

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

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Clerk of Court

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August 04, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 24-14058-JJ
Case Style: USA v. Maxon Alsenat
District Court Docket No: 0:23-cr-60209-DSL-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-14058

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAXON ALSENAT,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cr-60209-DSL-1

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before WILLIAM PRYOR, Chief Judge, and BRASHER and ABUDU, Cir-
cuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FED. R. APP. P. 40. The Petition for Panel Rehearing is also DENIED. *Id.*

Alsenat argues that we erred in rejecting his as-applied challenge to section 922(o) because he possessed a machinegun conversion device that “is compatible only with Glock handguns” and “enables the handgun to shoot [only] three rounds . . . with a single trigger pull.” *See* 18 U.S.C. § 922(o). He argues that we “overlooked” the machinegun conversion device’s “shooting-related limitations” and erroneously conflated the device he possessed with a military-grade rifle. So even if Congress *could* criminalize possession of the latter, he argues that ban cannot reach his conduct.

Alsenat’s guilty plea forecloses his argument. Alsenat cannot raise a constitutional challenge that contradicts his guilty plea or that we can resolve only by going beyond the existing record. *See Class v. United States*, 138 S. Ct. 798, 804 (2018). Alsenat’s challenge contradicts his guilty plea because his factual proffer admits that he told an undercover agent that the machinegun conversion device “would turn a semi-automatic gun into a fully automatic machine gun.” And at his change of plea hearing, he explained that the machinegun conversion device would “turn[] [a firearm] into a fully automatic” firearm. Alsenat cannot now contradict those admissions by arguing that the machinegun conversion device enabled only three shots.

And Alsenat’s challenge cannot be resolved on the existing record because there is no evidence that the machinegun conversion device enabled only three shots at a time. Alsenat points to an agent’s pre-plea testimony that when the government tested the machinegun conversion device, it “expelled” “three rounds . . . with the action of one trigger pull.” But the agent did not testify that the machinegun conversion device enabled the gun to fire *only*

24-14058

Order of the Court

3

three rounds at a time. The agent might have depressed the trigger for only a short time or loaded the gun with only three rounds. In fact, Alsenat's counsel stated at oral argument that the machinegun conversion device enabled the gun "spew out" 19 rounds.

Even if Alsenat's challenge was not foreclosed by his guilty plea, "[w]e do not consider issues or arguments raised for the first time on petition for rehearing." *United States v. Martinez*, 96 F.3d 473, 475 (11th Cir. 1996). Alsenat did not argue in his briefs that section 922(o) was unconstitutional as applied to the machinegun conversion device he possessed. Instead, he argued that section 922(o) was unconstitutional as applied to "an adult citizen who has no felony convictions." And in the Rule 28(j) letter to which his petition refers, Alsenat recounted the agent's testimony about the machinegun conversion device but made no argument that section 922(o) is unconstitutional as applied to that device. "Having . . . appealed [his] case on one theory," Alsenat "may not . . . use a petition for rehearing as a device to test a new theory." *United States v. Sutherland*, 428 F.2d 1152, 1158 (5th Cir. 1970).

PETITION FOR REHEARING AND REHEARING EN
BANC DENIED.