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## **NCLA Tells U.S. Supreme Court Why Deference to Sentencing Commission Violates Constitution**

*Marcus Broadway v. United States of America; Zimmian Tabb v. United States of America*

**Washington, DC (December 16, 2020)** – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed a [petition](#) in the U.S. Supreme Court for a *writ of certiorari* in *Marcus Broadway v. United States*. Mr. Broadway is challenging the lower court’s use of “*Stinson* deference” to sentence him as a “career offender” based on language in interpretive commentary issued by the United States Sentencing Commission that does not appear in the Sentencing Guidelines themselves.

Separately, NCLA also filed an [amicus brief](#) with the Supreme Court today in support of a *petition for writ of certiorari* in *Zimmian Tabb v. United States*, which also challenges the use of *Stinson* deference to interpret the Career Offender Guideline. In both cases, NCLA is asking the Court to rule that judges must not defer to the Commission’s views when interpreting a Guideline, especially when doing so would widen the scope of a Guideline or lengthen a defendant’s sentence.

Throughout his case, Mr. Broadway has maintained that the application of *Stinson* deference to brand and punish him as a career offender under the Guidelines violated the rule of lenity and Supreme Court precedent. NCLA agrees and contends that the rule of lenity dictates that courts cannot defer to an agency’s interpretation of an ambiguous criminal rule.

NCLA argues in its briefs that the growing circuit split on how the Court’s 2019 decision in *Kisor v. Wilkie* limited *Stinson* deference has led to unjust inconsistencies in sentencing nationwide. The rule of lenity requires courts to interpret ambiguities in favor of criminal defendants. Under *Kisor*, courts must apply traditional tools of statutory construction—like lenity—before resorting to deference. The *Broadway* case deserves the Supreme Court’s attention because the circuits are currently split on whether lenity precedes *Stinson* deference.

Deference to an agency’s interpretation of its own rules is unconstitutional—particularly in cases with criminal penalties. *Stinson* deference can unjustly force people to spend more time in prison than Congress required, which raises serious due-process and separation-of-powers concerns. A judge’s deferring to one of the parties before the court exhibits a bias that violates due process too. *Stinson* also commands federal judges to abandon their duty to provide independent judgment in violation of Article III and the judicial oath.

NCLA is asking the court to grant Mr. Broadway’s petition along with pending petitions in *Tabb v. U.S.* and *Lovato v. United States*, which present substantially similar issues of how and when *Stinson* deference is appropriate or whether it must be overturned as unconstitutional.

**NCLA released the following statements:**

“Mr. Broadway faces over 2,000 days in prison beyond the penalty that Congress set for his crime of distributing a small quantity of a controlled substance. Because the Court has sent mixed signals about *Stinson* deference and the rule of lenity for years now, the circuit courts are divided on the issue. It’s time for the Court to clarify that lenity takes priority over deference and that the Sentencing Commission cannot use its commentary to amend the Sentencing Guidelines.”

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

“Even though the sentencing guidelines are advisory, courts have accorded the Sentencing Commission—a group of unelected bureaucrats—overwhelming deference in the application of harsh criminal penalties. *Stinson* deference is directly responsible for scores of unjust sentences across the nation. These petitions give the Court an opportunity to set things right.”

— **Caleb Kruckenberg, Litigation 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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