

The Supreme Court Invalidates the ATF's Bump-Stock Ban

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Congressional [interest](#) in “bump-stock” devices—accessories that allow semiautomatic rifles effectively to mimic the firing capabilities of a fully automatic weapon—grew after [authorities discovered](#) that the perpetrator of the October 2017 mass shooting in Las Vegas had attached such devices to several of his semiautomatic firearms. Federal legislation does not expressly regulate bump stocks. At the federal administrative level, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) banned these devices—effective March 26, 2019—in a [final rule](#) published in the *Federal Register*. ATF did so by classifying bump-stock devices as prohibited “machineguns,” as that term is defined in the [National Firearms Act of 1934](#) (NFA) and the [Gun Control Act of 1968](#) (GCA). In response to legal challenges, several federal appeals courts subsequently declined to invalidate or enjoin the rule. On January 6, 2023, however, the en banc Fifth Circuit held that the rule [violates](#) the Administrative Procedure Act (APA), adding that an act of Congress is required to prohibit bump stocks.

On June 14, 2024, the Supreme Court [affirmed](#) the Fifth Circuit’s decision, reasoning that a bump-stock device does not meet the statutory definition of a “machinegun” and that in issuing a contrary rule, ATF exceeded its statutory authority. This Sidebar explains the legal framework for regulating machineguns; discusses ATF’s final rule; examines the circuit split that led to the Supreme Court decision; summarizes the Supreme Court’s majority and separate opinions; and offers considerations for Congress.

Statutory Regulation of Machineguns

Machineguns are separately regulated by the NFA and the GCA. [Both statutes](#) rely on the definition found in the NFA:

The term “machinegun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

The NFA imposes various [taxes](#) on the importation, manufacture, and transfer of covered firearms like machineguns and requires [registration](#) with the Attorney General. The GCA, as amended by the [Firearms](#)

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[Owners' Protection Act](#) (FOPA), makes it unlawful to transfer or possess a machinegun subject to two exceptions: (1) transfers to or from, or possession by (or under the authority of), federal or state authorities; and (2) the transfer or possession of a machinegun lawfully possessed before the effective date of the act (May 19, 1986). FOPA's machinegun ban is codified at [18 U.S.C. § 922\(o\)](#).

Before ATF promulgated its final rule regarding bump stocks, the agency had interpreted via a [policy statement](#) the phrase “automatically . . . by a single function of the trigger” in the NFA's definition of “machinegun” to cover devices enabling a weapon to shoot “[more than one shot, without manual reloading, by a single pull of the trigger](#).” Still, before issuing the final rule, ATF had not treated bump-stock devices as a single, homogenous category of firearm accessory. Rather, in previous determinations responding to classification requests as to whether a bump stock converts a semiautomatic firearm into a machinegun, ATF had reached [different](#) conclusions for different bump-stock devices based on how each device uniquely functioned.

2018 ATF Final Rule

In its [final rule](#), ATF examined various “bump-stock-type devices,” including “‘bump fire’ stocks, slide-fire devices, and devices with certain similar characteristics.” ATF characterized covered devices as replacing a rifle's standard stock and allowing the rifle to slide back and forth rapidly by harnessing the energy from the firearm's recoil.

In concluding that bump-stock-type devices are machineguns, ATF's [final rule](#) construed two terms in the NFA and GCA's definition of “machinegun”: (1) “automatically,” and (2) “single function of the trigger.” ATF explained in the final rule that it understood “‘automatically’ as it modifies ‘shoots, is designed to shoot or can be readily restored to shoot’” to mean “‘functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger.’” ATF, in turn, defined “single function of the trigger” as “a single pull of the trigger and analogous motions.” So defined, ATF concluded that a bump-stock device is a machinegun because it “allows a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.” ATF also determined that bump-stock devices governed by the rule were created *after* FOPA's effective date. Therefore, because the statutory definition of machinegun, as interpreted by ATF, encompasses bump-stock devices, those firearm accessories could no longer be possessed or transferred after the rule's effective date.

Prior Appellate Caselaw Regarding ATF's Bump-Stock Rule

After ATF issued the [final rule](#), several bump-stock owners and organizational advocates filed lawsuits to block the rule from taking effect. They contended that ATF lacked statutory authority to promulgate the final rule and, thus, violated the [APA](#). Between 2019 and 2022, the U.S. Courts of Appeals (referenced in this Legal Sidebar according to circuit number or jurisdictional designation) for the [Sixth](#), [Tenth](#), and [D.C.](#) Circuits considered APA challenges filed in their respective jurisdictions. These APA rulings mostly hinged on the circuit courts' application of the administrative law doctrine commonly called “[Chevron deference](#).” The doctrine refers to the Supreme Court case [Chevron U.S.A. Inc. v. Natural Resources Defense Council](#). In that case, the Supreme Court announced a two-part framework for evaluating an agency's interpretation in a “legislative rule” of a statute it administers. At step one, courts determine whether an agency-administered statute is ambiguous. If so, courts proceed to step two, asking whether the agency's statutory interpretation is reasonable. Courts uphold (and thus defer to) a [reasonable agency interpretation](#), even if it is not necessarily the best or most reasonable interpretation of the statute. (The constitutionality of the *Chevron* framework is currently under review by the Supreme Court, as discussed in [this](#) separate Sidebar.)

As applied to the bump-stock rule, the [D.C. Circuit](#) concluded in a 2019 decision, for example, that (1) the two statutory terms at issue (“automatically” and “single function of the trigger”) were [ambiguous](#), and (2) ATF reasonably interpreted those terms in the final rule. [The court commented](#) that ATF “is better equipped than we are to make the pivotal policy choice between a mechanism-focused and shooter-focused understanding of ‘function of the trigger.’” The [Tenth Circuit](#) issued a similar ruling upholding ATF’s bump-stock rule. Additionally, after a divided [panel](#) of the Sixth Circuit held that *Chevron* deference did not apply and that the statutory definition of machinegun does not include bump stocks, the [Sixth Circuit](#) granted rehearing en banc, vacated the panel opinion, and evenly divided on the merits. This division resulted in the affirmance of the district court’s ruling upholding the rule. The D.C. Circuit [revisited](#) the bump-stock rule in 2022, and this time a panel upheld the rule without relying on the *Chevron* framework. The [court](#) concluded that there was “no need to decide what deference, if any, [the] regulation should receive” because “the agency’s interpretation of the statute is the best one,” meaning the rule was lawful. The full D.C. Circuit [voted](#) not to hear the case en banc.

On January 6, 2023, the en banc Fifth Circuit in *Cargill v. Garland* [held](#) that ATF’s bump-stock rule was unlawful. Twelve of the 16 Fifth Circuit judges [determined](#) that, even assuming the relevant statutory terms were ambiguous, the rule of lenity—a canon of construction under which ambiguous criminal statutes are interpreted in favor of the defendant—would apply, meaning that the definition of “machinegun” should be construed narrowly to exclude the bump-stock devices at issue. The en banc majority further [reasoned](#) that *Chevron* deference does not apply to agency interpretations of statutes (including ATF’s bump-stock rule) with criminal law implications, adding that legal obligations carrying criminal liability should come in the form of a statute from Congress, and not a rule from an administrative agency. Eight judges also would have held, among other things, that the statutory terms “automatically” and “single function of the trigger” are unambiguous, that they do [not](#) warrant *Chevron* deference, and that they do not by their own terms cover the devices at issue. Whereas their sister courts viewed a shooter-focused perspective as an available interpretation of the statutory language supporting ATF’s rule, these judges focused on what they viewed as the statute’s unambiguous reference to “the movement of the trigger itself, and not the movement of a trigger finger.” So oriented, the judges described the function of the devices at issue: an individual pulls the trigger, [leading](#) to the firing of a single shot; subsequent shots are possible only when the user “maintain[s] manual, forward pressure on the barrel and manual, backward pressure on the trigger ledge.” According to these judges, multiple shots from the bump-stock devices at issue depend on additional action and [thus](#) are not “automatic”; moreover, multiple shots still require multiple functions of the trigger itself, [not](#) a “single function” as the statute requires.

On April 25, 2023, a [panel](#) of the Sixth Circuit joined the Fifth Circuit in holding that bump stocks are not machineguns under the NFA. While acknowledging that the en banc Sixth Circuit was “split down the middle” on the issue, the Sixth Circuit panel determined that ATF’s definition was not entitled to *Chevron* deference due to the predominantly criminal scope of the statutory scheme, among other things; that the statutory definition of machinegun was ambiguous in the context of bump stocks; and that the rule of lenity weighed against reading the definition to include bump stocks.

Supreme Court Strikes Down the ATF Rule

Following the Fifth Circuit’s ruling in *Cargill*, the government filed a [petition](#) for a writ of certiorari. The Supreme Court [granted](#) the petition, agreeing to resolve whether a bump-stock device is a “machinegun” within the meaning of 26 U.S.C. § 5845(b). In its filings with the Court, the government [acknowledged](#) that the case presented a question of pure statutory interpretation and that the ATF rule is not entitled to deference, declining to rely on *Chevron*. The Court issued its decision on June 14, 2024.

Majority Opinion

In a 6-3 [ruling](#), the Court invalidated the ATF rule. In the majority opinion, authored by Justice Thomas, the Court [held](#) that a firearm equipped with a bump stock does not satisfy the statutory definition of a machinegun in dual respects: (1) “it cannot fire more than one shot ‘by a single function of the trigger,’” and (2) “even if it could, it would not do so ‘automatically.’” As to the phrase “a single function of the trigger,” the Court [determined](#) that the shooter pulling the trigger *and* maintaining forward pressure on the front grip of the firearm are required for a firearm with a bump stock to fire multiple rounds. The latter, additional manual action is not a function of the trigger, the Court [pointed out](#), and thus a firearm with a bump stock does not meet the “single function of the trigger” definition of a machinegun.

In particular, the Court [explained](#) that with a firearm, a single pull of the trigger initiates a single firing cycle, the firearm recoils, the trigger moves back from the trigger finger, and the trigger is reset. With a firearm equipped with a bump stock, the shooter’s nontrigger hand maintains forward pressure on the firearm’s front grip, causing the firearm to move forward and the trigger to move forward and contact the shooter’s stationary trigger finger, leading to another firing cycle. Thus, according to the majority, the firing of multiple shots depends on the initial trigger pull and on a shooter’s forward motion causing the trigger to reengage with the shooter’s trigger finger. The majority therefore rejected the government’s argument that only a single pull of a trigger is required “to initiate a bump-firing sequence of multiple shots.” As to the “automatic” element of the statutory definition of a machinegun, the Court [observed](#) that a nonautomatic firearm is one in which “the shooter must do more than simply engage the trigger one time,” and with a bump stock the Court [determined](#) that a shooter does do something more: the shooter “actively maintains just the right amount of forward pressure on the rifle’s front grip with his nontrigger hand.”

Accordingly, the Court concluded that ATF exceeded its statutory authority by issuing a rule classifying bump stocks as “machineguns” and affirmed the Fifth Circuit’s judgment. In its decision, the Fifth Circuit had remanded the case to the district court to enter judgment for the plaintiff “and to determine the proper scope of relief.” The Fifth Circuit observed that vacatur of agency action is the default rule in the Circuit. The court reasoned, however, that the district court should consider the appropriate relief in the first instance since the parties hadn’t briefed the remedy question and it could be the case “that a more limited remedy is appropriate in these circumstances.” Thus, it appears that the next step in the case will be for the district court to determine whether vacatur of the rule or some alternative relief is appropriate.

Concurring and Dissenting Opinions

Justice Alito issued a brief [concurring opinion](#). He wrote separately to [provide](#) his view that the Court’s decision is compelled by the statutory text, notwithstanding the “horrible shooting spree in Las Vegas”; that a semiautomatic firearm with a bump stock may have the same “lethal effect” as a machinegun; and that the “remedy” for the “disparate treatment” between the two is for Congress to amend the law.

Justice Sotomayor penned the [dissenting opinion](#), which would have upheld the rule. The dissent disagreed with the majority’s application of the two statutory terms, “single function of the trigger” and “automatic,” to bump-stock devices. First, the dissent charged that the majority’s interpretation of a “single function of the trigger”—beginning with an action of the shooter that initiates a firing sequence and ending with the reset of the trigger—[focused](#) improperly on the internal mechanism of the firearm. The dissent would have [anchored](#) its interpretation of the phrase on the conduct of the shooter and, because ongoing firing sequences are initiated by the shooter “activat[ing] the trigger only a single time,” a semiautomatic firearm with a bump-stock device can fire more than one shot with “a single function of the trigger.”

The dissent also would have [concluded](#) that a semiautomatic firearm with a bump stock shoots more than one shot “automatically.” A machinegun that fires continuous shots due to continuous backwards pressure

on the trigger, as with an M16, is legally indistinguishable from a semiautomatic firearm with a bump stock that can fire continuous shots due to the continuous forward pressure on the barrel or front grip, the dissent [reasoned](#). In both situations, some human input is needed, but that manual action does not remove an M16 from the definition of a machinegun any more than it would a firearm fitted with a bump stock, in the dissent's view. In creating a distinction between the two, and [placing](#) bump stocks "back in civilian hands," the dissent [cautioned](#) that the majority opinion "will have deadly consequences."

Considerations for Congress

If Congress disagrees with the Supreme Court's interpretation of 26 U.S.C. § 5845(b), it may, as Justice Alito suggested, amend the statute (and related provisions in Title 18) to clarify whether bump-stock devices are covered by the definition of a "machinegun." Congress could opt to codify ATF's interpretation of the relevant statutory language or could alternatively expressly exclude bump stocks from the definition. With respect to the latter approach, prior to the *Cargill* ruling Members of Congress introduced bills that generally would have defined bump-stock devices as prohibited machineguns (see, e.g., [here](#) and [here](#)). The sponsor of the Senate measure [sought](#) unanimous consent for its adoption on June 18, 2024, but an objection blocked the measure from moving forward.

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