

 New Civil Liberties Alliance

March 2, 2020

Via CM/ECF

Christopher M. Wolpert  
Clerk of Court  
Tenth Circuit Court of Appeals  
The Byron White U.S. Courthouse  
1823 Stout Street  
Denver CO 80257

*Re: Aposhian v. Barr, et al.*, No. 19-4036 (Oral Argument Held January 22, 2020)

Dear Mr. Wolpert:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellant writes to inform the Court of Justice Neil Gorsuch's statement regarding denial of certiorari in *Guedes v. ATF*, No. 19-296, 2020 WL 981797 (Mar. 2, 2020).

*Guedes* involved a challenge to the same ATF rule at issue in this case, which was upheld by the D.C. Circuit “*only* on the strength of *Chevron* deference.” *Id.* at \*1. Justice Gorsuch wrote that “*Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.* 467 U. S. 837 (1984), has nothing to say about the proper interpretation of the law” at issue in the rule. *Id.* This is because, “the government expressly waived reliance on *Chevron*,” *Chevron* “has no role to play when liberty is at stake,” and the agency’s “bureaucratic pirouetting” suggests its interpretation is unreasonable. *Id.* at \*1-2.

Undersigned argued that this Court should not apply *Chevron* deference for much the same reasons. (*See* Aplt. Rep. Br. at 11-21.) The Supreme Court declined to review *Guedes* because of its interlocutory posture. 2020 WL 981797, at \*2. But, as Justice Gorsuch concluded, “Before deciding whether to weigh in, we would benefit from hearing the[] considered judgments” of “other courts of appeals [that] are actively considering challenges to the same regulation.” *Id.* “[P]rovided, of course, that they are not afflicted with the same problems. But waiting should not be mistaken for lack of concern.” *Id.*

Respectfully,

/s/ Caleb Kruckenberg

**Caleb Kruckenberg**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was electronically filed using the Tenth Circuit's CM/ECF system, which sent notification of such filing to all counsel of record.

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this letter complies with the word limitations of Fed. R. App. P. 28(j) because it contains 276 words.

Respectfully,

*/s/ Caleb Kruckenberg*

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