No. 23-62

In the
Supreme Court of the United States

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

v.

SCOTT A. HARDIN,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN SUPPORT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1. Whether the definition of a "machinegun" under 26 U.S.C. § 5845(b) is ambiguous as applied to a bump stock.
2. If there is ambiguity as to the definition of a "machinegun" under 26 U.S.C. § 5845(b), as applied to a bump stock, whether the 6th Circuit correctly held the rule of lenity requires courts to construe that statutory ambiguity against the government.
3. Whether the Court should overrule *Chevron* or at least clarify that *Chevron* deference does not apply in the criminal context.

"Bump stocks" are devices that attach to semi-automatic rifles to assist with faster firing and are useful for individuals with physical infirmities and limited dexterity. Between 2008 and 2017, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATF") issued a series of classification decisions concluding bump-stock devices that did not rely on springs or similar mechanical parts to channel recoil energy did not qualify as machineguns under 26 U.S.C. § 5845(b) and were in fact legal to possess. In 2018, without any change in law or Congressional intervention, the BATF reversed itself and criminalized bump stock possession, claiming bump stocks were now machineguns. Bump stock owner Hardin challenged the BATF's statutory reinterpretation. The question underlying this petition is whether an agency—*where Congress has*

not changed the applicable law—can volte-face its own statutory interpretation and invoke a "New Rule" to criminalize previously legal conduct. Under well-established principles of "one statute, one interpretation," the answer would appear to be no. The district court, on its own accord, invoked *Chevron* as the basis for finding in favor of the BATF. A unanimous Sixth Circuit panel, however, found that while the definition of a machinegun is ambiguous as applied to a bump stock, *Chevron* deference is improper because the statutory scheme of § 5845(b) is predominantly criminal in scope; hence, the rule of lenity requires the ambiguous statute to be interpreted in Hardin's favor. The Sixth Circuit and Fifth Circuit concur in their holdings that bump stock possession cannot be criminalized by the BATF. The Tenth Circuit and D.C. Circuit, however, disagree on the exact same matter and have invoked *Chevron* deference to find that bump stock possession can be criminalized by the BATF.

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RESPONDENT'S BRIEF IN SUPPORT OF CERTIORARI

BATF is an executive branch law enforcement agency that operates within the Department of Justice. BATF enforces federal statutes regulating, among other things, the possession of firearms, including 26 U.S.C. § 5845(b)'s prohibition on possession of "machinegun[s]." *See* 18 U.S.C. § 922(o). Between 2008 and 2017, under the leadership of five BATF Directors and at least two BATF-FATD Directors, BATF repeatedly and consistently issued a series of classification decisions stating devices that did not rely on springs or similar mechanical parts to channel recoil energy did not qualify as machineguns under § 5845(b) and were in fact entirely legal to possess. Throughout this decade long process of reasoned elucidation, at least four U.S. Attorneys General declined to take issue with the BATF's act of "one statute, one interpretation," when it came to bump stock legality. In 2018, under a BATF Director that had previously overseen the "they're legal" interpretation of bump stock statutory interpretation, the BATF reversed course on its longstanding interpretation and issued a new Final Rule ("New Rule") declaring bump stocks to be machineguns under § 5845(b), thus "they're now illegal." BATF also ordered destruction or abandonment of all bump stocks at an ATF office.

Respondent Scott A. Hardin ("Hardin") sued the BATF, the then acting United States Attorney General, the then acting BATF Director, and the United States of America ("Government") over its New Rule, as exceeding BATF's statutory authority,

the Administrative Procedures Act ("APA"), and the Constitution. Pet. App. 19a. On cross-motions for judgment on the administrative record, the district court decided Hardin's claims on the merits; specifically, the district court—*on its own accord and with neither party even making it an issue*—"placed an uninvited thumb on the scale in favor of the government" and invoked *Chevron* deference to the New Rule, found the BATF's volte-face interpretation of a decades old statute was now the reasonable interpretation of the statute, and dismissed Hardin's claims. A three-judge panel of the Sixth Circuit unanimously reversed and remanded, for further proceedings consistent with its opinion. Pet. App. 12a. The Solicitor General now seeks review of the Sixth Circuit's decision.

Hardin agrees with the Solicitor General that the Court should grant the petition. The questions presented have sharply divided the federal courts of appeals. Three courts of appeals courts—*including the court below*—agree with the BATF's pre-2018 statutory interpretation that bump stocks not utilizing springs or similar mechanical parts to channel recoil energy did not qualify as "machinegun[s]" under § 5845(b). Two other appeals courts agree with the BATF's present day statutory reinterpretation. A total of 23 separate opinions, in excess of 350 pages of text, fully explore the issue at hand. And yet, the purchase of 520,000 bump stocks, the expected loss of property in excess of $100 million, the lack of national uniformity in the sale and possession of bump stocks, and the non-legislative, unilateral criminalization of previously legal conduct all remain in controversy and dispute.

Hardin requests this Court address the definition of "machinegun" in § 5845(b), and whether it clearly and unambiguously prohibits bump stocks. For if there is any ambiguity, this Court should further decide whether the Sixth Circuit correctly held that the rule of lenity applies, if the determined ambiguity is sufficient to trigger the rule of lenity and should courts construe this statutory ambiguity against the government.

Hardin further requests that this Court decisively overrule *Chevron* with respect to any application with a criminal context, or at a minimum, as suggested by the Sixth Circuit in *Hardin*, clarify the "bounds of *Chevron* deference with respect to an agency's construction of a statute with criminal applications." Pet. App. 6a. To uphold or reaffirm *Chevron* as applied in *Hardin*, accords federal agencies, like the BATF, unconstitutional power.

Finally, Hardin urges the Court to deny the Government's request for a stay, grant petition for writ of certiorari in this case, and consider Hardin with both *Cargill v. Garland*, 57 F.4th 447 (5th Cir. 2023) and *Loper Bright Enterprises, et al. v. Gina Raimondo*, 45 F.4th 359 (D.C. Cir. 2022) (certiorari granted, in part), so as to specifically address both bump stock statutory interpretation and *Chevron* deference within both the civil *and* criminal contexts.

OPINIONS BELOW

The unanimous opinion of the court of appeals is reported at 65 F.4th 895 and reproduced at Pet. App. 1a-18a. The opinion of the district court is reported at 501 F. Supp. 3d 445 and reproduced at

Pet. App. 19a-38a. At issue is the validity of a December 2018 Final Rule issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives. The Final Rule appears in the Federal Register at 83 Fed. Reg. 66514 (Dec. 26, 2018) and is included in the Administrative Record at AR5764–AR5804.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

A "machinegun" is defined by the NFA as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). The foregoing definition has remained as such since 1986 and has been incorporated into the criminal code by the GCA. 18 U.S.C. § 921(a)(24).

A "bump stock" is a device affixed to a semiautomatic firearm, which harnesses the recoil energy from the discharge to slide the firearm back and forth so that the trigger automatically re-engages by "bumping" the shooter's stationary trigger finger without additional physical manipulation of the trigger by the shooter. Simply put, the recoil energy produced from firing the weapon "bumps" the trigger against the shooter's stationary finger to increase the rate of fire, but the result compared to the firing of the same weapon without the bump stock remains the same: *a single pull of the trigger equals one bullet fired.*

BATF is an executive branch law enforcement agency that operates within the Department of Justice. From 2008 to 2017, under the leadership of five BATF Directors and at least two BATF-FATD Directors, BATF made a series of debated determinations declaring that non-mechanical bump stocks, as described above, did *not* constitute "machineguns" within the meaning of the governing law. Specifically, ATF, between 2008 and 2017, issued a series of classification decisions and letter rulings concluding that "bump-stock-type" devices that enable a semiautomatic firearm to shoot more than one shot with a single function of the trigger by harnessing a combination of the recoil and the maintenance of pressure by the shooter, do not fire 'automatically'" within the meaning of a "machinegun" as that term is defined under the law, and were in fact entirely legal to possess. 83 Fed. Reg. at 13443, 13445. In the course of the aforementioned decade of elucidation, at least four U.S. Attorneys General declined to take issue with the BATF's decade long clarification of its "one statute, one interpretation" of bump stock legality.

On or about April 18, 2018, Hardin, in reliance upon the BATF's decade long position that bump stocks were not machineguns, and thus legal to purchase and possess, lawfully bought three such devices. Later that year, the BATF acting volte-face, promulgated and implemented its New Rule to criminalize that which it had for a decade been expressly deemed legal under the laws of Congress; namely, to explicitly state that § 5845(b)'s definition of "machinegun" includes non-mechanical bump stocks. *See* ATF, Bump-Stock-Type Devices, 83 Fed.

Reg. 66514 (Dec. 26, 2018) (amending 27 C.F.R. §§ 447.11, 478.11, and 479.11) ("Final Rule").

To avoid criminal prosecution, hundreds of thousands of dollars in fines, and up to 30 years in federal prison, Hardin destroyed his bump stocks and then sued the Government, in the United States District Court for the Western District of Kentucky. Hardin challenged the implementation and enforcement of the New Rule, as exceeding the BATF's statutory authority, and both the APA and the Constitution. Hardin sought relief pursuant to 5 U.S.C. §§ 552, 702, 703, 704; 26 U.S.C. § 7805; and 28 U.S.C. §§ 1331, 1343, 1346, 2201, 2202, and 2412. On cross-motions for judgment on the administrative record, the district court decided Hardin's claims on the merits, concluding the BATF's newfound interpretation of a decades old statute was now the reasonable exegesis of the unchanged law. On November 30, 2020, the district court dismissed Hardin's claims in favor of BATF, *et al.*

The district court—*despite both Hardin and the Government arguing, though for different reasons, that Chevron was not applicable in this case*—immediately identified ambiguity and utilized the two-step framework of the *Chevron* deference doctrine. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 104 S. Ct. 2778 (1984). Via its seemingly reflexive deference to agency interpretation, the district court found the statutory definition of "machinegun" to be ambiguous; that BATF reasonably interpreted the definition of "machinegun"; and therefore, BATF did not exceed its statutory authority in promulgating the New

Rule. The district court in its opinion also rejected Hardin's argument that the New Rule is arbitrary and capricious, by finding that: (1) BATF "examined the relevant data and articulated a satisfactory explanation for its action"; (2) BATF's "focus on the movement of the shooter's finger – rather than the trigger's movement – accords with its permissible definition of 'single function of the trigger' as meaning 'single pull of the trigger'"; (3) BATF is entitled to a "presumption of regularity in its promulgation of the [Final] Rule"; and (4) BATF had "good reasons for the new policy." Pet. App. 26a-33a.

In a unanimous opinion, the Sixth Circuit reversed the judgment of the district court, held in favor of Hardin on the rule of lenity, and remanded for further proceedings consistent with its opinion. Writing on behalf of the court, Judge Gilman held that a "significant number of reasonable jurists have reached diametrically opposed conclusions as to whether the definition of a machinegun includes a bump stock" and "because the statute is 'subject to more than one reasonable interpretation', it is ambiguous." Pet. App. 5a. Judge Gilman further held that *Chevron* is inapplicable in the present case, because the "particular statutory scheme before us is not an appropriate one to apply *Chevron* deference." Pet. App. 9a. The court held as such because "the statutory scheme is predominately criminal in scope and because of the nature of the actions that it criminalizes." Pet. App. 9a. According to the Sixth Circuit, the BATF possesses no special expertise "with respect to the statutory scheme that the judiciary lacks." Pet. App. 9a-10a. The court further held that "when *Chevron* deference is not warranted

and standard interpretation 'fails to establish the Government's position is unambiguously correct[,] we apply the rule of lenity and resolve the ambiguity in [the criminal defendant's] favor.'" Pet. App. 10a-11a. Judge Bush concurred in the judgment, but would have gone further, namely, that "the best reading of the statute is that Congress never gave the ATF "the power to expand the law banning machine guns through [the] legislative shortcut" of the ATF's rule at issue in this appeal. Pet. App. 14a. According to Judge Bush, "[s]imply put, under the statute as it currently reads, the addition of a bump stock to a rifle clearly does not make it a machinegun." Pet. App. 14a. Though Judge Bush's reasoning was slightly different from the majority opinion, he wrote, "all judges on this panel agree on this point: it is up to Congress, not the ATF, to change the law if bump stocks are to be made illegal." Pet. App. 14a.

REASONS FOR GRANTING THE PETITION

I. THE PETITION SHOULD BE GRANTED

This Court should grant the petition for multiple reasons. The question before this Court, whether bump stocks are machineguns under the NFA and GCA, is one that has created conflicting opinions among the federal appeals courts and even the military appeals courts. Consequently, the BATF's New Rule, which bans non-mechanical bump stocks, is enforceable in many states, unenforceable in many other states and on military bases, and of unknown validity to millions of other citizens. Is the definition of a "machinegun" under 26 U.S.C. § 5845(b) ambiguous as applied to a bump stock? If the definition of a machinegun is ambiguous, does

the rule of lenity require courts to construe such ambiguity against the government, as was held by the 6th Circuit in *Hardin*?

While rejection of *Chevron* deference to the New Rule may finally be adjudicated (at least in the Sixth Circuit), what about the next time one of the hundreds of federal agencies interpret or reinterpret the construction of a statute with criminal applications? Because the district court invoked *Chevron* on its own volition in interpreting a criminal statute—*an ongoing and fundamental problem of reflexive deference beholden to administrative absolutism*—should at this "late hour" the Court overrule *Chevron* to ensure the sanctity of the judiciary "to provide an independent judgment of the law's meaning in the cases that come before the Nation's courts," or at least clarify that *Chevron* deference should never apply in the criminal context? *Buffington v. McDonough*, 143 S. Ct. 14 (2022) (Gorsuch, J., dissenting from the denial of certiorari); *and see Crandon v. United States*, 110 S. Ct. 997 (1990) (Scalia, J., concurring) (Establishing the proposition that Chevron deference is inapplicable in the criminal context.). As stated by Judge Gilman, "the Supreme Court has not clearly identified the bounds of *Chevron* deference with respect to an agency's construction of a statute with criminal applications." Pet. App. 6a-7a. For both the judiciary and the citizenry, at both the macro and micro level, the time has come to finally decide the constraints of *Chevron*.

A. THE CATACLYSMIC SCHISM AMONG THE FEDERAL APPEALS COURTS MUST BE RESOLVED

As a result of the BATF's New Rule ban on non-mechanical Bump Stocks, the Fifth Circuit, the Sixth Circuit, the Tenth Circuit, the D.C. Circuit, and the Navy-Marine Corps Court of Criminal Appeals are all in dispute as to numerous statutory, case law, precedent, and Constitutional issues related to the legality of bump stocks. Asking the same question Hardin had to grapple with, citizens are presently unsure whether or not possession of a bump stock will subject themselves to up to 10 years imprisonment for each bump stock possessed? "For years, the government didn't think so. But recently the Bureau of Alcohol, Tobacco, Firearms and Explosives changed its mind. Now, according to a new interpretative rule from the agency, owning a bump stock is forbidden by a longstanding federal statute that outlaws the 'possession [of] a machinegun.' 26 U.S.C. § 5658(b), 18 U.S.C. § 924(a)(2)." *Guedes v. ATF*, 140 S. Ct. 789 (2020) (Gorsuch, J., statement respecting denial of certiorari).

Congress defined "machinegun" as a firearm which is designed *only* to shoot automatically more than one shot, without manual reloading, by a single pull of the trigger. The Sixth Circuit in *Hardin*, as referenced above, held the statute is 'subject to more than one reasonable interpretation… [and] it is ambiguous." Whereas, the *en banc* Fifth Circuit held that a "plain reading" of § 5845(b) "reveals that a bump stock is excluded from the technical definition

of "machinegun." Similarly, the Navy-Marine Corps Court of Criminal Appeals unanimously found no ambiguity as to § 5845(b) and the legality of bump stocks. *U.S. v. Alkazahg,* 81 M.J. 764 (U.S. Navy-Marin Corps Ct. Crim App 2021). Those holdings notwithstanding, both the Tenth Circuit and D.C. Circuit held that § 5845(b)'s applicability to bump stocks is ambiguous, with the D.C. Circuit finding that the New Rule constitutes the "best" interpretation of § 5845(b). *Aposhian v. Wilkinson*, 989 F.3d 890 (10th Cir. 2021); *and see Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1 (D.C. Cir. 2019).

In the exact situation espoused by Justice Kavanaugh, the "fundamental problem … is that different judges have widely different conceptions of whether a particular statute is clear or ambiguous." Brett M. Kavanaugh, *Book Review: Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2152 (2018). Consequently, this Court must address the definition of "machinegun" under 26 U.S.C. § 5845(b) as it relates to bump stocks, to unite this cataclysmic judicial divide.

B. IF DEFINITION OF "MACHINEGUN" IS AMBIGUOUS, RULE OF LENITY MUST BE APPLIED

The Sixth Circuit held that "when *Chevron* deference is not warranted and standard interpretation 'fails to establish the Government's position is unambiguously correct[,] we apply the rule of lenity and resolve the ambiguity in [the criminal defendant's] favor.'" Pet. App. 10a-11a. The rule of lenity requires, once other standard interpretive tools

have been considered, that any remaining serious ambiguity or uncertainty in the scope of criminal statutes must be resolved in favor of defendants. *See United States v. Rentz*, 777 F.3d 1105, 1113 (10th Cir. 2015) (*en banc*) ("Our job is always in the first instance to follow Congress's directions. But if those directions are unclear, the tie goes to the presumptively free citizen and not the prosecutor.").

Lenity is a traditional interpretive tool that a court must apply *before* turning to whether an agency interpretation is reasonable. *United States v. Granderson*, 511 U.S. 39, 114 S. Ct. 1259, 1267-68 (1994). That conclusion is a necessary corollary of the rule that there is no deference to the executive in the area of criminal law. For example, in *Abramski v. United States*, 134 S. Ct. 2259 (2014), the Supreme Court noted that BATF—*as in this case*—had changed its view of how to interpret a criminal statute. But even "put[ting] aside" that inconsistency, the Court stated, "[w]e think ATF's old position is no more relevant than its current one—which is to say, not relevant at all." *Id.* at 2274. Instead, "criminal laws are for courts, not for the Government, to construe." *Id.* (citing *United States v. Apel*, 134 S. Ct. 1144 (2014) ("[W]e have never held that the Government's reading of a criminal statute is entitled to any deference.")). In other words, where criminal penalties are at stake, a court may not defer to an agency's preferred statutory interpretation.

Numerous regulatory statutes authorize federal agencies to impose both criminal *and* civil penalties, and the GCA is one such statute. *See* 18 U.S.C. §§ 922, 923. This duality does not, however,

abrogate the requirement that ambiguities be construed against the government in a civil action where the underlying statute carries *criminal* penalties. Lenity is a rule of construction that instructs a court how to choose between two readings. *United States v. Universal C. I. T. Credit Corp.*, 73 S. Ct. 227 (1952). A statute's authoritative meaning cannot vary from case to case; if lenity applies, it must apply across the board. *See United States v. Santos*, 128 S. Ct. 2030 (2008) ("[T]he rule of lenity is an additional reason to remain consistent, lest those subject to the criminal law be misled."). If there is ambiguity, how can a criminal statute provide reasonably clear fair warning to the very persons to whom a penalty is prescribed? Accordingly, once the traditional tools of statutory interpretation as to § 5845(b) yield an ambiguity as whether or not bump stocks are machineguns, as to criminal liability, the next step is lenity. In this case, ambiguity in § 5845(b) demands the rule of lenity be followed, without regard to the degree or degree of the ambiguity.

C. *CHEVRON* MUST BE OVERRULED OR AT LEAST CLARIFIED WITHIN THE CRIMINAL CONTEXT

Hardin, in stark contrast to *Cargill—where Chevron played no role in its adjudication*—is the only bump stock case presented in which the district court, in a ruling on the merits, *sua sponte* invoked the *Chevron* deference doctrine, despite both Hardin and the Government expressly arguing that *Chevron* did not apply. It is the application of *Chevron* in *Hardin* that creates the principal distinction between

it and *Cargill,* and thus makes it imperative for this Court to not only grant petition, but to consider this case concurrently with *Cargill* and deny the Government's request for stay

Chevron has no part to play when one's liberty is at stake. Under the Constitution, "only the people's elected representatives in the legislature are authorized to 'make an act a crime" *United States v. Davis*, 139 S. Ct. 2319, 2333 (2019) (quoting *United States v. Hudson*, 7 Cranch 32, 34 (1812)). The BATF's New Rule, however, carries with it the possibility of serious criminal sanctions, including hefty fines and lengthy prison sentences. 26 U.S.C. § 5685(b) & 18 U.S.C. § 924(a)(2)). Specifically, under the New Rule, possession of a bump stock subjects a citizen to 10 years' imprisonment for each lawfully purchased device, completely reversing a decade's long administrative precedent finding that possession of such devices was legal.

Despite the parthenogenic reclassification of bump stocks as "machinegun[s]" by the BATF's New Rule, thus making possession of such devices a crime under § 5845(b), the district court in *Hardin* applied *Chevron* in the Government's favor. Though the Sixth Circuit in *Hardin* held that *Chevron* was inapplicable because "the statutory scheme is predominately criminal in scope and because of the nature of the actions that it criminalizes," the court emphasized that "The Supreme Court has not clearly identified the bounds of *Chevron* deference with respect to an agency's construction of a statute with criminal applications." Pet. App. 9a, 6a. Consequently, as in *Hardin*, any district court, on its own volition—even

over the objection of the parties—can defer to administrative agencies' re-interpretation of statutes that criminalize citizens' actions or conduct: *the same actions and conduct that had previously been held lawful by that same agency for more than a decade.*

But, as this case well illustrates, lower courts continue to feel obligated to apply Chevron because the Court has not yet formally overruled it. As was the case here, "[m]any judges find ambiguity immediately and engage in 'reflexive deference' to the agency." *Pereira v. Sessions*, 138 S. Ct. 2105, 2120-21 (2018) (Kennedy, J., concurring). When courts, however, rely upon, what is believed to be, a compulsory application of *Chevron* in the midst of statutory ambiguity, such reliance is in reality an abdication of judicial power. "*Chevron* compels judges to abdicate the judicial power without constitutional sanction. The Vesting Clause of Article III gives "[t]he judicial Power of the United States" to "one supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish." *Baldwin v. U.S.,* 140 S. Ct. 690 (2020) (Thomas, J., dissent in denial of petition for a writ of cert). "[T]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws." *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1217 (2015) (opinion concurring in the judgment). "The Court's decision in *Chevron*, however, 'precludes judges from exercising that judgment.'" *Michigan v. EPA*, 135 S. Ct. 2699 (2015) (quoting *Perez*, supra, at 119). Even if reflexive deference is addressed in this particular case, what happens when the next

"ambiguity" appears in the context of criminal sanctions?

To avoid treading down such a slippery slope, made even more treacherous by *Chevron's* application to a criminal statute as in *Hardin*; it is important for this Court to finally and unequivocally overrule *Chevron* in any application with a criminal context, or at a minimum, as suggested by the Sixth Circuit in *Hardin*, clearly identify the "bounds of *Chevron* deference with respect to an agency's construction of a statute with criminal applications." Pet. App. 6a. *Hardin*, not *Cargill*, is the only case seeking petition in which *Chevron* was invoked despite the draconian criminal ramifications that would result. Consequently, in an appropriate case, "it remains necessary and appropriate to reconsider … the premises that underlie Chevron and how courts have implemented that decision." *Pereira*, 138 S. Ct. at 2121 (Kennedy, J., concurring). *Hardin* is the appropriate case.

II. PETITIONER'S REQUEST FOR STAY SHOULD BE OVERRULED

As stated above, unlike *Cargill*, *Hardin* is the only bump stock case in which the district court, after an adjudication on the merits, applied *Chevron* on its own volition and without regard to the criminal context of a decidedly ambiguous statute. The district court's action in *Hardin* is not an aberration, but just another example of the longtime trend of lower courts finding ambiguity around every corner and surrendering the judiciary's function of statutory construction to an administrative agency. Be it the BATF in this case or the National Marine Fisheries

Service (NMFS) in *Loper*, lower courts appear obligated to apply *Chevron* with reflexive deference because this Court has neither overruled nor clarified Chevron's ever blurring boundaries. Because of the important ramifications of *Chevron*, and the need to clarify the doctrine's nebulous parameters of deference to all agency actions in the criminal context, it is important for this Court to not only grant petition for a writ of certiorari in this case, but to also consider the case with *Cargill*, so as to encompass the numerous statutory and Constitutional questions presented by and through both cases. Accordingly, the Court should deny the Government's request for stay and grant Hardin's petition for a writ of certiorari.

Moreover, unlike *Loper,* where the disputed administrative action deals with the economic impact upon the commercial fishing industry, *Hardin* involves the utmost power that any government can exert over its citizens: *the supreme arbiter over crime and punishment.* For the reasons given above, this Court would also benefit from considering *Hardin* and *Loper*, contemporaneously, to specifically address *Chevron* deference within both the civil *and* criminal contexts.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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