



MEMBER DISPATCH

June 22, 2023

Members Only Newsletter

Knowledge Is Power

Today's Edition

Important Message From CJ Grisham Attorney



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My name is CJ Grisham, and I'm the lead attorney with Self Defense Fund. First and foremost that the opinions below are mine alone and may not reflect the opinions or views of SDF. This will be a long explanation, but a necessary one regarding Forced Reset Triggers. While SDF does not cover possession of FRTs, I am available in Texas for independent representation on this matter.

Some members are concerned about the forced reset trigger rule recently adopted by the ATF. Let me first state that there is no formal or official rule. In an "open letter" to FFLs dated March 22, 2022, the ATF declared that it had examined devices commonly known as "forced reset triggers" (FRTs) and had determined that SOME of them are "firearms" and "machineguns" as defined in the National Firearms Act (NFA), and "machineguns" as defined in the Gun Control Act (GCA). I'm attaching the letter here.

The language in the letter is very vague, and generally, vague language is considered constitutionally unenforceable for two reasons. "First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement." City of Chi. v. Morales, 527 U.S. 41, 56 (1999). The definition of "Machinegun" under 26 U.S.C. § 5845(b) and 18 U.S.C. § 921(a)(23) includes the phrase "or combination of parts designed and intended, for use in converting a weapon into a machinegun." If these parts allow a weapon to shoot "automatically more than one shot, without manual reloading, by a single function of the trigger," federal law considers it a "machinegun."

However, as you likely know, this is not how forced reset triggers work. A forced reset trigger actually moves your finger forward on the trigger so that it can reset. This requires several functions of the trigger. When you pull the trigger, that is a single function. The FRT then forces your finger forward, a second function. The only difference between an FRT and a regular trigger is who is pushing the finger forward. In a truly automatic weapon, the finger is never forced forward to re-engage the firing pin to allow another round to be fired.

Much like the recent pistol brace rule, the ATF letters opines that NOT ALL FRTs are illegal, but has not provided consumers with a valid basis or rule upon which to rely regarding these triggers. Again, the rule says "SOME" FRTs are considered "machineguns," which means that SOME are not. Additionally, it found that "some FRT devices allow a firearm to automatically expel more than one shot with a single, continuous

pull of the trigger." Those are the FRTs that the ATF is targeting. You should only be concerned if you possess or installed "FRTs that function as described above [that] are 'machineguns' under the NFA and GCA" and it is against those that the "ATF intends to take appropriate remedial action with respect to sellers and possessors of these devices."

The problem is that the ATF is confusing objects that allow for an increased rate of fire with objects that create automatic fire. Federal law does not forbid faster rates of fire; it forbids "automatic" fire.

In its letter, "current possessors of these devices are encouraged to contact ATF for further guidance on how they may divest possession." It is not in your best interests to do this for several reasons.

If you contact the ATF and explain that you are in possession of what THEY consider to be a "machinegun" and your FRT in fact is one that they have considered, you could be charged with a felony and your admission used against you. It is my belief that the letter holds no legal weight because it misrepresents what an FRT is, and is unconstitutionally vague. There is no law or published rule making FRTs illegal. The only indication is essentially a letter to FFLs, not the general public. The ATF has not published a rule on the Federal Register informing the public about FRTs. Therefore, the public has not been given constructive notice even if the FRTs are illegal. "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits" Giaccio v. Pennsylvania, 382 U.S. 399, 402-403 (1966).

WHAT SHOULD YOU DO?

Honestly, this is a personal decision, and I highly recommend you consult with an attorney for specific and protected legal guidance. My advice is that you weigh the consequences and what you're willing to sacrifice in defense of law and order. Here are the three options you have:

Keep the FRT and do nothing because you may not even have an illegal FRT. I firmly believe the rule is unconstitutional and unenforceable. Do not publish or publicize that you have one. Just exist and keep being a law-abiding American.

- If you keep it, you may either remove it from your gun or not.
- If you do not remove it from your gun, there is a chance that the ATF or a law enforcement agency may visit you.
- If the ATF or a law enforcement agency arrives at your door, **DO NOT ANSWER ANY QUESTIONS** about whether you own, owned, purchased, possess, possessed, or ever used an FRT.
- If the ATF or a law enforcement agency does not have a warrant, explain that you are not willing to answer their questions, you do not consent to a search, and ask them to leave your property. Immediately contact an attorney. You have this right.
- If the ATF has a warrant, comply in accordance with the warrant under duress.
- **Destroy or dispose of the FRT.** Document its destruction either through a sworn affidavit that you have notarized or through photographic or video evidence of you destroying it.
- **Surrender the FRT to the ATF if they determine that your FRT is a machine gun.**
- You should only surrender ANY ITEM to the ATF under protest and make it clear that you do not consent to the forfeiture or destruction of your property.
- You should require a property receipt from ATF via the ATF form "ATF 3400.23, Receipt of Property and Other Items. They may try to get you to sign a form ATF 3400.1, Consent to Forfeiture or Destruction of Property and Waiver of Notice. **DO NOT SIGN THIS NO MATTER HOW MUCH THEY TRY TO CONVINCE YOU OTHERWISE.** If you sign the 3400.23, you are not agreeing to have the FRT forfeited or destroyed. It also protects your right to be reimbursed for the value of the FRT if it is destroyed.
- Make sure that you record the surrender and have photos of your property prior to handing it over. This ensures that if/when it's returned, you have documented its condition so that you get it back exactly as it was given.

So that there can be no misunderstanding on ATF's part, I would strongly recommend sending a letter, consistent with the below, to the ATF Agent that took your item(s) because, in the event ATF elects to institute a forfeiture action, they are required to serve you with a copy and in that event, you should immediately contact an attorney, if you wish to challenge ATF's ability to forfeit your property:

Sample Letter to ATF as follows:

From:
<Insert name and address>

To: Bureau of Alcohol, Tobacco, Firearms and Explosives
<Insert local ATF office address in your City and State>

Dear Agent _____

As I informed you on <Insert Date> when you took my <Insert Items> (hereinafter “item(s)”), I surrendered them under protest as I understand the ATF wrongly believes that my continued possession of those items would result in my arrest and prosecution. As I dispute ATF’s conclusion and authority in this matter, I am only surrendering my items to preclude my arrest and prosecution. I do not consent to the destruction of my items, nor do I consent to forfeiture of my items. I assert all of my rights pursuant to the U.S. Constitution and all applicable federal laws.

In the event ATF’s newly minted interpretation is enjoined or is deemed unlawful by a court of law, I expect ATF to immediately return my items, at no cost to me, and expect that ATF will not cause any damage or harm to them, while in its possession. I have documented the condition of my items so that they are returned in the same condition in which they were taken against my will.

Thank you for your time and assistance in this matter.

Yours truly,



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives
Office of Enforcement Programs and Services
Office of Field Operations

Washington, DC 20226
www.atf.gov

March 22, 2022

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recently examined devices commonly known as “forced reset triggers” (FRTs) and has determined that some of them are “firearms” and “machineguns” as defined in the National Firearms Act (NFA), and “machineguns” as defined in the Gun Control Act (GCA).

These particular FRTs are being marketed as replacement triggers for AR-type firearms. Unlike traditional triggers and binary triggers (sometimes referred to generally as “FRTs”), the subject FRTs do not require shooters to pull and then subsequently release the trigger to fire a second shot. Instead, these FRTs utilize the firing cycle to eliminate the need for the shooter to release the trigger before a second shot is fired. By contrast, some after-market triggers have similar components but also incorporate a disconnecter or similar feature to ensure that the trigger must be released before a second shot may be fired and may not be machineguns.

Both the NFA and GCA regulate machineguns. “Machinegun” is defined under 26 U.S.C. § 5845(b) and 18 U.S.C. § 921(a)(23) as—

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

ATF’s examination found that some FRT devices allow a firearm to automatically expel more than one shot with a single, continuous pull of the trigger. For this reason, ATF has concluded that FRTs that function in this way are a combination of parts designed and intended for use in converting a weapon into a machinegun, and hence, ATF has classified these devices as a “machinegun” as defined by the NFA and GCA.

Accordingly, ATF’s position is that any FRT that allows a firearm to automatically expel more than one shot with a single, continuous pull of the trigger is a “machinegun”, and is accordingly subject to the GCA prohibitions regarding the possession, transfer, and transport of machineguns

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES (cont.)

under 18 U.S.C. §§ 922(o) and 922(a)(4). They are also subject to registration, transfer, taxation, and possession restrictions under the NFA. *See* 26 U.S.C. §§ 5841, 5861; 27 CFR 479.101.

Under 26 U.S.C. § 5871, any person who violates or fails to comply with the provisions of the NFA may be fined up to \$10,000 per violation and is subject to imprisonment for a term of up to ten years. Further, pursuant to 26 U.S.C. § 5872, any machinegun possessed or transferred in violation of the NFA is subject to seizure and forfeiture. Under 18 U.S.C. § 924(a)(2), any person who violates § 922(o) may be sent to prison for up to 10 years and fined up to \$250,000 per person or \$500,000 per organization.

Based on ATF's determination that the FRTs that function as described above are "machineguns" under the NFA and GCA, ATF intends to take appropriate remedial action with respect to sellers and possessors of these devices. Current possessors of these devices are encouraged to contact ATF for further guidance on how they may divest possession. If you are uncertain whether the device you possess is a machinegun as defined by the GCA and NFA, please contact your local ATF Field Office. You may consult the local ATF Office's webpage for office contact information.



Assistant Director
Enforcement Programs and Services

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