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U.S. Supreme Court Agrees to Hear NCLA Case Against ATF's Unilateral Bump-Stock Ban

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

Washington, DC (November 3, 2023) – For the third time in less than a month, the U.S. Supreme Court has agreed to hear arguments in one of the New Civil Liberties Alliance's cases. Today, the Court granted the government's request for a *writ of certiorari* in NCLA's challenge to the Bureau of Alcohol, Tobacco, Firearms and Explosives' unilateral bump-stock ban. NCLA supported the Solicitor General's request in *Garland v. Cargill* and eagerly accepts this invitation. We will ask the Justices to affirm the *en banc* ruling of the U.S. Court of Appeals for the Fifth Circuit 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 machine guns. The rule required NCLA's client, Austin, 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 Constitution provides that only Congress may enact new criminal laws. Congress adopted a statute banning machine guns in 1986 that did not mention bump stocks. ATF is not authorized to issue legislative rules, let alone to draft regulations expanding the reach of criminal laws beyond the scope of what Congress prohibited, thereby turning half a million Americans into felons overnight. NCLA is confident that the U.S. Supreme Court will uphold the Fifth Circuit's ruling that bump stocks are not machine guns, thus safeguarding Americans' rights against administrative agency power grabs.

Garland v. Cargill will be NCLA's fourth case argued before the U.S. Supreme Court in under 2 years. The Justices unanimously held in April 2023 that NCLA client [Michelle Cochran](#) had the right to challenge the constitutionality of her ALJ's removal protections in federal court *before* undergoing an administrative adjudication. On October 13, the Court granted cert in NCLA's [Relentless, Inc., et al. v. Department of Commerce](#) challenge to the *Chevron* doctrine, with oral arguments set for January 2024. A week later, the Justices agreed to hear the government's challenge to the preliminary injunction in NCLA's [Missouri v. Biden](#) case that would bar various federal government officials from coercing or significantly encouraging social media platforms to censor constitutionally protected speech. NCLA has successfully battled the Administrative State for six years. As these cases show, we will fight all the way to the Supreme Court to protect civil liberties from federal agencies' attacks.

NCLA released the following statements:

“NCLA is pleased that the Supreme Court has agreed to hear our challenge to ATF’s unlawful expansion of the statutory definition of a ‘machinegun.’ As we told the Court in urging it to grant review and affirm the appeals court’s decision, ATF for many years recognized that bump-stock-equipped semi-automatic weapons are not ‘machineguns.’ Its sudden reversal can only be explained as a decision to allow political expediency to trump the rule of law.”

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

“This is not a case about gun rights. It is a case about administrative power. Congress never gave ATF the power to rewrite federal criminal statutes pertaining to machine guns—nor could it. Writing federal criminal laws is the sole preserve of Congress, and the Trump and Biden Administrations committed grievous constitutional error by trying to ban bump stocks without involving Congress. We are confident the U.S. Supreme Court will right this wrong for Michael Cargill and all Americans.”

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

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