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Media Inquiries: [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

NCLA Asks Supreme Court to Rule Against ATF's Unilateral Bump-Stock Ban

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

Washington, DC (January 23, 2024) – The New Civil Liberties Alliance has filed a [brief](#) for the Respondent in *Garland v. Cargill*, calling on the U.S. Supreme Court to determine 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 early last year, reversed the agency's own long-standing recognition that bump-stock-equipped firearms are *not* illegal machine guns. NCLA eagerly anticipates presenting oral argument to the Justices in *Garland v. Cargill* on February 28, definitively vindicating our client Michael Cargill and hundreds of thousands of other Americans. Former Texas Solicitor-General Jonathan Mitchell led the brief's drafting and will present argument on Mr. Cargill's behalf next month.

ATF issued a Final Rule in 2018 defining semi-automatic firearms equipped with bump stocks as "machineguns," which federal law prohibits. The rule required Mr. Cargill, a Texas gun shop owner and Army veteran—and every other bump-stock owner nationwide—to either destroy or turn in their legally purchased devices. 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.

The Constitution provides that only Congress may enact new criminal laws. Congress adopted a statute banning machineguns in 1986 that did not cover bump stocks. ATF is not authorized to draft regulations expanding the reach of criminal laws beyond the scope of what Congress prohibited, so NCLA urges the Supreme Court to resolve this issue and safeguard Americans' rights against administrative agency power grabs. After it hears oral argument next month, NCLA is confident the Court will interpret the statute correctly and set aside ATF's rule.

NCLA is a premier defender of Americans' civil liberties against violations by the Administrative State. Just last week, oral arguments were presented to the Supreme Court in NCLA's [Relentless Inc. v. Dept. of Commerce](#) case challenging the *Chevron* doctrine and an unconstitutional rule requiring fishermen to pay for at-sea government monitors on their fishing boats. This spring, the Court will hear oral arguments over the Fifth Circuit's affirmance of a preliminary injunction in NCLA's [Murthy v. Missouri](#) case that would bar federal agency officials from coercing or significantly encouraging social media platforms to censor constitutionally protected speech.

NCLA released the following statements:

"This case is not about guns rights; it's about the rule of law. Whether citizens should be permitted to own bump stocks is a decision for Congress, not an administrative agency."

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

“The government’s effort to convert legal bump stocks and their law-abiding owners into unlawful machine guns owned by felons is frightening. The Supreme Court should set aside this rule that misconstrues the 1986 law banning machine guns and reverses ATF’s 15-plus year position allowing non-mechanical bump stocks. If federal agencies can create new criminal liability by reinterpreting old statutes, then ordinary citizens are at grave risk.”
— **Mark Chenoweth, President and Chief Legal Officer, 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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