

No. 22-976

IN THE
Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,

Petitioners,

v.

MICHAEL CARGILL,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE, BRADY CENTER
TO PREVENT GUN VIOLENCE, AND
EVERYTOWN FOR GUN SAFETY AS *AMICI
CURIAE* IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	6
I. Bump Stocks Convert Semi-Automatic Rifles Into Machineguns	6
A. Semi-automatic rifles and automatic rifles have few mechanical differences.....	7
B. Bump stocks convert the semi-automatic firing process into an automatic one	11
C. Bump stocks enable fire rates rivaling that of automatic weapons	14
D. Manufacturer advertising confirms that rifles equipped with bump stocks are machineguns.....	14
II. The ATF Rule Recognizes the Uniquely Pernicious Threats That Unregulated Bump Stocks Pose to Society	15
III. The ATF Rule Furthers Congress’s Express Legislative Policy of Preventing Circumvention of the Machinegun Ban.....	18

TABLE OF CONTENTS

(continued)

	Page
A. Congress has repeatedly expanded the definition of “machinegun” to counteract efforts to design around the NFA	18
B. The ATF rule effectuates congressional intent to prevent workarounds.....	21
IV. The Fifth Circuit’s <i>En Banc</i> Ruling Inaugurated a Circuit Split and Disempowered Congress.....	23
A. The Fifth Circuit diverged from three other Circuits in holding that bump stocks are not machineguns	24
B. The Fifth Circuit’s Lenity Ruling Violates the Separation of Powers	25
CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aposhian v. Barr</i> , 958 F.3d 969 (10th Cir. 2020).....	24
<i>Bell v. United States</i> , 349 U.S. 81 (1955).....	26
<i>Callanan v. United States</i> , 364 U.S. 587 (1961).....	26
<i>Cargill v. Garland</i> , 20 F.4th 1004 (5th Cir. 2021)	24
<i>Cargill v. Garland</i> , 57 F.4th 447 (5th Cir. 2023)	4, 13, 24-25, 27
<i>Guedes v. ATF</i> , 45 F.4th 306 (D.C. Cir. 2022)	21, 22, 23, 24
<i>Guedes v. ATF</i> , 920 F.3d 1 (D.C. Cir. 2019).....	24
<i>Gun Owners of Am., Inc. v. Garland</i> , 19 F.4th 890 (6th Cir. 2021)	24
<i>Hardin v. ATF</i> , No. 20-6380, 2023 WL 3065807 (6th Cir. Apr. 25, 2023).....	25
<i>Moskal v. United States</i> , 498 U.S. 103 (1990).....	26
<i>Ocasio v. United States</i> , 578 U.S. 282 (2016).....	26
<i>Staples v. United States</i> , 511 U.S. 600 (1994).....	2, 15, 22, 26

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>United States v. Alkazahg</i> , 81 M.J. 764 (N-M. Ct. Crim. App. 2021).....	24
<i>United States v. Davis</i> , 139 S.Ct. 2319 (2019).....	26
<i>United States v. Kozminski</i> , 487 U.S. 931 (1988).....	26
<i>United States v. Palmer</i> , 16 U.S. (3 Wheat.) 610 (1818)	27
<i>United States v. Wiltberger</i> , 18 U.S. (5 Wheat.) 76 (1820)	28
<i>Wilson v. Sellers</i> , 138 S.Ct. 1188 (2018).....	25
Constitutional Provisions	
U.S. Const. amend. I.....	15
Statutes	
26 U.S.C. § 5845(b).....	2, 5, 7, 9, 11, 18, 21, 23
Pub. L. No. 73-474, 48 Stat. 1236 (1934)	2, 20
Pub. L. No. 90-618, 82 Stat. 1213 (Oct. 22, 1968).....	20
Pub. L. No. 99-308, 100 Stat. 449 (1986)	2, 21
Regulations	
83 Fed. Reg. 7,949 (Feb. 20, 2018).....	3
83 Fed. Reg. 13,442 (Mar. 29, 2018).....	17
83 Fed. Reg. 66,514 (Dec. 26, 2018).....	3, 16-17, 22-23

TABLE OF AUTHORITIES

(continued)

Page(s)

Other Authorities

45Snipers, <i>How An AR-15 Rifle Works: Part 2, Function</i> , YouTube (Jan. 11, 2017)	9
Alexis de Tocqueville, <i>Democracy in America</i> (Mansfield & Winthrop eds. 2000)	16
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ArmaLite, Inc., Technical Note 54: Direct Impingement Versus Piston Drive (July 3, 2010)	7
Brian Knight, <i>State Gun Policy and Cross-State Externalities: Evidence from Crime Gun Tracing</i> , 5 Am. Econ. J: Econ. Pol’y 200 (2013).....	25
Bryan Hendricks, <i>Arkansas Sportsman: Bump Stocks Do Nothing Good For AR-15 Rifles</i> , Arkansas Democrat Gazette (Dec. 23, 2018).....	16
David T. Hardy, <i>The Firearms Owners’ Protection Act: A Historical and Legal Perspective</i> , 17 Cumb. L. Rev. 585 (1987)	21
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TABLE OF AUTHORITIES

(continued)

	Page(s)
Erik J. Olson et al., <i>American Firearm Homicides: The Impact of Your Neighbors</i> , 86 <i>J. Trauma & Acute Care Surgery</i> 797 (2019).....	25
Firequest, Slide Fire SSAK-47 Bump Fire Stock – Right Hand Model.....	15
Firequest, Slide Fire SSAR-15 Bump Fire Stock – Right Hand Model.....	15
H.R. Rep. No. 73-1780 (1934)	18, 19, 20
Hearings Before a Subcommittee of the Committee on Commerce of the United States Senate on S.885, S.2258 and S. 3680 (1934)	19
Hearings Before The Committee on Ways and Means, House of Representatives on H.R. 9066 (1934).....	19, 20, 22
Jonathan Bernstein & Mark Gray, <i>Five Years Since the Route 91 Massacre No One Knows a Damn Thing</i> , <i>Rolling Stone</i> (Sept. 21, 2022)	3
Las Vegas Metro. Police Dep’t, LVMPD Criminal Investigative Report of the 1 October Mass Casualty Shooting (Aug. 3, 2018)	3, 17
Midsouth Shooters, Bumpfire Systems.....	15

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>Powerful US Gun Lobby Group Backs New Curbs on Rapid-fire Accessories,</i> Straits Times (Oct. 6, 2017)	13
S. Rep. No. 73-1444 (1934).....	18
Sen. Comm. on the Judiciary, 97th Cong., Federal Regulation of Firearms (1982).....	20
Slide Fire, <i>Slide Fire: Bump Fire Stocks</i> (Jan. 8, 2014).....	15
Steven Koff, <i>Assault Weapons, Semi- Automatic Rifles and the AR-15: Defining the Debate</i> , Cleveland.com (Apr. 18, 2018)	14
<i>The “Bump Stocks” Used in the Las Vegas Shooting May Soon Be Banned</i> , Economist (Oct. 6, 2017)	14
Thomas Schwenke, <i>M16 and AR-15 – How Firearms Work!</i> , YouTube (Feb. 23, 2019).....	10, 11
U.S. Ct. App. 5th Cir., Bump Fire Animation	12
U.S. Dep’t Army, Field Manual 23-9, Rifle Marksmanship M16A1, M16A2/3, M16A4, and M4 Carbine (Sept. 13, 2006)	8, 9, 10, 14
Webster’s International Dictionary (2d ed. 1934).....	22

INTEREST OF *AMICI CURIAE*¹

Amici curiae Giffords Law Center to Prevent Gun Violence, Brady Center to Prevent Gun Violence, and Everytown for Gun Safety are nonprofit organizations dedicated to reducing gun violence through education, research, and advocacy. *Amici* represent the interests of gun-violence survivors and others who have experienced firsthand the devastating impact that gun violence has on families and communities. *Amici* seek to improve community safety by supporting common-sense gun laws and policies. In furtherance of that goal, *amici* have filed numerous *amicus* briefs, including in bump-stock cases. *See, e.g.*, Brief for Giffords Law Center to Prevent Gun Violence, Brady, and Everytown for Gun Safety as Amici Curiae Supporting Appellees, *Guedes v. ATF*, No. 21-5045 (D.C. Cir. Nov. 8, 2021); Brief for Giffords Law Center to Prevent Gun Violence as Amicus Curiae Supporting Defendants-Appellees, *Cargill v. Garland*, No. 20-51016 (5th Cir. May 14, 2021).

¹ No counsel for any party authored this brief in whole or in part, and no entity or person other than *amici* and their counsel made any monetary contribution toward the preparation or submission of this brief. *Amici* timely notified all parties of their intent to file this brief.

SUMMARY OF THE ARGUMENT

Nine decades ago, Congress passed the National Firearms Act (“NFA”) to regulate “certain firearms and machine guns.” Pub. L. No. 73-474, 48 Stat. 1236 (1934). The NFA initially required civilians to register machineguns, Pub. L. No. 73-474, §§ 5, 14, but Congress later replaced that scheme with an all-out ban on civilian ownership of newly manufactured machineguns, Pub. L. No. 99-308, 100 Stat. 449 (1986). Sensibly, the NFA defined “machinegun” by its essential features: if a firearm can shoot “automatically ... more than one shot ... by a single function of the trigger,” it is a machinegun. Pub. L. No. 73-474, § 1(b). Over time, though, manufacturers began to circumvent the statute—for example, by producing components that made semi-automatic weapons function like machineguns. That led Congress to broaden the NFA to prohibit devices that “convert[] a weapon into a machinegun.” See Pub. L. No. 99-308, § 109(a), *codified at* 26 U.S.C. § 5845(b). This approach is only logical: if an invention turns an ordinary gun into a machinegun, it is a machinegun. And it is illegal.

“Bump stocks” turn semi-automatic rifles into machineguns. That is their sole purpose. When a rifle is outfitted with a bump stock, the shooter need only pull the trigger once, and the gun will fire continuously so long as the shooter keeps his trigger finger stationary and applies forward pressure to the barrel. Put another way, the bump stock makes the rifle “fire[] repeatedly with a single pull of the trigger.” *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994) (construing the NFA’s definition of “machinegun”). That makes it a machinegun.

The events of October 1, 2017, showed why. A gunman, perched in a hotel window on the Las Vegas strip, opened fire on thousands of concertgoers below using several legally purchased AR-15-style rifles equipped with bump stocks. In 11 minutes, one man shot over 500 people. Sixty were killed.² It remains the most deadly mass shooting in American history.

Only automatic weapons could inflict so many casualties in so few minutes. The dead cannot testify to that. Among the living, numerous witnesses, including police officers, described hearing “automatic gunfire.”³ That is exactly what it was: bump stocks allowed the gunman to fire over 1,000 rounds in 11 minutes.⁴

In the wake of the 1 October shooting, President Trump directed the Attorney General to promulgate “a rule banning all devices that turn legal weapons into machineguns.”⁵ In response to that directive, the Justice Department’s Bureau of Alcohol, Tobacco, and Firearms (“ATF”) issued a rule that defines all bump

² Jonathan Bernstein & Mark Gray, *Five Years Since the Route 91 Massacre No One Knows a Damn Thing*, Rolling Stone (Sept. 21, 2022), <https://tinyurl.com/bdjvkvk2>.

³ See Las Vegas Metro. Police Dep’t, LVMPD Criminal Investigative Report of the 1 October Mass Casualty Shooting 7, 34-36, 40-41, 56-57, 58, 73 (Aug. 3, 2018).

⁴ *Id.* at 125.

⁵ Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices, 83 Fed. Reg. 7,949 (Feb. 20, 2018).

stocks as machineguns.⁶ Certain individuals and organizations, including Respondent, challenged the ATF rule in court.

In the decision below, the *en banc* Fifth Circuit concluded that bump stocks are not machineguns and struck down the ATF rule. *Cargill v. Garland* (“*Cargill II*”), 57 F.4th 447, 472-73 (5th Cir. 2023) (*en banc*). The court stated that a machinegun’s defining characteristic is the power to “shoot continuously” with “one pull of the trigger.” *Id.* at 453. And it noted that a shooter can continuously fire a bump-stock-equipped rifle without a “need [to] pull and release his trigger finger”—just like a machinegun. *Id.* at 454. As a concurring judge wrote, bump stocks “allow semiautomatic weapons to mimic automatic machineguns.” *Id.* at 474 (Ho, J., concurring in judgment). Despite all this, the court ruled that bump stocks are not machineguns. *Id.* at 472-73.

The Fifth Circuit’s decision is wrong and dangerous. If this Court does not correct the ruling, it will make every American less safe.

Amici support the Government’s petition for certiorari for the following reasons:

First, the ATF correctly determined that bump stocks mechanically convert semi-automatic rifles into fully automatic weapons. In semi-automatic rifles, a “disconnecter” ensures that each pull of the trigger fires just one round. With automatic rifles, once the shooter pulls the trigger and fires a round,

⁶ Bump-Stock-Type Devices, 83 Fed. Reg. 66,514 (Dec. 26, 2018).

the disconnecter is disabled and an “auto sear” harnesses that combustion reaction’s kinetic force to load and fire another round—without requiring a new trigger pull. Bump stocks retool a rifle’s disconnecter to function like an auto sear, leveraging the back-and-forth movement from the same combustion reaction to enable continuous firing. This action increases the rifle’s rate of fire dramatically, rivaling that of an automatic weapon—a fact gun manufacturers highlight. Given their mechanics, bump stocks readily satisfy the NFA’s definition of “machinegun”: a bump stock “convert[s] a weapon” into a firearm that shoots “automatically more than one shot ... by a single function of the trigger.” 26 U.S.C. § 5845(b). For the convenience of the Court we provide below a straightforward technical description, with diagrams, of how bump stocks work, and we show how they transform a semi-automatic weapon into a fully automatic one.

Second, unregulated bump stocks pose a unique danger to society. Public gatherings—to worship, to protest, to celebrate, to play—are essential to Americans’ way of life and to the health of our religious, political, and social institutions. Because bump stocks dramatically increase a weapon’s fire rate but compromise its accuracy, they are ill-suited for sport shooting or self-defense—they are only suited for spraying many bullets in a short time. In the hands of a gunman bent on killing as many people as possible, they are a tool for indiscriminate murder: one need only aim a bump-stock-equipped rifle at a crowd and pull the trigger. The ATF rule addresses this singularly pernicious threat to public life.

Third, the ATF rule reflects the best interpretation of the statute. Over the past century, Congress has repeatedly expanded the definition of “machinegun” to counteract manufacturers’ efforts to design around the NFA’s prohibition. The ATF rule is entirely consistent with a plain-text (and common-sense) reading of the statute, and it furthers Congress’s decision to ban devices that serve no purpose other than to turn semi-automatic weapons into machineguns. The Fifth Circuit decision disregards the statute’s text and frustrates congressional policy.

Fourth, the Fifth Circuit’s decision striking down the ATF rule created a circuit split on an issue of national importance. While that is reason enough to warrant this Court’s intervention, the Fifth Circuit decision rests on a novel holding that would require judgment in favor of criminal defendants whenever a court perceives any ambiguity in a criminal statute. This mutation of the time-honored rule of lenity intrudes upon Congress’s Article I authority. The Court should step in to safeguard the separation of powers on which our system of government depends.

For these reasons, the Court should grant certiorari and reverse the Fifth Circuit’s decision.

ARGUMENT

I. **Bump Stocks Convert Semi-Automatic Rifles Into Machineguns.**

Bump stocks exist for one reason: to convert semi-automatic rifles into machineguns. A machinegun’s internal parts harness the recoil motion of the gun to maintain automatic fire after a trigger pull; bump stocks are external attachments that do the same

thing. In Congress’s words, a bump stock is “designed and intended solely and exclusively” to “convert[] a weapon into a machinegun.” 26 U.S.C. § 5845(b).

Automatic and semi-automatic rifles have very similar firing mechanisms. In semi-automatic rifles, the firing process is controlled by a “disconnecter,” which requires each shot to be fired manually (*i.e.*, with a trigger pull). In automatic rifles, a trigger pull disengages the disconnecter, and the auto sear then controls the firing process. The auto sear harnesses the kinetic force created by the combustion reaction that fires each round to load and fire a new round without additional operator action. Bump stocks harness the back-and-forth movement from the same combustion reaction, allowing the disconnecter cycle to loop and the gun to continuously fire, without the need for the shooter to make repeat trigger pulls. This turns a semi-automatic weapon into an automatic weapon.

A. Semi-automatic rifles and automatic rifles have few mechanical differences.

Most automatic and semi-automatic rifles use a “gas operating” system to eject and reload new rounds after firing.⁷ Consider the military’s standard-issue M16 automatic rifle and its semi-automatic civilian counterpart, the AR-15-style rifle:

⁷ ArmaLite, Inc., Technical Note 54: Direct Impingement Versus Piston Drive (July 3, 2010), <https://tinyurl.com/mr242pue>.

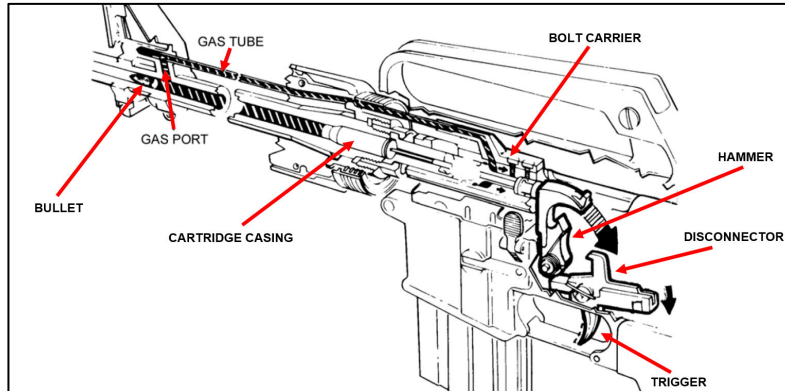


Figure 1: Diagram of Gas Operating System of M16- and AR-15-Style Rifles⁸

To prepare either gun to fire, the bolt locks a round of ammunition into firing position. FM23-9 ¶ 4-2. When the shooter pulls the trigger, the hammer strikes the firing pin, igniting the gunpowder housed in the round. *Id.* The resulting explosion causes rapidly expanding gas to propel the bullet forward. *Id.* As the bullet exits the barrel, the rifle diverts some of the expanding gas back toward the rear of the rifle to push the bolt carrier—which houses the bolt—backward, ejecting the spent cartridge casing and resetting the hammer. *Id.* A buffer spring at the back of the rifle then propels the bolt carrier forward to collect a new cartridge from the magazine and lock it into firing position. *Id.*

⁸ U.S. Dep't Army, Field Manual 23-9, Rifle Marksmanship M16A1, M16A2/3, M16A4, and M4 Carbine ("FM23-9") ¶ 4-2 (Sept. 13, 2006).



Figure 2: Post-Fire Forward Motion of Bolt Carrier⁹

The primary difference between automatic and semi-automatic rifles lies in the firing mechanism. For both types of rifles, the initial trigger pull releases the hammer to fire a round. FM23-9 ¶¶ 4-2, 4-3. The bolt carrier then cocks the hammer back, readying it to release again to fire the next shot. *Id.* ¶ 4-2. In a semi-automatic rifle, a spring pushes the disconnecter up to catch the hammer as the bolt carrier cocks it back, preventing the hammer from releasing until the shooter pulls the trigger again. *Id.* The disconnecter thereby disrupts the otherwise “automatic[]” cycle of firing, requiring another “function of the trigger” to fire again. *Cf.* 26 U.S.C. § 5845(b).

⁹ 45Snipers, *How An AR-15 Rifle Works: Part 2, Function*, YouTube (Jan. 11, 2017), <https://youtu.be/wAqE-KLbiYc>.

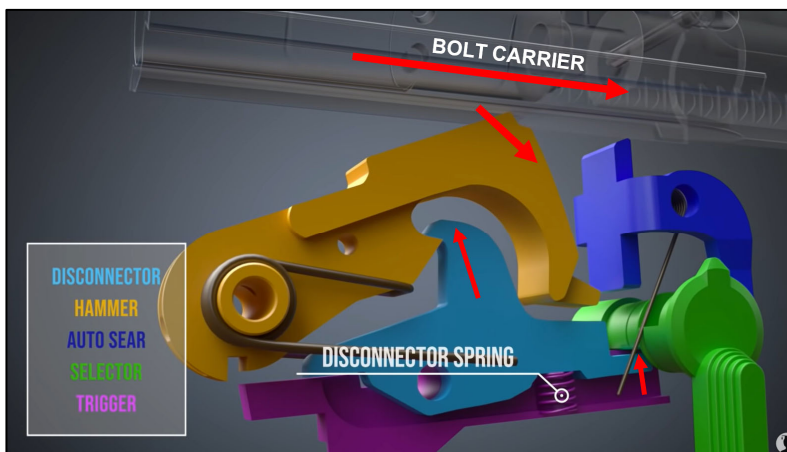


Figure 3: Post-Fire Mechanism—M16 in Semi-Automatic Mode¹⁰

In the automatic M16 rifle, by contrast, a post on the selector switch—the part used to toggle between different fire modes—prevents the disconnecter from rising to catch the hammer after each shot. FM23-9 ¶ 4-3. Instead, the firing mechanism is governed by the auto sear, which catches the hammer as the bolt carrier cocks it back after firing a round. *Id.* When the bolt carrier rebounds forward, it pushes the auto sear down, releasing the hammer and firing another round. *Id.*

¹⁰ Thomas Schwenke, *M16 and AR-15 – How Firearms Work!*, YouTube (Feb. 23, 2019), <https://youtu.be/wMIBUIN30yU>.

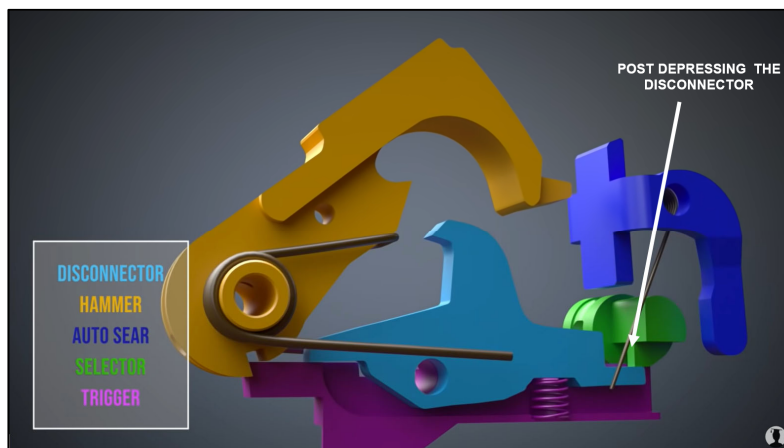


Figure 4: Firing Mechanism—M16 in Fully Automatic Mode¹¹

The auto sear allows the gun to harness the bolt carrier’s back-and-forth motion caused by the combustion reaction to continuously fire until the trigger is released. The first pull or “function” of the trigger initiates “automatic[]” firing of “more than one shot”—each subsequent round is fired not by new operator action, but by the reaction caused by the firing of the previous round. *See* 26 U.S.C. § 5845(b). That is what makes the weapon a machinegun.

B. Bump stocks convert the semi-automatic firing process into an automatic one.

A bump stock attached to a semi-automatic rifle employs the recoil from the combustion reaction—like any other automatic gun—to reengage the hammer after each round is fired. The disconnect-to-hammer

¹¹ Schwenke, *supra* note 10.

cycle repeats continuously until the shooter acts to stop the cycle.

A bump stock allows the rifle to slide within the stock. The recoil from each shot, combined with forward pressure from the operator's non-shooting hand (or a spring in some bump stocks), causes the rifle to slide back and forth, "bumping" the operator's stationary trigger finger, which rests on the bump stock's "trigger ledge." Each bump initiates a new firing sequence, allowing the hammer to fire another round without the shooter acting to pull the trigger.



Figure 5: Pre-Firing Position of Bump Stock With Trigger Finger on Trigger Ledge¹²

¹² U.S. Ct. App. 5th Cir., Bump Fire Animation, https://www.ca5.uscourts.gov/opinions/pub/20/20-51016_bump_fire_

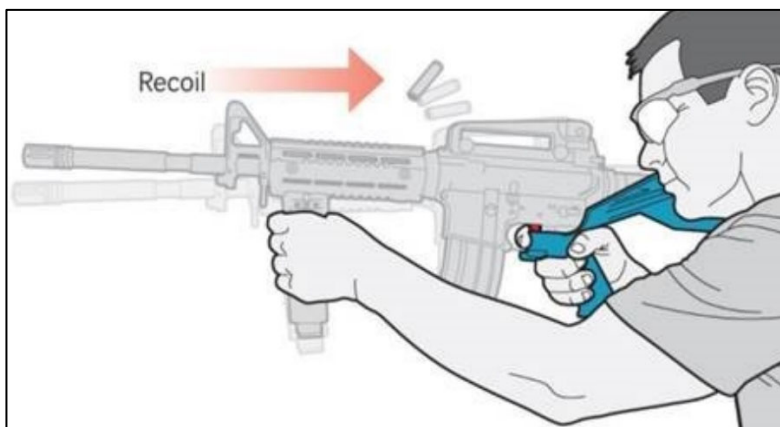


Figure 6: Bump Stock Firing¹³

Like a traditional automatic rifle, a bump stock links the firing of each round to the back-and-forth motion caused by the prior round's combustion, allowing continuous fire without the shooter repeatedly pulling the trigger. The only difference is how that kinetic energy is harnessed: by the bolt carrier (traditional automatic rifle) or the entire rifle (bump-stock-equipped rifle). So long as the shooter keeps a finger on the trigger ledge and holds the gun in place by applying forward pressure to the barrel, a bump-stock-equipped rifle will fire continuously.

animation.gif (visited Apr. 27, 2023) (cited in *Cargill II*, 57 F.4th at 454 n.3).

¹³ *Powerful US Gun Lobby Group Backs New Curbs on Rapid-fire Accessories*, Straits Times (Oct. 6, 2017), <https://www.straitstimes.com/world/united-states/after-las-vegas-shooting-momentum-builds-for-ban-of-rapid-fire-devices>.

C. Bump stocks enable fire rates rivaling that of automatic weapons.

Bump stocks dramatically increase weapons' fire rate. A firearm's cyclic fire rate is measured by the time between firing a loaded round and locking a new round into firing position. FM23-9 at Glossary 7. The military-issue M16 has a cyclic fire rate of 800 rounds per minute ("RPM"). *Id.* ¶ 2-1. Semi-automatic rifles cannot achieve this rate because they are limited by the shooter's trigger finger—professional sport-shooting competitors have a maximum theoretical firing rate of about 180 RPM.¹⁴ But when outfitted with a bump stock, semi-automatic rifles can fire between 400 and 800 RPM.¹⁵ Bump stocks enable even minimally skilled shooters to match military weapons' firing rates—underscoring that bump-stock-equipped rifles are machineguns.

D. Manufacturer advertising confirms that rifles equipped with bump stocks are machineguns.

Gun manufacturers do not shy away from the fact that bump stocks turn semi-automatic weapons into machineguns. That is the device's selling point. As one manufacturer proudly states, "Bumpfire Stocks

¹⁴ Steven Koff, *Assault Weapons, Semi-Automatic Rifles and the AR-15: Defining the Debate*, Cleveland.com (Apr. 18, 2018), https://www.cleveland.com/nation/2018/04/assault_weapons_semi-automatic_1.html.

¹⁵ See *The "Bump Stocks" Used in the Las Vegas Shooting May Soon Be Banned*, Economist (Oct. 6, 2017), <https://www.economist.com/graphic-detail/2017/10/06/the-bump-stocks-used-in-the-las-vegas-shooting-may-soon-be-banned>.

are the closest you can get to full auto and still be legal.”¹⁶ Another manufacturer abandons any pretense of civilian use, marketing its product as “Standard Battle Style.”¹⁷ Others specifically advertise bump stocks’ ability to bypass fire-rate limitations inherent to semi-automatic rifles.¹⁸

These slogans confirm the obvious: a bump stock modifies a semi-automatic rifle so that it “fires repeatedly with a single pull of the trigger.” *Staples*, 511 U.S. at 602 n.1. That is a machinegun.

II. The ATF Rule Recognizes the Uniquely Pernicious Threats That Unregulated Bump Stocks Pose to Society.

Large and open gatherings undergird American civil society and public life. The First Amendment enshrines “the right of the people peaceably to assemble, and to petition the Government” and safeguards the free exercise of religion. U.S. Const. amend. I. Americans exercise these rights by attending political rallies, marching for social causes, and congregating in

¹⁶ Midsouth Shooters, Bumpfire Systems, <https://www.midsouthshooterssupply.com/b/bumpfire-systems> (visited Apr. 27, 2023).

¹⁷ Firequest, Slide Fire SSAR-15 Bump Fire Stock – Right Hand Model, <https://www.firequest.com/AB227.html> (visited Apr. 27, 2023).

¹⁸ *E.g.*, Slide Fire, *Slide Fire: Bump Fire Stocks* (Jan. 8, 2014), <https://youtu.be/hCCT8JtwQeI> (hailing Bump Fire Stock’s ability to allow gun owners to fire rifles as “quickly as desired”); Firequest, Slide Fire SSAK-47 Bump Fire Stock – Right Hand Model, <https://www.firequest.com/product654.html> (visited Apr. 27, 2023) (“Simple modification for an AK-47 rifle that allows operator to shoot *as quickly as desired.*”) (emphasis added).

worship. They also attend, among other outdoor events, music concerts, sports games, marathons, holiday markets and festivals, car races, parades, county and state fairs, and fireworks displays. The breadth of causes, hobbies, and interests of an earlier generation of Americans prompted de Tocqueville to observe that “Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small.” Alexis de Tocqueville, *Democracy in America* 489 (Mansfield & Winthrop eds. 2000).

These gatherings often draw hundreds if not thousands of people to crowded (and sometimes confined) spaces. Those characteristics render these gatherings uniquely vulnerable to shooters with bump stocks. Bump-stock-equipped rifles spray hundreds of bullets per minute, albeit with reduced accuracy¹⁹—making them impractical for sport or self-defense but well-suited for devastation. As one National Rifle Association member told the ATF, the “only thing bump stocks are good for is creating a kill zone.” 83 Fed. Reg. at 66,520. Merely by pointing the weapon at a crowd from beyond an event’s security perimeter and opening fire, even an inexperienced assailant can murder dozens in little more than the blink of an eye.

¹⁹ Bryan Hendricks, *Arkansas Sportsman: Bump Stocks Do Nothing Good For AR-15 Rifles*, *Arkansas Democrat Gazette* (Dec. 23, 2018), <https://www.arkansasonline.com/news/2018/dec/23/bump-stocks-do-nothing-good-for-ar-15-r>.

The 1 October tragedy in Las Vegas is an all-too-real reminder of the senseless slaughter that bump stocks enable. In just over 10 minutes, the assailant carried out the deadliest shooting in modern U.S. history, shooting over 600 people and killing 60. According to his own brother, the assailant wanted to be known for “having the largest casualty count.”²⁰ He “planned every part of the attack methodically,” carefully selecting “the hotel, the room, the floor, and the concert venue below.”²¹ His choice of weapon was equally calculated: he had 14 guns equipped with bump stocks, and fired 1,049 rounds from those rifles.²² For security guards and police officers responding to the scene, the gunfire was indistinguishable from that of military-style automatic weapons.²³

The use of bump stocks to inflict mass carnage in Las Vegas increased the risk that these devices would be used in future mass shootings and terror attacks. As the ATF recognized in promulgating its rule, “the Las Vegas tragedy made ‘individuals aware that these devices exist—potentially including persons with criminal or terrorist intentions—and made their potential to threaten public safety obvious.’” 83 Fed. Reg. at 66,520 (quoting 83 Fed. Reg. 13,442, 13,447 (Mar. 29, 2018)). Moreover, before the rule, bump stocks were “easily attainable and inexpensive items.” *Id.*²⁴ For aspiring killers seeking “the largest casualty

²⁰ LVMPD Criminal Investigative Report, *supra* note 3, at 116.

²¹ *Id.* at 116, 118.

²² *Id.* at 96-107.

²³ *See id.* at 7, 56, 73.

²⁴ A search shortly after the 1 October shooting found bump stocks widely available for \$90 to \$200, a far cry from the price

count,” the 1 October bump-stock massacre provides a terrifying blueprint.

III. The ATF Rule Furthers Congress’s Express Legislative Policy of Preventing Circumvention of the Machinegun Ban.

Congress did not mince words—manufacturers cannot end-run the NFA’s machinegun ban by making devices that turn ordinary guns into machineguns. *See* 26 U.S.C. § 5845(b). The ATF’s bump-stock rule is faithful to the statute’s broad language and furthers a policy Congress has now twice reiterated: gunmakers may not invent around the NFA’s prohibitions with technical contrivances.

A. Congress has repeatedly expanded the definition of “machinegun” to counteract efforts to design around the NFA.

The menace from machineguns is not new. Recognizing that machineguns were a “weapon of choice” among armed gangsters of the 1920s and ’30s, Congress imposed a registration requirement and hefty taxes on machineguns by way of the NFA. *See, e.g.*, S. Rep. No. 73-1444, at 1-2 (1934) (“[The] law violator must be deprived of his most dangerous weapon, the machine gun.”); H.R. Rep. No. 73-1780, at 1 (1934) (same). The NFA reflected Congress’s judgment that machineguns have no legitimate civilian purpose, because they were neither useful nor necessary for sport or self-defense. *See* S. Rep. No. 73-1444, at 2 (1934)

tag of a pre-1986 fully automatic rifle, which can reach \$50,000. Ed Leefeldt, *Stephen Paddock Used a “Bump Stock” to Make His Guns Even Deadlier*, CBS News (Oct. 4, 2017), <https://tinyurl.com/5y5r7eht>.

("[T]here is no reason why anyone except a law officer should have a machine gun or sawed-off shotgun."); H.R. Rep. No. 73-1780, at 1 (1934) (same).

Congress was wary of efforts to circumvent the regulation. As originally proposed, the NFA defined "machinegun" as "any weapon designed to shoot automatically or semiautomatically twelve or more shots without reloading." Hearings Before a Subcommittee of the Committee on Commerce of the United States Senate on S.885, S.2258 and S. 3680, at 75 (1934). But the National Rifle Association's then-President, Karl T. Frederick, expressed concern that the definition was too narrow. He noted that firearm manufacturers could bypass the new restrictions simply by limiting a gun's ammunition-feeding device to hold 11 rounds or fewer. *See* Hearings Before The Committee on Ways and Means, House of Representatives on H.R. 9066, at 39-40 (1934) ("House NFA Hearing") ("A gun which fires automatically or semiautomatically less than 12 shots is not under this definition a machine gun. And yet, in my opinion, it is in fact a machine gun and should be so classified.").

Frederick proposed a broad definition to thwart workarounds: a weapon that "shoots automatically more than one shot without manual reloading, by a single function of the trigger" is a machinegun. *Id.* at 40. Frederick explained that "[t]he distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine." *Id.* By contrast, non-machineguns are limited by how "fast ... you can pull your trigger." *Id.* at 41. This focus on the human factor—the need to pull a trigger—

tracked Congress's intent to distinguish guns used for sport and self-defense from those useful only for crime. *See* Pub. L. No. 73-474, § 1(b). Congress eventually adopted Frederick's definition in full. House NFA Hearing at 83; *see* H.R. Rep. No. 73-1780, at 2 (noting the bill's "usual definition of machine gun as a weapon designed to shoot more than one shot without reloading and by a single pull of the trigger").

Three decades later, gun violence continued to plague the nation. Despite the NFA's expansive definition of machinegun, manufacturers managed to circumvent the statute by producing components that converted semi-automatic weapons to fully automatic machineguns. At the time, these converted machineguns accounted for 20 percent of machineguns seized or purchased by the ATF. *See* Sen. Comm. on the Judiciary, 97th Cong., Federal Regulation of Firearms 26 (1982). A government task force recommended that Congress authorize the ATF to expand its machinegun definition to include these conversion kits. *Id.*

Congress again acted to root out workarounds, first by enacting the Gun Control Act of 1968 ("GCA"). Pub. L. No. 90-618, 82 Stat. 1213 (Oct. 22, 1968). In relevant part, the GCA expanded the NFA's machinegun definition to include "any combination of parts designed and intended for use in converting a weapon into a machinegun." *Id.* at 1231.

In 1986, Congress went still further. The Firearms Owners' Protection Act replaced the prior registration scheme with a complete ban on civilian ownership of newly manufactured machineguns. Pub. L. No. 99-

308, § 102(9). Faced with a new generation of manufacturer workarounds, Congress broadened the definition of machinegun to capture not only “combination[s] of parts” that could convert a weapon into a machinegun, but *any part* used to convert a weapon into a machinegun. *Id.* § 109(a). This expanded definition targeted manufacturers that had skirted the “combination of parts” provision by designing individual parts capable of converting semi-automatic weapons into automatic weapons.²⁵

Time and again, Congress has made clear that the NFA’s machinegun prohibition applies to workarounds that turn ordinary guns into machineguns.

B. The ATF rule effectuates congressional intent to prevent workarounds.

As amended, the NFA’s machinegun ban unambiguously prohibits devices that cause semi-automatic weapons to function as machineguns. *See* 26 U.S.C. § 5845(b). The ATF’s bump-stock rule both furthers that policy and comports with the best interpretation of the statute. A “machinegun” is “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). As the D.C. Circuit correctly noted in *Guedes v. ATF* (“*Guedes II*”), 45 F.4th 306 (D.C. Cir. 2022), *reh’g en banc denied*, 2023 WL 3184927 (D.C. Cir. May 2, 2023), the ATF rule’s validity turns on the interpretation of two phrases: “single function of the trigger” and “automatically.” *Id.* at

²⁵ David T. Hardy, *The Firearms Owners’ Protection Act: A Historical and Legal Perspective*, 17 *Cumb. L. Rev.* 585, 668 (1987).

314. For both phrases, the ATF's interpretation tracks their ordinary meaning at the time Congress enacted the NFA.

The ATF interprets “single function of the trigger” as “‘single pull of the trigger’ and analogous motions.” 83 Fed. Reg. at 66,515. At the time of the NFA's enactment, the term “function” was defined as “to perform, execute” or as “activity; doing; performance.” *Function*, Webster's New International Dictionary (2d ed. 1934). In the context of the NFA, “the shooter's pull is the single ‘activity’ or ‘performance’ of the trigger that causes the gun to shoot automatically more than one shot.” *Guedes II*, 45 F.4th at 315; *see also* House NFA Hearing at 41 (emphasizing “a single pull” as the “distinguishing feature of a machine gun”). This Court has recognized as much. *See Staples*, 511 U.S. at 602 n.1 (weapons that “fire[] repeatedly with a single pull of the trigger ... are ‘machineguns’ within the meaning of the Act”).

The ATF defines “automatically” as “the result of a self-acting or self-regulating mechanism that allows the firings of multiple rounds.” 83 Fed. Reg. at 66,554. This definition intentionally draws on the 1934 definition of “automatic.” *Automatic*, Webster's International Dictionary (2d ed. 1934) (“having a self-acting or self-regulating mechanism that performs a required act at a predetermined point in an operation”); *see* 83 Fed. Reg. at 66,519. The plain meaning of “self-acting or self-regulating mechanism” does not preclude human input; to initiate and maintain fire with an automatic weapon, for example, the shooter must compress and apply continued pressure to the trigger. *See Guedes II*, 45 F.4th at 316-17.

The ATF's interpretations of these terms provide the "best definition" of machinegun, *id.* at 317, and one that respects the breadth of Congress's intent. As the ATF found, bump stocks are "designed and intended" for one purpose: to "convert[] a weapon into a machinegun." 26 U.S.C. § 5845(b); *see* 83 Fed. Reg. at 66,515. By affixing a bump stock to a semi-automatic rifle, a person can "shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b); *see* 83 Fed. Reg. at 66,518. That is why the ATF rule properly classifies bump stocks as machineguns—and it is why the Fifth Circuit's decision below was erroneous.

IV. The Fifth Circuit's *En Banc* Ruling Inaugurated a Circuit Split and Disempowered Congress.

Of four U.S. Courts of Appeals to weigh challenges to the ATF rule, the Fifth Circuit was, until recently, the only one to strike it down. The court was deeply fractured; the sole rationale on which a majority could agree was that, under the rule of lenity, any ambiguity in the term "machinegun" should be construed against the Government.

The Fifth Circuit's decision is unsound. Even if the definition of "machinegun" were ambiguous, lenity does not permit courts to rewrite statutes whenever they perceive any ambiguity. This Court should resolve this deepening circuit split and curb the Fifth Circuit's abridgement of congressional authority.

A. The Fifth Circuit diverged from three other Circuits in holding that bump stocks are not machineguns.

Before the Fifth Circuit’s *en banc* decision, the U.S. Courts of Appeals had uniformly upheld the ATF rule. First, the D.C. Circuit, the Tenth Circuit, and the Sixth Circuit each refused to preliminarily enjoin the rule. *Gun Owners of Am., Inc. v. Garland*, 19 F.4th 890 (6th Cir. 2021) (*en banc*) (affirming by evenly divided vote), *cert. denied*, 143 S.Ct. 83 (2022); *Aposhian v. Barr*, 958 F.3d 969 (10th Cir. 2020), *cert. denied*, 143 S.Ct. 84 (2022); *Guedes v. ATF*, 920 F.3d 1 (D.C. Cir. 2019) (*per curiam*), *cert. denied*, 140 S.Ct. 789 (2020). Then, the Fifth Circuit panel below and the D.C. Circuit affirmed final judgments for the Government, holding that the ATF rule embodies the “best interpretation” of the NFA. *Guedes II*, 45 F.4th at 313-14; *Cargill v. Garland*, 20 F.4th 1004, 1006 (5th Cir. 2021), *vacated*, 37 F.4th 1091 (5th Cir. 2022).

The *en banc* Fifth Circuit broke with these decisions. Despite recognizing that a machinegun is characterized by the power to “shoot continuously” with “one pull of the trigger”—and that bump stocks likewise allow a shooter to fire continuously without having to “pull and release his trigger finger”—the Fifth Circuit erroneously held that bump stocks are not machineguns. *Cargill II*, 57 F.4th at 453-54, 473.²⁶

²⁶ The U.S. Navy-Marine Corps Court of Criminal Appeals also set aside a conviction for machinegun possession on the basis that bump stocks are not machineguns. *United States v. Alkazahg*, 81 M.J. 764, 784 (N-M. Ct. Crim. App. 2021).

The Fifth Circuit created a circuit split on an issue of national importance. With the Sixth Circuit’s later decision in *Hardin v. ATF*, No. 20-6380, 2023 WL 3065807 (6th Cir. Apr. 25, 2023), that split has only deepened. The split has tangible implications: given the degree of interstate trafficking in guns and gun parts, bump stocks sold in states within the Fifth and Sixth Circuits will surely show up elsewhere.²⁷ The Court should resolve this disagreement. *See Wilson v. Sellers*, 138 S.Ct. 1188, 1193 (2018).

B. The Fifth Circuit’s Lenity Ruling Violates the Separation of Powers.

The problem with the Fifth Circuit’s decision is not just that it is wrong as a matter of statutory construction or that it created a circuit split—though those are good reasons to grant the petition. The decision also endorsed a rule that would undo Congress’s intent whenever a court finds any ambiguity in a criminal statute. The Court should correct this incursion on legislative authority.

Though 13 Fifth Circuit judges voted to reverse the district court, only one part of the opinion below commanded a majority: 12 judges supported reversal under the rule of lenity. *Cargill II*, 57 F.4th at 450 n.*.

²⁷ Though some states have banned bump stocks, no state within the Fifth or Sixth Circuits has expressly done so. And significant evidence indicates that guns originating in states with looser gun laws are often used in crimes in states with stricter laws. *See* Brian Knight, *State Gun Policy and Cross-State Externalities: Evidence from Crime Gun Tracing*, 5 Am. Econ. J: Econ. Pol’y 200 (2013); Erik J. Olson et al., *American Firearm Homicides: The Impact of Your Neighbors*, 86 J. Trauma & Acute Care Surgery 797 (2019).

The rule of lenity teaches that “an ambiguous criminal statute is to be construed in favor of the accused.” *Staples*, 511 U.S. at 619 n.17. For lenity to apply, it is not enough that there is a “division of judicial authority” or that it is “possible to articulate a construction more narrow than that urged by the Government.” *Moskal v. United States*, 498 U.S. 103, 108 (1990) (emphasis omitted). Lenity comes into play “only when a criminal statute contains a grievous ambiguity or uncertainty, and only if, after seizing everything from which aid can be derived, the Court can make no more than a guess as to what Congress intended.” *Ocasio v. United States*, 578 U.S. 282, 295 n.8 (2016) (quotations omitted).

Lenity helps “maintain the proper balance between Congress, prosecutors, and courts.” *United States v. Kozminski*, 487 U.S. 931, 952 (1988). Narrowly construing grievously ambiguous statutes ensures the Judiciary does not overstep constitutional limits by criminalizing conduct where Congress has not. See *United States v. Davis*, 139 S.Ct. 2319, 2333 (2019). But resorting to lenity where principles of statutory construction would suffice violates the separation of powers: “The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers. That is not the function of the judiciary.” *Callanan v. United States*, 364 U.S. 587, 596 (1961).

Where the Judiciary can ascertain Congress’s intent, lenity has no role. See *Bell v. United States*, 349 U.S. 81, 83 (1955). Otherwise, the best interpretation

of a statute would invariably give way to the narrowest. This Court has long rejected that view. *E.g.*, *United States v. Palmer*, 16 U.S. (3 Wheat.) 610, 629 (1818); *cf.* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 131 (2010) (“This insistence upon legislative supremacy is a constant refrain in the case law regarding the canon [of lenity]... Over and over again, courts stressed that they were obliged to choose the best, not the narrowest interpretation of a statute.”).

The Fifth Circuit’s invocation of lenity to strike down the ATF rule disregarded these bedrock principles. The majority began by asking whether any assumed ambiguity in the NFA “should be resolved in favor of lenity.” *Cargill II*, 57 F.4th at 469 (quotation omitted). It answered simply: “the rule of lenity applies if the statute is ambiguous.” *Id.* That was no slip; the majority repeatedly emphasized that *any* ambiguity warrants lenity. *E.g.*, *id.* at 471 (“[A]ssuming the definition of machinegun is ambiguous, we are bound to apply the rule of lenity.”). And because the “definition of ‘machinegun’ ... is ambiguous, at the very least,” the court said, lenity “compel[led]” it “to construe the statute in Cargill’s favor.” *Id.* at 451.

As Judge Higginson explained in dissent, the majority’s application of lenity to “garden-variety ambiguity” contradicts precedent and “usurps Congress’s power to define what conduct is subject to criminal sanction.” *Id.* at 480 (Higginson, J., dissenting). Holding that any ambiguity triggers lenity means “the defendant wins by default whenever the government fails to prove that a statute unambiguously criminalizes the defendant’s conduct.” *Id.* at 480-81 & n.4

(Higginson, J., dissenting). Neither the Constitution nor this Court’s precedents permit the Judiciary to decriminalize conduct contrary to the Legislature’s expressed and discernible intent. *See United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (“[T]hough penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature.”).

The Fifth Circuit’s intrusion on Congress’s powers affords another reason to grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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