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Transportation Secretary Buttigieg Runs over Due Process, NCLA Sues to Preserve *Brady* Rights

Institute for Hazardous Materials Packaging and Certification Testing, Inc. (IHMPACT) v. Peter Paul Montgomery Buttigieg, et al.

Washington, DC (May 18, 2021) – Today the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [lawsuit](#) against Transportation Secretary Peter Buttigieg for [revoking](#) Department of Transportation (DOT) rules that expanded and protected due process during agency enforcement actions. The lawsuit was filed in the U.S. District Court for the Northern District of Texas on behalf of the Institute for Hazardous Materials Packaging and Certification Testing, Inc. (IHMPACT). It argues that once substantive rights are extended, no federal agency may lawfully take them away by fiat. DOT would have to conduct notice-and-comment rulemaking to repeal the rules.

On April 2, 2021, Buttigieg arbitrarily rescinded DOT’s binding rules, which recognized a comprehensive set of rights, including a new mandate that DOT personnel voluntarily disclose all exculpatory evidence to those targeted by a civil enforcement action. This rule applied the U.S. Supreme Court’s decision in *Brady v. Maryland* to the administrative context. DOT first addressed longstanding concerns about civil enforcement abuse in a February 2019 General Counsel’s [memorandum](#). Shortly thereafter, the Bradbury Memo’s key provisions, requiring, among other things, prohibiting “fishing expedition” investigations without sufficient evidence in hand to support a violation, ending endless enforcement, and mandating fair and transparent civil penalties, were codified into binding rules.

Buttigieg seemingly revoked DOT’s due process rules to comply with President Biden’s “Day One” [Executive Order](#) demanding that agencies “rescind any orders, rules regulations, guidelines or policies” that supposedly inhibit the federal government’s ability to address “the coronavirus disease 2019 pandemic, economic recovery, racial justice, and climate change.” But Buttigieg did not explain why or how affording due process might “threaten” DOT’s response to these issues. Buttigieg revoked the rules without allowing IHMPACT or the public to comment beforehand, and he did so without considering IHMPACT members’ reliance interests, even though Congress and Supreme Court precedent require it.

Because of these legal violations, NCLA seeks a preliminary and permanent nationwide injunction to stop Buttigieg from denying and discarding our clients’ due process protections and statutory rights. The government should not take away rights and procedural protections put in place to cure deep-seated institutional abuse of due process and ensure fundamental fairness.

NCLA released the following statements:

“Secretary Buttigieg may be doing his part to carry out the Biden agenda, but taking away the rights of Americans, expanding federal power, and punishing anyone who dares dissent goes too far. Enough is enough.”

— **Reed D. Rubinstein, Senior Litigation Counsel, NCLA**

“The first step to abusing power is to take away people’s rights to challenge that abuse of power. The Department of Transportation is now revoking rights that were put in place precisely to stop longstanding enforcement abuse.”
— **Sheng Li, Litigation 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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