

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

MERRICK B. GARLAND,)
ATTORNEY GENERAL, ET AL.,)
 Petitioners,)
 v.) No. 22-976
MICHAEL CARGILL,)
 Respondent.)

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MERRICK B. GARLAND,)

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Petitioners,)

v.) No. 22-976

MICHAEL CARGILL,)

Respondent.)

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Washington, D.C.

Wednesday, February 28, 2024

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

APPEARANCES:

BRIAN H. FLETCHER, Principal Deputy Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Petitioners.

JONATHAN F. MITCHELL, ESQUIRE, Austin, Texas; on behalf of the Respondent.

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P R O C E E D I N G S

(10:03 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 22-976, Garland versus Cargill.

Mr. Fletcher.

ORAL ARGUMENT OF BRIAN H. FLETCHER

ON BEHALF OF THE PETITIONERS

MR. FLETCHER: Thank you, Mr. Chief Justice, and may it please the Court.

To fire a rifle fitted with a bump stock, the shooter simply places his trigger finger on the built-in finger ledge and uses his other hand to press the front of the rifle forward. As long as the shooter maintains that steady forward pressure, the rifle will fire continuously until it runs out of bullets, and it will empty a 100-round magazine like the ones used in the Las Vegas shooting in about 10 seconds. Those weapons do exactly what Congress meant to prohibit when it enacted the prohibition on machineguns, and those weapons are machineguns because they satisfy both disputed parts of the statutory definition.

First, a rifle with a bump stock fires

1 more than one shot by a single function of the
2 trigger. In common usage today as in 1934, a
3 function of the trigger happens when some act by
4 the shooter, usually a pull, starts a firing
5 sequence. With a semiautomatic rifle, it fires
6 one shot for each function of the trigger
7 because the shooter has to manually pull and
8 release the trigger for every shot. But a bump
9 stock eliminates those manual movements and
10 allows the shooter to fire many shots with one
11 act, a forward push.

12 Now Respondent says that a separate
13 function of the trigger happens every time the
14 trigger on a traditional rifle moves backwards
15 and releases the hammer, even if it moves
16 without any further manipulation by the shooter.

17 But that is inconsistent with
18 contemporaneous usage, does not account for guns
19 with other kinds of triggers, and would make it
20 trivially easy to evade the ban on machineguns
21 just by automating the back-and-forth movement
22 of the trigger after the shooter's initial pull.

23 Second, a rifle with a bump stock
24 fires more than one shot automatically, that is,
25 through a self-regulating mechanism. Once the

1 shooter presses forward to fire the first shot,
2 the bump stock uses the gun's recoil energy to
3 create a continuous back-and-forth cycle that
4 fires hundreds of shots per minute.

5 Now Respondent says that that cycle is
6 not automatic because the shooter has to keep up
7 the forward pressure to keep the cycle going.
8 But many traditional machineguns likewise
9 require the shooter to maintain backward
10 pressure on the trigger to maintain continuous
11 fire. Either way, a single motion both
12 initiates and maintains a multi-shot sequence,
13 and either way, the weapon is a machinegun.

14 I welcome the Court's questions.

15 JUSTICE THOMAS: Mr. Fletcher, how
16 does a machinegun -- what would I have to do to
17 fire a machinegun?

18 MR. FLETCHER: It depends on the
19 machinegun. Some, it's a push of a -- a push of
20 a button. Some, it's a pull of a trigger. The
21 statutory definition is, does it shoot more than
22 one shot automatically by a single function of
23 the trigger?

24 JUSTICE THOMAS: But I don't have to
25 do anything else? I don't have to put pressure

1 on it or anything else?

2 MR. FLETCHER: It depends on the gun
3 again. So if you imagine -- I think what your
4 question is getting at is, if you take a
5 traditional M16 rifle --

6 JUSTICE THOMAS: Yeah.

7 MR. FLETCHER: -- what we often think
8 of when we think of a machinegun, you're right,
9 to fire more than one shot, you pull the trigger
10 and you have to hold it back, and as long as you
11 maintain that backward pressure on the trigger,
12 it keeps shooting.

13 JUSTICE THOMAS: With a bump stock,
14 what would I do different?

15 MR. FLETCHER: You would do different
16 the -- the -- both the initial motion and the
17 motion that continues. It's the same thing in
18 the sense that one motion automates
19 back-and-forth movement and results in multiple
20 shots.

21 JUSTICE THOMAS: So what -- what --

22 MR. FLETCHER: But it's a different
23 motion.

24 JUSTICE THOMAS: -- is happening with
25 the -- a trigger-initiated firing of a

1 machinegun? What do I have to do other than
2 depress the trigger?

3 MR. FLETCHER: With a traditional
4 machinegun, again, take an M16 -- and, again, we
5 think they're all machineguns -- but I
6 understand the question to be take an M16, you
7 pull the trigger back and you hold it and it
8 keeps shooting.

9 JUSTICE THOMAS: Okay. With --

10 MR. FLETCHER: With a bump stock, you
11 push forward, and that both initiates and
12 continues the firing sequence.

13 JUSTICE THOMAS: And what is happening
14 with the trigger when you have the recoil?

15 MR. FLETCHER: That's exactly right.
16 So I think this gets to Respondent's primary
17 argument on function of a trigger, which is that
18 the difference with a bump stock is that it
19 fires multiple shots automatically by automating
20 the movement of the trigger.

21 So my friend says the trigger moves
22 back and forth every time a shot is fired. Our
23 view is that those subsequent movements of the
24 trigger aren't functions of the trigger because
25 they're not responding to separate acts,

1 separate pulls, or anything else by the shooter.
2 They're just the result of the automated cycle
3 --

4 JUSTICE THOMAS: So what is happening
5 with the trigger when someone doesn't need a
6 bump stock to bump-fire a weapon?

7 MR. FLETCHER: So this is the man --
8 the unassisted manual bump firing --

9 JUSTICE THOMAS: Yeah.

10 MR. FLETCHER: -- that's described,
11 where an expert can take a regular semiautomatic
12 rifle and hold it loosely enough that they can
13 do something like bump firing. And I think, in
14 our view there too, there's just one function of
15 the trigger because the first push starts the
16 sequence and then the sequence continues. The
17 ATF explained and we agree that that's not
18 automatic because there's no self-regulating
19 mechanism. The user has to control the recoil.

20 JUSTICE THOMAS: So what's the
21 difference? The same thing is happening with
22 the trigger.

23 MR. FLETCHER: The same thing's
24 happening with the trigger, and I think that's
25 why we would say, with manual bump firing, there

1 is just a single function of the trigger.
2 There's one action that initiates the firing
3 sequence. We think it's not automatic because
4 there's no self-regulating mechanism. The user
5 is having to do all of the work that the bump
6 stock automates for you on a rifle fitted with a
7 bump stock.

8 CHIEF JUSTICE ROBERTS: I'm have --

9 JUSTICE BARRETT: What about -- oh.

10 CHIEF JUSTICE ROBERTS: -- I'm having
11 a little trouble with the non-trigger hand. Are
12 you just holding the gun, or are you moving,
13 pushing it forward and then back and forward and
14 then back?

15 MR. FLETCHER: So I think the best
16 place to look for this, Mr. Chief Justice, is
17 the district court's factual findings, which are
18 at pages 10 -- 102a to 104a of the Petition
19 Appendix. And what he explained is that from
20 the shooter's perspective, it's just one
21 continuous forward push. The expert at trial
22 said, mentally, you're doing nothing but pushing
23 forward.

24 Now, if you look and watch the slow --

25 CHIEF JUSTICE ROBERTS: Continuous --

1 continuously pushing forward or --

2 MR. FLETCHER: You --

3 CHIEF JUSTICE ROBERTS: In other
4 words, are you holding it with pressure or are
5 you moving your hand?

6 MR. FLETCHER: So what you are doing
7 -- I want to distinguish between those two
8 things actually --

9 CHIEF JUSTICE ROBERTS: Yeah.

10 MR. FLETCHER: -- because what you are
11 doing is just pushing forward. Now, if you look
12 at the videos that we cite in Footnote 1 of our
13 reply brief, some of them are in slow motion,
14 and they show that when the shooter is doing
15 this, the hand is moving back and forth very
16 fast, 600 times a second.

17 That's not happening because the
18 shooter is able to move their hand back and
19 forth 600 -- or -- or, I'm sorry, 600 times a
20 minute. That's not happening because the
21 shooter can move their hand back and forth that
22 fast. That's happening because every time a
23 shot is fired, the recoil drives the -- the
24 rifle backwards, overcomes that steady forward
25 pressure momentarily. That's what lets the

1 trigger reset and then another shot to be fired
2 again.

3 So, from the shooter's perspective, we
4 view it as one act, and we think that's what the
5 district court found.

6 JUSTICE KAGAN: So would it be right
7 to say that the pressure is -- you know, on a
8 typical machinegun where you're pulling and
9 you're feeling, you know, continual backward
10 pressure, and on this, you're feeling continual
11 forward pressure of the opposite hand.

12 MR. FLETCHER: Exactly.

13 JUSTICE KAGAN: Is that right?

14 MR. FLETCHER: Exactly right. And I
15 think that's exactly what the district court
16 found.

17 JUSTICE BARRETT: Mr. Fletcher, so I
18 did watch all of these videos and try to figure
19 out exactly what this looks like. And I just
20 want to ask you about this bump-firing thing.

21 MR. FLETCHER: Mm-hmm.

22 JUSTICE BARRETT: So what if I design
23 something and I call it a bump band, because I
24 gather you can do this with --

25 MR. FLETCHER: Yeah.

1 JUSTICE BARRETT: -- bands and you can
2 do it with your belt loop.

3 So what if I design and market
4 something I call a bump band to help me turn my
5 semiautomatic, you know --

6 MR. FLETCHER: Yeah.

7 JUSTICE BARRETT: -- in -- in the same
8 way? Why wouldn't that then be a machinegun
9 under the statute?

10 MR. FLETCHER: So we think that's
11 still not functioning automatically because
12 that's not a self-regulating mechanism. My
13 understanding is that what those devices do is
14 they help the shooter keep their trigger finger
15 still, but the shooter still has to manage the
16 movement of the rifle back and forth, hold it so
17 that it moves backwards just the right distance
18 in just the right direction, then hold it again
19 so it moves forward in just the right distance
20 in just the right direction.

21 And what makes a bump stock different
22 is that it's a device that is built for just
23 this purpose. It has the finger ledge that
24 holds your finger in place, but then it also has
25 a sliding function built in so that when a shot

1 is fired, the recoil automatically pushes the
2 rifle back, lets it disengage from the trigger
3 so the shooter doesn't have to manually release
4 it, and then allows it to slide forward again,
5 again, just the right distance in just the right
6 direction.

7 JUSTICE BARRETT: Maybe Mr. Mitchell
8 can help me understand from his point of view
9 what that means, because it seems like it helps
10 you do it better and in a more stable way but
11 that it functions the same way.

12 But -- but the other question I
13 have -- look, intuitively, I am entirely
14 sympathetic to your argument, I mean, and it --
15 and it seems like, yes, that this is functioning
16 like a machinegun would. But, you know, looking
17 at that definition, I think the question is, why
18 didn't Congress pass that litigation -- I mean
19 that legislation to -- to make this cover it
20 more clearly?

21 I think your argument depends on
22 volition, right, so let me give you a
23 hypothetical, and then tell me if you think this
24 satisfies the definition of a machinegun.

25 Let's imagine someone builds a fully

1 automatic machinegun, and I won't try to come up
2 with the technology for exactly how this is
3 going to happen, but they install a tripwire on
4 their property and they just leave the gun there
5 unattended, walk away. Somebody trips the wire
6 and then it begins shooting lots of rounds.

7 MR. FLETCHER: Yeah.

8 JUSTICE BARRETT: Does that satisfy
9 your definition of a machinegun?

10 MR. FLETCHER: I think it does, yes.

11 JUSTICE BARRETT: Why?

12 MR. FLETCHER: Because a single act
13 and, you know, I think we've used different
14 words like volition. I think what we're -- the
15 idea that we're trying to get at is, does some
16 separate act, is that required, some manual act
17 required for each shot, or is a single
18 continuous act resulting in the firing of
19 multiple shots.

20 That's an unusual way to activate a
21 machinegun, obviously --

22 JUSTICE BARRETT: Right.

23 MR. FLETCHER: -- but I think, even if
24 it's a tripwire, that's still one act by a
25 person that initiates a multi-shot firing.

1 JUSTICE BARRETT: But it's an
2 unintentional act in the same way you might say
3 if your finger -- because, for the bump stock to
4 work, you still have to have your finger right
5 there, right?

6 MR. FLETCHER: You do, yeah.

7 JUSTICE BARRETT: And -- and it -- and
8 it -- according to the Fifth Circuit, what
9 you're focusing on is the definition, you know,
10 it looked at it from the perspective of the gun
11 and the machinery of the gun, but you still do
12 need your finger there to kind of pull back the
13 trigger the same way that you would if it was
14 volitional.

15 MR. FLETCHER: So not quite, actually,
16 Justice Barrett. And I think this is important.
17 When -- in the typical way that you fire these
18 bump stocks -- and this the Fifth Circuit
19 acknowledged at 21a of the Petition Appendix --
20 you don't initiate firing by pulling backward
21 with your trigger finger. The trigger finger
22 stays completely stationary.

23 JUSTICE BARRETT: You push.

24 MR. FLETCHER: You initiate by
25 pushing. And what the expert said and the

1 district court found is you could replace your
2 trigger finger with a little plastic post
3 attached to the bump stock and it would work in
4 exactly the same way.

5 So it's -- it's true that you have to
6 keep your finger there, and if you moved your
7 finger away, the bump firing sequence would
8 stop, but that's a pretty trivial additional
9 piece of input from the shooter. Really, what's
10 starting and continuing the sequence is the push
11 forward.

12 JUSTICE BARRETT: Thank you.

13 JUSTICE JACKSON: Can I ask you, just
14 kind of maybe stepping back a moment, why do
15 these various distinctions with respect to
16 operations matter?

17 I mean, I -- I read this statute to be
18 a classification statute, that Congress is
19 directing everyone or us to identify certain
20 kinds of weapons, and those certain kinds of
21 weapons are being treated in a particular way.
22 They're being prohibited.

23 And so I guess what I'm trying to
24 understand is, if -- if it's true that, you
25 know, the distinction that is being focused on

1 here is the one between the movement of the
2 trigger going back and forth or the trigger
3 staying the same, I'm trying to understand why
4 that matters for the purpose of this
5 classification.

6 MR. FLETCHER: So I think we don't
7 think it does because we don't think "function
8 of the trigger" means movement of the trigger.
9 We think it means act of the shooter.

10 That's how it was used at the time by
11 educated speakers of English, including the
12 president of the NRA when --

13 JUSTICE JACKSON: Ah.

14 MR. FLETCHER: -- he proposed the
15 language that became this statute to Congress,
16 and ever since, people have equated function of
17 the trigger with pull of the trigger. That
18 makes perfect sense if, like us, you read
19 "function of the trigger" to mean some act by
20 the shooter. I don't think that works on my
21 friend's account.

22 JUSTICE JACKSON: But I guess I'm
23 wondering -- I thought your answer was going to
24 be, we don't think it matters because of
25 something you said in the intro, which was

1 that's -- these are the kind of weapons that
2 Congress were -- was intending to prohibit
3 because of the damage they cause or something
4 like that. Like I read the word "function" to
5 be doing significant work in this statute.

6 And when, you know, "function" is
7 defined, it's really not about the operation of
8 the thing. It's about what it can achieve, what
9 it's being used for. So I see Congress as
10 putting function in this. The function of this
11 trigger is to cause this kind of damage, 800
12 rounds a second or whatever.

13 And -- and -- and so the
14 classification of weapons that we're trying to
15 identify with this statute are those that
16 function in that same way.

17 MR. FLETCHER: So, Justice Jackson, I
18 agree with most of that, but I want to be
19 careful because our -- our view is not that
20 because Congress banned machineguns because
21 they're dangerous, anything that's dangerous or
22 that shoots fast is a machinegun.

23 Our -- we draw the evident purpose of
24 Congress that we think my friend's
25 interpretation would frustrate from the text

1 that Congress enacted.

2 JUSTICE JACKSON: Right. And so how
3 about anything in which the trigger functions in
4 the same way, and by "function," I don't know
5 that that necessarily means it has to move in
6 the same way. It has to operate in the same
7 way. It can function in the same way insofar as
8 it automatically allows for 800 rounds to be
9 released.

10 MR. FLETCHER: So exactly. We think
11 the function of the trigger is what lets the
12 shooter start the firing sequence. And we think
13 all of the parts of the statutory definition are
14 aimed at we're worried about guns that let you
15 shoot many shots without repeated manual
16 actions, right. So it's -- it's single function
17 of the trigger. Does the shooter have to do one
18 thing or many things?

19 JUSTICE JACKSON: Thank you.

20 JUSTICE GORSUCH: Mr. Fletcher, on --
21 on that score, can we just step back a minute?
22 I -- I can certainly understand why these items
23 should be made illegal, but we're dealing with a
24 statute that was enacted in the 1930s, and
25 through many administrations, the government

1 took the position that these bump stocks are not
2 machineguns.

3 And then you -- you adopted an
4 interpretive rule, not even a legislative rule,
5 saying otherwise that would render between a
6 quarter of a million and a half million people
7 federal felons and not even through an APA
8 process they could challenge subject to 10 years
9 in federal prison, and the only way they can
10 challenge it is if they're prosecuted, and they
11 may well wind up dispossessed of guns, all guns
12 in the future, as well as a lot of other civil
13 rights, including the right to vote.

14 And I -- I guess I just want your
15 reaction to -- to that. And I believe there are
16 a number of members of Congress, including
17 Senator Feinstein, who said that this
18 administrative action forestalled legislation
19 that would have dealt with this topic directly,
20 rather than trying to use a nearly 100-year-old
21 statute in a way that many administrations
22 hadn't anticipated.

23 Thoughts?

24 MR. FLETCHER: There's a lot packed in
25 there, so as you might expect, I have a lot of

1 thoughts. I -- I think the main one is this
2 Court often concludes that the government has
3 interpreted a statute the wrong way and doesn't
4 hesitate to correct the government's mistakes.
5 I think the government should do the same thing.

6 After the Las Vegas shooting, the
7 deadliest shooting in our nation's history, I
8 think it would have been irresponsible for the
9 ATF not to take another closer look at this
10 prior interpretation, which was reflected in a
11 handful of classification letters, and to look
12 at the problem more carefully.

13 And having done that, I think it would
14 have been irresponsible if the ATF concluded, as
15 it did, that these devices are prohibited under
16 the best reading of the statute for the ATF not
17 to fix its errors.

18 JUSTICE GORSUCH: Then why not do a
19 legislative rule properly and in which -- I -- I
20 know you did notice-and-comment, but it was an
21 interpretive rule, and an interpretive rule you
22 can more or less just issue and you don't even
23 have to put it in the Federal Register. I mean,
24 maybe you do in some circumstances, but not all.

25 MR. FLETCHER: Well, Justice --

1 JUSTICE GORSUCH: And -- and -- and
2 you're -- you're -- you're creating a class of,
3 again, between a quarter of a million and a half
4 million people who have, in reliance on past
5 administrations, Republican and Democrat, who
6 said that this does not qualify in a very old
7 statute, taken actions. And an interpretive
8 rule you can't even challenge in an APA posture.

9 MR. FLETCHER: Well, we are in an APA
10 posture. They are challenging an interpretive
11 rule, and -- and --

12 JUSTICE GORSUCH: Well, I understand
13 that, but in your reply brief, you say, oh,
14 don't touch that because that's not before us.
15 That's not part of the QP. And in an
16 interpretive rule, you don't get an APA
17 challenge. You get -- you -- you get a criminal
18 prosecution against you is what you get.

19 MR. FLETCHER: So I -- I guess I
20 disagree with that on a number of levels.
21 First, I would think it would be better for
22 those who are concerned about administrative
23 power that we acknowledge this is an
24 interpretive rule.

25 The ATF doesn't have the power to make

1 something a crime that wasn't a crime before.
2 It's not a crime to violate the rule. It has
3 been and always will be a crime to violate the
4 statute. The ATF is saying, we got that wrong
5 before and we're fixing it now.

6 And you're right, it would be horribly
7 unfair to prosecute people who possessed these
8 devices in reliance on the agency's past
9 assurance, but that is taken care of through
10 doctrines like entrapment by estoppel, which
11 ensure that no one has been and no one will be
12 prosecuted for possessing these guns during --
13 or these devices during a time when ATF said it
14 was legal.

15 But that's not a reason to shackle the
16 ATF and certainly not a reason to shackle this
17 Court to adopt something other than the best
18 reading of the words Congress wrote. And it's
19 true, Congress wrote those words 90 years ago,
20 but we think it used capacious language like
21 function of a trigger instead of pull of a
22 trigger and then, in 1968, added parts that can
23 be used to convert something into a machinegun
24 precisely because it understood that Americans
25 are -- have a lot of ingenuity and a lot of

1 creativity.

2 There are a lot of ways to build
3 something that is a machinegun, and I don't
4 think you should hesitate from applying the
5 broad language that Congress wrote, consistent
6 with the meaning that it has always had.

7 JUSTICE KAVANAUGH: What's the --

8 JUSTICE SOTOMAYOR: Could I -- thank
9 you.

10 Are -- are you representing on behalf
11 of the government that you're not going to
12 prosecute anyone prior to 2017? Anyone who
13 wasn't a felon or -- or disqualified for some
14 other reason?

15 MR. FLETCHER: I am. ATF made very
16 clear in enacting this rule that anyone who
17 turned in their bump stock or destroyed it
18 before March of 2018 would not face prosecution.

19 As a practical matter also, the
20 statute of limitations for this offense is five
21 years, so in a month, the statute of limitations
22 would be gone. We have not prosecuted those
23 people. We won't do it. And if we try to do
24 it, I think they would have a good defense based
25 on entrapment by estoppel.

1 JUSTICE SOTOMAYOR: Second, the
2 back-and-forth here leads me to believe that at
3 best there might be some ambiguity. Now the
4 question is what's the best reading. And we
5 have a whole slew of doctrines that talk about
6 that with respect to that we shouldn't render
7 statutes ineffective by an interpretation.

8 That's not the best reading, correct?

9 MR. FLETCHER: Correct, exactly.

10 JUSTICE SOTOMAYOR: And I think we've
11 said that as far back as 1824.

12 MR. FLETCHER: In *The Emily*, exactly.

13 JUSTICE SOTOMAYOR: In *The Emily* case.
14 And so I think your position is, if anyone's in
15 doubt about this interpretation, that not
16 including something that basically you hold in
17 your hand and you let the recoil move it back
18 and forth, if that's not automatic, then it
19 doesn't make any sense that this is not a
20 machinegun, correct?

21 MR. FLETCHER: That's part of our
22 argument, absolutely. And it's not just this
23 device. I mean, we cite a number of the
24 examples, and the -- and there are many more, of
25 things that people have done to try to get

1 around the ban on machineguns, and accepting
2 some of the interpretations that my friend is
3 offering today would legalize not just bump
4 stocks but those devices as well.

5 JUSTICE SOTOMAYOR: One final
6 question. Justice Barrett said something about
7 she hoped Mr. Mitchell would explain something
8 about why there was a difference in the
9 functioning between the belt and the gun. Could
10 you go through that again so that -- I think I
11 understand it, but --

12 MR. FLETCHER: Of course. So, as I
13 acknowledge and as the ATF explained in the
14 rule, it is possible to do bump firing, meaning
15 that the rifle moves back and forth and bumps
16 against your stationary finger. An expert can
17 do that without any assistive device at all.
18 And you can also do it if you have a lot of
19 expertise by hooking your finger into a belt
20 loop or using a rubber band or something else
21 like that to hold your finger in place.

22 We don't think those things function
23 automatically because the definition of
24 "automatically," I think everybody agrees, is by
25 means of a self-regulating mechanism. That's

1 what a bump stock is. It's a device that is
2 purpose-built to harness the recoil energy of
3 the gun to automate the process of releasing the
4 trigger to move the rifle back just the right
5 distance in just the right direction so that the
6 trigger resets and then to ensure that the rifle
7 moves forward again, again, just the right
8 distance, just the right direction.

9 We think the cycle that's created by
10 that means is by means of a self-regulating
11 process. It's possible to do the same thing
12 with a lot of manual work and manual control and
13 expertise, but that's not unusual to say that
14 something can be done automatically by a device
15 if you eliminate a lot of manual movements that
16 someone like an expert could take to do the same
17 thing.

18 JUSTICE KAVANAUGH: Can I ask you
19 about mens rea, to pick up on Justice Gorsuch's
20 questions? For prosecuting someone now, what
21 mens rea showing would the government have to
22 make to convict someone?

23 MR. FLETCHER: So I think the relevant
24 case is Staples, and I think what the Court held
25 in Staples is that you have to be aware of the

1 facts that render your weapon a machinegun.

2 JUSTICE KAVANAUGH: So, even if you
3 are not aware of the legal prohibition, you can
4 be convicted?

5 MR. FLETCHER: That's right, but
6 that's true of all machineguns, I mean, all
7 different sorts of devices. I think the
8 distinct problem here is the one that's created
9 by the fact that the agency was previously
10 saying that these were not machineguns. We
11 acknowledge that those people who, in reliance
12 on that --

13 JUSTICE KAVANAUGH: I mean, that --
14 that's going to ensnare a lot of people who are
15 not aware of the legal prohibition.

16 MR. FLETCHER: So I guess I don't
17 think so, Justice Kavanaugh. I think the ATF --
18 one of the reasons, to Justice Gorsuch's point,
19 this is an interpretive rule that went through
20 notice-and-comment -- the reason was in part
21 because the agency knew that it had previously
22 been saying something different. It wanted to
23 maximize public notice. This is something
24 that's gotten a lot of coverage.

25 JUSTICE KAVANAUGH: Why -- why not --

1 why not require the government to also prove
2 that the person knew that what they were doing
3 was wrongful, was illegal?

4 MR. FLETCHER: Yeah -- well, I -- I
5 think that's not the understanding that this
6 Court adopted in Staples. If the Court wanted
7 to revisit that in another case, a criminal
8 case, you could. We haven't briefed that
9 question here.

10 But I think, to the extent that you're
11 concerned about that, it's -- it's not a concern
12 unique to bump stocks. We mention all sorts of
13 other devices, the forced reset trigger that we
14 mentioned. The -- the problem of people coming
15 up with devices that they want -- that they
16 think get close to the line but don't go over
17 but that, in fact, go over the line and turn
18 them into machineguns isn't new and could come
19 up anywhere.

20 The problem here, we acknowledge, is
21 ATF used to say something different about these,
22 but we think that's taken care of by the
23 rulemaking and the doctrine of entrapment by
24 estoppel.

25 JUSTICE GORSUCH: Because people will

1 sit down and read the Federal Register?

2 MR. FLETCHER: No. I -- I think
3 because I think people who have these devices --

4 JUSTICE GORSUCH: That's what they do
5 in their evening for fun. Gun owners across the
6 country crack it open next to the fire and the
7 dog.

8 (Laughter.)

9 MR. FLETCHER: I -- I -- I take that
10 point. I think, Justice Gorsuch, the fact that
11 this rulemaking happened has not gone unnoticed
12 in the community of people who are interested in
13 firearms. Many people have availed themselves
14 of the right to challenge our interpretation.
15 We're defending it in court. The Supreme Court
16 is hearing it. I -- I agree not everyone is
17 going to find out about those things, but we've
18 done everything the government could possibly do
19 to make people aware.

20 JUSTICE GORSUCH: Let me ask you about
21 the function of the trigger. You liken it to a
22 stroke of a key or -- or -- or -- or a throw of
23 the dice or a swing of the bat. Those are all
24 things people do.

25 MR. FLETCHER: Mm-hmm.

1 JUSTICE GORSUCH: A function of the
2 trigger, do people function triggers? I -- I
3 thought, you know, in -- in -- in, you know,
4 maybe somewhere in fifth -- fifth grade grammar,
5 I learned that was an intransitive verb.

6 MR. FLETCHER: Yeah.

7 JUSTICE GORSUCH: And people don't
8 function things. They may pull things, they may
9 throw things, but they don't function things.
10 And, again, it's a very old statute, and it was
11 designed for an obvious problem in the 1930s and
12 Al Capone, and people were -- with a single
13 function of the trigger, that is, the thing
14 itself, was moved once, and that's what they
15 wrote.

16 And maybe they should have written
17 something better. One might hope they might
18 write something better in the future. But
19 that's the language we're stuck with. Help me.

20 MR. FLETCHER: That is the language
21 we're stuck with, but I don't think it's as
22 narrow as you suggest for a couple of reasons.
23 I agree it's awkward to talk about a person
24 functioning a trigger, but there's an easy
25 explanation. The reason Congress used that

1 word, not "pull," is because Congress knew that
2 there were lots of different ways to activate a
3 trigger and wanted to cover all of them.

4 And I think the reason you know that
5 it's referring to what the shooter does --
6 there's really two. One is that's the way it's
7 been understood ever since. The interpretation
8 I'm giving you is the same one Karl Frederick,
9 the president of the NRA, and many other courts,
10 executive officials, Congressmen gave at the
11 same time. They used "pull" and "function"
12 interchangeably.

13 And, second, I think, even if you've
14 said we're going to focus just on the trigger,
15 the function of an object isn't just some action
16 by the object. It's the mode of action by which
17 it fulfills its purpose. And the purpose of a
18 trigger is to accept some input from the user.

19 And the way you know that is how
20 everyone reacts when someone attaches it to some
21 contraption like the AutoGlove, which is a glove
22 that you put on and you push a button and it has
23 a little piston that pulls the trigger really
24 fast, or you attach a fishing reel, like the one
25 the Fifth Circuit confronted in Camp, where you

1 flip a switch and it spins and turns the trigger
2 over and over again.

3 On my friend's reading, the function
4 of the trigger with those devices is exactly the
5 same because the curved metal lever is moving
6 back and it's releasing the hammer every single
7 time. But everyone, my friend included,
8 recognizes that that's not the function of the
9 trigger in those devices.

10 The function of the trigger is the
11 user's flip of the switch or push of the button
12 because that's the thing that allows an act by
13 the user to initiate a firing sequence.

14 JUSTICE BARRETT: Mr. Fletcher, I -- I
15 take it that the ATF defined the curved lever
16 that you pull back as the trigger. Could it
17 have defined the bump stock itself as the
18 trigger?

19 MR. FLETCHER: So I'm -- I'm not sure
20 that it could have defined the bump stock itself
21 as the trigger. I think -- we get into this a
22 little bit in the reply in response -- or a -- a
23 different argument maybe than the one that
24 you're thinking of but I think related, in
25 response to a move that's made in the red brief,

1 where we hypothesize that if you had a
2 machinegun that required you to pull the trigger
3 and also hold down a button, it would still fire
4 automatically, and we all understand that, even
5 though you have to do two things rather than
6 one.

7 And what my friend said in the red
8 brief is, well, in that case, maybe the button
9 is part of the trigger too because you have to
10 push the button to keep firing. And what we say
11 in the reply and what I think is true is that if
12 you were going to approach the statute that way,
13 which isn't the way the ATF has, I think you'd
14 still land in the same place because then you'd
15 say, it's both the curved metal lever and it's
16 the part on the front of the rifle that the user
17 pushes forward in order to initiate and maintain
18 the firing sequence.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Justice Thomas, anything further?

22 Justice Alito?

23 JUSTICE ALITO: What is the situation
24 of people who have possessed bump stocks between
25 the time of the ATF's new rule and the present

1 day or between the time of the new rule and the
2 Fifth Circuit decision? Can they be prosecuted?

3 MR. FLETCHER: I think probably yes,
4 unless they had gotten some judicial relief from
5 the rule. The rule has not been enjoined. It
6 hasn't been vacated, writ large, so I think the
7 -- the government has made clear that this is
8 what we think the statute means.

9 I'll say in practice that --

10 JUSTICE ALITO: Isn't that disturbing?
11 People in the Fifth Circuit who have been
12 possessing firearms since the beginning of 2023,
13 let's say, they -- you know, they are aware of
14 the Fifth Circuit's decision that they can be
15 criminally prosecuted for doing something that
16 the court of appeals that governs their
17 territory has said is not illegal?

18 MR. FLETCHER: Well, let me give a
19 practical answer and then a doctrinal answer. I
20 think, practically, I'm not aware of a lot of
21 these prosecutions being brought because we
22 recognize that there is some legal uncertainty.

23 But I think, doctrinally, that could
24 happen all the time, Justice Alito. Circuits
25 disagree about what a criminal law means, and

1 someone might, in reliance on their circuit
2 precedent, do something that they think is
3 lawful under circuit precedent that other
4 circuits disagree with, that the government
5 disagrees with, and that this Court ultimately
6 holds is covered by the statute.

7 JUSTICE ALITO: When we speak of the
8 function of an inanimate object, don't we
9 normally look at what that inanimate object --
10 object does? So why isn't the function of a
11 trigger to release the hammer -- let's look at
12 the -- the -- the M16, the AR-15, the function
13 of the -- why isn't the function of the trigger
14 to release the hammer from the sear so that the
15 hammer can swing forward and strike? Isn't that
16 the most straightforward interpretation of this?

17 MR. FLETCHER: I -- I don't think so,
18 and I think, even if you thought that was true,
19 just looking at the text alone, the three
20 indications that we've talked about, the
21 contemporaneous usage by the president of the
22 NRA and others, the application to other kinds
23 of triggers, which everybody agrees are covered
24 but which don't function by moving the hammer,
25 and then also just evasion. I mean, I talked

1 about some of them, but one of the devices that
2 the Fifth Circuit has held is permissible -- or,
3 I'm sorry, a district court in the Fifth Circuit
4 has held is permissible and the Fifth Circuit
5 has declined to stay is something called a
6 forced reset trigger, and with a forced reset
7 trigger, the ATF tested it, zip-tied the trigger
8 back, and the gun shot multiple bullets.

9 What the district court said is that
10 under my friend's interpretation, its
11 function -- there are multiple functions of the
12 trigger because the trigger is wiggling back and
13 forth imperceptibly and releasing the hammer
14 separately each time, and so it's not a
15 machinegun.

16 And I think it's just not reasonable
17 to read the statute that opens it up to that
18 sort of evasion, and we're seeing concrete
19 evidence of that evasion in the Fifth Circuit.

20 JUSTICE ALITO: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Sotomayor?

23 JUSTICE SOTOMAYOR: Just to be clear,
24 when you're citing what Congress people said or
25 what the NRA president said or what we said in

1 some of our decisions because we've used "pull
2 of the trigger" in describing a machinegun's
3 function, correct?

4 MR. FLETCHER: Exactly.

5 JUSTICE SOTOMAYOR: You're not using
6 legislative history in the traditional sense.
7 You are pointing to common usage?

8 MR. FLETCHER: Exactly right, exactly
9 right. We're not speculating. We're not saying
10 that the bump stocks are machineguns because the
11 president of the NRA wanted them to be. We're
12 using that as evidence --

13 JUSTICE SOTOMAYOR: Well, that's what
14 the Senate intended. You're saying it's a term
15 of art.

16 MR. FLETCHER: Exactly. If he -- if
17 he had published this in an essay or in The New
18 York Times, we would be pointing to it as
19 evidence of contemporary meaning. We certainly
20 don't think it should be of less weight --

21 JUSTICE SOTOMAYOR: Well, you're
22 pointing -- you're pointing to Supreme Court
23 decisions that did it.

24 MR. FLETCHER: Exactly, as this Court
25 does too. It looks at literature. It looks at

1 all sorts of sources to understand what it --
2 speakers of English understand the words to mean
3 when Congress used them. And we think this and
4 many other things are powerful indications that
5 we're right about that.

6 JUSTICE SOTOMAYOR: Thank you.

7 CHIEF JUSTICE ROBERTS: Justice Kagan?

8 JUSTICE KAGAN: Mr. Fletcher, you've
9 talked a lot about the mechanics of these
10 various devices. Could you give a sense of the
11 different effects of these various devices?

12 So you take on two poles a
13 semiautomatic weapon, let's say, and a
14 conventional machinegun on the -- on the other.
15 How many bullets and how much time? And then
16 one of these bump stock weapons, where does that
17 fall in the spectrum between those?

18 MR. FLETCHER: Sure. So the rate of a
19 semiautomatic weapon is not a fixed number
20 because it depends both on the weapon and very
21 much on the skill of the shooter. I think the
22 Giffords amicus brief says the theoretical
23 maximum for a very skilled competition shooter
24 with a specialized weapon is something like 180
25 bullets a minute. In practice, it's much, much

1 slower than that for the vast majority of people
2 who would use one of these things.

3 A fully automatic weapon --

4 JUSTICE KAGAN: How -- how much
5 slower?

6 MR. FLETCHER: I think, you know,
7 it -- it depends. I -- I think more on the
8 order of, you know, 60, something like that. I
9 don't -- I don't want to represent that that's
10 exact again because there's a lot of variation,
11 but the -- the point is that's the theoretical
12 max. In practice, it's significantly slower
13 than that.

14 A traditional machinegun like the M16
15 or the M14, things that are issued to members of
16 the American military, shoots in the range of
17 700 to 950 bullets a minute.

18 There are obviously bigger things like
19 the things mounted on helicopters that shoot
20 much, much faster than that, but I think, for
21 these purposes, that 700 to 900 is about the
22 right benchmark.

23 The Akins Accelerator, the original
24 bump stock, shot at 650 rounds a minute, and the
25 devices at issue here are represented to shoot

1 between 400 and 800 rounds a minute.

2 So right in that range with the M16,
3 the M14, and they do it in the way -- again,
4 I -- I think rates of fire are important, but we
5 acknowledge this is not a rate-of-fire statute.
6 It's a function statute.

7 But the function was, are you able to
8 fire multiple shots without multiple manual
9 movements? And I think the rate of fire is
10 powerful evidence that there are not multiple
11 manual movements going on here.

12 JUSTICE KAGAN: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Gorsuch?

15 Justice Kavanaugh?

16 JUSTICE KAVANAUGH: You've referred a
17 lot to the language in 1934 and around that
18 time, but, of course, bump stocks didn't exist
19 around that time.

20 What are we to make of that?

21 MR. FLETCHER: So I -- I think you
22 still apply the language and you have to do what
23 you have to do a lot, which is apply language
24 that Congress wrote and apply it to something
25 that didn't exist at the time. You know, none

1 of these workarounds, the fishing reel, the
2 AutoGlove, the forced reset trigger, all of them
3 are new problems.

4 But -- but I think what you can draw
5 is that Congress wrote a statute, chose the word
6 "function" deliberately because it didn't want
7 to just work -- focus on triggers that pull, and
8 then, in 1968, it added "parts that convert a
9 machine" -- a -- "a normal gun into a
10 machinegun" because it recognized that people
11 try to do things to semiautomatic weapons in
12 order to give them these same characteristics of
13 multiple rounds with a single manual action.

14 JUSTICE KAVANAUGH: And then what's
15 your explanation, maybe common-sense explanation
16 or some other explanation, for why, when this
17 does become an issue, the Bush Administration,
18 the Obama Administration, Senator Feinstein, all
19 say no?

20 MR. FLETCHER: Yeah.

21 JUSTICE KAVANAUGH: Bump stocks are --
22 are not covered because, if it were so, I don't
23 want to use the word "clear," but if so, if
24 your -- if your position were correct, oh, just
25 this is a new thing, obviously, covered by this

1 old statutory language, you would expect the
2 Bush Administration, and the Obama
3 Administration, Senator Feinstein to say, of
4 course, it's covered by, and -- and they didn't,
5 and that's reason for pause. It doesn't -- it's
6 not dispositive, but it's reason for pause.

7 And I just -- what -- what's your
8 explanation for that, if you have one?

9 MR. FLETCHER: So I agree with you.
10 It's -- it's -- it's worth looking at. It's
11 worth asking. I think that's why it's so
12 important to put it in context.

13 And -- and if I could, so when the ATF
14 first looks at these, it's the Akins Accelerator
15 in 2002. That's the bump stock with a spring in
16 the back where you don't even have to push
17 forward. And initially ATF tests it, the
18 prototype breaks, but the ATF writes a
19 classification letter, which is something
20 relatively informal, just goes to the
21 manufacturer, doesn't contain a lot of legal
22 reasoning, says this isn't a machinegun because
23 it doesn't have multiple functions of the
24 trigger.

25 Very quickly thereafter, ATF corrects

1 that error and in 2006 says the Akins
2 Accelerator is a machinegun because it does
3 function by -- it does shoot multiple shots by a
4 single function of the trigger.

5 So that part we've been consistent on.
6 The director of the ATF issued a ruling, 2006-2,
7 that was consistent on that, and the agency has
8 held that position ever since, and that's mostly
9 what we've talked about today.

10 It's true that in a series of
11 additional -- a -- another informal
12 classification letters is issued between 2007
13 and 2017, the ATF said that non-mechanical bump
14 stocks, those like the ones at issue here
15 without a spring where you have to push forward,
16 weren't machineguns because they didn't shoot
17 automatically.

18 But I -- I think it's important to
19 recognize those are informal, they don't include
20 a lot of legal analysis, and I think maybe most
21 importantly, no one defends the ATF's
22 interpretation from those letters. What the ATF
23 said there is this doesn't have springs or
24 mechanical parts, so it doesn't make guns -- the
25 gun function automatically.

1 I think even my friend doesn't defend
2 that interpretation. Everybody recognizes that
3 there are things like Glock switches that we
4 discuss in our reply brief that you can add to a
5 machinegun -- a -- a semiautomatic weapon that
6 make it a machinegun, and I think the fact that
7 no one is defending the ATF's prior
8 interpretation is a good indication that when
9 Attorney General Sessions and Attorney General
10 Barr revisited this and we've continued to
11 defend it since, they did a much more careful
12 examination and got it right.

13 And then Senator Feinstein, you know,
14 I -- I take your point. I guess, with all
15 respect to Senator Feinstein, I would say that
16 the comments from a legislator who's trying to
17 get a piece of legislation passed and is trying
18 to demonstrate the need for that legislation by
19 disagreeing with the administration about the
20 scope of current law are not a particularly
21 probative source of the meaning of the words
22 that Congress enacted in 1934.

23 JUSTICE KAVANAUGH: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Barrett?

1 JUSTICE BARRETT: No.

2 CHIEF JUSTICE ROBERTS: Justice
3 Jackson?

4 JUSTICE JACKSON: Can I just be clear
5 on this function point? Because they say, I
6 think, that a single function of the trigger in
7 -- as it appears in this statute is directing
8 consideration of whether the trigger is moving
9 only once.

10 MR. FLETCHER: Mm-hmm.

11 JUSTICE JACKSON: And I think you're
12 saying that, no, when it says the function of
13 the trigger, it's not how the trigger operates,
14 it's -- the function of the trigger is what it
15 achieves, and the function that I think you're
16 saying is that if by single operation, meaning
17 single movement of the person, you can achieve
18 firing multiple shots without multiple manual
19 movements, that's what you said --

20 MR. FLETCHER: Yeah.

21 JUSTICE JACKSON: -- that covers the
22 function of the trigger. Is that what you're
23 saying?

24 MR. FLETCHER: Exactly. And I think
25 the thing that makes this clearest is the boxes

1 hypothetical on page 30 of our brief where we
2 say imagine somebody builds a black box with a
3 button on the top and the shooter pushes the
4 button once and bullets come out of the front at
5 a very high rate. On our view, that's a
6 machinegun.

7 But, on my friend's view, if the
8 inventor sets it up so that after the shooter
9 pushes and releases the button the button keeps
10 moving up and down in the same way on its own, I
11 think he's stuck saying that that's not a
12 machinegun because the trigger is functioning
13 each time a shot is fired. We don't think
14 that's a plausible construction of the statute.

15 JUSTICE JACKSON: So we'll ask him
16 about that. And -- and I guess yours is
17 consistent or it -- it accounts for
18 automatically more than one shot being in this
19 definition?

20 MR. FLETCHER: Exactly.

21 JUSTICE JACKSON: Okay. Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Mr. Mitchell.

25

1 ORAL ARGUMENT OF JONATHAN F. MITCHELL
2 ON BEHALF OF THE RESPONDENT

3 MR. MITCHELL: Mr. Chief Justice, and
4 may it please the Court:

5 The statutory definition of machinegun
6 extends only to weapons that fire more than one
7 shot automatically by a single function of the
8 trigger. Mr. Cargill's non-mechanical bump
9 stocks fall outside the statutory definition for
10 two separate and independent reasons.

11 First, a bump stock-equipped rifle can
12 fire only one shot per function of the trigger
13 because the trigger must reset after every shot
14 and must function again before another shot can
15 be fired.

16 The trigger is the device that
17 initiates the firing of the weapon, and the
18 function of the trigger is what that triggering
19 device must do to cause the weapon to fire.

20 The phrase "function of the trigger"
21 can refer only to the trigger's function. It
22 has nothing to do with the shooter or what the
23 shooter does to the trigger because the shooter
24 does not have a function.

25 The statute is concerned only with

1 what the trigger does and whether a single
2 function of that trigger produces more than one
3 shot.

4 Second, a bump stock-equipped rifle
5 does not and cannot fire more than one shot
6 automatically by a single function of the
7 trigger because the shooter, in addition to
8 causing the trigger to function, must also
9 undertake additional manual actions to ensure a
10 successful round of bump firing.

11 Everything about the bump firing
12 process is manual. And there is no automating
13 device, such as a spring or a motor, in any of
14 Mr. Cargill's non-mechanical bump stocks.

15 The process depends entirely on human
16 effort and exertion as the shooter must
17 continually and repeatedly thrust the forestock
18 of the rifle forward with his non-shooting hand
19 while simultaneously maintaining backward
20 pressure on the weapon with his shooting hand.

21 None of these acts are automated. And
22 the Solicitor General has yet to identify any
23 component of Mr. Cargill's devices that
24 automatically performs any task that is
25 necessary for bump firing. The statute is

1 unambiguous as applied to Mr. Cargill's
2 non-mechanical bump stocks, and we ask the Court
3 to affirm on that ground.

4 JUSTICE THOMAS: Behind the
5 government's argument is a sense that the --
6 this statute was initially enacted because of
7 what some of the individuals did during
8 Prohibition.

9 MR. MITCHELL: Mm-hmm.

10 JUSTICE THOMAS: And there was
11 significant damage from machineguns, carnage,
12 people dying, et cetera. And the -- behind this
13 is a notion that the bump stock does the exact
14 same thing.

15 So, with that background, why
16 shouldn't we look at a broader definition of
17 "function," one suggested by the -- the
18 government, as opposed to just the narrow
19 function that you suggest?

20 MR. MITCHELL: The problem with the
21 government's argument, Justice Thomas, is that
22 the phrase "single function of the trigger" can
23 only be construed grammatically to focus on the
24 trigger's function and not on what the shooter
25 does to the trigger.

1 And that's so for many reasons. For
2 -- for one thing, there cannot be a subject of
3 "function" because a shooter does not function a
4 trigger. Only a trigger can have a function and
5 not a shooter.

6 Now the Solicitor General is trying to
7 replace the word "function" in the statute with
8 the word "pull." And if the statute had
9 actually said a single pull of the trigger, that
10 phrase would clearly refer to an act taken by
11 the shooter because only a shooter can pull the
12 trigger. The trigger certainly can't pull
13 itself.

14 So, if the Court is going to interpret
15 the statute based on what it says rather than
16 based on the purposes or perhaps the overarching
17 goals of what the 1934 legislature might have
18 been, there's no way it could accept the
19 government's construction of the statute because
20 it is changing the enacted words.

21 JUSTICE JACKSON: Can I give you a
22 way? Possibly?

23 MR. MITCHELL: Please.

24 JUSTICE JACKSON: All right. So the
25 statute says "function," as we've all

1 identified.

2 MR. MITCHELL: Yes.

3 JUSTICE JACKSON: And as far as I can
4 tell, the sort of common usage of the word
5 "function" is not its operational design. It's
6 not the mechanics of the thing. It is what it
7 achieves, what it's being used for.

8 MR. MITCHELL: Mm-hmm.

9 JUSTICE JACKSON: So I found
10 definitions. "Function" is defined as "the
11 action for which a person or thing is
12 specifically fitted or used"; the acts or
13 operations expected of the person or thing.

14 So, if we take that definition --

15 MR. MITCHELL: Mm-hmm.

16 JUSTICE JACKSON: -- it seems to me
17 that, through its use of the word "function,"
18 Congress was trying to capture a class of
19 weapons in which a trigger is used once to
20 achieve a certain result, which says, in the
21 statute, automatic firing many times.

22 And so weapons with bump stocks have
23 triggers that function in the same way. They --
24 you -- through a single, right, pull of the
25 trigger or -- you -- touch of the trigger, you

1 achieve the same result of automatic fire --

2 MR. MITCHELL: No.

3 JUSTICE JACKSON: -- of -- of the
4 weapon. So why -- why is that inconsistent with
5 grammar or the -- the -- the way the statute
6 reads?

7 MR. MITCHELL: Well, the -- the
8 premise of Your Honor's question is not true. A
9 single discharge of the trigger produces only
10 one shot. It doesn't produce a round of
11 automatic fire. The only way you get to
12 repeated shots with a bump stock equipped rifle
13 is for the shooter himself to continually
14 undertake manual action by thrusting the
15 forestock of the rifle forward with his
16 non-shooting hand.

17 JUSTICE JACKSON: But that's not the
18 trigger. He's only touched the -- he's holding
19 the trigger or touched the trigger once, right?

20 MR. MITCHELL: No. He touches the
21 trigger every single time. He has to bump the
22 trigger.

23 JUSTICE JACKSON: Well, I'm sorry, the
24 machine is -- but the machine is moving --

25 MR. MITCHELL: The machine --

1 JUSTICE JACKSON: -- to make his --

2 MR. MITCHELL: The machine is
3 moving --

4 JUSTICE JACKSON: Okay.

5 MR. MITCHELL: -- but the trigger has
6 to be bumped.

7 JUSTICE JACKSON: So then let me ask
8 you a question.

9 MR. MITCHELL: Yes.

10 JUSTICE JACKSON: The -- the other
11 question is -- I understood this to be a
12 classification statute in the sense that
13 Congress is trying to identify and classify
14 certain weapons. So, if you're right --

15 MR. MITCHELL: Mm-hmm.

16 JUSTICE JACKSON: -- I want to
17 understand why that matters. Why does it matter
18 for the purpose of this statute that we have
19 backwards pressure in the ordinary case of a
20 machinegun and forward pressure here? You --
21 you're saying there's a distinction being drawn.
22 Bump stocks don't fit into this category because
23 of this distinction, and I guess I don't
24 understand why Congress would have prohibited
25 one and not the other. Why -- why does it

1 matter?

2 MR. MITCHELL: Well, it matters
3 because the statute turns on whether the bump
4 stock-equipped rifle will fire more than one
5 shot automatically by a single function --

6 JUSTICE JACKSON: Right. But they're
7 -- the -- the -- the --

8 MR. MITCHELL: -- of the trigger. So
9 to answer that --

10 JUSTICE JACKSON: -- the statute is in
11 con -- in context.

12 MR. MITCHELL: Yes.

13 JUSTICE JACKSON: The statute is
14 classifying certain weapons for prohibition.

15 MR. MITCHELL: Right.

16 JUSTICE JACKSON: So, for it to make
17 sense, we have to understand why this category
18 of weapons are ones that Congress wants to
19 prohibit. And you're suggesting that Congress
20 is prohibiting through this classification
21 weapons in which we hold it backwards and
22 automatic fire happens, but we push it forward
23 and automatic fire happens, Congress says no,
24 that's not in the --

25 MR. MITCHELL: There's no automatic

1 fire. I'm sorry. Justice Jackson --

2 JUSTICE JACKSON: Okay.

3 MR. MITCHELL: -- there is no
4 automatic fire with a --

5 JUSTICE JACKSON: Sorry. Eight
6 hundred -- 800 bullets -- the conversation with
7 Justice Kagan suggested that, through a bump --
8 bump stock, you can achieve the same kinds of
9 result in terms of the amounts of bullets that
10 are being ejected.

11 MR. MITCHELL: That is true.

12 JUSTICE JACKSON: Is that correct?
13 Okay.

14 MR. MITCHELL: It has a very high rate
15 of fire, but it's not automatically fired.

16 JUSTICE JACKSON: Right, but what I'm
17 --

18 MR. MITCHELL: This is --

19 JUSTICE JACKSON: -- suggesting is
20 that the category of prohibition is about the
21 high rate of fire as opposed to, you know, the
22 movement of the trigger. And if you're right
23 that it's about the movement of the trigger, I'm
24 just asking why, why would -- why would Congress
25 want to prohibit certain things based on whether

1 the trigger is moving as opposed to certain
2 things that can achieve this, you know, lethal
3 kind of spray of bullets?

4 MR. MITCHELL: Because the statute was
5 written in 1934, about a hundred years before we
6 had bump stocks. So Congress drafted the
7 statute at that time to capture the type of
8 weaponry it wanted to prohibit in 1934, so --

9 JUSTICE KAGAN: Your interpretation,
10 Mr. Mitchell, though -- you've said this several
11 times in your brief -- captures a fair number of
12 weapons that nobody had on their radar screen in
13 1934, so let me ask you about that and where the
14 line is.

15 MR. MITCHELL: Sure.

16 JUSTICE KAGAN: If a gun fires
17 multiple shots at the push of a button or the
18 flip of a switch and just keeps firing -- -

19 MR. MITCHELL: Yes. Clearly, that's a
20 machinegun.

21 JUSTICE KAGAN: -- that's a
22 machinegun?

23 MR. MITCHELL: Yes. That's United
24 States against Camp essentially.

25 JUSTICE KAGAN: Okay. And if a -- if

1 -- if a gun does the same thing, except now it's
2 the push of two buttons?

3 MR. MITCHELL: So one button that
4 fires and then the other button that's
5 necessary?

6 JUSTICE KAGAN: Yes.

7 MR. MITCHELL: Both buttons necessary?

8 JUSTICE KAGAN: Yes.

9 MR. MITCHELL: And neither are by
10 themselves sufficient?

11 JUSTICE KAGAN: Yeah. I thought you
12 say also, on page 45 of your brief, that a -- a
13 -- a push-operated machinegun that requires the
14 shooter to push and hold two buttons, that that
15 would also qualify.

16 MR. MITCHELL: Right, because the two
17 buttons together are acting as the trigger in
18 that scenario.

19 JUSTICE KAGAN: Okay.

20 MR. MITCHELL: So the trigger is the
21 device that initiates the firing of the weapon.

22 JUSTICE KAGAN: Okay.

23 MR. MITCHELL: So, if you need to push
24 two buttons and not just one, then both, the two
25 buttons combined, are the trigger.

1 JUSTICE KAGAN: Okay. So now, instead
2 of doing two buttons, suppose you had one button
3 and with the other hand you held the trigger.

4 MR. MITCHELL: One button that you're
5 pushing and then with the other hand you're --

6 JUSTICE KAGAN: Yeah. Instead of two
7 buttons --

8 MR. MITCHELL: Right.

9 JUSTICE KAGAN: -- it's one button and
10 you held the trigger.

11 MR. MITCHELL: And you need to do both
12 to fire? You can't just do one?

13 JUSTICE KAGAN: Same as you just had
14 to do with two buttons.

15 MR. MITCHELL: Mm-hmm.

16 JUSTICE KAGAN: And you conceded the
17 two buttons is a machinegun. So now I'm saying,
18 instead of pushing two buttons, you push one
19 button and you hold the trigger.

20 MR. MITCHELL: It's going to depend on
21 what -- how we define "trigger." And as -- as
22 -- the answer to that will not always be clear.
23 The question is, can you extend the holding of
24 United States against Camp to this particular
25 situation? The trigger --

1 JUSTICE KAGAN: I -- I mean, I have to
2 say --

3 MR. MITCHELL: Yeah.

4 JUSTICE KAGAN: -- I -- I -- I think
5 you don't quite know what the answer to that
6 is -- if -- if -- if you have an answer, let me
7 know -- because the difference between pushing
8 two buttons --

9 MR. MITCHELL: Mm-hmm.

10 JUSTICE JACKSON: -- for me and
11 pushing one button and holding the trigger is
12 not self-evident.

13 MR. MITCHELL: To pushing a button and
14 holding the trigger and you need to do both --

15 JUSTICE KAGAN: Same.

16 MR. MITCHELL: -- and both --

17 JUSTICE KAGAN: Boy, I thought I was
18 being pretty clear here.

19 MR. MITCHELL: Yeah.

20 JUSTICE KAGAN: You push two buttons.
21 You say it's a machinegun. Now you don't push
22 two buttons. You have to push one button and
23 hold the trigger.

24 MR. MITCHELL: That shouldn't make a
25 difference if they're both going to be

1 considered -- they either have to both be
2 machineguns or neither. I don't think you can't
3 draw a distinction between --

4 JUSTICE KAGAN: Correct.

5 MR. MITCHELL: I agree with that much.

6 JUSTICE KAGAN: And you said the first
7 is a machinegun, so the second has to be a
8 machinegun.

9 MR. MITCHELL: Mm-hmm.

10 JUSTICE KAGAN: Okay. So now I guess
11 I want to know, what's the difference between
12 pushing a button and holding the trigger and
13 pushing the barrel and holding the trigger?
14 You've just described a bump stock.

15 MR. MITCHELL: No. No, because you
16 don't need to push the barrel forward to fire
17 the weapon. You can fire the weapon just by
18 clicking the trigger every single time, like a
19 normal semiautomatic weapon fires. So, no.

20 JUSTICE KAGAN: But -- but what the
21 bump stock does --

22 MR. MITCHELL: Mm-hmm.

23 JUSTICE KAGAN: Oh. Oh, you're saying
24 you don't have to put pressure?

25 MR. MITCHELL: Well, it's neither

1 necessary nor sufficient to fire the weapon.

2 The trigger is the device --

3 JUSTICE KAGAN: All right.

4 MR. MITCHELL: -- that initiates the
5 firing of the weapon. So --

6 JUSTICE KAGAN: Here's what I'm trying
7 to say. You've -- and I appreciate --

8 MR. MITCHELL: Mm-hmm.

9 JUSTICE KAGAN: -- your, you know,
10 going down this road of hypotheticals with me.

11 But, if -- if pushing one button and
12 holding a trigger is a machinegun, then --

13 MR. MITCHELL: Mm-hmm.

14 JUSTICE KAGAN: -- a device that works
15 by pushing the barrel, the front of the gun,
16 essentially -- I don't know about these things
17 -- and holding the trigger seems again, to me,
18 to essentially do the same thing.

19 MR. MITCHELL: It --

20 JUSTICE KAGAN: And that is how
21 everybody uses these devices. Like, I -- I
22 mean, maybe you could use the device
23 differently, but the entire point of this device
24 is that you exert forward pressure and you have
25 your finger on the trigger, and then a torrent

1 of bullets shoots out. So I don't understand
2 why it's any different --

3 MR. MITCHELL: It is different.

4 JUSTICE KAGAN: -- from pushing a
5 button and holding the trigger --

6 MR. MITCHELL: Mm-hmm.

7 JUSTICE KAGAN: -- pushing the barrel
8 and holding the trigger.

9 MR. MITCHELL: The difference is you
10 don't need to push the barrel to fire the
11 weapon. In the other hypotheticals that Your
12 Honor was describing, you need to push those
13 buttons to make the weapon fire. It is not
14 necessary --

15 JUSTICE KAGAN: So the fact that there
16 is a conceivable possibility of using these bump
17 stock devices in a way that does not take
18 advantage of what these bump stock devices do
19 and are able to do --

20 MR. MITCHELL: Mm-hmm.

21 JUSTICE KAGAN: -- the fact that there
22 is that conceivable possibility is what you are
23 resting your entire argument on?

24 MR. MITCHELL: No. Our argument
25 depends on what's the trigger. The trigger is

1 the device that initiates the firing of the
2 weapon.

3 A bump stock does not change the
4 trigger in any way. It does not alter the
5 nature of the trigger. The other hypothetical
6 devices that Your Honor is describing are
7 changing the triggering device either by
8 requiring pushing two buttons rather than just
9 one -- nothing in the bump stock changes the
10 trigger. The trigger is still in this situation
11 the curved metal lever, and the Solicitor
12 General has never contested that point, neither
13 has DOJ, at any point in this litigation.

14 JUSTICE GORSUCH: Mr. Mitchell, I --

15 JUSTICE ALITO: And, Mr. Mitchell,
16 this -- this conversation is totally confusing
17 me because I -- I thought that your argument
18 depended on what the trigger -- that the
19 function of the trigger was what the trigger
20 does mechanically inside the weapon, and,
21 therefore, whether you have one trigger or two
22 triggers or three triggers or 10 buttons, it
23 doesn't matter. It matter -- what matters is
24 what the trigger or the triggers do inside the
25 gun.

1 A -- a -- a -- a -- an M6 -- back in
2 the day when it was possible to fire the
3 standard military issue rifle, M16, from the
4 1970s on automatic, my understanding is that the
5 military doesn't even -- you can't even do that
6 anymore. All you can fire at most is a burst of
7 three shots.

8 But there are two buttons on -- on the
9 -- on the old-time M16. You have to flip the --
10 well, there are three. You have to -- you have
11 to flip it over from semiautomatic to automatic.
12 That's one button. And then the other button is
13 the pulling of the trigger.

14 But do I misunderstand your argument?

15 MR. MITCHELL: No, you're not
16 misunderstanding at all. The function of the
17 trigger is what the trigger does to cause the
18 weapon to fire. That's what "function of the
19 trigger" means.

20 But, to determine that, we need to
21 first determine what exactly the trigger is
22 before we can consider what is the function of
23 the trigger. And there will be certain types of
24 devices like this motorized trigger device in
25 United States against Camp where the trigger

1 actually is changed because you're no longer
2 pulling the curved metal lever to set off the
3 weapon; instead, you're flipping some switch
4 that starts the motor --

5 JUSTICE ALITO: Can you think of any
6 --

7 JUSTICE SOTOMAYOR: Now I'm completely
8 lost. The trigger is not doing anything. It's
9 the person doing something. And it's the person
10 choosing on an M16 whether they're going to keep
11 the switch on semiautomatic or put the switch on
12 automatic and turn the M16 into a machinegun.

13 And on a machinegun, it's not the
14 trigger that does this. It's the pressure that
15 the shooter is using to hold the trigger down
16 that permits it to keep going.

17 MR. MITCHELL: That's what causes the
18 trigger to function.

19 JUSTICE SOTOMAYOR: Well, but the --

20 MR. MITCHELL: The -- the -- the test
21 --

22 JUSTICE SOTOMAYOR: That's what the
23 government is saying, which is you're not
24 looking at what the -- what the trigger is
25 doing. You're looking at what the shooter is

1 doing. And is he using a force, keeping the gun
2 down -- keeping the trigger down or holding the
3 bump stock and letting it shoot back and forth
4 in an automatic recoil.

5 Those are not things that changes the
6 automatic nature of the firing.

7 MR. MITCHELL: It still has nothing to
8 do with what the shooter does. The question is
9 what does the trigger do when it functions. And
10 if the trigger allows more than one shot to fire
11 per function of the trigger, what is the single
12 function of the trigger? And on a semi --

13 JUSTICE SOTOMAYOR: But the
14 trigger's -- the trigger you're saying can be a
15 button. So why can't it be the bump stock
16 that's forcing this thing automatically in a
17 recoil motion to go back and forth?

18 MR. MITCHELL: Because the bump stock
19 doesn't fire the weapon. The bump stock is just
20 a case in which the weapon slides back and
21 forth. That doesn't do anything to fire the
22 weapon. The only way --

23 JUSTICE BARRETT: They have defined
24 the bump stock as the trigger?

25 MR. MITCHELL: No one defines the bump

1 stock as the trigger in this case.

2 JUSTICE BARRETT: Could they have?

3 MR. MITCHELL: No, they could not
4 because the bump stock is neither necessary nor
5 sufficient for the firing of the weapon. It's
6 the curved metal lever on the semiautomatic
7 rifle that causes the weapon to fire. That --

8 JUSTICE GORSUCH: Mr. --

9 MR. MITCHELL: Yes?

10 JUSTICE GORSUCH: Sorry. Mr.
11 Mitchell, it seems to me the spirit of some of
12 the questions you're getting are in the nature
13 of the anticircumvention principle --

14 MR. MITCHELL: Mm-hmm.

15 JUSTICE GORSUCH: -- that, okay, maybe
16 in 1934 "function of the trigger" meant the
17 firing, the -- the -- the -- the essential thing
18 that causes the weapon to fire.

19 But the high rate of fire that's
20 achievable through bump stocks is effectively
21 the equivalent, and we should take cognizance of
22 that.

23 Your thoughts?

24 MR. MITCHELL: It's just not what the
25 statute says. It has nothing to do with the

1 rate of fire. And --

2 JUSTICE KAGAN: But -- but the statute
3 doesn't say a lot of things that you've agreed
4 are prohibited under the statute. The statute
5 doesn't, you know, think about buttons, and the
6 statute doesn't think about switches.

7 And I have to think that if I gave you
8 a different hypo that said it was
9 voice-activated that you would have to say yes,
10 that's a machinegun too. And the statute
11 doesn't think about that.

12 And I guess what Justice Gorsuch is
13 saying is that you in arguing this case have had
14 to do something very sensible because,
15 otherwise, it would seem, you know, like, you
16 know, that this statute is loaded with
17 anticircumvention devices. The entire way this
18 statute is written suggests that Congress was
19 very aware -- aware that there could be small
20 adjustments of a weapon that could get around
21 what Congress meant to prohibit.

22 And -- and -- and in all kinds of
23 ways, you're accepting of that and saying yes,
24 you can't circumvent it by that. You can't
25 circumvent it by non-conventional triggers. You

1 can't circumvent it by, you know, all these
2 things that -- these hypotheticals I've been
3 giving you. But you can circumvent it through
4 this one mechanism.

5 MR. MITCHELL: I'm not conceding that
6 you can circumvent the statute, Justice Kagan.
7 We're just interpreting the word "trigger,"
8 which is a term that appears in the statutory
9 text and it has to be interpreted.

10 When you're dealing with the motorized
11 trigger device, that's an easy case in one
12 direction because that has changed the trigger
13 from the curved metal lever because the shooter
14 is no longer using that to fire the weapon.

15 Instead, there's a switch that is
16 flipped and that switch is now triggering the
17 device because that is the function, turning on
18 the switch, that then causes automatic fire to
19 occur because there's some motor that's moving
20 the trigger back -- I'm sorry, I shouldn't say
21 the trigger -- the curved metal lever back and
22 forth. That's United States against Camp.

23 This is an easy case because the bump
24 stock doesn't change the trigger in any way.

25 JUSTICE JACKSON: But what do you

1 do --

2 MR. MITCHELL: Everyone --

3 JUSTICE JACKSON: -- what do you do
4 about modification pieces? I -- I guess I don't
5 understand your argument insofar as I had taken
6 the United States to always take the position,
7 and I actually had a case about this when I was
8 a district court judge, where the question was
9 were these flat metal pieces that were mailed
10 internationally to the defendant machineguns.

11 And we were all confused. The jury
12 was confused because we had this notion of what
13 a machinegun was. And the government argued
14 that this metal piece was a machinegun and
15 brought in experts that said, under this
16 statute, anything that can be used to convert a
17 regularly operating semiautomatic weapon into
18 one that rapid fires qualifies.

19 MR. MITCHELL: I'm sorry, Justice
20 Jackson, rapid --

21 JUSTICE JACKSON: That's wrong?

22 MR. MITCHELL: -- rapid fire is not
23 the test under the statute. The -- it's not
24 whether it fires rapidly. It's whether it fires
25 more than one shot automatically --

1 JUSTICE JACKSON: Okay, I'm sorry.

2 I'm sorry.

3 MR. MITCHELL: -- by a single function
4 of the trigger.

5 JUSTICE JACKSON: I'm sorry.

6 MR. MITCHELL: Okay.

7 JUSTICE JACKSON: They said it could.
8 But what we focused on was not whether that
9 metal piece changed the way the trigger
10 operated. Now maybe you're saying that's wrong,
11 but I guess what I'm focused on is that your
12 argument seems to rest on the assumption that
13 the function of the trigger, as Justice Alito
14 says, is what the trigger does inside the gun.

15 MR. MITCHELL: That's correct.

16 JUSTICE JACKSON: Why is it
17 irrational, wrong, et cetera, to think of the
18 function of the trigger is -- as what it does to
19 cause the weapon to automatically fire more than
20 one shot?

21 If that's what we mean by "function of
22 the trigger," which is in the statute,
23 automatically more than one shot, and what we're
24 saying is by -- if -- if one operation causes
25 the trigger to -- the function -- causes the

1 function of the trigger to make the weapon
2 automatically fire more than one shot, I guess I
3 don't understand why your reading is preferable
4 to that when -- when -- when the common
5 understanding of a machinegun is that it is
6 doing this sort of thing at the end of the day.

7 MR. MITCHELL: Well, it's because the
8 trigger on a bump stock equipped rifle does not
9 cause the rifle to automatically fire more than
10 one shot. You still have to have manual action
11 by the shooter in response to every single shot
12 that gets fired. The shooter has to continue to
13 thrust that forestock forward --

14 JUSTICE JACKSON: Okay. And if --

15 MR. MITCHELL: -- with his
16 non-shooting hand.

17 JUSTICE JACKSON: -- that's true --
18 that's true -- that -- that is --

19 MR. MITCHELL: It is true, yes.

20 JUSTICE JACKSON: Okay. That is a
21 distinction. My other question then comes in.
22 Why is that distinction matter from Congress's
23 perspective in terms of it writing a statute
24 that it was trying to prohibit that?

25 If you're right that that's the

1 relevant distinction, I guess I need a reason
2 why there's something inherently so much worse
3 about a situation in which you push it forward
4 rather than pull it back that that -- that we
5 can reasonably say that that was a particular
6 category that Congress wanted to prohibit?

7 And that's what I'm missing in your
8 argument.

9 MR. MITCHELL: Well, it's -- it's
10 because -- yeah.

11 JUSTICE JACKSON: It doesn't make
12 sense to me that we're going to identify guns on
13 that purpose and say those are the ones that
14 prohibit -- that are prohibited when others that
15 achieve the same result are not.

16 MR. MITCHELL: It's because the
17 statute was written in 1934, and Congress wasn't
18 thinking about bump stocks when they wrote this
19 statute.

20 JUSTICE BARRETT: Mr. Mitchell --

21 CHIEF JUSTICE ROBERTS: Counsel,
22 you've said several times that you thrust with
23 your non-trigger hand, thrust part of the gun
24 forward.

25 MR. MITCHELL: Right.

1 CHIEF JUSTICE ROBERTS: And I
2 understood your friend on the other side to
3 focus on it more as maintaining pressure.

4 MR. MITCHELL: Right.

5 CHIEF JUSTICE ROBERTS: Which -- which
6 is it? I mean, do you hold it -- I mean, you
7 have to hold it harder at certain points rather
8 than others, or are you actually moving it with
9 the thrusting?

10 MR. MITCHELL: You're definitely
11 moving your hand back and forth. And Mr.
12 Fletcher agreed with us on that point. The hand
13 is moving.

14 I think where our disagreement comes
15 in is that Mr. Fletcher seems to characterize
16 the action of the non-shooting hand, so the left
17 hand for a right-handed shooter, as something
18 where you are applying constant pressure in a
19 certain direction, but the recoil is strong
20 enough to overcome that pressure from the
21 non-shooting hand and thereby move the weapon
22 backward, despite the forward pressure that's
23 coming from the non-shooting hand.

24 JUSTICE KAGAN: But that means --

25 MR. MITCHELL: There are --

1 JUSTICE KAGAN: -- that if a -- if a
2 -- I mean, tell me if I'm wrong, but that means
3 that the way a shooter perceives it is by
4 imposing constant forward pressure, not the
5 shooter is thinking I got to do this really
6 fast, you know, going back and forth.

7 MR. MITCHELL: The shooter can do
8 both. And it takes a lot of practice to master
9 the art of bump firing. So there is always
10 going to be recoil energy, and no person, I
11 think, is strong enough to push forward in a way
12 that overcomes the recoil energy. If they were,
13 bump firing wouldn't happen.

14 So, for successful bump firing to
15 occur, there needs to be that back-and-forth
16 motion. There's recoil every time the rifle
17 fires. There's still pressure from the left
18 hand, or the right hand if you're a left-handed
19 shooter. There's still going to be pressure
20 from that non-shooting hand, but the shooter can
21 decide how much he wants to calibrate that
22 pressure in response to the repeated recoils
23 that he's getting from the bump firing.

24 It doesn't have to be the same amount
25 of pressure each time. The shooter just has to

1 make sure that the hand is moving back and forth
2 because that's the only way you can have
3 successful bump firing.

4 But to get back to your question, Mr.
5 Chief Justice, I --

6 JUSTICE KAGAN: But the shooter
7 doesn't make sure that the hand is moving back
8 and forth. That's the way the recoil operates.
9 The shooter just makes sure that he is pushing
10 forward, and then the recoil -- recoil operates
11 to, in fact, even though the shooter is not
12 experiencing this --

13 MR. MITCHELL: Mm-hmm.

14 JUSTICE KAGAN: -- is -- is not
15 volitionally experiencing this, the shooter is
16 not moving his hand back and forward.

17 MR. MITCHELL: That's probably right,
18 unless the shooter is so strong that he has to
19 ease off a little bit to make sure he doesn't
20 overcome the recoil. But, to my knowledge, I
21 don't think there's anybody strong enough to
22 make -- to actually be able to keep pushing and
23 forcing it past the recoil energy.

24 But, Mr. Chief Justice, I don't think
25 the answer to this question matters in the end

1 because, even if we accept Mr. Fletcher's
2 characterization where it's just constant
3 pressure with the same amount of force
4 continuously over a sustained period of time,
5 it's still a manual action. There's nothing
6 automatic about that. The shooter is the one
7 who is pushing. It's human effort, human
8 exertion. Nothing automatic at all about this
9 process.

10 And Mr. Fletcher said during his
11 remarks that the bump stock harnesses the recoil
12 energy of the weapon. That is false. With the
13 Akins Accelerator, there is harnessing because
14 the Akins Accelerator has a spring. So there
15 will be certain types of bump-firing devices
16 like the Akins Accelerator where you can
17 accurately say that the bump stock harnesses the
18 recoil energy of the weapon.

19 Not so with respect to a
20 non-mechanical bump stock. The weapon recoils.
21 Nothing is harnessed with respect to the recoil
22 energy. And it is the shooter who must, with
23 that non-shooting hand, continue to thrust the
24 weapon forward in response.

25 JUSTICE BARRETT: If I disagree with

1 you about "automatically," can you win solely on
2 "function of a trigger"?

3 MR. MITCHELL: Absolutely, yes.

4 JUSTICE BARRETT: Why?

5 MR. MITCHELL: Because "the single
6 function of the trigger" -- the Solicitor
7 General has to win on both arguments to prevail.
8 We only need to win on one of the two. So we
9 could win on "automatically" standing alone. We
10 could win on "single function of the trigger"
11 standing alone. Or we could win on both. We
12 respectfully ask the Court to rule on both
13 because there's a well-developed circuit split
14 on each of the two sub-issues within the
15 question presented.

16 JUSTICE BARRETT: Well, speaking of
17 "automatically," can you address the question I
18 asked Mr. Fletcher about a band bump firing?
19 And, you know, he said it was different on the
20 ground of "automatically." But how do you see
21 them functioning differently?

22 MR. MITCHELL: They're
23 indistinguishable when it comes to
24 "automatically." Everything involved with the
25 band that Your Honor suggested and also

1 everything involved with Mr. Cargill's
2 non-mechanical bump stock is a manual action
3 undertaken entirely by the shooter.

4 There is no automating device. Mr.
5 Fletcher has yet to identify any device in the
6 non-mechanical bump stock that automates any
7 task that is necessary for successful bump
8 firing. It is all being done by the shooter.

9 There's the recoil after the shot gets
10 fired, and then it is the shooter who must, with
11 his own hand and with his own force, exert
12 pressure forward consistently to make sure that
13 the trigger bumps into his finger. This is all
14 manual. Nothing automatic about it. Nothing at
15 all. And the --

16 JUSTICE JACKSON: Can I ask you a
17 variation of the hypothetical black-box scenario
18 that the government puts forward in their -- and
19 you might be familiar with it. It's on --

20 MR. MITCHELL: Yeah.

21 JUSTICE JACKSON: It's in their brief.
22 So they say that we've got two boxes, each of
23 which continuously fires bullets after the
24 operator presses and releases a button.

25 If I hear you correctly -- or maybe

1 you can just tell me.

2 MR. MITCHELL: Right.

3 JUSTICE JACKSON: Box 1, the operator
4 pushes the button and the bullets come out
5 automatically. Box 2, the operator holds his
6 finger slightly above the box, and there's
7 something, you know, under the box that pushes
8 the box up into his finger. So the finger is
9 touching the trigger like a million times
10 because the -- in order for it to operate, the
11 box is going like so --

12 MR. MITCHELL: Yeah.

13 JUSTICE JACKSON: -- pushing up. One
14 is a machinegun, one is not. Same rate of --

15 MR. MITCHELL: Yeah.

16 JUSTICE JACKSON: -- velocity of
17 bullets coming out. That's your view?

18 MR. MITCHELL: The -- the answer to
19 that question depends on what is the trigger.

20 JUSTICE JACKSON: Okay.

21 MR. MITCHELL: And can the holding of
22 United States against Camp, that Fifth Circuit
23 decision that said motorized trigger devices are
24 machineguns --

25 JUSTICE JACKSON: Yeah.

1 MR. MITCHELL: -- can the rationale of
2 that case be extended to this hypothetical.

3 So I think the way to think of this,
4 Your Honor, is there are going to be easy cases
5 at each of the extremes, and there are going to
6 be harder cases in the middle. The easy case is
7 United States against Camp because that is a
8 situation where the trigger was changed. It no
9 longer is the curved metal lever.

10 JUSTICE JACKSON: Right, right, right.

11 MR. MITCHELL: It's instead a switch.
12 Everyone agrees with that.

13 JUSTICE JACKSON: But I guess -- and
14 -- and your -- and your view is what makes it
15 easy or hard is not the sort of thought of mine
16 that, like, geez, what makes it easy or hard is
17 actually distinguishing those two in the real
18 world, like in terms of what is actually
19 happening?

20 MR. MITCHELL: Mm-hmm.

21 JUSTICE JACKSON: You think what makes
22 it easy or hard is just identifying whether the
23 finger is -- is moving because the box is moving
24 or because the person is pushing it down?

25 MR. MITCHELL: What makes it hard is

1 whether it's changed the nature of the trigger
2 in some way. Clearly, that happened in Camp.

3 This situation with Mr. Cargill,
4 there's not even an argument that the trigger
5 has been changed. DOJ at no point in this
6 litigation has argued that bump stocks change
7 the nature of the trigger or change the trigger
8 at all.

9 There will be harder cases in the
10 middle, such as the forced reset triggers and
11 some of these hypotheticals that were discussed
12 in the D.C. Circuit's opinion in Guedes, where
13 there may be a question as to what exactly the
14 trigger is and then how does that trigger
15 function.

16 So, again, going back to Camp, when
17 there's a flip of a switch that turns on a motor
18 and that motor then forces the curved metal
19 lever back and forth, that's automatic fire.
20 That's a machinegun because we now have a new
21 trigger, the switch. It's no longer the curved
22 metal lever.

23 So can that rationale be extended to
24 some of these hypotheticals where we talk about
25 black boxes and oscillating buttons? What

1 exactly is the trigger there? Is it merely the
2 button? Is it the motor that's moving the
3 button up and down? It's arguable either way.

4 We don't think the Court should
5 resolve any of that, I understand, but for us to
6 take a position on the question, it's all going
7 to depend on whether you can extend the holding
8 of Camp to these new situations.

9 The Akins Accelerator is a good
10 example to think about because, in 2006, when
11 ATF changed its position on the Akins
12 Accelerator, ATF initially approved that device
13 in 2002. 2006, it changed its mind.

14 And if you look at the classification
15 letter, their argument rests on an argument
16 similar to what Mr. Fletcher is making today.
17 They cite the legislative history from Karl
18 Frederick and say that "function of the trigger"
19 means "pull of the trigger." That rationale is
20 not going to work if the Akins Accelerator is
21 going to be characterized as a machinegun.

22 What might work, though, is if there's
23 some possible argument to extend the holding of
24 United States against Camp to the Akins
25 Accelerator. Does that spring in the Akins

1 Accelerator change the nature of the trigger?
2 That's the question that needs to be addressed.

3 If ATF wants to continue to
4 characterize the Akins Accelerator as a
5 machinegun, it's going to need to come up with a
6 much better argument than what it offered in
7 2006. We're not closing the door on that
8 possibility, but we do think the actual
9 rationale that ATF has used is just as faulty as
10 their rationale for banning non-mechanical bump
11 stocks.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Thomas?

15 JUSTICE THOMAS: Mr. Mitchell, the --
16 I think we -- you would agree that the bump
17 stock accelerates the rate of fire?

18 MR. MITCHELL: Absolutely.

19 JUSTICE THOMAS: Why wouldn't you then
20 take the further step of saying it changes the
21 nature of the trigger in doing that?

22 MR. MITCHELL: Because the trigger
23 still has to reset after every single shot.
24 It's not accelerating the rate of fire by
25 changing the trigger. It's accelerating the

1 rate of fire --

2 JUSTICE THOMAS: That's not really
3 what I'm --

4 MR. MITCHELL: I'm sorry.

5 JUSTICE THOMAS: So the -- why
6 wouldn't you say that you have enhanced the
7 triggering mechanism by using the bump stock?

8 MR. MITCHELL: Because it's not
9 changing the triggering mechanism at all. It's
10 simply making it easier for the shooter to bump
11 that trigger repeatedly. The nature of the
12 triggering mechanism remains exactly the same.
13 What's going on inside the gun after the trigger
14 gets bumped is no different than what it would
15 be if it were a semiautomatic rifle without the
16 bump stock. And that's why the government can't
17 win on this "single function of the trigger"
18 point.

19 JUSTICE THOMAS: I think -- I think
20 the difference is that there may be some who
21 believe -- when -- when you look at it, the --
22 the nature of the firing has changed as a result
23 of the bump stock. So, if that's changed, why
24 don't you simply then look backwards and say
25 that the nature of the firing mechanism has

1 changed; thus, the nature of the trigger has
2 changed?

3 MR. MITCHELL: What's changed, though,
4 is the rate of fire. And it's still one shot
5 per function of the trigger, even though those
6 shots are coming out of the barrel a lot faster
7 than they were before. The question is, how
8 many functions of the trigger do we have for
9 each of the shots?

10 And the answer is one. If you divide
11 the number of shots that are fired from a bump
12 stock equipped rifle by the number of times the
13 trigger has to function to produce that shot,
14 the answer will always be one, and it will
15 remain that way because nothing in the
16 triggering mechanism has changed.

17 CHIEF JUSTICE ROBERTS: Justice Alito?

18 JUSTICE ALITO: Can you imagine a
19 legislator thinking we should ban machineguns,
20 but we should not ban bump stocks? Is there any
21 reason why a legislator might reach that
22 judgment?

23 MR. MITCHELL: I think there is. Bump
24 stocks can help people who have disabilities,
25 who have problems with finger dexterity, people

1 who have arthritis in their fingers. There
2 could be a valid reason for preserving the
3 legality of these devices as a matter of policy,
4 even while similar weapons, such as the fully
5 automatic machineguns, are being banned.

6 Whether Congress would ultimately make
7 that judgment, we would have to wait and find
8 out whether they would decide it along those
9 ways. But there are respectable arguments for
10 why these could remain legal as a matter of
11 policy.

12 JUSTICE ALITO: In --

13 JUSTICE SOTOMAYOR: Why would
14 anybody --

15 CHIEF JUSTICE ROBERTS: I'm sorry.

16 JUSTICE SOTOMAYOR: Oh, I'm sorry.

17 JUSTICE ALITO: That's okay. In -- in
18 -- in the field of statutory interpretation,
19 Justice Scalia's *bête noire* was the Church of
20 the Holy Trinity, a case where he thought that
21 the literal language of the statute had to
22 control even though it's pretty hard to think
23 that Congress actually meant that to apply in
24 certain situations.

25 As you see this case, is this another

1 Church of the Holy Trinity case?

2 MR. MITCHELL: I would say it's quite
3 as egregious as Church of the Holy Trinity, but
4 the arguments the government's making are
5 certainly in the spirit of Holy Trinity, to
6 borrow a phrase that was used from the Holy
7 Trinity opinion, and I don't think a textualist
8 judge can accept the rationale that's being
9 offered by the U.S. Government and they are in
10 their brief especially making purposivist
11 arguments along the lines of what we saw in
12 Church of the Holy Trinity.

13 JUSTICE ALITO: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Sotomayor?

16 JUSTICE SOTOMAYOR: Why would even a
17 person with arthritis, why would Congress think
18 they needed to shoot 400 to 7- or 800 rounds of
19 ammunition under any circumstance?

20 MR. MITCHELL: You -- you can't choose
21 --

22 JUSTICE SOTOMAYOR: If you don't let a
23 person without arthritis do that, why would you
24 permit a person with arthritis to do it?

25 MR. MITCHELL: They don't shoot 400 to

1 700 rounds because the magazine only goes up to
2 50. So you're still going to have to change the
3 magazine after every round. We allow large
4 capacity magazines up to 50.

5 And also, there are many shooters who
6 can pull the trigger of a semiautomatic rifle
7 very quickly, who can accomplish rates of fire
8 similar to those that approach fully automatic
9 weapons. So I don't --

10 JUSTICE SOTOMAYOR: All right.
11 Counsel, you spoke about legislative history and
12 -- and -- and I think you're trying to bat away
13 all of the statements during the legislative
14 process that called "functions of the trigger"
15 the single "pull of the trigger" by the shooter.

16 MR. MITCHELL: That's right.

17 JUSTICE SOTOMAYOR: But it's not
18 classic legislative history. It's how people
19 understood a term at the time. That's not
20 legislative history.

21 MR. MITCHELL: Well, it's still
22 legislative history. They're just using it for
23 a purpose that they claim --

24 JUSTICE SOTOMAYOR: Well, Justice
25 Thomas said in McDonald versus City of Chicago

1 that it's perfectly acceptable to do that, to
2 use, he said, if it's being cited to show what
3 lawmakers -- how lawmakers used a particular
4 term that's different than what they intended.

5 MR. MITCHELL: So, if we're using
6 legislative history in an effort to discern the
7 original public meaning of the statute, which is
8 how I understand Your Honor's characterization.

9 JUSTICE SOTOMAYOR: Exactly.

10 MR. MITCHELL: And I think that's how
11 Mr. Fletcher is trying to characterize his
12 reliance on this statement from Mr. Frederick --

13 JUSTICE SOTOMAYOR: It's not just
14 that.

15 MR. MITCHELL: -- which is -- which is
16 the statement of a lobbyist.

17 JUSTICE SOTOMAYOR: We've got
18 statements -- we've got statements in the House,
19 we've got -- from legislators in the House, we
20 have statements from legislators in the Senate,
21 all of them consistently translating "function
22 of the trigger" to mean a single pull of the
23 trigger.

24 MR. MITCHELL: Right. And they're all
25 wrong because the statute also was written to

1 encompass weapons that have push triggers rather
2 than pull triggers. And the Solicitor General
3 acknowledges this point in her opening brief.

4 JUSTICE SOTOMAYOR: Well -- well, that
5 -- what it suggests to me is that contrary to
6 what you're saying, that is they never
7 understood this to be how the trigger functions
8 but how the shooter functions.

9 MR. MITCHELL: No, I think we should
10 draw the exact opposite inference. It proves
11 how unreliable legislative history is as a tool
12 to try to discern what the statute means --

13 JUSTICE SOTOMAYOR: We're going to
14 disagree.

15 MR. MITCHELL: -- because -- well,
16 it's because, Justice Sotomayor, the phrase
17 "pull of the trigger" can't be equated with
18 "function of the trigger." And even the
19 Solicitor General acknowledges that because they
20 say in their brief that the statute needs to be
21 read in a way that encompasses fully automatic
22 weapons that have push triggers rather than
23 triggers that are pulled. So the word
24 "function" --

25 JUSTICE SOTOMAYOR: And you agree?

1 MR. MITCHELL: I'm sorry, go ahead.

2 JUSTICE SOTOMAYOR: And -- and you
3 agree?

4 MR. MITCHELL: I agree that function
5 can't be equated with the word "pull."

6 JUSTICE SOTOMAYOR: But the only way
7 you can get there is by looking at what the
8 shooter is doing.

9 MR. MITCHELL: No, that's not --

10 JUSTICE SOTOMAYOR: Okay, counsel.
11 Thank you.

12 MR. MITCHELL: -- correct. You don't
13 need to look at what the shooter is doing. A
14 weapon can go off by accident. You don't need a
15 shooter. There's still a function of the
16 trigger if the weapon falls on to the floor and
17 goes off accidentally with a discharge. The
18 trigger has functioned even though the shooter
19 hasn't pulled the trigger or pushed it or bumped
20 it. What matters under the statute is what the
21 trigger does.

22 And all these examples that we see in
23 the Solicitor General's brief, Justice Gorsuch
24 mentioned this earlier, when they're taking
25 transitive verbs, when they say "swing of the

1 bat" or "stroke of the key" or "roll of the
2 dice," all of those are transitive verbs that
3 are capable of taking an object.

4 So, when you see "swing of the bat,"
5 there's obviously an unnamed actor in that
6 sentence that is the subject of the verb
7 "swing." The bat can't swing itself. The bat's
8 an inanimate object.

9 Function of the trigger is entirely
10 different. Function is an intransitive verb.
11 It can't take an object grammatically. It's
12 impossible. Trigger has to be the subject of
13 function. It can't be the object.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 MR. MITCHELL: I'm sorry.

17 CHIEF JUSTICE ROBERTS: Justice Kagan?

18 JUSTICE KAGAN: I guess, Mr. Mitchell,
19 I mean, those four words are not the entire
20 statute, you know, "function of the trigger."

21 It's "by a function of the trigger"
22 and what's the "by"? It's shooting -- you know,
23 presumably, a shooter is there, but, you know,
24 maybe it happens spontaneously, but shooting
25 more than one shot by a single function of the

1 trigger.

2 MR. MITCHELL: Right.

3 JUSTICE KAGAN: I mean, that's the
4 relevant language, right, shooting more than one
5 shot by a single function of the trigger. And
6 then there's also the automatic thing.

7 MR. MITCHELL: Automatic, yeah, that's
8 right.

9 JUSTICE KAGAN: So I don't want to --
10 I don't want to ignore that. But it -- it seems
11 as if you look at the entire phrase, what that
12 means is that Congress had wanted to de-link the
13 number of shots that were coming out of a
14 barrel, right, more than one shot, it wanted to
15 de-link that from a discrete human action.

16 And I would think, you know, it might
17 be you pull the trigger, it might be you push
18 the trigger, it might be you switch on the
19 trigger, it might be --

20 MR. MITCHELL: Right.

21 JUSTICE KAGAN: -- you voice-activate
22 the trigger, there's a discrete human action and
23 it produces a torrent of bullets.

24 And that's exactly what's happening
25 here. You push the bump stock. Now you're --

1 you're saying, well, maybe they didn't define
2 the bump stock as the trigger, but -- but it --
3 it functions in precisely the same way.

4 And a torrent of bullets comes out,
5 and this is in the heartland of what they were
6 concerned about, which is anything that takes
7 just a little human action to produce more than
8 one shot is what they were getting at.

9 MR. MITCHELL: That's just not the way
10 they wrote the statute. If that's what they
11 were getting at, they should have drafted the
12 statute --

13 JUSTICE KAGAN: Shoot --

14 MR. MITCHELL: -- better than what
15 they did. I mean, it depends on whether more
16 than one shot is coming out by a single function
17 of the trigger.

18 And I agree with Your Honor, there --
19 the rate of fire of a bump stock equipped rifle
20 approaches the rate of fire of a fully automatic
21 weapon. And there may be good policy reasons to
22 treat these as identical.

23 There may also be good policy reasons
24 to distinguish them. That's ultimately a
25 decision for Congress to make. It's certainly

1 not a decision for a court or for an
2 administrative agency that's charged with
3 implementing the instructions of Congress.

4 JUSTICE KAGAN: I mean, Mr. Mitchell,
5 I will tell you I -- I view myself as a good
6 textualist. I think that that's the way we
7 should think about statutes. It's by reading
8 them.

9 But, you know, textualism is not
10 inconsistent with common sense. Like, at some
11 point, you have to apply a little bit of common
12 sense to the way you read a statute and
13 understand that what this statute comprehends is
14 a weapon that fires a multitude of shots with a
15 single human action.

16 Whether it's a continuous pressure on
17 a -- a -- a conventional machinegun holding the
18 trigger or a continuous pressure on one of these
19 devices on the barrel, I -- I can't understand
20 how anybody could think that those two things
21 should be treated differently.

22 MR. MITCHELL: Well, they're treated
23 differently because the statute turns on a
24 single function of the trigger. And the problem
25 for the government is they're not able to change

1 the nature of the trigger that currently exists
2 on a semiautomatic rifle simply by adding a bump
3 stock, which is nothing more than a casing that
4 allows the rifle to side slide back and forth.

5 The trigger is exactly the same as
6 what it was before, and the function of the
7 trigger is exactly the same as what it was
8 before.

9 I mean, think of a semiautomatic rifle
10 where someone just has a very quick trigger
11 finger. That could also have a very, very high
12 rate of fire, but it's still one shot per
13 function of the trigger.

14 And that's the problem here the
15 government still is not able to overcome. Every
16 time that trigger functions inside a bump stock
17 equipped rifle, there is one shot and only one
18 shot that gets fired, even though there may be
19 rapid functions that occur consecutively because
20 of the bump stock-equipped device.

21 JUSTICE KAGAN: Thank you.

22 MR. MITCHELL: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Gorsuch?

25 Justice Kavanaugh?

1 JUSTICE KAVANAUGH: In response to a
2 lot of the questions, you've made the point that
3 bump stocks were not around as of 1934. And
4 that's a -- a good point for you.

5 But what evidence is there, if any,
6 that as of 1934, the ordinary understanding of
7 the phrase "function of the trigger" referred to
8 the mechanics of the gun rather than the -- the
9 shooter's motion?

10 MR. MITCHELL: Well, it had to. And
11 the evidence that we can see is the evidence the
12 Solicitor General points out about the fact that
13 there were push triggers in existence at that
14 time.

15 And that function of the trigger, even
16 though you can find legislative history where
17 there seem to be people who think "function of
18 the trigger" means the same thing as "pull of
19 the trigger," those phrases cannot be equated
20 for that very reason.

21 JUSTICE KAVANAUGH: I guess I'm asking
22 the opposite.

23 MR. MITCHELL: I'm sorry.

24 JUSTICE KAVANAUGH: Was there any
25 evidence that someone was drawing that

1 distinction?

2 MR. MITCHELL: Drawing the distinction
3 between push and pull or --

4 JUSTICE KAVANAUGH: No. The
5 distinction between function -- that "function
6 of the trigger" meant something different.

7 MR. MITCHELL: I'm not aware of that
8 in the legislative history, but as a textualist
9 --

10 JUSTICE KAVANAUGH: Are you aware of
11 that anywhere in kind of communication at the
12 time?

13 MR. MITCHELL: Not at the time, no,
14 because the communication, as we can see from
15 the record, was rather sloppy. People were
16 using "pull of the trigger" as a phrase that
17 they thought was synonymous with "function of
18 the trigger."

19 JUSTICE KAVANAUGH: I guess --

20 MR. MITCHELL: And that obviously is
21 not the case.

22 JUSTICE KAVANAUGH: Okay. So no one
23 that was saying, oh, "function of the trigger,"
24 that's a different phrase than "pull or push"
25 and, therefore, it means something different?

1 Are you aware of anyone who said that anywhere

2 --

3 MR. MITCHELL: No, but as --

4 JUSTICE KAVANAUGH: -- in America at
5 the time?

6 MR. MITCHELL: I'm not aware of that.

7 But, as a textualist, I don't find that
8 concerning because everybody --

9 JUSTICE KAVANAUGH: Well, if -- as a
10 textualist, you have to think about the phrase,
11 not just each word in the phrase. That's --

12 MR. MITCHELL: That's right. That's
13 right.

14 JUSTICE KAVANAUGH: Yeah.

15 MR. MITCHELL: And we look at the
16 phrase "function of the trigger," as I was
17 saying earlier, and Justice Gorsuch made this
18 point in some of his earlier questioning --

19 JUSTICE KAVANAUGH: Yeah.

20 MR. MITCHELL: -- "function of the
21 trigger" --

22 JUSTICE KAVANAUGH: Yeah.

23 MR. MITCHELL: -- I mean, a trigger
24 is -- we talked about this before -- "trigger"
25 has to be the subject of "function." It can't

1 be the object or --

2 JUSTICE KAVANAUGH: Right, and now --
3 so the follow-on question is just focus on the
4 phrase, and I'm just making the point, I don't
5 think anyone said this at the time --

6 MR. MITCHELL: Right.

7 JUSTICE KAVANAUGH: -- which doesn't
8 defeat your argument. I'm not suggesting it
9 defeats your argument.

10 MR. MITCHELL: Right.

11 JUSTICE KAVANAUGH: But it would
12 obviously help your argument if people were
13 drawing that distinction, correct?

14 MR. MITCHELL: It -- it certainly
15 would help, but the phrase, given the way it's
16 written right now and the impossibility
17 textually of trying to make "trigger" into an
18 object of the verb "function" --

19 JUSTICE KAVANAUGH: Okay. And then no
20 one was drawing the distinction. Why would
21 Congress have drawn that distinction? Your big
22 point, I think, we got to look at 1934, we got
23 to look at what Congress wrote. Why would
24 Congress have drawn that distinction in 1934?

25 MR. MITCHELL: Because they wanted to

1 get the fully automatic weapons that had the
2 push triggers. And if you use "pull the
3 trigger," you're not going to reach those
4 devices. So they had to say "function of the
5 trigger" to make sure we encompassed those forms
6 of weaponry, as well as the conventional fully
7 automatic weapon.

8 JUSTICE KAVANAUGH: To cover push and
9 pull?

10 MR. MITCHELL: Push and pull, exactly.

11 JUSTICE KAVANAUGH: And how should it
12 be defined now in your view -- you may have just
13 answered this --

14 MR. MITCHELL: Yeah.

15 JUSTICE KAVANAUGH: -- to cover bump
16 stocks? In other words --

17 MR. MITCHELL: Oh --

18 JUSTICE KAVANAUGH: -- if tomorrow
19 Congress said, Mr. Mitchell, how should we write
20 the statute to cover bump stocks since "function
21 of the trigger," in your view, doesn't do it?

22 MR. MITCHELL: Well, I'd have to ask
23 them what else do you want to encompass besides
24 bump stocks. If they want to make it specific
25 --

1 JUSTICE KAVANAUGH: Just -- just bump
2 stocks.

3 MR. MITCHELL: Well, if -- then I
4 would --

5 JUSTICE KAVANAUGH: Just give me a
6 sentence that you think would cover bump stocks.

7 MR. MITCHELL: I would provide a
8 statutory definition of bump stock that tracks
9 as closely as possible the non-mechanical
10 devices that Mr. Cargill has. And I certainly
11 wouldn't say --

12 JUSTICE KAVANAUGH: It's not --

13 MR. MITCHELL: -- "single function of
14 a trigger."

15 JUSTICE KAVANAUGH: -- great statutory
16 language.

17 MR. MITCHELL: Yeah.

18 JUSTICE KAVANAUGH: You got anything
19 better than that?

20 (Laughter.)

21 MR. MITCHELL: I think you could say
22 any device -- and this may be a little too broad
23 -- but you could say any device that is used to
24 accelerate the rate of fire from a semiautomatic
25 weapon. That would probably capture -- that

1 would certainly capture bump stocks. It might
2 capture some other things, but those other
3 things would be similar enough to bump stocks
4 that Congress would probably want to ban them as
5 well, which they --

6 JUSTICE KAVANAUGH: Yeah. Back in the
7 '30s, some of the state statutes did that, I
8 guess --

9 MR. MITCHELL: Yeah.

10 JUSTICE KAVANAUGH: -- at the time.
11 Okay. Last question. You haven't made a Second
12 Amendment or constitutional avoidance argument.
13 In your view, are bump stocks covered by the
14 Second Amendment, protected by the Second
15 Amendment?

16 MR. MITCHELL: We didn't argue that
17 because courts are generally loath to decide
18 constitutional questions when there's an easy
19 statutory off-ramp.

20 JUSTICE KAVANAUGH: You didn't throw
21 it in as constitutional avoidance, and I imagine
22 that was a considered choice, and I'm curious
23 what -- what was behind that choice.

24 MR. MITCHELL: There -- there's
25 nothing that prevents this Court from invoking

1 the constitutional avoidance canon on the Second
2 Amendment issue because there is a question at
3 least whether this falls within the "dangerous
4 and unusual weapons" carveout in Heller.

5 We don't have a position on that
6 question because we didn't brief it, and also
7 "dangerous and unusual weapons" is vague enough
8 that it's just not clear to us what the answer
9 would be.

10 JUSTICE KAVANAUGH: Thank you.

11 MR. MITCHELL: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice
13 Barrett?

14 Justice Jackson?

15 JUSTICE JACKSON: So I guess I'm still
16 not clear as to why you believe there's only one
17 meaning of "function of the trigger" in this
18 context.

19 So why couldn't we read the words
20 "function of the trigger" in this statute to
21 mean the function of the trigger is to start a
22 chemical reaction that leads to the expulsion of
23 a projectile? If I read "function of the
24 trigger in that way," I think I come out to a
25 different result than you are positing. So help

1 me to understand why that couldn't be the
2 function of the trigger.

3 You -- in other words -- I know. I'm
4 sorry.

5 MR. MITCHELL: That's okay. Sorry.

6 JUSTICE JACKSON: Confusing question.

7 MR. MITCHELL: Yeah.

8 JUSTICE JACKSON: You seem to be
9 saying that the function of the trigger and the
10 only one that Congress cared about, that matters
11 for the way this statute reads --

12 MR. MITCHELL: Right.

13 JUSTICE JACKSON: -- is the movement
14 of the trigger.

15 MR. MITCHELL: No.

16 JUSTICE JACKSON: No?

17 MR. MITCHELL: Not necessarily the
18 movement.

19 JUSTICE JACKSON: Okay. Tell me.

20 MR. MITCHELL: It's -- it's what the
21 trigger does --

22 JUSTICE JACKSON: Yes. I'm sorry.

23 MR. MITCHELL: -- to cause the weapon
24 to fire. That's --

25 JUSTICE JACKSON: Okay. What the

1 trigger does. And I guess --

2 MR. MITCHELL: And it's more than just
3 the movement.

4 JUSTICE JACKSON: -- I'm saying what
5 the trigger does, both in this case, in a bump
6 stock case, and in a machinegun case, is to
7 start a -- chemical reaction that leads to the
8 expulsion of a projectile.

9 MR. MITCHELL: There --

10 JUSTICE JACKSON: So --

11 MR. MITCHELL: -- there are other
12 devices in the firearm that actually do that
13 part. What the trigger does, it releases the
14 powder --

15 JUSTICE JACKSON: No, no. No, no.
16 But it's -- it's like -- it's like causation,
17 right? It's like -- it's like Mrs. Palsgraf
18 standing on the scale.

19 MR. MITCHELL: Sure.

20 JUSTICE JACKSON: I mean, the trigger,
21 the trigger, what -- you know, the function of
22 it, right, one could say is to start this
23 chemical reaction. Now some weapons might do it
24 with a button; some might do it with a pull.

25 MR. MITCHELL: Yeah.

1 JUSTICE JACKSON: Some weapons might
2 do it by moving back and forth quickly, by the
3 mechanics of the gun operating in a certain way.
4 Others might do it by the mechanics of the gun
5 operating in a different way.

6 But I could say that the function is
7 to begin the chemical reaction that results in
8 the expulsion of this weapon, and that happens
9 both in the bump stop -- stock situation and in
10 this situation. So I don't understand why this
11 statute couldn't be read as -- the -- the way
12 that the government is.

13 MR. MITCHELL: Even if -- even if you
14 read the statute that way, Your Honor, I don't
15 see how that wins the case for the government
16 because --

17 JUSTICE JACKSON: Why not?

18 MR. MITCHELL: Because only one shot
19 is being fired per function of the trigger. So
20 it's single --

21 JUSTICE JACKSON: No. Single
22 function --

23 MR. MITCHELL: Yes.

24 JUSTICE JACKSON: -- right, if I read
25 the single --

1 MR. MITCHELL: Yes.

2 JUSTICE JACKSON: There's only a
3 single thing happens --

4 MR. MITCHELL: Right.

5 JUSTICE JACKSON: -- to begin the
6 chemical reaction that expels the bullet, right?

7 MR. MITCHELL: That expels one bullet,
8 one shot.

9 JUSTICE JACKSON: But then we go into
10 the other part of the statute, "automatically,"
11 multiple shots. You can't forget the rest of
12 the statute. That was Justice Kagan's point.

13 MR. MITCHELL: Certainly not.

14 JUSTICE JACKSON: So, when we put
15 those together, the work of the function of the
16 trigger, I think, could be to start the chemical
17 reaction that then results in the automatic
18 shoot -- more -- more than one shot coming out
19 of the gun. Why can't I interpret it that way?

20 MR. MITCHELL: If -- if that's what
21 actually were happening, then I think you would
22 have a plausible argument for why this is a
23 machinegun.

24 JUSTICE JACKSON: But that's just
25 because --

1 MR. MITCHELL: That's just not what
2 happens --

3 JUSTICE JACKSON: But -- but --

4 MR. MITCHELL: That's not the way it
5 works.

6 JUSTICE JACKSON: -- but that's just
7 because you're interpreting the statute to say
8 you have to -- it has to be about the mechanics.

9 MR. MITCHELL: No.

10 JUSTICE JACKSON: And what I'm trying
11 to understand is how that's consistent with
12 Congress putting "modifications" in here.

13 MR. MITCHELL: I'm just saying as a --
14 right.

15 JUSTICE JACKSON: And that -- can I --

16 MR. MITCHELL: Sorry.

17 JUSTICE JACKSON: -- can I -- can I
18 just change the -- a little bit?

19 MR. MITCHELL: Mm-hmm.

20 JUSTICE JACKSON: If you're right that
21 Congress cared about exactly the mechanistic
22 operation, then I'm confused as to why this
23 statute also talks about modifications, because
24 that suggests that Congress was not hung up on
25 exactly how this gun operates. We're -- we're

1 sweeping in all kinds of things, things that
2 originally was -- weren't designed to work this
3 way at all, right? We're -- we're -- we're
4 allowing for machineguns to include things that
5 can modify something that didn't operate this
6 way at all into a machine -- into the kind of
7 thing where a chemical reaction kicks it off and
8 it automatically fires more than one shot.

9 If that's what I'm thinking about,
10 then I guess I don't understand your hang-up
11 over how this operates mechanistically.

12 MR. MITCHELL: Well, the test under
13 the statute is whether it can be readily
14 restored to fire automatically more than one
15 shot by a single function of the trigger. It's
16 not whether it can be modified to fire
17 automatically more than one function of the
18 trigger. And if you --

19 JUSTICE JACKSON: All right. Well,
20 I'll look that up.

21 MR. MITCHELL: Yeah.

22 JUSTICE JACKSON: Yeah.

23 MR. MITCHELL: And -- and just to get
24 back to your earlier question, Justice
25 Jackson --

1 JUSTICE JACKSON: Mm-hmm. Yes.

2 MR. MITCHELL: -- it's factually
3 incorrect to say that a function of the trigger
4 automatically starts some chain reaction that
5 propels multiple bullets from the gun. A
6 function of the trigger fires one shot. Then
7 the shooter must take additional manual action.

8 JUSTICE JACKSON: I -- I understand --

9 MR. MITCHELL: All right? So there's
10 no --

11 JUSTICE JACKSON: -- that's your
12 argument. Thank you.

13 MR. MITCHELL: Thank you.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 MR. MITCHELL: Thank you.

17 CHIEF JUSTICE ROBERTS: Rebuttal, Mr.
18 Fletcher?

19 REBUTTAL ARGUMENT OF BRIAN H. FLETCHER

20 ON BEHALF OF THE PETITIONERS

21 MR. FLETCHER: Thank you, Mr. Chief
22 Justice.

23 So I take from my friend's answers
24 today that he does not seriously dispute that a
25 rifle with a bump stock does basically the same

1 thing as a machinegun and is basically just as
2 dangerous as a machinegun.

3 But his argument is the words that
4 Congress wrote in 1934 just don't cover it
5 because the words "single function of a trigger"
6 unambiguously refers to the movement or the
7 mechanics of the trigger, without regard to the
8 action of the shooter.

9 We are not making a Holy Trinity
10 argument. If that is what the words meant, then
11 we would be stuck with the words. We are not
12 asking you to depart from the plain language.
13 We're asking you to give it its natural reading.

14 And I think, it -- to understand why
15 the statute not only can be but should be read
16 our way, it's worth thinking about how many
17 people you have to disagree with in order to
18 adopt my friend's reading.

19 So, first of all, on the grammar,
20 Judge Ho, at page 56a of the Petition Appendix,
21 explains why it's perfectly natural to read
22 "function of the trigger" to refer to what the
23 shooter does to the trigger, not to what the
24 trigger does by itself.

25 Second, Justice Kavanaugh, you asked

1 about contemporaneous usage. There's a lot of
2 contemporaneous usage of people using the term
3 "pull of the trigger" to be synonymous with
4 "function of the trigger." That makes perfect
5 sense if we're talking about what the shooter
6 does, because the way the shooter activates
7 most, not all, but most triggers is by pulling
8 on them.

9 But I think my friend conceded that
10 usage is all inconsistent with his reading. And
11 as you pointed out, there is no evidence that
12 anyone at the time or ever since, until the
13 development of devices like these, ever thought
14 that "function of a trigger" meant mechanical
15 movement independent of any action by the
16 shooter.

17 It's also worth emphasizing that even
18 if you looked at what the trigger does by
19 itself, what the trigger does is accept some
20 input by the shooter.

21 Justice Kagan, you asked about what
22 about a voice-activated trigger? You could also
23 have a trigger that works by swiping a
24 touchscreen. Those triggers don't necessarily
25 have any moving parts.

1 On our understanding, we say, is there
2 an act of the trigger that -- of the shooter
3 that initiates the firing sequence, a spoken
4 command, a swipe on the touchscreen, it works
5 perfectly.

6 On my friend's understanding, I have
7 no idea how he would deal with a firearm that
8 had a trigger that did not have moving parts.

9 We've also talked some about
10 automatically, and I take my friend's point to
11 be that he thinks because there's some continued
12 manual input, the pushing forward, it can't be
13 automatic. But automatic just means by way of a
14 self-regulating mechanism. It doesn't mean it
15 eliminates all manual input. It just means that
16 it eliminates some of it.

17 And contrary to what my friend said, a
18 bump stock does eliminate manual action that the
19 shooter has to take. With a semiautomatic
20 weapon, you have to pull and release the trigger
21 with each shot. With an auto -- with a bump
22 stock the bump stock allows the recoil from each
23 shot to automatically push the rifle back,
24 disengaging the trigger, eliminating the need
25 for the shooter to manually release, and then it

1 channels the forward and backward movement in
2 exactly the right way to allow a continuous
3 firing cycle to continue.

4 Now I think it's also telling, some of
5 the gymnastics with respect that my friend has
6 to do in order to deal with all of the other
7 hypothetical and actual devices that have been
8 out there because I think he recognizes that the
9 Akins Accelerator, the LV 15, the electronic
10 reset assist device, the fishing reel in Camp,
11 all of these workarounds have to be covered by
12 the statute because it's just not plausible to
13 think that Congress enacted something subject to
14 such easy evasion.

15 But the only way he can say that those
16 are covered is by engaging in very implausible
17 understandings of what the trigger is. I think,
18 for the Akins Accelerator, he suggested that
19 maybe the trigger is the spring in the back of
20 the rifle rather than the lever that the -- the
21 shooter actually pulls to start the firing
22 sequence.

23 On the black-box hypothetical, I'm
24 still not sure what his answer is, but I think
25 it must be that the button is the trigger the

1 first time it moves up and down, but then it
2 stops being the trigger when it keeps moving up
3 and down afterwards.

4 I think those are all very implausible
5 interpretations that this Court should not give
6 to a statute if there's another reading
7 available, and our view is that there is another
8 reading available.

9 In short, we think Congress in 1934
10 wrote this statute not just for the kinds of
11 devices that existed then but for other kinds of
12 devices that could be created in the future that
13 would do the same thing.

14 It enacted and strengthened these laws
15 because it did not want members of the public or
16 our nation's law enforcement officers to face
17 the danger from weapons that let a shooter spray
18 many bullets by making a single act.

19 That's exactly what bump stocks do, as
20 the Las Vegas shooting vividly illustrated, and
21 we think this Court should give the words
22 Congress wrote their full, natural meaning and
23 hold that they encompass bump stocks.

24 Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel. The case is submitted.

2 (Whereupon, at 11:34 a.m., the case
3 was submitted.)

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