

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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MERRICK B. GARLAND,)
ATTORNEY GENERAL, ET AL.,)
 Petitioners,)
 v.) No. 23-852
JENNIFER VANDERSTOK, ET AL.,)
 Respondents.)
- - - - -

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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 23-852, Garland versus VanDerStok.

General Prelogar.

ORAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR

ON BEHALF OF THE PETITIONERS

GENERAL PRELOGAR: Mr. Chief Justice, and may it please the Court:

The Gun Control Act imposes straightforward but essential requirements. Firearms sellers and manufacturers must mark their products with serial numbers, maintain sales records, and conduct background checks. The industry has followed those conditions without difficulty for more than half a century, and those basic requirements are crucial to solving gun crimes and keeping guns out of the hands of minors, felons, and domestic abusers.

But, in recent years, companies like the Respondents here have tried to circumvent those requirements. They've begun selling firearms as easy-to-assemble kits and frames and receivers that require minimal work to be made

1 functional. They've advertised the products, in
2 their words, as "ridiculously easy to assemble
3 and dummy-proof" and touted that you can go from
4 opening the mail to have a fully functional gun
5 in as little as 15 minutes, no serial number,
6 background check, or records required.

7 Those untraceable guns are attractive
8 to people who can't lawfully purchase them or
9 who plan to use them in crimes. As a result,
10 our nation has seen an explosion in crimes
11 committed with ghost guns.

12 In the face of that public safety
13 crisis, ATF promulgated this rule to underscore
14 two points about the Gun Control Act's plain
15 text. First, a weapon parts kit that can
16 readily be converted to function as a gun with
17 common tools, often in under an hour, is a
18 covered firearm. Second, a product is a frame
19 or receiver under the Act even if the buyer must
20 drill a few holes or remove a few superfluous
21 pieces of plastic to make it functional.

22 Both of those points are consistent
23 with how ATF has interpreted and implemented the
24 Act across five decades and 11 different
25 presidential administrations.

1 Respondents now seek a sea change in
2 the Act's scope. They claim that if a firearm
3 isn't a hundred percent functional, if it's
4 missing just one hole that could be drilled in
5 seconds and immediately assembled into a working
6 gun, that product can be sold to anyone online
7 with no background check, no records, and no
8 serial number.

9 That contradicts the Act's plain text,
10 and it also contradicts common sense. This
11 Court should make clear that the Act regulates
12 these products as what they are, firearms and
13 frames and receivers of firearms.

14 I welcome the Court's questions.

15 JUSTICE THOMAS: Does this new
16 regulation cover all of Chapter 44?

17 GENERAL PRELOGAR: Yes. So I think
18 that the understanding of a firearm reflected in
19 the Final Rule does reflect the -- the
20 922(a)(1)(iii) definition.

21 JUSTICE THOMAS: Would it -- would
22 this -- would it also apply under 924?

23 GENERAL PRELOGAR: Yes. And so I
24 think that that also incorporates, though,
25 Justice Thomas, the mens rea requirements that

1 are under 924, which I think guards against some
2 of the concerns that Respondents have raised in
3 this case that manufacturers could
4 unintentionally be swept up by these
5 restrictions. For example, 924(a)(1)(D)
6 requires a showing of willfulness with respect
7 to selling products without a serial number or
8 without a license.

9 JUSTICE THOMAS: You make a lot of the
10 fact that -- that you've been -- this has been
11 regulated for half a century. But it wasn't
12 regulated in this way for half a century. What
13 was the -- the original reg, the previous reg?

14 GENERAL PRELOGAR: The previous reg
15 defined a frame or receiver with respect to
16 particular components that were housed in that
17 primary structure. But, Justice Thomas, I agree
18 that this rule reflects any fundamental change
19 in approach because, under that prior reg, ATF
20 consistently recognized that even when that
21 frame or receiver, the -- the primary structural
22 component, wasn't yet fully finished or
23 complete, still it would qualify as a firearm,
24 looking at the same factors that are listed in
25 the rule, things like how much time is it going

1 to take to make it functional? Do you need
2 special equipment? Do you need to buy parts,
3 and are they readily available? Do you need
4 special skill? So all along, from 1968 on, the
5 agency has consistently focused on this same
6 issue of how quickly you can make that frame or
7 receiver operational as part of a working gun.

8 And the only change in the rule -- and
9 I want to openly acknowledge this, as the rule
10 does -- is that ATF is now taking account of
11 jigs or templates, which are a form of tool that
12 quickly speed up the process of making a frame
13 or receiver functional because they show you
14 exactly where you have to drill in that weapon,
15 so there's no trial and error or guesswork.

16 But, as ATF explained in the Final
17 Rule, that wasn't a change in statutory
18 interpretation. It was just a recognition that
19 jigs serve precisely the same function as
20 something like indexing, stamping the frame or
21 receiver to show you where you have to drill.
22 So it goes directly to the question that the
23 agency has asked all along, namely, how quickly,
24 easily, and efficiently can this process be
25 completed.

1 JUSTICE SOTOMAYOR: Yeah, General, I
2 -- I'm looking at agency letters stretching back
3 as -- as far back as 1978, and each of them
4 basically used the same language that the
5 current regulation is using. The agency letter
6 in '78 said it evaluated an -- an item on
7 whether it had reached a stage of manufacture
8 such that it might be readily converted to
9 functional condition, correct? That's what
10 you're talking about?

11 GENERAL PRELOGAR: Exactly right. And
12 I think that that refutes Respondents'
13 suggestion here that ATF has somehow been
14 applying a different standard over the 50-year
15 history of the Gun Control Act. Instead, ATF
16 has always looked at whether the item has
17 reached a critical stage of manufacture by
18 reference to what work remains to be done to
19 make it functional.

20 So it's not like these are entirely
21 separate and distinct contexts. As the 1978
22 classification letter you referenced makes
23 clear, the only way to measure whether something
24 has reached a critical stage of manufacture is
25 to look at how close it is to the final product

1 and what steps you need to take to turn that
2 into a functional frame or receiver.

3 JUSTICE SOTOMAYOR: General, I want to
4 know what our standard of review here is,
5 because I can imagine a frame or receiver that
6 is just a block of metal that -- not readily
7 convertible. I can also imagine some part kits
8 that require such tremendous amount of work that
9 it doesn't qualify as readily convertible.

10 So, if I can point to one item that
11 wouldn't qualify, would -- could be swept up
12 potentially by your -- by the new regulation, is
13 that enough to defeat a facial challenge? Is it
14 enough, or is that always an as-applied
15 challenge?

16 GENERAL PRELOGAR: That is definitely
17 not enough to defeat a facial challenge. So
18 there is no particular product before the Court
19 in this case. Respondents have chosen to sue in
20 this facial pre-enforcement posture, and what
21 that means is that the only question the Court
22 should be asking in this case is whether there
23 is anything on the face of the rule that is
24 contradicted by the statutory text, in other
25 words, whether the standards that ATF set forth

1 in the rule are themselves contradicted by the
2 statute and, therefore, foreclosed by the
3 statute.

4 And they can't make that showing here.
5 It's certainly true that they try to suggest,
6 and your question touches on the idea, that
7 there might be particular marginal products out
8 there that could test the bounds of whether
9 something is readily convertible, but the Court
10 doesn't need to consider those kinds of products
11 in this case because that can all be adjudicated
12 on an as-applied basis going forward.

13 JUSTICE SOTOMAYOR: You -- you use
14 the Reno -- you use the I -- our statement in
15 INS versus NCIR, which basically tracks what
16 you're just saying. But, in Reno versus Flores,
17 we used a different standard and said that a
18 respondent, to prevail, must establish that no
19 set of circumstances exists under which the
20 regulation would be valid.

21 You didn't go that route.

22 GENERAL PRELOGAR: That would be an
23 even more stringent standard --

24 JUSTICE SOTOMAYOR: I agree.

25 GENERAL PRELOGAR: -- and I think a

1 burden that Respondents can't surmount. But we
2 think, even under the INS standard that we cite
3 in our brief, it's very clear that there's
4 nothing on the face of the Gun Control Act that
5 --

6 JUSTICE SOTOMAYOR: How about the --

7 GENERAL PRELOGAR: -- prohibits this
8 approach to regulation.

9 JUSTICE SOTOMAYOR: -- Washington
10 state range standard, which says, even if there
11 might be some applications that are
12 impermissible, those possible applications
13 cannot render the rule facially invalid so long
14 as the rule has a "plainly legitimate sweep."

15 GENERAL PRELOGAR: Yes, and I think
16 that that standard is equally satisfied as well
17 here.

18 You pointed to the hypothetical
19 possibility of marginal cases where a product
20 would take a lot of time to put together, but I
21 want to emphasize the core of the conduct that
22 this Act regulates, which were the ghost gun
23 kits and partially complete frames or receivers
24 that were flooding the market leading up to
25 promulgation of this rule.

1 Those are issues or -- or products
2 where the "readily convertible" determination
3 was not hard at all because the products were
4 specifically designed and marketed to
5 individuals who could put them together with no
6 specialized skill, often in under an hour, with
7 common hand tools.

8 And so I acknowledge the point that
9 maybe there could be other hypothetical
10 applications of the rule that could test the
11 bounds with respect to certain factors, but I
12 think that under any conceivable standard for
13 adjudicating this facial challenge, Respondents
14 haven't come anywhere close to satisfying their
15 burden to show that the statute squarely
16 forecloses the standards in the rule.

17 JUSTICE SOTOMAYOR: Thank you.

18 JUSTICE ALITO: What is the meaning of
19 the term "weapon" in 921(a)(3)(A)?

20 GENERAL PRELOGAR: That's --

21 JUSTICE ALITO: Can you give me a
22 definition?

23 GENERAL PRELOGAR: Sure. So that's an
24 undefined term, and we think it therefore
25 carries its plain dictionary definition as an

1 instrument of offensive or defensive combat.

2 But nothing in Congress's use of the
3 term "weapon" suggests that it has to presently
4 be functional as an instrument of combat in
5 order to qualify. And, in fact, I would say the
6 rest of the -- the statutory provision makes
7 clear that the weapon might well have to undergo
8 a conversion in order to operate as a gun.

9 JUSTICE ALITO: It may --

10 GENERAL PRELOGAR: There's an express
11 --

12 JUSTICE ALITO: -- it may have to
13 undergo a conversion, but, before it's
14 converted, it must be a weapon?

15 GENERAL PRELOGAR: That's right. We
16 certainly don't dispute that it has to be an
17 instrument of combat designed and intended to be
18 used in this way.

19 And Congress made clear in the
20 statutory history that the reason it used that
21 term is because there are objects out there,
22 toys and tools, that have a well-known
23 non-weapon use but that actually do expel
24 projectiles through the action of an explosive.

25 A -- a cap gun is an example of this.

1 It -- it expels bird shot, and so, therefore, it
2 would fit within the functional definition. But
3 it's not a weapon because it's not an instrument
4 of combat or intended to be used in that way.

5 JUSTICE ALITO: But is it -- is it the
6 case that components that can easily be
7 converted into something constitute that thing
8 before they are converted as a matter of
9 ordinary usage?

10 GENERAL PRELOGAR: I think that as a
11 matter of ordinary usage, we're not suggesting
12 that any statutory reference to one thing
13 includes separate and distinct things that can
14 be readily converted.

15 So shifting to our arguments under
16 frame or receiver, subparagraph B --

17 JUSTICE ALITO: Well, no, I -- I want
18 to stick with the definition of "weapon" for
19 just a second.

20 GENERAL PRELOGAR: Oh, sure.

21 JUSTICE ALITO: I'm going to show you.
22 Here's a -- here's a blank pad, and here's a
23 pen, all right? Is this a grocery list?

24 GENERAL PRELOGAR: I don't think that
25 that's a grocery list, but the reason for that

1 is because there are a lot of things you could
2 use those products for to create something other
3 than a grocery list.

4 JUSTICE ALITO: All right. If I show
5 --

6 GENERAL PRELOGAR: And so it's not
7 like they're --

8 JUSTICE ALITO: -- if I show you -- I
9 put out on a counter some eggs, some chopped-up
10 ham, some chopped-up pepper, and onions, is that
11 a western omelet?

12 GENERAL PRELOGAR: No, because, again,
13 those items have well-known other uses to become
14 something other than an omelet.

15 The key difference here is that these
16 weapon parts kits are designed and intended to
17 be used as instruments of combat, and they have
18 no other conceivable use.

19 And I think the further evidence comes
20 from the fact that Respondents themselves agree
21 that a disassembled gun qualifies as a weapon.
22 So this is on page 37 of the VanDerStok brief.

23 JUSTICE ALITO: Okay. So that's
24 helpful. So your definition is a -- a -- a
25 group of components that are -- can readily be

1 converted into something and have no other use.
2 They must have no other use in order to
3 constitute that thing?

4 GENERAL PRELOGAR: In the circumstance
5 --

6 JUSTICE ALITO: In that situation,
7 they already constitute that thing?

8 GENERAL PRELOGAR: I think that you
9 can recognize that something is a weapon even if
10 it's non-functional if it is clear from
11 objective evidence of --

12 JUSTICE ALITO: No, I think that
13 certainly is true from the face of the statute
14 because it has to be -- it's sufficient if it's
15 capable of being converted into -- into
16 something that can expel a projectile.

17 All right. Thank you.

18 JUSTICE BARRETT: General Prelogar, I
19 just want to follow up on Justice Alito's
20 question about the omelet.

21 Would your answer change if you
22 ordered it from HelloFresh and you got a kit,
23 and it was like turkey chili, but all of the
24 ingredients are in the kit?

25 GENERAL PRELOGAR: Yes. And I think

1 that that presses on the -- the more apt analogy
2 here, which is that we are not suggesting that
3 scattered components that might have some
4 entirely separate and distinct function could be
5 aggregated and called a weapon in the absence of
6 this kind of evidence that that is their
7 intended purpose and function.

8 But, if you bought, you know, from
9 Trader Joe's some omelet-making kit that had all
10 of the ingredients to make the omelet and maybe
11 included whatever you would need to start the
12 fire in order to cook the omelet and had all of
13 that objective indication that that's what's
14 being marketed and sold, we would recognize that
15 for what it is.

16 And it -- it doesn't stretch plain
17 English to say, I bought omelets at the store,
18 if you bought all of the ingredients that were
19 intended and designed to make them, especially
20 under statutory language that refers to
21 something like breakfast foods or things that
22 can be readily converted to make breakfast.

23 JUSTICE KAGAN: And --

24 JUSTICE BARRETT: Can I -- oh.

25 JUSTICE KAGAN: Go ahead.

1 JUSTICE BARRETT: Can I ask you about
2 the difference between the "destructive device"
3 and "machine gun" definitions that also
4 reference parts in a way that this definition
5 does not?

6 I've just been thinking about, in
7 1968, in the Gun Control Act, why Congress might
8 have done that differently. And these ghost
9 guns weren't around. These kits are a more
10 recent problem, which doesn't mean that the
11 plain language doesn't cover the unintended
12 consequence.

13 But, in 1968 -- and I don't know
14 enough about the gun industry to know if this is
15 right, which is why I want your take on this --
16 wasn't it the case then, I think, that
17 destructive devices like grenades or even
18 machine guns were not things that you tended to
19 buy whole because they were so heavily regulated
20 and -- and even illegal to purchase that way as
21 opposed to firearms?

22 So they were generally purchased as
23 components or things that were, you know, able
24 to be converted or made -- like, it would make
25 sense to think about it in terms of parts?

1 Am I thinking about that correctly
2 based on the industry at the time?

3 GENERAL PRELOGAR: Yes, you're exactly
4 right about that relevant difference and how
5 people were ordinarily constructing things like
6 destructive devices that weren't sold in these
7 types of kits.

8 And I think the important thing to
9 recognize and what this question presses on is
10 that Congress can use a variety of verbal
11 formulations to cover similar types of conduct.
12 Each of these other definitions that Respondents
13 have pointed to that refer explicitly to parts
14 were enacted at different times from the
15 relevant definition of a "firearm," and they
16 address different issues in the way that your
17 question touched on.

18 But what Respondents are doing is
19 ignoring the language of the statute that
20 Congress did use in 1968, and it expressly
21 referred to things that can be readily converted
22 to function to expel a projectile through the
23 action of an explosive.

24 It's hard for me to see how a weapon
25 parts kit doesn't fit within that plain language

1 because, quite literally, the kit is intended
2 and designed to produce that functioning weapon
3 in a very short amount of time by people who
4 don't know anything about guns and can do it
5 with relatively little skill.

6 JUSTICE GORSUCH: General, I
7 understand your argument under (A) with respect
8 to things that could be readily converted, but
9 there's also the argument under (B), frame or
10 receiver, which doesn't include that kind of
11 language that might bring in artifact nouns more
12 obviously.

13 What -- what's your thought about
14 that?

15 GENERAL PRELOGAR: So I do think
16 there's language in (B) that gets us there, and
17 it's the fact that Congress referred to "frame
18 or receiver" but didn't expressly define that
19 term.

20 It's true that in subparagraph (A)
21 Congress used the exact language "readily
22 converted," but that's because that's Congress's
23 definition of the term. And if it had defined
24 it solely in terms of the functionality of a
25 gun, you know, if it had just said something

1 that functions as a gun, that would be limited
2 to operational weapons.

3 So Congress had a really good reason
4 to use the language there.

5 JUSTICE GORSUCH: Got you. I follow
6 all of that.

7 GENERAL PRELOGAR: Yeah. So then in
8 -- in --

9 JUSTICE GORSUCH: Now -- now moving on
10 to (B), though.

11 GENERAL PRELOGAR: So moving on to
12 (B), Congress didn't define the term, which
13 means it carries its plain and ordinary meaning.
14 And we think that the ordinary meaning of a noun
15 like "frame" or "receiver" includes objects that
16 are nearly complete but are missing just a few
17 holes --

18 JUSTICE GORSUCH: How --

19 GENERAL PRELOGAR: -- that need to be
20 drilled.

21 JUSTICE GORSUCH: Now we can't
22 possibly think that every noun that Congress
23 uses everywhere in the U.S. Code is used as an
24 artifact noun that carries with it things like
25 Justice Alito's pen and pencil as a grocery

1 list, right? So there's got to be a line that
2 makes this on -- on your theory of the case why
3 we should read that into (B) here but not
4 everywhere in the U.S. Code.

5 What -- what -- what -- what are your
6 thoughts?

7 GENERAL PRELOGAR: Right. So I want
8 to be very clear that we think that this is a
9 matter of ordinary meaning, that you don't need
10 it to be a hundred percent complete.

11 And that -- I think that runs across
12 the board. If I mentioned a bicycle, but it was
13 missing pedals, as we explain in our brief, you
14 would still recognize that for what it is, as a
15 bicycle. That's the first order question.

16 But then the second question arises --

17 JUSTICE GORSUCH: But --

18 GENERAL PRELOGAR: -- that you touched
19 on --

20 JUSTICE GORSUCH: -- if you -- if I'm
21 not inclined to think that every noun is used in
22 that way in the U.S. Code, I mean, that would be
23 a very dramatic argument --

24 GENERAL PRELOGAR: Yeah.

25 JUSTICE GORSUCH: -- right? Lenity,

1 notice, fair notice to people that every piece
2 of paper and pen is a grocery list, you're on
3 notice of that. But is there something
4 particular to this statute that you think would
5 -- a more narrow approach?

6 GENERAL PRELOGAR: Yes. We think the
7 context and purpose of the statute strongly
8 support understanding the term in this way. And
9 the reason for that is because, throughout the
10 federal firearms laws, whenever Congress has
11 itself expressly provided a definition, it has
12 included not only the fully complete and
13 functional item but things that are the item and
14 can readily be made to function that way.

15 So I think that's Congress's own
16 indication in this statute that it's trying to
17 ensure coverage not only of things that have the
18 functionality of a frame or receiver at the
19 moment they're sold but frames or receivers that
20 can be readily converted to function with
21 minimal steps.

22 JUSTICE GORSUCH: Well, if you have
23 something textual, I'd love for you to point me
24 to that and also address -- your friends on the
25 other side I'm sure are going to make something

1 of this, that as recently as 2021, in a brief
2 filed in the Southern District of New York, the
3 government represented that an unfinished frame
4 or receiver does not meet the statutory
5 definition of "firearm."

6 GENERAL PRELOGAR: Sure. So let me
7 take those in turn.

8 With respect to text, what we have,
9 Justice Gorsuch, is the term "frame or receiver"
10 that's not defined, and the Court has many times
11 recognized it needs to interpret text and
12 context. I think the anti-circumvention
13 principle carries a lot of weight here because,
14 if Respondents are right and just one undrilled
15 hole is enough, then, basically, that covers
16 where "frame and receiver" --

17 JUSTICE GORSUCH: Does it --

18 GENERAL PRELOGAR: -- does no work.

19 JUSTICE GORSUCH: -- does it help that
20 (C) and (D) deal with mufflers, silencers, and
21 any other destructive devices that don't have
22 conventional frames and receivers? Does that
23 help you?

24 GENERAL PRELOGAR: I think that that
25 just goes to show that Congress was trying to

1 broadly cover the scope of products that can
2 qualify as firearms, and it certainly refutes
3 Respondents' suggestion here that every covered
4 object under the statutory definition needs to
5 have a traditional frame or receiver.

6 JUSTICE GORSUCH: Yeah, that's why I'm
7 wondering whether we can -- whether, looking at
8 (C) and (D) and (A), which, as you say --

9 GENERAL PRELOGAR: Right.

10 JUSTICE GORSUCH: -- carry some broad
11 language about not just complete items, might be
12 a textual way to -- to -- to -- to narrow and
13 focus on (B) without saying every artifact noun
14 in the U.S. Code carries this feature?

15 GENERAL PRELOGAR: Yes, I think you
16 certainly could adopt that interpretation, and
17 that contextual surrounding evidence strongly
18 supports our arguments in this case.

19 I don't want to lose track of your
20 question about the brief --

21 JUSTICE GORSUCH: Yeah.

22 GENERAL PRELOGAR: -- the district
23 court filing --

24 JUSTICE GORSUCH: Yeah.

25 GENERAL PRELOGAR: -- in the Syracuse

1 case. I want to be really clear that I think
2 Respondents are fundamentally misreading that
3 brief. They suggest that the brief stood for
4 the principle that ATF was arguing that a frame
5 or receiver has to be fully functional to
6 qualify.

7 But, if you actually look at that
8 brief, that's not what it says. It walks
9 through the statutory and regulatory history
10 here and makes clear that repeatedly, over five
11 decades, ATF has always looked at whether a
12 partially complete frame or receiver can be
13 brought to functional condition quickly, easily,
14 and efficiently.

15 So there is no dramatic break in the
16 way that ATF has regulated throughout the
17 entirety of the statute's history.

18 JUSTICE GORSUCH: Well, I'll look at
19 that again. And then the last question from me
20 and I'm sorry to take up so much time. In the
21 regulation, it indicates that a frame or
22 receiver -- and I'm stuck on this (B) point --

23 GENERAL PRELOGAR: Mm-hmm.

24 JUSTICE GORSUCH: -- which has been
25 cut into pieces is still a firearm --

1 GENERAL PRELOGAR: So this has --

2 JUSTICE GORSUCH: -- but -- but one
3 that's been shredded is not. Now I'm not sure
4 what the difference between "cut into pieces"
5 and "shredding" is, but perhaps you can
6 enlighten me and help me there.

7 GENERAL PRELOGAR: So this refers to,
8 when you already have a fully complete and
9 functional firearm, what steps you would need to
10 undertake to formally destroy that firearm and
11 exempt it from regulation. Those are not
12 provisions --

13 JUSTICE GORSUCH: So it's no longer
14 readily convertible, right? And --

15 GENERAL PRELOGAR: So, once you
16 actually have already brought something within
17 the regulatory scope of the statute, the -- the
18 statute itself and the agency's regulations
19 require that it be destroyed, which is a
20 specialized term in the firearms industry.

21 I can tell you as a factual matter
22 that the most common way that you destroy a
23 firearm is to torch-cut it in -- in -- with
24 three specified cuts that ATF has provided --

25 JUSTICE GORSUCH: Well --

1 GENERAL PRELOGAR: -- guidance about.

2 JUSTICE GORSUCH: -- this is -- this
3 is -- I'm sorry to interrupt, but this is
4 actually about frames and receivers that I'm
5 talking about, and it's 48 -- 478.12(c) and (e).

6 GENERAL PRELOGAR: Yes.

7 JUSTICE GORSUCH: Okay? And it -- and
8 it talks about partially complete, disassembled,
9 or nonfunctional frame or receiver. That's what
10 we're talking about, not the firearm. And,
11 again, maybe -- maybe there's a line that I -- a
12 through line, but I couldn't find one between
13 "shredding" and "cutting into pieces." I would
14 have thought that's pretty much the same thing.

15 GENERAL PRELOGAR: So that comes, as
16 you mention, from 478.12(e), which I should note
17 Respondents haven't challenged in this case. It
18 tees up a distinct statutory issue about what it
19 takes to destroy a frame or receiver or a
20 regulated object once you already have a
21 firearm. They aren't challenging that here.
22 And the only thing that is before the Court is
23 the definition in (B), recognizing that --

24 JUSTICE GORSUCH: Right, but -- but it
25 --

1 GENERAL PRELOGAR: -- you don't need a
2 fully functional firearm in the first place to
3 have --

4 JUSTICE GORSUCH: No, but it
5 illuminates what is a sufficiently complete
6 frame or receiver if a complete frame or
7 receiver is not a firearm. And the only way I
8 can be sure that I don't have a fully complete
9 or nearly complete or convertibly complete frame
10 or receiver and therefore a firearm is to shred
11 it but not cut it into pieces.

12 GENERAL PRELOGAR: Oh. No, let me --
13 let me try to clarify that --

14 JUSTICE GORSUCH: Yeah, that -- they
15 --

16 GENERAL PRELOGAR: -- because that's
17 not accurate at all.

18 JUSTICE GORSUCH: Okay. Right.

19 GENERAL PRELOGAR: As the regulation
20 itself makes clear, you don't even get to the
21 question of asking whether it's regularly --
22 readily converted into functional shape unless
23 you have the clearly identifiable unfinished
24 component part, so you have something that is
25 already well along the way to being a frame or

1 receiver, and that's when you would conduct the
2 readily converted inquiry.

3 And there is nothing in the rule or in
4 the agency's past practice to suggest that
5 anything that isn't shredded or cut up or
6 absolutely destroyed is going to be considered a
7 frame or receiver. That would be entirely
8 inconsistent with how the agency has implemented
9 --

10 JUSTICE GORSUCH: Okay. Thank you.

11 GENERAL PRELOGAR: -- the statute all
12 along.

13 JUSTICE GORSUCH: Thank you.

14 JUSTICE ALITO: Under the rule, what
15 percentage of the parts of a firearm kit must --
16 must be included in order for it to be a firearm
17 kit?

18 GENERAL PRELOGAR: So these kits
19 always come with a frame or receiver. And I
20 think that that's going to be a necessary part.
21 That's usually the part that needs just a couple
22 of holes drilled or pieces of plastic removed.
23 And then the weapon parts kits generally come
24 with the additional components that will allow
25 you to form a fully functioning gun.

1 If you're asking whether it would
2 still qualify as a regulated weapon that can be
3 readily converted if it were missing other
4 parts, you know, I think that's a matter of
5 degree and it presses on what it means to
6 readily convert. It might be fact-specific, so
7 if the part you're missing is something that is
8 super-specialized and would be hard to track
9 down or is going to cost you a million dollars,
10 that might not be readily converted. But, if
11 you have something that's missing a single pin
12 that you might even have lying around the house,
13 it probably will be.

14 Again, in this facial challenge, I
15 don't think it's necessary for the Court to
16 consider all of the possible permutations of how
17 this could play out with respect to different
18 types of products. The thing that you need to
19 be asking is, did the agency reasonably define
20 the term "readily"? And it did because it gave
21 it its ordinary definition of a process that's
22 quick, easy, and efficient. And then did the
23 agency identify relevant factors? And I think
24 it did with respect to things like time,
25 expertise, scope of work, and, as your question

1 touched on, what parts you would need to
2 actually make it functional.

3 JUSTICE SOTOMAYOR: General, we have a
4 clue from the statute's use of a starter gun as
5 an example of something that's readily
6 convertible. As I understand it, to make a
7 starter gun operable, you either have to replace
8 the bore, so you need a new bore part to do
9 that, or you have to drill out the existing bore
10 on the starter gun and get a pin to make it
11 operable, correct?

12 GENERAL PRELOGAR: That's right. So
13 the most commonly publicized example that I
14 think was top of mind for Congress, and it's one
15 that's cited in the statutory history here, was
16 the example of a -- a gang member who bought the
17 starter guns in bulk and then, you're exactly
18 right, had to drill out the plugged barrel or
19 else cut it off and rethread it and put in a new
20 barrel. And often you also have to enlarge the
21 barrel so that it can chamber conventional
22 ammunition if it isn't already able to accept
23 bullets.

24 JUSTICE SOTOMAYOR: So we know that
25 some incomplete items qualify under the

1 statute's definition?

2 GENERAL PRELOGAR: Yes. And I think
3 that also show -- I think shows, as the
4 statutory text makes clear, that things that
5 aren't presently functioning as guns but can be
6 readily converted to function are covered under
7 subparagraph (A). That was exactly what
8 Congress was trying to accomplish, to ensure
9 that these things that are going to be used as
10 instruments of combat and that can be completed
11 to functional condition with minimal work would
12 come within the scope of the federal firearms
13 laws.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Thomas, anything?

17 Justice Alito?

18 JUSTICE ALITO: Were weapons parts
19 kits common in 1968?

20 GENERAL PRELOGAR: So there have only
21 been a couple of examples over the years that
22 I'm aware of reflected in the case law. We cite
23 the Stewart case and the Wick case. One of
24 those was kind of an Uzi-making kit. Another
25 one involved someone who was making it possible

1 through kit form to construct a machine gun.

2 It wasn't particularly common then,
3 and I can tell you the reason why. The big
4 development and the technological development
5 that led to the explosion of ghost guns was
6 using polymer --

7 JUSTICE ALITO: Right. Well --

8 GENERAL PRELOGAR: -- a form of
9 plastic, to make this.

10 JUSTICE ALITO: -- are there gun kits
11 available now that do not consist of polymer
12 parts but instead consist of parts taken from
13 disassembled firearms that have been altered in
14 a way to make them nonfunctional without some
15 modification?

16 GENERAL PRELOGAR: I'm not aware of
17 any commercial product right now that -- that
18 fits that description.

19 JUSTICE ALITO: On what it means to be
20 readily convertible, I -- I don't know whether
21 it's possible to do something. That's the
22 statutory term, and I don't know whether it's
23 possible to do something more precise than what
24 ATF has done, but it would be interesting if --
25 it would be helpful if you could perhaps explain

1 a little bit more what that means.

2 So what level of expertise is taken
3 into account? What collection of tools is taken
4 into account? Can you provide any sort of a
5 time limit? How long must it take?

6 Some of us who are not -- who don't
7 have a lot of mechanical ability have spent
8 hours and hours and hours trying to assemble
9 things that we've purchased.

10 (Laughter.)

11 GENERAL PRELOGAR: I'm with you on
12 that one, Justice Alito, as someone who
13 struggles with IKEA furniture. Let me do my
14 best to try to be responsive to that question.

15 And I think the thing to point to is
16 the case law on this point because ATF wasn't
17 just coming up with these factors out of
18 nowhere. Instead, because this is the term that
19 Congress used in the statute, we have 50 years
20 of judicial precedent further fleshing out the
21 contours of when something can be readily
22 converted.

23 So, as a general matter, what the
24 courts and, therefore, what the agency have said
25 is that it is readily converted if someone -- if

1 a novice, in a fairly quick amount of time, can
2 easily and efficiently convert their weapon to
3 function.

4 You asked about outside bounds like
5 time limits. I can tell you that in the case
6 law, the longest period of time that was ever
7 deemed still readily convertible was eight
8 hours. And the agency has not considered any
9 product greater than eight hours to be readily
10 convertible. So, if that issue were squarely
11 presented, a court might hold that something
12 like a day's work or eight hours sets an outer
13 bound.

14 With respect to things like skill or
15 -- or parts availability, obviously, that's
16 going to be facts -- fact- and context-specific.
17 And I think the important thing to recognize is
18 that these are principles that were themselves
19 drawn from case law. And the agency, I think,
20 can't be expected to do better than courts
21 themselves have done in trying to flesh out the
22 qualitative standard that Congress chose to use
23 here.

24 JUSTICE ALITO: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Sotomayor?

2 Justice Kagan?

3 JUSTICE KAGAN: On parts kits first.

4 In addition to the parts kit that's analogous to
5 an IKEA table kit, Judge O'Connor below was
6 concerned that that language would include sort
7 of any aggregation of gun parts.

8 So let's say, you know, a gunsmith
9 just wanted to replenish inventory and got a big
10 box of gun parts generally from a gun
11 manufacturer. Would that count under the ATF
12 regulation?

13 GENERAL PRELOGAR: No. The lower
14 court fundamentally misunderstood how this Final
15 Rule operates.

16 In the first place, it doesn't
17 regulate something like a gunsmith at home who's
18 buying individual parts and seeking to aggregate
19 them. This is a regulation that only governs
20 commercial manufacturers and sellers of firearms
21 who are themselves constructing the -- the
22 weapons and the kits and putting them on the
23 market. So these are just conditions on
24 commercial sale.

25 And then, with respect to what the

1 rule would cover, it's clear from the "readily
2 convertible" analysis that you need to have a
3 process that's fairly quick, easy, and
4 efficient. And so it wouldn't sweep in things
5 that have a lot of other uses and that would
6 require a lot of skill and expertise or time to
7 track down the missing parts to put together.

8 And I want to emphasize again it's not
9 like ATF was coming up with this rule without
10 real-world experience about the kinds of market
11 -- kinds of products that these fringe
12 manufacturers were putting on the market. These
13 were kits that you could put together in under
14 an hour. They had all of the relevant
15 components. You would just need to do a little
16 bit of finishing work.

17 I actually had the experience of
18 putting one of these kits together, and it's
19 just like what the record shows. There are
20 usually only a couple of steps. The first thing
21 that most of the kits require is drilling the
22 holes. Usually, it's six holes, and you do it
23 with a jig. So you have the product there in
24 the tool, and it removes all of the trial and
25 error or guesswork. You know exactly where to

1 drill in seconds.

2 The second step is to remove the extra
3 plastic blocking tabs. That, again, doesn't
4 require much work at all because you clip them
5 off with a pair of pliers or a box cutter. You
6 can file it down with a jig as a template using
7 a metal nail file or using a Dremel rotary tool
8 that a lot of people, especially dog owners, own
9 because it's helpful for trimming your dog's
10 nails.

11 At that point, you have a fully
12 functional frame or receiver, and you can
13 quickly assemble it into a gun in no time at
14 all. That's how the products were marketed.
15 That's how they were sold.

16 JUSTICE KAGAN: And turning to the
17 frames or receivers, you made a point of saying
18 that this follows in a long line of regulation.
19 But there --- there were changes, right, that
20 you -- that the new regulation is intended to
21 capture items sold with jigs and templates.

22 Is there anything else that the new
23 regulation was intended to capture that was not
24 captured under the old? And why did ATF make
25 that change?

1 GENERAL PRELOGAR: No, that is the
2 only change. ATF made that change and openly
3 acknowledged and justified its decision because
4 it recognized that when you have a jig, which is
5 this tool, as I mentioned, that removes all of
6 the trial and error and really does make it
7 dummy-proof, as the manufacturers have claimed,
8 it goes directly to the question the agency has
9 asked all along, which is: How quickly, easily,
10 and efficiently can this thing be made to
11 function?

12 So it's no different in kind from
13 indexing on the frame or receiver. Indexing is
14 something that ATF has looked at from 1968 on.
15 It's always recognized that if you actually put
16 a dimple in the frame or through the body of the
17 structural component, that's going to speed up
18 the process. And jigs work exactly the same
19 way.

20 JUSTICE KAGAN: And let me ask you a
21 broader question if we step back a little bit.

22 Sometimes this Court looks at
23 regulations and it says, you know, there's an
24 old statute, and the old statute doesn't
25 contemplate a new problem, and a new problem

1 comes up, and Congress can't get its act
2 together and deal with the old problem.

3 And so the agency takes old statutory
4 language that doesn't really fit the problem
5 but, you know, is vague enough or general enough
6 or broad enough, you know, so that it can be
7 kind of made to deal with the new problem.

8 And -- and this Court has sometimes
9 said: Well, that's -- that's not right. The
10 new statute had nothing to do with -- the old
11 statute had nothing to do with this new problem,
12 and this is kind of, you know, the agency just
13 taking over what is really Congress's business.

14 Is -- is that a story line that the
15 Respondents here can tell about this regulation?

16 GENERAL PRELOGAR: No. I don't think
17 there is any tenable way to characterize this
18 regulation as -- as an attempt to change the
19 meaning of the statute to confront a new
20 problem.

21 First of all, this is an age-old
22 problem. Congress, I think, rightly recognized
23 that manufacturers might seek to evade these
24 central requirements. That's why anytime it's
25 expressly defined a term, like in subparagraph

1 (A), it's included concepts of whether an item
2 can be readily made to function.

3 We think the weapon parts kits are
4 precisely described by that subparagraph (A)
5 description.

6 I acknowledge in subparagraph (B) it's
7 not a defined term, "frame or receiver." But
8 there again, we think that Congress was simply
9 tracking ordinary meaning, which recognizes that
10 if you have that principal structural component
11 of a handgun, that can be recognized as a frame
12 or receiver even if it's missing the single,
13 final hole that you need to drill in that.

14 So I think it would be wrong to
15 suggest that the statutory language just on its
16 own terms doesn't cover this situation.

17 And then, on top of that, we have
18 context and purpose here. On Respondents'
19 theory of this statute, it would be incredibly
20 easy for any gun manufacturer to avoid the
21 regulation and the essential requirements of
22 serializing, background checks, and
23 recordkeeping just by leaving one little part of
24 the weapon or the frame or receiver unfinished.

25 Plainly, that's not what Congress was

1 intending. And I think it brings this case
2 squarely within cases like Abramski, where, as
3 you know, Justice Kagan, the -- the Court
4 recognized that if you have an interpretation of
5 the Gun Control Act that is going to allow that
6 entire circumvention and essentially nullify the
7 Act's requirements, the statute shouldn't
8 properly be interpreted that way.

9 JUSTICE KAGAN: That was a close case.
10 You maybe want this to be a stronger case than
11 Abramski.

12 GENERAL PRELOGAR: It is a stronger
13 case. And the circumvention here is even more
14 profound because it wouldn't just be in the
15 sales transactions with the straw purchaser. It
16 would effectively be all weapons going forward
17 would not need to be serialized or sold with
18 background checks and recordkeeping.

19 JUSTICE KAGAN: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch?

22 Justice Kavanaugh?

23 JUSTICE KAVANAUGH: Your statutory
24 interpretation has force, but I had some concern
25 at the state stage, and I have some concern now

1 about mens rea. And this is an agency
2 regulation that broadens a criminal statute
3 beyond what it had been before.

4 So what about the seller, for example,
5 who is truly not aware, truly not aware that
6 they are violating the law and gets criminally
7 charged? What assurances can you give about
8 mens rea, about instructions to the jury that
9 the government would seek, and the like?

10 GENERAL PRELOGAR: So let me begin
11 with the statutory mens rea standard that I
12 think fully addresses this concern. This is in
13 18 U.S.C. 924(a)(1)(D), and it requires
14 willfulness.

15 So that means that if a -- a
16 manufacturer isn't putting a serial number on it
17 because the manufacturer believes in good faith
18 that this isn't a regulated product and the
19 manufacturer doesn't know that it's violating
20 the law, it will not be criminally chargeable
21 because the government won't be able to prove
22 that mens rea of willfulness. So I think that's
23 an important check against criminal prosecutions
24 that might be unwarranted.

25 The second thing I would point to is

1 the --

2 JUSTICE KAVANAUGH: And does
3 "willfully" apply to all potential prosecutions
4 that we're talking about in this case?

5 GENERAL PRELOGAR: It applies if
6 there's no serial number on the weapon, and it
7 applies if there's -- if the weapon is being
8 sold without a license.

9 I believe that with respect to not
10 conducting a background check, that's under a
11 different provision that requires knowledge.

12 But, of course, the kind of entry
13 point for the weapon is whether or not it has a
14 serial number, and that happens at the point of
15 manufacture.

16 I also want to emphasize that to the
17 extent that there is really --

18 JUSTICE KAVANAUGH: So how would that
19 work on the background check? I just want to
20 make sure I'm not missing something there.

21 GENERAL PRELOGAR: Yeah. So I think,
22 on the background check, if you have a seller
23 out there who -- who wants guidance about
24 whether, with respect to particular type of
25 products, it's necessary to do that background

1 check, the -- the person can seek a
2 classification from ATF. The manufacturers
3 would be the ones to do this. And this is a way
4 to get a pre-enforcement dispositive ruling from
5 ATF as to whether that's deemed a regulated
6 firearm.

7 And in that circumstance, if you don't
8 like the answer that ATF gives, you have a right
9 to judicial review that will be conducted under
10 a de novo standard about whether this is a
11 covered product.

12 JUSTICE KAVANAUGH: But, if you
13 haven't done that, let's say you haven't done
14 that, and you truly --

15 GENERAL PRELOGAR: Right.

16 JUSTICE KAVANAUGH: -- take the
17 hypothetical -- you truly believe you're not
18 violating the law, could you be charged under
19 that provision?

20 GENERAL PRELOGAR: As a theoretical
21 possibility, I think only with respect to
22 background checks, it's possible you could. I'm
23 not aware of any prosecutions that look like
24 this. And the whole point of this reg --

25 JUSTICE KAVANAUGH: Is that something

1 the government would do?

2 GENERAL PRELOGAR: I don't think the
3 government would be likely to charge someone in
4 that kind of situation. And it doesn't look
5 anything like what was happening where the
6 manufacturers were themselves the sellers
7 putting these products on the market with
8 explicit knowledge that it was being put into
9 the hands of teenagers --

10 JUSTICE KAVANAUGH: Okay. That's --

11 GENERAL PRELOGAR: -- felons, and so
12 forth.

13 JUSTICE KAVANAUGH: -- that's helpful.
14 Anything else you wanted to finish up with on
15 that?

16 GENERAL PRELOGAR: So I guess the only
17 other thing I would say is that we think that
18 there is a lot of protection for manufacturers
19 who are seeking to comply with the law in good
20 faith. ATF is not trying to hide the ball here.
21 The point of the agency is not a game of gotcha
22 to try to criminally prosecute people.

23 There was a very serious public safety
24 threat posed by the explosion in the use of
25 these gun -- these ghost guns in crimes, and so

1 the whole point of this regulation is simply to
2 put the regulated industry on notice of how the
3 statute applies in that discrete context and how
4 it's always applied since the statute was
5 enacted.

6 JUSTICE KAVANAUGH: And on that point,
7 because you had a lot of classification letters
8 that were out there, this was to collect
9 everything and put everyone, as you say, on
10 notice, adding a couple things, as you pointed
11 out earlier, correct?

12 GENERAL PRELOGAR: Right. And so I
13 don't think that this is any vast expansion of
14 the statute. We just think this is ATF's
15 longstanding interpretation with the addition --

16 JUSTICE KAVANAUGH: Some expansion.
17 Some expansion.

18 GENERAL PRELOGAR: -- only with the
19 addition of looking at jigs. But -- but --

20 JUSTICE KAVANAUGH: Yeah.

21 GENERAL PRELOGAR: -- to be clear,
22 that doesn't change the meaning of the statute.

23 JUSTICE KAVANAUGH: Right.

24 GENERAL PRELOGAR: It just changes the
25 factors that are relevant under the statute when

1 you're conducting a "readily" analysis.

2 JUSTICE KAVANAUGH: Okay. That's
3 helpful. Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Barrett?

6 JUSTICE BARRETT: I have a question
7 about AR-15s. So Judge Oldham expressed concern
8 that because AR-15 receivers can be readily
9 converted into machine gun receivers, that this
10 regulation on its face turns everyone who
11 lawfully owns an AR-15 into a criminal.

12 GENERAL PRELOGAR: That is wrong. So
13 I want to be really clear about our
14 interpretation of the statute. We are not
15 suggesting that a statutory reference to one
16 thing includes all other separate and distinct
17 things that might be readily converted into the
18 thing that's listed in the statute itself.

19 So the example we give in our reply
20 brief is that a pair of pants is not regulated
21 as a pair of shorts if you have a statute
22 referring to shorts even though the pants could
23 be readily converted into shorts. That's
24 because pants are a distinct object in their own
25 right and they have a separate identity.

1 And the rule itself incorporates this
2 principle by requiring that the regulated
3 object, before you even get to a "readily"
4 analysis, has to be clearly identifiable as the
5 unfinished component part of the regulated
6 weapon.

7 So what that means is you would have
8 to say this thing is a clearly unfinished
9 component part of a machine gun, a weapon that's
10 designed to fire automatically more than one
11 shot with a single function of the trigger. But
12 you couldn't say that about an AR-15. That is
13 obviously something that's designed and intended
14 to be used for semi-automatic fire.

15 And the fact that you might be able to
16 undertake certain drilling and machining
17 operations to convert it into a machine gun
18 doesn't mean that while it has this separate
19 identity and is standing alone, it would be
20 regulated as a machine gun.

21 The agency has never held otherwise.
22 This again is the same interpretation that the
23 agency has had all along, and it has never
24 suggested that AR-15s, standing alone, are
25 regulated machine guns.

1 JUSTICE BARRETT: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Jackson?

4 JUSTICE JACKSON: So Justice Kagan
5 talked about the problem of the agency
6 potentially taking over what is Congress's
7 business, and I guess I'm worried about the
8 different concern, which is about the Court
9 taking over what Congress may have intended for
10 the agency to do in this situation. And so all
11 of my questions -- the reason why I didn't
12 really engage in the other part of this is
13 because all of my questions really for you stem
14 from that concern.

15 You -- you've phrased the question
16 presented in this case as whether certain items,
17 weapons, parts, and kits, or partially complete
18 and disassembled frames or receivers qualify as
19 firearms within the meaning of the statute. And
20 I guess I'm concerned about this framing because
21 it doesn't seem to account, in my view, for the
22 actual claim that the challengers have made
23 here, which is that the agency has exceeded its
24 statutory authority.

25 And so I'm trying to figure out how

1 we're supposed to address what I think is a
2 distinct question about the scope of the
3 agency's authority vis-à-vis the Court to fill
4 out the category of what is a firearm.

5 I mean, are we to conclude that an
6 agency exceeds its statutory authority whenever
7 it fails to choose what we think is the best
8 meaning of a statutory term? Is that how the --
9 the scope of the agency's authority to
10 promulgate a rule is supposed to be determined?
11 We just compare what the agency believes
12 qualifies as a firearm with what we think
13 qualifies as a firearm, and if the agency has
14 something in its definition that we wouldn't
15 have put there, we say the agency has exceeded
16 its authority?

17 I think those seem not right to me as
18 the way of figuring out the question of
19 exceeding the authority, and I think it can't be
20 assumed that the agency exceeds its authority
21 whenever it interprets a statutory term
22 differently than we would such that all we have
23 to do as a part of this claim here today is just
24 decide what we think a firearm is.

25 Can you react to that?

1 GENERAL PRELOGAR: Sure. So I think,
2 as in any statutory interpretation case, the
3 task of this Court is to determine what Congress
4 intended and what it meant. And we think that
5 we have clearly the best interpretation of the
6 language that Congress used, but the Court has
7 said time and again that you don't just look at
8 text, you interpret that text in context.

9 JUSTICE JACKSON: Right. But can I
10 just --

11 GENERAL PRELOGAR: And you can take
12 account of --

13 JUSTICE JACKSON: -- can -- can I take
14 you on a little bit of a -- let me just drill
15 down a little bit, right? The term we are
16 interpreting, I thought, was a category.
17 Congress has said firearms, right, and frames
18 and receivers, which it defines the firearms
19 part of it, have to be treated in a certain way.
20 And I think, in order to implement this statute,
21 the agency has to look at real-world
22 circumstances and determine what particular
23 items fit into that category.

24 I understood the delegation of this
25 entire thing to an agency to be that task.

1 That's what the agency's supposed to be doing.
2 We look at firearm. We look at the definition
3 of the firearm, says the agency, and we look at
4 things in the world, and we say X, Y, Z, those
5 are in that category.

6 My question is, when the challenge is
7 X shouldn't have been in that category, does it
8 exceed the agency's authority if the Court
9 thinks, yeah, X shouldn't have been in that
10 category? Just, you know -- I mean, the agency
11 still has the authority, I think. And, in
12 Loper, Loper seemed to recognize that Congress
13 may have given the agency the authority to make
14 certain calls, right?

15 GENERAL PRELOGAR: So -- so I think,
16 in responding to this question --

17 JUSTICE JACKSON: Yes.

18 GENERAL PRELOGAR: -- it's really
19 helpful to distinguish between the facial
20 challenge here and some of these as-applied
21 applications of the agency's determination of
22 what fits within the definition.

23 JUSTICE JACKSON: Okay.

24 GENERAL PRELOGAR: I do think that if
25 the Court concluded that Congress, in drafting

1 this statute, had, for example, categorically
2 precluded looking at time in deciding whether
3 something's readily convertible, then the agency
4 would be exceeding its authority because, of
5 course, if Congress has said in the statute you
6 can't think about time --

7 JUSTICE JACKSON: Right.

8 GENERAL PRELOGAR: -- then the agency
9 can't choose to do so.

10 JUSTICE JACKSON: Right.

11 GENERAL PRELOGAR: We are miles away
12 from that kind of situation here because all of
13 the factors the agency listed on their face are
14 consistent with the plain meaning of what it is
15 to readily convert.

16 JUSTICE JACKSON: So what you would
17 have us do is not come up with our list of what
18 items we think should be in the firearm
19 category, like we have to think about exactly
20 each thing. In this facial challenge, I think
21 you're saying we need to do something more like
22 did the agency take into account the relevant
23 factors for making the determination of what
24 goes in this category?

25 GENERAL PRELOGAR: That's right,

1 because you don't have any particular products
2 in front of you to examine in light of whether
3 they would fit the definition or not.

4 The only relevant question in this
5 case is the facial question of, does this
6 regulation conflict with anything in the Gun
7 Control Act? And our answer is no, we think
8 that this follows from the plain text of the Gun
9 Control Act and is consistent with judicial
10 precedent interpreting that plain text.

11 With respect to any follow-on
12 questions about particular products, that could
13 all be assessed as applied in light of their
14 specific facts to make a determination about how
15 the factors might cash out in an individual
16 case.

17 But, for the front-line question of
18 the agency's authority here, we think everything
19 in the Final Rule is consistent with the statute
20 Congress wrote.

21 JUSTICE JACKSON: Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Mr. Patterson.

25

1 ORAL ARGUMENT OF PETER A. PATTERSON

2 ON BEHALF OF THE RESPONDENTS

3 MR. PATTERSON: Mr. Chief Justice, and
4 may it please the Court:

5 This case turns on decisions made by
6 Congress in the Gun Control Act of 1968.

7 First, Congress altered the common
8 understanding of "firearm" to include other
9 weapons that may readily be converted to
10 firearms.

11 Second, in a departure from prior
12 federal law, Congress decided to regulate only a
13 single part of a firearm, the frame or receiver,
14 and Congress did not alter the common
15 understanding of a "frame or receiver."

16 ATF has now exceeded its authority by
17 operating outside of the bounds set by Congress.

18 One, ATF has expanded the definition
19 of "frame or receiver" to include items that may
20 readily be converted to a frame or receiver.

21 And, two, ATF has expanded the
22 definition of "firearm" to include collections
23 of parts that are not weapons and that do not
24 include a frame or receiver.

25 Some concern has been raised about

1 circumvention. But, of course, complying with a
2 statute is not circumventing it. And as this
3 Court said in *Abramski*, which has already been
4 referenced, Congress, in the Gun Control Act,
5 did not seek to pursue its purposes of
6 controlling access to firearms to the nth
7 degree.

8 And, notably, Congress did not
9 regulate the secondary market for firearms, and
10 that secondary market is a much bigger source of
11 firearms for criminals than privately made
12 firearms.

13 There also has been questions raised
14 about the agency's prior practice. There
15 definitely has been a sea change by the agency
16 here. The agency projected that its rule would
17 put 42 out of 43 unlicensed manufacturers out of
18 business.

19 And what the agency said in the
20 Syracuse litigation was they said: "An
21 unfinished frame or receiver does not meet the
22 statutory definition of 'firearm' simply because
23 it can be designed to or can readily be
24 converted into a frame or receiver." That's the
25 exact standard they've now adopted.

1 Instead, what they looked at was
2 whether critical machining operations had taken
3 place. And, to be clear, we have no quarrel
4 with that prior practice. We have raised as
5 alternatives, one, something has to be
6 completely machined, or, two, the critical
7 machining operation test.

8 And the -- the latter, we submit, is
9 more consistent with the statutory language and
10 solves the machine gun problem because, if you
11 say, in the machine gun provision, a frame or
12 receiver is also regulated, and if one hole is
13 all that separates a semi-automatic receiver
14 from a machine gun receiver, it's hard to see
15 how the "readily" standard would not also be
16 applied there.

17 I welcome the Court's questions.

18 JUSTICE THOMAS: Judge Oldham makes
19 much of the 80 percent rule that was --

20 MR. PATTERSON: Yes.

21 JUSTICE THOMAS: -- at the stage of
22 manufacture versus the ready -- what a receiver
23 or an item is capable or ready -- can readily
24 become. And we've had much discussion here
25 about "readily" this morning.

1 Is that analysis or that approach --
2 does -- does it make a difference as -- to your
3 argument whether it is the 80 percent rule or
4 the current "readily become" rule?

5 MR. PATTERSON: Yes, I think it does
6 and for at least three reasons.

7 One, we -- we submit it can't be
8 "readily" because, when Congress wanted it to be
9 "readily," it put it in the statute in multiple
10 circumstances.

11 Two, it has a different practical
12 impact, for example, in the machine gun frame
13 example. So, if it -- if the standard is
14 "readily" and the government gives as kind of
15 the paradigmatic example of "readily" drilling
16 one hole, well, if all you have to do is drill
17 one hole into a receiver to make it a machine
18 gun receiver, it's hard to see how that is not a
19 machine gun receiver.

20 And, three, the -- Congress said "the
21 frame or receiver." What Congress did not
22 include in this statute was parts that may be
23 used to convert an item into --

24 JUSTICE THOMAS: I think I'm --

25 MR. PATTERSON: -- a frame or

1 receiver.

2 JUSTICE THOMAS: -- a bit more
3 interested in how the 80 percent rule operated.
4 We've -- we've heard --

5 MR. PATTERSON: Yes.

6 JUSTICE THOMAS: -- much about the
7 "readily" this morning --

8 MR. PATTERSON: Yes.

9 JUSTICE THOMAS: -- and -- and whether
10 or not that change actually took place and
11 whether it really matters.

12 MR. PATTERSON: Yes, it does really
13 matter. And just the 80 percent rule is kind of
14 a colloquialism used in the industry. What the
15 governing standard was was called the critical
16 machining operations test.

17 And what the agency would do, based on
18 what the definition of a frame or receiver is,
19 the part that holds the essential firing and
20 sealing components of a firearm, would say:
21 We're going to look at that part of the firearm
22 and see if critical machining operations have
23 taken place.

24 And then, as a crosscheck, there
25 sometime would be temporal considerations. This

1 is what the agency said in the Syracuse
2 litigation. Temporal considerations were tied
3 to the degree of machining. It was kind of like
4 a lodestar crosscheck in a fees case.

5 So they would look at those temporal
6 considerations. But where the different --
7 where the difference would be made -- and we can
8 see this very clearly in the regulation of the
9 AR-15 lowers, and that is the same piece of
10 metal can be considered a frame or receiver
11 depending on what is sold with it.

12 Under the old standard, you would look
13 at the item itself, and that's what Congress did
14 in the Act. They said: Look at the item
15 itself. It did not say: Look at other things
16 that may be used to convert that item into a
17 frame or receiver.

18 And that's what the agency is now
19 doing, for example, with looking at the jigs
20 because, really, what is being done is that jig
21 is being regulated because the same piece of
22 metal can either be a frame or receiver
23 depending on what is sold with it.

24 JUSTICE JACKSON: But I thought --

25 CHIEF JUSTICE ROBERTS: What would --

1 JUSTICE JACKSON: -- "readily
2 convertible" was in the statute.

3 MR. PATTERSON: "Readily convertible"
4 is in the statute under part (A).

5 JUSTICE JACKSON: Okay.

6 MR. PATTERSON: It is not in the
7 statute under part (B). So then you cannot --
8 it would be very odd to say that, well, we're
9 going to say "readily convertible" is a implicit
10 in every term.

11 JUSTICE JACKSON: For a frame and
12 receiver.

13 JUSTICE SOTOMAYOR: Counsel --

14 JUSTICE JACKSON: But does the
15 80 percent rule apply then to part A?

16 I'm just trying to understand your
17 answer to Justice Thomas with respect to the
18 80 percent rule.

19 MR. PATTERSON: Yes. And, again,
20 understanding that we're using 80 percent rule
21 --

22 JUSTICE JACKSON: Yes. Yes.

23 MR. PATTERSON: -- as a stand-in for
24 critical machining operations. No, that part --
25 applies to part (B). That is what the agency

1 would look at to determine whether something had
2 become a frame or receiver. And -- and if
3 you're --

4 JUSTICE SOTOMAYOR: Counsel, doesn't
5 that --

6 MR. PATTERSON: Yeah.

7 JUSTICE SOTOMAYOR: -- give your game
8 away? Once you admit that you need to figure
9 out when something has become a finished
10 product, you have to have a standard to decide
11 that. And you're saying the standard has to be
12 something along -- that -- that goes to
13 manufacturing.

14 The SG is saying: Yes, that's just a
15 silent way of saying, has the manufacturing gone
16 far enough to make this essentially a -- a -- a
17 frame or receiver? Can it be converted to be
18 fully functional? That's what they're saying,
19 that the two are doing exactly the same thing.

20 You prefer one because you want to
21 sell frames without a serial number or -- or
22 sell frames that you have to drill a hole in and
23 say that's not regulated.

24 They're saying a hole is really not a
25 critical component of the frame. Everything

1 else is.

2 MR. PATTERSON: Well --

3 JUSTICE SOTOMAYOR: So I -- I -- I --
4 I'm having difficulty understanding, once you
5 admit that some sort of test is necessary, why
6 this particular test exceeds their statutory
7 authority --

8 MR. PATTERSON: Yes. And so --

9 JUSTICE SOTOMAYOR: -- since it's only
10 a different way of getting to the same thing.

11 MR. PATTERSON: Understood.

12 JUSTICE SOTOMAYOR: Do I have enough
13 of a frame or receiver to call it a frame and
14 receiver.

15 MR. PATTERSON: Understood. And to be
16 clear, we provided the Court two alternatives.

17 One is that all of the machining
18 operations have taken place. So, if you were to
19 say this was a sculptor, all the chiseling has
20 been done, everything's been done, that this can
21 now function as a frame or receiver.

22 JUSTICE SOTOMAYOR: Well, you --

23 MR. PATTERSON: Our alternative --

24 JUSTICE SOTOMAYOR: -- are you -- you
25 don't disagree that taking a tab off a frame --

1 is that a completed frame?

2 MR. PATTERSON: I -- I think -- I
3 don't think taking a tab off, if you could do it
4 with your finger, that's not --

5 JUSTICE SOTOMAYOR: All right.

6 MR. PATTERSON: -- like actually
7 removing material that's --

8 JUSTICE SOTOMAYOR: So, if you have to
9 drill a hole to attach it to something, that's
10 not a completed frame?

11 MR. PATTERSON: Well, this is where
12 the difference between the two alternatives that
13 we have given the Court comes in.

14 Under the first alternative, drilling
15 a single hole would be what would make it cross
16 the line. And the government admits that
17 sometimes drilling a single hole can be the
18 difference between a semi-automatic receiver and
19 a machine gun receiver. And a machine gun
20 receiver is much more heavily regulated than a
21 semi-automatic receiver. So the notion that
22 just one hole separating something from another
23 item is somehow absurd is clearly not the case.

24 But the alternative we've given you is
25 the critical machining operations test, and that

1 is different from the government's new test
2 because, A, it's not conflicting with the
3 statute by taking language from another part of
4 the statute that's not there and putting it
5 there and where the government represented in
6 the Syracuse litigation in 2021 we can't do
7 that.

8 JUSTICE GORSUCH: Let me --

9 CHIEF JUSTICE ROBERTS: Counsel --

10 MR. PATTERSON: Yes.

11 JUSTICE GORSUCH: -- come at it -- oh,
12 I'm sorry, Chief, please.

13 CHIEF JUSTICE ROBERTS: Just what
14 would -- what is the purpose of selling a
15 receiver without the holes drilled in it?

16 MR. PATTERSON: Well, the -- some
17 individuals -- just like some individuals enjoy,
18 like, working on their car every weekend, some
19 individuals want to construct their own firearm.
20 So the purpose of selling it is to allow --

21 CHIEF JUSTICE ROBERTS: Well, that
22 would be -- I'm sorry, go ahead.

23 MR. PATTERSON: -- is to assist and
24 provide individuals with material with which
25 they can do that.

1 CHIEF JUSTICE ROBERTS: Well, I mean,
2 drilling a hole or two, I would think, doesn't
3 give the same sort of reward that you get from
4 working on your car on the weekends.

5 MR. PATTERSON: Well, I would
6 encourage the Court to read the Vasquez brief.

7 This is not a easy thing necessarily
8 to do and particularly the Press Democrat
9 article cited there, where the reporter engaged
10 to show how easy this was and, in fact, showed
11 that he couldn't actually do it. He had to
12 engage friends to help him complete this that
13 were expert in firearms.

14 And the -- and even once you have a
15 complete frame, it's not a trivial matter to put
16 that together. There are small parts that have
17 to be put in precise locations. And that
18 reporter, he could not -- he couldn't put it
19 together from the completed frame. So it's not
20 clear that it is a trivial -- it is clearly not
21 a trivial proposition for someone to do this.

22 CHIEF JUSTICE ROBERTS: Well --

23 JUSTICE GORSUCH: Counsel --

24 CHIEF JUSTICE ROBERTS: -- I don't
25 know the skills of the particular reporter, but

1 my understanding is, is that it's not terribly
2 difficult for someone to do this, and it's
3 certainly not terribly difficult to take the
4 plastic piece out. That's -- is that part of
5 the gunsmithing?

6 MR. PATTERSON: Well, the plastic rail
7 -- the parts that are blocking the rails in the
8 product that's been highlighted, that has to be
9 taken out. It -- it's recommended that you put
10 it on a drill press vise and use a drill press
11 with a specialized bit to take that away. And
12 Polymer80 explicitly recommends against using
13 against a -- using a Dremel. They say that
14 could damage the product.

15 And I know we don't have any
16 particular product at issue here, but the point
17 is that with -- what Congress said is that we
18 want to regulate the frame or receiver itself.
19 And there's got to be some point, there's going
20 to be a line --

21 CHIEF JUSTICE ROBERTS: I guess what
22 I'm --

23 MR. PATTERSON: Yes.

24 CHIEF JUSTICE ROBERTS: -- I'm
25 suggesting that if someone who goes through the

1 process of drilling the one or two holes --

2 MR. PATTERSON: Right.

3 CHIEF JUSTICE ROBERTS: -- and taking
4 the plastic out, he really wouldn't think that
5 he has built that gun, would he?

6 MR. PATTERSON: You know, I -- I don't
7 know what that person would think, but I think
8 he would. It's not a simple proposition. Even
9 the individuals that the government cited that
10 took 21 minutes to put something together wasn't
11 counting the time for the person to acquire the
12 tools, learn how to use the tools -- this person
13 was a mechanic, so they knew how to do these
14 things -- or the time to learn how to machine
15 the object. That person spent two hours
16 watching instructional materials before starting
17 to put that item together. And even after that
18 21 minutes, the person had done it incorrectly
19 and it needed to be repaired.

20 JUSTICE GORSUCH: Counsel, I'd like to
21 circle back --

22 MR. PATTERSON: Yes.

23 JUSTICE GORSUCH: -- to Justice
24 Sotomayor's question on -- on (B).

25 MR. PATTERSON: Yes.

1 JUSTICE GORSUCH: I -- I -- I -- I
2 take that one position might be it has to be a
3 complete frame or receiver --

4 MR. PATTERSON: Yes.

5 JUSTICE GORSUCH: -- because there's
6 no indication of "readily converted" the way
7 there is in (A).

8 MR. PATTERSON: Right.

9 JUSTICE GORSUCH: All right. I've got
10 that argument. But I think you've suggested
11 that, no, we accept that there are incomplete
12 frames or receivers that count. This is indeed
13 an artifact noun. And -- and, if that's true --
14 well, first of all, is that true?

15 MR. PATTERSON: Well, we've given our
16 --

17 JUSTICE GORSUCH: Do you concede that?

18 MR. PATTERSON: Our primary argument
19 is no, it's got to be complete, but we've given
20 an alternative argument --

21 JUSTICE GORSUCH: Okay.

22 MR. PATTERSON: -- that, okay, it
23 could be an artifact now, but, if it is, the
24 test should be critical machining and not
25 readily converted.

1 JUSTICE GORSUCH: Let me -- let me
2 press on the first argument.

3 MR. PATTERSON: Yes.

4 JUSTICE GORSUCH: Why wouldn't this be
5 an artifact noun in this statute given (A),
6 which does suggest incomplete things can count;
7 (C), you know, mufflers and silencers; (D),
8 other destructive devices which don't have a
9 traditional receiver? I think the examples
10 we've been given are umbrella guns and pen guns
11 and things like that.

12 Why wouldn't that be an indication
13 that here, if not throughout the U.S. Code,
14 Congress was using an artifact noun?

15 MR. PATTERSON: I would think the
16 inference would be precisely the opposite
17 because Congress put that language specifically
18 into those neighboring statutes, words like
19 "converted" or words like "collections of
20 parts." So it would be odd to say that in this
21 particular place where Congress has taken
22 special care to use that sort of language, when
23 Congress wanted that language to be applied, to
24 say, well, we're just going to infer that it
25 also applies here, where Congress did not put

1 that language.

2 And I think it could -- again, as I've
3 said, it could wreak havoc with the firearm laws
4 because there are a lot of things that can be
5 readily converted. A -- a traditional rifle can
6 be converted to a short-barreled rifle in
7 minutes with -- with a hacksaw or by swapping in
8 a shorter barrel.

9 So, if -- this concept, "readily
10 converted," Congress only put it into specific
11 places. And we can see in the machine gun
12 provision Congress said "readily restored"
13 instead of "readily converted." So we need to
14 be very precise here.

15 And in -- and in terms of why we would
16 pick critical machining operations instead of
17 readily converted, if we're looking for evidence
18 of meaning, if we're not going to say it has to
19 be completed, well, one evidence of meaning was
20 what did ATF and the industry, working together
21 over a period of years, arrive at? And what
22 they arrived at was this critical machining test
23 because it does not pose these same problems as
24 readily converted would potentially with other
25 provisions of the Code, and it also is more

1 consistent with the statute by not importing
2 "readily" into a place where Congress chose not
3 to put it.

4 JUSTICE GORSUCH: Thank you.

5 JUSTICE BARRETT: But it doesn't
6 appear in the statute. It seems a little made
7 up, right, the critical machining test. I mean,
8 your other test, I think, has the problem of
9 pulling a tab off the front and -- and saying,
10 okay, now it's a frame or receiver, but it
11 wasn't before you pulled the tape. But the
12 critical machining doesn't really come from the
13 statute; it's just sort of a way of allowing for
14 a de minimis exception, right?

15 MR. PATTERSON: Well, I wouldn't say
16 that, Your Honor. And, first, we wouldn't --
17 even under our primary test, I think it's -- if
18 it's machined, so, you know, if you think of the
19 sculptor when everything's been sculpted, if
20 something is put on to protect it or something
21 and it just has to be pulled off, I wouldn't
22 call that machining.

23 So I think it's -- once all the holes
24 have been drilled, all the material has been
25 removed that requires tools to remove, that

1 would be our primary test.

2 But then, under the secondary test, so
3 it would come from the language of "frame or
4 receiver." And I think you would say, okay,
5 this is an artifact noun, but then what does
6 that artifact noun mean? We have to still
7 determine at what point something is a frame or
8 receiver.

9 And we think the evidence of meaning
10 of the agency and the others in the industry who
11 are very keenly interested in this question,
12 working it out over a period of years and
13 saying, okay, here is this test that we have
14 come up with, this critical machining test, it's
15 much better attested than "readily" --

16 JUSTICE JACKSON: But isn't --

17 MR. PATTERSON: -- in terms of what --

18 JUSTICE BARRETT: So would you say
19 that it's like the ordinary usage? Now
20 everybody just understands based on longstanding
21 practice that this critical machining test is
22 the point at which the frame or receiver --

23 MR. PATTERSON: Correct. And it's not
24 that we're deferring to that, but that's the
25 best evidence we have of what this means.

1 JUSTICE ALITO: In -- in ordinary
2 usage, an object that is created to perform a
3 function may still be called by the name that's
4 attached to that object even if it is not
5 completely functional. Isn't that what this
6 gets at?

7 MR. PATTERSON: I don't believe that
8 this is what it gets at. And there are two
9 provisions here --

10 JUSTICE ALITO: Well, before you --

11 MR. PATTERSON: Oh. Yes.

12 JUSTICE ALITO: -- walk away from
13 that, I mean, let me give you an example.

14 MR. PATTERSON: Okay.

15 JUSTICE ALITO: Suppose I see that my
16 neighbor is restoring a classic car, and -- but
17 he's taken out the -- some critical parts. And
18 then someone says, well, what is that? And I --
19 I might well say, well, that's a 1957
20 Thunderbird, even though you couldn't drive it
21 and it would take some work to make it do the
22 thing that it was originally created to do.

23 So isn't that what -- isn't that the
24 essence of your backup argument? The thing must
25 still be such that one would call it a frame or

1 receiver even if it is not fully ready to be
2 functional as a -- as a frame or receiver at
3 this time?

4 MR. PATTERSON: Yes. Yes. So our
5 primary argument is it would have to be, and so
6 I think -- you could think of the situation with
7 the car and you ask your neighbor can I borrow
8 your car, and you give him the car with the
9 engine taken out, they would probably say that's
10 not a car. But also, the backup, yes, is that
11 at some point, something is a car even if it
12 can't currently perform that function and --

13 JUSTICE ALITO: So what exactly does
14 this -- does the critical manufacturing --
15 critical machining test involve? What does that
16 mean? Explain it to somebody who -- you know,
17 to a layperson.

18 MR. PATTERSON: Yes. So a frame or
19 receiver is basically the part of a firearm that
20 holds the components that allow a firearm to
21 function, so the firing mechanism, the trigger
22 and such, and the sealing component that makes
23 sure that the barrel is sealed off so that the
24 round goes out of the barrel and the energy from
25 the explosion doesn't go elsewhere.

1 So what the critical machining
2 operations test was is, okay, we're going to
3 focus on the parts of the frame or receiver that
4 either have the holes drilled or material
5 removed that are going to hold those parts, and
6 we're going to see, have those operations been
7 performed or been performed to some degree? And
8 if they have, we're going to say that's a frame
9 or receiver.

10 And what's important is that this
11 solves the one hole in the AR-15 lower problem
12 because the critical machining operation for
13 that machine gun receiver would be drilling that
14 final hole. So, until that final hole is
15 drilled or at least indexed, as the government
16 has indicated, that critical machining operation
17 has not taken place.

18 But, if the question is "readily,"
19 then it would be hard to see, well, how it could
20 be readily in this context and not readily in
21 the machine gun context.

22 JUSTICE JACKSON: So you prevented the
23 -- you presented the Court with the critical
24 machining alternative, and you say you have
25 these two alternatives. The agency has

1 presented yet another way of going about this.

2 Do you concede that under a facial
3 challenge like the one that you've brought, your
4 task is actually to demonstrate that your
5 alternatives are the only permissible ones under
6 the statute?

7 MR. PATTERSON: Well, I think it's --
8 under a rule of party presentation, we've
9 presented the Court with the alternatives that
10 have occurred to anyone. So I think these are
11 the best alternatives that have occurred.

12 JUSTICE JACKSON: So you see the
13 question as what is the best alternative, and
14 the Court is just supposed to say we have three
15 options here, which one do we think the best;
16 the agency didn't pick the best, its rule is
17 stricken?

18 MR. PATTERSON: Well -- well, I think
19 we actually don't have that -- I think our
20 burden is to show that the agency's is wrong.
21 Maybe we don't have the right interpretation,
22 but, if their interpretation is incorrect, then
23 they're asking the wrong question. As --

24 JUSTICE JACKSON: But, by "incorrect,"
25 you mean that they don't have the authority

1 under the statute to reach that, the -- it's --
2 it's inconsistent with the statute?

3 MR. PATTERSON: Correct. If "frame or
4 receiver" does not include items that may
5 readily be converted to frames or receivers,
6 then this rule is beyond their authority
7 regardless of what "frame or receiver" does
8 mean. So they've gone beyond their authority.

9 And so, you know, we've prevent --
10 presented the Court with two alternatives that
11 we think are better interpretations. But the
12 key point here is that the agency's
13 interpretation is incorrect.

14 JUSTICE JACKSON: Do you believe that
15 a weapon that has been disassembled -- a -- a
16 firearm, a gun that was once fully operational,
17 everyone would agree was a firearm, it's
18 disassembled, as sometimes happens, maybe even
19 after a crime, is that still a firearm or no
20 under your view?

21 MR. PATTERSON: Yes and for two
22 reasons --

23 JUSTICE JACKSON: Okay.

24 MR. PATTERSON: -- if I can give it.
25 So the first reason is that will have a frame or

1 receiver. So that's what Congress put in the
2 statute to ensure --

3 JUSTICE JACKSON: In my hypo --

4 MR. PATTERSON: -- that that would be
5 a firearm.

6 JUSTICE JACKSON: -- the frame or
7 receiver is not in the box.

8 MR. PATTERSON: Oh, then no.

9 JUSTICE JACKSON: It's not.

10 MR. PATTERSON: If you don't have the
11 frame or receiver, then, no, it's not a weapon.

12 JUSTICE JACKSON: Okay. So all that
13 matters really is (B), the frame or receiver?

14 MR. PATTERSON: Well, that is how the
15 statute is structured, and part of that may be
16 due to statutory history.

17 So, before this statute, the
18 definition was "any weapon that is designed to
19 expel a projectile by the action of an explosive
20 ans any part or parts of any such weapon." And
21 I think we can --

22 JUSTICE JACKSON: Well, what's all
23 that language doing in there if all that matters
24 for the purpose of the definition is that it has
25 a frame or receiver?

1 MR. PATTERSON: Well, I -- and -- and
2 so what I was going to say, Your Honor, is that
3 Congress was working from that background, and
4 they said: Okay, we're going to alter the
5 definition of (A) to include "readily
6 convertible" weapons, and we -- we're going to
7 alter the definition of (B), instead of
8 including "every part," to focus on a particular
9 part, the frame or receiver, and it's the frame
10 or receiver of any such weapon.

11 So it really could -- so I think that
12 explains, that's why it's structured that way.
13 It's maybe not the most straightforwardly
14 structured statute, but it could be "the frame
15 or receiver of," and then insert (A), instead of
16 "any such weapon." That's really how the
17 statute is structured, a frame or receiver --

18 JUSTICE SOTOMAYOR: I'm sorry, could
19 you clarify for me what you mean?

20 Assume that there's all the parts of a
21 gun and -- a -- a weapons kit with all the parts
22 of the gun, but the receiver or the frame has a
23 hole missing. So that's the weapon parts kit.

24 MR. PATTERSON: Right. Right.

25 JUSTICE SOTOMAYOR: Is it your

1 position that under (A), assuming we were to
2 find --

3 MR. PATTERSON: Mm-hmm.

4 JUSTICE SOTOMAYOR: -- that "readily
5 convertible" does include some -- some drilling
6 some holes --

7 MR. PATTERSON: Right.

8 JUSTICE SOTOMAYOR: -- et cetera, just
9 like a starter gun, to make it a weapon, would
10 that be covered under (A)?

11 MR. PATTERSON: I don't think -- I
12 think whether it would be covered would turn on
13 the interpretation of (B). If the Court
14 accepted our backup argument --

15 JUSTICE SOTOMAYOR: Ah, now that's --
16 okay.

17 MR. PATTERSON: -- and that critical
18 --

19 JUSTICE SOTOMAYOR: So what you're --
20 you're taking out of (B) "readily convertible"
21 and also taking it out of (A)?

22 MR. PATTERSON: No, we're not taking
23 it out of (A) because -- and it's because of
24 what (A) was meant to cover, and that is the
25 starter guns that practically were guns. They

1 had handgun frames --

2 JUSTICE SOTOMAYOR: You have no --

3 MR. PATTERSON: -- but the barrel had
4 to be --

5 JUSTICE SOTOMAYOR: -- you have no
6 quarrel with the proposition that the agency
7 can, within whatever the statute limits it to
8 do, to determine what makes a completed or
9 nearly -- or -- a -- a completed frame or
10 receiver?

11 MR. PATTERSON: I'm not sure I
12 understand the question. But we have no
13 quarrel, as the alternative which we presented,
14 with the critical machining test and in the
15 hypothetical Your Honor presented with a single
16 hole --

17 JUSTICE SOTOMAYOR: Thank you,
18 counsel.

19 MR. PATTERSON: -- that likely would
20 meet that test.

21 CHIEF JUSTICE ROBERTS: Anything
22 further?

23 Thank you, counsel.

24 Rebuttal, General?

25

1 REBUTTAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR

2 ON BEHALF OF THE PETITIONERS

3 GENERAL PRELOGAR: Thank you.

4 Mr. Chief Justice, I want to begin
5 with a question you asked about why
6 manufacturers would leave these holes undrilled.
7 You said: What is the purpose?

8 My friend responded that it's to
9 create a kit that hobbyists can put together. I
10 think that that's a questionable proposition
11 given that if it only takes 20 minutes, the
12 hobbyist is probably not going to get his
13 money's worth and won't actually have the
14 experience of building a gun.

15 But I also think it's contradicted by
16 the facts on the ground because what the
17 evidence shows is that these guns were being
18 purchased and used in crime. They were sold to
19 be crime guns. There was a 1,000 percent
20 increase between 2017 and 2021 in the number of
21 these guns that were recovered as part of
22 criminal investigations.

23 And it makes perfect sense because the
24 whole reason why you would want to get your
25 hands on one of these unserialized, untraceable

1 firearms is if you are a prohibited person or
2 you want to use that gun in a crime.

3 And more fundamentally, if there is a
4 market for these kits for hobbyists, they can be
5 sold to hobbyists. You just have to comply with
6 the requirements of the Gun Control Act.

7 Someone who is lawfully allowed to
8 possess a firearm and wants to build it can
9 purchase that kit if they undergo a background
10 check. And so, if there is a market for these
11 products, they can operate under the statute.

12 The evidence shows that actually, the
13 market for ghost guns essentially collapsed
14 after this rule was permitted to go into effect,
15 which I think just underscores what was evident
16 all along: The reason why you want a ghost gun
17 is specifically because it's unserialized and
18 can't be traced.

19 On the question of a frame or
20 receiver, Justice Sotomayor, you asked questions
21 about exactly what standard governs here, and I
22 think it's helpful to break down the
23 interpretive question into two points.

24 The first one is this is an undefined
25 term in the statute, does it require the weapon

1 to be functional? We think the answer to that
2 is no. If you are missing a single hole, then
3 you can clearly recognize that as an unfinished
4 component part of a weapon, and it is readily
5 convertible to function. And that fits within
6 the plain dictionary definition of what a frame
7 or receiver is understood to be, no different
8 than a bicycle missing pedals or a tennis racket
9 that is sold unstrung.

10 We have a picture of this on page 34
11 of our brief, what these frames and receivers
12 look like, and it's hard to know what else to
13 call them because they look exactly like the
14 principal structural component of a gun.

15 But that just raises the follow-on
16 question: Okay, if it doesn't have to be
17 functional, exactly what standard should you use
18 to measure when it is a frame or receiver
19 regulated by the statute?

20 And there are good reasons why ATF
21 focused on whether it can be readily
22 convertible.

23 First, that's most consistent with how
24 Congress has approached this issue when it has
25 defined terms under the federal firearms laws.

1 That's the standard that Congress itself uses to
2 mark the terrain of what products are regulated.

3 Second, there is a consistent agency
4 practice here of applying that "readily
5 converted" standard.

6 My friend, several times, tried to
7 suggest that the 50-plus years of agency
8 practice instead focused on whether it has
9 reached a critical stage of manufacture. But
10 that's ignoring the actual elements cited in the
11 classification letters.

12 They looked not just at what had been
13 done to the gun but what steps remained, how
14 much time it would take to perform those
15 functions, what equipment you would need to make
16 that functional, what kind of skill you would
17 need, and whether there are other parts.

18 None of those elements go to what has
19 already been machined on that particular frame
20 or receiver. Instead, they are centrally
21 relevant to whether it can be readily converted
22 to function, just as the agency has said all
23 along.

24 For a third reason, that means that
25 this is a standard that is familiar in the law

1 and familiar to industry. I think it's really
2 notable here that we don't have the major gun
3 manufacturers suing us about this Final Rule,
4 and the reason for that is because this "readily
5 converted" standard is the one that has governed
6 their conduct ever since the Gun Control Act was
7 enacted.

8 That also means that there is a stable
9 body of judicial precedent and agency practice
10 to draw on here in further answering concerns
11 about whether particular types of products will
12 be regulated, which I think, Justice Kavanaugh,
13 also answer some of the concern about how the
14 regulated parties will know whether their
15 conduct falls within the scope of the law.

16 Finally, in thinking about
17 Respondents' primary argument here, which is
18 that a single undrilled hole is enough to exempt
19 a product from regulation, I think the Court
20 doesn't have to blind itself to the practical
21 ramifications of that rule.

22 The agency's interpretation reflected
23 in this rule is the status quo. It is how the
24 law has been applied over 50 years. And if this
25 Court now says that one undrilled hole is enough

1 to exempt these products from regulation, then
2 that is going to be a sea change in how the Gun
3 Control Act is implemented.

4 At that point, it can't serve out its
5 function because all manufacturers everywhere
6 could simply exempt their products from
7 regulation through that simple expedient, and
8 that means that going forward, all guns could
9 become ghost guns.

10 This Court said 200 years ago in *The*
11 *Emily* that you don't have to interpret a statute
12 to be self-defeating like that if there is a
13 plausible alternative construction.

14 Our construction is not only
15 plausible, it is the best reading of this
16 statute looking at text, context, purpose, and
17 history, so I'd encourage the Court to say that
18 and reverse the Fifth Circuit.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 General, counsel.

21 The case is submitted.

22 (Whereupon, at 11:21 a.m., the case
23 was submitted.)

24

25

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