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## **NCLA Asks Supreme Court to Permit Equitable Tolling of Statutory Deadlines to Thwart Agency Deceit**

*Metal Conversion Technologies, LLC v. United States Department of Transportation*

**Washington, DC (February 9, 2024)** – Today, the New Civil Liberties Alliance filed a [petition](#) for a *writ of certiorari*, urging the U.S. Supreme Court to hear *Metal Conversion Techs. v. DOT* and decide that courts can equitably toll statutory deadlines to forestall agencies from tricking their enforcement targets. Metal Conversion Technologies, LLC (Metal Conversion) is a family-owned company that the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) tried to punish via an unconstitutionally appointed agency adjudicator. Despite knowing that its hearing officer was improperly appointed, DOT allowed that official to issue a civil penalty against Metal Conversion for allegedly violating Hazardous Materials Regulations. DOT then failed to disclose the official’s improper appointment, preventing the company from seeking judicial review of the civil penalty on that basis within the normal statutory deadline.

PHMSA revealed in an unrelated July 2022 federal appeals court case that Chief Safety Officer Harold McMillan was not properly appointed by the President or Secretary of Transportation to adjudicate administrative proceedings, even after the Supreme Court’s 2018 *Lucia v. SEC* decision. Metal Conversion’s administrative appeal of its original penalty order had been pending before the improperly appointed adjudicator for seven months at that time. Under *Lucia*, DOT should have given Metal Conversion a new proceeding before an adjudicator without an appointment defect. Instead, it allowed the defectively appointed adjudicator to issue final orders in cases he heard while improperly appointed—including this one.

Metal Conversion first learned that its adjudicator lacked proper appointment on October 18, 2022—not from DOT, but from an attorney for another NCLA client, whose own civil penalty was vacated at DOT’s behest due to McMillan’s defective appointment. Metal Conversion filed a petition for judicial review of McMillan’s final civil penalty order on December 15, 2022. Its filing met the [statutorily required](#) 60-day filing deadline, but only if that deadline is equitably adjusted to begin running when the company discovered the appointment defect.

The Eleventh Circuit below decided that Metal Conversion missed its deadline to petition because it said equitable tolling is categorically unavailable for *any* petition to review an agency’s order. The Eleventh Circuit’s ruling would prevent equitable tolling of all statutory filing deadlines for judicial review of agency orders, no matter how egregious, on the theory that Federal Rule of Appellate Procedure 26(b) precludes it. But that cramped theory conflicts with Supreme Court precedent and precedents from other circuits, which hold that Congress legislates against a background presumption in favor of equitable tolling of statutory deadlines. That presumption is rebutted only if a statute’s text or structure shows Congress meant to preclude equitable tolling, and nothing in the relevant statute that supplied the deadline here shows that. Congress did not enact the court-adopted procedural rule that the Eleventh Circuit cited (FRAP 26(b)), so it cannot rebut the general presumption in favor of equitable tolling.

**NCLA released the following statements:**

“The Department of Transportation intentionally concealed a fatal constitutional defect in its administrative proceedings to mislead a company subject to an adverse decision into believing that the agency executed the law in good faith. Equitable tolling exists to provide for judicial review in this precise scenario, so that a company may challenge an agency’s unlawful action once the misconduct is discovered. By categorically precluding tolling—not just to challenge *this* agency’s order but *all* agency orders—the Eleventh Circuit’s ruling encourages bad-faith agency conduct. Without equitable tolling, agencies will be able to avoid judicial review simply by hiding their misconduct until after very short—often 30 or 60-day—statutory deadlines.”

— **Sheng Li, Litigation Counsel, NCLA**

“Equitable tolling must extend to cases of agency misconduct like this one. Otherwise, federal agencies will be able to dodge accountability for failing to correct appointments defects. Worse yet, the Administrative State will be handed another weapon with which to punish unwitting Americans who fail to see through an agency’s carefully concealed constitutional defects.”

— **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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