

To: (b) (6); Shaefer, Christopher
C. (b) (6)
Cc: McMullan, William P. (b) (6); Bennett, Megan A. (b) (6)
Gleysteen, Michael (b) (6)
From: Allen, Joseph J.
Sent: Wed 10/4/2017 12:40:55 AM
Subject: RE: SAC Snyder Press Conference Remarks
SAC Snyder Vegas Remarks 1 REVISED.docx

My revisions attached— (b) (5) out
understand the decision to address the issue was jointly made with the Sheriff, FBI and LE partners. I've
revised to limit the scope of the comments on the subject as much as possible under the time constraints.

From: (b) (6)
Sent: Tuesday, October 3, 2017 7:45 PM
To: Shaefer, Christopher C. (b) (6); Allen, Joseph J. <(b) (6)>
Cc: McMullan, William P. (b) (6); Bennett, Megan A. <(b) (6)>;
Gleysteen, Michael (b) (6)
Subject: Re: SAC Snyder Press Conference Remarks

Looks good.

Joe, it's ready for front office review.

(b) (6)

Sent from my iPhone
On Oct 3, 2017, at 7:42 PM, (b) (6). <(b) (6)> wrote:

Thanks, Chris. Reviewing it now.

Sent from my iPhone
On Oct 3, 2017, at 7:38 PM, Shaefer, Christopher C. (b) (6) > wrote:

Bill - thanks for forwarding for clearance.

(b) (6) - Quick turnaround---please review and comment, once done please
forward to Joe for front office review and clearance..... when doing so, please copy
all on this email string for awareness.

Chris

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648.(b) (6) | C: (b) (6)
On Oct 3, 2017, at 7:29 PM, McMullan, William P. <(b) (6)>
wrote:

Please review and let me know if you have any concerns. SAC
Snyder plans on making this statement at 1700 hrs PST.
Thanks.

William P. McMullan
Deputy Assistant Director
ATF Field Operations – West
C – (b) (6)
O – 202-648-(b) (6)

From: Corneiro, Alexandria A.
Sent: Tuesday, October 03, 2017 7:25 PM
To: McMullan, William P. (b) (6)
Subject: SAC Snyder Press Conference Remarks

Sir,

Good afternoon, I have attached a copy of the remarks I drafted for SAC Snyder for you to review. The remarks are for the next press conference which will take place at 1700 today. I apologize for the large font. I write her remarks in broadcast format to make them easier for her to read at the podiums. Thank you for your time.

Very Respectfully,
Alexandria A. Corneiro
Public Information Officer
U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
San Francisco Field Division
Office: (925) 557-(b) (6)
Mobile: (b) (6)
(b) (6)
www.atf.gov/san-francisco-field-division
5601 Arnold Road, Suite 400
Dublin, CA 94568

<SAC Snyder Vegas Remarks 1.docx>

**GOOD AFTERNOON/ I'M SPECIAL AGENT IN CHARGE JILL
SNYDER/ OF ATF'S SAN FRANCISCO FIELD DIVISION// SPECIAL
AGENTS FROM THE SAN FRANCISCO FIELD DIVISION'S/ LAS
VEGAS FIELD OFFICE/ RESPONDED TO THE SHOOTING THAT
OCCURRED ON SUNDAY//**

**ADDITIONAL AGENTS FROM OTHER LOCATIONS WITHIN THE
SAN FRANCISCO FIELD DIVISION/ AS WELL AS/ AGENTS FROM
ATF'S LOS ANGELES/ DALLAS/ PHOENIX AND BOSTON FIELD
DIVISIONS HAVE BEEN WORKING ON THIS INVESTIGATION//**

**WE KNOW THAT YOU HAVE MANY QUESTIONS REGARDING
THE FIREARMS IN THIS CASE// THERE HAS ALSO BEEN A LOT OF
UNOFFICAL INFORMATION REPORTED REGARDING THE
GUNS//**

**WE WOULD LIKE TO CLEAR UP ANY CONFLICTING
INFORMATION REGARDING THE NUMBERS OF FIREARMS AND
THE CURRENT STATUS OF TRACE INFORMATION//**

PLEASE UNDERSTAND THAT THE INVESTIGATION IS ONGOING AND I WONT BE TAKING QUESTIONS AT THIS TIME BECAUSE WE ARE STILL WORKING THROUGH ALL OF OUR INVESTIGATIVE FINDINGS BUT I WILL GIVE YOU THE FACTS THAT WE HAVE AT THIS TIME//

CURRENTLY/ 47 FIREARMS HAVE BEEN RECOVERED AND A VERY LARGE AMOUNT OF AMMUNITION// THESE FIREARMS WERE RECOVERED FROM THREE DIFFERENT LOCATIONS: THE HOTEL ROOM, THE HOUSE IN MESQUITE, and THE HOUSE IN VERDI//

THE RECOVERED FIREARMS INCLUDED RIFLES, SHOTGUNS AND PISTOLS WHICH WERE PURCHASED BY THE GUNMAN IN NEVADA/ UTAH/ CALIFORNIA AND TEXAS

AT THIS TIME/ NONE OF THE GUNS RECOVERED APPEAR TO BE HOMEMADE//

**12 “BUMP FIRE”-TYPE STOCKS WERE ALSO FOUND ON
FIREARMS RECOVERED FROM THE HOTEL ROOM//**

**FIREARMS ACCESSORIES, LIKE BUMP STOCK DEVICES, ARE
GENERALLY UNREGULATED UNDER FEDERAL LAW. THEY
ARE SUBJECT TO FEDERAL REGULATION ONLY IF THEY FALL
WITHIN A SPECIFIC PROVISION OF THE NATIONAL FIREARMS
ACT OR GUN CONTROL ACT.**

**THE ATF FIREARMS AND AMMUNITION TECHNOLOGY
DIVISION REVIEWS DEVICES SUCH AS BUMP FIRE STOCKS TO
DETERMINE WHETHER THEY SHOULD BE CLASSIFIED AS
FIREARMS SUBJECT TO THE PROVISIONS OF THE NFA AND GCA --
INCLUDING PROVISIONS WHICH STRICTLY LIMIT THE
MANUFACTURE AND POSSESSION OF FULLY AUTOMATIC
WEAPONS//**

THE CLASSIFICATION OF THESE DEVICES DEPENDS ON WHETHER THEY MECHANICALLY ALTER THE FUNCTION OF THE FIREARM TO FIRE AUTOMATICALLY//

I CANNOT FURTHER COMMENT ON THE BUMP-FIRE TYPE DEVICES RECOVERED IN THIS CASE AT THIS TIME AS THE PROCESSING AND ASSESSMENT OF EVIDENCE ONGOING, INCLUDING WHETHER OR HOW THE FIREARMS WITH BUMP-STOCKS WERE USED//

WE ARE STILL IN THE PROCESS OF COMPILING ALL OF THE TRACE DATA//

AS THE INVESTIGATION PROCEEDS ATF WILL CONTINUE TO CONDUCT INTERVIEWS AND PROVIDE OUR RESOURCES AND FULL SUPPORT TO SHERIFF AND LOCAL LAW ENFORCEMENT//

THANK YOU//

WWW

Pages 568-571

Pulled for additional review

SM • METS • US



(19) **United States**

(12) **Patent Application Publication**
Cottle et al.

(10) **Pub. No.: US 2016/0187099 A1**
(43) **Pub. Date: Jun. 30, 2016**

(54) **ADJUSTABLE LENGTH SLIDE-ACTION RIFLE STOCK**

(52) **U.S. Cl.**
CPC *F41C 23/14* (2013.01); *F41C 23/10* (2013.01); *F41C 23/20* (2013.01)

(71) Applicant: **Slide Fire Solutions, LP**, Moran, TX (US)

(72) Inventors: **Jeremiah Cottle**, Moran, TX (US);
Edmund R. Retort, Edinburg, PA (US);
Christopher Taylor Nichols, Cisco, TX (US);
Martin F. Anness, Poland, OH (US)

(57) **ABSTRACT**

(21) Appl. No.: **14/986,280**

(22) Filed: **Dec. 31, 2015**

Related U.S. Application Data

(60) Provisional application No. 62/098,850, filed on Dec. 31, 2014.

Publication Classification

(51) **Int. Cl.**
F41C 23/14 (2006.01)
F41C 23/20 (2006.01)
F41C 23/10 (2006.01)

A manually-actuated slide-action handle (22) for a semi-automatic firearm. The handle has a chassis portion (58) and a length-adjustable shoulder stock portion (60) to enable a user to alter the trigger pull length of the firearm. A finger rest (82) stabilizes the end of a user's trigger finger stretched in front of the firearm trigger. The finger rest is detachable from the chassis and has a generally U-shaped configuration that is adapted to connect to the handle in either a right-handed position or an inverted left-handed position. A lock switch (116) is located on the grip base of a pistol grip feature (66) to selectively arrest relative sliding movement between the firing unit and the handle. A brake (76) is controlled by an engagement lever to selectively remove play between the handle and the firing unit portion of the firearm for competitive slow shooting.

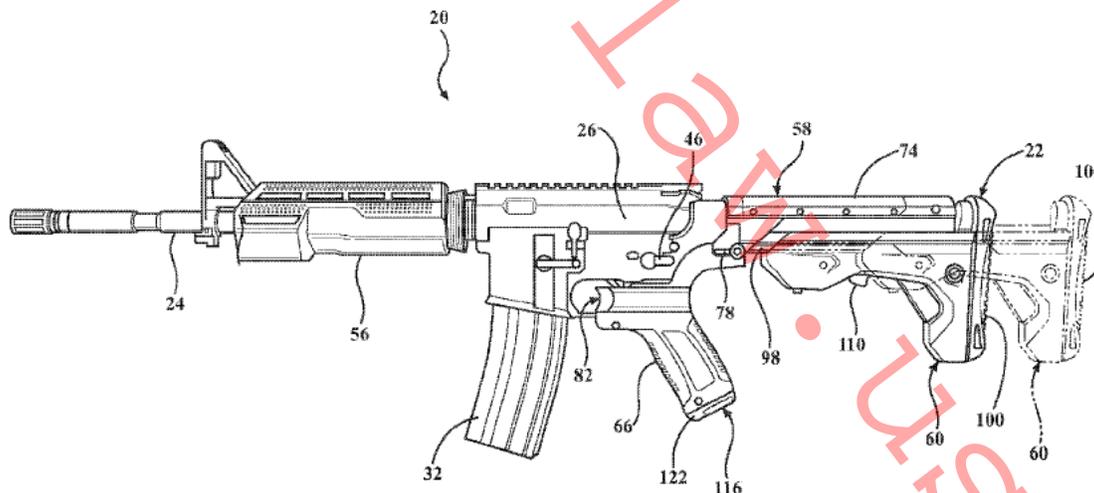
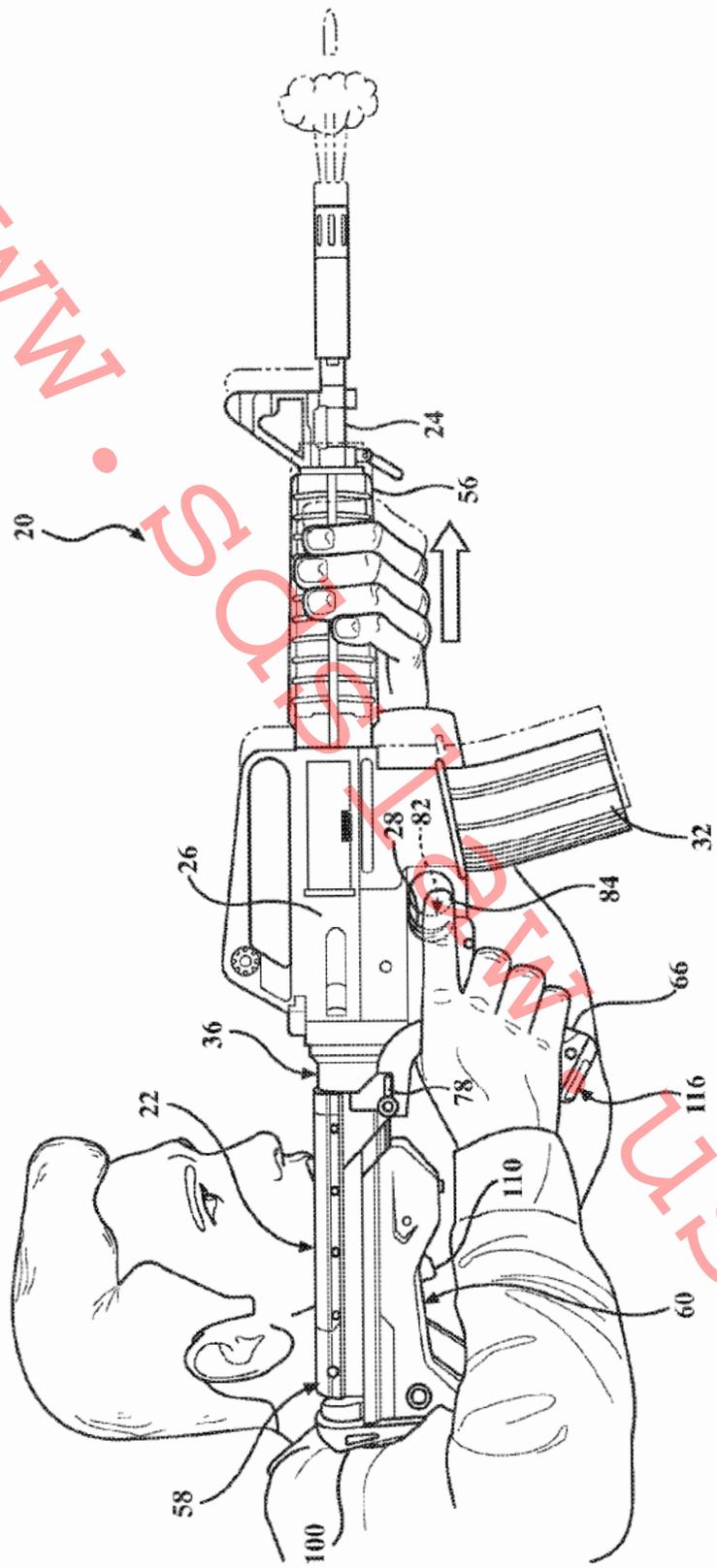


FIG. 1



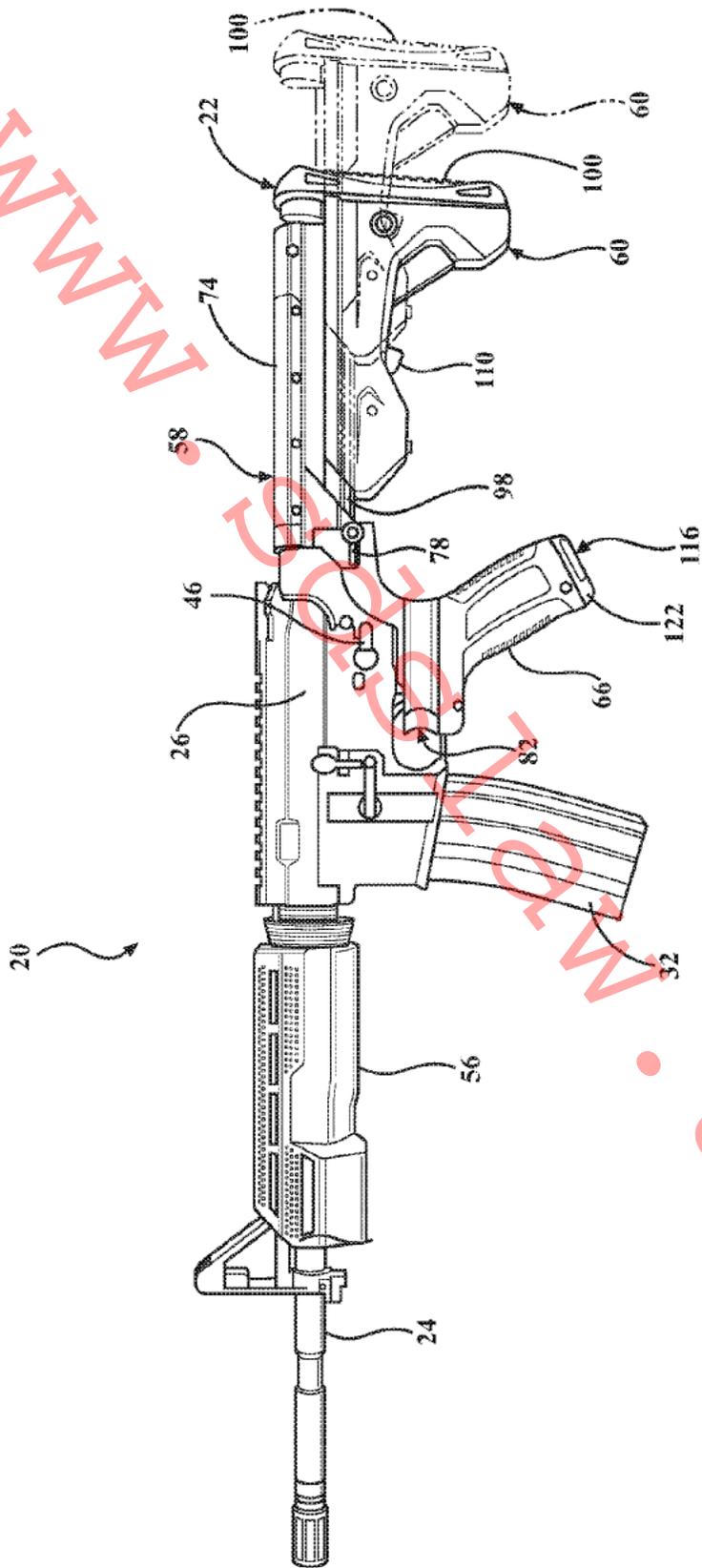


FIG. 2

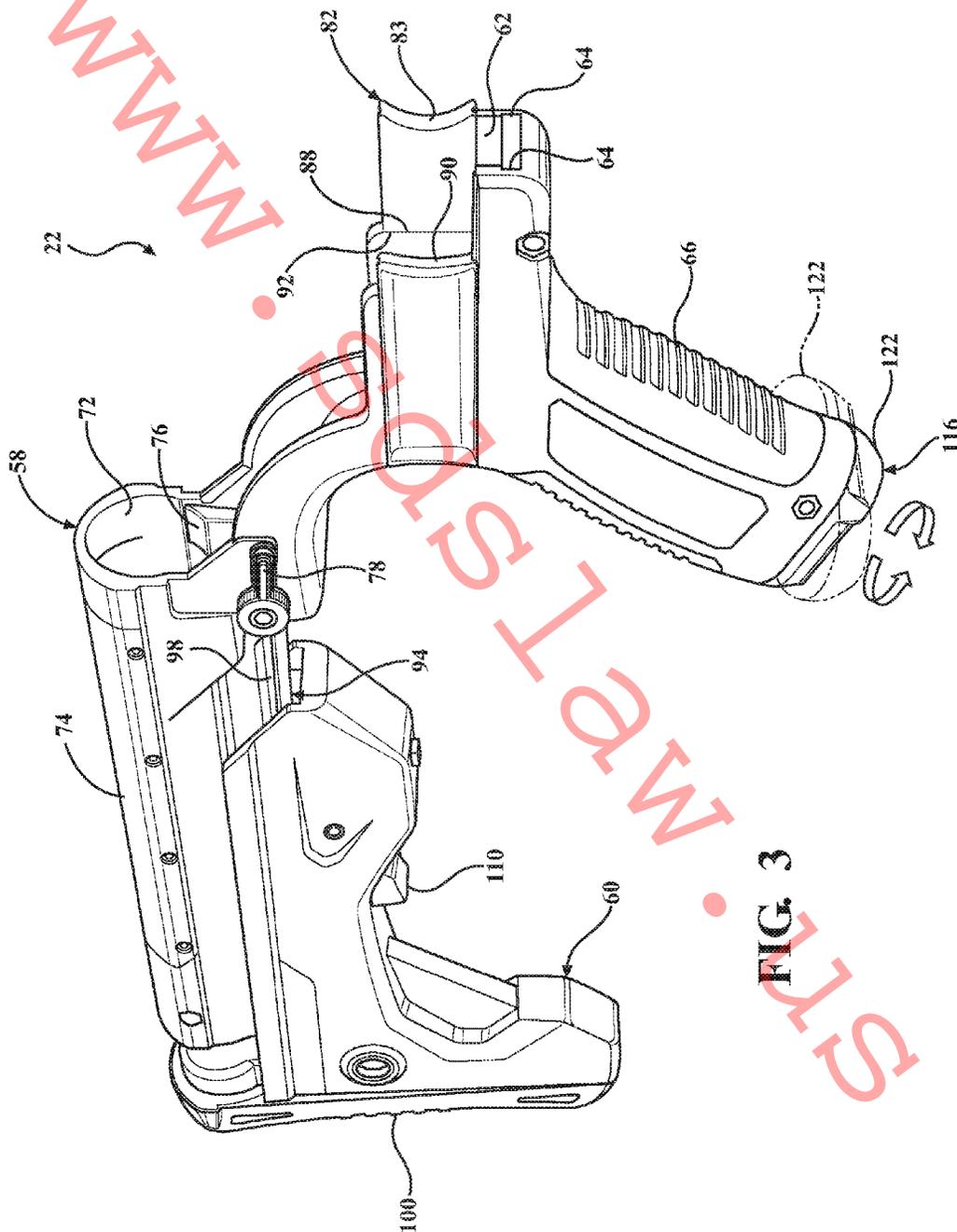


FIG. 3

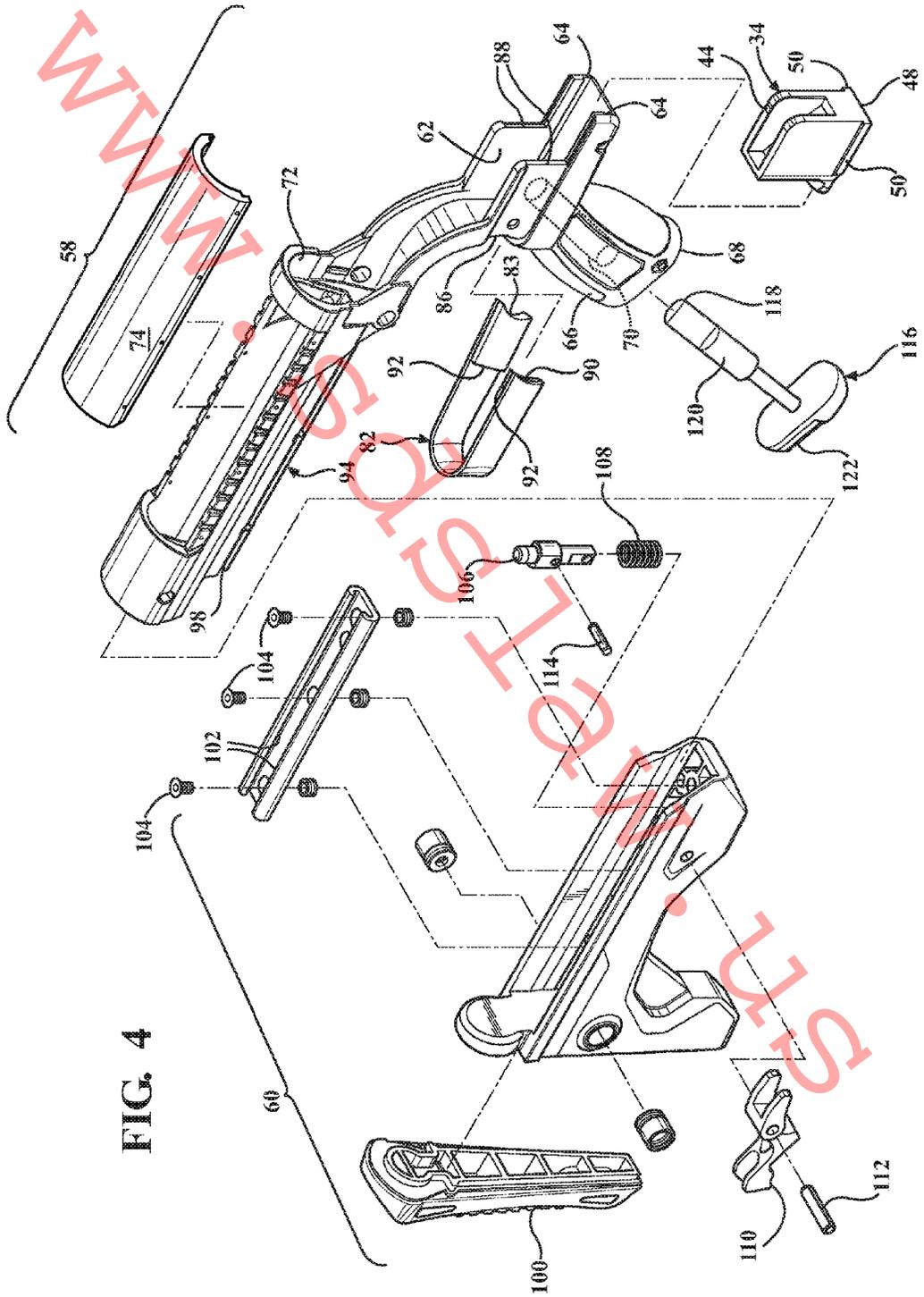


FIG. 4

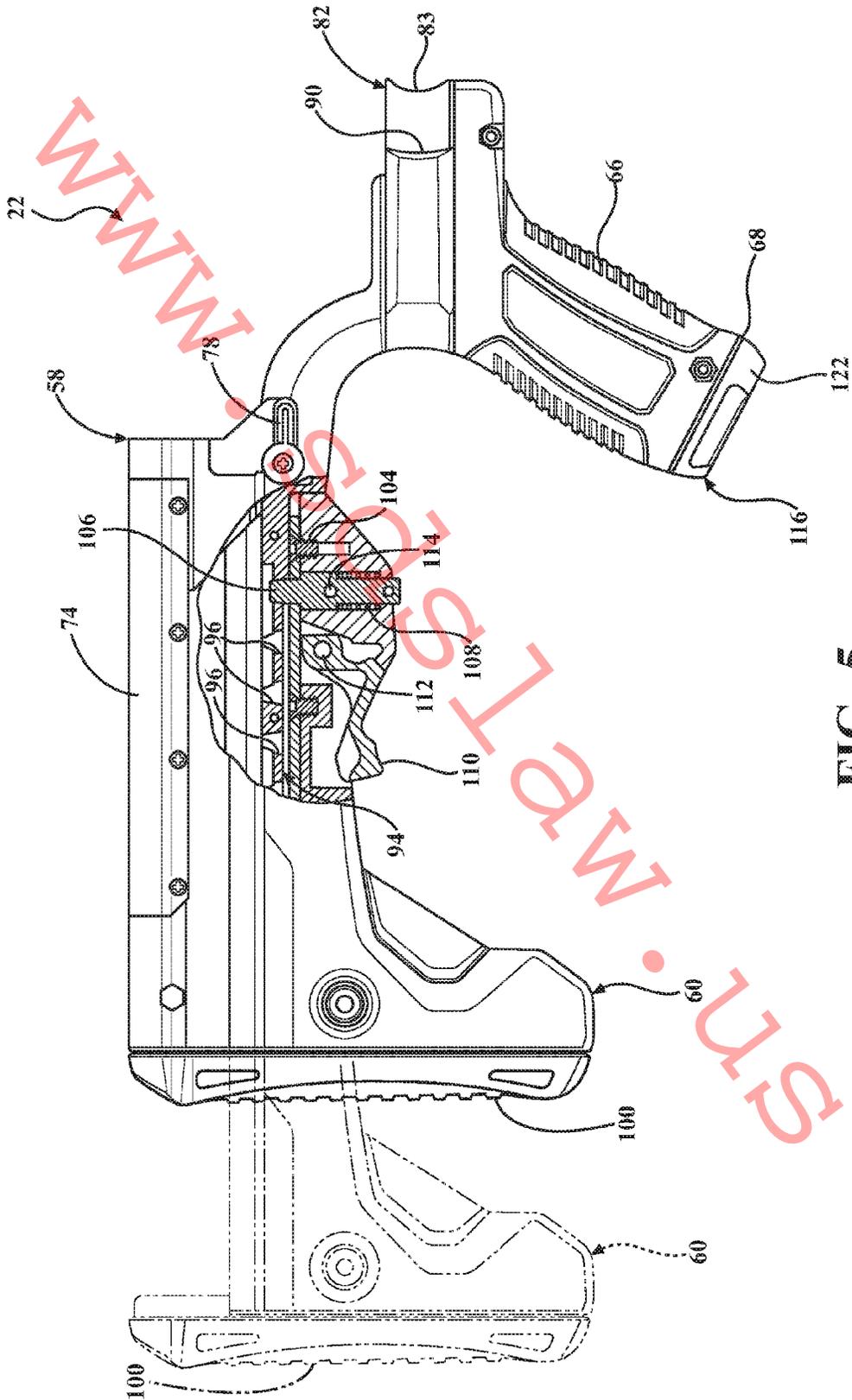


FIG. 5

FIG. 6

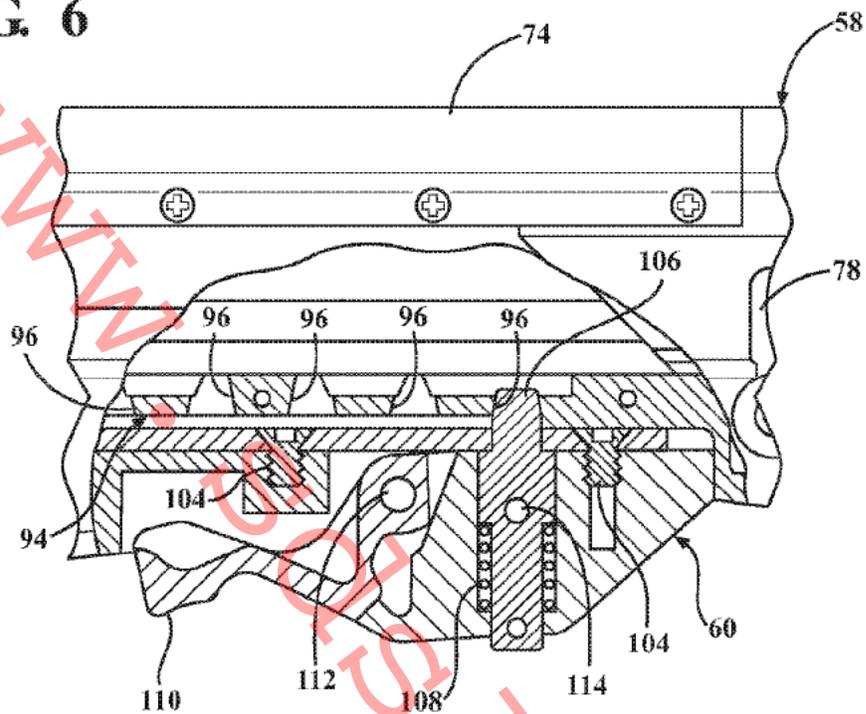
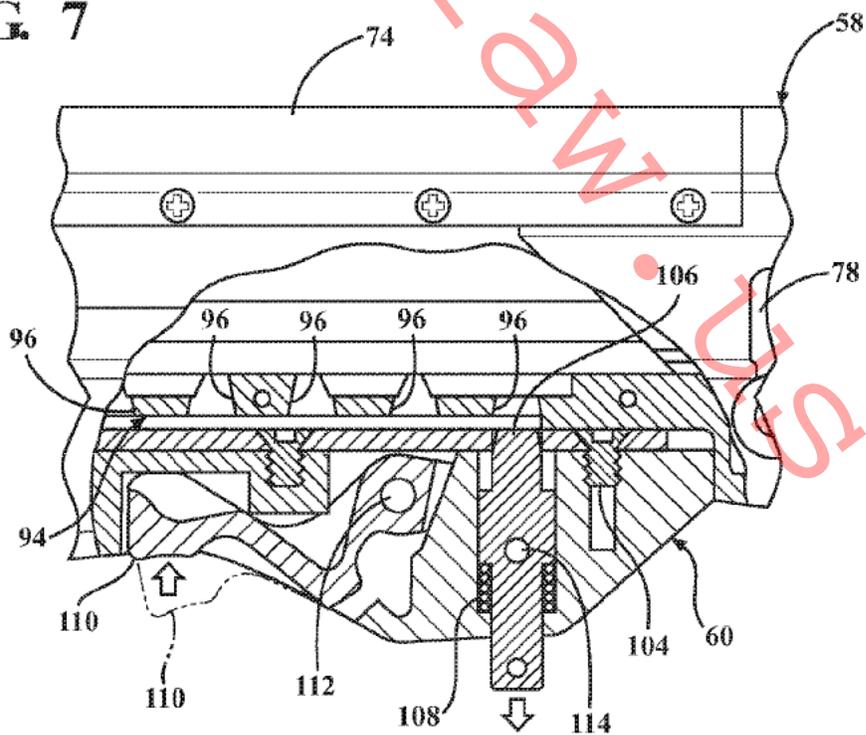


FIG. 7



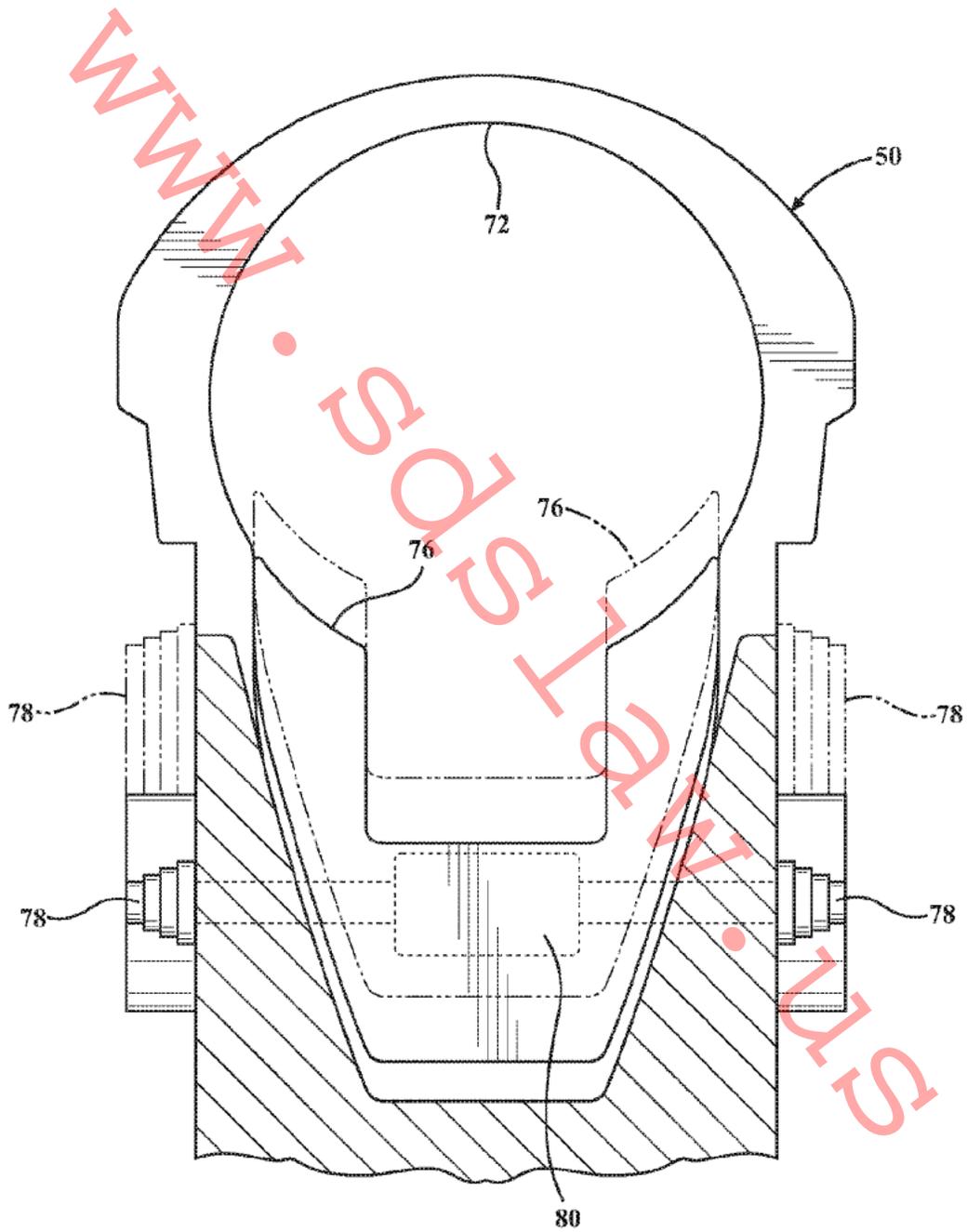


FIG. 8

FIG. 9

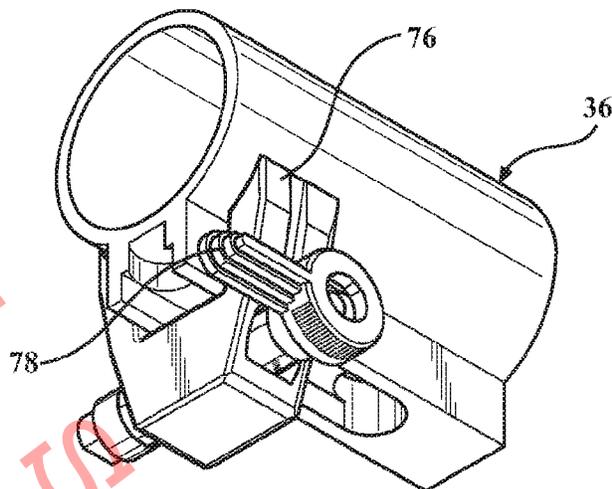


FIG. 10

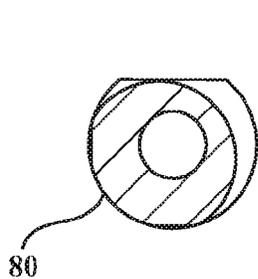
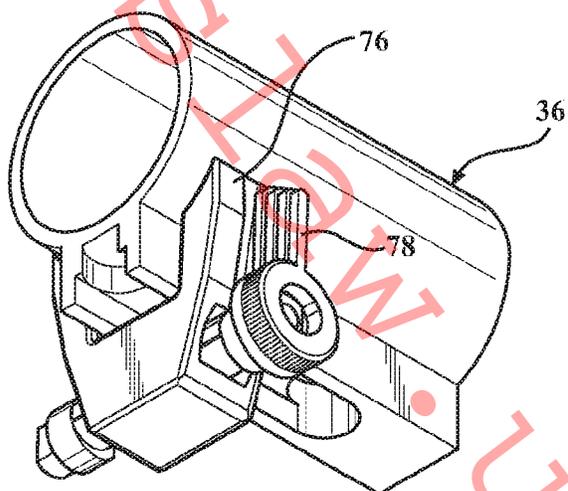


FIG. 11

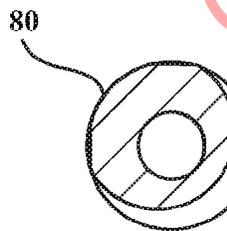


FIG. 12

FIG. 13

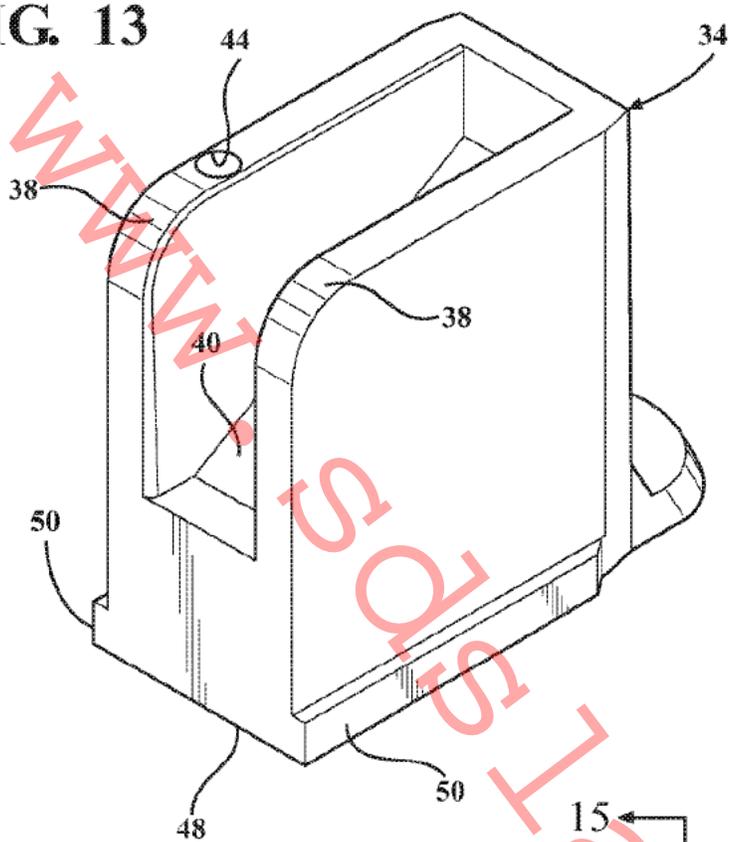
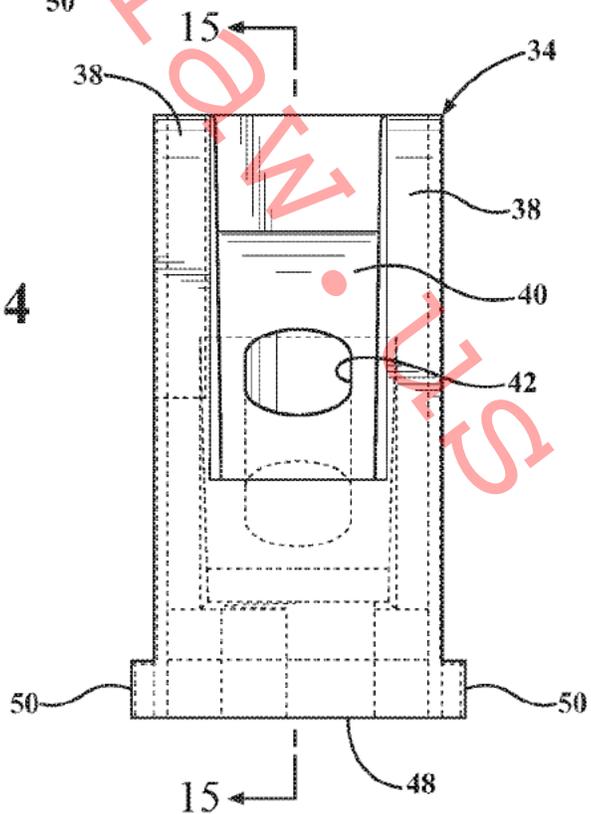
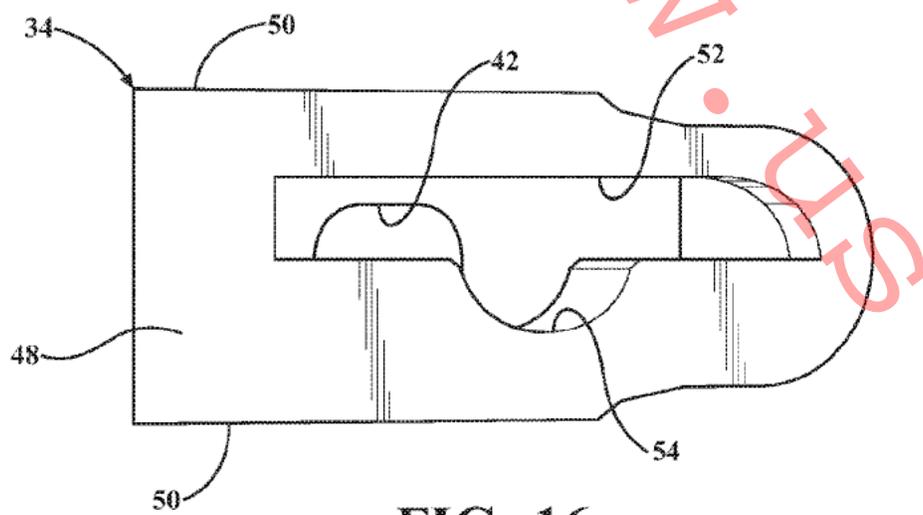
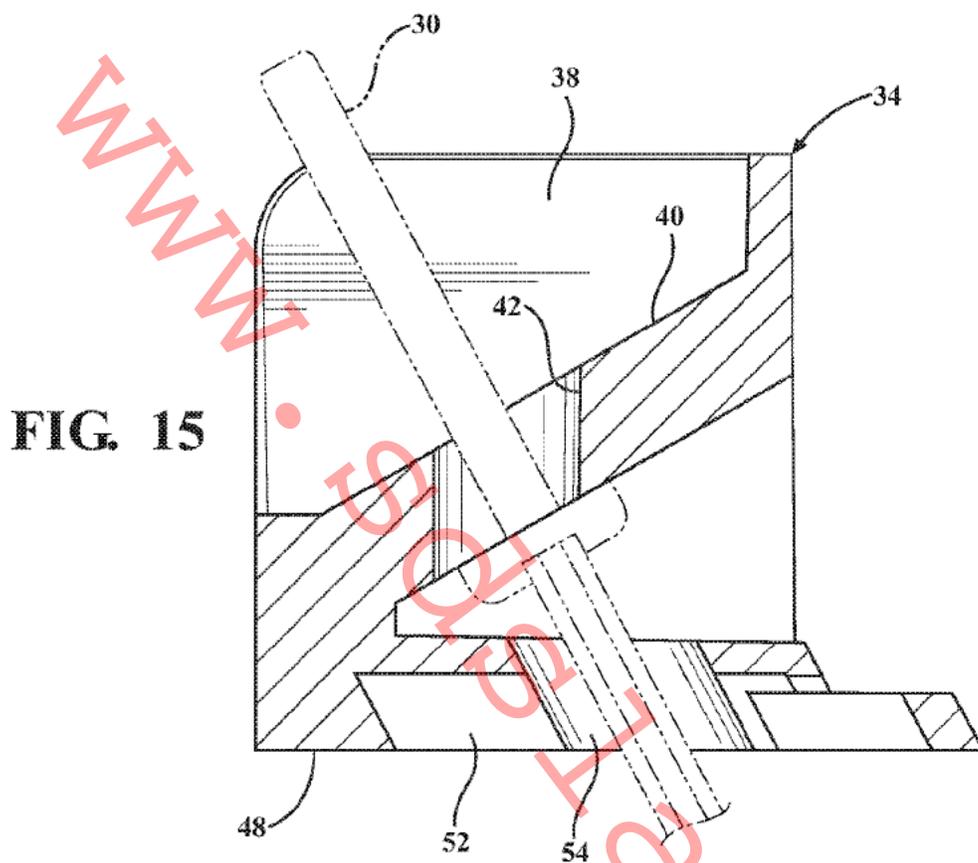
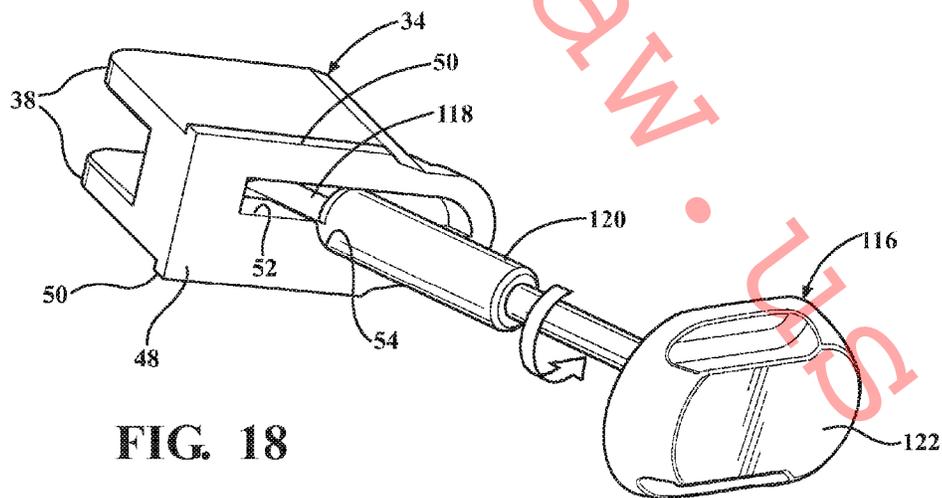
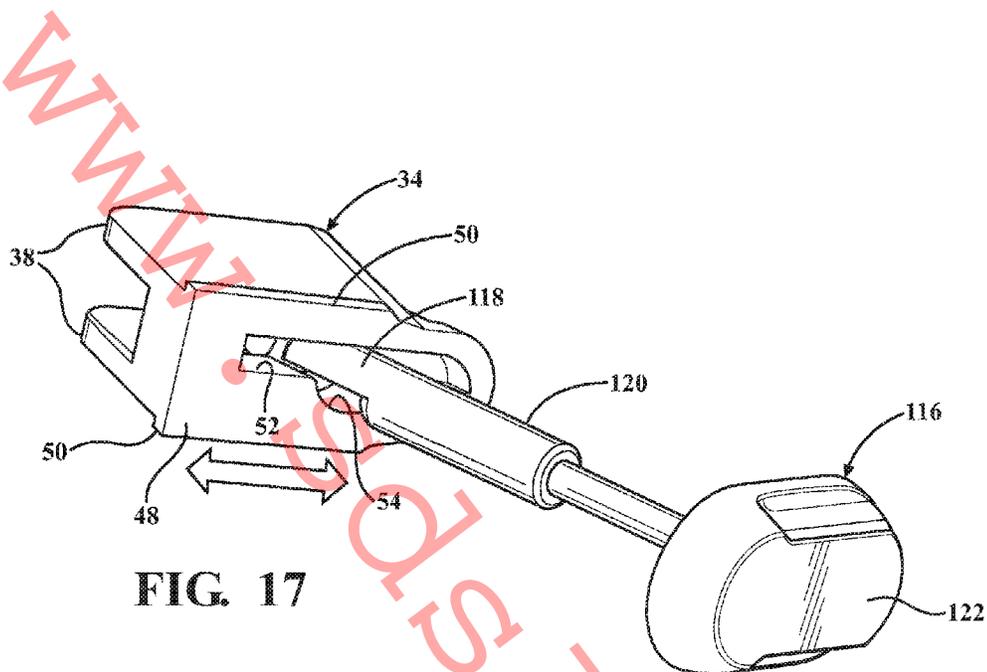


FIG. 14







ADJUSTABLE LENGTH SLIDE-ACTION RIFLE STOCK

CROSS REFERENCE TO RELATED APPLICATIONS

[0001] This application claims priority to Provisional Patent Application No. 62/098,850 filed Dec. 31, 2014, the entire disclosure of which is hereby incorporated by reference and relied upon.

BACKGROUND OF THE INVENTION

[0002] 1. Field of the Invention

[0003] The present invention relates generally to firearms, and more particularly toward a manually reciprocated gun stock or handle for enabling controlled rapid fire of a semi-automatic firearm.

[0004] 2. Description of Related Art

[0005] Various techniques and devices have been developed to increase the firing rate of semi-automatic firearms. Slide Fire Solutions LP, of Moran, Tex., Applicant of this present invention, markets a proprietary slide-action stock under the registered trademark SLIDE FIRE. The SLIDE FIRE® slide-action stock is described for example in detail in US 2012/0240442, published Sep. 27, 2012 and US 2012/0311907 published Dec. 13, 2012, the entire disclosures of which are hereby incorporated by reference and relied upon.

[0006] The slide-action stocks in these exemplary citations include a shoulder stock portion having a rearwardly facing butt end that is adapted to be pressed into the shoulder of a user, a pistol grip portion adapted to be grasped by the user's hand, and a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger of the firearm while the remaining fingers of the user's hand clench the pistol grip. The shoulder stock and pistol grip and finger rest are fixed together as a monolithic handle unit that, in use, is held tight to the user's body. When used in a rapid-fire slide-action mode of operation, the handle unit supports a firing unit portion of the firearm—namely the barrel, receiver and trigger—for manual reciprocation back-and-forth over a short (e.g., about one inch) travel distance. In the hands of a practiced and responsible user, the handle unit allows the reciprocation of the firing unit to be timed in counterpoise with the recoil from each fired round of ammunition, which in turn allows a very short time interval between each successive round fired.

[0007] In the prior art examples, the distance between the butt end of the shoulder stock and the finger rest is non-adjustable. That is, the trigger pull length, which is generally defined as the distance between butt end of the shoulder stock and the trigger in a rifle, is non-adjustable. As a result, users with exceptionally long or short arms, or that wear especially thick clothing, could find the firearm fit to be less than ideal. Shooting accuracy may suffer as a result of poor fit.

[0008] Adjustable and/or collapsible shoulder stocks are made for non-slide-action semi-automatic long rifles, including as two examples those produced by Magpul, Inc. and Tapco, Inc. Such prior art adjustable shoulder stocks usually include a lever-actuated latch that is manipulated by the user to selectively place a small plunger in any one of several adjustment holes aligned in a row along the bottom of a buffer tube (or of a comparable shaft-like feature) that extends rearwardly from the firearm receiver. To adjust the shoulder stock length, i.e., the trigger pull length, a user manually withdraws

the plunger (via the lever actuator of the latch) then slides the shoulder stock to a preferred adjusted length position. Upon release of the lever actuator, the plunger seats itself in the nearest adjustment hole thus securing the shoulder stock in the length-adjusted position.

[0009] Such prior art adjustable shoulder stocks are generally incompatible with slide-action reciprocating handles. For one reason, slide-action handles may use the same row of adjustment holes along the buffer tube (or comparable shaft-like feature) as a lock-out feature to selectively impede the slide-action mode of operation. Another reason that prior art adjustable shoulder stocks have been deemed incompatible with a slide-action reciprocating handles is that there has been no effective way to couple the prior art adjustable stock to the pistol grip and to a finger rest as a monolithic handle unit while incorporating a reciprocating interface with the firing unit portion of the firearm. While those not well-acquainted with the art may naively suppose design of an adjustable slide-action handle to be a relatively straightforward engineering exercise, such is in fact not at all readily apparent to the skilled artisan due, at least in part, to the requirements that shoulder stock and pistol grip be integrated into a monolithic handle unit that, in use, remains held tight to the user's body while the firing unit portion of the firearm rapidly reciprocates back-and-forth. A still further reason that prior art adjustable shoulder stocks have been deemed incompatible with slide-action reciprocating handles is that a prior art adjustable shoulder stock is intended to be locked relative to the firing unit in an adjusted position for use. A shoulder stock locked in position relative to the firing unit would impede slide-action shooting.

[0010] Another shortcoming that exists in prior art slide-action stocks has been the fact that different stock designs are required to accommodate left-handed and right-handed shooters. A right-handed shooter wants the finger rest to be located on the left side of the trigger. Conversely, a left-handed shooter wants the finger rest to be located on the right side of the trigger.

[0011] A still further shortcoming that exists in prior art slide-action stocks has been raised by competitive shooters that require a solid, stable connection between handle and firing unit. That is to say, for some users that shoot at a slow pace in normal semi-automatic mode, any degree of play between firing unit and handle could pose a concern. However, a slide-action handle required there to be at least a running fit clearance to allow the firing unit to rapidly reciprocate within the handle. Too tight of a fit will not only impede the rapid-fire, slide-action mode of operation, but also possibly result in accelerated wear of the sliding components.

[0012] And yet another shortcoming that exists in prior art slide-action stocks has been identified by some in the location of the slide-action lock-out feature. As mentioned above, there may be times when a user wants to operate the firearm in a traditional, semi-automatic mode firing rounds of ammunition at a relatively slow cadence. In these situations, the user may wish to arrest all longitudinal reciprocating action between the handle and the firing unit. The prior art has taught to incorporate a lock-out feature for this purpose at a mid-point location between butt end and pistol grip. The location of the prior art lock-out features and generated concerns by some users, as being not optimally ergonomic.

[0013] Therefore, there exists a continuing need for further improvements in devices that will allow a firearms user to practice slide-action shooting in the most effective manner

possible, and in which users of varying arm lengths may experience the sport with proper fit, and in which left-handed and right-handed shooters can enjoy by sharing use of the same firearm, and in which competitive shooters can practice carefully aimed shots from a solid, stable handle, and where the lock-out feature is more ergonomic and versatile.

BRIEF SUMMARY OF THE INVENTION

[0014] According to a first aspect of this invention, a manually-actuated slide-action stock assembly is provided for a semi-automatic firearm of the type having a finger-actuated trigger. The assembly comprises a slide-action handle configured for slideable attachment to the firing unit portion of a semi-automatic firearm so that the firing unit longitudinally reciprocates within the handle when in a rapid-fire mode of operation. The handle includes a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger. The finger rest is detachable from the chassis and has a generally U-shaped configuration adapted to connect to the handle in either a right-handed position or an inverted left-handed position.

[0015] According to a second aspect of this invention, a slide-action stock assembly is provided for a semi-automatic firearm of the type having a longitudinally reciprocating firing unit. The assembly comprises a first bearing interface adapted for connection directly behind the trigger of a semi-automatic firing unit. The assembly also includes a slide-action handle. The handle has a first bearing slide-way that is disposed in sliding connection with the first bearing interface to enable longitudinally reciprocating movement when in a rapid-fire slide-action mode of operation. The handle also has a finger rest is configured to stabilize the end of a user's trigger finger stretched in front of the trigger of the firearm. Furthermore, the handle includes a lock switch that is engageable with the firing unit to selectively arrest relative sliding movement between the firing unit and the handle. The lock switch includes a tab that is moveable into and out of engagement with the first bearing interface.

[0016] According to a third aspect of this invention, a slide-action stock assembly is provided for a semi-automatic firearm having a longitudinally reciprocating firing unit. The assembly comprises a first bearing interface adapted for connection directly behind the trigger of a semi-automatic firing unit, and a second bearing interface adapted for connection to a firing unit. The second bearing interface is spaced apart from the first bearing interface. The assembly includes a slide-action handle. The handle has a first bearing slide-way and a second bearing slide-way. The first bearing slide-way is disposed in sliding connection with the first bearing interface for longitudinally reciprocating movement when in a rapid-fire slide-action mode of operation. The second bearing slide-way is disposed in sliding connection with the second bearing interface. The handle includes a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger of the firearm. And a brake is disposed for movement between extended and retracted positions within the second bearing slide-way. The brake has a generally v-shaped friction block. An engagement lever is operatively connected to the friction block for selectively moving the friction block between a disengaged condition and an engaged condition.

[0017] According to a fourth aspect of this invention, a manually-actuated slide-action stock assembly is provided for a semi-automatic firearm of the type having a finger-actuated trigger. The assembly comprises a slide-action

handle configured for slideable attachment to the firing unit portion of a semi-automatic firearm so that the firing unit longitudinally reciprocates within the handle when in a rapid-fire mode of operation. The handle includes a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger. The handle is comprised of a chassis portion and a shoulder stock portion. An adjuster track extends longitudinally along the chassis portion. The shoulder stock includes an adjuster pin that is disposed for movement into and out of registry with the adjuster track to enable a user to alter the trigger pull length of the firearm.

[0018] The present invention enables a firearms user to practice slide-action shooting in the most effective manner possible. In some aspects, the invention allows users of varying arm lengths to experience the sport with proper fit. In some aspects, the invention allows left-handed and right-handed shooters to share use of the same firearm. In some aspects, the invention enables competitive shooters to practice carefully aimed shots while holding a solid, stable handle. And in some aspects, the invention provides a more ergonomic and versatile lock-out feature.

BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWINGS

[0019] These and other features and advantages of the present invention will become more readily appreciated when considered in connection with the following detailed description and appended drawings, wherein:

[0020] FIG. 1 is a side elevation view of a user holding a firearm equipped with a slide-action handle assembly according to one embodiment of this invention;

[0021] FIG. 2 is a side-elevation of a different firearm equipped with slide-action handle assembly illustrating the adjustable trigger-pull length capability in phantom lines;

[0022] FIG. 3 is a perspective view of a slide-action handle assembly according to one embodiment of this invention;

[0023] FIG. 4 is an exploded view of the slide-action handle assembly of FIG. 3;

[0024] FIG. 5 is a side view of the slide-action handle assembly of FIG. 3, showing in partial cross-section to reveal the adjuster track and pin coupling, and further illustrating the adjustable trigger-pull length capability in phantom lines;

[0025] FIG. 6 is an enlarged view of the cross-sectional area of FIG. 5;

[0026] FIG. 7 is a view as in FIG. 6 but showing the release button depressed which in turn causes the nose of the adjuster pin to disengage from adjuster track and compress the adjuster spring;

[0027] FIG. 8 is a cross-sectional view looking down the second bearing slide-way to show the V-shaped friction block in a lower disengaged condition in solid lines and in a raised engaged condition in phantom lines;

[0028] FIG. 9 is a fragmentary perspective view of a second bearing element/buffer tube and the V-shaped friction block in the disengaged condition;

[0029] FIG. 10 is a view as in FIG. 9 but showing the V-shaped friction block in the engaged condition;

[0030] FIG. 11 is a cross-sectional view of the eccentric cam corresponding to the disengaged condition of the V-shaped friction block and FIG. 9;

[0031] FIG. 12 is a cross-sectional view of the eccentric cam corresponding to the engaged condition of the V-shaped friction block and FIG. 10;

[0032] FIG. 13 is a perspective view of the first bearing interface according to one exemplary embodiment of the present invention;

[0033] FIG. 14 is a front elevation view of the first bearing interface of FIG. 13;

[0034] FIG. 15 is a cross-sectional view taken generally along lines 15-15 of FIG. 14;

[0035] FIG. 16 is a bottom view of the first bearing interface of FIG. 13;

[0036] FIG. 17 is a simplified perspective view of the lock-out switch and the associated first bearing interface, where the tab of the lock-out switch is disposed in the lock-out slot of the first bearing interface; and

[0037] FIG. 18 is a view as in FIG. 17 but showing the lock-out switch rotated 180-degrees so that its tab becomes trapped in the lock-notch portion of the lock-out slot.

DETAILED DESCRIPTION OF THE INVENTION

[0038] This invention is related by subject matter to the Applicant's own international patent Publication No. WO/2014078462, published on May 22, 2014, and also to its U.S. Pat. No. 8,176,835, issued May 15, 2012, the entire disclosures of which are hereby incorporated by reference and relied upon.

[0039] Referring to the Figures, wherein like reference numerals indicate like or corresponding parts throughout the several views, a user is shown in FIG. 1 operating a semi-automatic firearm, generally shown at 20, that is configured for rapid-fire, slide-action shooting. It will be understood that the principles of this invention are adaptable to many different makes and models of firearms 20. The exemplary embodiment of the invention depicted in FIGS. 1-18 is configured specifically for use with AR platform firearms 20, such as the popular AR-15 and AR-10. However, the invention may be practiced with other makes and models of firearms given corresponding modifications that will be apparent to a gunsmith or firearms engineer of ordinary skill. To be sure, many aspects of the disclosed invention may be implemented in handguns as well as all type of long-guns and rifles, and the ensuing description that relies heavily on the AR-platform is not intended to preclude any possible alternative applications even though not specifically mentioned herein.

[0040] The firearm 20 of this invention is composed of two main components: a firing unit and a slide-action handle, generally indicated at 22. The firing unit comprises those components which, in the slide-action mode of operation, are manually reciprocated back-and-forth in the handle 22. The elements of the firing unit include at least a barrel 24, a receiver 26 and a trigger 28. The barrel 24 is a tubular construction, usually quite long, designed to guide the discharge of a bullet along a generally linear trajectory. The barrel 24 includes a chamber at one end thereof, and a muzzle at the other end. The receiver 26 is a working mechanism designed to mechanically feed successive live rounds of ammunition into the chamber, and to expel spent shells from the chamber as bullets are discharged. In AR-platforms, receiver 26 may be further defined as having separable upper and lower parts. The receiver 26 may also be fitted with a grip mounting lug. The grip mounting lug is not shown in the accompanying drawing figures of this patent application, however it is a common feature well-known to those of skill in the art. For reference, a grip mounting lug of this type is shown and described in the aforementioned WO/2014078462 in its FIG. 4 (reference number 44). The typical grip mounting lug in

AR-platforms is located directly behind the trigger 28, and is configured with a threaded bore so as to receive a standard threaded fastener 30 (shown in phantom in FIG. 15). A cartridge magazine 32 is shown in FIGS. 1 and 2 operatively fitted in a mag well portion of the receiver 26 for storing a supply of live ammunition to be fed, on demand, into the chamber.

[0041] The firing unit includes at least one bearing feature with which to couple the handle 22 for longitudinally reciprocating movement therebetween when in a rapid-fire slide-action mode of operation. The bearing feature can take many different forms. One or more sliding bearings are contemplated, as well as linked mechanisms and pivoted couplings and other mechanical constructs to accomplish the longitudinally reciprocating movement necessary for rapid-fire, slide-action mode. In the embodiment illustrated in the Figures, the bearing feature includes a first bearing interface 34 and a distinct, spaced-apart, second bearing interface 36. These first 34 and second 36 bearing interfaces establish a guided travel path against which the firing unit rides in the handle 22 along back-and-forth directions generally parallel to the long axis of the barrel 24. In practice, about one inch (1") of back-and-forth travel is needed to adequately operate the firearm 20 in rapid-fire, slide-action mode. A detailed description of the rapid-fire, slide-action mode of operation may be found in the afore-mentioned U.S. Pat. No. 8,176,835.

[0042] The first bearing interface 34 is shown in FIGS. 4 and 13-18. It will be understood that the first bearing interface 34 can take many different forms, and is even optional to the extent the invention is capable of operation with only a single bearing feature as mentioned above. When the firearm 20 is built on the AR platform, as shown in the illustrations, the first bearing interface 34 is directly connected to the previously described grip mounting lug. In other firearm platforms, the first bearing interface 34 could be connected to (or otherwise utilize) a different part of the firing unit. For example, in AK-47 platforms, there is a suitable space to attach a first bearing interface under its receiver and directly behind its trigger. For firearms 20 in the form of a semi-automatic handgun, an adaptation of the first bearing interface 34 provides a particularly useful, and perhaps the only practical, bearing feature within which to slidably couple the firing unit to the handle 22.

[0043] Returning again to the case of AR platforms, the first bearing interface 34 may be formed with a pair of upstanding ears 38 spaced apart from one another across a sloped mounting surface 40 as shown in FIGS. 13-15. The ears 38 and sloped mounting surface 40 are matched to the external shape of the grip mounting lug so that the first bearing interface 34 attaches with a tight mated fit. A hole 42 in the sloped mounting surface receives the threaded fastener 30 so as to securely hold the first bearing interface 34 in position on the grip mounting lug. (The reader is invited to consult WO/2014078462 for illustration of this connection). At least one of the ears 38 includes a safety spring hole 44 to retain the OE safety spring in proper position for maintaining functionality of the safety selector switch 46 (FIG. 2). The first bearing interface 34 has a bottom portion 48. A pair of flanges 50 extend laterally outwardly from the bottom portion 48 of the first bearing interface 34, as perhaps best shown in FIGS. 13 and 14. A lock-out slot 52 is disposed in the bottom portion 48 of the first bearing interface 34. The lock-out slot 52 may include a semi-circular lock-notch 54, as shown in FIG. 16. Of course, in other variants the lock-notch 54 could take a

shape other than semi-circular, and could even exist as a feature disassociated with the lock-out slot 52. That is to say, the lock-notch 54 could be configured as a distinct feature of the first bearing interface 34, such as a recessed exterior formation. Furthermore, in other contemplated embodiments the lock-notch 54 could be designed as a protruding feature on the first bearing interface 34, such as a bump or a tab, so as to accomplish the novel lock-out purposes of this invention, which will be described more fully below.

[0044] The second bearing interface 36 can also take many different forms, and is optional to the extent the invention is capable of operation with any suitable single bearing feature as in the handgun example mentioned above, not to mention other contemplated rifle variations in which only a single bearing feature might be needed. For AK-47 type platforms, the second bearing interface 36 could, for example, take the form of a post-like extension similar to that depicted in WO/2014078462. In AR platform firearms 20, on the other hand, the receiver 26 already conveniently includes a rearwardly extending buffer tube that houses a large coil spring. This buffer tube can be multi-purposed for use as the second bearing interface 36 in AR-type rifles. As the figures illustrate an AR platform, the OE buffer tube is therefore identified as the second bearing interface 36 in FIGS. 1, 9 and 10. (The buffer tube/second bearing interface 36 is mostly obstructed from view in FIG. 2 by the handle 22.) The standard OE buffer tube, both the commercial and Mil-Spec types, has a lug rail that extends axially along a lowermost portion thereof. A fragment of an OE buffer tube and its lug rail are depicted in FIGS. 9 and 10. The reader is invited to consult the aforementioned U.S. Pat. No. 8,176,835 for enhanced descriptions and depictions of an OE buffer tube for AR-platform firearms 20, which include a lug rail that houses a plurality of axially spaced holes used to set the shoulder-stock length for traditional adjustable length shoulder stocks. The outer, longitudinally extending surface of the buffer tube comprises a second bearing interface 36 in this embodiment. In other words, for AR-type firearms 20, the second bearing interface 36 is composed of the mostly-cylindrical outside surface of an OE buffer tube, in combination with the planar outside edges of its lug rail. These combined surfaces provide a reasonably smooth sliding interface against which complimentary portions of the handle 22 can rub when the firearm 20 is used in the rapid-fire, slide-action mode of operation.

[0045] The trigger 28 is part of a trigger group, or trigger mechanism, that is housed within the receiver 26. In well-known fashion, the trigger 28 is thus operatively associated with the receiver 26 for activating a live round of ammunition disposed in the chamber portion of the barrel 24. Those of skill in the art will readily understand the assembly and operating principles of a semi-automatic trigger group, as that system is adapted for various types and platforms of firearms 20.

[0046] Turning now to the handle 22, reference is made initially to FIGS. 3-5. To reiterate, the handle 22 comprises those elements of the firearm 20 which, in use, are intended to be held tight to the user's body, as illustrated in FIG. 1, and which provide a sturdy feature for the user to hold and aim the firearm 20. For a person that shoots right-handed, the handle 22 will be pulled in tight by the user's right hand against their right shoulder. A right-handed shooter is depicted in FIG. 1. Conversely, for a left-handed shooter, the handle 22 will be anchored to the user's left shoulder via their left hand in locked tension. When the firearm 20 is operated in the rapid-

fire, slide-action mode, the handle 22 remains generally anchored to the user's rear shoulder. So in the example of FIG. 1, during rapid-fire, slide-action mode all parts of the handle 22 will remain relatively stationary as they are pulled tight against the shooter's right shoulder by his right arm and hand. However, the shooter's left arm and hand (holding a front handguard 56) will be continuously pumping back and forth with the reciprocating firing unit. It will be seen, therefore, that during the rapid-fire, slide-action mode of operation, the handle 22 remains stationary (relative to the user's rear shoulder) while the firing unit (i.e., barrel 24, receiver 26 and trigger 28) rapidly reciprocate in the fore-and-aft direction.

[0047] The handle 22 includes two primary components: a chassis, generally indicated at 58, and a shoulder stock, generally indicated at 60. In use, these two components 58, 60 of the handle 22 are fixed together so that they form an integral unit, meaning that the chassis 58 and shoulder stock 60 portions are locked in unitary relationship with one another. However, when the firearm 20 is not in use, i.e., not firing ammunition, the relative positions of the chassis 58 and shoulder stock 60 can be shifted, or adjusted, so as to change the trigger pull distance to accommodate the preferences of the user. A particularly tall or long-armed user may wish to adjust the relative positions of the shoulder stock 60 and chassis 58 to an extreme in one direction, whereas a particularly small or short-armed user may wish to adjust in the opposite direction for improved comfort.

[0048] The chassis 58 includes those portions of the handle 22 that directly attach to the firing unit. Such direct attachment is accomplished principally through the one or more bearing features of the firing unit. In the illustrated examples for the AR-platform, the chassis 58 includes a first bearing slide-way 62 for slideable connection with the first bearing interface 34 as perhaps best shown in FIGS. 3 and 4. The first bearing slide-way 62 comprises generally parallel sidewalls adapted to receive therebetween the ears of the first bearing interface 34 for sliding engagement in the fore-and-aft direction. The first bearing slide-way 62 also has a pair of side slots 64 configured to receive the flanges 50 of the first bearing interface 34. That is, the shape of the first bearing slide-way 62 somewhat resembles a T-slot adapted to receive the complimentary-shaped profile of the first bearing interface 34 with a near-precision running fit. If in another embodiment the first bearing interface 34 is shaped differently than that shown in the figures, then the first bearing slide-way 62 may also be adapted to the different shape so that the two members 34, 62 can be mated with a smooth sliding fit.

[0049] A pistol grip 66 is ergonomically designed for a comfortable grip by the user's trigger hand. A right-handed shooter (as illustrated in FIG. 1) will grasp the pistol grip 66 with their right hand, and conversely a left-handed shooter (not shown) will grasp the pistol grip 66 with their left hand. The hand clutching the pistol grip 66 will pull the handle 22 inwardly against that same shoulder to securely anchor the firearm 20 for use. The pistol grip 66 is preferably a distinct protruding feature that extends downwardly from the first bearing slide-way 62 at an oblique back-angle. In other contemplated embodiments, the pistol grip 66 may comprise a necked-down region that flows directly into a shoulder stock section like those one-piece stocks commonly found in hunting rifles and shotguns. Various shapes and treatments to the tactile exterior of the pistol grip 66 are possible, and considered largely a matter of design choice. The pistol grip 66 has

a grip base 68. Preferably, the grip base 68 has a symmetrical periphery, such that its front half is shaped identical to its rear half. A lock passage 70 (FIG. 4) extends through the pistol grip 66 and into the first bearing slide-way 62, thus forming a shaft journal for purposes to be described below. That is to say, the lock passage 70 passes through the inside of the pistol grip 66, with an opening at its lower end adjacent the grip base 68 and an opening at its upper end directly into the first bearing slide-way 62.

[0050] The chassis 58 includes a second bearing slide-way 72 for slideable connection with the second bearing interface 36. The second bearing slide-way 72 comprises an elongated tubular channel that extends rearwardly of the first bearing slideway 62. There is a lateral (vertical) as well as a longitudinal (axial) offset between the first 62 and second 72 bearing slide-ways that adds stability to the system when the firearm 20 is operated in the rapid-fire, slide-action mode. That is, the spaced-apart interfaces 34/36 and slide-ways 62/72 allow the firing unit to rapidly reciprocate within the handle 22 in a smooth and controlled manner. In order to improve the running fit afforded by the second bearing slide-way 72, a multi-part construction may be adopted like that shown in FIG. 4. The long channel of the second bearing slide-way 72 can thus be held to a more consistent tolerance relative to the second bearing interface 36 by separately forming a hood-like cover 74 that is subsequently affixed to the chassis 58 such as by screws, adhesive, welding, snap-fit, or any other suitable means. Furthermore, the body of the chassis 58 may be separately formed in left and right halves which are subsequently joined together.

[0051] The afore-mentioned running fit clearance between the interfaces 34/36 and slide-ways 62/72 is necessary to allow the firing unit to rapidly reciprocate within the handle 22. Of course, too tight of a fit will impede the rapid-fire, slide-action mode of operation and/or result in accelerated wear of the sliding components. A reasonable running fit clearance nevertheless results in a slight sensation of wiggle, or play, between the handle 22 and the firing unit. For many users, the slight wiggle sensation is not objectionable. However, for competitive shooters shooting at a slow pace in normal semi-automatic mode, any degree of play between firing unit and handle 22 could pose a concern. For this reason, the chassis 58 is fitted with a brake disposed in the tubular channel for movement between extended and retracted positions. The brake can take many different forms and/or be implemented in several different ways. In the examples shown in FIGS. 3 and 8-12, the brake comprises a generally V-shaped friction block 76 disposed just inside the mouth of the second bearing slide-way 72 to straddle a lowermost section of the buffer tube and its lug rail. I.e., the friction block 76 is poised underneath the second bearing interface 36, near where it connects to the receiver 26. An engagement lever 78 is operatively connected to the friction block 76. The engagement lever 78, which is preferably two-ended (see FIG. 8) so as to be accessible from either the left or right-hand side of the chassis 58, is moveable from a disengaged condition to an engaged condition. In the illustrated examples, the movement is by way of a quarter-turn or 90-degree rotation of the engagement lever 78. In other contemplated embodiments, the engagement lever 78 can be configured to accept a different range of motion in order to actuate the friction block 76, e.g., a linear motion or a curvilinear motion.

[0052] When the engagement lever 78 is in the disengaged condition, corresponding to FIGS. 9 and 11, the friction block 76 is in a lowered position like that shown in solid lines in FIG. 8. When the engagement lever 78 is in the engaged condition, corresponding to FIGS. 10 and 12, the friction block 76 is raised into direct pressing engagement against the buffer tube/second bearing interface 36, as shown in phantom lines in FIG. 8. This up and down movement of the friction block 76 is accomplished, in at least one exemplary embodiment, by an eccentric cam 80 that is carried on a shaft common with the engagement lever 78. The eccentric cam 80 is captured in operative engagement with a follower surface formed inside the friction block 76. When the engagement lever 78 is in the engaged condition, the friction block 76 presses tightly against the buffer tube/second bearing interface 36 and thereby eliminates all play/wiggle from between the handle 22 and the firing unit. The engagement lever 76 must be in the disengaged position to operate in the rapid-fire, slide-action mode. Of course, many alternative configurations of the brake feature are possible.

[0053] As is common with slide-action handles 22, the chassis 58 must include a finger rest, generally indicated at 82, which is configured to stabilize the end of a user's trigger finger 84 (FIG. 1) stretched in front of the trigger 28 of the firearm 20. In use, the user's trigger hand (e.g., the right hand for a right-handed shooter) clenches the pistol grip 66 as shown in FIG. 1 while their index fingertip 84 is extended through the trigger guard and placed upon a perch 83 of the finger rest 82. For added comfort and improved functionality, the perch 83 may be shaped with a gentle concavity to form a cradle for the user's fingertip 84.

[0054] Preferably, but not necessarily, the finger rest 82 is reversible for either left-handed or right-handed use. By way of background, a right-handed shooter wants the perch 83 to be located on the left side of the trigger 28, so that they must extend their fingertip 84 completely through the trigger guard before reaching the perch 83. Conversely, a left-handed shooter wants the perch 83 to be located on the right side of the trigger 28. By configuring the finger rest 82 to be reversible, the perch 83 can be secured into position on the left side of the firing unit for right-handed shooters or alternatively on the right side of the firing unit for left-handed shooters. There are perhaps many different ways to accomplish this general objective. One such approach is described in the afore-mentioned WO/2014078462, in which the finger rest is secured with fasteners to either the left or right sides of the handle.

[0055] In the example of this present invention, reversibility of the finger rest 82 is accomplished by configuring the chassis 58 so as to include a generally U-shaped groove 86 surrounding the first bearing slide-way 62. The U-shaped groove 86 terminates at opposing left and right notch-ends 88. The left and right notch-ends 88 are directly laterally spaced apart from one another, as perhaps best shown in FIG. 4. That is to say, the left and right notch-ends 88 are aligned to one another across the first bearing slide-way 62. The finger rest 82 is formed as a loose-piece component having a generally U-shaped, but not symmetrical, configuration. One leg of the U-shape is intentionally longer than the other leg. In this structure, the body of the finger rest 82 is adapted to seat snugly within the U-shaped groove 86 like a well-fitted strap. The perch 83 is fashioned on the longer leg of the U-shaped configuration and a concave stub 90 is fashioned on the shorter leg of the U-shaped configuration. The finger rest 82 includes a pair of internal flanges 92 that are diametrically

opposed to one another inside the U-shaped band. These internal flanges 92 are perhaps best seen in FIG. 4. The internal flanges 92 are configured to engage respective left and right notch-ends 88 of the U-shaped groove 86 and thereby lock the finger rest 82 securely in place. The abutting flanges 92 and notch-ends 88 form a very strong resistance against axially rearward pressure as may be applied when a user pulls rearwardly against the perch 83 during rapid-fire, slide-action operation.

[0056] Before shouldering the firearm 20, a user inserts the finger rest 82 into the groove 86 so that the perch 83 is on the side that corresponds with their handedness—left side for right handers and right side for left handers. If the perch 83 is not on the correct side for a user, he or she merely gently spreads the legs of the U-shaped finger rest 82 sufficient for the flanges 92 to clear and disengage from the notch-ends 88. The user then removes the finger rest 82, inverts it and then re-attaches to the groove 86 where the finger rest 82 self-locks in place via the natural resiliency of the flanges 92 re-engaging against the notch-ends 88 and the U-shaped body of the finger rest 82 seated inside the groove 86. When the shooter wishes to fire the firearm 20 in normal semi-automatic mode, he or she does not place their fingertip 84 on the perch 83, but instead touches the trigger 28 directly with their fingertip 84 in a traditional shooting manner. The concave shape on the stub 90 provides both ample clearance and a comfortable tactile feel for the user's trigger finger 84 in both traditional and rapid-fire, slide-action modes of operation.

[0057] The chassis 58 is also fitted with an adjuster track, generally indicated at 94, as best shown in FIGS. 4-7. The adjuster track 94 extends longitudinally along the chassis 58, below the second bearing slide-way 72. That is, in the illustrated examples the adjuster track 94 is disposed directly below the elongated tubular channel of the second bearing slide-way 72, however in other contemplated variations the adjuster track 94 may be configured differently. In one embodiment, the adjuster track 94 is an integrally formed feature of the plastic-molded second bearing slide-way 72. In other contemplated embodiments, the adjuster track 94 is a separately manufactured element, perhaps metallic, that is attached to the bottom of the second bearing slide-way 72. The adjuster track 94 includes a plurality of notches 96 disposed at generally regular intervals therealong. In one example, there may be provided four-to-eight notches 96 spaced at intervals between about 0.75-1.25 inches. The spacing interval between notches 96 need not be regular. And of course more than eight or fewer than four notches 96 are possible. In some contemplated embodiments, there are no notches so as to provide an infinite number of stops within a defined adjustment range. The adjuster track 94 includes a pair of opposing slots 98 disposed on opposite sides of the notches 96, the purpose of which will be described subsequently.

[0058] Turning now toward discussion of the shoulder stock 60 portion of the handle 22, reference is made particularly to FIGS. 2-7. The shoulder stock 60 is operatively coupled to the chassis 58 and includes a rearwardly facing butt end 100 that is adapted to be pressed into the rear shoulder of a user, as depicted in FIG. 1. The shoulder stock 60 is adjustable, relative to the chassis 58, in order to change the trigger pull length. The trigger pull length may be defined as the distance between the butt end 100 and the trigger 28. A greater distance between butt end 100 and trigger 28 represents a longer trigger pull which is typically more comfort-

able for shooters having a large body frame and/or relatively long arms. And conversely, a smaller distance between butt end 100 and trigger 28 represents a shorter trigger pull which is typically more comfortable for shooters having a small body frame and/or relatively short arms and/or those wearing bulky clothing. Adjustment of the shoulder stock 60 relative to the chassis 58 is shown, for example, in FIGS. 2 and 5. The handle 22 of this invention enables a user to custom-adjust the trigger pull length to suit their preferences without affecting the ability of the firearm 22 to operate in the rapid-fire, slide-action mode. That is to say, the handle 22 enables a small framed user that prefers the shortest possible trigger pull length to operate the firearm 20 in rapid-fire, slide-action mode just as effectively as can a large framed user that prefers the longest possible trigger pull length.

[0059] In order to accomplish this adjustability between shoulder stock 60 and chassis 58, the shoulder stock 60 is provided with a pair of rails 102 that are slidably disposed in the slots 98 of the adjuster track 94. That is to say, the shoulder stock 60 slides back and forth (in the fore-and-aft direction) by way of its rails 102 rising in the slots 98 below the second bearing slideway 72. In one exemplary embodiment of this invention, the rails 102 are monolithically formed along the length of a rigid, metallic C-channel as shown in the exploded view of FIG. 4. The C-channel is fastened by screws 104 to the body of the shoulder stock 60. Of course, other C-channel attachment options are possible, as well as other overall design configurations for the rails 102.

[0060] A retractable adjuster pin 106 is disposed for movement into and out of registry with the adjuster track 94 to hold the shoulder stock 60 in a user's chosen length-adjusted position relative to the chassis 58. In the illustrated examples, the adjuster pin 106 is configured to engage a selected one of the notches in the adjuster track 94. In other contemplated examples, the adjuster pin 106, or an equivalent structure thereof, is manipulated by the user to cause the shoulder stock 60 to lock in position relative to the chassis 58 so that the rails 102 cannot slide in the slots 98. Thus, in embodiments without notches 96 (i.e., infinite adjust models), the adjuster pin 106 may be designed to provide a sufficiently strong frictional impact on the chassis 58 so as to secure the handle 22 at the user's preferred trigger pull setting. In other contemplated embodiments, the adjuster pin 106 may be configured to engage a plurality of notches 96 simultaneously, such as when the notches 96 are small and/or closely spaced from one another. Returning, however, to the specific embodiment shown in FIGS. 5-7, the adjuster pin 106 takes the form of a plunger-like member having a leading nose adapted to seat in any one of the notches 96 along the length of the adjuster track 94. An adjuster spring 108 is operatively disposed below the adjuster pin 106 and housed within a pocket formed inside the shoulder stock 60 so as to continuously urge the adjuster pin 106 upwardly, toward registry with one of the notches 96 in the adjuster track 94. Retraction of the adjuster pin 106 is accomplished by actuating a release button 110 carried on the shoulder stock 60.

[0061] There are of course many different ways to configure the release button 110. In the embodiment shown in the accompanying drawings, the release button 110 is fashioned as a lever, pivoted upon a small transverse axel 112. The adjuster pin 106 is moved out of registry with the notches 96 in the adjuster track 94 when the exposed free end of the release button 110 is depressed. The exploded view of FIG. 4 shows that the release button 110 has a forked internal end.

The forked end rests atop a cross-pin 114 that extends transversely through the body of the adjuster pin 106. Pressure exerted by the adjuster spring 108 keeps the cross-pin 114 in constant contact with the forks of the release button 110. When the release button 110 is depressed by the user, its forks press downwardly on the cross-pin 114, causing the nose of the adjuster pin 106 to withdraw from the adjuster track 94 thereby enabling the shoulder stock 60 to slide back and forth relative to the chassis 58. FIG. 6 depicts the adjuster pin 106 in its normally locked position, in registry with one of the notches 96 in the adjuster track 94. FIG. 7 shows the release button 110 depressed, so as to pivot about the axel 112 and retract the nose of the adjuster pin 106 as described.

[0062] As mentioned above, there may be times when a user wants to operate the firearm 20 in a traditional, semi-automatic mode firing rounds of ammunition at a relatively slow cadence. In these situations, the user may wish to arrest all longitudinal reciprocating action between the handle 22 and the firing unit. The Applicant's own prior art, e.g., U.S. Pat. No. 8,176,835, has taught to incorporate a lock-out feature. In the present invention, a lock switch, generally indicated at 116, is provided for this purpose yet in a novel location and novel implementation. The lock-out switch 116 is engageable with the firing unit to selectively arrest relative sliding movement between the firing unit and the chassis 58 so that the user can aim and shoot from a slightly more stable platform. The afore-mentioned brake may optionally be employed during these situations to eliminate play between handle 22 and firing unit.

[0063] The lock switch 116 can take many different forms and can be implemented in many different ways. In this present example, the lock switch 116 includes a tab 118 that is moveable into and out of engagement with the lock-notch 54 in the first bearing interface 34. The tab 118 is disposed on the upper end of a shaft 120 that extends through the lock passage 70 inside the pistol grip 66. In this example, the tab 118 is shaped as a semi-cylinder, having one flat side and a curved or bulbous other side. The width of the tab 118, as measured perpendicular to its one flat face, is just slightly smaller than the width of the lock-out slot 52. Other shapes for the tab 118 are possible. A twist knob 122 is disposed on the lower end of the shaft 120, and when assembled covers the grip base 68 of the pistol grip 66 to provide a comfortable finish. Suitable retainers are used to hold the shaft 120 in the lock passage 70 with a moderate degree of friction to resist unwanted free rotation. Preferably, the outline of the twist knob 122 is symmetrical and matches the outline of the grip base 68. And furthermore, the shaft 120 preferably adjoins the twist knob 122 in its geometric center so that the twist knob 122 can be rotated about its shaft 120 and will fit flush against the grip base 68 in either of two positions—a first “locked” condition and a second “unlocked” condition that is 180-degrees offset. A torque input applied by a user to the twist knob 122 will cause the attached shaft 120 to rotate within the journal-like lock passage 70. This in turn causes the tab 118 to rotate inside the lock-out slot 52.

[0064] FIG. 17 is a simplified illustration showing the twist knob 122 in its “unlocked” condition, as would be selected for rapid-fire, slide-action mode. In this state, the tab 118 is out of registry with the lock-notch 54, enabling free sliding movement of the lock-out slot 52 back-and-forth, while the tab 118 inside the lock-out slot 52 remains relatively stationary (because the user has anchored the handle 22 against their rear shoulder and the firing unit is reciprocating back-and-forth).

The terminal ends of the lock-out slot 52 establish travel limits for the chassis 58. That is to say, when the tab 118 reaches the end of the lock-out slot 52, the handle 22 will not slide any further relative to the firing unit. In this manner, the tab 118 and slot 52 arrangement provides an over-travel limiting function. When it is desired to disconnect the handle 22 from the firing unit, the user must pull downwardly on the twist knob 122 (against a biasing spring—not shown), causing the tab 118 to withdraw from the lock-out slot 52. Once the tab 118 is sufficiently withdrawn from the lock-out slot 52, the handle 22 can be removed from the firing unit. Re-assembly is accomplished by reversing these steps.

[0065] For traditional, semi-automatic firing mode, the user will rotate the twist knob 122 180-degrees to the “locked” condition shown in FIG. 18. This can only be accomplished when the handle 22 is fully compressed against the firing unit, because the lock-notch 54 is intentionally located at this corresponding position along the length of the lock-out slot 52. When the handle 22 is fully compressed relative to the trigger, the tab 118 is aligned with the lock-notch 54 such that 180-degree rotation cause the bulbous portion of the tab 118 to roll into the complimentary lock-notch 54. This effectively secures the tab 118 relative to the first bearing interface 34. And because the tab 118 is held fast inside the lock passage 70, the entire handle 22 is locked in the fully collapsed position relative to the firing unit.

[0066] The lock-out switch 116 is adaptable across a wide range of firearm types, and is particularly attractive in handgun applications. It is also worth mentioning again that many variants of the tab 118 and lock-notch 54 interaction are contemplated. The lock-notch 54 could be configured as a feature of the first bearing interface 34 wholly disassociated from any type of lock-out slot 52, so that the tab 118 interacts with just the lock-notch 54. For example, the lock-notch 54 could be designed as a protruding feature on the first bearing interface 34, such as a bump or a stub, with the tab 116 selectively interacting therewith to accomplish over-travel limits as well as the lock-out condition desired for traditional, semi-automatic firing mode.

[0067] The foregoing invention has been described in accordance with the relevant legal standards, thus the description is exemplary rather than limiting in nature. Variations and modifications to the disclosed embodiment may become apparent to those skilled in the art and fall within the scope of the invention. Furthermore, particular features of one embodiment can replace corresponding features in another embodiment or can supplement other embodiments unless otherwise indicated by the drawings or this specification.

What is claimed is:

1. A manually-actuated slide-action stock assembly for a semi-automatic firearm of the type having a finger-actuated trigger, said assembly comprising:

a slide-action handle configured for slideable attachment to the firing unit portion of a semi-automatic firearm so that the firing unit longitudinally reciprocates within said handle when in a rapid-fire mode of operation, said handle including a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger,

said finger rest being detachable from said chassis and having a generally U-shaped configuration adapted to connect to said handle in either a right-handed position or an inverted left-handed position.

2. The assembly of claim 1, wherein said finger rest includes a concave finger cradle on a longer leg of said U-shaped configuration and a concave stub on a shorter leg of said U-shaped configuration.

3. The assembly of claim 2, wherein said handle includes a first bearing slide-way, a U-shaped groove surrounding said first bearing slide-way, said finger rest at least partially disposed in said U-shaped groove.

4. The assembly of claim 3, wherein said U-shaped groove terminates at opposing left and right notch-ends, said left and right notch-ends being directly laterally spaced apart from one another on opposite sides of said first bearing slideway, said finger rest including a pair of internal flanges diametrically opposing one another and each configured to engage a respective one of said left and right notch-ends.

5. The assembly of claim 1, further including a first bearing interface adapted for connection to a firing unit, a lock switch engageable with said first bearing interface to selectively arrest relative sliding movement between the firing unit and said handle.

6. The assembly of claim 5, wherein said handle includes a first bearing slide-way disposed in sliding connection with said first bearing interface, a pistol grip extending downwardly from said first bearing slideway, a lock passage extending through said pistol grip and into said first bearing slide-way, said first bearing interface including a lock-notch, said lock switch including a tab moveable into and out of engagement with said lock-notch in said first bearing interface, said tab disposed on the upper end of a shaft extending through said lock passage in said pistol grip, a twist knob disposed on the lower end of said shaft for receiving a torque input to rotate said tab into and out of engagement with said lock-notch.

7. The assembly of claim 1, further including a second bearing interface adapted for connection to a firing unit, said handle including a second bearing slide-way disposed in sliding connection with said second bearing interface, a brake disposed for movement between extended and retracted positions within said second bearing slide-way, said brake having a generally v-shaped friction block, an engagement lever operatively connected to said friction block for selectively moving said friction block between a disengaged condition to an engaged condition.

8. The assembly of claim 1, wherein said handle includes a chassis portion and a shoulder stock portion, an adjuster track extending longitudinally along said chassis, said shoulder stock including an adjuster pin disposed for movement into and out of registry with said adjuster track.

9. The assembly of claim 8, wherein said adjuster track includes a plurality of notches disposed at generally regular intervals therealong, said adjuster pin configured to engage a selected one of said notches in said adjuster track to fix said shoulder stock in a length-adjusted position relative to said chassis, a release button carried on said shoulder stock, said release button actuatable to move said adjuster pin out of registry with said notches in said adjuster track.

10. A slide-action stock assembly for a semi-automatic firearm having a longitudinally reciprocating firing unit, said assembly comprising:

- a first bearing interface adapted for connection directly behind the trigger of a semi-automatic firing unit,
- a slide-action handle, said handle including a first bearing slide-way disposed in sliding connection with said first bearing interface for longitudinally reciprocating move-

ment when in a rapid-fire slide-action mode of operation, a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger of the firearm, and

a lock switch engageable with said firing unit to selectively arrest relative sliding movement between said firing unit and said handle, said lock switch including a tab moveable into and out of engagement with said first bearing interface.

11. The assembly of claim 10, wherein said first bearing interface has a bottom portion, a lock-out slot disposed in said bottom portion of said first bearing interface, said lock-out slot having a lock-notch, said lock switch including a tab moveable into and out of engagement with said lock-notch.

12. The assembly of claim 11, wherein said handle includes a pistol grip extending downwardly from said first bearing slideway, a lock passage extending through said pistol grip and into said first bearing slide-way, said tab disposed on the upper end of a shaft extending through said lock passage in said pistol grip, a twist knob disposed on the lower end of said shaft for receiving a torque input to rotate said tab into and out of engagement with said lock-notch.

13. The assembly of claim 10, further including a second bearing interface adapted for connection to a firing unit, said handle including a second bearing slide-way disposed in sliding connection with said second bearing interface, a brake disposed for movement between extended and retracted positions within said second bearing slide-way, said brake having a generally v-shaped friction block, an engagement lever operatively connected to said friction block for selectively moving said friction block between a disengaged condition to an engaged condition.

14. The assembly of claim 10, wherein said handle includes a chassis portion and a shoulder stock portion, an adjuster track extending longitudinally along said chassis, said shoulder stock including an adjuster pin disposed for movement into and out of registry with said adjuster track.

15. The assembly of claim 14, wherein said adjuster track includes a plurality of notches disposed at generally regular intervals therealong, said adjuster pin configured to engage a selected one of said notches in said adjuster track to fix said shoulder stock in a length-adjusted position relative to said chassis, a release button carried on said shoulder stock, said release button actuatable to move said adjuster pin out of registry with said notches in said adjuster track.

16. The assembly of claim 10, wherein said finger rest is detachable from said chassis and has a generally U-shaped configuration adapted to connect to said handle in either a right-handed position or an inverted left-handed position.

17. The assembly of claim 16, wherein said finger rest includes a concave finger cradle on a longer leg of said U-shaped configuration and a concave stub on a shorter leg of said U-shaped configuration.

18. The assembly of claim 17, wherein said handle includes a first bearing slide-way, a U-shaped groove surrounding said first bearing slide-way, said finger rest at least partially disposed in said U-shaped groove, said U-shaped groove terminating at opposing left and right notch-ends, said left and right notch-ends being directly laterally spaced apart from one another on opposite sides of said first bearing slideway, said finger rest including a pair of internal flanges diametrically opposing one another and each configured to engage a respective one of said left and right notch-ends.

19. A slide-action stock assembly for a semi-automatic firearm having a longitudinally reciprocating firing unit, said assembly comprising:

- a first bearing interface adapted for connection directly behind the trigger of a semi-automatic firing unit,
- a second bearing interface adapted for connection to a firing unit and spaced apart from said first bearing interface,
- a slide-action handle, said handle including a first bearing slide-way disposed in sliding connection with said first bearing interface for longitudinally reciprocating movement when in a rapid-fire slide-action mode of operation, said handle including a second bearing slide-way disposed in sliding connection with said second bearing interface, a finger rest configured to stabilize the end of a user's trigger finger stretched in front of the trigger of the firearm, and
- a brake disposed for movement between extended and retracted positions within said second bearing slide-way, said brake having a generally v-shaped friction block, an engagement lever operatively connected to said friction block for selectively moving said friction block between a disengaged condition and an engaged condition.

20. The assembly of claim 19, wherein said handle includes a chassis portion and a shoulder stock portion, an adjuster track extending longitudinally along said chassis, said shoulder stock including an adjuster pin disposed for movement into and out of registry with said adjuster track.

* * * * *

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-15640
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEB 04, 2009 THOMAS K. KAHN CLERK

D. C. Docket No. 08-00988-CV-T-26-TGW

WILLIAM AKINS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(February 4, 2009)

Before BIRCH, HULL and PRYOR, Circuit Judges.

PER CURIAM:

William Akins appeals the summary judgment in favor of the Bureau of

Alcohol, Tobacco, Firearms, and Explosives and against his complaint that the Bureau violated his due process rights when it classified the Akins Accelerator, an accessory that increases the rate of fire of a semiautomatic rifle, as a prohibited firearm. Akins argues that the decision of the Bureau to classify the Accelerator as a “machinegun” as defined in the National Firearms Act, 26 U.S.C. § 5845(b), is unreasonable and not entitled to deference; the classification of the Accelerator without a hearing violated his right to procedural due process; and section 5845(b) is unconstitutionally vague. We affirm.

I. BACKGROUND

The Gun Control Act makes it unlawful for any person, other than law enforcement personnel, to “transfer or possess a machinegun” manufactured after May 19, 1986. 18 U.S.C. § 922(o). The term “machinegun” used in section 922(o) shares the definition of the term in the National Firearms Act. The Firearms Act defines a machinegun as “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.” 26 U.S.C. § 5845(b). A machinegun also includes “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”

Id. Congress delegated authority to the Bureau to interpret and enforce the Act. 27 C.F.R. § 479.

Akins invented an “apparatus for accelerating the cyclic firing rate of a semi-automatic firearm” and received a patent for the accessory. The Accelerator is a molded stock that cradles a semiautomatic rifle and uses an internal spring and the force of recoil to reposition and refire the rifle. According to Akins, a gunman pulls the trigger, then “maintains tension against the finger stops,” and each time the rifle recoils, it is pushed forward by “tension supplied by the spring,” which pushes “the trigger . . . into the finger[] and the rifle.” The process continues until the rifle empties its ammunition chamber or the shooter releases contact with the finger stops. This process is known commonly as “bump firing,” but the Accelerator allegedly enables the shooter to achieve better accuracy than with similar devices.

In March 2002, Akins wrote the Firearms Technology Branch of the Bureau to inquire if it would classify the Accelerator as a machinegun. In the letter, Akins explained that the Accelerator “alter[ed] the stock on some semiautomatic rifles in a manner which allows them to be fired so rapidly that the practical effect is equivalent to a fully-automatic machinegun.” After the Firearms Branch tested a prototype of the Accelerator with an SKS-type rifle, it determined that “[t]he

weapon did not fire more than one shot by a single function of the trigger” and concluded that “the submitted stock assembly does not constitute a machinegun . . . [nor] a part or parts designed and intended for use in converting a weapon into a machinegun.” The letter mentioned that the prototype broke during testing.

Concerned that the classification might not include an Accelerator that functioned properly, Akins asked the Bureau in January 2004 to explain its ruling. The Bureau stated that it classified the Accelerator based on its “theory of operation,” which “was clear even though the rifle/stock assembly did not perform as intended.” Akins began to produce and sell the Accelerator.

In August 2006, the Bureau noticed a website that Akins used to market the Accelerator. The website advertised the Accelerator as “[e]valuated by” the Bureau and quoted from its letters. An individual who had purchased an Accelerator wrote the Bureau and asked for a “written determination” whether the accessory when “assembled with a standard Ruger 10/22 semiautomatic carbine” would constitute a machinegun. The Bureau also received requests to evaluate other devices designed to increase the rate of fire of a semiautomatic firearm.

The Bureau opened an investigation regarding the Accelerator in September 2006. After the Bureau obtained and tested the accessory, it advised Akins in November 2006 that the Accelerator, when used with a Ruger 10/22 rifle,

“demonstrated that a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.” The Bureau classified the Accelerator as a machinegun, notified Akins that its previous letters were “overruled,” and instructed him either to register the devices he possessed or to surrender them.

On December 13, 2006, the Bureau issued a new policy statement, ATF Ruling 2006-2. The Bureau stated that “conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.” The Bureau described the Accelerator in the statement and stated that the accessory was a machinegun. In January 2007, the Bureau ordered Akins to turn over any recoil springs in his possession.

In early February, Akins asked the Bureau to reconsider its decision. Akins alleged that “[i]f the trigger finger remains in contact with the trigger, only one shot can result until the trigger is released and then pressed again” and he mentioned that several other devices had not been classified as machineguns although they also enabled shooters to fire two or three shots with a single pull of the trigger. Akins argued that the original classification of the Accelerator was

“consistent” with “long-standing agency interpretations” and he asked for an opportunity to “present [his] case orally” to the Bureau. The Bureau affirmed its decision summarily in September 2007.

Akins filed a complaint against the United States in May 2008. He alleged that the decision of the Bureau was arbitrary and capricious and violated his right to due process. Akins requested the court: (1) declare that the Accelerator is not a machinegun; (2) issue an injunction to prohibit the government from treating the Accelerator as a machinegun; (3) declare section 5845 unconstitutionally vague; and (4) issue an injunction to prohibit the government from classifying the Accelerator as a machinegun.

The United States moved for summary judgment, which the district court granted. The district court found that the decision of the Bureau that the Accelerator qualified as machinegun was consistent with the language and legislative history of the National Firearms Act and concluded that the Bureau had the authority to reclassify the Accelerator. The court ruled that the actions of the Bureau did not violate Akins’s right to procedural due process and that the definition of machinegun in section 5845 was not unconstitutionally vague.

II. STANDARD OF REVIEW

We review a summary judgment de novo. Cooper v. Fulton County, Ga.,

458 F.3d 1282, 1285 (11th Cir. 2006). Under the Administrative Procedures Act, we defer to the decision of the Bureau unless it “(1) exceeds the Bureau’s statutory authority, (2) violates a constitutional right, or (3) constitutes an ‘arbitrary’ or ‘capricious action,’ or ‘an abuse of discretion’ or an action ‘otherwise not in accordance with law.’” Gun South, Inc. v. Brady, 877 F.2d 858, 861 (11th Cir. 1989) (quoting the Administrative Procedure Act, 5 U.S.C.A. § 706(2)(A), (B), and (C) (West 1977)). Based on that deferential standard, we “cannot substitute our judgment for the Bureau’s judgment, but rather, we must presume” that the actions of the government agency are “valid[.]” Id. We review de novo the constitutionality of a federal statute. See United States v. Awan, 966 F.2d 1415, 1424 (11th Cir. 1992).

III. DISCUSSION

Akins challenges the summary judgment on three grounds. First, Akins argues that the classification by the Bureau of the Accelerator as a machinegun is unreasonable. Second, Akins argues that the summary disposition of the classification violated his right to due process. Third, Akins contends that section 5845(b) of the National Firearms Act is unconstitutionally vague. These arguments fail.

The Bureau acted within its discretion when it reclassified the Accelerator as

a machinegun. A machinegun is a weapon that fires “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The interpretation by the Bureau that the phrase “single function of the trigger” means a “single pull of the trigger” is consonant with the statute and its legislative history. See Staples v. United States, 511 U.S. 600, 602 n.1, 114 S. Ct. 1793, 1795 n.1 (1994); National Firearms Act: Hearings Before the Committee on Ways and Means, 73rd Cong. 40 (1934). After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted. Based on the operation of the Accelerator, the Bureau had authority to “reconsider and rectify” what it considered to be a classification error. See Gun South, 877 F.2d at 862–63. That decision was not arbitrary and capricious. See id. at 866.

The Bureau did not violate Akins’s right to due process when it reclassified the Accelerator summarily. Due process requires that the “a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.” Mathews v. Eldridge, 424 U.S. 319, 348, 96 S. Ct. 893, 909 (1976) (quoting Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 171–72, 71 S. Ct. 624, 649 (1951) (Frankfurter, J., concurring)). As the Mathews Court explained, “[a]ll that is

necessary is that the procedures be tailored, in light of the decision to be made, to ‘the capacities and circumstances of those who are to be heard,’ to insure that they are given a meaningful opportunity to present their case.” Id. at 349, 96 S. Ct. at 909 (citation omitted). Akins received notice that the Bureau had reclassified the Accelerator, and Akins submitted a lengthy request for the agency to reconsider its decision based on his interpretation of the statute. No further process was required.

Section 5845(b) also is not unconstitutionally vague. A statute is constitutionally vague when it fails to give a “person of ordinary intelligence a reasonable opportunity to know what is prohibited.” Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298–99 (1972). The plain language of the statute defines a machinegun as any part or device that allows a gunman to pull the trigger once and thereby discharge the firearm repeatedly. See United States v. Thomas, 567 F.2d 299, 300 (5th Cir. 1978) (applying a commonsense meaning to the word “silencer” under former section 5845 in a vagueness challenge). Use of the word “function” instead of “pull” to reference the action taken by a gunman to commence the firing process is not so confusing that a man of common intelligence would have to guess at its meaning.

IV. CONCLUSION

The summary judgment in favor of the United States is **AFFIRMED**.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

FREEDOM ORDNANCE MFG., INC.,)
)
 Plaintiff,)
)
 v.) Case No. 3:16-cv-243-RLY-MPB
)
 THOMAS E. BRANDON, Director,)
 Bureau of Alcohol Tobacco Firearms)
 and Explosives,)
)
 Defendant.)

**BRIEF IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Freedom Ordnance Manufacturing, Inc. (“Freedom”) is a firearms manufacturer headquartered in Chandler, Indiana. In this case, Freedom challenges a decision by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) that a device Freedom seeks to manufacture and market is a “machinegun” as defined under the National Firearms Act, 26 U.S.C. § 5845(b). ATF’s decision is not arbitrary and capricious, but is supported by the administrative record. Based on the foregoing, ATF is entitled to summary judgment.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE¹

Freedom Ordnance Manufacturing, Inc. (“Freedom”) is a federally-licensed firearms manufacturer with its principle place of business in Chandler, Indiana. (Docket No. 1 ¶ 2.) Freedom designed an Electronic Reset Assist Device (“ERAD”) for commercial sale to the general public. (Docket No. 1 ¶ 9.) The purpose of the ERAD, as described by Freedom, is to “improve firearm design” to assist the firearm user’s “ability to continually pull the trigger in a rapid manner when a high rate of fire is desired.” (Administrative Record (“AR”) 0025; Patent documents.)

The Firearms and Ammunition Technology Division (“FATD”) of ATF, through its Firearms Technology Industry Services Branch (“FTISB”), provides expert technical support to ATF, other Federal agencies, State and local law enforcement, the firearms industry, Congress, and the general public. ATF, Firearms Ammunition and Technology (2017), available at <https://www.atf.gov/firearms/firearms-and-ammunition-technology>. FTISB is responsible for technical determinations concerning types of firearms approved for importation into the United States and for rendering opinions regarding the classification of suspected illegal firearms and newly designed firearms. *Id.*

There is no requirement in the law or regulations for a manufacturer to seek an ATF classification of its product prior to manufacture. *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, National Firearms Act Handbook 7.2.4 (2017), available at

¹ As discussed in Legal Background, Section D, the typical Fed. R. Civ. P. 56 standard and procedural structure does not apply in an APA review case. Accordingly, the Defendant is not required to marshal evidence showing material issues of fact in dispute and the typical “Statement of Material Facts Not In Dispute” does not apply, but is offered for factual context. Specific sections of the Record are cited in the relevant portions of the Argument section.

<https://www.atf.gov/firearms/national-firearms-act-handbook>. ATF, however, encourages firearms manufacturers to submit devices for classification before they are offered for sale to ensure that the sale of such devices would not violate the Federal firearms laws and regulations.

Id. ATF responds to classification requests with letter rulings that represent “the agency's official position concerning the status of the firearms under Federal firearms laws.” *Id.* at 7.2.4.1.

A. The November 2015 Submission

In November 2015, Freedom submitted a request to FTISB to examine a “trigger reset device.” (AR 0002; 0005 – 17 (photos of submission).) Freedom submitted a prototype of the device, along with correspondence, and a Bushmaster Model XM15-E2S AR-type firearm to be used in testing the prototype. (*Id.*)

FTISB closely examined and tested the prototype. (AR 0003.) As part of the examination, FTISB staff fired an AR-type rifle² with the prototype attached. (*Id.*) FTISB staff noted two instances of machinegun function with the prototype device attached. (*Id.*) Specifically, FTISB found that trigger reset device, when attached to the test weapon, converted it into a weapon that fired automatically – “firing more than one shot without manual reloading by a single function of the trigger.” (*Id.*) Based on the examination and testing conducted, FTISB determined that the trigger reset device was a “machinegun” as defined in 26 U.S.C. § 5845(b), and notified Freedom in a letter dated March 23, 2016. (AR 0002 – 4.)

B. The April 2016 Submission and October 27, 2016 Classification Decision

² FTISB ended up using an ATF AR-type firearm to field test the prototype device because it noted a deformity in the Bushmaster Model XM15-E2S AR-type firearm submitted by Freedom. (AR 0003.)

In April 2016, Freedom submitted a new sample prototype of its trigger reset assist device (referred to as the “ERAD”). (AR 0001.) According to Freedom, the new sample prototype “is a total redesign” of the initial prototype. (AR 0001.) In the submission, Freedom included two sample prototypes of the device, along with 9-volt lithium batteries, and DVDs showing demonstrations of live firing and disassembly of the device. (*Id.*) Although Freedom did not explicitly request a classification from FTISB on its prototype, FTISB treated the submission as such because the letter referred back to the Agency’s March 23, 2016, classification and stated that Freedom “worked very hard to correct” the issues identified in the March 23, 2016, letter. (*Id.*)

On or about September 7, 2016, Freedom submitted a supplemental letter to FTISB in support of its April 2016 request for classification of the ERAD. (AR 0018 – 24.) The supplemental materials included a letter from Freedom’s counsel setting forth Freedom’s position that the ERAD should not be classified as a machinegun. (AR 0018 – 24.) The supplemental materials also included a sixteen minute demonstration video of the ERAD, and written materials, including Freedom’s purported patent application for the ERAD. (AR 0018; AR0025 – 46.) In the video, Freedom states that the ERAD permits the shooter to discharge 450 to 500 rounds per minute. (AR 0047.)

FTISB examined that submission and supplemental materials, including the demonstration video. (AR 0070 – 71.) Specifically, FTISB disassembled and examined the two sample ERAD prototypes. (*Id.*) FTISB examined each component part of the ERAD and its design features and characteristics. (AR 0071 – 72.) FTISB staff also conducted field testing of the ERAD by attaching it to and firing from commercially-available Remington and

PMC rifles and a Bushmaster Model XM15-E2S AR-type firearm. (AR 0072.) During the test-fire portion of the examination, staff observed machinegun function six times. (*Id.*)

Specifically, FTISB personnel observed that a single pull of the ERAD trigger - designated as the “primary trigger” - initiated the firing sequence, which caused firing until the trigger finger was removed. (AR 0073.)

By letter dated October 27, 2016, FTISB issued a classification on Freedom’s ERAD trigger system. (AR 0070 - 82.) In the eleven-page letter, FTISB described (1) the composition of the trigger and grip assembly, including its several constituent parts; (2) FTISB’s process for examining and testing the ERAD trigger system; (3) its observations of the ERAD trigger system functionality and the firing effect that was produced when the ERAD was applied to a firearm (*i.e.*, the prototype sent by Freedom) and test-fired; and (4) a breakdown of the firing sequence with and without the ERAD, including several accompanying illustrations. (*Id.*)

FTISB concluded that the ERAD is properly classified as a machinegun. Significantly, FTISB found that “the firing sequence is initiated by a pull of the primary trigger and perpetuated *automatically* by shooter’s constant pull and the reciprocating, battery-powered metal lobe repeatedly forcing the primary trigger forward.” (AR 0073.) Thus, “[a] single pull of the trigger by the shooter therefore starts a firing sequence in which *semiautomatic* operation is made *automatic* by an electric motor.” (*Id.*) FTISB found that because the shooter does not have to release the trigger for subsequent shots to be fired, the firing sequence is continually engaged as long as the shooter maintains constant rearward pressure (a pull) on the trigger and the motor continues to push the shooter’s finger forward. (*Id.*) In other words, as long as the trigger is depressed, the firearm continues to fire until either the trigger finger is removed, the

firearm malfunctions, or it runs out of ammunition. (*Id.*)

FTISB therefore concluded that the installation of an ERAD on a semiautomatic firearm causes that firearm to shoot automatically (through the automatic functioning made possible by the electric motor), more than one shot, by a single function (a single constant pull) of the trigger. FTISB therefore properly concluded that the ERAD is classified as a combination of parts designed and intended for use in converting a semiautomatic rifle into a machinegun under 26 U.S.C. § 5845(b). (AR at 79-80; 80-82.)

**THE COURT MUST STRIKE AND DISREGARD
FREEDOM'S EXTRA-RECORD EVIDENCE**

Freedom brings its claim under the Administrative Procedure Act, 5 U.S.C. § 704, challenging ATF's decision that Freedom's ERAD device be classified as a machinegun. (Docket No. 1; Docket No. 24.) As discussed further below, review of the agency's decision under the APA is conducted using an arbitrary and capricious standard, and the Court's review is limited to the administrative record lodged by the agency. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court."); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) ("That review is to be based on the full administrative record that was before the Secretary at the time he made his decision."), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 952 (7th Cir. 2003) ("the reviewing court considers only the administrative record already in existence, not some new record made initially [in that court].").

In support of its motion for summary judgment, Freedom submitted the declarations of

Michael Winge (Pl.’s Ex. D, Docket No. 24-4) and Richard Vasquez (Pl.’s Ex. E, Docket No. 24-5). Mr. Winge is one of the owners of Freedom Manufacturing. (Pl.’s Ex. D, Docket No. 24-4.) Several paragraphs of his declaration recount correspondence between FTISB and Freedom, which is already contained in the Administrative Record and which is the best evidence of its contents. (See Pl.’s Ex. D, Docket No. 24-4, ¶¶ 18 – 20.) The remaining paragraphs contain Mr. Winge’s opinions about the ERAD and his arguments regarding why the ERAD should not be classified as a machinegun. Mr. Winge’s opinions are merely that – his opinions – and are not part of the official record containing the information upon which ATF relied in issuing its decision. The Court should strike and disregard these opinions because the Court’s review is limited to the administrative record lodged by ATF. Freedom did not challenge or move to supplement that administrative record; therefore, it is complete. *Highway J Citizens Grp.*, 349 F.3d at 952; *see also United States Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (“a presumption of regularity attaches to [g]overnment agencies’ actions.”); *Spiller v. Walker*, No. A-98-CA-255-SS, 2002 U.S. Dist. Lexis 13194, *26-27 (W.D. Tex. July 19, 2002) (“any legal conclusions and post-[decision] evidence within the declarations and argumentation offered simply to contest the agencies’ experts are not admissible.”).

Richard Vasquez appears to be a witness who was retained by Freedom to provide his expert opinion regarding the ERAD’s classification. (Pl.’s Ex. E, Docket No. 24-5.) Expert reports are generally not permitted in an APA review case. *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 555 (1978) (“the role of a court in reviewing the sufficiency of an agency’s consideration . . . is a limited one, limited both by the time at which the decision was made and by the statute mandating review.”). Both the Supreme Court and the Seventh Circuit

have emphasized that “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Cronin v. USDA*, 919 F.2d 439, 443 (7th Cir. 1990) (“it is imprudent for the generalist judges of the federal district courts and courts of appeals to consider testimonial and documentary evidence bearing on those questions unless the evidence has first been presented to and considered by the agency.”); *see also Airport Cmty Coal. v. Graves*, 280 F. Supp.2d 1207, 1213 (W.D. Wash. 2003) (holding that APA was intended to preclude “Monday morning quarterbacking”).

The Vasquez Declaration simply criticizes the agency’s analysis, but under the APA the Court must allow the agency to rely on its own experts’ opinions even if a plaintiff has other expert opinions. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989) (“When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts, even if as an original matter, a court might find contrary views more persuasive.”). Therefore, even if a so-called “expert” conclusion would contradict the agency’s expert’s conclusions, this Court can give it no force. *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1335 (9th Cir. 1992).

Based on the foregoing, the Court must strike and disregard the Winge and Vasquez Declarations.

LEGAL BACKGROUND

A. The National Firearms Act and Gun Control Act

The National Firearms Act of 1934, 26 U.S.C. Chapter 53, and the Gun Control Act of 1968, 18 U.S.C. Chapter 44, comprise the relevant federal framework governing the firearm

market. The Gun Control Act generally makes it unlawful for a person to transfer or possess a machinegun manufactured on or after May 19, 1986. 18 U.S.C. § 922(o). ATF is charged with administering and enforcing both the National Firearms Act and the Gun Control Act. 28 C.F.R. § 0.130(a)(1)–(2).

18 U.S.C. § 922(a)(4) states that it shall be unlawful –

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

Accordingly, with the limited exception of State, Federal and local law enforcement agencies, it is unlawful for any person to transfer or possess a machinegun manufactured on or after May 19, 1986. Moreover, machineguns must be registered in the National Firearms Registration and Transfer Record and may only be transferred upon the approval of an application. 26 U.S.C. § 5812. The National Firearms Act makes it unlawful to manufacture a machine gun in violation of its provisions. 26 U.S.C. § 5861(f). Specifically, the National Firearms Act requires that a person shall obtain approval from ATF to make a National Firearms Act firearm, which includes a machinegun. 26 U.S.C. §§ 5922, 5845(a). Similarly, licensed manufacturers are required to notify ATF by the end of the business day following manufacture of a NFA firearm. 26 U.S.C. § 5841(c), 27 CFR 479.103.

B. The Definition of a Machinegun

The National Firearms Act, 26 U.S.C. § 5845(b), defines a machinegun³ as

³ Although more commonly spelled “machine gun,” the applicable statutes use the spelling “machinegun.”

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.

See also 27 C.F.R. § 478.11 (stating same).

The Gun Control Act incorporates the National Firearms Act's definition of machinegun and defines machinegun identically to the National Forearms Act. 18 U.S.C. § 922(a)(4).

Both statutory definitions of a machinegun therefore include a combination of parts designed and intended for use in converting a weapon into a machinegun. *Id.* This language includes a device that, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until the finger is released or the ammunition supply is exhausted. *See* ATF Rule 2006-2 (AR at 630-32.)

C. The Administrative Procedure Act

The Administrative Procedure Act (APA) requires that the Court “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The “scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Court must be satisfied that the agency has “‘examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” *Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 6 (D.C. Cir. 2006) (quoting *State Farm*, 463 U.S. at 43). The agency’s decisions

are entitled to a “presumption of regularity,” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971), and although “inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one,” *id.* at 416.

Federal courts are particularly deferential towards the “scientific determinations” of the agency, which are “presumed to be the product of agency expertise.” *Franks v. Salazar*, 816 F.Supp.2d 49, 55 (D. D.C. 2011) (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983)). The Court’s review is confined to the administrative record, subject to limited exceptions not at issue here. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (“[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.”). *See also Sig Sauer, Inc. v. Jones*, 133 F. Supp. 3d 364, 371 (D.N.H. 2015), *aff’d sub nom. Sig Sauer, Inc. v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (recognizing that classification determinations “require expertise that is well within the ATF’s grasp” and that “its conclusions are entitled to substantial deference from a reviewing court.”) (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989)).

D. Summary Judgment in APA Cases

Under the APA, “courts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review.” *Fla. Power & Light Co.*, 470 U.S. at 743-44. Because extra-record evidence and trials are inappropriate in APA cases, courts decide APA claims via summary judgment based on the administrative record the agency compiles. *Cronin*, 919 F.2d at 445 (“Because the plaintiffs are not entitled to present evidence in court to challenge the [decision-maker’s] decision . . . , there will never be an evidentiary hearing in court.”); *Nw. Motorcycle Ass’n v. USDA*, 18 F.3d 1468, 1472 (9th Cir.

1994).

Although summary judgment is the procedural mechanism by which the Government is presenting its case, the limited role federal courts play in reviewing such administrative decisions means that the typical Federal Rule 56 summary judgment standard does not apply. *See Citizens for Appropriate Rural Roads, Inc. v. Foxx*, 14 F. Supp. 3d 1217, 1228 (S.D. Ind. March 31, 2014) (Barker, J.) (citing *Cronin*, 919 F.2d at 445); *see also Sierra Club v. Mainella*, 459 F.Supp.2d 76, 89–90 (D. D.C. 2006). Instead, in APA cases, “[t]he factfinding capacity of the district court is thus typically unnecessary to judicial review of agency factfinding [C]ourts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review.” *Florida Power & Light Co.*, 470 U.S. at 744–74.

ARGUMENT

Plaintiff raises several challenges to FTISB’s classification decision. As discussed below, FTISB conducted a thorough examination of the ERAD, and fully disclosed the findings supporting its decision. FTISB’s decision was not arbitrary and capricious, but is supported by the facts as presented in the administrative record, and is a reasonable interpretation of the statute. Defendant is entitled to judgment in its favor on all of the Plaintiff’s claims.

A. ATF’s Decision Is Not Arbitrary and Capricious.

A machinegun is defined in part as any weapon that shoots “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The term also includes any “combination of parts designed and intended, for use in converting a weapon into a machinegun.” *Id.* In the definition of machinegun, neither the National

Firearms Act nor the Gun Control Act further define the phrase “single function of the trigger.” The test firing of Plaintiff’s prototype—an AR-15 semi-automatic rifle (Bushmaster Model XMI150E2S) with an integrated ERAD grip—demonstrated that, once the grip button was pulled (activating the motor) concurrent with constant rearward pressure being applied to the trigger extension (which Plaintiffs refer to as the “reset bar”), the weapon fired more than one shot without manual reloading and without any additional action on the shooter’s part. Indeed, the weapon fired continuously until the shooter stopped applying rearward pressure to the trigger extension, or the ERAD’s ammunition supply was exhausted. (AR at 79, 47 (demonstration video).) Additionally, when equipped with the ERAD, the weapon fired at a very high rate of speed, discharging up to 500 rounds per minute. (AR 0047.) Thus, the nature and mechanics of the ERAD support FTISB’s finding that it converted the semiautomatic firearm to a machinegun.

FTISB’s conclusion is consistent with the National Firearm’s Act’s legislative history, in which the drafters equated “single function of the trigger” with “single pull of the trigger.” *See* National Firearms Act: Hearings Before the Committee on Ways and Means, H.R. Rep. No. 9066, 73rd Cong., 2nd Sess., at 40 (1934) (“Mr. Frederick.[] The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and such guns are not properly designated as machine guns. A gun, however, which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun.”); *see also* George C. Nonte, Jr., *Firearms Encyclopedia* 13 (1973) (the term “automatic” is defined to include “any firearm in

which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device – in other words, a machinegun”).

FTISB’s decision is also consistent with the ordinary meaning of the term “function,” which includes “any of a group of related actions contributing to a larger action.” Webster’s Ninth New Collegiate Dictionary, 498 (1986); *see also* Random House Thesaurus College Edition, 297 (1984) (a synonym of function is “act”). Here, the action, or act, is pulling the trigger, which leads to the automatic firing.

Courts have also interpreted “function” as the action of pulling the trigger. *See Staples v. United States*, 511 U.S. 600, 600 (1994) (“The National Firearms Act criminalizes possession of an unregistered ‘firearm,’ 26 U.S.C. § 5861(d), including a ‘machinegun,’ § 5845(a)(6), which is defined as a weapon that automatically fires more than one shot with a single pull of the trigger, § 5845(b).”); *see also id.* at 602 n.1 (“As used here, the terms ‘automatic’ and ‘fully automatic’ refer to a weapon that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are ‘machineguns’ within the meaning of the Act.”).

In *United States v. Fleischli*, 305 F.3d 643, 655-56 (7th Cir. 2002), the Seventh Circuit held that a “minigun” was a machinegun even though it was “activated by means of an electronic on-off switch rather than a more traditional mechanical trigger.” Despite Fleischli’s arguments that the minigun was not a machinegun because it was not fired by pulling a traditional trigger, but rather was fired using an electronic switch, the court found to the contrary: “Fleischli's

electronic switch served to initiate the firing sequence and the minigun continued to fire until the switch was turned off or the ammunition was exhausted. The minigun was therefore a machine gun as defined in the National Firearms Act.” *Id.* (superseded by statute on other grounds); *see also United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977) (rejecting defendant’s argument that because he had constructed a weapon with two triggers, it would not fire by a single function of the trigger, finding “it is undisputed that the shooter could, by fully pulling the trigger, and it only, at the point of maximum leverage, obtain automation with a single trigger function. We are satisfied the gun was a machine gun within the statutory definition both in law and fact.”)

Similarly here, the ERAD is a component that, when attached to a rifle, causes the rifle to function automatically. The ERAD allows the firing sequence to be initiated by a single pull of the primary trigger, which is continually engaged as long as the shooter maintains rearward pressure on the trigger and the motor continues to push the shooter’s finger forward. (AR 0073; 79-80.) Because the ERAD is a combination of parts designed and intended for use in converting a semiautomatic firearm into weapon which shoots automatically more than one shot by a single action—the pull of the trigger—it is a machinegun. ATF’s decision is not arbitrary or capricious, but is consistent with the facts based on a thorough examination and testing of the ERAD’s functionality.

B. ATF’s Classification is Consistent with Public Policy.

Because of their rapid rate of fire, machineguns have long been considered inherently dangerous and are therefore strictly regulated and generally unlawful to possess. *See* 18 U.S.C. § 922(o); *United States v. Brock*, 724 F.3d 817, 824 (7th Cir. 2013) (“Congress has grouped together sawed-off shotguns, machineguns, and a variety of dangerous explosive devices for

stringent restrictions on possession and strict registration requirements for those that can be possessed lawfully.”); *United States v. Brazeau*, 237 F.3d 842, 845 (7th Cir. 2001) (“The point is that most firearms do not have to be registered—only those that Congress found to be inherently dangerous.”); *United States v. Kruszewski*, No. 91-0031P, 1991 WL 268684, at *1 (N.D. Ind. Dec. 10, 1991) (“The categories of firearms covered by U.S.C. Title 26 include only particularly dangerous weapons such as machineguns In *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008), the Supreme Court discussed a machinegun (M-16), and recognized a “limitation on the right to keep and carry arms” that includes “dangerous and unusual weapons.” *See also United States v. Spires*, 755 F.Supp. 890, 892 (C.D. Cal. 1991) (“Congress believed these particular weapons, as opposed to firearms in general, are extremely dangerous and serve virtually no purpose other than furtherance of illegal activity.”).

The device at issue in this case – the ERAD grip – enables a firearm to produce automatic fire with a single pull of the trigger, and therefore makes an otherwise semiautomatic firearm into one of the “dangerous and unusual weapons” recognized by the *Heller* court.. A rifle with the ERAD will continue to fire automatically once the trigger is pulled and remains depressed, with no further action by the shooter required. The widely-available Bushmaster Model XMI150E2S fires at a rate of one shot per trigger pull and up to 120 rounds per minute.⁴ When

⁴ Although there are no official documents establishing a maximum firing rate, it is thought that 120 rounds per minute would be a ceiling. Obviously, the rate of fire depends on how fast the shooter can pull and release the trigger. The Department of the Army has published 45 rounds per minute as the maximum effective rate of fire for AR-type weapons, meaning the number of shots that allow the shooter to effectively engage the intended target. *See* Department of the Army, Field Manual (FM) 3-22.9, Rifle Marksmanship M16-/M4-Series Weapons, Ch. 2-1 (Characteristics of M16-/M4-Series Weapons), Aug. 2008, available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixkfTIrPzTAhUKwiYKHf9iA30QFggnMAA&url=http%3A%2F%2Fusacac.army.m>

the ERAD device is attached to it, however, the same rifle is capable of firing at a rate of up to 500 rounds per minute. (AR 0047.) This unhindered automatic firing capability is the very danger that the National Firearms Act was intended to protect against. *See* 149 Cong. Rec. H2944-02, H2950 (Apr. 9, 2003) (“these weapons ... are inherently dangerous”); *United States v. Newman*, 134 F.3d 373 (6th Cir. Jan. 21, 1998) (unpublished) (“Although the National Firearms Act is ostensibly a revenue-generating statute enacted under Congress’s taxation power, it is clearly designed to regulate the manufacture, transfer, and possession of dangerous weapons. Although the means by which Congress advanced its objectives are somewhat roundabout, close analysis of the relevant provisions reveals an unmistakable intent to prohibit possession of any machine gun the manufacture or importation of which was not explicitly authorized by the Bureau of Alcohol, Tobacco, and Firearms.”). Nor is such easy transformation to an automatic firearm consistent with the prohibition imposed by section 922(o) of the Gun Control Act. *See United States v. Haney*, 264 F.3d 1161, 1168 (10th Cir. 2001) (“banning possession of post 1986 machine guns is an essential part of the federal scheme to regulate interstate commerce in dangerous weapons.”). Accordingly, ATF’s assessment of the functionality of the ERAD grip, including its ability to convert a firearm into an automatic weapon, support ATF’s finding that the ERAD is properly classified as a machinegun.

C. Freedom’s “Reset Bar” Terminology Does Not Alter the Outcome

Freedom argues that FTISB’s analysis is flawed because the ERAD’s “reset bar” is not a “trigger.” Freedom specifically claims that, “the trigger finger reset bar is not the trigger, nor

il%2Fsites%2Fdefault%2Ffiles%2Fmisc%2Fdoctrine%2FCDG%2Fcdg_resources%2Fmanuals%2Ffm%2Ffm3_22x9.pdf&usg=AFQjCNEzIuwG-XuAHAhI5HSuun3SGVrZxg&sig2=5AF-YguyuZCKe4rELOibbQ.

can it activate the firing sequence. Only the shooter's conscious and deliberate pull of the reset bar that subsequently engages the trigger that causes the weapon to fire and the ERAD cannot be made to function any other way." (Docket No. 24 at 8.) To this end, Freedom admits it has created a device that incorporates the traditional firearm trigger as another intermediate component in the firing mechanism.

Nevertheless, Freedom's position has been rejected by ATF before, and this rejection has been upheld in court. As discussed above, in *United States v. Fleischli*, 305 F.3d 643 (7th Cir. 2002), the Seventh Circuit rejected the appellant's argument that an electronic switch did not meet the traditional definition of a trigger, holding as follows:

This is a puerile argument, based on hyper-technical adherence to literalism. We are not surprised to learn that Fleischli is not the first defendant to make such a brazen argument, although he appears to be the first to do so in this circuit. We join our sister circuits in holding that a trigger is a mechanism used to initiate a firing sequence. *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (commonsense understanding of trigger is mechanism used to initiate firing sequence); *United States v. Evans*, 978 F.2d 1112, 1113–14 n. 2 (9th Cir. 1992), *cert. denied*, 510 U.S. 821, 114 S.Ct. 78, 126 L.Ed.2d 46 (1993) (trigger is anything that releases the bolt to cause the weapon to fire). Fleischli's definition "would lead to the absurd result of enabling persons to avoid the NFA simply by using weapons that employ a button or switch mechanism for firing." *Evans*, 978 F.2d at 1113–14 n. 2. The dictionary definition of "trigger" includes both the traditional ("a small projecting tongue in a firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon") and the more general ("anything, as an act or event, that serves as a stimulus and initiates or precipitates a reaction or series of reactions."). See Webster's Unabridged Dictionary Of The English Language (2001). Fleischli's electronic switch served to initiate the firing sequence and the minigun continued to fire until the switch was turned off or the ammunition was exhausted. The minigun was therefore a machine gun as defined in the National Firearms Act.

Id. at 655–56.

Similarly, in *United States v. Carter*, 465 F.3d 658 (6th Cir. 2006), the Sixth Circuit opined on the definition of a "trigger" under the National Firearms Act. There, Carter appealed

a conviction for illegal possession of a machine gun and other parts designed or intended for use in converting a weapon into a machinegun. *Id.* at 660. Carter argued that the jury instruction on the definition of “trigger” was faulty because the indictment “did not mention a trigger mechanism among the parts he was alleged to have possessed” and thus the indictment failed to state a charge pursuant to the Federal Rule of Criminal Procedure 7(c)(1) because “the definition of ‘machinegun’ given at 26 U.S.C. § 5845 specifically includes a trigger.” *Id.* at 661. According to the testifying expert, the weapon was complete except for a trigger mechanism. Thus “[a]fter inserting a magazine with three rounds of ammunition, he said, he was able to make the gun fire all three rounds consecutively by pulling the bolt back and releasing it by hand.” *Id.* at 661-62. The court held that, even in the absence of a traditional trigger, the weapon fell within the definition of a “machinegun.”

The reasoning adopted by other circuits, as well as simple logic, compels the conclusion that the district court’s instruction was proper and not an abuse of discretion. A trigger is generally “anything, as an act or event, that serves as a stimulus and initiates or precipitates a reaction.” Webster’s Unabridged Dictionary 2021 (2nd ed.1997). Within the realm of firearms, it is commonly understood as “a small projecting tongue in a firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon.” *Id.* However, the latter definition is obviously a context-specific articulation of the former. According to the testimony of the government’s expert, the manipulation of his hands on the assembled weapon initiated a reaction, namely the firing of the gun and two automatic successive firings. This manual manipulation constituted a trigger for purposes of the weapon's operation. The district court’s “trigger” instruction to the jury was not an abuse of discretion.

Id. at 665.

Finally, in *United States v. Camp*, 343 F.3d 743 (5th Cir. 2003), the defendant modified a semiautomatic rifle by adding an electrically operated trigger mechanism, which operated as follows:

When an added switch behind the original trigger was pulled, it supplied electrical power to a motor connected to the bottom of a fishing reel that had been placed inside the weapon's trigger guard; the motor caused the reel to rotate; and that rotation caused the original trigger to function in rapid succession. The weapon would fire until either the shooter released the switch or the loaded ammunition was expended.

Id. at 744.

An ATF expert testified that a true trigger activating devices, although giving the impression of functioning as a machinegun, are not classified as machineguns because the shooter still has to separately pull the trigger each time he/she fires the gun by manually operating a lever, crank, or the like. To this end, the court stated:

We reject Camp's contention that the switch on . . . his firearm was a legal "trigger activator". As discussed, those activators described by the ATF Agent require a user to separately pull the activator each time the weapon is fired. Camp's weapon, however, required only one action – pulling the switch he installed – to fire multiple shots.

Camp, 343 F.3d at 745.

Similarly here, even though Freedom refers to its ERAD as a "trigger reset assistance device," a firearm fitted with the ERAD does not require separate, mechanical pulls of the trigger (*i.e.*, pull and release) to discharge more than a single round. The trigger is moving at such a rapid rate that the shooter's finger does not pull the trigger each time to fire each shot, but instead pulls the trigger once and then remains stationary, resisting forward pressure, as the motor causes the weapon to function automatically, and continue to fire rounds. It is undisputed that when the shooter's finger remains connected to the "reset bar," and an electric motor is activated, the "reset bar" functions as a trigger in and of itself, and controls the pace of the firing sequence. The only action required by the shooter is that of continued rearward pressure. To this end, the ERAD is capable of firing at a rate of 500 rounds per minute and does not require

any additional act by the shooter after the motor is turned on and the shooter pulls the “reset bar” (or what FTISB describes as the “primary trigger”) once without releasing pressure. (AR 0047.)

Accordingly, in spite of its branding and terminology, the ERAD meets the definition of a machinegun.

D. The ERAD Is Not The Same As “Bump Fire” or “Slide Fire” Stock.

Freedom also argues that its ERAD is similar to “bump fire” or “slide fire” stock, which has been found not to be machinegun technology. (Pl.’s Br. at 24 (citing AR at 231 and Pl.’s Exhibits A, B, and C, Docket Nos. 24-1, 24-2, 24-3).) “Bump firing” is the process of using the recoil of a semi-automatic firearm to fire in rapid succession, simulating the effect of an automatic firearm when performed with a high level of skill and precision by the shooter. Bump firing requires the shooter to manually and simultaneously pull and push the firearm in order for it to continue firing. (See Pl.’s Ex. A, Docket No. 24-1 at 3-4; Pl.’s Ex. B, Docket No. 24-3 at 4-5.) The shooter must use both hands to pull the trigger rearward - and the other to push the firearm forward to counteract the recoil - to fire in rapid succession. While the shooter receives an assist from the natural backfire of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input, rather than mechanical input, and thus cannot shoot “automatically.” (Pl.’s Ex. A, Docket No. 24-1 at 3-4; Pl.’s Ex. B, Docket No. 24-3 at 4-5.)

Conversely, the ERAD does not require any such skill or input from the shooter. A rifle equipped with the ERAD will utilize a battery-powered motor to continue to fire automatically once the trigger is pulled and remains depressed, with no other action by the shooter required. Indeed, in its classification letter, FTISB noted that the AR-type trigger functions as a

“secondary trigger” in that “it merely becomes a part of the firing sequence.” (AR at 0071.) Freedom argues that the ERAD allows the shooter to make a “conscious decision to apply or not apply rearward pressure to fire the weapon by initiating a trigger function,” (AR at 47 (demonstration video)). This argument is technically correct to the extent the shooter may make a purposeful choice to cease applying rearward pressure to the reset bar/primary trigger. In fact, this is true of any machinegun—a shooter makes a conscious decision to pull and release the trigger. What is misleading, however, is any assertion that the shooter may make a conscious choice to pull and release the trigger for *each individual, subsequent shot*. In accepting this argument, the shooter would presumably be able to control the precise number of shots he intends to fire. For example, he could intend to fire a precise number of rounds of ammunition, such as 263 rounds, and actually expel that exact number of rounds. With the ERAD engaged, however, the number of rounds fired is the result of automatic functioning so long as the shooter is applying pressure on the “reset bar,” and therefore the number of rounds expelled cannot accurately be characterized as conscious or deliberate. (AR 0047; 0073.)

In contrast, bump firing requires the shooter to manually pull and push the firearm in order for it to continue firing. Generally, the shooter must use both hands—one to push forward and the other to pull rearward—to fire in rapid succession. While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input in pushing the weapon forward, rather than mechanical input, and is thus not an automatic function of the weapon.

Freedom also argues that FTISB’s decision regarding the ERAD is inconsistent with its decision regarding the Akins Accelerator, which was an accessory attached to firearm that

accelerated rate of fire. *Akins v. United States*, 312 F. App'x 197 (11th Cir. 2009). On the contrary, ATF's decision is entirely consistent with its decision regarding the Akins Accelerator and ATF Ruling 2006-2.⁵

To operate the Akins Accelerator, the shooter pulled the trigger one time, initiating an automatic firing sequence, which in turn caused the rifle to recoil within the stock, permitting the trigger to lose contact with the finger and manually reset (move forward). *Akins*, 312 F. App'x at 199. Springs then forced the rifle forward in the stock, forcing the trigger against the finger, which caused the weapon to discharge the ammunition until the shooter released the constant pull or the ammunition is exhausted. Put another way, the recoil and the spring-powered device caused the firearm to cycle back and forth, impacting the trigger finger, which remained rearward in a constant pull, without further input by the shooter, thereby creating an automatic firing effect. *Id.* The advertised rate of fire for a weapon with the Akins Accelerator was 650 rounds per minute. *Id.*

The Eleventh Circuit found that ATF properly classified the Akins Accelerator as a machinegun because:

[a] machinegun is a weapon that fires “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The interpretation by the Bureau that the phrase “single function of the trigger” means a “single pull of the trigger” is consonant with the statute and its legislative history. After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted. Based on the operation of the Accelerator, the Bureau had authority to “reconsider and rectify” what it considered to be a classification error. That decision was not

⁵ Initially ATF classified the Akins Accelerator as a non-machinegun, but after a subsequent test fire, it was determined the Akins Accelerator converts a semiautomatic rifle into a weapon capable of firing automatically by a single function of the trigger and was therefore in fact a machinegun. Thus, ATF overruled its earlier classification.

arbitrary and capricious.

Id. at 200.

Pursuant to ATF Ruling 2006-2, any device that is truly analogous to the Akins Accelerator - *i.e.*, a device that allows a weapon to fire automatically when the shooter pulls the trigger - is properly classified as a machinegun. (AR at 630-32.) Specifically, the Rule provides that a firearm with the following functionality constitutes a machinegun:

A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

(AR at 631.)

Like the Akins Accelerator, the ERAD requires a single pull of the trigger to activate the firing sequence, which continues until the shooter's finger is released, or the firearm depletes its ammunition supply. (AR at 354-68, 395-97.) Because the ERAD is a part designed and intended for use in converting a semiautomatic firearm into weapon which shoots automatically more than one shot by a single action—the pull of the trigger—it is a machinegun. Thus, ATF's decision is not arbitrary or capricious, but is consistent with the facts based on a thorough examination and testing of the ERAD's functionality.

With regard to Plaintiff's Exhibit B (Docket No. 24-3), the 3MR reset trigger device submitted to ATF was an internal mechanism, which operated to push the shooter's finger

forward. It does not run on a motor, and although the mechanism assists in manually resetting the trigger, the shooter is still required to release the trigger to fully reset the trigger. Thus, during inspection, ATF determined that the weapon could not be fired automatically. The item was tested by seven individuals at ATF prior to the classification, and no individual was able to generate automatic fire. Because the reset trigger required a release of the trigger and subsequent pull before another round was expelled, the 3MR was not classified as a machinegun.

Based on the foregoing, FTISB has not rendered inconsistent decisions, but has inspected and analyzed each prototype or device presented to it by Freedom for classification, and has issued its decisions based on the unique characteristics of each. Accordingly, ATF's classification of the ERAD device as a machinegun is not arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the applicable law.

CONCLUSION

Based on the foregoing, the Court must enter judgment in favor of the Bureau of Alcohol, Tobacco, Firearms, and Explosives as to all of Plaintiff's claims against it.

Respectfully submitted,

JOSH J. MINKLER
United States Attorney

By: s/ Shelese Woods
Shelese Woods
Assistant United States Attorney

To: Shaefer, Christopher C. (b) (6)
Cc: Turk, Ronald B. (b) (6); Gleysteen, Michael (b) (6)
From: Allen, Joseph J.
Sent: Tue 10/3/2017 1:25:02 PM
Subject: Re: Information from ATF about Las Vegas Shooting Incident

Thanks Chris.

On Oct 3, 2017, at 8:55 AM, Shaefer, Christopher C. <(b) (6)> wrote:

Joe – for your records - - - after you cleared this message, the below email blast went out last night to approximately 76 media representatives, the PIOs (for awareness as they know to send media calls to HQ), PAD (b) (6) and (b) (6)

-Chris

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648.(b) (6) | C: (b) (6)

<image001.jpg>

From: (b) (6)
Sent: Tuesday, October 03, 2017 7:44 AM
To: Shaefer, Christopher C. (b) (6); Bennett, Megan A.
(b) (6)
Subject: Fwd: Information from ATF about Las Vegas Shooting Incident

Sent from my iPhone

Begin forwarded message:

From: (b) (6) <(b) (6)>
Date: October 2, 2017 at 9:30:45 PM EDT
Subject: Information from ATF about Las Vegas Shooting Incident

Good evening:

Special agents from ATF's San Francisco Field Division, Las Vegas Field Office responded to the shooting that occurred in Las Vegas last night, and ATF is participating in the multi-agency investigation of this horrific crime. ATF's role includes conducting urgent traces of recovered firearms, and we are providing those results to the Las Vegas Sheriff's Department and other investigative partners as they are completed.

Most importantly, ATF extends its condolences to the families and friends of everyone impacted by this tragedy.

We appreciate all of you reaching out to us today. As you are aware, however, ATF cannot provide specific information about the ongoing criminal investigation. All updates about the status of the investigation will be issued through the Las Vegas Sheriff's Department or its designee.

While we cannot provide specific information about the ongoing investigation, many of your questions relate to background information about statutes that may apply to the investigation, general statistical information about firearms in the U.S., and information about the tracing process. The general factual information provided below addresses many of these inquiries. When specific updates are authorized by the Las Vegas Sheriff's Department, we will provide them through this media distribution list. Please note that those updates will be posted on Twitter, @ATFHQ, prior to distribution.

National Firearms Act

- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act. <https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>
- To obtain an NFA firearm: An individual who is not prohibited by federal, state, or local law from receiving or possessing firearms may lawfully obtain an NFA firearm either through an approved transfer of a registered NFA firearm from its lawful owner, or an approved making of an NFA firearm. Applicants should use the ATF Form 4, Application for Tax Paid Transfer and Registration of a Firearm and the ATF Form 1, Application to Make and Register a Firearm, respectively. [26 U.S.C. §§ 5812, 5822; 27 C.F.R. §§ 479.62-66, 479.84-86] <https://www.atf.gov/firearms/qa/how-do-i-obtain-nfa-firearm>.
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- The NFA tax must be paid and registration need only happen once by the individual the firearm is being transferred to. If it is transferred to a new individual, that new individual must pay the tax and register the firearm with ATF again.
- If you have an NFA firearm and are moving: A registered possessor of an NFA firearm, other than an federal firearms licensee (FFL)/special occupational tax (SOT), may not lawfully transport in interstate or foreign commerce any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, without prior written approval of ATF, specifically the NFA Branch. Approval for the transportation may be obtained by either a

written request, or an approved application filed with ATF on Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain NFA Firearms. Please note that applications to transport NFA firearms will be approved only if consistent with all State and local laws. [18 U.S.C. § 922(a)(4); 27 C.F.R. § 478.28]

<https://www.atf.gov/firearms/qa/i-have-nfa-firearm-and-i%E2%80%99m-moving-what-do-i-do>

- If an individual is changing his or her state of residence and the individual's application to transport the NFA firearm cannot be approved because of a prohibition in the new State, options available to the lawful possessor include: NFA firearms may be left in a safe deposit box in his or her former state of residence. Also, the firearm could be left or stored in the former state of residence at the house of a friend or relative in a locked room or container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The firearms may also be transferred in accordance with NFA regulations or abandoned to ATF. <https://www.atf.gov/firearms/qa/if-individual-changing-his-or-her-state-residence-and-individuals-application-transport>
- Per the 2017 ATF Commerce Report, in 2017, there were 630,019 machineguns registered in the U.S. 11,752 were registered in Nevada. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- NFA registry records are not public.

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- There is no way to estimate the total number of firearms in the U.S. The only number we can confirm is the number of firearms that are manufactured each year, which are captured in the ATF Annual Firearms Manufacturing and Export Report. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
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If you have other questions, please contact the ATF Public Affairs Office at 202-648-7273.

To: Shaefer, Christopher C. (b) (6)
Cc: Bennett, Megan A. (b) (6)
From: Allen, Joseph J.
Sent: Tue 10/3/2017 12:55:32 AM
Subject: RE: PAD Talking Points for clearance

Thanks Chris—good catch.

From: Shaefer, Christopher C.
Sent: Monday, October 2, 2017 8:39 PM
To: Allen, Joseph J. <(b) (6)>
Cc: Bennett, Megan A. <(b) (6)>
Subject: Fwd: PAD Talking Points for clearance

Sorry Joe, meant to copy you in and hit send too quick! Please see my only comment below...

Chris

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648 (b) (6) | C: (b) (6)
Begin forwarded message:

From: "Shaefer, Christopher C." <(b) (6)>
Date: October 2, 2017 at 8:34:49 PM EDT
To: "Bennett, Megan A." <(b) (6)>
Subject: Fwd: PAD Talking Points for clearance

Meg - I only noted the the word -in- needs to be inserted after participating and in front of the multi-agency....excerpt below:

Good evening:

Special agents from ATF's San Francisco Field Division, Las Vegas Field Office responded to the shooting that occurred in Las Vegas last night, and ATF is participating the multi-agency

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648 (b) (6) | C: (b) (6)
Begin forwarded message:

From: "Allen, Joseph J." <(b) (6)>
Date: October 2, 2017 at 8:21:33 PM EDT
To: "Bennett, Megan A." <(b) (6)>
Cc: "Shaefer, Christopher C." <(b) (6)>
Subject: RE: PAD Talking Points for clearance

Megan, The summary information is good to go. Please revise the introduction as follows:

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Sent: Monday, October 2, 2017 6:28 PM

To: Allen, Joseph J. <(b) (6)>

Subject: PAD Talking Points for clearance

Hi Joe,

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Thanks!

Megan A. Bennett

Begin forwarded message:

From: "Shaefer, Christopher C." <(b) (6)>

Date: October 2, 2017 at 6:23:20 PM EDT

To: "Bennett, Megan A." <(b) (6)>

Subject: Re: Information from ATF about Las Vegas Shooting Incident

Megan - reviewed and please forward to the front office for review and clearance.

Chris

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648 (b) (6) |

C: (b) (6)

On Oct 2, 2017, at 6:11 PM, Bennett, Megan A.

(b) (6) > wrote:

Hi Chris,

I have edited the below, please let me know if you approve of these and whether they will require clearance by the front office.

Thanks.

Megan A. Bennett

On Oct 2, 2017, at 4:48 PM, (b) (6)

<(b) (6)> wrote:

Chris and Megan,

The below has been approved by Curtis.
Please see below for your review.

Thanks,

(b) (6)

From: (b) (6)

Sent: Monday, October 2, 2017 3:18 PM

To: (b) (6) <(b) (6)>

Subject: Information from ATF about Las Vegas Shooting Incident

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[i-have-nfa-firearm-and-i%E2%80%99m-moving-what-do-i-do](#)

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Cc: Shaefer, Christopher C. (b) (6)
From: Allen, Joseph J.
Sent: Tue 10/3/2017 12:21:33 AM
Subject: RE: PAD Talking Points for clearance

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Date: October 2, 2017 at 6:23:20 PM EDT
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Subject: Re: Information from ATF about Las Vegas Shooting Incident

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Chris

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Public and Governmental Affairs | O: 202.648.(b) (6) | C: (b) (6)

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[national-tracing-center](#)

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To: Turk, Ronald B. (b) (6)
From: Allen, Joseph J.
Sent: Tue 10/3/2017 12:00:42 AM
Subject: RE: PAD Talking Points for clearance

Ron, My proposed revision of the intro is below in *italics*. The background information is all publically available and I see no problem providing it so long as we include the intro/disclaimer. Any concerns?

Good evening:

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- The NFA tax must be paid and registration need only happen once by the individual the firearm is being transferred to. If it is transferred to a new individual, that new individual must pay the tax and

register the firearm with ATF again.

- If you have an NFA firearm and are moving: A registered possessor of an NFA firearm, other than an federal firearms licensee (FFL)/special occupational tax (SOT), may not lawfully transport in interstate or foreign commerce any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, without prior written approval of ATF, specifically the NFA Branch. Approval for the transportation may be obtained by either a written request, or an approved application filed with ATF on Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain NFA Firearms. Please note that applications to transport NFA firearms will be approved only if consistent with all State and local laws. [18 U.S.C. § 922(a)(4); 27 C.F.R. § 478.28] <https://www.atf.gov/firearms/qa/i-have-nfa-firearm-and-i%E2%80%99m-moving-what-do-i-do>
- If an individual is changing his or her state of residence and the individual's application to transport the NFA firearm cannot be approved because of a prohibition in the new State, options available to the lawful possessor include: NFA firearms may be left in a safe deposit box in his or her former state of residence. Also, the firearm could be left or stored in the former state of residence at the house of a friend or relative in a locked room or container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The firearms may also be transferred in accordance with NFA regulations or abandoned to ATF. <https://www.atf.gov/firearms/qa/if-individual-changing-his-or-her-state-residence-and-individuals-application-transport>
- Per the 2017 ATF Commerce Report, in 2017, there were 630,019 machineguns registered in the U.S. 11,752 were registered in Nevada. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- NFA registry records are not public.

Firearms in the U.S.

- There is no way to estimate the total number of firearms in the U.S. The only number we can confirm is the number of firearms that are manufactured each year, which are captured in the ATF Annual Firearms Manufacturing and Export Report. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- There is no national registry of all firearms in the U.S. ATF possesses no searchable database of all firearms and their owners. The National Firearms Registration and Transfer Record (NFRTR) is the only database that exists, in accordance with laws and regulations, and is maintained by the NFA Branch as a central registry of all restricted weapons, as defined in 26 U.S.C. § 5845. These weapons include items such as machineguns and short-barreled shotguns. In the registry, the NFA Branch records a firearm's identification, date of registration, and the name and address of the person or entity entitled to legally possess the firearm. Registrations are indexed by name of the registrant and serial number of registered NFA firearms.

Firearms Tracing

- <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>
- <https://www.atf.gov/resource-center/how-atf-traces-firearms>
- <https://www.atf.gov/resource-center/firearms-trace-data-2016>
- ATF is the only law enforcement agency responsible for tracing firearms.
- We have not yet released the specific number of firearms ATF has traced for fiscal year (FY) 2017, but it has been more than 400,000 so far this fiscal year, which is the most ATF has ever had.

- The number of firearms traced in FY2016 was 386,999. Information for other fiscal years is available at: <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>.
- There is no one specific reason for the increase. We continue to promote firearms tracing with our partners, and more agencies have utilized the system and found value in this resource. We continue to partner with domestic and international law enforcement partners to use eTrace. Two new international partners signed memorandums of understanding (MOUs) with ATF just this year: the Netherlands Police in June and representatives from Brazil in July. We now have partnerships with more than 6,700 domestic and international agencies for the eTrace system.

From: Bennett, Megan A.
Sent: Monday, October 2, 2017 6:28 PM
To: Allen, Joseph J. (b) (6)
Subject: PAD Talking Points for clearance

Hi Joe,

Below our talking points PAD drafted for release to reporters who have had questions. Please let me know if they are cleared to go out (via email) or if you have any questions.

Thanks!

Megan A. Bennett
Begin forwarded message:

From: "Shaefer, Christopher C." (b) (6)
Date: October 2, 2017 at 6:23:20 PM EDT
To: "Bennett, Megan A." (b) (6)
Subject: Re: Information from ATF about Las Vegas Shooting Incident

Megan - reviewed and please forward to the front office for review and clearance.

Chris

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648.(b) (6) | C: (b) (6)
On Oct 2, 2017, at 6:11 PM, Bennett, Megan A. (b) (6) wrote:

Hi Chris,

I have edited the below, please let me know if you approve of these and whether they will require clearance by the front office.

Thanks.

Megan A. Bennett
On Oct 2, 2017, at 4:48 PM, (b) (6) (b) (6) wrote:

Chris and Megan,

The below has been approved by Curtis. Please see below for your review.

Thanks,

(b) (6)

From: (b) (6)

Sent: Monday, October 2, 2017 3:18 PM

To: (b) (6) <(b) (6)>

Subject: Information from ATF about Las Vegas Shooting Incident

Good afternoon:

ATF special agents from ATF's San Francisco Field Division, Las Vegas Field Office responded to the shooting that occurred in Las Vegas last night. First and foremost, ATF would like to extend its condolences to the families and friends of everyone involved in this tragic event. ATF is currently conducting urgent traces on firearms recovered from the scene in Las Vegas. ATF is committed to providing its investigative resources to local law enforcement throughout this investigation.

We appreciate all of you reaching out to us today. Below is some information that will address many of the questions we have received. No additional information is available at this time. We will send out updates to this media distribution list as more information becomes available. Please note, all updates will be posted on Twitter, @ATFHQ, prior to distribution.

National Firearms Act

- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>
- To obtain an NFA firearm: An individual who is not prohibited by federal, state, or local law from receiving or possessing firearms may lawfully obtain an NFA firearm either through an approved transfer of a registered NFA firearm from its lawful owner, or an approved making of an NFA firearm. Applicants should use the ATF Form 4, Application for Tax Paid Transfer and Registration of a Firearm and the ATF Form 1, Application to Make and Register a Firearm, respectively. [26 U.S.C. §§ 5812, 5822; 27 C.F.R. §§ 479.62-66, 479.84-86]
<https://www.atf.gov/firearms/qa/how-do-i-obtain-nfa-firearm>.

- To make and register an NFA firearm: A person not otherwise prohibited by federal, state, or local law from possessing firearms may submit an application to make an NFA firearm, other than a machinegun as prescribed by the Gun Control Act of 1968, as amended, at 18 U.S.C. § 922(o). The application process requires the applicant to submit ATF Form 1, Application to Make and Register a Firearm, in duplicate, along with FBI FD-258, Fingerprint Card, in duplicate, and payment of the \$200 making tax. [27 C.F.R. §§ 479.62-65] <https://www.atf.gov/firearms/qa/how-can-i-make-and-register-nfa-firearm>
- The NFA tax must be paid and registration need only happen once by the individual the firearm is being transferred to. If it is transferred to a new individual, that new individual must pay the tax and register the firearm with ATF again.
- If you have an NFA firearm and are moving: A registered possessor of an NFA firearm, other than an federal firearms licensee (FFL)/special occupational tax (SOT), may not lawfully transport in interstate or foreign commerce any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, without prior written approval of ATF, specifically the NFA Branch. Approval for the transportation may be obtained by either a written request, or an approved application filed with ATF on Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain NFA Firearms. Please note that applications to transport NFA firearms will be approved only if consistent with all State and local laws. [18 U.S.C. § 922(a)(4); 27 C.F.R. § 478.28] <https://www.atf.gov/firearms/qa/i-have-nfa-firearm-and-i%E2%80%99m-moving-what-do-i-do>
- If an individual is changing his or her state of residence and the individual's application to transport the NFA firearm cannot be approved because of a prohibition in the new State, options available to the lawful possessor include: NFA firearms may be left in a safe deposit box in his or her former state of residence. Also, the firearm could be left or stored in the former state of residence at the house of a friend or relative in a locked room or container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The firearms may also be transferred in accordance with NFA regulations or abandoned to ATF. <https://www.atf.gov/firearms/qa/if-individual-changing-his-or-her-state-residence-and-individuals-application-transport>
- Per the 2017 ATF Commerce Report, in 2017, there were 630,019 machineguns registered in the U.S. 11,752 were registered in Nevada. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- NFA registry records are not public.

Firearms in the U.S.

- There is no way to estimate the total number of firearms in the U.S. The only number we can confirm is the number of firearms that are manufactured each year, which are captured in the ATF Annual Firearms Manufacturing and Export Report. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
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Firearms Tracing

- <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>
- <https://www.atf.gov/resource-center/how-atf-traces-firearms>
- <https://www.atf.gov/resource-center/firearms-trace-data-2016>
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- We have not yet released the specific number of firearms ATF has traced for fiscal year (FY) 2017, but it has been more than 400,000 so far this fiscal year, which is the most ATF has ever had.
- The number of firearms traced in FY2016 was 386,999. Information for other fiscal years is available at: <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>.
- There is no one specific reason for the increase. We continue to promote firearms tracing with our partners, and more agencies have utilized the system and found value in this resource. We continue to partner with domestic and international law enforcement partners to use eTrace. Two

new international partners signed memorandums of understanding (MOUs) with ATF just this year: the Netherlands Police in June and representatives from Brazil in July. We now have partnerships with more than 6,700 domestic and international agencies for the eTrace system.

www.metris.com

Page 667

Pulled for additional review

www.stps.com

>
>
> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Thursday, October 05, 2017 10:50 AM
> To: Gross, Charles R. <(b) (6)>; (b) (6)
> <(b) (6)>
> <(b) (6)>
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> My revised intro attached. Adding (b) (6)

>
> -----Original Message-----
> From: Gross, Charles R.
> Sent: Thursday, October 5, 2017 8:34 AM
> To: (b) (6)>; Allen, Joseph J.
> <(b) (6)>
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> I have suggested edits/comments in the "analysis" section, for your consideration.

>
> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 04, 2017 9:19 PM
> To: Allen, Joseph J. <(b) (6)> Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration
> Importance: High

> Attached is a rough first draft of the memo. Please provide any feedback.

> Joe - what's the deadline on this?

> Thanks

> (b) (6)

> (b) (6), Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

>
> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 6:08 PM
> To: (b) (6)>; Gross, Charles R.
> <(b) (6)>
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> Seems far more suitable to objective testing and evaluation.

> -----Original Message-----

> From: (b) (6)
> Sent: Wednesday, October 4, 2017 6:03 PM
> To: Allen, Joseph J. <(b) (6)>; Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> OK. (b) (5)

(b) (5)

> (b) (6)

> (b) (6), Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

> -----Original Message-----

> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 5:55 PM
> To: (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

> --Joe

> -----Original Message-----

> From: (b) (6)
> Sent: Wednesday, October 4, 2017 5:25 PM
> To: Gross, Charles R. (b) (6); Allen, Joseph J.
> (b) (6)
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> Perhaps, but it how about this? In discussions with (b) (6) and
> (b) (6) we were thinking of suggesting (b) (5)
> (b) (5). How about--

(b) (5)

> What do you think?

> - (b) (6)
>
> (b) (6) Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620
>
> -----Original Message-----
> From: Gross, Charles R.
> Sent: Wednesday, October 04, 2017 5:10 PM
> To: Allen, Joseph J. (b) (6)
> (b) (6)
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: RE: Emailing: Akins Powerpoint reconsideration
>

(b) (5)

> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 4:02 PM
> To: (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. <(b) (6)>
> Subject: FW: Emailing: Akins Powerpoint reconsideration
>
> FYSA. Counsel PPT on Akins reconsideration of MG classification.
>

> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 3:32 PM
> To: Allen, Joseph J. (b) (6)
> Subject: Emailing: Akins Powerpoint reconsideration
>

> Your message is ready to be sent with the following file or link attachments:

> Akins Powerpoint reconsideration

> Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

> <Memo re 'Bump Fire' Stocks ja (b) (6) - 10-5-17.docx>



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of

Washington, DC 20226

www.atf.gov

October 5, 2017

200000 (b) (6)

MEMORANDUM TO:

United States Department of Justice

FROM:

Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT:

Legality of "Bump-Fire" Rifle Stocks

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

WWW

Pages 675 – 920

Pulled for additional review

SM • METSRS

To: Shaefer, Christopher C. (b) (6)
Cc: Allen, Joseph J. (b) (6)
From: Bennett, Megan A.
Sent: Fri 10/6/2017 3:47:21 PM
Subject: Field PIO Talking Points
Field PIO Talking Points for Las Vegas 10-6-17.docx

Hello,

Attached are the Field PIO Talking Points. Please let me know if you have any questions.

If they are good, I'll ask PAD to forward them out.

Thanks.

Megan A. Bennett
Deputy Assistant Director
Office of Public and Governmental Affairs
Bureau of Alcohol, Tobacco, Firearms and Explosives
Direct: 202.648 (b) (6) Cell: (b) (6)



FIELD PIO TALKING POINTS FOR LAS VEGAS SHOOTING

All questions directly related to the investigation are to be forwarded to the Las Vegas Metropolitan PD as they are the lead.

All questions related to bump stocks should be forwarded to HQ Public Affairs Division at 202-648-8500.

CONVERSION TO MACHINEGUNS

- In general, firearms parts and accessories are not regulated by the National Firearms Act (NFA) or the Gun Control Act (GCA).
- Devices that have been submitted to ATF for classification and are deemed a firearm “part” and not a “firearm,” are not subject to rules and regulations of the NFA or GCA. It is legal to purchase firearms parts and accessories.
- If a firearms part or accessory allows a firearm to be converted to fully automatic, it is no longer classified as a part or accessory, but rather as a machinegun. Then the device and firearm are subject to regulations of the NFA and any person in possession would need to be in compliance with applicable federal laws and regulations. A firearms part or accessory alone that is not coupled with a firearm, which is a combination of “parts” or a single “part,” that is designed and intended solely and exclusively for use in converting a non-NFA firearm into a machinegun is subject to all regulations of NFA.

SEMIAUTOMATIC vs. “FULLY-AUTOMATIC” (“MACHINEGUN”)

- Semiautomatic is defined by the National Firearms Act (NFA) as having self-loading action that is used in the design and function of rifles, shotguns and pistols.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-self>
- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>

FIREARMS vs. FIREARMS PARTS:

- If a firearms part or accessory allows a firearm to be converted to fully automatic, it is no longer classified as a part or accessory but rather as a machinegun. The classification is based upon an evaluation of whether or not the firearms part or accessory in question alters the function of the firearm to shoot automatically, more than one shot without manual reloading, by a single function of the trigger.

FIREARMS PARTS AND ACCESSORIES CLASSIFICATIONS

- The firearms industry and individuals submit numerous items to ATF to make classifications (i.e. a “part”, a “firearm”, a “machinegun”, a “silencer”, etc.). These submissions are not required, but are submitted voluntarily to clarify what laws and regulations the items may or may not be subject to. ATF makes classifications based on the most current laws and regulations at the time of submission and on the results of a physical examination of that specific item.
- After ATF makes a classification, then the applicable laws and regulations related to the GCA and NFA, if any, apply to the item.
- Classifications are memorialized via a letter from ATF, which is provided to the requesting individual or entity. These letters are not made public by ATF due to individuals’ and/or entities’ privacy rights and/or proprietary rights. Classifications are particular to the item submitted for evaluation and do not apply to like items manufactured by a different entity.
- ATF DOES NOT APPROVE ITEMS THAT ARE SUBMITTED FOR CLASSIFICATION. ATF provides guidance to the industry and evaluates and classifies items submitted as either being a firearm, an NFA firearm, or not subject to the jurisdiction of ATF.
- Amendments to existing law or the introduction of new laws can have an impact on a previously submitted item that may cause an item’s classification to change. This later change in classification ensures consistency with the most current law. Additionally, if an item previously classified by ATF is changed or altered, this too can result in the item’s classification to change.

MULTIPLE SALES

- A multiple sale occurs when a licensed dealer or pawnbroker sells or otherwise disposes of, at one time or during any five consecutive business days, more than one semiautomatic rifle capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56 caliber) to an unlicensed person. <https://www.atf.gov/file/61741/download>
- The reporting of multiple sales for rifles requirement is applicable to licensed dealers and pawnbrokers in Arizona, California, New Mexico and Texas. However, all licensees remain obligated to submit reports of multiple sales or other dispositions of handguns when the licensee sells or otherwise disposes of two or more pistols or revolvers or any combination of pistols or revolvers totaling two or more, to an unlicensed person at one time or during any five consecutive business days.

- The reporting of multiple sales for pistols and revolvers is a separate requirement from the reporting of multiple sales of certain rifles.
- The multiple sales reporting requirement has no expiration date. The OMB form “Report of Multiple Sale or Other Disposition of Certain Rifles (ATF Form 3310.12) (OMB Number 1140–0100)” expires on Nov. 30, 2017. The form is expected to be renewed.

CLASSIFICATION LETTER

- Letters to firearms licensees are proprietary and ATF does not release these letters without approval from the licensee. Licensees may release them if they so choose.

NFA

- ATF is responsible for regulating and overseeing every person or business entity which intends to sell, manufacture and import firearms.
- The NFA Division maintains the National Firearms Registration and Transfer Record (NFRTR), the central registry of all NFA firearms in the United States.
- Possession of an unregistered machinegun (NFA) is a federal crime. In addition, some conversion kits are subject to NFA regulation.
- ATF conducts background checks on possessors of machineguns.
- Release of NFRTR Information
 - Information about whether someone does or does not have something registered on the NFRTR can NOT be released to the public, per 26 USC 6103 (tax information)
 - Whether someone is alive or dead does NOT matter.

GCA FIREARM DISCLOSURE RESTRICTION (Commonly referred to as the Tiahrt Amendment)

- Applies to information included on records mandated to be kept by FFLs pursuant to 18 USC 923(g)(3) and (7) and/or any information contained in the FTS or otherwise related to the tracing of a firearm.
- Includes 4473s, A&D books, Multiple Sale Forms, etc.
- Example: ATF finds a firearm laying on the ground next to a suspect and a credit card statement at his home with a purchase at Bob’s Gun Shop

- Releasing information about the make and model of the gun you can clearly see laying on the ground does NOT violate the disclosure restriction.
 - Releasing that ATF found a credit card statement for a purchase at Some Unnamed Gun Shop does NOT violate the disclosure restriction.
 - If ATF goes to Bob's Gun Shop and asks if that suspect purchased that gun there, and the shop checks their records to confirm, ATF releasing that confirmation DOES violate the restriction. If ATF traces the firearm and it comes back to Bob's Gun Shop and ATF releases that confirmation, that DOES violate the restriction.
 - Whether a suspect associated with that trace is alive or dead does NOT matter. It would be a violation of the restriction either way as Congress has provided for specific exemptions in the restriction and the fact that a possessor or purchaser is deceased is not one of the specific exemptions.
- The GCA disclosure restriction does not apply to information not required to be maintained by an FFL. For example, ammunition and accessory purchases.

ADMINISTRATION AND EXECUTIVE ACTION

- ATF does not comment on pending legislation, nor executive changes or decisions. We continue to work closely with FFLs, those individuals licensed by ATF to engage in the business of manufacturing, importing, and dealing in firearms, to ensure they are in compliance with federal rules and regulations.
- **ATF does not comment on potential internal deliberations.**

BINARY EXPLOSIVES

- ATF does not regulate the sale and distribution of binary component chemicals (usually an oxidizer like ammonium nitrate and a fuel like aluminum or another metal) even when sold together in binary "kits." However, when the binary components are combined, the resulting mixture is an explosive material subject to the regulatory requirements, as mixing binary components together constitutes manufacturing explosives.
- Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) are not required to have a federal explosives license or permit.
- Individuals or entities must obtain a federal explosives license or permit if they intend to acquire and/or transport explosives materials, engage in the business as an explosives manufacturer, importer or dealer, or use explosives materials for their own business use.
www.atf.gov/explosives/binary-explosives
- Tannerite is the brand name of an exploding target used for firearms practice, sold in kit form and containing the components of a binary explosive.

To: Shaefer, Christopher C. (b) (6)
Cc: Allen, Joseph J. (b) (6)
From: Bennett, Megan A.
Sent: Fri 10/6/2017 3:42:31 PM
Subject: TPs for HQ PAD/LAD
Talking Points for Las Vegas 10-6-17.docx

Hello,

Sorry for the earlier email, please delete it as the attached has been updated.

The talking points for HQ PAD/LAD and the SFFD PIO. I will send a separate email with talking points for the field PIOs.

Please let me know if it's good to forward.

Thanks.

Megan A. Bennett
Deputy Assistant Director
Office of Public and Governmental Affairs
Bureau of Alcohol, Tobacco, Firearms and Explosives
Direct: 202.648 (b) (6) | Cell: (b) (6)



TALKING POINTS FOR LAS VEGAS SHOOTING

CONVERSION TO MACHINEGUNS

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- If a firearms part or accessory allows a firearm to be converted to fully automatic, it is no longer classified as a part or accessory, but rather as a machinegun. Then the device and firearm are subject to regulations of the NFA and any person in possession would need to be in compliance with applicable federal laws and regulations. A firearms part or accessory alone that is not coupled with a firearm, which is a combination of “parts” or a single “part,” that is designed and intended solely and exclusively for use in converting a non-NFA firearm into a machinegun is subject to all regulations of NFA.

SEMI-AUTOMATIC vs. “FULLY-AUTOMATIC” (“MACHINEGUN”)

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- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>

FIREARMS vs. FIREARMS PARTS:

- If a firearms part or accessory allows a firearm to be converted to fully automatic, it is no longer classified as a part or accessory but rather as a machinegun. The classification is based upon an evaluation of whether or not the firearms part or accessory in question alters the function of the firearm to shoot automatically, more than one shot without manual reloading, by a single function of the trigger.

FIREARMS PARTS AND ACCESSORIES CLASSIFICATIONS

- The firearms industry and individuals submit numerous items to ATF to make classifications (i.e. a “part”, a “firearm”, a “machinegun”, a “silencer”, etc.). These submissions are not required, but are submitted voluntarily to clarify what laws and regulations the items may or may not be subject to. ATF makes classifications based on the most current laws and regulations at the time of submission and on the results of a physical examination of that specific item.
- After ATF makes a classification, then the applicable laws and regulations related to the GCA and NFA, if any, apply to the item.
- Classifications are memorialized via a letter from ATF, which is provided to the requesting individual or entity. These letters are not made public by ATF due to individuals’ and/or entities’ privacy rights and/or proprietary rights. Classifications are particular to the item submitted for evaluation and do not apply to like items manufactured by a different entity.
- ATF DOES NOT APPROVE ITEMS THAT ARE SUBMITTED FOR CLASSIFICATION. ATF provides guidance to the industry and evaluates and classifies items submitted as either being a firearm, an NFA firearm, or not subject to the jurisdiction of ATF.
- Amendments to existing law or the introduction of new laws can have an impact on a previously submitted item that may cause an item’s classification to change. This later change in classification ensures consistency with the most current law. Additionally, if an item previously classified by ATF is changed or altered, this too can result in the item’s classification to change.

FIREARMS FOUND

- Already released by SAC Snyder:
 - The firearms were purchased in Nevada, Utah, California, and Texas.
 - The firearms consist of rifles, shotguns, and pistols.
 - Twelve (12) bump fire stocks were also found on firearms in the hotel room, on semi-automatic rifles.
 - It is still being determined which firearms were used in the shooting.
 - All firearms were submitted for urgent tracing and all traces have been completed.
 - The firearms are currently at the FBI Crime Lab in Quantico, Va.
 - Paddock began purchasing firearms in 1982.
 - The “ammo clips” (should be called MAGAZINES) were large capacity magazines including those with 50-100 round capacity.
 - Las Vegas Metro Police Department is the lead on the investigation.

MULTIPLE SALES

- A multiple sale occurs when a licensed dealer or pawnbroker sells or otherwise disposes of, at one time or during any five consecutive business days, more than one semiautomatic rifle capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56 caliber) to an unlicensed person. <https://www.atf.gov/file/61741/download>

- The reporting of multiple sales for rifles requirement is applicable to licensed dealers and pawnbrokers in Arizona, California, New Mexico and Texas. However, all licensees remain obligated to submit reports of multiple sales or other dispositions of handguns when the licensee sells or otherwise disposes of two or more pistols or revolvers or any combination of pistols or revolvers totaling two or more, to an unlicensed person at one time or during any five consecutive business days.
- The reporting of multiple sales for pistols and revolvers is a separate requirement from the reporting of multiple sales of certain rifles.
- The multiple sales reporting requirement has no expiration date. The OMB form “Report of Multiple Sale or Other Disposition of Certain Rifles (ATF Form 3310.12) (OMB Number 1140–0100)” expires on Nov. 30, 2017. The form is expected to be renewed.

CLASSIFICATION LETTER

- Letters to firearms licensees are proprietary and ATF does not release these letters without approval from the licensee. Licensees may release them if they so choose.

NFA

- ATF is responsible for regulating and overseeing every person or business entity which intends to sell, manufacture and import firearms.
- The NFA Division maintains the National Firearms Registration and Transfer Record (NFRTR), the central registry of all NFA firearms in the United States.
- Possession of an unregistered machinegun (NFA) is a federal crime. In addition, some conversion kits are subject to NFA regulation.
- ATF conducts background checks on possessors of machineguns.
- Release of NFRTR Information
 - Information about whether someone does or does not have something registered on the NFRTR can NOT be released to the public, per 26 USC 6103 (tax information)
 - Whether someone is alive or dead does NOT matter.

GCA FIREARM DISCLOSURE RESTRICTION (Commonly referred to as the Tiahrt Amendment)

- Applies to information included on records mandated to be kept by FFLs pursuant to 18 USC 923(g)(3) and (7) and/or any information contained in the FTS or otherwise related to the tracing of a firearm.

- Includes 4473s, A&D books, Multiple Sale Forms, etc.
- Example: ATF finds a firearm laying on the ground next to a suspect and a credit card statement at his home with a purchase at Bob's Gun Shop
 - Releasing information about the make and model of the gun you can clearly see laying on the ground does NOT violate the disclosure restriction.
 - Releasing that ATF found a credit card statement for a purchase at Some Unnamed Gun Shop does NOT violate the disclosure restriction.
 - If ATF goes to Bob's Gun Shop and asks if that suspect purchased that gun there, and the shop checks their records to confirm, ATF releasing that confirmation DOES violate the restriction. If ATF traces the firearm and it comes back to Bob's Gun Shop and ATF releases that confirmation, that DOES violate the restriction.
 - Whether a suspect associated with that trace is alive or dead does NOT matter. It would be a violation of the restriction either way as Congress has provided for specific exemptions in the restriction and the fact that a possessor or purchaser is deceased is not one of the specific exemptions.
- The GCA disclosure restriction does not apply to information not required to be maintained by an FFL. For example, ammunition and accessory purchases.

ADMINISTRATION AND EXECUTIVE ACTION

- ATF does not comment on pending legislation, nor executive changes or decisions. We continue to work closely with FFLs, those individuals licensed by ATF to engage in the business of manufacturing, importing, and dealing in firearms, to ensure they are in compliance with federal rules and regulations.
- **ATF does not comment on potential internal deliberations.**

BINARY EXPLOSIVES

- ATF does not regulate the sale and distribution of binary component chemicals (usually an oxidizer like ammonium nitrate and a fuel like aluminum or another metal) even when sold together in binary "kits." However, when the binary components are combined, the resulting mixture is an explosive material subject to the regulatory requirements, as mixing binary components together constitutes manufacturing explosives.
- Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) are not required to have a federal explosives license or permit.
- Individuals or entities must obtain a federal explosives license or permit if they intend to acquire and/or transport explosives materials, engage in the business as an explosives manufacturer, importer or dealer, or use explosives materials for their own business use.
www.atf.gov/explosives/binary-explosives

- Tannerite is the brand name of an exploding target used for firearms practice, sold in kit form and containing the components of a binary explosive.

www.sellert.com

To: Shaefer, Christopher C. [(b) (6)]
Cc: Allen, Joseph J. [(b) (6)]
From: Bennett, Megan A.
Sent: Fri 10/6/2017 3:35:54 PM
Subject: TPs - HQ PAD/LAD
Talking Points for Las Vegas 10-6-17.docx

Hi Chris,

Attached are the talking points for HQ PAD/LAD and the SFFD PIO. I will forward the field PIO TPs under separate cover.

If you're good with them, I'll forward out.

Thanks.

Megan A. Bennett
Deputy Assistant Director
Office of Public and Governmental Affairs
Bureau of Alcohol, Tobacco, Firearms and Explosives
Direct: 202.648 [(b) (6)] | Cell: [(b) (6)]



TALKING POINTS FOR LAS VEGAS SHOOTING

CONVERSION TO MACHINEGUNS

- In general, firearms parts and accessories are not regulated by the National Firearms Act (NFA) or the Gun Control Act (GCA).
- Devices that have been submitted to ATF for classification and are deemed a firearm “part” and not a “firearm,” are not subject to rules and regulations of the NFA or GCA. It is legal to purchase firearms parts and accessories.
- If a firearms part or accessory allows a firearm to be converted to fully automatic, it is no longer classified as a part or accessory, but rather as a machinegun. Then the device and firearm are subject to regulations of the NFA and any person in possession would need to be in compliance with applicable federal laws and regulations. A firearms part or accessory alone that is not coupled with a firearm, which is a combination of “parts” or a single “part,” that is designed and intended solely and exclusively for use in converting a non-NFA firearm into a machinegun is subject to all regulations of NFA.

SEMI-AUTOMATIC vs. “FULLY-AUTOMATIC” (“MACHINEGUN”)

- Semiautomatic is defined by the National Firearms Act (NFA) as having self-loading action that is used in the design and function of rifles, shotguns and pistols.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-self>
- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>

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- Possession of an unregistered machinegun (NFA) is a federal crime. In addition, some conversion kits are subject to NFA regulation.
- ATF conducts background checks on possessors of machineguns.
- Release of NFRTR Information
 - Information about whether someone does or does not have something registered on the NFRTR can NOT be released to the public, per 26 USC 6103 (tax information)
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BINARY EXPLOSIVES

- ATF does not regulate the sale and distribution of binary component chemicals (usually an oxidizer like ammonium nitrate and a fuel like aluminum or another metal) even when sold together in binary "kits." However, when the binary components are combined, the resulting mixture is an explosive material subject to the regulatory requirements, as mixing binary components together constitutes manufacturing explosives.
- Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) are not required to have a federal explosives license or permit.
- Individuals or entities must obtain a federal explosives license or permit if they intend to acquire and/or transport explosives materials, engage in the business as an explosives manufacturer,

importer or dealer, or use explosives materials for their own business use.

www.atf.gov/explosives/binary-explosives

- Tannerite is the brand name of an exploding target used for firearms practice, sold in kit form and containing the components of a binary explosive.

www.sellfirearms.com

To: Allen, Joseph J. (b) (6)
Cc: Shaefer, Christopher C. (b) (6)
From: Bennett, Megan A.
Sent: Fri 10/6/2017 11:02:10 AM
Subject: Re: Unanswered questions from reporters regarding Lost Vegas Shooting

Hi Joe, yes, that is the intent

Megan A. Bennett

On Oct 6, 2017, at 6:13 AM, Allen, Joseph J. (b) (6) wrote:

Chris, Let's discuss this morning. Not sure I understand how some of the answers will be delivered. We should be providing the process answers -- without specific tie-in to the investigation.

Thanks, Joe

Thank you, Joe

On Oct 5, 2017, at 10:05 PM, Shaefer, Christopher C. (b) (6) wrote:

Meg and Joe - short of erasing all bullets under bump stock - only reflecting we have no comment as DOJ will provide additional information. I'm good with the other TPs for PAD.

Joe - concur or additional caveat?

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648.(b) (6) | C: (b) (6)

On Oct 5, 2017, at 9:55 PM, Bennett, Megan A. (b) (6) wrote:

Hi Chris and Joe,

Below are the responses to go back to PAD regarding answering questions that have come in....this is to provide guidance to PAD...

Thanks.

Megan A. Bennett

:

(b) (5)

WWW.METTSFORSTYU.COM

(b) (5)

WWW.METTSFOR.SD

(b) (5)

WWW.METTSOFS.COM

(b) (5)

WWW.MERITSTOPS.COM

To: Shaefer, Christopher C. (b) (6); Allen, Joseph J. (b) (6)
From: Bennett, Megan A.
Sent: Fri 10/6/2017 1:55:15 AM
Subject: Re: Unanswered questions from reporters regarding Lost Vegas Shooting

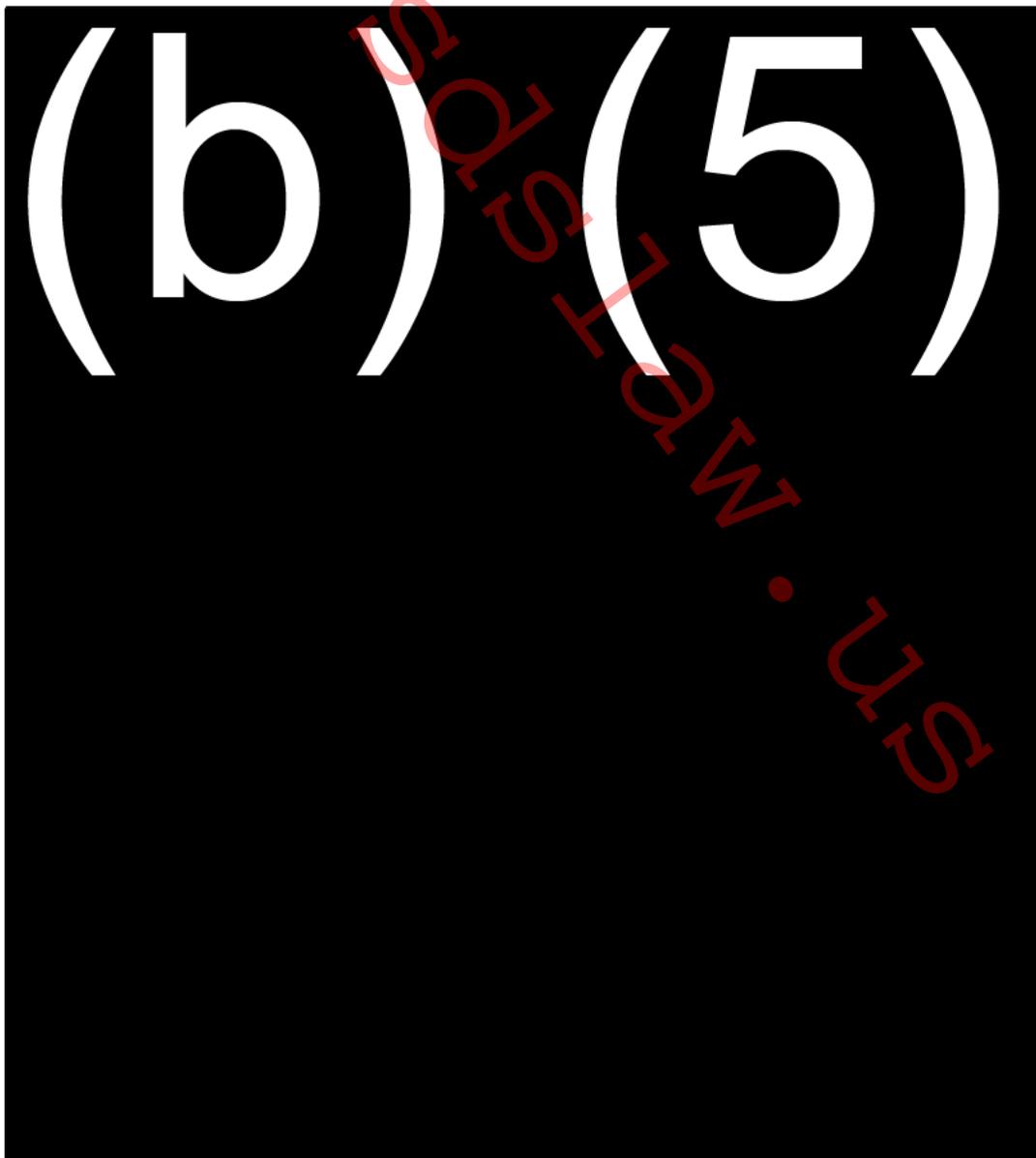
Hi Chris and Joe,

Below are the responses to go back to PAD regarding answering questions that have come in...this is to provide guidance to PAD...

Thanks.

Megan A. Bennett

:



(b) (5)

www.metstps.com

(b) (5)

www.meritstps.com

• Pages 946 – 948

Pulled for additional review

To: Turk, Ronald B. (b) (6) Shaefer, Christopher C. (b) (6); Gross, Charles R. (b) (6)
From: Bennett, Megan A.
Sent: Thur 10/5/2017 3:31:32 PM
Subject: Talking Points for Clearance
Media Talking Points for Las Vegas 10-5-17.docx

Hello,

Attached are talking points for PGA HQ use only. We have forwarded them to Joe Allen and he is currently at DOJ and suggested we forward to you in the meantime. PGA and EPS have reviewed these.

Please let me know if you have any questions.

Thanks!

Megan A. Bennett
Deputy Assistant Director
Office of Public and Governmental Affairs
Bureau of Alcohol, Tobacco, Firearms and Explosives
Direct: 202.648 (b) (6) | Cell: (b) (6)



MEDIA TALKING POINTS FOR LAS VEGAS SHOOTING

CONVERSION TO MACHINEGUNS:

- In general firearms parts are not regulated by the National Firearms Act (NFA) or the Gun Control Act (GCA).
- Devices that have been submitted to ATF for classification and are deemed a firearm “part” and not a “firearm,” are not subject to rules and regulations of the NFA or GCA. It is legal to purchase “devices” that are firearms parts and these purchases are not subject to regulations of the NFA or GCA.
- If a firearms part works to allow a firearm to be converted to fully automatic, it is no longer classified as a part but rather as a machinegun. Then the device and firearm are subject to regulations of the NFA and any person in possession would need to be in compliance with those federal laws. A device alone that is not coupled with a firearm, which is a combination of “parts” or a single “part,” that is designed and intended solely and exclusively for use in converting a non-NFA firearm into a machinegun is subject to all regulations of NFA.

SEMIAUTOMATIC vs. “FULLY-AUTOMATIC” (“MACHINEGUN”)

- Semiautomatic is defined by the National Firearms Act (NFA) as having self-loading action that is used in the design and function of rifles, shotguns and pistols.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-self>
- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>

FIREARMS vs. FIREARMS PARTS:

- If a firearms part works to allow a firearm to be converted to fully automatic, it is no longer classified as a part but rather as a machinegun. The classification is based upon an evaluation of whether or not the device in question alters the function of the firearm to shoot automatically, more than one shot without manual reloading, by a single function of the trigger.

FIREARMS PARTS CLASSIFICATION

- The firearms industry and individuals submit numerous items to ATF to make determinations for classification (i.e. a “part”, a “firearm”, a “machinegun”, a “silencer”, etc.). These submissions are not required, but are encouraged by ATF so that all can clarify that they are complying with the law. ATF makes a determination on classification based on the most current laws and regulations at the time of submission and on the results of a physical examination of that specific item.
- After ATF makes a determination on classification, then applicable regulations related to the GCA and NFA applies to the item.
- These determinations are memorialized via a letter from ATF, which is provided to the individual or entity that requested the determination. These letters are not made public by ATF due to individuals’ and/or entities’ privacy rights and/or proprietary rights.

- Amendments to existing law or the introduction of new laws can have an impact on a previously submitted item that causes the item's classification to change. This later change in classification is to ensure consistency with the most current law. Additionally, if an item previously classified by ATF is changed or altered, this too can result in the item's classification to change.

FIREARMS FOUND

- Already released by SAC Snyder:
 - Forty-seven (47) firearms were recovered from three locations: The Mandalay Bay hotel room and locations in Verde and Mesquite, Nev.
 - The firearms were purchased in Nevada, Utah, California, and Texas.
 - The firearms consist of rifles, shotguns, and pistols.
 - Twelve (12) bump fire stocks were also found on firearms in the hotel room, on semi-automatic rifles.
 - It is still being determined which firearms were used in the shooting.
 - All firearms were submitted for urgent tracing and all traces have been completed.
 - The firearms are currently at the FBI Crime Lab in Quantico, Va.
 - Paddock began purchasing firearms in 1982.
 - From October 2016 to Sept. 28, 2017, Paddock purchased 33 firearms, majority of which were rifles.
 - The "ammo clips" (should be called MAGAZINES) ranged from 60-100 round capacity.

MULTIPLE SALES

- A multiple sale occurs when a licensed dealer or pawnbroker sells or otherwise disposes of, at one time or during any five consecutive business days, more than one semiautomatic rifle capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56 caliber) to an unlicensed person. <https://www.atf.gov/file/61741/download>
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BUMP STOCK

- In general firearms parts are not regulated by the GCA or NFA.
- If a firearms part works to allow a firearm to be converted to fully automatic, it is no longer classified as a part but rather as a machinegun.
- FATD reviews "request for classification" applications when manufacturers have a firearm part that they want to ensure are not classified as a firearm.

- Manufacturers are not required to send these requests to FATD, but most do so that they can clarify that they are complying with the law.
- One such part that FATD has reviewed is a “bump fire stock” or “bump fire trigger.” These devices allow for a shooter to apply forward pressure with the non-shooting hand and rearward pressure with the shooting hand. It allows for the shooter to speed up the semi-automatic process.
- The determination of these devices is evaluated by whether or not the “bump fire stock” in question mechanically alters the function of the firearm from semi-automatic to fully automatic. The classification is based upon an evaluation of whether or not the device in question alters the function of the firearm to shoot automatically, more than one shot without manual reloading, by a single function of the trigger.

DETERMINATION LETTER

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NFA

- ATF is responsible for regulating and overseeing every person or business entity which intends to sell, manufacture and import firearms.
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- Possession of an unregistered machinegun (NFA) is a federal crime. In addition, some conversion kits are subject to NFA regulation.
- ATF conducts background checks on possessors of machineguns.
- Release of NFRTR Information
 - Information about whether someone does or does not have something registered on the NFRTR can NOT be released to the public, per 26 USC 6103 (tax information)
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restriction. If ATF traces the firearm and it comes back to Bob's Gun Shop and ATF releases that confirmation, that DOES violate the restriction.

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- Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) are not required to have a federal explosives license or permit. However, individuals or companies must obtain a federal explosives manufacturing license if they intend to engage in the business of manufacturing explosives for sale or distribution, or for their own business use. www.atf.gov/explosives/binary-explosives

To: Allen, Joseph J. (b) (6)
Cc: Shaefer, Christopher C. (b) (6); Gilbert, Curtis W. (b) (6);
(b) (6); (b) (6)
From: Bennett, Megan A.
Sent: Thur 10/5/2017 3:18:23 PM
Subject: Talking Points
Media Talking Points for Las Vegas 10-5-17.docx

Hi Joe,

Attached are the talking points we would like to use to answer questions and send to the field PIOs. They have been cleared by PGA and EPS.

Please let me know if you have any questions.

Thanks.

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SEMIAUTOMATIC vs. “FULLY-AUTOMATIC” (“MACHINEGUN”)

- Semiautomatic is defined by the National Firearms Act (NFA) as having self-loading action that is used in the design and function of rifles, shotguns and pistols.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-self>
- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>

FIREARM vs. FIREARMS PART:

- If a firearms part works to allow a firearm to be converted to fully automatic, it is no longer classified as a part but rather as a machinegun. The classification is based upon an evaluation of whether or not the device in question alters the function of the firearm to shoot automatically, more than one shot without manual reloading, by a single function of the trigger.

FIREARM PARTS CLASSIFICATION

- The firearms industry and individuals submit numerous items to ATF to make determinations for classification (i.e. a “part”, a “firearm”, a “machinegun”, a “silencer”, etc.). These submissions are not required, but are encouraged by ATF so that all can clarify that they are complying with the law. ATF makes a determination on classification based on the most current laws and regulations at the time of submission and on the results of a physical examination of that specific item.
- After ATF makes a determination on classification, then applicable regulations related to the GCA and NFA applies to the item.
- These determinations are memorialized via a letter from ATF, which is provided to the individual or entity that requested the determination. These letters are not made public by ATF due to individuals’ and/or entities’ privacy rights and/or proprietary rights.

- Amendments to existing law or the introduction of new laws can have an impact on a previously submitted item that causes the item's classification to change. This later change in classification is to ensure consistency with the most current law. Additionally, if an item previously classified by ATF is changed or altered, this too can result in the item's classification to change.

FIREARMS FOUND

- Already released by SAC Snyder:
 - Forty-seven (47) firearms were recovered from three locations: The Mandalay Bay hotel room and locations in Verde and Mesquite, Nev.
 - The firearms were purchased in Nevada, Utah, California, and Texas.
 - The firearms consist of rifles, shotguns, and pistols.
 - Twelve (12) bump fire stocks were also found on firearms in the hotel room, on semi-automatic rifles.
 - It is still being determined which firearms were used in the shooting.
 - All firearms were submitted for urgent tracing and all traces have been completed.
 - The firearms are currently at the FBI Crime Lab in Quantico, Va.
 - Paddock began purchasing firearms in 1982.
 - From October 2016 to Sept. 28, 2017, Paddock purchased 33 firearms, majority of which were rifles.
 - The "ammo clips" (should be called MAGAZINES) ranged from 60-100 round capacity.

MULTIPLE SALES

- A multiple sale occurs when a licensed dealer or pawnbroker sells or otherwise disposes of, at one time or during any five consecutive business days, more than one semiautomatic rifle capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56 caliber) to an unlicensed person. <https://www.atf.gov/file/61741/download>
- The reporting of multiple sales for rifles requirement is applicable to licensed dealers and pawnbrokers in Arizona, California, New Mexico and Texas. However, all licensees remain obligated to submit reports of multiple sales or other dispositions of handguns when the licensee sells or otherwise disposes of two or more pistols or revolvers or any combination of pistols or revolvers totaling two or more, to an unlicensed person at one time or during any five consecutive business days. The reporting of multiple sales for pistols and revolvers is a separate requirement from the reporting of multiple sales of certain rifles.
- The multiple sales reporting requirement has no expiration date. The OMB form "Report of Multiple Sale or Other Disposition of Certain Rifles (ATF Form 3310.12) (OMB Number 1140-0100)" expires on Nov. 30, 2017. The form is expected to be renewed.

BUMP STOCK

- In general firearms parts are not regulated by the GCA or NFA.
- If a firearms part works to allow a firearm to be converted to fully automatic, it is no longer classified as a part but rather as a machinegun.
- FATD reviews "request for classification" applications when manufacturers have a firearm part that they want to ensure are not classified as a firearm.

- Manufacturers are not required to send these requests to FATD, but most do so that they can clarify that they are complying with the law.
- One such part that FATD has reviewed is a “bump fire stock” or “bump fire trigger.” These devices allow for a shooter to apply forward pressure with the non-shooting hand and rearward pressure with the shooting hand. It allows for the shooter to speed up the semi-automatic process.
- The determination of these devices is evaluated by whether or not the “bump fire stock” in question mechanically alters the function of the firearm from semi-automatic to fully automatic. The classification is based upon an evaluation of whether or not the device in question alters the function of the firearm to shoot automatically, more than one shot without manual reloading, by a single function of the trigger.

DETERMINATION LETTER

- Letters to firearms manufacturers are proprietary and ATFs does not release these letters without approval from the manufacturer

NFA

- ATF is responsible for regulating and overseeing every person or business entity which intends to sell, manufacture and import firearms.
- The NFA Division maintains the National Firearms Registration and Transfer Record (NFRTR), the central registry of all NFA firearms in the United States.
- Possession of an unregistered machinegun (NFA) is a federal crime. In addition, some conversion kits are subject to NFA regulation.
- ATF conducts background checks on possessors of machineguns.
- Release of NFRTR Information
 - Information about whether someone does or does not have something registered on the NFRTR can NOT be released to the public, per 26 USC 6103 (tax information)
 - Whether someone is alive or dead does NOT matter.

GCA FIREARM DISCLOSURE RESTRICTION (Commonly referred to as the Tiahrt Amendment)

- Applies to information included on records mandated to be kept by FFLs pursuant to 18 USC 923(g)(3) and (7) and/or any information contained in the FTS or otherwise related to the tracing of a firearm.
- Includes 4473s, A&D books, Multiple Sale Forms, etc.
- Example: ATF finds a firearm laying on the ground next to a suspect and a credit card statement at his home with a purchase at Bob’s Gun Shop
 - Releasing information about the make and model of the gun you can clearly see laying on the ground does NOT violate the disclosure restriction.
 - Releasing that ATF found a credit card statement for a purchase at Some Unnamed Gun Shop does NOT violate the disclosure restriction.
 - If ATF goes to Bob’s Gun Shop and asks if that suspect purchased that gun there, and the shop checks their records to confirm, ATF releasing that confirmation DOES violate the

restriction. If ATF traces the firearm and it comes back to Bob's Gun Shop and ATF releases that confirmation, that DOES violate the restriction.

- Whether a suspect associated with that trace is alive or dead does NOT matter. It would be a violation of the restriction either way as Congress has provided for specific exemptions in the restriction and the fact that a possessor or purchaser is deceased is not one of the specific exemptions.
- The GCA disclosure restriction does not apply to information not required to be maintained by an FFL. For example, ammunition and accessory purchases.

ADMINISTRATION AND EXECUTIVE ACTION

- ATF does not comment on pending legislation, nor executive changes or decisions. We continue to work closely with FFLs, those individuals licensed by ATF to engage in the business of manufacturing, importing, and dealing in firearms, to ensure they are in compliance with federal rules and regulations. Any additional inquiries should be directed to the Administration.

BINARY EXPLOSIVES

- ATF does not regulate the sale and distribution of binary component chemicals (usually an oxidizer like ammonium nitrate and a fuel like aluminum or another metal) even when sold together in binary "kits." However, when the binary components are combined, the resulting mixture is an explosive material subject to the regulatory requirements, as mixing binary components together constitutes manufacturing explosives.
- Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) are not required to have a federal explosives license or permit. However, individuals or companies must obtain a federal explosives manufacturing license if they intend to engage in the business of manufacturing explosives for sale or distribution, or for their own business use. www.atf.gov/explosives/binary-explosives

To: (b) (6)
Cc: Shaefer, Christopher C. (b) (6) Allen, Joseph J. (b) (6)
From: Bennett, Megan A.
Sent: Tue 10/3/2017 1:12:28 AM
Subject: Fwd: PAD Talking Points for clearance

Hi (b) (6)

The below has been cleared for release. I'll forward you the mail string with the approval in the next email. Please ensure that you copy in (b) (6) and (b) (6) on the email so they can make the appropriate notifications to the hill.

Thanks!

Megan A. Bennett

Good evening:

Special agents from ATF's San Francisco Field Division, Las Vegas Field Office responded to the shooting that occurred in Las Vegas last night, and ATF is participating in the multi-agency investigation of this horrific crime. ATF's role includes conducting urgent traces of recovered firearms, and we are providing those results to the Las Vegas Sheriff's Department and other investigative partners as they are completed.

Most importantly, ATF extends its condolences to the families and friends of everyone impacted by this tragedy.

We appreciate all of you reaching out to us today. As you are aware, however, ATF cannot provide specific information about the ongoing criminal investigation. All updates about the status of the investigation will be issued through the Las Vegas Sheriff's Department or its designee.

While we cannot provide specific information about the ongoing investigation, many of your questions relate to background information about statutes that may apply to the investigation, general statistical information about firearms in the U.S., and information about the tracing process. The general factual information provided below addresses many of these inquiries. When specific updates are authorized by the Las Vegas Sheriff's Department, we will provide them through this media distribution list. Please note that those updates will be posted on Twitter, @ATFHQ, prior to distribution.

National Firearms Act

- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>
- To obtain an NFA firearm: An individual who is not prohibited by federal, state, or local law from receiving or possessing firearms may lawfully obtain an NFA firearm either through an approved transfer of a registered NFA firearm from its lawful owner, or an approved making of an NFA firearm. Applicants should use the ATF Form 4, Application for Tax Paid Transfer and Registration of a Firearm and the ATF Form 1, Application to Make and Register a Firearm, respectively. [26 U.S.C. §§ 5812, 5822; 27 C.F.R. §§ 479.62-66, 479.84-86]
<https://www.atf.gov/firearms/qa/how-do-i-obtain-nfa-firearm>.
- To make and register an NFA firearm: A person not otherwise prohibited by federal, state, or local law from possessing firearms may submit an application to make an NFA firearm, other than a machinegun as prescribed by the Gun Control Act of 1968, as amended, at 18 U.S.C. § 922(o). The application process requires the applicant to submit ATF Form 1, Application to Make and Register a Firearm, in duplicate, along with FBI FD-258, Fingerprint Card, in duplicate, and payment of the \$200 making tax. [27 C.F.R. §§ 479.62-65]
<https://www.atf.gov/firearms/qa/how-can-i-make-and-register-nfa-firearm>
- The NFA tax must be paid and registration need only happen once by the individual the firearm is being transferred to. If it is transferred to a new individual, that new individual must pay the tax and register the firearm with ATF again.

- If you have an NFA firearm and are moving: A registered possessor of an NFA firearm, other than an federal firearms licensee (FFL)/special occupational tax (SOT), may not lawfully transport in interstate or foreign commerce any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, without prior written approval of ATF, specifically the NFA Branch. Approval for the transportation may be obtained by either a written request, or an approved application filed with ATF on Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain NFA Firearms. Please note that applications to transport NFA firearms will be approved only if consistent with all State and local laws. [18 U.S.C. § 922(a)(4); 27 C.F.R. § 478.28]
<https://www.atf.gov/firearms/qa/i-have-nfa-firearm-and-i%E2%80%99m-moving-what-do-i-do>
- If an individual is changing his or her state of residence and the individual's application to transport the NFA firearm cannot be approved because of a prohibition in the new State, options available to the lawful possessor include: NFA firearms may be left in a safe deposit box in his or her former state of residence. Also, the firearm could be left or stored in the former state of residence at the house of a friend or relative in a locked room or container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The firearms may also be transferred in accordance with NFA regulations or abandoned to ATF.
<https://www.atf.gov/firearms/qa/if-individual-changing-his-or-her-state-residence-and-individuals-application-transport>
- Per the 2017 ATF Commerce Report, in 2017, there were 630,019 machineguns registered in the U.S. 11,752 were registered in Nevada.
<https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- NFA registry records are not public.

Firearms in the U.S.

- There is no way to estimate the total number of firearms in the U.S. The only number we can confirm is the number of firearms that are manufactured each year, which are captured in the ATF Annual Firearms Manufacturing and Export Report. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- There is no national registry of all firearms in the U.S. ATF possesses no searchable database of all firearms and their owners. The National Firearms Registration and Transfer Record (NFRTR) is the only database that exists, in accordance with laws and regulations, and is maintained by the NFA Branch as a central registry of all restricted weapons, as defined in 26 U.S.C. § 5845. These weapons include items such as machineguns and short-barreled shotguns. In the registry, the NFA Branch records a firearm's identification, date of registration, and the name and address of the person or entity entitled to legally possess the firearm. Registrations are indexed by name of the registrant and serial number of registered NFA firearms.

Firearms Tracing

- <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>
- <https://www.atf.gov/resource-center/how-atf-traces-firearms>
- <https://www.atf.gov/resource-center/firearms-trace-data-2016>
- ATF is the only law enforcement agency responsible for tracing firearms.
- We have not yet released the specific number of firearms ATF has traced for fiscal year (FY) 2017, but it has been more than 400,000 so far this fiscal

year, which is the most ATF has ever had.

- The number of firearms traced in FY2016 was 386,999. Information for other fiscal years is available at: <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>.
- There is no one specific reason for the increase. We continue to promote firearms tracing with our partners, and more agencies have utilized the system and found value in this resource. We continue to partner with domestic and international law enforcement partners to use eTrace. Two new international partners signed memorandums of understanding (MOUs) with ATF just this year: the Netherlands Police in June and representatives from Brazil in July. We now have partnerships with more than 6,700 domestic and international agencies for the eTrace system.

To: Allen, Joseph J. (b) (6)
From: Bennett, Megan A.
Sent: Mon 10/2/2017 10:27:31 PM
Subject: PAD Talking Points for clearance

Hi Joe,

Below our talking points PAD drafted for release to reporters who have had questions. Please let me know if they are cleared to go out (via email) or if you have any questions.

Thanks!

Megan A. Bennett

Begin forwarded message:

From: "Shaefer, Christopher C." (b) (6) >
Date: October 2, 2017 at 6:23:20 PM EDT
To: "Bennett, Megan A." (b) (6) >
Subject: Re: Information from ATF about Las Vegas Shooting Incident

Megan - reviewed and please forward to the front office for review and clearance.

Chris

Regards,

Christopher Shaefer | Assistant Director
Public and Governmental Affairs | O: 202.648.(b) (6) | C: (b) (6)
On Oct 2, 2017, at 6:11 PM, Bennett, Megan A. (b) (6) > wrote:

Hi Chris,

I have edited the below, please let me know if you approve of these and whether they will require clearance by the front office.

Thanks.

Megan A. Bennett

On Oct 2, 2017, at 4:48 PM, (b) (6) (b) (6) > wrote:

Chris and Megan,

The below has been approved by Curtis. Please see below for your

review.

Thanks,

- Cherie

From: (b) (6)

Sent: Monday, October 2, 2017 3:18 PM

To: (b) (6); (b) (6)

Subject: Information from ATF about Las Vegas Shooting Incident

Good afternoon:

ATF special agents from ATF's San Francisco Field Division, Las Vegas Field Office responded to the shooting that occurred in Las Vegas last night. First and foremost, ATF would like to extend its condolences to the families and friends of everyone involved in this tragic event. ATF is currently conducting urgent traces on firearms recovered from the scene in Las Vegas. ATF is committed to providing its investigative resources to local law enforcement throughout this investigation.

We appreciate all of you reaching out to us today. Below is some information that will address many of the questions we have received. No additional information is available at this time. We will send out updates to this media distribution list as more information becomes available. Please note, all updates will be posted on Twitter, @ATFHQ, prior to distribution.

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- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
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- ATF is the only law enforcement agency responsible for tracing firearms.
- We have not yet released the specific number of firearms ATF has traced for fiscal year (FY) 2017, but it has been more than 400,000 so far this fiscal year, which is the most ATF has ever had.
- The number of firearms traced in FY2016 was 386,999. Information for other fiscal years is available at: <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>.
- There is no one specific reason for the increase. We continue to promote firearms tracing with our partners, and more agencies have utilized the system and found value in this resource. We continue to partner with domestic and international law enforcement partners to use eTrace. Two new international partners signed memorandums of understanding (MOUs) with ATF just this year: the Netherlands Police in June and representatives from Brazil in

July. We now have partnerships with more than 6,700 domestic and international agencies for the eTrace system.

- For a trace to be classified as "urgent" or "routine", the requesting law enforcement agency asks that the trace be classified as such. Urgent traces are typically completed within 24 hours, often just a few hours. Routine traces are typically completed within five business days.
- More info and stats on e-Trace can be found at: <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-etrace-internet-based-firearms-tracing-and-analysis>
- Copies of tweets ATF sent when the MOUs were signed with our international partners can be found at:
 - Brazil: <https://twitter.com/ATFHQ/status/887794361878151168>
 - Netherlands: <https://twitter.com/ATFHQ/status/875827869980790786>

ATF National Integrated Ballistic Information Network (NIBIN)

- <https://www.atf.gov/firearms/national-integrated-ballistic-information-network-nibin>
- <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network>

V/R

(b) (6)

Public Affairs Specialist

Bureau of Alcohol, Tobacco, Firearms and Explosives

Office: (202) 648-(b) (6)

Cell: (b) (6)

(b) (6)

<image001.jpg>



<image005.jpg>

To: Turk, Ronald B. (b) (6)
From: Brandon, Thomas E.
Sent: Mon 10/2/2017 9:15:37 PM
Subject: Re: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

10-4, Ron. Thanks, Tom

Sent from my iPad

On Oct 2, 2017, at 5:08 PM, Turk, Ronald B. (b) (6) > wrote:

Sir, details below from Ops. We did not do an examination of the alleged "suppressor" based on (b) (5) (b) (5). The photo looks like a barrel extension but I have asked Ops to verify whether it is a barrel extension or silencer.

Ron

From: (b) (6)
Subject: RE: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

Good Afternoon,

Regarding this incident the following is a summary of incident/actions taken to date:

ATF response to this incident started from a call to the JTTF desk.

USSS UD initially did not contact any agency for assistance

Initial call for service by USSS UD was due to subject disturbing the peace near the White House

After discussions with subject and a consent to search was granted for a vehicle - firearms were discovered

(b) (6)

Current status/location of subject is unknown however inquiries with USSS are being followed up to ascertain

Subject is not prohibited as of the time of interaction with USSS UD

(b) (6)

Traces of firearms were submitted by ATF/JTTF Rep under a routine status as there was no indication of ongoing threat

(b) (3) - (26 USC § 6103)

List of firearms found at scene:

Item #1: Bushmaster XM15-E2S

Designation: Semi Auto Rifle

Caliber: 223/5.56MM

SN: (b) (6)

Item #1- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #2: Intratec TEC-DC9

Designation: Semi Auto Pistol

Caliber: 9mm Lugar

SN: (b) (6)

Item #2- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #3: Vulcan V10-45

Designation: Semi Auto Pistol

Caliber: 45 ACP

SN: (b) (6)

Item #3- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #4: Norinco MAK-90

Designation: Semi Auto Rifle

Caliber: 7.62x39MM

SN: (b) (6)

Item #4- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #5: Glock 30

Designation: Semi Auto Pistol

Caliber: 45 Auto

SN: (b) (6)

Item #5- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #10: Smith & Wesson 4043TSW Stainless

Designation: Semi Auto Pistol

Caliber: 40 S&W

SN: (b) (6)

Item #10- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #11: Springfield Armory XDS 3.3"

Designation: Semi Auto Pistol

Caliber: 45 ACP

SN: (b) (6)

Item #11- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #12: Smith & Wesson 4046

Designation: Semi Auto Pistol

Caliber: 40 S&W

SN: (b) (6)

Item #12 (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #16: Interarms Amadeo Rossi M971

Designation: Revolver

Caliber: 357 Mag

SN: (b) (6)

Item #16 (b) (3) - Public Law 112-55 (125 Stat. 552)

<image001.jpg>

SUMMARY:

USSS Is (b) (5)

ATF is not facilitating a case

ATF will continue to support/assist USSS

Should additional information merit prosecution, ATF will facilitate that action

(b) (6)

S/A (b) (6)

ATF – Washington Field Division

(b) (6)

(b) (6)

From: Croke, Kenneth J.

Sent: Monday, October 2, 2017 2:30 PM

To: (b) (6)

Subject: RE: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

10-4. Any trace data? If you can put together a brief summary in a short time frame it would be much appreciated.

Kenneth J. Croke

Deputy Assistant Director (DAD)

Field Operations - East

Office (202) 648-(b) (6)

Cell (b) (6)

(b) (6)

From: (b) (6)

Sent: Monday, October 02, 2017 2:27 PM

To: Croke, Kenneth J. <(b) (6)>

Subject: Re: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

Working on an update

(b) (6)

(b) (6)

S/A (b) (6)
ATF-Washington Field Division

(b) (6)

(b) (6)

Pages 980 – 989

Pulled for additional review

WWW

• Pages 990 – 1027

Pulled for additional review

• METS • SM

To: Allen, Joseph J. (b) (6)
From: (b) (6)
Sent: Fri 10/6/2017 10:42:15 PM
Subject: RE: WSJ question on registering machine guns and bump stock determination

Thanks Joe. I don't have an answer back from EPS as of yet regarding the first part of the question and I'll definitely be clarifying that the response was referring to ATF's position on when a device is classified as a machinegun conversion device. When I hear back from EPS, do you want to look at their response first or am I good to send it to the reporter?

From: Allen, Joseph J.
Sent: Friday, October 6, 2017 6:23 PM
To: (b) (6)
Subject: RE: WSJ question on registering machine guns and bump stock determination

(b) (6) I thought we were answering the question about ATF's position on when a device is classified as a machinegun conversion device (which underlies the second question).

EPS was to provide data on the question regarding increase in registrations.

I would clarify that response was not intended to answer the first part of the question. Do you have an answer from EPS yet?

--Joe

From: (b) (6)
Sent: Friday, October 6, 2017 5:45 PM
To: Allen, Joseph J. (b) (6) >
Subject: WSJ question on registering machine guns and bump stock determination

Hi Joe,

The reporter had the below follow up question about the answer that you crafted in my office: "I'm not sure I understand your response to the first question. I think I'm missing something. How does this explain the increase in the number of registered machineguns?"

Here's the question and answer he's referring to:

Q: What explains the increase in registered machine guns? Has the ATF veered at all from its 2010 determination that bump stocks are firearm parts and not regulated by the GCA or the NFA?

A: In Dec 2006, ATF publicly published Ruling 2006-2. This ruling described criteria for classification of devices that are "designed and intended solely and exclusively or a combination of parts designed and intended, for use in converting a weapon into a machinegun."

(b) (6)

To: Allen, Joseph J. (b) (6)
From: (b) (6)
Sent: Fri 10/6/2017 9:45:02 PM
Subject: WSJ question on registering machine guns and bump stock determination

Hi Joe,

The reporter had the below follow up question about the answer that you crafted in my office: " I'm not sure I understand your response to the first question. I think I'm missing something. How does this explain the increase in the number of registered machineguns?"

Here's the question and answer he's referring to:

Q: What explains the increase in registered machine guns? Has the ATF veered at all from its 2010 determination that bump stocks are firearm parts and not regulated by the GCA or the NFA?

A: In Dec 2006, ATF publicly published Ruling 2006-2. This ruling described criteria for classification of devices that are "designed and intended solely and exclusively or a combination of parts designed and intended, for use in converting a weapon into a machinegun."

- (b) (6)

To: Bennett, Megan A. (b) (6)
Cc: Shafer, Christopher C. (b) (6) Allen, Joseph J. (b) (6)
From: (b) (6)
Sent: Tue 10/3/2017 1:15:07 AM
Subject: Re: PAD Talking Points for clearance

Thanks, Megan. And we have (b) (6) and (b) (6) on our distribution list to receive the email. I'll be on the lookout for your email with the mail string of approvals.

(b) (6)

Sent from my iPhone

On Oct 2, 2017, at 9:12 PM, Bennett, Megan A. <(b) (6)> wrote:

Hi (b) (6),

The below has been cleared for release. I'll forward you the mail string with the approval in the next email. Please ensure that you copy in (b) (6) and (b) (6) on the email so they can make the appropriate notifications to the hill.

Thanks!

Megan A. Bennett

Good evening:

Special agents from ATF's San Francisco Field Division, Las Vegas Field Office responded to the shooting that occurred in Las Vegas last night, and ATF is participating in the multi-agency investigation of this horrific crime. ATF's role includes conducting urgent traces of recovered firearms, and we are providing those results to the Las Vegas Sheriff's Department and other investigative partners as they are completed.

Most importantly, ATF extends its condolences to the families and friends of everyone impacted by this tragedy.

We appreciate all of you reaching out to us today. As you are aware, however, ATF cannot provide specific information about the ongoing criminal investigation. All updates about the status of the investigation will be issued through the Las Vegas Sheriff's Department or its designee.

While we cannot provide specific information about the ongoing investigation, many of your questions relate to background information about statutes that may apply to the investigation, general statistical information about firearms in the U.S., and information about the tracing process. The general factual information provided below addresses many of these inquiries. When specific updates are authorized by the Las Vegas Sherriff's Department, we will provide them through this media distribution list. Please note that those updates will be posted on Twitter, @ATFHQ, prior to distribution.

National Firearms Act

- Machineguns are defined by the National Firearms Act (NFA) as 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, under the National Firearms Act.
<https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-national-firearms-act-definitions-0>
- To obtain an NFA firearm: An individual who is not prohibited by federal, state, or local law from receiving or possessing firearms may lawfully obtain an NFA firearm either through an approved transfer of a registered NFA firearm from its lawful owner, or an approved making of an NFA firearm. Applicants should use the ATF Form 4, Application for Tax Paid Transfer and Registration of a Firearm and the ATF Form 1, Application to Make and Register a Firearm, respectively. [26 U.S.C. §§ 5812, 5822; 27 C.F.R. §§ 479.62-66, 479.84-86]
<https://www.atf.gov/firearms/qa/how-do-i-obtain-nfa-firearm>.
- To make and register an NFA firearm:

A person not otherwise prohibited by federal, state, or local law from possessing firearms may submit an application to make an NFA firearm, other than a machinegun as prescribed by the Gun Control Act of 1968, as amended, at 18 U.S.C. § 922(o). The application process requires the applicant to submit ATF Form 1, Application to Make and Register a Firearm, in duplicate, along with FBI FD-258, Fingerprint Card, in duplicate, and payment of the \$200 making tax. [27 C.F.R. §§ 479.62-65]

<https://www.atf.gov/firearms/qa/how-can-i-make-and-register-nfa-firearm>

- The NFA tax must be paid and registration need only happen once by the individual the firearm is being transferred to. If it is transferred to a new individual, that new individual must pay the tax and register the firearm with ATF again.
- If you have an NFA firearm and are moving: A registered possessor of an NFA firearm, other than an federal firearms licensee (FFL)/special occupational tax (SOT), may not lawfully transport in interstate or foreign commerce any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, without prior written approval of ATF, specifically the NFA Branch. Approval for the transportation may be obtained by either a written request, or an approved application filed with ATF on Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain NFA Firearms. Please note that applications to transport NFA firearms will be approved only if consistent with all State and local laws. [18 U.S.C. § 922(a)(4); 27 C.F.R. § 478.28]

<https://www.atf.gov/firearms/qa/i-have-nfa-firearm-and-i%E2%80%99m->

moving-what-do-i-do

- If an individual is changing his or her state of residence and the individual's application to transport the NFA firearm cannot be approved because of a prohibition in the new State, options available to the lawful possessor include: NFA firearms may be left in a safe deposit box in his or her former state of residence. Also, the firearm could be left or stored in the former state of residence at the house of a friend or relative in a locked room or container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The firearms may also be transferred in accordance with NFA regulations or abandoned to ATF. <https://www.atf.gov/firearms/qa/if-individual-changing-his-or-her-state-residence-and-individuals-application-transport>
- Per the 2017 ATF Commerce Report, in 2017, there were 630,019 machineguns registered in the U.S. 11,752 were registered in Nevada. <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>
- NFA registry records are not public.

Firearms in the U.S.

- There is no way to estimate the total number of firearms in the U.S. The only number we can confirm is the number of firearms that are manufactured each year, which are captured in the ATF Annual Firearms Manufacturing and

Export Report.

<https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>

- There is no national registry of all firearms in the U.S. ATF possesses no searchable database of all firearms and their owners. The National Firearms Registration and Transfer Record (NFRTR) is the only database that exists, in accordance with laws and regulations, and is maintained by the NFA Branch as a central registry of all restricted weapons, as defined in 26 U.S.C. § 5845. These weapons include items such as machineguns and short-barreled shotguns. In the registry, the NFA Branch records a firearm's identification, date of registration, and the name and address of the person or entity entitled to legally possess the firearm. Registrations are indexed by name of the registrant and serial number of registered NFA firearms.

Firearms Tracing

- <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>
- <https://www.atf.gov/resource-center/how-atf-traces-firearms>
- <https://www.atf.gov/resource-center/firearms-trace-data-2016>
- ATF is the only law enforcement agency responsible for tracing firearms.
- We have not yet released the specific number of firearms ATF has traced for fiscal year (FY) 2017, but it has been more than 400,000 so far this fiscal

year, which is the most ATF has ever had.

- The number of firearms traced in FY2016 was 386,999. Information for other fiscal years is available at: <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>.
- There is no one specific reason for the increase. We continue to promote firearms tracing with our partners, and more agencies have utilized the system and found value in this resource. We continue to partner with domestic and international law enforcement partners to use eTrace. Two new international partners signed memorandums of understanding (MOUs) with ATF just this year: the Netherlands Police in June and representatives from Brazil in July. We now have partnerships with more than 6,700 domestic and international agencies for the eTrace system.

Pages 1036-1037

Pulled for additional review

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>
> (b) (6), Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

>
>
> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 6:08 PM
> To: (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

>
> Seems far more suitable to objective testing and evaluation.

>
> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 6:03 PM
> To: Allen, Joseph J. (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> Ok.

>
> (b) (6)

>
> (b) (6) Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

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> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 5:55 PM
> To: (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

>
> (b) (5)

> --Joe

> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 5:25 PM
> To: Gross, Charles R. (b) (6) Allen, Joseph J.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> (b) (5)

> (b) (5)

> What do you think?
>
> (b) (6)
>
> (b) (6) Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

> -----Original Message-----
> From: Gross, Charles R.
> Sent: Wednesday, October 04, 2017 5:10 PM
> To: Allen, Joseph (b) (6)
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> (b) (5)

> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 4:02 PM
> To: (b) (6) Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: FW: Emailing: Akins Powerpoint reconsideration
>
> FYSA. Counsel PPT on Akins reconsideration of MG classification.

> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 3:32 PM
> To: Allen, Joseph J. (b) (6)
> Subject: Emailing: Akins Powerpoint reconsideration

- >
- >
- > Your message is ready to be sent with the following file or link attachments:
- >
- > Akins Powerpoint reconsideration
- >
- >
- > Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.
- > <Memo re 'Bump Fire' Stocks (b) (6) - 10-5-17.docx>

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of Chief Counsel

Washington, DC 20226

www.atf.gov

October 5, 2017

200000(b) (6)

MEMORANDUM TO: Office of the Attorney General
United States Department of Justice

FROM: Chief Counsel
Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT: Legality of "Bump-Fire" Rifle Stocks

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

(b) (5)

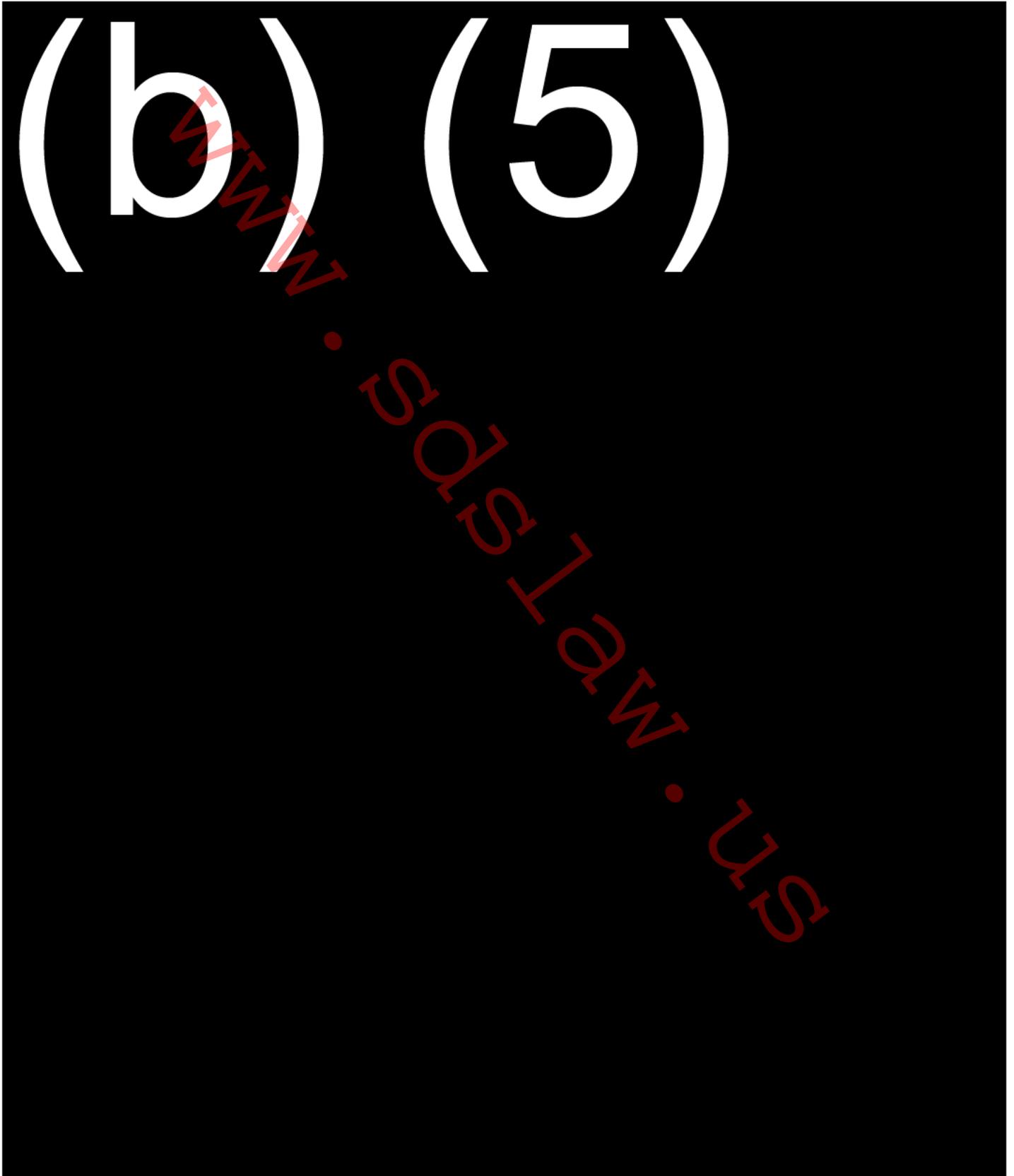
PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General



PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

Charles R. Gross

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WWW

• Pages 1046-1047

Pulled for additional review

• METS • SM

>
> (b) (6), Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

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> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 6:08 PM
> To: (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

>
> Seems far more suitable to objective testing and evaluation.

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> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 6:03 PM
> To: Allen, Joseph J. (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

> Ok. (b) (5)

(b) (5)

>
> (b) (6)
>
> (b) (6) Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
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> Sent: Wednesday, October 04, 2017 5:55 PM
> To: (b) (6); Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

> --Joe

>

> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 5:25 PM
> To: Gross, Charles R. (b) (6) Allen, Joseph J.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

(b) (5)

> What do you think?

> (b) (6)

> (b) (6) Senior Policy Counsel (Firearms and Explosives)
> Bureau of Alcohol, Tobacco, Firearms and Explosives United States
> Department of Justice
> 99 New York Ave., NE, Room 6E-363
> Washington, D.C. 20226
> Tel: 202-648-(b) (6)
> Fax: 202-648-9620

> -----Original Message-----
> From: Gross, Charles R.
> Sent: Wednesday, October 04, 2017 5:10 PM
> To: Allen, Joseph (b) (6)
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

> -----Original Message-----
> From: Allen, Joseph J.
> Sent: Wednesday, October 04, 2017 4:02 PM
> To: (b) (6) Gross, Charles R.
> (b) (6)
> Cc: Roessner, Joel J. (b) (6)
> Subject: FW: Emailing: Akins Powerpoint reconsideration
>
> FYSA. Counsel PPT on Akins reconsideration of MG classification.

> -----Original Message-----
> From: (b) (6)
> Sent: Wednesday, October 4, 2017 3:32 PM
> To: Allen, Joseph J. (b) (6)
> Subject: Emailing: Akins Powerpoint reconsideration

- >
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- > <Memo re 'Bump Fire' Stocks (b) (6) - 10-5-17.docx>

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of Chief Counsel

Washington, DC 20226

www.atf.gov

October 5, 2017

200000(b) (6)

MEMORANDUM TO: Office of the Attorney General
United States Department of Justice

FROM: Chief Counsel
Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT: Legality of "Bump-Fire" Rifle Stocks

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General

Charles R. Gross

www.stps.com

To: Allen, Joseph J. (b) (6); Gross, Charles R. (b) (6),
(b) (6)
Cc: Roessner, Joel J. (b) (6)
From: (b) (6)
Sent: Thur 10/5/2017 3:26:31 PM
Subject: RE: Emailing: Akins Powerpoint reconsideration
Memo re 'Bump Fire' Stocks ja (b) (6) - 10-5-17.docx

Here is a revised analysis for further review ASAP.

Thanks,

- (b) (6)

Eric M. Epstein, Senior Policy Counsel (Firearms and Explosives)
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

-----Original Message-----

From: Allen, Joseph J.
Sent: Thursday, October 05, 2017 10:50 AM
To: Gross, Charles R. (b) (6)
(b) (6)
Cc: Roessner, Joel J. <(b) (6)>
Subject: RE: Emailing: Akins Powerpoint reconsideration

My revised intro attached. Adding (b) (6)

-----Original Message-----

From: Gross, Charles R.
Sent: Thursday, October 5, 2017 8:34 AM
To: (b) (6); Allen, Joseph J. (b) (6) >
Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

I have suggested edits/comments in the "analysis" section, for your consideration.

-----Original Message-----

From: (b) (6)
Sent: Wednesday, October 04, 2017 9:19 PM
To: Allen, Joseph J. (b) (6) >; Gross, Charles R. (b) (6) >
Cc: Roessner, Joel J. (b) (6)
Subject: RE: Emailing: Akins Powerpoint reconsideration
Importance: High

Attached is a rough first draft of the memo. Please provide any feedback.

Joe - what's the deadline on this?

Thanks

(b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives) Bureau of Alcohol, Tobacco, Firearms and

Explosives United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

-----Original Message-----

From: Allen, Joseph J.
Sent: Wednesday, October 04, 2017 6:08 PM
To: (b) (6) >; Gross, Charles R. (b) (6)
Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

Seems far more suitable to objective testing and evaluation.

-----Original Message-----

From: (b) (6)
Sent: Wednesday, October 4, 2017 6:03 PM
To: Allen, Joseph J. <(b) (6) >; Gross, Charles R. (b) (6) >
Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

Ok. (b) (5)

(b) (5)

(b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives) Bureau of Alcohol, Tobacco, Firearms and Explosives United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

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From: Allen, Joseph J.
Sent: Wednesday, October 04, 2017 5:55 PM
To: (b) (6) > Gross, Charles R. (b) (6) >
Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

--Joe

-----Original Message-----

From: (b) (6)
Sent: Wednesday, October 4, 2017 5:25 PM
To: Gross, Charles R. (b) (6) > Allen, Joseph J. (b) (6) >
Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

(b) (5)

What do you think?

(b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives) Bureau of Alcohol, Tobacco, Firearms and Explosives United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

-----Original Message-----

From: Gross, Charles R.

Sent: Wednesday, October 04, 2017 5:10 PM

To: Allen, Joseph J. (b) (6)

Cc: Roessner, Joel J. (b) (6)

Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

-----Original Message-----

From: Allen, Joseph J.

Sent: Wednesday, October 04, 2017 4:02 PM

To: (b) (6), Gross, Charles R. (b) (6)

Cc: Roessner, Joel J. <(b) (6)>

Subject: FW: Emailing: Akins Powerpoint reconsideration

FYSA. Counsel PPT on Akins reconsideration of MG classification.

-----Original Message-----

From: (b) (6)

Sent: Wednesday, October 4, 2017 3:32 PM

To: Allen, Joseph J. (b) (6)

Subject: Emailing: Akins Powerpoint reconsideration

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Akins Powerpoint reconsideration

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of

Washington, DC 20226

www.atf.gov

October 5, 2017

200000(b) (6)

MEMORANDUM TO:

United States Department of Justice

FROM:

Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT:

Legality of "Bump-Fire" Rifle Stocks

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: Allen, Joseph J. (b) (6); Gross, Charles R. (b) (6)
Cc: Roessner, Joel J. (b) (6)
From: (b) (6)
Sent: Thur 10/5/2017 1:18:52 AM
Subject: RE: Emailing: Akins Powerpoint reconsideration
Memo re 'Bump Fire' Stocks.docx

Attached is a rough first draft of the memo. Please provide any feedback.

Joe - what's the deadline on this?

Thanks

- (b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives)
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

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Sent: Wednesday, October 04, 2017 6:08 PM
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Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

Seems far more suitable to objective testing and evaluation.

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To: Allen, Joseph J. <(b) (6)>; Gross, Charles R. <(b) (6)>
Cc: Roessner, Joel J. (b) (6) >
Subject: RE: Emailing: Akins Powerpoint reconsideration

Ok. (b) (5)

(b) (5)

- (b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives) Bureau of Alcohol, Tobacco, Firearms and Explosives United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

-----Original Message-----

From: Allen, Joseph J.

Sent: Wednesday, October 04, 2017 5:55 PM

To: (b) (6) >; Gross, Charles R. <(b) (6)>

Cc: Roessner, Joel J. (b) (6)

Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

--Joe

-----Original Message-----

From: (b) (6)

Sent: Wednesday, October 4, 2017 5:25 PM

To: Gross, Charles R. (b) (6) >; Allen, Joseph J. (b) (6) >

Cc: Roessner, Joel J. <(b) (6)>

Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

What do you think?

(b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives) Bureau of Alcohol, Tobacco, Firearms and Explosives United States Department of Justice

99 New York Ave., NE, Room 6E-363

Washington, D.C. 20226

Tel: 202-648-(b) (6)

Fax: 202-648-9620

-----Original Message-----

From: Gross, Charles R.

Sent: Wednesday, October 04, 2017 5:10 PM

To: Allen, Joseph J. <(b) (6)>

Cc: Roessner, Joel J. (b) (6)

Subject: RE: Emailing: Akins Powerpoint reconsideration

(b) (5)

-----Original Message-----

From: Allen, Joseph J.

Sent: Wednesday, October 04, 2017 4:02 PM

To: (b) (6) Gross, Charles R. <(b) (6)>

Cc: Roessner, Joel J. <(b) (6)>

Subject: FW: Emailing: Akins Powerpoint reconsideration

FYSA. Counsel PPT on Akins reconsideration of MG classification.

-----Original Message-----

From: (b) (6)

Sent: Wednesday, October 4, 2017 3:32 PM

To: Allen, Joseph J. (b) (6)

Subject: Emailing: Akins Powerpoint reconsideration

Your message is ready to be sent with the following file or link attachments:

Akins Powerpoint reconsideration

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of

Washington, DC 20226

www.atf.gov

October 4, 2017

200000 (b) (6)

MEMORANDUM TO:

United States Department of Justice

FROM:

Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT:

Legality of "Bump-Fire" Rifle Stocks

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Deputy Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Deputy Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: Allen, Joseph J. (b) (6)
Cc: Gross, Charles R. (b) (6); (b) (6)
From: (b) (6)
Sent: Tue 10/3/2017 9:28:29 PM
Subject: Akins and Related Docs
Akins - 11th Circuit Decision.pdf
Freedom Ordinance brief in support of MSJ.PDF
US v Olofson (7th Cir).docx
atf-ruling-2006-2.pdf

Joe – per your request.

(b) (6)

(b) (6), Senior Policy Counsel (Firearms and Explosives)
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice
99 New York Ave., NE, Room 6E-363
Washington, D.C. 20226
Tel: 202-648-(b) (6)
Fax: 202-648-9620

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-15640
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEB 04, 2009 THOMAS K. KAHN CLERK

D. C. Docket No. 08-00988-CV-T-26-TGW

WILLIAM AKINS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(February 4, 2009)

Before BIRCH, HULL and PRYOR, Circuit Judges.

PER CURIAM:

William Akins appeals the summary judgment in favor of the Bureau of

Alcohol, Tobacco, Firearms, and Explosives and against his complaint that the Bureau violated his due process rights when it classified the Akins Accelerator, an accessory that increases the rate of fire of a semiautomatic rifle, as a prohibited firearm. Akins argues that the decision of the Bureau to classify the Accelerator as a “machinegun” as defined in the National Firearms Act, 26 U.S.C. § 5845(b), is unreasonable and not entitled to deference; the classification of the Accelerator without a hearing violated his right to procedural due process; and section 5845(b) is unconstitutionally vague. We affirm.

I. BACKGROUND

The Gun Control Act makes it unlawful for any person, other than law enforcement personnel, to “transfer or possess a machinegun” manufactured after May 19, 1986. 18 U.S.C. § 922(o). The term “machinegun” used in section 922(o) shares the definition of the term in the National Firearms Act. The Firearms Act defines a machinegun as “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.” 26 U.S.C. § 5845(b). A machinegun also includes “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”

Id. Congress delegated authority to the Bureau to interpret and enforce the Act. 27 C.F.R. § 479.

Akins invented an “apparatus for accelerating the cyclic firing rate of a semi-automatic firearm” and received a patent for the accessory. The Accelerator is a molded stock that cradles a semiautomatic rifle and uses an internal spring and the force of recoil to reposition and refire the rifle. According to Akins, a gunman pulls the trigger, then “maintains tension against the finger stops,” and each time the rifle recoils, it is pushed forward by “tension supplied by the spring,” which pushes “the trigger . . . into the finger[] and the rifle.” The process continues until the rifle empties its ammunition chamber or the shooter releases contact with the finger stops. This process is known commonly as “bump firing,” but the Accelerator allegedly enables the shooter to achieve better accuracy than with similar devices.

In March 2002, Akins wrote the Firearms Technology Branch of the Bureau to inquire if it would classify the Accelerator as a machinegun. In the letter, Akins explained that the Accelerator “alter[ed] the stock on some semiautomatic rifles in a manner which allows them to be fired so rapidly that the practical effect is equivalent to a fully-automatic machinegun.” After the Firearms Branch tested a prototype of the Accelerator with an SKS-type rifle, it determined that “[t]he

weapon did not fire more than one shot by a single function of the trigger” and concluded that “the submitted stock assembly does not constitute a machinegun . . . [nor] a part or parts designed and intended for use in converting a weapon into a machinegun.” The letter mentioned that the prototype broke during testing.

Concerned that the classification might not include an Accelerator that functioned properly, Akins asked the Bureau in January 2004 to explain its ruling. The Bureau stated that it classified the Accelerator based on its “theory of operation,” which “was clear even though the rifle/stock assembly did not perform as intended.” Akins began to produce and sell the Accelerator.

In August 2006, the Bureau noticed a website that Akins used to market the Accelerator. The website advertised the Accelerator as “[e]valuated by” the Bureau and quoted from its letters. An individual who had purchased an Accelerator wrote the Bureau and asked for a “written determination” whether the accessory when “assembled with a standard Ruger 10/22 semiautomatic carbine” would constitute a machinegun. The Bureau also received requests to evaluate other devices designed to increase the rate of fire of a semiautomatic firearm.

The Bureau opened an investigation regarding the Accelerator in September 2006. After the Bureau obtained and tested the accessory, it advised Akins in November 2006 that the Accelerator, when used with a Ruger 10/22 rifle,

“demonstrated that a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.” The Bureau classified the Accelerator as a machinegun, notified Akins that its previous letters were “overruled,” and instructed him either to register the devices he possessed or to surrender them.

On December 13, 2006, the Bureau issued a new policy statement, ATF Ruling 2006-2. The Bureau stated that “conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.” The Bureau described the Accelerator in the statement and stated that the accessory was a machinegun. In January 2007, the Bureau ordered Akins to turn over any recoil springs in his possession.

In early February, Akins asked the Bureau to reconsider its decision. Akins alleged that “[i]f the trigger finger remains in contact with the trigger, only one shot can result until the trigger is released and then pressed again” and he mentioned that several other devices had not been classified as machineguns although they also enabled shooters to fire two or three shots with a single pull of the trigger. Akins argued that the original classification of the Accelerator was

“consistent” with “long-standing agency interpretations” and he asked for an opportunity to “present [his] case orally” to the Bureau. The Bureau affirmed its decision summarily in September 2007.

Akins filed a complaint against the United States in May 2008. He alleged that the decision of the Bureau was arbitrary and capricious and violated his right to due process. Akins requested the court: (1) declare that the Accelerator is not a machinegun; (2) issue an injunction to prohibit the government from treating the Accelerator as a machinegun; (3) declare section 5845 unconstitutionally vague; and (4) issue an injunction to prohibit the government from classifying the Accelerator as a machinegun.

The United States moved for summary judgment, which the district court granted. The district court found that the decision of the Bureau that the Accelerator qualified as machinegun was consistent with the language and legislative history of the National Firearms Act and concluded that the Bureau had the authority to reclassify the Accelerator. The court ruled that the actions of the Bureau did not violate Akins’s right to procedural due process and that the definition of machinegun in section 5845 was not unconstitutionally vague.

II. STANDARD OF REVIEW

We review a summary judgment de novo. Cooper v. Fulton County, Ga.,

458 F.3d 1282, 1285 (11th Cir. 2006). Under the Administrative Procedures Act, we defer to the decision of the Bureau unless it “(1) exceeds the Bureau’s statutory authority, (2) violates a constitutional right, or (3) constitutes an ‘arbitrary’ or ‘capricious action,’ or ‘an abuse of discretion’ or an action ‘otherwise not in accordance with law.’” Gun South, Inc. v. Brady, 877 F.2d 858, 861 (11th Cir. 1989) (quoting the Administrative Procedure Act, 5 U.S.C.A. § 706(2)(A), (B), and (C) (West 1977)). Based on that deferential standard, we “cannot substitute our judgment for the Bureau’s judgment, but rather, we must presume” that the actions of the government agency are “valid[.]” Id. We review de novo the constitutionality of a federal statute. See United States v. Awan, 966 F.2d 1415, 1424 (11th Cir. 1992).

III. DISCUSSION

Akins challenges the summary judgment on three grounds. First, Akins argues that the classification by the Bureau of the Accelerator as a machinegun is unreasonable. Second, Akins argues that the summary disposition of the classification violated his right to due process. Third, Akins contends that section 5845(b) of the National Firearms Act is unconstitutionally vague. These arguments fail.

The Bureau acted within its discretion when it reclassified the Accelerator as

a machinegun. A machinegun is a weapon that fires “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The interpretation by the Bureau that the phrase “single function of the trigger” means a “single pull of the trigger” is consonant with the statute and its legislative history. See Staples v. United States, 511 U.S. 600, 602 n.1, 114 S. Ct. 1793, 1795 n.1 (1994); National Firearms Act: Hearings Before the Committee on Ways and Means, 73rd Cong. 40 (1934). After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted. Based on the operation of the Accelerator, the Bureau had authority to “reconsider and rectify” what it considered to be a classification error. See Gun South, 877 F.2d at 862–63. That decision was not arbitrary and capricious. See id. at 866.

The Bureau did not violate Akins’s right to due process when it reclassified the Accelerator summarily. Due process requires that the “a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.” Mathews v. Eldridge, 424 U.S. 319, 348, 96 S. Ct. 893, 909 (1976) (quoting Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 171–72, 71 S. Ct. 624, 649 (1951) (Frankfurter, J., concurring)). As the Mathews Court explained, “[a]ll that is

necessary is that the procedures be tailored, in light of the decision to be made, to ‘the capacities and circumstances of those who are to be heard,’ to insure that they are given a meaningful opportunity to present their case.” Id. at 349, 96 S. Ct. at 909 (citation omitted). Akins received notice that the Bureau had reclassified the Accelerator, and Akins submitted a lengthy request for the agency to reconsider its decision based on his interpretation of the statute. No further process was required.

Section 5845(b) also is not unconstitutionally vague. A statute is constitutionally vague when it fails to give a “person of ordinary intelligence a reasonable opportunity to know what is prohibited.” Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298–99 (1972). The plain language of the statute defines a machinegun as any part or device that allows a gunman to pull the trigger once and thereby discharge the firearm repeatedly. See United States v. Thomas, 567 F.2d 299, 300 (5th Cir. 1978) (applying a commonsense meaning to the word “silencer” under former section 5845 in a vagueness challenge). Use of the word “function” instead of “pull” to reference the action taken by a gunman to commence the firing process is not so confusing that a man of common intelligence would have to guess at its meaning.

IV. CONCLUSION

The summary judgment in favor of the United States is **AFFIRMED**.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

FREEDOM ORDNANCE MFG., INC.,)
)
Plaintiff,)
)
v.) Case No. 3:16-cv-243-RLY-MPB
)
THOMAS E. BRANDON, Director,)
Bureau of Alcohol Tobacco Firearms)
and Explosives,)
)
Defendant.)

**BRIEF IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Freedom Ordnance Manufacturing, Inc. (“Freedom”) is a firearms manufacturer headquartered in Chandler, Indiana. In this case, Freedom challenges a decision by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) that a device Freedom seeks to manufacture and market is a “machinegun” as defined under the National Firearms Act, 26 U.S.C. § 5845(b). ATF’s decision is not arbitrary and capricious, but is supported by the administrative record. Based on the foregoing, ATF is entitled to summary judgment.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE¹

Freedom Ordnance Manufacturing, Inc. (“Freedom”) is a federally-licensed firearms manufacturer with its principle place of business in Chandler, Indiana. (Docket No. 1 ¶ 2.) Freedom designed an Electronic Reset Assist Device (“ERAD”) for commercial sale to the general public. (Docket No. 1 ¶ 9.) The purpose of the ERAD, as described by Freedom, is to “improve firearm design” to assist the firearm user’s “ability to continually pull the trigger in a rapid manner when a high rate of fire is desired.” (Administrative Record (“AR”) 0025; Patent documents.)

The Firearms and Ammunition Technology Division (“FATD”) of ATF, through its Firearms Technology Industry Services Branch (“FTISB”), provides expert technical support to ATF, other Federal agencies, State and local law enforcement, the firearms industry, Congress, and the general public. ATF, Firearms Ammunition and Technology (2017), available at <https://www.atf.gov/firearms/firearms-and-ammunition-technology>. FTISB is responsible for technical determinations concerning types of firearms approved for importation into the United States and for rendering opinions regarding the classification of suspected illegal firearms and newly designed firearms. *Id.*

There is no requirement in the law or regulations for a manufacturer to seek an ATF classification of its product prior to manufacture. *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, National Firearms Act Handbook 7.2.4 (2017), available at

¹ As discussed in Legal Background, Section D, the typical Fed. R. Civ. P. 56 standard and procedural structure does not apply in an APA review case. Accordingly, the Defendant is not required to marshal evidence showing material issues of fact in dispute and the typical “Statement of Material Facts Not In Dispute” does not apply, but is offered for factual context. Specific sections of the Record are cited in the relevant portions of the Argument section.

<https://www.atf.gov/firearms/national-firearms-act-handbook>. ATF, however, encourages firearms manufacturers to submit devices for classification before they are offered for sale to ensure that the sale of such devices would not violate the Federal firearms laws and regulations.

Id. ATF responds to classification requests with letter rulings that represent “the agency's official position concerning the status of the firearms under Federal firearms laws.” *Id.* at 7.2.4.1.

A. The November 2015 Submission

In November 2015, Freedom submitted a request to FTISB to examine a “trigger reset device.” (AR 0002; 0005 – 17 (photos of submission).) Freedom submitted a prototype of the device, along with correspondence, and a Bushmaster Model XM15-E2S AR-type firearm to be used in testing the prototype. (*Id.*)

FTISB closely examined and tested the prototype. (AR 0003.) As part of the examination, FTISB staff fired an AR-type rifle² with the prototype attached. (*Id.*) FTISB staff noted two instances of machinegun function with the prototype device attached. (*Id.*) Specifically, FTISB found that trigger reset device, when attached to the test weapon, converted it into a weapon that fired automatically – “firing more than one shot without manual reloading by a single function of the trigger.” (*Id.*) Based on the examination and testing conducted, FTISB determined that the trigger reset device was a “machinegun” as defined in 26 U.S.C. § 5845(b), and notified Freedom in a letter dated March 23, 2016. (AR 0002 – 4.)

B. The April 2016 Submission and October 27, 2016 Classification Decision

² FTISB ended up using an ATF AR-type firearm to field test the prototype device because it noted a deformity in the Bushmaster Model XM15-E2S AR-type firearm submitted by Freedom. (AR 0003.)

In April 2016, Freedom submitted a new sample prototype of its trigger reset assist device (referred to as the “ERAD”). (AR 0001.) According to Freedom, the new sample prototype “is a total redesign” of the initial prototype. (AR 0001.) In the submission, Freedom included two sample prototypes of the device, along with 9-volt lithium batteries, and DVDs showing demonstrations of live firing and disassembly of the device. (*Id.*) Although Freedom did not explicitly request a classification from FTISB on its prototype, FTISB treated the submission as such because the letter referred back to the Agency’s March 23, 2016, classification and stated that Freedom “worked very hard to correct” the issues identified in the March 23, 2016, letter. (*Id.*)

On or about September 7, 2016, Freedom submitted a supplemental letter to FTISB in support of its April 2016 request for classification of the ERAD. (AR 0018 – 24.) The supplemental materials included a letter from Freedom’s counsel setting forth Freedom’s position that the ERAD should not be classified as a machinegun. (AR 0018 – 24.) The supplemental materials also included a sixteen minute demonstration video of the ERAD, and written materials, including Freedom’s purported patent application for the ERAD. (AR 0018; AR0025 – 46.) In the video, Freedom states that the ERAD permits the shooter to discharge 450 to 500 rounds per minute. (AR 0047.)

FTISB examined that submission and supplemental materials, including the demonstration video. (AR 0070 – 71.) Specifically, FTISB disassembled and examined the two sample ERAD prototypes. (*Id.*) FTISB examined each component part of the ERAD and its design features and characteristics. (AR 0071 – 72.) FTISB staff also conducted field testing of the ERAD by attaching it to and firing from commercially-available Remington and

PMC rifles and a Bushmaster Model XM15-E2S AR-type firearm. (AR 0072.) During the test-fire portion of the examination, staff observed machinegun function six times. (*Id.*)

Specifically, FTISB personnel observed that a single pull of the ERAD trigger - designated as the “primary trigger” - initiated the firing sequence, which caused firing until the trigger finger was removed. (AR 0073.)

By letter dated October 27, 2016, FTISB issued a classification on Freedom’s ERAD trigger system. (AR 0070 - 82.) In the eleven-page letter, FTISB described (1) the composition of the trigger and grip assembly, including its several constituent parts; (2) FTISB’s process for examining and testing the ERAD trigger system; (3) its observations of the ERAD trigger system functionality and the firing effect that was produced when the ERAD was applied to a firearm (*i.e.*, the prototype sent by Freedom) and test-fired; and (4) a breakdown of the firing sequence with and without the ERAD, including several accompanying illustrations. (*Id.*)

FTISB concluded that the ERAD is properly classified as a machinegun. Significantly, FTISB found that “the firing sequence is initiated by a pull of the primary trigger and perpetuated *automatically* by shooter’s constant pull and the reciprocating, battery-powered metal lobe repeatedly forcing the primary trigger forward.” (AR 0073.) Thus, “[a] single pull of the trigger by the shooter therefore starts a firing sequence in which *semiautomatic* operation is made *automatic* by an electric motor.” (*Id.*) FTISB found that because the shooter does not have to release the trigger for subsequent shots to be fired, the firing sequence is continually engaged as long as the shooter maintains constant rearward pressure (a pull) on the trigger and the motor continues to push the shooter’s finger forward. (*Id.*) In other words, as long as the trigger is depressed, the firearm continues to fire until either the trigger finger is removed, the

firearm malfunctions, or it runs out of ammunition. (*Id.*)

FTISB therefore concluded that the installation of an ERAD on a semiautomatic firearm causes that firearm to shoot automatically (through the automatic functioning made possible by the electric motor), more than one shot, by a single function (a single constant pull) of the trigger. FTISB therefore properly concluded that the ERAD is classified as a combination of parts designed and intended for use in converting a semiautomatic rifle into a machinegun under 26 U.S.C. § 5845(b). (AR at 79-80; 80-82.)

**THE COURT MUST STRIKE AND DISREGARD
FREEDOM'S EXTRA-RECORD EVIDENCE**

Freedom brings its claim under the Administrative Procedure Act, 5 U.S.C. § 704, challenging ATF's decision that Freedom's ERAD device be classified as a machinegun. (Docket No. 1; Docket No. 24.) As discussed further below, review of the agency's decision under the APA is conducted using an arbitrary and capricious standard, and the Court's review is limited to the administrative record lodged by the agency. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court."); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) ("That review is to be based on the full administrative record that was before the Secretary at the time he made his decision."), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 952 (7th Cir. 2003) ("the reviewing court considers only the administrative record already in existence, not some new record made initially [in that court].").

In support of its motion for summary judgment, Freedom submitted the declarations of

Michael Winge (Pl.’s Ex. D, Docket No. 24-4) and Richard Vasquez (Pl.’s Ex. E, Docket No. 24-5). Mr. Winge is one of the owners of Freedom Manufacturing. (Pl.’s Ex. D, Docket No. 24-4.) Several paragraphs of his declaration recount correspondence between FTISB and Freedom, which is already contained in the Administrative Record and which is the best evidence of its contents. (See Pl.’s Ex. D, Docket No. 24-4, ¶¶ 18 – 20.) The remaining paragraphs contain Mr. Winge’s opinions about the ERAD and his arguments regarding why the ERAD should not be classified as a machinegun. Mr. Winge’s opinions are merely that – his opinions – and are not part of the official record containing the information upon which ATF relied in issuing its decision. The Court should strike and disregard these opinions because the Court’s review is limited to the administrative record lodged by ATF. Freedom did not challenge or move to supplement that administrative record; therefore, it is complete. *Highway J Citizens Grp.*, 349 F.3d at 952; *see also United States Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (“a presumption of regularity attaches to [g]overnment agencies’ actions.”); *Spiller v. Walker*, No. A-98-CA-255-SS, 2002 U.S. Dist. Lexis 13194, *26-27 (W.D. Tex. July 19, 2002) (“any legal conclusions and post-[decision] evidence within the declarations and argumentation offered simply to contest the agencies’ experts are not admissible.”).

Richard Vasquez appears to be a witness who was retained by Freedom to provide his expert opinion regarding the ERAD’s classification. (Pl.’s Ex. E, Docket No. 24-5.) Expert reports are generally not permitted in an APA review case. *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 555 (1978) (“the role of a court in reviewing the sufficiency of an agency’s consideration . . . is a limited one, limited both by the time at which the decision was made and by the statute mandating review.”). Both the Supreme Court and the Seventh Circuit

have emphasized that “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Cronin v. USDA*, 919 F.2d 439, 443 (7th Cir. 1990) (“it is imprudent for the generalist judges of the federal district courts and courts of appeals to consider testimonial and documentary evidence bearing on those questions unless the evidence has first been presented to and considered by the agency.”); see also *Airport Cmty Coal. v. Graves*, 280 F. Supp.2d 1207, 1213 (W.D. Wash. 2003) (holding that APA was intended to preclude “Monday morning quarterbacking”).

The Vasquez Declaration simply criticizes the agency’s analysis, but under the APA the Court must allow the agency to rely on its own experts’ opinions even if a plaintiff has other expert opinions. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989) (“When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts, even if as an original matter, a court might find contrary views more persuasive.”). Therefore, even if a so-called “expert” conclusion would contradict the agency’s expert’s conclusions, this Court can give it no force. *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1335 (9th Cir. 1992).

Based on the foregoing, the Court must strike and disregard the Winge and Vasquez Declarations.

LEGAL BACKGROUND

A. The National Firearms Act and Gun Control Act

The National Firearms Act of 1934, 26 U.S.C. Chapter 53, and the Gun Control Act of 1968, 18 U.S.C. Chapter 44, comprise the relevant federal framework governing the firearm

market. The Gun Control Act generally makes it unlawful for a person to transfer or possess a machinegun manufactured on or after May 19, 1986. 18 U.S.C. § 922(o). ATF is charged with administering and enforcing both the National Firearms Act and the Gun Control Act. 28 C.F.R. § 0.130(a)(1)–(2).

18 U.S.C. § 922(a)(4) states that it shall be unlawful –

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

Accordingly, with the limited exception of State, Federal and local law enforcement agencies, it is unlawful for any person to transfer or possess a machinegun manufactured on or after May 19, 1986. Moreover, machineguns must be registered in the National Firearms Registration and Transfer Record and may only be transferred upon the approval of an application. 26 U.S.C. § 5812. The National Firearms Act makes it unlawful to manufacture a machine gun in violation of its provisions. 26 U.S.C. § 5861(f). Specifically, the National Firearms Act requires that a person shall obtain approval from ATF to make a National Firearms Act firearm, which includes a machinegun. 26 U.S.C. §§ 5922, 5845(a). Similarly, licensed manufacturers are required to notify ATF by the end of the business day following manufacture of a NFA firearm. 26 U.S.C. § 5841(c), 27 CFR 479.103.

B. The Definition of a Machinegun

The National Firearms Act, 26 U.S.C. § 5845(b), defines a machinegun³ as

³ Although more commonly spelled “machine gun,” the applicable statutes use the spelling “machinegun.”

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.

See also 27 C.F.R. § 478.11 (stating same).

The Gun Control Act incorporates the National Firearms Act's definition of machinegun and defines machinegun identically to the National Forearms Act. 18 U.S.C. § 922(a)(4).

Both statutory definitions of a machinegun therefore include a combination of parts designed and intended for use in converting a weapon into a machinegun. *Id.* This language includes a device that, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until the finger is released or the ammunition supply is exhausted. *See* ATF Rule 2006-2 (AR at 630-32.)

C. The Administrative Procedure Act

The Administrative Procedure Act (APA) requires that the Court “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The “scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Court must be satisfied that the agency has “‘examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” *Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 6 (D.C. Cir. 2006) (quoting *State Farm*, 463 U.S. at 43). The agency’s decisions

are entitled to a “presumption of regularity,” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971), and although “inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one,” *id.* at 416.

Federal courts are particularly deferential towards the “scientific determinations” of the agency, which are “presumed to be the product of agency expertise.” *Franks v. Salazar*, 816 F.Supp.2d 49, 55 (D. D.C. 2011) (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983)). The Court’s review is confined to the administrative record, subject to limited exceptions not at issue here. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (“[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.”). *See also Sig Sauer, Inc. v. Jones*, 133 F. Supp. 3d 364, 371 (D.N.H. 2015), *aff’d sub nom. Sig Sauer, Inc. v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (recognizing that classification determinations “require expertise that is well within the ATF’s grasp” and that “its conclusions are entitled to substantial deference from a reviewing court.”) (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989)).

D. Summary Judgment in APA Cases

Under the APA, “courts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review.” *Fla. Power & Light Co.*, 470 U.S. at 743-44. Because extra-record evidence and trials are inappropriate in APA cases, courts decide APA claims via summary judgment based on the administrative record the agency compiles. *Cronin*, 919 F.2d at 445 (“Because the plaintiffs are not entitled to present evidence in court to challenge the [decision-maker’s] decision . . . , there will never be an evidentiary hearing in court.”); *Nw. Motorcycle Ass’n v. USDA*, 18 F.3d 1468, 1472 (9th Cir.

1994).

Although summary judgment is the procedural mechanism by which the Government is presenting its case, the limited role federal courts play in reviewing such administrative decisions means that the typical Federal Rule 56 summary judgment standard does not apply. *See Citizens for Appropriate Rural Roads, Inc. v. Foxx*, 14 F. Supp. 3d 1217, 1228 (S.D. Ind. March 31, 2014) (Barker, J.) (citing *Cronin*, 919 F.2d at 445); *see also Sierra Club v. Mainella*, 459 F.Supp.2d 76, 89–90 (D. D.C. 2006). Instead, in APA cases, “[t]he factfinding capacity of the district court is thus typically unnecessary to judicial review of agency factfinding [C]ourts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review.” *Florida Power & Light Co.*, 470 U.S. at 744–74.

ARGUMENT

Plaintiff raises several challenges to FTISB’s classification decision. As discussed below, FTISB conducted a thorough examination of the ERAD, and fully disclosed the findings supporting its decision. FTISB’s decision was not arbitrary and capricious, but is supported by the facts as presented in the administrative record, and is a reasonable interpretation of the statute. Defendant is entitled to judgment in its favor on all of the Plaintiff’s claims.

A. ATF’s Decision Is Not Arbitrary and Capricious.

A machinegun is defined in part as any weapon that shoots “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The term also includes any “combination of parts designed and intended, for use in converting a weapon into a machinegun.” *Id.* In the definition of machinegun, neither the National

Firearms Act nor the Gun Control Act further define the phrase “single function of the trigger.” The test firing of Plaintiff’s prototype—an AR-15 semi-automatic rifle (Bushmaster Model XMI150E2S) with an integrated ERAD grip—demonstrated that, once the grip button was pulled (activating the motor) concurrent with constant rearward pressure being applied to the trigger extension (which Plaintiffs refer to as the “reset bar”), the weapon fired more than one shot without manual reloading and without any additional action on the shooter’s part. Indeed, the weapon fired continuously until the shooter stopped applying rearward pressure to the trigger extension, or the ERAD’s ammunition supply was exhausted. (AR at 79, 47 (demonstration video).) Additionally, when equipped with the ERAD, the weapon fired at a very high rate of speed, discharging up to 500 rounds per minute. (AR 0047.) Thus, the nature and mechanics of the ERAD support FTISB’s finding that it converted the semiautomatic firearm to a machinegun.

FTISB’s conclusion is consistent with the National Firearm’s Act’s legislative history, in which the drafters equated “single function of the trigger” with “single pull of the trigger.” *See* National Firearms Act: Hearings Before the Committee on Ways and Means, H.R. Rep. No. 9066, 73rd Cong., 2nd Sess., at 40 (1934) (“Mr. Frederick.[] The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and such guns are not properly designated as machine guns. A gun, however, which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun.”); *see also* George C. Nonte, Jr., *Firearms Encyclopedia* 13 (1973) (the term “automatic” is defined to include “any firearm in

which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device – in other words, a machinegun”).

FTISB’s decision is also consistent with the ordinary meaning of the term “function,” which includes “any of a group of related actions contributing to a larger action.” Webster’s Ninth New Collegiate Dictionary, 498 (1986); *see also* Random House Thesaurus College Edition, 297 (1984) (a synonym of function is “act”). Here, the action, or act, is pulling the trigger, which leads to the automatic firing.

Courts have also interpreted “function” as the action of pulling the trigger. *See Staples v. United States*, 511 U.S. 600, 600 (1994) (“The National Firearms Act criminalizes possession of an unregistered ‘firearm,’ 26 U.S.C. § 5861(d), including a ‘machinegun,’ § 5845(a)(6), which is defined as a weapon that automatically fires more than one shot with a single pull of the trigger, § 5845(b).”); *see also id.* at 602 n.1 (“As used here, the terms ‘automatic’ and ‘fully automatic’ refer to a weapon that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are ‘machineguns’ within the meaning of the Act.”).

In *United States v. Fleischli*, 305 F.3d 643, 655-56 (7th Cir. 2002), the Seventh Circuit held that a “minigun” was a machinegun even though it was “activated by means of an electronic on-off switch rather than a more traditional mechanical trigger.” Despite Fleischli’s arguments that the minigun was not a machinegun because it was not fired by pulling a traditional trigger, but rather was fired using an electronic switch, the court found to the contrary: “Fleischli's

electronic switch served to initiate the firing sequence and the minigun continued to fire until the switch was turned off or the ammunition was exhausted. The minigun was therefore a machine gun as defined in the National Firearms Act.” *Id.* (superseded by statute on other grounds); *see also United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977) (rejecting defendant’s argument that because he had constructed a weapon with two triggers, it would not fire by a single function of the trigger, finding “it is undisputed that the shooter could, by fully pulling the trigger, and it only, at the point of maximum leverage, obtain automation with a single trigger function. We are satisfied the gun was a machine gun within the statutory definition both in law and fact.”)

Similarly here, the ERAD is a component that, when attached to a rifle, causes the rifle to function automatically. The ERAD allows the firing sequence to be initiated by a single pull of the primary trigger, which is continually engaged as long as the shooter maintains rearward pressure on the trigger and the motor continues to push the shooter’s finger forward. (AR 0073; 79-80.) Because the ERAD is a combination of parts designed and intended for use in converting a semiautomatic firearm into weapon which shoots automatically more than one shot by a single action—the pull of the trigger—it is a machinegun. ATF’s decision is not arbitrary or capricious, but is consistent with the facts based on a thorough examination and testing of the ERAD’s functionality.

B. ATF’s Classification is Consistent with Public Policy.

Because of their rapid rate of fire, machineguns have long been considered inherently dangerous and are therefore strictly regulated and generally unlawful to possess. *See* 18 U.S.C. § 922(o); *United States v. Brock*, 724 F.3d 817, 824 (7th Cir. 2013) (“Congress has grouped together sawed-off shotguns, machineguns, and a variety of dangerous explosive devices for

stringent restrictions on possession and strict registration requirements for those that can be possessed lawfully.”); *United States v. Brazeau*, 237 F.3d 842, 845 (7th Cir. 2001) (“The point is that most firearms do not have to be registered—only those that Congress found to be inherently dangerous.”); *United States v. Kruszewski*, No. 91-0031P, 1991 WL 268684, at *1 (N.D. Ind. Dec. 10, 1991) (“The categories of firearms covered by U.S.C. Title 26 include only particularly dangerous weapons such as machineguns In *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008), the Supreme Court discussed a machinegun (M-16), and recognized a “limitation on the right to keep and carry arms” that includes “dangerous and unusual weapons.” *See also United States v. Spires*, 755 F.Supp. 890, 892 (C.D. Cal. 1991) (“Congress believed these particular weapons, as opposed to firearms in general, are extremely dangerous and serve virtually no purpose other than furtherance of illegal activity.”).

The device at issue in this case – the ERAD grip – enables a firearm to produce automatic fire with a single pull of the trigger, and therefore makes an otherwise semiautomatic firearm into one of the “dangerous and unusual weapons” recognized by the *Heller* court.. A rifle with the ERAD will continue to fire automatically once the trigger is pulled and remains depressed, with no further action by the shooter required. The widely-available Bushmaster Model XMI150E2S fires at a rate of one shot per trigger pull and up to 120 rounds per minute.⁴ When

⁴ Although there are no official documents establishing a maximum firing rate, it is thought that 120 rounds per minute would be a ceiling. Obviously, the rate of fire depends on how fast the shooter can pull and release the trigger. The Department of the Army has published 45 rounds per minute as the maximum effective rate of fire for AR-type weapons, meaning the number of shots that allow the shooter to effectively engage the intended target. *See* Department of the Army, Field Manual (FM) 3-22.9, Rifle Marksmanship M16-/M4-Series Weapons, Ch. 2-1 (Characteristics of M16-/M4-Series Weapons), Aug. 2008, available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixkfTlrPzTAhUKwiYKHf9iA30QFggnMAA&url=http%3A%2F%2Fusacac.army.m>

the ERAD device is attached to it, however, the same rifle is capable of firing at a rate of up to 500 rounds per minute. (AR 0047.) This unhindered automatic firing capability is the very danger that the National Firearms Act was intended to protect against. *See* 149 Cong. Rec. H2944-02, H2950 (Apr. 9, 2003) (“these weapons ... are inherently dangerous”); *United States v. Newman*, 134 F.3d 373 (6th Cir. Jan. 21, 1998) (unpublished) (“Although the National Firearms Act is ostensibly a revenue-generating statute enacted under Congress’s taxation power, it is clearly designed to regulate the manufacture, transfer, and possession of dangerous weapons. Although the means by which Congress advanced its objectives are somewhat roundabout, close analysis of the relevant provisions reveals an unmistakable intent to prohibit possession of any machine gun the manufacture or importation of which was not explicitly authorized by the Bureau of Alcohol, Tobacco, and Firearms.”). Nor is such easy transformation to an automatic firearm consistent with the prohibition imposed by section 922(o) of the Gun Control Act. *See United States v. Haney*, 264 F.3d 1161, 1168 (10th Cir. 2001) (“banning possession of post 1986 machine guns is an essential part of the federal scheme to regulate interstate commerce in dangerous weapons.”). Accordingly, ATF’s assessment of the functionality of the ERAD grip, including its ability to convert a firearm into an automatic weapon, support ATF’s finding that the ERAD is properly classified as a machinegun.

C. Freedom’s “Reset Bar” Terminology Does Not Alter the Outcome

Freedom argues that FTISB’s analysis is flawed because the ERAD’s “reset bar” is not a “trigger.” Freedom specifically claims that, “the trigger finger reset bar is not the trigger, nor

il%2Fsites%2Fdefault%2Ffiles%2Fmisc%2Fdoctrine%2FCDG%2Fcdg_resources%2Fmanuals%2Ffm%2Ffm3_22x9.pdf&usg=AFQjCNEzIuwG-XuAHAhI5HSuun3SGVrZxg&sig2=5AF-YguyuZCKe4rELOibbQ.

can it activate the firing sequence. Only the shooter's conscious and deliberate pull of the reset bar that subsequently engages the trigger that causes the weapon to fire and the ERAD cannot be made to function any other way." (Docket No. 24 at 8.) To this end, Freedom admits it has created a device that incorporates the traditional firearm trigger as another intermediate component in the firing mechanism.

Nevertheless, Freedom's position has been rejected by ATF before, and this rejection has been upheld in court. As discussed above, in *United States v. Fleischli*, 305 F.3d 643 (7th Cir. 2002), the Seventh Circuit rejected the appellant's argument that an electronic switch did not meet the traditional definition of a trigger, holding as follows:

This is a puerile argument, based on hyper-technical adherence to literalism. We are not surprised to learn that Fleischli is not the first defendant to make such a brazen argument, although he appears to be the first to do so in this circuit. We join our sister circuits in holding that a trigger is a mechanism used to initiate a firing sequence. *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (commonsense understanding of trigger is mechanism used to initiate firing sequence); *United States v. Evans*, 978 F.2d 1112, 1113–14 n. 2 (9th Cir. 1992), *cert. denied*, 510 U.S. 821, 114 S.Ct. 78, 126 L.Ed.2d 46 (1993) (trigger is anything that releases the bolt to cause the weapon to fire). Fleischli's definition "would lead to the absurd result of enabling persons to avoid the NFA simply by using weapons that employ a button or switch mechanism for firing." *Evans*, 978 F.2d at 1113–14 n. 2. The dictionary definition of "trigger" includes both the traditional ("a small projecting tongue in a firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon") and the more general ("anything, as an act or event, that serves as a stimulus and initiates or precipitates a reaction or series of reactions."). See Webster's Unabridged Dictionary Of The English Language (2001). Fleischli's electronic switch served to initiate the firing sequence and the minigun continued to fire until the switch was turned off or the ammunition was exhausted. The minigun was therefore a machine gun as defined in the National Firearms Act.

Id. at 655–56.

Similarly, in *United States v. Carter*, 465 F.3d 658 (6th Cir. 2006), the Sixth Circuit opined on the definition of a "trigger" under the National Firearms Act. There, Carter appealed

a conviction for illegal possession of a machine gun and other parts designed or intended for use in converting a weapon into a machinegun. *Id.* at 660. Carter argued that the jury instruction on the definition of “trigger” was faulty because the indictment “did not mention a trigger mechanism among the parts he was alleged to have possessed” and thus the indictment failed to state a charge pursuant to the Federal Rule of Criminal Procedure 7(c)(1) because “the definition of ‘machinegun’ given at 26 U.S.C. § 5845 specifically includes a trigger.” *Id.* at 661. According to the testifying expert, the weapon was complete except for a trigger mechanism. Thus “[a]fter inserting a magazine with three rounds of ammunition, he said, he was able to make the gun fire all three rounds consecutively by pulling the bolt back and releasing it by hand.” *Id.* at 661-62. The court held that, even in the absence of a traditional trigger, the weapon fell within the definition of a “machinegun.”

The reasoning adopted by other circuits, as well as simple logic, compels the conclusion that the district court’s instruction was proper and not an abuse of discretion. A trigger is generally “anything, as an act or event, that serves as a stimulus and initiates or precipitates a reaction.” Webster’s Unabridged Dictionary 2021 (2nd ed.1997). Within the realm of firearms, it is commonly understood as “a small projecting tongue in a firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon.” *Id.* However, the latter definition is obviously a context-specific articulation of the former. According to the testimony of the government’s expert, the manipulation of his hands on the assembled weapon initiated a reaction, namely the firing of the gun and two automatic successive firings. This manual manipulation constituted a trigger for purposes of the weapon's operation. The district court’s “trigger” instruction to the jury was not an abuse of discretion.

Id. at 665.

Finally, in *United States v. Camp*, 343 F.3d 743 (5th Cir. 2003), the defendant modified a semiautomatic rifle by adding an electrically operated trigger mechanism, which operated as follows:

When an added switch behind the original trigger was pulled, it supplied electrical power to a motor connected to the bottom of a fishing reel that had been placed inside the weapon's trigger guard; the motor caused the reel to rotate; and that rotation caused the original trigger to function in rapid succession. The weapon would fire until either the shooter released the switch or the loaded ammunition was expended.

Id. at 744.

An ATF expert testified that a true trigger activating devices, although giving the impression of functioning as a machinegun, are not classified as machineguns because the shooter still has to separately pull the trigger each time he/she fires the gun by manually operating a lever, crank, or the like. To this end, the court stated:

We reject Camp's contention that the switch on . . . his firearm was a legal "trigger activator". As discussed, those activators described by the ATF Agent require a user to separately pull the activator each time the weapon is fired. Camp's weapon, however, required only one action – pulling the switch he installed – to fire multiple shots.

Camp, 343 F.3d at 745.

Similarly here, even though Freedom refers to its ERAD as a "trigger reset assistance device," a firearm fitted with the ERAD does not require separate, mechanical pulls of the trigger (*i.e.*, pull and release) to discharge more than a single round. The trigger is moving at such a rapid rate that the shooter's finger does not pull the trigger each time to fire each shot, but instead pulls the trigger once and then remains stationary, resisting forward pressure, as the motor causes the weapon to function automatically, and continue to fire rounds. It is undisputed that when the shooter's finger remains connected to the "reset bar," and an electric motor is activated, the "reset bar" functions as a trigger in and of itself, and controls the pace of the firing sequence. The only action required by the shooter is that of continued rearward pressure. To this end, the ERAD is capable of firing at a rate of 500 rounds per minute and does not require

any additional act by the shooter after the motor is turned on and the shooter pulls the “reset bar” (or what FTISB describes as the “primary trigger”) once without releasing pressure. (AR 0047.)

Accordingly, in spite of its branding and terminology, the ERAD meets the definition of a machinegun.

D. The ERAD Is Not The Same As “Bump Fire” or “Slide Fire” Stock.

Freedom also argues that its ERAD is similar to “bump fire” or “slide fire” stock, which has been found not to be machinegun technology. (Pl.’s Br. at 24 (citing AR at 231 and Pl.’s Exhibits A, B, and C, Docket Nos. 24-1, 24-2, 24-3).) “Bump firing” is the process of using the recoil of a semi-automatic firearm to fire in rapid succession, simulating the effect of an automatic firearm when performed with a high level of skill and precision by the shooter. Bump firing requires the shooter to manually and simultaneously pull and push the firearm in order for it to continue firing. (See Pl.’s Ex. A, Docket No. 24-1 at 3-4; Pl.’s Ex. B, Docket No. 24-3 at 4-5.) The shooter must use both hands to pull the trigger rearward - and the other to push the firearm forward to counteract the recoil - to fire in rapid succession. While the shooter receives an assist from the natural backfire of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input, rather than mechanical input, and thus cannot shoot “automatically.” (Pl.’s Ex. A, Docket No. 24-1 at 3-4; Pl.’s Ex. B, Docket No. 24-3 at 4-5.)

Conversely, the ERAD does not require any such skill or input from the shooter. A rifle equipped with the ERAD will utilize a battery-powered motor to continue to fire automatically once the trigger is pulled and remains depressed, with no other action by the shooter required. Indeed, in its classification letter, FTISB noted that the AR-type trigger functions as a

“secondary trigger” in that “it merely becomes a part of the firing sequence.” (AR at 0071.) Freedom argues that the ERAD allows the shooter to make a “conscious decision to apply or not apply rearward pressure to fire the weapon by initiating a trigger function,” (AR at 47 (demonstration video)). This argument is technically correct to the extent the shooter may make a purposeful choice to cease applying rearward pressure to the reset bar/primary trigger. In fact, this is true of any machinegun—a shooter makes a conscious decision to pull and release the trigger. What is misleading, however, is any assertion that the shooter may make a conscious choice to pull and release the trigger for *each individual, subsequent shot*. In accepting this argument, the shooter would presumably be able to control the precise number of shots he intends to fire. For example, he could intend to fire a precise number of rounds of ammunition, such as 263 rounds, and actually expel that exact number of rounds. With the ERAD engaged, however, the number of rounds fired is the result of automatic functioning so long as the shooter is applying pressure on the “reset bar,” and therefore the number of rounds expelled cannot accurately be characterized as conscious or deliberate. (AR 0047; 0073.)

In contrast, bump firing requires the shooter to manually pull and push the firearm in order for it to continue firing. Generally, the shooter must use both hands—one to push forward and the other to pull rearward—to fire in rapid succession. While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input in pushing the weapon forward, rather than mechanical input, and is thus not an automatic function of the weapon.

Freedom also argues that FTISB’s decision regarding the ERAD is inconsistent with its decision regarding the Akins Accelerator, which was an accessory attached to firearm that

accelerated rate of fire. *Akins v. United States*, 312 F. App'x 197 (11th Cir. 2009). On the contrary, ATF's decision is entirely consistent with its decision regarding the Akins Accelerator and ATF Ruling 2006-2.⁵

To operate the Akins Accelerator, the shooter pulled the trigger one time, initiating an automatic firing sequence, which in turn caused the rifle to recoil within the stock, permitting the trigger to lose contact with the finger and manually reset (move forward). *Akins*, 312 F. App'x at 199. Springs then forced the rifle forward in the stock, forcing the trigger against the finger, which caused the weapon to discharge the ammunition until the shooter released the constant pull or the ammunition is exhausted. Put another way, the recoil and the spring-powered device caused the firearm to cycle back and forth, impacting the trigger finger, which remained rearward in a constant pull, without further input by the shooter, thereby creating an automatic firing effect. *Id.* The advertised rate of fire for a weapon with the Akins Accelerator was 650 rounds per minute. *Id.*

The Eleventh Circuit found that ATF properly classified the Akins Accelerator as a machinegun because:

[a] machinegun is a weapon that fires “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The interpretation by the Bureau that the phrase “single function of the trigger” means a “single pull of the trigger” is consonant with the statute and its legislative history. After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted. Based on the operation of the Accelerator, the Bureau had authority to “reconsider and rectify” what it considered to be a classification error. That decision was not

⁵ Initially ATF classified the Akins Accelerator as a non-machinegun, but after a subsequent test fire, it was determined the Akins Accelerator converts a semiautomatic rifle into a weapon capable of firing automatically by a single function of the trigger and was therefore in fact a machinegun. Thus, ATF overruled its earlier classification.

arbitrary and capricious.

Id. at 200.

Pursuant to ATF Ruling 2006-2, any device that is truly analogous to the Akins Accelerator - *i.e.*, a device that allows a weapon to fire automatically when the shooter pulls the trigger - is properly classified as a machinegun. (AR at 630-32.) Specifically, the Rule provides that a firearm with the following functionality constitutes a machinegun:

A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

(AR at 631.)

Like the Akins Accelerator, the ERAD requires a single pull of the trigger to activate the firing sequence, which continues until the shooter's finger is released, or the firearm depletes its ammunition supply. (AR at 354-68, 395-97.) Because the ERAD is a part designed and intended for use in converting a semiautomatic firearm into weapon which shoots automatically more than one shot by a single action—the pull of the trigger—it is a machinegun. Thus, ATF's decision is not arbitrary or capricious, but is consistent with the facts based on a thorough examination and testing of the ERAD's functionality.

With regard to Plaintiff's Exhibit B (Docket No. 24-3), the 3MR reset trigger device submitted to ATF was an internal mechanism, which operated to push the shooter's finger

forward. It does not run on a motor, and although the mechanism assists in manually resetting the trigger, the shooter is still required to release the trigger to fully reset the trigger. Thus, during inspection, ATF determined that the weapon could not be fired automatically. The item was tested by seven individuals at ATF prior to the classification, and no individual was able to generate automatic fire. Because the reset trigger required a release of the trigger and subsequent pull before another round was expelled, the 3MR was not classified as a machinegun.

Based on the foregoing, FTISB has not rendered inconsistent decisions, but has inspected and analyzed each prototype or device presented to it by Freedom for classification, and has issued its decisions based on the unique characteristics of each. Accordingly, ATF's classification of the ERAD device as a machinegun is not arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the applicable law.

CONCLUSION

Based on the foregoing, the Court must enter judgment in favor of the Bureau of Alcohol, Tobacco, Firearms, and Explosives as to all of Plaintiff's claims against it.

Respectfully submitted,

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By: s/ Shelese Woods
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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon the Plaintiff herein by electronically filing a copy thereof through the Court's CM/ECF system, which will transmit a copy electronically to the following on the 27th day of July, 2017:

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563 F.3d 652
United States Court of Appeals,
Seventh Circuit.

UNITED STATES of America, Plaintiff–Appellee,
v.
David OLOFSON, Defendant–Appellant.

No. 08–2294.
|
Argued Jan. 22, 2009.
|
Decided May 1, 2009.

Synopsis

Background: Defendant was convicted in a jury trial in that United States District Court for the Eastern District of Wisconsin, Charles N. Clevert, Jr., J., of transferring machinegun. Defendant appealed.

Holdings: The Court of Appeals, Manion, Circuit Judge, held that:

[1] defendant’s proffered instruction defining “automatically” was not accurate statement of law;

[2] evidence was sufficient to show that defendant transferred machinegun;

[3] defendant had requisite knowledge that weapon had characteristics of machinegun;

[4] statutes prohibiting transfers of machineguns were not unconstitutionally vague;

[5] exclusion of defendant’s expert from courtroom during testimony of government’s firearms expert was warranted;

[6] denial of defendant’s various motions to compel disclosure of evidence did not constitute *Brady* violation.

Affirmed.

West Headnotes (22)

[1] **Criminal Law**

Construction and Effect of Charge as a Whole
Criminal Law
Review De Novo

Whether jury instructions correctly state law is matter Court of Appeals reviews de novo; Court will reverse only if instructions viewed as whole misled jury to defendant’s prejudice.

1 Cases that cite this headnote

[2] **Statutes**
Plain Language; Plain, Ordinary, or Common Meaning

Statutory interpretation begins with plain language of statute.

1 Cases that cite this headnote

[3] **Statutes**
Plain language; plain, ordinary, common, or literal meaning

Court of Appeals assumes that legislative purpose of statute is expressed by ordinary meaning of words used.

2 Cases that cite this headnote

[4] **Statutes**
Plain Language; Plain, Ordinary, or Common Meaning

Absent clearly expressed Congressional intent to contrary, plain language of statute is conclusive.

1 Cases that cite this headnote

[5] **Statutes**
Contemporary and Historical Circumstances

Most relevant time for determining statutory

term's meaning is year of provision's enactment.

Cases that cite this headnote

[6]

Weapons

☛Manufacture, sale, transfer

Defendant's proffered instruction, defining term "automatically," for purposes of prosecution for transferring machinegun, as firing bullets repeatedly with single pull of trigger, was not accurate statement of law, and thus trial court properly rejected it as unnecessary and instead used Internal Revenue Code provision defining machinegun to instruct jury, even though provision did not specifically define term; as used in provision, term comported with its ordinary modern meaning, which was readily accessible to laypersons and was in no sense confusing. 18 U.S.C.A. § 922(o)(1); 26 U.S.C.A. § 5845(b).

1 Cases that cite this headnote

[7]

Criminal Law

☛Construction in favor of government, state, or prosecution

Criminal Law

☛Reasonable doubt

When defendant challenges sufficiency of evidence, Court of Appeals views evidence in light most favorable to government and will reverse conviction only if no rational jury could have found defendant guilty beyond reasonable doubt.

Cases that cite this headnote

[8]

Weapons

☛Prohibited weapons/ammunition

In order to convict defendant of transferring machinegun, government must prove that: (1) defendant possessed or transferred machinegun, and (2) with knowledge that weapon had characteristics that bring it within statutory

definition of machinegun. 18 U.S.C.A. § 922(o)(1).

Cases that cite this headnote

[9]

Internal Revenue

☛Weight and sufficiency of evidence in general

Evidence was sufficient to show that defendant transferred machinegun in violation of statute, where defendant loaned weapon to another individual, and government's expert who test-fired weapon exhausted 20-round magazine with one continuous depression of trigger and emptied two additional 20-round magazines in five-or ten-round bursts by intermittently depressing, holding, and releasing trigger. 18 U.S.C.A. § 922(o)(1); 26 U.S.C.A. § 5845(b).

Cases that cite this headnote

[10]

Internal Revenue

☛Weight and sufficiency of evidence in general

Defendant had requisite knowledge that weapon had characteristics of machinegun, as defined by statute, to support conviction for transferring machinegun, where defendant had told person to whom he loaned weapon that it would fire in three-round bursts with a single trigger pull, and then jam. 18 U.S.C.A. § 922(o)(1); 26 U.S.C.A. § 5845(b).

Cases that cite this headnote

[11]

Criminal Law

☛Review De Novo

Court of Appeals reviews constitutionality of statute de novo.

2 Cases that cite this headnote

[12]

Constitutional Law

⚡ Statutes

Statute is unconstitutionally vague if it either (1) does not provide person of ordinary intelligence reasonable opportunity to know what is prohibited, or (2) fails to provide explicit standards to prevent arbitrary and discriminatory enforcement by those enforcing statute.

5 Cases that cite this headnote

[13] **Constitutional Law**

⚡ Vagueness on face or as applied

Vagueness challenge to statute that does not implicate First Amendment freedoms is analyzed as applied to specific facts of case. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[14] **Constitutional Law**

⚡ Weapons and explosives

Internal Revenue

⚡ Firearms and destructive devices

Weapons

⚡ Validity

Weapons

⚡ Automatic or semi-automatic weapons

Statutes prohibiting transfers of machineguns were not unconstitutionally vague due to way “automatically” was used in incorporated definition of “machinegun” from Internal Revenue Code; persons of ordinary intelligence would have understood common meaning of term, “as the result of a self-acting mechanism,” and thus would have had fair warning of relevant features of regulated weapons. 18 U.S.C.A. §§ 922(o), 924(a)(2); 26 U.S.C.A. § 5845(b).

Cases that cite this headnote

[15] **Criminal Law**

⚡ Exceptions from rule

Presence of defendant’s firearms expert was not

essential to presentation of defendant’s case in prosecution for transferring machinegun, and thus exclusion of expert from courtroom during testimony of government’s firearms expert was warranted; rule permitting expert to base opinion on facts made known to expert at trial did not preclude sequestration order, and much data and malfunction information relied upon by government’s expert was already known to defendant’s expert due to pre-trial disclosures, and to which defendant had ample opportunity to respond. 18 U.S.C.A. § 922(o); Fed.Rules Evid.Rules 615(3), 703, 28 U.S.C.A.

3 Cases that cite this headnote

[16] **Criminal Law**

⚡ Exceptions from rule

Party asserting exception to sequestration of witnesses, based on essential nature of witness, bears burden of showing that exception applies. Fed.Rules Evid.Rule 615(3), 28 U.S.C.A.

2 Cases that cite this headnote

[17] **Criminal Law**

⚡ Separation and exclusion of witnesses

Court of Appeals reviews for abuse of discretion district court’s decision about essentiality of witness’s presence under sequestration of witnesses rule.

2 Cases that cite this headnote

[18] **Criminal Law**

⚡ Duties and obligations of prosecuting attorneys

Court of Appeals reviews district court’s decision that evidence need not be produced under *Brady* for abuse of discretion.

2 Cases that cite this headnote

[19] **Criminal Law**
☞ Materiality and probable effect of information in general

There are three parts to *Brady* violation: (1) disputed evidence must be favorable to defendant, either because it is exculpatory or impeaching; (2) that evidence must have been suppressed by government, either willfully or inadvertently; and (3) prejudice must have occurred.

Cases that cite this headnote

[20] **Criminal Law**
☞ Test results; demonstrative and documentary evidence

Denial of defendant's motion to compel production of internal procedures of Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for test-firing purported machinegun that defendant was charged with transferring, did not constitute *Brady* violation; although defendant claimed that failure to follow procedures could have shown that tests had been manipulated, such information was not exculpatory to defendant, since statutory definition did not require compliance with ATF test-fire procedures in order for weapon to qualify as machinegun. 18 U.S.C.A. § 922(o); 26 U.S.C.A. § 5845(b).

Cases that cite this headnote

[21] **Criminal Law**
☞ Impeaching evidence
Criminal Law
☞ Other particular issues

Letter correspondence between Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and gun manufacturer, concerning use of certain parts in early versions of purported machinegun that defendant was charged with transferring, was neither exculpatory for defendant nor of any impeachment value, and thus denial of defendant's motion to compel

disclosure of correspondence did not constitute *Brady* violation; letter from ATF merely advised manufacturer that installation of certain parts in weapon permitted weapon to fire automatically even though an automatic sear was not present. 18 U.S.C.A. § 922(o); 26 U.S.C.A. § 5845(b).

Cases that cite this headnote

[22] **Criminal Law**
☞ Impeaching evidence
Criminal Law
☞ Other particular issues

Bureau of Alcohol, tobacco, Firearms, and Explosives (ATF) documents relating to change in registry or refusal to register weapons with certain parts, like purported machinegun that defendant was charged with transferring, were neither exculpatory for defendant nor of any impeachment value, and thus denial of defendant's motion for disclosure of documents did not constitute *Brady* violation; contrary to defendant's claims, government's expert testified that defendant's weapon fired the way it did due in part to certain parts, but not that it was the parts that made it a machinegun. 18 U.S.C.A. § 922(o); 26 U.S.C.A. § 5845(b).

Cases that cite this headnote

Attorneys and Law Firms

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Robert Sanders, Winston Salem, NC, William J. Olson, Herbert W. Titus (argued), William J. Olson, P.C., McLean, VA, for Defendant–Appellant.
Before MANION and KANNE, Circuit Judges, and KENDALL, District Judge.*

Opinion

MANION, Circuit Judge.

David Olofson was indicted for knowingly transferring a

machinegun in violation of 18 U.S.C. § 922(o). A jury convicted Olofson of the charged offense following a two-day trial, and the district court sentenced him to thirty months' imprisonment. Olofson appeals his conviction. For the following reasons, we affirm.

I. Background

Robert Kiernicki saw a "for sale" advertisement for a Colt AR-15 rifle that David Olofson had posted at a gas station in New Berlin, Wisconsin. Kiernicki called Olofson at the phone number listed on the ad to inquire about the weapon. Olofson informed Kiernicki that the advertised gun was no longer available but agreed to order and assemble another Colt AR-15 for Kiernicki. In the meantime, Olofson loaned Kiernicki an AR-15¹ and hundreds of rounds of ammunition on four separate occasions. The selector switch on the borrowed AR-15 had three positions: one marked "fire," one marked "safety," and one that was unmarked. Olofson and Kiernicki discussed the unmarked setting on July 13, 2006, which was the fourth time that Olofson loaned Kiernicki the weapon. Olofson told Kiernicki that putting the selector switch in the unmarked position would enable the AR-15 to fire a three-round burst with a single pull of the trigger, but the gun would then jam.

While at a shooting range that same day, Kiernicki (for the first time since using the gun) switched the AR-15 to the unmarked position and pulled the trigger; three or four rounds were discharged before the gun jammed. Kiernicki fired the weapon in that fashion several times, and each time it jammed after a short burst of three or four rounds. Police received a telephone complaint of automatic gunfire at the shooting range. When officers arrived at the range, they confiscated the AR-15 from Kiernicki. Kiernicki told the police that he had borrowed the gun from Olofson. Several days later, agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") interviewed Olofson while executing a search warrant at his home. During that conversation, Olofson acknowledged loaning the AR-15 to Kiernicki.

On December 5, 2006, a grand jury indicted Olofson for knowingly transferring a machinegun in violation of 18 U.S.C. § 922(o). Shortly before trial, Olofson filed a motion to compel the government to disclose evidence of the ATF's firearms testing procedures, correspondence between the ATF and the manufacturer of Olofson's AR-15 about the use of M-16 parts in AR-15 rifles, and the ATF's registration history of AR-15 rifles that contain M-16 parts. The district court denied that motion on the

first day of trial after concluding that the information the defendant was seeking was not exculpatory under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

*656 At trial, the government asked the district court to exclude Olofson's expert witness from the courtroom during the testimony of its firearms expert. Over Olofson's objection, the court granted the government's request. The government's expert testified that he used military-grade ammunition the first time he test-fired the AR-15 with the selector switch in the unmarked position and that the gun fired only one round. Later, using civilian-grade ammunition, he conducted two more test-fires of the weapon in the unmarked mode. In one of those tests, he held the trigger down and the gun fired all of its ammunition (twenty rounds) before stopping. He also emptied two twenty-round magazines in five- or ten-round bursts by depressing, holding, and releasing the trigger several times. The government's expert stated that such firing capabilities did not result from a "hammer-follow" malfunction but rather were intended features of the gun.

After the close of the evidence, the court used the definition of a "machinegun" from 26 U.S.C. § 5845(b) to instruct the jury and chose not to define the word "automatically" from that statute as the defendant had requested. Following deliberation, the jury returned a guilty verdict. Olofson then moved for a judgment of acquittal, arguing that the evidence presented at trial was insufficient to convict him of the charged offense and that the statutes under which he was prosecuted are unconstitutionally vague. The district court denied that motion and sentenced Olofson to thirty months in prison. Olofson appeals, challenging his conviction on five grounds.

II. Discussion

A. Olofson's Proposed Jury Instruction

¹Title 18 U.S.C. § 922(o)(1) provides that, subject to exceptions not relevant here, "it shall be unlawful for any person to transfer or possess a machinegun." The applicable definition² of a "machinegun" is

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.

26 U.S.C. § 5845(b) (emphasis added). The district court instructed the jury using the first sentence of § 5845(b) but did not give any guidance on the meaning of the word “automatically.” Olofson contends that the court inaccurately stated the law when it did not instruct the jury using the definition of “automatically” that derives from *Staples v. United States*, 511 U.S. 600, 602 n. 1, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994), and that we allegedly adopted in *United States v. Fleischli*, 305 F.3d 643, 655 (7th Cir.2002).³ Whether jury instructions correctly state the law is a matter we review de novo. *United States v. Thornton*, 539 F.3d 741, 745 (7th Cir.2008). We *657 will reverse only if the instructions viewed as a whole misled the jury to the defendant’s prejudice. *Id.*

In *Staples*, the defendant was convicted of possession of an unregistered machinegun. 511 U.S. at 603–04, 114 S.Ct. 1793. At trial, the defendant insisted that he did not know that the weapon was capable of firing automatically (which is one of the features of a “machinegun” under § 5845(b)) and requested a jury instruction that the government must prove beyond a reasonable doubt that he knew the gun could fire in such a manner. *Id.* The district court refused to give the defendant’s proposed instruction; instead, it gave an instruction that discounted the defendant’s need for knowledge of every characteristic of the weapon that made it subject to regulation. *Id.* at 604, 114 S.Ct. 1793. The Tenth Circuit affirmed, holding that “the Government need not prove a defendant’s knowledge of a weapon’s physical properties to obtain a conviction.” *Id.* In reversing, the Supreme Court held that the government was required to prove that the defendant knew of the characteristics of the gun that brought it within the ambit of the statute. *Id.* at 619, 114 S.Ct. 1793.

At the beginning of its opinion, the Court quoted the statutory definition of “machinegun” from § 5845(b) and stated that “any fully automatic weapon is a ‘firearm’ within the meaning of the Act.” *Id.* at 602, 114 S.Ct. 1793. In a footnote, the Court then said the following:

As used here, the terms “automatic” and “fully automatic” refer to a weapon that fires repeatedly with a single pull of the trigger. *That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted.* Such weapons are “machineguns” within

the meaning of the Act.

Id. at n. 1, 114 S.Ct. 1793 (emphasis added).

The narrow holding from *Staples* is that *mens rea* was an element of the crime in question—i.e., that the government had to prove the defendant’s knowledge of the features of the weapon (including automatic firing capability) that brought it within the proscriptive purview of the statute. *Id.* at 619, 114 S.Ct. 1793. The precise definition of “automatically” was not at issue; therefore, the Court’s discussion of the terms “automatic” and “fully automatic” was immaterial to its holding. Indeed, the Court prefaced its explanation of the terms “automatic” and “fully automatic” with the phrase “[a]s used here.” Thus, rather than interpreting a statute, the Court simply was providing a glossary for terms frequently appearing in the opinion. Therefore, *Staples* did not establish a requirement for district courts to instruct juries on the meaning of “automatically” from § 5845(b).

The same is true of our decision in *Fleischli*. In that case, the defendant was convicted of two counts of possession of machineguns in violation of 18 U.S.C. § 922(o)(1). *Fleischli*, 305 F.3d at 647. The defendant argued that a certain weapon was not a machinegun under § 5845(b) because it did not fire automatically and did not have a trigger. *Id.* at 654. *Fleischli* relied upon the definition of a semiautomatic rifle from 18 U.S.C. § 921(a)(28) to assert that a gun does not fire automatically “unless it uses a portion of the energy of a firing cartridge to extract the fired cartridge and chamber the next round without a separate pull of the trigger.” *Id.* at 655. This court concluded that the gun’s electronic on/off switch that initiated the firing sequence was a trigger and, having quoted from footnote one in *Staples*, stated that if the gun continued to fire until that switch was turned off or until the ammunition was exhausted, it was a machinegun. *Id.* at 655–56.

*658 Olofson suggests that *Fleischli* obliged the district court to give his proffered instruction. True, in *Fleischli* we did borrow terminology from *Staples* in order to stamp out the appellant’s “disingenuous argument”; *id.* at 655; however, we never purported to be setting forth a comprehensive definition of “automatically” from § 5845(b). Indeed, we described the *Staples* footnote as merely “offer[ing] commonsense explanations” of the words “automatic” and “semiautomatic,” which confirms that we did not consider that passage to be precedentially binding. As we explain below, a weapon does not have to continue to fire until its trigger is released or its ammunition is exhausted in order to qualify as a “machinegun” under § 5845(b). Therefore, Olofson’s reliance on *Fleischli* for that proposition is misplaced.

^[2] ^[3] ^[4] We turn now to address what the word “automatically” means as it is used in the definition of “machinegun” in § 5845(b). “Statutory interpretation begins with the plain language of the statute.” *United States v. Berkos*, 543 F.3d 392, 396 (7th Cir.2008). We assume that the purpose of the statute is communicated by the ordinary meaning of the words Congress used; therefore, absent any clear indication of a contrary purpose, the plain language is conclusive. *Id.*

^[5] ^[6] Again, “[t]he 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.” 26 U.S.C. § 5845(b). “The most relevant time for determining a statutory term’s meaning” is the year of the provision’s enactment. *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 228, 114 S.Ct. 2223, 129 L.Ed.2d 182 (1994) (citing *Perrin v. United States*, 444 U.S. 37, 42–45, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979)). Therefore, we examine how “automatically” was commonly used and understood in 1934, the year in which the definition of “machinegun” became law with the passage of the National Firearms Act, Pub.L. 73–474, 48 Stat. 1236. A leading dictionary from 1934 tells us that “automatically” is the adverbial form of “automatic.” WEBSTER’S NEW INTERNATIONAL DICTIONARY 187 (2d ed.1934). The adjectival form of “automatic” is relevantly defined by that dictionary as “[h]aving a self-acting or self-regulating mechanism that performs a required act at a predetermined point in an operation[.]” *Id.* Another contemporaneous dictionary similarly describes “automatic” as “[s]elf-acting under conditions fixed for it, going of itself.” OXFORD ENGLISH DICTIONARY 574 (1933).⁴ Thus defined, in § 5845(b) the adverb “automatically,” as it modifies the verb “shoots,”⁵ delineates how the discharge of multiple rounds from a weapon occurs: as the result of a self-acting mechanism. That mechanism is one that is set in motion by a single function of the trigger and is accomplished without manual reloading.

That interpretation clearly forecloses the argument that a weapon is not a machinegun merely because it *stopped firing* due to a malfunction; indeed, the reason a weapon ceased firing is not a matter with which § 5845(b) is concerned. Under that interpretation, however, a defendant can still argue that the *reason a gun fired more than one round* (with a single pull of *659 the trigger without manual reloading) was due to a malfunction—i.e., the additional rounds fired resulted from a mishap rather than from a regular self-acting mechanism.

In light of the foregoing interpretation, we conclude that

Olofson’s proffered instruction was not an accurate statement of the law and that the district court properly rejected it. Moreover, the district court correctly used § 5845(b) to instruct the jury. As used in the statute, “automatically” comports with its ordinary modern meaning, *see* note 4, that is readily accessible to laypersons and is in no sense confusing; therefore, the district court was not required to define that term for the jury. *United States v. Castillo*, 406 F.3d 806, 821 (7th Cir.2005); *Miller v. Neathery*, 52 F.3d 634, 638 (7th Cir.1995).

B. Sufficiency of the Evidence

^[7] ^[8] Olofson contends that the evidence presented at trial was insufficient to sustain his conviction. When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the government and will reverse the conviction only if no rational jury could have found the defendant guilty beyond a reasonable doubt. *United States v. Castaldi*, 547 F.3d 699, 705 (7th Cir.2008). In order to convict a person of violating 18 U.S.C. § 922(o)(1), the government must prove that 1) the defendant possessed or transferred a machinegun 2) with knowledge that the weapon had the characteristics that bring it within the statutory definition of a machinegun. *United States v. McGiffen*, 267 F.3d 581, 590 (7th Cir.2001).

^[9] ^[10] Regarding the first element, Kiernicki testified that Olofson loaned him the AR–15 on four occasions, the last of which was July 13, 2006. An ATF agent also testified that Olofson admitted loaning the gun to Kiernicki. In addition, Kiernicki stated that the gun fired three or four rounds (on several occasions) with one pull of the trigger. The government’s expert who test-fired the AR–15 stated that he exhausted a twenty-round magazine with one continuous depression of the trigger and emptied two additional twenty-round magazines in five-or ten-round bursts by intermittently depressing, holding, and releasing the trigger. He also declared that the weapon was intended to fire in such fashions and that a “hammer-follow” malfunction was not the cause. That evidence was adequate to permit a reasonable jury to find beyond a reasonable doubt that Olofson transferred a “machinegun” as defined by § 5845(b). Regarding the evidence on the knowledge element, Kiernicki said that Olofson told him “the three-round burst wouldn’t work and that it would jam up.” Kiernicki understood that statement to mean that “[t]hree rounds come out of it when you would pull the trigger” once. That testimony was sufficient for a reasonable jury to find beyond a reasonable doubt that the defendant knew that the AR–15, with a single pull of the trigger and without manual reloading, could shoot more

than one round as the result of a self-acting mechanism. For these reasons, the defendant's challenge to the sufficiency of the evidence fails.⁶

C. Unconstitutional Vagueness

^[11] ^[12] ^[13] Olofson argues that 18 U.S.C. §§ 922(o) and 924(a)(2) are unconstitutionally vague. We review the constitutionality of a statute de novo. *United States v. Warner*, 498 F.3d 666, 697 (7th Cir.2007). A statute is unconstitutionally vague if it *660 either “1) does not provide a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or 2) fails to provide explicit standards to prevent arbitrary and discriminatory enforcement by those enforcing the statute.” *United States v. Lim*, 444 F.3d 910, 915 (7th Cir.2006). A vagueness challenge such as this one that does not implicate First Amendment freedoms is analyzed as applied to the specific facts of the case. *Id.*

^[14] To the extent Olofson contends that the statutes are fatally vague due to the way “automatically” is used in the incorporated definition of “machinegun” from § 5845(b), we disagree. We have already noted that the common meaning of “automatically” is readily known by laypersons and thus a specific instruction defining the term for the jury was unnecessary. Similarly, a person of ordinary intelligence would have understood the common meaning of the term—“as the result of a self-acting mechanism”—and thus would have had fair warning of the relevant features of a weapon that § 5845(b) covers and that §§ 922(o) and 924(a)(2) regulate. Therefore, we reject Olofson's argument that §§ 922(o) and 924(a)(2) are unconstitutionally vague.⁷

D. Exclusion of Olofson's Firearms Expert from the Courtroom

^[15] The defendant also argues that the district court improperly granted the government's request to exclude his firearms expert (Len Savage) from the courtroom during the testimony of the government's firearms expert. Olofson contends that the presence of his expert during the testimony of the government's expert was essential to the presentation of his case.

^[16] ^[17] Under Federal Rule of Evidence 615, “[a]t the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.” That rule does not authorize the exclusion of four categories of persons, including “a person whose presence is shown by a party to be essential to the presentation of the party's

cause.” FED.R.EVID. 615(3). As the party asserting a Rule 615(3) exception, Olofson bore the burden for showing that the exception applied. *Opus 3, Ltd. v. Heritage Park, Inc.*, 91 F.3d 625, 628 (4th Cir.1996); *United States v. Jackson*, 60 F.3d 128, 135 (2d Cir.1995). We review for an abuse of discretion a district court's decision about the essentiality of a witness's presence under Rule 615(3). *Milicevic v. Fletcher Jones Imports, Ltd.*, 402 F.3d 912, 916 (9th Cir.2005); *Opus 3*, 91 F.3d at 629; *Jackson*, 60 F.3d at 135–36.

At trial, Olofson presented two reasons for opposing the government's request to exclude Savage from the courtroom. First, he argued that because Federal Rule of Evidence 703 permits an expert to base his opinion upon facts or data made known to him at trial, Savage “should be allowed to be present to hear” the government expert's testimony. However, merely because Rule 703 contemplates that an expert may render an opinion based on facts or data made known at trial does not necessarily mean that an expert witness is exempt from a Rule 615 sequestration order. The text of Rule 615 plainly does not provide for such a per se exception; rather, Rule 615(3) confers discretion upon district courts to determine whether a given witness (of whatever stripe) is essential. We agree with the courts of appeals that have addressed the issue that Rule 703 is not an automatic exemption for expert witnesses from Rule 615 sequestration. *661 *Miller v. Universal City Studios, Inc.*, 650 F.2d 1365, 1374 (5th Cir.1981); *Morvant v. Constr. Aggregates Corp.*, 570 F.2d 626, 630 (6th Cir.1978); see *Opus 3*, 91 F.3d at 629. Therefore, the mere mention of Rule 703 by Olofson was insufficient to show that a Rule 615(3) exception was warranted.

Second, Olofson stated that he “would like to have Mr. Savage present to hear” the government expert's testimony on malfunctions so that he could “rebut or add information” if such testimony was incomplete or incorrect. While no precise incantation is required, we doubt whether those statements advanced the argument that Savage's presence was essential under Rule 615(3). Olofson did not tell the district court (as he tells us on appeal) that Savage's presence was of critical import to his highly-technical defense that the AR-15 malfunctioned. Even assuming that he did make the argument, Olofson did not carry his burden of demonstrating essentiality. The defendant stated that Savage should be allowed to hear the government expert's testimony so that Savage could “rebut or add information” to any inaccurate testimony about malfunctions, but Olofson did not tell the district court why Savage's presence was necessary to achieve that end. Indeed, much of the data and malfunction information relied upon by the government's expert was already known to Savage due to the pre-trial disclosure of the government

expert's reports, and Savage had the opportunity to respond to such materials during the defendant's case. Regarding any information which was not included in the reports but may have come into evidence during the testimony of the government's expert, Olofson had ample opportunity on direct examination for Savage to rebut, add to, or opine on the implications of such information by asking him to assume its existence.

Although it might have been helpful or desirable for Savage to hear the government expert's testimony, Olofson did not show that Savage's presence was *essential* to the presentation of his case. Therefore, the district court did not abuse its discretion in denying Savage a sequestration exemption under Rule 615(3).

E. Denial of Olofson's Discovery Requests

^{118]} Prior to trial and pursuant to *Brady*, Olofson made a motion to compel the discovery of evidence he had requested but that the government had not produced. The defendant sought: 1) documentation of the procedures used by the ATF in testing the AR-15; 2) correspondence between the ATF and the manufacturer of the defendant's AR-15 concerning the use of M-16 parts in early AR-15 rifles; 3) information about changes in the ATF's registry of AR-15 rifles with M-16 components; and 4) documents pertaining to the ATF's refusal to register AR-15 rifles with M-16 parts. The district court denied the defendant's motion on the first day of trial after concluding that the information sought was not exculpatory. On appeal, Olofson claims that the district court committed prejudicial error in denying his *Brady* motion and that he therefore is entitled to a new trial. We review a district court's decision that evidence need not be produced under *Brady* for an abuse of discretion. *United States v. Dabney*, 498 F.3d 455, 459 (7th Cir.2007).

^{119]} Under *Brady*, the government is constrained to disclose evidence that is favorable to a defendant and material to either his guilt or punishment. *United States v. Fallon*, 348 F.3d 248, 251 (7th Cir.2003). Favorable evidence includes both impeachment and exculpatory evidence. *United States v. Baker*, 453 F.3d 419, 422 (7th Cir.2006). Even when the government has not disclosed such evidence, "strictly speaking, there is never a *662 real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." *Strickler v. Greene*, 527 U.S. 263, 281, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). "We have described this inquiry as 'materiality,' and stated that the demonstration of materiality is the key to obtaining a new trial where a defendant alleges a *Brady* violation." *Baker*, 453 F.3d at

422. Thus there are three parts to a *Brady* violation: 1) the disputed evidence must be favorable to the defendant, either because it is exculpatory or impeaching; 2) that evidence must have been suppressed by the government, either willfully or inadvertently; and 3) prejudice must have occurred. *Strickler*, 527 U.S. at 281-82, 119 S.Ct. 1936.

^{120]} Regarding the first non-disclosed item—the ATF's internal procedures for test-firing AR-15 rifles—Olofson says he wanted that information because "[f]ailure to follow those procedures by changing the type of ammunition in the second test could demonstrate that the tests had been manipulated to arrive at a reversal of the results of the first test." We do not see how that information could have exculpated Olofson; section 5845(b) does not require compliance with ATF test-fire procedures in order for a weapon to qualify as a machinegun, nor must the weapon fire any particular grade of ammunition or in the prohibited fashion during the first test-fire. Assuming that such evidence might have had some impeachment value, there was no *Brady* violation because the government's expert was otherwise sufficiently impeached. *United States v. Ervin*, 540 F.3d 623, 632 (7th Cir.2008) ("Brady does not extend to 'evidence that impeaches an already thoroughly impeached witness.'" (quoting *United States v. Kozinski*, 16 F.3d 795, 819 (7th Cir.1994))). Specifically, Olofson questioned the government's expert at length about ATF test-fire procedures and the types of ammunition used in the tests. In addition, the government's expert admitted that the gun fired automatically more than one round with a single function of the trigger without manual reloading in the second test with civilian-grade rounds, but jammed in the first test with military-grade rounds. Even if the second test was inconsistent with ATF procedures, that fact would not undermine confidence in the outcome of the trial. *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Therefore, the district court did not abuse its discretion in denying the defendant's motion to compel the production of that evidence.

^{121]} With respect to his request for the ATF's correspondence with the manufacturer of his AR-15 concerning the use of M-16 parts in early AR-15 rifles, the defendant contends that evidence was exculpatory because it was relevant to his knowledge of whether or not his AR-15 was a machinegun. The district court denied Olofson's request on the first day of trial. At the sentencing hearing, the court revisited the issue; the court inspected a document *in camera*, stated that it was not exculpatory, and placed it under seal. We subsequently ordered that document to be unsealed. That evidence is a 1983 letter from the ATF to the manufacturer of the

AR-15 in which the ATF advised the company that the installation of certain M-16 parts in AR-15 receivers may permit the weapon to fire automatically even though an automatic sear is not present. We agree with the district court that the document is not exculpatory: it has no bearing on Olofson's knowledge of whether his AR-15 was a machinegun.⁸ The letter has *663 no impeachment value either. Therefore, the district court did not abuse its discretion in refusing to order the production of that evidence.

^[22] Lastly, Olofson argues that any documents relating to the ATF's change in registry or refusal to register AR-15 rifles with M-16 components were exculpatory because they could have been used to refute the government expert's testimony that the M-16 parts in Olofson's AR-15 made it a machinegun. But the government's expert did not testify that the AR-15 was a machinegun merely because it had M-16 parts; rather, the expert stated that the AR-15 *fired* the way it did due in part to the M-16 components. Regardless, like the district court, we do not see how the ATF's opinions or positions regarding the presence of M-16 parts in AR-15 rifles are the least bit germane to Olofson's conviction for knowingly transferring a machinegun. The district court did not abuse its discretion in denying Olofson's motion to compel the

government to produce that evidence.

III. Conclusion

In sum, the defendant's proffered jury instruction was not a correct statement of the law, and the district court properly rejected it. Furthermore, the evidence presented at trial was sufficient to sustain Olofson's conviction, and 18 U.S.C. §§ 922(o) and 924(a)(2) are not unconstitutionally vague as applied to the facts of this case. In addition, the district court did not abuse its discretion in either excluding the defendant's firearms expert from the courtroom during the government expert's testimony or in denying Olofson's motion to compel the production of evidence he had requested from the government. Accordingly, we AFFIRM Olofson's conviction.

All Citations

563 F.3d 652

Footnotes

- * Hon. Virginia M. Kendall, District Judge for the Northern District of Illinois, is sitting by designation.
- 1 Four of the AR-15's fire control components were parts from M-16 rifles: the trigger, hammer, disconnecter, and selector switch.
- 2 According to 18 U.S.C. § 921(a)(23), "[a]s used in this chapter[,] [t]he term 'machinegun' has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. [§] 5845(b))."
- 3 The defendant contends that if that instruction had been given, the jury could have found him not guilty because a malfunction was the reason the weapon stopped firing or, alternatively, was what caused the gun to fire more than one round with a single trigger pull.
- 4 Modern versions of those two dictionaries define "automatic" in the same terms. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 148 (2002); OXFORD ENGLISH DICTIONARY 805 (2d ed. 1989).
- 5 For the sake of efficiency and readability, we use the term "shoots" as shorthand for "shoots, is designed to shoot, or can be readily restored to shoot," unless otherwise indicated.
- 6 The jury heard the testimony of the defendant's firearms expert about the AR-15's supposed malfunctioning and obviously rejected it; on a sufficiency-of-the-evidence challenge, we will not second-guess the jury's credibility determinations. *United States v. Brandt*, 546 F.3d 912, 917 (7th Cir. 2008).
- 7 Olofson does not present any cogent argument that §§ 922(o) and 924(a)(2) lack standards to prevent arbitrary or discriminatory enforcement.
- 8 The government's theory of the case was that the AR-15 *functioned* as a machinegun, thus implicating the first sentence of § 5845(b)'s definition of the term. As discussed earlier, the district court instructed the jury using only that part of § 5845(b), and sufficient evidence of Olofson's knowledge of the AR-15's firing capacity was presented to

convict him. Had the government attempted to prove that a part or combination of parts in the AR-15 made it a machinegun under the second sentence of § 5845(b), then perhaps evidence about the manufacturer's installation of M-16 parts in AR-15s would have been relevant to the defendant's knowledge of those parts in the weapon.

End of Document

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18 U.S.C. 922(o): Transfer or possession of machinegun

26 U.S.C. 5845(b): Definition of machinegun

18 U.S.C. 921(a)(23): Definition of machinegun

The definition of machinegun in the National Firearms Act and the Gun Control Act includes a part or parts that are designed and intended for use in converting a weapon into a machinegun. This language includes a device that, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until the finger is released or the ammunition supply is exhausted.

ATF Rul. 2006-2

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has been asked by several members of the firearms industry to classify devices that are exclusively designed to increase the rate of fire of a semiautomatic firearm. These devices, when attached to a firearm, result in the firearm discharging more than one shot with a single function of the trigger. ATF has been asked whether these devices fall within the definition of machinegun under the National Firearms Act (NFA) and Gun Control Act of 1968 (GCA). As explained herein, these devices, once activated by a single pull of the trigger, initiate an automatic firing cycle which continues until either the finger is released or the ammunition supply is exhausted. Accordingly, these devices are properly classified as a part “*designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun*” and therefore machineguns under the NFA and GCA.

The National Firearms Act (NFA), 26 U.S.C. Chapter 53, defines the term “firearm” to include a machinegun. Section 5845(b) of the NFA defines “machinegun” as “*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 Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, defines machinegun identically to the NFA. 18 U.S.C. 921(a)(23). Pursuant to 18 U.S.C. 922(o), machineguns manufactured on or after May 19, 1986, may only be

transferred to or possessed by Federal, State, and local government agencies for official use.

ATF has examined several firearms accessory devices that are designed and intended to accelerate the rate of fire for semiautomatic firearms. One such device consists of the following components: two metal blocks; the first block replaces the original manufacturer's V-Block of a Ruger 10/22 rifle and has attached two rods approximately $\frac{1}{4}$ inch in diameter and approximately 6 inches in length; the second block, approximately 3 inches long, $1\frac{3}{8}$ inches wide, and $\frac{3}{4}$ inch high, has been machined to allow the two guide rods of the first block to pass through. The second block supports the guide rods and attaches to the stock. Using $\frac{1}{4}$ inch rods, metal washers, rubber and metal bushings, two collars with set screws, one coiled spring, C-clamps, and a split ring, the two blocks are assembled together with the composite stock. As attached to the firearm, the device permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock when fired. A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

As noted above, a part or parts designed and intended to convert a weapon into a machinegun, *i.e.*, a weapon that will shoot automatically more than one shot, without manual reloading, by a single function of the trigger, is a machinegun under the NFA and GCA. ATF has determined that the device constitutes a machinegun under the NFA and GCA. This determination is consistent with the legislative history of the National Firearms Act in which the drafters equated "single function of the trigger" with "single pull of the trigger." *See, e.g., National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066, 73rd Cong., at 40 (1934).* Accordingly, conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.

Held, a device (consisting of a block replacing the original manufacturer's V-Block of a Ruger 10/22 rifle with two attached rods approximately $\frac{1}{4}$ inch in diameter and approximately 6 inches in length; a second block, approximately 3 inches long, $1\frac{3}{8}$ inches wide, and $\frac{3}{4}$ inch high, machined to allow the two guide rods of the first block to pass through; the second block supporting the guide rods and attached to the stock; using $\frac{1}{4}$ inch rods; metal washers; rubber and metal bushings; two collars with set screws; one coiled spring; C-clamps; a split ring; the two blocks assembled together with the

composite stock) that is designed to attach to a firearm and, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, is a machinegun under the National Firearms Act, 26 U.S.C. 5845(b), and the Gun Control Act, 18 U.S.C. 921(a)(23).

Held further, manufacture and distribution of any device described in this ruling must comply with all provisions of the NFA and the GCA, including 18 U.S.C. 922(o).

To the extent that previous ATF rulings are inconsistent with this determination, they are hereby overruled.

Date approved: December 13, 2006

Michael J. Sullivan
Director

To: Allen, Joseph J. (b) (6)
From: (b) (6)
Sent: Tue 10/3/2017 6:35:27 PM
Subject: Fwd: Could you send (b) (6) our opening brief in Freedom?
[brief in support of MSJ.PDF](#)
[ATT00001.htm](#)

(b) (6)

Begin forwarded message:

From: "(b) (6)"
Date: October 3, 2017 at 2:28:17 PM EDT
To: "(b) (6)"
Subject: RE: Could you send (b) (6) our opening brief in Freedom?

Here you go.

-----Original Message-----

From: (b) (6)
Sent: Tuesday, October 3, 2017 2:27 PM
To: (b) (6) >
Subject: Could you send (b) (6) our opening brief in Freedom?

(b) (6)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

FREEDOM ORDNANCE MFG., INC.,)
)
 Plaintiff,)
)
 v.) Case No. 3:16-cv-243-RLY-MPB
)
 THOMAS E. BRANDON, Director,)
 Bureau of Alcohol Tobacco Firearms)
 and Explosives,)
)
 Defendant.)

**BRIEF IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Freedom Ordnance Manufacturing, Inc. (“Freedom”) is a firearms manufacturer headquartered in Chandler, Indiana. In this case, Freedom challenges a decision by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) that a device Freedom seeks to manufacture and market is a “machinegun” as defined under the National Firearms Act, 26 U.S.C. § 5845(b). ATF’s decision is not arbitrary and capricious, but is supported by the administrative record. Based on the foregoing, ATF is entitled to summary judgment.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE¹

Freedom Ordnance Manufacturing, Inc. (“Freedom”) is a federally-licensed firearms manufacturer with its principle place of business in Chandler, Indiana. (Docket No. 1 ¶ 2.) Freedom designed an Electronic Reset Assist Device (“ERAD”) for commercial sale to the general public. (Docket No. 1 ¶ 9.) The purpose of the ERAD, as described by Freedom, is to “improve firearm design” to assist the firearm user’s “ability to continually pull the trigger in a rapid manner when a high rate of fire is desired.” (Administrative Record (“AR”) 0025; Patent documents.)

The Firearms and Ammunition Technology Division (“FATD”) of ATF, through its Firearms Technology Industry Services Branch (“FTISB”), provides expert technical support to ATF, other Federal agencies, State and local law enforcement, the firearms industry, Congress, and the general public. ATF, Firearms Ammunition and Technology (2017), available at <https://www.atf.gov/firearms/firearms-and-ammunition-technology>. FTISB is responsible for technical determinations concerning types of firearms approved for importation into the United States and for rendering opinions regarding the classification of suspected illegal firearms and newly designed firearms. *Id.*

There is no requirement in the law or regulations for a manufacturer to seek an ATF classification of its product prior to manufacture. *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, National Firearms Act Handbook 7.2.4 (2017), available at

¹ As discussed in Legal Background, Section D, the typical Fed. R. Civ. P. 56 standard and procedural structure does not apply in an APA review case. Accordingly, the Defendant is not required to marshal evidence showing material issues of fact in dispute and the typical “Statement of Material Facts Not In Dispute” does not apply, but is offered for factual context. Specific sections of the Record are cited in the relevant portions of the Argument section.

<https://www.atf.gov/firearms/national-firearms-act-handbook>. ATF, however, encourages firearms manufacturers to submit devices for classification before they are offered for sale to ensure that the sale of such devices would not violate the Federal firearms laws and regulations.

Id. ATF responds to classification requests with letter rulings that represent “the agency's official position concerning the status of the firearms under Federal firearms laws.” *Id.* at 7.2.4.1.

A. The November 2015 Submission

In November 2015, Freedom submitted a request to FTISB to examine a “trigger reset device.” (AR 0002; 0005 – 17 (photos of submission).) Freedom submitted a prototype of the device, along with correspondence, and a Bushmaster Model XM15-E2S AR-type firearm to be used in testing the prototype. (*Id.*)

FTISB closely examined and tested the prototype. (AR 0003.) As part of the examination, FTISB staff fired an AR-type rifle² with the prototype attached. (*Id.*) FTISB staff noted two instances of machinegun function with the prototype device attached. (*Id.*) Specifically, FTISB found that trigger reset device, when attached to the test weapon, converted it into a weapon that fired automatically – “firing more than one shot without manual reloading by a single function of the trigger.” (*Id.*) Based on the examination and testing conducted, FTISB determined that the trigger reset device was a “machinegun” as defined in 26 U.S.C. § 5845(b), and notified Freedom in a letter dated March 23, 2016. (AR 0002 – 4.)

B. The April 2016 Submission and October 27, 2016 Classification Decision

² FTISB ended up using an ATF AR-type firearm to field test the prototype device because it noted a deformity in the Bushmaster Model XM15-E2S AR-type firearm submitted by Freedom. (AR 0003.)

In April 2016, Freedom submitted a new sample prototype of its trigger reset assist device (referred to as the “ERAD”). (AR 0001.) According to Freedom, the new sample prototype “is a total redesign” of the initial prototype. (AR 0001.) In the submission, Freedom included two sample prototypes of the device, along with 9-volt lithium batteries, and DVDs showing demonstrations of live firing and disassembly of the device. (*Id.*) Although Freedom did not explicitly request a classification from FTISB on its prototype, FTISB treated the submission as such because the letter referred back to the Agency’s March 23, 2016, classification and stated that Freedom “worked very hard to correct” the issues identified in the March 23, 2016, letter. (*Id.*)

On or about September 7, 2016, Freedom submitted a supplemental letter to FTISB in support of its April 2016 request for classification of the ERAD. (AR 0018 – 24.) The supplemental materials included a letter from Freedom’s counsel setting forth Freedom’s position that the ERAD should not be classified as a machinegun. (AR 0018 – 24.) The supplemental materials also included a sixteen minute demonstration video of the ERAD, and written materials, including Freedom’s purported patent application for the ERAD. (AR 0018; AR0025 – 46.) In the video, Freedom states that the ERAD permits the shooter to discharge 450 to 500 rounds per minute. (AR 0047.)

FTISB examined that submission and supplemental materials, including the demonstration video. (AR 0070 – 71.) Specifically, FTISB disassembled and examined the two sample ERAD prototypes. (*Id.*) FTISB examined each component part of the ERAD and its design features and characteristics. (AR 0071 – 72.) FTISB staff also conducted field testing of the ERAD by attaching it to and firing from commercially-available Remington and

PMC rifles and a Bushmaster Model XM15-E2S AR-type firearm. (AR 0072.) During the test-fire portion of the examination, staff observed machinegun function six times. (*Id.*)

Specifically, FTISB personnel observed that a single pull of the ERAD trigger - designated as the “primary trigger” - initiated the firing sequence, which caused firing until the trigger finger was removed. (AR 0073.)

By letter dated October 27, 2016, FTISB issued a classification on Freedom’s ERAD trigger system. (AR 0070 - 82.) In the eleven-page letter, FTISB described (1) the composition of the trigger and grip assembly, including its several constituent parts; (2) FTISB’s process for examining and testing the ERAD trigger system; (3) its observations of the ERAD trigger system functionality and the firing effect that was produced when the ERAD was applied to a firearm (*i.e.*, the prototype sent by Freedom) and test-fired; and (4) a breakdown of the firing sequence with and without the ERAD, including several accompanying illustrations. (*Id.*)

FTISB concluded that the ERAD is properly classified as a machinegun. Significantly, FTISB found that “the firing sequence is initiated by a pull of the primary trigger and perpetuated *automatically* by shooter’s constant pull and the reciprocating, battery-powered metal lobe repeatedly forcing the primary trigger forward.” (AR 0073.) Thus, “[a] single pull of the trigger by the shooter therefore starts a firing sequence in which *semiautomatic* operation is made *automatic* by an electric motor.” (*Id.*) FTISB found that because the shooter does not have to release the trigger for subsequent shots to be fired, the firing sequence is continually engaged as long as the shooter maintains constant rearward pressure (a pull) on the trigger and the motor continues to push the shooter’s finger forward. (*Id.*) In other words, as long as the trigger is depressed, the firearm continues to fire until either the trigger finger is removed, the

firearm malfunctions, or it runs out of ammunition. (*Id.*)

FTISB therefore concluded that the installation of an ERAD on a semiautomatic firearm causes that firearm to shoot automatically (through the automatic functioning made possible by the electric motor), more than one shot, by a single function (a single constant pull) of the trigger. FTISB therefore properly concluded that the ERAD is classified as a combination of parts designed and intended for use in converting a semiautomatic rifle into a machinegun under 26 U.S.C. § 5845(b). (AR at 79-80; 80-82.)

**THE COURT MUST STRIKE AND DISREGARD
FREEDOM'S EXTRA-RECORD EVIDENCE**

Freedom brings its claim under the Administrative Procedure Act, 5 U.S.C. § 704, challenging ATF's decision that Freedom's ERAD device be classified as a machinegun. (Docket No. 1; Docket No. 24.) As discussed further below, review of the agency's decision under the APA is conducted using an arbitrary and capricious standard, and the Court's review is limited to the administrative record lodged by the agency. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court."); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) ("That review is to be based on the full administrative record that was before the Secretary at the time he made his decision."), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 952 (7th Cir. 2003) ("the reviewing court considers only the administrative record already in existence, not some new record made initially [in that court].").

In support of its motion for summary judgment, Freedom submitted the declarations of

Michael Winge (Pl.’s Ex. D, Docket No. 24-4) and Richard Vasquez (Pl.’s Ex. E, Docket No. 24-5). Mr. Winge is one of the owners of Freedom Manufacturing. (Pl.’s Ex. D, Docket No. 24-4.) Several paragraphs of his declaration recount correspondence between FTISB and Freedom, which is already contained in the Administrative Record and which is the best evidence of its contents. (See Pl.’s Ex. D, Docket No. 24-4, ¶¶ 18 – 20.) The remaining paragraphs contain Mr. Winge’s opinions about the ERAD and his arguments regarding why the ERAD should not be classified as a machinegun. Mr. Winge’s opinions are merely that – his opinions – and are not part of the official record containing the information upon which ATF relied in issuing its decision. The Court should strike and disregard these opinions because the Court’s review is limited to the administrative record lodged by ATF. Freedom did not challenge or move to supplement that administrative record; therefore, it is complete. *Highway J Citizens Grp.*, 349 F.3d at 952; *see also United States Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (“a presumption of regularity attaches to [g]overnment agencies’ actions.”); *Spiller v. Walker*, No. A-98-CA-255-SS, 2002 U.S. Dist. Lexis 13194, *26-27 (W.D. Tex. July 19, 2002) (“any legal conclusions and post-[decision] evidence within the declarations and argumentation offered simply to contest the agencies’ experts are not admissible.”).

Richard Vasquez appears to be a witness who was retained by Freedom to provide his expert opinion regarding the ERAD’s classification. (Pl.’s Ex. E, Docket No. 24-5.) Expert reports are generally not permitted in an APA review case. *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 555 (1978) (“the role of a court in reviewing the sufficiency of an agency’s consideration . . . is a limited one, limited both by the time at which the decision was made and by the statute mandating review.”). Both the Supreme Court and the Seventh Circuit

have emphasized that “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Cronin v. USDA*, 919 F.2d 439, 443 (7th Cir. 1990) (“it is imprudent for the generalist judges of the federal district courts and courts of appeals to consider testimonial and documentary evidence bearing on those questions unless the evidence has first been presented to and considered by the agency.”); *see also Airport Cmty Coal. v. Graves*, 280 F. Supp.2d 1207, 1213 (W.D. Wash. 2003) (holding that APA was intended to preclude “Monday morning quarterbacking”).

The Vasquez Declaration simply criticizes the agency’s analysis, but under the APA the Court must allow the agency to rely on its own experts’ opinions even if a plaintiff has other expert opinions. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989) (“When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts, even if as an original matter, a court might find contrary views more persuasive.”). Therefore, even if a so-called “expert” conclusion would contradict the agency’s expert’s conclusions, this Court can give it no force. *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1335 (9th Cir. 1992).

Based on the foregoing, the Court must strike and disregard the Winge and Vasquez Declarations.

LEGAL BACKGROUND

A. The National Firearms Act and Gun Control Act

The National Firearms Act of 1934, 26 U.S.C. Chapter 53, and the Gun Control Act of 1968, 18 U.S.C. Chapter 44, comprise the relevant federal framework governing the firearm

market. The Gun Control Act generally makes it unlawful for a person to transfer or possess a machinegun manufactured on or after May 19, 1986. 18 U.S.C. § 922(o). ATF is charged with administering and enforcing both the National Firearms Act and the Gun Control Act. 28 C.F.R. § 0.130(a)(1)–(2).

18 U.S.C. § 922(a)(4) states that it shall be unlawful –

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

Accordingly, with the limited exception of State, Federal and local law enforcement agencies, it is unlawful for any person to transfer or possess a machinegun manufactured on or after May 19, 1986. Moreover, machineguns must be registered in the National Firearms Registration and Transfer Record and may only be transferred upon the approval of an application. 26 U.S.C. § 5812. The National Firearms Act makes it unlawful to manufacture a machine gun in violation of its provisions. 26 U.S.C. § 5861(f). Specifically, the National Firearms Act requires that a person shall obtain approval from ATF to make a National Firearms Act firearm, which includes a machinegun. 26 U.S.C. §§ 5922, 5845(a). Similarly, licensed manufacturers are required to notify ATF by the end of the business day following manufacture of a NFA firearm. 26 U.S.C. § 5841(c), 27 CFR 479.103.

B. The Definition of a Machinegun

The National Firearms Act, 26 U.S.C. § 5845(b), defines a machinegun³ as

³ Although more commonly spelled “machine gun,” the applicable statutes use the spelling “machinegun.”

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.

See also 27 C.F.R. § 478.11 (stating same).

The Gun Control Act incorporates the National Firearms Act's definition of machinegun and defines machinegun identically to the National Forearms Act. 18 U.S.C. § 922(a)(4).

Both statutory definitions of a machinegun therefore include a combination of parts designed and intended for use in converting a weapon into a machinegun. *Id.* This language includes a device that, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until the finger is released or the ammunition supply is exhausted. *See* ATF Rule 2006-2 (AR at 630-32.)

C. The Administrative Procedure Act

The Administrative Procedure Act (APA) requires that the Court “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The “scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Court must be satisfied that the agency has “‘examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” *Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 6 (D.C. Cir. 2006) (quoting *State Farm*, 463 U.S. at 43). The agency’s decisions

are entitled to a “presumption of regularity,” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971), and although “inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one,” *id.* at 416.

Federal courts are particularly deferential towards the “scientific determinations” of the agency, which are “presumed to be the product of agency expertise.” *Franks v. Salazar*, 816 F.Supp.2d 49, 55 (D. D.C. 2011) (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983)). The Court’s review is confined to the administrative record, subject to limited exceptions not at issue here. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (“[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.”). *See also Sig Sauer, Inc. v. Jones*, 133 F. Supp. 3d 364, 371 (D.N.H. 2015), *aff’d sub nom. Sig Sauer, Inc. v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (recognizing that classification determinations “require expertise that is well within the ATF’s grasp” and that “its conclusions are entitled to substantial deference from a reviewing court.”) (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989)).

D. Summary Judgment in APA Cases

Under the APA, “courts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review.” *Fla. Power & Light Co.*, 470 U.S. at 743-44. Because extra-record evidence and trials are inappropriate in APA cases, courts decide APA claims via summary judgment based on the administrative record the agency compiles. *Cronin*, 919 F.2d at 445 (“Because the plaintiffs are not entitled to present evidence in court to challenge the [decision-maker’s] decision . . . , there will never be an evidentiary hearing in court.”); *Nw. Motorcycle Ass’n v. USDA*, 18 F.3d 1468, 1472 (9th Cir.

1994).

Although summary judgment is the procedural mechanism by which the Government is presenting its case, the limited role federal courts play in reviewing such administrative decisions means that the typical Federal Rule 56 summary judgment standard does not apply. *See Citizens for Appropriate Rural Roads, Inc. v. Foxx*, 14 F. Supp. 3d 1217, 1228 (S.D. Ind. March 31, 2014) (Barker, J.) (citing *Cronin*, 919 F.2d at 445); *see also Sierra Club v. Mainella*, 459 F.Supp.2d 76, 89–90 (D. D.C. 2006). Instead, in APA cases, “[t]he factfinding capacity of the district court is thus typically unnecessary to judicial review of agency factfinding [C]ourts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review.” *Florida Power & Light Co.*, 470 U.S. at 744–74.

ARGUMENT

Plaintiff raises several challenges to FTISB’s classification decision. As discussed below, FTISB conducted a thorough examination of the ERAD, and fully disclosed the findings supporting its decision. FTISB’s decision was not arbitrary and capricious, but is supported by the facts as presented in the administrative record, and is a reasonable interpretation of the statute. Defendant is entitled to judgment in its favor on all of the Plaintiff’s claims.

A. ATF’s Decision Is Not Arbitrary and Capricious.

A machinegun is defined in part as any weapon that shoots “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The term also includes any “combination of parts designed and intended, for use in converting a weapon into a machinegun.” *Id.* In the definition of machinegun, neither the National

Firearms Act nor the Gun Control Act further define the phrase “single function of the trigger.” The test firing of Plaintiff’s prototype—an AR-15 semi-automatic rifle (Bushmaster Model XMI150E2S) with an integrated ERAD grip—demonstrated that, once the grip button was pulled (activating the motor) concurrent with constant rearward pressure being applied to the trigger extension (which Plaintiffs refer to as the “reset bar”), the weapon fired more than one shot without manual reloading and without any additional action on the shooter’s part. Indeed, the weapon fired continuously until the shooter stopped applying rearward pressure to the trigger extension, or the ERAD’s ammunition supply was exhausted. (AR at 79, 47 (demonstration video).) Additionally, when equipped with the ERAD, the weapon fired at a very high rate of speed, discharging up to 500 rounds per minute. (AR 0047.) Thus, the nature and mechanics of the ERAD support FTISB’s finding that it converted the semiautomatic firearm to a machinegun.

FTISB’s conclusion is consistent with the National Firearm’s Act’s legislative history, in which the drafters equated “single function of the trigger” with “single pull of the trigger.” *See* National Firearms Act: Hearings Before the Committee on Ways and Means, H.R. Rep. No. 9066, 73rd Cong., 2nd Sess., at 40 (1934) (“Mr. Frederick.[] The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and such guns are not properly designated as machine guns. A gun, however, which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun.”); *see also* George C. Nonte, Jr., *Firearms Encyclopedia* 13 (1973) (the term “automatic” is defined to include “any firearm in

which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device – in other words, a machinegun”).

FTISB’s decision is also consistent with the ordinary meaning of the term “function,” which includes “any of a group of related actions contributing to a larger action.” Webster’s Ninth New Collegiate Dictionary, 498 (1986); *see also* Random House Thesaurus College Edition, 297 (1984) (a synonym of function is “act”). Here, the action, or act, is pulling the trigger, which leads to the automatic firing.

Courts have also interpreted “function” as the action of pulling the trigger. *See Staples v. United States*, 511 U.S. 600, 600 (1994) (“The National Firearms Act criminalizes possession of an unregistered ‘firearm,’ 26 U.S.C. § 5861(d), including a ‘machinegun,’ § 5845(a)(6), which is defined as a weapon that automatically fires more than one shot with a single pull of the trigger, § 5845(b).”); *see also id.* at 602 n.1 (“As used here, the terms ‘automatic’ and ‘fully automatic’ refer to a weapon that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are ‘machineguns’ within the meaning of the Act.”).

In *United States v. Fleischli*, 305 F.3d 643, 655-56 (7th Cir. 2002), the Seventh Circuit held that a “minigun” was a machinegun even though it was “activated by means of an electronic on-off switch rather than a more traditional mechanical trigger.” Despite Fleischli’s arguments that the minigun was not a machinegun because it was not fired by pulling a traditional trigger, but rather was fired using an electronic switch, the court found to the contrary: “Fleischli's

electronic switch served to initiate the firing sequence and the minigun continued to fire until the switch was turned off or the ammunition was exhausted. The minigun was therefore a machine gun as defined in the National Firearms Act.” *Id.* (superseded by statute on other grounds); *see also United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977) (rejecting defendant’s argument that because he had constructed a weapon with two triggers, it would not fire by a single function of the trigger, finding “it is undisputed that the shooter could, by fully pulling the trigger, and it only, at the point of maximum leverage, obtain automation with a single trigger function. We are satisfied the gun was a machine gun within the statutory definition both in law and fact.”)

Similarly here, the ERAD is a component that, when attached to a rifle, causes the rifle to function automatically. The ERAD allows the firing sequence to be initiated by a single pull of the primary trigger, which is continually engaged as long as the shooter maintains rearward pressure on the trigger and the motor continues to push the shooter’s finger forward. (AR 0073; 79-80.) Because the ERAD is a combination of parts designed and intended for use in converting a semiautomatic firearm into weapon which shoots automatically more than one shot by a single action—the pull of the trigger—it is a machinegun. ATF’s decision is not arbitrary or capricious, but is consistent with the facts based on a thorough examination and testing of the ERAD’s functionality.

B. ATF’s Classification is Consistent with Public Policy.

Because of their rapid rate of fire, machineguns have long been considered inherently dangerous and are therefore strictly regulated and generally unlawful to possess. *See* 18 U.S.C. § 922(o); *United States v. Brock*, 724 F.3d 817, 824 (7th Cir. 2013) (“Congress has grouped together sawed-off shotguns, machineguns, and a variety of dangerous explosive devices for

stringent restrictions on possession and strict registration requirements for those that can be possessed lawfully.”); *United States v. Brazeau*, 237 F.3d 842, 845 (7th Cir. 2001) (“The point is that most firearms do not have to be registered—only those that Congress found to be inherently dangerous.”); *United States v. Kruszewski*, No. 91-0031P, 1991 WL 268684, at *1 (N.D. Ind. Dec. 10, 1991) (“The categories of firearms covered by U.S.C. Title 26 include only particularly dangerous weapons such as machineguns In *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008), the Supreme Court discussed a machinegun (M-16), and recognized a “limitation on the right to keep and carry arms” that includes “dangerous and unusual weapons.” *See also United States v. Spires*, 755 F.Supp. 890, 892 (C.D. Cal. 1991) (“Congress believed these particular weapons, as opposed to firearms in general, are extremely dangerous and serve virtually no purpose other than furtherance of illegal activity.”).

The device at issue in this case – the ERAD grip – enables a firearm to produce automatic fire with a single pull of the trigger, and therefore makes an otherwise semiautomatic firearm into one of the “dangerous and unusual weapons” recognized by the *Heller* court.. A rifle with the ERAD will continue to fire automatically once the trigger is pulled and remains depressed, with no further action by the shooter required. The widely-available Bushmaster Model XMI150E2S fires at a rate of one shot per trigger pull and up to 120 rounds per minute.⁴ When

⁴ Although there are no official documents establishing a maximum firing rate, it is thought that 120 rounds per minute would be a ceiling. Obviously, the rate of fire depends on how fast the shooter can pull and release the trigger. The Department of the Army has published 45 rounds per minute as the maximum effective rate of fire for AR-type weapons, meaning the number of shots that allow the shooter to effectively engage the intended target. *See* Department of the Army, Field Manual (FM) 3-22.9, Rifle Marksmanship M16-/M4-Series Weapons, Ch. 2-1 (Characteristics of M16-/M4-Series Weapons), Aug. 2008, available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixkfTlrPzTAhUKwiYKHf9iA30QFggnMAA&url=http%3A%2F%2Fusacac.army.m>

the ERAD device is attached to it, however, the same rifle is capable of firing at a rate of up to 500 rounds per minute. (AR 0047.) This unhindered automatic firing capability is the very danger that the National Firearms Act was intended to protect against. See 149 Cong. Rec. H2944-02, H2950 (Apr. 9, 2003) (“these weapons ... are inherently dangerous”); *United States v. Newman*, 134 F.3d 373 (6th Cir. Jan. 21, 1998) (unpublished) (“Although the National Firearms Act is ostensibly a revenue-generating statute enacted under Congress’s taxation power, it is clearly designed to regulate the manufacture, transfer, and possession of dangerous weapons. Although the means by which Congress advanced its objectives are somewhat roundabout, close analysis of the relevant provisions reveals an unmistakable intent to prohibit possession of any machine gun the manufacture or importation of which was not explicitly authorized by the Bureau of Alcohol, Tobacco, and Firearms.”). Nor is such easy transformation to an automatic firearm consistent with the prohibition imposed by section 922(o) of the Gun Control Act. See *United States v. Haney*, 264 F.3d 1161, 1168 (10th Cir. 2001) (“banning possession of post 1986 machine guns is an essential part of the federal scheme to regulate interstate commerce in dangerous weapons.”). Accordingly, ATF’s assessment of the functionality of the ERAD grip, including its ability to convert a firearm into an automatic weapon, support ATF’s finding that the ERAD is properly classified as a machinegun.

C. Freedom’s “Reset Bar” Terminology Does Not Alter the Outcome

Freedom argues that FTISB’s analysis is flawed because the ERAD’s “reset bar” is not a “trigger.” Freedom specifically claims that, “the trigger finger reset bar is not the trigger, nor

il%2Fsites%2Fdefault%2Ffiles%2Fmisc%2Fdoctrine%2FCDG%2Fcdg_resources%2Fmanuals%2Ffm%2Ffm3_22x9.pdf&usg=AFQjCNEzIuwG-XuAHAhI5HSuun3SGVrZxg&sig2=5AF-YguyuZCKe4rELoibbQ.

can it activate the firing sequence. Only the shooter's conscious and deliberate pull of the reset bar that subsequently engages the trigger that causes the weapon to fire and the ERAD cannot be made to function any other way." (Docket No. 24 at 8.) To this end, Freedom admits it has created a device that incorporates the traditional firearm trigger as another intermediate component in the firing mechanism.

Nevertheless, Freedom's position has been rejected by ATF before, and this rejection has been upheld in court. As discussed above, in *United States v. Fleischli*, 305 F.3d 643 (7th Cir. 2002), the Seventh Circuit rejected the appellant's argument that an electronic switch did not meet the traditional definition of a trigger, holding as follows:

This is a puerile argument, based on hyper-technical adherence to literalism. We are not surprised to learn that Fleischli is not the first defendant to make such a brazen argument, although he appears to be the first to do so in this circuit. We join our sister circuits in holding that a trigger is a mechanism used to initiate a firing sequence. *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (commonsense understanding of trigger is mechanism used to initiate firing sequence); *United States v. Evans*, 978 F.2d 1112, 1113–14 n. 2 (9th Cir. 1992), *cert. denied*, 510 U.S. 821, 114 S.Ct. 78, 126 L.Ed.2d 46 (1993) (trigger is anything that releases the bolt to cause the weapon to fire). Fleischli's definition "would lead to the absurd result of enabling persons to avoid the NFA simply by using weapons that employ a button or switch mechanism for firing." *Evans*, 978 F.2d at 1113–14 n. 2. The dictionary definition of "trigger" includes both the traditional ("a small projecting tongue in a firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon") and the more general ("anything, as an act or event, that serves as a stimulus and initiates or precipitates a reaction or series of reactions."). See Webster's Unabridged Dictionary Of The English Language (2001). Fleischli's electronic switch served to initiate the firing sequence and the minigun continued to fire until the switch was turned off or the ammunition was exhausted. The minigun was therefore a machine gun as defined in the National Firearms Act.

Id. at 655–56.

Similarly, in *United States v. Carter*, 465 F.3d 658 (6th Cir. 2006), the Sixth Circuit opined on the definition of a "trigger" under the National Firearms Act. There, Carter appealed

a conviction for illegal possession of a machine gun and other parts designed or intended for use in converting a weapon into a machinegun. *Id.* at 660. Carter argued that the jury instruction on the definition of “trigger” was faulty because the indictment “did not mention a trigger mechanism among the parts he was alleged to have possessed” and thus the indictment failed to state a charge pursuant to the Federal Rule of Criminal Procedure 7(c)(1) because “the definition of ‘machinegun’ given at 26 U.S.C. § 5845 specifically includes a trigger.” *Id.* at 661. According to the testifying expert, the weapon was complete except for a trigger mechanism. Thus “[a]fter inserting a magazine with three rounds of ammunition, he said, he was able to make the gun fire all three rounds consecutively by pulling the bolt back and releasing it by hand.” *Id.* at 661-62. The court held that, even in the absence of a traditional trigger, the weapon fell within the definition of a “machinegun.”

The reasoning adopted by other circuits, as well as simple logic, compels the conclusion that the district court’s instruction was proper and not an abuse of discretion. A trigger is generally “anything, as an act or event, that serves as a stimulus and initiates or precipitates a reaction.” Webster’s Unabridged Dictionary 2021 (2nd ed.1997). Within the realm of firearms, it is commonly understood as “a small projecting tongue in a firearm that, when pressed by the finger, actuates the mechanism that discharges the weapon.” *Id.* However, the latter definition is obviously a context-specific articulation of the former. According to the testimony of the government’s expert, the manipulation of his hands on the assembled weapon initiated a reaction, namely the firing of the gun and two automatic successive firings. This manual manipulation constituted a trigger for purposes of the weapon's operation. The district court’s “trigger” instruction to the jury was not an abuse of discretion.

Id. at 665.

Finally, in *United States v. Camp*, 343 F.3d 743 (5th Cir. 2003), the defendant modified a semiautomatic rifle by adding an electrically operated trigger mechanism, which operated as follows:

When an added switch behind the original trigger was pulled, it supplied electrical power to a motor connected to the bottom of a fishing reel that had been placed inside the weapon's trigger guard; the motor caused the reel to rotate; and that rotation caused the original trigger to function in rapid succession. The weapon would fire until either the shooter released the switch or the loaded ammunition was expended.

Id. at 744.

An ATF expert testified that a true trigger activating devices, although giving the impression of functioning as a machinegun, are not classified as machineguns because the shooter still has to separately pull the trigger each time he/she fires the gun by manually operating a lever, crank, or the like. To this end, the court stated:

We reject Camp's contention that the switch on . . . his firearm was a legal "trigger activator". As discussed, those activators described by the ATF Agent require a user to separately pull the activator each time the weapon is fired. Camp's weapon, however, required only one action – pulling the switch he installed – to fire multiple shots.

Camp, 343 F.3d at 745.

Similarly here, even though Freedom refers to its ERAD as a "trigger reset assistance device," a firearm fitted with the ERAD does not require separate, mechanical pulls of the trigger (*i.e.*, pull and release) to discharge more than a single round. The trigger is moving at such a rapid rate that the shooter's finger does not pull the trigger each time to fire each shot, but instead pulls the trigger once and then remains stationary, resisting forward pressure, as the motor causes the weapon to function automatically, and continue to fire rounds. It is undisputed that when the shooter's finger remains connected to the "reset bar," and an electric motor is activated, the "reset bar" functions as a trigger in and of itself, and controls the pace of the firing sequence. The only action required by the shooter is that of continued rearward pressure. To this end, the ERAD is capable of firing at a rate of 500 rounds per minute and does not require

any additional act by the shooter after the motor is turned on and the shooter pulls the “reset bar” (or what FTISB describes as the “primary trigger”) once without releasing pressure. (AR 0047.)

Accordingly, in spite of its branding and terminology, the ERAD meets the definition of a machinegun.

D. The ERAD Is Not The Same As “Bump Fire” or “Slide Fire” Stock.

Freedom also argues that its ERAD is similar to “bump fire” or “slide fire” stock, which has been found not to be machinegun technology. (Pl.’s Br. at 24 (citing AR at 231 and Pl.’s Exhibits A, B, and C, Docket Nos. 24-1, 24-2, 24-3).) “Bump firing” is the process of using the recoil of a semi-automatic firearm to fire in rapid succession, simulating the effect of an automatic firearm when performed with a high level of skill and precision by the shooter. Bump firing requires the shooter to manually and simultaneously pull and push the firearm in order for it to continue firing. (See Pl.’s Ex. A, Docket No. 24-1 at 3-4; Pl.’s Ex. B, Docket No. 24-3 at 4-5.) The shooter must use both hands to pull the trigger rearward - and the other to push the firearm forward to counteract the recoil - to fire in rapid succession. While the shooter receives an assist from the natural backfire of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input, rather than mechanical input, and thus cannot shoot “automatically.” (Pl.’s Ex. A, Docket No. 24-1 at 3-4; Pl.’s Ex. B, Docket No. 24-3 at 4-5.)

Conversely, the ERAD does not require any such skill or input from the shooter. A rifle equipped with the ERAD will utilize a battery-powered motor to continue to fire automatically once the trigger is pulled and remains depressed, with no other action by the shooter required. Indeed, in its classification letter, FTISB noted that the AR-type trigger functions as a

“secondary trigger” in that “it merely becomes a part of the firing sequence.” (AR at 0071.) Freedom argues that the ERAD allows the shooter to make a “conscious decision to apply or not apply rearward pressure to fire the weapon by initiating a trigger function,” (AR at 47 (demonstration video)). This argument is technically correct to the extent the shooter may make a purposeful choice to cease applying rearward pressure to the reset bar/primary trigger. In fact, this is true of any machinegun—a shooter makes a conscious decision to pull and release the trigger. What is misleading, however, is any assertion that the shooter may make a conscious choice to pull and release the trigger for *each individual, subsequent shot*. In accepting this argument, the shooter would presumably be able to control the precise number of shots he intends to fire. For example, he could intend to fire a precise number of rounds of ammunition, such as 263 rounds, and actually expel that exact number of rounds. With the ERAD engaged, however, the number of rounds fired is the result of automatic functioning so long as the shooter is applying pressure on the “reset bar,” and therefore the number of rounds expelled cannot accurately be characterized as conscious or deliberate. (AR 0047; 0073.)

In contrast, bump firing requires the shooter to manually pull and push the firearm in order for it to continue firing. Generally, the shooter must use both hands—one to push forward and the other to pull rearward—to fire in rapid succession. While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input in pushing the weapon forward, rather than mechanical input, and is thus not an automatic function of the weapon.

Freedom also argues that FTISB’s decision regarding the ERAD is inconsistent with its decision regarding the Akins Accelerator, which was an accessory attached to firearm that

accelerated rate of fire. *Akins v. United States*, 312 F. App'x 197 (11th Cir. 2009). On the contrary, ATF's decision is entirely consistent with its decision regarding the Akins Accelerator and ATF Ruling 2006-2.⁵

To operate the Akins Accelerator, the shooter pulled the trigger one time, initiating an automatic firing sequence, which in turn caused the rifle to recoil within the stock, permitting the trigger to lose contact with the finger and manually reset (move forward). *Akins*, 312 F. App'x at 199. Springs then forced the rifle forward in the stock, forcing the trigger against the finger, which caused the weapon to discharge the ammunition until the shooter released the constant pull or the ammunition is exhausted. Put another way, the recoil and the spring-powered device caused the firearm to cycle back and forth, impacting the trigger finger, which remained rearward in a constant pull, without further input by the shooter, thereby creating an automatic firing effect. *Id.* The advertised rate of fire for a weapon with the Akins Accelerator was 650 rounds per minute. *Id.*

The Eleventh Circuit found that ATF properly classified the Akins Accelerator as a machinegun because:

[a] machinegun is a weapon that fires “automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). The interpretation by the Bureau that the phrase “single function of the trigger” means a “single pull of the trigger” is consonant with the statute and its legislative history. After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted. Based on the operation of the Accelerator, the Bureau had authority to “reconsider and rectify” what it considered to be a classification error. That decision was not

⁵ Initially ATF classified the Akins Accelerator as a non-machinegun, but after a subsequent test fire, it was determined the Akins Accelerator converts a semiautomatic rifle into a weapon capable of firing automatically by a single function of the trigger and was therefore in fact a machinegun. Thus, ATF overruled its earlier classification.

arbitrary and capricious.

Id. at 200.

Pursuant to ATF Ruling 2006-2, any device that is truly analogous to the Akins Accelerator - *i.e.*, a device that allows a weapon to fire automatically when the shooter pulls the trigger - is properly classified as a machinegun. (AR at 630-32.) Specifically, the Rule provides that a firearm with the following functionality constitutes a machinegun:

A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

(AR at 631.)

Like the Akins Accelerator, the ERAD requires a single pull of the trigger to activate the firing sequence, which continues until the shooter's finger is released, or the firearm depletes its ammunition supply. (AR at 354-68, 395-97.) Because the ERAD is a part designed and intended for use in converting a semiautomatic firearm into weapon which shoots automatically more than one shot by a single action—the pull of the trigger—it is a machinegun. Thus, ATF's decision is not arbitrary or capricious, but is consistent with the facts based on a thorough examination and testing of the ERAD's functionality.

With regard to Plaintiff's Exhibit B (Docket No. 24-3), the 3MR reset trigger device submitted to ATF was an internal mechanism, which operated to push the shooter's finger

forward. It does not run on a motor, and although the mechanism assists in manually resetting the trigger, the shooter is still required to release the trigger to fully reset the trigger. Thus, during inspection, ATF determined that the weapon could not be fired automatically. The item was tested by seven individuals at ATF prior to the classification, and no individual was able to generate automatic fire. Because the reset trigger required a release of the trigger and subsequent pull before another round was expelled, the 3MR was not classified as a machinegun.

Based on the foregoing, FTISB has not rendered inconsistent decisions, but has inspected and analyzed each prototype or device presented to it by Freedom for classification, and has issued its decisions based on the unique characteristics of each. Accordingly, ATF's classification of the ERAD device as a machinegun is not arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the applicable law.

CONCLUSION

Based on the foregoing, the Court must enter judgment in favor of the Bureau of Alcohol, Tobacco, Firearms, and Explosives as to all of Plaintiff's claims against it.

Respectfully submitted,

JOSH J. MINKLER
United States Attorney

By: s/ Shelese Woods
Shelese Woods
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon the Plaintiff herein by electronically filing a copy thereof through the Court's CM/ECF system, which will transmit a copy electronically to the following on the 27th day of July, 2017:

Brent R. Weil
KIGHTLINGER & GRAY, LLP
bweil@k-glaw.com

Timothy R. Rudd
Scott Braum
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s/ Shelese Woods

Shelese Woods
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Pages 1147-1182

Pulled for additional review

To: Turk, Ronald B. (b) (6)]
From: Gleysteen, Michael
Sent: Mon 10/2/2017 8:22:21 PM
Subject: FW: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

FYI

From: Croke, Kenneth J.
Sent: Monday, October 02, 2017 4:16 PM
To: Gleysteen, Michael (b) (6) >
Subject: FW: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

As requested

Kenneth J. Croke

*Deputy Assistant Director (DAD)
Field Operations - East
Office (202) 648 (b) (6)
Cell (b) (6)
(b) (6)*

From: (b) (6)
Sent: Monday, October 02, 2017 4:13 PM
To: Croke, Kenneth J. (b) (6)
Cc: Chittum, Thomas L. (b) (6) >; (b) (6)
Subject: RE: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

Good Afternoon,

Regarding this incident the following is a summary of incident/actions taken to date:

ATF response to this incident started from a call to the JTTF desk.

USSS UD initially did not contact any agency for assistance

Initial call for service by USSS UD was due to subject disturbing the peace near the White House

After discussions with subject and a consent to search was granted for a vehicle - firearms were discovered

(b) (6)

Current status/location of subject is unknown however inquiries with USSS are being followed up to ascertain

Subject is not prohibited as of the time of interaction with USSS UD

(b) (6)

Traces of firearms were submitted by ATF/JTTF Rep under a routine status as there was no indication of ongoing threat

There was a suppressor found in the vehicle, however (b) (5)

(b) (3) - (26 USC § 6103)

List of firearms found at scene:

Item #1: Bushmaster XM15-E2S

Designation: Semi Auto Rifle

Caliber: 223/5.56MM

SN: (b) (6)

Item #1- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #2: Intratec TEC-DC9

Designation: Semi Auto Pistol

Caliber: 9mm Luger

SN: (b) (6)

Item #2- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #3: Vulcan V10-45

Designation: Semi Auto Pistol

Caliber: 45 ACP

SN: (b) (6)

Item #3- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #4: Norinco MAK-90

Designation: Semi Auto Rifle

Caliber: 7.62x39MM

SN: (b) (6)

Item #4- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #5: Glock 30

Designation: Semi Auto Pistol

Caliber: 45 Auto

SN: (b) (6)

Item #5- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #10: Smith & Wesson 4043TSW Stainless

Designation: Semi Auto Pistol

Caliber: 40 S&W

SN: (b) (6)

Item #10- (b) (3) - Public Law 112-55 (125 Stat. 552)

Item #11: Springfield Armory XDS 3.3"

Designation: Semi Auto Pistol

Caliber: 45 ACP

SN: (b) (6)

Item #11- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #12: Smith & Wesson 4046

Designation: Semi Auto Pistol

Caliber: 40 S&W

SN: (b) (6)

Item #12- (b) (3) - Public Law 112-55 (125 Stat. 5)

Item #16: Interarms Amadeo Rossi M971

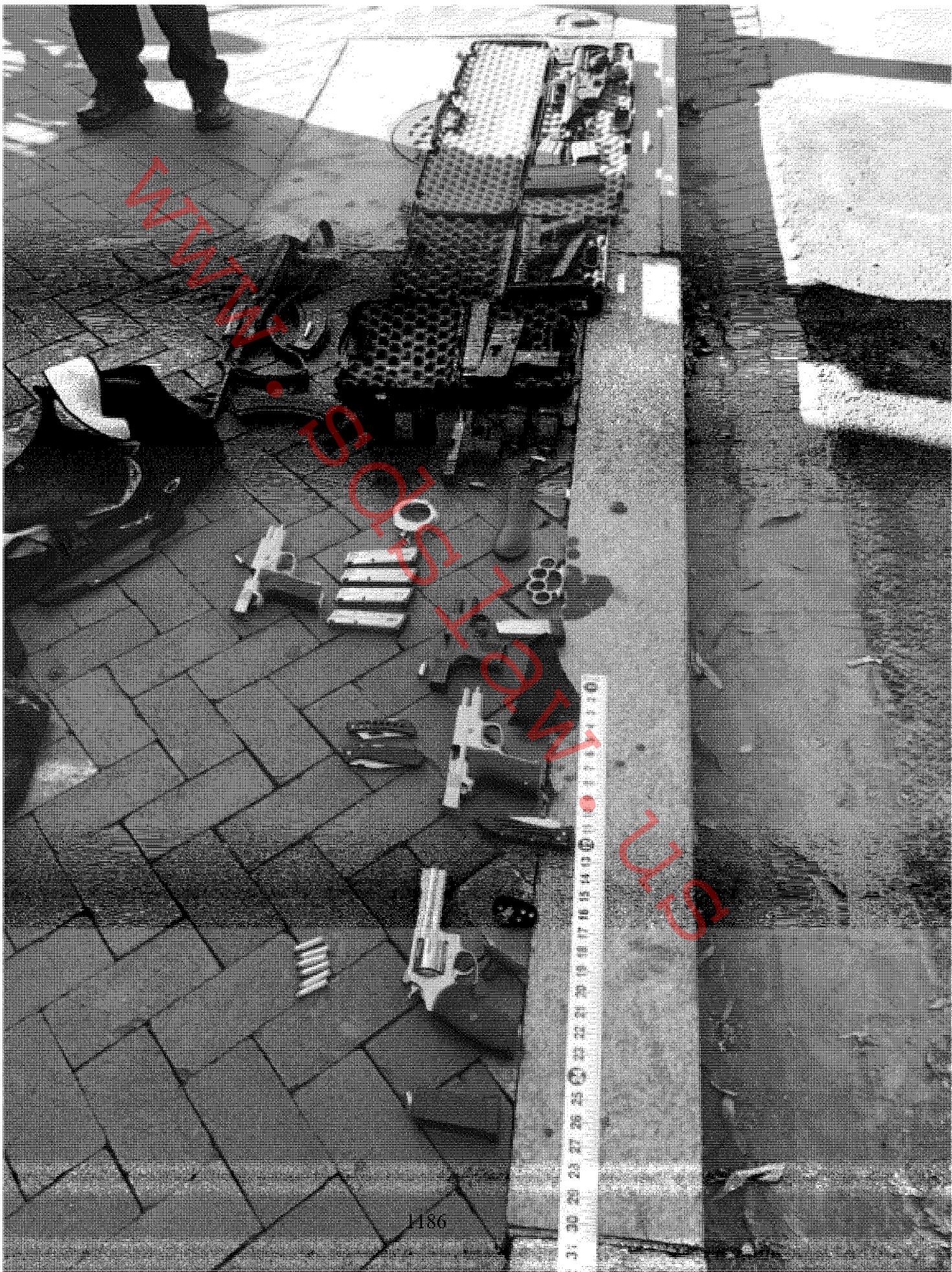
Designation: Revolver

Caliber: 357 Mag

SN: (b) (6)

Item #16- (b) (3) - Public Law 112-55 (125 Stat. 552)

SMITH & WESSON • www.smith-wesson.com



MONTANA
POLICE

SUMMARY:

USSS is (b) (3) - Public Law 112-55 (125 Stat. 552), (b) (5), (b) (4)

ATF is not facilitating a case

ATF will continue to support/assist USSS

Should additional information merit prosecution, ATF will facilitate that action

(b) (6)

S/A (b) (6)

ATF – Washington Field Division

(b) (6)

(b) (6)

From: Croke, Kenneth J.

Sent: Monday, October 2, 2017 2:30 PM

To: (b) (6)

Subject: RE: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

10-4. Any trace data? If you can put together a brief summary in a short time frame it would be much appreciated.

Kenneth J. Croke

Deputy Assistant Director (DAD)

Field Operations - East

Office (202) 648-(b) (6)

Cell (b) (6)

(b) (6)

From: (b) (6)

Sent: Monday, October 02, 2017 2:27 PM

To: Croke, Kenneth J. (b) (6)

Subject: Re: Police: Man arrested near White House had cache of weapons in car - CNNPolitics

Working on an update

(b) (6)

(b) (6)

S/A (b) (6)

ATF-Washington Field Division

(b) (6)

(b) (6)

To: Allen, Joseph J. (b) (6)
From: (b) (6)
Sent: Mon 10/2/2017 6:39:20 PM
Subject: FW: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed
[M16 vs AR receiver.docx](#)
[2010 434 MMK Photos.pdf](#)
[WF#74544 Signed Response.pdf](#)
[AR15 Conversions.pdf](#)

Forgot to include you.

From: (b) (6)
Sent: Monday, October 2, 2017 2:25 PM
To: Brandon, Thomas E. (b) (6) >
Subject: RE: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed

Sir,



(b) (6)

From: Brandon, Thomas E.
Sent: Monday, October 2, 2017 12:30 PM
To: (b) (6) >
Subject: Fwd: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed

(b) (6) are these "ATF approved" as advertised? Thanks, Tom

Sent from my iPad
Begin forwarded message:

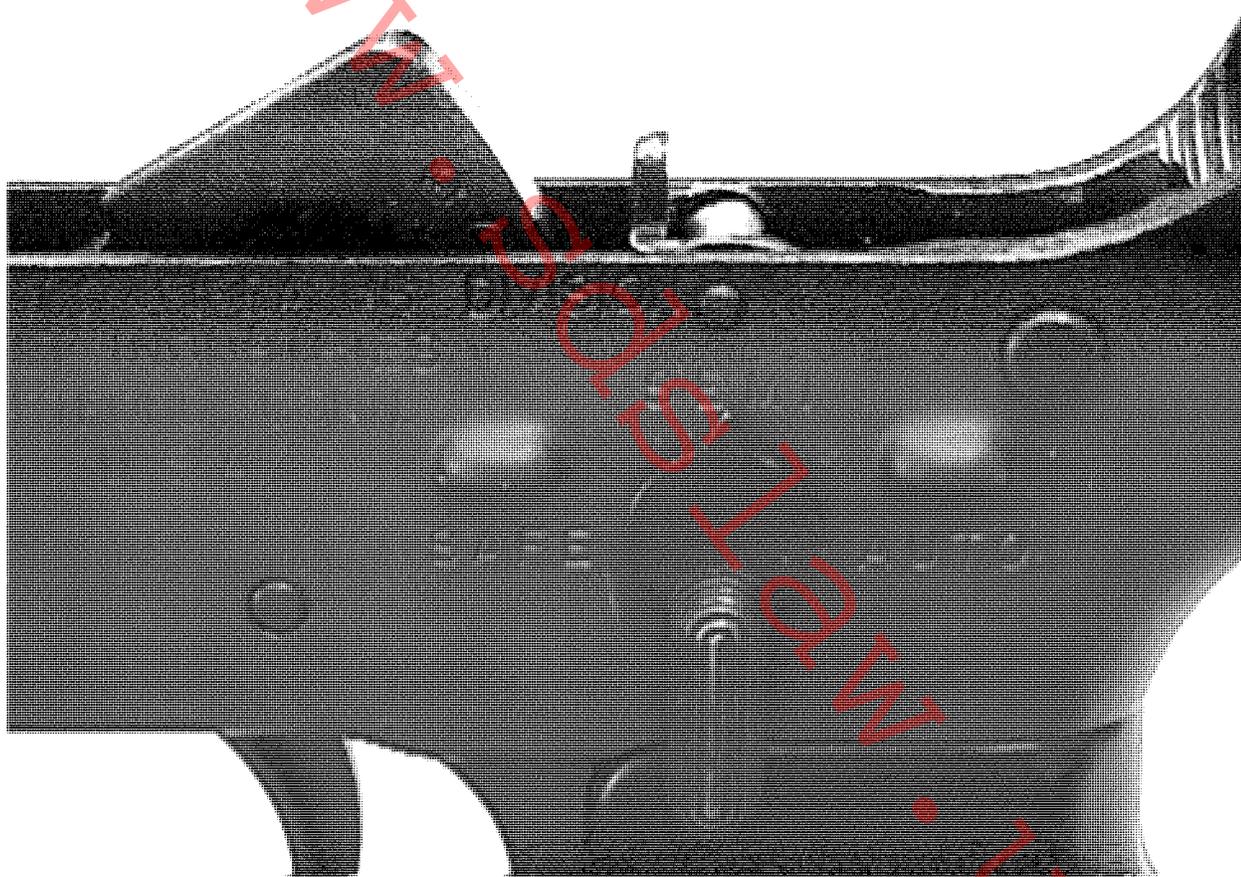
From: <Thomas.Brandor(b) (6)>
Date: October 2, 2017 at 12:24:41 PM EDT
To: (b) (6)
Subject: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed

<http://www.slidefire.com/videos>

Sent from my iPad

M-16 type Machinegun

M-16 type machinegun with auto sear pin hole drilled. Once the auto sear pin hole is drilled it becomes a machinegun under the NFA and all controls apply. A receiver without the hole drilled would not be a machinegun per the NFA. The second picture depicts an AR-15 type receiver without the sear pin hole drilled, therefore only a GCA semiautomatic (Title 1) firearm.





WINTER

ST. MARY'S
CATHOLIC CHURCH







U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

JUN 07 2010

903050(b) (6)
3311/2010-434

(b) (6)
P.O. Box 3175
Albany, Texas 76430

Dear (b) (6)

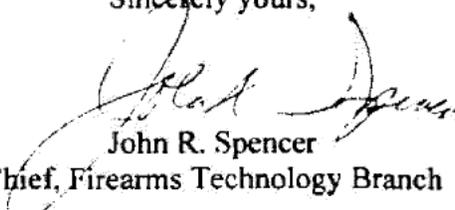
This is in reference to your submission and accompanying letter to the Firearms Technology Branch (FTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), asking for an evaluation of a replacement shoulder stock for an AR-15 type rifle. Your letter advises that the stock (referenced in this reply as a "bump-stock") is intended to assist persons whose hands have limited mobility to "bump-fire" an AR-15 type rifle. Your submission includes the following: a block to replace the pistol grip while providing retention for the selector stop spring; a hollow shoulder stock intended to be installed over the rear of an AR-15 fitting with a sliding-stock type buffer-tube assembly; and a set of assembly instructions.

The FTB evaluation confirmed that the submitted stock (see enclosed photos) does attach to the rear of an AR-15 type rifle which has been fitted with a sliding shoulder-stock type buffer-tube assembly. The stock has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed. In order to use the installed device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand. Accordingly, we find that the "bump-stock" is a firearm part and is not regulated as a firearm under Gun Control Act or the National Firearms Act.

Per your telephoned instructions, we will contact you separately to make return delivery arrangements.

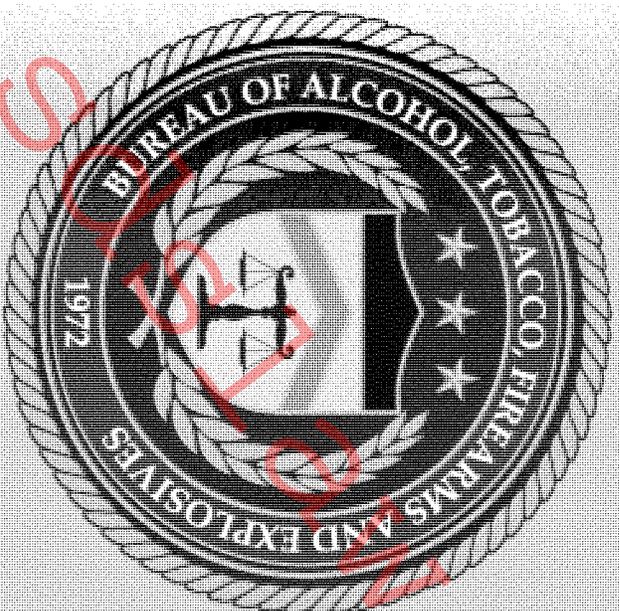
We thank you for your inquiry and trust that the foregoing has been responsive.

Sincerely yours,


John R. Spencer
Chief, Firearms Technology Branch

Enclosure

AR15-Type Conversions



**Bureau of Alcohol, Tobacco,
Firearms, and Explosives**

Firearms & Ammunition Technology Division

AR-15 Conversions and Conversion Devices



WWW.SportsTrs.com

AR-15 Conversions and Conversion devices

- Identify the manufacturer of the receiver
- Note all markings on the receiver
- Is it a factory machinegun?
- Has it been modified?

AR-15 Conversions and Conversion Devices

A complete conversion of an AR15 type into an M16 type machinegun incorporates the following:

- Hole drilled through the L/R receiver wall above the selector lever for the automatic sear to be installed.
- Cross pin for the automatic sear installed
- Interior of receiver cavity milled to accept the automatic sear. Interior may show bare metal.
- Installation of M16 type components: Hammer, trigger, disconnect, selector, automatic sear, and bolt carrier.

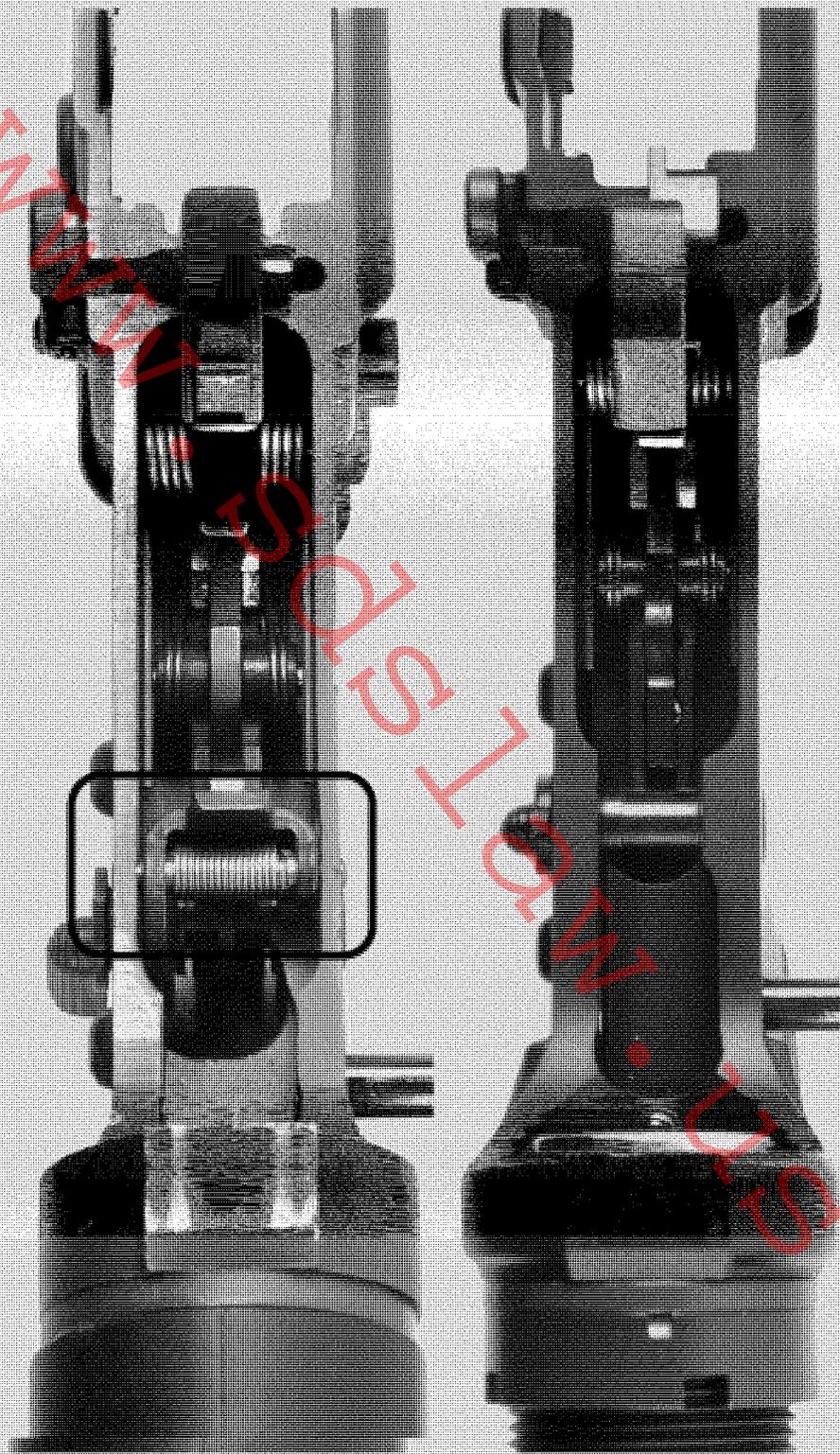


AR15 receiver

M16 receiver. Notice the M16 machinegun sear retaining pin.



Machinegun sear installed

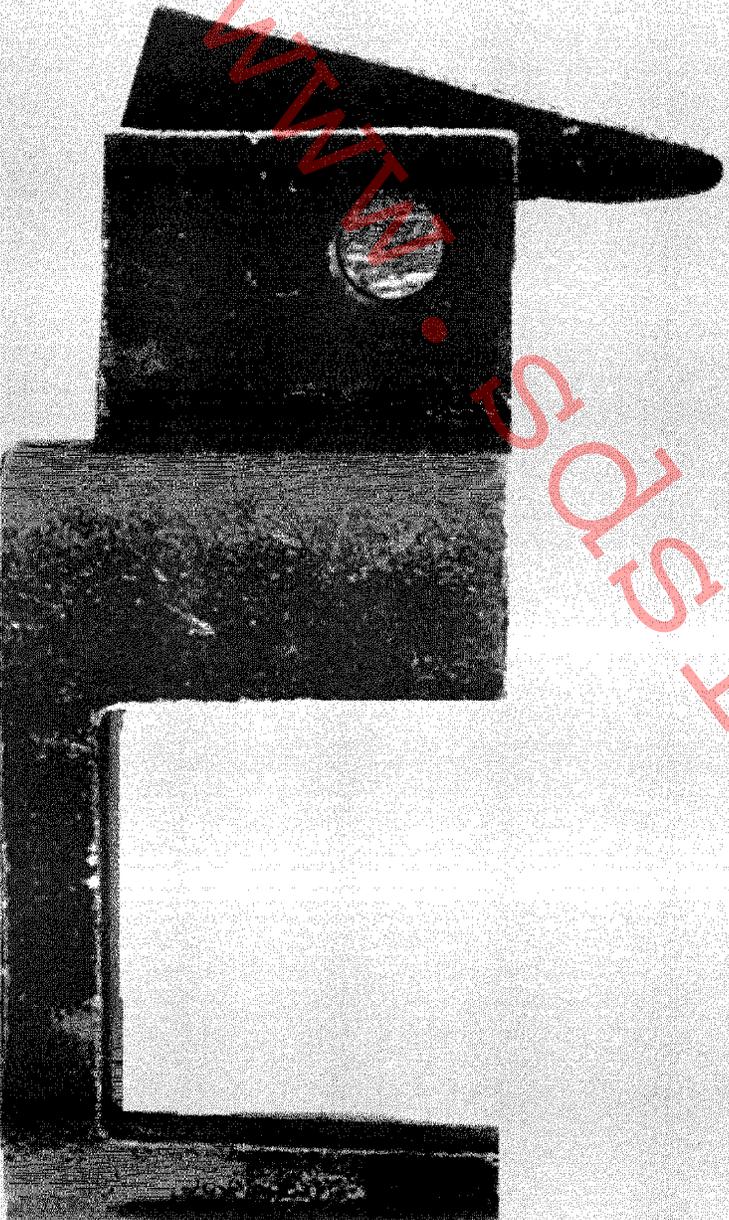


AR-15 Conversions and Conversion Devices

- Install M16 fire-control components and a Drop-in Auto Sear (DIAS).
- Generally does not require any modifications to the receiver.
- Installation of an M16 bolt carrier, hammer, trigger, disconnect and selector only - will fire automatically on “hammer follow”.

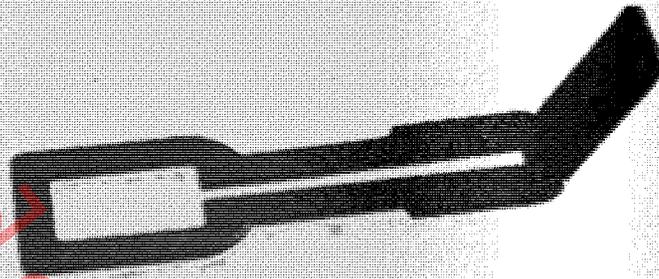
Drop-in Auto Sear “DIAS”

- Requires the installation of M16 components.
- Replicates the M16 Machinegun sear.
- Is a machinegun in and of itself.



AR-15 Conversions And Conversion Devices

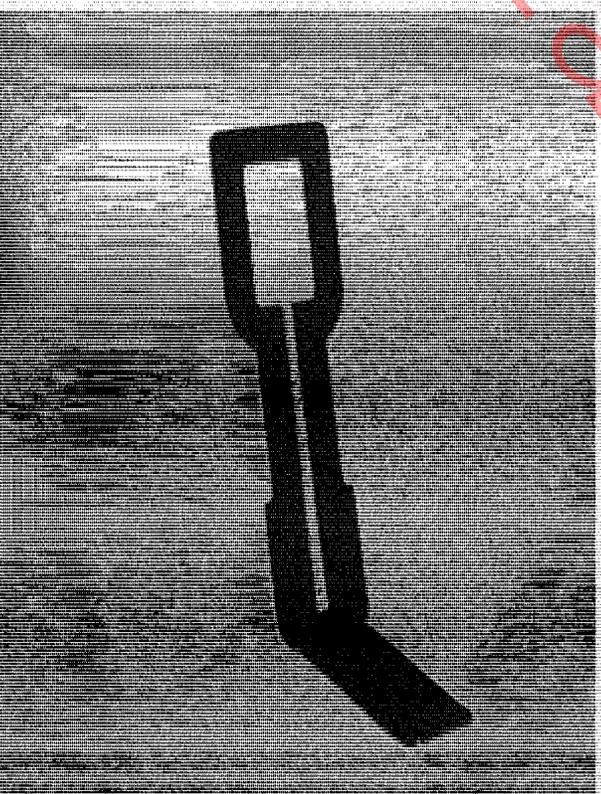
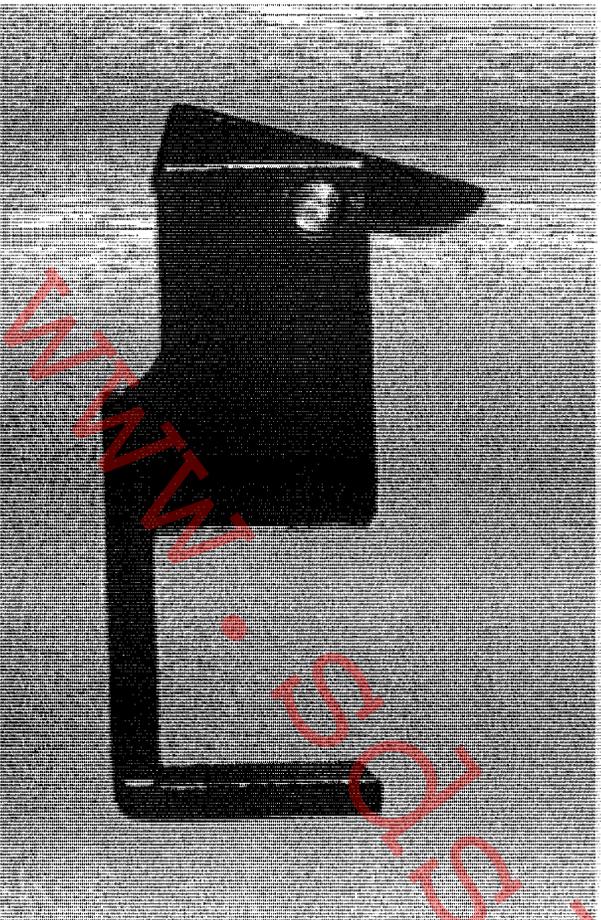
Installation of the auto connector “Lightning Link”



- No alterations or modifications to the receiver.
- AR-15 components remain in the receiver.

AR-15 Drop-in Conversions

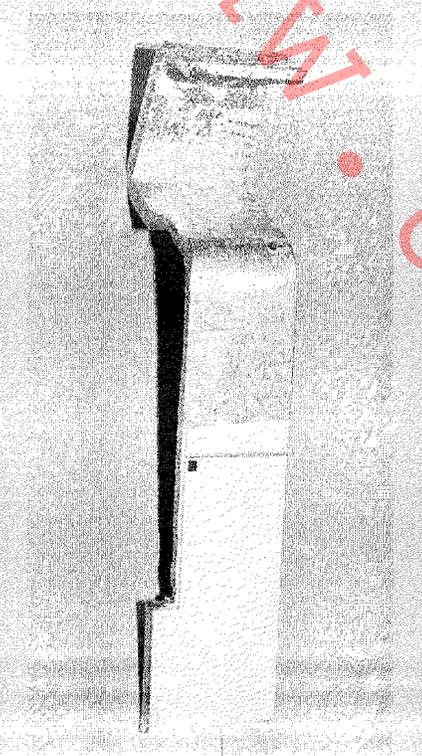
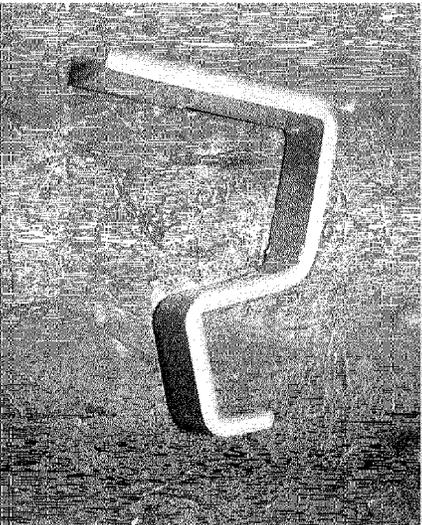
AR-15 Drop-in Auto Sear



Auto Connector
"Lightning Link"

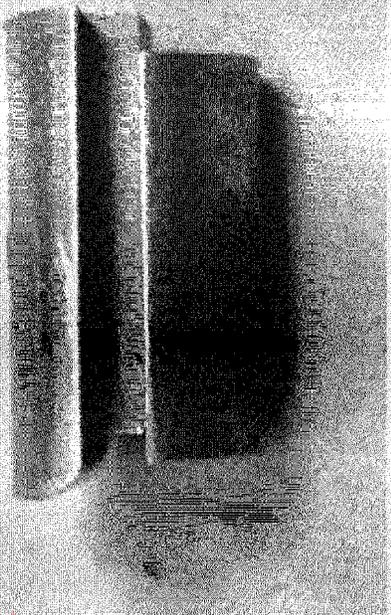
AR-15 Drop-in Conversions

“Swift Link”

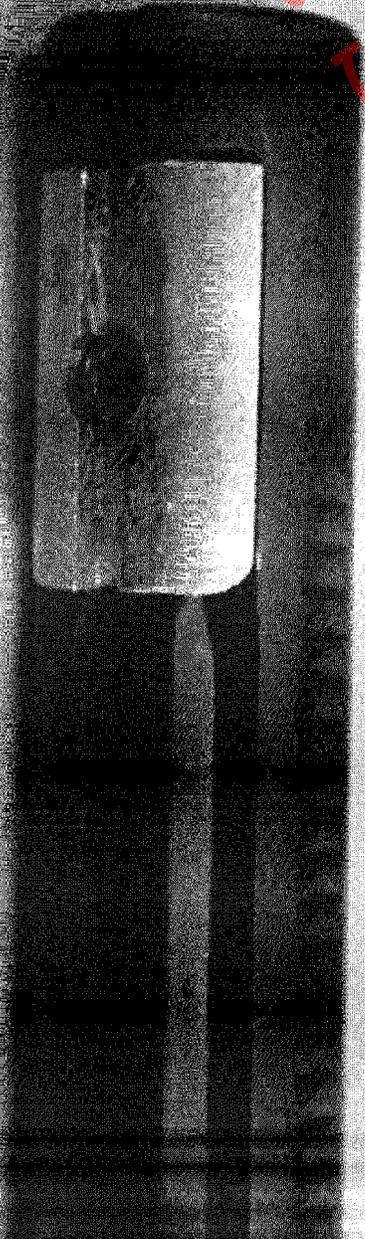


- Installed in rear receiver interior
- Works somewhat like a “Lightning Link”
- Requires M-16 type bolt carrier to function
- Classified as a “machinegun”

AR-15 Bolt Carrier Adaptor



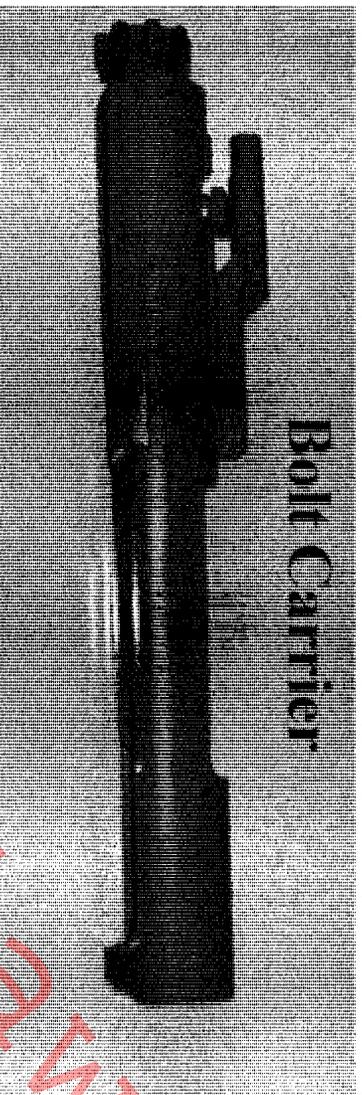
AR-15 Bolt Carrier



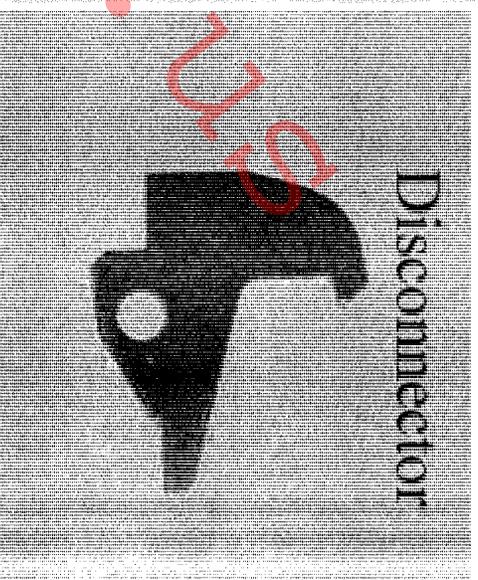
WWW.MMM

ST.M.S. • ST.M.S. • ST.M.S.

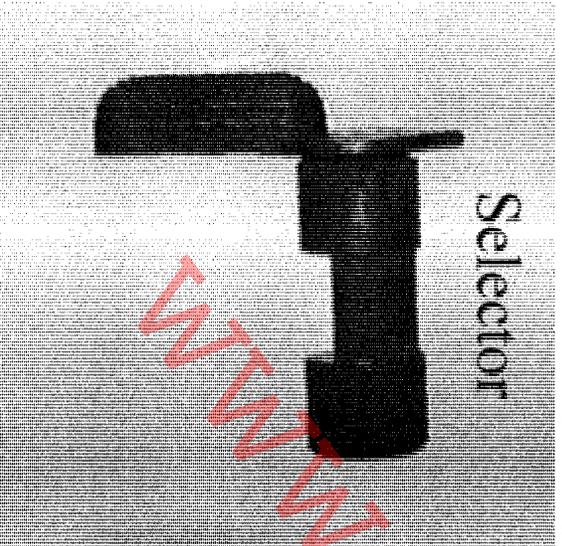
AR-15 Components



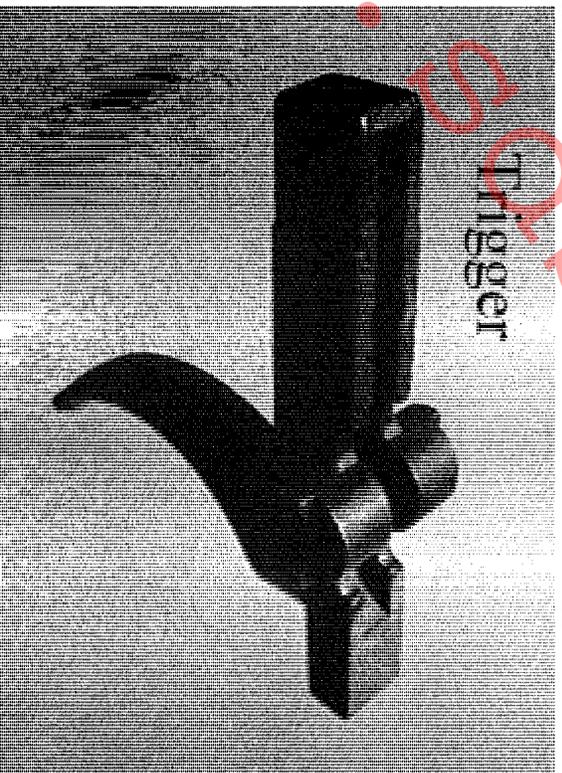
Bolt Carrier



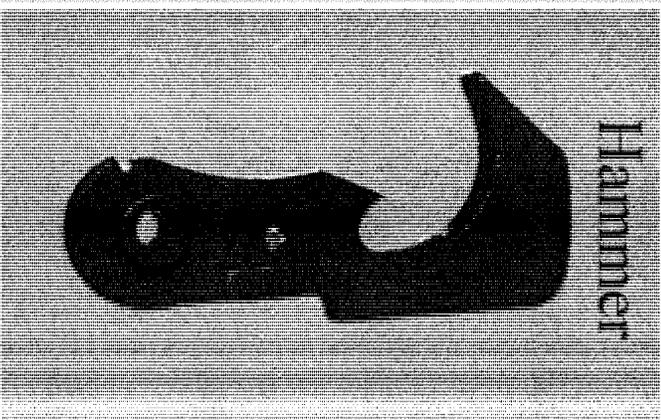
Disconnect



Selector



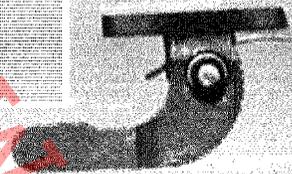
Trigger



Hammer

M16 Components

Auto Sear



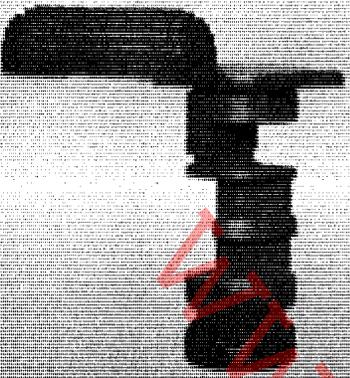
Bolt Carrier



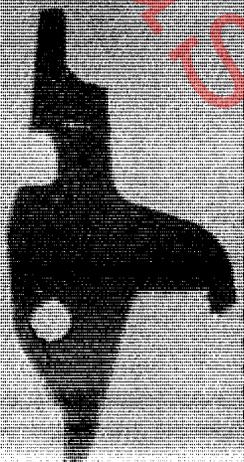
Trigger



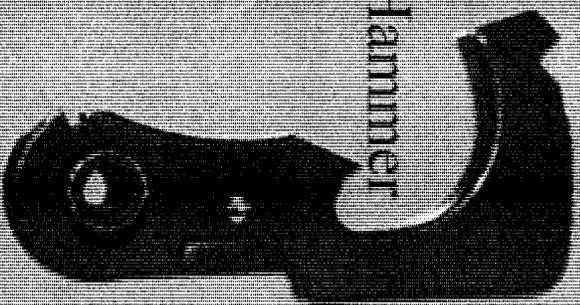
Selector



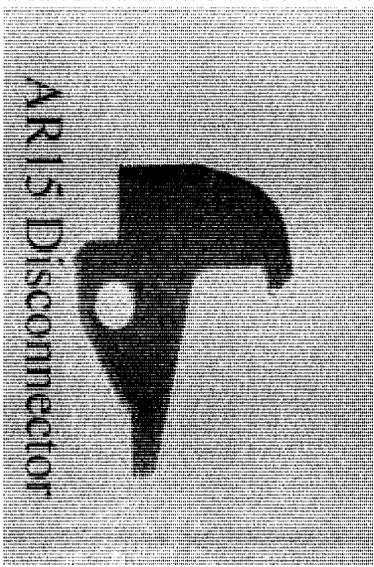
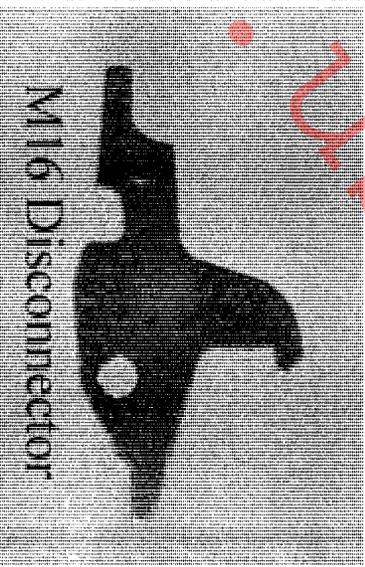
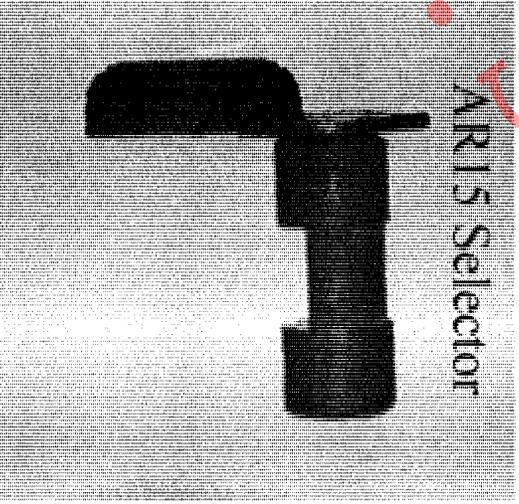
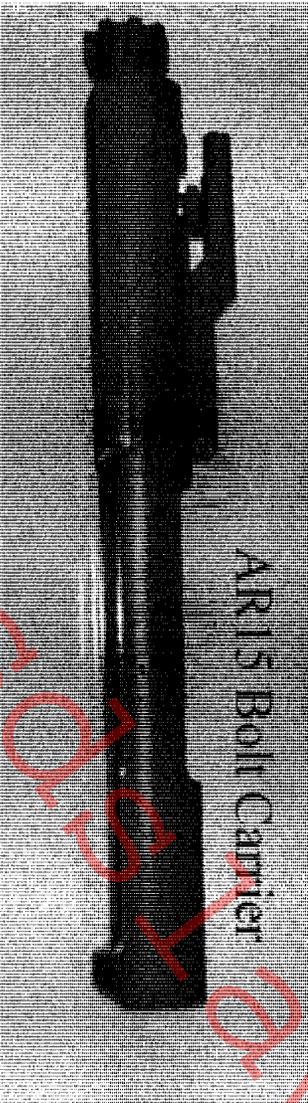
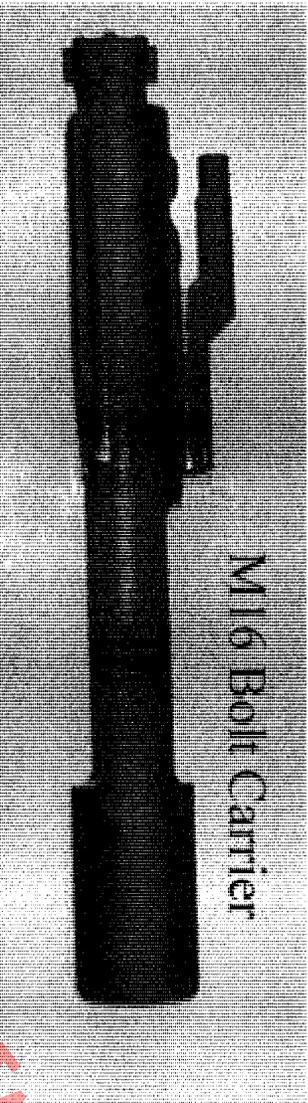
Disconnecter



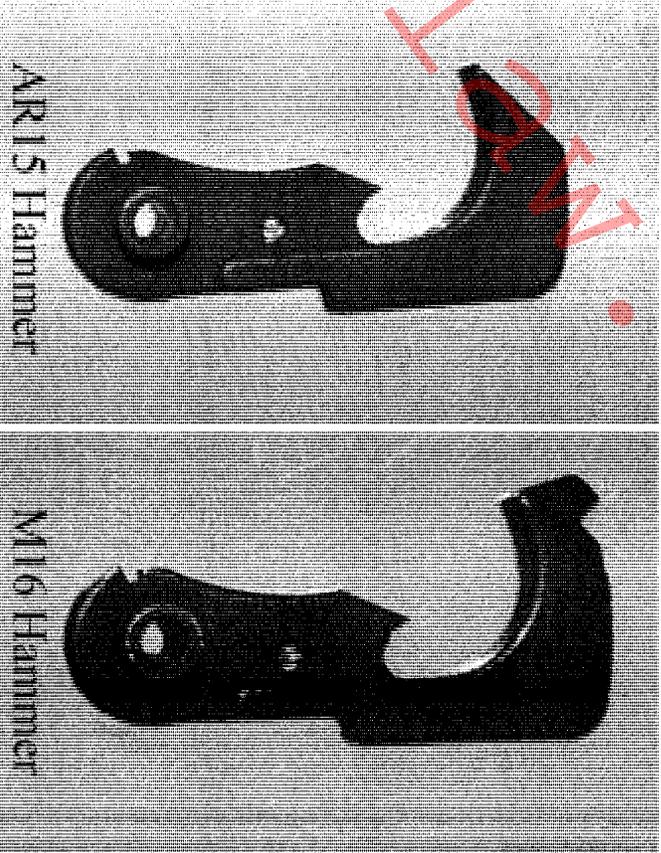
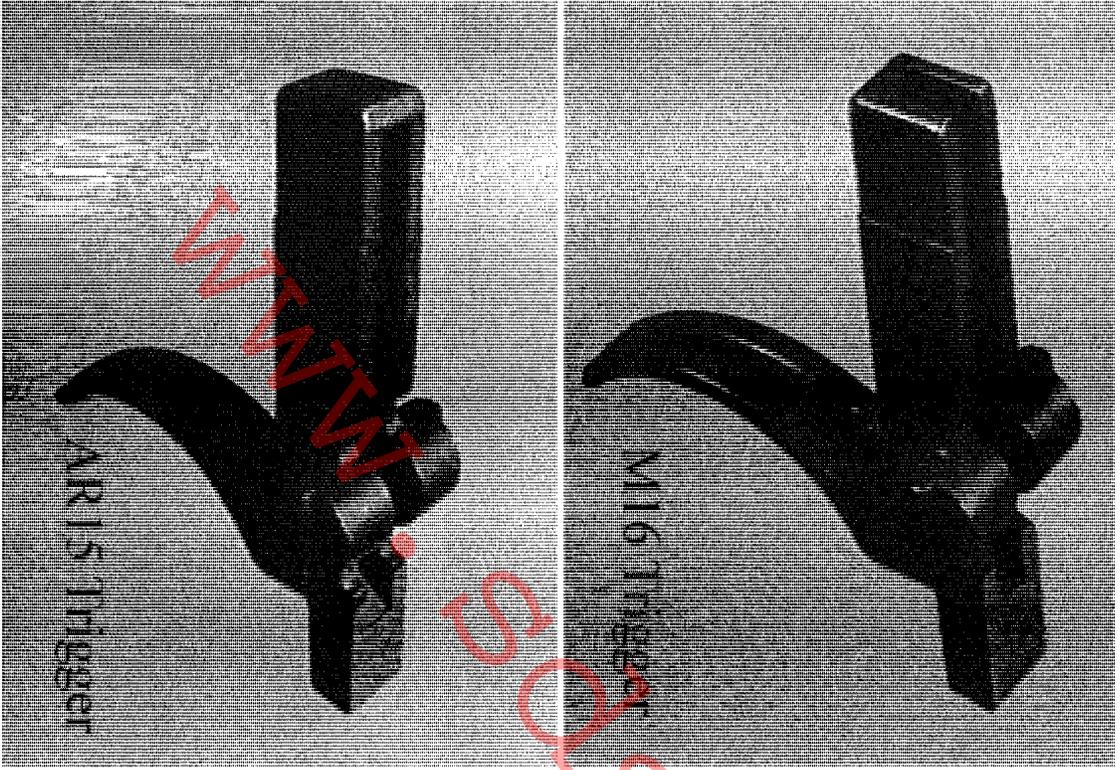
Hammer



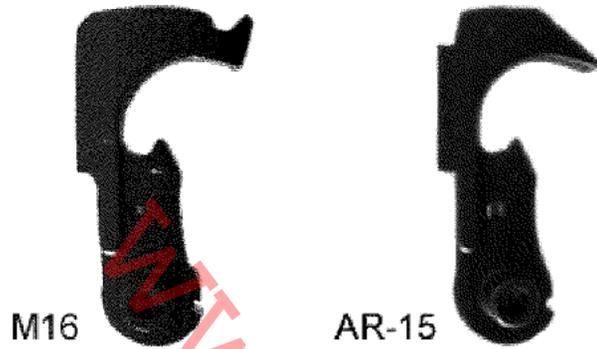
Comparison



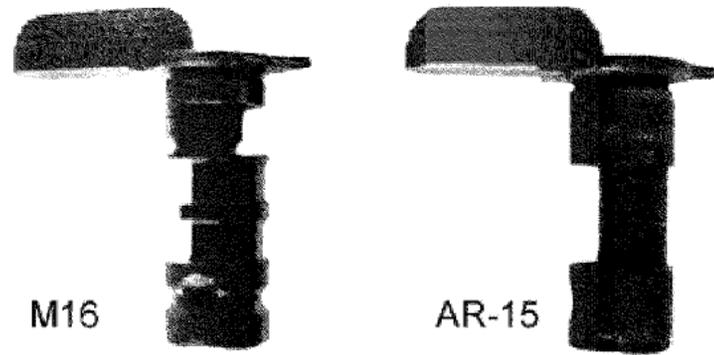
Comparison



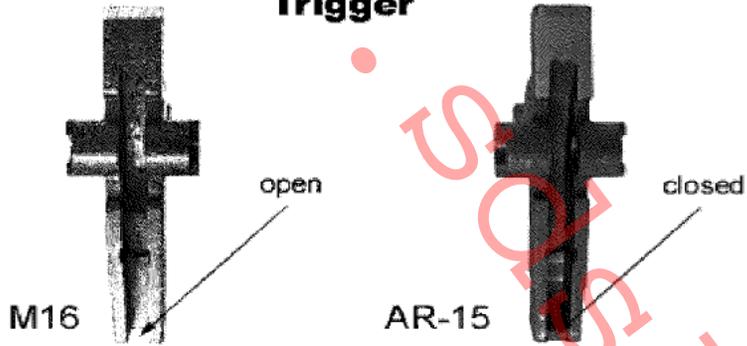
Hammer



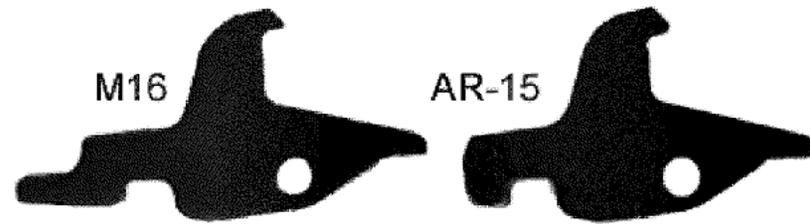
Selector



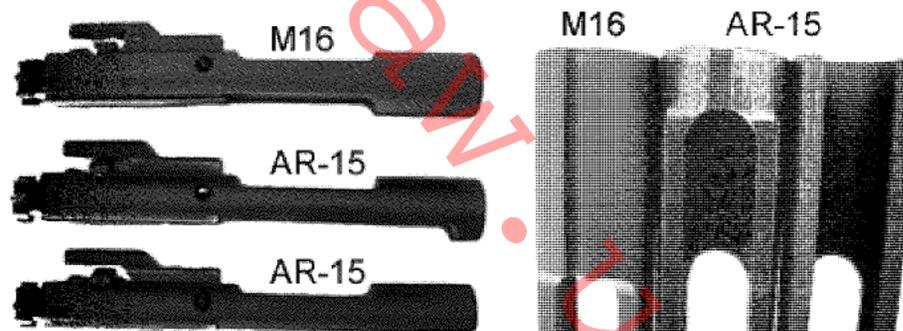
Trigger



Disconnecter



Bolt Carrier



To: Brandon, Thomas E. (b) (6)]
From: (b) (6)
Sent: Mon 10/2/2017 6:25:09 PM
Subject: RE: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed
[M16 vs AR receiver.docx](#)
[2010 434 MMK Photos.pdf](#)
[WF#74544 Signed Response.pdf](#)
[AR15 Conversions.pdf](#)

Sir,



Easrl

From: Brandon, Thomas E.
Sent: Monday, October 2, 2017 12:30 PM
To: (b) (6) >
Subject: Fwd: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed

(b) (6), are these "ATF approved" as advertised? Thanks, Tom

Sent from my iPad
Begin forwarded message:

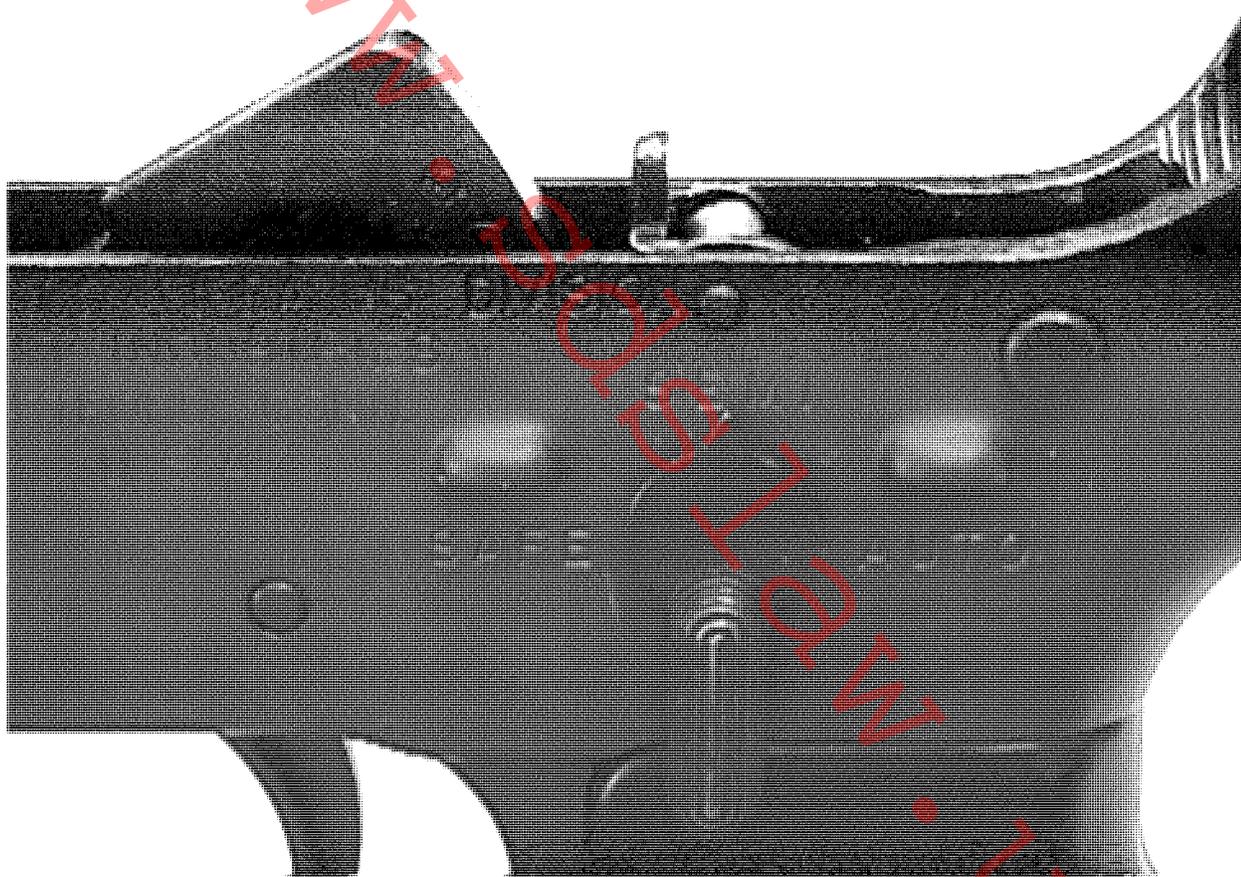
From: <Thomas.Brandon(b) (6) >
Date: October 2, 2017 at 12:24:41 PM EDT
To: (b) (6)
Subject: Bump Fire Videos and Reviews | Slide Fire® Freedom Unleashed

<http://www.slidefire.com/videos>

Sent from my iPad

M-16 type Machinegun

M-16 type machinegun with auto sear pin hole drilled. Once the auto sear pin hole is drilled it becomes a machinegun under the NFA and all controls apply. A receiver without the hole drilled would not be a machinegun per the NFA. The second picture depicts an AR-15 type receiver without the sear pin hole drilled, therefore only a GCA semiautomatic (Title 1) firearm.









U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

JUN 07 2010

903050(b) (6)
3311/2010-434

(b) (6)

P.O. Box 3175
Albany, Texas 76430

Dear (b) (6)

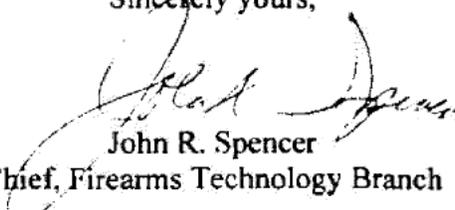
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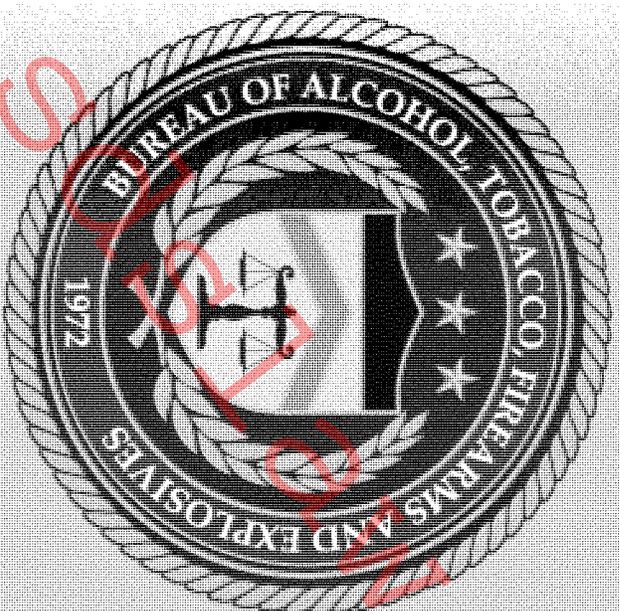
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Chief, Firearms Technology Branch

Enclosure

AR15-Type Conversions



**Bureau of Alcohol, Tobacco,
Firearms, and Explosives**

Firearms & Ammunition Technology Division

AR-15 Conversions and Conversion Devices



AR-15 Conversions and Conversion devices

- Identify the manufacturer of the receiver
- Note all markings on the receiver
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AR-15 Conversions and Conversion Devices

A complete conversion of an AR15 type into an M16 type machinegun incorporates the following:

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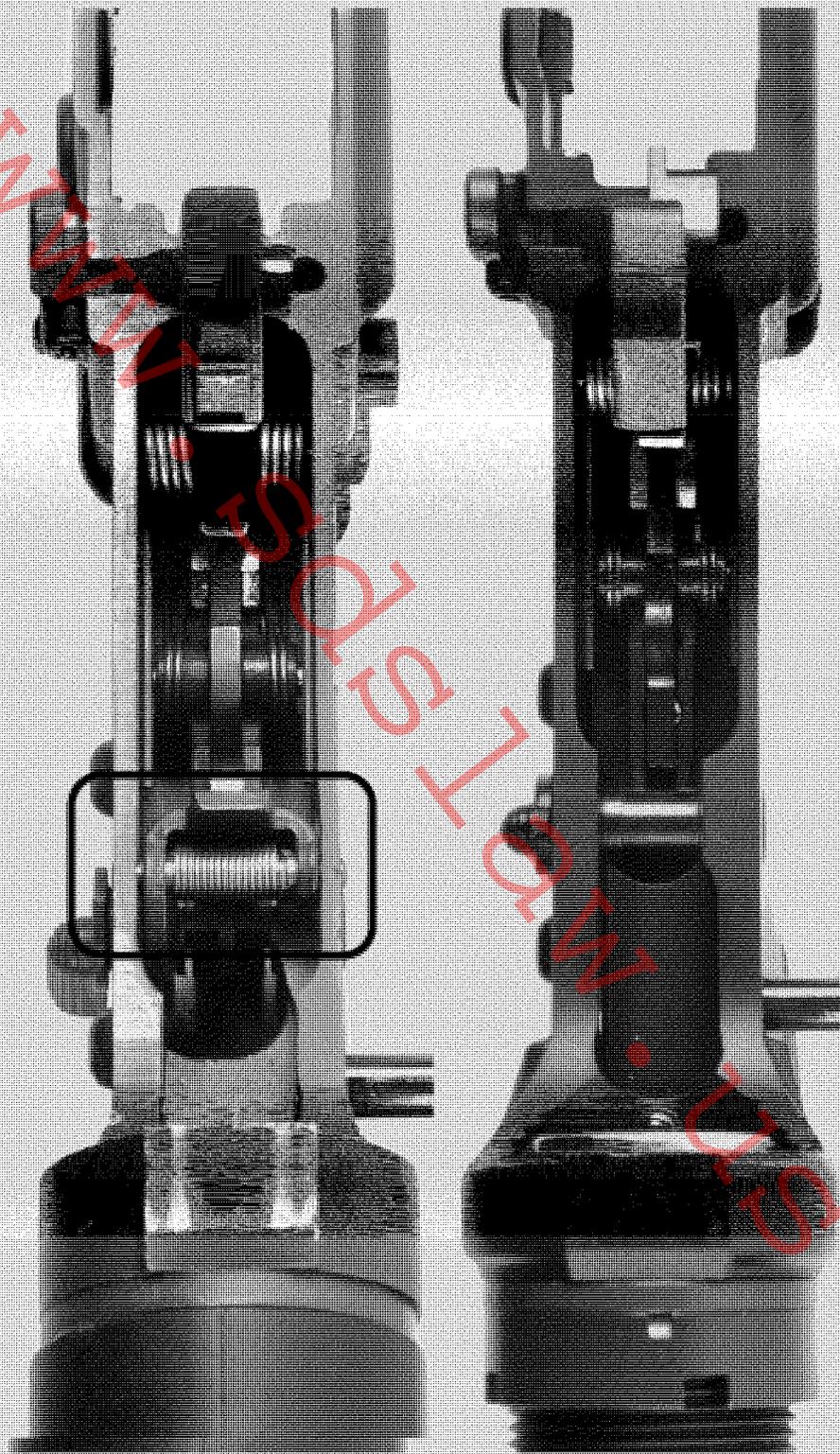


AR15 receiver

M16 receiver. Notice the M16 machinegun sear retaining pin.



Machinegun sear installed

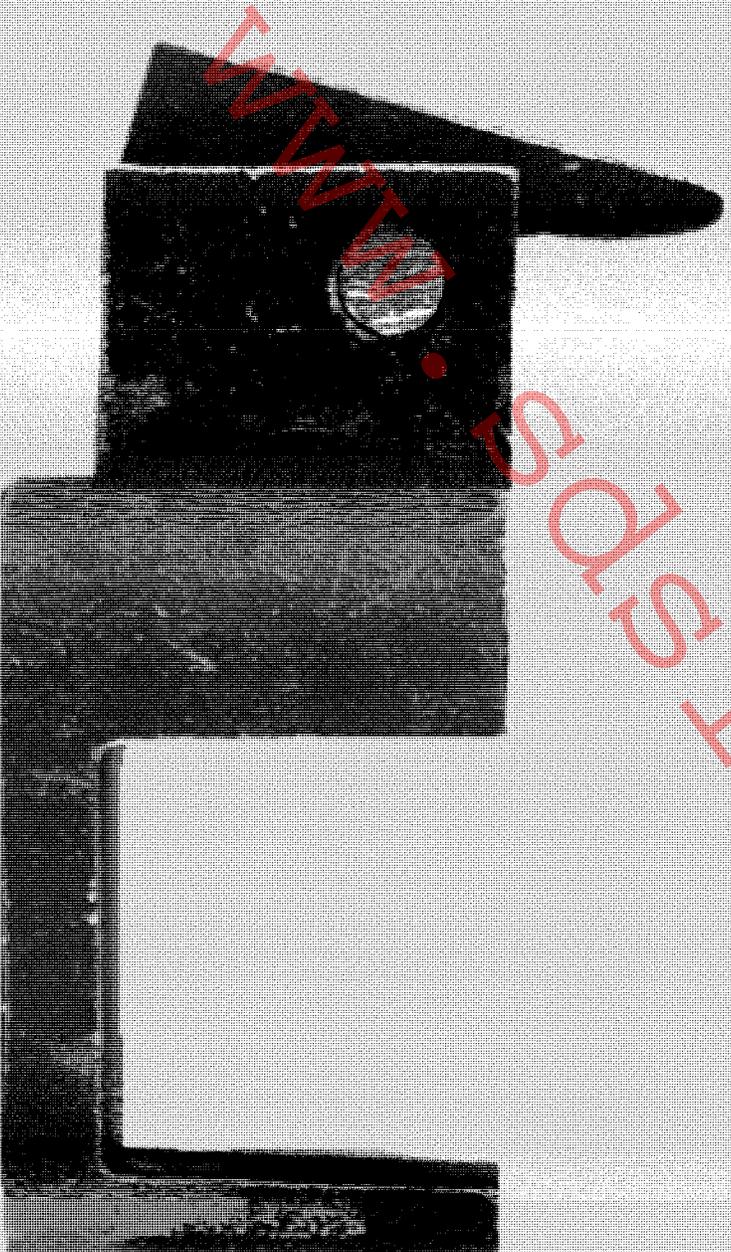


AR-15 Conversions and Conversion Devices

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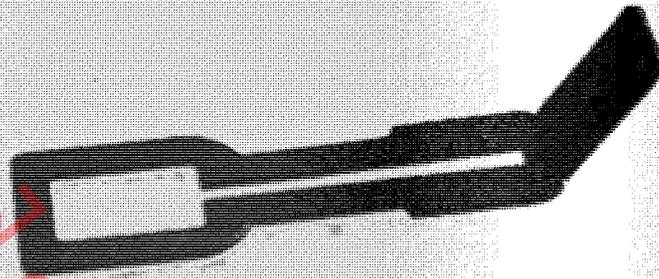
Drop-in Auto Sear "DIAS"

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AR-15 Conversions And Conversion Devices

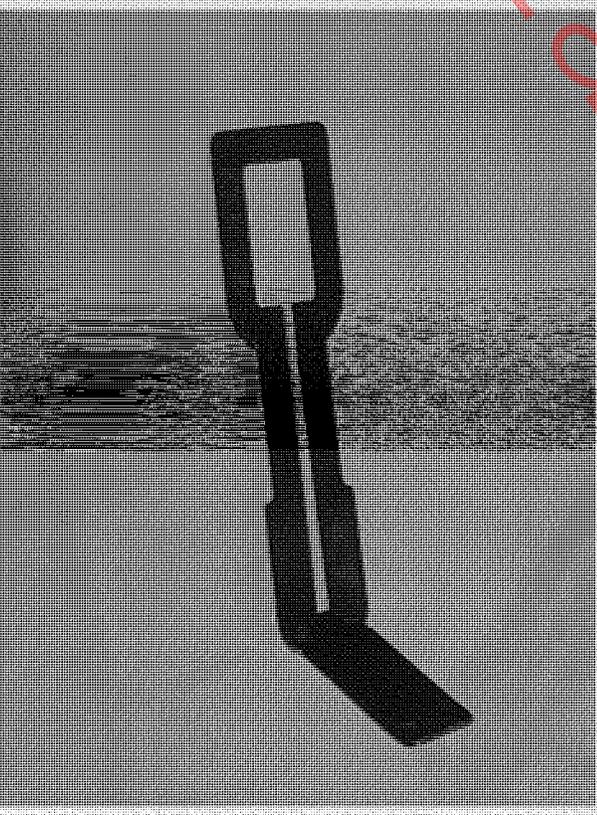
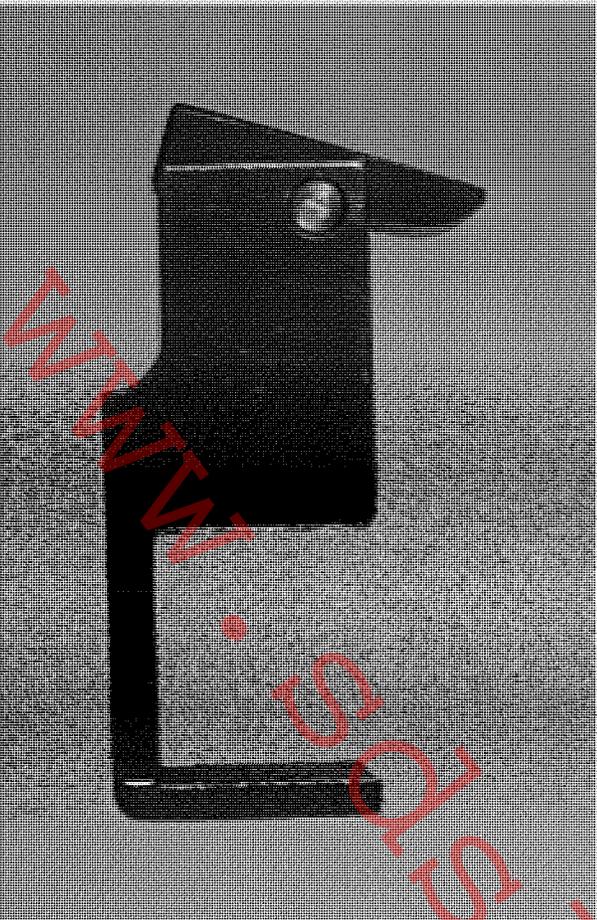
Installation of the auto connector “Lightning Link”



- No alterations or modifications to the receiver.
- AR-15 components remain in the receiver.

AR-15 Drop-in Conversions

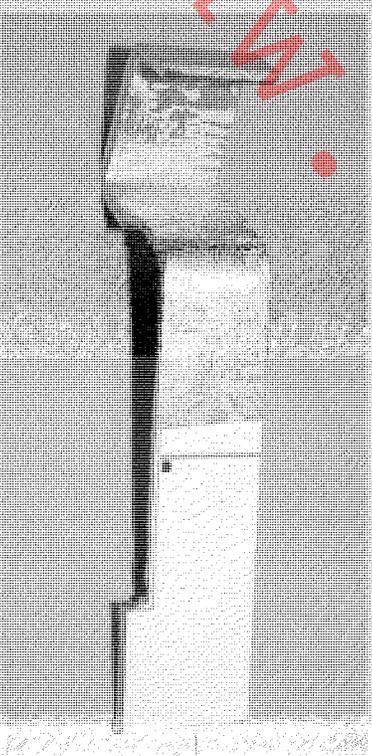
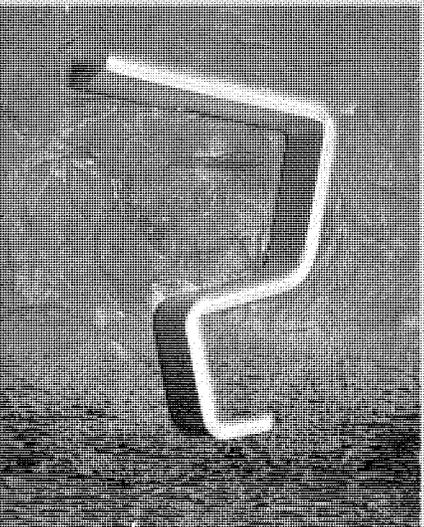
AR-15 Drop-in Auto Sear



Auto Connector
"Lightning Link"

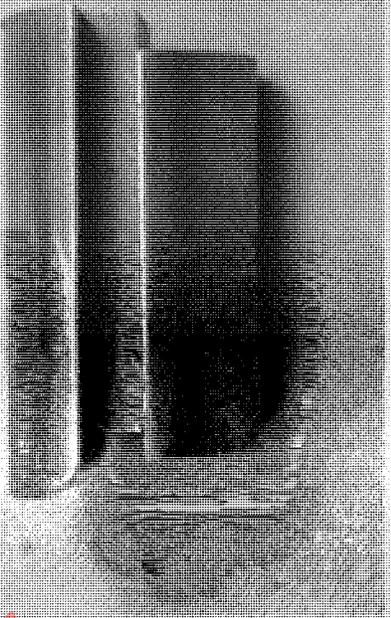
AR-15 Drop-in Conversions

“Swift Link”

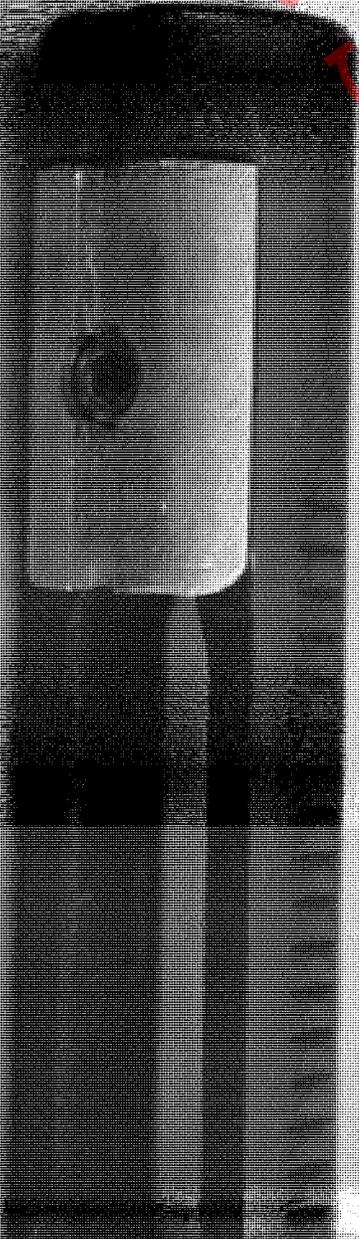


- Installed in rear receiver interior
- Works somewhat like a “Lightning Link”
- Requires M-16 type bolt carrier to function
- Classified as a “machinegun”

AR-15 Bolt Carrier Adaptor



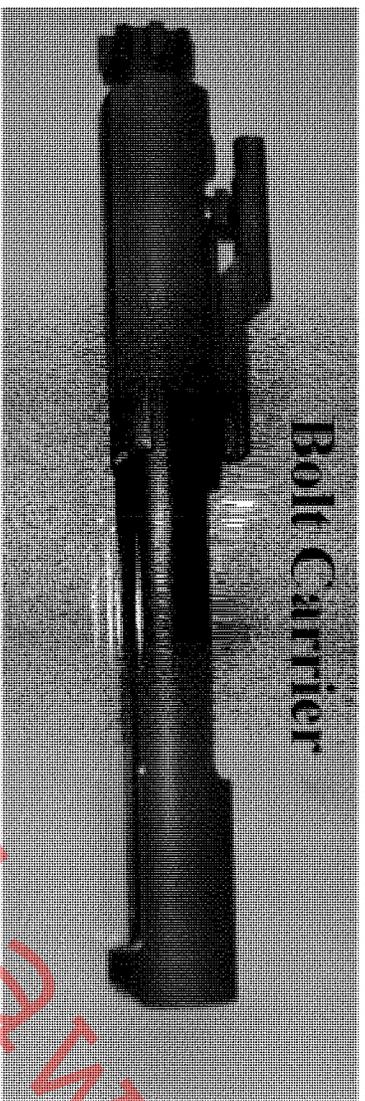
AR-15 Bolt Carrier



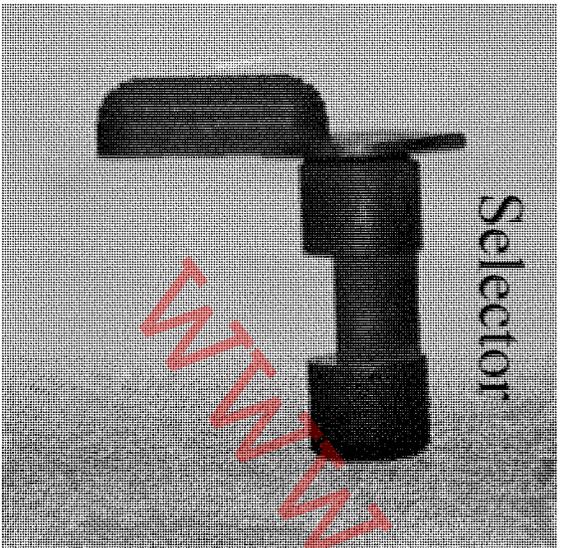
WWW.MMM

WWW.MMM.COM

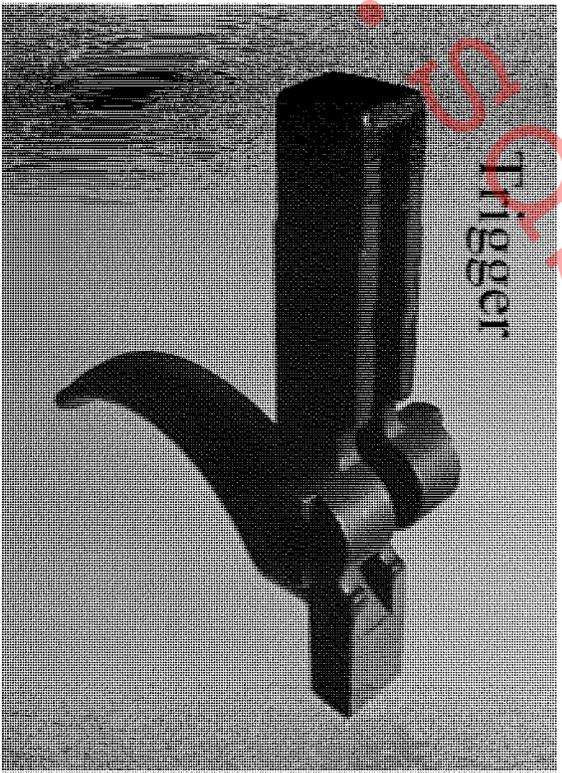
AR-15 Components



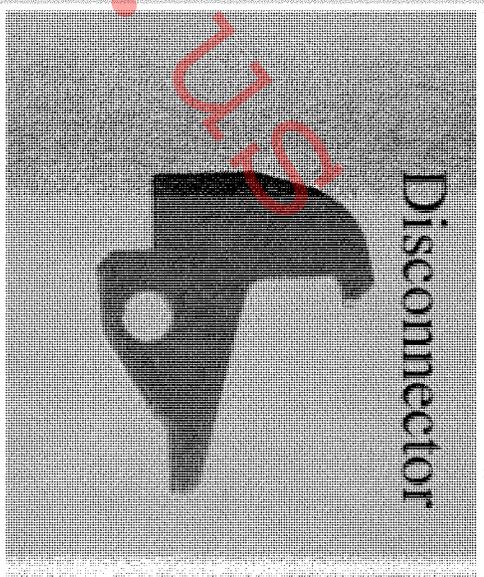
Bolt Carrier



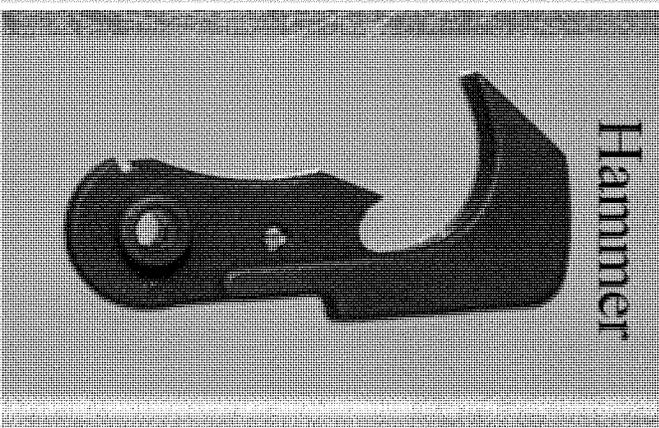
Selector



Trigger



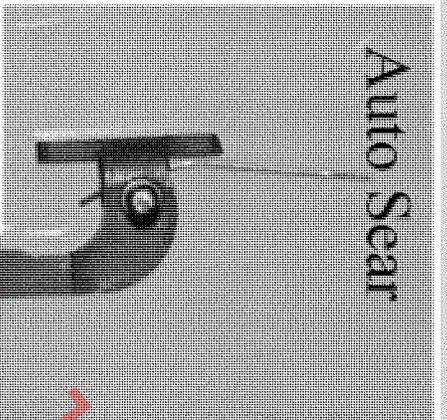
Disconnecter



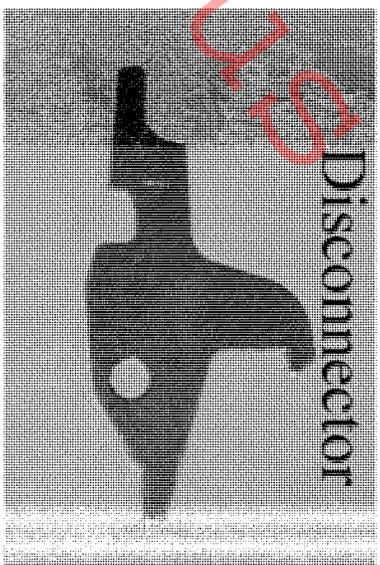
Hammer

M16 Components

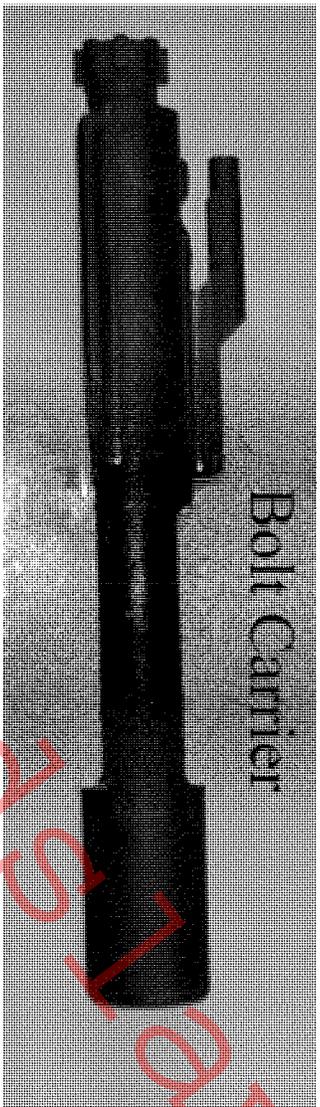
Auto Sear



Disconnecter



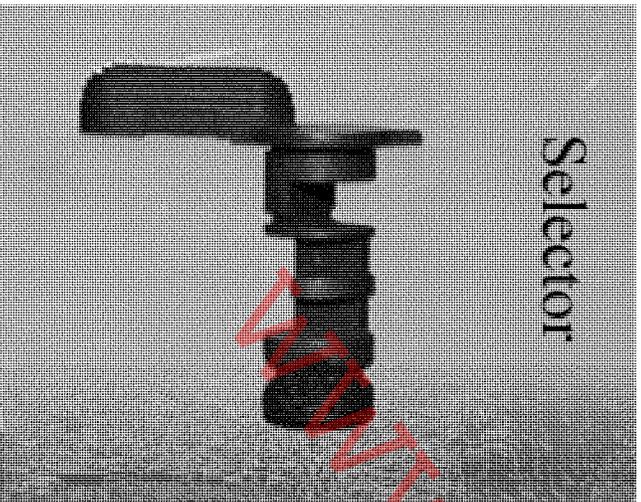
Bolt Carrier



Trigger



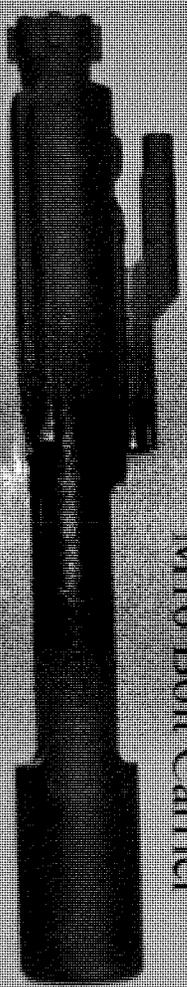
Selector



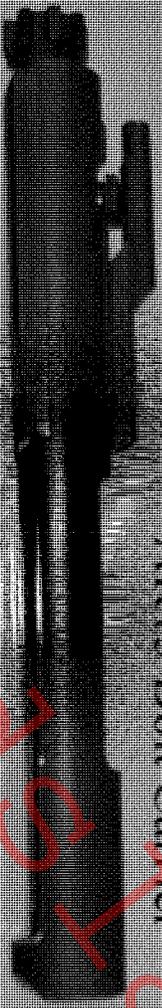
Hammer



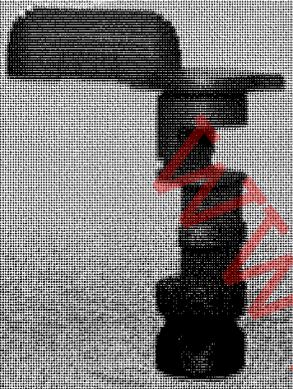
Comparison



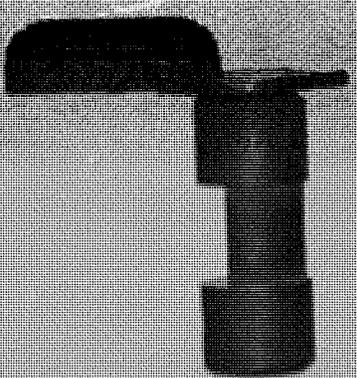
M16 Bolt Carrier



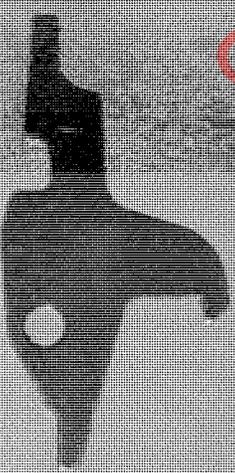
AR15 Bolt Carrier



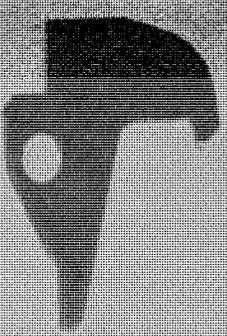
M16 Selector



AR15 Selector

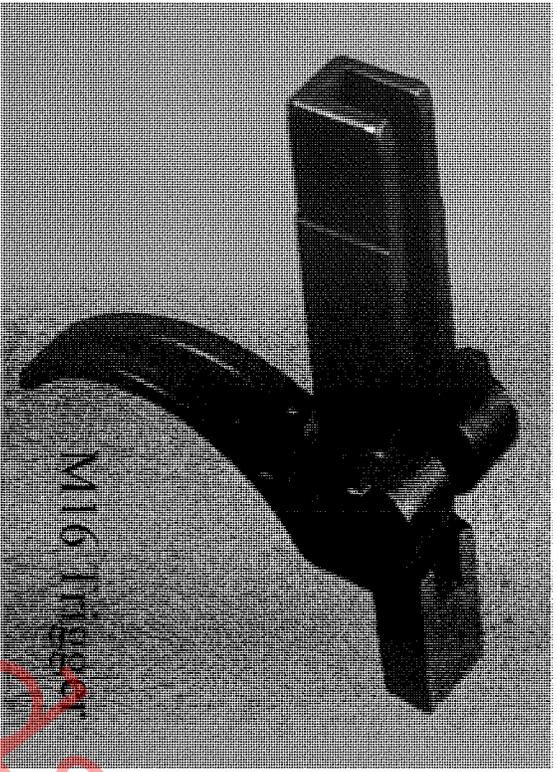
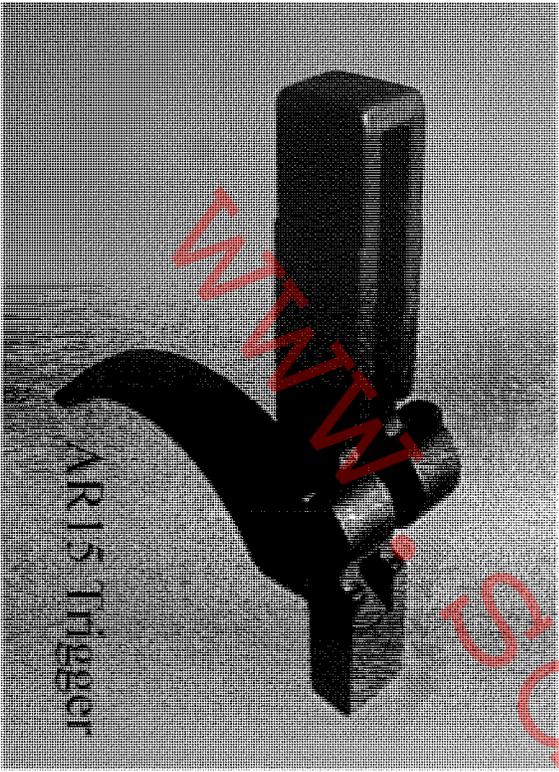


M16 Disconnecter

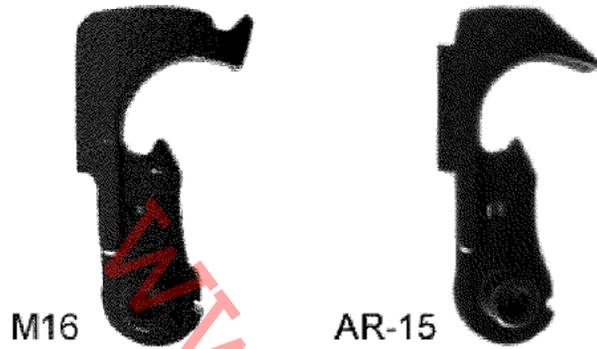


AR15 Disconnecter

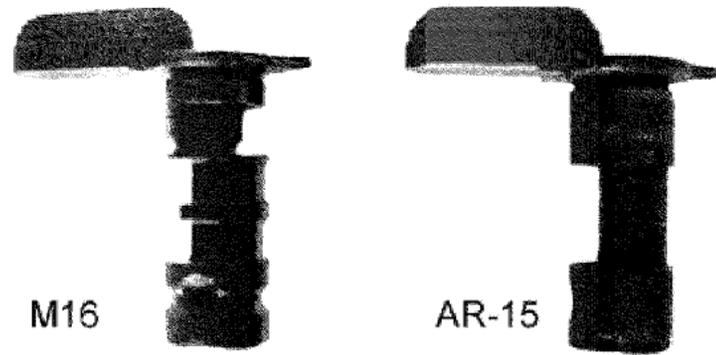
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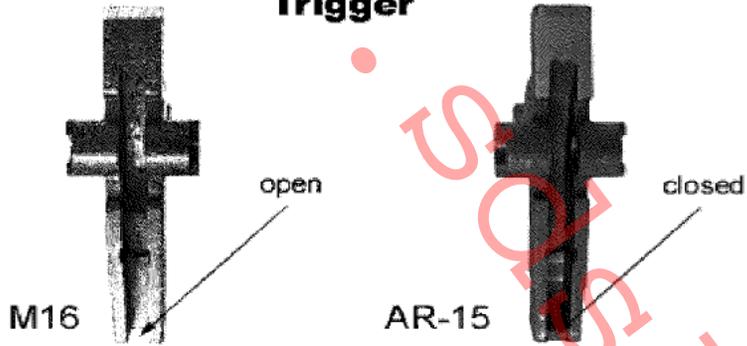
Hammer



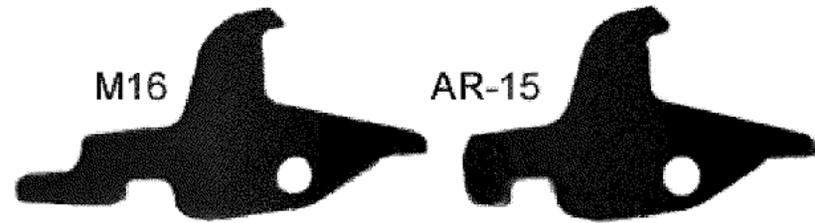
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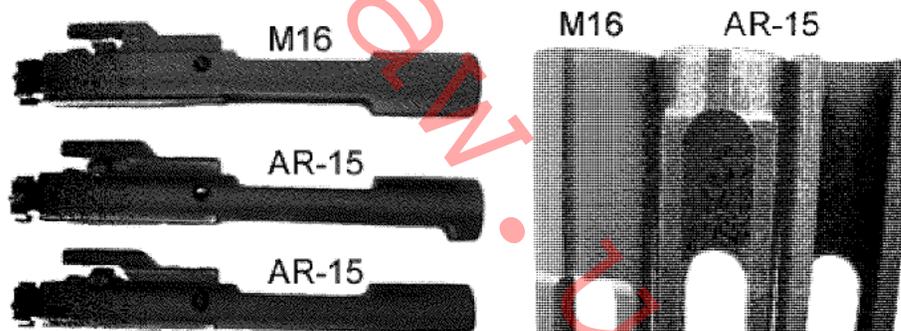
Trigger



Disconnecter



Bolt Carrier



Page 1238

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of Chief Counsel

Washington, DC 20226

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October 5, 2017

200000(b) (6)

MEMORANDUM TO: Office of the Attorney General
United States Department of Justice

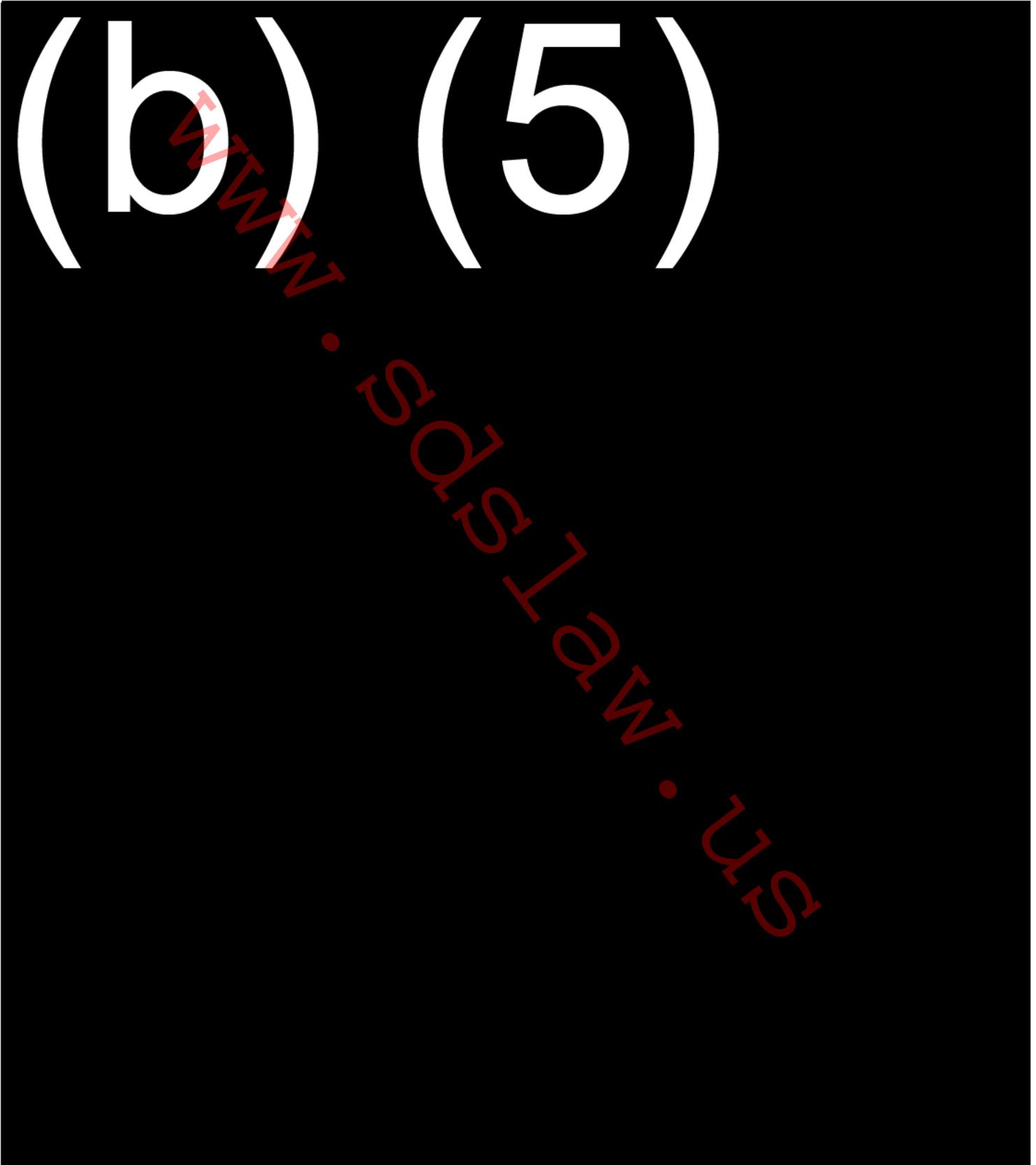
FROM: Chief Counsel
Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT: Legality of "Bump-Fire" Rifle Stocks

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General



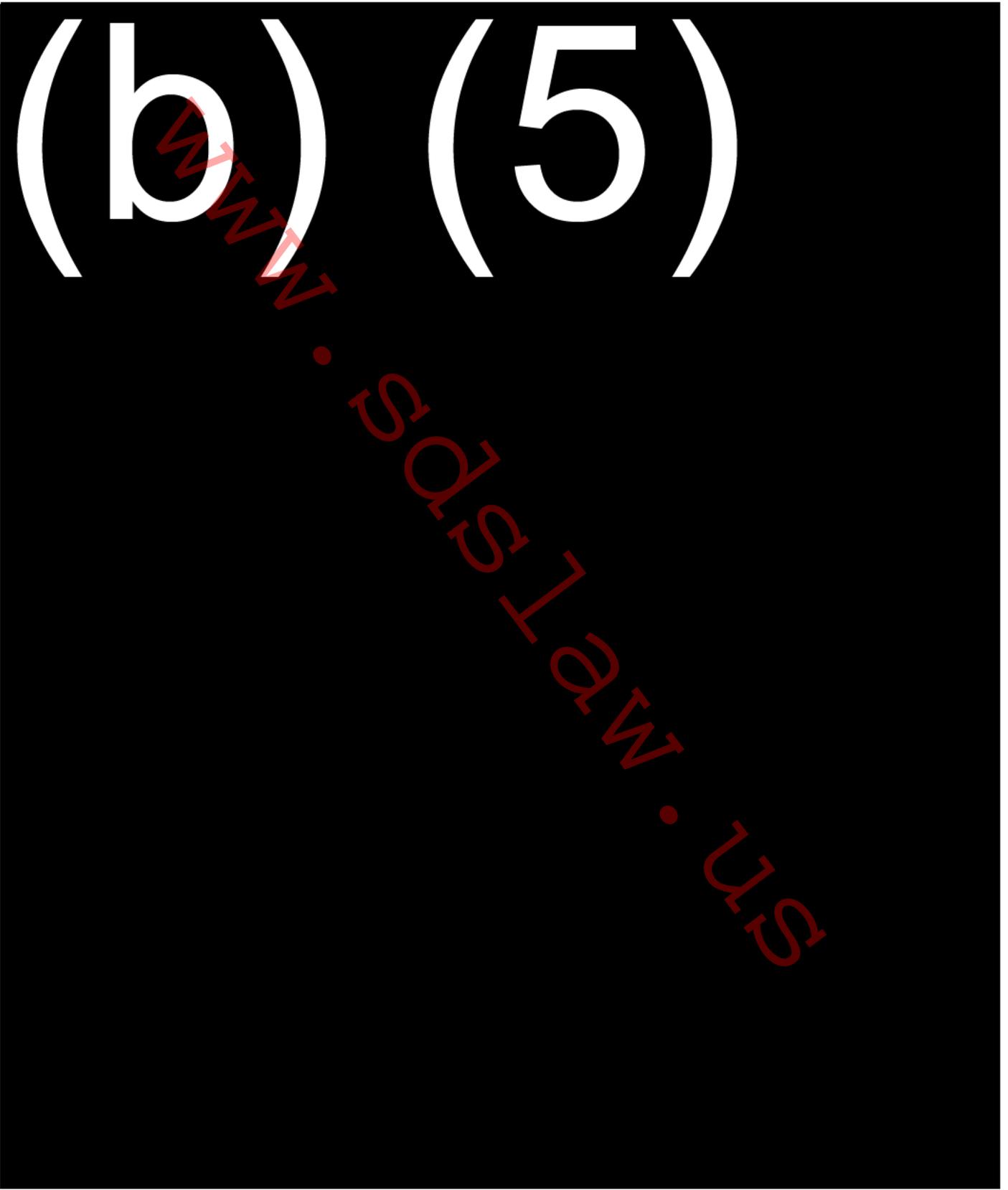
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Office of the Attorney General

(b) (5)

PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Office of the Attorney General



PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: Allen, Joseph J. (b) (6)
(b) (6)
Cc: Roessner, Joel J. (b) (6)
From: Gross, Charles R.
Sent: Thur 10/5/2017 7:09:34 PM
Subject: Memo re 'Bump Fire' Stocks ja (b) (6) - 10-5-17 v2
Memo re 'Bump Fire' Stocks ja (b) (6) 10-5-17 v2.docx

Fyi – final version

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PREDECISIONAL - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION