

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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1 P R O C E E D I N G S

2 (10:05 a.m.)

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

6 General Prelogar.

7 ORAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR
8 ON BEHALF OF THE PETITIONERS

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

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

21 But, in recent years, companies like
22 the Respondents here have tried to circumvent
23 those requirements. They've begun selling
24 firearms as easy-to-assemble kits and frames and
25 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 right -- this has
11 been regulated for half a century. But it
12 wasn't regulated in this way for a half century.
13 What was the -- the original reg, the previous
14 reg?

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

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

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

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

1 completed.

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

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

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

1 to look at how close it is to the final product
2 and what steps you need to take to turn that
3 into a functional frame or receiver.

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

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

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

1 words, whether the standards that ATF set forth
2 in the rule are themselves contradicted by the
3 statute and, therefore, foreclosed by the
4 statute.

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

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

22 You didn't go that route.

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

25 JUSTICE SOTOMAYOR: I agree.

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

7 JUSTICE SOTOMAYOR: How about the --

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

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

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

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

1 promulgation of this rule.

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

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

18 JUSTICE SOTOMAYOR: Thank you.

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

21 GENERAL PRELOGAR: That's --

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

24 GENERAL PRELOGAR: Sure. So that's an
25 undefined term, and we think it therefore

1 carries its plain dictionary definition as an
2 instrument of offensive or defensive combat.

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

10 JUSTICE ALITO: It may --

11 GENERAL PRELOGAR: There's an express
12 reference --

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

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

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

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

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

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

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

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

21 GENERAL PRELOGAR: Oh, sure.

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

25 GENERAL PRELOGAR: I don't think that

1 that's a grocery list, but the reason for that
2 is because there are a lot of things you could
3 use those products for to create something other
4 than a grocery list.

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

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

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

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

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

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

24 JUSTICE ALITO: Okay. So that's
25 helpful. So your definition is a -- a -- a

1 group of components that are -- can readily be
2 converted into something and have no other use.
3 They must have no other use in order to
4 constitute that thing?

5 GENERAL PRELOGAR: In the
6 circumstance --

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

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

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

18 All right. Thank you.

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

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

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

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

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

24 JUSTICE KAGAN: And --

25 JUSTICE BARRETT: Can I -- I -- oh.

1 JUSTICE KAGAN: Go ahead.

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

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

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

23 So they were generally purchased as
24 components or things that were, you know, able
25 to be converted or made -- like, it would make

1 sense to think about it in terms of parts?

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

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

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

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

25 It's hard for me to see how a weapon

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

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

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

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

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

1 gun, you know, if it had just said something
2 that functions as a gun, that would be limited
3 to operational weapons.

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

6 JUSTICE GORSUCH: Got you. I'm -- I
7 follow all of that.

8 GENERAL PRELOGAR: Yep. So then in --
9 in --

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

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

19 JUSTICE GORSUCH: How --

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

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

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

6 What -- what -- what's -- what are
7 your thoughts?

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

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

17 But then the second question arises --

18 JUSTICE GORSUCH: But -- I -- if --
19 I -- if -- if --

20 GENERAL PRELOGAR: -- that you touched
21 on --

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

1 argument --

2 GENERAL PRELOGAR: Yeah.

3 JUSTICE GORSUCH: -- right? Lenity,
4 notice, fair notice to people that -- every
5 piece of paper and pen is a grocery list, you --
6 you're on notice of that. But is there
7 something particular to this statute that you
8 think would -- a more narrow approach?

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

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

25 JUSTICE GORSUCH: Well, I -- if you

1 have something textual, I'd love for you to
2 point me to that and also address -- your
3 friends on the other side I'm sure are going to
4 make something of this, that as recently as
5 2021, in a brief filed in the Southern District
6 of New York, the government represented that an
7 unfinished frame or receiver does not meet the
8 statutory definition of "firearm."

9 GENERAL PRELOGAR: Sure. So let me
10 take those in turn.

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

20 JUSTICE GORSUCH: Does it help --

21 GENERAL PRELOGAR: -- does no work.

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

1 help you?

2 GENERAL PRELOGAR: I -- I think that
3 that just goes to show that Congress was trying
4 to broadly cover the scope of products that can
5 qualify as firearms, and it certainly refutes
6 Respondents' suggestion here that every covered
7 object under the statutory definition needs to
8 have a traditional frame or receiver.

9 JUSTICE GORSUCH: You know, that's why
10 I'm wondering whether we can -- what -- whether,
11 looking at (C) and (D) and (A), which, as you
12 say --

13 GENERAL PRELOGAR: Right.

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

20 GENERAL PRELOGAR: Yes, I think you
21 certainly could adopt that interpretation, and
22 that contextual surrounding evidence strongly
23 supports our arguments in this case.

24 I don't want to lose track of your
25 question about the brief --

1 JUSTICE GORSUCH: Yeah.

2 GENERAL PRELOGAR: -- the district
3 court filing --

4 JUSTICE GORSUCH: Yeah.

5 GENERAL PRELOGAR: -- in the Syracuse
6 case. I want to be really care -- clear that I
7 think Respondents are fundamentally misreading
8 that brief. They suggest that the brief stood
9 for the principle that ATF was arguing that a
10 frame or receiver has to be fully functional to
11 qualify.

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

20 So there is no dramatic break in the
21 way that ATF has regulated throughout the
22 entirety of the statute's history.

23 JUSTICE GORSUCH: Well, I'll look at
24 that again. And then last question from me and
25 I'm sorry to take up so much time. In the

1 regulation, it indicates that a frame or
2 receiver -- and I'm -- I'm stuck on this (B)
3 point --

4 GENERAL PRELOGAR: Mm-hmm.

5 JUSTICE GORSUCH: -- which has been
6 cut into pieces is still a firearm --

7 GENERAL PRELOGAR: So this has --

8 JUSTICE GORSUCH: -- but -- but -- but
9 one that's been shredded is not. Now I'm not
10 sure what the difference between "cut into
11 pieces" and "shredding" is, but perhaps you can
12 in -- enlighten me and help me there.

13 GENERAL PRELOGAR: So this refers to,
14 when you already have a fully complete and
15 functional firearm, what steps you would need to
16 undertake to formally destroy that firearm and
17 exempt it from regulation. Those are not
18 provisions --

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

21 GENERAL PRELOGAR: So, once you
22 actually have already brought something within
23 the regulatory scope of the statute, the -- the
24 statute itself and the agency's regulations
25 require that it be destroyed, which is a

1 specialized term in the firearms industry.

2 I can tell you as a factual matter
3 that the most common way that you destroy a
4 firearm is to torch-cut it in -- in -- with
5 three specified cuts that ATF has provided --

6 JUSTICE GORSUCH: Well, the -- the --
7 I --

8 GENERAL PRELOGAR: -- guidance about.

9 JUSTICE GORSUCH: -- this is -- this
10 is -- I'm sorry to interrupt, but this is
11 actually about frames and receivers that I'm
12 talking about, and it's 48 -- 478.12(c) and (e).

13 GENERAL PRELOGAR: (C) -- yes.

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

22 GENERAL PRELOGAR: So that comes, as
23 you mention, from 478.12(e), which I should note
24 Respondents haven't challenged in this case. It
25 tees up a distinct statutory issue about what it

1 takes to destroy a frame or receiver or a
2 regulated object once you already have a
3 firearm. They aren't challenging that here.
4 And the only thing that is before the Court is
5 the definition in (B), recognizing that --

6 JUSTICE GORSUCH: Right, but -- but
7 it --

8 GENERAL PRELOGAR: -- you don't need a
9 fully functional firearm in the first place to
10 have --

11 JUSTICE GORSUCH: No, but it
12 illuminates what is a sufficiently complete
13 frame or receiver if a complete frame or
14 receiver is not a firearm. And the only way I
15 can be sure that I don't have a fully complete
16 or nearly complete or convertibly complete frame
17 or receiver and therefore a firearm is to shred
18 it but not cut it into pieces.

19 GENERAL PRELOGAR: Oh. No, let me --
20 let me try to clarify that --

21 JUSTICE GORSUCH: Yeah, that --
22 they --

23 GENERAL PRELOGAR: -- because that's
24 not accurate at all.

25 JUSTICE GORSUCH: Okay. Right.

1 GENERAL PRELOGAR: As the regulation
2 itself makes clear, you don't even get to the
3 question of asking whether it's regularly --
4 readily converted into functional shape unless
5 you have the clearly identifiable unfinished
6 component part, so you have something that is
7 already well along the way to being a frame or
8 receiver, and that's when you would conduct the
9 readily converted inquiry.

10 And there is nothing in the rule or in
11 the agency's past practice to suggest that
12 anything that isn't shredded or cut up or
13 absolutely destroyed is going to be considered a
14 frame or receiver. That would be entirely
15 inconsistent with how the agency has
16 implemented --

17 JUSTICE GORSUCH: Okay. Thank you.

18 GENERAL PRELOGAR: -- the statute all
19 along.

20 JUSTICE GORSUCH: Thank you.

21 JUSTICE BARRETT: General --

22 JUSTICE ALITO: Under the rule, what
23 percentage of the parts of a firearm kit must --
24 must be included in order for it to be a firearm
25 kit?

1 GENERAL PRELOGAR: So these kits
2 always come with a frame or receiver. And I
3 think that that's going to be a necessary part.
4 That's usually the part that needs just a couple
5 of holes drilled or pieces of plastic removed.
6 And then the weapon parts kits generally come
7 with the additional components that will allow
8 you to form a fully functioning gun.

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

22 Again, in this facial challenge, I
23 don't think it's necessary for the Court to
24 consider all of the possible permutations of how
25 this could play out with respect to different

1 types of products. The thing that you need to
2 be asking is, did the agency reasonably define
3 the term "readily"? And it did because it gave
4 it its ordinary definition of a process that's
5 quick, easy, and efficient. And then did the
6 agency identify relevant factors? And I think
7 it did with respect to things like time,
8 expertise, scope of work, and, as your question
9 touched on, what parts you would need to
10 actually make it functional.

11 JUSTICE SOTOMAYOR: General, we have a
12 clue from the statute's use of a starter gun as
13 an example of something that's readily
14 convertible. As I understand it, to make a
15 starter gun operable, you either have to replace
16 the bore, so you need a new bore part to do
17 that, or you have to drill out the existing bore
18 on the starter gun and get a pin to make it
19 operable, correct?

20 GENERAL PRELOGAR: That's right. So
21 the most commonly publicized example that I
22 think was top of mind for Congress, and it's one
23 that's cited in the statutory history here, was
24 the example of a -- a gang member who bought the
25 starter guns in bulk and then, you're exactly

1 right, had to drill out the plugged barrel or
2 else cut it off and rethread it and put in a new
3 barrel. And often you also have to enlarge the
4 barrel so that it can chamber conventional
5 ammunition if it isn't already able to accept
6 bullets.

7 JUSTICE SOTOMAYOR: So we know that
8 some incomplete items qualify under the
9 statute's definition?

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

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Justice Thomas, anything?

25 Justice Alito?

1 JUSTICE ALITO: Were weapons parts
2 kits common in 1968?

3 GENERAL PRELOGAR: So there have only
4 been a couple of examples over the years that
5 I'm aware of reflected in the case law. We cite
6 the Stewart case and the Wick case. One of
7 those was kind of an Uzi-making kit. Another
8 one involved someone who was making it possible
9 through kit form to construct a machine gun.

10 It wasn't particularly common then,
11 and I can tell you the reason why. The -- the
12 big development and the technological
13 development that led to the explosion of ghost
14 guns was using polymer --

15 JUSTICE ALITO: Right. Well --

16 GENERAL PRELOGAR: -- a form of
17 plastic, to make this.

18 JUSTICE ALITO: -- are there gun kits
19 available now that do not consist of polymer
20 parts but instead consist of parts taken from
21 disassembled firearms that have been altered in
22 a way to make them nonfunctional without some
23 modification?

24 GENERAL PRELOGAR: I'm not aware of
25 any commercial product right now that -- that

1 fits that description.

2 JUSTICE ALITO: On what it means to be
3 readily convertible, I -- I don't know whether
4 it's possible to do something. That's the
5 statutory term, and I don't know whether it's
6 possible to do something more precise than what
7 ATF has done, but it would be interesting if --
8 it would be helpful if you could perhaps explain
9 a little bit more what that means.

10 So what level of expertise is taken
11 into account? What collection of tools is taken
12 into account? Can you provide any sort of a
13 time limit? How long must it take?

14 Some of us who are not -- who don't
15 have an -- a -- a lot of mechanical ability have
16 spent hours and hours and hours trying to
17 assemble things that we've purchased.

18 (Laughter.)

19 GENERAL PRELOGAR: I'm with you on
20 that one, Justice Alito, as someone who
21 struggles with IKEA furniture. Let me do my
22 best to try to be responsive to that question.

23 And I think the thing to point to is
24 the case law on this point because ATF wasn't
25 just coming up with these factors out of

1 nowhere. Instead, because this is the term that
2 Congress used in the statute, we have 50 years
3 of judicial precedent further fleshing out the
4 contours of when something can be readily
5 converted.

6 So, as a general matter, what the
7 courts and, therefore, what the agency have said
8 is that it is readily converted if someone of --
9 if a novice, in a fairly quick amount of time,
10 can easily and efficiently convert their weapon
11 to function.

12 You asked about outside bounds like
13 time limits. I -- I can tell you that in the
14 case law, the longest period of time that was
15 ever deemed still readily convertible was eight
16 hours. And the agency has not considered any
17 product greater than eight hours to be readily
18 convertible. So, if that issue were squarely
19 presented, a court might hold that something
20 like a day's work or eight hours sets an outer
21 bound.

22 With respect to things like skill
23 or -- or parts availability, obviously, that's
24 going to be facts -- fact- and context-specific.
25 And I think the important thing to recognize is

1 that these are principles that were themselves
2 drawn from case law. And the agency, I think,
3 can't be expected to do better than courts
4 themselves have done in trying to flesh out the
5 qualitative standard that Congress chose to use
6 here.

7 JUSTICE ALITO: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Sotomayor?

10 JUSTICE SOTOMAYOR: No.

11 CHIEF JUSTICE ROBERTS: Justice Kagan?

12 JUSTICE KAGAN: On parts kits first.

13 In addition to the parts kit that's analogous to
14 an IKEA table kit, Judge O'Connor below was
15 concerned that that language would include sort
16 of any aggregation of gun parts.

17 So let's say, you know, a gunsmith
18 just wanted to replenish inventory and got a big
19 box of gun parts generally from a gun
20 manufacturer. Would that count under the ATF
21 regulation?

22 GENERAL PRELOGAR: No. The lower
23 court fundamentally misunderstood how this Final
24 Rule operates.

25 In the first place, it doesn't

1 regulate something like a gunsmith at home who's
2 buying individual parts and seeking to aggregate
3 them. This is a regulation that only governs
4 commercial manufacturers and sellers of firearms
5 who are themselves constructing the -- the
6 weapons and the kits and putting them on the
7 market. So these are just conditions on
8 commercial sale.

9 And then, with respect to what the
10 rule would cover, it's clear from the "readily
11 convertible" analysis that you need to have a
12 process that's fairly quick, easy, and
13 efficient. And so it wouldn't sweep in things
14 that have a lot of other uses and that -- that
15 would require a lot of skill and expertise or
16 time to track down the missing parts to put
17 together.

18 And I want to emphasize again it --
19 it's not like ATF was coming up with this rule
20 without real-world experience about the kinds of
21 market -- kinds of products that these fringe
22 manufacturers were putting on the market. These
23 were kits that you could put together in under
24 an hour. They had all of the relevant
25 components. You would just need to do a little

1 bit of finishing work.

2 I actually had the experience of
3 putting one of these kits together, and it's
4 just like what the record shows. There are
5 usually only a couple of steps. The first thing
6 that most of the kits require is drilling the
7 holes. Usually, it's six holes, and you do it
8 with a jig. So you have the product there in
9 the tool, and it removes all of the trial and
10 error or guesswork. You know exactly where to
11 drill in seconds.

12 The second step is to remove the extra
13 plastic blocking tabs. That, again, doesn't
14 require much work at all because you clip them
15 off with a pair of pliers or a box cutter. You
16 can file it down with a jig as a template using
17 a -- a metal nail file or using a Dremel rotary
18 tool that a lot of people, especially dog
19 owners, own because it's helpful for trimming
20 your dog's nails.

21 At that point, you have a fully
22 functional frame or receiver, and you can
23 quickly assemble it into a gun in no time at
24 all. That's how the products were marketed.
25 That's how they were sold.

1 JUSTICE KAGAN: And turning to the
2 frames or receivers, you made a point of saying
3 that this follows in a long line of regulation.
4 But there --- there were changes, right, that
5 you -- that the new regulation is intended to
6 capture items sold with jigs and templates.

7 Is there anything else that the new
8 regulation was intended to capture that was not
9 captured under the old? And why did ATF make
10 that change?

11 GENERAL PRELOGAR: No, that is the
12 only change. ATF made that change and openly
13 acknowledged and justified its decision because
14 it recognized that when you have a jig, which is
15 this tool, as I mentioned, that removes all of
16 the trial and error and really does make it
17 dummy-proof, as the manufacturers have claimed,
18 it goes directly to the question the agency has
19 asked all along, which is: How quickly, easily,
20 and efficiently can this thing be made to
21 function?

22 So it's no different in kind from
23 indexing on the frame or receiver. Indexing is
24 something that ATF has looked at from 1968 on.
25 It's always recognized that if you actually put

1 a dimple in the frame or -- or the body of the
2 structural component, that's going to speed up
3 the process. And jigs work exactly the same
4 way.

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

7 Sometimes this Court looks at
8 regulations and it says, you know, there's an
9 old statute, and the old statute doesn't
10 contemplate a new problem, and new problem comes
11 up, and Congress can't get its act together and
12 deal with the old problem.

13 And so the agency takes old statutory
14 language that doesn't really fit the problem
15 but, you know, is vague enough or general enough
16 or broad enough, you know, so that it can be
17 kind of made to deal with the new problem.

18 And -- and this Court has sometimes
19 said: Well, that's -- that's not right. The
20 new statute had nothing to do with -- the old
21 statute had nothing to do with this new problem,
22 and this is kind of, you know, the agency just
23 taking over what is really Congress's business.

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

1 GENERAL PRELOGAR: No. I don't think
2 there is any tenable way to characterize this
3 regulation as -- as an attempt to change the
4 meaning of the statute to confront a new
5 problem.

6 First of all, this is an age-old
7 problem. Congress, I think, rightly recognized
8 that manufacturers might seek to evade these
9 central requirements. That's why anytime it's
10 expressly defined a term, like in subparagraph
11 (A), it's included concepts of whether an item
12 can be readily made to function.

13 We think the weapon parts kits are
14 precisely described by that subparagraph (A)
15 description.

16 I acknowledge in subparagraph (B) it's
17 not a defined term, "frame or receiver." But
18 there again, we think that Congress was simply
19 tracking ordinary meaning, which recognizes that
20 if you have that principal structural component
21 of a handgun, that can be recognized as a frame
22 or receiver even if it's missing the single,
23 final hole that you need to drill in that.

24 So I think it would be wrong to
25 suggest that the statutory language just on its

1 own terms doesn't cover this situation.

2 And then, on top of that, we have
3 context and purpose here. On Respondents'
4 theory of this statute, it would be incredibly
5 easy for any gun manufacturer to avoid the
6 regulation and the essential requirements of
7 serializing, background checks, and
8 recordkeeping just by leaving one little part of
9 the weapon or the frame or receiver unfinished.

10 Plainly, that's not what Congress was
11 intending. And I think it brings this case
12 squarely within cases like *Abramski*, where, as
13 you know, Justice Kagan, the -- the Court
14 recognized that if you have an interpretation of
15 the Gun Control Act that is going to allow that
16 entire circumvention and essentially nullify the
17 Act's requirements, the statute shouldn't
18 properly be interpreted that way.

19 JUSTICE KAGAN: That was a close case.
20 You maybe want this to be a stronger case than
21 *Abramski*.

22 GENERAL PRELOGAR: It is a stronger
23 case. And the circumvention here is even more
24 profound because it wouldn't just be in the
25 sales transactions with the straw purchaser. It

1 would effectively be all weapons going forward
2 would not need to be serialized or sold with
3 background checks and recordkeeping.

4 JUSTICE KAGAN: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Gorsuch?

7 Justice Kavanaugh?

8 JUSTICE KAVANAUGH: Your statutory
9 interpretation has force, but I had some concern
10 at the stay stage, and I have some concern now
11 about mens rea. And this is an agency
12 regulation that broadens a criminal statute
13 beyond what it had been before.

14 So what about the seller, for example,
15 who is truly not aware, truly not aware that
16 they are violating the law and gets criminally
17 charged? What assurances can you give about
18 mens rea, about instructions to the jury that
19 the government would seek, and the like?

20 GENERAL PRELOGAR: So let me begin
21 with the statutory mens rea standard that I
22 think fully addresses this concern. This is in
23 18 U.S.C. 924(a)(1)(D), and it requires
24 willfulness.

25 So that means that if a -- a

1 manufacturer isn't putting a serial number on it
2 because the manufacturer believes in good faith
3 that this isn't a regulated product and the
4 manufacturer doesn't know that it's violating
5 the law, it will not be criminally chargeable
6 because the government won't be able to prove
7 that mens rea of willfulness. So I think that's
8 an important check against criminal prosecutions
9 that might be unwarranted.

10 The second thing I would point to is
11 the --

12 JUSTICE KAVANAUGH: And does
13 "willfully" apply to all potential prosecutions
14 that we're talking about in this case?

15 GENERAL PRELOGAR: It applies if
16 there's no serial number on the weapon, and it
17 applies if there's -- if the weapon is being
18 sold without a license.

19 I believe that with respect to not
20 conducting a background check, that's under a
21 different provision that requires knowledge.

22 But, of course, the kind of entry
23 point for the weapon is whether or not it has a
24 serial number, and that happens at the point of
25 manufacture.

1 I also want to emphasize that to the
2 extent that there is really --

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

6 GENERAL PRELOGAR: Yeah. So I think,
7 on the background check, if you have a seller
8 out there who -- who wants guidance about
9 whether, with respect to particular type of
10 products, it's necessary to do that background
11 check, the -- the person can seek a
12 classification from ATF. The manufacturers
13 would be the ones to do this. And this is a way
14 to get a pre-enforcement dispositive ruling from
15 ATF as to whether that's deemed a regulated
16 firearm.

17 And in that circumstance, if -- if you
18 don't like the answer that ATF gives, you have a
19 right to judicial review that will be conducted
20 under a de novo standard about whether this is a
21 covered product.

22 JUSTICE KAVANAUGH: But, if you
23 haven't done that, let's say you haven't done
24 that, and you truly --

25 GENERAL PRELOGAR: Right.

1 JUSTICE KAVANAUGH: -- take the
2 hypothetical -- you truly believe you're not
3 violating the law, could you be charged under
4 that provision?

5 GENERAL PRELOGAR: As a theoretical
6 possibility, I think only with respect to
7 background checks, it's possible you could. I'm
8 not aware of any prosecutions that look like
9 this. And the whole point of this reg --

10 JUSTICE KAVANAUGH: Is that something
11 the government would do?

12 GENERAL PRELOGAR: I -- I don't think
13 the government would be likely to charge someone
14 in that kind of situation. And it doesn't look
15 anything like what was happening where the
16 manufacturers were themselves the sellers
17 putting these products on the market with
18 explicit knowledge that it was being put into
19 the hands of teenagers --

20 JUSTICE KAVANAUGH: Okay. That's --

21 GENERAL PRELOGAR: -- felons, and so
22 forth.

23 JUSTICE KAVANAUGH: -- that's helpful.
24 Anything else you wanted to finish up with on
25 that?

1 GENERAL PRELOGAR: So I guess the only
2 other thing I would say is that we think that
3 there is a lot of protection for manufacturers
4 who are seeking to comply with the law in good
5 faith. ATF is not trying to hide the ball here.
6 The -- the point of the agency is not a game of
7 gotcha to try to criminally prosecute people.

8 There was a very serious public safety
9 threat posed by the explosion in the use of
10 these gun -- these ghost guns in crimes, and so
11 the whole point of this regulation is simply to
12 put the regulated industry on notice of how the
13 statute applies in that discrete context and how
14 it's always applied since the statute was
15 enacted.

16 JUSTICE KAVANAUGH: And on that point,
17 because you had a lot of classification letters
18 that were out there, this was to collect
19 everything and put everyone, as you say, on
20 notice, adding a couple things, as you pointed
21 out earlier, correct?

22 GENERAL PRELOGAR: Right. And so I
23 don't think that this is any vast expansion of
24 the statute. We just think this is ATF's
25 longstanding interpretation with the addition --

1 JUSTICE KAVANAUGH: Some expansion.

2 Some expansion.

3 GENERAL PRELOGAR: -- only with the
4 addition of looking at jigs. But -- but --

5 JUSTICE KAVANAUGH: Yeah.

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

8 JUSTICE KAVANAUGH: Right.

9 GENERAL PRELOGAR: It just changes the
10 factors that are relevant under the statute when
11 you're conducting a "readily" analysis.

12 JUSTICE KAVANAUGH: Okay. That's
13 helpful. Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Barrett?

16 JUSTICE BARRETT: I have a question
17 about AR-15s. So Judge Oldham expressed concern
18 that because AR-15 receivers can be readily
19 converted into machine gun receivers, that this
20 regulation on its face turns everyone who
21 lawfully owns an AR-15 into a criminal.

22 GENERAL PRELOGAR: That is wrong. So
23 I want to be really clear about our
24 interpretation of the statute. We are not
25 suggesting that a statutory reference to one

1 thing includes all other separate and distinct
2 things that might be readily converted into the
3 thing that's listed in the statute itself.

4 So the example we give in our reply
5 brief is that a pair of pants is not regulated
6 as a pair of shorts if you have a statute
7 referring to shorts even though the pants could
8 be readily converted into shorts. That's
9 because pants are a distinct object in their own
10 right and they have a separate identity.

11 And the rule itself incorporates this
12 principle by requiring that the regulated
13 object, before you even get to a "readily"
14 analysis, has to be clearly identifiable as the
15 unfinished component part of the regulated
16 weapon.

17 So what that means is you would have
18 to sigh -- say this thing is a clearly
19 unfinished component part of a machine gun, a
20 weapon that's designed to fire automatically
21 more than one shot with a single function of the
22 trigger. But you couldn't say that about an
23 AR-15. That is obviously something that's
24 designed and intended to be used for
25 semi-automatic fire.

1 And the fact that you might be able to
2 undertake certain drilling and machining
3 operations to convert it into a machine gun
4 doesn't mean that while it has this separate
5 identity and is standing alone, it would be
6 regulated as a machine gun.

7 The agency has never held otherwise.
8 This again is the same interpretation that the
9 agency has had all along, and it has never
10 suggested that AR-15s, standing alone, are
11 regulated machine guns.

12 JUSTICE BARRETT: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Jackson?

15 JUSTICE JACKSON: So Justice Kagan
16 talked about the problem of the agency
17 potentially taking over what is Congress's
18 business, and I guess I'm worried about the
19 different concern, which is about the Court
20 taking over what Congress may have intended for
21 the agency to do in this situation. And so all
22 of my questions -- the reason why I didn't
23 really engage in the other part of this is
24 because all of my questions really for you stem
25 from that concern.

1 You -- you've phrased the question
2 presented in this case as whether certain items,
3 weapons, parts, and kits, or a partially
4 complete and disassembled frames or receivers
5 qualify as firearms within the meaning of the
6 statute. And I guess I'm concerned about this
7 framing because it doesn't seem to count, in my
8 view, for the actual claim that the challengers
9 have made here, which is that the agency has
10 exceeded its statutory authority.

11 And so I'm trying to figure out how
12 we're supposed to address what I think is a
13 distinct question about the scope of the
14 agency's authority vis-à-vis the Court to fill
15 out the category of what is a firearm.

16 I mean, are we to conclude that an
17 agency exceeds its statutory authority whenever
18 it fails to choose what we think is the best
19 meaning of a statutory term? Is that how the --
20 the scope of the agency's authority to
21 promulgate a rule is supposed to be determined?
22 We just compare what the agency believes
23 qualifies as a firearm with what we think
24 qualifies as a firearm, and if the agency has
25 something in its definition that we wouldn't

1 have put there, we say the agency has exceeded
2 its authority?

3 I -- I think those seem not right to
4 me as the way of figuring out the question of
5 exceeding the authority, and I think it can't be
6 assumed that the agency exceeds its authority
7 whenever it interprets a statutory term
8 differently than we would such that all we have
9 to do as a part of this claim here today is just
10 decide what we think a firearm is.

11 Can you react to that?

12 GENERAL PRELOGAR: Sure. So I think,
13 as in any statutory interpretation case, the
14 task of this Court is to determine what Congress
15 intended and what it meant. And we think that
16 we have clearly the best interpretation of the
17 language that Congress used, but the Court has
18 said time and again that you don't just look at
19 text, you interpret that text in context.

20 JUSTICE JACKSON: Right. But can I
21 just --

22 GENERAL PRELOGAR: And you can take
23 account of --

24 JUSTICE JACKSON: -- can -- can I take
25 you on a little bit of a -- let me just drill

1 down a little bit, right?

2 GENERAL PRELOGAR: Yeah.

3 JUSTICE JACKSON: The term we are
4 interpreting, I thought, was a category.
5 Congress has said firearms, right, and frames
6 and receivers, which it defines the firearms
7 part of it, have to be treated in a certain way.
8 And I think, in order to implement this statute,
9 the agency has to look at real-world
10 circumstances and determine what particular
11 items fit into that category.

12 I understood the delegation of this
13 entire thing to an agency to be that task.
14 That's what the agency's supposed to be doing.
15 We look at firearm. We look at the definition
16 of the firearm, says the agency, and we look at
17 things in the world, and we say X, Y, Z, those
18 are in that category.

19 My question is, when the challenge is
20 X shouldn't have been in that category, does it
21 exceed the agency's authority if the Court
22 thinks, yeah, X shouldn't have been in that
23 category? Just, you know -- I mean, the agency
24 still has the authority, I think. And, in
25 Loper, Loper seemed to recognize that Congress

1 may have given the agency the authority to make
2 certain calls, right?

3 GENERAL PRELOGAR: So -- so I think,
4 in responding to this question --

5 JUSTICE JACKSON: Yes.

6 GENERAL PRELOGAR: -- it's really
7 helpful to distinguish between the facial
8 challenge here and some of these as-applied
9 applications of the agency's determination of
10 what fits within the definition.

11 JUSTICE JACKSON: Okay.

12 GENERAL PRELOGAR: I do think that if
13 the Court concluded that Congress, in drafting
14 this statute, had, for example, categorically
15 precluded looking at time in deciding whether
16 something's readily convertible, then the agency
17 would be exceeding its authority because, of
18 course, if Congress has said in the statute you
19 can't think about time --

20 JUSTICE JACKSON: Right.

21 GENERAL PRELOGAR: -- then the agency
22 can't choose to do so.

23 JUSTICE JACKSON: Right.

24 GENERAL PRELOGAR: We are miles away
25 from that kind of situation here because all of

1 the factors the agency listed on their face are
2 consistent with the plain meaning of what it is
3 to readily convert.

4 JUSTICE JACKSON: So what you would
5 have us do is not come up with our list of what
6 items we think should be in the firearm
7 category, like we have to think about exactly
8 each thing. In this facial challenge, I think
9 you're saying we need to do something more like
10 did the agency take into account the relevant
11 factors for making the determination of what
12 goes in this category?

13 GENERAL PRELOGAR: That's right,
14 because you don't have any particular products
15 in front of you to examine in light of whether
16 they would fit the definition or not.

17 The only relevant question in this
18 case are -- is the facial question of, does this
19 regulation conflict with anything in the Gun
20 Control Act? And our answer is no, we think
21 that this follows from the plain text of the Gun
22 Control Act and is consistent with judicial
23 precedent interpreting that plain text.

24 With respect to any follow-on
25 questions about particular products, that could

1 all be assessed as applied in light of their
2 specific facts to make a determination about how
3 the factors might cash out in an individual
4 case.

5 But, for the front-line question of
6 the agency's authority here, we think everything
7 in the Final Rule is consistent with the statute
8 Congress wrote.

9 JUSTICE JACKSON: Thank you.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Mr. Patterson.

13 ORAL ARGUMENT OF PETER A. PATTERSON
14 ON BEHALF OF THE RESPONDENTS

15 MR. PATTERSON: Mr. Chief Justice, and
16 may it please the Court:

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

19 First, Congress altered the common
20 understanding of "firearm" to include other
21 weapons that may readily be converted to
22 firearms.

23 Second, in a departure from prior
24 federal law, Congress decided to regulate only a
25 single part of a firearm, the frame or receiver,

1 and Congress did not alter the common
2 understanding of a "frame or receiver."

3 ATF has now exceeded its authority by
4 operating outside of the bounds set by Congress.

5 One, ATF has expanded the definition
6 of "frame or receiver" to include items that may
7 readily be converted to a frame or receiver.

8 And, two, ATF has expanded the
9 definition of "firearm" to include collections
10 of parts that are not weapons and that do not
11 include a frame or receiver.

12 Some concern has been raised about
13 circumvention. But, of course, complying with a
14 statute is not circumventing it. And as this
15 Court said in *Abramski*, which has already been
16 referenced, Congress, in the Gun Control Act,
17 did not seek to pursue its purposes of
18 controlling access to firearms to the nth
19 degree.

20 And, notably, Congress did not
21 regulate the secondary market for firearms, and
22 that secondary market is a much bigger source of
23 firearms for criminals than privately made
24 firearms.

25 There also has been questions raised

1 about the agency's prior practice. There
2 definitely has been a sea change by the agency
3 here. The agency projected that its rule would
4 put 42 out of 43 unlicensed manufacturers out of
5 business.

6 And what the agency said in the
7 Syracuse litigation was they said: "An
8 unfinished frame or receiver does not meet the
9 statutory definition of 'firearm' simply because
10 it can be designed to or can readily be
11 converted into a frame or receiver." That's the
12 exact standard they've now adopted.

13 Instead, what they looked at was
14 whether critical machining operations had taken
15 place. And, to be clear, we have no quarrel
16 with that prior practice. We have raised as
17 alternatives, one, something has to be
18 completely machined, or, two, the critical
19 machining operation test.

20 And that the latter, we submit, is
21 more consistent with the statutory language and
22 solves the machine gun problem because, if you
23 say, in the machine gun provision, a frame or
24 receiver is also regulated, and if one hole is
25 all that separates a semi-automatic receiver

1 from a machine gun receiver, it's hard to see
2 how the "readily" standard would not also be
3 applied there.

4 I welcome the Court's questions.

5 JUSTICE THOMAS: Judge Oldham makes
6 much of the 80 percent rule that was --

7 MR. PATTERSON: Yes.

8 JUSTICE THOMAS: -- at the stage of
9 manufacture versus the ready -- what a receiver
10 or an item is capable or ready -- can readily
11 become. And we've had much discussion here
12 about "readily" this morning.

13 Is that analysis or that approach --
14 does -- does it make a difference as -- to your
15 argument whether it is the 80 percent rule or
16 the current "readily become" rule?

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

19 One, we -- we submit it can't be
20 "readily" because, when Congress wanted it to be
21 "readily," it put it in the statute in multiple
22 circumstances.

23 Two, it has a different practical
24 impact, for example, in the machine gun frame
25 example. So, if it -- if the standard is

1 "readily" and the government gives as kind of
2 the paradigmatic example of "readily" drilling
3 one hole, well, if all you have to do is drill
4 one hole into a receiver to make it a machine
5 gun receiver, it's hard to see how that is not a
6 machine gun receiver.

7 And, three, the -- Congress said "the
8 frame or receiver." What Congress did not
9 include in this statute was parts that may be --
10 be used to convert an item into --

11 JUSTICE THOMAS: I think I'm --

12 MR. PATTERSON: -- a frame or
13 receiver.

14 JUSTICE THOMAS: -- a bit more
15 interested in how the 80 percent rule operated.
16 We've -- we've heard --

17 MR. PATTERSON: Yes.

18 JUSTICE THOMAS: -- much about the
19 "readily" this morning --

20 MR. PATTERSON: Yes.

21 JUSTICE THOMAS: -- and -- and whether
22 or not that change actually took place and
23 whether it really matters.

24 MR. PATTERSON: Yes, it does really
25 matter. And just the 80 percent rule is kind of

1 a colloquialism used in the industry. What the
2 governing standard was was called the critical
3 machining operations test.

4 And what the agency would do would --
5 based on what the definition of a frame or
6 receiver is, the part that holds the essential
7 firing and sealing components of a firearm,
8 would say: We're going to look at that part of
9 the firearm and see if critical machining
10 operations have taken place.

11 And then, as a crosscheck, there
12 sometime would be temporal considerations. This
13 is what the agency said in the Syracuse
14 litigation. Temporal considerations were tied
15 to the degree of machining. It was kind of like
16 a lodestar crosscheck in a fees case.

17 So they would look at those temporal
18 considerations. But where the different --
19 where the difference would be made -- and we can
20 see this very clearly in the regulation of the
21 AR-15 lowers, and that is the same piece of
22 metal can be considered a frame or receiver
23 depending on what is sold with it.

24 Under the old standard, you would look
25 at the item itself, and that's what Congress did

1 in the Act. They said: Look at the item
2 itself. It did not say: Look at other things
3 that may be used to convert that item into a
4 frame or receiver.

5 And that's what the agency is now
6 doing, for example, with looking at the jigs
7 because, really, what is being done is that jig
8 is being regulated because the same piece of
9 metal can either be a frame or receiver
10 depending on what is sold with it.

11 JUSTICE JACKSON: But I thought --

12 CHIEF JUSTICE ROBERTS: What would
13 the --

14 JUSTICE JACKSON: -- "readily
15 convertible" was in the statute.

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

18 JUSTICE JACKSON: Okay.

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

24 JUSTICE JACKSON: For a frame and
25 receiver.

1 JUSTICE SOTOMAYOR: Counsel --

2 JUSTICE JACKSON: But does the
3 80 percent rule apply then to part A?

4 I'm just trying to understand your
5 answer to Justice Thomas with respect to the
6 80 percent rule.

7 MR. PATTERSON: Yes. And, again,
8 understanding that we're using 80 percent
9 rule --

10 JUSTICE JACKSON: Yes. Yes.

11 MR. PATTERSON: -- as a stand-in for
12 critical machining operations. No, that apart
13 applies to part (B). That is what the agency
14 would look at to determine whether something had
15 become a frame or receiver. And -- and if
16 you're --

17 JUSTICE SOTOMAYOR: Counsel, doesn't
18 that --

19 MR. PATTERSON: Yes.

20 JUSTICE SOTOMAYOR: -- give your game
21 away? Once you admit that you need to figure
22 out when something has become a finished
23 product, you have to have a standard to decide
24 that. And you're saying the standard has to be
25 something along -- that -- that goes to

1 manufacturing.

2 The SG is saying: Yes, that's just a
3 silent way of saying, has the manufacturing gone
4 far enough to make this essentially a -- a -- a
5 frame or receiver? Can it be converted to be
6 fully functional? That's what they're saying,
7 that the two are doing exactly the same thing.

8 You prefer one because you want to
9 sell frames without a serial number or -- or
10 sell frames that you have to drill a hole in and
11 say, that's not regulated.

12 They're saying a hole is really not a
13 critical component of the frame. Everything
14 else is.

15 MR. PATTERSON: Well --

16 JUSTICE SOTOMAYOR: So I -- I -- I --
17 I'm having difficulty understanding, once you
18 admit that some sort of test is necessary, why
19 this particular test exceeds their statutory
20 authority --

21 MR. PATTERSON: Yes. And so --

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

24 MR. PATTERSON: Understood.

25 JUSTICE SOTOMAYOR: Do I have enough

1 of a frame or receiver to call it a frame and
2 receiver.

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

5 One is that all of the machining
6 operations have taken place. So, if you were to
7 say this was a sculptor, all the chiseling has
8 been done, everything's been done, that this can
9 now function as a frame or receiver.

10 JUSTICE SOTOMAYOR: Well, you --

11 MR. PATTERSON: Our alternative --

12 JUSTICE SOTOMAYOR: -- are you -- you
13 don't disagree that taking a tab off a frame --
14 is that a completed frame?

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

18 JUSTICE SOTOMAYOR: All right.

19 MR. PATTERSON: -- like actually
20 removing material that's --

21 JUSTICE SOTOMAYOR: So, if you have to
22 drill a hole to attach it to something, that's
23 not a completed frame?

24 MR. PATTERSON: Well, this is where
25 the difference between the two alternatives that

1 we have given the Court comes in.

2 Under the first alternative, drilling
3 a single hole would be what would make it cross
4 the line. And the government admits that
5 sometimes drilling a single hole can be the
6 difference between a semi-automatic receiver and
7 a machine gun receiver. And a machine gun
8 receiver is much more heavily regulated than a
9 semi-automatic receiver. So the notion that
10 just one hole separating something from another
11 item is somehow absurd is clearly not the case.

12 But the alternative we've given you is
13 the critical machining operations test, and that
14 is different from the government's new test
15 because, A, it's not conflicting with the
16 statute by taking language from another part of
17 the statute that's not there and putting it
18 there and where the government represented in
19 the Syracuse litigation in 2021 we can't do
20 that.

21 JUSTICE GORSUCH: Let -- let me --

22 CHIEF JUSTICE ROBERTS: Counsel --

23 MR. PATTERSON: Yes.

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

1 CHIEF JUSTICE ROBERTS: Just what
2 would -- what is the purpose of selling a
3 receiver without the holes drilled in it?

4 MR. PATTERSON: Well, the -- some
5 individuals -- in -- just like some individuals
6 enjoy, like, working on their car every weekend,
7 some individuals want to construct their own
8 firearm. So the purpose of selling it is to
9 allow --

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

12 MR. PATTERSON: -- is to assist and
13 provide individuals with material with which
14 they can do that.

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

19 MR. PATTERSON: Well, I would
20 encourage the Court to read the Vasquez brief.

21 This is not a easy thing necessarily
22 to do and particularly the Press Democrat
23 article cited there, where the reporter engaged
24 to show how easy this was and, in fact, showed
25 that he couldn't actually do it. He had to

1 engage friends to help him complete this that
2 were expert in firearms.

3 And the -- and even once you have a
4 complete frame, it's not a trivial matter to put
5 that together. There are small parts that have
6 to be put in precise locations. And that
7 reporter that, he could not -- he couldn't put
8 it together from the completed frame. So it's
9 not clear that it is a trivial -- it is clearly
10 not a trivial proposition for someone to do
11 this.

12 CHIEF JUSTICE ROBERTS: Well --

13 JUSTICE GORSUCH: Counsel --

14 CHIEF JUSTICE ROBERTS: -- I don't
15 know the skills of the particular reporter, but
16 my understanding is, is that it's not terribly
17 difficult for someone to do this, and it's
18 certainly not terribly difficult to take the
19 plastic piece out. That's -- is that part of
20 the gunsmithing?

21 MR. PATTERSON: Well, the plastic
22 rail -- the parts that are blocking the rails in
23 the product that's been highlighted, that has to
24 be taken out. It's -- it's recommended that you
25 put it on a drill press vise and use a drill

1 press with a specialized bit to take that away.
2 And Polymer80 explicitly recommends against
3 using against a -- using a Dremel. They say
4 that could damage the product.

5 And I know we don't have any
6 particular product at issue here, but the point
7 is that with -- what Congress said is that we
8 want to regulate the frame or receiver itself.
9 And there's got to be some point, there's going
10 to be a line --

11 CHIEF JUSTICE ROBERTS: I guess what
12 I'm --

13 MR. PATTERSON: Yes.

14 CHIEF JUSTICE ROBERTS: -- I'm
15 suggesting that if someone who goes through the
16 process of drilling the one or two holes --

17 MR. PATTERSON: Right.

18 CHIEF JUSTICE ROBERTS: -- and taking
19 the plastic out, he -- he really wouldn't think
20 that he has built that gun, would he?

21 MR. PATTERSON: You know, I -- I don't
22 know what that person would think, but I think
23 he would. It's not a simple proposition. Even
24 the individuals that the government cited that
25 took 21 minutes to put something together wasn't

1 counting the time for the person to acquire the
2 tools, learn how to use the tools -- this person
3 was a mechanic, so they knew how to do these
4 things -- or the time to learn how to machine
5 the object. That person spent two hours
6 watching instructional materials before starting
7 to put that item together. And even after that
8 21 minutes, the person had done it incorrectly
9 and it needed to be repaired.

10 JUSTICE GORSUCH: Counsel, I -- I'd
11 like to circle back --

12 MR. PATTERSON: Yes.

13 JUSTICE GORSUCH: -- to Justice
14 Sotomayor's question on -- on (B).

15 MR. PATTERSON: Yes.

16 JUSTICE GORSUCH: I -- I -- I -- I --
17 I take that one position might be it has to be a
18 complete frame or receiver --

19 MR. PATTERSON: Yes.

20 JUSTICE GORSUCH: -- because there's
21 no indication of "readily converted" the way
22 there is in (A).

23 MR. PATTERSON: Right.

24 JUSTICE GORSUCH: Right. I -- I got
25 that argument. But I -- I think you've

1 suggested that, no, we accept that there are
2 incomplete frames or receivers that count. This
3 is indeed an artifact noun. And -- and -- and,
4 if that's true -- well, first of all, is that
5 true?

6 MR. PATTERSON: Well, we've given
7 our --

8 JUSTICE GORSUCH: Do you concede that?

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

12 JUSTICE GORSUCH: Okay.

13 MR. PATTERSON: -- that, okay, it
14 could be an artifact now, but, if it is, the
15 test should be critical machining and not
16 readily converted.

17 JUSTICE GORSUCH: Let me -- let me
18 press on the first argument.

19 MR. PATTERSON: Yes.

20 JUSTICE GORSUCH: Why wouldn't this be
21 an artifact noun in this statute given (A),
22 which does suggest incomplete things can count;
23 (C), you know, mufflers and silencers; (D),
24 other destructive devices which don't have a
25 traditional receiver? I think the examples

1 we've been given are umbrella guns and pen guns
2 and things like that.

3 Why -- why wouldn't that be an
4 indication that here, if not throughout the U.S.
5 Code, Congress was using an artifact noun?

6 MR. PATTERSON: I would think the
7 inference would be precisely the opposite
8 because Congress put that language specifically
9 into those neighboring statutes, words like
10 "converted" or words likes "collections of
11 parts." So it would be odd to say that in this
12 particular place where Congress has taken
13 special care to use that sort of language, when
14 Congress wanted that language to be applied, to
15 say, well, we're just going to infer that it
16 also applies here, where Congress did not put
17 that language.

18 And I think it could -- again, as I've
19 said, it could wreak havoc with the firearm laws
20 because there are a lot of things that can be
21 readily converted. A -- a traditional rifle can
22 be converted to a short-barreled rifle in
23 minutes with -- with a hacksaw or by swapping in
24 a shorter barrel.

25 So, if -- this concept, "readily

1 converted," Congress only put it into specific
2 places. And we can see in the machine gun
3 provision Congress said "readily restored"
4 instead of "readily converted." So we need to
5 be very precise here.

6 And in -- and in terms of why we would
7 pick critical machining operations instead of
8 readily converted, if we're looking for evidence
9 of meaning, if we're not going to say it has to
10 be completed, well, one evidence of meaning was
11 what did ATF and the industry, working together
12 over a period of years, arrive at? And what
13 they arrived at was this critical machining test
14 because it does not pose these same problems as
15 readily converted would potentially with other
16 provisions of the Code, and it also is more
17 consistent with the statute by not importing
18 "readily" into a place where Congress chose not
19 to put it.

20 JUSTICE GORSUCH: Thank you.

21 JUSTICE BARRETT: But it doesn't
22 appear in the statute. It seems a little made
23 up, right, the critical machining test. I mean,
24 your other test, I think, has the problem of
25 pulling a tab off the front and -- and saying,

1 okay, now it's a frame or receiver, but it
2 wasn't before you pulled the tape. But the
3 critical machining doesn't really come from the
4 statute; it's just sort of a way of allowing for
5 a de minimis exception, right?

6 MR. PATTERSON: Well, I wouldn't say
7 that, Your Honor. And, first, we wouldn't --
8 even under our primary test, I think it's -- if
9 it's machined, so, you know, if you think of the
10 sculptor when everything's been sculpted, if
11 something is put on to protect it or something
12 and it just has to be pulled off, I wouldn't
13 call that machining.

14 So I think it's -- once all the holes
15 have been drilled, all the material has been
16 removed that requires tools to remove, that
17 would be our primary test.

18 But then, under the secondary test, so
19 that it would come from the language of "frame
20 or receiver." And I think you would say, okay,
21 this is an artifact noun, but then what does
22 that artifact noun mean? We have to still
23 determine at what point something is a frame or
24 receiver.

25 And we think the evidence of meaning

1 of the agency and the others in the industry who
2 are very keenly interested in this question,
3 working it out over a period of years and
4 saying, okay, here is this test that we have
5 come up with, this critical machining test, it's
6 much better attested than "readily" --

7 JUSTICE JACKSON: But isn't --

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

9 JUSTICE BARRETT: So would you say
10 that it's like the ordinary usage? Now
11 everybody just understands based on longstanding
12 practice that this critical machining test is
13 the point at which frame or receiver --

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

17 JUSTICE ALITO: In -- in ordinary
18 usage, an object that is created to perform a
19 function may still be called by the name that's
20 attached to that object even if it is not
21 completely functional. Isn't that what this
22 gets at?

23 MR. PATTERSON: I don't believe that
24 this is what -- gets at. And there are two
25 provisions here --

1 JUSTICE ALITO: Well, before you --

2 MR. PATTERSON: Oh. Yes.

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

5 MR. PATTERSON: Okay.

6 JUSTICE ALITO: Suppose I see that my
7 neighbor is restoring a classic car, and -- but
8 he's taken out the -- some critical parts.
9 And -- and then someone says, well, what is
10 that? And I -- I might well say, well, that's a
11 1957 Thunderbird, even though you couldn't drive
12 it and it would take some work to make it do the
13 thing that it was originally created to do.

14 So isn't that what -- isn't that the
15 essence of your backup argument? The thing must
16 still be such that one would call it a frame or
17 receiver even if it is not fully ready to be
18 functional as a -- as a frame or receiver at
19 this time?

20 MR. PATTERSON: Yes. Yes. So -- so
21 our primary argument is it would have to be,
22 and -- and so I think -- you could think of the
23 situation with the car and you ask your neighbor
24 can I borrow your car, and you give him the car
25 with the engine taken out, they'd probably say

1 that's not a car. But also, the backup, yes, is
2 that at some point, something is a car even if
3 it can't currently perform that function and --

4 JUSTICE ALITO: So -- so what exactly
5 does this -- does the critical manufacturing --
6 critical machining test involve? What does that
7 mean? Explain it to somebody who -- you know,
8 to a layperson.

9 MR. PATTERSON: Yes. So a -- a frame
10 or receiver is basically the part of a firearm
11 that holds the components that allow a fire --
12 firearm to function, so the firing mechanism,
13 the trigger and such, and -- and the sealing
14 component that makes sure that the barrel is
15 sealed off so that the round goes out of the
16 barrel and the energy from the explosion doesn't
17 go elsewhere.

18 So what the critical machining
19 operations test was is, okay, we're going to
20 focus on the parts of the frame or receiver that
21 either have the holes drilled or material
22 removed that are going to hold those parts, and
23 we're going to see, have those operations been
24 performed or been performed to some degree? And
25 if they have, we're going to say that's a frame

1 or receiver.

2 And what's important is that this
3 solves the one hole in the AR-15 lower problem
4 because the critical machining operation for
5 that machine gun receiver would be drilling that
6 final hole. So, until that final hole is
7 drilled or at least indexed, as the government
8 has indicated, that critical machining operation
9 has not taken place.

10 But, if the question is "readily,"
11 then it would be hard to see, well, how it could
12 be readily in this context and not readily in
13 the machine gun context.

14 JUSTICE JACKSON: So you prevented
15 the -- you -- you presented the Court with the
16 critical machining alternative, and you say you
17 have these two alternatives. The agency has
18 presented yet another way of going about this.

19 Do you concede that under a facial
20 challenge like the one that you've brought, your
21 task is actually to demonstrate that your
22 alternatives are the only permissible ones under
23 the statute?

24 MR. PATTERSON: Well, I think it's --
25 under a rule of party presentation, we've

1 presented the Court with the alternatives that
2 have occurred to anyone. So I think these are
3 the best alternatives that have occurred.

4 JUSTICE JACKSON: So you see the
5 question as what is the best alternative, and
6 the Court is just supposed to say we have three
7 options here, which one do we think the best;
8 the agency didn't pick the best, its rule is
9 stricken?

10 MR. PATTERSON: Well -- well, I think
11 we actually don't have that -- I think our
12 burden is to show that the agency's is wrong.
13 Maybe we don't have the right interpretation,
14 but, if their interpretation is incorrect, then
15 they're asking the wrong question. As --

16 JUSTICE JACKSON: But, by "incorrect,"
17 you mean that they don't have the authority
18 under the statute to reach that, the -- it's --
19 it's inconsistent with the statute?

20 MR. PATTERSON: Correct. If "frame or
21 receiver" does not include items that may
22 readily be converted to frames or receivers,
23 then this rule is beyond their authority
24 regardless of what "frame or receiver" does
25 mean. So they've gone beyond their authority.

1 And so, you know, we've prevent --
2 presented the Court with two alternatives that
3 we think are better interpretations. But the
4 key point here is that the agency's
5 interpretation is incorrect.

6 JUSTICE JACKSON: Do you believe that
7 a weapon that has been disassembled -- a -- a
8 firearm, a -- a gun that was once fully
9 operational, everyone would agree was a firearm,
10 it's disassembled, as sometimes happens, maybe
11 even after a crime, is that still a firearm or
12 no under your view?

13 MR. PATTERSON: Yes and for two
14 reasons --

15 JUSTICE JACKSON: Okay.

16 MR. PATTERSON: -- if I can give it.
17 So the first reason is that will have a frame or
18 receiver. So that's what Congress put in the
19 statute to ensure --

20 JUSTICE JACKSON: In my hypo --

21 MR. PATTERSON: -- that that would be
22 a firearm.

23 JUSTICE JACKSON: -- the frame or
24 receiver is not in the box.

25 MR. PATTERSON: Oh, then no.

1 JUSTICE JACKSON: It's not.

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

4 JUSTICE JACKSON: Okay.

5 CHIEF JUSTICE ROBERTS: Thank --

6 JUSTICE JACKSON: So all that matters
7 really is (B), the frame or receiver?

8 MR. PATTERSON: Well, that is how the
9 statute is structured, and part of that may be
10 due to statutory history.

11 So, before this statute, the
12 definition was "any weapon that is designed to
13 expel a projectile by the action of an explosive
14 and any part or parts of any such weapon." And
15 I think we can --

16 JUSTICE JACKSON: Well, what's all
17 that language doing in there if all that matters
18 for the purpose of the definition is that it has
19 a frame or receiver?

20 MR. PATTERSON: Well, I -- and -- and
21 so what I was going to say, Your Honor, is that
22 Congress was working from that background, and
23 they said: Okay, we're going to alter the
24 definition of (A) to include "readily
25 convertible" weapons, and we -- we're going to

1 alter the definition of (B), instead of
2 including "every part," to focus on a particular
3 part, the frame or receiver, and it's the frame
4 or receiver of any such weapon.

5 So it really could -- so I think that
6 explains, that's why it's structured that way.
7 It's maybe not the most straightforwardly
8 structured statute, but it could be "the frame
9 or receiver of," and then insert (A), instead of
10 "any such weapon." That's really how the
11 statute is structured, a frame or receiver --

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

14 Assume that there's all the parts of a
15 gun and -- a -- a weapons kit with all the parts
16 of the gun, but the receiver or the frame has a
17 hole missing. So that's the weapon parts kit.

18 MR. PATTERSON: Right. Right.

19 JUSTICE SOTOMAYOR: Is it your
20 position that under (A), assuming we were to
21 find --

22 MR. PATTERSON: Mm-hmm.

23 JUSTICE SOTOMAYOR: -- that "readily
24 convertible" does include some -- some drilling
25 some holes --

1 MR. PATTERSON: Mm-hmm. Right.

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

5 MR. PATTERSON: I -- I don't think --
6 I think whether it would be covered would turn
7 on the interpretation of (B). If the Court
8 accepted our backup argument --

9 JUSTICE SOTOMAYOR: Ah, now that's --
10 okay.

11 MR. PATTERSON: -- and that
12 critical --

13 JUSTICE SOTOMAYOR: So what you're --
14 you're taking out of (B) "readily convertible"
15 and also taking it out of (A)?

16 MR. PATTERSON: No, we're not taking
17 it out of (A) because -- and -- and it's because
18 of what (A) was meant to cover, and that is the
19 starter guns that practically were guns. They
20 had handgun frames --

21 JUSTICE SOTOMAYOR: You have no --

22 MR. PATTERSON: -- but the barrel had
23 to be --

24 JUSTICE SOTOMAYOR: -- you have no
25 quarrel with the proposition that the agency

1 can, within whatever the statute limits it to
2 do, to determine what makes a completed or
3 nearly -- or -- a -- a -- a completed frame or
4 receiver?

5 MR. PATTERSON: I'm not sure I
6 understand the question. But we have no
7 quarrel, as the alternative with we presented,
8 with the critical machining test and in the
9 hypothetical Your Honor presented with a single
10 hole --

11 JUSTICE SOTOMAYOR: Thank you,
12 counsel.

13 MR. PATTERSON: -- that likely would
14 meet that test.

15 CHIEF JUSTICE ROBERTS: Anything
16 further? Good.

17 Thank you, counsel.

18 Rebuttal, General?

19 REBUTTAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR

20 ON BEHALF OF THE PETITIONERS

21 GENERAL PRELOGAR: Thank you.

22 Mr. Chief Justice, I want to begin
23 with a question you asked about why
24 manufacturers would leave these holes undrilled.
25 You said: What is the purpose?

1 My friend responded that it's to
2 create a kit that hobbyists can put together. I
3 think that that's a questionable proposition
4 given that if it only takes 20 minutes, the
5 hobbyist is probably not going to get his
6 money's worth and won't actually have the
7 experience of building a gun.

8 But I also think it's contradicted by
9 the facts on the ground because what the
10 evidence shows is that these guns were being
11 purchased and used in crime. They were sold to
12 be crime guns. There was a 1,000 percent
13 increase between 2017 and 2021 in the number of
14 these guns that were recovered as part of
15 criminal investigations.

16 And it makes perfect sense because the
17 whole reason why you would want to get your
18 hands on one of these unserialized, untraceable
19 firearms is if you are a prohibited person or
20 you want to use that gun in a crime.

21 And more fundamentally, if there is a
22 market for these kits for hobbyists, they can be
23 sold to hobbyists. You just have to comply with
24 the requirements of the Gun Control Act.

25 Someone who is lawfully allowed to

1 possess a firearm and wants to build it can
2 purchase that kit if they undergo a background
3 check. And so, if there is a market for these
4 products, they can operate under the statute.

5 The evidence shows that actually, the
6 market for ghost guns essentially collapsed
7 after this rule was permitted to go into effect,
8 which I think just underscores what was evident
9 all along: The reason why you want a ghost gun
10 is specifically because it's unserialized and
11 can't be traced.

12 On the question of a frame or
13 receiver, Justice Sotomayor, you asked questions
14 about exactly what standard governs here, and I
15 think it's helpful to break down the
16 interpretive question into two points.

17 The first one is this is an undefined
18 term in the statute, does it require the weapon
19 to be functional? We think the answer to that
20 is no. If you are missing a single hole, then
21 you can clearly recognize that as an unfinished
22 component part of a weapon, and it is readily
23 convertible to function. And that fits within
24 the plain dictionary definition of what a frame
25 or receiver is understood to be, no different

1 than a bicycle missing pedals or a tennis racket
2 that is sold unstrung.

3 We have a picture of this on page 34
4 of our brief, what these frames and receivers
5 look like, and it's hard to know what else to
6 call them because they look exactly like the
7 principal structural component of a gun.

8 But that just raises the follow-on
9 question: Okay, if it doesn't have to be
10 functional, exactly what standard should you use
11 to measure when it is a frame or receiver
12 regulated by the statute?

13 And there are good reasons why ATF
14 focused on whether it can be readily
15 convertible.

16 First, that's most consistent with how
17 Congress has approached this issue when it has
18 defined terms under the federal firearms laws.
19 That's the standard that Congress itself uses to
20 mark the terrain of what products are regulated.

21 Second, there is a consistent agency
22 practice here of applying that "readily
23 converted" standard.

24 My friend, several times, tried to
25 suggest that the 50-plus years of agency

1 practice instead focused on whether it has
2 reached a critical stage of manufacture. But
3 that's ignoring the actual elements cited in the
4 classification letters.

5 They looked not just at what had been
6 done to the gun but what steps remained, how
7 much time it would take to perform those
8 functions, what equipment you would need to make
9 that functional, what kind of skill you would
10 need, and whether there are other parts.

11 None of those elements go to what has
12 already been machined on that particular frame
13 or receiver. Instead, they are centrally
14 relevant to whether it can be readily converted
15 to function, just as the agency has said all
16 along.

17 For a third reason, that means that
18 this is a standard that is familiar in the law
19 and familiar to industry. I think it's really
20 notable here that we don't have the major gun
21 manufacturers suing us about this Final Rule,
22 and the reason for that is because this "readily
23 converted" standard is the one that has governed
24 their conduct ever since the Gun Control Act was
25 enacted.

1 That also means that there is a stable
2 body of judicial precedent and agency practice
3 to draw on here in further answering concerns
4 about whether particular types of products will
5 be regulated, which I think, Justice Kavanaugh,
6 also answer some of the concern about how the
7 regulated parties will know whether their
8 conduct falls within the scope of the law.

9 Finally, in thinking about
10 Respondents' primary argument here, which is
11 that a single undrilled hole is enough to exempt
12 a product from regulation, I think the Court
13 doesn't have to blind itself to the practical
14 ramifications of that rule.

15 The agency's interpretation reflected
16 in this rule is the status quo. It is how the
17 law has been applied over 50 years. And if this
18 Court now says that one undrilled hole is enough
19 to exempt these products from regulation, then
20 that is going to be a sea change in how the Gun
21 Control Act is implemented.

22 At that point, it can't serve out its
23 function because all manufacturers everywhere
24 could simply exempt their products from
25 regulation through that simple expedient, and

1 that means that going forward, all guns could
2 become ghost guns.

3 This Court said 200 years ago in The
4 Emily that you don't have to interpret a statute
5 to be self-defeating like that if there is a
6 plausible alternative construction.

7 Our construction is not only
8 plausible, it is the best reading of this
9 statute looking at text, context, purpose, and
10 history, so I'd encourage the Court to say that
11 and reverse the Fifth Circuit.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 General, counsel.

14 The case is submitted.

15 (Whereupon, at 11:21 a.m., the case
16 was submitted.)

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