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Media Inquiries: Judy Pino, 202-869-5218

NCLA Wages Legal Battle Against ATF's Unlawful Bump Stock Final Rule in Texas and Utah

Michael Cargill v. Bureau of Alcohol, Tobacco, Firearms and Explosives and *Aposhian v. Barr, et al.*

Washington, DC (October 6, 2020) –The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is substantively rewriting federal criminal law with its Final Rule on bump stock-type devices, concluded the New Civil Liberties Alliance in two recent court filings against the ATF in lawsuits originally filed in Texas and Utah.

NCLA, a nonpartisan, nonprofit civil rights group, filed [closing argument](#) in *Michael Cargill v. ATF* in the District Court for the Western District of Texas last Friday. NCLA also filed a [supplemental brief](#) in the U.S. Court of Appeals for the Tenth Circuit late Monday evening in the case of *Aposhian v. Barr* after the court agreed last month to rehear the case *en banc*.

NCLA represents Michael Cargill of Austin, Texas and W. Clark Aposhian of Salt Lake City, Utah in the lawsuits against the ATF. Both lawsuits seek to overturn the federal ban on bump stocks issued Dec. 26, 2018 and to halt its enforcement.

At issue in both cases is whether the Slide Fire bump stock falls under the statutory definition of a “machinegun,” which is a firearm that shoots multiple times after only a single physical input. NCLA argues that in 2010 the ATF conducted a physical examination and test-fire of the Slide Fire bump stock and determined that it “was not regulated as a firearm under the Gun Control Act or the National Firearms Act.”

But after the tragic massacre in Las Vegas in October of 2017, the ATF rejected its own prior interpretation of the law and disregarded its substantive expertise in the mechanics and operation of firearms in order to alter federal criminal law.

NCLA contends that if ATF could criminalize bump stocks with its Final Rule, it would violate core limits on Congressional delegation of authority. Because it would involve a purely political determination of the scope of criminal liability, only Congress could pass a legislative rule that criminalizes the possession of bump stock devices. ATF’s purported exercise of that authority is therefore unconstitutional.

NCLA presented its case in *Cargill* at trial on September 9, 2020. This was the first legal challenge to the 2018 rule to proceed to trial. In Mr. Aposhian’s case, the U.S. Court of Appeals for the Tenth Circuit vacated an earlier panel decision on September 4, 2020, and it [granted](#) NCLA’s petition for rehearing *en banc*. In this case,

NCLA argues that *Chevron* deference cannot be invoked by the court to decide a case when the government waives any reliance on the doctrine.

The Final Rule turned an estimated 520,000 bump stock owners around the country, like Mr. Cargill and Mr. Aposhian, into felons overnight unless they destroyed or surrendered their lawfully acquired Slide Fire bump-stock devices. NCLA has brought these lawsuits to ensure that our nation's administrative agencies may not write new criminal laws and so that Congress takes responsibility for any such lawmaking.

NCLA released the following statement:

“Mr. Cargill’s case is the first challenge to the bump stock ban to go to trial. At trial we learned what we suspected all along—the ban had nothing to do with how bump stocks work, or even how weapons are classified under existing law. It did, however, have everything to do with ATF’s effort to rewrite the law for political considerations. The court should reject ATF’s actions and declare the ban unlawful.”

– **Caleb Kruckenberg, NCLA Litigation Counsel**

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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