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Media Inquiries: [Judy Pino](#), 202-869-5218

Fifth Circuit Grants *en Banc* Review in Lawsuit Challenging Bump-Stock Ban and *Chevron* Deference

Michael Cargill v. Merrick B. Garland, et al.

Washington, DC (June 23, 2022) – The New Civil Liberties Alliance commends the U.S. Court of Appeals for the Fifth Circuit for granting *en banc* review in *Michael Cargill v. Merrick B. Garland, et al.* today. NCLA is challenging the Bureau of Alcohol, Tobacco, Firearms and Explosives’ newly discovered interpretation of a 35-year-old statute to reverse earlier ATF determinations that bump-stock devices were not “machineguns.” Congress has generally banned the possession of fully automatic machineguns but has not prohibited bump stocks, and it is thus unlawful for a prosecutorial entity like ATF to rewrite the law in Congress’s place. NCLA seeks to overturn the federal ban on bump stocks to prevent ATF’s usurpation of Congress’s proper legislative role.

ATF’s bump-stock ban has a significant negative impact on hundreds of thousands of law-abiding citizens. By ATF’s own estimate, Americans purchased as many as 520,000 bump stocks during the decade-plus interval when ATF said that it was legal to do so. In [ruling](#) against Mr. Cargill, the Fifth Circuit panel branded him and all others who purchased bump stocks before 2018 as felons who have avoided criminal liability solely because the federal government has chosen to exercise prosecutorial discretion.

The Fifth Circuit panel held that the bump-stock rule’s re-interpretation of the statutory definition of “machineguns”—which ATF used to define bump stocks as machineguns—“is the best interpretation of the statute.” Several federal appeals courts have addressed the meaning of the statute in question. The panel’s decision conflicts with the decision of every one of the other appeals courts that has ruled on the issue. A conflict among the circuits existed even before the panel’s ruling, which has only exacerbated the split. By agreeing to rehear the case *en banc*, the Fifth Circuit now has an opportunity to correct the panel’s legal errors.

The *en banc* court will consider two issues of exceptional importance: (1) does the statute’s definition of “machineguns” unambiguously include bump stocks?; and (2) if the statute is ambiguous, is ATF’s construction entitled to *Chevron* deference, or does the rule of lenity require interpreting any ambiguity in this statute that has criminal applications in Mr. Cargill’s favor? The case is calendared for oral argument in New Orleans, LA, on September 12. NCLA has a similar case pending cert. at the U.S. Supreme Court in [Aposhian v. Garland, et al.](#)

NCLA released the following statements:

“The New Civil Liberties Alliance is delighted that the U.S. Court of Appeals for the Fifth Circuit has agreed to hear Michael Cargill’s case *en banc*. The issue of whether the rule of lenity or *Chevron* deference has a role to play in construing the statutory ban on machine guns in a way that outlaws bump stocks is extremely important. Given that two other circuits have heard similar cases *en banc*, we are not surprised by today’s news. But we do look forward to presenting Mr. Cargill’s case to the full court, and we are confident that it ultimately will correct the multiple legal errors in the panel decision below.”

— **Mark Chenoweth, President and General Counsel, NCLA**

“The Fifth Circuit panel decision was out of step with other judges around the country, a majority of whom have determined that ATF overstepped its authority when it reversed its longstanding position and held that bump stocks are illegal ‘machineguns.’ We are gratified that the *en banc* Fifth Circuit has agreed to step in and take a second look at the panel’s rubberstamping of the ATF’s decision.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) and the case video [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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