



**2<sup>ND</sup> AMENDMENT COALITION**

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**THE 1997 IMPORT BAN  
WHAT CLINTON TAUGHT CUOMO**

**2<sup>nd</sup> Amendment Coalition**  
**by Paloma A. Capanna,**  
**Attorney & Policy Analyst**

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What Clinton Taught Cuomo**

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## Foreword

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This White Paper is a very detailed account of the entire process of the ATF doing the job they're supposed to, while being put at odds against politicians with an agenda of doing whatever they feel like. As the Import/Export Manager and Federal Compliance Officer for American Tactical Imports, what struck me in reading this account of the 1998 Federal Import Ban was the response of White House Staff in the Clinton Administration capitulating to the demands of Senator Feinstein while fearing a loss in a court case that never came.

The ATF has faced its fair share of issues over the years, but this analysis proves that the run-up to the 1998 sporting purposes evaluation and reclassification of importable firearms was not the fault of the 'evil ATF,' but of agenda-based politics. The ATF, symbolically, is made to take the bad wrap, but it is ultimately an agency under the control of the Executive Branch and answerable to the President. The ATF has no problem with approving guns that are, in fact, importable under the laws and regulations – when the politicians allow those with technical and regulatory expertise to do their jobs.

Thank you to the Second Amendment Coalition for its willingness to dig deep and compile this and other White Papers to attempt to set the record straight. To preserve our civil liberties, we must protect not only the spirit of the Second Amendment, but, also, the firearm in the stream of commerce, both domestic and international.

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## **1. EXECUTIVE SUMMARY**

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Documents available on-line from the William J. Clinton Presidential Library allow, for the first time, an in-depth examination of the 1997 federal import ban. What began as a routine ATF letter to a U.S. Federal Firearms Licensee in the spring of 1997, just a few months later rapidly turned into an international circus on gun control with President Clinton and U.S. Senator Feinstein in the center ring – this, right at the time that a young Andrew Cuomo was dispatched by his New York governor father to work for the Clinton Administration. This episode may be the cleanest, clearest documentation we’ve ever seen of how politicians achieve gun control, regardless of the law or the facts. These were the early political lessons that the younger Cuomo later brought home to New York to unleash in 2013.

## **2. WHAT STARTED AS A ROUTINE ATF LETTER.**

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On May 12, 1997, the ATF Firearms Technology Branch issued a letter that a rifle called the “Galil Sporter” would be acceptable for import.<sup>1</sup> The letter responded to a request of April 4, 1997 for an ATF opinion on the newly designed Galil Sporter rifle as lawful for future import as a semiautomatic rifle not in violation of the 1994 Assault Weapons Ban<sup>2</sup> and fulfilling the 1968 Gun Control Act “sporting purposes” test<sup>3</sup>. The ATF letter was addressed to

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Mr. Jonathan Mossberg at UZI America, Inc. in North Haven, Connecticut.

The “Galil” is a brand name for a line of firearms produced by Israel Military Industries Ltd. (the small arms division for which became “Israel Weapon Industries Ltd.,” a private company, in 2005). IMI designed and manufactured the “Galil” and the “Uzi,” both lines of firearms used the world over since the 1950s. IMI began firearms production in Israel in 1933.<sup>4</sup>

The U.S. consumer firearms market at that time was estimated at \$4 billion.<sup>5</sup> The partnership between Mossberg and IMI for the Galil Sporter was estimated at \$7 million with an eventual production run of 10,000 units.<sup>6</sup> Not only was the firearm uninteresting to the ATF from a technical and legal standpoint, the firearm was of limited value as part of the international commerce in firearms for the civilian market.

The ATF FTB (now the “Firearms and Ammunition Technology Division”) provides expert technical support to the ATF, other governmental agencies and law enforcement offices, Congress, the firearms industry, and the general public. FTB is “responsible for technical determinations concerning types of firearms approved for importation in the United States and for rendering opinions regarding the classification of suspected illegal firearms and newly

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designed firearms.”<sup>7</sup> The 1968 Gun Control Act expressly authorized the ATF to make determinations of the suitability of importation of individual firearms, as follows: “The Attorney General “shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this section.”<sup>8, 9</sup>

The ATF FTB letter (reprinted at “Appendix A”) gives the technical analysis for the Galil Sporter Rifle, part by part. The case in favor of Mossberg/IMI is won on these technical specifications – the very same technical details that slipped further and further from the political and media onslaught once Senator Feinstein and White House Staff took control of the headlines.

In May 1997, the ATF correctly concluded that the Galil Sporter was “...originally designed and manufactured to permit only semiautomatic fire.” The conclusion was based upon the following important technical specification: “The receiver was originally manufactured with no provision for installing an automatic sear or automatic sear pin. Additionally, the right bolt guide rail has never been cut out to allow clearance for the upper arm of the automatic sear. The bolt carrier has no provision for tripping an automatic sear.”



That's it, really. That's the beginning and end of the story. The Galil Sporter was a non-NFA, sporting purposes rifle, specifically designed for non-military use. To rephrase it: the Galil Sporter would have qualified for its own patent as differentiated from a military-issue Galil due to its unique design and function.

The second conclusion reached by ATF FTB was the legal one: the Galil Sporter was not on the prohibited firearms list, nor was it a prohibited semiautomatic rifle because of its features and characteristics. The Galil Sporter did not violate the 1994 Assault Weapons Ban.<sup>10</sup> This was the correct legal conclusion.

To put it in the federal legal framework of the time, the 1994 AWB contained a list of 19 prohibited firearms at Paragraph A, which included, of relevance, "(ii) Action Arms Israeli Military Industries UZI and Galil."<sup>11</sup> The list can be characterized as a specific firearm, such as the "Fabrique National FN/FAL,"<sup>12</sup> or a manufacturer of firearm, such as "Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models)."<sup>13</sup> The use of "Action Arms" was in this statute a poor job of drafting in that "Action Arms" was at that time an importer and one that produced aftermarket conversion kits. There was no IMI-manufactured firearm model named, e.g., "the Uzi Action Arms." Perhaps those

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in Congress drafting the statute were unfamiliar that an importer was (and remains) required to, among other things, engrave the import company name onto the firearm?<sup>14</sup> In any event, the statute does not accurately reflect what model Uzi or Galil, if any, was examined prior to the draft of this statutory provision – a point that in and of itself could have rendered this part of the statute void for ambiguity, if it had been challenged in court.

For a firearm not on the prohibited firearms list, the 1994 AWB then put the firearm through a two-part review: did the firearm have a detachable magazine, and, if so, did it also have two or more of the enumerated features. If yes + yes, the firearm was prohibited. If yes + no or if no + no or if no + yes, the firearm was legal.

Let's review the specific features and characteristics documented by the ATF FTB for the Galil Sporter, as follows:

1. fitted with a fixed, one-piece shoulder stock, which was neither folding nor telescoping;
2. having a pistol grip that protruded conspicuously beneath the action of the weapon;
3. no bayonet mount;
4. no flash suppressor;
5. no threaded barrel designed to accommodate a flash suppressor;
6. no grenade launcher.

The Galil Sporter had only one feature on the statutory list, the pistol grip that protruded conspicuously beneath the action, and thus passed the two-feature test.

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Third, the ATF FTB concluded “The rifle is suitable for importation under the provisions of §925(d)(3) of the cited chapter.” This statutory reference was to the “sporting purposes test,” which is part of the 1968 Gun Control Act. In short, it is prohibited to import a firearm into the U.S. unless it falls into one of four exempted categories, in which instance, the Secretary shall then allow the import. The “sporting purposes test” is one measure of the importability of a firearm. The Galil Sporter satisfied this import requirement.

The two-page letter from ATF FTB was of standard format and content, and mirrors many others publicly available, both with findings of compliance and findings of non-compliance. Indeed, as earlier quoted, federal law allows for conditional importation or bringing in of a firearm for examination and testing to make a determination of whether the firearm meets an import exemption. This dialogue between the ATF and FFLs in part has been and continues to be a line of open communication, keeping everyone up to date and on the law.

For countless FFLs there is good business value to be had from advance ATF reviews that can assist with design specifications prior to going into production or making purchase orders abroad. The ATF in the process contributes to a firearms industry “culture of compliance” that is an equivalent to the individual culture of the

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“law abiding gun owner.”

So, from an industry and a consumer perspective, if you will, the Galil Sporter rifle was a non-issue. Mossberg/IMI made a good and routine compliance-oriented decision in the course of business. The ATF made appropriate technical observations and reached the correct legal conclusion based upon the sample submitted for evaluation. Nothing interesting about the firearm. Nothing interesting about the exchange.

The “Uzi” had already been assigned a negative connotation by gun control advocates, and that included U.S. Senator Dianne Feinstein. Elected to the Senate in 1992 from a position as Mayor of San Francisco,<sup>15</sup> Feinstein is the same politician who in 1999 said, “If I could have gotten 51 votes in the Senate of the United States for an outright ban, picking up every one of them -- Mr. and Mrs. America turn ‘em all in -- I would have done it.”<sup>16</sup> “Them” in this instance meaning firearms.

From Jonathan Mossberg, the apt and accurate press quote at the time was: “These guns are no different than many other firearms either imported or produced right here in the (*sic*) country. We are engaging in legal trade.”<sup>17</sup>

Feinstein was all political agenda. Mossberg was all compliance in lawful commerce. It’s all the foreshadowing you need.

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### **3. THE IGNORANCE OF POLITICIANS.**

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For this White Paper, in addition to other sources, more than 15,000 pages of White House documents were examined from the Clinton Library, as available on-line, largely compiled for release in 2010 to the U.S. Senate, in advance of the confirmation hearings of now U.S. Supreme Court Justice Kagan. Kagan has been credited as “legal advisor to President Clinton,” “Associate White House Counsel,” and “Deputy Director of the Domestic Policy Council,” covering “tough issues,” including “importation of rapid-fire assault weapons”<sup>18</sup> and working as a “central figure in the Clinton-Gore effort to restrict gun rights.”<sup>19</sup> Documents reviewed spanned the period mid-1995 through mid-1998, and included hand written messages on yellow-lined pads and White House notepads, internal e-mails, drafts, letters, and formal documents, including those signed by the President.

It is these same materials that likely triggered the following comment from Senator Grassley during the Kagan confirmation hearings: “You were involved in a number of high-profile, hot-button issues during the Clinton Administration, including gun rights, welfare reform, abortion, and the Whitewater and Paula Jones controversies. A review of the material produced by the Clinton Library shows that you forcefully promoted liberal positions and offered analyses and recommendations that often were more

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political than legal.”<sup>20</sup> Kagan was far from the only player in this drama and also far from the only one to have advanced their political careers into positions of even greater power today than in 1997, on the nation’s high court, within the Obama-Biden Administration, in the City of Chicago, and right here in New York.

Even so, in all those reams of White House documents, the May 12, 1997 letter from the ATF to Mossberg was not mentioned, even once, until mid-September 1997.

What was going on in the White House and on the Hill relative to firearms in the spring and summer of 1997? The detachable magazine was en route to becoming mischaracterized as suitable only for military applications.

Since mid-1995, the ATF and the White House had been trying to sort out a position on the importation of “large magazines.”<sup>21</sup> The ATF initially made one interpretation, then changed course, and in the process, a question arose over the potential importation of Chinese-made magazines, on what was being couched as a post-Tiananmen Square international trade issue.<sup>22</sup> The topic bounced through a few documents from 1995 to 1997, although it could not be characterized as a “focus” of White House attention, as compared to a fairly long list of other issues and priorities.<sup>23</sup>



Indeed, it seemed to take the White House domestic policy advisors three years to start covering mechanical basics of magazines, over jockeying the politics of them. Consider, for example, the following e-mail exchange from April 8, 1997 on the “usable life of clips (*sic*).”

From Susan Ginsburg,<sup>24</sup> Department of Treasury (at that time, the agency housing the ATF): “Ammunition feeding devices – magazines and clips – are gun parts. They are used to contain bullets; ammunition is separate. A clip can be reloaded over and over again. If the owner is careless in its handling or doesn’t maintain it, it can become useless. Like any other gun part, if it is well maintained, it can last a lifetime.”

Minutes later, from Dennis K. Burke,<sup>25</sup> forwarding Ginsburg’s message to Bruce Reed,<sup>26</sup> Kagan,<sup>27</sup> and Thomas Freedman<sup>28</sup> (all White House domestic policy staff): “FYI on the question raised yesterday. So, you have to wonder why they have several million of these floating around...”

One could get the impression that critical members of the domestic policy advisory team hadn’t spent a moment at the range, even though they were advising the President of the United States on firearms matters. There was, already, an undeniable Clinton Administration culture that it was going to be “us vs. them.” “Them” in this instance, referring to gun owners.

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#### **4. WHICH IS WORSE: THE PRESS OR THE POLITICIAN?**

On August 24, 1997, the Los Angeles Times ran what they called a breaking story that the 1994 Assault Weapons Ban was being circumvented through imports of firearms that “looks like, smells like an AK47.”<sup>29</sup> In the span of just 60 days, this one newspaper would repeatedly tout policy marketing language adopted by – or perhaps it was initiated by – Feinstein until it was eventually adopted by White House Staff and then the President, himself. The LA Times repeatedly wrote that that the Galil Sporter reflected only “cosmetic changes” and “mutations” and “minor modifications that amounted to nothing more than cosmetic surgery.”<sup>30</sup> At no point did the writers from the LA Times quote the available technical information from the May 1997 ATF letter or provide a copy of the availing statutory provisions to allow that readers might form their own opinions.

The first White House written communication was surprisingly ambivalent, if not leaning away from using executive authority to expand the itemized list of firearms prohibited under the 1994 AWB. On September 13, 1997 internal White House Memorandum stated the position “We do not think this is possible without additional authority from Congress. This was a limitation of the assault weapons ban that the Administration and Congress accepted when they decided to endorse the Feinstein/DeConcini approach



over then House Representative Schumer's. The Schumer ban granted the Treasury Department the authority to add or delete firearms from the prohibited list."<sup>31</sup> The Memorandum went on to give the President "suggested talking points" for speaking to Feinstein, including, "So, unfortunately, I think we will need to pass new legislation that expands Treasury's authority if we want to include more guns and more clips (*sic*) – and you know that will not be easy."<sup>32</sup>

Far from settling the issue, on September 17, 1997, Feinstein wrote a letter to the President, co-signed by 29 U.S. Senators, demanding President Clinton use executive authority to declare a temporary suspension of the importation of "semi-automatic assault weapons."<sup>33</sup> The letter not only went public, the Senator made sure it went international.

The Feinstein letter correctly stated the Galil Sporter was "capable of firing bullets as fast as the operator can pull the trigger," a rather unremarkable feature of all semi-automatic firearms.<sup>34</sup> The Feinstein letter also stated that "the pistol grip is designed to allow the weapon to be fired from the hip as opposed to target shooting," which also states routine and various uses of the pistol grip to add stability and accuracy for the shooter, regardless of the position, whether off-hand, benched, hip, or otherwise. The Feinstein letter was also correct that the Galil Sporter accepted a

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detachable magazine, although she failed to mention that the manufacturer included a magazine designed to hold only ten rounds.<sup>35</sup>

But then the Feinstein letter went off the rails, incorrectly stating “with slight alterations they are able to be made fully-automatic.” Feinstein was incorrect to argue that “the Uzi and Galil” were on the inventory of firearms banned in 1994, which was like saying “Beretta” and “Colt” were illegal. These are companies that manufacture multiple models of firearms, from military contract to law enforcement to limited specialty commemorative civilian issue.

It didn’t stop there. The Feinstein letter was equally incorrect to both assert and imply that Israel Military Industries was marketing a firearm that “with slight alterations” could be converted from a semi-automatic firearm into an automatic firearm. Based upon the technical specifications laid out in the ATF letter of May 1997, such a physical conversion would not be possible. And yet, in the letter, Feinstein mangled the Galil Sporter into a gun of choice for the “grievance killers” and “gangs” using “assault weapons” “every other day” “in bank robberies, drive-by shootings and revenge killings.”

There was a second Feinstein letter sent that same date, addressed to the President, and this was the one annotated by Kagan



with words in the margins like “interesting” and “yes.”<sup>36</sup> It was through this second letter that Feinstein requested the President “issue a directive to the Department of Treasury to suspend pending permits of these weapons until such time as a clarification can be made as to the suitability of these weapons for sporting purposes.” Feinstein wrote that she had already reached out to the Israeli Prime Minister, Benjamin Netanyahu, and that she expected the President to do the same through diplomatic channels. (Additionally, she requested her state not to have to forfeit \$3.7 billion in federal support due to its failure to meet the deadline for establishing a statewide child support collection system.)

Within a week, anonymous newspaper editorials began running coast to coast. Netanyahu became the focus, and Feinstein and the newspapers couched the issue as a “moral” imperative. Anonymous authors wrote “Netanyahu knows, more than most leaders, what can happen when assault weapons fall into rogue hands.”<sup>37</sup> More than a dozen of these editorials made it onto Kagan’s desk and she paid attention. To the editorial line “Criminals know the uses of these weapons,” Kagan penned in the margin, “That’s why criminals like them, + that’s why we must...”<sup>38</sup> (The “...” is in the original.)

By October 14, 1997, the ATF had compiled a list of 1995 and 1996 ATF Form 6As statistics for “the importation of a select group of semiautomatic rifles identified by the Firearms Technology



Branch.”<sup>39</sup> The “select group” of nine firearms reflected prior importation approvals for a total of 36,188 semiautomatic rifles.<sup>40</sup> Keep in mind that any person or business importing firearms or ammunition for resale must be an FFL pursuant to the Gun Control Act of 1968 and must also be registered with the Department of State as an importer under the Arms Export Control Act of 1976.<sup>41</sup>

There is an important difference between ATF “Form 6A” and ATF “Form 6.” The ATF Form 6A is the “Release and Receipt of Imported Firearms, Ammunition and Implements of War” to obtain release of the imported items from U.S. Customs and Border Protection.<sup>42</sup> ATF “Form 6” is the permit application for a theoretical number of firearms.<sup>43</sup> Anyone using Form 6 figures for analytical purposes needs to distinguish the larger quantities used on the permit application form from the ultimate number actually imported, if any, into the U.S. and released from Customs. The granting of a permit confers no corresponding obligation upon the importer to actually import even one firearm pursuant to the terms of the permit during the period specified thereon. Take note now: these wildly different forms and statistics would become the pivot for Kagan as she flipped from actual imports to permit requests.

Back to Feinstein, just three days later, on October 17, 1997, Feinstein continued her letter writing campaign, this time to Rahm Emanuel, then working in the White House as a Senior Advisor to

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the President for Policy and Strategy,<sup>44</sup> and Robert Rubin, then Secretary of the Treasury.<sup>45</sup> Feinstein did not make specific reference to the October 14, 1997 ATF email referenced above, but here is what she wrote:

“Information from the Bureau of Alcohol, Tobacco and Firearms indicates that tens of thousands of semiautomatic assault weapons from more than a dozen foreign nations have either been imported in the last two years, or are pending importation. These weapons are not suitable for nor readily adaptable to sporting purposes as required by the 1968 Gun Control Act and therefore should not be granted permits for importation to this county.”<sup>46</sup>

She goes on to say that she wrote to Prime Minister Binyamin Netanyahu and “That request is being considered at the highest levels.” The LA Times reported that Feinstein had also written to heads of state in Russia, Bulgaria, Greece, Egypt, Poland, and Romania.<sup>47</sup>

Through this October 17, 1997 letter, Feinstein shifted off the hard data from the October 14, 1997 ATF e-mail, which were actual imports from five foreign countries into “more than a dozen” that were either imported or “pending importation.” She also makes conclusory allegations that the firearms to which she refers are “not suitable for nor readily adaptable to sporting purposes” and she does so without any reference to an ATF FTB analysis of any kind for any importer. IMI was not requesting the Galil Sporter be imported

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as a modified military surplus firearm, which would have triggered an additional body of law, including the Arms Export Control Act,<sup>48</sup> the International Traffic in Arms Regulations,<sup>49</sup> and the U.S. Munitions List<sup>50</sup>. The Galil Sporter was being made new, from scratch, specifically designed for the U.S. consumer market, post-1994 AWB, to meet current U.S. legal standards. Feinstein was jumbling up both technical firearms specifications and matters of federal law and neither the White House nor the press were calling her on it.

## **5. THREE CHOICES FOR THE PRESIDENT**

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On that same day as the second round of letters from Feinstein, the first of what would become three options went into circulation at the White House, created by Staff on how to use executive authority to impose an import ban and whether it could apply to already granted or pending permit applications. Some of the words were lifted directly out of the Feinstein letters. Consider, for example:

“I am now informed that 2 of the 19 assault weapons that were specifically banned from importation in 1989, the Galil and the Uzi, have been redesigned in order to circumvent the ban. The Galil and Uzi, which are manufactured by Israel Military Industries, were banned because – in their military configurations – they were found to have no legitimate sporting purpose. It is now appropriate to determine whether the redesigned weapons would have legitimate sporting

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purposes in this country and are suitable for continued importation under the provisions of the Gun Control Act of 1968.”<sup>51</sup>

Let’s rewind for a moment.

First, the May 12, 1997 ATF FTB letter described the technical evaluation of the Galil Sporter. It was not an evaluation of a Galil military rifle. Second, there was no companion ATF FTB letter reflecting an evaluation of any Uzi model. Third, no ATF import figures reflected the import of any Galil or Uzi firearm during 1995 and 1996.

Perhaps we can put a simple end to the argument of “circumvention” of the law? To win the argument that the Galil Sporter was a joke, intended only to “circumvent” U.S. law, you would have to convince James May of Top Gear that the Mercedes-Benz M-Class SUV should be illegal because of its shared technology and heritage with the Mercedes C9, which clocked at Le Mans at 400 km/h in 1989. Different product. Different market.

White House Staff pushed even harder on October 21, 1997, as Jose Cerda<sup>52</sup> circulated an e-mail with “positive talking points” for the next day’s press Q&A.<sup>53</sup> The e-mail reflected a divide on the legalities of the Feinstein request, even among those in the Executive Branch.

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“These talking points try and address Senator Feinstein’s minimizing of our directive in the LA Times piece – but they’re stretching a bit. Also, I will visit w/Counsel and Treasury one more time about trying to cover the existing Uzi and other permits. I did speak to ATF Counsel tonight, and they insist we can’t act on the current permits. While the Bush Administration did this in 1989, was sued...and won, all of our lawyers say that this was an entirely different situation (*sic*). More than a million assault rifles had been approved for import, and many were being recovered at crime scenes. With respect to the Uzis, not a one has even come in. In any event, we better do this soon. The increased media coverage is sure to result in new applications for imports.” The reference to the 1989 Bush import ban would continue to be the problem of a tenuous precedent by the opposing political party, following an election campaign during which Clinton – a Democrat – had co-opted the traditional Republican theme of “tough on crime.”

At this point, as of October 21, 1997, both ATF FTB and the lawyers at Treasury had concurred that there was no basis in law or fact to deny the import permit for the Galil Sporter. For the second time, this story should be over.

Instead, Kagan’s notes from a meeting October 22, 1997 indicate what was being discussed among White House domestic policy advisory staff:

- “volume issue similar to 89 but no nexus to crime stats”
- “look like new thing meant to get around ban but no data on whether being used for sporting purposes or not”
- “no high profile crimes (89=Stockton)”



In an effort to find a different route to placate Feinstein, the second draft directive emerged, dated “10/22/97,” with language “Directive to be broader than Senator Feinstein’s request,” commenting “Instead of just focusing on a single permit, the President’s directive is intended to permanently ban the next generation of assault-type weapons.” What the law and the lawyers could not head off over a few permits, the President’s policy advisors shifted into a directive on a scale that would exceed the original 1994 AWB firearm list. They had apparently already forgotten the first written White House communication of September 13, 1997 (“We do not think this is possible without additional authority from Congress.”).

In the media world of the LA Times, that same day, Cerda gave his legendary quote: “We are taking the law and bending it as far as we can to capture a whole new class of guns.”<sup>54</sup> As outrageous as this appeared on its face, it was an understatement to what was going on behind the scenes on Capitol Hill.

One day later, on October 23, 1997, another e-mail emerged from Cerda, floating the third and final option for the President with the comment

“This, of course, would not protect us from criticism if there were just one high-profile shooting with one of these weapons (which ATF claims has not happened to date) – and may only be postponing the inevitable



(increases in imports, legal challenges to overall action, etc.).”<sup>55</sup>

Cerda ended the e-mail by saying that he’s “come up with a list of the usual gun suspects for meetings” in an effort to get a buy-in prior to finalizing the decision on how to proceed.

And, how do we not read Kagan’s October 22nd notes along side the Cerda October 23rd note and fail to notice the analytic that what was missing from a winning legal hand was a high profile shooting, like Stockton.

## **6. THE ATF’S DRAFT AFFIDAVIT**

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Meanwhile, at the office of Chief Counsel to the ATF, an affidavit was being drawn for the anticipated signature of Mr. John W. Magaw, then Director of the ATF. This 8-page draft made its way at least to Kagan and bears her handwritten remarks.<sup>56</sup> It was prepared on the presumption the President, the ATF, or both, would be sued by an FFL manufacturer or importer as soon as the President took unilateral action.

The October 23, 1997 first draft of the Affidavit most importantly contained the following: “13. [??]Immediate action with respect to the importation of the sporterized versions of semiautomatic assault-type rifles is necessary since these weapons

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may be used in crime and are a threat to public safety. (CRIME EXAMPLES)??].” After which is written in Kagan’s handwriting, “ATF cannot find examples + this paragraph will be deleted.” The language was deleted and did not appear in the second draft affidavit on October 27, 1997.

You see how quickly the President’s domestic policy team built their mirage? Out front, the press and Members of Congress are using “Uzi” and “Galil” as if each were a single, foreign-manufactured model linked to gang violence and law enforcement shootings, while behind the scenes at the White House the ATF was providing statistics and facts that concluded the opposite. The ATF left the White House in a position of inability to make a “public safety” argument around the Galil Sporter and that amounted to a fatal legal deficit.

The most the ATF could come up with for the first draft affidavit of October 23, 1997 were trace statistics for 1994 through 1996, indicating an average per year of 100 “sporterized semiautomatic assault-type rifles” were traced. Understand that tracing a firearm can be initiated by international, federal, state, and local law enforcement for any gun crime, including mere possession of a stolen firearm.<sup>57</sup> Also, and particularly considering this draft affidavit was coming out of the legal offices of the ATF, this is a terrible misuse of language. It would not be admissible to support

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the claims White House Staff wanted to make. It did not demonstrate a nexus between the firearm and crimes committed.

Under federal firearms law and regulations as it evolved from the 1934 National Firearms Act, there is no such thing as a “sporterized semiautomatic assault-type rifle.” “Sporterized” is not defined at federal law. “Assault-type” is not defined at federal law. The “semiautomatic assault weapon” was a federal legal term for ten years pursuant to the 1994 AWB. All of this was actually spelled out in paragraph 8 of the draft ATF affidavit, the problem for the White House being, of course, that the Galil Sporter was not prohibited by law – a fact which the ATF had already gone on record to say through its letter of May 12, 1997.

So where did everyone have to turn to try to make its “case?” To the ATF Form 6 statistics on applications for import. And what did at least Kagan very clearly understand from the outset of this public relations turn? That only a small fraction of applications granted were ever acted upon.

Within the October 23 draft affidavit was a paragraph that read: “ATF has 266,000 applications to import sporterized versions of semiautomatic assault-type rifles pending. ATF has approved permits for importation of 342,421 such firearms. ATF’s records indicate that \_\_\_\_\_ such rifles have been imported in the last 12



months.” (The blank line appears in the original.) To Kagan’s credit, she already had and did access the data from the earlier ATF statistics on actual imports and she handwrote in the margin “1996 – 33,296/1997 to date – 19,544” and added “only 10% have been acted upon.”

The imagined legal arguments would focus on two additional paragraphs in the draft affidavit of October 23 that were blank, “18. DESCRIPTION OF METHODOLOGY OF ATF’S STUDY” and “19. DESCRIPTION OF THE PARTICULAR FIREARM AT ISSUE.” Only the headings were present. There were no completed studies that could be used to fill in the blanks. But, among the options White House Staff had circulated, was the idea of a temporary suspension of import permits already granted to allow for the “study” of the so-called “sporterized” versions of semiautomatic rifles bearing resemblance to military equivalents. These were the “details to follow” provisions that would become the bullwork of the affidavit if the Administration had to defend its decision in federal court after reversing the permits.

Staff had no Congressional vote or record to stand on to provide authority for what Feinstein wanted Clinton to do. They were going to have to take a risky temporary suspension in order to force the ATF – an executive-led agency – to conduct a study of semi-automatic rifles otherwise lawful for import to see if they could pull



off an extension of the list of banned firearms without another vote of Congress.

At this point in the story, still there was neither legal basis nor firearms technical data nor crime data to support a ban on the Galil Sporter, but that didn't seem to bother Feinstein. She was actively engaging foreign heads of state and leading a nationwide press and editorial assault on the President. White House Staff was scrambling to exceed the request of the Senator.

The next day, on October 24, 1997, the issue was lost, politically.

That morning a call and/or a meeting took place, reflected in the call note and then the handwritten notes of Kagan, that signaled "Karen Popp playing ringmaster,"<sup>58</sup> the drafted affidavit "wasn't going to get us anyplace," that the "litigation risk – pretty big" and "we know we're going to get beat."<sup>59</sup>

So how did we lose with the law and the facts on our side and the lawyers tolling the death knell? It was on this day that Kagan's notes read "100,000 permit apps/3000,000 (*sic*)/900,000 permit apps." There's a double underline and a box around the "900,000." White House Staff went from zero involved in crime to 36,188 of various imported semi-automatic rifles to crisis-level numbers of nearly "1,000,000" in less than ten days. From facts to hysteria. From lawful commerce to a mimic of the Bush 1987 import ban



defense found in *Gun South, Inc. v. Brady*,<sup>60</sup> the only printed case decision found in all these thousands of pages of Kagan's White House records.

The same day, U.S. Representative John Dingell (MI-16) wrote to the President, apparently having finally noticed press reports of the impending import suspension and study, noting "Despite the improvements ultimately agreed to, I remained opposed to the assault weapons provisions [in the 1994 Crime Bill] because I knew then that they would have very little practical impact in reducing crime."<sup>61</sup> Representative Dingell closed with emphasis that such a directive would be "outside of the law and the clear intent of Congress," but his words were too little, too late.

Also the same day, the weekly presidential domestic policy report from Reed and Kagan included item #6, a new heading for "crime – assault weapons directive," reading, in full:

"We are working with Rahm [Emanuel] on a directive to the Treasury Department that would (1) reexamine and, if necessary, modify the criteria used to keep non-sporting weapons out of the country; and (2) pending this reexamination, temporarily suspend any pending and future applications for permits to import modified – or "sporterized" – assault weapons, including the new Uzi American and Galil Sporter. Although only a limited number of these firearms has come into the country over the past few years (10,000 in 1996, 25,000 in 1996, and

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20,000 to date this year), applications are now pending to import as many as 900,000 of these firearms.

“The one issue we have not resolved is whether the Administration should take the additional step of temporarily suspending permits that have already been granted. These permits allow the future importation of about 300,000 sporterized assault weapons. Senator Feinstein is insisting that we temporarily suspend these permits, and she already has told the press that a directive would be meaningless unless it does so. Administration lawyers, however, have serious doubts that we have a factual basis for temporarily suspending existing permits, and they worry that a loss on this issue could undermine our ability to defend any future action by Treasury to modify the test for non-sporting weapons. Senator Biden thinks that a loss on the temporary suspension issue would have detrimental political consequences, and that we should not take the action unless we believe a court could sustain it.

“We are pressing Treasury, Justice, and White House Counsel lawyers to develop the strongest possible case for suspending existing permits; when we are satisfied that they have done so, we will together evaluate the strength of that case and determine whether to recommend temporary suspensions. We have met with staff for Sens. Feinstein and Biden and Reps. Schumer and McCarthy to brief them on our concerns about this issue. We are also trying to develop some kind of compromise option.”

As to the last paragraph, Kagan wrote in the margins “Yes” (double underline), then what appears to read “push this,” and, written clearly, “don’t let them delay.”



There is a certain irony in our ability to evaluate these papers, because of all the players in this saga, it is Kagan, now U.S. Supreme Court Justice Kagan, who may shortly have a voice and a vote among the nine justices who could determine *NYSRPA vs. Cuomo*,<sup>62</sup> *Shew vs. Malloy*,<sup>63</sup> and *Kolbe vs. Hogan*.<sup>64</sup> These three cases challenge the constitutionality of the “assault weapons” provisions of state laws in NY, CT, and MD, decisions that will hinge upon a technical understanding of firearms and ask whether state governments can effectively ban firearms in the interest of public safety through legislation that is purported to be narrowly tailored. Back then, it was Kagan who wrote an e-mail to Sylvia Mathews,<sup>65</sup> then Deputy Chief of Staff to President Clinton and now Secretary of Health and Human Services under President Obama, saying “I’ll be glad to write something every week that we don’t care if the world sees.”<sup>66</sup> It appears Kagan will soon get her chance to do just this.

The second draft of the ATF affidavit emerged also on October 27, 1997,<sup>67</sup> and the language of public relations was infused throughout. New phrases appeared like “suitable for combat” and “traditional sporting rifles.” New numbers appeared like “ATF currently has applications to import over 1,000,000 sporterized versions of semiautomatic assault-type rifles pending.”

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Still, there were sentences in the second draft ATF affidavit that more than hinted its position was not resigned to the pull it was getting from the White House. One sentence reads

“Admittedly, there are other widely recognized traditional sport rifles that function in the same manner. These sporterized versions of semiautomatic assault-type rifles have been approved for importation under the sporting purposes test as currently applied, which generally treats rifles as sporting weapons.”

Another sentence reads “Importers generally do not import all firearms authorized on the permit.”

Perhaps most importantly, several pages later, the ATF claimed that “...just within the three-day period from October 21, 1997 through October 23, 1997, ATF has received applications to import over 1,000,000 sporterized versions of semiautomatic assault-type rifles.”

Is all of this starting to sound familiar to those of us in NY?

It should. The language used to describe the 1997 import permit run-up was the 2013 Cuomo justification of his refusal to allow public conversation over NYS Senate Bill 2230-2013 ahead of it being passed and signed. Here’s the 1997 ATF draft affidavit language: “Once word is out that a change may be made, there is a rush to beat the deadline.” And here’s the 2013 Cuomo press

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conference language: “The ban on assault weapons would be immediate. It wouldn’t make a heck of a lot of sense to announce a ban three days later and just generate, you know, hundreds and hundreds of sales of assault weapons in the state when we’re trying to ban those sales of assault weapons.”<sup>68</sup>

The second draft ATF affidavit anticipates use in opposition to an imagined federal lawsuit through which a plaintiff would be requesting a preliminary injunction to halt the enforcement of an import suspension in favor of allowing inventory both to land on U.S. soil and to clear U.S. Customs for delivery to FFLs. The ATF’s drafted argument came, in essence, down to one sentence near the end: “Although the number of weapons involved in this case appear to be insignificant, the overall issue involves the importation of over 1,000,000 firearms.” It was a sentence that glossed statistics in favor of White House strategy. The number of Uzi and Galil rifles recovered at crime scenes during the 1995-1997 period was zero, the number of selected semi-automatic rifles imported during the period was 36,188, the number of applications reflected a three-day period anticipating an import ban, and only a small percentage of permits actualized to imports. Within the files, there was not one sheet of documentation from Treasury/ATF listing a licensed importer or manufacturer by name or providing their Form 6 information to support Kagan’s note of “900,000.”



Even so, White House Staff “asked Treasury, Justice, and White House Counsel to develop the strongest possible case for temporarily suspending existing permits.”<sup>69</sup> Internal memorandum continued to emphasize that “no highly publicized crimes have involved these weapons.” And there continued to be a fear – not of crime – but that Feinstein would “complain that this action is not sufficiently bold.”<sup>70</sup>

## 7. THE CLINTON MEMORANDUM TO TREASURY

While the Administration lawyers continued to sweat the probable indefensibility of a suspension of approved and pending import permits, White House Staff started to elicit what could be done to strengthen the anticipated need for a defense strategy. In another Memorandum, “Treasury and ATF attorneys also noted that if there is a drastic increase in the numbers of weapons actually being imported through existing permits during the 120 day period, in conjunction with favorable facts gathered from any of the review tracks, our claim that sufficient circumstances exist to warrant the suspension of existing permits would be substantially stronger.”<sup>71</sup> As late as a Memorandum for the President dated October 31, 1997, Staff were reflecting that Chuck Ruff and the Department of Justice “believe an existing-permit suspension (Option 3) would not survive in court – there is not a sufficient factual basis for upholding such an



action as there was in 1989 when a court last addressed this issue. Furthermore, they believe such a loss could cripple efforts to modify the importation criteria.”<sup>72</sup>

By November 14, 1997, President Clinton signed his “Memorandum for the Secretary of the Treasury” on the subject of the “Importation of Modified Semiautomatic Assault-Type Rifles.”<sup>73</sup> The Memorandum (reproduced herein at Appendix B) recites the history of the letters from Feinstein and keeps its focus on the connection to Israel and to the Uzi and the Galil. None had been imported in 1995 or 1996. None had been traced to gun crime from 1995-1997. And the Galil Sporter had been cleared by the ATF on May 12, 1997 as being in compliance with federal law. This version of the Memorandum that was signed in final form by the President was transmitted from Ruff and Kagan.<sup>74</sup>

On November 15, 1997, in his weekly radio address, President Clinton adopted the language that would become the language in 2013 of Governor Cuomo: “We’ve banned these guns because you don’t need an Uzi to go deer hunting, and everyone knows it.” In 1997, the blame was laid at the feet of “some foreign gun manufacturers” “getting around the ban” through “minor modifications” that “amount to nothing more than cosmetic surgery.” It was the epitome of the culture wars: “Well, we didn’t fight has (*sic*) hard as we have – to pass the assault weapons in the

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first place – only to let a few gun manufacturers sidestep our laws and undermine our progress.” And the rhetoric gathered the speed that we would come to hear again in 2013: “Assault weapons in the hands of civilians exist for no reason but to inspire fear and wreak deadly havoc on our streets. They don’t belong on our streets or in our schoolyards, and they shouldn’t be aimed at our children. That’s why we banned them three years ago and why we’re taking action today.”<sup>75</sup>

This, from the President of the United States, even though in 1997 the ATF was clear that not one of these rifles had been used in the commission of a crime. Neither President Clinton, nor then-aspirational Mr. Cuomo, had factual or legal basis basis for the executive actions that both decisively took.

## **8. FAST FORWARD TO THE 1998 CLINTON IMPORT BAN**

Truly, we can skip straight across the months between the temporary suspension and the permanent ban, issued April 6, 1998. The outcome of the 1998 ATF Working Group “study” was a foregone conclusion from “go.” White House Staff called an ATF study “the best chance for acquiring information supporting modification of the sporting purposes test to prohibit the importation of these weapons.”<sup>76</sup> Between November 21 and 23, 1997, a presentation was transmitted between the White House, Treasury,



and ATF for the “Technical Working Group (TWG) Plans” for a “Study on the Sporting Use Suitability of Certain Semiautomatic Rifles.”<sup>77</sup> The number one “objective of study” was to “focus on semi-automatic rifles that are modified version of firearms that failed to meet the sporting purposes test in 1989 but were later found to be importable when certain military features were removed.”

Four months later, in a tortured report that really found no problem with semi-automatic rifles under the 1994 AWB and the import sporting test, the ATF came out with a determination that it was the “large capacity military magazine” that served “a function in combat and crime, but serves no sporting purpose.”<sup>78</sup> The 1998 ATF study concluded that the detachable “large capacity military magazine” should be given the same weight as other military configuration features identified in 1989.<sup>79</sup>

By the time we get to President Clinton’s speech of April 6, 1998, announcing the temporary suspension would become a permanent ban, the language of speechwriters had become “Because, as everybody knows, you don’t need an Uzi to go deer hunting. You don’t need a Galil to go skeet shooting. These – no matter how they’re modified for cosmetic reasons – are military weapons, weapons of war. They are not meant for sporting, and they’re not meant for our streets.”<sup>80</sup>



Once again, sound familiar to New Yorkers?

On January 10, 2013, we heard the Governor remark: “And I say to you: forget the extremists! It’s simple! No one hunts with an assault rifle! No one needs 10 bullets to kill a deer!”<sup>81</sup>

On a final note, apparently the President’s speechwriters failed to notice that the 1998 ATF Working Group paper did not include any discussion of the Galil Sporter in its 126-page evaluation, with only one, small exception buried in a footnote on page 121 of 126. The footnote reflects that the Galils and Uzis should be barred from importation, as referenced “in a memo from the Center to Prevent Handgun Violence” that concludes

“The modified assault rifles currently under suspended permits should be permanently barred from importation because they do not meet the sporting purposes test for importation under the Gun Control Act of 1968 and because certain of the rifles [Galils and Uzis] also are banned by the 1994 Federal assault weapon law.”

(Parenthetical reference in the original.) What started as a legally-correct approval for the lawful importation of the Galil Sporter to the American consumer market ended with a substantial expansion of the 1994 AWB, unilaterally, by Clinton without the debate of or a vote from Congress. Those operating throughout this chapter of Second Amendment history continue to hold office and positions of political power.

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## CONCLUSION

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How do we know young Cuomo was soaking in the relevant lessons on manipulation? We'll give you a checkmark for correct if you point to his methodology of jamming the 2013 "SAFE Act" through the NYS legislature on a "Message of Necessity" immediately following a mass shooting. But the real proof came a scant few months later, back in 1998, when Feinstein continued steamrolling gun control to the point where we ended up with the Smith & Wesson debacle in April 2000. Cuomo spends a full chapter on his own self-importance in the push for federal gun control in his 2014 autobiography, claiming that he was a lead negotiator for the President in clandestine meetings with manufacturers that took place at airports around the U.S. – all this while he was Assistant and then Secretary of HUD. To Clinton and to his pupil Andrew Cuomo, the law and the facts simply don't matter.

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## ENDNOTES

<sup>1</sup> Letter from Edward M. Owen, Jr., Chief, Firearms Technology Branch, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (dated May 12, 1997) to Mr. Jonathan Mossberg, Uzi America, Inc.

<sup>2</sup> The common reference to the “1994 Assault Weapons Ban,” discussed in further detail within this White Paper, was part of the “Violent Crime Control and Law Enforcement Act of 1994.” The 1994 AWB contained a sunset clause and expired 10 years after the effective date. See: <http://www.gpo.gov/fdsys/pkg/BILLS-103hr3355enr/pdf/BILLS-103hr3355enr.pdf>.

<sup>3</sup> The “sporting purposes test,” discussed in further detail within this White Paper, can be found at 18 U.S.C. §925, “Exceptions: Relief from disabilities.” See: <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-part1-chap44-sec925.pdf>.

<sup>4</sup> IWI US, Inc. website, homepage, “Our Story.” See: <http://www.iwi.us/Our-Story>.

<sup>5</sup> “Gun Maker Targets U.S. Senators’ Ban,” Chicago Tribune (November 12, 1997).

<sup>6</sup> Tarto, Nicholas, “Israelis debate whether to privatize the arms industry,” South Coast Today (December 7, 1997).

<sup>7</sup> Website of the ATF, page “Firearms and Ammunition Technology” at <https://www.atf.gov/content/firearms/firearms-technology>.

<sup>8</sup> 18 U.S.C. §925(d).

<sup>9</sup> See also 27 CFR §478.116, “Conditional importation.” *N.B.*: One should read all three major federal firearms statutes along side their corresponding regulations, referring here to the National Firearms Act of 1934, the Gun Control Act of 1968, and the Arms Export Control Act of 1976.

<sup>10</sup> 18 U.S.C. §921(a)(30)(A) and (B), which statute became effective on September 18, 1994 and then expired on September 13, 2004. It is no longer an effective statute and any references within this White Paper to the “1994 Assault Weapons Ban” are for historic analysis purposes only.

<sup>11</sup> 18 U.S.C. §921(a)(30)(A)(ii), sunset on September 13, 2004.

<sup>12</sup> 18 U.S.C. §921(a)(30)(A)(v), sunset on September 13, 2004.



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- <sup>13</sup> 18 U.S.C. §921(a)(3)(A)(i), sunset on September 13, 2004.
- <sup>14</sup> 18 U.S.C. §923(i) with 27 CFR §478.92 and 26 U.S.C. §5842 with 27 CFR §479.102, that the name of the importer must be conspicuously engraved, cast, or stamped on the firearm frame, receiver, barrel, or slide. For more on the subject of conversion of military surplus firearms for domestic import see “ATF Guidebook: Importation & Verification of Firearms, Ammunition, and Implements of War” at <https://www.atf.gov/files/firearms/guides/importation-verification/download/firearms-importation-verification-guidebook--firearms-verification.pdf>.
- <sup>15</sup> Official biography of Dianne Feinstein on her website for the U.S. Senate at <http://www.feinstein.senate.gov/public/index.cfm/biography>.
- <sup>16</sup> CBS News, 60 Minutes, “What Assault Weapons Ban?” (August 1, 1999), available on the CBS News website at <http://www.cbsnews.com/videos/what-assault-weapons-ban/>.
- <sup>17</sup> Brazil, Jeff and Berry, Steve, “Clinton Urged to Stop import of Assault Guns,” Los Angeles Times (September 28, 1997).
- <sup>18</sup> Statement of Senator Feinstein, “The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States” (June 28, 2010), p. 12, available at: [https://www.senate.gov/pagelayout/reference/one\\_item\\_and\\_teasers/Supreme\\_Court\\_Nomination\\_Hearings.htm](https://www.senate.gov/pagelayout/reference/one_item_and_teasers/Supreme_Court_Nomination_Hearings.htm).
- <sup>19</sup> Statement of Senator Jeff Sessions (AL), *Id.*, p. 5. Note that his complete comment goes on to say “and as the dramatic 5-4 decision today in the *McDonald* case shows, the personal right of every American to own a gun hangs by a single vote on the Supreme Court.”
- <sup>20</sup> Statement of Senator Grassley (IA), *Id.*, p. 15.
- <sup>21</sup> See, for example, the facsimile from James Castello to Kagan at the White House Counsel’s Office, “Importation Status of Large Capacity Ammunition Feeding Devices,” (July 11, 1995).
- <sup>22</sup> E-mail from Dennis K. Burke to Reed and Kagan on the subject of “Assault Weapon Clips (*sic*)” (March 18, 1997).
- <sup>23</sup> See, e.g., the “Memorandum for the Chief of Staff” (dated March 12, 1997) from Reed and Kagan, titled “Ideas,” spanning six, single-spaced pages, of which a “ban on importation of gun clips (*sic*)” spanned two sentences on three lines.
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<sup>24</sup> Ms. Susan Ginsburg rose to the position of Senior Advisor for Firearms Policy Coordination to the Under-Secretary of the Treasury for Enforcement, and was in office until December 2000. For a profile article, see “Public Lives; The Woman Who Changed the Illegal-Gun Landscape” by Fox Butterfield for the New York Times (December 23, 2000), available on line at <http://www.nytimes.com/2000/12/23/us/public-lives-the-woman-who-changed-the-illegal-gun-landscape.html>.

<sup>25</sup> Mr. Dennis Burke was a Senior Policy Analyst for the White House Domestic Policy Council, focusing on crime, law enforcement, and drug policy. Among his current projects through G SIS, where he is co-founder and partner, is customs compliance and supply chain security. See, <http://gsis360.com/>.

<sup>26</sup> Reed most recently served under the Obama Administration as Assistant to the President and Chief of Staff to the Vice President. His career build during the Clinton Administration was Assistant to the President for Domestic Policy Planning, Deputy Domestic Policy Advisor, and then Chief Domestic Policy Advisor. See, <https://www.whitehouse.gov/the-press-office/2011/01/14/vice-president-biden-announces-bruce-reed-new-chief-staff>. Since December 2013, he has been at the Broad Foundation, with more than \$2.7 billion in assets, according to its November 30, 2013 “Statement of Financial Position.” See, <http://www.broadfoundation.org/asset/101-2013-14tbfreport.pdf>.

<sup>27</sup> For the official biography of Justice Kagan, listing her positions in the Clinton Administration as Associate Counsel to the President and then Deputy Assistant to the President for Domestic Policy, see <http://www.supremecourt.gov/about/biographies.aspx>.

<sup>28</sup> Freedman lists his positions in the Clinton Administration as Senior Advisor to the President and, prior to that, as Special Assistant to the President for Policy Planning. For more information, see his biography at Freedman Consulting, at <http://www.tfreedmanconsulting.com/Staff-Bios13.php>.

<sup>29</sup> Brazil, Jeff and Berry, Steve, “Crackdown on Assault Weapons Has Missed Mark,” Los Angeles Times (August 24, 1997).

<sup>30</sup> For one example per month during this campaign, see (1.) Brazil, Jeff and Berry, Steve, “Feinstein Targets Loopholes in Assault Weapons Ban,” Los Angeles Times (September 17, 1997); (2.) Brazil, Jeff and Berry, Steve, “Gun Import Fight Pressed by Feinstein,” Los Angeles Times (October 17, 1997); and, (3.) Brazil, Jeff and Berry, Steve, “Clinton Imposes Import Ban on Assault Guns,” Los Angeles Times (November 15, 1997).

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<sup>31</sup> “Memorandum to the President” on the subject of “Meeting with Senator Feinstein on Firearms Issues,” from Emanuel and Reed (dated September 13, 1997), p. 2.

<sup>32</sup> *Id.*, p. 3.

<sup>33</sup> Letter from U.S. Senator Dianne Feinstein (CA) to President William Clinton (dated September 17, 1987).

<sup>34</sup> A “semiautomatic rifle” “means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.” 18 U.S.C. §921(a)(28).

<sup>35</sup> Chicago Tribune, November 12, 1997, *supra*.

<sup>36</sup> Letter from U.S. Senator Dianne Feinstein to President William Clinton (dated September 17, 1987).

<sup>37</sup> Editorial (no byline), “Up in arms over Israeli weapons,” St. Petersburg Times (September 29, 1997).

<sup>38</sup> Editorial (no byline), “A loophole for assault weapons,” Boston Globe (October 6, 1997).

<sup>39</sup> Email from Mr. Larry White to Ms. Mary Jo Hughes (dated October 14, 1997). Ms. Hughes held various positions with the ATF, by 2000 being appointed the Division Chief of Firearms Services Division, overseeing the Firearms Licensing Center, Explosives Licensing Center, Imports Branch, and the National Firearms Branch. See her recent bio for the NSSF at <http://www.nssfblog.com/nssf-welcomes-former-atf-director-industry-operations-mary-jo-hughes-as-newest-member-of-ffl-compliance-consulting-team/>.

<sup>40</sup> Because these figures are difficult to find, here is the breakdown: Bulgaria (SA93 – 1,001, SLR95 – 16,592, SLR96 – 1,001), Brazil (SAR4800 - 150, L1A1 – 9,492), Egypt (MISR – 2,201, ARM – 1,100), Greece (SAR8 - 1), and Hungary (SA85M – 4,650). The e-mail does not identify the FFL(s) that handled the import(s).

<sup>41</sup> 18 U.S.C. §922(a), *et seq.*; 22 U.S. C. §2778(b), *et seq.*; see also corresponding regulations.

<sup>42</sup> 27 CFR 478.112(c); ATF Form 6A can be found here: <https://www.atf.gov/files/forms/download/atf-f-5330-3c.pdf>.

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<sup>43</sup> 27 CFR 478.112(b); ATF Form 6 can be found here:  
<https://www.atf.gov/files/forms/download/atf-f-5330-3a.pdf>.

<sup>44</sup> Mr. Rahm Emanuel, former Chief of Staff to President Barack Obama, is the current Mayor of Chicago, and his official biography can be found here:  
[http://www.cityofchicago.org/city/en/depts/mayor/supp\\_info/about\\_the\\_mayor.html](http://www.cityofchicago.org/city/en/depts/mayor/supp_info/about_the_mayor.html).

<sup>45</sup> For a more extensive biography of Mr. Robert Rubin see:  
<http://www.cfr.org/staff/b292>.

<sup>46</sup> Letter from U.S. Senator Dianne Feinstein to Mr. Robert Rubin, Secretary, Department of the Treasury (dated October 17, 1997).

<sup>47</sup> Brazil, Jeff and Berry, Steve, "Israel Freezes Export of Assault Rifles to U.S.," Los Angeles Times (October 29, 1997). *N.B.*: no other newspaper article available on-line made this claim and we could find no copies of any these alleged letters, nor any foreign press coverage of, nor quotations of any foreign leaders or diplomatic personnel commenting upon such alleged letters or overtures by Feinstein, nor were such letters part of the Kagan materials.

<sup>48</sup> Arms Export Control Act of 1976, Pub.L. 94-329, at 22 U.S.C. Chapter 39. See: <http://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg729.pdf>.

<sup>49</sup> International Traffic in Arms Regulations, 22 CFR 120-130. For this and other relevant information, see:  
[https://www.pmdtc.state.gov/regulations\\_laws/itar.html](https://www.pmdtc.state.gov/regulations_laws/itar.html).

<sup>50</sup> U.S. Munitions List, 22 CFR §121.1, *et seq.* See:  
[https://www.pmdtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_121.pdf](https://www.pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf).

<sup>51</sup> "Memorandum for the Secretary of the Treasury" on the subject of "Importation of Uzi and Galil Firearms," marked "DRAFT (10/17/97...6pm)."

<sup>52</sup> Mr. Jose Cerda III, in addition to running for the public office of City Clerk in Chicago, worked on policy matters not only under Clinton, but also for Obama and Biden. He currently works for IFF, a community development financial institution. See:  
<http://www.iff.org/resources/content/1/3/documents/IFF%20Chicago%2>

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[QStaff%20List\\_020215.pdf](#) and <http://nalcab.org/conference2014speakers>.

<sup>53</sup> E-mail from Cerda (dated October 21, 1997 at 11:38 PM), sent to Ms. Michelle Crisci [Meyercord], Reed, Kagan, Mr. Barry J. Toiv, and Ms. Leanne Shimabukuro. Although the text begins “Rahm, et. al.,” the “To” says “See the distribution list at the bottom of this page,” which does not include Emanuel.

<sup>54</sup> Shogren, Elizabeth, Brazil, Jeff, and Berry, Steve, “Clinton Moves to Limit Import of Assault Guns,” Los Angeles Times (October 22, 1997).

<sup>55</sup> E-mail from Cerda (dated October 23, 1997 at 2:42 PM), sent to Kagan, Reed, Ms. Shimabukuro.

<sup>56</sup> “Declaration of John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms,” not signed, facsimile transmission data on each page stating “10/23/97” and “ATF Chief Counsel,” eight pages in length.

<sup>57</sup> To read more about the ATF National Tracing center, see <https://www.atf.gov/content/firearms/firearms-enforcement/national-tracing-center>.

<sup>58</sup> Ms. Popp served in the Clinton Administration as a lawyer in the Office of Legal Counsel at the U.S. Department of Justice and as Associate White House Counsel to President Clinton. For her current biographical information see: <http://www.sidley.com/people/karen-popp>.

<sup>59</sup> Kagan, call sheet, Friday, October 24, 1997 at 2:12 pm, page 1.

<sup>60</sup> *Gun South, Inc. v. Brady*, 877 F.2d 858 (11<sup>th</sup> Cir., 1989).

<sup>61</sup> Letter from U.S. Representative John Dingell to The President (dated October 24, 1997).

<sup>62</sup> *NYSRPA v. Cuomo*, 13-cv-291S, District Court Decision and Order of December 31, 2013 fully submitted and pending decision from the Second Circuit Court of Appeals. See: [http://www.nysrpa.org/index.php?option=com\\_content&view=article&id=860&Itemid=215](http://www.nysrpa.org/index.php?option=com_content&view=article&id=860&Itemid=215).

<sup>63</sup> *Shew vs. Malloy*, 3:13-cv-00739-AVC, District Court Decision and Order of January 30, 2014 fully submitted and pending decision, jointly with *NYSRPA vs. Cuomo*, from the Second Circuit Court of Appeals. See:

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[http://www.gpo.gov/fdsys/granule/USCOURTS-ctd-3\\_13-cv-00739/USCOURTS-ctd-3\\_13-cv-00739-0](http://www.gpo.gov/fdsys/granule/USCOURTS-ctd-3_13-cv-00739/USCOURTS-ctd-3_13-cv-00739-0).

<sup>64</sup> *Kolbe vs. Hogan*, 1:13-cv-02841-CCB, District Court Decision and Order of August 12, 2014 fully submitted and pending decision from the Fourth Circuit Court of Appeals. See:

<http://www.plainsite.org/dockets/udtbs2w7/maryland-district-court/kolbe-et-al-v-omalley-et-al/>.

<sup>65</sup> For more information on the career track of Ms. Mathews through the Clinton Administration and into the Obama Administration, see <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/03/03/sylvia-mathews-burwell-six-things-to-know-about-the-new-white-house-budget-director/>.

<sup>66</sup> E-mail from Kagan to Sylvia Mathews (dated October 20, 1997).

<sup>67</sup> "Declaration of John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms," not signed, facsimile transmission data on each page stating "10/27/97" and "General Counsel" as well as "ATF Chief Counsel," 13 pages in length.

<sup>68</sup> Official website of New York Governor Andrew M. Cuomo, "Governor Cuomo Holds Briefing on his Gun Legislation Proposal" (January 14, 2013). See: <http://www.governor.ny.gov/news/january-14-2013-governor-cuomo-holds-briefing-his-gun-legislation-proposal>, at 7:00.

<sup>69</sup> "Memorandum for the President" (dated October 30, 1997) from Reed and Emanuel on the subject of "Sporterized Assault Weapons Directive."

<sup>70</sup> This latter is apparently a reference to an unnamed editorial "Time for Presidential Boldness: Clinton needs to go the extra mile in controlling assault guns," no byline attribution, Los Angeles Times (dated October 23, 1997).

<sup>71</sup> "Memorandum for the President" (dated November 4, 1997) from Ruff, Reed, and Emanuel on the subject of "Sporterized Assault Weapons Directive." Ruff, an attorney, eventually defended President Clinton during the U.S. Senate impeachment hearings in January 1999. For more information on his career, see <http://www.nytimes.com/2000/11/21/nyregion/charles-ruff-white-house-counsel-who-defended-clinton-in-impeachment-dies-at-61.html>.

<sup>72</sup> Memorandum for the President (October 31, 1997) from Phil Caplan and Sean Maloney. Caplan was Deputy and then the Assistant to the

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President and Staff Secretary from 1995-1999. See his resume at Renova Capital Partners: [http://www.renovacap.com/sites/default/files/resumes/p\\_caplan.pdf](http://www.renovacap.com/sites/default/files/resumes/p_caplan.pdf). Maloney is currently a Member of the United States House of Representatives, and was a previous primary candidate against Cuomo when he was running for the position of NYS Attorney General in 2006. See: <http://seanmaloney.house.gov/>.

<sup>73</sup> The final draft of the Directive was submitted to the President from Ruff and Kagan on November 13, 1997.

<sup>74</sup> Memorandum for the President (November 13, 1997) on the subject of "Importation of Modified Semiautomatic Assault Type Rifles" from Ruff and Kagan.

<sup>75</sup> Clinton radio address, November 15, 1997. See: <http://www.gpo.gov/fdsys/pkg/PPP-1997-book2/pdf/PPP-1997-book2-doc-pg1576.pdf>.

<sup>76</sup> Memorandum for the President (November 4, 1997) on the subject of "Sporterized Assault Weapons Directive" from Ruff, Reed, and Emanuel.

<sup>77</sup> According to "A History of the United States Department of the Treasury During the Clinton Administration 1993-2001," p. 163, both Deputy Assistant Secretary David Medina and Senior Advisor Susan Ginsburg worked with the ATF on the study. Ginsburg was earlier mentioned in this White Paper for her definition of the "detachable magazine" to White House Staff. See: [http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1990/1993\\_0120\\_ClintonTreasury.pdf](http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1990/1993_0120_ClintonTreasury.pdf).

<sup>78</sup> "Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles" (April 1998) at <https://www.atf.gov/files/firearms/industry/april-1998-sporting-suitability-of-modified-semiautomatic-assault-rifles.pdf>.

<sup>79</sup> *Id.*, p. 38.

<sup>80</sup> "Crime Event 4/6 – Outline," single page from William J. Clinton Presidential Library, Box 005, FOIA Number 2006-0467-F, subgroup "Speechwriting."

<sup>81</sup> Website of Governor Andrew M. Cuomo of the State of New York, "2013 State of the State" (January 9, 2013), at 1:46. The link to the PowerPoint presentation is available at the same website page.

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## Appendix A

SEP-85-1997 08:52

*Crime - assault weapons P. 07/08 Imports*



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, DC 20226

E:CE:FT:EMO  
3311

MAY 12 1997

Mr. Jonathan Mossberg  
UZI America, Inc.  
7 Grasso Avenue  
North Haven, Connecticut 06473

Dear Mr. Mossberg:

This refers to your letter of April 4, 1997, with which you submitted a semiautomatic rifle for evaluation as to its importability into the United States.

Examination of the submitted sample, serial number 97100171, indicates that it is a Galil Sporter model semiautomatic rifle in caliber 7.62mm NATO (.308 Winchester) manufactured by I.M.I. in Israel. The rifle has been originally designed and manufactured to permit only semiautomatic fire. The receiver was originally manufactured with no provision for installing an automatic sear or automatic sear pin. Additionally, the right bolt guide rail has never been cut out to allow clearance for the upper arm of the automatic sear. The bolt carrier has no provision for tripping an automatic sear. *these are*

The rifle is fitted with a fixed, one-piece shoulder stock having an elongated thumbhole style design. The rifle has a pistol grip that protrudes conspicuously beneath the action of the weapon. The rifle has no folding stock, bayonet mount, flash suppressor, threaded barrel designed to accommodate a flash suppressor, and no grenade launcher. The rifle as submitted is more in the configuration of a traditional sporting rifle. The firearm was submitted with a detachable, double column magazine having a maximum capacity of less than 10 cartridges. *Military characteristics*

Based on the above examination, the Galil Sporter model rifle as submitted is not a semiautomatic assault weapon as that term is defined in 18 U.S.C., Chapter 44, Section 921(a)(30)(A) and (B). The rifle is suitable for importation under the provisions of § 925(d)(3) of the cited chapter.



## Appendix A (con't.)

SEP-25-1997 08:53

P.08/08

-2-

Mr. Jonathan Mossberg

Please be advised that this determination is based on the sample as submitted. If the design, dimensions, configuration, material used or method of construction is changed, this classification is subject to review.

It was noted in our examination that the sample is not marked with the name of the importer as required by 27 CFR, Section 178.92(a)(1). Any firearms you import must be marked as required by the cited section.

The sample is being returned under separate cover.

We trust that the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely yours,

  
Edward M. Owen, Jr.  
Chief, Firearms Technology Branch

TOTAL P.08



## Appendix B

THE WHITE HOUSE  
WASHINGTON

November 14, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

SUBJECT: Importation of Modified Semiautomatic  
Assault-Type Rifles

The Gun Control Act of 1968 restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable to sporting purposes. In 1989, the Department of the Treasury (the Department) conducted a review of existing criteria for applying the statutory test based on changing patterns of gun use. As a result of that review, 43 assault-type rifles were specifically banned from importation. However, manufacturers have modified many of those weapons banned in 1989 to remove certain military features without changing their essential operational mechanism. Examples of such weapons are the Galil and the Uzi.

In recent weeks Members of Congress have strongly urged that it is again necessary to review the manner in which the Department is applying the sporting purposes test, in order to ensure that the agency's practice is consistent with the statute and current patterns of gun use. A letter signed by 30 Senators strongly urged that modified assault-type weapons are not properly importable under the statute and that I should use my authority to suspend temporarily their importation while the Department conducts an intensive, expedited review. A recent letter from Senator Dianne Feinstein emphasized again that weapons of this type are designed not for sporting purposes but for the commission of crime. In addition, 34 Members of the House of Representatives signed a letter to Israeli Prime Minister Binyamin Netanyahu requesting that he intervene to stop all sales of Galils and Uzis into the United States. These concerns have caused the Government of Israel to announce a temporary moratorium on the exportation of Galils and Uzis so that the United States can review the importability of these weapons under the Gun Control Act.



## Appendix B (con't.)

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The number of weapons at issue underscores the potential threat to the public health and safety that necessitates immediate action. Firearms importers have obtained permits to import nearly 600,000 modified assault-type rifles. In addition, there are pending before the Department applications to import more than 1 million additional such weapons. The number of rifles covered by outstanding permits is comparable to that which existed in 1989 when the Bush Administration temporarily suspended import permits for assault-type rifles. The number of weapons for which permits for importation are being sought through pending applications is approximately 10 times greater than in 1989. The number of such firearms for which import applications have been filed has skyrocketed from 10,000 on October 9, 1997, to more than 1 million today.

My Administration is committed to enforcing the statutory restrictions on importation of firearms that do not meet the sporting purposes test. It is necessary that we ensure that the statute is being correctly applied and that the current use of these modified weapons is consistent with the statute's criteria for importability. This review should be conducted at once on an expedited basis. The review is directed to weapons such as the Uzi and Galil that failed to meet the sporting purposes test in 1989, but were later found importable when certain military features were removed. The results of this review should be applied to all pending and future applications.

The existence of outstanding permits for nearly 600,000 modified assault-type rifles threatens to defeat the purpose of the expedited review unless, as in 1989, the Department temporarily suspends such permits. Importers typically obtain authorization to import firearms in far greater numbers than are actually imported into the United States. However, gun importers could effectively negate the impact of any Department determination by simply importing weapons to the maximum amount allowed by their permits. The public health and safety require that the only firearms allowed into the United States are those that meet the criteria of the statute.

Accordingly, as we discussed, you will:

- 1) Conduct an immediate expedited review not to exceed 120 days in length to determine whether modified semiautomatic assault-type rifles are properly importable under the statutory sporting purposes test. The results of this review will govern action on pending and future applications for import permits, which shall not be acted upon until the completion of this review.



## Appendix B (con't.)

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2) Suspend outstanding permits for importation of modified semiautomatic assault-type rifles for the duration of the 120-day review period. The temporary suspension does not constitute a permanent revocation of any license. Permits will be revoked only if and to the extent that you determine that a particular weapon does not satisfy the statutory test for importation, and only after an affected importer has an opportunity to make its case to the Department.

William J. Clinton



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## ORGANIZATION

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Full name: **The Second Amendment Coalition**

The Second Amendment Coalition was launched in 2014 to provide accurate information on firearms to the public and to combat the misinformation produced by gun control advocates. Comprised of more than 30 groups at its inception, the Second Amendment Coalition will be producing original materials to advance support for the Second Amendment. Its Second Amendment Coalition Resource Center will be a storehouse for public and proprietary resource materials, as well as serving as a host for conferences and training.

Groups and individuals that support the civil liberties embodied in the Second Amendment are encouraged to contact us through SCOPE at (716) 941-3286, [www.SCOPEny.org](http://www.SCOPEny.org).

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## AUTHOR

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Full name: **Paloma A. Capanna**

Title: **Attorney & Policy Analyst**

Paloma is an attorney and policy analyst in private practice with more than 20 years of litigation experience at the trial and appellate levels in state and federal courts. Paloma represents the Plaintiffs in *Montgomery vs. Cuomo*, and other of her current clients include SCOPE, Empire State Arms Collectors, Gun Owners of America, and the Second Amendment Radio Show. She recently authored an Amicus Brief to the Second Circuit Court of Appeals in the case of *NYSRPA vs. Cuomo*. Among her publications is an article on the *Heller* “common usage” standard in the Regent Journal of Law & Public Policy. Paloma is a frequent guest speaker, recently including the Gun Rights Policy Conference (Chicago).





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**THANK YOU TO OUR SUPPORTERS!**

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