No. 22-976

In the Supreme Court of the United States

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

v.

MICHAEL CARGILL

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

REPLY BRIEF FOR THE PETITIONERS

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A bump stock transforms a semiautomatic rifle into a weapon that shoots hundreds of bullets per minute with a single pull of the trigger. Like a traditional machinegun, a rifle with a bump stock fires repeatedly without any further manipulation of the trigger by the shooter: As long as the shooter leaves his finger on the bump stock's finger rest and maintains steady forward pressure on the front of the rifle, the gun keeps firing until it runs out of ammunition. The only difference is that a traditional machinegun relies on the back-and-forth movement of the gun's internal parts whereas a bump stock relies on the back-and-forth movement of the entire forward portion of the rifle. Videos in the record vividly illustrate both how little input from the

shooter is required and the rapid fire that bump stocks enable.[1]

Respondent nonetheless maintains that a bump stock is not a "machinegun" under the National Firearms Act. He insists (Br. 19-21) that a rifle with a bump stock does not fire multiple shots "by a single function of the trigger," 26 U.S.C. 5845(b), on the theory that a separate "function of the trigger" occurs whenever the trigger moves backwards and releases the hammer—even if the trigger moves without further manipulation by the shooter. And he asserts (Br. 42) that a rifle with a bump stock does not fire "automatically," 26 U.S.C. 5845(b), because "*any* extra help from the shooter apart from the initial activation of the trigger"—even just continued forward pressure—is in his view inconsistent with automatic fire.

Respondent's interpretation of the statute echoes the one adopted by the plurality below. Our opening brief explains why that interpretation defies the ordinary meaning of the text, frustrates the statute's evident purpose, and would "legalize an instrument of mass murder" that has no legitimate civilian use, Pet. App. 71a (Higginson, J., dissenting). Respondent offers no persuasive response. And his repeated refusals to defend the necessary implications of his arguments further confirm that those arguments are wrong.

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[1] See https://www.youtube.com/watch?v=hCCT8JtwQeI (promotional video created by a bump-stock manufacturer); https://www.youtube.com/watch?v=pPI95ZZTzZQ (manufacturer's demonstration video); https://www.youtube.com/watch?v=67oxh-KpWeQ (full-speed and slow-motion demonstration); see also D. Ct. Doc. 59-1 (Oct. 1, 2020).

A. A Rifle With A Bump Stock Fires Multiple Shots "By A Single Function Of The Trigger"

Our opening brief explains (at 18) that a firearm shoots more than one shot "by a single function of the trigger," 26 U.S.C. 5845(b), if a single volitional motion, such as a push or a pull, initiates the firing of multiple shots. Respondent's objections to that interpretation lack merit. And his alternative interpretation—that a separate "function of the trigger" occurs whenever a rifle's trigger moves—contradicts the contemporaneous understanding of the words in the statute and yields untenable results that even respondent is unwilling to defend.

1. To begin, respondent errs in arguing (Br. 21, 27) that our interpretation differs from the interpretation adopted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Respondent asserts (*ibid.*) that ATF read the term "single function of the trigger" to refer only to a single pull of the trigger, but that the "Solicitor General" now reads it more broadly to refer to any single volitional motion of the shooter that initiates the firing of multiple shots. In fact, ATF adopted the same reading advanced in our opening brief. ATF defined "'single function of the trigger' to mean 'single pull of the trigger' and analogous motions, taking into account that there are other methods of initiating an automatic firing sequence that do not require a pull." 83 Fed. Reg. 66,514, 66,515 (Dec. 26, 2018).

Respondent also errs in asserting (Br. 23) that the government's reading rests on "legislative history" rather than "statutory text." Everyone agrees that this case turns on the meaning of the statutory phrase "single function of the trigger," not on lawmakers' unenacted intentions. Our opening brief thus explained (at

17-18) that the government's interpretation follows naturally from the relevant dictionary definitions of the words "function of the trigger." But this Court often determines the meaning of a statutory term not only by examining dictionaries, but also by considering how English speakers used or understood the term around the time the statute was enacted. See, *e.g.*, *New Prime Inc.* v. *Oliveira*, 139 S. Ct. 532, 540 & nn. 2-5 (2019); *Whitfield* v. *United States*, 574 U.S. 265, 267-268 (2015).

That approach is especially appropriate here. This case concerns the meaning of a phrase, not the meaning of a single word. Phrases often mean more than the sums of their components. See, *e.g.*, *Nken* v. *Holder*, 556 U.S. 418, 430 (2009) ("The sun may be a star, but 'starry sky' does not refer to a bright summer day."). The phrase at issue here, however, poses an interpretive challenge. "The phrase 'single function of the trigger' is not a matter of common parlance." Pet. App. 53a (Ho., J., concurring in part and concurring in the judgment). Instead, it appears to have been used only in connection with legislation regulating machineguns—including the provision at issue here and some of its state-law predecessors. See Patrick J. Charles Amicus Br. 10-15. The most reliable way to interpret the phrase is thus to consider how speakers—whether legislators, executive officials, judges, or ordinary citizens—used and understood it in the context of those statutes. See *McDonald* v. *City of Chicago*, 561 U.S. 742, 828 (2010) (Thomas, J., concurring in part and concurring in the judgment) ("Statements by legislators can * * * demonstrate the manner in which the public used or understood a particular word or phrase.").

That contemporaneous usage is not speculation about the "aspirations or intentions" of those who sup-

ported the statute (Resp. Br. 23); instead, it is evidence of what the words Congress used were understood to mean at the time. And that evidence overwhelmingly favors the government's reading. Many speakers at or near the time of the statute's enactment—including the President of the National Rifle Association, two congressional committees, multiple members of Congress, and the Department of the Treasury—understood the term "single function of the trigger" to include a single pull of the trigger. See Gov't Br. 18-21. Federal officials and National Rifle Association personnel also used the word "pull" in guidance issued shortly after the statute's passage, and government agencies did so in guidance issued to soldiers returning from the Second World War. See Patrick J. Charles Amicus Br. 21-23, 27-31. This Court, too, has stated that the term "machinegun" includes a firearm that "fires repeatedly with a single pull of the trigger," *Staples* v. *United States*, 511 U.S. 600, 602 n.1 (1994), and many courts of appeals have likewise reached for the word "pull" when applying the statute, see Gov't Br. 21 n.7. Those sources confirm that the term "single function of the trigger" focuses on what the shooter does to initiate the firing of multiple shots (*e.g.*, pull the trigger) rather than on the internal mechanics of the firearm or the physical movement of the trigger itself.

Contrary to respondent's suggestion (Br. 25-27), those sources are consistent with the understanding that the term "function of the trigger" also covers triggers that are pushed rather than pulled. The cited sources show that the phrase "function of the trigger" includes a pull of the trigger, but none of them states that the phrase excludes other methods of trigger activation. And given that most firearm triggers function

by means of a shooter's pull, see Pet. App. 81a, speakers naturally use a pull of the trigger as the archetypal example of a "function of the trigger."

Respondent faults the government (Br. 28-30) for reading the term "function of the trigger" to refer to the action of the shooter rather than to the movement of the trigger. But the defining characteristic of a trigger is not any particular movement, interaction with the hammer, or other mechanical role in the process that results in the discharge of a shot. To the contrary, as respondent acknowledges (Br. 34 n.36, 38-40), different types of firearms rely on many different types of trigger with widely varying mechanical operations that need not include the release of a hammer at all. Instead, the essential characteristic of a trigger—and thus the thing that defines a "function" of the trigger—is that it allows a push, pull, or other act by the shooter to initiate a firing sequence. Gov't Br. 17-18. Indeed, respondent himself reads "function of the trigger" to mean a "shooting cycle" that begins when "*[t]he shooter* activates the trigger" and that ends when "*[t]he shooter* releases or disengages the trigger." Br. 19-20 (emphases added). Respondent's own interpretation thus confirms that the term "function of the trigger" requires some reference to the shooter.

Respondent's objection also fails to account for context. Congress defined the term "machinegun" to include "any weapon which shoots * * * *automatically* more than one shot, without *manual reloading*, by a *single function of the trigger*." 26 U.S.C. 5845(b) (emphases added). No one disputes that a court must consider the shooter's acts in deciding whether a firearm shoots "automatically." Nor does anyone dispute that a court must consider the shooter's acts in deciding

whether a firearm shoots without "manual reloading." So too, applying the phrase "single function of the trigger" necessarily involves considering the shooter's actions.

2. Respondent errs in asserting (Br. 30-33) that a rifle equipped with a bump stock does not qualify as a machinegun under the government's interpretation. As we have explained, a firearm shoots more than one shot "by a single function of the trigger," 26 U.S.C. 5845(b), if a single volitional motion, such as a push or a pull, initiates the firing of multiple shots. See p. 3, *supra*; Gov't Br. 17. A rifle equipped with a bump stock satisfies that definition: It allows a shooter to initiate a firing sequence that releases hundreds of rounds with a single motion—typically, sliding the rifle forward in order to press the trigger against his trigger finger. See Gov't Br. 22-23.

Respondent emphasizes (Br. 30-33) that, during a bump-firing cycle, the trigger bumps repeatedly into the shooter's stationary trigger finger. As the government has explained, however, the phrase "function of the trigger" refers to the mechanism that allows some distinct act by the shooter to initiate a firing sequence. See Gov't Br. 17-18, 23-24. When a shooter uses a bump stock, the rifle's curved metal lever initiates a firing sequence only when the shooter first slides it into his finger. The lever does not initiate a new firing sequence each time it bumps into the shooter's finger during a bump-firing cycle; rather, it simply continues a sequence that has already begun.

Nor do those subsequent bumps reflect any distinct action by the shooter. Respondent asserts (Br. 32) that "bump stocks require the shooter to 'bump' the trigger each time a shot is fired," and insists (Br. 21) that the

trigger "must be reactivated by the shooter after every shot." But as the videos make clear, that gets things backwards: The shooter does not "bump" or "activate" the trigger; instead, the back-and-forth cycle enabled by the bump stock allows *the trigger* to bump the shooter's stationary finger. See p.2 n.1, *supra*. Indeed, the shooter's trigger finger could be "replace[d]" by a fixed "post" attached to the bump stock and the device "would operate the same." J.A. 112; see Pet. App. 103a-104a. The additional bumps that occur during a bump firing cycle thus do not constitute additional functions of the trigger because they do not require any separate action by the shooter.

Respondent observes (Br. 31) that, in order to keep a bump-firing cycle going, the shooter must keep his trigger finger on the bump stock's finger ledge and maintain constant pressure on the front of the rifle. But as we have explained, a conventional machinegun likewise requires a measure of sustained human input after the initial trigger pull: If the shooter stops depressing the trigger, the weapon stops firing. See Gov't Br. 33-34. Yet no one doubts that a conventional machinegun fires multiple shots "by a single function of the trigger." So too for rifles equipped with bump stocks. As discussed in more detail below, there is no meaningful distinction between the sustained human input required by a conventional machinegun (a continuous pull) and the sustained human input required by a rifle with a bump stock (a continuous push). See pp. 13-14, *infra*.

3. Although respondent takes issue with the government's reading of "single function of the trigger," he does not offer any general definition of his own. Instead, he defines the phrase solely in terms of the mechanics of a particular type of rifle, asserting (Br. 19-20)

that the term "function of the trigger" refers to a "shooting cycle" in which (1) "[t]he shooter activates the trigger," (2) "[t]he trigger releases the hammer, which springs forward and causes a single bullet to be fired," and (3) "[t]he shooter releases or disengages the trigger, causing the trigger to reset and allowing the hammer and trigger to return to a cocked position." See Resp. Br. 20 ("All of this constitutes a 'single function of the trigger.'") Respondent argues (Br. 20-21) that, under that definition, a rifle equipped with a bump stock fires only one shot for each function of the trigger. That mechanistic reading is incorrect.

As an initial matter, respondent derives his interpretation (Br. 20 & n.24) from his understanding of the mechanics of common modern semiautomatic and fully automatic rifles. But Congress did not limit the definition of "machinegun" to the most common types of fully automatic rifles. Congress instead defined the term to include "*any* weapon which shoots * * * automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. 5845(b) (emphasis added). Congress also specifically defined the term to include parts designed "for use in converting a weapon into a machinegun," *ibid.*—making clear that the statute reaches firearms that have been converted into machineguns in novel ways.

Respondent acknowledges as much in accepting (Br. 34 n.36) that a device that automatically activates a conventional firearm's trigger—such as the motorized fishing reel in *United States* v. *Camp*, 343 F.3d 743 (5th Cir. 2003)—qualifies as a machinegun, even though it lacks a direct connection to the hammer or other internal components of the firearm to which it is attached. A reading of "function of the trigger" that is tied to the

mechanics of a particular type of firearm is thus inconsistent with the breadth of the definition Congress adopted. And although respondent himself concedes that the "trigger" on a machinegun need not be a curved metal lever that releases the hammer (Br. 34 n.36, 38-40), he offers no definition of "function of the trigger" that would apply to other types of trigger. That by itself is sufficient reason to reject his understanding.

Nor does respondent attempt to ground his interpretation in the ordinary meaning of the words "function of the trigger" or contemporaneous usage of that phrase. Respondent reads the statute as though it defined a machinegun as a gun that fires more than one shot by "a single movement of the trigger." But that is not what the statute says. And respondent offers no evidence that ordinary English speakers understood a "function of the trigger" to include movements independent of any act by the shooter to initiate a firing sequence.

Respondent's interpretation also frustrates the statute's evident purpose. Respondent does not deny that Congress restricted machineguns because they are dangerous. He also does not deny that a machinegun is dangerous because it eliminates the manual movements that a shooter must otherwise repeat in order to fire multiple shots. Given that evident purpose, it makes more sense to read the statute to focus on the shooter's interaction with the trigger than to focus, as respondent does (Br. 19), on the trigger's interaction with "the hammer," "firing pin," and "disconnector."

4. Respondent's reading threatens to legalize a variety of devices that courts and ATF have long classified as machineguns. And although respondent seeks to distinguish those devices from bump stocks, he can do so

only by retreating (Br. 38-40) from his own definition of "single function of the trigger."

For example, respondent's interpretation threatens to legalize the Akins Accelerator—a device that worked much like the bump stock at issue here, but that relied on an internal spring to keep a bump-fire cycle going. See Gov't Br. 27. After all, the Akins Accelerator, no less than the bump-stock device at issue in this case, "facilitates rapid firing through repeated 'bumps' of the trigger into the shooter's finger." Resp. Br. 21; see Gov't Br. 7. Respondent argues (Br. 38) that this Court "need not (and should not) repudiate ATF's characterization of the Akins Accelerator," but he does not explain how to reconcile that result with his reading of "single function of the trigger." He instead suggests (*ibid.*) that the Court should decline to adopt his interpretation of that phrase and should "assume for the sake of argument that bump stock–equipped rifles fire more than one shot 'by a single function of the trigger,' yet hold that * * * non-mechanical bump stocks do not fire these multiple shots 'automatically.'"

Respondent likewise fails to reconcile his reading with ATF's longstanding classification of forced reset triggers—devices that enable a shooter to pull and maintain continuous pressure on the trigger while the trigger is repeatedly pushed against his stationary finger. Respondent argues (Br. 29-30) that a bump stock falls outside the definition of "machinegun" because it "facilitate[s] rapid activations of the trigger by allowing it to bump repeatedly into the shooter's finger." But forced reset triggers could equally be said to "facilitate rapid activations of the trigger." See *United States* v. *Rare Breed Triggers, LLC*, No. 23-cv-369, 2023 WL 5689770, at *17 (E.D.N.Y. Sept. 5, 2023) ("Defendants

played a video of [a forced reset trigger] at a rate approximately sixty-one times slower than real-time speed; in extreme slow motion, a viewer can see that the trigger shoe does move slightly back and forth against the shooter's finger with each shot in the firing cycle."), appeal pending, No. 23-7276 (2d Cir. filed Oct. 5, 2023).

Respondent argues (Br. 39-40) that, at a minimum, his interpretation would not jeopardize the understanding that motorized trigger devices—devices that, once switched on by the user, repeatedly pull a semiautomatic firearm's original trigger—are machineguns. He argues (Br. 39) that courts could "interpret the word 'trigger' to refer to a switch on a motorized device" rather than to the firearm's original trigger. Fair enough. But that concession just confirms that respondent errs in defining "function of the trigger" in terms of the movement of a rifle's curved metal lever or the release of a hammer. Instead, respondent himself ultimately appears to acknowledge that what matters is how the shooter initiates a firing sequence.

Finally, and most strikingly, respondent has no good answer (Br. 40) to the hypothetical example of a device that fires multiple bullets after the shooter presses a button, with the button oscillating up and down each time a bullet is fired. Respondent suggests (*ibid.*) that, in that example, only the operator's press of the button, not the button's later oscillations, would count as a function of the trigger. But that concession contradicts respondent's insistence (Br. 29) that "what matters is the behavior of the trigger—not the behavior of the shooter." Put another way, respondent does not explain why the curved metal lever's back-and-forth movements count as separate functions of the trigger in a rifle with a bump stock, but the button's up-and-down os-

cillations would not count as separate functions of the trigger in the hypothetical example.

B. A Rifle With A Bump Stock Fires Multiple Shots "Automatically"

A semiautomatic rifle equipped with a bump stock also fires multiple shots "automatically." 26 U.S.C. 5845(b). Respondent's contrary arguments lack merit.

1. Respondent argues (Br. 41) that a rifle equipped with a bump stock does not shoot multiple shots automatically because it "requires the shooter to engage in ongoing manual actions after he activates the trigger." In his view (Br. 42), a firearm does not fire "automatically" if it "requires *any* extra help from the shooter apart from the initial activation of the trigger." But that proves far too much. A conventional machinegun likewise requires human input beyond the initial activation of the trigger; at a minimum, it continues to fire only as long as the shooter keeps the trigger depressed. See *Staples*, 511 U.S. at 602 n.1. Yet even respondent accepts (Br. 44) that conventional machineguns fit the statutory definition.

Seeking to distinguish conventional machineguns from bump stocks, respondent argues that continuous fire with a conventional machinegun requires "[p]ressing and holding" the trigger, while continuous fire with a bump stock requires making repeated "forward thrusts on the barrel or front grip." Br. 44-45; see Br. i ("forward thrusts"); Br. 5 ("rapid forward thrusts"); Br. 41 ("forward thrusts"). But operating a bump stock does not require multiple "thrusts." Instead, the shooter simply maintains "*constant* forward pressure on the fore-grip or barrel shroud to continue firing." Pet. App. 142a (emphasis added); see *ibid.* ("[T]he shooter must maintain constant forward pressure with

his non-shooting hand."); *ibid.* ("[A] shooter can continue firing by just maintaining pressure."). There is no meaningful difference between (1) maintaining constant backward pressure on the trigger of a conventional machinegun and (2) maintaining constant forward pressure on the front grip of a rifle equipped with a bump stock. Either way, "maintaining pressure in one direction" both initiates the firing sequence and "allows shooting to continue." *Ibid.*

Respondent also contends (Br. 42, 44) that conventional machineguns differ from bump stocks because maintaining forward pressure on the barrel of the rifle is "separate and distinct" from the "initial activation of the trigger." But that is no distinction at all. Maintaining rearward pressure on the trigger of a machinegun could just as easily be described as "separate and distinct" from the "initial activation of the trigger." *Ibid.* It is true that the shooter applies the pressure to the trigger in one case and to the barrel in the other case. But the ordinary meaning of the word "automatically" depends on the degree of human input required, not on the part of the firearm to which that input is directed. A rifle with a bump stock requires the same type and degree of sustained human input—namely, maintaining pressure in one direction—as a conventional machinegun.

2. Under respondent's reading, a manufacturer could evade Congress's ban on machineguns by requiring a minute level of human input beyond pulling the trigger—*e.g.*, pressing and holding down a selector button—in order to fire multiple shots. See Gov't Br. 35-36. Respondent suggests (Br. 45) that a court could avoid that untenable result by treating the firearm's selector button "as part of the 'trigger.'" But it makes little sense to insist that the rifle fire multiple shots

without "*any* extra help * * * apart from the initial activation of the trigger," Resp. Br. 42, while simultaneously allowing a court to treat multiple components of the firearm "as part of the 'trigger,'" *id.* at 45.

Indeed, respondent's argument is self-defeating. A shooter typically begins a bump-firing sequence by pushing forward on the barrel so that the trigger slides into the trigger finger. See Gov't Br. 6. Under respondent's logic (Br. 45), a court could treat the barrel itself "as part of the 'trigger.'" On that view, the maintenance of forward pressure on the barrel would form part of the "single function of the trigger," and the rifle equipped with a bump stock would fire multiple shots "automatically." 26 U.S.C. 5845(b).

3. Respondent emphasizes (Br. 17) that the bump stocks at issue here contain "no motor, no spring, no electrical device, or anything else that might automate a manual task." But the same could be said of devices that unquestionably convert semiautomatic firearms into machineguns, including small plastic or metal "switches" that include no moving parts at all. See Tom Jackman, *With "conversion switch" devices, machine guns return to U.S. streets*, Wash. Post (Dec. 6, 2023), perma.cc/G6AK-CNZR. As with those devices, the question is not whether a bump stock by itself operates "automatically"; instead, the question is whether a rifle equipped with a bump stock shoots "automatically." The answer is yes: A bump stock "automate[s] a manual task" (Resp. Br. 17) by creating a back-and-forth cycle that eliminates the need for the shooter to manually release and pull the trigger to fire repeated shots.

Respondent also touts (Br. 43 n.44) a former Federal Trade Commission regulation outlawing the phrase "automatic sewing machine" as deceptive. But the

Commission's explanation of that decision supports the government's reading, not respondent's. The Commission explained that "'[a]utomatic' means self-operating or self-regulating." 16 C.F.R. 401.1(b) (Cum. Supp. 1966). ATF adopted the same interpretation here. See 27 C.F.R. 479.11 ("[T]he term 'automatically' * * * means functioning as the result of a self-acting or self-regulating mechanism."). And the Commission ruled that a sewing machine is not "automatic" because it "require[s] considerable control, skill, knowledge, and personal intervention by the operator to achieve satisfactory results." 16 C.F.R. 401.1(b) (Cum. Supp. 1966). That describes the sort of unassisted bump-firing technique that experts can learn to perform. Cf. Resp. Br. 3-4. By contrast, using a bump stock does not require "considerable control, skill, knowledge, and personal intervention." Rather, once the bump-firing cycle begins, the shooter need only keep his trigger finger stationary and maintain forward pressure on the rifle's front grip. As the district court found—and as the videos show—"[in] firing with a bump stock, 'mentally, you're doing nothing but pressing forward.'" Pet. App. 142a (citation omitted); see p.2 n.1, *supra*.

C. Respondent's Reading Would Enable Ready Circumvention Of The Statute

Respondent's reading would facilitate ready evasion of the statutory ban on new machineguns, 18 U.S.C. 922(*o*)(1). Respondent does not deny (Br. 47) that rifles equipped with bump stocks, like conventional machineguns, eliminate the manual movements that a shooter would otherwise need to make in order to fire continuously. Nor does he deny (*ibid.*) that, as a result, a bump stock allows a shooter to fire hundreds of bullets

per minute and to achieve the same lethality as a conventional machinegun.

Respondent dismisses (Br. 46) those concerns as rooted in "statutory purpose" rather than "statutory text." But "interpretation always depends on context," "context always includes evident purpose," and "evident purpose always includes effectiveness." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 4, at 63 (2012). For that reason, this Court has long rejected interpretations of statutes—including criminal statutes—that would "enable offenders to elude [their] provisions in the most easy manner." *The Emily*, 9 Wheat. 381, 389 (1824). To the contrary, it has observed that a court should "never adopt an interpretation that will defeat [the statute's] own purpose, if it will admit of any other reasonable construction." *Id.* at 388; see, *e.g.*, *American Broadcasting Cos.* v. *Aereo, Inc.*, 573 U.S. 431, 446 (2014).

In the end, even respondent accepts (Br. 46) that "textual ambiguit[y] * * * open[s] the door to considerations of statutory purpose." As multiple judges of the en banc Fifth Circuit recognized, the terms "single function of the trigger" and "automatically" are, at a minimum, ambiguous when considered in isolation. See Pet. App. 49a (Haynes, J., concurring in the judgment); *id.* at 53a-60a (Ho, J., concurring in part and concurring in the judgment). This Court should resolve any such textual ambiguity in a manner that "furthers rather than obstructs the [machinegun ban's] purpose." Scalia & Garner § 4, at 63 (emphasis omitted).

D. Respondent's And His Amici's Remaining Arguments Lack Merit

1. Like the Fifth Circuit plurality, respondent invokes (Br. 48-49) the rule of lenity in support of his

reading of "single function of the trigger" and "automatically." But respondent concedes that the rule of lenity applies only if, "after considering text, structure, history and purpose, there remains a grievous ambiguity or uncertainty in the statute." Br. 49 (quoting *Abramski* v. *United States*, 573 U.S. 169, 188 n.10 (2014)). Even if the text contained a linguistic ambiguity, context and purpose would resolve that ambiguity in favor of classifying a rifle equipped with a bump stock as a machinegun. See pp. 16-17, *supra*. The rule of lenity thus has no role to play here.

2. Respondent also argues (Br. 49-50) that, because ATF previously declined to classify bump-stock devices as machineguns, adopting a contrary interpretation now would violate the Fifth Amendment's Due Process Clause, or at least raise constitutional concerns, because it would "retroactively expand the scope of a criminal statute." That is incorrect. The scope of the statutory definition of a machinegun is defined by the text enacted by Congress. If this Court holds that the text encompasses bump stocks, it would not be retroactively expanding the statute; it would be declaring what the statute has always meant. The fact that ATF previously (and erroneously) took a different view poses no obstacle to the Court's reaching that conclusion. "Whether the Government interprets a criminal statute too broadly * * * or too narrowly," this Court "has an obligation to correct its error." *Abramski*, 573 U.S. at 191.

Nothing in the Due Process Clause prevents this Court from fulfilling that obligation here. Of course, if the government sought to prosecute someone for manufacturing or possessing a bump stock during the period when ATF took the position that such devices were not machineguns, that person could assert reliance on

ATF's classification letters as a defense to prosecution under the doctrine of entrapment by estoppel. See *United States* v. *Pennsylvania Indus. Chem. Corp.*, 411 U.S. 655, 674-675 (1973). But the government has not sought to bring such prosecutions, and this case does not raise any comparable issues because it is a challenge to a notice-and-comment regulation that repudiates ATF's prior classification letters and announces the interpretation the agency will apply prospectively.[2]

3. Some of respondent's amici, though not respondent himself, argue that a ban on bump-stock devices would violate the Second Amendment. See, *e.g.*, Gun Owners of America Amici Br. 30-33; National Shooting Sports Foundation Amicus Br. 14-19. But the Second Amendment allows the government to prohibit "dangerous and unusual weapons." *NYSRPA* v. *Bruen*, 597 U.S. 1, 21 (2022) (quoting *District of Columbia* v. *Heller*, 554 U.S. 570, 627 (2008)). Machineguns are a paradigmatic example of such weapons. See *Heller*, 554 U.S. at 624, 627. Indeed, this Court has described the suggestion that "restrictions on machineguns * * * might be unconstitutional" as "startling." *Id.* at 624.

Rifles equipped with bump stocks, like conventional machineguns, are dangerous and unusual weapons. "[B]ump stocks allow semiautomatic weapons to achieve the same lethality as fully automatic machineguns." Pet. App. 52a (Ho, J., concurring in part and concurring

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[2] ATF's regulation and our opening brief inadvertently misstated the number of classification letters between 2008 and 2017 in which ATF had concluded that certain bump-stock devices did not enable a firearm to fire "automatically" and thus did not convert weapons into machineguns. See Gov't Br. 8 (citing 83 Fed. Reg. at 66,517). Respondent correctly observes (Br. 7, 21) that the record includes 15 such classification letters.

in the judgment). They "can empower a single individual to take many lives in a single incident." 83 Fed. Reg. at 66,520. In the 2017 mass shooting in Las Vegas, for example, a gunman used semiautomatic weapons equipped with bump stocks to kill 58 people and wound approximately 500 more in a matter of minutes. See *id.* at 66,516. And unlike weapons such as handguns, bump stocks are not "'in common use' today for self-defense." *Bruen*, 597 U.S. at 32 (quoting *Heller*, 554 U.S. at 627). The Second Amendment does not guarantee a right to possess them.

4. Respondent next argues (Br. 48-50) that this Court does not owe deference to ATF's interpretation under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). But as the government has explained (Br. 43), it does not seek any such deference here because ATF's regulation is not a legislative rule carrying the force and effect of law; instead, it is simply an interpretive rule announcing ATF's understanding of the statute. That should be the end of the matter. See *HollyFrontier Cheyenne Refining* v. *Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2180 (2021) ("'[T]he government is not invoking *Chevron*.' * * * We therefore decline to consider whether any deference might be due its regulation.") (citation omitted).

5. Finally, respondent argues that, because the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, directs federal courts to "'set aside'" unlawful agency action, this Court should "direct the district court to formally vacate ATF's final rule." Resp. Br. 50 (quoting 5 U.S.C. 706(2)). For multiple reasons, that contention is not properly before the Court. The Fifth Circuit did not consider the issue, see *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005); it lies outside the question pre-

sented, see Sup. Ct. R. 14.1(a); respondent did not raise it in his response to the petition for a writ of certiorari, see Sup. Ct. R. 15.2; he did not file a cross-petition and thus cannot seek a modification of the court of appeals' judgment, see *Northwest Airlines, Inc.* v. *County of Kent*, 510 U.S. 355, 364-365 (1994); and the contention raises an exceptionally important question of administrative law that this Court should resolve with full briefing in a case where it is actually presented, see *United States* v. *Texas*, 599 U.S. 670, 693-704 (2023) (Gorsuch, J., concurring in the judgment).

This case presents a pure question of statutory interpretation: Whether the statutory definition of machinegun covers a bump stock that allows a semiautomatic rifle to fire hundreds of shots per minute with a single pull of the trigger. If this Court holds that it does, respondent's remedial arguments will be moot. And if the Court adopts respondent's interpretation of the statute, respondent will be free to raise his remedial arguments in the lower courts. See Gov't Br. 14.

CONCLUSION

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

Respectfully submitted.

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