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## **NCLA Amicus Brief Supports SCOTUS Cert Petition Targeting Lower Court Split on *Chevron* Deference**

*Gun Owners of America, Inc., et al. v. Merrick Garland, et al.*

**Washington, DC (April 8, 2022)** - The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has promulgated a [Final Rule](#) that classifies bump stocks as “machineguns” without authority from Congress to redefine that term. Gun Owners of America and several other organizations and individuals filed a petition for a writ of certiorari, asking the Supreme Court to settle a widespread lower-court disagreement over (1) whether the definition of “machinegun” found in the relevant statute is clear, unambiguous and encompasses bump stocks; (2) whether *Chevron* deference applies to statutes with criminal penalties; and (3) whether courts may apply *Chevron* deference to an agency interpretation of federal law when the federal government declines to invoke it.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [amicus curiae brief](#) in support of the cert petition in *Gun Owners of America v. Garland*, which raises the same *Chevron*-related questions that NCLA’s still-pending August 2021 [cert petition](#) presented in *Aposhian v. Garland*. The lower court’s decision to defer to an agency’s interpretation of a statute with criminal applications raises serious constitutional concerns and warrants review. The district court, whose judgment was affirmed by an equally divided Sixth Circuit (8-8), held that ATF’s construction of the statute in question was entitled to *Chevron* deference without pausing to consider that virtually all the statute’s applications are criminal in nature. That holding directly conflicts with decisions from the Second and Ninth Circuits, which have held that federal agencies’ interpretations of criminal statutes may not receive judicial deference.

This circuit conflict likely arose as a result of inconsistent decisions issued by the Supreme Court. Even apart from their consideration of the Final Rule, the courts of appeals are in disarray on the question of whether *Chevron* deference can be waived by the federal government. ATF has told each of the five federal appeals courts that have reviewed an Administrative Procedure Act (APA) challenge to the Final Rule that its construction of the statute is not entitled to *Chevron* deference. The district court’s application of *Chevron* deference in *Gun Owners of America*, despite ATF’s waiving it, directly conflicts with at least one other federal appeals court decision, as well as multiple Supreme Court decisions. Until the Supreme Court steps in definitively, NCLA’s brief contends, the lower courts will continue to interpret inconsistent *Chevron* signals differently and widen the existing conflict.

ATF’s Final Rule took effect on March 26, 2019, and it has had a significant negative impact on hundreds of thousands of law-abiding citizens. ATF estimates that Americans purchased 520,000 bump stocks during the decades when ATF said they were legal. The Rule required owners to surrender or destroy their devices; they will recover nothing if the Final Rule stands. ATF admits that the loss of property will exceed \$100 million.

### **NCLA released the following statement:**

“Application of *Chevron* deference is particularly problematic in the context of criminal law. When courts defer to executive branch construction of an ambiguous criminal statute, they are displaying a bias that systematically favors prosecutors and harms defendants. Such bias is inconsistent with constitutional due-process requirements.”

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

For more information visit the *amicus* brief page [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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