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NCLA Asks Supreme Court to Eliminate or Limit Judicial Deference to Sentencing Commission

Marcus Broadway v. United States of America

Washington, DC (April 7, 2021) – If Marcus Broadway lived in Tennessee, over the state line from his home in Arkansas, he would not have been labeled a “career offender” and thus not sentenced to significantly more prison time than Congress prescribed for his crime. The New Civil Liberties Alliance filed a [reply brief](#) today with the U.S. Supreme Court in support of a petition for a *writ of certiorari* in *Marcus Broadway v. United States*. Mr. Broadway’s petition challenges the Eighth Circuit’s use of “*Stinson* deference” to adopt the U.S. Sentencing Commission’s interpretation of the Sentencing Guidelines. The growing circuit split over how the Supreme Court’s 2019 decision in *Kisor v. Wilkie* limited *Stinson* deference has led to unjust inconsistencies in sentencing nationwide, including in Mr. Broadway’s case.

In *Stinson v. United States*, the Supreme Court ruled that courts must defer to the Commission’s commentary interpreting the Sentencing Guidelines. But, as the government admitted in its opposition to Mr. Broadway’s petition, *Kisor* set forth the authoritative standards for determining when there is ambiguity whereby courts may defer to commentary to a particular Guideline. Congress created the Guidelines to promote national uniformity in the way judges calculate criminal sentences, yet the split in the circuit courts over how *Kisor* affected the *Stinson* deference doctrine has made that uniformity impossible.

NCLA contends that the application of *Stinson* deference in Mr. Broadway’s sentencing violated the rule of lenity, which instructs courts to apply the more lenient reading of an ambiguous criminal provision. Additionally, the doctrine of constitutional avoidance, the right of due process, and the separation of powers preclude applying *Stinson* deference when commentary to a Guideline would increase a sentence.

The unconstitutional application of *Stinson* deference is set to cost Mr. Broadway up to 81 months of freedom. Each term that passes, the federal courts sentence another 75,000 defendants pursuant to the Guidelines—2,000 of whom face severe sentence enhancements under the ambiguous Career-Offender Guideline. NCLA argues that it’s time for the Court to overturn *Stinson* deference—or at least clarify that lenity takes priority over deference and that the Sentencing Commission cannot use its commentary to amend the Sentencing Guidelines.

NCLA released the following statements:

“Mr. Broadway’s petition raises important constitutional issues that deprive thousands of defendants of their liberty each year. The government’s only real response is that the lower federal courts shouldn’t have to waste time ensuring that criminal sentences comply with current Supreme Court precedent. It’s already clear what the law requires; Mr. Broadway hopes that the Court will take this opportunity to resolve the division among the lower courts.”

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

“Unelected bureaucrats have no business ordering federal judges to increase someone’s prison sentence. But that is what happened to Mr. Broadway. And that is what is happening every day in federal courts nationwide. The Court must set this right.”

— **Caleb Kruckenberg, Litigation Counsel, 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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