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NCLA Endorses Request for U.S. Supreme Court to Rule on ATF's Unilateral Bump Stock Ban

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

Washington, DC (June 8, 2023) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil liberties organization, has filed a [brief](#) agreeing that the U.S. Supreme Court should grant the U.S. Solicitor General's cert [petition](#) in the *Garland v. Cargill* case. That petition asks the Court to hear NCLA's challenge to the Bureau of Alcohol, Tobacco, Firearms and Explosives' unilateral bump stock ban. Contrary to the Solicitor General, however, NCLA's brief urges the Court to affirm the recent *en banc* decision of the U.S. Court of Appeals for the Fifth Circuit, which held that ATF's regulatory ban conflicts with the federal statute defining "machineguns."

ATF issued a Final Rule in 2018 defining semi-automatic firearms with bump stocks as "machineguns," which federal law prohibits. That rule reversed ATF's long-standing recognition that bump stock-equipped firearms are *not* illegal machineguns. The rule required NCLA's client, Texas gun shop owner and Army veteran Michael Cargill—and half a million other Americans—to either destroy or turn in legally purchased bump stocks.

In January, the *en banc* U.S. Court of Appeals for the Fifth Circuit [ruled](#) in *Cargill v. Garland* that banning bump stocks requires an act of Congress, a major victory for NCLA. That ruling agrees with a subsequent decision by the U.S. Court of Appeals for the Sixth Circuit and an earlier one from the Navy-Marine Corps Court of Criminal Appeals, but it conflicts with Tenth Circuit and D.C. Circuit decisions rejecting challenges to ATF's Final Rule. The resulting circuit court split makes Solicitor General Elizabeth Prelogar's cert petition one likely to be granted.

The Constitution provides that only Congress may enact new criminal laws. Congress adopted a statute banning machineguns in 1986 that did not mention bump stocks. ATF is not authorized to draft regulations expanding the reach of criminal laws beyond the scope of what Congress prohibited. NCLA urges the Supreme Court to resolve this issue and safeguard Americans' rights against administrative agency power grabs. If and when it hears this case, NCLA is confident the Court will uphold the Fifth Circuit's ruling that bump stocks are not machineguns.

NCLA released the following statements:

"The Fifth Circuit held that the 'rule of lenity' requires that ambiguities in criminal statutes be construed against the government so that ordinary citizens will not be punished unless they have clear notice of the conduct that is prohibited. NCLA is urging the Supreme Court, if it agrees to hear Mr. Cargill's case, to address whether the rule of lenity requires rejection of ATF's rule."

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

"This case is not about gun control; it is about law control. If ATF gets away with rewriting this statute to ban bump stocks, then it will rewrite other laws to wrest more power away from Congress. So, even though Michael Cargill won below, NCLA is not opposing the government's petition for a writ of certiorari. We agree it is high time for the High Court to weigh in on the lawfulness of ATF's bump stock ban and reassert Congress's primacy."

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

For more information visit the case 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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