weapon that shoots (1) "automatically more than one shot" (2) "by a single function of the trigger." 26

U.S.C. § 5845(b). As the Rule explains, the term "automatically" refers to whether the weapon or device is a self-acting or self-regulating mechanism, while the term "single function of the trigger" examines whether the shooter is able to initiate that self-acting or self-regulating process by a single pull of the trigger or other analogous single step. Plaintiffs' argument focuses almost exclusively on the assertion that a bump stock does not operate by a single function of the trigger, and we therefore address that aspect of the definition first.

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

a. For over a decade, ATF has recognized that the phrase "single function of the trigger" includes a "single pull of the trigger." *See* 83 Fed. Reg. at 66,517; Add. 2-4. This reflects the common-sense understanding of how most weapons are fired: by the shooter's pull on a curved metal trigger. Courts have frequently applied this straightforward understanding of the term. For example, the Supreme Court has observed that the National Firearms Act treats a weapon that "fires repeatedly with a single pull of the trigger" as a machinegun, in contrast to "a weapon that fires only one shot with each pull of the trigger." *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994). Similarly, the Tenth Circuit recognized that a weapon qualified as a

machinegun where it could be fired automatically "by fully pulling the trigger." *United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977).

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

"[o]ther guns [that] require a separate pull of the trigger for every shot fired . . . are not properly designated as machine guns." *Id.*

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

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

trigger to function in rapid succession" qualified as a machinegun); *Fleischli*, 305 F.3d at 655-56 (holding that a minigun fired by "an electronic switch" was a machinegun).

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

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

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

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

After reviewing the Akins Accelerator "based on how it actually functioned when sold," ATF corrected its erroneous earlier decision classifying the device as not a machinegun. 83 Fed. Reg. at 66,517. In doing so, it relied in part on the legislative history of the National Firearms Act to conclude "that the phrase 'single function of the trigger' . . . was best interpreted to mean a 'single pull of the trigger.'" *Id.*; *see* Add. 2-4. The agency concluded that installing the Akins Accelerator on a semiautomatic

rifle "resulted in a weapon that '[w]ith a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.'" 83 Fed. Reg. at 66,517 (quoting *Akins v. United States*, No. 8:08-cv-988, slip op. at 5 (M.D. Fla. Sept. 23, 2008)).

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

2. In arguing that bump stocks do not allow a semiautomatic rifle to fire continuously by a "single function of the trigger," plaintiffs insist that the phrase "refers to the mechanical process through which the trigger goes," and that "one complete function of the trigger" occurs "each time the trigger of a semiautomatic firearm is depressed and reset." Br. 29-30, 32; *see also* Br. 34 (arguing that a bump

stock equipped rifle does not fire more than one round by a single pull of the trigger because the trigger "lose[s] contact with the finger and manually reset[s]" (emphasis omitted)). As courts have consistently recognized, however, "function" is not constrained to the precise mechanical operation of a specific type of trigger, but instead looks to the "action that enables the weapon to 'shoot . . . automatically . . . without manual reloading,' not the 'trigger' mechanism," *Evans*, 978 F.2d at 1113 n.2.

Plaintiffs do not dispute that the shooter's initial pull of the trigger "initiate[s] the firing sequence" of the weapon, *Jokel*, 969 F.2d at 135, and they likewise do not dispute that the shooter's trigger finger remains stationary on the bump stock's extension ledge after the initial shot while the weapon continues to discharge in a continuous cycle. *See* Br. 2-3. As the Rule explains, a shooter using a bump stock can "maintain a continuous firing cycle after a single pull of the trigger" by keeping the trigger finger stationary and positioned to be repeatedly "bumped," "without repeated manual manipulation of the trigger by a shooter." 83 Fed. Reg. at 66,532. And to conclude otherwise permits precisely the sort of circumvention of the National Firearms Act that Congress intended to prevent. *See Fleischli*, 305 F.3d at 655; *Evans*, 978 F.2d at 1113 n.2; *cf. Abramski v. United States*, 573 U.S. 165, 174 (2014) (rejecting interpretation of criminal statute that would have "enable[d] evasion of the firearms law").

Plaintiffs' theory is apparently that no aftermarket device could convert an AR-15 or similar semiautomatic rifle into a "machinegun," as long as it permits the

weapon's trigger mechanism to operate as originally designed. A rifle equipped with the Akins Accelerator, for example, would no longer qualify as a machinegun, notwithstanding the Eleventh Circuit's contrary ruling, *Akins*, 312 F. App'x at 200, because each shot fired requires that the trigger separate from the shooter's finger, allowing the firing mechanism to reset, before the weapon is propelled forward by the internal spring in the device to "bump" the shooter's stationary finger, *see* 83 Fed. Reg. at 66,517. Indeed, even a device that mechanically and automatically pulled and released the trigger on an AR-15 rifle on the shooter's behalf at the flip of a switch would not qualify as a machinegun, because each bullet fired would require that the weapon's original trigger be "depressed and reset." Br. 32. The weapon in *Camp*, for example—which used a motor activated by a switch to repeatedly pull and release the weapon's trigger, 343 F.3d at 744-45—would not qualify as a machinegun on plaintiffs' interpretation. The fact that the shooter produces a continuous firing cycle by taking only one step—flipping the switch—would be immaterial.

Plaintiffs' proposed understanding would also remove from the scope of the statute a variety of other devices that ATF has treated as machineguns. As the Rule notes, ATF has addressed a host of devices that enable shooters to create and sustain a continuous firing cycle. 83 Fed. Reg. at 66,517-18. For example, in 2016, ATF classified "LV-15 Trigger Reset Devices" as machinegun parts. *Id.* at 66,518 n.4; *see* Add. 11-21. These devices attached to an AR-15 rifle and used a battery-operated "piston that projected forward through the lower rear portion of the trigger guard" to

push the trigger forward, enabling the shooter to pull the trigger once and "initiate and maintain a firing sequence" by continuing the pressure while the piston rapidly reset the trigger. 83 Fed. Reg. at 66,518 n.4. ATF took the same approach to another device—a "positive reset trigger"—that used the recoil energy of each shot to push the shooter's trigger finger forward. *See id.*; Add. 5-10. Yet another example is the "AutoGlove," a glove with a battery-operated piston attached to the index finger that pulled and released the trigger on the shooter's behalf when the shooter held down a plunger to activate the motor. Add. 22-28. Under plaintiffs' definition, such devices would not qualify as machineguns even though they operated, from the shooter's perspective, identically to a machinegun and produce the same results. It is thus unsurprising that plaintiffs identify no case adopting their reading of the statutory text.

Plaintiffs likewise err in urging (Br. 25-26) that bump stocks do not fall within the scope of the statute because they require "a single function of the trigger *and* the shooter's additional manual input" or "added physical pressure" in maintaining pressure on the fore-grip or barrel-shroud of the weapon. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 35, 46 (D.C. Cir. 2019) (per curiam) (Henderson, J., concurring in part and dissenting in part). Neither plaintiffs nor the dissent they rely on take issue with the fact that "a quite common feature of weapons that indisputably qualify as machine guns is that they require both a single pull of the trigger *and* the application of constant and continuing pressure on the trigger after it is pulled." *Id.* at 30. The distinctive feature of a bump stock is simply that it relocates

the focus of that pressure; instead of applying continuous pressure to the trigger itself, the shooter applies continuous pressure to the front of the weapon to enable continuous "bumping" of the stationary trigger finger. But that difference is immaterial: Congress did not ban machineguns only to have that ban be circumvented merely by a shift in the locus of a shooter's pressure on the weapon. Indeed, many weapons require a shooter to use their off hand to bear the weight of the weapon or otherwise exert pressure on the gun while firing, and no one contends that a weapon is not a machinegun because of that manual input.

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

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

A rifle equipped with a bump stock plainly fits within the ordinary meaning of "automatically." The bump stock "performs a required act at a predetermined point"

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

2. Plaintiffs do not seriously urge that the operation of a bump stock falls outside the common understanding of "automatically." Instead, plaintiffs assert that "the boundaries of the term" are defined by the statutory phrase "single function of the trigger." Br. 25. As discussed, plaintiffs' understanding of "single function of the trigger" is incorrect, and their suggestion that "automatically" is superfluous reflects their misunderstanding of the statute. The statute encompasses weapons which allow a shooter to fire automatically, that is, "as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds." 83 Fed. Reg. at 66,554. The single function of the trigger here results in such automatic firing.

II. Plaintiffs' Remaining Arguments Are Without Merit

Plaintiffs' remaining arguments are similarly unpersuasive. ATF's interpretation does not rely on any disputed facts; ATF's interpretation does not

inadvertently treat common household items as bump stocks; and plaintiffs' extended discussion of *Chevron* deference is misplaced.

A. Although plaintiffs urge (Br. 40) that the Rule is based on perceived factual errors, their argument recapitulates their statutory assertions. For example, plaintiffs note that ATF had previously concluded that a bump stock did not operate "automatically" or "harness[] the recoil energy" of a gunshot because it lacked mechanical parts or springs, and argue that ATF was correct in its prior interpretation. Br. 40. Plaintiffs thus argue in favor of an understanding of the statute that ATF correctly rejected on further review. That is not an argument about disputed facts. As the Rule explains in detail, the agency had premised its earlier determination on the mistaken premise that the term "automatically" in 26 U.S.C. § 5845(b) required the presence of springs or similar mechanical parts. ATF's determination that a bump stock can operate "automatically" even in the absence of mechanical parts or springs does not represent a "factual error."

Similarly, plaintiffs rely on an ATF classification letter that observed that a shooter must apply pressure "to the handguard/gripping surface with the shooter's support hand" in order for the weapon to maintain a continuous firing cycle and described that pressure as the shooter "pull[ing] the receiver assembly forward to fire each shot." Exhibit 18, RE 1-19, PageID #75; *see* Br. 40. But no one disputes that a shooter must maintain "constant forward pressure with the non-trigger hand on the barrel-shroud or fore-grip of the rifle" to produce a continuous cycle of fire with a

bump stock. 83 Fed. Reg. at 66,518; *accord id.* at 66,532. The question is simply whether such a weapon qualifies as a machinegun under the statutory definition. And plaintiffs do not dispute that ATF has the authority to correct past classification errors that misapplied the legal standard to the facts of a weapon's operation, as it did in revisiting the proper classification of the Akins Accelerator. *Akins*, 312 F. App'x at 200; Add. 2-4.

In any event, to the extent that plaintiffs actually intend to contest the Rule's factual statements about how bump stocks operate, those challenges are without merit. The agency's understanding of how a firearm operates is entitled to deference because it reflects the agency's broad experience and technical expertise. *See Federal Power Comm'n v. Florida Power & Light Co.*, 404 U.S. 453, 463 (1972) (noting that courts should defer to an agency's analysis of "purely factual question[s]" that "depend[] on 'engineering and scientific' considerations" in light of "the relevant agency's technical expertise and experience"); *Kentucky Res. Council, Inc. v. EPA*, 467 F.3d 986, 991 (6th Cir. 2006); *see also Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 603 (1st Cir. 2016) (explaining that review of a silencer was "within [ATF's] special competence" and required "a high level of technical expertise," entitling the agency to deference); *York v. Secretary of Treasury*, 774 F.2d 417, 420 (10th Cir. 1985) (rejecting factual challenge to ATF's classification of a weapon as a machinegun). Plaintiffs have identified nothing in the factual underpinnings of the Rule that approaches error under this standard, or any other.

B. Plaintiffs likewise err in complaining (Br. 42) that the Rule is arbitrary and capricious because individuals can "bump fire" weapons by other means, such as through the use of a rubber band or belt loop, and that such bump-fire techniques are unregulated. As the Rule explains, an item like a rubber band does not operate "automatically" because it is "not a 'self-acting or self-regulating mechanism'"; "[w]hen such items are used for bump firing, no device is present to capture and direct the recoil energy; rather, the shooter must do so." 83 Fed. Reg. at 66,533. Thus, a shooter must manually "harness the recoil energy" and "control the distance that the firearm recoils and the movement along the plane on which the firearm recoils." *Id.* By contrast, a bump stock "direct[s] the recoil energy of the discharged rounds into the space created by the sliding stock . . . in constrained linear rearward and forward paths," relieving the shooter of these tasks and enabling "a continuous firing cycle." *Id.* at 66,532.

For the same reasons, plaintiffs' suggestions that the Rule could lead to the classification of "all semiautomatic firearms" as machineguns and that the Rule unsettles "'the longstanding distinction between 'automatic' and 'semiautomatic' in the firearms context,'" Br. 46 (quoting *Guedes*, 920 F.3d at 44-45 (Henderson, J., concurring part and dissenting in part)), are baseless. The statute specifically contemplates that weapons that ordinarily are not machineguns can be modified to fire "automatically more than one shot, without manual reloading, by a single function of the trigger," by specifying that the term "machinegun" includes any part or parts

"designed and intended solely and exclusively" to "convert[] a weapon into a machinegun." 26 U.S.C. § 5845(b). A bump stock is such a part because it enables a shooter wielding an otherwise semiautomatic rifle to produce a continuous cycle of automatic fire with a single pull of the trigger. Plaintiffs do not (and cannot) explain how an unmodified semiautomatic rifle could meet the statutory definition.

C. Plaintiffs devote much of their brief to contending that *Chevron* deference does not apply in this case. *See* Br. 9-21. Deference to the agency is not required to resolve this case: plaintiffs' arguments cast no doubt on the correctness of the Rule's implementation of the statute. *See Edelman v. Lynchburg Coll.*, 535 U.S. 106, 114 (2002) (observing that "there is no occasion to defer and no point in asking what kind of deference, or how much" would apply where the agency has adopted "the position [the court] would adopt" when "interpreting the statute from scratch").

Chevron deference applies where Congress has delegated to an agency the authority to fill gaps in a statute or engage in interpretations that will have the force of law. The relevant threshold question is therefore "whether *Congress* would have intended, and expected, courts to treat an agency's rule, regulation, application of a statute, or other agency action as within, or outside, its delegation to the agency of 'gap-filling' authority." *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 173 (2007); *see Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 843-44 (1984) (deference appropriate where "Congress has explicitly left a gap for the agency to fill"

or where there is an "implicit" "legislative delegation to an agency on a particular question").

The D.C. Circuit believed that Congress gave the Attorney General the authority to make possession of a bump stock unlawful even if it were not illegal under the plain terms of the statute. *See Guedes*, 920 F.3d at 19. Yet as a general matter, "criminal laws are for courts, not for the Government, to construe." *Abramski* 573 U.S. at 191. Congress, of course, can delegate substantial authority to Executive Branch agencies to engage in rulemaking that may lead to criminal consequences. For example, Congress has delegated to the Securities and Exchange Commission the authority to "define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent" in connection with tender offers. 15 U.S.C. § 78n(e); *see also Loving v. United States*, 517 U.S. 748, 768 (1996) (noting that the Supreme Court has regularly "upheld delegations whereby the Executive or an independent agency defines by regulation what conduct will be criminal"). And those agency determinations, where issued pursuant to delegated authority, receive deference no less than agency determinations reached in purely civil contexts. *See Babbitt v. Sweet Home Chapter of Cmtys. for a Greater Or.*, 515 U.S. 687, 704 n.18 (1995); *Guedes*, 920 F.3d at 24-27; *Esquivel-Quintana v. Lynch*, 810 F.3d 1019, 1023-24 (6th Cir. 2016), *rev'd on other grounds*, 137 S. Ct. 1562 (2017).

As we have explained, a court should defer to the agency's technical expertise in analyzing a particular weapon in making classification decisions. *See supra* p. 31.

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

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

Nothing in the Rule suggests that its legality depends on the application of *Chevron* deference, or that the agency believed *Chevron* deference was required to uphold the Rule. The Rule repeatedly emphasizes that it is announcing the "best interpretation" of the statutory terms used to define a machinegun, *see* 83 Fed. Reg. at 66,517, 66,518, 66,521; *accord id.* at 66,527 (stating the interpretations in the Rule "accord with the plain meaning" of the terms), and explains that the Rule reflects the Department's belief "that bump-stock-type devices must be regulated because they satisfy the statutory definition of 'machinegun,'" *id.* at 66,520; *accord id.* at 66,529, 66,535. The Rule revokes erroneous classification letters that concluded that bump stocks were not machineguns within the statutory definition—an action already within the agency's authority. *See id.* at 66,516, 66,530, 66,531; *Akins*, 312 F. App'x at 200. The Rule also makes "clarify[ing]" amendments to the term "machinegun" in regulations governing manufacturers, importers, dealers, and collectors, as well as registration provisions, to make it clear on the face of the regulation that bump stocks are within the statutory definition. 83 Fed. Reg. at 66,519. And the Rule further serves to notify possessors of bump stocks of the Department's understanding of the

relevant statutory terms and to provide appropriate methods for disposal within a specified timeframe to avoid criminal liability.

For similar reasons, the fact that the Department chose to make these changes through a notice-and-comment rulemaking process does not, as the district court apparently believed, make the Rule a legislative rule. *See* Opinion, RE 48, PageID #463. The Department could have revoked its prior classification letters through a letter ruling, as it has done in the past, including when it reclassified the Akins Accelerator. *See Akins*, 312 F. App'x at 200; Add. 2-4. And the Department need not have amended its regulatory definitions of the term "machinegun," but could instead have simply begun applying the regulatory requirements to bump stocks without altering the definitions—again, as it did with the Akins Accelerator. That the Department used a more public process to raise awareness of its corrected interpretation and to put the public on notice of the status of bump stocks is a virtue, but does not alter the basic effect of the Rule.

Nor does the fact that the Rule refers to an "effective date" alter the analysis. *See Guedes*, 920 F.3d at 20. Before mentioning an "effective date," the Rule is explicit that ATF has "misclassified some bump-stock-type devices and therefore initiated this rulemaking," which was "specifically designed to notify the public about changes in ATF's interpretation of the [National Firearms Act] and the [Gun Control Act] and to help the public avoid the unlawful possession of a machinegun." 83 Fed. Reg. 66,523; *accord id.* (stating that the Rule is designed to "ensur[e] that the public is aware of the

correct classification of bump-stock-type devices under the law"); *id.* at 66,531 (observing that the agency has "authority to reconsider and rectify its classification errors" (quotation omitted)); *id.* at 66,516 (same). Plaintiffs contend that reference to an effective date means that the agency believes it was changing the law. On the contrary, it explained that it had previously "misclassified" bump stocks and that its prior classifications were "errors" precisely because those devices were machineguns at the time of classification. In any event, whether conduct occurring before the "effective date" could be prosecuted is irrelevant to resolving this case, as the Rule makes clear that, in light of the agency's previous misclassification, it would first inform the public of its determination before taking enforcement action.

Finally, were this Court to agree with the D.C. Circuit that the purpose and effect of the Rule is to prescribe prospective criminal liability, and that Congress delegated authority to the Attorney General to promulgate such a regulation through the Gun Control Act and the National Firearms Act, *see* 18 U.S.C. § 926(a); 26 U.S.C. § 7805(a), plaintiffs would not be entitled to a preliminary injunction. For the same reasons that the Rule represents the correct understanding of the statutory text, the Rule at a minimum reflects a *permissible* reading of the statutory terms. *See Guedes*, 920 F.3d at 31-32; Opinion, RE 48, PageID #464-66.

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

As plaintiffs have failed to demonstrate a likelihood of success on the merits, this Court need not address the remaining preliminary injunction factors. But the remaining factors—irreparable harm, the harm to others from an injunction, and the public interest, *see Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)—decisively weigh against a preliminary injunction.

As the district court recognized, and as this Court explained in denying a stay pending appeal, "the public interest in safety supports the denial" of preliminary relief. *Gun Owners of Am., Inc. v. Barr*, 2019 WL 1395502, at *1 (6th Cir. Mar. 25, 2019); *accord* Opinion, RE 48, PageID #469. Plaintiffs question whether the Las Vegas shooter used bump stocks. Br. 48-50. But the undeniable threat to the public safety posed by weapons that discharge hundreds of bullets within minutes by a single function of a trigger does not depend on the precise mechanism used to commit that tragic massacre or any other particular crime. Implementation of the Rule also reflects a particularized interest in advancing the safety of law-enforcement personnel because "[a] ban [on bump stocks] . . . could result in less danger to first responders when responding to incidents." 83 Fed. Reg. at 66,551. The public interest in the safety of law enforcement officials is "both legitimate and weighty." *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977).

Against this overwhelming public interest, plaintiffs can urge only that they are unable to use or obtain bump stocks for recreational purposes unless and until they prevail in this litigation. *See, e.g.*, Compl., RE 1, PageID #4, ¶13 (plaintiff noting that he "wishes to continue using his bump stock in recreational shooting and target practice"); *id.* at PageID #5, ¶15 (plaintiff stating that she "does not own bump stocks, but would purchase one, if not for the noticed regulation"). This temporary inability to use or obtain a particular device for recreational purposes cannot come close to outweighing Congress's long-stated goal of ensuring public safety by keeping machineguns out of the hands of the public.

CONCLUSION

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

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August 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,200 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Brad Hinshelwood
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Brad Hinshelwood
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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rule 28(b)(1)(A)(i), the government designates the following district court documents as relevant:

Record Entry	**Description**	**Page ID # Range**
RE 1	Complaint	1-28
RE 1-19	Exhibit 18	74-76
RE 9	Preliminary Injunction Motion	163-65
RE 48	Opinion	453-70
RE 49	Notice of Appeal	471