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NCLA Appeals Bump Stock Ban Ruling that Allowed ATF to Get Away with Rewriting Criminal Law

Michael Cargill v. Robert M. Wilkinson, Acting U.S. Attorney General, U.S. Department of Justice, Regina Lombardo, Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Bureau of Alcohol, Tobacco, Firearms and Explosives

Washington, DC (March 8, 2021) — Congress has not prohibited bump stocks, and it is thus unlawful for a prosecutorial entity like the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to rewrite the law in Congress’ place. That’s the basic argument the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, makes in its [opening brief](#) filed today in the U.S. Court of Appeals for the Fifth Circuit in *Cargill v. Wilkinson, et al.*

The case of NCLA’s client, Michael Cargill of Austin, TX, was the first challenge to ATF’s bump stock ban to go to trial, last September. Instead of shutting down an administrative shortcut and restoring constitutional lawmaking principles, the U.S. District Court for the Western District of Texas turned a blind eye to numerous legal discrepancies caused by ATF’s unauthorized revision of a federal statute.

ATF does not have the power to issue binding legislative rules like the Final Rule targeting bump stocks. Yet, in December 2019, under direction from the Attorney General and U.S. Department of Justice, ATF’s Final Rule altered the statutory definition of a “machinegun” to include bump stocks. It turned an estimated 520,000 bump stock owners into felons overnight and ordered law-abiding Americans to destroy or surrender their devices to ATF or face 10 years in prison. Even though the Rule’s promulgation involved determining the scope of criminal liability, which is solely Congress’ responsibility, the district court concluded that bump stocks have always been prohibited by the statute—echoing ATF’s distorted claim that its rule is “interpretive” not “legislative” in nature.

But before issuing the new rule, ATF had publicly said for well more than a decade—under administrations of both parties—that bump stocks were not machineguns. And the rule significantly rewrites sections in the Gun Control Act and National Firearms Act.

Congress unambiguously drew the statutory line between (1) weapons that fire one bullet with a single function of the trigger and (2) machineguns, which fire multiple rounds continuously with one function of the trigger. Bump stocks do nothing to change the way a semi-automatic weapon’s trigger functions. So, even with a bump stock, a person cannot fire more than one shot every time a gun’s trigger is pulled (or “bumped”). Congress left no room for the agency to issue its rule. What ATF did circumvented the plain statutory text.

ATF lacks the authority to line-edit the criminal code. But the Final Rule does just that in purporting to impose new legal obligations, and it thus constitutes an unconstitutional divestment of legislative authority—from Congress to the Executive Branch.

NCLA is asking the Fifth Circuit to reverse the district court’s decision. The case is not about gun control. Rather, it brings to the fore the question *who* gets to make the laws that restrict the American people’s liberty.

NCLA released the following statements:

“ATF thinks it can get away with a brazen power grab simply because it involves a sensitive topic. No matter one’s stance on bump stocks, we should all be deeply concerned about the idea that federal prosecutors can rewrite criminal laws at will and make anyone into a criminal overnight.”

— **Caleb Kruckenberg, NCLA Litigation Counsel**

“The U.S. Court of Appeals for the Fifth Circuit has an opportunity to be the first court to set aside ATF’s unlawful Final Rule. Although six federal appeals court judges in two other cases have now clearly explained why the Rule contradicts the statute, no court has yet secured a majority to set the Rule aside on that basis.”

— **Mark Chenoweth, NCLA Executive Director and General Counsel**

For more information about this case visit [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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