No. 25-1282

In the United States Court of Appeals
for the Sixth Circuit

GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, VIRGINIA CITIZENS DEFENSE LEAGUE, MATT WATKINS, TIM HARMSEN, RACHEL MALONE
Plaintiffs-Appellants,

GUN OWNERS OF CALIFORNIA, INC.,
Movant,

V.

PAMELA BONDI, U.S. ATTORNEY GENERAL, UNITED STATES ATTORNEY GENERAL; U.S. DEPARTMENT OF JUSTICE; BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, KASH PATEL, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN
The Honorable District Court Judge Paul L. Maloney
Civil Action No. 1:18-cv-01429

BRIEF FOR APPELLANTS

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Dated: June 11, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 25-1282 Case Name: Gun Owners of America v. Bondi, et al.

Name of counsel: Robert J. Olson, Stephen Stamboulieh, Kerry L. Morgan, Oliver Krawczyk

Pursuant to 6th Cir. R. 26.1, Gun Owners of America
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on June 11, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Stephen D. Stamboulieh
P.O. Box 428
Olive Branch, MS 38654

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Sixth Circuit
Case Number: 25-1282 Case Name: Gun Owners of America v. Bondi, et al.

Name of counsel: Robert J. Olson, Stephen Stamboulieh, Kerry L. Morgan, Oliver Krawczyk

Pursuant to 6th Cir. R. 26.1, Gun Owners Foundation
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

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Name of counsel: Robert J. Olson, Stephen Stamboulieh, Kerry L. Morgan, Oliver Krawczyk

Pursuant to 6th Cir. R. 26.1, Virginia Citizens Defense League
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

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STATEMENT CONCERNING ORAL ARGUMENT

Pursuant to 6th Circuit Rule 34(a), Plaintiffs-Appellants respectfully request oral argument. This appeal presents a question of statutory interpretation under the Equal Access to Justice Act. In denying Plaintiffs a substantial amount of attorneys' fees, the district court found the "government advanced a substantially justified position" in promulgating the Bureau of Alcohol, Tobacco, Firearms and Explosives Final Rule entitled Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec. 26, 2018), notwithstanding holdings of the United States Supreme Court, and others, finding that the Final Rule had been issued in excess of statutory authority.

Oral argument would serve to focus this Court's attention on the key legal and factual bases underlying the parties' fee dispute.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 5 U.S.C. § 702 and 28 U.S.C. § 1331. Complaint, R.1, Page ID#3. The district court entered judgment for Plaintiffs-Appellants, declaring that the Bureau of Alcohol, Tobacco, Firearms and Explosives Final Rule entitled Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec. 26, 2018), was issued in excess of statutory authority and is therefore unlawful. Order, R.103, Page ID#6594. Plaintiffs then filed a Motion for Attorneys' Fees and Costs, which the district court denied with respect to attorneys' fees, and granted in part with respect to costs. Order, R.112, Page ID#6778. Plaintiffs timely filed a Notice of Appeal on March 24, 2025, R.115, Page ID#6801. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1) Whether the district court improperly denied Plaintiffs-Appellants' Motion for Attorneys' Fees and Costs pursuant to the Equal Access to Justice Act?

STATEMENT OF THE CASE

Background

Following a mass shooting in Las Vegas, Nevada and at President Donald Trump's behest, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") issued a Final Rule entitled Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec. 26, 2018), which reversed more than a decade of ATF interpretive precedent to

reclassify and criminalize bump stocks as prohibited "machineguns" under federal law. Bump stocks are (or were) popular firearm accessories that assist shooters in increasing the rate at which they can fire semiautomatic firearms. On December 26, 2018, Plaintiffs filed this action for declaratory, injunctive, and other relief pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331, challenging ATF's sudden reversal. The district court had authority to grant the remedy Plaintiffs sought under 28 U.S.C. §§ 2201 and 2202, and 5 U.S.C. § 706. Plaintiffs brought suit against Matthew Whitaker, named in his then-official capacity as Acting Attorney General, and Thomas E. Brandon, in his then-official capacity as Acting Director of ATF (collectively "Defendants"). Plaintiffs' central claim against Appellees was that ATF's Final Rule conflicted with the statutory text, and therefore had been issued in excess of ATF's statutory authority and was unlawful.

Proceedings Below

Gun Owners of America, Inc. ("GOA"), Gun Owners Foundation ("GOF"), Virginia Citizens Defense League ("VCDL"), Matt Watkins ("Watkins"), Tim Harmsen ("Harmsen"), and Rachel Malone ("Malone") (collectively "Plaintiffs") filed suit on December 26, 2018. Complaint, R.1, Page ID##1-38. At the time Defendants promulgated their Final Rule, Watkins lawfully owned a Slide Fire bump stock reclassified and criminalized by the Final Rule. Complaint, R.1, Page ID#4. Harmsen likewise possessed a bump stock and, prior to the Final Rule, posted videos

featuring bump stocks to his popular YouTube channel. Complaint, R.1, Page ID#5. In contrast, Malone did not own any bump stocks, but wanted to purchase one, but for the Final Rule. Complaint, R.1, Page ID#5. And GOA, GOF, and VCDL represented other Michigan bump stock owners like Watkins and Harmsen. Complaint, R.1, Page ID##3-4.

After filing suit, Plaintiffs moved for a preliminary injunction against enforcement of the Final Rule, arguing that ATF had issued it in excess of its statutory authority under the National Firearms Act. The district court held a hearing on Plaintiffs' motion on March 6, 2019. On March 21, 2019, the Court denied Plaintiffs' motion for preliminary injunction, which Plaintiffs appealed to this Court. A panel of this Court initially reversed the district court's denial, siding with Plaintiffs. *Gun Owners of Am., Inc. v. Garland*, 992 F.3d 446 (6th Cir. 2021). But in June 2021, this Court granted en banc review, vacating the panel's opinion. *Gun Owners of Am., Inc. v. Garland*, 2 F.4th 576 (6th Cir. 2021). And, after rehearing, this Court evenly split, resulting in the affirmation of the district court's decision. *Gun Owners of Am., Inc. v. Garland*, 19 F.4th 890 (6th Cir. 2021). Thereafter, Plaintiffs petitioned the U.S. Supreme Court for a writ of certiorari, which was denied in October 2022. *Gun Owners of Am., Inc. v. Garland*, 143 S. Ct. 83 (2022).

However, the Supreme Court later granted certiorari in *Garland v. Cargill*, 144 S. Ct. 374 (2023), another challenge to the Final Rule originating in the Fifth

Circuit and raising similar statutory arguments. Accordingly, the district court stayed Plaintiffs' case pending resolution of *Cargill*. *See* Nov. 9, 2023 Order, R.87, Page ID#6546 (continuing stay). The Supreme Court issued its opinion in *Cargill* on June 14, 2024. *See Garland v. Cargill*, 602 U.S. 406 (2024).

In *Cargill*, the Supreme Court vindicated Plaintiffs' position, holding that the Final Rule indeed had exceeded ATF's statutory authority. The Supreme Court held that a semiautomatic rifle equipped with a bump stock is not a "machinegun" as defined by 26 U.S.C. § 5845(b) because it fits no part of the statutory text: (1) it cannot fire more than one shot "by a single function of the trigger" and, (2) even if it could, it cannot do so "automatically." *Cargill*, 602 U.S. at 423, 427. Soon after deciding *Cargill*, the Supreme Court also denied the government's petition for a writ of certiorari in *Hardin v. ATF*, No. 20-6380 (6th Cir. Apr. 25, 2023), ECF No. 43 (a prior panel of this Court finding that Section 5845(b)'s definition of a "machinegun" does not encompass bump stock devices). *See Garland v. Hardin*, 144 S. Ct. 2680 (2024).

On November 1, 2024, the district court entered an Order Resolving Competing Proposals, holding that Plaintiffs' request for injunctive relief were moot following *Cargill* and *Hardin*, but granting Plaintiffs' request for declaratory relief. *See* Nov. 1, 2024 Order, R.102, Page ID##6587-6593. The district court then entered a Final Order declaring that the Rule "was issued in excess of ATF's statutory

authority and is therefore unlawful." Nov. 1, 2024 Order, R.103, Page ID#6594. In so doing, the district court observed that "Defendants do not oppose Plaintiffs' request for declaratory relief." *Id.*

Having incurred hundreds of thousands of dollars' worth of legal expenses during years of litigation to obtain a declaratory judgment, Plaintiffs timely filed their Motion for Attorneys' Fees and Costs Under the Equal Access to Justice Act ("EAJA") (Motion, R.104, Page ID##6595-6601) and an accompanying Memorandum in Support. R.105, Page ID##6602-6617. As "prevailing parties," Plaintiffs sought $431,272.50 in attorneys' fees and $34,851.53 in litigation costs and expenses. Motion, R.104, Page ID#6600. In response, aside from asserting that their position was "substantially justified," Defendants did not dispute the other elements entitling Plaintiffs to a fee award. Plaintiffs also sought an additional $6,065 for time spent in drafting their Reply brief. Reply, R.109, Page ID#6759.

On January 23, 2025, the district court agreed that "Plaintiffs are the prevailing party," (Order, R.112, Page ID#6795), but denied Plaintiffs' Motion for Attorneys' Fees and awarded them only "$724.00 in costs." Order, R.112, Page ID#6795. The district court stated (i) that the "government has established that its position in this litigation had substantial justification" because, *inter alia*, "Congress had not defined the key phrases that underlie this dispute," (ii) that the Final Rule's interpretation of the statutory terms "single function of the trigger" and

"automatically" "had some basis in earlier court opinions," and (iii) that this Circuit "has found that the government's position was viable and reasonable." Order, R.112, Page ID#6796.

Plaintiffs timely appealed the district court's denial of the majority of their fee motion.

SUMMARY OF ARGUMENT

The district court erred, finding that Defendants were "substantially justified" in bucking not only the statutory text but also years of interpretive precedent to reclassify bump stocks as "machineguns," a purely political decision taken at the President's behest. Accordingly, the district court erred in denying Plaintiffs a reasonable attorneys' fee as the prevailing parties in this litigation. As the Ninth Circuit has observed in summarizing several Supreme Court cases:

> The policy behind the EAJA "is to encourage litigants to vindicate their rights where any level of the adjudicating agency has made some error in law or fact and has thereby forced the litigant to seek relief from a federal court." "[W]e have consistently held that regardless of the government's conduct in the federal court proceedings, unreasonable agency action at any level entitles the litigant to EAJA fees." [*Ibrahim v. DHS*, 912 F.3d 1147, 1167 (9th Cir. 2019) (citations omitted).]

In stark contrast to that principle, under the opinion below, the government may promulgate rules entirely untethered from the law, the facts, or reality, forcing private litigants of limited means into court to defend their rights and their property. Then, even when ultimately successful in challenging such lawless action and even if

vindicated on the merits by the U.S. Supreme Court, those plaintiffs may be denied the ability to recoup reasonable attorneys' fees. That is not what Congress intended when it enacted EAJA, and this Court should reverse.

STANDARD OF REVIEW

This Court reviews a "district court's award of attorney fees using the abuse-of-discretion standard." *Coursey v. Comm'r of Soc. Sec.*, 843 F.3d 1095, 1097 (6th Cir. 2016). A "district court abuses its discretion when it relies on clearly erroneous findings of fact, when it improperly applies the law, or uses an erroneous legal standard." *Id.* And "a panel will find such an abuse of discretion when it 'is firmly convinced that a mistake has been made.'" *Minor v. Comm'r of Soc. Sec.*, 826 F.3d 878, 882 (6th Cir. 2016).

ARGUMENT

I. PLAINTIFFS ARE ELIGIBLE FOR AND ENTITLED TO AN AWARD OF FEES AND EXPENSES.

The Equal Access to Justice Act ("EAJA") provides for a mandatory award of fees when certain preconditions are met:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A) (emphasis added). Thus, EAJA directs that a fee application must include:

- A showing that the petitioning party is a prevailing party. 28 U.S.C. § 2412(d)(1)(A).
- An allegation that the pre-litigation and litigation position of the government was not substantially justified. 28 U.S.C. §§ 2412(d)(1)(A) & (2)(D).
- An allegation that there are no special circumstances that would make an award unjust. 28 U.S.C. § 2412(d)(3).
- A showing that the petitioning party has met the appropriate net-worth requirements. 28 U.S.C. § 2412(d)(2)(B).

The only prong of EAJA at issue here is whether the "position of the government was not substantially justified."[1] And the district court acknowledged that the

[1] Below, Defendants did not dispute (i) that Plaintiffs are prevailing parties (R.105, Page ID#6607), (ii) that Plaintiffs' fee motion was timely (R.105, Page ID#6606), or (iii) that Plaintiffs meet the qualifications for a fee award (R.105, Page ID#6607). Nor did Defendants contest the number of hours expended, the hourly rates sought, or the costs incurred by Plaintiffs' counsel (R.105-13, Page ID##6716-6717), asserting only that, if a fee award is appropriate, no upward departure is warranted, and any award should be set at EAJA rates "only … adjusted for cost-of-living...." Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees, R.107, Page ID#6737; *see Humphrey v. U.S. Att'y Gen.'s Off.*, 279 F. App'x 328, 331 (6th Cir. 2008) ("failure to oppose defendants' motions" means "the arguments have been waived"); *Merit Med. Sys. v. Aspen Surgical Prods., Inc.*, 2007 U.S. Dist. LEXIS 17537, at *3-4 (W.D. Mich. Mar. 12, 2007) ("failure to address this argument in its response brief, or any of its other briefs, constitutes waiver or abandonment of the argument"); *Burley v. Quiroga*, 2019 U.S. Dist. LEXIS 40597, at *24 (E.D. Mich. Jan. 25, 2019) ("A non-moving party's failure to address an argument in its opposition brief waives the argument.").

"parties dispute only the substantial justification element." Order, R.112, Page ID#6779.

A. Defendants' Position Was Not Substantially Justified.

Under EAJA, "[w]hether or not the position of the United States was substantially justified shall be determined on the basis of the record...." 28 U.S.C. § 2412(d)(1)(B). Below, Defendants bore the burden of demonstrating that their position was substantially justified. *Cinciarelli v. Reagan*, 729 F.2d 801, 806 (D.C. Cir. 1984). To meet that burden, Defendants had to show that their position was "'justified in substance or in the main' – 'that is, justified to a degree that could satisfy a reasonable person.'" *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Thus, the government's position must be something "more than merely undeserving of sanctions for frivolousness...." *Id.* at 566. As this Court explained, the government is not "substantially justified [unless] it has a 'reasonable basis *both* in law *and* fact.'" *Howard v. Barnhart*, 376 F.3d 551, 554 (6th Cir. 2004) (emphases added).[2] What "matters most" are the "actual merits" of the government's position.

[2] *See also F.J. Vollmer Co. v. Magaw*, 102 F.3d 591, 595 (D.C. Cir. 1996) (involving *another* ATF misclassification of a device as a machinegun); *see also id.* at 596 ("an agency's position [i]s not substantially justified when 'it lack[s] a reasonable factual basis'"); *United States v. Hallmark Constr. Co.*, 200 F.3d 1076, 1080 (7th Cir. 2000) (agency must show "that its position was grounded in (1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced").

Griffith v. Comm'r of Soc. Sec., 987 F.3d 556, 563 (6th Cir. 2021). Here, Defendants were neither justified in law nor fact, falling flat on the "actual merits" of their position, and the district court abused its discretion in concluding otherwise.

First, as the Supreme Court noted in *Cargill*, ATF's position in this case marked a dramatic shift from the agency's earlier factual findings and legal conclusions: "On more than 10 separate occasions over several administrations, ATF consistently … took the position that semiautomatic rifles equipped with bump stocks were not machineguns under the statute...." *Cargill*, 602 U.S. at 412. Yet against that backdrop of consistent agency decisions and determinations – *i.e.*, settled law –Defendants adopted the *opposite* position entirely at the President's behest. Indeed, such a departure was motivated by nothing other than "tremendous political pressure to outlaw bump stocks nationwide," *id.*, when, after a Las Vegas shooting, the President demanded ATF reject its prior consistent determinations and outlaw bump stocks by regulation. As the Supreme Court noted, this change was generated by "political pressure," not by any change to the law or bump stocks themselves such as their mechanics. *Id.* Where Defendants take a forced political position that is belied by their own past conduct, data, and evidence,[3] and not to

[3] *See MCR Oil Tools, L.L.C. v. DOT*, 2024 U.S. App. LEXIS 14297, at *12 (5th Cir. June 12, 2024) ("The agency [cannot] … ignore 'data it did not want to consider.' … That is especially so where, as here, the agency has ignored *directly contradictory* evidence that thoroughly forecloses its chosen position.").

mention *the statute*, they should not be permitted to later assert that their position was reasonable.[4]

Second, the Supreme Court held that Defendants' position was contrary to the plain meaning of an unambiguous statute. Holding that Defendants had "[a]bandon[ed] the text," the Court observed:

> Section 5845(b) asks whether a weapon "shoots … automatically more than one shot … by a single function of the trigger." … If something more than a "single function of the trigger" is required to fire multiple shots, the weapon does not satisfy the statutory definition. As Judge Henderson put it, the "statutory definition of 'machinegun' does not include a firearm that shoots more than one round 'automatically' by a single pull of the trigger **AND THEN SOME**." [*Cargill*, 602 U.S. at 424 (emphasis in original).[5]]

An agency's position that clearly conflicts with – and in fact rewrites – the relevant statute cannot possibly be "substantially justified." *See Air Transp. Ass'n of Can. v. FAA*, 156 F.3d 1329, 1332-33 (D.C. Cir 1998) ("We cannot hold that an attempt by

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[4] On December 6, 2017, then-Acting Director of the ATF, Thomas Brandon, testified in front of Congress that "ATF's authority to regulate firearms is, of course, limited by the terms [of the GCA and NFA] and they do not empower ATF to regulate parts or accessories designed to be used with firearms… ATF does not have direct authority to regulate or ban bumpstocks. … If a device does not fall within those statutory definitions, ATF has no authority to regulate the device." *See* https://www.c-span.org/program/senate-committee/firearm-regulations-and-background-checks/492643 at 46:46.

[5] *See also Gun Owners of Am., Inc.*, 992 F.3d at 471 ("Nothing in the statute suggests that the phrase 'single function of the trigger' refers to the shooter's pulling the trigger rather than the trigger itself."). Thus, it cannot be the case, as the district court found, that "AFT's [sic] interpretation had some basis in the law." Order, R.112, Page ID#6781.

an agency to completely displace Congress is substantially justified."). Here, ATF "[a]bandon[ed] the text" and performed an "about-face" after "political pressure," adopting a Final Rule that the Supreme Court found plainly conflicted with the statutory text. *Cargill*, 602 U.S. at 427, 428, 412. And when the "government interprets a statute in a manner that is contrary to its plain language and unsupported by its legislative history,[6] it will prove difficult to establish substantial justification." *Patrick v. Shinseki*, 668 F.3d 1325, 1330-31 (Fed. Cir. 2011); *cf. Cargill*, 602 U.S. at 427, 412 (Final Rule supported by neither plain language – ATF "[a]bandon[ed] the text" – nor legislative history – "proposed bills to ban bump stocks" had failed).[7] ATF could not have been more wrong on the statute, here.

Third, ATF was wrong not only on the law but also on the facts. Contrary to Defendants' claim that a bump stock "harness[es]" recoil energy (83 Fed. Reg. at

[6] Indeed, Congress did not intend to regulate *all* firearms that fire quickly, choosing to omit any reference to rate of fire in the statute. As the Supreme Court observed, "Congress could have linked the definition of 'machinegun' to a weapon's rate of fire, as the dissent would prefer. But, it instead enacted a statute that turns on whether a weapon can fire more than one shot 'automatically … by a single function of the trigger.'" *Cargill*, 602 U.S. at 428. The legislative history thus confirms that Congress did not intend to regulate objects that merely help shooters operate semiautomatic firearms more rapidly. *See id.* at 412-13.

[7] Even then-Senator Dianne Feinstein – a *proponent* of banning bump stocks – acknowledged that ATF lacked statutory authority to ban bump stocks on its own, observing that "ATF has consistently stated that bump stocks could not be banned through regulation because they do not fall under the legal definition of a machine gun. … Unbelievably, the regulation hinges on a dubious analysis...." *See* https://www.judiciary.senate.gov/press/dem/releases/feinstein-statement-on-regulation-to-ban-bump-stocks.

66554), a factual point Plaintiffs disputed (Complaint ¶113, R.1, Page ID#22; Memorandum Supporting Motion for Preliminary Injunction, R.10, Page ID#182), the Supreme Court explained that *the shooter* "uses the firearm's recoil to help rapidly manipulate the trigger." *Cargill*, 602 U.S. at 411. Moreover, contrary to Defendants' factual claim that bump stocks require the shooter to apply "constant forward pressure" to operate (83 Fed. Reg. at 66532), a point Plaintiffs similarly disputed (Memorandum Supporting Motion for Preliminary Injunction, R.10, Page ID#177 & n.11), the Supreme Court again set the record straight, explaining that "[a] shooter must … maintain just the right amount of forward pressure on the rifle's front grip...." *Cargill*, 602 U.S. at 424. Defendants' Final Rule did not even clear the starting gate in explaining the facts of how bump stocks operate. "Bump firing is a balancing act," not a gross motor skill like simply holding down a trigger. *Id.* at 411.

Even so, the district court disputed that ATF's factual errors "were actual disputes" between the parties. Order, R.112, Page ID#6790. Rather, minimizing ATF's use of the phrase "harnessing recoil energy," the district court misunderstood that "the verb harness" does not merely "explain" how "a bump stock controls the recoil energy." *Id.* To the contrary, in the firearms technology context, "[h]arnessing the energy would require the addition of a device such as a spring or hydraulics that could automatically absorb the recoil, and then use this energy to activate the device.

If a firearm equipped with a bump stock did harness the recoil energy, then it would be capable of being fired with one hand – without the use of the non-shooting hand pushing the firearm forward." Verified Dec. of Richard (Rick) Vasquez, ¶13d., R.7, Page ID#149.[8] ATF's choice of words mattered – especially as purported subject-matter experts – because "all semiautomatic firearms operate from the action of harnessing the energy of the gases or from blow back." *Id.* ¶22. Thus, "[u]sing the new standard provided in ATF's regulation – that the bump stock such as the Slidefire 'harnesses' the energy to shoot automatically – place[d] all semiautomatic firearms at risk of being classified as machineguns." *Id.* ¶24. This factual dispute – which the district court casually swept aside – struck at the heart of ATF's attempt to expand the statute to cover inherently semiautomatic actions. ATF's position was not only misleading, but blatantly revisionist.

At bottom, Defendants' regulatory fiat fails the standard the district court was required to apply. ATF only changed course when a presidential order compelled it, suddenly claiming that its previous determinations had completely and repeatedly misread the statute defining machineguns. And in order to do reach a new and diametric result, ATF invented new factual claims about how bump stocks operate.

[8] Rick Vasquez is a former employee of the ATF. During his 14-year tenure with the ATF, he held "positions of Acting Chief of the Firearms Technology Branch ('FTB'), Assistant Chief (Senior Technical Expert) of the FTB, and Acting Chief of the Firearms Training Branch." Dec. of Rick Vasquez, R.7, Page ID#146.

If that is substantial justification, then the government may act lawlessly and with impunity.

B. The District Court Erred in Its Substantial Justification Analysis.

1. The District Court's Cited Cases Fail to Support a Finding of Substantial Justification.

Justifying its denial of Plaintiffs' fee motion, the district court claimed that, at the time of this litigation, the "proper interpretation of the word machinegun remained unsettled" and, without "authoritative precedent interpreting the key phrases in the definition of machinegun," that absence "lend[ed] support to finding the government's position substantially justified." Order, R.112, Page ID#6782. But this theory misses wide of the mark. The term "machinegun" is defined in 26 U.S.C. § 5845 to mean:

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

In other words, Defendants were not working with a clean slate. To the contrary, they had been tasked with enforcing an existing *paragraph-long* statutory definition, whose application to bump stocks had been "settled" for decades prior. Thus, the district court's objection was that the terms were not defined *enough*.

Under the district court's theory, Congress would be required to define every subsidiary term in a statute, before EAJA could attach. Otherwise, ATF could adopt whatever interpretation – no matter how inventive – and still be found to have been "substantially justified" because its theory had not been expressly foreclosed. But Congress clearly did not intend EAJA to include this sort of a "qualified immunity" standard, or to provide agencies with cover to hammer square pegs into round holes with impunity. Rather, "[t]he statute's unambiguous … definition … precludes the [agency] from more expansively interpreting that term." *Dig. Realty Trust, Inc. v. Somers*, 583 U.S. 149, 169 (2018); *see also Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition....").[9] In the Final Rule, ATF deliberately swept *beyond* what the statute covered. Such bureaucratic fiat is hardly reasonable – much less "substantially justified."

Nor did the district court cite any cases where any court had expressed confusion as to what the statutory terms "automatically" or "single function of the

[9] *See also ACLU v. FCC*, 823 F.2d 1554, 1568 (D.C. Cir. 1987) ("the statute speaks with crystalline clarity. It provides a precise definition … for the exact term the Commission now seeks to redefine. … From the face of the statute then, we are left with no ambiguity and thus no need … for clarification."); *Maralex Res., Inc. v. Barnhardt*, 913 F.3d 1189, 1201 (10th Cir. 2019) ("agency discretion 'in the interstices created by statutory silence'" applies "only when 'considering undefined terms in a statute'"); *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 642 (1990) ("where the terms of a statute are unambiguous, judicial inquiry is complete").

trigger" meant. Indeed, the district court characterized the Final Rule as newly "reinterpreting" the statute. Order, R.112, Page ID#6778. And the cases the district court did cite are unavailing.

First, the district court cited an explanatory footnote in *Staples v. United States*, 511 U.S. 600 (1994), for the proposition that Defendants' treatment of the term "single function of the trigger" as synonymous with the colloquialism "single *pull* of the trigger" found some support in then-existing case law. Order, R.112, Page ID#6783; *see Staples*, 511 U.S. at 602 n.1. But rather than supporting such a *statutory* interpretation, *Staples* merely considered the appropriate *mens rea* requirement, and did not construe the meaning of other statutory terms or apply them to issue presented in *Cargill*. *See Guedes v. BATFE*, 920 F.3d 1, 30 (D.C. Cir. 2019) (concluding that *Staples* does not "compel a particular interpretation of 'single function of the trigger'").[10] As the district court observed, the statutory terms "were not in dispute in *Staples* and the criminal action did not require the Court to perform a statutory construction of the word machinegun." Order, R.112, Page ID#6784.

[10] This Court's earlier panel, although vacated, also repudiated the district court's later reliance on *Staples*. *See Gun Owners of Am., Inc.*, 992 F.3d at 472 (*Staples*'s "focus on whether the 'trigger is depressed' and how many times the firearm is capable of firing until the 'trigger is released' strongly suggests that the Court understood § 5845(b) as referring to the mechanical process of the depress-release-reset cycle of the trigger."). In other words, rejecting the district court's reasoning in denying Plaintiffs' fee request, the panel saw *Staples* as evidence that *Plaintiffs* were correct, not ATF.

And, as the Supreme Court later explained in *Cargill*, ATF's conflating "function" and "pull" "rests on [a] mistaken premise," and "ATF's argument cannot succeed on its own terms." *Cargill*, 602 U.S. at 422. So immaterial was *Staples*'s colloquial use of "single pull of the trigger" that the Supreme Court never even addressed *Staples* in its *Cargill* opinion. *See id.* at 410-29. Had *Staples* been the interpretive staple that the district court thought, the Court presumably would have either overruled or at least clarified its prior statement. Not so.

Second, the district court cited *Akins v. United States*, 2008 U.S. Dist. LEXIS 134550, at *13 (M.D. Fla. Sept. 23, 2008), as an example of a court later relying on *Staples*'s footnote to find synonymity between "function" and "pull," again for the proposition that ATF had been justified in rewriting the statutory text to apply to bump stocks. But the "Akins Accelerator" at issue in that case contained a "recoil spring" to assist in bump firing, a feature conspicuously absent in the bump stocks the Final Rule ultimately reclassified and banned. *See id.* at *7; *cf.* ATF Ruling 2006-2.[11] In fact, it had long been settled (both in court and in ATF determinations) that bump devices with internal springs were unlawful, but ones without such springs were permissible. *See* Complaint ¶63, R.1, Page ID#14 & Ex. 12, R.1-13, Page ID##53-54. Reliance on *Akins* therefore fails for the same reasons as reliance on

[11] https://www.atf.gov/firearms/docs/ruling/2006-2-classification-devices-exclusively-designed-increase-rate-fire/download.

Staples itself.

Finally, the district court's third cited case, *Modern Sportsman, LLC v. United States*, 145 Fed. Cl. 575, 580 (2019), claimed that ATF had "been interpreting the phrase single function of the trigger to mean single pull of the trigger since 2006." Order, R.112, Page ID#6784. But while this may be true, it is of no moment. As the D.C. Circuit explained, "we do not see how merely applying an unreasonable statutory interpretation for several years can transform it into a reasonable interpretation." *F.J. Vollmer Co. v. Magaw*, 102 F.3d 591, 598 (D.C. Cir. 1996). Moreover, ATF had routinely classified non-Akins-type bump stocks as *accessories* and *not* machineguns. Indeed, "[o]n more than 10 separate occasions over several administrations, ATF consistently concluded that rifles equipped with bump stocks cannot 'automatically' fire more than one shot 'by a single function of the trigger.'" *Cargill*, 602 U.S. at 412.

In fact, in July 2017, *just prior* to Defendants' Notice of Proposed Rulemaking that precipitated the Final Rule at issue here, Defendants argued in *Freedom Ordnance Mfg., Inc. v. Brandon*, No. 3:16-cv-243-RLY-MPB (S.D. Ind.), ECF No. 28, that bump firing:

> requires the shooter to *manually* pull and push the firearm in order for it to continue firing. Generally, the shooter must use both hands – one to push forward and the other to pull rearward – to fire in rapid succession. While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is *contingent on shooter input* in pushing the

> weapon forward, rather than mechanical input, *and is thus not an automatic function* of the weapon. [Emphases added.]

The court in *Freedom Ordnance* adopted ATF's argument, finding that bump stocks do not fit the definition of machinegun. *See Freedom Ordnance Mfg., Inc. v. Brandon*, 2018 U.S. Dist. LEXIS 243000, at *16-17 (S.D. Ind. Mar. 27, 2018) ("Additionally, the user's trigger finger is separated from the trigger due to the recoil of the firearm between each shot whereas with the ERAD, the user never has to release the ERAD trigger."). Thus, by ATF's own arguments, the application of the statute to bump stocks *had been definitively settled before the Final Rule was promulgated*. The district court entirely failed to explain how ATF was "substantially justified" in (i) convincing a court in 2017 that the statute clearly did not apply to bump stocks and then (ii) arguing in court in 2018 that the statute clearly did. No "substantial justification" theory permits an agency to advance schizophrenic legal positions and then claim itself "substantially justified" when finally caught with its hand in the cookie jar.

2. The District Court Erred in Concluding ATF's Position Was "Reasonable."

Next, the district court cited to *Hardin v. BATFE*, 65 F.4th 895 (6th Cir. 2023), for the proposition that the question of whether "a bump stock is a machinegun" "is a close one on which reasonable jurists have disagreed...." But if the EAJA standard is whether a judge in one court or another at one time sided with the agency, then

virtually no plaintiff would ever be successful in obtaining attorneys' fees under EAJA. That cannot be the law. That some judges disagree in their holdings is a wholly unremarkable statement and, just because a court here or there agreed with ATF's interpretation does not change the fact that its interpretation was erroneous, and diametrically opposed to its own previous interpretation.

Rejecting *precisely* the logic employed below, the Seventh Circuit once explained that "the EAJA fee inquiry does not necessarily turn" on "uncertainty in the law arising from conflicting authority," because "the district court may also consider the government's pre-litigation conduct." *Marcus v. Shalala*, 17 F.3d 1033, 1037 (7th Cir. 1994).[12] Thus, the Seventh Circuit rejected the argument that, "where the government defends a policy that has been upheld by a majority of courts, its position must be substantially justified as a matter of law." *Id.* at 1037. If even a seeming consensus among courts is not dispositive, the pre-*Cargill* mixed record cannot be, either. Likewise, the Supreme Court has explained that a finding of substantial justification does not revolve around the government's batting average in court: "[o]bviously, the fact that one other court agreed or disagreed with the Government does not establish whether its position was substantially justified. …

[12] Even the district court seemed to acknowledge that "dissenting opinions and outcome of similar litigation in other courts … 'matter less "than the actual merits of the Government's litigating position."'" Order, R.112, Page ID#6781 (quoting *Holman v. Vilsack*, 117 F.4th 906, 917 (6th Cir. 2024)).

[T]he Government could take a position that is not substantially justified, yet win … [or] it could take a position that is substantially justified, yet lose." *Pierce v. Underwood*, 487 U.S. 552, 569 (1988).

The district court cited a number of cases where other district courts had "denied requests for preliminary injunction[s]" in bump stock cases (*see* Order, R.112, Page ID#6785), and where the Circuit Courts affirmed those denials. Order, R.112, Page ID#6786. But those cases were decided on preliminary postures without the benefit of developed records. If the relevant EAJA standard requires "a 'reasonable basis both in law *and fact*,'" *Howard*, 376 F.3d at 554 (emphasis added), it is hard to imagine how factually undeveloped cases can lend support to an agency's "substantial justification."

Finally, Defendants' position was not "substantially justified" for another, related reason. In *F.J. Vollmer Co.*, the D.C. Circuit rejected "the Bureau's approach requir[ing] treating identical weapons in completely different ways," finding that ATF was not "substantially justified" on that basis. 102 F.3d at 596. Similarly, here, ATF decided to treat bump stocks entirely differently than items like belt loops and rubber bands, even though they function identically to bump stocks in facilitating bump firing. *See Gun Owners of Am., Inc. v. Garland*, 992 F.3d 446, 452 n.2 (6th Cir. 2021) ("Rubber bands, belt loops, and even shoestrings … all … create the same continuous firing cycle that a bump-stock device creates."); *see also Cargill*, 602

U.S. at 423 (If "a shooter 'need only pull the trigger and maintain forward pressure' to 'activate continuous fire,'" then "the same should be true for a semiautomatic rifle *without* a bump stock."). Nevertheless, the district court upheld the Final Rule's disparate treatment on the theory that "rubber bands and belt loops" are unlike bump stocks because they "do not harness the recoil energy." *Gun Owners of Am., Inc. v. Barr*, 363 F. Supp. 3d 823, 833 (W.D. Mich. 2019). But again, that conclusion was based on ATF's false representation that bump stocks "harness recoil energy," a claim the Supreme Court flatly rejected. *Cargill*, 602 U.S. at 411, 424. ATF's arbitrary decision to treat bump stocks differently than rubber bands and belt loops renders the Rule not "substantially justified" *in fact*. *F.J. Vollmer Co.*, 102 F.3d at 596. As the Ninth Circuit once explained, "it will be only a 'decidedly unusual case in which there is substantial justification under the EAJA even though the agency's decision was reversed as lacking in reasonable, substantial and probative evidence in the record.'" *Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005). Here, ATF's conclusion did not merely *lack* an evidentiary underpinning; rather, it *conflicted with* how the agency had classified numerous other objects that served an identical mechanical function.

3. The District Court's Holding Is Incompatible with *Cargill*.

As the Supreme Court explained, ATF's interpretation could "[]not succeed on its own terms" and was "logically inconsistent." *Cargill*, 602 U.S. at 422, 423.

But the district court, citing "the reasons outlined in the previous section," found that, even though the "government's position" ultimately was incorrect, it nevertheless "had substantial justification." Order, R.112, Page ID#6789. That conclusion is difficult to square with *Cargill*, which never once tipped its hat to the strength of the government's legal arguments. Quite the opposite, in fact.

First, to bolster its finding of substantial justification in spite of the Supreme Court's repudiation of ATF's position, the district court rejected Plaintiffs' observation that the statute ATF reinterpreted was in fact unambiguous. The district court asserted that "the majority opinion [in *Cargill*] [did not] use the phrase 'ambiguous' or 'unambiguous' to describe the statute." Order, R.112, Page ID#6789. But then, in a footnote, the district court acknowledged that the Supreme Court "did use the words 'ambiguous' and 'unambiguous' to describe how other courts interpreted the statute." *Id.* at n.5; *see Cargill*, 602 U.S. at 414 ("majority agreed, at a minimum, that § 5845(b) is ambiguous as to whether a semiautomatic rifle equipped with a bump stock fits the statutory definition of a machinegun"); *id.* ("eight-judge plurality determined that the statutory definition of 'machinegun' unambiguously excludes such weapons"). Thus, *Cargill* certainly had the opportunity to declare the statute ambiguous, yet declined to do so. To the contrary, the Court's analysis was a straightforward application of the statutory terms as commonly understood.

Moreover, the Court plainly stated that "ATF's argument cannot succeed on its own terms." *Cargill*, 602 U.S. at 422. Discussing Defendants' definition of "function of the trigger" to include "single pull" and also "analogous motions," the Court observed that, "if that is true, then every bump is a separate 'function of the trigger,' and semiautomatic rifles equipped with bump stocks are therefore not machineguns." *Id.* at 423. Thus, "ATF resists the natural implication of its reasoning, insisting that the bumping motion is a 'function of the trigger' only when it initiates, but not when it continues, a firing sequence." *Id.* The *Cargill* Court compared a semiautomatic rifle with a bump stock against one without a bump stock, noting that, if shooter with a bump stock-equipped semiautomatic rifle "'need only pull the trigger and maintain forward pressure' to 'activate continuous fire,'" then "the same should be true for a semiautomatic rifle *without* a bump stock." *Id.* Because Defendants agreed "that a semiautomatic rifle without a bumpstock 'fires only one shot each time the shooter pulls the trigger," the Supreme Court held that ATF's argument is "at odds with itself" and "logically inconsistent." *Id.*

Recounting how, "on more than 10 separate occasions over several administrations, ATF consistently concluded" that bump stocks were not machineguns, the Supreme Court likewise noted that ATF's change of heart arose from "tremendous political pressure" to ban bump stocks. *Id.* at 412. And the Court noted that, early on, even ATF's most ardent supporters acknowledged that the Rule

"'hinge[d] on a dubious analysis'" and that challengers would "'would have a field day with [ATF's] reasoning.'" *Id.* at 413. That is not a history supporting substantial justification, and have a field day with the Rule, the Supreme Court did.

For starters, the Supreme Court noted that the statutory phrase "function of the trigger … means the physical trigger movement," not the action of the shooter.[13] *Cargill*, 602 U.S. at 416. Claiming that ATF had simply "ignor[ed] the subsequent 'bumps' of the shooter's finger against the trigger,"[14] the Court held that the statute "does not define a machinegun based on … human input." *Id.* at 422 (noting that "ATF's position is logically inconsistent" and "ATF's argument is … at odds with itself"). These are not the words of "substantial justification." *See Johnson v. Astrue*, 2012 U.S. Dist. LEXIS 40047, at *6-7 (W.D. Ky. Mar. 22, 2012) ("To find that the Commissioner's position was 'substantially justified' at the same time that [a higher court] found that the position was 'clearly erroneous' would stretch the meaning of 'substantially justified' beyond its reasonable boundaries. To hold that a 'clearly erroneous' opinion was one that was 'substantially justified' would likely preclude plaintiffs from recovering fees and costs under the EAJA altogether.").

[13] *See also Cargill v. Garland*, 57 F.4th 447, 461 (5th Cir. 2023) ("Congress did not use words describing the shooter's perspective or the weapon's rate of fire. … Instead, it made up an entirely new phrase – by a single function of the trigger – that specifically pertains to the mechanics of a firearm.").

[14] *See also* Reply Brief in Support of Plaintiffs' Motion for Preliminary Injunction, R.37, Page ID#297 (explaining Defendants ignore that "the shooter's trigger finger is physically separated from the trigger between shots").

Next, disputing ATF's contention that bump stocks operate "automatically," the Court accused ATF of "abandoning the text," ignoring all of the human input required to operate a firearm equipped with a bump stock. *Cargill*, 602 U.S. at 427. And dispensing with ATF's argument that the statute must be contorted to reach all rapidly firing weapons, the Court noted that "it is difficult to understand how ATF can *plausibly* argue [that], given that its consistent position for almost a decade in numerous separate decisions was that §5845(b) does not capture semiautomatic rifles equipped with bump stocks."[15] *Id.* at 428 (emphasis added). Again, this is not language indicating "substantial justification."

Even so, the district court was "not persuaded … that the government's description of how a bump stock functions renders its position unjustified," stating that the "dispute centered on the appropriate interpretation of a statute." Order,

[15] *See also Bittner v. United States*, 598 U.S. 85, 97 n.5 (2023) ("when the government (or any litigant) speaks out of both sides of its mouth, no one should be surprised if its latest utterance isn't the most convincing one"); Oral Argument, *Gun Owners of Am., Inc. v. Barr*, No. 19-1298 (6th Cir. Dec. 11, 2019), at 24:48 ("How come you never thought that [bump stocks are machineguns] before?"), at 25:30 ("Looks like the agency has been making a lot of mistakes over the last ten years on the meaning of this statute. … the agency itself doesn't understand the scope of this statute until just recently."). *See* https://tinyurl.com/3xknwysd.

In stark contrast to the *Cargill* majority and this Court's prior panel, the district court resisted the notion that an agency's diametric positions undermined the reasonableness of its newfound assertions about bump stocks. Instead, the district court concluded that ATF's "shift in position … provides little support for the conclusion that the government's position did not enjoy substantial justification." Order, R.112, Page ID#6788.

R.112, Page ID#6789. The district court then cited to a nonbinding Ninth Circuit opinion for the proposition that, "[w]here multiple federal judges have reasonable disagreements about the proper interpretation of a statute, courts have found the government's position substantially justified and have denied" EAJA fees. *Id.* (*citing Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1090-91 (9th Cir. 2022). Of course, in *Medina Tovar*, the Ninth Circuit did not hold that mere disagreement between judges renders an agency "substantially justified."[16] In fact, the court stated the exact opposite: "disagreement between judges on the merits of a case is not dispositive." *Medina Tovar*, 41 F.4th at 1090. Another factor that court analyzed was that it "involved an issue of first impression."[17] *Id.* at 1091. But the district court did not analyze that factor, and for good reason. The issue presented below was neither novel nor one of first impression. *See Cargill*, 602 U.S. at 415 n.2.

4. The District Court Misconstrued the Apparent Judicial Consensus Supporting the Final Rule, and It Omitted Some Contrary Authorities Entirely.

As noted above, an agency is not "substantially justified" merely because one

[16] *See also Or. Nat. Res. Council v. Madigan*, 980 F.2d 1330, 1332 (9th Cir. 1992) ("our precedents do not treat the district judge's agreement with the government in the initial case as conclusive as to whether or not the government was reasonable" (quoting *United States v. One 1984 Ford Van,* 873 F.2d 1281, 1282 (9th Cir. 1989))).

[17] *But see Tovar*, 41 F.4th at 1091 ("there is no per se rule that EAJA fees cannot be awarded where the government's litigation position contains an issue of first impression").

court concurs, or even several. Appellees admitted as much. Defendants' Opposition to Attorney's Fees, R.107, Page ID##6733, 6735. Even so, the district court inaccurately represented the legal landscape on bump stocks, and this error only further justified the court's erroneous holding.

First, while noting the "Sixth, Tenth and District of Columbia Circuit Courts" denied preliminary relief in challenges to the Final Rule, the district court failed to appreciate that these were cases with *undeveloped records*. *See* Order, R.112, Page ID#6787 (concluding "plaintiffs did not have a likelihood of success on the merits").

Second, the district court failed to wrestle with the fact that not one, but *two* Sixth Circuit panels determined that the Final Rule was unlawful. *See Gun Owners of Am., Inc. v. Garland*, 992 F.3d 446 (6th Cir. 2021); *Hardin v. BATFE*, 65 F.4th 895 (6th Cir. 2023). *None* of the judges on the subsequent *Hardin* panel were on the en banc panel that heard this case. In other words, when considering the 19 total Sixth Circuit judges who have heard challenges to the Final Rule, 11 of them sided with Plaintiffs' position.[18]

[18] And of the eight judges who voted to affirm this Court after en banc review, no more than five could agree on any singular position, with two voting for affirmance without giving a reason. Not to mention, four of those judges joined conflicting opinions, one holding that "*Chevron* provides the standard of review" and the other holding that "*Chevron* application is unnecessary here." *See Gun Owners of Am., Inc. v. Garland*, 19 F.4th 890, 898 (6th Cir. 2021) (White, J., opinion in support of affirming); *id.* at 909 (Gibbons, J., opinion in support of affirming). All eight dissenting judges in this case (plus the three on the *Hardin* panel) concluded that the Final Rule violates the rule of lenity, and nine of them determined that the

Third, the district court erroneously claimed that the "*en banc* panel of the Fifth Circuit Court of Appeals sided with the government." Order, R.112, Page ID#6787. But that is simply incorrect, as the en banc Fifth Circuit held exactly the opposite: "Cargill is correct. A plain reading of the statutory language, paired with close consideration of the mechanics of a semi-automatic firearm, reveals that a bump stock is excluded from the technical definition of 'machinegun' set forth in the Gun Control Act and National Firearms Act." *Cargill v. Garland*, 57 F.4th 447, 451 (5th Cir. 2023). The Fifth Circuit also held that the "Government's [Rule] violates" the principle that "[i]t is the legislature, not the Court, which is to define a crime, and ordain its punishment" and that it was unable to "say that the statutory definition [of machineguns] unambiguously supports the Government's interpretation. As noted above, we conclude that it unambiguously does not." *Cargill*, 57 F.4th at 451.

Fourth and finally, the district court's Order fails to include any acknowledgment of the NMCCA's decision in *United States v. Alkazagh*, 81 M.J. 764 (N-M. Ct. Crim. App. 2021), a panel of which unanimously concluded bump stocks are definitively *not* machineguns. At bottom, the district court's survey of the various bump stocks opinions was incomplete and inaccurate, and certainly does not support a finding of "substantial justification" – quite the opposite.

Rule misconstrued the statute. *Id.* at 927-928; *Hardin*, 65 F.4th at 901.

CONCLUSION

This Court should reverse the district court's decision, and award Plaintiffs their fees and costs in this case, to include not only that amount requested below, but also their time spent in preparing their final Reply Brief in the district court, and the legal fees and costs required to litigate this appeal.[19]

Respectfully submitted,

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[19] Even under its own logic, the district court erred when it denied Plaintiffs' request for $5,692.25 for "printing" on March 3, 2022 (Order, R.112, Page ID#6795) which was required for Plaintiffs' petition for writ of certiorari to the Supreme Court. *See* https://www.supremecourt.gov/docket/docketfiles/html/public/21-1215.html; *see also* Order, R.112, Page ID#6793 (citing 28 U.S.C. § 1920 regarding reimbursement for "fees and disbursements for printing").

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED:

1. That the foregoing Brief for Appellants complies with Fed. R. App. P. 32(a)(7)(B) as it includes 8,094 words, excluding the parts of the brief exempted by Rule 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 14-point Times New Roman.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

ADDENDUM

DESIGNATION OF RELEVANT LOWER COURT DOCUMENTS

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1	Complaint	1-28
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7	Verified Dec. of Richard (Rick) Vasquez	146-160
10	Plaintiffs' Brief in Support of Motion for a Preliminary Injunction	166-197
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87	Nov. 9, 2023 Order	6546
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104	Plaintiffs' Motion for Attorneys' Fees and Costs Under the Equal Access to Justice Act	6595-6601
105	Plaintiffs' Memorandum in Support	6602-6617
105-13	Exhibit 13 – Time and Expenses	6716-6717
107	Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees	6721-6738
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112	January 23, 2025 Order	6778-6797