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NCLA Asks Court to Bar ATF’s Attempt to Unilaterally Change Criminal Law with Bump Stock Ban

Aposhian v. Garland, et al.

Washington, DC (January 5, 2023) – The New Civil Liberties Alliance filed a [Motion for Summary Judgment](#) today in *Aposhian v. Garland, et al.*, challenging enforcement of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF) rule banning bump stocks. ATF changed its position regarding the meaning of a federal statute to incorrectly interpret non-mechanical bump stocks as “machinegun[s]”, and subsequently ordered Americans possessing those devices to destroy them or abandon them at an ATF office. NCLA, a nonpartisan, nonprofit civil rights group, asks the U.S. District Court for the District of Utah to declare ATF’s “Bump Stock Rule” invalid and require the government to return the bump stock confiscated from Plaintiff Clark Aposhian.

This case is not about gun control. It is instead about who has the constitutional prerogative to change the criminal law if changes are warranted. The current statute, adopted in 1986, defines “machinegun” in a manner that does not encompass non-mechanical bump stocks. It is unlawful for a prosecutorial entity like ATF to rewrite existing law without authorization from Congress. Any change in gun-control laws must emanate from Congress. Indeed, Congress adopted and President Biden signed major new gun-control legislation in 2022, but the new statute makes no changes in the definition of “machinegun” and does not ban bump stocks. The Court should enjoin ATF’s efforts to enact new legislation on its own.

On January 16, 2019, before the Final Rule was scheduled to take effect, Mr. Aposhian filed his claim seeking an injunction against enforcement of the Bump Stock Rule. The district court denied Mr. Aposhian’s motion for a preliminary injunction but has not yet decided the case on the merits. Mr. Aposhian would eventually bring his appeal from denial of the preliminary injunction motion all the way to the U.S. Supreme Court. After rescheduling its consideration of Mr. Aposhian’s certiorari petition on 21 separate occasions, the Supreme Court denied the petition in October 2022.

The Administrative Record, which was unavailable when the district court originally ruled on the preliminary injunction motion, demonstrates conclusively that a semi-automatic rifle equipped with a non-mechanical bump stock is not a weapon that “shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot ... by a single function of the trigger.” ATF’s construction of the statute has also been met with considerable skepticism by the federal appeals courts. The U.S. Navy-Marine Corps Court of Criminal Appeals has struck down the rule as inconsistent with the statutory definition of “machinegun.” Based on a recent oral argument, the *en banc* Fifth Circuit appears poised to reach the same conclusion. The Utah district court should join the Navy-Marine Corps court and strike down the Final Rule.

NCLA released the following statement:

“Three different Administrations issued ten separate letter rulings declaring that non-mechanical bump stocks are *not* ‘machineguns.’ ATF changed its interpretation in 2018 only because it was pressured to do so by senior

Executive Branch officials. But it is up to Congress, not Executive Branch officials, to write the criminal laws. And it is up to the courts, not ATF, to say what the law is.”

— **Rich Samp, Senior 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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