

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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

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MERRICK B. GARLAND,)

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v.) No. 22-976

MICHAEL CARGILL,)

Respondent.)

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Washington, D.C.

Wednesday, February 28, 2024

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

APPEARANCES:

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

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

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	BRIAN H. FLETCHER, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	JONATHAN F. MITCHELL, ESQ.	
7	On behalf of the Respondent	47
8	REBUTTAL ARGUMENT OF:	
9	BRIAN H. FLETCHER, ESQ.	
10	On behalf of the Petitioners	112
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
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11
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P R O C E E D I N G S

(10:03 a.m.)

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

Mr. Fletcher.

ORAL ARGUMENT OF BRIAN H. FLETCHER

ON BEHALF OF THE PETITIONERS

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

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

First, a rifle with a bump stock fires

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

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

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

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

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

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

14 I welcome the Court's questions.

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

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

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

1 on it or anything else?

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

6 JUSTICE THOMAS: Yeah.

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

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

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

20 JUSTICE THOMAS: So what -- what --

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

23 JUSTICE THOMAS: -- is happening with
24 the -- a trigger-initiated firing of a
25 machinegun? What do I have to do other than

1 depress the trigger?

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

8 JUSTICE THOMAS: Okay. With --

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

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

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

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

1 They're just the result of the --

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

5 MR. FLETCHER: So this is the man --
6 the unassisted manual bump firing --

7 JUSTICE THOMAS: Yeah.

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

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

21 MR. FLETCHER: The same thing's
22 happening with the trigger, and I think that's
23 why we would say, with manual bump firing, there
24 is just a single function of the trigger.
25 There's one action that initiates the firing

1 sequence. We think it's not automatic because
2 there's no self-regulating mechanism. The user
3 is having to do all of the work that the bump
4 stock automates for you on a rifle fitted with a
5 bump stock.

6 CHIEF JUSTICE ROBERTS: I'm have --

7 JUSTICE BARRETT: What about -- oh.

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

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

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

23 CHIEF JUSTICE ROBERTS: Continuous --
24 continuously pushing forward or --

25 MR. FLETCHER: You --

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

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

7 CHIEF JUSTICE ROBERTS: Yeah.

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

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

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

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

10 MR. FLETCHER: Exactly.

11 JUSTICE KAGAN: Is that right?

12 MR. FLETCHER: Exactly right. I think
13 that's exactly what the district court found.

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

18 MR. FLETCHER: Mm-hmm.

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

22 MR. FLETCHER: Yeah.

23 JUSTICE BARRETT: -- bands and you can
24 do it with your belt loop.

25 So what if I design and market

1 something I call a bump band to help me turn my
2 semiautomatic, you know --

3 MR. FLETCHER: Yeah.

4 JUSTICE BARRETT: -- in the same way?
5 Why wouldn't that then be a machinegun under the
6 statute?

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

18 And what makes a bump stock different
19 is that it's a device that is built for just
20 this purpose. It has the finger ledge that
21 holds your finger in place, but then it also has
22 a sliding function built in so that when a shot
23 is fired, the recoil automatically pushes the
24 rifle back, lets it disengage from the trigger
25 so the shooter doesn't have to manually release

1 it, and then allows it to slide forward again,
2 again, just the right distance in just the right
3 direction.

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

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

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

22 Let's imagine someone builds a fully
23 automatic machinegun, and I won't try to come up
24 with the technology for exactly how this is
25 going to happen, but they install a tripwire on

1 their property and they just leave the gun there
2 unattended, walk away. Somebody trips the wire
3 and then it begins shooting lots of rounds.

4 MR. FLETCHER: Yeah.

5 JUSTICE BARRETT: Does that satisfy
6 your definition of a machinegun?

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

8 JUSTICE BARRETT: Why?

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

17 That's an unusual way to activate a
18 machinegun, obviously, but I think, even if it's
19 a tripwire, that's still one act by a person
20 that initiates a multi-shot fire.

21 JUSTICE BARRETT: But it's an
22 unintentional act in the same way you might say
23 if your finger -- because, for the bump stock to
24 work, you still have to have your finger right
25 there, right?

1 MR. FLETCHER: You do, yeah.

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

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

18 JUSTICE BARRETT: You push.

19 MR. FLETCHER: You initiate by
20 pushing. And what the expert said and the
21 district court found is you could replace your
22 trigger finger with a little plastic post
23 attached to the bump stock and it would work in
24 exactly the same way.

25 So it's -- it's true that you have to

1 keep your finger there, and if you moved your
2 finger away, the bump firing sequence would
3 stop, but that's a pretty trivial additional
4 piece of input from the shooter. Really, what's
5 starting and continuing the sequence is the push
6 forward.

7 JUSTICE BARRETT: Thank you.

8 JUSTICE JACKSON: Can I ask you, just
9 kind of maybe stepping back a moment, why do
10 these various distinctions with respect to
11 operations matter?

12 I mean, I -- I read this statute to be
13 a classification statute, that Congress is
14 directing everyone or us to identify certain
15 kinds of weapons, and those certain kinds of
16 weapons are being treated in a particular way.
17 They're being prohibited.

18 And so I guess what I'm trying to
19 understand is, if -- if it's true that, you
20 know, the distinction that is being focused on
21 here is the one between the movement of the
22 trigger going back and forth or the trigger
23 staying the same, I'm trying to understand why
24 that matters for the purpose of this
25 classification.

1 MR. FLETCHER: So I think we don't
2 think it does because we don't think "function
3 of the trigger" means movement of the trigger.
4 We think it means act of the shooter.

5 That's how it was used at the time by
6 educated speakers of English, including the
7 president of the NRA when he proposed the
8 language that became this statute to Congress,
9 and ever since, people have equated function of
10 the trigger with pull of the trigger. That
11 makes perfect sense if, like us, you read
12 "function of the trigger" to mean some act by
13 the shooter. I don't think that works on my
14 friend's account.

15 JUSTICE JACKSON: But I guess I'm
16 wondering -- I thought your answer was going to
17 be we don't think it matters because of
18 something you said in the intro, which was
19 that's -- these are the kind of weapons that
20 Congress were -- was intending to prohibit
21 because of the damage they cause or something
22 like that. Like I read the word "function" to
23 be doing significant work in this statute.

24 And when, you know, "function" is
25 defined, it's really not about the operation of

1 the thing. It's about what it can achieve, what
2 it's being used for. So I see Congress as
3 putting function in this. The function of this
4 trigger is to cause this kind of damage, 800
5 rounds a second or whatever.

6 And -- and -- and so the
7 classification of weapons that we're trying to
8 identify with this statute are those that
9 function in that same way.

10 MR. FLETCHER: So, Justice Jackson, I
11 agree with most of that, but I want to be
12 careful because our -- our view is not that
13 because Congress banned machineguns because
14 they're dangerous, anything that's dangerous or
15 that shoots fast is a machinegun.

16 Our -- we draw the evident purpose of
17 Congress that we think my friend's
18 interpretation would frustrate from the text
19 that Congress enacted.

20 JUSTICE JACKSON: Right. And so how
21 about anything in which the trigger functions in
22 the same way, and by "function," I don't know
23 that that necessarily means it has to move in
24 the same way. It has to operate in the same
25 way. It can function in the same way insofar as

1 it automatically allows for 800 rounds to be
2 released.

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

12 JUSTICE JACKSON: Thank you.

13 JUSTICE GORSUCH: Mr. Fletcher, on --
14 on that score, can we just step back a minute?
15 I can certainly understand why these items
16 should be made illegal, but we're dealing with a
17 statute that was enacted in the 1930s, and
18 through many administrations, the government
19 took the position that these bump stocks are not
20 machineguns.

21 And then you -- you adopted an
22 interpretive rule, not even a legislative rule,
23 saying otherwise that would render between a
24 quarter of a million and a half million people
25 federal felons and not even through an APA

1 process they could challenge subject to 10 years
2 in federal prison, and the only way they can
3 challenge it is if they're prosecuted, and they
4 may well wind up dispossessed of guns, all guns
5 in the future, as well as a lot of other civil
6 rights, including the right to vote.

7 And I -- I guess I just want your
8 reaction to -- to that. And I believe there are
9 a number of members of Congress, including
10 Senator Feinstein, who said that this
11 administrative action forestalled legislation
12 that would have dealt with this topic directly,
13 rather than trying to use a nearly 100-year-old
14 statute in a way that many administrations
15 hadn't anticipated.

16 Thoughts?

17 MR. FLETCHER: There's a lot packed in
18 there, so as you might expect, I have a lot of
19 thoughts. I think the main one is this Court
20 often concludes that the government has
21 interpreted a statute the wrong way and doesn't
22 hesitate to correct the government's mistakes.
23 I think the government should do the same thing.

24 After the Las Vegas shooting, the
25 deadliest shooting in our nation's history, I

1 think it would have been irresponsible for the
2 ATF not to take another closer look at this
3 prior interpretation, which was reflected in a
4 handful of classification letters, and to look
5 at the problem more carefully.

6 And having done that, I think it would
7 have been irresponsible if the ATF concluded, as
8 it did, that these devices are prohibited under
9 the best reading of the statute for the ATF not
10 to fix its errors.

11 JUSTICE GORSUCH: Then why not do a
12 legislative rule properly and in which -- I -- I
13 know you did notice-and-comment, but it was an
14 interpretive rule, and an interpretive rule you
15 can more or less just issue and you don't even
16 have to put it in the Federal Register. I mean,
17 maybe you do in some circumstances, but not all.

18 MR. FLETCHER: Well, Justice --

19 JUSTICE GORSUCH: And -- and -- and
20 you're -- you're -- you're creating a class of,
21 again, between a quarter of a million and a half
22 million people who have, in reliance on past
23 administrations, Republican and Democrat, who
24 said that this does not qualify in a very old
25 statute, taken actions. And an interpretive

1 rule you can't even challenge in an APA posture.

2 MR. FLETCHER: Well, we are in an APA
3 posture. They are challenging an interpretive
4 rule, and -- and --

5 JUSTICE GORSUCH: Well, I understand
6 that, but in your reply brief, you say, oh,
7 don't touch that because that's not before us.
8 That's not part of the QP. And in an
9 interpretive rule, you don't get an APA
10 challenge. You get -- you -- you get a criminal
11 prosecution against you is what you get.

12 MR. FLETCHER: So I -- I guess I
13 disagree with that on a number of levels.
14 First, I would think it would be better for
15 those who are concerned about administrative
16 power that we acknowledge this is an
17 interpretive rule.

18 The ATF doesn't have the power to make
19 something a crime that wasn't a crime before.
20 It's not a crime to violate the rule. It has
21 been and always will be a crime to violate the
22 statute. The ATF is saying we got that wrong
23 before and we're fixing it now.

24 And you're right, it would be horribly
25 unfair to prosecute people who possessed these

1 devices in reliance on the agency's past
2 assurance, but that is taken care of through
3 doctrines like entrapment by estoppel, which
4 ensure that no one has been and no one will be
5 prosecuted for possessing these guns during --
6 or these devices during a time when ATF said it
7 was legal.

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

20 There are a lot of ways to build
21 something that is a machinegun, and I don't
22 think you should hesitate from applying the
23 broad language that Congress wrote, consistent
24 with the meaning that it has always had.

25 JUSTICE KAVANAUGH: What's the --

1 JUSTICE SOTOMAYOR: Could I -- thank
2 you.

3 Are you representing on behalf of the
4 government that you're not going to prosecute
5 anyone prior to 2017? Anyone who wasn't a felon
6 or -- or disqualified for some other reason?

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

11 As a practical matter also, the
12 statute of limitations for this offense is five
13 years, so in a month, the statute of limitations
14 would be gone. We have not prosecuted those
15 people. We won't do it. And if we try to do
16 it, I think they would have a good defense based
17 on entrapment by estoppel.

18 JUSTICE SOTOMAYOR: Second, the
19 back-and-forth here leads me to believe that at
20 best there might be some ambiguity. Now the
21 question is what's the best reading. And we
22 have a whole slew of doctrines that talk about
23 that with respect to that we shouldn't render
24 statutes ineffective by an interpretation.

25 That's not the best reading, correct?

1 MR. FLETCHER: Correct, exactly.

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

4 MR. FLETCHER: In The Emily, exactly.

5 JUSTICE SOTOMAYOR: In The Emily case.
6 And so I think your position is, if anyone's in
7 doubt about this interpretation, that not
8 including something that basically you hold in
9 your hand and you let the recoil move it back
10 and forth, if that's not automatic, then it
11 doesn't make any sense that this is not a
12 machinegun, correct?

13 MR. FLETCHER: That's part of our
14 argument, absolutely. And it's not just this
15 device. I mean, we cite a number of the
16 examples, and -- and there are many more, of
17 things that people have done to try to get
18 around the ban on machineguns, and accepting
19 some of the interpretations that my friend is
20 offering today would legalize not just bump
21 stocks but those devices as well.

22 JUSTICE SOTOMAYOR: One final
23 question. Justice Barrett said something about
24 she hoped Mr. Mitchell would explain something
25 about why there was a difference in the

1 functioning between the belt and the gun. Could
2 you go through that again so that -- I think I
3 understand it, but --

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

14 We don't think those things function
15 automatically because the definition of
16 "automatically," I think everybody agrees, is by
17 means of a self-regulating mechanism. That's
18 what a bump stock is. It's a device that is
19 purpose-built to harness the recoil energy of
20 the gun to automate the process of releasing the
21 trigger to move the rifle back just the right
22 distance in just the right direction so that the
23 trigger resets and then to ensure that the rifle
24 moves forward again, again, just the right
25 distance, just the right direction.

1 We think the cycle that's created by
2 that means is by means of a self-regulating
3 process. It's possible to do the same thing
4 with a lot of manual work and manual control and
5 expertise, but that's not unusual to say that
6 something can be done automatically by a device
7 if you eliminate a lot of manual movements that
8 someone like an expert could take to do the same
9 thing.

10 JUSTICE KAVANAUGH: Can I ask you
11 about mens rea, to pick up on Justice Gorsuch's
12 questions? For prosecuting someone now, what
13 mens rea showing would the government have to
14 make to convict someone?

15 MR. FLETCHER: So I think the relevant
16 case is Staples, and I think what the Court held
17 in Staples is that you have to be aware of the
18 facts that render your weapon a machinegun.

19 JUSTICE KAVANAUGH: So, even if you
20 are not aware of the legal prohibition, you can
21 be convicted?

22 MR. FLETCHER: That's right, but
23 that's true of all machineguns, I mean, all
24 different sorts of devices. I think the
25 distinct problem here is the one that's created

1 by the fact that the agency was previously
2 saying that these were not machineguns. We
3 acknowledge that those people who, in reliance
4 on that --

5 JUSTICE KAVANAUGH: And that -- that's
6 going to ensnare a lot of people who are not
7 aware of the legal prohibition.

8 MR. FLETCHER: So I guess I don't
9 think so, Justice Kavanaugh. I think the ATF --
10 one of the reasons, to Justice Gorsuch's point,
11 this is an interpretive rule that went through
12 notice-and-comment -- the reason was in part
13 because the agency knew that it had previously
14 been saying something different. It wanted to
15 maximize public notice. This is something
16 that's gotten a lot of coverage.

17 JUSTICE KAVANAUGH: Why not -- why not
18 require the government to also prove that the
19 person knew that what they were doing was
20 wrongful, was illegal?

21 MR. FLETCHER: Well, I think that's
22 not the understanding that this Court adopted in
23 Staples. If the Court wanted to revisit that in
24 another case, a criminal case, you could. We
25 haven't briefed that question here.

1 But I think, to the extent that you're
2 concerned about that, it's -- it's not a concern
3 unique to bump stocks. We mention all sorts of
4 other devices, the forced reset trigger that we
5 mentioned. The problem of people coming up with
6 devices that they want -- that they think get
7 close to the line but don't go over but that, in
8 fact, go over the line and turn them into
9 machineguns isn't new and could come up
10 anywhere.

11 The problem here, we acknowledge, is
12 ATF used to say something different about these,
13 but we think that's taken care of by the
14 rulemaking and the doctrine of entrapment by
15 estoppel.

16 JUSTICE GORSUCH: Because people will
17 sit down and read the Federal Register?

18 MR. FLETCHER: No. I think because I
19 think people who have these devices --

20 JUSTICE GORSUCH: That's what they do
21 in their evening for fun. Gun owners across the
22 country crack it open next to the fire and the
23 dog.

24 (Laughter.)

25 MR. FLETCHER: I take that point. I

1 think, Justice Gorsuch, the fact that this
2 rulemaking happened has not gone unnoticed in
3 the community of people who are interested in
4 firearms. Many people have availed themselves
5 of the right to challenge our interpretation.
6 We're defending it in court. The Supreme Court
7 is hearing it. I agree not everyone is going to
8 find out about those things, but we've done
9 everything the government could possibly do to
10 make people aware.

11 JUSTICE GORSUCH: Let me ask you about
12 the function of the trigger. You liken it to a
13 stroke of a key or -- or -- or -- or a throw of
14 the dice or a swing of the bat. Those are all
15 things people do.

16 MR. FLETCHER: Mm-hmm.

17 JUSTICE GORSUCH: A function of the
18 trigger, do people function triggers? I
19 thought, you know, in -- in -- in, you know,
20 maybe somewhere in fifth -- fifth grade grammar,
21 I learned that was an intransitive verb.

22 MR. FLETCHER: Yeah.

23 JUSTICE GORSUCH: And people don't
24 function things. They may pull things, they may
25 throw things, but they don't function things.

1 And, again, it's a very old statute, and it was
2 designed for an obvious problem in the 1930s and
3 Al Capone, and people were -- with a single
4 function of the trigger, that is, the thing
5 itself, was moved once, and that's what they
6 wrote.

7 And maybe they should have written
8 something better. One might hope they might
9 write something better in the future. But
10 that's the language we're stuck with. Help me.

11 MR. FLETCHER: That is the language
12 we're stuck with, but I don't think it's as
13 narrow as you suggest for a couple of reasons.
14 I agree it's awkward to talk about a person
15 functioning a trigger, but there's an easy
16 explanation. The reason Congress used that
17 word, not "pull," is because Congress knew that
18 there were lots of different ways to activate a
19 trigger and wanted to cover all of them.

20 And I think the reason you know that
21 it's referring to what the shooter does --
22 there's really two. One is that's the way it's
23 been understood ever since. The interpretation
24 I'm giving you is the same one Karl Frederick,
25 the president of the NRA, and many other courts,

1 executive officials, Congressmen gave at the
2 same time. They used "pull" and "function"
3 interchangeably.

4 And, second, I think, even if you've
5 said we're going to focus just on the trigger,
6 the function of an object isn't just some action
7 by the object. It's the mode of action by which
8 it fulfills its purpose. And the purpose of a
9 trigger is to accept some input from the user.

10 And the way you know that is how
11 everyone reacts when someone attaches it to some
12 contraption like the AutoGlove, which is a glove
13 that you put on and you push a button and it has
14 a little piston that pulls the trigger really
15 fast, or you attach a fishing reel, like the one
16 the Fifth Circuit confronted in Camp, where you
17 flip a switch and it spins and turns the trigger
18 over and over again.

19 On my friend's reading, the function
20 of the trigger with those devices is exactly the
21 same because the curved metal lever is moving
22 back and it's releasing the hammer every single
23 time. But everyone, my friend included,
24 recognizes that that's not the function of the
25 trigger in those devices.

1 The function of the trigger is the
2 user's flip of the switch or push of the button
3 because that's the thing that allows an act by
4 the user to initiate a firing sequence.

5 JUSTICE BARRETT: Mr. Fletcher, I -- I
6 take it that the ATF defined the curved lever
7 that you pull back as the trigger. Could it
8 have defined the bump stock itself as the
9 trigger?

10 MR. FLETCHER: So I -- I'm not sure
11 that it could have defined the bump stock itself
12 as the trigger. I think -- we get into this a
13 little bit in the reply in response -- or a
14 version -- a different argument maybe than the
15 one that you're thinking of but I think related,
16 in response to a move that's made in the red
17 brief, where we hypothesize that if you had a
18 machinegun that required you to pull the trigger
19 and also hold down a button, it would still fire
20 automatically, and we all understand that, even
21 though you have to do two things rather than
22 one.

23 And what my friend said in the red
24 brief is, well, in that case, maybe the button
25 is part of the trigger too because you have to

1 push the button to keep firing. And what we say
2 in the reply and what I think is true is that if
3 you were going to approach the statute that way,
4 which isn't the way the ATF has, I think you'd
5 still land in the same place because then you'd
6 say it's both the curved metal lever and it's
7 the part on the front of the rifle that the user
8 pushes forward in order to initiate and maintain
9 the firing sequence.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas, anything further?

13 Justice Alito?

14 JUSTICE ALITO: What is the situation
15 of people who have possessed bump stocks between
16 the time of the ATF's new rule and the present
17 day or between the time of the new rule and the
18 Fifth Circuit decision? Can they be prosecuted?

19 MR. FLETCHER: I think probably yes,
20 unless they had gotten some judicial relief from
21 the rule. The rule has not been enjoined. It
22 hasn't been vacated, writ large, so I think the
23 -- the government has made clear that this is
24 what we think the statute means.

25 I'll say in practice that --

1 JUSTICE ALITO: Isn't that disturbing?
2 People in the Fifth Circuit who have been
3 possessing firearms since the beginning of 2023,
4 let's say, they -- you know, they are aware of
5 the Fifth Circuit's decision that they can be
6 criminally prosecuted for doing something that
7 the court of appeals that governs their
8 territory has said is not illegal?

9 MR. FLETCHER: Well, let me give a
10 practical answer and then a doctrinal answer. I
11 think, practically, I'm not aware of a lot of
12 these prosecutions being brought because we
13 recognize that there is some legal uncertainty.

14 But I think, doctrinally, that could
15 happen all the time, Justice Alito. Circuits
16 disagree about what a criminal law means, and
17 someone might, in reliance on their circuit
18 precedent, do something that they think is
19 lawful under circuit precedent that other
20 circuits disagree with, that the government
21 disagrees with, and that this Court ultimately
22 holds is covered by the statute.

23 JUSTICE ALITO: When we speak of the
24 function of an inanimate object, don't we
25 normally look at what that inanimate object --

1 object does? So why isn't the function of a
2 trigger to release the hammer -- let's look at
3 the -- the -- the M16, the AR-15, the function
4 of -- why isn't the function of the trigger to
5 release the hammer from the sear so that the
6 hammer can swing forward and strike? Isn't that
7 the most straightforward interpretation of this?

8 MR. FLETCHER: I don't think so, and I
9 think, even if you thought that was true, just
10 looking at the text alone, the three indications
11 that we've talked about, the contemporaneous
12 usage by the president of the NRA and others,
13 the application to other kinds of triggers,
14 which everybody agrees are covered but which
15 don't function by moving the hammer, and then
16 also just evasion. I mean, I talked about some
17 of them, but one of the devices that the Fifth
18 Circuit has held is permissible -- or, I'm
19 sorry, a district court in the Fifth Circuit has
20 held is permissible and the Fifth Circuit has
21 declined to stay is something called a forced
22 reset trigger, and with a forced reset trigger,
23 the ATF tested it, zip-tied the trigger back,
24 and the gun shot multiple bullets.

25 What the district court said is that

1 under my friend's interpretation, its
2 function -- there are multiple functions of the
3 trigger because the trigger is wiggling back and
4 forth imperceptibly and releasing the hammer
5 separately each time, and so it's not a
6 machinegun.

7 And I think it's just not reasonable
8 to read the statute that opens it up to that
9 sort of evasion, and we're seeing concrete
10 evidence of that evasion in the Fifth Circuit.

11 JUSTICE ALITO: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice
13 Sotomayor?

14 JUSTICE SOTOMAYOR: Just to be clear,
15 when you're citing what Congress people said or
16 what the NRA president said or what we said in
17 some of our decisions because we've used "pull
18 of the trigger" in describing a machinegun's
19 function, correct?

20 MR. FLETCHER: Exactly.

21 JUSTICE SOTOMAYOR: You're not using
22 legislative history in the traditional sense.
23 You are pointing to common usage?

24 MR. FLETCHER: Exactly right, exactly
25 right. We're not speculating. We're not saying

1 that the bump stocks are machineguns because the
2 president of the NRA wanted them to be. We're
3 using that as evidence --

4 JUSTICE SOTOMAYOR: Well, that's what
5 the Senate intended. You're saying it's a term
6 of art.

7 MR. FLETCHER: Exactly. If he -- if
8 he had published this in an essay or in The New
9 York Times, we would be pointing to it as
10 evidence of contemporary meaning. We certainly
11 don't think it should be a blessed reading.

12 JUSTICE SOTOMAYOR: Well, you're
13 pointing -- you're pointing to Supreme Court
14 decisions that did it.

15 MR. FLETCHER: Exactly, as this Court
16 does too. It looks at literature. It looks at
17 all sorts of sources to understand what speakers
18 of English understand the words to mean when
19 Congress used them. And we think this and many
20 other things are powerful indications that we're
21 right about that.

22 JUSTICE SOTOMAYOR: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice Kagan?

24 JUSTICE KAGAN: Mr. Fletcher, you've
25 talked a lot about the mechanics of these

1 various devices. Could you give a sense of the
2 different effects of these various devices?

3 So you take on two poles a
4 semiautomatic weapon, let's say, and a
5 conventional machinegun on the -- on the other.
6 How many bullets and how much time? And then
7 one of these bump stock weapons, where does that
8 fall in the spectrum between those?

9 MR. FLETCHER: Sure. So the rate of a
10 semiautomatic weapon is not a fixed number
11 because it depends both on the weapon and very
12 much on the skill of the shooter. I think the
13 Giffords amicus brief says the theoretical
14 maximum for a very skilled competition shooter
15 with a specialized weapon is something like 180
16 bullets a minute. In practice, it's much, much
17 slower than that for the vast majority of people
18 who would use one of these things.

19 A fully automatic weapon --

20 JUSTICE KAGAN: How -- how much
21 slower?

22 MR. FLETCHER: I think, you know,
23 it -- it depends. I think more on the order of,
24 you know, 60, something like that. I don't -- I
25 don't want to represent that that's exact again

1 because there's a lot of variation, but the --
2 the point is that's the theoretical max. In
3 practice, it's significantly slower than that.

4 A traditional machinegun like the M16
5 or the M14, things that are issued to members of
6 the American military, shoot in the range of 700
7 to 950 bullets a minute.

8 There are obviously bigger things like
9 the things mounted on helicopters that shoot
10 much, much faster than that, but I think, for
11 these purposes, that 700 to 900 is about the
12 right benchmark.

13 The Akins Accelerator, the original
14 bump stock, shot at 650 rounds a minute, and the
15 devices at issue here are represented to shoot
16 between 400 and 800 rounds a minute.

17 So right in that range with the M16,
18 the M14, and they do it in the way -- again,
19 I -- I think rates of fire are important, but we
20 acknowledge this is not a rate-of-fire statute.
21 It's a function statute.

22 But the function was, are you able to
23 fire multiple shots without multiple manual
24 movements? And I think the rate of fire is
25 powerful evidence that there are not multiple

1 manual movements going on here.

2 JUSTICE KAGAN: Thank you.

3 CHIEF JUSTICE ROBERTS: Justice
4 Gorsuch?

5 Justice Kavanaugh?

6 JUSTICE KAVANAUGH: You've referred a
7 lot to the language in 1934 and around that
8 time, but, of course, bump stocks didn't exist
9 around that time.

10 What are we to make of that?

11 MR. FLETCHER: So I -- I think you
12 still apply the language and you have to do what
13 you have to do a lot, which is apply language
14 that Congress wrote and apply it to something
15 that didn't exist at the time. You know, none
16 of these workarounds, the fishing reel, the
17 AutoGlove, the forced reset trigger, all of them
18 are new problems.

19 But -- but I think what you can draw
20 is that Congress wrote a statute, chose the word
21 "function" deliberately because it didn't want
22 to just work -- focus on triggers that pull, and
23 then, in 1968, it added "parts that convert a
24 machine" -- a -- "a normal gun into a
25 machinegun" because it recognized that people

1 try to do things to semiautomatic weapons in
2 order to give them these same characteristics of
3 multiple rounds with a single manual action.

4 JUSTICE KAVANAUGH: And then what's
5 your explanation, maybe common-sense explanation
6 or some other explanation, for why, when this
7 does become an issue, the Bush Administration,
8 the Obama Administration, Senator Feinstein, all
9 say no?

10 MR. FLETCHER: Yeah.

11 JUSTICE KAVANAUGH: Bump stocks are --
12 are not covered because, if it were so, I don't
13 want to use the word "clear," but if so, if
14 your -- if your position were correct, oh, just
15 this is a new thing, obviously, covered by this
16 old statutory language, you would expect the
17 Bush Administration and the Obama Administration
18 and Senator Feinstein to say, of course, it's
19 covered by, and -- and they didn't, and that's
20 reason for pause. It doesn't -- it's not
21 dispositive, but it's reason for pause.

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

24 MR. FLETCHER: So I agree with you.
25 It's -- it's -- it's worth looking at. It's

1 worth asking. I think that's why it's so
2 important to put it in context.

3 And if I could, so when the ATF first
4 looks at these, it's the Akins Accelerator in
5 2002. That's the bump stock with a spring in
6 the back where you don't even have to push
7 forward. And initially ATF tests it, the
8 prototype breaks, but the ATF writes a
9 classification letter, which is something
10 relatively informal, just goes to the
11 manufacturer, doesn't contain a lot of legal
12 reasoning, says this isn't a machinegun because
13 it doesn't have multiple functions of the
14 trigger.

15 Very quickly thereafter, ATF corrects
16 that error and in 2006 says the Akins
17 Accelerator is a machinegun because it does
18 function by -- it does shoot multiple shots by a
19 single function of the trigger.

20 So that part we've been consistent on.
21 The director of the ATF issued a ruling, 2006-2,
22 that was consistent on that, and the agency has
23 held that position ever since, and that's mostly
24 what we've talked about today.

25 It's true that in a series of

1 additional -- other informal classification
2 letters issued between 2007 and 2017, the ATF
3 said that non-mechanical bump stocks, those like
4 the ones at issue here without a spring where
5 you have to push forward, weren't machineguns
6 because they didn't shoot automatically.

7 But I -- I think it's important to
8 recognize those are informal, they don't include
9 a lot of legal analysis, and I think maybe most
10 importantly, no one defends the ATF's
11 interpretation from those letters. What the ATF
12 said there is this doesn't have springs or
13 mechanical parts, so it doesn't make guns -- the
14 gun function automatically.

15 I think even my friend doesn't defend
16 that interpretation. Everybody recognizes that
17 there are things like Glock switches that we
18 discuss in our reply brief that you can add to a
19 machinegun -- a semiautomatic weapon that make
20 it a machinegun, and I think the fact that no
21 one is defending the ATF's prior interpretation
22 is a good indication that when Attorney General
23 Sessions and Attorney General Barr revisited
24 this and we've continued to defend it since,
25 they did a much more careful examination and got

1 it right.

2 And then Senator Feinstein, you know,
3 I -- I take your point. I guess, with all
4 respect to Senator Feinstein, I would say that
5 the comments from a legislator who's trying to
6 get a piece of legislation passed and is trying
7 to demonstrate the need for that legislation by
8 disagreeing with the administration about the
9 scope of current law are not a particularly
10 probative source of the meaning of the words
11 that Congress enacted in 1934.

12 JUSTICE KAVANAUGH: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Barrett?

15 JUSTICE BARRETT: No.

16 CHIEF JUSTICE ROBERTS: Justice
17 Jackson?

18 JUSTICE JACKSON: Can I just be clear
19 on this function point? Because they say, I
20 think, that a single function of the trigger in
21 -- as it appears in this statute is directing
22 consideration of whether the trigger is moving
23 only once.

24 And I think you're saying that, no,
25 when it says the function of the trigger, it's

1 not how the trigger operates, it's -- the
2 function of the trigger is what it achieves, and
3 the function that I think you're saying is that
4 if by single operation, meaning single movement
5 of the person, you can achieve firing multiple
6 shots without multiple manual movements, that's
7 what you said, that covers the function of the
8 trigger. Is that what you're saying?

9 MR. FLETCHER: Exactly. And I think
10 the thing that makes this clearest is the boxes
11 hypothetical on page 30 of our brief where we
12 say imagine somebody builds a black box with a
13 button on the top and the shooter pushes the
14 button once and bullets come out of the front at
15 a very high rate. On our view, that's a
16 machinegun.

17 But, on my friend's view, if the
18 inventor sets it up so that after the shooter
19 pushes and releases the button the button keeps
20 moving up and down in the same way on its own, I
21 think he's stuck saying that that's not a
22 machinegun because the trigger is functioning
23 each time a shot is fired. We don't think
24 that's a plausible construction of the statute.

25 JUSTICE JACKSON: So we'll ask him

1 about that. And -- and I guess yours is
2 consistent or it -- it accounts for
3 automatically more than one shot being in this
4 definition?

5 MR. FLETCHER: Exactly.

6 JUSTICE JACKSON: Okay. Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Mr. Mitchell.

10 ORAL ARGUMENT OF JONATHAN F. MITCHELL

11 ON BEHALF OF THE RESPONDENT

12 MR. MITCHELL: Mr. Chief Justice, and
13 may it please the Court:

14 The statutory definition of machinegun
15 extends only to weapons that fire more than one
16 shot automatically by a single function of the
17 trigger. Mr. Cargill's non-mechanical bump
18 stocks fall outside the statutory definition for
19 two separate and independent reasons.

20 First, a bump stock equipped rifle can
21 fire only one shot per function of the trigger
22 because the trigger must reset after every shot
23 and must function again before another shot can
24 be fired.

25 The trigger is the device that

1 initiates the firing of the weapon, and the
2 function of the trigger is what that triggering
3 device must do to cause the weapon to fire.

4 The phrase "function of the trigger"
5 can refer only to the trigger's function. It
6 has nothing to do with the shooter or what the
7 shooter does to the trigger because the shooter
8 does not have a function.

9 The statute is concerned only with
10 what the trigger does and whether a single
11 function of that trigger produces more than one
12 shot.

13 Second, a bump stock equipped rifle
14 does not and cannot fire more than one shot
15 automatically by a single function of the
16 trigger because the shooter, in addition to
17 causing the trigger to function, must also
18 undertake additional manual actions to ensure a
19 successful round of bump firing.

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

24 The process depends entirely on human
25 effort and exertion as the shooter must

1 continually and repeatedly thrust the forestock
2 of the rifle forward with his non-shooting hand
3 while simultaneously maintaining backward
4 pressure on the weapon with his shooting hand.

5 None of these acts are automated. And
6 the Solicitor General has yet to identify any
7 component of Mr. Cargill's devices that
8 automatically performs any task that is
9 necessary for bump firing. The statute is
10 unambiguous as applied to Mr. Cargill's
11 non-mechanical bump stocks, and we ask the Court
12 to affirm on that ground.

13 JUSTICE THOMAS: Behind the
14 government's argument is a sense that the --
15 this statute was initially enacted because of
16 what some of the individuals did during
17 Prohibition.

18 MR. MITCHELL: Mm-hmm.

19 JUSTICE THOMAS: And there was
20 significant damage from machineguns, carnage,
21 people dying, et cetera. And behind this is a
22 notion that the bump stock does the exact same
23 thing.

24 So, with that background, why
25 shouldn't we look at a broader definition of

1 "function," one suggested by the -- the
2 government, as opposed to just the narrow
3 function that you suggest?

4 MR. MITCHELL: The problem with the
5 government's argument, Justice Thomas, is that
6 the phrase "single function of the trigger" can
7 only be construed grammatically to focus on the
8 trigger's function and not on what the shooter
9 does to the trigger.

10 And that's so for many reasons. For
11 -- for one thing, there cannot be a subject of
12 "function" because a shooter does not function a
13 trigger. Only a trigger can have a function and
14 not a shooter.

15 Now the Solicitor General is trying to
16 replace the word "function" in the statute with
17 the word "pull." And if the statute had
18 actually said a single pull of the trigger, that
19 phrase would clearly refer to an act taken by
20 the shooter because only a shooter can pull the
21 trigger. The trigger certainly can't pull
22 itself.

23 So, if the Court is going to interpret
24 the statute based on what it says rather than
25 based on the purposes or perhaps the overarching

1 goals of what the 1934 legislature might have
2 been, there's no way it could accept the
3 government's construction of the statute because
4 it is changing the enacted words.

5 JUSTICE JACKSON: Can I give you a way
6 possibly?

7 MR. MITCHELL: Please.

8 JUSTICE JACKSON: All right. So the
9 statute says "function," as we've all
10 identified.

11 MR. MITCHELL: Yes.

12 JUSTICE JACKSON: And as far as I can
13 tell, the sort of common usage of the word
14 "function" is not its operational design. It's
15 not the mechanics of the thing. It is what it
16 achieves, what it's being used for.

17 MR. MITCHELL: Mm-hmm.

18 JUSTICE JACKSON: So I found
19 definitions. "Function" is defined as the
20 action for which a person or thing is
21 specifically fitted or used; the acts or
22 operations expected of the person or thing.

23 So, if we take that definition --

24 MR. MITCHELL: Mm-hmm.

25 JUSTICE JACKSON: -- it seems to me

1 that, through its use of the word "function,"
2 Congress was trying to capture a class of
3 weapons in which a trigger is used once to
4 achieve a certain result, which says, in the
5 statute, automatic firing many times.

6 And so weapons with bump stocks have
7 triggers that function in the same way. They --
8 through a single, right, pull of the trigger or
9 touch of the trigger, you achieve the same
10 result of automatic fire --

11 MR. MITCHELL: No.

12 JUSTICE JACKSON: -- of the weapon.
13 So why -- why is that inconsistent with grammar
14 or the -- the -- the way the statute reads?

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

24 JUSTICE JACKSON: But that's not the
25 trigger. He's only touched the -- he's holding

1 the trigger or touched the trigger once, right?

2 MR. MITCHELL: No. He touches the
3 trigger every single time. He has to bump the
4 trigger.

5 JUSTICE JACKSON: Well, I'm sorry, the
6 machine is -- but the machine is moving --

7 MR. MITCHELL: The machine --

8 JUSTICE JACKSON: -- to make his --

9 MR. MITCHELL: The machine is
10 moving --

11 JUSTICE JACKSON: Okay.

12 MR. MITCHELL: -- but the trigger has
13 to be bumped.

14 JUSTICE JACKSON: So then let me ask
15 you a question.

16 MR. MITCHELL: Yes.

17 JUSTICE JACKSON: The -- the other
18 question is -- I understood this to be a
19 classification statute in the sense that
20 Congress is trying to identify and classify
21 certain weapons. So, if you're right --

22 MR. MITCHELL: Mm-hmm.

23 JUSTICE JACKSON: -- I want to
24 understand why that matters. Why does it matter
25 for the purpose of this statute that we have

1 backwards pressure in the ordinary case of a
2 machinegun and forward pressure here? You're
3 saying there's a distinction being drawn. Bump
4 stocks don't fit into this category because of
5 this distinction, and I guess I don't understand
6 why Congress would have prohibited one and not
7 the other. Why -- why does it matter?

8 MR. MITCHELL: Well, it matters
9 because the statute turns on whether the bump
10 stock equipped rifle will fire more than one
11 shot automatically by a single function --

12 JUSTICE JACKSON: Right. But they're
13 -- the -- the -- the --

14 MR. MITCHELL: -- of the trigger. So
15 to answer that --

16 JUSTICE JACKSON: -- the statute is in
17 con -- in context.

18 MR. MITCHELL: Yes.

19 JUSTICE JACKSON: The statute is
20 classifying certain weapons for prohibition.

21 MR. MITCHELL: Right.

22 JUSTICE JACKSON: So, for it to make
23 sense, we have to understand why this category
24 of weapons are ones that Congress wants to
25 prohibit. And you're suggesting that Congress

1 is prohibiting through this classification
2 weapons in which we hold it backwards and
3 automatic fire happens, but we push it forward
4 and automatic fire happens, Congress says no,
5 that's not in the --

6 MR. MITCHELL: There's no automatic
7 fire. I'm sorry. Justice Jackson --

8 JUSTICE JACKSON: Okay.

9 MR. MITCHELL: -- there is no
10 automatic fire with a --

11 JUSTICE JACKSON: Sorry. Eight
12 hundred -- 800 bullets -- the conversation with
13 Justice Kagan suggested that, through a bump
14 stock, you can achieve the same kinds of result
15 in terms of the amounts of bullets that are
16 being ejected.

17 MR. MITCHELL: That is true.

18 JUSTICE JACKSON: Is that correct?
19 Okay.

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

22 JUSTICE JACKSON: Right, but what I'm
23 --

24 MR. MITCHELL: This is --

25 JUSTICE JACKSON: -- suggesting is

1 that the category of prohibition is about the
2 high rate of fire as opposed to, you know, the
3 movement of the trigger. And if you're right
4 that it's about the movement of the trigger, I'm
5 just asking why, why would -- why would Congress
6 want to prohibit certain things based on whether
7 the trigger is moving as opposed to certain
8 things that can achieve this, you know, lethal
9 kind of spray of bullets?

10 MR. MITCHELL: Because the statute was
11 written in 1934, about a hundred years before we
12 had bump stocks. So Congress drafted the
13 statute at that time to capture the type of
14 weaponry it wanted to prohibit in 1934, so --

15 JUSTICE KAGAN: Your interpretation,
16 Mr. Mitchell, though -- you've said this several
17 times in your brief -- captures a fair number of
18 weapons that nobody had on their radar screen in
19 1934, so let me ask you about that and where the
20 line is.

21 MR. MITCHELL: Sure.

22 JUSTICE KAGAN: If a gun fires
23 multiple shots at the push of a button or the
24 flip of a switch and just keeps firing -- -

25 MR. MITCHELL: Yes. Clearly, that's a

1 machinegun.

2 JUSTICE KAGAN: -- that's a
3 machinegun?

4 MR. MITCHELL: Yes. That's United
5 States against Camp essentially.

6 JUSTICE KAGAN: Okay. And if a -- if
7 -- if a gun does the same thing, except now it's
8 the push of two buttons?

9 MR. MITCHELL: So one button that
10 fires and then the other button that's
11 necessary?

12 JUSTICE KAGAN: Yes.

13 MR. MITCHELL: Both buttons necessary?

14 JUSTICE KAGAN: Yes.

15 MR. MITCHELL: And neither are by
16 themselves sufficient?

17 JUSTICE KAGAN: Yeah. I thought you
18 say also, on page 45 of your brief, that a
19 push-operated machinegun that requires the
20 shooter to push and hold two buttons, that that
21 would also qualify.

22 MR. MITCHELL: Right, because the two
23 buttons together are acting as the trigger in
24 that scenario.

25 JUSTICE KAGAN: Okay.

1 MR. MITCHELL: The trigger is the
2 device that initiates the firing of the weapon.

3 JUSTICE KAGAN: Okay.

4 MR. MITCHELL: So, if you need to push
5 two buttons and not just one, then both, the two
6 buttons combined, are the trigger.

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

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

12 JUSTICE KAGAN: Yeah. Instead of two
13 buttons --

14 MR. MITCHELL: Right.

15 JUSTICE KAGAN: -- it's one button and
16 you held the trigger.

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

19 JUSTICE KAGAN: Same as you just had
20 to do with two buttons.

21 MR. MITCHELL: Mm-hmm.

22 JUSTICE KAGAN: And you conceded the
23 two buttons is a machinegun. So now I'm saying,
24 instead of pushing two buttons, you push one
25 button and you hold the trigger.

1 MR. MITCHELL: It's going to depend on
2 what -- how we define "trigger." And as -- the
3 answer to that will not always be clear. The
4 question is, can you extend the holding of
5 United States against Camp to this particular
6 situation? The trigger --

7 JUSTICE KAGAN: I mean, I have to
8 say --

9 MR. MITCHELL: Yeah.

10 JUSTICE KAGAN: -- I think you don't
11 quite know what the answer to that is -- if you
12 have an answer, let me know -- because the
13 difference between pushing two buttons --

14 MR. MITCHELL: Mm-hmm.

15 JUSTICE JACKSON: -- for me and
16 pushing one button and holding the trigger is
17 not self-evident.

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

20 JUSTICE KAGAN: Same.

21 MR. MITCHELL: -- and both --

22 JUSTICE KAGAN: Boy, I thought I was
23 being pretty clear here.

24 MR. MITCHELL: Yeah.

25 JUSTICE KAGAN: You push two buttons.

1 You say it's a machinegun. Now you don't push
2 two buttons. You have to push one button and
3 hold the trigger.

4 MR. MITCHELL: That shouldn't make a
5 difference if they're both going to be
6 considered -- they either have to both be
7 machineguns or neither. I don't think you can't
8 draw a distinction between --

9 JUSTICE KAGAN: Correct.

10 MR. MITCHELL: I agree with that much.

11 JUSTICE KAGAN: And you said the first
12 is a machinegun, so the second has to be a
13 machinegun.

14 MR. MITCHELL: Mm-hmm.

15 JUSTICE KAGAN: Okay. So now I guess
16 I want to know, what's the difference between
17 pushing a button and holding the trigger and
18 pushing the barrel and holding the trigger?
19 You've just described a bump stock.

20 MR. MITCHELL: No. No, because you
21 don't need to push the barrel forward to fire
22 the weapon. You can fire the weapon just by
23 clicking the trigger every single time, like a
24 normal semiautomatic weapon fires. So, no.

25 JUSTICE KAGAN: But -- but what the

1 bump stock does --

2 MR. MITCHELL: Mm-hmm.

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

5 MR. MITCHELL: Well, it's neither
6 necessary nor sufficient to fire the weapon.
7 The trigger is the device --

8 JUSTICE KAGAN: All right.

9 MR. MITCHELL: -- that initiates the
10 firing of the weapon. So --

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

13 MR. MITCHELL: Mm-hmm.

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

16 But, if -- if pushing one button and
17 holding a trigger is a machinegun, then --

18 MR. MITCHELL: Mm-hmm.

19 JUSTICE KAGAN: -- a device that works
20 by pushing the barrel, the front of the gun,
21 essentially -- I don't know about these things
22 -- and holding the trigger seems again, to me,
23 to essentially do the same thing.

24 MR. MITCHELL: It --

25 JUSTICE KAGAN: And that is how

1 everybody uses these devices. Like, I mean,
2 maybe you could use the device differently, but
3 the entire point of this device is that you
4 exert forward pressure and you have your finger
5 on the trigger, and then a torrent of bullets
6 shoots out. So I don't understand why it's any
7 different --

8 MR. MITCHELL: It is different.

9 JUSTICE KAGAN: -- from pushing a
10 button and holding the trigger --

11 MR. MITCHELL: Mm-hmm.

12 JUSTICE KAGAN: -- pushing the barrel
13 and holding the trigger.

14 MR. MITCHELL: The difference is you
15 don't need to push the barrel to fire the
16 weapon. In the other hypotheticals that Your
17 Honor was describing, you need to push those
18 buttons to make the weapon fire. It is not
19 necessary --

20 JUSTICE KAGAN: So the fact that there
21 is a conceivable possibility of using these bump
22 stock devices in a way that does not take
23 advantage of what these bump stock devices do
24 and are able to do --

25 MR. MITCHELL: Mm-hmm.

1 JUSTICE KAGAN: -- the fact that there
2 is that conceivable possibility is what you are
3 resting your entire argument on?

4 MR. MITCHELL: No. Our argument
5 depends on what's the trigger. The trigger is
6 the device that initiates the firing of the
7 weapon.

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

19 JUSTICE GORSUCH: Mr. Mitchell, I --

20 JUSTICE ALITO: And, Mr. Mitchell,
21 this con -- this conversation is totally
22 confusing me because I -- I thought that your
23 argument depended on what the trigger -- that
24 the function of the trigger was what the trigger
25 does mechanically inside the weapon, and,

1 therefore, whether you have one trigger or two
2 triggers or three triggers or 10 buttons, it
3 doesn't matter. It matter -- what matters is
4 what the trigger or the triggers do inside the
5 gun.

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

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

18 But do I misunderstand your argument?

19 MR. MITCHELL: No, you're not
20 misunderstanding at all. The function of the
21 trigger is what the trigger does to cause the
22 weapon to fire. That's what "function of the
23 trigger" means.

24 But, to determine that, we need to
25 first determine what exactly the trigger is

1 before we can consider what is the function of
2 the trigger. And there will be certain types of
3 devices like this motorized trigger device in
4 United States against Camp where the trigger
5 actually is changed because you're no longer
6 pulling the curved metal lever to set off the
7 weapon; instead, you're flipping some switch
8 that starts the motor --

9 JUSTICE ALITO: Can you think of any
10 --

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

17 And on a machinegun, it's not the
18 trigger that does this. It's the pressure that
19 the shooter is using to hold the trigger down
20 that permits it to keep going.

21 MR. MITCHELL: That's what causes the
22 trigger to function.

23 JUSTICE SOTOMAYOR: Well, but the --

24 MR. MITCHELL: The -- the -- the test
25 --

1 JUSTICE SOTOMAYOR: That's what the
2 government is saying, which is you're not
3 looking at what the -- what the trigger is
4 doing. You're looking at what the shooter is
5 doing. And is he using a force, keeping the gun
6 down -- keeping the trigger down or holding the
7 bump stock and letting it shoot back and forth
8 in an automatic recoil.

9 Those are not things that changes the
10 automatic nature of the firing.

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

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

22 MR. MITCHELL: Because the bump stock
23 doesn't fire the weapon. The bump stock is just
24 a case in which the weapon slides back and
25 forth. That doesn't do anything to fire the

1 weapon. The only way --

2 JUSTICE BARRETT: They have defined
3 the bump stock as the trigger?

4 MR. MITCHELL: No one defines the bump
5 stock as the trigger in this case.

6 JUSTICE BARRETT: Could they have?

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

12 JUSTICE GORSUCH: Mr. --

13 MR. MITCHELL: Yes?

14 JUSTICE GORSUCH: Sorry. Mr.
15 Mitchell, it seems to me the spirit of some of
16 the questions you're getting are in the nature
17 of the anticircumvention principle --

18 MR. MITCHELL: Mm-hmm.

19 JUSTICE GORSUCH: -- that, okay, maybe
20 in 1934 "function of the trigger" meant the
21 firing, the -- the -- the essential thing that
22 causes the weapon to fire.

23 But the high rate of fire that's
24 achievable through bump stocks is effectively
25 the equivalent, and we should take cognizance of

1 that.

2 Your thoughts?

3 MR. MITCHELL: It's just not what the
4 statute says. It has nothing to do with the
5 rate of fire.

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

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

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

1 And -- and -- and in all kinds of
2 ways, you're accepting of that and saying yes,
3 you can't circumvent it by that. You can't
4 circumvent it by non-conventional triggers. You
5 can't circumvent it by, you know, all these
6 things that -- these hypotheticals I've been
7 giving you. But you can circumvent it through
8 this one mechanism.

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

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

19 Instead, there's a switch that is
20 flipped and that switch is now triggering the
21 device because that is the function, turning on
22 the switch, that then causes automatic fire to
23 occur because there's some motor that's moving
24 the trigger back -- I'm sorry, I shouldn't say
25 the trigger -- the curved metal lever back and

1 forth. That's United States against Camp.

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

4 JUSTICE JACKSON: But what do you
5 do --

6 MR. MITCHELL: Everyone --

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

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

23 MR. MITCHELL: I'm sorry, Justice
24 Jackson, rapid --

25 JUSTICE JACKSON: That's wrong?

1 MR. MITCHELL: -- rapid fire is not
2 the test under the statute. It's not whether it
3 fires rapidly. It's whether it fires more than
4 one shot automatically --

5 JUSTICE JACKSON: Okay, I'm sorry.
6 I'm sorry.

7 MR. MITCHELL: -- by a single function
8 of the trigger.

9 JUSTICE JACKSON: I'm sorry.

10 MR. MITCHELL: Okay.

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

19 MR. MITCHELL: That's correct.

20 JUSTICE JACKSON: Why is it
21 irrational, wrong, et cetera, to think of the
22 function of the trigger as what it does to cause
23 the weapon to automatically fire more than one
24 shot?

25 If that's what we mean by "function of

1 the trigger," which is in the statute,
2 automatically more than one shot, and what we're
3 saying is by -- if -- if one operation causes
4 the trigger to -- the function -- causes the
5 function of the trigger to make the weapon
6 automatically fire more than one shot, I guess I
7 don't understand why your reading is preferable
8 to that when -- when -- when the common
9 understanding of a machinegun is that it is
10 doing this sort of thing at the end of the day.

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

18 JUSTICE JACKSON: Okay. And if --

19 MR. MITCHELL: -- with his
20 non-shooting hand.

21 JUSTICE JACKSON: -- that's true --
22 that's true -- that -- that is --

23 MR. MITCHELL: It is true, yes.

24 JUSTICE JACKSON: Okay. That is a
25 distinction. My other question then comes in.

1 Why does that distinction matter from Congress's
2 perspective in terms of it writing a statute
3 that it was trying to prohibit that?

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

11 And that's what I'm missing in your
12 argument.

13 MR. MITCHELL: Well, it's because --
14 yeah.

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

20 MR. MITCHELL: It's because the
21 statute was written in 1934, and Congress wasn't
22 thinking about bump stocks when they wrote this
23 statute.

24 JUSTICE BARRETT: Mr. Mitchell --

25 CHIEF JUSTICE ROBERTS: Counsel,

1 you've said several times that you thrust with
2 your non-trigger hand, thrust part of the gun
3 forward.

4 MR. MITCHELL: Right.

5 CHIEF JUSTICE ROBERTS: And I
6 understood your friend on the other side to
7 focus on it more as maintaining pressure.

8 MR. MITCHELL: Right.

9 CHIEF JUSTICE ROBERTS: Which is it?
10 I mean, do you hold it -- I mean, you have to
11 hold it harder at certain points rather than
12 others, or are you actually moving it with the
13 thrusting?

14 MR. MITCHELL: You're definitely
15 moving your hand back and forth. And Mr.
16 Fletcher agreed with us on that point. The hand
17 is moving.

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

1 backward, despite the forward pressure that's
2 coming from the non-shooting hand.

3 JUSTICE KAGAN: But that means --

4 MR. MITCHELL: There are --

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

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

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

1 pressure in response to the repeated recoils
2 that he's getting from the bump firing.

3 It doesn't have to be the same amount
4 of pressure each time. The shooter just has to
5 make sure that the hand is moving back and forth
6 because that's the only way you can have
7 successful bump firing.

8 But to get back to your question, Mr.
9 Chief Justice, I --

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

17 MR. MITCHELL: Mm-hmm.

18 JUSTICE KAGAN: -- is -- is not
19 volitionally experiencing this, the shooter is
20 not moving his hand back and forward.

21 MR. MITCHELL: That's probably right,
22 unless the shooter is so strong that he has to
23 ease off a little bit to make sure he doesn't
24 overcome the recoil. But, to my knowledge, I
25 don't think there's anybody strong enough to

1 make -- to actually be able to keep pushing and
2 forcing it past the recoil energy.

3 But, Mr. Chief Justice, I don't think
4 the answer to this question matters in the end
5 because, even if we accept Mr. Fletcher's
6 characterization where it's just constant
7 pressure with the same amount of force
8 continuously over a sustained period of time,
9 it's still a manual action. There's nothing
10 automatic about that. The shooter is the one
11 who is pushing. It's human effort, human
12 exertion. Nothing automatic at all about this
13 process.

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

23 Not so with respect to a
24 non-mechanical bump stock. The weapon recoils.
25 Nothing is harnessed with respect to the recoil

1 energy. And it is the shooter who must, with
2 that non-shooting hand, continue to thrust the
3 weapon forward in response.

4 JUSTICE BARRETT: If I disagree with
5 you about "automatically," can you win solely on
6 "function of a trigger"?

7 MR. MITCHELL: Absolutely, yes.

8 JUSTICE BARRETT: Why?

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

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

1 MR. MITCHELL: They're
2 indistinguishable when it comes to
3 "automatically." Everything involved with the
4 band that Your Honor suggested and also
5 everything involved with Mr. Cargill's
6 non-mechanical bump stock is a manual action
7 undertaken entirely by the shooter.

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

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

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

24 MR. MITCHELL: Yeah.

25 JUSTICE JACKSON: It's in their brief.

1 So they say that we've got two boxes, each of
2 which continuously fires bullets after the
3 operator presses and releases a button.

4 If I hear you correctly -- or maybe
5 you can just tell me.

6 MR. MITCHELL: Right.

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

16 MR. MITCHELL: Yeah.

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

19 MR. MITCHELL: Yeah.

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

22 MR. MITCHELL: The answer to that
23 question depends on what is the trigger.

24 JUSTICE JACKSON: Okay.

25 MR. MITCHELL: And the holding of

1 United States against Camp, that Fifth Circuit
2 decision that said motorized trigger devices are
3 machineguns --

4 JUSTICE JACKSON: Yeah.

5 MR. MITCHELL: -- and the rationale of
6 that case would be extended to this
7 hypothetical.

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

15 JUSTICE JACKSON: Right, right, right.

16 MR. MITCHELL: It's instead a switch.
17 Everyone agrees with that.

18 JUSTICE JACKSON: But I guess -- and
19 -- and your -- and your view is what makes it
20 easy or hard is not the sort of thought of mine
21 that, like, geez, what makes it easy or hard is
22 actually distinguishing those two in the real
23 world, like in terms of what is actually
24 happening?

25 MR. MITCHELL: Mm-hmm.

1 JUSTICE JACKSON: You think what makes
2 it easy or hard is just identifying whether the
3 finger is -- is moving because the box is moving
4 or because the person is pushing it down?

5 MR. MITCHELL: What makes it hard is
6 whether it's changed the nature of the trigger
7 in some way. Clearly, that happened in Camp.

8 This situation with Mr. Cargill,
9 there's not even an argument that the trigger
10 has been changed. DOJ at no point in this
11 litigation has argued that bump stocks change
12 the nature of the trigger or change the trigger
13 at all.

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

21 So, again, going back to Camp, when
22 there's a flip of a switch that turns on a motor
23 and that motor then forces the curved metal
24 lever back and forth, that's automatic fire.
25 That's a machinegun because we now have a new

1 trigger, the switch. It's no longer the curved
2 metal lever.

3 So can that rationale be extended to
4 some of these hypotheticals where we talk about
5 black boxes and oscillating buttons? What
6 exactly is the trigger there? Is it merely the
7 button? Is it the motor that's moving the
8 button up and down? It's arguable either way.

9 We don't think the Court should
10 resolve any of that, I understand, but for us to
11 take a position on the question, it's all going
12 to depend on whether you can extend the holding
13 of Camp to these new situations.

14 The Akins Accelerator is a good
15 example to think about because, in 2006, when
16 ATF changed its position on the Akins
17 Accelerator, ATF initially approved that device
18 in 2002. 2006, it changed its mind.

19 And if you look at the classification
20 letter, their argument rests on an argument
21 similar to what Mr. Fletcher is making today.
22 They cite the legislative history from Karl
23 Frederick and say that "function of the trigger"
24 means "pull of the trigger." That rationale is
25 not going to work if the Akins Accelerator is

1 going to be characterized as a machinegun.

2 What might work, though, is if there's
3 some possible argument to extend the holding of
4 United States against Camp to the Akins
5 Accelerator. Does that spring in the Akins
6 Accelerator change the nature of the trigger?
7 That's the question that needs to be addressed.

8 If ATF wants to continue to
9 characterize the Akins Accelerator as a
10 machinegun, it's going to need to come up with a
11 much better argument than what it offered in
12 2006. We're not closing the door on that
13 possibility, but we do think the actual
14 rationale that ATF has used is just as faulty as
15 their rationale for banning non-mechanical bump
16 stocks.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Justice Thomas?

20 JUSTICE THOMAS: Mr. Mitchell, the --
21 I think we -- you would agree that the bump
22 stock accelerates the rate of fire?

23 MR. MITCHELL: Absolutely.

24 JUSTICE THOMAS: Why wouldn't you then
25 take the further step of saying it changes the

1 nature of the trigger in doing that?

2 MR. MITCHELL: Because the trigger
3 still has to reset after every single shot.
4 It's not accelerating the rate of fire by
5 changing the trigger. It's accelerating the
6 rate of fire --

7 JUSTICE THOMAS: That's not really
8 what I'm trying --

9 MR. MITCHELL: I'm sorry.

10 JUSTICE THOMAS: So the -- why
11 wouldn't you say that you have enhanced the
12 triggering mechanism by using the bump stock?

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

24 JUSTICE THOMAS: I think -- I think
25 the difference is that there may be some who

1 believe -- when -- when you look at it, the
2 nature of the firing has changed as a result of
3 the bump stock. So, if that's changed, why
4 don't you simply then look backwards and say
5 that the nature of the firing mechanism has
6 changed; thus, the nature of the trigger has
7 changed?

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

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

22 CHIEF JUSTICE ROBERTS: Justice Alito?

23 JUSTICE ALITO: Can you imagine a
24 legislator thinking we should ban machineguns,
25 but we should not ban bump stocks? Is there any

1 reason why a legislator might reach that
2 judgment?

3 MR. MITCHELL: I think there is. Bump
4 stocks can help people who have disabilities,
5 who have problems with finger dexterity, people
6 who have arthritis in their fingers. There
7 could be a valid reason for preserving the
8 legality of these devices as a matter of policy,
9 even while similar weapons, such as the fully
10 automatic machineguns, are being banned.

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

17 JUSTICE ALITO: In --

18 JUSTICE SOTOMAYOR: Why would
19 anybody --

20 JUSTICE ALITO: I'm sorry.

21 JUSTICE SOTOMAYOR: I'm sorry.

22 JUSTICE ALITO: That's okay. In the
23 field of statutory interpretation, Justice
24 Scalia's *bête noire* was the Church of the Holy
25 Trinity, a case where he thought that the

1 literal language of the statute had to control
2 even though it's pretty hard to think that
3 Congress actually meant that to apply in certain
4 situations.

5 As you see this case, is this another
6 Church of the Holy Trinity case?

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

18 JUSTICE ALITO: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Sotomayor?

21 JUSTICE SOTOMAYOR: Why would even a
22 person with arthritis, why would Congress think
23 they needed to shoot 400 to 7- or 800 rounds of
24 ammunition under any circumstance?

25 MR. MITCHELL: You can't choose --

1 JUSTICE SOTOMAYOR: If you don't let a
2 person without arthritis do that, why would you
3 permit a person with arthritis to do it?

4 MR. MITCHELL: They don't shoot 400 to
5 700 rounds because the magazine only goes up to
6 50. So you're still going to have to change the
7 magazine after every round. We allow large
8 capacity magazines up to 50.

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

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

20 MR. MITCHELL: That's right.

21 JUSTICE SOTOMAYOR: But it's not
22 classic legislative history. It's how people
23 understood a term at the time. That's not
24 legislative history.

25 MR. MITCHELL: Well, it's still

1 legislative history. They're just using it for
2 a purpose that they claim --

3 JUSTICE SOTOMAYOR: Well, Justice
4 Thomas said in McDonald versus City of Chicago
5 that it's perfectly acceptable to do that, to
6 use, he said, if it's being cited to show what
7 lawmakers -- how lawmakers used a particular
8 term that's different than what they intended.

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

13 JUSTICE SOTOMAYOR: Exactly.

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

17 JUSTICE SOTOMAYOR: It's not just
18 that.

19 MR. MITCHELL: -- which is -- which is
20 the statement of a lobbyist.

21 JUSTICE SOTOMAYOR: We've got
22 statements -- we've got statements in the House
23 from legislators in the House, we have
24 statements from legislators in the Senate, all
25 of them consistently translating "function of

1 the trigger" to mean a single pull of the
2 trigger.

3 MR. MITCHELL: Right. And they're all
4 wrong because the statute also was written to
5 encompass weapons that have push triggers rather
6 than pull triggers. And the Solicitor General
7 acknowledges this point in her opening brief.

8 JUSTICE SOTOMAYOR: Well, that -- what
9 it suggests to me is that contrary to what
10 you're saying, that is they never understood
11 this to be how the trigger functions but how the
12 shooter functions.

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

17 JUSTICE SOTOMAYOR: We're going to
18 disagree.

19 MR. MITCHELL: -- because -- well,
20 it's because, Justice Sotomayor, the phrase
21 "pull of the trigger" can't be equated with
22 "function of the trigger." And even the
23 Solicitor General acknowledges that because they
24 say in their brief that the statute needs to be
25 read in a way that encompasses fully automatic

1 weapons that have push triggers rather than
2 triggers that are pulled. So the word
3 "function" --

4 JUSTICE SOTOMAYOR: And you agree?

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

6 JUSTICE SOTOMAYOR: And -- and you
7 agree?

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

10 JUSTICE SOTOMAYOR: But the only way
11 you can get there is by looking at what the
12 shooter is doing.

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

14 JUSTICE SOTOMAYOR: Okay, counsel.
15 Thank you.

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

1 And all these examples that we see in
2 the Solicitor General's brief, Justice Gorsuch
3 mentioned this earlier, when they're taking
4 transitive verbs, when they say swing of the bat
5 or stroke of the key or roll of the dice, all of
6 those are transitive verbs that are capable of
7 taking an object.

8 So, when you see swing of the bat,
9 there's obviously an unnamed actor in that
10 sentence that is the subject of the verb swing.
11 The bat can't swing itself. The bat's an
12 inanimate object.

13 Function of the trigger is entirely
14 different. Function is an intransitive verb.
15 It can't take an object grammatically. It's
16 impossible. Trigger has to be the subject of
17 function. It can't be the object.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 MR. MITCHELL: I'm sorry.

21 CHIEF JUSTICE ROBERTS: Justice Kagan?

22 JUSTICE KAGAN: I guess, Mr. Mitchell,
23 I mean, those four words are not the entire
24 statute, you know, function of the trigger.

25 It's by a function of the trigger and

1 what's the by? It's shooting -- you know,
2 presumably, a shooter is there, but, you know,
3 maybe it happens spontaneously, but shooting
4 more than one shot by a single function of the
5 trigger. I mean, that's the relevant language,
6 right, shooting more than one shot by a single
7 function of the trigger. And then there's also
8 the automatic thing.

9 MR. MITCHELL: Automatic, yeah, that's
10 right.

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

18 And I would think, you know, it might
19 be you pull the trigger, it might be you push
20 the trigger, it might be you switch on the
21 trigger, it might be you voice-activate the
22 trigger, there's a discrete human action and it
23 produces a torrent of bullets.

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

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

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

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

13 JUSTICE KAGAN: Shoot --

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

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

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

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

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

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

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

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

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

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

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

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

21 JUSTICE KAGAN: Thank you.

22 MR. MITCHELL: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Gorsuch?

25 Justice Kavanaugh?

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

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

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

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

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

23 MR. MITCHELL: I'm sorry.

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

1 distinction?

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

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

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

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

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

19 JUSTICE KAVANAUGH: I guess --

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

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

1 Are you aware of anyone who said that anywhere

2 --

3 MR. MITCHELL: No, but as --

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

6 MR. MITCHELL: I'm not aware of that.
7 But, as a textualist, I don't find that
8 concerning because everybody --

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

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

14 JUSTICE KAVANAUGH: Yeah.

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

19 JUSTICE KAVANAUGH: Yeah.

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

22 JUSTICE KAVANAUGH: Yeah.

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

1 be the object or --

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

6 MR. MITCHELL: Right.

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

10 MR. MITCHELL: Right.

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

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

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

25 MR. MITCHELL: Because they wanted to

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

8 JUSTICE KAVANAUGH: To cover push and
9 pull?

10 MR. MITCHELL: Push and pull, exactly.

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

14 MR. MITCHELL: Yeah.

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

17 MR. MITCHELL: So --

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

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

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

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

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

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

11 JUSTICE KAVANAUGH: It's not --

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

14 JUSTICE KAVANAUGH: -- great statutory
15 language.

16 MR. MITCHELL: Yeah.

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

19 (Laughter.)

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

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

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

8 MR. MITCHELL: Yeah.

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

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

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

23 MR. MITCHELL: There's nothing that
24 prevents this Court from invoking the
25 constitutional avoidance canon on the Second

1 Amendment issue because there is a question at
2 least whether this falls within the dangerous
3 and unusual weapons carveout in Heller.

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

9 JUSTICE KAVANAUGH: Thank you.

10 MR. MITCHELL: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Barrett?

13 Justice Jackson?

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

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

1 function of the trigger.

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

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

5 JUSTICE JACKSON: Confusing question.

6 MR. MITCHELL: Yeah.

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

11 MR. MITCHELL: Right.

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

14 MR. MITCHELL: No.

15 JUSTICE JACKSON: No?

16 MR. MITCHELL: Not necessarily the
17 movement.

18 JUSTICE JACKSON: Okay. Tell me.

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

21 JUSTICE JACKSON: Yes. I'm sorry.

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

24 JUSTICE JACKSON: Okay. What the
25 trigger does. And I guess --

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

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

8 MR. MITCHELL: There --

9 JUSTICE JACKSON: So --

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

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

18 MR. MITCHELL: Sure.

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

24 MR. MITCHELL: Yeah.

25 JUSTICE JACKSON: Some weapons might

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

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

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

16 JUSTICE JACKSON: Why not?

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

20 JUSTICE JACKSON: No. Single
21 function --

22 MR. MITCHELL: Yes.

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

25 MR. MITCHELL: Yes.

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

3 MR. MITCHELL: Right.

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

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

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

12 MR. MITCHELL: Certainly not.

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

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

22 JUSTICE JACKSON: But that's just
23 because --

24 MR. MITCHELL: That's just not what
25 happens --

1 JUSTICE JACKSON: But -- but --

2 MR. MITCHELL: That's not the way it
3 works.

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

7 MR. MITCHELL: No.

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

11 MR. MITCHELL: I'm just saying as a --
12 right.

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

14 MR. MITCHELL: Sorry.

15 JUSTICE JACKSON: -- can I -- can I
16 just change the -- a little bit?

17 MR. MITCHELL: Mm-hmm.

18 JUSTICE JACKSON: If you're right that
19 Congress cared about exactly the mechanistic
20 operation, then I'm confused as to why this
21 statute also talks about modifications, because
22 that suggests that Congress was not hung up on
23 exactly how this gun operates. We're -- we're
24 sweeping in all kinds of things, things that
25 originally weren't designed to work this way at

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

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

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

17 JUSTICE JACKSON: All right. Well,
18 I'll look that up.

19 MR. MITCHELL: Yeah.

20 JUSTICE JACKSON: Yeah.

21 MR. MITCHELL: And just to get back to
22 your earlier question, Justice Jackson --

23 JUSTICE JACKSON: Mm-hmm. Yes.

24 MR. MITCHELL: -- it's factually
25 incorrect to say that a function of the trigger

1 automatically starts some chain reaction that
2 propels multiple bullets from the gun. A
3 function of the trigger fires one shot. Then
4 the shooter must take additional manual action.

5 JUSTICE JACKSON: I -- I understand --

6 MR. MITCHELL: All right? So there's
7 no --

8 JUSTICE JACKSON: -- that's your
9 argument. Thank you.

10 MR. MITCHELL: Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 MR. MITCHELL: Thank you.

14 CHIEF JUSTICE ROBERTS: Rebuttal, Mr.
15 Fletcher?

16 REBUTTAL ARGUMENT OF BRIAN H. FLETCHER

17 ON BEHALF OF THE PETITIONERS

18 MR. FLETCHER: Thank you, Mr. Chief
19 Justice.

20 So I take from my friend's answers
21 today that he does not seriously dispute that a
22 rifle with a bump stock does basically the same
23 thing as a machinegun and is basically just as
24 dangerous as a machinegun.

25 But his argument is the words that

1 Congress wrote in 1934 just don't cover it
2 because the words "single function of a trigger"
3 unambiguously refers to the movement or the
4 mechanics of the trigger, without regard to the
5 action of the shooter.

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

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

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

22 Second, Justice Kavanaugh, you asked
23 about contemporaneous usage. There's a lot of
24 contemporaneous usage of people using the term
25 "pull of the trigger" to be synonymous with

1 "function of the trigger." That makes perfect
2 sense if we're talking about what the shooter
3 does, because the way the shooter activates
4 most, not all, but most triggers is by pulling
5 on them.

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

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

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

23 On our understanding, we say, is there
24 an act of the trigger that -- of the shooter
25 that initiates the firing sequence, a spoken

1 command, a swipe on the touchscreen, it works
2 perfectly.

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

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

14 And contrary to what my friend said, a
15 bump stock does eliminate manual action that the
16 shooter has to take. With a semiautomatic
17 weapon, you have to pull and release the trigger
18 with each shot. With an auto -- with a bump
19 stock the bump stock allows the recoil from each
20 shot to automatically push the rifle back,
21 disengaging the trigger, eliminating the need
22 for the shooter to manually release, and then it
23 channels the forward and backward movement in
24 exactly the right way to allow a continuous
25 firing cycle to continue.

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

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

20 On the black box hypothetical, I'm
21 still not sure what his answer is, but I think
22 it must be that the button is the trigger the
23 first time it moves up and down, but then it
24 stops being the trigger when it keeps moving up
25 and down afterwards.

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

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

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

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

21 Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel. The case is submitted.

24 (Whereupon, at 11:34 a.m., the case
25 was submitted.)

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<p style="text-align: center;">1</p> <p>1 [2] 10:10 80:7 10 [4] 3:19 9:16 20:1 64:2 10:03 [2] 1:16 3:2 100-round [1] 3:18 100-year-old [1] 20:13 102a [1] 9:16 104a [1] 9:16 11:34 [1] 117:24 112 [1] 2:10 15 [1] 116:6 180 [1] 39:15 1824 [1] 25:3 1930s [2] 19:17 31:2 1934 [15] 4:2 41:7 45:11 51:1 56:11,14,19 67:20 73:21 98:3,6 101:22,24 113:1 117:6 1968 [2] 23:15 41:23 1970s [1] 64:8</p>	<p>950 [1] 40:7</p> <hr/> <p style="text-align: center;">A</p> <p>a.m [3] 1:16 3:2 117:24 abject [1] 35:25 able [6] 10:16 40:22 62:24 77:1 96:25 97:15 above [1] 80:10 above-entitled [1] 1:14 absolutely [3] 25:14 78:7 84:23 accelerate [1] 103:23 accelerates [1] 84:22 accelerating [2] 85:4,5 Accelerator [14] 40:13 43:4,17 77:17,18,20 83:14,17,25 84:5,6,9 116:6,15 accept [5] 32:9 51:2 77:5 88:13 114:16 acceptable [1] 90:5 accepting [2] 25:18 69:2 accident [1] 92:18 accidentally [1] 92:21 accomplish [1] 89:11 according [1] 15:3 account [2] 4:18 17:14 accounts [1] 47:2 accurately [1] 77:21 achievable [1] 67:24 achieve [7] 18:1 46:5 52:4,9 55:14 56:8 73:19 achieves [2] 46:2 51:16 acknowledge [5] 22:16 26:5 28:3 29:11 40:20 acknowledged [1] 15:14 acknowledges [2] 91:7,23 across [1] 29:21 act [15] 4:3,11 11:2 14:9,13,13,15,19,22 17:4,12 33:3 50:19 114:24 117:15 acting [1] 57:23 action [19] 8:25 20:11 32:6,7 42:3 51:20 52:21 72:14 74:20 77:9 79:6 94:17,22 95:7 96:15 112:4 113:5 114:12 115:15 actions [3] 19:9 21:25 48:18 activate [2] 14:17 31:18 activates [1] 114:3 actor [1] 93:9 acts [3] 7:24 49:5 51:21 actual [2] 84:13 116:4 actually [13] 10:6 15:10 50:18 65:5 70:11 74:12 77:1 81:22,23 88:3 107:11 109:19 116:18 add [1] 44:18 added [2] 23:15 41:23 adding [1] 97:2 addition [1] 48:16 additional [4] 16:3 44:1 48:18 112:4 address [1] 78:21</p>	<p>addressed [1] 84:7 adjustments [1] 68:24 Administration [5] 42:7,8,17,17 45:8 administrations [3] 19:18 20:14 21:23 administrative [3] 20:11 22:15 96:2 adopt [2] 23:10 113:14 adopted [2] 19:21 28:22 advantage [1] 62:23 affirm [1] 49:12 afterwards [1] 116:25 agency [4] 28:1,13 43:22 96:2 agency's [1] 23:1 ago [1] 23:12 agree [11] 8:15 18:11 30:7 31:14 42:24 60:10 84:21 92:4,7,8 95:18 agreed [2] 68:7 74:16 agrees [3] 26:16 36:14 81:17 ahead [1] 92:5 aimed [1] 19:7 Akins [14] 40:13 43:4,16 77:17,18,20 83:14,16,25 84:4,5,9 116:6,15 AL [2] 1:4 31:3 Alito [15] 34:13,14 35:1,15,23 37:11 63:20 65:9 71:17 86:22,23 87:17,20,22 88:18 allow [2] 89:7 115:24 allowing [1] 111:1 allows [7] 4:10 13:1 19:1 33:3 66:14 97:4 115:19 alone [3] 36:10 78:13,15 alter [1] 63:9 ambiguity [1] 24:20 Amendment [4] 104:11,13,14 105:1 America [1] 100:4 American [1] 40:6 Americans [1] 23:17 amicus [1] 39:13 ammunition [1] 88:24 amount [2] 76:3 77:7 amounts [1] 55:15 analysis [1] 44:9 another [7] 10:24 21:2 28:24 47:23 88:5 117:3,4 answer [13] 17:16 35:10,10 54:15 59:3,11,12 77:4 80:22 86:15,19 105:7 116:21 answered [1] 102:13 answers [1] 112:20 anticipated [1] 20:15 anticircumvention [2] 67:17 68:21 anybody [3] 76:25 87:19 96:20 anyone's [1] 25:6 APA [4] 19:25 22:1,2,9</p>	<p>appeals [1] 35:7 APPEARANCES [1] 1:18 appears [2] 45:21 69:12 Appendix [3] 9:17 15:14 113:17 application [1] 36:13 applied [1] 49:10 apply [5] 41:12,13,14 88:3 96:11 applying [2] 23:22 74:22 appreciate [1] 61:12 approach [2] 34:3 89:12 approaches [1] 95:20 approved [1] 83:17 AR-15 [1] 36:3 aren't [1] 7:23 arguable [1] 83:8 argue [1] 104:15 argued [2] 70:17 82:11 arguing [1] 68:17 argument [35] 1:15 2:2,5,8 3:4,7 7:16 13:11,18 25:14 33:14 47:10 49:14 50:5 63:3,4,23 64:18 70:9 71:16 73:12 82:9 83:20,20 84:3,11 101:8,9,12 104:11 109:21 112:9,16,25 113:7 arguments [4] 78:11 87:14 88:9,16 around [5] 25:18 41:7,9 68:24 98:3 art [2] 38:6 75:13 arthritis [4] 87:6 88:22 89:2,3 assist [1] 116:7 assistive [1] 26:9 assumption [1] 71:16 assurance [1] 23:2 ATF [26] 8:15 21:2,7,9 22:18,22 23:6,9 24:7 26:5 28:9 29:12 33:6 34:4 36:23 43:3,7,8,15,21 44:2,11 83:16,17 84:8,14 ATF's [3] 34:16 44:10,21 attach [1] 32:15 attached [1] 15:23 attaches [1] 32:11 ATTORNEY [3] 1:4 44:22,23 Austin [1] 1:22 auto [1] 115:18 AutoGlove [2] 32:12 41:17 automate [1] 26:20 automated [1] 49:5 automates [3] 6:18 9:4 79:10 automatic [34] 5:6 8:16 9:1 13:23 25:10 39:19 52:5,10,18 55:3,4,6,10 64:8,15 65:16 66:8,10 69:22 77:10,12 79:18 82:24 87:10 89:12 91:25 94:8,9 95:20 102:1,7 109:16 115:10,10 automatically [37] 4:24 5:</p>	<p>22 7:18 12:8,23 19:1 26:15,16 27:6 33:20 44:6,14 47:3,16 48:15 49:8 54:11 55:21 66:20 71:4,23 72:2,6,13 78:5,13,21,24 79:3 80:9 109:9 111:6,12,15 112:1 115:7,20 automating [4] 4:21 7:18 48:21 79:8 available [2] 117:4,5 availed [1] 30:4 avoidance [3] 104:11,20,25 aware [12] 27:17,20 28:7 30:10 35:4,11 68:23,23 99:7,10 100:1,6 away [3] 14:2 16:2 89:16 awkward [1] 31:14</p> <hr/> <p style="text-align: center;">B</p> <p>bête [1] 87:24 back [44] 6:10 7:6,21 9:11,12 10:13,16,19 12:13,24 15:7 16:9,22 19:14 25:3,9 26:7,21 32:22 33:7 36:23 37:3 43:6 64:6 66:7,21,24 69:24,25 73:8 74:15 75:10 76:5,8,11,20 82:21,24 97:4 104:5 108:1 111:21 115:20 116:16 back-and-forth [5] 4:21 5:3 6:18 24:19 75:19 background [1] 49:24 backward [7] 5:9 6:11 11:7 15:15 49:3 75:1 115:23 backwards [6] 4:14 10:22 12:14 54:1 55:2 86:4 ban [5] 4:20 25:18 86:24,25 104:3 band [5] 11:20 12:1 26:12 78:22 79:4 bands [1] 11:23 banned [2] 18:13 87:10 banning [1] 84:15 Barr [1] 44:23 barrel [8] 60:18,21 61:20 62:12,15 86:11 94:16 96:19 BARRETT [24] 9:7 11:14,19,23 12:4 13:4 14:5,8,21 15:2,11,18 16:7 25:23 33:5 45:14,15 67:2,6 73:24 78:4,8,20 105:12 based [4] 24:16 50:24,25 56:6 basically [3] 25:8 112:22,23 bat [5] 30:14 89:16 93:4,8,11 bat's [1] 93:11 became [1] 17:8 become [1] 42:7 begin [2] 108:6 109:4 beginning [1] 35:3</p>
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Official - Subject to Final Review

<p>begins [1] 14:3 behalf [9] 1:20,23 2:4,7,10 3:8 24:3 47:11 112:17 Behind [3] 49:13,21 104:22 believe [4] 20:8 24:19 86:1 105:15 belt [3] 11:24 26:1,11 benchmark [1] 40:12 besides [1] 102:23 best [6] 9:13 21:9 23:10 24:20,21,25 better [7] 13:7 22:14 31:8,9 84:11 95:14 103:18 between [15] 10:5 16:21 19:23 21:21 26:1 34:15,17 39:8 40:16 44:2 59:13 60:8,16 99:3,5 big [1] 101:21 bigger [1] 40:8 bit [4] 33:13 76:23 96:11 110:16 black [3] 46:12 83:5 116:20 black-box [1] 79:21 blesed [1] 38:11 borrow [1] 88:11 both [19] 3:23 5:11 6:16 7:10 34:6 39:11 57:13 58:5,17 59:19,21 60:5,6 75:12 78:11,15,16 107:4 108:8 box [9] 46:12 80:7,9,10,11,12,15 82:3 116:20 boxes [3] 46:10 80:1 83:5 Boy [1] 59:22 breaks [1] 43:8 BRIAN [5] 1:19 2:3,9 3:7 112:16 brief [15] 10:11 22:6 33:17,24 39:13 44:18 46:11 56:17 57:18 79:25 88:15 91:7,24 93:2 105:5 briefed [1] 28:25 broad [2] 23:23 103:21 broader [1] 49:25 brought [2] 35:12 70:19 build [1] 23:20 builds [2] 13:22 46:12 built [2] 12:19,22 built-in [1] 3:13 bullet [2] 109:5,6 bullets [17] 3:17 36:24 39:6,16 40:7 46:14 55:12,15 56:9 62:5 80:2,8,21 94:23 95:4 112:2 117:15 bump [16] 3:11,25 4:8,23 5:2 6:13 7:9,17 8:4,6,11,23 9:3,5 11:20 12:1,18 14:23 15:13,23 16:2 19:19 24:9 25:20 26:6,18 29:3 33:8,11 34:15 38:1 39:7 40:14 41:8 42:11 43:5 44:3 47:17,20 48:13,19,20,23 49:9,11,22 52:6,20 53:3 54:3,9 55:13 56:12 60:19 61:1 62:</p>	<p>21,23 63:8,14 66:7,19,22,23 67:3,4,8,24 70:2 72:12 73:22 75:13,16,18 76:2,7 77:15,21,24 78:22 79:6,10,11 82:11 84:15,21 85:12,15,21 86:3,16,25 87:3 94:25 95:2,19 97:2,16,20 98:3 102:15,20,24 103:1,5,7,25 104:2,12 107:4 108:8 112:22 115:15,18,19 117:16,20 bump-fire [1] 8:4 bump-firing [2] 11:17 77:19 bumped [3] 53:13 85:19 92:23 bumps [2] 26:7 79:17 burst [1] 64:11 Bush [2] 42:7,17 button [32] 5:20 32:13 33:2,19,24 34:1 46:13,14,19,19 56:23 57:9,10 58:8,10,15,25 59:16,18 60:2,17 61:16 62:10 64:16,16 66:19 80:3,8 83:7,8 107:23 116:22 buttons [20] 57:8,13,20,23 58:5,6,8,13,20,23,24 59:13,25 60:2 62:18 63:13 64:2,12 68:9 83:5</p> <hr/> <p style="text-align: center;">C</p> <p>calibrate [1] 75:25 call [2] 11:20 12:1 called [2] 36:21 89:18 came [1] 1:14 Camp [12] 32:16 57:5 59:5 65:4 70:1 81:1,12 82:7,21 83:13 84:4 116:7 cannot [3] 48:14 50:11 98:19 canon [1] 104:25 capable [1] 93:6 capacious [1] 23:13 capacity [1] 89:8 Capone [1] 31:3 capture [5] 52:2 56:13 103:24,25 104:1 captures [1] 56:17 care [2] 23:2 29:13 cared [2] 106:9 110:19 careful [2] 18:12 44:25 carefully [1] 21:5 CARGILL [4] 1:7 3:5 82:8 103:9 Cargill's [5] 47:17 48:23 49:7,10 79:5 carnage [1] 49:20 carveout [1] 105:3 Case [25] 3:4 25:5 27:16 28:24,24 33:24 54:1 66:24 67:5 68:17 69:15 70:2,11 81:6,11 87:25 88:5,6 99:21 107:4,5,5 108:14 117:23,24 cases [3] 81:9,11 82:14</p>	<p>casing [1] 97:3 category [4] 54:4,23 56:1 73:10 causation [1] 107:15 cause [7] 17:21 18:4 48:3 64:21 71:22 72:13 106:22 causes [6] 65:21 67:11,22 69:22 72:3,4 causing [1] 48:17 certain [13] 16:14,15 52:4 53:21 54:20 56:6,7 65:2 74:11,23 77:19 88:3 108:2 certainly [10] 19:15 23:9 38:10 50:21 88:10 95:25 101:14 103:9,25 109:12 cetera [2] 49:21 71:21 chain [1] 112:1 challenge [5] 20:1,3 22:1,10 30:5 challenging [1] 22:3 change [8] 63:8 70:3 82:11,12 84:6 89:6 96:25 110:16 12 84:6 89:6 96:25 110:16 71:13 81:13 82:6,10 83:16,18 86:2,3,6,7,8,21 changes [3] 63:14 66:9 84:25 changing [4] 51:4 63:12 85:5,14 channels [1] 115:23 characteristics [1] 42:2 characterization [2] 77:6 90:12 characterize [3] 74:19 84:9 90:15 characterized [1] 84:1 charged [1] 96:2 chemical [7] 105:21 107:6,21 108:6 109:5,15 111:5 Chicago [1] 90:4 CHIEF [32] 3:3,9 9:6,8,14,23 10:1,7 34:10 37:12 38:23 41:3 45:13,16 47:7,12 73:25 74:5,9 76:9 77:3 84:17 86:22 88:19 93:18,21 97:23 105:11 112:11,14,18 117:22 choice [2] 104:21,22 choose [1] 88:25 choosing [1] 65:14 chose [1] 41:20 Church [4] 87:24 88:6,8,17 Circuit [13] 15:3,13 32:16 34:18 35:2,17,19 36:18,19,20 37:10 78:17 81:1 Circuit's [2] 35:5 82:17 Circuits [2] 35:15,20 circumstance [1] 88:24 circumstances [1] 21:17 circumvent [5] 69:3,4,5,7,10 cite [3] 10:10 25:15 83:22 cited [1] 90:6 citing [1] 37:15</p>	<p>City [1] 90:4 civil [1] 20:5 claim [1] 90:2 class [2] 21:20 52:2 classic [1] 89:22 classification [9] 16:13,25 18:7 21:4 43:9 44:1 53:19 55:1 83:19 classify [1] 53:20 classifying [1] 54:20 clear [9] 24:8 34:23 37:14 42:13 45:18 59:3,23 105:7,15 clearest [1] 46:10 clearly [4] 13:17 50:19 56:25 82:7 clicking [1] 60:23 close [1] 29:7 closely [1] 103:8 closer [1] 21:2 closing [1] 84:12 cognizance [1] 67:25 combined [1] 58:6 come [6] 13:23 29:9 46:14 80:8 84:10 105:23 comes [4] 72:25 74:18 79:2 95:4 coming [7] 29:5 75:2 80:21 86:11 94:15 95:16 109:17 command [1] 115:1 comments [1] 45:5 common [6] 4:2 37:23 51:13 72:8 96:10,11 common-sense [1] 42:5 communication [2] 99:11,14 community [1] 30:3 competition [1] 39:14 completely [2] 15:17 65:11 component [1] 49:7 comprehends [1] 96:13 con [2] 54:17 63:21 conceded [2] 58:22 114:6 conceding [1] 69:9 conceivable [2] 62:21 63:2 concern [1] 29:2 concerned [4] 22:15 29:2 48:9 95:6 concerning [1] 100:8 concluded [1] 21:7 concludes [1] 20:20 concrete [1] 37:9 confronted [1] 32:16 confused [3] 70:15,16 110:20 confusing [2] 63:22 106:5 Congress [5] 3:20 13:15 16:13 17:8,20 18:2,13,17,19 20:9 23:11,12,23 31:16,17 37:15 38:19 41:14,20 45:11 52:2 53:20 54:6,24,25 55:4 56:5,12 68:22,25</p>	<p>73:10,21 87:11 88:3,22 94:14 95:25 96:3 101:21,23,24 102:19 104:3 106:9 110:10,19,22 113:1 116:10 117:6,19 Congress's [1] 73:1 Congressmen [1] 32:1 consecutively [1] 97:19 consider [1] 65:1 consideration [1] 45:22 considered [2] 60:6 104:21 consistent [5] 23:23 43:20,22 47:2 110:9 consistently [2] 79:16 90:25 constant [3] 74:22 75:8 77:6 constitutional [4] 104:11,17,20,25 construction [2] 46:24 51:3 construed [1] 50:7 contain [1] 43:11 contemporaneous [4] 4:18 36:11 113:23,24 contemporary [1] 38:10 contested [1] 63:17 context [3] 43:2 54:17 105:17 continual [2] 11:7,8 continually [2] 49:1 52:21 continue [4] 72:16 78:2 84:8 115:25 continued [2] 44:24 115:8 continues [3] 6:17 7:11 8:14 continuing [1] 16:5 continuous [8] 5:3,10 9:19,23 14:15 96:16,18 115:24 continuously [4] 3:17 9:24 77:8 80:2 contraption [1] 32:12 contrary [2] 91:9 115:14 control [3] 8:17 27:4 88:1 conventional [3] 39:5 96:17 102:6 conversation [2] 55:12 63:21 convert [3] 23:16 41:23 70:20 convict [1] 27:14 convicted [1] 27:21 correct [11] 20:22 24:25 25:1,12 37:19 42:14 55:18 60:9 71:19 92:16 101:13 correctly [1] 80:4 corrects [1] 43:15 couldn't [3] 105:18,25 108:10 counsel [9] 34:11 47:8 73:25 84:18 89:15 92:14 93:19 112:12 117:23</p>
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----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Official - Subject to Final Review

<p>country ^[1] 29:22 couple ^[1] 31:13 course ^[3] 26:4 41:8 42:18 COURT ^[29] 1:1,15 3:10 11:3,13 15:21 20:19 23:10 27:16 28:22,23 30:6,6 35:7,21 36:19,25 38:13,15 47:13 49:11 50:23 70:12 78:16 83:9 96:1 104:24 117:2,18 Court's ^[2] 5:14 9:15 courts ^[2] 31:25 104:16 cover ^[7] 13:16 31:19 102:8,15,20 103:5 113:1 coverage ^[1] 28:16 covered ^[8] 35:22 36:14 42:12,15,19 104:12 116:8,13 covers ^[1] 46:7 crack ^[1] 29:22 create ^[1] 5:3 created ^[3] 27:1,25 117:9 creating ^[1] 21:20 creativity ^[1] 23:19 crime ^[4] 22:19,19,20,21 criminal ^[3] 22:10 28:24 35:16 criminally ^[1] 35:6 curious ^[1] 104:21 current ^[1] 45:9 currently ^[1] 97:1 curved ^[11] 32:21 33:6 34:6 63:16 65:6 67:10 69:17,25 81:14 82:23 83:1 cycle ^[5] 5:3,5,7 27:1 115:25</p> <hr/> <p style="text-align: center;">D</p> <p>D.C ^[3] 1:11,20 82:17 damage ^[3] 17:21 18:4 49:20 danger ^[1] 117:14 dangerous ^[5] 18:14,14 105:2,6 112:24 day ^[3] 34:17 64:6 72:10 de-link ^[2] 94:14,17 deadliest ^[1] 20:25 deal ^[2] 115:4 116:3 dealing ^[2] 19:16 69:14 dealt ^[1] 20:12 decide ^[3] 75:25 87:13 104:16 decision ^[5] 34:18 35:5 81:2 95:25 96:1 decisions ^[2] 37:17 38:14 declined ^[1] 36:21 defeat ^[1] 101:8 defeats ^[1] 101:9 defend ^[2] 44:15,24 defendant ^[1] 70:14 defending ^[2] 30:6 44:21 defends ^[1] 44:10 defense ^[1] 24:16 define ^[2] 59:2 95:1 defined ^[7] 17:25 33:6,8,11</p>	<p>51:19 67:2 102:12 defines ^[1] 67:4 definitely ^[1] 74:14 definition ^[14] 3:24 5:21 13:14,21 14:6 15:4 19:6 26:15 47:4,14,18 49:25 51:23 103:7 definitions ^[1] 51:19 deliberately ^[1] 41:21 Democrat ^[1] 21:23 demonstrate ^[1] 45:7 depart ^[1] 113:9 Department ^[1] 1:20 depend ^[2] 59:1 83:12 depended ^[1] 63:23 depends ^[9] 5:18 6:2 13:18 39:11,23 48:24 63:5 80:23 95:15 depress ^[1] 7:1 Deputy ^[1] 1:19 described ^[2] 8:8 60:19 describing ^[3] 37:18 62:17 63:11 design ^[3] 11:19,25 51:14 designed ^[2] 31:2 110:25 despite ^[1] 75:1 destroyed ^[1] 24:9 determine ^[2] 64:24,25 development ^[1] 114:10 device ^[25] 12:19 25:15 26:9,18 27:6 47:25 48:3,22 58:2 61:7,19 62:2,3 63:6,12 65:3 69:15,21 79:8,9 83:17 97:20 103:21,22 116:7 devices ^[33] 12:10 21:8 23:1,6 25:21 27:24 29:4,6,19 32:20,25 36:17 39:1,2 40:15 49:7 62:1,22,23 63:11 65:3 68:21 77:19 81:2 87:8 96:19 102:4 103:9 107:11 114:10 116:4 117:8,9 dexterity ^[1] 87:5 dice ^[2] 30:14 93:5 difference ^[8] 7:17 8:19 25:25 59:13 60:5,16 62:14 85:25 different ^[23] 6:14,15,21 12:18 14:10 27:24 28:14 29:12 31:18 33:14 39:2 62:7,8 68:12 78:23 85:19 90:8 93:14 99:6,24,25 105:24 108:4 differently ^[4] 62:2 78:25 96:21,23 directing ^[2] 16:14 45:21 direction ^[7] 12:15,17 13:3 26:22,25 69:16 74:23 directly ^[1] 20:12 director ^[1] 43:21 disabilities ^[1] 87:4 disagree ^[6] 22:13 35:16,20 78:4 91:18 113:14 disagreeing ^[1] 45:8</p>	<p>disagreement ^[1] 74:18 disagrees ^[1] 35:21 discern ^[2] 90:10 91:16 discharge ^[2] 52:17 92:21 discrete ^[2] 94:17,22 discuss ^[1] 44:18 discussed ^[1] 82:16 disengage ^[1] 12:24 disengaging ^[1] 115:21 dispositive ^[1] 42:21 dispossessed ^[1] 20:4 dispute ^[1] 112:21 disputed ^[1] 3:24 disqualified ^[1] 24:6 distance ^[5] 12:14,16 13:2 26:22,25 distinct ^[1] 27:25 distinction ^[14] 16:20 54:3,5 60:8 72:25 73:1,5 99:1,2,5 101:13,20,21,24 distinctions ^[1] 16:10 distinguish ^[2] 10:5 95:24 distinguishing ^[1] 81:22 district ^[7] 9:15 11:3,13 15:21 36:19,25 70:12 disturbing ^[1] 35:1 divide ^[1] 86:15 doctrinal ^[1] 35:10 doctrinally ^[1] 35:14 doctrine ^[1] 29:14 doctrines ^[2] 23:3 24:22 dog ^[1] 29:23 doing ^[16] 9:20 10:4,9,12 17:23 28:19 35:6 58:8 65:12,13 66:4,5 72:10 85:1 92:12,17 DOJ ^[2] 63:18 82:10 done ^[5] 21:6 25:17 27:6 30:8 79:12 door ^[1] 84:12 doubt ^[1] 25:7 down ^[11] 29:17 33:19 46:20 61:15 65:19 66:6,6 82:4 83:8 116:23,25 drafted ^[2] 56:12 95:11 draw ^[4] 18:16 41:19 60:8 91:14 drawing ^[4] 98:25 99:2 101:13,20 drawn ^[3] 54:3 101:21,24 drives ^[1] 10:21 during ^[5] 23:5,6 49:16 77:14 89:17 dying ^[1] 49:21</p> <hr/> <p style="text-align: center;">E</p> <p>each ^[12] 4:6 14:14 37:5 46:23 76:4 78:18 80:1 81:10 86:14 100:11 115:18,19 earlier ^[4] 93:3 100:17,18 111:22 ease ^[1] 76:23 easier ^[1] 85:15 easy ^[11] 4:20 31:15 69:15</p>	<p>70:2 81:9,11,20,21 82:2 104:17 116:11 educated ^[1] 17:6 effectively ^[1] 67:24 effects ^[1] 39:2 effort ^[3] 48:25 77:11 90:10 egregious ^[1] 88:8 Eight ^[1] 55:11 Either ^[5] 5:11,13 60:6 63:12 83:8 ejected ^[1] 55:16 electronic ^[1] 116:6 eliminate ^[2] 27:7 115:15 eliminates ^[3] 4:9 115:12,13 eliminating ^[1] 115:21 Emily ^[2] 25:4,5 emphasizing ^[1] 114:14 empty ^[1] 3:18 enacted ^[8] 3:21 18:19 19:17 45:11 49:15 51:4 116:10 117:11 enacting ^[1] 24:8 encompass ^[3] 91:5 102:23 117:20 encompassed ^[1] 102:5 encompasses ^[1] 91:25 end ^[2] 72:10 77:4 energy ^[8] 5:2 26:19 75:14,16 77:2,16,22 78:1 enforcement ^[1] 117:13 engaging ^[1] 116:13 English ^[2] 17:6 38:18 enhanced ^[1] 85:11 enjoined ^[1] 34:21 enough ^[6] 8:10 74:24 75:15 76:25 104:2 105:6 ensnare ^[1] 28:6 ensure ^[3] 23:4 26:23 48:18 entire ^[5] 62:3 63:3 68:21 93:23 94:13 entirely ^[4] 13:10 48:24 79:7 93:13 entrapment ^[3] 23:3 24:17 29:14 equated ^[4] 17:9 91:21 92:9 98:19 equipped ^[9] 47:20 48:13 52:20 54:10 72:12 86:17 95:19 97:17,20 equivalent ^[1] 67:25 error ^[1] 43:16 errors ^[1] 21:10 especially ^[1] 88:15 ESQ ^[3] 2:3,6,9 ESQUIRE ^[1] 1:22 essay ^[1] 38:8 essential ^[1] 67:21 essentially ^[3] 57:5 61:21,23 estoppel ^[3] 23:3 24:17 29:15 ET ^[3] 1:4 49:21 71:21</p>	<p>evade ^[1] 4:20 evasion ^[4] 36:16 37:9,10 116:11 even ^[28] 4:15 14:18 19:22,25 21:15 22:1 27:19 32:4 33:20 36:9 43:6 44:15 64:9,10 76:15 77:5 82:9 86:10 87:9 88:2,21 91:22 92:22 97:18 98:15 108:12,12 114:14 evening ^[1] 29:21 everybody ^[5] 26:16 36:14 44:16 62:1 100:8 everyone ^[6] 16:14 30:7 32:11,23 70:6 81:17 everything ^[4] 30:9 48:20 79:3,5 evidence ^[9] 37:10 38:3,10 40:25 98:5,11,11,25 114:8 evident ^[1] 18:16 exact ^[3] 39:25 49:22 91:14 exactly ^[32] 3:20 7:14 11:10,12,13,16 13:24 15:24 19:3 25:1,4 32:20 37:20,24,24 38:7,15 46:9 47:5 64:25 82:18 83:6 85:17 90:13 94:24 97:5,7 102:10 110:19,23 115:24 117:16 examination ^[1] 44:25 example ^[1] 83:15 examples ^[2] 25:16 93:1 except ^[1] 57:7 executive ^[1] 32:1 exert ^[2] 62:4 79:15 exertion ^[2] 48:25 77:12 exist ^[2] 41:8,15 existed ^[1] 117:8 existence ^[1] 98:13 exists ^[1] 97:1 expect ^[2] 20:18 42:16 expected ^[1] 51:22 expels ^[2] 109:5,6 experiencing ^[2] 76:16,19 expert ^[5] 8:9 9:19 15:20 26:8 27:8 expertise ^[2] 26:11 27:5 experts ^[1] 70:19 explain ^[1] 25:24 explained ^[3] 8:15 9:17 26:5 explains ^[1] 113:18 explanation ^[5] 31:16 42:5,5,6,23 expulsion ^[3] 105:21 107:7 108:7 extend ^[3] 59:4 83:12 84:3 extended ^[2] 81:6 83:3 extends ^[1] 47:15 extent ^[1] 29:1 extremes ^[1] 81:10</p> <hr/> <p style="text-align: center;">F</p> <p>face ^[2] 24:10 117:13 fact ^[8] 28:1 29:8 30:1 44:</p>
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Official - Subject to Final Review

20 62:20 63:1 76:15 98:12 facts [1] 27:18 factual [1] 9:15 factually [1] 111:24 fair [1] 56:17 fall [2] 39:8 47:18 falls [2] 92:20 105:2 false [1] 77:16 familiar [1] 79:23 far [2] 25:3 51:12 fast [5] 10:14,20 18:15 32:15 75:10 faster [2] 40:10 86:11 faulty [1] 84:14 February [1] 1:12 federal [4] 19:25 20:2 21:16 29:17 feeling [2] 11:7,8 Feinstein [5] 20:10 42:8,18 45:2,4 felon [1] 24:5 felons [1] 19:25 field [1] 87:23 Fifth [13] 15:3,13 30:20,20 32:16 34:18 35:2,5 36:17,19,20 37:10 81:1 figure [1] 11:15 final [1] 25:22 find [4] 30:8 87:12 98:16 100:7 findings [1] 9:15 finger [24] 3:13,13 12:11,20,21 14:23,24 15:7,16,16,22 16:1,2 26:8,11,13 62:4 79:17 80:10,12,12 82:3 87:5 97:11 fingers [1] 87:6 fire [62] 3:11,16 4:10 5:1,11,17 6:9 14:20 15:12 29:22 33:19 40:19,23,24 47:15,21 48:3,14 52:10,18 54:10 55:3,4,7,10,21 56:2 58:18 60:21,22 61:6 62:15,18 64:7,11,22 66:14,23,25 67:11,22,23 68:5 69:18,22 71:1,23 72:6,13 82:24 84:22 85:4,6 86:9 89:11 95:19,20 97:12 103:23 106:23 111:12,14 firearm [2] 107:11 115:4 firearms [2] 30:4 35:3 fired [12] 7:21 10:21,24 12:23 46:23 47:24 55:21 72:16 79:14 86:16 97:18 108:18 fires [16] 3:25 4:5,24 5:4 7:18 56:22 57:10 60:24 70:22 71:3,3 75:21 80:2 96:14 111:6 112:3 firing [40] 4:4 6:24 7:11 8:6,11,23,25 14:15 15:15 16:2 19:5 26:6 33:4 34:1,9 46:5 48:1,19,20 49:9 52:5 56:24 58:2 61:10 63:6 66:10	67:9,21 75:13,17,18 76:2,7 78:22 79:12 86:2,5 114:25 115:25 116:18 first [11] 3:4,25 5:1 8:13 22:14 43:3 47:20 60:11 64:25 113:16 116:23 fishing [3] 32:15 41:16 116:7 fit [1] 54:4 fitted [3] 3:11 9:4 51:21 five [1] 24:12 fix [1] 21:10 fixed [1] 39:10 fixing [1] 22:23 flat [1] 70:13 FLETCHER [84] 1:19 2:3,9 3:6,7,9 5:15,18 6:2,7,15,21 7:2,9,14 8:5,8,21 9:13,25 10:4,8 11:10,12,14,18,22 12:3,7 14:4,7,9 15:1,10,19 17:1 18:10 19:3,13 20:17 21:18 22:2,12 24:7 25:1,4,13 26:4 27:15,22 28:8,21 29:18,25 30:16,22 31:11 33:5,10 34:19 35:9 36:8 37:20,24 38:7,15,24 39:9,22 41:11 42:10,24 46:9 47:5 74:16,19 77:14 78:22 79:9 83:21 90:15 112:15,16,18 Fletcher's [1] 77:5 flip [6] 32:17 33:2 56:24 64:13,15 82:22 flipped [1] 69:20 flipping [1] 65:7 floor [1] 92:20 focus [5] 32:5 41:22 50:7 74:7 101:3 focused [3] 16:20 71:12,15 focusing [1] 15:4 follow-on [1] 101:3 Footnote [1] 10:10 force [3] 66:5 77:7 79:15 forced [5] 29:4 36:21,22 41:17 82:15 forces [1] 82:23 forcing [2] 66:20 77:2 forestalled [1] 20:11 forestock [3] 49:1 52:22 72:17 forget [1] 109:10 forms [1] 102:5 forth [20] 7:21 10:13,17,19 12:13 16:22 25:10 26:7 37:4 66:7,21,25 70:1 74:15 75:10 76:5,12 82:24 97:4 108:1 forward [41] 3:15,16 4:11 5:1,7 7:10 9:11,11,19,21,24 10:9,22 11:9 12:16 13:1 16:6 26:24 34:8 36:6 43:7 44:5 49:2 52:22 54:2 55:3 60:21 62:4 72:17 73:7 74:3 75:1,8,15 76:14,20 78:3	79:16,22 115:9,23 found [4] 11:3,13 15:21 51:18 four [1] 93:23 Frederick [3] 31:24 83:23 90:16 friend [9] 7:20 25:19 32:23 33:23 44:15 74:6 114:6 115:14 116:2 friend's [9] 17:14 18:17 32:19 37:1 46:17 112:20 113:15 115:3,7 front [4] 3:14 34:7 46:14 61:20 frustrate [1] 18:18 fulfills [1] 32:8 full [1] 117:19 fully [8] 13:22 39:19 87:9 89:12 91:25 95:20 102:1,6 fun [1] 29:21 function [149] 4:1,3,6,13 5:22 7:16 8:12,24 12:22 17:2,9,12,22,24 18:3,3,9,22,25 19:4,9 23:14 26:14 30:12,17,18,24,25 31:4 32:2,6,19,24 33:1 35:24 36:1,3,4,15 37:2,19 40:21,22 41:21 43:18,19 44:14 45:19,20,25 46:2,3,7 47:16,21,23 48:2,4,5,8,11,15,17 50:1,3,6,8,12,12,13,16 51:9,14,19 52:1,7 54:11 63:24 64:20,22 65:1,22 66:15,16 67:20 69:21 71:7,17,22,25 72:4,5 78:6,10,14 82:20 83:23 85:22 86:10,18 90:25 91:22 92:3,8,19 93:13,14,17,24,25 94:4,7 95:16 96:24 97:6,13 98:7,15,17 99:5,5,17,23 100:16,20,25 101:18 102:4,20 103:12 105:16,19,20,22 106:1,8 107:20 108:5,18,21 109:14 111:13,15,25 112:3 113:2,19 114:1,11 functioned [1] 92:22 functioning [6] 12:8 13:12 26:1 31:15 46:22 78:25 functions [13] 7:23 13:8 18:21 37:2 43:13 66:13 86:13 89:18 91:11,12 95:3 97:16,19 further [3] 4:16 34:12 84:25 future [3] 20:5 31:9 117:9	generally [1] 104:16 gets [5] 7:15 72:16 79:13 85:19 97:18 getting [5] 6:4 67:16 76:2 95:8,11 Giffords [1] 39:13 give [9] 13:19 35:9 39:1 42:2 51:5 103:4 113:10 117:2,18 given [1] 101:15 giving [2] 31:24 69:7 Glock [1] 44:17 glove [1] 32:12 goals [1] 51:1 GORSUCH [19] 19:13 21:11,19 22:5 29:16,20 30:1,11,17,23 41:4 63:19 67:12,14,19 68:16 93:2 97:24 100:17 Gorsuch's [2] 27:11 28:10 got [9] 22:22 44:25 75:9 80:1 90:21,22 101:22,22 103:17 gotten [2] 28:16 34:20 government [19] 19:18 20:20,23 24:4 27:13 28:18 30:9 34:23 35:20 50:2 66:2 70:17 79:22 85:21 88:14 96:25 97:15 108:11,14 government's [5] 20:22 49:14 50:5 51:3 88:9 governs [1] 35:7 grade [1] 30:20 grammar [3] 30:20 52:13 113:16 grammatically [2] 50:7 93:15 great [1] 103:14 ground [2] 49:12 78:24 Guedes [1] 82:17 guess [22] 16:18 17:15 20:7 22:12 28:8 45:3 47:1 54:5 60:15 68:16 70:8 71:15 72:6 73:5 81:18 93:22 98:21 99:19 104:7 105:14 106:25 111:8 gun [25] 6:2 9:10 14:1 15:5,6 26:1,20 29:21 36:24 41:24 44:14 56:22 57:7 61:20 64:5 66:5 71:18 74:2 85:18 98:8 108:2,3 109:18 110:23 112:2 gun's [1] 5:2 guns [7] 4:18 19:7 20:4,4 23:5 44:13 73:16 gymnastics [1] 116:2	16,20,21,25 75:2,22,22,24 76:5,11,20 78:2 79:15 handful [1] 21:4 hang-up [1] 111:8 happen [3] 13:25 35:15 75:17 happened [2] 30:2 82:7 happening [11] 6:23 7:12 8:2,19,22 10:15,18,20 81:24 94:24 109:20 happens [8] 4:3,13 55:3,4 94:3 108:7 109:2,25 hard [5] 81:20,21 82:2,5 88:2 harder [3] 74:11 81:11 82:14 harness [1] 26:19 harnessed [1] 77:25 harnesses [2] 77:15,21 harnessing [1] 77:17 hear [2] 3:3 80:4 hearing [1] 30:7 heartland [1] 95:5 held [6] 27:16 36:18,20 43:23 58:9,16 helicopters [1] 40:9 Heller [1] 105:3 help [8] 12:1,11 13:5 31:10 87:4 101:12,15 105:24 helps [1] 13:6 hesitate [2] 20:22 23:22 high [5] 46:15 55:20 56:2 67:23 97:11 himself [1] 52:21 history [11] 20:25 37:22 83:22 89:15,22,24 90:1,10 91:15 98:16 99:8 Ho [1] 113:17 hold [16] 6:10 7:6 8:10 12:13,15 25:8 26:13 33:19 55:2 57:20 58:25 60:3 65:19 74:10,11 117:20 holding [17] 9:10 10:2 52:25 59:4,16,19 60:17,18 61:17,22 62:10,13 66:6 80:25 83:12 84:3 96:17 holds [3] 12:21 35:22 80:9 Holy [7] 87:24 88:6,8,10,11,17 113:6 Honor [6] 62:17 63:11 79:4 81:9 95:18 108:13 Honor's [2] 52:16 90:12 hooking [1] 26:11 hope [1] 31:8 hoped [1] 25:24 horribly [1] 22:24 House [2] 90:22,23 human [7] 48:24 77:11,11 94:17,22 95:7 96:15 hundred [2] 55:12 56:11 hundreds [1] 5:4 hung [1] 110:22 hypo [1] 68:12 hypothesize [1] 33:17
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G

GARLAND [2] 1:3 3:5

gather [1] 11:21

gave [2] 32:1 68:11

geez [1] 81:21

GENERAL [11] 1:4,19 44:

22,23 49:6 50:15 63:17 78:

11 91:6,23 98:12

General's [1] 93:2

H

half [2] 19:24 21:21

hammer [7] 4:15 32:22 36:

2,5,6,15 37:4

hand [29] 3:14 9:9 10:3,13,

16,19 11:9 25:9 49:2,4 52:

23 58:9,11 72:20 74:2,15,

Official - Subject to Final Review

<p>hypothetical ^[7] 13:20 46:11 63:10 79:21 81:7 116:4, 20</p> <p>hypotheticals ^[5] 61:15 62:16 69:6 82:16 83:4</p> <hr/> <p style="text-align: center;">I</p> <p>idea ^[2] 14:12 115:4</p> <p>identical ^[1] 95:22</p> <p>identified ^[1] 51:10</p> <p>identify ^[6] 16:14 18:8 49:6 53:20 73:16 79:9</p> <p>identifying ^[1] 82:2</p> <p>ignore ^[1] 94:12</p> <p>illegal ^[3] 19:16 28:20 35:8</p> <p>illustrated ^[1] 117:17</p> <p>imagine ^[5] 6:3 13:22 46:12 86:23 104:20</p> <p>imperceptibly ^[1] 37:4</p> <p>implausible ^[2] 116:13 117:1</p> <p>implementing ^[1] 96:3</p> <p>important ^[4] 15:11 40:19 43:2 44:7</p> <p>importantly ^[1] 44:10</p> <p>imposing ^[1] 75:8</p> <p>impossibility ^[1] 101:16</p> <p>impossible ^[1] 93:16</p> <p>inanimate ^[3] 35:24,25 93:12</p> <p>include ^[2] 44:8 111:2</p> <p>included ^[1] 32:23</p> <p>including ^[4] 17:6 20:6,9 25:8</p> <p>inconsistent ^[4] 4:17 52:13 96:10 114:7</p> <p>incorrect ^[1] 111:25</p> <p>independent ^[2] 47:19 114:12</p> <p>indication ^[1] 44:22</p> <p>indications ^[2] 36:10 38:20</p> <p>indistinguishable ^[1] 79:2</p> <p>individuals ^[1] 49:16</p> <p>ineffective ^[1] 24:24</p> <p>inference ^[1] 91:14</p> <p>informal ^[3] 43:10 44:1,8</p> <p>ingenuity ^[1] 23:18</p> <p>inherently ^[1] 73:6</p> <p>initial ^[2] 4:22 6:16</p> <p>initially ^[3] 43:7 49:15 83:17</p> <p>initiate ^[4] 15:15,19 33:4 34:8</p> <p>initiates ^[9] 5:12 7:10 8:25 14:20 48:1 58:2 61:9 63:6 114:25</p> <p>input ^[5] 16:4 32:9 114:17 115:9,12</p> <p>inside ^[5] 63:25 64:4 71:18 85:18 97:16</p> <p>insofar ^[2] 18:25 70:9</p> <p>install ^[1] 13:25</p>	<p>instead ^[7] 23:14 58:7,12, 24 65:7 69:19 81:16</p> <p>instructions ^[1] 96:3</p> <p>intended ^[2] 38:5 90:8</p> <p>intending ^[1] 17:20</p> <p>interchangeably ^[1] 32:3</p> <p>interested ^[1] 30:3</p> <p>internationally ^[1] 70:14</p> <p>interpret ^[2] 50:23 109:18</p> <p>interpretation ^[13] 18:18 21:3 24:24 25:7 30:5 31:23 36:7 37:1 44:11,16,21 56:15 87:23</p> <p>interpretations ^[2] 25:19 117:2</p> <p>interpreted ^[2] 20:21 69:13</p> <p>interpreting ^[2] 69:11 110:5</p> <p>interpretive ^[8] 19:22 21:14,14,25 22:3,9,17 28:11</p> <p>intransitive ^[2] 30:21 93:14</p> <p>intro ^[1] 17:18</p> <p>intuitively ^[1] 13:10</p> <p>inventor ^[1] 46:18</p> <p>invoking ^[1] 104:24</p> <p>involved ^[2] 79:3,5</p> <p>irrational ^[1] 71:21</p> <p>irresponsible ^[2] 21:1,7</p> <p>isn't ^[8] 29:9 32:6 34:4 35:1 36:1,4,6 43:12</p> <p>issue ^[6] 21:15 40:15 42:7 44:4 64:7 105:1</p> <p>issued ^[3] 40:5 43:21 44:2</p> <p>items ^[1] 19:15</p> <p>itself ^[7] 31:5 33:8,11 50:22 93:11 113:21 114:16</p> <hr/> <p style="text-align: center;">J</p> <p>JACKSON ^[89] 16:8 17:15 18:10,20 19:12 45:17,18 46:25 47:6 51:5,8,12,18,25 52:12,24 53:5,8,11,14,17, 23 54:12,16,19,22 55:7,8, 11,18,22,25 59:15 70:4,7, 24,25 71:5,9,11,20 72:18, 21,24 73:15 79:20,25 80:7, 17,20,24 81:4,15,18 82:1 105:13,14 106:5,7,12,15, 18,21,24 107:3,9,14,19,25 108:16,20,23 109:1,4,8,13, 22 110:1,4,8,13,15,18 111: 17,20,22,23 112:5,8</p> <p>JONATHAN ^[3] 1:22 2:6 47:10</p> <p>judge ^[3] 70:12 88:13 113:17</p> <p>judgment ^[2] 87:2,12</p> <p>judicial ^[1] 34:20</p> <p>jury ^[1] 70:15</p> <p>Justice ^[335] 1:20 3:3,10 5:15,24 6:6,13,20,23 7:8,12 8:2,7,18 9:6,7,8,14,23 10:</p>	<p>1,7 11:4,11,14,19,23 12:4 13:4 14:5,8,21 15:2,11,18 16:7,8 17:15 18:10,20 19:12,13 21:11,18,19 22:5 23:25 24:1,18 25:2,5,22,23 27:10,11,19 28:5,9,10,17 29:16,20 30:1,11,17,23 33:5 34:10,12,13,14 35:1,15,23 37:11,12,12,14,21 38:4,12, 22,23,23,24 39:20 41:2,3,3, 5,6 42:4,11 45:12,13,13,15, 16,16,18 46:25 47:6,7,12 49:13,19 50:5 51:5,8,12,18, 25 52:12,24 53:5,8,11,14, 17,23 54:12,16,19,22 55:7, 8,11,13,18,22,25 56:15,22 57:2,6,12,14,17,25 58:3,7, 12,15,19,22 59:7,10,15,20, 22,25 60:9,11,15,25 61:3,8, 11,14,19,25 62:9,12,20 63:1,19,20 65:9,11,23 66:1,17 67:2,6,12,14,19 68:6,16 69:10 70:4,7,23,25 71:5,9,11, 17,20 72:18,21,24 73:15, 24,25 74:5,9 75:3,5 76:9, 10,18 77:3 78:4,8,20 79:20, 25 80:7,17,20,24 81:4,15, 18 82:1 84:17,19,20,24 85:7,10,24 86:22,22,23 87:17, 18,20,21,22,23 88:18,19, 19,21 89:1,14,21 90:3,3,13, 17,21 91:8,17,20 92:4,6,10, 14 93:2,18,21,21,22 94:11 95:13 96:4 97:21,23,23,25 98:1,21,24 99:4,10,19,22 100:4,9,14,17,19,22 101:2, 7,11,19 102:8,11,15,18 103:1,4,11,14,17 104:5,9, 19 105:9,11,11,13,14 106:5,7,12,15,18,21,24 107:3,9, 14,19,25 108:16,20,23 109:1,4,8,11,13,22 110:1,4,8, 13,15,18 111:17,20,22,23 112:5,8,11,14,19 113:22 114:18 117:22</p> <hr/> <p style="text-align: center;">K</p> <p>KAGAN ^[53] 11:4,11 38:23, 24 39:20 41:2 55:13 56:15, 22 57:2,6,12,14,17,25 58:3, 7,12,15,19,22 59:7,10,20, 22,25 60:9,11,15,25 61:3,8, 11,14,19,25 62:9,12,20 63:1 68:6 69:10 75:3,5 76:10, 18 93:21,22 94:11 95:13 96:4 97:21 114:18</p> <p>Kagan's ^[1] 109:11</p> <p>Karl ^[2] 31:24 83:22</p> <p>KAVANAUGH ^[42] 23:25 27:10,19 28:5,9,17 41:5,6 42:4,11 45:12 97:25 98:1, 21,24 99:4,10,19,22 100:4, 9,14,19,22 101:2,7,11,19 102:8,11,15,18 103:1,4,11,</p>	<p>14,17 104:5,9,19 105:9 113:22</p> <p>keep ^[8] 5:6,7 12:11 16:1 34:1 65:14,20 77:1</p> <p>keeping ^[2] 66:5,6</p> <p>keeps ^[5] 6:12 7:7 46:19 56:24 116:24</p> <p>key ^[2] 30:13 93:5</p> <p>kicks ^[1] 111:5</p> <p>kind ^[7] 15:7 16:9 17:19 18:4 56:9 99:11 111:4</p> <p>kinds ^[9] 4:19 16:15,15 36:13 55:14 69:1 110:24 117:7,8</p> <p>knowledge ^[1] 76:24</p> <hr/> <p style="text-align: center;">L</p> <p>land ^[1] 34:5</p> <p>language ^[13] 17:8 23:13, 23 31:10,11 41:7,12,13 42:16 88:1 94:5 103:15 113:9</p> <p>large ^[2] 34:22 89:7</p> <p>Las ^[3] 3:19 20:24 117:17</p> <p>Last ^[1] 104:10</p> <p>Laughter ^[2] 29:24 103:19</p> <p>law ^[3] 35:16 45:9 117:13</p> <p>lawful ^[1] 35:19</p> <p>lawmakers ^[2] 90:7,7</p> <p>laws ^[1] 117:11</p> <p>leads ^[3] 24:19 105:21 107:6</p> <p>learned ^[1] 30:21</p> <p>least ^[1] 105:2</p> <p>leave ^[1] 14:1</p> <p>ledge ^[2] 3:13 12:20</p> <p>left ^[2] 74:20 75:21</p> <p>left-handed ^[1] 75:22</p> <p>legal ^[7] 23:7 27:20 28:7 35:13 43:11 44:9 87:15</p> <p>legality ^[1] 87:8</p> <p>legalize ^[1] 25:20</p> <p>legislation ^[4] 13:16 20:11 45:6,7</p> <p>legislative ^[13] 19:22 21:12 37:22 83:22 89:15,17, 22,24 90:1,10 91:15 98:16 99:8</p> <p>legislator ^[3] 45:5 86:24 87:1</p> <p>legislators ^[2] 90:23,24</p> <p>legislature ^[1] 51:1</p> <p>less ^[1] 21:15</p> <p>lethal ^[1] 56:8</p> <p>letter ^[2] 43:9 83:20</p> <p>letters ^[3] 21:4 44:2,11</p> <p>letting ^[1] 66:7</p> <p>levels ^[1] 22:13</p> <p>lever ^[12] 32:21 33:6 34:6 63:16 65:6 67:10 69:17,25 81:14 82:24 83:2 116:17</p> <p>liken ^[1] 30:12</p> <p>likewise ^[1] 5:8</p> <p>limitations ^[2] 24:12,13</p> <p>line ^[3] 29:7,8 56:20</p>	<p>lines ^[1] 88:16</p> <p>literal ^[1] 88:1</p> <p>literature ^[1] 38:16</p> <p>litigation ^[3] 13:15 63:18 82:11</p> <p>little ^[9] 9:9 15:22 32:14 33:13 76:23 95:7 96:11 103:21 110:16</p> <p>loaded ^[1] 68:20</p> <p>loath ^[1] 104:16</p> <p>lobbyist ^[1] 90:20</p> <p>long ^[2] 3:15 6:10</p> <p>longer ^[4] 65:5 69:18 81:14 83:1</p> <p>look ^[18] 9:14,22 10:9 13:10 21:2,4 35:25 36:2 49:25 83:19 86:1,4 92:17 94:13 100:15 101:22,23 111:18</p> <p>looked ^[2] 15:5 114:15</p> <p>looking ^[6] 13:13 36:10 42:25 66:3,4 92:11</p> <p>looks ^[4] 11:16 38:16,16 43:4</p> <p>loop ^[2] 11:24 26:12</p> <p>loosely ^[1] 8:10</p> <p>lost ^[1] 65:12</p> <p>lot ^[23] 20:5,17,18 23:18,18, 20 26:10 27:4,7 28:6,16 35:11 38:25 40:1 41:7,13 43:11 44:9 68:7 75:12 86:11 98:2 113:23</p> <p>lots ^[2] 14:3 31:18</p> <p>LV ^[1] 116:6</p> <hr/> <p style="text-align: center;">M</p> <p>M14 ^[2] 40:5,18</p> <p>M16 ^[10] 6:5 7:3,5 36:3 40:4,17 64:8,13 65:14,16</p> <p>M6 ^[1] 64:6</p> <p>machine ^[6] 41:24 53:6,6,7, 9 111:4</p> <p>machinegun ^[55] 5:13,16, 17,19 6:8,25 7:3 11:6 12:5 13:13,21,23 14:6,18 18:15 23:16,21 25:12 27:18 33:18 37:6 39:5 40:4 41:25 43:12,17 44:19,20 46:16, 22 47:14 54:2 57:1,3,19 58:23 60:1,12,13 61:17 65:16,17 68:14 70:17,18 72:9 80:18 82:25 84:1,10 96:17 107:5 109:21 112:23,24</p> <p>machinegun's ^[1] 37:18</p> <p>machineguns ^[20] 3:22,23 4:20 5:8 7:4 18:13 19:20 25:18 27:23 28:2 29:9 38:1 44:5 49:20 60:7 70:14 81:3 86:24 87:10 111:2</p> <p>machinery ^[1] 15:6</p> <p>made ^[7] 19:16 24:7 33:16 34:23 98:2 100:17 104:10</p> <p>magazine ^[3] 3:18 89:5,7</p> <p>magazines ^[1] 89:8</p>
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Official - Subject to Final Review

<p>mailed ^[1] 70:13 main ^[1] 20:19 maintain ^[4] 5:9,10 6:11 34:8 maintaining ^[2] 49:3 74:7 maintains ^[2] 3:15 5:12 majority ^[1] 39:17 man ^[1] 8:5 manage ^[1] 12:12 manipulation ^[1] 4:16 manual ^[23] 4:9 8:6,23 14:13 19:8 27:4,4,7 40:23 41:1 42:3 46:6 48:18,21 52:21 72:14 77:9 79:6,18 112:4 115:9,12,15 manually ^[3] 4:7 12:25 115:22 manufacturer ^[1] 43:11 many ^[17] 4:10 5:8 19:8,11,18 20:14 25:16 30:4 31:25 38:19 39:6 50:10 52:5 86:13 89:9 113:13 117:15 March ^[1] 24:10 market ^[1] 11:25 master ^[1] 75:12 matter ^[10] 1:14 16:11 24:11 53:24 54:7 64:3,3 73:1 87:8,15 matters ^[8] 16:24 17:17 53:24 54:8 64:3 77:4 92:24 106:9 max ^[1] 40:2 maximize ^[1] 28:15 maximum ^[1] 39:14 McDonald ^[1] 90:4 mean ^[25] 13:11,15 16:12 17:12 21:16 25:15 27:23 36:16 38:18 59:7 62:1 71:25 74:10,10 75:6 91:1 93:23 94:5 95:15 96:4 97:9 100:23 105:20 107:19 115:10,12 meaning ^[8] 23:24 26:6 38:10 45:10 46:4 90:11 105:16 117:19 means ^[19] 13:6 17:3,4 18:23 26:17 27:2,2 34:24 35:16 64:23 75:3,6 83:24 91:16 94:14 98:18 99:25 115:10,12 meant ^[7] 3:21 67:20 68:25 88:3 99:6 113:7 114:11 mechanical ^[2] 44:13 114:11 mechanically ^[1] 63:25 mechanics ^[7] 38:25 51:15 98:8 108:2,3 110:6 113:4 mechanism ^[12] 4:25 8:17 9:2 12:9 26:17 69:8 85:12,14,17 86:5,21 115:11 mechanistic ^[1] 110:19 mechanistically ^[1] 111:9 members ^[3] 20:9 40:5</p>	<p>117:12 mens ^[2] 27:11,13 mentally ^[1] 9:20 mention ^[1] 29:3 mentioned ^[2] 29:5 93:3 merely ^[1] 83:6 MERRICK ^[1] 1:3 metal ^[13] 32:21 34:6 63:16 65:6 67:10 69:17,25 70:13,18 71:13 81:14 82:23 83:2 MICHAEL ^[1] 1:7 middle ^[2] 81:11 82:15 might ^[19] 14:22 20:18 24:20 31:8,8 35:17 51:1 79:23 84:2 87:1 94:18,19,20,21 103:25 107:22,23,25 108:3 military ^[3] 40:6 64:7,9 million ^[5] 19:24,24 21:21,22 80:13 mind ^[1] 83:18 mine ^[1] 81:20 minute ^[7] 5:4 10:18 19:14 39:16 40:7,14,16 missing ^[1] 73:11 mistakes ^[1] 20:22 misunderstand ^[1] 64:18 misunderstanding ^[1] 64:20 MITCHELL ^[205] 1:22 2:6 13:4 25:24 47:9,10,12 49:18 50:4 51:7,11,17,24 52:11,15 53:2,7,9,12,16,22 54:8,14,18,21 55:6,9,17,20,24 56:10,16,21,25 57:4,9,13,15,22 58:1,4,10,14,17,21 59:1,9,14,18,21,24 60:4,10,14,20 61:2,5,9,13,18,24 62:8,11,14,25 63:4,19,20 64:19 65:21,24 66:11,22 67:4,7,13,15,18 68:3 69:9 70:6,23 71:1,7,10,19 72:11,19,23 73:13,20,24 74:4,8,14 75:4,11 76:17,21 78:7,9 79:1,24 80:6,16,19,22,25 81:5,16,25 82:5 84:20,23 85:2,9,13 86:8 87:3 88:7,25 89:4,20,25 90:9,14,19 91:3,13,19 92:5,8,13,16 93:20,22 94:9 95:9,14 96:4,22 97:22 98:10,23 99:2,7,13,20 100:3,6,12,15,20,23 101:6,10,14,25 102:10,14,17,19,22 103:3,6,12,16,20 104:8,15,23 105:10 106:4,6,11,14,16,19,22 107:1,8,10,18,24 108:12,17,22,25 109:3,6,12,19,24 110:2,7,11,14,17 111:10,19,21,24 112:6,10,13 Mm-hmm ^[19] 11:18 30:16 49:18 51:17,24 53:22 58:21 59:14 60:14 61:2,13,18 62:11,25 67:18 76:17 81:</p>	<p>25 110:17 111:23 mode ^[1] 32:7 modification ^[1] 70:8 modifications ^[2] 110:10,21 modified ^[1] 111:14 modify ^[1] 111:3 moment ^[1] 16:9 momentarily ^[1] 10:23 month ^[1] 24:13 morning ^[1] 3:4 most ^[6] 18:11 36:7 44:9 64:11 114:4,4 mostly ^[1] 43:23 motion ^[5] 5:11 6:16,16,18,22 10:11 66:21 75:20 98:9 motor ^[6] 48:22 65:8 69:23 82:22,23 83:7 motorized ^[3] 65:3 69:14 81:2 mounted ^[1] 40:9 move ^[7] 10:16,19 18:23 25:9 26:21 33:16 74:25 moved ^[2] 16:1 31:5 movement ^[15] 4:21 6:19 7:19 12:13 16:21 17:3 46:4 56:3,4 106:12,17 107:2 113:3 114:12 115:23 movements ^[6] 4:9 7:22 27:7 40:24 41:1 46:6 moves ^[8] 4:14,15 7:20 12:14,16 26:7,24 116:23 moving ^[24] 9:10 10:3,13 32:21 36:15 45:22 46:20 53:6,10 56:7 69:23 74:12,15,17 76:5,11,20 82:3,3 83:7 108:1 114:22 115:5 116:24 much ^[12] 39:6,12,16,16,20 40:10,10 44:25 60:10 73:6 75:25 84:11 multi-shot ^[2] 5:12 14:20 multiple ^[16] 6:19 7:18 14:16 36:24 37:2 40:23,23,25 42:3 43:13,18 46:5,6 56:23 109:10 112:2 multitude ^[1] 96:14 must ^[9] 47:22,23 48:3,17,25 78:1 79:14 112:4 116:22 myself ^[1] 96:5</p>	<p>13 61:6 62:19 67:8 79:11 need ^[16] 8:3 15:7 45:7 58:4,17 59:19 60:21 62:15,17 64:24 73:5 78:12 84:10 92:17,18 115:21 needed ^[1] 88:23 needs ^[3] 75:19 84:7 91:24 neither ^[5] 57:15 60:7 61:5 63:17 67:8 never ^[2] 63:17 91:10 new ^[8] 29:9 34:16,17 38:8 41:18 42:15 82:25 83:13 next ^[1] 29:22 nobody ^[1] 56:18 noire ^[1] 87:24 non-conventional ^[1] 69:4 non-mechanical ^[9] 44:3 47:17 48:23 49:11 77:24 79:6,10 84:15 103:8 non-shooting ^[8] 49:2 52:23 72:20 74:20,25 75:2,24 78:2 non-trigger ^[2] 9:9 74:2 none ^[2] 41:15 49:5 nor ^[2] 61:6 67:8 normal ^[2] 41:24 60:24 normally ^[1] 35:25 nothing ^[13] 9:20 48:6 63:14 66:11 68:4 77:9,12,25 79:18,18 86:20 97:3 104:23 notice ^[1] 28:15 notice-and-comment ^[2] 21:13 28:12 notion ^[2] 49:22 70:16 NRA ^[5] 17:7 31:25 36:12 37:16 38:2 number ^[8] 20:9 22:13 25:15 39:10 56:17 86:16,17 94:15</p>	<p>old-time ^[1] 64:13 Once ^[6] 4:25 31:5 45:23 46:14 52:3 53:1 one ^[95] 4:1,6,10,24 5:22 6:9,18 8:12,25 9:18 11:2 14:19 16:21 19:10 20:19 23:4,4 25:22 27:25 28:10 31:8,17 39:7,18 42:23 44:10,21 47:3,15,21 48:11,14 50:1,11 52:17 54:6,10 57:9 58:5,8,10,15,18,24 59:16 60:2 61:16 63:14 64:1,16 66:14 67:4 69:8,15 70:22 71:4,23 72:2,3,6,14 77:10 78:12 80:17,18 86:9,15,19 94:4,6,16 95:8,16 96:18 97:12,17,17 99:22 101:20 105:15 106:9 107:21 108:17 109:6,7,17 111:6,12,15 112:3 ones ^[4] 3:18 44:4 54:24 73:17 only ^[24] 20:2 45:23 47:15,21 48:5,9 50:7,13,20 52:17,19,25 67:1 76:6 78:12 89:5 92:10 97:17 105:15 106:9 108:17 109:1 113:12 116:12 open ^[1] 29:22 opening ^[1] 91:7 opens ^[1] 37:8 operate ^[3] 18:24 80:14 111:3 operated ^[1] 71:14 operates ^[5] 46:1 76:12,14 110:23 111:9 operating ^[3] 70:21 108:2,4 operation ^[4] 17:25 46:4 72:3 110:20 operational ^[1] 51:14 operations ^[2] 16:11 51:22 operator ^[3] 80:3,7,9 opinion ^[2] 82:17 88:12 opposed ^[3] 50:2 56:2,7 opposite ^[3] 11:9 91:14 98:22 oral ^[5] 1:15 2:2,5 3:7 47:10 order ^[6] 34:8 39:23 42:2 80:14 113:14 116:3 ordinary ^[2] 54:1 98:6 original ^[2] 40:13 90:11 originally ^[1] 110:25 oscillating ^[1] 83:5 other ^[34] 3:14 4:19 6:25 10:1 13:9 20:5 23:10 24:6 29:4 31:25 35:19 36:13 38:20 39:5 42:6 44:1 53:17 54:7 57:10 58:9,11 62:16 63:10 64:16 72:25 74:6 102:16 104:1,1 106:2 107:10 109:9 116:3 117:8</p>
O				
<p>Obama ^[2] 42:8,17 object ^[10] 32:6,7 35:24 36:1 93:7,12,15,17 101:1,17 obvious ^[1] 31:2 obviously ^[6] 14:18 40:8 42:15 93:9 99:20 101:12 occur ^[3] 69:23 75:19 97:19 off-ramp ^[1] 104:18 offense ^[1] 24:12 offered ^[2] 84:11 88:14 offering ^[1] 25:20 officers ^[1] 117:13 officials ^[1] 32:1 often ^[2] 6:7 20:20 Okay ^[24] 7:8 47:6 53:11 55:8,19 57:6,25 58:3,7 60:15 67:19 71:5,10 72:18,24 80:24 87:22 92:14 99:22 101:19 104:10 106:4,18,24 old ^[3] 21:24 31:1 42:16</p>				
N				
<p>narrow ^[2] 31:13 50:2 nation's ^[2] 20:25 117:13 natural ^[3] 113:10,18 117:19 nature ^[12] 63:10 66:10 67:16 82:6,12 84:6 85:1,16 86:2,5,6 97:1 nearly ^[1] 20:13 necessarily ^[3] 18:23 106:16 114:21 necessary ^[7] 49:9 57:11,</p>				

Official - Subject to Final Review

<p>others [4] 36:12 73:18 74:12 108:3</p> <p>otherwise [2] 19:23 68:19</p> <p>out [17] 3:17 11:16 30:8 46:14 62:6 80:8,21 86:11 87:13 94:15 95:4,16 98:12 105:23 109:17 114:8 116:5</p> <p>outside [1] 47:18</p> <p>over [7] 29:7,8 32:18,18 64:15 77:8 111:9</p> <p>overarching [1] 50:25</p> <p>overcome [3] 74:24 76:24 97:15</p> <p>overcomes [2] 10:22 75:16</p> <p>own [3] 46:20 79:15,15</p> <p>owners [1] 29:21</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>packed [1] 20:17</p> <p>PAGE [4] 2:2 46:11 57:18 113:17</p> <p>pages [1] 9:16</p> <p>Palsgraf [1] 107:16</p> <p>part [9] 22:8 25:13 28:12 33:25 34:7 43:20 74:2 107:12 109:9</p> <p>particular [4] 16:16 59:5 73:9 90:7</p> <p>particularly [1] 45:9</p> <p>parts [7] 3:24 19:6 23:15 41:23 44:13 114:22 115:5</p> <p>pass [1] 13:15</p> <p>passed [1] 45:6</p> <p>past [3] 21:22 23:1 77:2</p> <p>pause [2] 42:20,21</p> <p>people [32] 17:9 19:24 21:22 22:25 24:15 25:17 28:3,6 29:5,16,19 30:3,4,10,15,18,23 31:3 34:15 35:2 37:15 39:17 41:25 49:21 87:4,5 89:22 98:17 99:15 101:12 113:13,24</p> <p>per [6] 5:4 47:21 66:15 86:10 97:12 108:18</p> <p>perceives [1] 75:7</p> <p>perfect [2] 17:11 114:1</p> <p>perfectly [3] 90:5 113:18 115:2</p> <p>performs [1] 49:8</p> <p>perhaps [1] 50:25</p> <p>period [1] 77:8</p> <p>permissible [2] 36:18,20</p> <p>permit [1] 89:3</p> <p>permits [1] 65:20</p> <p>person [13] 14:19 28:19 31:14 46:5 51:20,22 65:13,13 75:14 82:4 88:22 89:2,3</p> <p>perspective [4] 9:18 11:1 15:5 73:2</p> <p>Petition [3] 9:16 15:14 113:17</p> <p>Petitioners [6] 1:5,21 2:4,</p>	<p>10 3:8 112:17</p> <p>phrase [14] 48:4 50:6,19 88:11 91:20 94:13 98:7 99:16,24 100:10,11,16 101:4,15</p> <p>phrases [1] 98:19</p> <p>pick [1] 27:11</p> <p>piece [4] 16:4 45:6 70:18 71:13</p> <p>pieces [2] 70:8,13</p> <p>piston [1] 32:14</p> <p>place [4] 9:14 12:21 26:13 34:5</p> <p>places [1] 3:12</p> <p>plain [1] 113:9</p> <p>plastic [1] 15:22</p> <p>plausible [3] 46:24 109:21 116:9</p> <p>please [3] 3:10 47:13 51:7</p> <p>point [21] 13:5 28:10 29:25 40:2 45:3,19 62:3 63:17,18 74:16 82:10 85:23 91:7 96:11 98:2,4 100:18 101:4,22 109:11 115:7</p> <p>pointed [1] 114:8</p> <p>pointing [4] 37:23 38:9,13,13</p> <p>points [2] 74:11 98:12</p> <p>poles [1] 39:3</p> <p>policy [4] 87:8,16 95:21,23</p> <p>positing [1] 105:24</p> <p>position [8] 19:19 25:6 42:14 43:23 70:10 83:11,16 105:4</p> <p>possessed [2] 22:25 34:15</p> <p>possessing [2] 23:5 35:3</p> <p>possibility [3] 62:21 63:2 84:13</p> <p>possible [5] 26:6 27:3 64:7 84:3 103:8</p> <p>possibly [2] 30:9 51:6</p> <p>post [1] 15:22</p> <p>posture [2] 22:1,3</p> <p>powder [1] 107:13</p> <p>power [2] 22:16,18</p> <p>powerful [2] 38:20 40:25</p> <p>practical [2] 24:11 35:10</p> <p>practically [1] 35:11</p> <p>practice [4] 34:25 39:16 40:3 75:12</p> <p>precedent [2] 35:18,19</p> <p>precisely [2] 23:17 95:3</p> <p>preferable [1] 72:7</p> <p>premise [1] 52:15</p> <p>present [1] 34:16</p> <p>presented [1] 78:19</p> <p>preserving [1] 87:7</p> <p>president [5] 17:7 31:25 36:12 37:16 38:2</p> <p>press [1] 3:14</p> <p>presses [2] 5:1 80:3</p> <p>pressure [29] 3:16 5:7,10,25 6:11 10:2,23 11:5,8,9</p>	<p>49:4 54:1,2 61:4 62:4 65:18 74:7,22,24 75:1,8,21,23 76:1,4 77:7 79:16 96:16,18</p> <p>presumably [1] 94:2</p> <p>pretty [3] 16:3 59:23 88:2</p> <p>prevail [1] 78:11</p> <p>prevents [1] 104:24</p> <p>previously [2] 28:1,13</p> <p>primary [1] 7:15</p> <p>Principal [1] 1:19</p> <p>principle [1] 67:17</p> <p>prior [3] 21:3 24:5 44:21</p> <p>prison [1] 20:2</p> <p>probably [4] 34:19 76:21 103:24 104:3</p> <p>probative [1] 45:10</p> <p>problem [8] 21:5 27:25 29:5,11 31:2 50:4 96:24 97:14</p> <p>problems [2] 41:18 87:5</p> <p>process [7] 20:1 26:20 27:3 48:21,24 77:13 89:17</p> <p>produce [3] 52:18 86:18 95:7</p> <p>produces [3] 48:11 52:17 94:23</p> <p>prohibit [9] 3:21 17:20 54:25 56:6,14 68:25 73:3,10,18</p> <p>prohibited [5] 16:17 21:8 54:6 68:8 73:18</p> <p>prohibiting [1] 55:1</p> <p>prohibition [6] 3:22 27:20 28:7 49:17 54:20 56:1</p> <p>projectile [2] 105:22 107:7</p> <p>propels [1] 112:2</p> <p>properly [1] 21:12</p> <p>property [1] 14:1</p> <p>proposed [1] 17:7</p> <p>prosecute [2] 22:25 24:4</p> <p>prosecuted [5] 20:3 23:5 24:14 34:18 35:6</p> <p>prosecuting [1] 27:12</p> <p>prosecution [2] 22:11 24:10</p> <p>prosecutions [1] 35:12</p> <p>protected [1] 104:13</p> <p>prototype [1] 43:8</p> <p>prove [1] 28:18</p> <p>proves [1] 91:14</p> <p>provide [1] 103:6</p> <p>public [3] 28:15 90:11 117:12</p> <p>published [1] 38:8</p> <p>pull [40] 4:4,7,22 5:20 6:9 7:6 15:7 17:10 23:14 30:24 31:17 32:2 33:7,18 37:17 41:22 50:17,18,20,21 52:8 73:8 83:24 89:10,19 91:1,6,21 92:9 94:19 98:18 99:3,16,24 102:2,9,10 107:23 113:25 115:17</p> <p>pulled [2] 92:2,23</p>	<p>pulling [5] 11:6 15:15 64:17 65:6 114:4</p> <p>pulls [3] 7:25 32:14 116:18</p> <p>purpose [8] 12:20 16:24 18:16 32:8,8 53:25 73:17 90:2</p> <p>purpose-built [1] 26:19</p> <p>purposes [2] 40:11 50:25</p> <p>purposivist [1] 88:15</p> <p>push [38] 4:11 5:19,19 7:10 8:13 9:19 15:18 16:5 32:13 33:2 34:1 43:6 44:5 55:3 56:23 57:8,20 58:4,24 59:25 60:1,2,21 62:15,17 73:7 75:15 91:5 92:1 94:19,25 98:13 99:3,24 102:2,8,10 115:20</p> <p>push-operated [1] 57:19</p> <p>pushed [1] 92:23</p> <p>pushes [6] 12:23 34:8 46:13,19 80:8,11</p> <p>pushing [23] 9:11,20,24 10:9 15:20 58:11,24 59:13,16,18 60:17,18 61:16,20 62:9,12 63:13 76:13 77:1,11 80:17 82:4 115:9</p> <p>put [7] 5:25 21:16 32:13 43:2 61:4 65:15 109:13</p> <p>puts [1] 79:22</p> <p>putting [2] 18:3 110:10</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>QP [1] 22:8</p> <p>qualifies [1] 70:22</p> <p>qualify [2] 21:24 57:21</p> <p>quarter [2] 19:24 21:21</p> <p>question [29] 6:4 7:5 13:9,14 24:21 25:23 28:25 52:16 53:15,18 59:4 66:12 70:12 72:25 76:8 77:4 78:19,21 80:23 82:18 83:11 84:7 86:12 101:3 104:10 105:1,5 106:5 111:22</p> <p>questioning [1] 100:18</p> <p>questions [5] 5:14 27:12 67:16 98:2 104:17</p> <p>quick [1] 97:10</p> <p>quickly [3] 43:15 89:11 108:1</p> <p>quite [3] 15:10 59:11 88:7</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radar [1] 56:18</p> <p>range [2] 40:6,17</p> <p>rapid [4] 70:22,24 71:1 97:19</p> <p>rapidly [1] 71:3</p> <p>rate [16] 39:9 40:24 46:15 55:20 56:2 67:23 68:5 80:18 84:22 85:4,6 86:9 95:19,20 97:12 103:23</p> <p>rate-of-fire [1] 40:20</p> <p>rates [2] 40:19 89:11</p> <p>rather [11] 20:13 33:21 50:</p>	<p>24 63:13 73:8 74:11 91:5 92:1 98:8 99:15 116:17</p> <p>rationale [6] 81:5 83:3,24 84:14,15 88:13</p> <p>rea [2] 27:11,13</p> <p>reach [2] 87:1 102:3</p> <p>reaction [9] 20:8 105:21 107:6,22 108:6 109:5,16 111:5 112:1</p> <p>reacts [1] 32:11</p> <p>read [14] 16:12 17:11,22 29:17 37:8 91:25 96:12 105:18,22 108:10,13,23 113:12,18</p> <p>readily [1] 111:11</p> <p>reading [13] 21:9 23:11 24:21,25 32:19 38:11 72:7 96:7 113:10,15 114:7 117:3,5</p> <p>reads [2] 52:14 106:10</p> <p>real [1] 81:22</p> <p>Really [6] 16:4 17:25 31:22 32:14 75:9 85:7</p> <p>reason [12] 23:8,9 24:6 28:12 31:16,20 42:20,21 73:5 87:1,7 98:20</p> <p>reasonable [1] 37:7</p> <p>reasonably [1] 73:9</p> <p>reasoning [1] 43:12</p> <p>reasons [6] 28:10 31:13 47:19 50:10 95:21,23</p> <p>REBUTTAL [3] 2:8 112:14,16</p> <p>recognize [2] 35:13 44:8</p> <p>recognized [1] 41:25</p> <p>recognizes [3] 32:24 44:16 116:5</p> <p>recoil [23] 5:2 7:13 8:17 10:21 12:23 25:9 26:19 66:8,21 74:23 75:14,16,20 76:12,14,14,24 77:2,15,22,25 79:13 115:19</p> <p>recoils [2] 76:1 77:24</p> <p>record [1] 99:15</p> <p>red [2] 33:16,23</p> <p>reel [3] 32:15 41:16 116:7</p> <p>refer [3] 48:5 50:19 113:19</p> <p>referred [2] 41:6 98:7</p> <p>referring [1] 31:21</p> <p>refers [1] 113:3</p> <p>reflected [1] 21:23</p> <p>regard [1] 113:4</p> <p>Register [2] 21:16 29:17</p> <p>regular [1] 8:9</p> <p>regularly [1] 70:21</p> <p>related [1] 33:15</p> <p>relatively [1] 43:10</p> <p>release [6] 4:8 12:25 36:2,5 115:17,22</p> <p>released [1] 19:2</p> <p>releases [4] 4:15 46:19 80:3 107:12</p> <p>releasing [3] 26:20 32:22 37:4</p> <p>relevant [3] 27:15 73:5 94:</p>
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Official - Subject to Final Review

<p>5 reliance [5] 21:22 23:1 28:3 35:17 90:16 relief [1] 34:20 remain [2] 86:20 87:15 remains [1] 85:17 remarks [1] 77:15 render [3] 19:23 24:23 27:18 repeated [3] 19:8 52:19 76:1 repeatedly [2] 49:1 85:16 replace [2] 15:21 50:16 reply [5] 10:11 22:6 33:13 34:2 44:18 represent [1] 39:25 represented [1] 40:15 representing [1] 24:3 Republican [1] 21:23 require [2] 5:9 28:18 required [3] 14:13,14 33:18 requires [1] 57:19 requiring [1] 63:13 reset [9] 10:24 29:4 36:22, 22 41:17 47:22 82:15 85:3 116:7 resets [1] 26:23 resolve [1] 83:10 respect [6] 16:10 24:23 45:4 77:23,25 116:2 respectable [1] 87:14 respectfully [1] 78:16 Respondent [6] 1:8,23 2:7 4:12 5:5 47:11 Respondent's [1] 7:15 responding [1] 7:24 response [6] 33:13,16 72:15 76:1 78:3 98:1 rest [2] 71:16 109:10 resting [1] 63:3 restored [1] 111:12 rests [1] 83:20 result [7] 8:1 52:4,10 55:14 73:19 86:2 105:24 resulting [1] 14:15 results [3] 6:19 108:6 109:16 revisit [1] 28:23 revisited [1] 44:23 rifle [39] 3:11,14,16,25 4:5, 14,23 6:5 8:10 9:4 10:22 12:13,24 26:7,21,23 34:7 47:20 48:13 49:2 52:20,22 54:10 64:8 67:11 72:12,13 75:20 85:20 86:17 89:10 95:19 97:2,4,9,17 112:22 115:20 116:17 right-handed [1] 74:21 rights [1] 20:6 road [1] 61:15 ROBERTS [26] 3:3 9:6,8, 23 10:1,7 34:10 37:12 38:23 41:3 45:13,16 47:7 73:</p>	<p>25 74:5,9 84:17 86:22 88:19 93:18,21 97:23 105:11 112:11,14 117:22 roll [1] 93:5 round [3] 48:19 52:18 89:7 rounds [8] 14:3 18:5 19:1 40:14,16 42:3 88:23 89:5 rubber [1] 26:12 rule [18] 19:22,22 21:12,14, 14 22:1,4,9,17,20 24:8 26:6 28:11 34:16,17,21,21 78:16 rulemaking [2] 29:14 30:2 ruling [1] 43:21 runs [1] 3:17</p> <p style="text-align: center;">S</p> <p>same [42] 6:17 8:19,21 12:4 13:8 14:22 15:8,24 16:23 18:9,22,24,24,25 20:23 27:3,8 31:24 32:2,21 34:5 42:2 46:20 49:22 52:7,9 55:14 57:7 58:19 59:20 61:23 73:19 76:3 77:7 80:18 85:17 95:3 97:5,7 98:18 112:22 117:10 satisfies [1] 13:21 satisfy [2] 3:23 14:5 saw [1] 88:16 saying [27] 19:23 22:22 28:2,14 37:25 38:5 45:24 46:3,8,21 54:3 58:23 61:3 66:2,18 68:17 69:2 71:14 72:3 84:25 91:10 95:1 99:23 100:17 106:8 107:3 110:11 says [13] 4:12 5:5 7:20 39:13 43:12,16 45:25 50:24 51:9 52:4 55:4 68:4 71:18 scale [1] 107:17 Scalia's [1] 87:24 scenario [2] 57:24 79:21 scope [1] 45:9 score [1] 19:14 screen [1] 56:18 sear [1] 36:5 Second [12] 4:23 10:14 18:5 24:18 32:4 48:13 60:12 104:10,13,13,25 113:22 seconds [1] 3:20 see [8] 18:2 78:24 88:5 93:1,8 98:11 99:14 108:14 seeing [1] 37:9 seem [3] 68:19 98:17 106:7 seems [8] 13:6,12 51:25 61:2 67:15 71:16 74:19 94:12 self-evident [1] 59:17 self-regulating [7] 4:25 8:16 9:2 12:9 26:17 27:2 115:11 semi [1] 66:16 semiautomatic [18] 4:5 8:9 12:2 39:4,10 42:1 44:19</p>	<p>60:24 64:15 65:15 67:10 70:21 85:20 89:10 97:2,9 103:23 115:16 Senate [2] 38:5 90:24 Senator [5] 20:10 42:8,18 45:2,4 sense [12] 6:18 17:11 25:11 37:22 39:1 49:14 53:19 54:23 73:16 96:10,12 114:2 sensible [1] 68:18 sentence [2] 93:10 103:5 separate [5] 4:12 7:24,25 14:13 47:19 separately [1] 37:5 sequence [12] 4:5 5:12 8:14,14 9:1 16:2,5 19:5 33:4 34:9 114:25 116:19 series [1] 43:25 seriously [1] 112:21 Sessions [1] 44:23 set [1] 65:6 sets [1] 46:18 several [2] 56:16 74:1 shackle [2] 23:8,9 shoot [12] 5:21 19:8 40:6,9, 15 43:18 44:6 66:7 88:23 89:4 95:13 109:17 shooter [8] 3:12,15 4:4,7, 10,16 5:1,6,9 7:25 10:12, 16,19 12:11,12,25 16:4 17:4,13 19:5,10 31:21 39:12, 14 46:13,18 48:6,7,7,16,25 50:8,12,14,20,20 52:20 57:20 65:19 66:4,12 69:17 72:15,16 74:21 75:7,9,11,23, 24 76:4,10,13,15,19,22 77:10 78:1 79:7,12,14 85:15 89:19 91:12 92:12,17,19, 22 94:2 112:4 113:5,20 114:2,3,13,17,24 115:16, 22 116:18 117:14 shooter's [4] 4:22 9:18 11:1 98:9 shooters [1] 89:9 shooting [11] 3:19 6:12 7:7 14:3 20:24,25 49:4 94:1, 3,6 117:17 shoots [2] 18:15 62:6 short [1] 117:6 shot [5] 4:1,6,8,24 5:1,22 6:9 7:21 10:21,24 12:22 14:14 36:24 40:14 46:23 47:3,16,21,22,23 48:12,14 52:17 54:11 66:14 71:4,24 72:2,6,14,15 79:13 85:3 86:9,18 94:4,6,16 95:8,16 97:12,17,18 108:17 109:7, 17 111:6,13 112:3 115:18, 20 shots [18] 4:10 5:4 6:19 7:18 14:16 19:8 40:23 43:18 46:6 52:19 56:23 64:11 86:11,14,16 94:15 96:14 109:</p>	<p>10 shouldn't [4] 24:23 49:25 60:4 69:24 show [2] 10:12 90:6 showing [1] 27:13 side [2] 74:6 97:4 significant [2] 17:23 49:20 significantly [1] 40:3 similar [4] 83:21 87:9 89:12 104:2 simply [4] 3:12 85:15 86:4 97:2 simultaneously [1] 49:3 since [7] 17:9 31:23 35:3 43:23 44:24 102:20 114:9 single [46] 4:1 5:11,22 8:24 14:9,14 19:9 31:3 32:22 42:3 43:19 45:20 46:4,4 47:16 48:10,15 50:6,18 52:8,16 53:3 54:11 60:23 66:15 71:7 72:15 78:9,14 85:3,22 89:18 91:1 94:4,6 95:16 96:15,24 103:12 108:19, 20,24 109:2 111:13 113:2 117:15 sit [1] 29:17 situation [8] 34:14 59:6 63:15 73:7 81:13 82:8 108:8, 9 situations [2] 83:13 88:4 skill [1] 39:12 skilled [1] 39:14 slew [1] 24:22 slide [2] 13:1 97:4 slides [1] 66:24 sliding [1] 12:22 slightly [1] 80:10 sloppy [1] 99:15 slow [2] 9:22 10:11 slower [3] 39:17,21 40:3 small [1] 68:23 solely [1] 78:5 Solicitor [9] 1:19 49:6 50:15 63:16 78:10 91:6,23 93:2 98:12 Somebody [2] 14:2 46:12 someone [9] 8:3 13:22 27:8,12,14 32:11 35:17 97:10 98:25 Somebody [2] 14:2 46:12 someone [9] 8:3 13:22 27:8,12,14 32:11 35:17 97:10 98:25 somewhere [1] 30:20 sorry [2] 10:17 36:19 53:5 55:7,11 67:14 69:24 70:23 71:5,6,9 85:9 87:20,21 92:5 93:20 98:23 106:3,4,21 110:14 sort [4] 37:9 51:13 72:10 81:20 sorts [3] 27:24 29:3 38:17 SOTOMAYOR [33] 24:1,18 25:2,5,22 37:13,14,21 38:4, 12,22 65:11,23 66:1,17 87:18,21 88:20,21 89:1,14,21 90:3,13,17,21 91:8,17,20 92:4,6,10,14</p>	<p>source [1] 45:10 sources [1] 38:17 speakers [2] 17:6 38:17 speaking [1] 78:20 specialized [1] 39:15 specific [1] 102:24 specifically [1] 51:21 spectrum [1] 39:8 speculating [1] 37:25 spins [1] 32:17 spirit [2] 67:15 88:10 split [1] 78:17 spoke [1] 89:15 spoken [1] 114:25 spontaneously [1] 94:3 spray [2] 56:9 117:14 spring [6] 43:5 44:4 48:22 77:18 84:5 116:16 springs [1] 44:12 stable [1] 13:7 standard [1] 64:7 standing [3] 78:13,15 107:17 Staples [3] 27:16,17 28:23 start [6] 19:5 105:20 107:6, 21 109:15 116:18 starting [1] 16:5 starts [4] 4:4 8:13 65:8 112:1 state [1] 104:6 statement [2] 90:16,20 statements [4] 89:17 90:22,22,24 STATES [10] 1:1,16 57:5 59:5 65:4 70:1,10 81:1,12 84:4 stationary [2] 15:17 26:8 statute [82] 12:6 16:12,13 17:8,23 18:8 19:17 20:14, 21 21:9,25 22:22 24:12,13 31:1 34:3,24 35:22 37:8 40:20,21 41:20 45:21 46:24 48:9 49:9,15 50:16,17, 24 51:3,9 52:5,14 53:19,25 54:9,16,19 56:10,13 68:4,6, 8,8,10,14,20,22 69:10 70:20 71:2 72:1 73:2,21,23 88:1 90:11 91:4,16,24 92:24 93:24 95:10,12 96:12, 13,23 102:20 105:19 106:10 108:10,13 109:9,11 110:5,21 111:11 113:12 116:9 117:3,7 statutes [3] 24:24 96:7 104:6 statutory [11] 3:24 5:21 19:6 42:16 47:14,18 69:12 87:23 103:7,14 104:18 stay [1] 36:21 staying [1] 16:23 stays [1] 15:17 steady [2] 3:16 10:22 step [2] 19:14 84:25 stepping [1] 16:9</p>
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Official - Subject to Final Review

<p>still [24] 12:8,12,12 14:19, 24 15:6 33:19 34:5 41:12 63:15 66:11 72:14 75:21, 23 77:9 85:3 86:9 89:6,25 92:19 97:12,15 105:14 116:21</p> <p>stock [64] 3:12,25 4:9,23 5: 2 6:13 7:9,17 8:4 9:4,5 12: 18 14:23 15:23 24:9 26:18 33:8,11 39:7 40:14 43:5 47:20 48:13 49:22 52:20 54:10 55:14 60:19 61:1 62: 22,23 63:8,14 66:7,19,22, 23 67:3,5,8 70:3 72:12 77: 15,21,24 79:6,10 84:22 85: 12,21 86:3,17 94:25 95:2, 19 97:3,16,20 107:5 108:8 112:22 115:15,19,19</p> <p>stocks [33] 15:13 19:19 25: 21 29:3 34:15 38:1 41:8 42:11 44:3 47:18 48:23 49: 11 52:6 54:4 56:12 67:24 73:22 82:11 84:16 86:25 87:4 98:3 102:16,20,24 103:2,5,7,25 104:2,12 117: 16,20</p> <p>stop [1] 16:3</p> <p>stops [1] 116:24</p> <p>straightforward [1] 36:7</p> <p>strengthened [1] 117:11</p> <p>strike [1] 36:6</p> <p>stroke [2] 30:13 93:5</p> <p>strong [4] 74:23 75:15 76: 22,25</p> <p>stuck [4] 31:10,12 46:21 113:8</p> <p>sub-issues [1] 78:18</p> <p>subject [6] 20:1 50:11 93: 10,16 100:25 116:10</p> <p>submitted [2] 117:23,25</p> <p>subsequent [1] 7:22</p> <p>successful [4] 48:19 75: 18 76:7 79:11</p> <p>sufficient [3] 57:16 61:6 67:9</p> <p>suggest [2] 31:13 50:3</p> <p>suggested [4] 50:1 55:13 79:4 116:15</p> <p>suggesting [3] 54:25 55: 25 101:8</p> <p>suggests [3] 68:22 91:9 110:22</p> <p>suppose [1] 58:8</p> <p>SUPREME [4] 1:1,15 30:6 38:13</p> <p>sustained [1] 77:8</p> <p>sweeping [1] 110:24</p> <p>swing [6] 30:14 36:6 93:4, 8,10,11</p> <p>swipe [1] 115:1</p> <p>swiping [1] 114:20</p> <p>switch [13] 32:17 33:2 56: 24 65:7,15,15 69:19,20,22 81:16 82:22 83:1 94:20</p>	<p>switches [2] 44:17 68:10</p> <p>sympathetic [1] 13:11</p> <p>synonymous [2] 99:17 113:25</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>talked [6] 36:11,16 38:25 43:24 100:24 115:6</p> <p>talks [1] 110:21</p> <p>task [2] 49:8 79:11</p> <p>technology [1] 13:24</p> <p>term [5] 38:5 69:12 89:23 90:8 113:24</p> <p>terms [3] 55:15 73:2 81:23</p> <p>territory [1] 35:8</p> <p>test [3] 65:24 71:2 111:10</p> <p>tested [1] 36:23</p> <p>tests [1] 43:7</p> <p>Texas [1] 1:22</p> <p>text [3] 18:18 36:10 69:13</p> <p>textualism [1] 96:9</p> <p>textualist [5] 88:12 96:6 99:8 100:7,10</p> <p>textually [1] 101:16</p> <p>themselves [2] 30:4 57:16</p> <p>theoretical [2] 39:13 40:2</p> <p>there's [37] 8:12,16,25 9:2 20:17 31:15,22 40:1 51:2 54:3 55:6 69:19,23 73:6 75:20,21,23 76:25 77:9 78: 17 79:13 80:10 82:9,22 84: 2 92:19 93:9 94:7,22 104: 17,23 105:15 109:1 112:6 113:23 115:8 117:3</p> <p>thereafter [1] 43:15</p> <p>thereby [1] 74:25</p> <p>therefore [2] 64:1 99:25</p> <p>thing's [1] 8:21</p> <p>thinking [6] 33:15 73:22 75:9 86:24 111:7 113:13</p> <p>thinks [1] 115:8</p> <p>THOMAS [22] 5:15,24 6:6, 13,20,23 7:8,12 8:2,7,18 34:12 49:13,19 50:5 84:19, 20,24 85:7,10,24 90:4</p> <p>though [10] 33:21 56:16 76: 15 84:2 86:8,10 88:2 92: 22 97:18 98:16</p> <p>Thoughts [3] 20:16,19 68: 2</p> <p>three [4] 36:10 64:2,11,14</p> <p>throw [3] 30:13,25 104:19</p> <p>thrust [5] 49:1 72:17 74:1, 2 78:2</p> <p>thrusting [2] 52:22 74:13</p> <p>today [5] 4:2 25:20 43:24 83:21 112:21</p> <p>together [2] 57:23 109:14</p> <p>tomorrow [1] 102:18</p> <p>took [1] 19:19</p> <p>tool [1] 91:15</p> <p>top [1] 46:13</p> <p>topic [1] 20:12</p> <p>torrent [3] 62:5 94:23 95:4</p>	<p>totally [1] 63:21</p> <p>touch [2] 22:7 52:9</p> <p>touched [2] 52:25 53:1</p> <p>touches [1] 53:2</p> <p>touching [1] 80:13</p> <p>touchscreen [2] 114:21 115:1</p> <p>tracks [1] 103:7</p> <p>traditional [6] 4:14 5:8 6:5 7:2 37:22 40:4</p> <p>transitive [2] 93:4,6</p> <p>translating [1] 90:25</p> <p>treat [1] 95:22</p> <p>treated [3] 16:16 96:21,22</p> <p>trial [1] 9:19</p> <p>trigger [301] 3:12 4:2,3,6,8, 13,14,22 5:10,20,23 6:9,11 7:1,6,13,16,19,20,23,23 8: 3,13,20,22,24 10:24 12:11, 24 15:8,16,16,22 16:22,22 17:3,3,10,10,12 18:4,21 19: 4,10 23:14,15 26:21,23 29: 4 30:12,18 31:4,15,19 32:5, 9,14,17,20,25 33:1,7,9,12, 18,25 36:2,4,22,22,23 37:3, 3,18 41:17 43:14,19 45:20, 22,25 46:1,2,8,22 47:17,21, 22,25 48:2,4,7,10,11,16,17 50:6,9,13,13,18,21,21 52:3, 8,9,17,25 53:1,1,3,4,12 54: 14 56:3,4,7 57:23 58:1,6,9, 16,25 59:2,6,16,19 60:3,17, 18,23 61:7,17,22 62:5,10, 13 63:5,5,9,10,15,15,23,24, 24 64:1,4,17,21,21,23,25 65:2,3,4,12,18,19,22 66:3, 6,13,14,15,16,18 67:3,5,20 69:11,15,16,24,25 70:3 71: 8,13,17,18,22 72:1,4,5,12 78:6,10,14 79:17 80:13,23 81:2,13 82:6,9,12,12,19,19 83:1,6,23,24 84:6 85:1,2,5, 16,18,22 86:6,10,13,18 89: 10,18,19 91:1,2,11,21,22 92:20,22,23,25 93:13,16, 24,25 94:5,7,19,20,21,22 95:2,17 96:18,24 97:1,5,7, 10,13,16 98:7,15,18,19 99: 6,16,18,23 100:16,21,23, 24 101:17 102:3,5,21 103: 13 105:16,19,20,23 106:1, 8,13,19,25 107:4,12,19,20 108:18 109:15 111:13,16, 25 112:3 113:2,4,19,20,21, 25 114:1,11,15,16,19,20, 24 115:5,17,21 116:14,16, 22,24</p> <p>trigger's [3] 48:5 50:8 66: 18</p> <p>trigger-initiated [1] 6:24</p> <p>triggering [7] 48:2 63:12 69:20 85:12,14,17 86:21</p> <p>triggers [18] 4:19 30:18 36: 13 41:22 52:7 64:2,2,4 69:</p>	<p>4 82:15 91:5,6 92:1,2 98: 13 102:2 114:4,21</p> <p>Trinity [7] 87:25 88:6,8,10, 12,17 113:6</p> <p>trips [1] 14:2</p> <p>tripwire [2] 13:25 14:19</p> <p>trivial [1] 16:3</p> <p>trivially [1] 4:20</p> <p>trouble [1] 9:9</p> <p>true [12] 15:25 16:19 23:12 27:23 34:2 36:9 43:25 52: 16 55:17 72:21,22,23</p> <p>try [6] 11:15 13:23 24:15 25: 17 42:1 91:16</p> <p>trying [17] 14:12 16:18,23 18:7 20:13 45:5,6 50:15 52:2 53:20 61:11 73:3 85: 8 89:16 90:15 101:17 110: 8</p> <p>turn [3] 12:1 29:8 65:16</p> <p>turned [1] 24:9</p> <p>turning [1] 69:21</p> <p>turns [4] 32:17 54:9 82:22 96:23</p> <p>two [26] 10:5 31:22 33:21 39:3 47:19 57:8,20,22 58: 5,5,8,12,20,23,24 59:13,25 60:2 63:13 64:1,12 78:12, 18 80:1 81:22 96:20</p> <p>type [1] 56:13</p> <p>types [2] 65:2 77:19</p> <p>typical [2] 11:6 15:12</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S [1] 88:14</p> <p>ultimately [3] 35:21 87:11 95:24</p> <p>unambiguous [1] 49:10</p> <p>unambiguously [1] 113:3</p> <p>unassisted [1] 8:6</p> <p>unattended [1] 14:2</p> <p>uncertainty [1] 35:13</p> <p>under [11] 12:5 21:8 35:19 37:1 68:8 70:19 71:2 80: 11 88:24 92:24 111:10</p> <p>understand [26] 7:5 13:5 16:19,23 19:15 22:5 26:3 33:20 38:17,18 53:24 54:5, 23 62:6 70:9 72:7 83:10 90:12 96:13,19 105:25 108:9 110:9 111:8 112:5 113:11</p> <p>understanding [7] 12:10 28:22 64:9 72:9 98:6 114: 23 115:3</p> <p>understandings [1] 116: 14</p> <p>understood [6] 23:17 31: 23 53:18 74:6 89:23 91:10</p> <p>undertake [2] 48:18 52:21</p> <p>undertaken [1] 79:7</p> <p>unfair [1] 22:25</p> <p>unintentional [1] 14:22</p> <p>unique [1] 29:3</p>	<p>UNITED [10] 1:1,16 57:4 59:5 65:4 70:1,10 81:1,12 84:4</p> <p>unless [2] 34:20 76:22</p> <p>unnamed [1] 93:9</p> <p>unnoticed [1] 30:2</p> <p>unreliable [1] 91:15</p> <p>until [2] 3:17 114:9</p> <p>unusual [4] 14:17 27:5 105:3,6</p> <p>up [19] 5:6 13:23 20:4 27: 11 29:5,9 37:8 46:18,20 80:12,17 83:8 84:10 89:5, 8 110:22 111:18 116:23,24</p> <p>usage [6] 4:2,18 36:12 37: 23 51:13 113:23,24 114:7</p> <p>user [5] 8:17 9:2 32:9 33:4 34:7</p> <p>user's [1] 33:2</p> <p>uses [3] 3:13 5:2 62:1</p> <p>using [12] 26:12 37:21 38:3 62:21 65:19 66:5 69:18 85: 12 90:1,9 99:16 113:24</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacated [1] 34:22</p> <p>vague [1] 105:6</p> <p>valid [1] 87:7</p> <p>variation [2] 40:1 79:21</p> <p>various [3] 16:10 39:1,2</p> <p>vast [1] 39:17</p> <p>Vegas [3] 3:19 20:24 117: 17</p> <p>velocity [1] 80:20</p> <p>verb [4] 30:21 93:10,14 101:18</p> <p>verbs [2] 93:4,6</p> <p>version [1] 33:14</p> <p>versus [2] 3:5 90:4</p> <p>videos [2] 10:10 11:15</p> <p>view [14] 7:22 8:12 11:2 13: 5 18:12 46:15,17 80:21 81: 19 96:5 102:12,21 104:12 117:4</p> <p>violate [2] 22:20,21</p> <p>vividly [1] 117:17</p> <p>voice-activate [1] 94:21</p> <p>voice-activated [2] 68:13 114:19</p> <p>volition [2] 13:19 14:11</p> <p>volitional [1] 15:9</p> <p>volitionally [1] 76:19</p> <p>vote [1] 20:6</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait [1] 87:12</p> <p>walk [1] 14:2</p> <p>wanted [9] 28:14,23 31:19 38:2 56:14 73:10 94:14,16 101:25</p> <p>wants [3] 54:24 75:25 84:8</p> <p>Washington [2] 1:11,20</p> <p>watch [2] 9:22 11:15</p> <p>way [66] 5:11,13 12:4 13:7,</p>
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Official - Subject to Final Review

<p>8 14:17,22 15:8,12,24 16:16 18:9,22,24,25,25 20:2,14,21 31:22 32:10 34:3,4 40:18 46:20 51:2,5 52:7,14,19 62:22 63:9 67:1 68:21 70:3 71:13 75:7,15 76:6,12 81:8 82:7 83:8 86:20 91:25 92:10 95:3,9 96:6,12 101:15 105:23 106:10 108:2,4,10,13 109:18 110:2,25 111:3 113:13 114:3 115:10,24 116:12</p> <p>ways ^[4] 23:20 31:18 69:2 87:14</p> <p>weapon ^[50] 5:13 8:4 27:18 39:4,10,11,15,19 44:19 48:1,3 49:4 52:12 58:2 60:22,22,24 61:6,10 62:16,18 63:7,25 64:22 65:7 66:23,24 67:1,9,11,22 68:24 69:18 70:21 71:23 72:5 74:25 77:16,22,24 78:3 92:18,20 95:21 96:14 102:7 103:24 106:22 108:7 115:17</p> <p>weaponry ^[2] 56:14 102:6</p> <p>weapons ^[26] 3:20,22 16:15,16 17:19 18:7 39:7 42:1 47:15 52:3,6 53:21 54:20,24 55:2 56:18 87:9 89:13 91:5 92:1 102:1 105:3,6 107:22,25 117:14</p> <p>Wednesday ^[1] 1:12</p> <p>welcome ^[1] 5:14</p> <p>well-developed ^[1] 78:17</p> <p>whatever ^[1] 18:5</p> <p>Whereupon ^[1] 117:24</p> <p>whether ^[19] 45:22 48:10 54:9 56:6 64:1 65:14 71:2,3,12 82:2,6 83:12 87:11,13 95:15 96:16 105:2 111:11,14</p> <p>who's ^[1] 45:5</p> <p>whole ^[1] 24:22</p> <p>wiggling ^[1] 37:3</p> <p>will ^[14] 3:3,16,18 22:21 23:4 29:16 54:10 59:3 65:2 77:19 82:14 86:19,19 96:5</p> <p>win ^[7] 78:5,11,12,13,14,15 85:22</p> <p>wind ^[1] 20:4</p> <p>wins ^[1] 108:14</p> <p>wire ^[1] 14:2</p> <p>within ^[2] 78:18 105:2</p> <p>without ^[9] 4:16 19:8 26:9 40:23 44:4 46:6 85:20 89:2 113:4</p> <p>wondering ^[1] 17:16</p> <p>word ^[12] 17:22 31:17 41:20 42:13 50:16,17 51:13 52:1 69:11 92:2,9 100:11</p> <p>words ^[16] 10:2 14:11 23:11,12 38:18 45:10 51:4 93:23 102:16 105:18 106:2 112:25 113:2,7,8 117:18</p>	<p>work ^[10] 9:3 14:24 15:23 17:23 27:4 41:22 83:25 84:2 109:14 110:25</p> <p>workarounds ^[2] 41:16 116:8</p> <p>works ^[5] 17:13 61:19 110:3 114:20 115:1</p> <p>world ^[1] 81:23</p> <p>worried ^[1] 19:7</p> <p>worse ^[1] 73:6</p> <p>worth ^[4] 42:25 43:1 113:13 114:14</p> <p>writ ^[1] 34:22</p> <p>write ^[2] 31:9 102:19</p> <p>writes ^[1] 43:8</p> <p>writing ^[1] 73:2</p> <p>written ^[6] 31:7 56:11 68:22 73:21 91:4 101:15</p> <p>wrongful ^[1] 28:20</p> <p>wrote ^[12] 23:11,12,23 31:6 41:14,20 73:22 95:10 101:23 113:1 117:7,19</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[4] 20:1 23:12 24:13 56:11</p> <p>York ^[1] 38:9</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zip-tied ^[1] 36:23</p>
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