

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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MERRICK B. GARLAND, )  
ATTORNEY GENERAL, ET AL., )  
                                Petitioners, )  
                                v. ) No. 23-852  
JENNIFER VANDERSTOK, ET AL., )  
                                Respondents. )  
- - - - -

Pages: 1 through 91  
Place: Washington, D.C.  
Date: October 8, 2024

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*Official Reporters*  
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Washington, D.C. 20005  
(202) 628-4888  
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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 23-852, Garland versus VanDerStok.

General Prelogar.

ORAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR

ON BEHALF OF THE PETITIONERS

GENERAL PRELOGAR: Mr. Chief Justice, and may it please the Court:

The Gun Control Act imposes straightforward but essential requirements. Firearms sellers and manufacturers must mark their products with serial numbers, maintain sales records, and conduct background checks. The industry has followed those conditions without difficulty for more than half a century, and those basic requirements are crucial to solving gun crimes and keeping guns out of the hands of minors, felons, and domestic abusers.

But, in recent years, companies like the Respondents here have tried to circumvent those requirements. They've begun selling firearms as easy-to-assemble kits and frames and receivers that require minimal work to be made

1 functional. They've advertised the products, in  
2 their words, as "ridiculously easy to assemble  
3 and dummy-proof" and touted that you can go from  
4 opening the mail to have a fully functional gun  
5 in as little as 15 minutes, no serial number,  
6 background check, or records required.

7           Those untraceable guns are attractive  
8 to people who can't lawfully purchase them or  
9 who plan to use them in crimes. As a result,  
10 our nation has seen an explosion in crimes  
11 committed with ghost guns.

12           In the face of that public safety  
13 crisis, ATF promulgated this rule to underscore  
14 two points about the Gun Control Act's plain  
15 text. First, a weapon parts kit that can  
16 readily be converted to function as a gun with  
17 common tools, often in under an hour, is a  
18 covered firearm. Second, a product is a frame  
19 or receiver under the Act even if the buyer must  
20 drill a few holes or remove a few superfluous  
21 pieces of plastic to make it functional.

22           Both of those points are consistent  
23 with how ATF has interpreted and implemented the  
24 Act across five decades and 11 different  
25 presidential administrations.

1                    Respondents now seek a sea change in  
2                    the Act's scope. They claim that if a firearm  
3                    isn't a hundred percent functional, if it's  
4                    missing just one hole that could be drilled in  
5                    seconds and immediately assembled into a working  
6                    gun, that product can be sold to anyone online  
7                    with no background check, no records, and no  
8                    serial number.

9                    That contradicts the Act's plain text,  
10                    and it also contradicts common sense. This  
11                    Court should make clear that the Act regulates  
12                    these products as what they are, firearms and  
13                    frames and receivers of firearms.

14                    I welcome the Court's questions.

15                    JUSTICE THOMAS: Does this new  
16                    regulation cover all of Chapter 44?

17                    GENERAL PRELOGAR: Yes. So I think  
18                    that the understanding of a firearm reflected in  
19                    the Final Rule does reflect the -- the  
20                    922(a)(1)(iii) definition.

21                    JUSTICE THOMAS: Would it -- would  
22                    this -- would it also apply under 924?

23                    GENERAL PRELOGAR: Yes. And so I  
24                    think that that also incorporates, though,  
25                    Justice Thomas, the mens rea requirements that

1 are under 924, which I think guards against some  
2 of the concerns that Respondents have raised in  
3 this case that manufacturers could  
4 unintentionally be swept up by these  
5 restrictions. For example, 924(a)(1)(D)  
6 requires a showing of willfulness with respect  
7 to selling products without a serial number or  
8 without a license.

9 JUSTICE THOMAS: You make a lot of the  
10 fact that -- that you've been -- this has been  
11 regulated for half a century. But it wasn't  
12 regulated in this way for half a century. What  
13 was the -- the original reg, the previous reg?

14 GENERAL PRELOGAR: The previous reg  
15 defined a frame or receiver with respect to  
16 particular components that were housed in that  
17 primary structure. But, Justice Thomas, I agree  
18 that this rule reflects any fundamental change  
19 in approach because, under that prior reg, ATF  
20 consistently recognized that even when that  
21 frame or receiver, the -- the primary structural  
22 component, wasn't yet fully finished or  
23 complete, still it would qualify as a firearm,  
24 looking at the same factors that are listed in  
25 the rule, things like how much time is it going

1 to take to make it functional? Do you need  
2 special equipment? Do you need to buy parts,  
3 and are they readily available? Do you need  
4 special skill? So all along, from 1968 on, the  
5 agency has consistently focused on this same  
6 issue of how quickly you can make that frame or  
7 receiver operational as part of a working gun.

8           And the only change in the rule -- and  
9 I want to openly acknowledge this as the rule  
10 does -- is that ATF is now taking account of  
11 jigs or templates, which are a form of tool that  
12 quickly speed up the process of making a frame  
13 or receiver functional because they show you  
14 exactly where you have to drill in that weapon,  
15 so there's no trial and error or guesswork.

16           But, as ATF explained in the Final  
17 Rule, that wasn't a change in statutory  
18 interpretation. It was just a recognition that  
19 jigs serve precisely the same function as  
20 something like indexing, stamping the frame or  
21 receiver to show you where you have to drill.  
22 So it goes directly to the question that the  
23 agency has asked all along, namely, how quickly,  
24 easily, and efficiently can this process be  
25 completed.



1 JUSTICE SOTOMAYOR: Yeah, General, I'm  
2 looking at agency letters stretching back as --  
3 as far back as 1978, and each of them basically  
4 used the same language that the current  
5 regulation is using. The agency letter in '78  
6 said it evaluated an -- an item on whether it  
7 had reached a stage of manufacture such that it  
8 might be readily converted to functional  
9 condition, correct? That's what you're talking  
10 about?

11 GENERAL PRELOGAR: Exactly right. And  
12 I think that that refutes Respondents'  
13 suggestion here that ATF has somehow been  
14 applying a different standard over the 50-year  
15 history of the Gun Control Act. Instead, ATF  
16 has always looked at whether the item has  
17 reached a critical stage of manufacture by  
18 reference to what work remains to be done to  
19 make it functional.

20 So it's not like these are entirely  
21 separate and distinct contexts. As the 1978  
22 classification letter you referenced makes  
23 clear, the only way to measure whether something  
24 has reached a critical stage of manufacture is  
25 to look at how close it is to the final product

1 and what steps you need to take to turn that  
2 into a functional frame or receiver.

3 JUSTICE SOTOMAYOR: General, I want to  
4 know what our standard of review here is,  
5 because I can imagine a frame or receiver that  
6 is just a block of metal that -- not readily  
7 convertible. I can also imagine some part kits  
8 that require such tremendous amount of work that  
9 it doesn't qualify as readily convertible.

10 So, if I can point to one item that  
11 wouldn't qualify, would -- could be swept up  
12 potentially by your -- by the new regulation, is  
13 that enough to defeat a facial challenge? Is it  
14 enough, or is that always an as-applied  
15 challenge?

16 GENERAL PRELOGAR: That is definitely  
17 not enough to defeat a facial challenge. So  
18 there is no particular product before the Court  
19 in this case. Respondents have chosen to sue in  
20 this facial pre-enforcement posture, and what  
21 that means is that the only question the Court  
22 should be asking in this case is whether there  
23 is anything on the face of the rule that is  
24 contradicted by the statutory text.

25 In other words, whether the standards

1 that ATF set forth in the rule are themselves  
2 contradicted by the statute and, therefore,  
3 foreclosed by the statute.

4 And they can't make that showing here.  
5 It's certainly true that they try to suggest,  
6 and your question touches on the idea, that  
7 there might be particular marginal products out  
8 there that could test the bounds of whether  
9 something is readily convertible, but the Court  
10 doesn't need to consider those kinds of products  
11 in this case because that can all be adjudicated  
12 on an as-applied basis going forward.

13 JUSTICE SOTOMAYOR: You -- you use  
14 the Reno -- you use the I -- our statement in  
15 INS versus NCIR, which basically tracks what  
16 you're just saying. But, in Reno versus Flores,  
17 we used a different standard and said that a  
18 respondent, to prevail, must establish that no  
19 set of circumstances exists under which the  
20 regulation would be valid.

21 You didn't go that route.

22 GENERAL PRELOGAR: That would be an  
23 even more stringent standard --

24 JUSTICE SOTOMAYOR: I agree.

25 GENERAL PRELOGAR: -- and I think a

1 burden that Respondents can't surmount. But we  
2 think even under the INS standard that we cite  
3 in our brief, it's very clear that there's  
4 nothing on the face of the Gun Control Act that  
5 --

6 JUSTICE SOTOMAYOR: How about the --

7 GENERAL PRELOGAR: -- prohibits this  
8 approach to regulation.

9 JUSTICE SOTOMAYOR: -- Washington  
10 state range standard, which says, even if there  
11 might be some applications that are  
12 impermissible, those possible applications  
13 cannot render the rule facially invalid so long  
14 as the rule has a "plainly legitimate sweep."

15 GENERAL PRELOGAR: Yes, and I think  
16 that that standard is equally satisfied as well  
17 here.

18 You pointed to the hypothetical  
19 possibility of marginal cases where a product  
20 would take a lot of time to put together, but I  
21 want to emphasize the core of the conduct that  
22 this Act regulates, which were the ghost gun  
23 kits and partially complete frames or receivers  
24 that were flooding the market leading up to  
25 promulgation of this rule.

1                   Those are issues or -- or products  
2                   where the readily convertible determination was  
3                   not hard at all because the products were  
4                   specifically designed and marketed to  
5                   individuals who could put them together with no  
6                   specialized skill, often in under an hour, with  
7                   common hand tools.

8                   And so I acknowledge the point that  
9                   maybe there could be other hypothetical  
10                  applications of the rule that could test the  
11                  bounds with respect to certain factors, but I  
12                  think that under any conceivable standard for  
13                  adjudicating this facial challenge, Respondents  
14                  haven't come anywhere close to satisfying their  
15                  burden to show that the statute squarely  
16                  forecloses the standards in the rule.

17                  JUSTICE SOTOMAYOR: Thank you.

18                  JUSTICE ALITO: What is the meaning of  
19                  the term "weapon" in 921(a)(3)(A)?

20                  GENERAL PRELOGAR: That's --

21                  JUSTICE ALITO: Can you give me a  
22                  definition?

23                  GENERAL PRELOGAR: Sure. So that's an  
24                  undefined term, and we think it therefore  
25                  carries its plain dictionary definition as an

1 instrument of offensive or defensive combat.

2 But nothing in Congress's use of the  
3 term "weapon" suggests that it has to presently  
4 be functional as an instrument of combat in  
5 order to qualify. And, in fact, I would say the  
6 rest of the -- the statutory provision makes  
7 clear that the weapon might well have to undergo  
8 a conversion in order to operate as a gun.

9 JUSTICE ALITO: It may --

10 GENERAL PRELOGAR: There's an express  
11 --

12 JUSTICE ALITO: -- it may have to  
13 undergo a conversion, but before it's converted,  
14 it must be a weapon?

15 GENERAL PRELOGAR: That's right. We  
16 certainly don't dispute that it has to be an  
17 instrument of combat designed and intended to be  
18 used in this way.

19 And Congress made clear in the  
20 statutory history that the reason it used that  
21 term is because there are objects out there,  
22 toys and tools, that have a well-known  
23 non-weapon use but that actually do expel  
24 projectiles through the action of an explosive.

25 A -- a cap gun is an example of this.

1 It -- it expels bird shot, and so, therefore, it  
2 would fit within the functional definition. But  
3 it's not a weapon because it's not an instrument  
4 of combat or intended to be used in that way.

5 JUSTICE ALITO: But is it -- is it the  
6 case that components that can easily be  
7 converted into something constitute that thing  
8 before they are converted as a matter of  
9 ordinary usage?

10 GENERAL PRELOGAR: I think that as a  
11 matter of ordinary usage, we're not suggesting  
12 that any statutory reference to one thing  
13 includes separate and distinct things that can  
14 be readily converted.

15 So shifting to our arguments under  
16 framer/receiver, subparagraph B --

17 JUSTICE ALITO: Well, no, I -- I want  
18 to stick with the definition of "weapon" for  
19 just a second.

20 GENERAL PRELOGAR: Oh, sure.

21 JUSTICE ALITO: I'm going to show you.  
22 Here's a -- here's a blank pad, and here's a  
23 pen, all right? Is this a grocery list?

24 GENERAL PRELOGAR: I don't think that  
25 that's a grocery list, but the reason for that

1 is because there are a lot of things you could  
2 use those products for to create something other  
3 than a grocery list.

4 JUSTICE ALITO: All right. If I show  
5 --

6 GENERAL PRELOGAR: And so it's not  
7 like they're --

8 JUSTICE ALITO: -- if I show you -- I  
9 put out on a counter some eggs, some chopped-up  
10 ham, some chopped-up pepper, and onions, is that  
11 a western omelet?

12 GENERAL PRELOGAR: No, because, again,  
13 those items have well-known other uses to become  
14 something other than an omelet.

15 The key difference here is that these  
16 weapon parts kits are designed and intended to  
17 be used as instruments of combat, and they have  
18 no other conceivable use.

19 And I think the further evidence comes  
20 from the fact that Respondents themselves agree  
21 that a disassembled gun qualifies as a weapon.  
22 So this is on page 37 of the Anderson brief.

23 JUSTICE ALITO: Okay. So that's  
24 helpful. So your definition is a -- a -- a  
25 group of components that are -- can readily be



1 converted into something and have no other use.  
2 They must have no other use in order to  
3 constitute that thing?

4 GENERAL PRELOGAR: In the circumstance  
5 --

6 JUSTICE ALITO: In that situation,  
7 they already constitute that thing?

8 GENERAL PRELOGAR: I think that you  
9 can recognize that something is a weapon even if  
10 it's non-functional if it is clear from  
11 objective evidence of --

12 JUSTICE ALITO: No, I think that  
13 certainly is true from the face of the statute  
14 because it has to be -- it's sufficient if it's  
15 capable of being converted into -- into  
16 something that can expel a projectile.

17 All right. Thank you.

18 JUSTICE BARRETT: General Prelogar, I  
19 just want to follow up on Justice Alito's  
20 question about the omelet.

21 Would your answer change if you  
22 ordered it from HelloFresh and you got a kit,  
23 and it was like turkey chili, but all of the  
24 ingredients are in the kit?

25 GENERAL PRELOGAR: Yes. And I think

1 that that presses on the -- the more apt analogy  
2 here, which is that we are not suggesting that  
3 scattered components that might have some  
4 entirely separate and distinct function could be  
5 aggregated and called a weapon in the absence of  
6 this kind of evidence that that is their  
7 intended purpose and function.

8 But, if you bought, you know, from  
9 Trader Joe's some omelet-making kit that had all  
10 of the ingredients to make the omelet and maybe  
11 included whatever you would need to start the  
12 fire in order to cook the omelet and had all of  
13 that objective indication that that's what's  
14 being marketed and sold, we would recognize that  
15 for what it is.

16 And it -- it doesn't stretch plain  
17 English to say, I bought omelets at the store,  
18 if you bought all of the ingredients that were  
19 intended and designed to make them, especially  
20 under statutory language that refers to  
21 something like breakfast foods or things that  
22 can be readily converted to make breakfast.

23 JUSTICE KAGAN: And --

24 JUSTICE BARRETT: Can I -- oh.

25 JUSTICE KAGAN: Go ahead.

1                   JUSTICE BARRETT: Can I ask you about  
2 the difference between the "destructive device"  
3 and "machine gun" definitions that also  
4 reference parts in the way that this definition  
5 does not?

6                   I've just been thinking about, in  
7 1968, in the Gun Control Act, why Congress might  
8 have done that differently. And these ghost  
9 guns weren't around. These kits are a more  
10 recent problem, which doesn't mean that the  
11 plain language doesn't cover the unintended  
12 consequence.

13                   But, in 1968 -- and I don't know  
14 enough about the gun industry to know if this is  
15 right, which is why I want your take on this --  
16 wasn't it the case then, I think, that  
17 destructive devices like grenades or even  
18 machine guns were not things that you tended to  
19 buy whole because they were so heavily regulated  
20 and -- and even illegal to purchase that way as  
21 opposed to firearms?

22                   So they were generally purchased as  
23 components or things that were, you know, able  
24 to be converted or made -- like, it would make  
25 sense to think about it in terms of parts?

1                   Am I thinking about that correctly  
2                   based on the industry at the time?

3                   GENERAL PRELOGAR: Yes, you're exactly  
4                   right about that relevant difference and how  
5                   people were ordinarily constructing things like  
6                   destructive devices that weren't sold in these  
7                   types of kits.

8                   And I think the important thing to  
9                   recognize and what this question presses on is  
10                  that Congress can use a variety of verbal  
11                  formulations to cover similar types of conduct.  
12                  Each of these other definitions that Respondents  
13                  have pointed to that refer explicitly to parts  
14                  were enacted at different times from the  
15                  relevant definition of a "firearm," and they  
16                  address different issues in the way that your  
17                  question touched on.

18                  But what Respondents are doing is  
19                  ignoring the language of the statute that  
20                  Congress did use in 1968, and it expressly  
21                  referred to things that can be readily converted  
22                  to function to expel a projectile through the  
23                  action of an explosive.

24                  It's hard for me to see how a weapon  
25                  parts kit doesn't fit within that plain language

1 because, quite literally, the kit is intended  
2 and designed to produce that functioning weapon  
3 in a very short amount of time by people who  
4 don't know anything about guns and can do it  
5 with relatively little skill.

6 JUSTICE GORSUCH: General, I  
7 understand your argument under (A) with respect  
8 to things that could be readily converted, but  
9 there's also the argument under (B), frame or  
10 receiver, which doesn't include that kind of  
11 language that might bring in artifact nouns more  
12 obviously.

13 What -- what's your thought about  
14 that?

15 GENERAL PRELOGAR: So I do think  
16 there's language in (B) that gets us there, and  
17 it's the fact that Congress referred to "frame  
18 or receiver" but didn't expressly define that  
19 term.

20 It's true that in subparagraph (A)  
21 Congress used the exact language "readily  
22 converted," but that's because that's Congress's  
23 definition of the term. And if it had defined  
24 it solely in terms of the functionality of a  
25 gun, you know, if it had just said something

1 that functions as a gun, that would be limited  
2 to operational weapons.

3 So Congress had a really good reason  
4 to use the language there.

5 JUSTICE GORSUCH: Got you. I follow  
6 all of that.

7 GENERAL PRELOGAR: Yeah. So then in  
8 -- in --

9 JUSTICE GORSUCH: Now moving on to  
10 (B), though.

11 GENERAL PRELOGAR: So moving on to  
12 (B), Congress didn't define the term, which  
13 means it carries its plain and ordinary meaning.  
14 And we think that the ordinary meaning of a noun  
15 like "frame" or "receiver" includes objects that  
16 are nearly complete but are missing just a few  
17 holes that need to be drilled.

18 JUSTICE GORSUCH: Now we can't  
19 possibly think that every noun that Congress  
20 uses everywhere in the U.S. Code is used as an  
21 artifact noun that carries with it things like  
22 Justice Alito's pen and pencil as a grocery  
23 list, right? So there's got to be a line that  
24 makes this on -- on your theory of the case why  
25 we should read that into (B) here but not

1 everywhere in the U.S. Code.

2           What -- what -- what -- what are your  
3 thoughts?

4           GENERAL PRELOGAR: Right. So I want  
5 to be very clear that we think that this is a  
6 matter of ordinary meaning that you don't need  
7 it to be a hundred percent complete.

8           And that -- I think that runs across  
9 the board. If I mentioned a bicycle, but it was  
10 missing pedals, as we explain in our brief, you  
11 would still recognize that for what it is, as a  
12 bicycle.

13           That's the first order question. But  
14 then the second question arises --

15           JUSTICE GORSUCH: But --

16           GENERAL PRELOGAR: -- that you touched  
17 on --

18           JUSTICE GORSUCH: -- if you -- if I'm  
19 not inclined to think that every noun is used in  
20 that way in the U.S. Code, I mean, that would be  
21 a very dramatic argument --

22           GENERAL PRELOGAR: Yeah.

23           JUSTICE GORSUCH: -- right? Lenity,  
24 notice, fair notice to people that every piece  
25 of paper and pen is a grocery list, you're on

1 notice of that. But is there something  
2 particular to this statute that you think would  
3 -- a more narrow approach?

4 GENERAL PRELOGAR: Yes. We think the  
5 context and purpose of the statute strongly  
6 support understanding the term in this way. And  
7 the reason for that is because, throughout the  
8 federal firearms laws, whenever Congress has  
9 itself expressly provided a definition, it has  
10 included not only the fully complete and  
11 functional item but things that are the item and  
12 can readily be made to function that way.

13 So I think that's Congress's own  
14 indication in this statute that it's trying to  
15 ensure coverage not only of things that have the  
16 functionality of a frame or receiver at the  
17 moment they're sold but frames or receivers that  
18 can be readily converted to function with  
19 minimal steps.

20 JUSTICE GORSUCH: Well, if you have  
21 something textual, I'd love for you to point me  
22 to that and also address -- your friends on the  
23 other side I'm sure are going to make something  
24 of this, that as recently as 2021, in a brief  
25 filed in the Southern District of New York, the



1 government represented that an unfinished frame  
2 or receiver does not meet the statutory  
3 definition of "firearm."

4 GENERAL PRELOGAR: Sure. So let me  
5 take those in turn.

6 With respect to text, what we have,  
7 Justice Gorsuch, is the term "frame or receiver"  
8 that's not defined, and the Court has many times  
9 recognized it needs to interpret text and  
10 context. I think the anti-circumvention  
11 principle carries a lot of weight here because,  
12 if Respondents are right and just one undrilled  
13 hole is enough, then, basically, that covers  
14 where "frame and receiver" --

15 JUSTICE GORSUCH: Does it --

16 GENERAL PRELOGAR: -- does no work.

17 JUSTICE GORSUCH: -- does it help that  
18 (C) and (D) deal with mufflers, silencers, and  
19 any other destructive devices that don't have  
20 conventional frames and receivers? Does that  
21 help you?

22 GENERAL PRELOGAR: I think that that  
23 just goes to show that Congress was trying to  
24 broadly cover the scope of products that can  
25 qualify as firearms, and it certainly refutes

1 Respondents' suggestion here that every covered  
2 object under the statutory definition needs to  
3 have a traditional frame or receiver.

4 JUSTICE GORSUCH: Yeah, that's why I'm  
5 wondering whether we can -- whether, looking at  
6 (C) and (D) and (A), which, as you say --

7 GENERAL PRELOGAR: Right.

8 JUSTICE GORSUCH: -- carry some broad  
9 language about not just complete items, might be  
10 a textual way to -- to -- to -- to narrow and  
11 focus on (B) without saying every artifact noun  
12 in the U.S. Code carries this feature?

13 GENERAL PRELOGAR: Yes, I think you  
14 certainly could adopt that interpretation, and  
15 that contextual surrounding evidence strongly  
16 supports our arguments in this case.

17 I don't want to lose track of your  
18 question about the brief --

19 JUSTICE GORSUCH: Yeah.

20 GENERAL PRELOGAR: -- the district  
21 court filing --

22 JUSTICE GORSUCH: Yeah.

23 GENERAL PRELOGAR: -- in the Syracuse  
24 case. I want to be really clear that I think  
25 Respondents are fundamentally misreading that

1 brief. They suggest that the brief stood for  
2 the principle that ATF was arguing that a frame  
3 or receiver has to be fully functional to  
4 qualify.

5 But, if you actually look at that  
6 brief, that's not what it says. It walks  
7 through the statutory and regulatory history  
8 here and makes clear that repeatedly, over five  
9 decades, ATF has always looked at whether a  
10 partially complete frame or receiver can be  
11 brought to functional condition quickly, easily,  
12 and efficiently.

13 So there is no dramatic break in the  
14 way that ATF has regulated throughout the  
15 entirety of the statute's history.

16 JUSTICE GORSUCH: Well, I'll look at  
17 that again. And then last question from me and  
18 I'm sorry to take up so much time. In the  
19 regulation, it indicates that a frame or  
20 receiver -- and I'm stuck on this (B) point --

21 GENERAL PRELOGAR: Mm-hmm.

22 JUSTICE GORSUCH: -- which has been  
23 cut into pieces is still a firearm --

24 GENERAL PRELOGAR: So this has --

25 JUSTICE GORSUCH: -- but -- but one

1 that's been shredded is not. Now I'm not sure  
2 what the difference between cut into pieces and  
3 shredding is, but perhaps you can enlighten me  
4 and help me there.

5 GENERAL PRELOGAR: So this refers to  
6 when you already have a fully complete and  
7 functional firearm, what steps you would need to  
8 undertake to formally destroy that firearm and  
9 exempt it from regulation. Those are not  
10 provisions --

11 JUSTICE GORSUCH: So it's no longer  
12 readily convertible, right? And --

13 GENERAL PRELOGAR: So, once you  
14 actually have already brought something within  
15 the regulatory scope of the statute, the -- the  
16 statute itself and the agency's regulations  
17 require that it be destroyed, which is a  
18 specialized term in the firearms industry.

19 I can tell you as a factual matter  
20 that the most common way that you destroy a  
21 firearm is to torch-cut it in -- in -- with  
22 three specified cuts that ATF has provided --

23 JUSTICE GORSUCH: Well --

24 GENERAL PRELOGAR: -- guidance about.

25 JUSTICE GORSUCH: -- this is -- this

1 is -- I'm sorry to interrupt, but this is  
2 actually about frames and receivers that I'm  
3 talking about, and it's 48 -- 478.12(c) and (e).

4 GENERAL PRELOGAR: Yes.

5 JUSTICE GORSUCH: Okay? And it -- and  
6 it talks about partially complete, disassembled,  
7 or nonfunctional frame or receiver. That's what  
8 we're talking about, not the firearm. And,  
9 again, maybe -- maybe there's a line that I -- a  
10 through line, but I couldn't find one between  
11 shredding and cutting into pieces. I would have  
12 thought that's pretty much the same thing.

13 GENERAL PRELOGAR: So that comes, as  
14 you mention, from 478.12(e), which I should note  
15 Respondents haven't challenged in this case. It  
16 tees up a distinct statutory issue about what it  
17 takes to destroy a frame or receiver or a  
18 regulated object once you already have a  
19 firearm. They aren't challenging that here.  
20 And the only thing that is before the Court is  
21 the definition in (B), recognizing that --

22 JUSTICE GORSUCH: Right, but -- but it  
23 --

24 GENERAL PRELOGAR: -- you don't need a  
25 fully functional firearm in the first place to

1 have --

2 JUSTICE GORSUCH: No, but it  
3 illuminates what is a sufficiently complete  
4 frame or receiver if a complete frame or  
5 receiver is not a firearm. And the only way I  
6 can be sure that I don't have a fully complete  
7 or nearly complete or convertibly complete frame  
8 or receiver and therefore a firearm is to shred  
9 it but not cut it into pieces.

10 GENERAL PRELOGAR: Oh. No, let me --  
11 let me try to clarify that --

12 JUSTICE GORSUCH: Yeah, that -- they  
13 --

14 GENERAL PRELOGAR: -- because that's  
15 not accurate at all.

16 JUSTICE GORSUCH: Okay. Right.

17 GENERAL PRELOGAR: As the regulation  
18 itself makes clear, you don't even get to the  
19 question of asking whether it's regularly --  
20 readily converted into functional shape unless  
21 you have the clearly identifiable unfinished  
22 component part, so you have something that is  
23 already well along the way to being a frame or  
24 receiver, and that's when you would conduct the  
25 readily converted inquiry.

1                   And there is nothing in the rule or in  
2                   the agency's past practice to suggest that  
3                   anything that isn't shredded or cut up or  
4                   absolutely destroyed is going to be considered a  
5                   frame or receiver. That would be entirely  
6                   inconsistent with how the agency has implemented  
7                   --

8                   JUSTICE GORSUCH: Okay. Thank you.

9                   GENERAL PRELOGAR: -- the statute all  
10                  along.

11                  JUSTICE GORSUCH: Thank you.

12                  JUSTICE ALITO: Under the rule, what  
13                  percentage of the parts of a firearm kit must --  
14                  must be included in order for it to be a firearm  
15                  kit?

16                  GENERAL PRELOGAR: So these kits  
17                  always come with a frame or receiver. And I  
18                  think that that's going to be a necessary part.  
19                  That's usually the part that needs just a couple  
20                  of holes drilled or pieces of plastic removed.  
21                  And then the weapon parts kits generally come  
22                  with the additional components that will allow  
23                  you to form a fully functioning gun.

24                  If you're asking whether it would  
25                  still qualify as a regulated weapon that can be

1 readily converted if it were missing other  
2 parts, you know, I think that's a matter of  
3 degree and it presses on what it means to  
4 readily convert. It might be fact-specific, so  
5 if the part you're missing is something that is  
6 super-specialized and would be hard to track  
7 down or is going to cost you a million dollars,  
8 that might not be readily converted. But, if  
9 you have something that's missing a single pin  
10 that you might even have lying around the house,  
11 it probably will be.

12           Again, in this facial challenge, I  
13 don't think it's necessary for the Court to  
14 consider all of the possible permutations of how  
15 this could play out with respect to different  
16 types of products. The thing that you need to  
17 be asking is, did the agency reasonably define  
18 the term "readily"? And it did because it gave  
19 it its ordinary definition of a process that's  
20 quick, easy, and efficient. And then did the  
21 agency identify relevant factors? And I think  
22 it did with respect to things like time,  
23 expertise, scope of work, and, as your question  
24 touched on, what parts you would need to  
25 actually make it functional.



1                   JUSTICE SOTOMAYOR: General, we have a  
2 clue from the statute's use of a starter gun as  
3 an example of something that's readily  
4 convertible. As I understand it, to make a  
5 starter gun operable, you either have to replace  
6 the bore, so you need a new bore part to do  
7 that, or you have to drill out the existing bore  
8 on the starter gun and get a pin to make it  
9 operable, correct?

10                   GENERAL PRELOGAR: That's right. So  
11 the most commonly publicized example that I  
12 think was top of mind for Congress, and it's one  
13 that's cited in the statutory history here, was  
14 the example of a -- a gang member who bought the  
15 starter guns in bulk and then, you're exactly  
16 right, had to drill out the plugged barrel or  
17 else cut it off and rethread it and put in a new  
18 barrel. And often you also have to enlarge the  
19 barrel so that it can chamber conventional  
20 ammunition if it isn't already able to accept  
21 bullets.

22                   JUSTICE SOTOMAYOR: So we know that  
23 some incomplete items qualify under the  
24 statute's definition?

25                   GENERAL PRELOGAR: Yes. And I think

1 that also show -- I think shows, as the  
2 statutory text makes clear, that things that  
3 aren't presently functioning as guns but can be  
4 readily converted to function are covered under  
5 subparagraph (A). That was exactly what  
6 Congress was trying to accomplish, to ensure  
7 that these things that are going to be used as  
8 instruments of combat and that can be completed  
9 to functional condition with minimal work would  
10 come within the scope of the federal firearms  
11 laws.

12 CHIEF JUSTICE ROBERTS: Thank you,  
13 counsel.

14 Justice Thomas, anything?

15 Justice Alito?

16 JUSTICE ALITO: Were weapons parts  
17 kits common in 1968?

18 GENERAL PRELOGAR: So there have only  
19 been a couple of examples over the years that  
20 I'm aware of reflected in the case law. We cite  
21 the Stewart case and the Wick case. One of  
22 those was kind of an Uzi-making kit. Another  
23 one involved someone who was making it possible  
24 through kit form to construct a machine gun.

25 It wasn't particularly common then,

1 and I can tell you the reason why. The big  
2 development and the technological development  
3 that led to the explosion of ghost guns was  
4 using polymer --

5 JUSTICE ALITO: Right. Well --

6 GENERAL PRELOGAR: -- a form of  
7 plastic, to make this.

8 JUSTICE ALITO: -- are there gun kits  
9 available now that do not consist of polymer  
10 parts but instead consist of parts taken from  
11 disassembled firearms that have been altered in  
12 a way to make them nonfunctional without some  
13 modification?

14 GENERAL PRELOGAR: I'm not aware of  
15 any commercial product right now that -- that  
16 fits that description.

17 JUSTICE ALITO: On what it means to be  
18 readily convertible, I -- I don't know whether  
19 it's possible to do something. That's the  
20 statutory term, and I don't know whether it's  
21 possible to do something more precise than what  
22 ATF has done, but it would be interesting if --  
23 it would be helpful if you could perhaps explain  
24 a little bit more what that means.

25 So what level of expertise is taken

1 into account? What collection of tools is taken  
2 into account? Can you provide any sort of a  
3 time limit? How long must it take?

4 Some of us who are not -- who don't  
5 have a lot of mechanical ability have spent  
6 hours and hours and hours trying to assemble  
7 things that we've purchased.

8 (Laughter.)

9 GENERAL PRELOGAR: I'm with you on  
10 that one, Justice Alito, as someone who  
11 struggles with IKEA furniture. Let me do my  
12 best to try to be responsive to that question.

13 And I think the thing to point to is  
14 the case law on this point because ATF wasn't  
15 just coming up with these factors out of  
16 nowhere. Instead, because this is the term that  
17 Congress used in the statute, we have 50 years  
18 of judicial precedent further fleshing out the  
19 contours of when something can be readily  
20 converted.

21 So, as a general matter, what the  
22 courts and, therefore, what the agency has said  
23 is that it is readily converted if someone -- if  
24 a novice, in a fairly quick amount of time, can  
25 easily and efficiently convert the weapon to

1 function.

2           You asked about outside bounds like  
3 time limits. I can tell you that in the case  
4 law, the longest period of time that was ever  
5 deemed still readily convertible was eight  
6 hours. And the agency has not considered any  
7 product greater than eight hours to be readily  
8 convertible. So, if that issue were squarely  
9 presented, a court might hold that something  
10 like a day's work or eight hours sets an outer  
11 bound.

12           With respect to things like skill or  
13 -- or parts availability, obviously, that's  
14 going to be facts -- fact- and context-specific.  
15 And I think the important thing to recognize is  
16 that these are principles that were themselves  
17 drawn from case law. And the agency, I think,  
18 can't be expected to do better than courts  
19 themselves have done in trying to flesh out the  
20 qualitative standard that Congress chose to use  
21 here.

22           JUSTICE ALITO: Thank you.

23           CHIEF JUSTICE ROBERTS: Justice  
24 Sotomayor?

25           Justice Kagan?

1 JUSTICE KAGAN: On parts kits first.  
2 In addition to the parts kit that's analogous to  
3 an IKEA table kit, Judge O'Connor below was  
4 concerned that that language would include sort  
5 of any aggregation of gun parts.

6 So let's say, you know, a gunsmith  
7 just wanted to replenish inventory and got a big  
8 box of gun parts generally from a gun  
9 manufacturer. Would that count under the ATF  
10 regulation?

11 GENERAL PRELOGAR: No. The lower  
12 court fundamentally misunderstood how this Final  
13 Rule operates.

14 In the first place, it doesn't  
15 regulate something like a gunsmith at home who's  
16 buying individual parts and seeking to aggregate  
17 them. This is a regulation that only governs  
18 commercial manufacturers and sellers of firearms  
19 who are themselves constructing the -- the  
20 weapons and the kits and putting them on the  
21 market. So these are just conditions on  
22 commercial sale.

23 And then, with respect to what the  
24 rule would cover, it's clear from the "readily  
25 convertible" analysis that you need to have a

1 process that's fairly quick, easy, and  
2 efficient. And so it wouldn't sweep in things  
3 that have a lot of other uses and that would  
4 require a lot of skill and expertise or time to  
5 track down the missing parts to put together.

6           And I want to emphasize again it's not  
7 like ATF was coming up with this rule without  
8 real-world experience about the kinds of market  
9 -- kinds of products that these fringe  
10 manufacturers were putting on the market. These  
11 were kits that you could put together in under  
12 an hour. They had all of the relevant  
13 components. You would just need to do a little  
14 bit of finishing work.

15           I actually had the experience of  
16 putting one of these kits together, and it's  
17 just like what the record shows. There are  
18 usually only a couple of steps. The first thing  
19 that most of the kits require is drilling the  
20 holes. Usually, it's six holes, and you do it  
21 with a jig. So you have the product there in  
22 the tool, and it removes all of the trial and  
23 error or guesswork. You know exactly where to  
24 drill in seconds.

25           The second step is to remove the extra

1 plastic blocking tabs. That, again, doesn't  
2 require much work at all because you clip them  
3 off with a pair of pliers or a box cutter. You  
4 can file it down with a jig as a template using  
5 a metal nail file or using a Dremel rotary tool  
6 that a lot of people, especially dog owners, own  
7 because it's helpful for trimming your dog's  
8 nails.

9 At that point, you have a fully  
10 functional frame or receiver, and you can  
11 quickly assemble it into a gun in no time at  
12 all. That's how the products were marketed.  
13 That's how they were sold.

14 JUSTICE KAGAN: And turning to the  
15 frames or receivers, you made a point of saying  
16 that this follows in a long line of regulation.  
17 But there --- there were changes, right, that  
18 you -- that the new regulation is intended to  
19 capture items sold with jigs and templates.

20 Is there anything else that the new  
21 regulation was intended to capture that was not  
22 captured under the old? And why did ATF make  
23 that change?

24 GENERAL PRELOGAR: No, that is the  
25 only change. ATF made that change and openly



1 acknowledged and justified its decision because  
2 it recognized that when you have a jig, which is  
3 this tool, as I mentioned, that removes all of  
4 the trial and error and really does make it  
5 dummy-proof, as the manufacturers have claimed,  
6 it goes directly to the question the agency has  
7 asked all along, which is: How quickly, easily,  
8 and efficiently can this thing be made to  
9 function?

10           So it's no different in kind from  
11 indexing on the frame or receiver. Indexing is  
12 something that ATF has looked at from 1968 on.  
13 It's always recognized that if you actually put  
14 a dimple in the frame or through the body of the  
15 structural component, that's going to speed up  
16 the process. And jigs work exactly the same  
17 way.

18           JUSTICE KAGAN: And let me ask you a  
19 broader question if we step back a little bit.

20           Sometimes this Court looks at  
21 regulations and it says, you know, there's an  
22 old statute, and the old statute doesn't  
23 contemplate a new problem, and a new problem  
24 comes up, and Congress can't get its act  
25 together and deal with the old problem.

1                   And so the agency takes old statutory  
2 language that doesn't really fit the problem  
3 but, you know, is vague enough or general enough  
4 or broad enough, you know, so that it can be  
5 kind of made to deal with the new problem.

6                   And -- and this Court has sometimes  
7 said: Well, that's -- that's not right. The  
8 new statute had nothing to do with -- the old  
9 statute had nothing to do with this new problem,  
10 and this is kind of, you know, the agency just  
11 taking over what is really Congress's business.

12                   Is -- is that a story line that the  
13 Respondents here can tell about this regulation?

14                   GENERAL PRELOGAR: No. I don't think  
15 there is any tenable way to characterize this  
16 regulation as -- as an attempt to change the  
17 meaning of the statute to confront a new  
18 problem.

19                   First of all, this is an age-old  
20 problem. Congress, I think, rightly recognized  
21 that manufacturers might seek to evade these  
22 central requirements. That's why anytime it's  
23 expressly defined a term, like in subparagraph  
24 (A), it's included concepts of whether an item  
25 can be readily made to function.

1           We think the weapon parts kits are  
2 precisely described by that subparagraph (A)  
3 description.

4           I acknowledge in subparagraph (B) it's  
5 not a defined term, "frame or receiver." But  
6 there again, we think that Congress was simply  
7 tracking ordinary meaning, which recognizes that  
8 if you have that principal structural component  
9 of a handgun, that can be recognized as a frame  
10 or receiver even if it's missing the single,  
11 final hole that you need to drill in that.

12           So I think it would be wrong to  
13 suggest that the statutory language just on its  
14 own terms doesn't cover this situation.

15           And then, on top of that, we have  
16 context and purpose here. On Respondents'  
17 theory of this statute, it would be incredibly  
18 easy for any gun manufacturer to avoid the  
19 regulation and the essential requirements of  
20 serializing, background checks, and  
21 recordkeeping just by leaving one little part of  
22 the weapon or the frame or receiver unfinished.

23           Plainly, that's not what Congress was  
24 intending. And I think it brings this case  
25 squarely within cases like *Abramski*, where, as

1 you know, Justice Kagan, the -- the Court  
2 recognized that if you have an interpretation of  
3 the Gun Control Act that is going to allow that  
4 entire circumvention and essentially nullify the  
5 Act's requirements, the statute shouldn't  
6 properly be interpreted that way.

7 JUSTICE KAGAN: That was a close case.  
8 You maybe want this to be a stronger case than  
9 Abramski.

10 GENERAL PRELOGAR: It is a stronger  
11 case. And the circumvention here is even more  
12 profound because it wouldn't just be in the  
13 sales transactions with the straw purchaser. It  
14 would effectively be all weapons going forward  
15 would not need to be serialized or sold with  
16 background checks and recordkeeping.

17 JUSTICE KAGAN: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice  
19 Gorsuch?

20 Justice Kavanaugh?

21 JUSTICE KAVANAUGH: Your statutory  
22 interpretation has force, but I had some concern  
23 at the state stage, and I have some concern now  
24 about mens rea. And this is an agency  
25 regulation that broadens a criminal statute

1 beyond what it had been before.

2 So what about the seller, for example,  
3 who is truly not aware, truly not aware that  
4 they are violating the law and gets criminally  
5 charged? What assurances can you give about  
6 mens rea, about the instructions to the jury  
7 that the government would seek, and the like?

8 GENERAL PRELOGAR: So let me begin  
9 with the statutory mens rea standard that I  
10 think fully addresses this concern. This is in  
11 18 U.S.C. 924(a)(1)(D), and it requires  
12 willfulness.

13 So that means that if a -- a  
14 manufacturer isn't putting a serial number on it  
15 because the manufacturer believes in good faith  
16 that this isn't a regulated product and the  
17 manufacturer doesn't know that it's violating  
18 the law, it will not be criminally chargeable  
19 because the government won't be able to prove  
20 that mens rea of willfulness. So I think that's  
21 an important check against criminal prosecutions  
22 that might be unwarranted.

23 The second thing I would point to is  
24 the --

25 JUSTICE KAVANAUGH: And does

1 "willfully" apply to all potential prosecutions  
2 that we're talking about in this case?

3 GENERAL PRELOGAR: It applies if  
4 there's no serial number on the weapon, and it  
5 applies if there's -- if the weapon is being  
6 sold without a license.

7 I believe that with respect to not  
8 conducting a background check, that's under a  
9 different provision that requires knowledge.

10 But, of course, the kind of entry  
11 point for the weapon is whether or not it has a  
12 serial number, and that happens at the point of  
13 manufacture.

14 I also want to emphasize that to the  
15 extent that there is really --

16 JUSTICE KAVANAUGH: So how would that  
17 work on the background check? I just want to  
18 make sure I'm not missing something there.

19 GENERAL PRELOGAR: Yeah. So I think,  
20 on the background check, if you have a seller  
21 out there who -- who wants guidance about  
22 whether, with respect to particular type of  
23 products, it's necessary to do that background  
24 check, the -- the person can seek a  
25 classification from ATF. The manufacturers

1 would be the ones to do this. And this is a way  
2 to get a pre-enforcement dispositive ruling from  
3 ATF as to whether that's deemed a regulated  
4 firearm.

5 And in that circumstance, if you don't  
6 like the answer that ATF gives, you have a right  
7 to judicial review that will be conducted under  
8 a de novo standard about whether this is a  
9 covered product.

10 JUSTICE KAVANAUGH: But, if you  
11 haven't done that, let's say you haven't done  
12 that, and you truly --

13 GENERAL PRELOGAR: Right.

14 JUSTICE KAVANAUGH: -- take the  
15 hypothetical -- you truly believe you're not  
16 violating the law, could you be charged under  
17 that provision?

18 GENERAL PRELOGAR: As a theoretical  
19 possibility, I think only with respect to  
20 background checks, it's possible you could. I'm  
21 not aware of any prosecutions that look like  
22 this. And the whole point of this reg --

23 JUSTICE KAVANAUGH: Is that something  
24 the government would do?

25 GENERAL PRELOGAR: I don't think the

1 government would be likely to charge someone in  
2 that kind of situation. And it doesn't look  
3 anything like what was happening where the  
4 manufacturers were themselves the sellers  
5 putting these products on the market with  
6 explicit knowledge that it was being put into  
7 the hands of teenagers --

8 JUSTICE KAVANAUGH: Okay. That's --

9 GENERAL PRELOGAR: -- felons, and so  
10 forth.

11 JUSTICE KAVANAUGH: -- that's helpful.  
12 Anything else you wanted to finish up with on  
13 that?

14 GENERAL PRELOGAR: So I guess the only  
15 other thing I would say is that we think that  
16 there is a lot of protection for manufacturers  
17 who are seeking to comply with the law in good  
18 faith. ATF is not trying to hide the ball here.  
19 The point of the agency is not a game of gotcha  
20 to try to criminally prosecute people.

21 There was a very serious public safety  
22 threat posed by the explosion in the use of  
23 these gun -- these ghost guns in crimes, and so  
24 the whole point of this regulation is simply to  
25 put the regulated industry on notice of how the



1 statute applies in that discrete context and how  
2 it's always applied since the statute was  
3 enacted.

4 JUSTICE KAVANAUGH: And on that point,  
5 because you had a lot of classification letters  
6 that were out there, this was to collect  
7 everything and put everyone, as you say, on  
8 notice, adding a couple things, as you pointed  
9 out earlier, correct?

10 GENERAL PRELOGAR: Right. And so I  
11 don't think that this is any vast expansion of  
12 the statute. We just think this is ATF's long  
13 standing interpretation with the addition --

14 JUSTICE KAVANAUGH: Some expansion.  
15 Some expansion.

16 GENERAL PRELOGAR: -- only with the  
17 addition of looking at jigs. But -- but --

18 JUSTICE KAVANAUGH: Yeah.

19 GENERAL PRELOGAR: -- to be clear,  
20 that doesn't change the meaning of the statute.

21 JUSTICE KAVANAUGH: Right.

22 GENERAL PRELOGAR: It just changes the  
23 factors that are relevant under the statute when  
24 you're conducting a "readily" analysis.

25 JUSTICE KAVANAUGH: Okay. That's

1 helpful. Thank you.

2 CHIEF JUSTICE ROBERTS: Justice  
3 Barrett?

4 JUSTICE BARRETT: I have a question  
5 about AR-15s. So Judge Oldham expressed concern  
6 that because AR-15 receivers can be readily  
7 converted into machine gun receivers, that this  
8 regulation on its face turns everyone who  
9 lawfully owns an AR-15 into a criminal.

10 GENERAL PRELOGAR: That is wrong. So  
11 I want to be really clear about our  
12 interpretation of the statute. We are not  
13 suggesting that a statutory reference to one  
14 thing includes all other separate and distinct  
15 things that might be readily converted into the  
16 thing that's listed in the statute itself.

17 So the example we give in our reply  
18 brief is that a pair of pants is not regulated  
19 as a pair of shorts if you have a statute  
20 referring to shorts even though the pants could  
21 be readily converted into shorts. That's  
22 because pants are a distinct object in their own  
23 right and they have a separate identity.

24 And the rule itself incorporates this  
25 principle by requiring that the regulated

1 object, before you even get to a "readily"  
2 analysis, has to be clearly identifiable as the  
3 unfinished component part of the regulated  
4 weapon.

5           So what that means is you would have  
6 to say this thing is a clearly unfinished  
7 component part of a machine gun, a weapon that's  
8 designed to fire automatically more than one  
9 shot with a single function of the trigger. But  
10 you couldn't say that about an AR-15. That is  
11 obviously something that's designed and intended  
12 to be used for semi-automatic fire.

13           And the fact that you might be able to  
14 undertake certain drilling and machining  
15 operations to convert it into a machine gun  
16 doesn't mean that while it has this separate  
17 identity and is standing alone, it would be  
18 regulated as a machine gun.

19           The agency has never held otherwise.  
20 This again is the same interpretation that the  
21 agency has had all along, and it has never  
22 suggested that AR-15s, standing alone, are  
23 regulated machine guns.

24           JUSTICE BARRETT: Thank you.

25           CHIEF JUSTICE ROBERTS: Justice

1 Jackson?

2 JUSTICE JACKSON: So Justice Kagan  
3 talked about the problem of the agency  
4 potentially taking over what is Congress's  
5 business, and I guess I'm worried about the  
6 different concern, which is about the Court  
7 taking over what Congress may have intended for  
8 the agency to do in this situation. And so all  
9 of my questions -- the reason why I didn't  
10 really engage in the other part of this is  
11 because all of my questions really for you stem  
12 from that concern.

13 You -- you've phrased the question  
14 presented in this case as whether certain items,  
15 weapons, parts, and kits, or partially complete  
16 and disassembled frames or receivers qualify as  
17 firearms within the meaning of the statute. And  
18 I guess I'm concerned about this framing because  
19 it doesn't seem to account, in my view, for the  
20 actual claim that the challengers have made  
21 here, which is that the agency has exceeded its  
22 statutory authority.

23 And so I'm trying to figure out how  
24 we're supposed to address what I think is a  
25 distinct question about the scope of the

1 agency's authority vis-à-vis the Court to fill  
2 out the category of what is a firearm.

3 I mean, are we to conclude that an  
4 agency exceeds its statutory authority whenever  
5 it fails to choose what we think is the best  
6 meaning of a statutory term? Is that how the --  
7 the scope of the agency's authority to  
8 promulgate a rule is supposed to be determined?  
9 We just compare what the agency believes  
10 qualifies as a firearm with what we think  
11 qualifies as a firearm, and if the agency has  
12 something in its definition that we wouldn't  
13 have put there, we say the agency has exceeded  
14 its authority?

15 I think those seem not right to me as  
16 the way of figuring out the question of  
17 exceeding the authority, and I think it can't be  
18 assumed that the agency exceeds its authority  
19 whenever it interprets a statutory term  
20 differently than we would such that all we have  
21 to do as a part of this claim here today is just  
22 decide what we think a firearm is.

23 Can you react to that?

24 GENERAL PRELOGAR: Sure. So I think,  
25 as in any statutory interpretation case, the

1 task of this Court is to determine what Congress  
2 intended and what it meant. And we think that  
3 we have clearly the best interpretation of the  
4 language that Congress used, but the Court has  
5 said time and again that you don't just look at  
6 text, you interpret that text in context.

7 JUSTICE JACKSON: Right. But can I  
8 just --

9 GENERAL PRELOGAR: And you can take  
10 account of --

11 JUSTICE JACKSON: -- can -- can I take  
12 you on a little bit of a -- let me just drill  
13 down a little bit, right? The term we are  
14 interpreting, I thought, was a category.  
15 Congress has said firearms, right, and frames  
16 and receivers, which it defines, the firearms  
17 part of it, have to be treated in a certain way.  
18 And I think, in order to implement this statute,  
19 the agency has to look at real-world  
20 circumstances and determine what particular  
21 items fit into that category.

22 I understood the delegation of this  
23 entire thing to an agency to be that task.  
24 That's what the agency's supposed to be doing.  
25 We look at firearm. We look at the definition

1 of the firearm, says the agency, and we look at  
2 things in the world, and we say X, Y, Z, those  
3 are in that category.

4 My question is, when the challenge is  
5 X shouldn't have been in that category, does it  
6 exceed the agency's authority if the Court  
7 thinks, yeah, X shouldn't have been in that  
8 category? Just, you know -- I mean, the agency  
9 still has the authority, I think, and in Loper,  
10 Loper seemed to recognize that Congress may have  
11 given the agency the authority to make certain  
12 calls, right?

13 GENERAL PRELOGAR: So -- so I think,  
14 in responding to this question --

15 JUSTICE JACKSON: Yes.

16 GENERAL PRELOGAR: -- it's really  
17 helpful to distinguish between the facial  
18 challenge here and some of these as-applied  
19 applications of the agency's determination of  
20 what fits within the definition.

21 JUSTICE JACKSON: Okay.

22 GENERAL PRELOGAR: I do think that if  
23 the Court concluded that Congress, in drafting  
24 this statute, had, for example, categorically  
25 precluded looking at time in deciding whether

1 something's readily convertible, then the agency  
2 would be exceeding its authority because, of  
3 course, if Congress has said in the statute you  
4 can't think about time --

5 JUSTICE JACKSON: Right.

6 GENERAL PRELOGAR: -- then the agency  
7 can't choose to do so.

8 JUSTICE JACKSON: Right.

9 GENERAL PRELOGAR: We are miles away  
10 from that kind of situation here because all of  
11 the factors the agency listed on their face are  
12 consistent with the plain meaning of what it is  
13 to readily prepare.

14 JUSTICE JACKSON: So what you would  
15 have us do is not come up with our list of what  
16 items we think should be in the firearm  
17 category, like we have to think about exactly  
18 each thing. In this facial challenge, I think  
19 you're saying we need to do something more like  
20 did the agency take into account the relevant  
21 factors for making the determination of what  
22 goes in this category?

23 GENERAL PRELOGAR: That's right,  
24 because you don't have any particular products  
25 in front of you to examine in light of whether



1 they would fit the definition or not. The only  
2 relevant question in this case is the facial  
3 question of does this regulation conflict with  
4 anything in the Gun Control Act? And our answer  
5 is no, we think that this follows from the plain  
6 text of the Gun Control Act and is consistent  
7 with judicial precedent interpreting that plain  
8 text.

9 With respect to any follow-on  
10 questions about particular products, that could  
11 all be assessed as applied in light of their  
12 specific facts to make a determination about how  
13 the factors might cash out in an individual  
14 case.

15 Before the front-line question of the  
16 agency's authority here, we think everything in  
17 the Final Rule is consistent with the statute  
18 Congress wrote.

19 JUSTICE JACKSON: Thank you.

20 CHIEF JUSTICE ROBERTS: Thank you,  
21 counsel.

22 Mr. Patterson.

23 ORAL ARGUMENT OF PETER A. PATTERSON

24 ON BEHALF OF THE RESPONDENTS

25 MR. PATTERSON: Mr. Chief Justice, and

1 may it please the Court:

2           This case turns on decisions made by  
3 Congress in the Gun Control Act of 1968.

4           First, Congress altered the common  
5 understanding of "firearm" to include other  
6 weapons that may readily be converted to  
7 firearms.

8           Second, in a departure from prior  
9 federal law, Congress decided to regulate only a  
10 single part of a firearm, the frame or receiver,  
11 and Congress did not alter the common  
12 understanding of a "frame or receiver."

13           ATF has now exceeded its authority by  
14 operating outside of the bounds set by Congress.

15           One, ATF has expanded the definition  
16 of "frame or receiver" to include items that may  
17 readily be converted to a frame or receiver.

18           And, two, ATF has expanded the  
19 definition of "firearm" to include collections  
20 of parts that are not weapons and that do not  
21 include a frame or receiver.

22           Some concern has been raised about  
23 circumvention, but, of course, complying with a  
24 statute is not circumventing it. And as this  
25 Court said in *Abramski*, which has already been

1 referenced, Congress, in the Gun Control Act,  
2 did not seek to pursue its purposes of  
3 controlling access to firearms to the nth  
4 degree.

5 And, notably, Congress did not  
6 regulate the secondary market for firearms, and  
7 that secondary market is a much bigger source of  
8 firearms for criminals than privately made  
9 firearms.

10 There also has been questions raised  
11 about the agency's prior practice. There  
12 definitely has been a sea change by the agency  
13 here. The agency projected that its rule would  
14 put 42 out of 43 unlicensed manufacturers out of  
15 business.

16 And what the agency said in the  
17 Syracuse litigation was they said: "An  
18 unfinished frame or receiver does not meet the  
19 statutory definition of 'firearm' simply because  
20 it can be designed to or can readily be  
21 converted into a frame or receiver." That's the  
22 exact standard they've now adopted.

23 Instead, what they looked at was  
24 whether critical machining operations had taken  
25 place. And, to be clear, we have no quarrel

1 with that prior practice. We have raised as  
2 alternatives, one, something has to be  
3 completely machined, or, two, the critical  
4 machining operation test.

5 And the -- the latter, we submit, is  
6 more consistent with the statutory language and  
7 solves the machine gun problem because, if you  
8 say, in the machine gun provision, a frame or  
9 receiver is also regulated, and if one hole is  
10 all that separates a semi-automatic receiver  
11 from a machine gun receiver, it's hard to see  
12 how the "readily" standard would not also be  
13 applied there.

14 I welcome the Court's questions.

15 JUSTICE THOMAS: Judge Oldham makes  
16 much of the 80 percent rule that was --

17 MR. PATTERSON: Yes.

18 JUSTICE THOMAS: -- at the stage of  
19 manufacture versus the ready -- what a receiver  
20 or an item is capable or ready -- can readily  
21 become. And we've had much discussion here  
22 about "readily" this morning.

23 Is that analysis or that approach --  
24 does -- does it make a difference as -- to your  
25 argument whether it is the 80 percent rule or

1 the current "readily become" rule?

2 MR. PATTERSON: Yes, I think it does  
3 and for at least three reasons.

4 One, we -- we submit it can't be  
5 "readily" because, when Congress wanted it to be  
6 "readily," it put it in the statute in multiple  
7 circumstances.

8 Two, it has a different practical  
9 impact, for example, in the machine gun frame  
10 example. So, if it -- if the standard is  
11 "readily" and the government gives as kind of  
12 the paradigmatic example of "readily" drilling  
13 one hole, well, if all you have to do is drill  
14 one hole into a receiver to make it a machine  
15 gun receiver, it's hard to see how that is not a  
16 machine gun receiver.

17 And, three, the -- Congress said "the  
18 frame or receiver." What Congress did not  
19 include in this statute was parts that may be  
20 used to convert an item into --

21 JUSTICE THOMAS: I think I'm --

22 MR. PATTERSON: -- a frame or  
23 receiver.

24 JUSTICE THOMAS: -- a bit more  
25 interested in how the 80 percent rule operated.

1 We've -- we've heard --

2 MR. PATTERSON: Yes.

3 JUSTICE THOMAS: -- much about the  
4 "readily" this morning --

5 MR. PATTERSON: Yes.

6 JUSTICE THOMAS: -- and -- and whether  
7 or not that change actually took place and  
8 whether it really matters.

9 MR. PATTERSON: Yes, it does really  
10 matter. And just the 80 percent rule is kind of  
11 a colloquialism used in the industry. What the  
12 governing standard was was called the critical  
13 machining operations test.

14 And what the agency would do, based on  
15 what the definition of a frame or receiver is,  
16 the part that holds the essential firing and  
17 sealing components of a firearm, would say:  
18 We're going to look at that part of the firearm  
19 and see if critical machining operations have  
20 taken place.

21 And then, as a crosscheck, there  
22 sometimes would be temporal considerations.  
23 This is what the agency said in the Syracuse  
24 litigation. Temporal considerations were tied  
25 to the degree of machining. It was kind of like

1 a lodestar crosscheck in a fees case.

2 So they would look at those temporal  
3 considerations. But where the different --  
4 where the difference would be made -- and we can  
5 see this very clearly in the regulation that the  
6 AR-15 lowers, and that is the same piece of  
7 metal can be considered a frame or receiver  
8 depending on what is sold with it.

9 Under the old standard, you would look  
10 at the item itself, and that's what Congress did  
11 in the Act. They said: Look at the item  
12 itself. It did not say: Look at other things  
13 that may be used to convert that item into a  
14 frame or receiver.

15 And that's what the agency is now  
16 doing, for example, with looking at the jigs  
17 because, really, what is being done is that jig  
18 is being regulated because the same piece of  
19 metal can either be a frame or receiver  
20 depending on what is sold with it.

21 JUSTICE JACKSON: But I thought --

22 CHIEF JUSTICE ROBERTS: What would --

23 JUSTICE JACKSON: -- "readily  
24 convertible" was in the statute.

25 MR. PATTERSON: "Readily convertible"

1 is in the statute under part A.

2 JUSTICE JACKSON: Okay.

3 MR. PATTERSON: It is not in the  
4 statute under part B. So then you cannot -- it  
5 would be very odd to say that, well, we're going  
6 to say "readily convertible" is a implicit in  
7 every term.

8 JUSTICE JACKSON: For a frame and  
9 receiver.

10 JUSTICE SOTOMAYOR: Counsel --

11 JUSTICE JACKSON: But does the  
12 80 percent rule apply then to part A?

13 I'm just trying to understand your  
14 answer to Justice Thomas with respect to the  
15 80 percent rule.

16 MR. PATTERSON: Yes. And, again,  
17 understanding that we're using 80 percent rule  
18 --

19 JUSTICE JACKSON: Yes. Yes.

20 MR. PATTERSON: -- as a stand-in for  
21 critical machining operations. No, that part --  
22 applies to part B. That is what the agency  
23 would look at to determine whether something had  
24 become a frame or receiver. And -- and if  
25 you're --



1 JUSTICE SOTOMAYOR: Counsel, doesn't  
2 that --

3 MR. PATTERSON: Yeah.

4 JUSTICE SOTOMAYOR: -- give your game  
5 away? Once you admit that you need to figure  
6 out when something has become a finished  
7 product, you have to have a standard to decide  
8 that. And you're saying the standard has to be  
9 something along -- that -- that goes to  
10 manufacturing.

11 The SG is saying: Yes, that's just a  
12 silent way of saying, has the manufacturing gone  
13 far enough to make this essentially a -- a -- a  
14 frame or receiver? Can it be converted to be  
15 fully functional? That's what they're saying,  
16 that the two are doing exactly the same thing.

17 You prefer one because you want to  
18 sell frames without a serial number or -- or  
19 sell frames that you have to drill a hole in and  
20 say that's not regulated.

21 They're saying a hole is really not a  
22 critical component of the frame. Everything  
23 else is.

24 MR. PATTERSON: Well --

25 JUSTICE SOTOMAYOR: So I -- I -- I --

1 I'm having difficulty understanding, once you  
2 admit that some sort of test is necessary, why  
3 this particular test exceeds their statutory  
4 authority --

5 MR. PATTERSON: Yes. And so --

6 JUSTICE SOTOMAYOR: -- since it's only  
7 a different way of getting to the same thing.

8 MR. PATTERSON: Understood.

9 JUSTICE SOTOMAYOR: Do I have enough  
10 of a frame or receiver to call it a frame and  
11 receiver.

12 MR. PATTERSON: Understood. And to be  
13 clear, we provided the Court two alternatives.

14 One is that all of the machining  
15 operations have taken place. So, if you were to  
16 say this was a sculptor, all the chiseling has  
17 been done, everything's been done, that this can  
18 now function as a frame or receiver.

19 JUSTICE SOTOMAYOR: Well, you --

20 MR. PATTERSON: Our alternative --

21 JUSTICE SOTOMAYOR: -- are you -- you  
22 don't disagree that taking a tab off a frame, is  
23 that a completed frame?

24 MR. PATTERSON: I -- I think -- I  
25 don't think taking a tab off, if you could do it

1 with your finger, that's not --

2 JUSTICE SOTOMAYOR: All right.

3 MR. PATTERSON: -- like actually  
4 removing material that's --

5 JUSTICE SOTOMAYOR: So, if you have to  
6 drill a hole to attach it to something, that's  
7 not a completed frame?

8 MR. PATTERSON: Well, this is where  
9 the difference between the two alternatives that  
10 we have given the Court comes in.

11 Under the first alternative, drilling  
12 a single hole would be what would make it cross  
13 the line. And the government admits that  
14 sometimes drilling a single hole can be the  
15 difference between a semi-automatic receiver and  
16 a machine gun receiver. And a machine gun  
17 receiver is much more heavily regulated than a  
18 semi-automatic receiver. So the notion that  
19 just one hole separating something from another  
20 item is somehow absurd is clearly not the case.

21 But the alternative we've given you is  
22 the critical machining operations test, and that  
23 is different from the government's new test  
24 because, A, it's not conflicting with the  
25 statute by taking language from another part of

1 the statute that's not there and putting it  
2 there and where the government represented in  
3 the Syracuse litigation in 2021 we can't do  
4 that.

5 JUSTICE GORSUCH: Let me --

6 MR. PATTERSON: Yes.

7 JUSTICE GORSUCH: -- come at it -- oh,  
8 I'm sorry, Chief, please.

9 CHIEF JUSTICE ROBERTS: Just what  
10 would -- what is the purpose of selling a  
11 receiver without the holes drilled in it?

12 MR. PATTERSON: Well, the -- some  
13 individuals -- just like some individuals enjoy,  
14 like, working on their car every weekend, some  
15 individuals want to construct their own firearm.  
16 So the purpose of selling it is to allow --

17 CHIEF JUSTICE ROBERTS: Well, that  
18 would be -- I'm sorry, go ahead.

19 MR. PATTERSON: -- is to assist and  
20 provide individuals with material with which  
21 they can do that.

22 CHIEF JUSTICE ROBERTS: Well, I mean,  
23 drilling a hole or two, I would think, doesn't  
24 give the same sort of reward that you get from  
25 working on your car on the weekends.

1                   MR. PATTERSON: Well, I would  
2 encourage the Court to read the Vasquez brief.

3                   This is not a easy thing necessarily  
4 to do and particularly the Press Democrat  
5 article cited there, where the reporter engaged  
6 to show how easy this was and, in fact, showed  
7 that he couldn't actually do it. He had to  
8 engage friends to help him complete this that  
9 were expert in firearms.

10                  And the -- and even once you have a  
11 complete frame, it's not a trivial matter to put  
12 that together. There are small parts that have  
13 to be put in precise locations. And that  
14 reporter, he could not -- he couldn't put it  
15 together from the completed frame. So it's not  
16 clear that it is a trivial -- it is clearly not  
17 a trivial proposition for someone to do this.

18                  CHIEF JUSTICE ROBERTS: Well --

19                  JUSTICE GORSUCH: Counsel --

20                  CHIEF JUSTICE ROBERTS: -- I don't  
21 know the skills of the particular reporter, but  
22 my understanding is, is that it's not terribly  
23 difficult for someone to do this, and it's  
24 certainly not terribly difficult to take the  
25 plastic piece out. That's -- is that part of

1 the gunsmithing?

2 MR. PATTERSON: Well, the plastic rail  
3 -- the parts that are blocking the rails in the  
4 product that's been highlighted, that has to be  
5 taken out. It -- it's recommended that you put  
6 it on a drill press vise and use a drill press  
7 with a specialized bit to take that away. And  
8 Polymer80 explicitly recommends against using  
9 against a -- using a Dremel. They say that  
10 could damage the product.

11 And I know we don't have any  
12 particular product at issue here, but the point  
13 is that with -- what Congress said is that we  
14 want to regulate the frame or receiver itself.  
15 And there's got to be some point, there's going  
16 to be a line --

17 CHIEF JUSTICE ROBERTS: I guess what  
18 I'm --

19 MR. PATTERSON: Yes.

20 CHIEF JUSTICE ROBERTS: -- I'm  
21 suggesting that if someone who goes through the  
22 process of drilling the one or two holes --

23 MR. PATTERSON: Right.

24 CHIEF JUSTICE ROBERTS: -- and taking  
25 the plastic out, he really wouldn't think that

1 he has built that gun, would he?

2 MR. PATTERSON: You know, I -- I don't  
3 know what that person would think, but I think  
4 he would. It's not a simple proposition. Even  
5 the individuals that the government cited that  
6 took 21 minutes to put something together wasn't  
7 counting the time for the person to acquire the  
8 tools, learn how to use the tools -- this person  
9 was a mechanic, so they knew how to do these  
10 things -- or the time to learn how to machine  
11 the object. That person spent two hours  
12 watching instructional materials before starting  
13 to put that item together. And even after that  
14 21 minutes, the person had done it incorrectly  
15 and it needed to be repaired.

16 JUSTICE GORSUCH: Counsel, I'd like to  
17 circle back --

18 MR. PATTERSON: Yes.

19 JUSTICE GORSUCH: -- to Justice  
20 Sotomayor's question on -- on (B).

21 MR. PATTERSON: Yes.

22 JUSTICE GORSUCH: I -- I -- I -- I  
23 take that one position might be it has to be a  
24 complete frame or receiver --

25 MR. PATTERSON: Yes.

1 JUSTICE GORSUCH: -- because there's  
2 no indication of "readily converted" the way  
3 there is in (A).

4 MR. PATTERSON: Right.

5 JUSTICE GORSUCH: All right. I've got  
6 that argument. But I think you've suggested  
7 that, no, we accept that there are incomplete  
8 frames or receivers that count. This is indeed  
9 an artifact noun. And -- and, if that's true --  
10 well, first of all, is that true?

11 MR. PATTERSON: Well, we've given our  
12 --

13 JUSTICE GORSUCH: Do you concede that?

14 MR. PATTERSON: Our primary argument  
15 is no, it's got to be complete, but we've given  
16 an alternative argument --

17 JUSTICE GORSUCH: Okay.

18 MR. PATTERSON: -- that, okay, it  
19 could be an artifact now, but, if it is, the  
20 test should be critical machining and not  
21 readily converted.

22 JUSTICE GORSUCH: Let me -- let me  
23 press on the first argument.

24 MR. PATTERSON: Yes.

25 JUSTICE GORSUCH: Why wouldn't this be



1 an artifact noun in this statute given (A),  
2 which does suggest incomplete things can count;  
3 (C), you know, mufflers and silencers; (D),  
4 other destructive devices which don't have a  
5 traditional receiver? I think the examples  
6 we've been given are umbrella guns and pen guns  
7 and things like that.

8           Why wouldn't that be an indication  
9 that here, if not throughout the U.S. Code,  
10 Congress was using an artifact noun?

11           MR. PATTERSON: I would think the  
12 inference would be precisely the opposite  
13 because Congress put that language specifically  
14 into those neighboring statutes, words like  
15 "converted" or words like "collections of  
16 parts." So it would be odd to say that in this  
17 particular place where Congress has taken  
18 special care to use that sort of language, when  
19 Congress wanted that language to be applied to  
20 say, well, we're just going to infer that it  
21 also applies here, where Congress did not put  
22 that language.

23           And I think it could -- again, as I've  
24 said, it could wreak havoc with the firearm laws  
25 because there are a lot of things that can be

1 readily converted. A -- a traditional rifle can  
2 be converted to a short-barreled rifle in  
3 minutes with -- with a hacksaw or by swapping in  
4 a shorter barrel.

5           So, if -- this concept, "readily  
6 converted," Congress only put it into specific  
7 places. And we can see in the machine gun  
8 provision Congress said "readily restored"  
9 instead of "readily converted." So we need to  
10 be very precise here.

11           And in -- and in terms of why we would  
12 pick critical machining operations instead of  
13 readily converted, if we're looking for evidence  
14 of meaning, if we're not going to say it has to  
15 be completed, well, one evidence of meaning was  
16 what did ATF and the industry, working together  
17 over a period of years, arrive at? And what  
18 they arrived at was this critical machining test  
19 because it does not pose these same problems as  
20 readily converted would potentially with other  
21 provisions of the Code, and it also is more  
22 consistent with the statute by not importing  
23 "readily" into a place where Congress chose not  
24 to put it.

25           JUSTICE GORSUCH: Thank you.

1 JUSTICE BARRETT: But it doesn't  
2 appear in the statute. It seems a little made  
3 up, right, the critical machining test? I mean,  
4 your other test, I think, has the problem of  
5 pulling a tab off the front and -- and saying,  
6 okay, now it's a frame or receiver, but it  
7 wasn't before you pulled the tape. But the  
8 critical machining doesn't really come from the  
9 statute; it's just sort of a way of allowing for  
10 a de minimis exception, right?

11 MR. PATTERSON: Well, I wouldn't say  
12 that, Your Honor. And, first, we wouldn't --  
13 even under our primary test, I think it's -- if  
14 it's a machine, so, you know, if you think of  
15 the sculptor when everything's been sculpted, if  
16 something is put on to protect it or something  
17 and it just has to be pulled off, I wouldn't  
18 call that machining.

19 So I think it's -- once all the holes  
20 have been drilled, all the material has been  
21 removed that requires tools to remove, that  
22 would be our primary test.

23 But then, under the secondary test, so  
24 it would come from the language of frame or  
25 receiver. And I think you would say, okay, this

1 is an artifact noun, but then what does that  
2 artifact noun mean? We have to still determine  
3 at what point something is a frame or receiver.

4 And we think the evidence of meaning  
5 of the agency and the others in the industry who  
6 are very keenly interested in this question,  
7 working it out over a period of years and  
8 saying, okay, here is this test that we have  
9 come up with, this critical machining test, it's  
10 much better attested than "readily" --

11 JUSTICE JACKSON: But isn't --

12 MR. PATTERSON: -- in terms of what --

13 JUSTICE BARRETT: So would you say  
14 that it's like the ordinary usage? Now  
15 everybody just understands based on long  
16 standing practice that this critical machining  
17 test is the point at which the frame or receiver  
18 --

19 MR. PATTERSON: Correct. And it's not  
20 that we're deferring to that, but that's the  
21 best evidence we have of what this means.

22 JUSTICE ALITO: In -- in ordinary  
23 usage, an object that is created to perform a  
24 function may still be called by the name that's  
25 attached to that object even if it is not

1 completely functional. Isn't that what this  
2 gets at?

3 MR. PATTERSON: I don't believe that  
4 this is what it gets at. And there are two  
5 provisions here --

6 JUSTICE ALITO: Well, before you --

7 MR. PATTERSON: Oh. Yes.

8 JUSTICE ALITO: -- walk away from  
9 that, I mean, let me give you an example.

10 MR. PATTERSON: Okay.

11 JUSTICE ALITO: Suppose I see that my  
12 neighbor is restoring a classic car, and -- but  
13 he's taken out the -- some critical parts, and  
14 then someone says, well, what is that? And I --  
15 I might well say, well, that's a 1957  
16 Thunderbird, even though it -- you couldn't  
17 drive it and it would take some work to make it  
18 do the thing that it was originally created to  
19 do.

20 So isn't that what -- isn't that the  
21 essence of your backup argument? The thing must  
22 still be such that one would call it a frame or  
23 receiver even if it is not fully ready to be  
24 functional as a -- as a frame or receiver at  
25 this time?

1           MR. PATTERSON: Yes. Yes. So our  
2 primary argument is it would have to be, and so  
3 I think -- you could think of the situation with  
4 the car and you ask your neighbor can I borrow  
5 your car, and you give him the car with the  
6 engine taken out, they would probably say that's  
7 not a car. But also the backup, yes, is that at  
8 some point, something is a car even if it can't  
9 currently perform that function and --

10           JUSTICE ALITO: So what exactly does  
11 this -- does the critical manufacturing --  
12 critical machining test involve? What does that  
13 mean? Explain it to somebody who -- you know,  
14 to a layperson.

15           MR. PATTERSON: Yes. So a frame or  
16 receiver is basically the part of a firearm that  
17 holds the components that allow a firearm to  
18 function, so the firing mechanism, the trigger  
19 and such, and the sealing component that makes  
20 sure that the barrel is sealed off so that the  
21 round goes out of the barrel and the energy from  
22 the explosion doesn't go elsewhere.

23           So what the critical machining  
24 operations test was is, okay, we're going to  
25 focus on the parts of the frame or receiver that

1 either have the holes drilled or material  
2 removed that are going to hold those parts, and  
3 we're going to see, have those operations been  
4 performed or been performed to some degree? And  
5 if they have, we're going to say that's a frame  
6 or receiver.

7           And what's important is that this  
8 solves the one hole in the AR-15 lower problem  
9 because the critical machining operation for  
10 that machine gun receiver would be drilling that  
11 final hole. So, until that final hole is  
12 drilled or at least indexed, as the government  
13 has indicated, that critical machining operation  
14 has not taken place.

15           But, if the question is "readily,"  
16 then it would be hard to see, well, how it could  
17 be readily in this context and not readily in  
18 the machine gun context.

19           JUSTICE JACKSON: So you prevented the  
20 -- you presented the Court with the critical  
21 machining alternative, and you say you have  
22 these two alternatives. The agency has  
23 presented yet another way of going about this.

24           Do you concede that under a facial  
25 challenge like the one that you've brought, your

1 task is actually to demonstrate that your  
2 alternatives are the only permissible ones under  
3 the statute?

4 MR. PATTERSON: Well, I think it's --  
5 under a rule of party presentation, we've  
6 presented the Court with the alternatives that  
7 have occurred to anyone. So I think these are  
8 the best alternatives that have occurred.

9 JUSTICE JACKSON: So you see the  
10 question as what is the best alternative, and  
11 the Court is just supposed to say we have three  
12 options here, which one do we think the best;  
13 the agency didn't pick the best, its rule is  
14 stricken?

15 MR. PATTERSON: Well -- well, I think  
16 we actually don't have that -- I think our  
17 burden is to show that the agency's is wrong.  
18 Maybe we don't have the right interpretation,  
19 but if their interpretation is incorrect, then  
20 they're asking the wrong question. As --

21 JUSTICE JACKSON: But by "incorrect,"  
22 you mean that they don't have the authority  
23 under the statute to reach that, the -- it's --  
24 it's inconsistent with the statute?

25 MR. PATTERSON: Correct. If "frame or



1 receiver" does not include items that may  
2 readily be converted to frames or receivers,  
3 then this rule is beyond their authority,  
4 regardless of what "frame or receiver" does  
5 mean. So they've gone beyond their authority.

6 And so, you know, we've prevent --  
7 presented the Court with two alternatives that  
8 we think are better interpretations. But the  
9 key point here is that the agency's  
10 interpretation is incorrect.

11 JUSTICE JACKSON: Do you believe that  
12 a weapon that has been disassembled -- a -- a  
13 firearm, a gun that was once fully operational,  
14 everyone would agree was a firearm, it's  
15 disassembled, as sometimes happens, maybe even  
16 after a crime, is that still a firearm or no,  
17 under your view?

18 MR. PATTERSON: Yes. And for two  
19 reasons --

20 JUSTICE JACKSON: Okay.

21 MR. PATTERSON: -- if I can give it.  
22 So the first reason is that will have a frame or  
23 receiver. So that's what Congress put in the  
24 statute to ensure --

25 JUSTICE JACKSON: In my hypo --

1           MR. PATTERSON:  -- that that would be  
2   a firearm.

3           JUSTICE JACKSON:  -- the frame or  
4   receiver is not in the box.

5           MR. PATTERSON:  Oh, then no.

6           JUSTICE JACKSON:  It's not.

7           MR. PATTERSON:  If you don't have the  
8   frame or receiver, then no, it's not a weapon.

9           JUSTICE JACKSON:  Okay.  So all that  
10   matters really is (B), the frame or receiver?

11          MR. PATTERSON:  Well, that is how the  
12   statute is structured.  And part of that may be  
13   due to statutory history.

14          So before this statute, the definition  
15   was "any weapon that is designed to expel a  
16   projectile by the action of an explosive in any  
17   part or parts of any such weapon."  And I think  
18   we can --

19          JUSTICE JACKSON:  Well, what's all  
20   that language doing in there if all that matters  
21   for the purpose of the definition is that it has  
22   a frame or receiver?

23          MR. PATTERSON:  Well, I -- and -- and  
24   so what I was going to say, Your Honor, is that  
25   Congress was working from that background.

1           And they said: Okay, we're going to  
2 alter the definition of (A) to include "readily  
3 convertible weapons"; and we were -- we're going  
4 to alter the definition of (B), instead of  
5 including "every part," to focus on a particular  
6 part, the frame or receiver. And it's the frame  
7 or receiver of any such weapon.

8           So it really could -- so I think that  
9 explains, that's why it's structured that way.  
10 It's maybe not the most straightforwardly  
11 structured statute, but it could be "the frame  
12 or receiver of," and then insert (A), instead of  
13 "any such weapon."

14           That's really how the statute is  
15 structured, a frame or receiver --

16           JUSTICE SOTOMAYOR: I'm sorry, could  
17 you clarify for me what you mean?

18           Assume that there's all the parts of a  
19 gun and -- a -- a weapons kit with all the parts  
20 of the gun, but the receiver or the frame has a  
21 hole missing. So that's the weapon parts kit.

22           MR. PATTERSON: Right. Right.

23           JUSTICE SOTOMAYOR: Is it your  
24 position that under (A), assuming we were to  
25 find --

1 MR. PATTERSON: Mm-hmm.

2 JUSTICE SOTOMAYOR: -- that "readily  
3 convertible" does include some -- some drilling  
4 some holes --

5 MR. PATTERSON: Right.

6 JUSTICE SOTOMAYOR: -- et cetera, just  
7 like a starter gun, to make it a weapon, would  
8 that be covered under (A)?

9 MR. PATTERSON: I don't think -- I  
10 think whether it would be covered would turn on  
11 the interpretation of (B).

12 JUSTICE JACKSON: Ah, now we've got --

13 MR. PATTERSON: If the Court accepted  
14 our backup argument --

15 JUSTICE SOTOMAYOR: -- some -- okay.

16 MR. PATTERSON: And that critical --

17 JUSTICE SOTOMAYOR: So what you're --  
18 you're taking out of (B) "readily convertible,"  
19 and also taking it out of (A)?

20 MR. PATTERSON: No, we're not taking  
21 it out of (A), because -- and it's because of  
22 what (A) was meant to cover. And that is the  
23 starter guns that practically were guns. They  
24 had handgun frames --

25 JUSTICE SOTOMAYOR: You have no --

1                   MR. PATTERSON:  -- but the barrel had  
2                   to be --

3                   JUSTICE SOTOMAYOR:  You have no  
4                   quarrel with the proposition that the agency  
5                   can, within whatever the statute limits it to  
6                   do, to determine what makes a completed or  
7                   nearly -- or -- a -- a completed frame or  
8                   receiver?

9                   MR. PATTERSON:  I'm not sure I  
10                  understand the question.  But we have no  
11                  quarrel, as the alternative with we've  
12                  presented, with the critical machining test and  
13                  the hypothetical Your Honor presented with a  
14                  single hole --

15                  JUSTICE SOTOMAYOR:  Thank you,  
16                  counsel.

17                  MR. PATTERSON:  -- that likely would  
18                  meet that test.

19                  CHIEF JUSTICE ROBERTS:  Anything  
20                  further?

21                  Thank you, counsel.

22                  Rebuttal, General?

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25

1 REBUTTAL ARGUMENT OF  
2 GEN. ELIZABETH B. PRELOGAR  
3 ON BEHALF OF THE PETITIONERS

4 GENERAL PRELOGAR: Thank you.

5 Mr. Chief Justice, I want to begin  
6 with a question you asked about why  
7 manufacturers would leave these holes undrilled.  
8 You said: What is the purpose?

9 My friend responded that it's to  
10 create a kit that hobbyists can put together. I  
11 think that that's a questionable proposition  
12 given that if it only takes 20 minutes, the  
13 hobbyist is probably not going to get his  
14 money's worth and won't actually have the  
15 experience of building a gun.

16 But I also think it's contradicted by  
17 the facts on the ground. Because what the  
18 evidence shows is that these guns were being  
19 purchased and used in crime. They were sold to  
20 be crime guns.

21 There was a 1,000 percent increase  
22 between 2017 and 2021 in the number of these  
23 guns that were recovered as part of criminal  
24 investigations.

25 And it makes perfect sense, because

1 the whole reason why you would want to get your  
2 hands on one of these unserialized, untraceable  
3 firearms is if you are a prohibited person or  
4 you want to use that gun in a crime.

5 And more fundamentally, if there is a  
6 market for these kits for hobbyists, they can be  
7 sold to hobbyists. You just have to comply with  
8 the requirements of the Gun Control Act.

9 Someone who is lawfully allowed to  
10 possess a firearm and wants to build it can  
11 purchase that kit if they undergo a background  
12 check. And so if there is a market for these  
13 products, they can operate under the statute.

14 The evidence shows that actually the  
15 market for ghost guns essentially collapsed  
16 after this rule was permitted to go into effect,  
17 which I think just underscores what was evident  
18 all along: The reason why you want a ghost gun  
19 is specifically because it's unserialized and  
20 can't be traced.

21 On the question of a frame or  
22 receiver, Justice Sotomayor you asked questions  
23 about exactly what standard governs here. And I  
24 think it's helpful to break down the  
25 interpretive question into two points.

1                   The first one is: This is an  
2 undefined term in the statute, does it require  
3 the weapon to be functional? We think the  
4 answer to that is no.

5                   If you are missing a single hole, then  
6 you can clearly recognize that as an unfinished  
7 component part of a weapon, and it is readily  
8 convertible to function. And that fits within  
9 the plain dictionary definition of what a frame  
10 or receiver is understood to be. No different  
11 than a bicycle missing pedals or a tennis racket  
12 that is sold unstrung.

13                   We have a picture of this on page 34  
14 of our brief, what these frames and receivers  
15 look like. And it's hard to know what else to  
16 call them because they look exactly like the  
17 principal structural component of a gun.

18                   But that just raises the follow-on  
19 question: Okay, if it doesn't have to be  
20 functional, exactly what standard should you use  
21 to measure when it is a frame or receiver  
22 regulated by the statute?

23                   And there are good reasons why ATF  
24 focused on whether it can be readily  
25 convertible.



1           First, that's most consistent with how  
2 Congress has approached this issue when it has  
3 defined terms under the federal firearms laws.  
4 That's the standard that Congress itself uses to  
5 mark the terrain of what products are regulated.

6           Second, there is a consistent agency  
7 practice here of applying that "readily  
8 converted" standard.

9           My friend, several times, tried to  
10 suggest that the 50-plus years of agency  
11 practice, instead, focused on whether it has  
12 reached a critical stage of manufacture. But  
13 that's ignoring the actual elements cited in the  
14 classification letters.

15           They looked not just at what had been  
16 done to the gun, but what steps remained, how  
17 much time it would take to perform those  
18 functions, what equipment you would need to make  
19 that functional, what kind of skill you would  
20 need, and whether there are other parts.

21           None of those elements go to what has  
22 already been machined on that particular frame  
23 or receiver. Instead, they are centrally  
24 relevant to whether it can be readily converted  
25 to function, just as the agency has said all

1 along.

2 For a third reason, that means that  
3 this is a standard that is familiar in the law  
4 and familiar to industry. I think it's really  
5 notable here that we don't have the major gun  
6 manufacturers suing us about this final rule.  
7 And the reason for that is because this "readily  
8 converted" standard is the one that has governed  
9 their conduct ever since the Gun Control Act was  
10 enacted.

11 That also means that there is a stable  
12 body of judicial precedent and agency practice  
13 to draw on here in further answering concerns  
14 about whether particular types of products will  
15 be regulated. Which I think Justice Kavanaugh  
16 also answered some of the concern about how the  
17 regulated parties will know whether their  
18 conduct falls within the scope of the law.

19 Finally, in thinking about  
20 Respondents' primary argument here, which is  
21 that a single undrilled hole is enough to exempt  
22 a product from regulation, I think the Court  
23 doesn't have to blind itself to the practical  
24 ramifications of that rule.

25 The agency's interpretation reflected

1 in this rule is the status quo. It is how the  
2 law has been applied over 50 years. And if this  
3 Court now says that one undrilled hole is enough  
4 to exempt these products from regulation, then  
5 that is going to be a sea change in how the Gun  
6 Control Act is implemented.

7 At that point it can't serve out its  
8 function because all manufacturers everywhere  
9 could simply exempt their products from  
10 regulation through that simple expedient. And  
11 that means that going forward, all guns could  
12 become ghost guns.

13 This Court said 200 years ago in *The*  
14 *Emily* that you don't have to interpret a statute  
15 to be self-defeating like that, if there is a  
16 plausible alternative construction.

17 Our construction is not only  
18 plausible, it is the best reading of this  
19 statute looking at text, context, purpose, and  
20 history. So I would encourage the Court to say  
21 that and reverse the Fifth Circuit.

22 CHIEF JUSTICE ROBERTS: Thank you,  
23 General.

24 Counsel, the case is submitted.

25 (Whereupon, at 11:21 a.m., the case

1 was submitted.)

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