

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 1, 2023

Lyle W. Cayce  
Clerk

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No. 23-10319

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WILLIAM T. MOCK; CHRISTOPHER LEWIS; FIREARMS POLICY  
COALITION, INCORPORATED, *a nonprofit corporation*;  
MAXIM DEFENSE INDUSTRIES, L.L.C.,

*Plaintiffs—Appellants,*

*versus*

MERRICK GARLAND, *U.S. Attorney General,*  
*in his official capacity as Attorney General of the United States*;  
UNITED STATES DEPARTMENT OF JUSTICE;  
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, and EXPLOSIVES;  
STEVEN DETTELBACH, *in his official capacity*  
*as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives,*

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:23-CV-95

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Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

JERRY E. SMITH, *Circuit Judge:*

The National Firearms Act of 1934 (“NFA”) and the Gun Control Act of 1968 (“GCA”) are two of the primary means of federal arms regulation and licensure. To that end, the statutes impose heightened, and at times,

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onerous requirements on manufacturing, selling, and transferring certain firearms, including short-barreled rifles (“SBRs”). Pistols and handguns are not subject to those extra requirements.

In 2012, a federal firearms licensee (“FFL”) submitted a “stabilizing brace” for review to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and asked whether that stabilizing brace, when attached to a pistol, transformed the pistol into a rifle and thus an SBR. The stabilizing brace was intended to attach to the forearm and, according to the licensee, to permit disabled and weaker persons to fire pistols more easily. Although the brace also could be used to shoulder the weapon, the ATF initially indicated that the brace did not transform the pistol into a rifle. Now, a decade later, the use of stabilizing braces and braced pistols has dramatically increased.

So, in 2021, the ATF issued a Proposed Rule<sup>1</sup> indicating that the agency would use a point system to classify a firearm with a stabilizing brace as either a braced pistol or a rifle. After a comment period, during which the agency received hundreds of thousands of negative comments, the ATF published the Final Rule.<sup>2</sup>

The Final Rule scrapped the points-based approach of the Proposed Rule and, instead, instituted a six-factor balancing test considering everything from the weight of the firearm with the stabilizing brace attached to the prevalence of Youtubers’ demonstrating the likely use of the weapon.

The Final Rule went into effect on January 31, 2023, but the ATF allowed a grace period of four months, which ended on May 31, 2023, giving

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<sup>1</sup> Factoring Criteria for Firearms with Attached “Stabilizing Braces,” 86 Fed. Reg. 30826 (June 10, 2021) (“Proposed Rule”).

<sup>2</sup> Factoring Criteria for Firearms with Attached “Stabilizing Braces,” 88 Fed. Reg. 6478 (Jan. 31, 2023) (“Final Rule”).

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owners of weapons now considered SBRs multiple options for compliance, including registration under the NFA, before criminal penalties would take effect.

These plaintiffs sued for injunctive relief, alleging various statutory deficiencies with the process and substance of the Final Rule. They also brought constitutional challenges. The district court denied injunctive relief, and after it did not rule expeditiously on a motion for an injunction pending appeal, this court enjoined enforcement of the Final Rule against the named plaintiffs. Plaintiffs now request that we extend that interim relief.

We reverse the denial of an injunction because plaintiffs will likely succeed on the merits of their Administrative Procedure Act (“APA”) challenge. We remand with instruction to adjudicate the remainder of the preliminary-injunction factors and determine the scope of any relief.

## I.

### A.

As stated, this suit is a challenge to the Final Rule, which announces when a device marketed as a stabilizing brace turns a pistol or handgun into a rifle. In most cases, such a weapon would subsequently be characterized as a short-barreled rifle. But examining the Final Rule, as well as the challenge to it, requires reviewing the text and history of the NFA and the GCA.<sup>3</sup>

The NFA applies to “firearms.” 26 U.S.C. § 5861. “Firearms” is a term of art—one that is both highly under- and over-inclusive (as compared to the word’s ordinary meaning today). For instance, the NFA’s definition

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<sup>3</sup> The Attorney General is authorized to administer and enforce the GCA and the NFA. 26 U.S.C. §§ 7801(a)(2)(A), 7805(a); 18 U.S.C. § 926(a). That authority was subsequently delegated to the ATF, which promulgates the challenged rule per those Acts. 28 C.F.R. § 0.130.

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of “firearm” does not include pistols—but it does include both “silencer[s]” and “poison gas.” *See id.* § 5845(a), (e), (f). That is because the NFA was designed to target “gangster-type weapons” that are “especially dangerous and unusual.”<sup>4</sup> Final Rule at 6482.

Because of this, NFA “firearms” are extensively regulated. And SBRs are regulated because an NFA “firearm” includes

[A] a rifle having a barrel or barrels of less than 16 inches in length; . . . a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; . . . any other weapon, as defined in subsection (e); . . .

. . .

(e) . . . The term “any other weapon” . . . shall not include a pistol or a revolver having a rifled bore . . .

26 U.S.C. § 5845(a), (e). Although the NFA does not define a “pistol,” it does define a “rifle”:

The term “rifle” means a weapon *designed* or redesigned, *made* or remade, *and intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

*Id.* § 5845(c) (emphasis added). Putting all of that together, a weapon is a “rifle”—that is, either an ordinary rifle (which is not an NFA “firearm”) or a short-barreled rifle (which is)—only if it is “designed,” “made,” and “intended to be fired from the shoulder.” A weapon that fails any one of those

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<sup>4</sup> To that end, the NFA’s definition of “firearm” also includes machineguns and short-barreled shotguns.

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criteria is neither an ordinary rifle nor a short-barreled rifle. Ergo, a weapon not meeting the criteria is not a “firearm” under the NFA. A rifle is different from an SBR because of the length of the barrel. And the text also states that a “pistol” is not an NFA firearm. Nevertheless, the NFA does not define “pistol” or explain how to distinguish a pistol from an SBR.

Enter the GCA, which supplements and is much broader than the NFA. The GCA’s definition of “firearm” includes “any weapon . . . designed . . . to expel a projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3). In other words, the GCA’s definition includes all “firearms” — in both the NFA’s specialized use of that word and the ordinary-meaning use. The GCA also prohibits certain persons from possessing firearms, *see, e.g., id.* § 922(g)(1), and, as relevant here, establishes requirements for FFLs who wish to sell an SBR, *id.* § 922(a)(4), (b)(4).

The definition of “rifle” is essentially identical under the NFA and the GCA. *See* 18 U.S.C. § 921(a)(7); 26 U.S.C. § 5845(c). Similarly, the definitions of an SBR roughly track in both statutes, although the GCA, unlike the NFA, expressly defines the term. *Compare* 18 U.S.C. § 921(a)(8), *with* 26 U.S.C. § 5845(a)(3)–(4).

The GCA further defines a “handgun” as “a firearm which has a short stock and is designed to be held and fired by the use of a single hand” and “any combination of parts from which a firearm described [before] can be assembled.” 18 U.S.C. § 921(a)(30). Per regulations providing for ATF’s implementation of the NFA, the term “handgun” includes pistols and revolvers. 27 C.F.R. §§ 478.11, 479.11.<sup>5</sup>

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<sup>5</sup> A pistol is a “weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having: [1] a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and [2] a short stock designed to be gripped by one hand and at an angle to and extending below the line of the

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