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Victory! NCLA Applauds Third Circ. for Rejecting Deference to US Sentencing Guidelines Commentary

U.S. v. Malik Nasir

Washington, DC (December 1, 2020) – Today the U.S. Court of Appeals for the Third Circuit sitting *en banc*, issued its ruling in *United States v. Nasir*. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an amicus brief in this case asking the Court to overturn its prior interpretation of the 1993 Supreme Court decision in *Stinson v. United States*, which required district courts to defer to the U.S. Sentencing Commission’s commentary to the Sentencing Guidelines when sentencing a criminal defendant.

NCLA argued that deference to an agency’s interpretation of its own rules is unconstitutional—particularly in cases with criminal penalties. *Stinson* commands federal judges to abandon their duty of independent judgment in violation of Article III and the judicial oath and to assign weight to a non-judicial entity’s interpretation of the law when imposing criminal sentences. *Stinson* deference can also unjustly force people to spend more time in prison than Congress required, which raises serious due-process and separation-of-powers concerns.

Today’s Third Circuit decision rejected deference to the Sentencing Commission based on the Supreme Court’s decision last year in *Kisor v. Wilkie*, which “cut back on what had been understood to be uncritical and broad deference to agency interpretations.” Concurring with the Court’s decision, Judge Stephanos Bibas wrote separately to explain that “the narrow scope” of the Court’s ruling “hints at a broader problem.” That problem is one that NCLA raised in its *amicus* brief: the rule of lenity dictates that courts cannot defer to an agency’s interpretation of an ambiguous rule when doing so would increase a criminal penalty. In his powerful concurrence, Judge Bibas reasoned that “[w]hatever the virtues” of administrative deference may be, “those virtues cannot outweigh life and liberty” in criminal cases.

The Third Circuit is now part of a growing chorus of circuits correcting an erroneous and unconstitutional application of judicial deference. NCLA applauds the Third Circuit for today’s ruling and especially commends Judge Bibas’s noteworthy concurrence. We will continue working to convince judges that their constitutional office requires them to prioritize due process over deference to administrative agencies. As a result of today’s decision, Mr. Nasir will be resentenced without a career offender enhancement.

NCLA released the following statements:

“Judge Bibas’s concurrence cuts right to the heart of the matter. The problems with *Stinson* deference extend far beyond its application in a single case. Courts cannot defer to the commentary of the Sentencing Guidelines and still afford due process to criminal defendants.”

— **Jared McClain, Litigation Counsel, NCLA**

“NCLA is pleased that yet another circuit court of appeals has followed the Sixth Circuit in *Havis* and undone its use of *Stinson* deference. NCLA has been at the forefront of these cases, filing *amicus* briefs in nearly all of them. We anticipate that the U.S. Supreme Court will itself put a final nail in *Stinson*’s coffin one day soon.”

—Mark Chenoweth, Executive Director and General Counsel, NCLA

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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