

United States Court of Appeals
for the Fifth Circuit

No. 23-40556

United States Court of Appeals
Fifth Circuit

FILED

August 26, 2024

Lyle W. Cayce
Clerk

BLAKE J. WATTERSON,

Plaintiff—Appellant,

versus

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

Defendants—Appellees,

CONSOLIDATED WITH

No. 23-11157

SECOND AMENDMENT FOUNDATION, INCORPORATED; RAINIER
ARMS, L.L.C.; SAMUEL WALLEY; WILLIAM GREEN,

Plaintiffs—Appellants,

versus

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, and EXPLOSIVES;
STEVEN DETTELBACH, *in his official capacity Director of the Bureau of
Alcohol Tobacco Firearms and Explosives;* UNITED STATES

No. 23-40556
c/w Nos. 23-11157, 23-11199, 23-11203, 23-11204, 23-40685

DEPARTMENT OF JUSTICE; MERRICK GARLAND, *U.S. Attorney General,*

Defendants—Appellees,

CONSOLIDATED WITH

No. 23-11199

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

Plaintiffs—Appellees,

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—Appellants,

CONSOLIDATED WITH

No. 23-11203

DARREN A. BRITTO; GABRIEL A. TAUSCHER; SHAWN M. KROLL,

Plaintiffs—Appellees,

No. 23-40556
c/w Nos. 23-11157, 23-11199, 23-11203, 23-11204, 23-40685

versus

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, and EXPLOSIVES,

Defendant—Appellant,

CONSOLIDATED WITH

No. 23-11204

**TEXAS GUN RIGHTS, INCORPORATED; NATIONAL ASSOCIATION
FOR GUN RIGHTS, INCORPORATED,**

Plaintiffs—Appellees,

versus

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, and EXPLOSIVES,

Defendant—Appellant,

CONSOLIDATED WITH

No. 23-40685

**STATE OF TEXAS; GUN OWNERS OF AMERICA, INCORPORATED;
GUN OWNERS FOUNDATION; BRADY BROWN,**

Plaintiffs—Appellees,

versus

No. 23-40556
c/w Nos. 23-11157, 23-11199, 23-11203, 23-11204, 23-40685

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, and EXPLOSIVES;
UNITED STATES DEPARTMENT OF JUSTICE; STEVEN M.
DETTELBACH, *Director of ATF*,

Defendants—Appellants.

Appeals from the United States District Court
for the Eastern District of Texas

USDC No. 4:23-CV-80

for the Northern District of Texas

USDC Nos. 3:21-CV-116, 4:23-CV-95, 2:23-CV-19, 4:23-CV-578
and for the Southern District of Texas

USDC No. 6:23-CV-13

Before JONES, SMITH, and Ho, *Circuit Judges.*

PER CURIAM:*

In one of the six consolidated appeals, *Mock v. Garland*, No. 23-11199, the Government has moved to dismiss its appeal as moot because the district court has entered a final judgment in the case. In light of this development, we DISMISS all the consolidated appeals as moot.

The consolidated appeals are from orders granting or denying motions to preliminarily enjoin the enforcement of a rule issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. In *Mock*, the district court proceeded to final judgment while the appeal from its preliminary injunction order was pending. The district court's final judgment vacated BATFE's rule under the Administrative Procedure Act. The Government has appealed the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

23-40556
c/w Nos. 23-11157, 23-11199, 23-11203, 23-11204, 23-40685

district court's ruling and has not moved for a stay pending appeal. *See* Case No. 24-10743.

An appeal is moot when "the preliminary injunctions no longer provide Plaintiffs 'any effectual relief.'" *U.S. Navy Seals 1-26 v. Biden*, 72 F.4th 666, 672 (5th Cir. 2023) (citing *Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020)); *see also Carr v. Davis*, 865 F.3d 210, 210 (5th Cir. 2017) (per curiam) ("The entry of a final judgment on a request for permanent injunctive relief renders moot any appeal of an order ruling on a temporary request for the same relief." (citation omitted)). Because the rule that Plaintiffs seek to preliminarily enjoin enforcement of has been vacated and will remain vacated at least until this court decides the new appeal in *Mock*, a preliminary injunction would not provide Plaintiffs with any effectual relief. We accordingly DISMISS all six of the consolidated appeals as moot.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 26, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 23-40556, Consolidated with 23-11157, 23-11199, 23-11203, 23-11204, and 23-40685

Watterson v. ATF
USDC No. 4:23-CV-80
USDC No. 3:21-CV-116
USDC No. 4:23-CV-95
USDC No. 2:23-CV-19
USDC No. 4:23-CV-578
USDC No. 6:23-CV-13

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved

of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, and advise them of the time limits for filing for rehearing and certiorari. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellants pay to Appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By: Dantrell L. Johnson, Deputy Clerk

Enclosure(s)

Mr. Barry K. Arrington
Mr. Bradley Benbrook
Mr. Clayton Way Calvin
Mr. Richard Brent Cooper
Mr. Skylar Croy
Mr. Michael Drezner
Mr. Stephen Duvernay
Mr. Charles Kenneth Eldred
Mr. Richard M. Esenberg
Mr. Samuel I. Ferenc
Mr. Chad Flores
Mr. Robert E. Henneke
Ms. Katelyn R. Jackson
Mr. Sean Janda
Mr. Daniel Lennington
Mr. Benjamin Lewis
Mr. Jody Dale Lowenstein
Mr. Ed J. McConnell
Mr. Matthew R. Miller
Mr. Anthony Roman Napolitano
Mr. Jason C. Nash
Mr. Stephen Obermeier
Mr. Robert J. Olson
Ms. Lanora Christine Pettit
Mr. Taylor Pitz
Mr. Stephen Dean Stamboulieh
Mr. Jeffrey W. Tormey
Mr. Lucas Vebber
Mr. Chance Weldon
Mr. Cody J. Wisniewski
Ms. Abby Christine Wright