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Supreme Court Hears Oral Argument in NCLA's *Cargill* Case Against ATF's Unilateral Bump Stock Ban

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

Washington, DC (February 28, 2024) – Today, former Texas Solicitor General Jonathan Mitchell presented oral argument to the Supreme Court in the New Civil Liberties Alliance's *Garland v. Cargill* case, demonstrating that the Bureau of Alcohol, Tobacco, Firearms and Explosives' unilateral bump-stock ban conflicts with the federal statute defining "machineguns." ATF's regulatory ban, which the U.S. Court of Appeals for the Fifth Circuit shot down 13-3 early last year, reversed the agency's own long-standing recognition that bump-stock-equipped firearms are *not* illegal machine guns. NCLA's client, Texas gun shop owner and Army veteran Michael Cargill, made his case in the courtroom today, anticipating a Supreme Court decision later this term that will confirm the Fifth Circuit's ruling and prevent ATF from criminalizing innocent Americans.

ATF issued its interpretive Final Rule in 2018 defining semi-automatic firearms equipped with bump stocks as "machineguns," which federal law prohibits. The rule required Mr. Cargill and every other bump-stock owner nationwide to either destroy or turn in their legally purchased devices. ATF had no right to create this threat. Congress adopted a statute banning machineguns in 1986 that did not cover bump stocks. ATF does not have the authority to enact regulations that create new criminal liability.

Justice Neil Gorsuch noted that the government had regarded bump stocks as different from machine guns for over a decade across three administrations before ATF changed its position in creating its interpretive Final Rule. He said the government's rule "... would render between a quarter-of-a-million and a half-million people federal felons, and not even through an [Administrative Procedure Act] process they could challenge, subject[ing them] to ten years in federal prison."

In January 2023, the *en banc* Fifth Circuit [ruled](#) in *Cargill v. Garland* that banning bump stocks requires an act of Congress, a major victory for NCLA. The ruling that bump stocks are not machine guns 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. This case tasks the Supreme Court with resolving these conflicting opinions.

The government argued today that bump stocks are "machine guns," claiming the statutory definition of "machine gun" includes any device that causes more than one shot to fire in response to a "single motion of the shooter" or a "single act of the shooter." However, the statute says that a device cannot qualify as a "machinegun" unless it causes a weapon to fire more than one shot "by a single function of the trigger" and a bump stock does not alter the trigger's function in any way. Regardless of whether a semi-automatic rifle is equipped with a bump stock, the weapon will fire only a single bullet in response to a single activation of the trigger. The shooter must disengage the trigger, allow it to reset, and activate it again before another shot can be fired. NCLA is confident the Court will interpret the statute correctly and set aside ATF's rule.

NCLA released the following statements:

“I’m here today to stop ATF from overstepping its proper authority. ATF’s bump-stock ban turned law-abiding citizens into criminals even though they were compliant with the statute. That’s not right, and the Supreme Court should condemn it once and for all.”

— **Michael Cargill, NCLA Client**

“It’s a travesty of justice for federal bureaucrats to try to rewrite the criminal laws and turn law-abiding gun owners into felons. Today’s argument in the Supreme Court drove home the point that it is up to Congress alone to write the criminal laws.”

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

“The Justices seemed appropriately focused on the text of the statute during today’s argument, which should bode well for Mr. Cargill’s position. A bump stock does not alter the trigger on a semi-automatic weapon, so a bump stock does not turn a semi-automatic weapon into a machine gun.”

— **Mark Chenoweth, President, 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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