No. 19-296

In The Supreme Court of the United States

DAMIEN GUEDES; SHANE RODEN; FIREARMS POLICY FOUNDATION, A NON-PROFIT ORGANIZATION; MADISON SOCIETY FOUNDATION, INC., A NON-PROFIT ORGANIZATION; FLORIDA CARRY, INC., A NON-PROFIT ORGANIZATION; DAVID CODREA; SCOTT HEUMAN; AND OWEN MONROE,

Petitioners,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; WILLIAM P. BARR, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES; REGINA LOMBARDO, IN HER OFFICIAL CAPACITY AS ACTING DEPUTY DIRECTOR; AND THE UNITED STATES OF AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF OF NFA FREEDOM ALLIANCE, INC., CALIFORNIA GUN RIGHTS FOUNDATION, AND ARIZONA CITIZENS DEFENSE LEAGUE AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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October 2, 2019

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INTEREST OF AMICI CURIAE[1],[2]

NFA Freedom Alliance, Inc. ("NFAFA") is an Arizona nonprofit corporation organized to promote a common good and general welfare to effect civic betterment and social improvement throughout all communities. Among NFAFA's members are owners of items regulated by the National Firearms Act ("NFA"). NFAFA represents the interests of its members through education, advocacy, and lobbying. NFAFA also works diligently to ensure that the general public is educated on the importance of gun rights through media outlets, public demonstrations, and presentations. In addition to representing the interests of its members and educating the general public, NFAFA initiates changes to gun policies through legislative reform. It is of vital interest to NFAFA's members that the rules relating to NFA regulated items be stable, predictable, consistent, and fairly established.

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[1] This brief is filed with the written consent of all parties. Timely notice was provided to all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amici or their counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

[2] Special thanks to Jeff Folloder, Executive Director of National Firearms Act Trade & Collectors Association, who assisted with research for this brief.

California Guns Rights Foundation ("CGF") is a nonprofit organization dedicated to defending the rights of gun owners. CGF conducts research, promotes constitutionally-sound public policy, engages in litigation, educates the public about federal, state, and local laws, and performs other charitable programs. This Court's interpretation of statutes and administrative law principles directly impacts CGF's organizational interests and the rights of CGF's members and supporters.

The Arizona Citizens Defense League ("AZCDL") is a non-partisan, non-profit, all volunteer organization dedicated to educating the citizenry about their government of the people, with a principal focus on Right to Keep and Bear Arms issues. AZCDL believes that the emphasis of gun laws should be on criminal misuse and that law-abiding citizens should be able to own and carry firearms unaffected by excessive laws or regulations.

Amici wish to assist the Court to ensure that the constitutional rights of their members and the public are not impaired by arbitrary, inconsistent, and standard-less lawmaking by regulatory authorities and mere executive fiat. No Amicus is publicly traded, and none has a parent corporation.

SUMMARY OF THE ARGUMENT

The 2018 rulemaking of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") represents a major departure from 63 years of established understanding of the definition of "machine gun" under the National Firearms Act of 1934 ("NFA") and the Gun Control Act of 1968 ("GCA"). ATF's wholly new construction so departs from 63 years of established law that it can barely even be described as "plausible." As such, it is subject to the rule of lenity and should be rejected.

Federal law defines "machine gun," in pertinent part, as follows:

> 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.

18 U.S.C. § 921(a)(23); 26 U.S.C. § 5845(b). The key words and phrases at issue in this case are "automatically" and "single function of the trigger." The same definition is used in both the NFA and the GCA.

The definition was first construed in 1955 by the Internal Revenue Service, which found that a Gatling Gun (whether hand-cranked or electric driven) was not a machine gun. This was for two

reasons. First, because a Gatling Gun was operated by a cam mechanism that repeatedly cocked and fired the weapon, it could not be characterized as operating with a "single function of the trigger." Second, with the hand crank version, the Gatling Gun required user input to keep the gun firing and therefore could be not considered to be firing "automatically." By explicitly importing the NFA definition into the GCA in 1968, Congress is deemed to have adopted this construction as it existed as of 1968.

Between 2003 and 2006, ATF examined a device called the Akins Accelerator. This device consisted of a stock which allowed the action of a semiautomatic rifle to move rearward within the housing of the stock as a result of recoil, then used a spring to push the stock forward again and caused the trigger to come in contact repeatedly with the trigger finger. Although at first ATF ruled that the Akins was not a machine gun, the agency later ruled that the spring made the mechanism "automatic."

Starting in 2008, ATF began examining a variety of new devices referred to as bump-stocks. These bump-stocks *lacked* any spring and instead required the user to manually push forward on the rifle's action with just the right amount of pressure to cause the trigger to contact the user's finger. In each instance, ATF repeatedly ruled that such a bump-stock device was *not* a machine gun because (1) it required user input and therefore could not be

considered "automatic" and (2) the repeated user action could not be considered a "single function of trigger." This analysis was thoroughly consistent with the approach adopted by Congress when it approved the 1968 understanding of the statute.

In 2018, ATC suddenly reversed course and arbitrarily decided that its prior analysis on bump-stocks was incorrect, suggesting that its prior holdings were not reasoned determinations, even though they plainly were. ATF even went so far as to claim that bump-stocks were "self-acting or self-regulating," even though a device that requires repeated user input cannot possibly be "self-acting or self-regulating."

This regulatory history makes ATF's current construction largely preposterous and, at best, barely plausible, and it is therefore plainly subject to the rule of lenity.

Additionally, the public should be entitled to rely on the stability and predictability of statutory definitions in conforming their behavior to the law. These statutes carry severe criminal penalties, and the law abiding public needs to know how to comply with the law without having to wonder about capricious lawlessness by a government agency that makes compliance with the law a perilous maze of pitfalls and traps.

For these reasons the Petition should be granted.

ARGUMENT

I. The Petition Should be Granted Because Regulatory History Reveals ATF's New Construction of "Machine Gun" is, at Best, a Barely Plausible Interpretation of the Statute Precluded By the Rule of Lenity.

If the history of the Government's application of the statutory definition of "machine gun" tells us one thing for certain, it is that the Government has, for the first time since the definition was created by Congress in 1934 and readopted by Congress in 1968, redefined the term "automatic" to mean, effectively, "not automatic." The Government's new definition is, to put it mildly, a reach.

Federal law defines "machine gun," in pertinent part, as follows:

> 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.

18 U.S.C. § 921(a)(23); 26 U.S.C. § 5845(b). The key words and phrases at issue in this case are "automatically" and "single function of the trigger." The same definition is used in both the National Firearms Act of 1934 ("NFA") and the Gun Control Act of 1968 ("GCA").

The definition has been applied a variety of times over the years, but for the purpose of this case, what matters is those instances in which the Government has attempted to identify when something, not normally understood to be a machine gun, *becomes* a machine gun or *turns out to be* a machine gun.

This matters greatly because, as the Petition explains, the definition can determine whether or not a person is subject to severe criminal penalties.

A. The Classic Non-Machine Gun: The Gatling Gun.

The first occasion the Government had to apply this concept of whether something not traditionally thought of as a machine gun was, in fact, a machine gun was in 1955. In Rev. Rul. 55-528, the Internal Revenue Service ("IRS") applied the definition of machine gun to a traditional Gatling Gun. The IRS described the subject gun as follows:

> Any crank-operated gear-driven Gatling gun (produced under 1862 to 1893 patents) employing a cam action to perform the functions of repeatedly cocking and firing the weapon, as well as any such gun actuated by an electric motor in lieu of hand crank (produced under 1893 and later patents), while being a forerunner of fully automatic machine guns, is not designed to shoot

> automatically or semiautomatically more than one shot with a single function of the trigger. Such weapons are held *not* to be firearms with the purview of the [NFA]. [Emphasis in original.]

Rev. Rul. 55-528, 1955-2 C.B. 482. The IRS then went on to explain that if such a gun were, instead, designed such that the hand crank served only to "sear off the first round of ammunition, thence becoming a gas-operated fully automatic machine gun," then it met the statutory definition.

Thus, a cam action device which repeatedly cocks and releases a trigger cannot possibly constitute only a "single function of the trigger." Further, with the hand crank version, another key difference was that the hand cranking represents input from the user to keep the action going vs. an internal gas system of the firearm keeping the action going. In the former instance, the user is necessary to keep the action of the gun firing. In the latter instance, the user need only let the mechanism loose and it keeps going *all by itself*. This is, in fact, the essence of "automatic." User input (not automatic) vs. no user input (automatic).

Importantly, the statutory difference between a machine gun and a non-machine gun under federal law is *not*: (1) it shoots fast, or (2) it shoots really, really fast, or (3) it shoots faster than a person could

manually pull a trigger with her finger.[3] In fact, rate of fire has literally not a thing to do with whether or not a firearm is a machine gun. Both the language of the statute and Rev. Rul. 55-528 reveal that whether or not a firearm is a machine gun turns on whether or not the action continues to fire without some sort of user input and/or whether or not it continues to fire with only a single function of the trigger.

In 1968, Congress enacted the GCA. In doing so it enacted 18 U.S.C. §921(a)(23), which reads simply:

> The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

Thus, Congress imported the NFA definition of "machine gun" into the GCA as it was understood in 1968. 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. U.S.*, 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").

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[3] *But, see*, legendary speed shooter Jerry Miculek https://www.youtube.com/watch?v=WzHG-ibZaKM (last accessed October 2, 2019)

Thus, in enacting 18 U.S.C. §921(a)(23), Congress is presumed to have intended the construction provided by the IRS in Rev. Rul. 55-528 -- that to be a machine gun, a firearm must continue to fire without additional user input and/or without multiple functions of the trigger. That should end the discussion right there, and if nothing else, the Petition should be granted in order to enforce that important controlling precedent of this Court. [4]

B. Machine Gun or Not a Machine Gun: The Akins Accelerator.

Between 2003 and 2006 the definition of machine gun was tested against a new invention called the "Akins Accelerator." The Akins Accelerator was a stock within which the action of a semiautomatic rifle could move. The recoil of the fired round caused the action of the rifle to move backwards, thereby compressing a spring within the stock, which spring then forced the action of the rifle forward again,

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[4] In enacting the GCA in 1968, Congress paid particular attention to the NFA definitions, adding "destructive device" to the definition of "firearm" (26 U.S.C. §5845(a)(8)) and deleting the term "semiautomatic" from the definition of "machine gun" (26 U.S.C. §5845(b)). *See* Pub. L. 90-618, Title II, §201. Of course, deleting "semiautomatic" makes Congress's adoption of the understanding of "machine gun" set forth in Rev. Rul. 55-528 even starker, since the 1968 deletion made is *more* difficult for a device to be a machine gun. If the Gatling Gun was not a machine gun under the broader pre-1968 definition, it certainly is not under the 1968 amendment.

causing the trigger to contact the user's finger, firing another round, and so on, until the ammunition was expended. ATF Det. Ltr. (Jan. 29, 2004),[5] App.1.

By letter dated January 29, 2004, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") approved the device as *not* a machine gun, even though the prototype sent to ATF for testing malfunctioned and the repeating aspects of the device could not actually be tested. The examiner approved the device as not a machine gun based on the fact that "the theory of operation was clear even though the rifle/stock assembly did not perform as intended." ATF Det. Ltr. (Jan. 29, 2004), App.1-2.

The Akins Accelerator entered production, and in 2006, an individual submitted a request to ATF to examine the production version of the device. By letter dated November 22, 2006, ATF notified the manufacturer of the Akins Accelerator that the device *was*, in fact, a machine gun under the NFA definition. ATF Det. Ltr. (Nov. 22, 2006), App.3-8. In its letter, ATF did not provide a persuasive explanation at the time for its change in position but spoke more generally as to why the Akins Accelerator met the definition of machine gun. The November 22, 2006 Akins Accelerator letter resulted in the release of a published ruling, ATF Rul. 2006-2, dated December 13, 2006.

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[5] Citations in the form ATF Det. Ltr. ([date]) refer to ATF Determination Letters.

C. Not a Machine Gun: The Bump-Stock.

It would not be until ATF later evaluated a similar but materially and importantly different invention, the bump-stock, that it would become clear just *why* ATF thought the Akins Accelerator met the definition of machine gun. Subsequent to its 2006 Akins Accelerator ruling, ATF had the opportunity to undertake multiple examinations of various bump-stock devices.

By letter dated June 26, 2008, ATF responded to an inquiry from the manufacture of what was referred to as an "Akins Accelerator type device." ATF concluded that the 2008 device was not a machine gun. The determination focused on the *absence of a spring* which, in the Akins Accelerator, automatically caused the action of the rifle to move forward and make contact with the trigger finger. Instead, the 2008 device relied on the user carefully applying just the right amount of force when holding the stock, manually pushing the action forward, and resulting in subsequent contact with the trigger finger by the trigger. ATF Det. Ltr. (Jun. 26, 2008), App.9-13. The letter noted:

> The absence of an accelerator spring in the submitted device prevents the device from operating automatically as described in ATF Ruling 2006-2. Conversely, forward pressure must be applied to the thumb screw with the

> support hand, bringing the receiver assembly forward to a point where the trigger can be pulled by the firing hand. If strong forward pressure is applied to the thumb screw with the support hand, the rifle can be fired in a conventional semiautomatic manner since the reciprocation of the receiver assembly is eliminated. If, upon firing, weak pressure is applied to the thumb screw with the support hand, the receiver assembly will recoil rearward past the finger stops, requiring that the shooter push the receiver assembly forward before a subsequent shot can be fired.
>
> The FTB live-fire testing of the submitted device indicates that if, as a shot is fired, an *intermediate* amount of pressure is applied to the thumb screw with the support hand, the receiver assembly will recoil rearward far enough to allow the trigger to mechanically reset. Continued intermediate pressure applied to the thumb screw will then push the receiver assembly forward until the trigger re-contacts the shooter's stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the receiver assembly forward to fire each shot, each shot being fired by a single function of the trigger. [Emphasis in original.]

ATF Det. Ltr. (Jun. 26, 2008), App.11-12.

Thus, the user's application of the correct amount of pressure was essential to the function of the device. Too *much* pressure and the action did not reciprocate rearward at all. Too *little* pressure and the action did not return forward and make subsequent contact with the trigger. In that way, this bump-stock device required direct user input in order to function as designed and could therefore not be considered to function "automatically." Further, ATF recognized that such a mechanism did not fire more than one round with a single function of the trigger.[6] *Id.*

In 2010, ATF examined a device explicitly referred to as a "bump-stock." By letter dated June 7, 2010, ATF held that the bump-stock device was *not* a machine gun because it had no springs and relied on the user's application of "constant pressure" to the device in order for it to operate as designed. ATF Det. Ltr. (Jun. 7, 2010), C.A.App.278.

In 2011, ATF examined a device manufactured by Historic Arms, LLC called the "ALM" stock which *also* lacked any spring. By letter dated May 25,

[6] Significantly, in comparing the 2008 bump stock ruling to the 2006 Akins Accelerator ruling, it appears that ATF mistakenly stopped halfway through the Akins analysis in 2006. While it may be the case that the internal spring made the Akins operate "automatically," the Akins still did not fire more than one shot with a single function of the trigger. Thus, ATF's 2006 Akins ruling omitted half of the statutory analysis and was almost certainly incorrect.

2011, ATF held that the ALM was *not* a machine gun. ATF Det. Ltr. (May 25, 2011), C.A. App.345-47. The letter explained:

> If sufficient forward pressure is not applied to the hand guard with the support hand, the rifle can be fired in a conventional semiautomatic manner since the reciprocation of the receiver assembly is eliminated.
>
> The FTB live-fire testing of the submitted device indicates that if, as a shot is fired and a *sufficient* amount of pressure is applied to the hand guard/gripping surface with the shooter's support hand, the SKS rifle assembly will come forward until the trigger re-contacts the shooter's stationary firing-hand trigger finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the receiver assembly forward to fire each shot, each shot being fired by a single function of the trigger. [Emphasis in original.]

Id. at 346.

Thus, the ALM similarly relied entirely on the user applying just the right amount of pressure on the device in order for it to provide subsequent shots as designed and also fired only one shot with a single function of the trigger.

In 2012, ATF evaluated yet another similar bump-stock type device. This, too, lacked a spring. By letter dated April 2, 2012, ATF held that this bump-stock device was *not* a machine gun:

> The FTB live-fire testing of the submitted device indicates that if, as a shot is fired, an *intermediate* amount of pressure is applied to the fore-end with the support hand, the shoulder stock device will recoil sufficiently rearward to allow the trigger to mechanically reset. Continued intermediate pressure applied to the fore-end will then push the receiver assembly forward until the trigger re-contacts the shooter's stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, the firing of each shot being accomplished by a single trigger function. Further, each subsequent shot depends on the shooter applying the appropriate amount of forward pressure to the fore-end and timing it to contact the trigger finger on the firing hand, while maintaining constant pressure on the trigger itself. [Emphasis in original.]

ATF Det. Ltr. (Apr. 2, 2012), C.A. App.278.

In exactly the same way the 2008, 2010, and 2011 bump-stock devices were not machine guns, this was not a machine gun. The 2012 device also relied on

the *user* to provide just the right amount of manually applied pressure in order for it to function as designed and fired only one shot for a single function of the trigger.

On April 16, 2013, ATF summed up 58 years of "machine gun" analysis in a letter to Congressman Ed Perlmutter. ATF explained that the lynchpin to understanding what is and what is not a machine gun is "single input of a user" (machine gun) vs. "continuous multiple inputs by the user" (not a machine gun) ATF Ltr. (Apr. 16, 2013), C.A. App.281-82. Thus, consistent with ATF's prior determination letters, the need for repeated user input precludes a device from being considered "automatic" and precludes the device from firing more than one shot with a "single function of the trigger."

Stated more generally, to satisfy the "automatically" requirement of the definition the user need only act once and then let the mechanism keeps going all by itself (as with the Akins Accelerator spring mechanism) – that is, it fires automatically as a result of a single user input. On the other hand, if additional user input is necessary to keep the action of the gun firing (e.g. the application of user pressure or force), it is not a machine gun, since it does not fire automatically.

This analysis is precisely on all fours with the analysis provided in 1955 by the IRS in Rev. Rul. 55-

528 regarding what makes a device "automatic" -- the requirement for user input (e.g. the manual crank Gatling Gun), and it is the same understanding of "automatically" approved by Congress in 1968.[7]

D. 2018: ATF Ignores 63 Years of Detailed, Reasoned Analysis.

In its 2018 rulemaking, ATF largely ignored the foregoing regulatory history. Although it nominally paid lip service to its existence, ATF failed to acknowledge its true nature. For example, in its Notice of Proposed Rulemaking and again in its Final Rule, ATF claims:

> . . . the Department also noted that prior ATF ruling concerning bump-stock-type devices did not provide substantial or consistent legal analysis regarding the term "automatically."

83 Fed. Reg. 66,518 (Dec. 26, 2018).

In view of all of the foregoing, this is plainly untrue. Taken together, the rulings spanning the 63

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[7] As discussed, *infra*, Rev. Rul. 55-528 also establishes the idea that a cam triggered device, such as both the hand crank and electric driven versions of the Gatling Gun, relies on repeated functioning of the trigger, which is another reason the Gatling Gun (hand cranked or electric) could not satisfy the criteria to be considered a machine gun. Congress approved this understanding as well in 1968.

year history from 1955 up until 2018 provide an unmistakably thorough, detailed, reasoned, and clear analysis of "automatically" and "single function of the trigger" and actually supplies a bright-line, readily applied rule. ATF simply no longer wants to apply that rule -- even though *Congress* approved that understanding of the rule in 1968.

In fact, ATF's Final Rule even supports the foregoing 63 year old understanding of "automatically." ATF admits that "automatically" means "as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through the single pull of a trigger." *Id*. The application of user input to the mechanism, as with the cranking of a Gatling Gun or as with user pressure applied to a bump-stock, cannot possibly constitute a mechanism that could be described as "self-acting or self-regulating." "Self- acting or self-regulating" plainly requires that the automatic nature be inherent in the device, as with the Akins Accelerator's internal spring. If the user must carefully apply pressure to the device, the device is not "self" anything. ATF does not even want to be consistent with its own rulemaking language and concept.

The regulatory history of the definition of "machine gun" makes ATF's current construction largely preposterous. Even being *generous* to ATF and acknowledging that its wholly brand new construction could be "kinda-sorta-maybe," the

construction is no better than *barely plausible,* and is therefore plainly subject to the rule of lenity. ATF's new approach is no way to send folks to prison under a definition that has severe criminal implications.

For this reason the Petition should be granted.

II. The Public Should be Able to Rely on Consistency in NFA Definitions.

The Petition should also be granted because the public should be able to rely on consistency and predictability in rules that govern the possession and use highly regulated items, which regulations carry severe criminal implications if users get the rules wrong.

As a basic matter, members of the public must be able to rely on consistency in the definitions found in firearms statutes, as they typically carry considerable criminal penalties. ATF's arbitrariness undermines this important principle.

But specifically as to the NFA, gun owners especially must have consistency so they can know whether or not an item they possess or wish to possess carries the statutory registration and other requirements, where failure to strictly comply under the NFA is a criminal act.

And finally, folks who do choose to lawfully possess NFA regulated items and comply with all of the statutory requirements, as many members of Amici do, surely suffer when those lines became blurred and uncertain. These are law abiding Americans who take great care to understand and abide by the rules governing NFA regulated items. ATF's sudden and arbitrary rule change puts into question all definitions and rules upon which Amici's members and the general public rely to ensure that they are engaging in lawful conduct.

This type of capricious lawlessness by a government agency makes compliance with the law a perilous maze of pitfalls and traps – the opposite of what the Constitution is designed to provide. *See, e.g. Johnson v. U.S.*, 135 S. Ct. 2551 (2015).

For this reason the Petition should be granted.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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OCTOBER 2, 2019

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[SEAL] **Bureau of Alcohol, Tobacco, Firearms and Explosives**

903050:RDC
3311/2004-308

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www.atf.gov

JAN 29 2004

Mr. Thomas Bowers
Post Office Box 430
Cornelius, OR 97113

Dear Mr. Bowers:

This refers to your letter of January 21, 2004, to the Firearms Technology Branch, ATF, in which you request clarification of our previous correspondence (3311/2004-096) regarding the manufacture of a recoiling metal stock assembly that is designed for use on an SKS-type semiautomatic rifle.

As noted previously, the proposed theory of operation of this stock involves the application of the movement of the counter recoiling rifle to initiate a rapid succession of semiautomatic fire. Our examination and subsequent classification revealed that the stock did not constitute a "machinegun" as that term is defined in the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

As indicated, during the course of our examination and testing of the item (SKS barreled action installed into the submitted stock), two set-screws dislodged from the frame. The weapon did not fire more than one shot by a single function of the trigger at any point throughout the testing.

Our classification of the stock assembly was rendered despite the fact that the screws dislodged from the frame. The theory of operation was clear even though the rifle/stock assembly did not perform as intended.

In conclusion, your prototype shoulder stock assembly does not constitute a "machinegun" as defined in the NFA. This evaluation is valid *provided that when the stock is assembled with an otherwise unmodified SKS semiautomatic rifle, the rifle does not discharge more than one shot by a single function of the trigger.*

We trust the foregoing has been responsive to your follow-up inquiry.

Sincerely yours,

/s/ Sterling Nixon
Sterling Nixon
Chief, Firearms Technology Branch

[SEAL] **U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25401 903050:MRC
www.atf.gov 3311/2006-1060

NOV 22 2006

BY HAND DELIVERY

Mr. Thomas Bowers
President
Akins Group, Inc.
935 S. Cherry Street #B
Cornelius, OR 97113

Dear Mr. Bowers:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recently received a request from an individual to examine a device referred to as an "Akins Accelerator." Because your company is manufacturing and distributing the device, we are contacting you to advise you of the results of our examination and classification.

The National Firearms Act (NFA), Title 26 United States Code (U.S.C.) Chapter 53, defines the term "firearm" to include a machinegun. Section 5845(b) of the NFA defines the term "machinegun" as follows:

> *. . . 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*.

Machineguns are also regulated under the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, which defines the term in the same way as in the NFA. 18 U.S.C. § 921(a)(23). Pursuant to 18 U.S.C. § 922(o), machineguns manufactured on or after May 19, 1986, may only be manufactured for and distributed to Federal, State, and local government agencies for official use.

The Firearms Technology Branch (FTB) examination of the submitted item indicates that the Akins Accelerator is an accessory that is designed and intended to accelerate the rate of fire for Ruger 10/22 semiautomatic firearms. The Akins Accelerator device, which is patented, consists of the following metal block components (also see enclosed photos):

- Block 1: A metal block that replaces the original manufacturer's V-Block of the 10/22 rifle. The replacement block has two rods attached that are approximately 1/4 inch in diameter and approximately 6 inches in length.
- Block 2: A metal block that is approximately 3 inches long, 1-3/8 inches wide, and 3/4 of an inch high that has been machined to allow the two guide rods to pass through. Block 2 serves as a support for the guide rods and as an attachment to the stock.

As received, the Akins Accelerator utilizes the following parts and features to facilitate assembly:

- Assembly of Block 1 to Block 2: These blocks are assembled using $^1/_4$ inch rods, metal washers, rubber and metal bushings, two collars with set screws, one coiled spring, C-clamps, and a split ring.
- Apertures for Attachment of Stock: Block 2 is drilled and tapped for two 10-24 NC screws. These threaded holes allow the attachment of the Akins device with Ruger 10/22 barreled receiver to the composite stock that is a component part of the Akins device.

The composite stock is designed for a Ruger 10/22 barrel and receiver. This stock permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock when fired. Rearward pressure on the trigger causes the firearm to discharge, and as the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the accelerator, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this accelerator spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger, so long as the shooter maintains finger pressure against the stock, making the weapon fire again. The Akins device assembled with a Ruger 10/22 is advertised to fire approximately 650 rounds per minute.

For testing purposes, FTB personnel installed a semi-automatic Ruger 10/22 rifle from the National Firearms Collection into the stock, with the Akins device attached. Live-fire testing of the Akins Accelerator demonstrated that a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.

In order to be regulated as a "machinegun" under Section 5845(b), conversion parts must be designed and intended to convert a weapon into a machinegun, i.e., a weapon that shoots automatically more than one shot, without manual reloading, by a **single function of the trigger**. Legislative history for the National Firearms Act indicates that the drafters equated "single function of the trigger" with "single pull of the trigger." National Firearms Act: Hearings Before the Comm. on Ways and Means House of Representatives Second Session on H. R. 9066, 73rd Cong., at 40 (1934). Accordingly, it is the position of this agency that conversion parts that are designed and intended to convert a weapon into a machinegun, that is, one that will shoot more than one shot, without manual reloading, by a single pull of the trigger, are regulated as machineguns under the National Firearms Act and the Gun Control Act.

We note that by letters dated November 17, 2003, and January 29, 2004, we previously advised you that we were unable to test-fire a prototype of the Akins device that you sent in for examination. However, both letters state that the theory of operation is clear, and because

the device is not a part or parts designed and intended for use in converting a weapon into a machinegun, it is not a machinegun as defined under the National Firearms Act. The previous classification was based on a prototype that fractured when this office attempted to test fire it. Nonetheless, the theory of operation of the prototype and the Akins Accelerator is the same. To the extent the determination in this letter is inconsistent with the letters dated November 17, 2003, and January 29, 2004, they are hereby overruled.

Manufacture and distribution of the Akins Accelerator device must comply with all provisions of the NFA and the GCA. Accordingly, any devices you currently possess must be registered in accordance with 26 U.S.C. § 5822 and regulations in Part 27 Code of Federal Regulations (C.F.R). § 479.103. If you do not wish to register the devices, they should immediately be abandoned to the nearest ATF Office. You may contact the Portland field office at (503) 331-7850 to arrange for abandonment of the weapons. Pursuant to 18 U.S.C. § 922(o), the devices may only be manufactured for and distributed to Federal, State, and local law enforcement agencies. In addition, the devices must be marked in accordance with 18 U.S.C. § 923(i), 26 U.S.C. § 5842, 27 C.F.R. § 478.92, and 27 C.F.R. § 479.102. If you have questions about any of these provisions of law, please

contact Acting Assistant Chief Cherie A. Knoblock in the Firearms Programs Division at (202) 927-7770.

Sincerely yours,

/s/ Richard Vasquez
Richard Vasquez
Assistant Chief, Firearms Technology Branch

cc: SAC, Seattle Field Division
DIO, Seattle Field Division
Division Counsel, Seattle
Assistant Chief Counsel, San Francisco

Enclosures

[SEAL] **U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

903050:AG

Martinsburg, West
Virginia 25405 3311/2007-812

www.atf.gov

JUN 26 2008

Mr. Michael Johnson

Dear Mr. Johnson:

This is in reference to your submitted item, as well as accompanying correspondence, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB). This item, consisting of a Ruger 10/22 rifle and stock which you have modified to incorporate what you refer to as an Akins Accelerator type device of your own manufacture, was submitted with a request for classification under the Gun Control Act (GCA) and National Firearms Act (NFA). This submission was sent in response to our earlier reply to your initial correspondence (see FTB #3311/2007-383).

As you may be aware, the National Firearms Act (NFA), 26 U.S.C. § 5845(b), defines the term "**machinegun**" as follows:

"*. . . 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."

Further, **ATF Ruling 2006-2** describes a device that is designed and intended to accelerate the rate of fire of a semiautomatic weapon and classifies it as follows:

Held, a device (consisting of a block replacing the original manufacturer's V-Block of a Ruger 10/22 rifle with two attached rods approximately 1/4 inch in diameter and approximately 6 inches in length; a second block, approximately 3 inches long, 1 3/8 inches wide, and 3/4 inch high, machined to allow the two guide rods of the first block to pass through; the second block supporting the guide rods and attached to the stock; using 1/4 inch rods; metal washers; rubber and metal bushings; two collars with set screws; one coiled spring; C-clamps; a split ring; the two blocks assembled together with the composite stock) that is designed to attach to a firearm and, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, is a machinegun under the NFA, 26 U.S.C. 5845(b), and the GCA, 18 U.S.C. 921(a)(23).

The submitted device (also see enclosed photos, pages 4 and 5) incorporates the following features:

- A metal block that replaces the original manufacturer's V-Block from the 10/22 rifle. The replacement block has two rods attached that are approximately 1/4 inch in diameter and approximately 6 inches in length.
- A second metal block which has been machined to allow the two guide rods to pass through. This component serves as a support for the guide rods and as an attachment to the modified stock.
- A third rod, threaded into the outside rear of the 10/22 receiver, rides within a bushing inletted into the tang area of the stock immediately behind the receiver.
- Two external finger stops mounted to the stock, adjacent to the rifle's trigger guard, which limit the rearward travel of the shooter's trigger finger.
- The device does not incorporate an operating spring like the original Akins Accelerator, but has been modified to utilize a thumbscrew which protrudes downward through the fore end of the stock, and allows the operator to apply manual forward pressure to the device.

The absence of an accelerator spring in the submitted device prevents the device from operating automatically as described in ATF Ruling 2006-2. Conversely, forward pressure must be applied to the thumb screw with the support hand, bringing the receiver assembly forward to a point where the trigger can be pulled by the firing hand. If strong forward pressure is applied

to the thumb screw with the support hand, the rifle can be fired in a conventional semiautomatic manner since the reciprocation of the receiver assembly is eliminated. If, upon firing, weak pressure is applied to the thumb screw with the support hand, the receiver assembly will recoil rearward past the finger stops, requiring that the shooter push the receiver assembly forward before a subsequent shot can be fired.

The FTB live-fire testing of the submitted device indicates that if, as a shot is fired, an *intermediate* amount of pressure is applied to the thumb screw with the support hand, the receiver assembly will recoil rearward far enough to allow the trigger to mechanically reset. Continued intermediate pressure applied to the thumb screw will then push the receiver assembly forward until the trigger re-contacts the shooter's stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the receiver assembly forward to fire each shot, each shot being fired by a single function of the trigger.

Since your device does not, when activated by a single function of the trigger, initiate an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, FTB finds that it is NOT a machinegun under the NFA, 26 U.S.C. 5845(b), or the GCA, 18 U.S.C. 921(a)(23).

Please note that this classification is based on the item as submitted. Any changes to its design features or characteristics will void this classification. Moreover, we caution that the addition of an accelerator spring

or any other non-manual source of energy which allows this device to operate automatically as described in ATF Ruling 2006-2 will result in the manufacture of a machinegun as defined in the NFA, 26 U.S.C. 5845(b).

Please provide our Branch with a FedEx account number so that we may return this item to you. We thank you for your inquiry and trust that the foregoing has been responsive.

Sincerely yours,

/s/ John R. Spencer
John R. Spencer
Chief, Firearms Technology Branch

Enclosures