UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAMIEN GUEDES, *et al.*, Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *et al.*, Defendants.	Case No. 1:18-cv-02988-DLF The Hon. Judge Friedrich
DAVID CODREA, *et al.*, Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *et al.*, Defendants.	Case No. 1:18-cv-03086-DLF The Hon. Judge Friedrich

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby cross-move for summary judgment pursuant to Fed. R. Civ. P. 56.1 In accordance with Local Civil Rule 7(h)(2), this motion is accompanied by a statement of facts, a memorandum of points and authorities, and a proposed order. For the reasons explained therein, the Court should enter judgment in Plaintiffs' favor.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Adam Kraut, hereby certify that I have filed with the Clerk of this Court, a true and correct copy of the foregoing document or pleading, utilizing this Court's CM/ECF system, which generated a Notice and delivered a copy of this document or pleading to all counsel of record.

Dated: June 26th, 2020.

/s/ Adam Kraut
Adam Kraut

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MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The crux of this case for purposes of summary judgment is the proper interpretation of the statutory definition of "machinegun." In their rulemaking and throughout this litigation, Defendants have maintained that Final Rule merely articulates the plain meaning of the statutory definition. In their current Memorandum, they continue to claim that the final rule constitutes the "plain," or at least the "best," meaning of the statutory definition of "machinegun." As before, that argument borders on the absurd given the decades of contrary and incompatible construction by Treasury and the ATF, Congressional action in the face of prior agency interpretations, and the absurd overbreadth of the definitions proposed by the Final Rule.

Even assuming, *arguendo*, that the Final Rule's definitions were barely plausible, Defendants have long conceded that *Chevron* deference does not apply and, in any event, to the extent there was ambiguity sufficient to allow Defendants to enact a "legislative" rule under *Chevron*, such ambiguity would be sufficient to trigger the rule of lenity and all of the separation of powers and anti-delegation concerns that argue against deference to the government in the context of criminal statutes. *See generally*, *Guedes v. ATF*, 140 S. Ct. 789 (2020) (Gorsuch, J., statement regarding denial of certiorari) (discussing the many errors of applying *Chevron* deference in this case but finding a grant of cert. premature).

BACKGROUND

> The term "machinegun" means **any weapon *which shoots***, is designed to shoot, or can be readily restored to shoot, ***automatically more than one shot, without***

> ***manual reloading, by a single function of the trigger***. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and ***any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person***.

26 U.S.C. § 5845(b) and 18 U.S.C. § 921(a)(23) (emphasis added). Prior to the current rulemaking, the regulatory definition of a machine gun simply mirrored the statutory definition. 27 C.F.R. § 478.11; 27 C.F.R. § 479.11. The Final Rule alters the regulatory definition by retaining the prior language but adding:

> For purposes of this definition, the term "automatically" as it modifies "shoots, is designed to shoot, or can be readily restored to shoot," means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and "single function of the trigger" means a single pull of the trigger and analogous motions. The term "machine gun" includes a bump-stock-type device, i.e., a device that allows a semi-automatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semi-automatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

27 C.F.R. § 478.11;

Defendants' new definition proposes that "function of the trigger" be defined as the action of the *shooter* in "pull[ing]" or otherwise moving the trigger, rather than as the mechanical operation of the trigger mechanism itself, as the statutory text more naturally reads. While that difference is meaningful in a variety of contexts, as will be discussed *infra*, recognizing that each time the trigger *moves* in a way that causes a shot to be fired is a separate function of the trigger is more important to this case than how that trigger is made to move.

Defendants' definitions also propose that the adverb "automatically" be defined as referring not merely to performing the specified action via a "self-acting" mechanism, but also through the far more vague and malleable notion of a "self-regulating" mechanism that need not actually perform the action of "shoot[ing]" more than one shot, but instead merely makes it easier in some ill-defined way to perform such action notwithstanding the need for continuous manual input beyond the initial "single function of the trigger." That definition is not even remotely plausible, much less the "plain" or "best" definition of what it means to "shoot … automatically more than one shot … by a single function of the trigger." While it may in some sense be a plausible definition of "semi-automatically" – a term previously included in, but eventually removed from, the definition of machinegun – firearms that fired "automatically" were, are, and always have been understood as a far narrower class of firearms that continued to expend available ammunition so long as the trigger remained depressed. A firearm that only shot another round if the trigger was released or reset and then depressed again for each subsequent shot would never have been understood by Congress, the agency, or the public as an automatic weapon when Congress enacted the definition in 1934 or when it later amended and narrowed that definition in 1968.

This Court previously held that the statutory words "single function of the trigger" and "shoot ... automatically" in the above definition were ambiguous, but approved Defendants' expansive redefinition of those words by applying *Chevron* deference. *Guedes v. ATF*, 356 F. Supp.3d 109, 119, 126-27, 129-31 (D.D.C. 2019). Plaintiffs maintain that such predicate determination of ambiguity was erroneously generous to

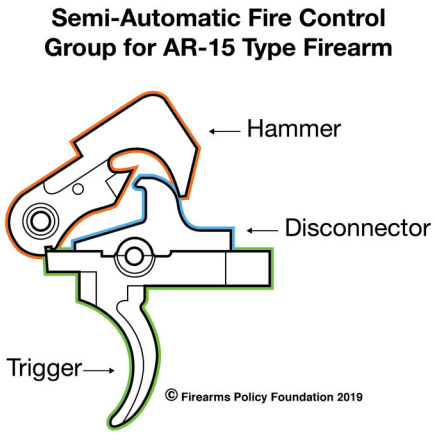
Defendants and that the statutory language is meaningfully narrower than, and precludes, the redefinitions proposed by Defendants. Additionally, *Chevron* deference has no proper role in this case. *Guedes*, 140 S. Ct. at 789-90 (Gorsuch, J., statement regarding denial of certiorari).

The phrase "single function of the trigger," as it relates to a typical trigger mechanism, involves the mechanical movement of the lever that constitutes the trigger. It is complete when the trigger traverses its range of motion and initiates the internal sequence of mechanical actions resulting in one or more shots being fired. That function ends when the trigger is released and returns to its starting point or is otherwise reset to await further action to cause a subsequent function of the trigger. Any other interpretation of that phrase is contrary to the public understanding of those words and yields absurd results.

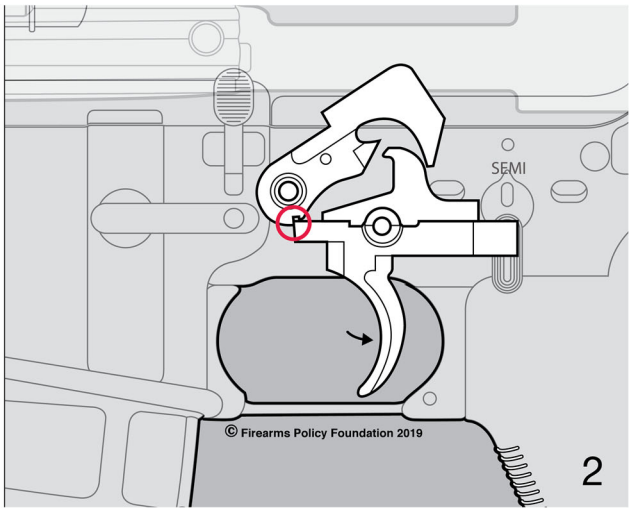
The word "automatically" likewise means by a "self-acting" mechanical process without further human intervention and to "shoot … automatically more than one shot" means to continue to fire a second or subsequent shot without further human action until the trigger is released, thus terminating that single function of the trigger. *See infra* at 14-17 (citing numerous definitions). A bump stock does not cause a semi-automatic firearm to fire more than one shot by a single function of the trigger, but rather, by multiple functions of the trigger, with the trigger having to traverse its range of motion each time a shot is fired. *See* Pl. Statement of Facts ("SOF") ¶ 1 (discussing video of bump stock operation and affidavits describing same). Similarly, the bump stocks at issue in this case do not "shoot … automatically," but instead require ongoing human intervention beyond

merely keeping the trigger continuously depressed. For each and every shot, the shooter must repeatedly force the gun body and trigger forward to reengage the trigger with the trigger finger once the trigger has been disengaged from the trigger finger and reset after each shot. Whether an individual pulls their finger against a trigger or pushes the trigger assembly forward to meet their finger, human intervention occurs for each of the consecutive functions of the trigger, and nothing is accomplished "automatically." *See* Pl. SOF ¶ 1 (referencing video and affidavit demonstrating same).

To better understand these simple mechanical realities, it is useful to review how a typical semi-automatic trigger assembly operates. For example, the fire control group of a semi-automatic AR-15 has three main components: the trigger, disconnector, and hammer. Image 1.

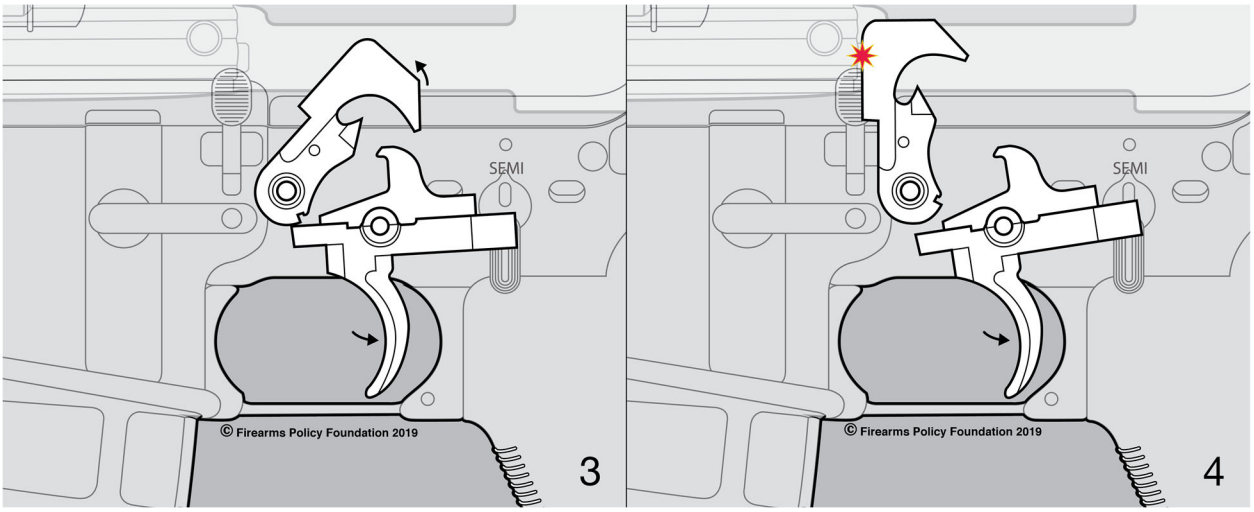


1

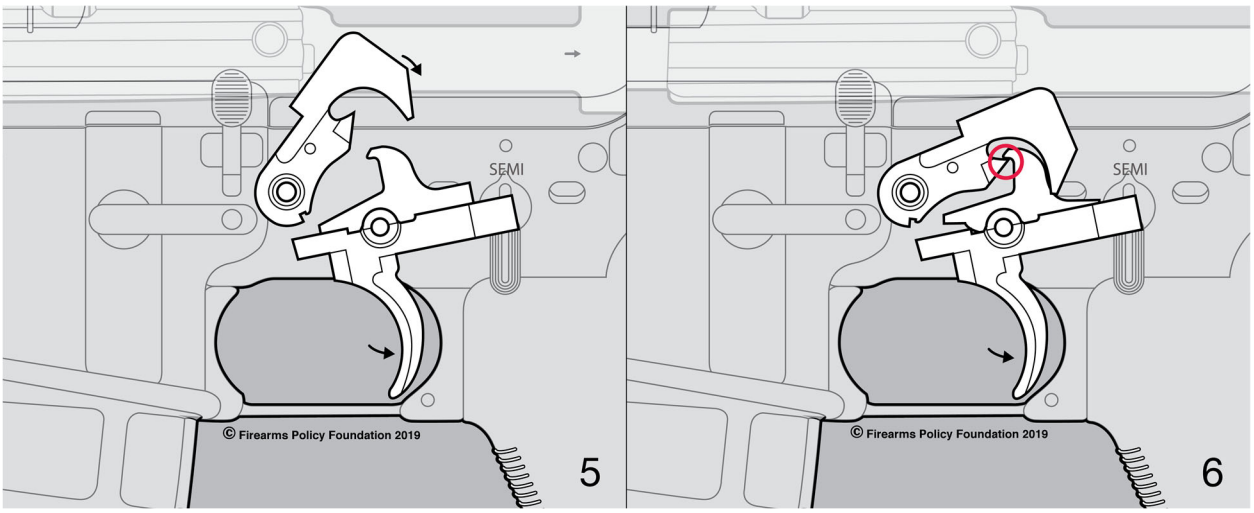


2

When the firearm is set to fire, the hammer rests on the internal edge of the trigger. Image 2. Causing the trigger to move rearward releases the hammer, which strikes the firing pin and results in a single round being discharged. Images 3-4.

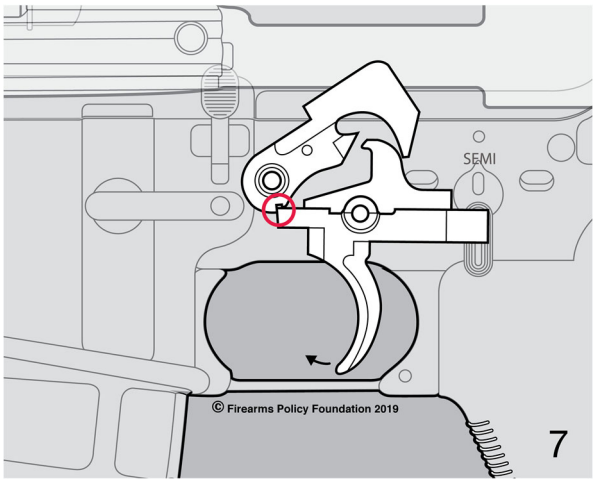


While the empty casing is being ejected from the firearm, the bolt carrier slides rearwards and the hammer is pushed back towards the disconnector. The disconnector grabs and holds the hammer, preventing it from firing another round without the trigger being "reset." Images 5-6. Indeed, unlike with a machinegun, keeping the trigger depressed actually prevents gun from firing again because the disconnector keeps hold of the hammer.



A second function of the trigger occurs when the trigger is released and allowed to move forward, causing the disconnector to let go of the hammer, which then again rests on the

"reset" edge of the trigger, awaiting the next function of the trigger to initiate the next firing sequence. Image 7.



See animation at http://publicfiles.firearmspolicy.org/ar15.gif.

A bump-stock-type device does not change these functions. Regardless whether the shooter "pulls" their finger against the trigger or pushes the trigger assembly forward against a stationary finger, neither the operation or "function" of the trigger's connected parts, nor the operation of the firearm, vary. Each round discharged is the result of a single function of the trigger initiated by the manual act of putting sufficient pressure on the reset trigger.

STANDARD OF REVIEW

Because the primary issues in this case involve the legal meaning of the statutory definition of "machinegun," the standard of review for those issues is *de novo*. *United States v. Wishnefsky*, 7 F.3d 254, 256 (D.C. Cir. 1993) (questions of statutory interpretation are reviewed *de novo*). Other issues, insofar as necessary, are evaluated under the familiar arbitrary, capricious, or contrary to law standard. *Animal Legal Def.*

Fund, Inc. v. Perdue, 872 F.3d 602, 611 (D.C. Cir. 2017). In this case, the Department purported to be bound by what it claimed was the plain meaning of the law, claimed to lack discretion in deviating from that plain meaning, and hence its decisions would not receive deference but must be evaluated solely based on whether the Department correctly understood the law's commands or restraints. Regardless whether an agency action might be justified on some other basis, if it "is based upon a determination of law," then it "may not stand if the agency has misconceived the law." *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943); *Sea-Land Serv., Inc. v. Dep't of Transp.*, 137 F.3d 640, 646 (D.C. Cir. 1998) ("An agency action, however permissible as an exercise of discretion, cannot be sustained where it is based not on the agency's own judgment but on an erroneous view of the law.") (cleaned up); *cf. Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402 (1990) ("'[I]f a district court's findings rest on an erroneous view of the law, they may be set aside on that basis.'") (citation omitted).

ARGUMENT

I. THE FINAL RULE CONTRADICTS THE PLAIN STATUTORY DEFINITION OF A MACHINEGUN

A. The Final Rule's Definitions Are Inconsistent with the Common Public Meanings of the Statutory Terms

In the statutory definition of a machinegun, the phrase "by a single function of the trigger" is best understood as referring to a single instance of the trigger performing its intrinsic function as part of the firearm. Who or what *causes* the trigger to perform that function is not the point. The object of the word "function" is the trigger itself, not the

operator of the firearm. *See Guedes v. ATF*, 920 F.3d 1, 44 n. 13 (D.C. Cir. 2019) (Henderson, J., concurring in part and dissenting in part).

Defendants argue, Def. SJ Mem. at 11-14, that the plain meaning of "single function of the trigger" is "a single pull of the trigger and analogous motions." They assert that focusing on the action of the "shooter" rather than the action of the "trigger" itself is the best interpretation, though they further claim that dictionary definitions are of little help in reaching such a conclusion. While this Court has already found the language ambiguous, the structure of the sentence, and relevant past interpretations support Plaintiffs' trigger-centric view. Ultimately, however, the debate over the word "function" is less relevant than its interaction with the word "single."

Whether defined as a single movement or operation of the trigger, or a single manual input upon the trigger – a "pull" or analogous motion – causing such movement, what matters is understanding where one "function" of the trigger ends and the next begins.[1] Typically, the primary function or "pull" of the trigger is complete when the hammer is released, and a shot is fired. For the trigger to perform its primary firing function again it must be released, and the hammer must be reset to await a subsequent

[1] The prior debate between trigger- or shooter-focused definitions tended to obscure the more meaningful question discussed in the text of whether bump stocks involve a single function or multiple functions of the trigger. The trigger- versus shooter-focused disagreement remains relevant, however, because the trigger-focused definition helps explain various past decisions by ATF, better comports with the language and structure of the statute, and avoids redundancy with the phrase "shoots … automatically more than one shot." Defendant's emphasis on the shooter's manual operation of the trigger goes more to the issue of whether subsequent shots are occurring automatically, not *how many* functions of the trigger are involved. Indeed, Defendant's definitions make the phrase "single function of the trigger" superfluous in that the word automatically already implies the absence of further volitional action by the shooter.

function of the trigger. It is the release of the trigger that terminates the single function of an ordinary trigger and initiates a second or subsequent function. The same analysis would apply even if viewing "function" as a "pull," push, or bump of the trigger. A single "pull" of the trigger is complete when the shooter pulls the trigger through its range of motion. It ends when the trigger is released and the trigger returns to its starting position and is reset awaiting a subsequent "pull" or analogous motion by the shooter. Indeed, the Final Rule itself admits that releasing a trigger constitutes a separate and second "function" of the trigger when it discusses binary triggers. 83 Fed. Reg. at 66,534; *see infra* at 22-23.

Much of Defendants' arguments, therefore, miss the point. There is no credible dispute that bump-firing in general, and using bump-stocks in particular, the "bump" of the shooter's finger against the trigger, causing it to traverse its range of motion and release the hammer to fire a shot would constitute a "pull" of the trigger or analogous motion. The shooter in such a scenario engages with the trigger mechanism, manually pressing the fore-end of the firearm forward causing the trigger to move into contact with the trigger finger, be pushed backwards by such contact, and thereby perform its firing function. That "pull" or analogous motion typically ends when the pressure from the shooter's finger on the trigger is reduced or eliminated, allowing the trigger to return to its starting position and reset.[2] Any subsequent interaction between the shooter's finger and the trigger, causing it once again to traverse its range of motion, is a second or

[2] For a binary trigger, the trigger resets on its own after the initial shot is fired. Releasing the trigger – a separate function – causes a further shot to be fired.

subsequent "pull" of the trigger, not a continuation of the initial completed pull. Indeed, even ATF previously conceded in the rulemaking the mechanical reality that "additional physical manipulation of the trigger" results in an additional "function of the trigger." 83 Fed. Reg. 66519.

Defendants' reliance, at 12, on its 2006 reversal of position regarding the Akins Accelerator is a good example of the mischief of their revised approach. When initially reviewed, ATF determined that the Akins Accelerator did not convert a semi-automatic weapon into a machine gun because it involved multiple functions of the trigger. 83 Fed. Reg. 66,517. In changing its determination, it focused not on the number of functions or pulls of the trigger, but on whether subsequent operation of the trigger was "automatic." While it may be the case that the spring-loaded Akins Accelerator harnessed the recoil energy of an initial shot and used that energy to cause an "automatic" subsequent function, "pull," or bump of the trigger, that renders the word "single" superfluous. Indeed, the revised determination slyly altered and manipulated the language of the statute by saying that the device was "*activated* by a single pull of the trigger, initiat[ing] an automatic firing cycle which continues until either the *finger is released* or the ammunition supply is exhausted." AR005599 (emphasis added); *see also* 83 Fed. Reg. 66517 (same).

The first meaningful alteration was that the device does not "shoot" multiple shots "by" a single function of the trigger, but rather is merely "activated" by a single function of the trigger. Of course, while every journey is initiated or "activated" by a single step, that hardly denies the existence of the many subsequent steps that follow. The second

sleight of hand is the reference to the firing cycle continuing until the finger is released. But that begs the question "released" from what? Certainly not from the trigger, since the finger and the trigger separate after each shot and recoil when using a bump stock.

Ultimately, however, even allowing the conflation of whether the Akins Accelerator operated automatically with the number of functions of the trigger involved, the same decision recognized that without the spring the process did not work "automatically," but required manual input to cause each subsequent pull or bump or movement of the trigger.

Turning, then, to Defendants' revised notion of what it means to "shoot[] … automatically more than one shot," they conflate the separate statutory concepts of "by a single function of the trigger" and "shoots automatically more than one shot" by arguing, at 12-13, that that "the 'single function of the trigger' is the action that initiates a firing sequence that continues automatically." As for whether the "firing sequence … continues automatically," that once again substitutes imprecise language for the statutory phrase "shoots ... automatically." It is anybody's guess what a firing sequence is in this context. It certainly does not comport with the technical or mechanical understanding of the firing sequence as involving the operation of the trigger releasing the hammer causing the shot to be fired. Rather, it seems to involve the entire process, broadly conceived, of firing multiple rounds, regardless of its technical or mechanical meaning or how many pulls of the trigger are involved.[3] Thus, the serial actions of pull, release, pull, release,

[3] Defendants, at 13, raise a bit of a red herring in arguing that there may be many different types of triggers and it should not matter how the trigger is caused to operate. While it is true that once

etc. would be a "firing sequence" under this altered phraseology regardless how many trigger functions are involved. The only issue under Defendant's revised definitions thus would be whether such sequence is "automatic," a concept also stripped of meaning under the Final Rule.

Regarding the Final Rule's definition of "automatically" as meaning "the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single pull of the trigger," Defendants claim it is take directly from contemporaneous dictionaries, but that is misleading and largely inaccurate.

As an initial matter, Defendants use the definition of "automatic" standing alone, rather than the relevant phrase of "shoots … automatically more than one shot." The difference is important, because the statutory phrase explains *what* needs to occur "automatically" – "shooting" – and sets the sole non-automatic activity allowed as part of the process – "by a single function of the trigger." The importance of precision in identifying the verb to which the adverb "automatically" applies can be seen by a simple example: Automobiles are colloquially referred to as "automatic" or "manual," yet such labels obscure the fact that automatic cars generally do not drive themselves (though that

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one moves beyond the traditional "trigger" of a physical lever as seen on most firearms, there may be ambiguities and uncertainty as to what counts as the "trigger" where firing is initiated by electronic or other means, those issues are not meaningful to bump-stocks that are used with more traditional firearms. Defendants further point that it should not matter "how the trigger is caused to operate," however, is entirely correct. That the traditional trigger of a rifle equipped with a bump-stock is caused to operate by bumping it forward against a stationary finger rather than by a moving finger pulling backward against a stationary trigger mechanism does not change the fact that each interaction between finger and trigger is a separate function of the trigger and each and every shot fired on a bump-stock equipped semi-automatic rifle requires a separate such function of the trigger.

may soon change). Rather, an automatic car *shifts gears* automatically, but still requires considerable driver input into the driving overall. Likewise with firearms, there may be many things a firearm does automatically – it can eject a spent cartridge, load the next round, reset the trigger, or adjust for recoil, etc. – but none of those means that it "shoots … more than one shot" automatically, much less does so "by" a single function or even "pull" of the trigger.

The definition proposed by the Final Rule also erroneously expands the notion of "automatic" performance of an identified task by including not merely the operation of a "self-acting" mechanism, which is quite sensible, but also the operation of a "self-regulating" mechanism, which is incoherent as applied by Defendants. Indeed, this Court's prior reliance on *United States v. Olofson*, 563 F.3d 652 (7th Cir.), *cert. denied*, 558 U.S. 948 (2009), supported only the concept of a "self-acting" mechanism, and this Court recognized that including a "self-regulating" mechanism in the revised definition created added ambiguities and impossible-to-predict judgments about how much manual input was allowed in a self-regulating mechanism. 563 F.3d at 658-60; *Guedes*, 356 F. Supp.3d at 131.

Furthermore, even the dictionary cited by Defendants as the source of its definition – WEBSTER'S NEW INTERNATIONAL DICTIONARY, SECOND EDITION – does not support the use of the broader phraseology in the context of firearms. Indeed, the same edition contains a separate definition of an "automatic gun" as "[a] firearm which, after the first round is exploded, by gas pressure or force of recoil automatically extracts and ejects the empty case, loads another round into the chamber, fires, and repeats the above

cycle, *until* the ammunition in the feeding mechanism is exhausted, or *pressure on the trigger is released*." *Id*. at 187 (emphasis added).[4]

Other definitions from the 1930s and, more importantly, from the 1960s when the statutory definition of "machinegun" was amended and narrowed, confirm that the language is best understood as referring to the operation of a "self-acting" mechanism, not a merely a "self-regulating" one, and that the concept of an automatic firearm had a more specific and discrete meaning as one that fired continuously until the trigger is released or the ammunition exhausted. *See, e.g.*, WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, SECOND EDITION 127 (1965 printing, 1964 copyright) (defining "automatic" and "automatical" as "1. conducted or carried on by self-acting machinery; as, *automatic* operations."; defining "automatic pistol, automatic rifle, etc." as "a pistol, rifle, etc. that uses the force of the explosion of a shell to eject the empty cartridge case and place the next cartridge into the breech so that shots are fired in rapid succession until the trigger is released."); THE SHORTER OXFORD ENGLISH DICTIONARY, THIRD EDITION 135 (1973 printing, original Third Edition copyright 1944) (defining "Automatic," in relevant part, as "1. *lit*. Self-acting, having the power of motion or action within itself 1812. 2. Going by itself; *esp*. of machinery and its movements, which produce results otherwise done by hand, or which simulate human or animal action 1802."); THE

[4] There are several printings of the Second Edition, all of which appear the same other than regarding the addition of a separately copyrighted New Words Section. The above quote is from the 1941 printing, which lists 1934 as the copyright for the main body of the work and 1939 as the copyright for the New Words Section. The 1937 printing of the Second Edition contains the identical definitions on the identical page of the edition.

OXFORD ENGLISH DICTIONARY, Volume I at 574 (1970 printing, 1933 publication date) (defining "Automatic," in relevant part, as "1. *lit*. Self-acting, having the power of motion or action within itself. … 2. Self-acting under the conditions fixed for it, going of itself. Applied *esp*. to machinery and its movements, which produce results otherwise done by hand ….").[5]

Various court cases, including many cited by the government, confirm this understanding of what constitutes an automatic firearm and hence what it means to shoot more than one shot "automatically" "by a single function of the trigger." *See Staples v. United States*, 511 U.S. 600, 602 n. 1 (1994) ("As used here, the terms 'automatic' and 'fully automatic' refer to a weapon that fires repeatedly with a single pull of the trigger. *That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted*." (emphasis added)); *Kolbe v. Hogan*, 849 F.3d 114, 158 (4th Cir. 2017) (Traxler, J., dissenting) ("[S]emiautomatic firearms require that the shooter pull the trigger for each shot fired, while … 'machine guns' do not require a pull of the trigger for each shot and will [shoot] as long as the trigger is depressed.") (citation omitted); *Hollis v. Lynch*, 827 F.3d 436, 440 n. 2 (5th Cir. 2016) (a machinegun "fir[es] more than one round per trigger-action" and a semiautomatic firearm "fires only one round per trigger-action.").

[5] *See also* WEBSTER'S II NEW RIVERSIDE-UNIVERSITY DICTIONARY (1988) (automatically: "acting or operating in a manner essentially independent of external influence or control"); John Quick, DICTIONARY OF WEAPONS AND MILITARY TERMS 40 (McGraw-Hill 1973) (automatic fire: "continuous fire from an automatic gun, lasting until pressure on the trigger is released").

Even ATF used to understand this plain and firearm-specific meaning of the words "automatic" or "automatically" in the statute, prior to its being instructed to pretend otherwise. *See, e.g.*, ATF Rul. 2004-5 (" '[A]utomatic' is defined to include 'any firearm in which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots[.]' ") (quoting George C. Nonte, Jr., FIREARMS ENCYCLOPEDIA 13 (Harper & Rowe 1973)). The suggestion that the actual firearms experts at ATF, and numerous general and specialized dictionaries, for years misunderstood the "plain" and public understanding of what it means to shoot "automatically," as distinguished from "semi-automatically," is frivolous and asks this Court to suspend disbelief to a fantastical degree.

B. The Final Rule's Definitions Make No Sense as Applied to Bump Stocks

Even under the Defendants' wrongly expanded definitions, bump stocks still are not properly categorized as machineguns. And if the Final Rule's definitions *could* be contorted to cover them, the effort required to get there illustrates the ambiguity and error of such definitions.

Defendants argue, for example, that a bump-stock allows a firearm to "function automatically" by making it "easier to bump fire" because it controls recoil and ensures more linear motion of the firearm. Def. SJ Mem. at 14. Making it *easier* to bump fire a firearm, however, is hardly the test in the statute or even in the Final Rule. It does not speak to whether each subsequent round fired requires a further function of the trigger, and it does not explain why making operation of a weapon "easier" constitutes shooting

via a self-acting or self-regulating mechanism. At best, Defendants' discussion perhaps describes the mechanical *stabilization* of a firearm, but hardly the automatic *shooting* of such firearm. Indeed, any stock stabilizes a rifle in much the same way – it controls the distance and linearity of recoil – particularly as compared to a handgun. Pl. SOF ¶ 2 (citing Hlebinsky Declaration discussing how fixed stock and other innovations stabilize a firearm to allow more rapid or accurate successive shots). Given that ATF argues that all other means of facilitating bump firing of a semi-automatic firearm do not convert that firearm into an illegal machinegun, it is impossible to find a statutory basis for concluding that this one means of making such action easier has crossed some now utterly unknowable line from semi-automatic to automatic.

The Final Rule's new definition of "automatically" ultimately makes the concept of a "semi-automatic" weapon meaningless – such a weapon is plainly self-regulating at any number of levels in the sense that they reduce or replace the manual effort needed to manage the "firing sequence," the stabilization of the barrel, and the control of recoil.

Defendants' citation, at 14, to this Court's prior determination that "automatically" does not require the device to act spontaneously without any manual input actually proves the point. And it begs the questions of what manual input is allowed and what must be accomplished "automatically." As to the first question, the statute provides the definitive answer – the only manual input allowed is that required to cause "a single function of the trigger," which is, of course, the part of the gun designed to accept manual input in order to fire. If there were any doubt, the word "single" would confirm that such input is strictly limited and that all remaining steps required to fire more than one shot

must be accomplished without further manual input beyond maintaining that completed single function by keeping the trigger depressed.

Defendants' analogy, at 14, to an automatic sewing machine is particularly inapt given that it uses the wrong form of speech – an adjective rather than an adverb – and nobody would say that such a machine "automatically sews clothes" any more than an automatic car "automatically drives." Indeed, had Defendants looked to the extended definitions of "automatic" in, for example, THE SHORTER OXFORD ENGLISH DICTIONARY, THIRD EDITION 135, they would have seen reference to "[a] sewing machine with a[utomatic] tension (*mod*.)," making clear that the label "automatic" refers only to a limited particular function of the machine – maintaining tension – not to the act of "sewing" in general. Popular nomenclature for different devices that do *some* things automatically is useless in this case given that there is no dispute that semi-automatic firearms – which likewise do *some* things automatically – are perfectly legal. The question is not whether the firearm does anything automatically, but whether it "shoots" more than one shot automatically "by" a single function of the trigger. The better comparison would be a sewing machine that sews automatically by a single push of a button. While some industrial or robotic machines may indeed do that, the typical "automatic" sewing machine does not.

Finally, Defendant's attempts, at 16, to distinguish the video evidence illustrating a separate manual interaction with the trigger for each shot fired is pure sophistry. That video, referenced and discussed in Plaintiffs' SOF ¶ 1, demonstrates and explains the mechanics of bump-stock-equipped semi-automatic rifles. Defendants do not dispute that

the trigger is released and reset between each shot, or that it requires the manual volitional act of pushing the fore-body of the rifle forward to reengage the trigger with the trigger finger for the next shot. *See also*, *Guedes*, 920 F.3d at 36-37 (Henderson, J., concurring in part and dissenting in part) (discussing the clarity of video evidence and related Vasquez declaration)

Instead, Defendants claim that "a continuing pull of the trigger may continue as long as there is a single volitional act to 'hold the trigger finger stationary.'" Def. SJ Mem. at 16 (citation omitted). That sentence could not be more preposterous. An unmoving trigger finger that is not in contact with the trigger is not in any conceivable sense still "pulling" the trigger. If *that* is what constitutes a single pull of the trigger, then *every* firearm is capable of multiple shots by a single pull. Just hold one finger steady and repeatedly shove the firearm's trigger into the immobile finger, even without a bump stock, and even as slowly as you like. By Defendants' reasoning, that sequence of events remains a *single* continuous pull of the trigger as long as the trigger *finger* remains steady in space, regardless how much the trigger itself moves, separates, takes a smoke break, etc. The only question then would be whether any aid to such bump firing provided sufficient assistance to render the exercise automatic. Of course, a rubber band, a belt loop, a tennis ball, or a padded vest provides comparable assistance in helping a shooter control the path and distance of recoil, and hence would render the process automatic under ATF's distorted view.[6]

[6] Defendants' reliance, at 16-17, on irrelevant descriptions of bump-stocks to claim their application of the definitions was reasonable does not actually go to the coherence of the

In reality, while a bump-stock may facilitate the *termination* of a "pull" or "function" of the trigger, it is the manual effort and decision to push the fore-body containing the trigger assembly forward that initiates the next pull or analogous "bump" of the trigger. That is not what is meant by "automatic," and is not a "self-acting" process that continues until pressure on the trigger is released.

C. The Final Rule's Definitions Are Overbroad

The flaw in defendant's definitions can be seen by the gross overbreadth of those definitions. If a "single" pull of the trigger only means the *first* pull of a trigger in a sequence made easier by some component that relieves the shooter of some unspecified degree of manual input relating to any aspect of controlling the weapon for multiple shots, then every modern semi-automatic firearm is a machinegun, and the definitions in the Final Rule are in conflict with the statutory scheme permitting such firearms. *Cf.* 18 U.S.C. § 921(a)(28) (defining "semiautomatic rifle").

Since the 1930s there have been all sorts of innovations that make it easier to shoot multiple rounds in a row, including improved stocks, pistol grips, recoil compensators, adjustable tension for triggers, binary triggers, and improved bipods or tripods, just to name a few. Pl. SOF ¶ 2 (describing Hlebinsky affidavit discussing evolution of firearms technology). Every one of those technologies relieves a shooter of a task that would require greater manual activity and attention in order to control the

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definitions. There is no debate about the mechanical operation of bump stocks, only about the legal applicability of the statutory terms to those mechanics. That random comments submitted in the rulemaking may intentionally or mistakenly mischaracterize the operation of a bump-stock is of no moment.

firearm or release and reengage the trigger, and hence would make firing subsequent shots "automatic" under the Final Rule definitions. That the Final Rule sought to limit the applications of its overbroad definitions by inconsistently ignoring them when inconvenient only shows the vagueness and ambiguity of the supposed definitions and the Department's results-driven application of those definitions.

Regarding binary triggers, for example, Defendants claim, at 17, that releasing the trigger is analogous to pulling the trigger and hence constitutes a *second* "function" of the trigger.[7] But the fact that the binary trigger "automatically" resets surely makes it *easier* to fire the second shot and removes one step of manual input – releasing the trigger – than otherwise would be required to fire a second shot using a traditional trigger. Under the Final Rule it thus initiates an "automatic" firing sequence with the initial pull regardless whether there is a subsequent analogous motion. The Department's rationale for distinguishing binary triggers thus is identical to the rationale it rejected regarding bump stocks: that the repeated release and subsequent *bumps* of the trigger are properly considered second and subsequent functions. Furthermore, the greater irony is that binary triggers actually facilitate bump-firing more than one shot far more efficiently than bump-stocks do. A single pull of a binary trigger would fire the first shot and, if a shooter held the firearm with a light to moderate grip, the recoil alone would cause the

[7] *See also* 83 Fed. Reg. 66,534 (In denying that binary-trigger-equipped guns are machineguns, ATF noted that while "semiautomatic firearms may shoot one round when the trigger is pulled, the shooter must release the trigger before another round is fired. Even if this release results in a second shot being fired, it is as the result of a separate function of the trigger. This is also the reason that binary triggers cannot be classified as 'machineguns' under the rule—one function of the trigger results in the firing of only one round.")

release of the trigger and fire the second shot without further manual input. With a bump stock and an ordinary trigger the recoil merely causes the trigger to reset, not to fire again, and it is only the manual and volitional act of forcing the trigger mechanism forward that results in a second function of the trigger and a second shot.[8]

Other simple physical aids, like a belt-loop, a rubber band, any fixed stock itself, or a padded shooting jacket, likewise facilitate bump firing by constraining movement of the firearm, maintaining linearity during recoil, controlling the distance of recoil, and myriad other things a shooter otherwise would have do through greater manual effort. Every one of those aids thus would convert a semi-automatic firearm into a machine gun under the Final Rule's own definitions and logic.

As for Defendants' claim, at 18, that such aids are not "designed" to be affixed to a semi-automatic firearm, that is factually false for fixed stocks, and is not material to the statutory test in any event. Under the statute, a "machinegun" includes "any *combination* of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." 26 U.S.C. § 5845(b). While parts that are "designed and intended" for use in converting a firearm into a machine gun are alone regulated as

[8] Similarly, Defendant's attempt, at 17, to distinguish a pump action shotgun capable of being "slam-fired" when the trigger is kept depressed ignores their own expansive definition of "automatically." Pumping the fore-end does not "reload" the firearm, it simply ejects the old shell and chambers the next round from a pre-loaded cache of shells in the firearm itself. And it does so via a mechanism that significantly reduces the manual inputs as compared to having to open the breech, remove the spent shell, and add the new one. The linear back-and-forth motion of the pump mechanism likewise allows greater control and continued aim by requiring and regulating the path of the recoil and the pumping of the forward hand, again eliminating or making easier considerable manual effort. Defendants' claim that this is not automatic under their broad definitions is disingenuous and illustrates the manipulability of their definitions.

machine guns even without the rest of the firearm, the last "combination" portion of the definition cited above does not have such a design and intent requirement, simply a functional test of parts that, when possessed in a combination, "can" be assembled into a machine gun, *i.e.*, a semiautomatic rifle and pants with belt loops. Under the misguided and overbroad definitions of the Final Rule, actually using such components in combination to bump fire a firearm would convert the firearm into a machinegun even if the Department claims otherwise and such a result would contradict other parts of the statute. The point is *not* that such actions are covered by the statutory definition of "machinegun," but rather that they are not materially distinguishable from the operation of a bump stock under the revised regulatory definitions and hence those definitions are necessarily wrong. The very ambiguity and overbreadth of the definitions the Department adopts demonstrate they are neither the best nor the plain meaning of the terms. If Congress in fact had used terms with such malleable application, then such a criminal law would be invalid or would have to be narrowly construed by a court, as discussed *infra*.

D. Congress in 1968 Ratified a Narrow Reading of the Definition of Machinegun

One especially glaring weakness of Defendants' revisionist claim to have suddenly discovered the plain or best meaning of the statutory definition is that for over eight decades Treasury and ATF thought otherwise. The clearest instance if this is in the 1955 ruling that certain Gatling guns were not machineguns. Rev. Rul. 55-528, 1955-2 C.B. 482, 1955 WL 9410. Such firearms used a hand crank or an *electric motor* to drive a

"cam action to perform the functions of repeatedly cocking and firing the weapon." *Id*. But while recognizing that they were the "forerunner[s] of fully automatic machine guns," and obviously could fire at a high rate of speed, the agency concluded they did not meet the statutory definition of automatically or even semi-automatically shooting "more than one shot with a single function of the trigger." *Id*.

Those determinations are necessarily inconsistent with ATF's current definitions. A crank-driven Gatling gun, for example, while not automatic in the proper sense of the word, surely satisfies the Final Rule's overbroad definitions of a "self-regulating" mechanism that relieves some, though not all, of the required manual input. Just substituting a crank-driven cam for any manual back and forth pulling and releasing of a trigger serves to direct and control the application of linear force into a circular motion that then drives rapid firing of multiple rounds. That alone meets the Final Rule's now-revised definition of automatic, yet the agency at the time had a narrower and correct understanding of the statute.

The issue is even more stark regarding motor-driven Gatling guns, also included in that ruling and held *not* to be machineguns. While such firearms might indeed have been automatic, they functioned via a rotating cam that repeatedly pressed upon and released the trigger of the firearm. The only way that could have been excluded is because it involved more than "a single function of the trigger." While ATF many years later repudiated that portion of the earlier ruling and held that so-called mini-guns (partly comparable to motor-driven Gatling guns) were indeed machine guns, Ruling 2004-5 (holding that electric-motor-operated firearms, including Gatling guns, are machineguns

but that crank-driven cam-operated Gatling guns still are not), it is the earlier ruling that actually has interpretive significance given its timing.

The 1955 ruling on both crank- and motor-driven Gatling guns was the extant view when Congress next returned to the statutory definition of machineguns in 1968. Congress addressed numerous aspects of the NFA and actually *narrowed* the definition of machinegun. As originally adopted, the NFA definition read: "any weapon which shoots, or is designed to shoot, automatically *or semiautomatically*, more than one shot, without manual reloading, by a single function of the trigger." 48 Stat. 1236 (emphasis added). Congress amended that definition of machinegun by removing the words "or semiautomatically," but leaving the current language of the first sentence of the definition. Despite having responded to numerous concerns from court cases and filling various other perceived gaps in the statute, Congress did not question the narrow prior construction of the first sentence, did not object to the Gatling gun ruling, and hence effectively incorporated that narrow interpretation into the meaning of the statute – or at least confirmed and narrowed the existing "public meaning" of the statute at the time.

It is well settled that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change[.]" *Lorillard v. Pons*, 434 U.S. 575, 580 (1978); *see also Boeing Co. v. United States*, 537 U.S. 437, 456 (2003) ("The fact that Congress did not legislatively override 26 CFR § 1.861–8(e)(3) (1979) in enacting the FSC provisions in 1984 serves as persuasive evidence that Congress regarded that regulation as a correct implementation of its intent"). That presumption is even stronger where Congress

amends the precise definition at issue in a way that strengthens, rather than weakens, the earlier interpretation.

II. IF THE STATUTE IS AMBIGUOUS, THE FINAL RULE IS INVALID

This Court and the D.C. Circuit both preliminarily found that the statute was ambiguous but gave Defendants *Chevron* deference and upheld the Final Rule on those grounds. That preliminary decision should not preclude revisitng those issues on summary judgment. *See Pitt News v. Pappert,* 379 F.3d 96, 105 (3d Cir. 2004) (Alito, J.) ("In the typical situation—where the prior panel stopped at the question of likelihood of success—the prior panel's legal analysis must be carefully considered, but it is not binding on the later panel"). Defendants never sought, and expressly eschewed, *Chevron* deference, so the issue has never been properly litigated in this case. Justice Gorsuch has correctly pointed out the substantial error of the applying *Chevron* deference in this case, and that alone should be sufficient grounds for this Court to reconsider its earlier decision. *Guedes*, 140 S. Ct. at 789-90 (Gorsuch, J., statement regarding denial of certiorari). Furthermore, the Supreme Court's recent decision in *United States v. Sineneng-Smith* also provides strong grounds for questioning a decision based on arguments not raised, and in fact repudiated, by Defendants. 140 S. Ct. 1575, 1579 (2020) ("But as a general rule, our system 'is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.'") (citation omitted; alteration in original); *id*. at 1578 ("[T]he appeals panel departed so drastically from the principle of party presentation as to constitute an abuse of discretion.").

A. The Rule of Lenity Forecloses Executive Expansion of Ambiguous Criminal Statutes

While Plaintiffs maintain that the plain and best meaning of the statutory definition of machinegun affirmatively *excludes* the definitions proffered in the Final Rule, at a minimum Plaintiffs have demonstrated serious ambiguity. Indeed, the fact that the Final Rule contradicts eight decades of supposedly erroneous interpretations by Treasury and ATF is more than sufficient to illustrate that, at best, the statute's meaning is not apparent or discernable by reasonable persons.

If it took government experts 80-plus years to "discover" the supposed plain meaning of the statute, surely the average citizen could not have been expected to do better, and there is no evidence that the public has ever shared the Defendants' expansive understanding of the statutory terms. Any alternative conclusion implies that the many lawyers and firearms experts making the decisions all those years were not reasonable people and were somehow incapable of reading a plain and reputedly common definition that they applied repeatedly in numerous cases and rulings. Under such circumstances, the rule of lenity requires a narrower reading of the statute, not a broader one.

The rule of lenity is one of "the most venerable and venerated of interpretive principles," *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 731 (6th Cir. 2013) (Sutton, J., concurring), and is deeply "rooted in a constitutional principle," Cass R. Sunstein, *Nondelegation Canons*, 67 U. CHI. L. REV. 315, 332 (2000). As Chief Justice Marshall observed, the rule of lenity "is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the

plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment." *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820).

Narrow construction of ambiguous criminal laws is especially important in the administrative context. Because agencies have a natural tendency to broadly interpret the statutes they administer, deference in the criminal context "would turn the normal construction of criminal statutes upside-down, replacing the doctrine of lenity with a doctrine of severity." *Crandon v. United States*, 494 U.S. 152, 178 (1990) (Scalia, J., concurring).

One central purpose of lenity is to *avoid* improper delegation of lawmaking authority in the criminal realm. Sunstein, 67 U. CHI. L. REV. at 332 ("One function of the lenity principle is to ensure against delegations."). The rule of lenity "is *not* a rule of administration," but "a rule of statutory construction whose purpose is to help give authoritative meaning to statutory language." *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 518 n. 10 (1992).

Lenity is an interpretive rule that resolves ambiguity in favor of potential defendants and is part of the traditional toolkit for determining the meaning of statutory language. "Rules of interpretation bind all interpreters, administrative agencies included. That means an agency, no less than a court, must interpret a doubtful criminal statute in favor of the defendant." *Carter*, 736 F.3d at 731 (Sutton, J., concurring). Lenity thus comes *before* applying any questionable inference that Congress intentionally delegated legislative authority to executive agencies through ambiguous drafting. "If you believe

that *Chevron* has two steps, you would say that the relevant interpretive rule—the rule of lenity—operates during step one. Once the rule resolves an uncertainty at this step, 'there [remains], for *Chevron* purposes, no ambiguity * * * for an agency to resolve.' " *Id.* at 731 (Sutton, J., concurring) (alteration in original) (quoting *INS* v. *St. Cyr,* 533 U.S. 289, 320 n. 45 (2001)). That *Chevron* deference depends on such inferred delegation is all the more reason to apply other rules of construction first. "Only after a court has determined a challenged statute's meaning can it decide whether the law sufficiently guides executive discretion to accord with Article I." *Gundy* v. *United States*, 139 S. Ct. 2116, 2123 (2019) (plurality opinion).

Furthermore, if trumped by *Chevron* deference, the separation-of-powers function of the rule of lenity would be severely compromised.

> Making something a crime is serious business. It visits the moral condemnation of the community upon the citizen who engages in the forbidden conduct, and it allows the government to take away his liberty and property. The rule of lenity carries into effect the principle that only the legislature, the most democratic and accountable branch of government, should decide what conduct triggers these consequences. By giving unelected commissioners and directors and administrators carte blanche to decide when an ambiguous statute justifies sending people to prison, [*Chevron* deference] diminishes this ideal.

Carter, 736 F.3d at 731 (Sutton, J., concurring); see also *Whitman v. United States*, 135 S. Ct. 352, 354 (2014) (statement of Scalia & Thomas, JJ., respecting the denial of certiorari) ("[E]qually important, [the rule of lenity] vindicates the principle that only the *legislature* may define crimes and fix punishments. Congress cannot, through ambiguity,

effectively leave that function to the courts—much less to the administrative bureaucracy.") (emphasis in original).[9]

As the Supreme Court recognizes, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-22 (1952); *see also Lewis v. United States*, 445 U.S. 55, 65 (1980) ("[T]he touchstone" of the lenity principle "is statutory ambiguity."), *United States v. Gradwell*, 243 U.S. 476, 485 (1917) ("[B]efore a man can be punished as a criminal under the Federal law his case must be 'plainly and unmistakably' within the provisions of some statute.") (citations omitted).[10] The burden thus properly rests upon the government to show that the statute "plainly" covers the conduct supposedly criminalized, not on potential defendants to show overly sever ambiguity.

Defendants' only other argument is that lenity requires grievous ambiguity in order to apply. Plaintiffs would note that any level of ambiguity in a criminal statute sufficient to allow *Chevron* deference and the "legislative" enactment of crimes by the

[9] The "first principle" of criminal law requires that crimes be explicitly and unambiguously specified in advance by statute. *Liparota v. United States*, 471 U.S. 419, 424 (1985) ("The definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." (citation omitted)).

[10] The Supreme Court has long held that "when there are two rational readings of a criminal statute, one harsher than the other, [the Court is] to choose the harsher only when Congress has spoken in clear and definite language." *McNally* v. *United States*, 483 U.S. 350, 359-60 (1987); see *Yates* v. *United States*, 135 S. Ct. 1074, 1087-88 (2015) (plurality opinion); *Skilling* v. *United States*, 561 U.S. 358, 410-11 (2010); *Scheidler* v. *NOW*, 537 U.S. 393, 409 (2003).

Executive Branch is sufficiently "grievous" to trigger the rule of lenity. While courts themselves should strive to resolve minor ambiguities when reading a statute, at the point a court is willing to throw up its hands and pass the ball to the Executive Branch to legislatively *define* crimes, it should be willing to look first to the rule of lenity. At a minimum, it should do so as a matter of constitutional avoidance given the serious separation of powers concerns raised by allowing the Executive Branch to define crimes.

Cases such a *Maracich v. Spears*, 570 U.S. 48, 75-76 (2013), are not to the contrary. The Court in *Maracich*, for example, considered a civil liability provision "written in different terms" than a separate criminal provision and concluded that the statute's "surrounding text and structure … resolve any ambiguity in" the disputed phrases. *Id*. While it indeed cited some cases mentioning "grievous ambiguity," it also cited cases applying lenity "'where the language or history of the statute is uncertain'" after ordinary principles of construction are applied. *Id*. (cleaned up); *see Moskal v. United States*, 498 U.S. 103, 107–08 (1990) ("We have repeatedly emphasized that the touchstone of the rule of lenity is statutory ambiguity. … [That] leaves open the crucial question – almost invariably present – of *how much* ambiguousness constitutes ... ambiguity. … [W]e have always reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute.") (cleaned up). While various cases use stronger or weaker language regarding whether uncertainty can be resolved by traditional tools before the rule of lenity, those cases do not address the *relative* amounts of uncertainty needed for lenity as opposed to *Chevron* deference for a

criminal statute. Plaintiffs' position is that if the uncertainty is enough for the court to take the extreme act of abdicating its interpretive role for a criminal statute, it is more than enough for lenity.

At the end of the day, *Chevron* deference is not a means for a court to interpret a statute, not a cannon of construction, and not even part of *Chevron* step one. Rather, it is an allocation of *authority* to interpret or construe a statute once the words have been found sufficiently uncertain after the application of tradition interpretive principles to suggest an implied delegation of legislative authority to fill any such gaps. Lenity, by contrast, is a traditional interpretive principle, and would apply before deferring to an agency to "legislatively" define terms in a criminal statute.

B. *Chevron* Deference Does Not Apply or Was Waived by the Government.

As the government has repeatedly stated, it does not invoke deference for its interpretive rule, it did not do so in the rulemaking, and on numerous occasions it affirmatively denied having the sort of discretion that leads to deference for an agency's legislative choices. *See, e.g.*, Brief for the Respondents in Opposition, *Guedes v. ATF*, No. 19-296 (U.S. Supreme Court, 2019) at 14, 20-27. Before the Supreme Court, it repeated and expanded on its arguments that the rule was not legislative, it did not understand itself to be engaging in legislative rulemaking, and that the definitions should rise or fall of a court's independent construction of the statute. And it likewise denied having any delegated "legislative" gap-filling authority regarding the definition of "machinegun." *Id*. at 25.

That Attorney General Barr is the Head of the Department responsible for ratifying the Final Rule itself, and for defending that rule in court and in the Supreme Court, makes this case different than if litigation counsel makes assertions that may or may not reflect the views of the agency *qua* agency. Here, the Department and its counsel are one and the same and there is no basis for ignoring the Department's explanation of what it was doing in the rulemaking.[11]

C. *Chevron* Deference Violates the Constitution

Plaintiffs recognize that this Court lacks authority to overrule *Chevron* or to disregard D.C. Circuit precedent on such deference generally. They note, merely to preserve the argument for later review, that such deference, particularly in the context of a statute defining crimes, violates the separation of powers, the anti-delegation doctrine, and is otherwise improper for the reasons discussed in Justice Gorsuch's opinion respecting the denial of cert. and in the Plaintiffs' interlocutory petition for certiorari in this case. *See Guedes*, 140 S. Ct. at 789-92 (Gosruch, J., statement respecting the denial of cert.); Petition, *Guedes v. ATF*, No. 19-296 (U.S., Aug. 29, 2019).

D. The Final Rule Is Unreasonable, Arbitrary, and Capricious

[11] It is, of course, true that small portions of the rulemaking were indeed legislative in nature: How much time to give as a transition period, how innocently acquired supposed contraband could be surrendered or destroyed, etc. Those indeed required judgment, are not predetermined by the statute, and at some level represent formal guidance on prosecutorial discretion instructing Department lawyers not to prosecute in circumstances that surely would raise due process and retroactivity concerns. But those "legislative" components of the rulemaking did not extend to the Department's interpretation of the operative words of the definition of "machinegun," regarding which the department claimed it had no discretion at all.

Even assuming ambiguity and that lenity did not apply, *Chevron* deference cannot save the Final Rule because it was not based on unbiased and reasoned consideration and is unreasonable, arbitrary, and capricious. "Agency action is arbitrary and capricious 'if the agency has relied on factors which Congress has not intended it to consider, … [or] offered an explanation for its decision that runs counter to the evidence before the agency.'" *Animal Legal Def. Fund, Inc. v. Perdue*, 872 F.3d 602, 611 (D.C. Cir. 2017) (citation omitted).

First, because the government repeatedly claimed that it was bound by the plain meaning of the statute, even if deference to a "legislative" definition of machinegun were appropriate, not legislative discretion was in fact exercised. Indeed, Defendants have repeatedly claimed in numerous briefs in this case that it did not exercise any discretion. *See, e.g.*, *Guedes*, 920 F.3d at 39 n. 6 (Henderson, J., concurring in part and dissenting in part) ("I would note that the ATF in fact declared that the Rule's interpretations of 'single function of the trigger' and 'automatically' 'accord with the *plain meaning* of those terms.' *Bump-Stock-Type Devices*, 83 Fed. Reg. at 66,527 (emphasis added).").[12]

[12] *See also* 83 Fed. Reg. at 66,529-36 ("The bump-stock-type device rule is not a discretionary policy decision based upon a myriad of factors that the agency must weigh, but is instead based only upon the functioning of the device and the application of the relevant statutory definition."; "the materials and evidence of public safety implications that commenters seek have no bearing on whether these devices are appropriately considered machineguns based on the statutory definition."; rejecting various alternatives to the reclassification, stating that "the Department has concluded that the NFA and GCA require regulation of bump-stock-type devices as machineguns, and that taking no regulatory action is therefore not a viable alternative to this rule."; "This is because the statutory definition alone determines whether a firearm is a machinegun. The Department believes that the final rule makes clear that a bump-stock-device will be classified as a machinegun based only upon whether the device satisfies the statutory definition."; "Because bump-stock-type devices are properly classified as "machineguns" under

It is a fundamental truism that an agency that does not believe it has discretion cannot be deemed to have exercised such discretion. *See supra*, at 8-9 (standard of review and agency misconception of the governing law). If the Court again determines that the statutory definition is ambiguous and that the Department was perhaps *permitted* to define machinegun as it did in a legislative rule, but not *required* to do so, then all of the Final Rule's responses rejecting proposed alternatives due to a lack of discretion rest on a false assumption. A legislative choice to expand to the outer reaches of the potential definitions of machinegun is not required and hence the Department would have to consider and articulate "legislative" reasons for rejecting the comments, not simply erroneously perceived legal constraint. *See DHS v. Regents of the Univ. of Cal.*, No. 18-587 (June 18, 2020), Slip. Op. at 19 (rejecting repeal of DACA because Acting Secretary of DHS "did not appear to appreciate the full scope of her discretion").

If the statutory definition of a machinegun is ambiguous and the Department thus has an implied delegation of legislative discretion, then its rejections of numerous comments and objections due to a supposed lack of discretion are based on a false legal premise and the Rule is arbitrary and capricious. As with the recent DACA decision, a remand would be required.

Second, as noted by the Cato Institute, the rulemaking here "was a fait accompli" from inception. Cato Institute Comments on Definition of "Machinegun," at 2, *available at* https://www.regulations.gov/document?D=ATF-2018-0002-65898. President Trump

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the NFA and GCA, the Department believes that ATF must regulate them as such, and that the recommended alternatives are not possible unless Congress amends the NFA and GCA.").

declared he would "write out" bump-stock devices "myself because I'm able to." *Id*.; *see also* Brief of the Cato Institute as *Amicus Curiae* in Support of Petitioners, *Guedes v. ATF*, No. 19-239 (U.S., Oct. 3, 2019), at 6-8 (discussing fait accompli that was the bump stock review). Pre-ordained rulemaking outcomes reversing past reasoned determinations are arbitrary and capricious and not entitled to deference. "The agency's statement must be one of 'reasoning'; it must not be just a [foregone] 'conclusion[.]' " *Butte Cty v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) (citation omitted). The Final Rule appears to stem from political compulsion, not agency expertise. Political determinations in criminal statutes must be made by Congress, not the President. While Defendants now dubiously claim, at 20, that they were merely told to apply the statute, not that they were instructed to reach a particular outcome, there is at least a genuine dispute whether the President directed the Department to reach a pre-ordained result. His public statements certainly say the decision was predetermined, notwithstanding that some Department lawyer ghost-wrote a memo providing false cover for what the President claimed he was doing. At a minimum, these disputes would preclude summary judgment for Defendants so it could be determined through discovery whether the actual instructions given the agency were improperly excluded from the administrative record.

Third, the new definition on its own terms is arbitrary and capricious in its treatment of the phrase "shoot … automatically." This Court previously endorsed ATF's expansion of the word automatically to mean "'functioning as the result of a self-acting or self-regulating mechanism,'" but then found that expansion itself to be ambiguous because "[a]utomatic devices regularly require *some* degree of manual input" and

"[b]ecause [neither] the statute [nor the regulation] … specify how much manual input is too much." Opinion 21-22. Of course, the statute does indeed state the maximum level of manual input allowed – a *single* function of the trigger – but regardless, defining a supposedly ambiguous term with an even more ambiguous concept conflating automatic and manual is arbitrary and capricious.

Fourth, the numerous absurdities and inconsistencies discussed previously in this brief, even if thought insufficient to remove any and all ambiguity in the statute, would at least be sufficient to demonstrate why the Defendants' chosen alternative definition is arbitrary and capricious.

III. APPLICATION OF DEFINITIONAL ISSUES TO SPECIFIC COUNTS

Most of the specific counts in the two Second Amended Complaints turn in large part on the resolution of the definitional issues. If Defendants are correct that the plain language or best independent reading of the statute requires the definitions in the Final Rule, then many of the counts would fall with that determination. If Plaintiffs are correct that the plain language of the statute precludes the definitions in the Final Rule, then many of the specific counts are either redundant or moot. Indeed, several of them were included in a belt-and-suspenders approach simply to ensure the proper procedural and legal basis for challenging the incorrect legal determinations in the Final Rule. Finally, if the language is ambiguous many of the counts turn on the specifics of the Final Rule and the discussions above whether the rule is arbitrary and capricious.

A. Guedes Count I – Lack of Statutory Authority to Alter Definition Established by Congress (APA and Article I); Codrea Counts I, II, III, V & VII – Ultra Vires, APA Violation and Amnesty.

These counts turn on whether the statutory definition of a machinegun is plain and unambiguous and whether Defendants otherwise satisfied the requirements for rulemaking under the APA. If Plaintiffs are correct in their narrower reading, or in their contention that the Rule was otherwise arbitrary and capricious, the Final Rule would be unlawful, either as contrary to law under the APA or directly as a violation of the relevant constitutional provisions.

If Defendants are correct that the statute plainly requires the definitions in the Final Rule, then each of these counts would fail.

If the statute is ambiguous, these counts would turn on the interplay between *Chevron* deference and lenity, discussed above. This Court's resolution of those issues thus would similarly resolve these counts for better or worse.

B. Guedes Count II – Separation of Powers and Non-Delegation

These counts need only be resolved if the court finds the statue ambiguous but nonetheless applies *Chevron* deference to uphold the Final Rule. Insofar as these same constitutional concerns inform the application of deference or lenity, the Court's reasoning as to those questions in the interpretive context likely would resolve these counts as well. They exist, however, to ensure that an actual ruling on the constitutional questions is made and thus to facilitate further review. If Plaintiffs' prevail on interpretive or other APA grounds, the cannon of constitutional avoidance would suggest that these counts need not be decided. If defendants prevail on the various other APA

grounds, it would be necessary to resolve the constitutional counts as they relate to separation of powers and delegated authority regarding criminal or mixed-use law.

C. Guedes Count III – Due Process and Takings; Codrea Counts IV & VI – Procedural Due Process and Takings

The procedural counts regarding the comment period and the nature of the hearing afforded by the rulemaking process would be moot if the Final Rule is rejected for other reasons or sent back as arbitrary and capricious. If Defendants prevail on the interpretive and separation of power issues, Plaintiffs propose that this Court enter judgment for Defendants on the procedural or substantive Due Process issues, other than as they may be deemed necessary to reach and resolve those other issues, in order to facilitate timely appellate review of the interpretive and separation of powers/delegation related issues.

The vagueness component of the Due Process counts, however, largely overlaps with the lenity and deference issues. If the language is sufficiently vague to warrant lenity instead of deference, it might be unnecessary to reach vagueness if a suitably clear interpretation applied as a matter of lenity would render the Final Rule invalid. In the unlikely event that a sufficiently clear and narrowed construction is not possible, the Court should invalidate the definition of machinegun.

If Defendants prevail regarding then plain or best reading of the statute, then the Court's resolution of that issue would necessarily find that the statute is not vague. If Defendants' prevail based on *Chevron* deference, the court would have to decide whether the ambiguity permitting Deference was insufficient to make the statute vague or whether agency clarification cured any such vagueness. For the same reasons, lenity should

trump deference in the face of ambiguity, the void-for vagueness doctrine likewise should take priority in such circumstances. If the court nonetheless rejects the arguments against *Chevron* deference it would implicitly have resolved the vagueness issues for the same reasons. If the statute is vague enough for *Chevron*, then it is vague enough to require lenity or simply to be void, particularly because the test for a criminal statute should be stricter given the rule of lenity. Due to anti-delegation concerns, the two issues should be considered *in pari materia*.

As for the Takings claim, part of the claims are not to recover compensation, but rather that, because the Final Rule claims compensation is not authorized at all, 83 Fed. Reg. 66,536, if the Final Rule constitutes a Taking it would be an uncompensated taking and hence invalid. *See Duncan v. Becerra*, 366 F.Supp.3d 1131, 1185 (S.D. Cal. 2019) ("[T]he Takings Clause prevents [the State] from compelling the physical dispossession of such lawfully-acquired private property without just compensation."). Questions regarding jurisdiction to award compensation thus are not relevant if compensation is not available. Furthermore, if compensation is available, the amounts at issue are less than $10,000, so such claims would be cognizable under the Little Tucker Act.

As for the Defendants' argument that there is no Taking when contraband is seized or destroyed, that simply begs the interpretive question. If the government prevails on plain meaning, then it *might* be correct, though, to this day, *actual* machineguns manufactured before 1986 may be possessed and transferred by persons in compliance with the National Firearms Act of 1934, by paying the tax, registering the machinegun and submitting to a background investigation prior to acquisition. According to the ATF,

as of 2017, there were 630,019 machineguns lawfully registered in this country. *See* https://www.atf.gov/resource-center/docs/undefined/firearmscommerce-united-states-annual-statistical-update-2017/download. Not even Defendants contend that bump stocks are more dangerous than these lawfully owned machineguns. Nothing in the Final Rule even attempts to apply any "principles of nuisance and property law." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1031 (1992); *see also Bowles v. United States*, 31 Fed. Cl. 37, 45 (1994) ("[T]he government has the burden of proof to demonstrate that the prohibited use of the property constitutes a nuisance under state common-law doctrine. It cannot hide behind conclusory legislative findings that simply characterize land use restrictions as harm-preventing.").

If the Defendants lose on the interpretive issues, then the Takings question as framed here is moot, though there might be separate claims elsewhere for compensation for bump stocks destroyed as a result of the Final Rule's unlawful adoption.

But if the government only prevails based on *Chevron* deference or the Court's view that the rule is "legislative," then the new rule would still constitute a Taking. Under such reasoning, bump stocks are not intrinsically contraband or otherwise contrary to traditional nuisance, property, or pre-existing statutory law. Rather, they would have been *completely lawful* prior to the Final Rule and are now merely *malum prohibitum* on a prospective basis. A holding based on ambiguity and deference thus would confirm that that bump stocks were not previously illegal under the statute and thus cannot be characterized as contraband or nuisance under "background principles of nuisance and property law." *Lucas*, 505 U.S. at 1031. These devices are thus "property" protected by

the Takings Clause of the Fifth Amendment because the right of possession abolished by the Final Rule "inhered" in Plaintiffs' (and institutional Plaintiffs' affected members') title prior to the adoption of the Final Rule. A & D *Auto Sales, Inc. v. United States*, 748 F.3d 1142, 1152 (Fed. Cir. 2014) ("If a challenged restriction as enacted after the plaintiff's property interest was acquired, it cannot be said to 'inhere' in the plaintiff's title").

D. Guedes Count IV – Ex Post Facto Clause; Codrea Count VI – Retroactive Rulemaking and Ex Post Facto Clause

The Ex Post Facto Clause count likewise turns on the definitional question. If the statute plainly requires the definitions in the Final Rule, there is no violation. If the Final Rule is contrary to the Statute, the claim is moot as the Rule is invalid for non-constitutional reasons and hence can have no retroactive effect in any event. If the statute is ambiguous and the Final Rule is an exercise of legislative discretion, the fact that DOJ declared it would only prospectively enforce the statute against bump stocks perhaps saves such enforcement actions, but might well result in other consequences imposed for past possession of bump stocks. Such consequences, however, are likely best addressed in any as applied challenges that might later arise, and the Court should simply make clear that it is only the Department's formal disavowal of any ability to enforce the revised interpretation against conduct preceding the Rule's effective date that saves it from constitutional infirmity.

CONCLUSION

The Final Rule conflicts with the proper construction of the statutory definition of "machinegun" and is unlawful. This Court should deny Defendant's Motion for Summary Judgement, grant Plaintiff's Cross-Motion for Summary Judgment, and resolve the individual counts accordingly, as described above.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Adam Kraut, hereby certify that I have filed with the Clerk of this Court, a true and correct copy of the foregoing document or pleading, utilizing this Court's CM/ECF system, which generated a Notice and delivered a copy of this document or pleading to all counsel of record.

Dated: June 26th, 2020.

/s/ Adam Kraut
Adam Kraut

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAMIEN GUEDES, *et al.*, Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *et al.*, Defendants.	Case No. 1:18-cv-02988-DLF The Hon. Judge Friedrich
DAVID CODREA, *et al.*, Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *et al.*, Defendants.	Case No. 1:18-cv-03086-DLF The Hon. Judge Friedrich

PLAINTIFFS' STATEMENT OF FACTS PURSUANT TO LCvR 7(h)92)

In addition to their Response to Defendants' Statement of Facts, Plaintiffs' offer the following additional facts in support of their Cross-Motion for Summary Judgment:

1. An accurate video showing the operation of a bump-stock equipped firearm is referenced in Exhibit 28 to Exhibit A of the Guedes Plaintiffs' Second Amended Complaint, Docket Entry 58-2, and may be seen at https://youtu.be/1OyK2RdO63U. The video is described and verified for accuracy by the declaration of Rick Vasquez, former ATF Asst. Chief and Acting Chief of FTB, included as Exhibit 32 (p. 901, ¶8) to Exhibit A of the Guedes Plaintiffs' Second Amendment Complaint, Docket Entry 58-2.

2. The history of semi-automatic and automatic weapons is described in a Declaration by Ashley Hlebinsky, attached hereto as Exhibit A. The declaration describes the many innovations in firearms technology that have improved stability, enabled faster and more accurate firing of shots, and reduced some of the manual effort required to achieve such results. The declaration further describes the understanding of firearms experts regarding the differences between automatic and semi-automatic weapons and how they would understand those concepts as applied to bump-stock equipped firearms.

3. The administrative record contains evidence that ATF over the years has given considerable thought as to what is or is not a machinegun: The PowerPoint "Akins Accelerator: Is it a machinegun" goes through the function of the original, spring-loaded Atkins accelerator, and the chronology from when it was first classified as a non-machinegun, to the subsequent determination that it was a machinegun. The PowerPoint also specifically addresses the meaning of "single function of the trigger," includes a discussion of plain meaning and statutory intent, and includes a slide that says in bold

letters "If 'single function of the trigger' is ambiguous we can look to legislative history for guidance." Additional slides consider how some states have chosen to classify bump stocks and other firearms-triggering devices. The final page, titled "Counsel Recommendation" is completely redacted. AR000494-000532.

4. The administrative record contains evidence that ATF's Chief Legal Counsel provided background and then (redacted) legal analysis on the legality of bump stocks. The background notes the transition in the ATF interpretation of "single function of the trigger" from single "movement" of the trigger to single "pull" of the trigger around the time that the original, spring-loaded Atkins Accelerator was re-classified as a machine gun. This interpretation was conveyed in ATF Ruling 2006-2. He further explained that subsequent determinations that non-spring loaded bump fire devices were not machine guns were dependent on the additional action required from the shooter to initiate additional firing of the weapon whereas with a spring-assisted apparatus like the Akins, no such additional shooter-input was required. AR000534-000538.

5. The administrative record contains evidence that Rick Vasquez, former ATF Asst. Chief and Acting Chief of FTB, wrote a document called "Slide Fire Analysis" in which he outlines the methodology, analysis, and conclusions of the FTB in coming to its determinations about bump fire stocks as not being machineguns, or firearms under the NFA and GCA. On October 11, 2017, Michael Powell, an ATF technical firearms specialist, sent this analysis to Earl Griffith, Max Kingery, and Michael Curtis, asking if they had seen it. AR000704 (email) AR000707-000707 (Vasquez analysis).

6. The administrative record contains a letter from Michael Bouchard, the president of ATF Association (ATFA, which consists of past and present ATF employees), to Representative Carlos Curbelo, in which Bouchard addresses that some politicians are blaming the ATF for not banning bump-fire stocks and in turn, blaming the Las Vegas shooting on the ATF. The letter expressly and repeatedly states that the ATF did not decide to make bump stocks legal, but rather that the current state of the law did. He stated that ATF merely applied the law and does not have the power or authority to change it—"The law is very clear and does not currently allow the ATF to regulate such accessories." "ATF makes rulings based on the statutory authority contained in law and cannot change the law to add new accessories that do not fall within the scope of the existing law." AR000708-000709 (underlining in original).

7. The administrative record contains evidence that Michael Powell sent an email to Earl L. Griffith, Max M. Kingery, Michael Curtis, Marvin G. Richardson, Curtis Gilbert, and cc's Joseph J. Allen, requesting they see the attached copy of Vasquez' Slide Firing Analysis Position Paper. AR000704.

8. The administrative record contains evidence that Rick Vasquez explained that ATF classifications are based on NFA and GCA definitions as well as "any previous rulings or court decisions based on the GCA and the NFA." AR000705-07.

9. The administrative record contains evidence that Vasquez, the former senior Technical Expert for the ATF, explained that the basis for determining that a slide fire stock is not a machinegun is that the device is "not designed to shoot . . . by a single function of

the trigger," and that the device was not classified as a conversion device within the meaning of the 26 U.S.C. 5845(b) definition of machinegun. AR000705-07.

10. The administrative record contains evidence that Vasquez stated that the Firearms Technology Branch (FTB)'s opinion was submitted to "Chief Counsel and higher authority for review," and that "after much study on how the device operates, the opinion, based on definitions in the GCA and NFA" that "the Slide Fire was not a machinegun nor a firearm." AR000705-07.

11. The administrative record contains evidence that Ross Arrends sent a summary of a briefing provided by ATF employees to Senator Cortez Masto to Earl Griffith and Joseph Allen, cc'ing Lisa Storey and William Ryan. The meeting was attended by Allen, Griffith, and Lauren Goldschmidt as well as Arrends, Melissa Garcia, and Matt Beccio from the ATF's Legal Affairs Division. Senator Cortez Masto also asked whether there was a "regulatory fix" or whether legislation would be required to ban bump stock devices. Allen responded that the legislative fix would be "straightforward and direct, whereas an attempt to [ban bump stocks] in a regulatory manner, would be challenging *given that the definition of automatic would have to be reinterpreted*." (emphasis added). AR000756-59.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Adam Kraut, hereby certify that I have filed with the Clerk of this Court, a true and correct copy of the foregoing document or pleading, utilizing this Court's CM/ECF system, which generated a Notice and delivered a copy of this document or pleading to all counsel of record.

Dated: June 26th, 2020.

/s/ Adam Kraut
Adam Kraut

Exhibit A

DECLARATION OF ASHLEY HLEBINSKY

I, Ashley Hlebinsky, declare as follows:

I am the Curator Emerita and Senior Firearms Scholar of the Cody Firearms Museum as well as a firearms and ammunition related museum consultant, expert witness, freelance writer, guest lecturer, and founder of the newly formed Association of Firearms History and Museums. I have been retained by the plaintiffs in this matter to provide historical testimony regarding the lineages of firearms technology with a specific emphasis on the history of semi-automatic and automatic technologies and the history of machine guns to highlight that many of these features were developed over a century ago and since their development have maintained similar definitions regarding terminology. I have personal knowledge of the facts stated herein, and if called as a witness, I could competently testify to these facts.

This declaration is executed in support of plaintiffs' motion for summary judgement.

QUALIFICATIONS AND EXPERIENCE

I am the Curator Emerita and Senior Firearms Scholar of the Cody Firearms Museum and recently, served as Robert W. Woodruff Curator of the Cody Firearms Museum at the Buffalo Bill Center of the West for about six years. At the museum, I managed an encyclopedic collection of around 7,000 firearms. Prior to my work at the Buffalo Bill Center of the West, I researched in the Smithsonian Institution's National

Firearms Collection for about three years. During this time, I studied firearms from the 1200s through modern day. I not only studied the evolution of firearms technology but completed work on the United States Patent Office Collection, which contained functional and nonfunctional firearms prototypes submitted to the Patent Office. I also worked as a liaison between the Smithsonian Institution and the Buffalo Bill Center of the West, helping to facilitate the loan of 64 firearms from the Smithsonian collection to the Center. A large portion of that loan and subsequent loans thereafter centered around the Patent Collection and early evolution of firearms technologies. In addition to my work with the National Firearms Collection, I earned Bachelor's and Master's degrees in American History, with a certification in Museum Studies, focusing my research towards the latter half of my degree on a macro historical approach to studying how advancement of firearms technology affected industry and society, as well as the perception of those firearms within a given culture. During my time in graduate school, I was awarded the Edward Ezell Firearms Fellowship from the University of Delaware, which allowed me to complete my research on the Smithsonian collection. Additionally, I was a teaching assistant in a military history survey course. During this survey, I taught the firearms portion of the class. I am an NRA Certified Firearms Instructor, in Basic Pistol and Personal Protection Inside the Home. I simultaneously earned my Well Armed Woman Instructor Certification. At the museum, I have been responsible for the education of thousands of students from elementary through college levels, where we teach not only

firearms safety and basics, but the historical and technical evolution of the firearm. Additionally, I served as the Project Director on a $12.9 million full scale renovation and reimagining of the Cody Firearms Museum, which reopened July 6, 2019. I was responsible for all aspects of the renovation from fundraising to content. As a museum consultant, under a Wyoming-based single member LLC (The Gun Code), I conduct workshops on firearms collections, survey collections and curate exhibitions at institutions such as the Houston Museum of Natural Science, the Winchester Mystery House, CM Russell Museum & Complex, the Mob Museum, and the Adirondack Experience. I have served as a scholar for the National Park Service and the Organization of American Historians on the upcoming Coltsville National Historic Site. I am also a freelance firearms writer, guest lecturer, on-camera firearms historian, and firearms-related television producer.

I have also made contributions to the academic study of firearms. In 2017, I developed the first full scale symposium in the United States dedicated to the study of firearms as material culture. That symposium has grown and is carried out annually. In October 2018, I also founded an academic association in the US for the study of firearms (Association of Firearms History and Museums) which is still in its early stages of development. A current copy of my Curriculum Vitae summarizing my education and experience is attached as **Exhibit 1**.

PRIOR EXPERT WITNESS TESTIMONY

Because my research covers centuries of firearms and ammunition development, I have a large breadth of topics related to the subject matter on which I can testify. I have served as an expert witness in the following matters:

James Miller, et al v Xavier Becerra, Attorney General of California, et al
Report written November 2019

Shannon Wayne Garrison, et al v Sturm, Ruger & Company, Inc.
Report written November 2017
Deposition Testimony, Chicago, IL November 27, 2017

Regina v Carvel Clayton
Halifax, Nova Scotia
Report written December 2017

SCOPE OF WORK

This declaration will provide some historical background on the interconnectivity between civilian and military firearms as well as the origins of semi-automatic and automatic firearms to provide perspective on the differences between a bump stock and the historic understanding of a machine gun. The Cody Firearms Museum defines *machine gun* for the public simply as: An automatic firearm either portable or mounted. The museum defines *automatic* as: A firearm that fires continuously when a trigger is pressed and stops either when the trigger is released, or the firearm is out of ammunition. According to the ATF's website, two

key points on the term "*machinegun"* focus on the automatic function as well as the "single trigger pull" – since changed to "single trigger function." The opinions expressed in this declaration are mine and are not reflective of any position of the Cody Firearms Museum.

FIREARMS HISTORY IN TERMS OF MILITARY AND CIVILIAN ARMS

As this case concerns the ability to increase the cyclic rate of a semi-automatic firearm to simulate rapid fire, this declaration will begin with the interconnection between firearms owned by civilians and the military throughout history. Today in America, semi-automatic firearms are readily available to the civilian market and utilized by the military. It is important to note that automatic firearms made before 1986 are also available for purchase to the civilian population, however, a purchaser must adhere to a more cumbersome process and a transfer tax ($200.00 for machine guns, short barrel rifles, short barrel shotguns, silencers, and destructive devices and $5.00 for a category of firearms known as "any other weapons"). *See* 26 U.S.C. §§ 5811, 5812. Additionally, due to the regulation of machine guns stemming from the passage of the National Firearms Act of 1934 and the ban of the transfer and possession of machine guns manufactured on or after May 19, 1986 for civilians, a result of the Hughes Amendment added to the Firearms Owners Protection Act ("FOPA"), it has created a finite market of these firearms driving the price of registered automatic firearms up exponentially. The prohibition and regulation of a

specific type of firearm used in the military from the public, however, is very recent in firearms history.

It is important to note from an overall historical perspective, early firearms technology was often driven by war. However, once that technology was developed, inventors and designers pushed the boundaries of capacity for firearms. The earliest firearm, or portable gun, was the handcannon which appeared on the battlefield in the 1200s. This simple weapon utilized a touchhole and external fire source to ignite powder and fire the gun. However, despite its simplicity, the handcannon was not always single barrel, some had multiple barrels. By the 1400s, the first true ignition system, the matchlock was developed. And while only slightly more sophisticated than its predecessor, there were even revolvers made in matchlock form. By the 16th and 17th centuries, firearms existed in many forms, such as pistols, rifles, muskets, carbines and shotguns; as combination weapons; as repeaters; as breechloaders; as gas sealed guns, etc. In fact, the foundation for many technologies perceived as "modern" has some root in firearms invention centuries ago. Even the idea of a recoil operated firearm was referenced in 1663.

An additional occurrence with this rapidly advancing technology was that it became *too* advanced for battlefield use, finding popularity and use rather in the civilian population. Military firearms in a general sense were limited by tactics and government bureaucracy while civilian arms, until recently, were predominantly

limited by individual budget. Furthermore, civilian arms could be applied in a far greater variety of uses (e.g., self-defense, hunting, sport.). And while historically, civilians have had the more advanced firearms technology in their possession, not everyone could afford the latest and greatest model. A more affordable option for the user and prized option for the collector was often post-war weapons surplus – i.e. weapons used *in* war were often sold on the civilian market both during and after wars' end. For example, after the American Civil War, post-war weapons surplus firearms became available on the civilian market. Soldiers could buy their firearms for as little as six dollars and many dealers and distributors sold them in their catalogs. This continued in the 20th century, with firearms such as the Springfield Model 1903 bolt action rifle and semi-automatics such as the M1 Garand. Even today, through the Civilian Marksmanship Program, civilians can purchase certain military rifles and pistols. Thus, there has always been an ebb and flow of civilian and military firearms for centuries and the modern assertion that civilians should not have, as the political phrase states, "weapons of war," flies in the face of the entirety of firearms history, where people have generally been able to own and possess the same type of firearms found on the battlefield *or* more advanced technologies on the civilian market.

SEMI-AUTOMATIC AND AUTOMATIC TECHNOLOGY

While often perceived as modern, semi-automatic and automatic technologies

were invented in the 1880s. In fact, some semi-automatic firearms predate the Gun Control Act of 1968's cut-off date for antique firearms (1898) and therefore, under federal law are not "firearms". *See* 18 U.S.C. 921(a)(16). A majority of firearms produced today are semi-automatic rifles, pistols or shotguns. Semi-automatic operation involves a trigger press each time to fire one round, eject a spent case, and load another round to be fired. The Mannlicher rifle is generally attributed to be the first semi-automatic rifle. Handguns followed shortly after. An early design was Hugo Borchardt's C-93 with detachable magazine. The Mauser C-96 followed, as did the John Moses Browning's Model 1899/1900 pistols. In the 20th century, millions of semi-automatic firearms have been made by countless companies and are used both by the civilian population and the military.

The magazine, which is typically associated with semi-automatic, and sometimes automatic, technology is even older. In the mid-1600s in Italy, the Lorenzoni system was developed and then imitated by many designers in long gun and pistol form. This gun was a flintlock, magazine-fed repeater that fired around seven shots before having to reload. A century later the Girardoni (1779) air rifle could fire about 20 rounds from a tubular magazine. By the mid-1800s many firearms both obscure and common had magazine capacities over ten rounds. Certain Luger semi-automatic pistols in the 1900s had the option of a 32-round drum magazine. And the Gatling Gun, patented in 1862, could fire several hundred rounds

a minute. Even a Winchester Model 1903 rifle could be fixed with a Sabo 96-round detachable tubular magazine.

The box magazines seen with an AR platform semi-automatic firearm today - the type of firearm most readily associated with the bump stock - were originally patented by a series of designers, including Rollin White in 1855. A detachable version was patented in 1864 by Robert Wilson. A vertically stacked box magazine was patented by James Paris Lee in 1879 which was applied to several rifles including the Mannlicher.

At the same time, semi-automatic technology was developed so too was automatic - in fact, automatic predates semi-automatic slightly. Automatic firearms have the capability to fire continuously through one depression of the trigger, until the trigger is released, it malfunctions, or runs out of ammunition. As previously stated, the original idea for a recoil operated firearm was referenced in the 1600s. Often, early firearms such as the Puckle Gun (1718) and other early "rapid firing" guns are considered the foundation for the idea of a machine gun. And while the concept of rapid fire and firing as many rounds as quickly as possible had been sought for centuries, the label of those early firearms as machine guns is presentist. Even the Gatling Gun is often inaccurately labeled as a "machine gun," because of its ability to fire hundreds of rounds a minute. According to the patent document, the drawing has the subtitle, machine gun, however nowhere in the document does it

call the invention that, rather it is a machine that is a gun. Furthermore, it has been legally determined to *not* be a machine gun. It is an improvement on a repeating and revolving firearm, more accurately dubbed a repeating rifle battery, operating off a hand crank rather than a trigger, in which the cyclic rate is influenced by the user's speed and ability - similar to the bump stock needing the user to push the firearm forward in order to increase the rate of fire. The first true successful machine gun is often attributed to Hiram Stevens Maxim around 1883. Once he came out with his automatic technology, others, such as John Moses Browning, quickly developed their own. The popularity of the machine gun grew so much that it was a key firearm used in the Battle of San Juan Hill of the Spanish American War in 1898 and more widely by World War I.

To my knowledge, the terms for semi-automatic and automatic technologies, as well as machine guns have not changed much since their invention, despite the sometimes confusing colloquialisms people use for terminology and the fact that other types of firearms are able to achieve fast cyclic rates, whether intentionally or unintentionally. In fact, the entirety of firearms development has been dedicated to the advancement of the technology to improve not only accuracy and precision, but ways to aid in more effective operation of a firearm or increase speed. As previously mentioned, the earliest handheld firearms were handcannons. These weapons came in several configurations but did not have traditional stocks – sometimes they were

merely a miniature tube-like cannon and other times they had handles. However, that design made it difficult to aim and hold onto the weapon during operation.[1] As technology advanced, more traditional stocks appeared on firearms which made it easier to wield from the shoulder or grip with the hand. Even those designs continued to evolve – utilizing curvatures and different shapes to better fit the user's shoulder or grip. Today, stock design continues to change with ways to better stabilize the firearm depending on its particular purpose. For example, the development of thumbhole stocks to balance the firearm for target and Olympic shooting or an adjustable stock to fit the size of the user and help them control the firearm and reset quickly for repeating functions. Another example is a pistol grip on a firearm which technically originated in the 19th century to help convert a pistol to a rifle/carbine and steady the user, often when on horseback. Even sporting clothes, such as jackets and vests with shoulder padding, improve stability and reduce the effort required to maintain control of a rifle or shotgun by absorbing, directing, and dampening some of the recoil from firing a shot.

In addition to designs and shapes of the firearms to stabilize the shot, so many facets of a firearm have been fine-tuned over centuries to better equip a firearm to serve its intended function, including but not limited to triggers, trigger guards,

[1] In fact, when I personally fired a handcannon, I had to nestle the back of the handle between my arm and my side in order to maintain control of the weapon.

sights, barrels, rifling, muzzle brakes, recoil compensators, etc. Such improvements often reduced the amount of manual effort required to maintain the stability of aim when shooting a weapon and allowed for more consistent shooting over multiple shots in a row. It's important to note though that firearms are designed for different purposes. Some are made for precision; some for speed; and they all serve an array of different functions for self-defense, target shooting, hunting, military, etc. And while these changes may decrease the reset time for faster firing or stabilize the gun for accuracy, they are still ancillary to the action of the gun itself and therefore, do not change the internal function of the gun. Another example of the change in cyclic rate is the Winchester Model 1897 slide action shotgun, invented after the first machine gun. Millions were made, as it was a popular sporting shotgun on the civilian market, as well as a shotgun used in warfare. This slide action firearm however has become famous for its "slam firing" capability - meaning that the user is able to depress the trigger and continuously work the slide increasing the shotgun's rate of fire with a single trigger depression. However, the user must manually work the slide. An argument has been made that a bump stock is different because it functions more "automatically," however, in order to get it to work, the user must *manually* push forward on the gun. With a true machine gun, the firearm does the work and all that is needed is a trigger pull without more.

CONCLUSION

Throughout history, civilians have typically had more superior firearms than the military. They also could purchase military firearms. Since the 17th century, estate inventories in Europe showed a propensity for not only nobility but an emerging middle class to own and collect military and commission civilian arms. And while firearms terminology is often complicated with multiple names for the same thing and colloquialisms, the term machine gun has remained relatively similar since Hiram Stevens Maxim's invention in the 1880s. There have been a number of firearms throughout history with the capacity for increased cyclic rates, including athletes firing semi-automatics at similar cyclic rates to the bump stock. However, the bump stock in its configuration is neither automatic nor operates with one trigger function; therefore, it may increase the cyclic rate, but it does not convert a firearm to a machine gun. As a historian and museum professional who must abide by federal, state, and local gun laws, there are unintended consequences to randomly changing the longstanding definitions of certain firearms terminologies. Making an executive decision to rewrite history can criminalize many Americans who own other technologies potentially affected by this ruling - firearms that have not necessarily been used in crime for over a century - and forcing museums to erase artifacts of history.

* * * *

I declare under penalty of perjury that the foregoing true and correct. Executed on June 26, 2020.

Ashley Hlebinsky

EXHIBIT 1

Ashley Hlebinsky Curriculum Vitae

2313 Central Avenue Unit A
Cody, WY, 82414
Email: theguncode@gmail.com
Phone: 412-491-2493

Education:

Master of Arts, American History, University of Delaware, 2013
Bachelor of Arts, American History, University of Delaware, 2011

Recent Honors/Awards:

Wyoming Business Report's Top 40 Under 40, 2017
National Shooting Sports Foundation & Professional Outdoor Media Association's Shooting Sports Communicator of the Year Award, 2017
Nominee – Wyoming's Non-Profit Woman of Influence, 2017

Grants:

National Endowment for the Humanities, 2017
Institute of Museum and Library Services, 2017
Gretchen Swanson Family Foundation, 2015, 2016, 2017, 2018, 2019, 2020
Kinnucan Arms Chair Grant, 2012

Fellowships:

Firearms Curatorial Resident, Buffalo Bill Center of the West, 2013
Edward Ezell Fellowship, University of Delaware, 2012
Buffalo Bill Resident Fellowship, Buffalo Bill Center of the West, 2011

Committees and Memberships:

Founding President – Association of Firearms History and Museums

- Academic association for the study of firearms history in United States

Founder – Arsenals of History Symposia Series

- First international symposia series on the academic study of firearms

Spokesperson – NSSF/AFSP Suicide Prevention and Project ChildSafe Programs
American Alliance of Museums – Member
American Society of Arms Collectors – Member
Winchester Arms Collectors Association – Honorary
Remington Society of Arms Collectors – Member
Weatherby Collector's Association –Life Member

Selected Firearms-Related Professional Experience:

Curator Emerita & Senior Firearms Scholar, Cody Firearms Museum. Buffalo Bill Center of the West, 2020 - Present
Adjunct Scholar of Firearms History, Technology & Culture. Firearms Policy Coalition. 2020 - Present

Consultant. Adirondack Experience. November 2019
Project Director, Cody Firearms Museum Renovation, Buffalo Bill Center of the West, Cody, WY, 2015-2019
Consultant. Winchester Mystery House, August 2019.
Consulting Scholar. National Park Service & Organization of American Historians, March 2019.
Robert W. Woodruff Curator, Cody Firearms Museum, Buffalo Bill Center of the West, Cody, WY, 2015-Present
Consulting Curator, Houston Museum of Natural Sciences, 2018 - Present
Producer. *Gun Stories with Joe Mantegna*, Outdoor Channel. 2017-Present
Consulting Producer. *Brothers in Arms*, History Channel. 2017
Consultant/Curator. Daniel Defense, Black Creek, Georgia. 2017
Consultant, National Museum of Law Enforcement and Organized Crime (Mob Museum), Las Vegas, NV, 2016 - Present
Associate & Acting Curator, Cody Firearms Museum, Buffalo Bill Center of the West, Cody, WY, 2015
Guest Curator. C.M. Russell Museums and Complex, 2015-2016
Guest Curator. Cody Firearms Experience, 2015
Assistant Curator, Cody Firearms Museum, Buffalo Bill Center of the West, Cody, WY, 2013-2014
Teaching Assistant, The Jewish Holocaust: 1933-1945, University of Delaware, 2013
Teaching Assistant, Introduction to Military History, University of Delaware, 2012
Teaching Assistant, History Education, University of Delaware, 2011
Researcher/Fellow, National Museum of American History, Smithsonian Institution, 2010-2013
Archival Assistant, University of Delaware Special Collection, 2010-2011
Firearm Intern, Soldiers and Sailors National Memorial Hall, 2008

Publicly Disclosed Expert Witness Testimony:

Miller v Becerra, November 2019
Regina (Nova Scotia) v Clayton, January 2019
Garrison v Sturm, Ruger & Company, Inc. 2018

Selected Media Appearances:

Co-Host. *Master of Arms*. Discovery Channel, 2018.
On Camera Expert. Gun Stories with Joe Mantegna, Outdoor Channel, 2015 - Present
Re-Occurring Expert. Mysteries at the Museum, Travel Channel, 2016-Present
Re-Occurring Guest. Sportsmen of Colorado, Radio The Source 560 AM KLZ, 2014 - Present
Guest. To the Best of Our Knowledge, National Public Radio, 2016

On Camera Expert. American Genius, National Geographic, 2015
Also appears on: National Public Radio, Fox News, Media, Entertainment, Arts, WorldWide, Women's Outdoor News, Outdoor Life, Shooting USA, Gun Talk Media, National Shooting Sports Foundation, Discovery Channel, Travel Channel, National Geographic

Has been profiled by: The Bourbon Review, Recoil Magazine, Outdoor Life Magazine, Guns.com, Blue Press Magazine, and many other national news outlets.

Selected Lectures/Panels:
Guest Lecturer. Art of Collecting. Nevada Museum of Art. January 2020
Panelist. Firearms and Museums in the 21st Century. National Council for Public History. March 2019.
Scholars Roundtable. Coltvsille National Historic Site. Organization of American Historians & National Park Service, March 2019.
Forum Speaker. The Art of the Hunt: Embellished Sporting Arms in America. New Orleans Antique Forum, August 2018
Guest Lecturer. Unloading the Gun: Firearms, History, and Museums. Yakima Valley Museum, June 2018
Guest Lecturer. Perpetrators and Protectors: The Mob, The Law and Firearms, National Museum of Law Enforcement and Organized Crime (Mob Museum), September 2017
Organizer. Arsenals of History: Firearms and Museums in the 21st Century, Buffalo Bill Center of the West, July 2017
Lecturer. The Cody Firearms Museum, Arsenals of History Symposium, Buffalo Bill Center of the West, July 2017
Moderator. Addressing the Press: Firearms and the Media, Arsenals of History Symposium, Buffalo Bill Center of the West, July 2017
Moderator. Forming an Association: Legitimizing Firearms in Academic Study, Arsenals of History Symposium, Buffalo Bill Center of the West, July 2017
Guest Lecturer. Displaying the "Politically Incorrect," C.M. Russell Museums and Complex, May 2017
Guest Lecturer. Displaying the "Politically Incorrect," Blackhawk Museum, March 2017
Panelist. Curator Roundtable, Firearms and Common Law Symposium, Aspen Institute, September 2016
Guest Lecturer. Displaying the "Politically Incorrect," Canadian Guild of Antique Arms Historians, April 2016
Guest Lecturer. The Cody Firearms Museum Renovation, American Society of Arms Collectors, September 2016

Guest Lecturer. From Protector to Perpetrator: Demystifying Firearms in History, Art Institute of Chicago, November 2015
Guest Lecturer. Winchester '73: The Illusion of Movie Making, Winchester Arms Collectors Association, July 2014
Guest Lecturer. Unloading the Six Shooter: Disassembling the Glamorization and Demonization of Firearms in the Arts, Buffalo Bill Center of the West, 2011

Selected Firearms Exhibitions:

Curator/Project Director. *Cody Firearms Museum Renovation*. Buffalo Bill Center of the West. Upcoming July 6, 2019

Co-Curator. *The Art of the Hunt: Embellished Sporting Arms from 1500-1800.* Houston Museum of Natural Sciences. March 2019

Curator. *Glock Makes History: The Birth of the Polymer Handgun Market*. Buffalo Bill Center of the West. June 2016

Guest Curator. *Designing the American West: The Artist and the Inventor*. C.M. Russell Museum & Complex. February 2016

Curator. *The Greatest Gun Designer in History: John Moses Browning.* Buffalo Bill Center of the West. December 2015

Curator. *Journeying West: Distinctive Firearms from the Smithsonian Institution.* Buffalo Bill Center of the West. December 2015

Curator. *The Forgotten Winchester: Great Basin National Park*. Buffalo Bill Center of the West. June 2015

Curator. Western Firearms Gallery, including *Shoot for the Stars: The Tradition of Cowboy Action Shooting*. Buffalo Bill Center of the West. April 2015.

Curator. *Steel Sculptures: Engraving Individuality from Mass Production*. Buffalo Bill Center of the West. Winter 2014.

Certifications:

Certified Firearms Instructor, Basic Pistol, 2016
Certified Firearms Instructor, Personal Protection Inside the Home, 2016
Well Armed Woman Instructor Certification, 2016
Museum Studies Certification, University of Delaware, 2013

Publication History

Books:
Co-Author. *Fifty Featured Firearms at the Buffalo Bill Center of the West*. Mowbray Publication: Rhode Island, 2017 (in process)
Contributor. *Buffalo Bill Center of the West.* Buffalo Bill Center of the West: Cody, WY, 2016.
Articles:
Author. "Burton Light Machine Rifle." *Recoil Magazine*. October, 2019
Founder/Editor/Author. Arsenals of History Journal, Annual Publication, 2018 - Present
Author. "It's Complicated: The Short Answer to Firearms, Museums and History. *Journal of the Early Republic – The Panorama*, September 2018.
Contributor. "Firearms Curator Roundtable" *Technology & Culture Journal*, August 2018
Author. "Displaying the 'Politically Incorrect.'" *CLOG X Guns*: Chicago, IL, September 2017
Author. "Does History Repeat Itself? The Smith & Wesson LadySmith." *CLOG X Guns:* Chicago, IL, September 2017
Author. "Renovating the Cody Firearms Museum." *International Committee of Museums and Collections of Arms and Military History Magazine.* Issue 17, May 2017. Pg. 38 - 41
Author. "Renovating the Cody Firearms Museum." *American Society of Arms Collectors Journal*. Fall 2016.
Author. "Glock Exhibit Opening." *Glock Magazine.* Bang Media. Annual 2017
Author. "The 28 Most Notable Guns from Remington's 200-Year History." *Outdoor Life Magazine*. Bonnier Corporation, 2016
Author. "Cassie Waters: Businesswoman of the Old West." *Guns of the Old West.* Harris Publications, Spring 2016
Author. "Making History: GLOCK Pistols at the Cody Firearms Museum" *Glock Magazine.* Harris Publications. Annual 2016
Author. "Pocket Pistols: 10 Seminal Guns from the Past 300 Years." *Pocket Pistols.* Harris Publications. 2016
Author. "The Gun that Won the Western and the Unforeseen Stars of *Winchester '73*" *Guns of the Old West.* Harris Publications.
Author. "Frontier Profile: Jedediah Strong Smith" *American Frontiersman*. Harris Publications
Author. "Frontier Legend John Johnston." *American Frontiersman.* Harris Publications
Author. "The Guns of John Johnston." *American Frontiersman.* Harris Publications

Author. "Annie Oakley VS Lillian Smith: A Female Sharpshooter Rivarly." *Guns of the Old West.* Harris Publications, Spring 2015
Author. "Icons and Has-beens." *American Handgunner*. FMG Publications, 2014
Author. "Triggering Memory: American Identity in *Cowboys and Aliens*." *Points West.* Spring 2012
Author. "Unloading the Six-Shooter: Disassembling the Glamorization and Demonization of Firearms in the Arts." *Points West*, Fall 2011.

Columns:

Author/Brand Ambassador. *The Bourbon Review.*
Author. *American Association for State and Local History*. Summer 2019
Author. "Weird West: Fact or Fiction" *Guns of the Old West*. Athlon Outdoors (formerly Harris Publications)

- 1st Assault Rifle
- Colt VS Winchester Revolver
- Did Winchester Really Win the West?
- Oliver Winchester's Lever Action Shotgun
- Remington Cane Gun

Author. "Cowboy Action Round Up." SHOT Show New Products. *Guns of the Old West*. Athlon Outdoors (formerly Harris Publications). 2015, 2016, 2017

Reviews:

Reviewer: Edited by Jonathan Obert, Andrew Poe, and Austin Sarat. Oxford: Oxford UniversityPress, 2018. *Journal of Technology & Culture*, Fall 2019
Author. "Everybody Loves an Outlaw: Taylor's Outlaw Legacy Revolver Series." *Guns of the Old West.* Harris Publications
Reviewer: Richard Rattenbury. *A Legacy in Arms: American Firearms Manufacture, Design and Artistry, 1800-1900*. *Chronicle of Oklahoma*, Spring 2016

Selected Blogs & Vlogs:

Recoil Magazine

- Weekly video series beginning October 2017 to Present

Dillon Precision

- Historical Videos on Ammunition (Upcoming)

Outdoor Life

- Top 10 Guns in American History
- Guns of the Old West: 10 Iconic Firearms and the Legendary Men (and Women) Who Shot Them
- 13 of the Biggest Gun Fails in Recent Firearms History
- Gun of the Week:
  - John Martz Luger
  - Apache Revolver

German Frei Pistol
King Louis XV Embellished Blunderbuss
Armalite AR-17 Shotgun
Getting the Christmas Goose with a Goose Rifle & Cutaway Suppressor
Mossberg Brownie
Wesson & Leavitt Belt Revolver
William Harnett and the Faithful Colt 1890
Winchester Model 1894 Lever Action Rifle
Ruger Semi-Automatic Pistol, 1 of 5,000
Herb Parson's Winchester Model 71 Lever Action Rifle
Lincoln Head Hammer Gun
American Trap Gun
Browning Brother's Single Shot Rifle Patent
Feltman Pneumatic Machine Gun
U.S. Springfield-Allin Conversion Model 1866 Trapdoor Rifle
Winchester Wetmore-Wood Revolver
Webley-Fosbery Automatic Revolver
Hopkins & Allen XL3 Double Action Revolver
DuBiel Modern Classic Rifle
Colt Model 1877 "Thunderer" Double Action Revolver
Tom Tobin's Colt Model 1878 Frontier Revolver
Walch 10-Shot Double Hammers Pocket Revolver
Winchester Model 1887, Serial No. 1
Deringer vs Derringer
The Forgotten Winchester 1873 of Great Basin National Park

Range 365

To the One Who Got Away
Gun Review: New Glock 19 Gen 5
Ain't She a Pistol? 10 Historic Gun Ads Featuring Women

National Shooting Sports Foundation

The Gun Vault:
Winchester 1873 Found in Great Basin National Park
Col. Jeff Cooper's Colt MK IV Series 80
500+ Year Old Firearms, Matchlocks, Flintlocks
U.S. Presidents Guns
Cross Dominance Shotgun
Herb Parson's Winchester Model 71 Rifle
Audie Murphy's Colt Bisley Revolver
4 Gauge Winchester Wildfowler

Pocket Pistols
Henry Ford's Winchester Model 1887 Lever Action Shotgun
Tom Knapp's First Gun
Buffalo Bill Cody's Winchester 1873
Colt Model 1861 Navy Serial No. 1
Cassie Waters' Hopkins & Allen XL3 Revolver
Glock 17

The Truth About Guns
Presidential Presentation Rifles
Factory Cut-Away M16A1
1854 Smith & Wesson Repeating Rifle (Serial Number 8)
Winchester World's Fair Model 1866 Deluxe Sporting Rifle
Raymond Wielgus Collection
Gastinne-Renette Muzzleloading Percussion Target Pistols
Oliver Winchester's Jennings Repeater
Henry Ford's Winchester Model 1887
Winchester Model 1866 Musket in .44 Rimfire
English Wheellock
Southern Belle American Longrifle
Annie Oakley's Model 1892 Smoothbore Rifle
Catherine the Great of Russia's Blunderbuss Gift to King Louis XV of France
Color Case-Hardened GLOCK 43: Merging the Old West with the New

Buffalo Bill Center of the West – Unloading the Myth
The Cody Firearms Museum – Yesterday, Today, and Tomorrow
Guns of the Week – Christmas List
Guns of the Week: December 15-19
Guns of the Week – The Cody Firearms Museum
Guns of the Week – German Firearms
Guns of the Week – Scheutzenfest
Guns of the Week – Air Guns
Guns of the Week – Early Firearms Law
Guns of the Week – October 13-17
Guns of the Week – Ingenious Engineering
Guns of the Week – Remington – Smoot
Guns of the Week – September 22-26
Guns of the Week – September 15-19
Guns of the Week – September 8 -12
CSI: Firearms Museum Edition
Confessions of a Gun Historian

Art Guns: Aesthetics Over Function?
What Good's a Gun Without a Firing Pin?
Gun Installations, Trials & Tribulations
A True Test of Marital Trust and Love
Remembering Tom Knapp
Cody Firearms Museum Goes Hollywood
When Will My Firearms Go On Display
What's Your Cody Firearms Museum
To Vlog or Not to Vlog
We Don't Just Have Old Guns in Our Museum: SHOT Show 2014
Taking a Staba at Displaying More Guns
"Hi Yo Silver" Cook Away! Lone Ranger Display

The Shooting Wire
Winchester's 150th Anniversary Website
Remington's 200th Anniversary Website

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAMIEN GUEDES, *et al.*, Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *et al.*, Defendants.	)	Case No. 1:18-cv-02988-DLF The Hon. Judge Friedrich
DAVID CODREA, *et al.*, Plaintiffs, v. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *et al.*, Defendants.	)	Case No. 1:18-cv-03086-DLF The Hon. Judge Friedrich

[PROPOSED] ORDER

In light of Defendants' Motion for Summary Judgment, Plaintiffs' Cross-Motion for Summary Judgment, and the responses and replies thereof, it is **HEREBY ORDERED** that:

1) Plaintiffs' Cross-Motion for Summary Judgment is **GRANTED**; and

2) Defendants' Motion for Summary Judgment is **DENIED**.

Judgment is hereby entered for Plaintiffs.

IT IS SO ORDERED.

_____ _____

Date United States District Judge