



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA *Amicus* Brief Backs Cert Petition Challenging Deference to Sentencing Guidelines Commentary

Jayren Wynn v. United States of America

Washington, DC (November 24, 2021) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in *Jayren Wynn v. United States of America*, urging the U.S. Supreme Court to grant Mr. Wynn’s petition for certiorari and either discard *Stinson* deference altogether or at least rule that *Stinson* deference cannot increase criminal sentences. This judicial-deference doctrine requires federal judges to defer to commentary the U.S. Sentencing Commission has written interpreting the U.S. Sentencing Guidelines. Under the current deference regime, district courts in seven circuits systematically violate the due-process rights of thousands of criminal defendants by applying *Stinson* deference to increase the Sentencing Guideline range beyond what Congress approved. With the liberty of thousands of defendants at stake each year, the Supreme Court must address the grave constitutional concerns present in this case. The Court called for the Solicitor General’s views in the *Wynn* case.

A 1993 Supreme Court decision, *Stinson v. United States*, commands federal judges to abandon their duty of independent judgment in violation of Article III and their judicial oath, and to assign weight to a non-judicial entity’s interpretation of the law when imposing criminal sentences. The use of *Stinson* deference raises serious due-process concerns when it requires courts to display bias in favor of the government and against a defendant. Due process ordinarily requires lenity in the interpretation of criminal statutes, to ensure that criminal offenses are very well defined. Following the Court’s decision in *Stinson*, however, the circuit courts of appeals began to give disproportionate weight to the Commission’s commentary whenever the Sentencing Guidelines’ plain text was at all ambiguous. But interpreting ambiguity *against* a defendant violates due process and the traditional rule of lenity.

The Third, Sixth, and D.C. Circuits have already recognized that strict adherence to *Stinson* is inconsistent with the Supreme Court’s modern administrative-law jurisprudence, the Commission’s legal authority, and the Constitution. The other circuits, however, perpetuate *Stinson*’s outdated language and refuse to reconsider outdated circuit precedent that contradicts *Kisor v. Wilkie*. All nine Supreme Court Justices in *Kisor* agreed on the need to “reinforce” and “further develop” the limitation that courts owe to an agency’s interpretation of its own rules *only* if the rule proves genuinely ambiguous *after* the court applies all traditional tools of interpretation. The rule of lenity is one such traditional tool that courts must apply before deference.

Last year, NCLA filed a cert. petition on behalf of client Marcus Broadway asking the Court to consider this issue in [Marcus Broadway v. United States](#). NCLA has also filed several *amicus* briefs in similar lawsuits challenging *Stinson* deference in [United States v. Tabb](#), [United States v. Nasir](#), [United States v. Lovato](#), and [United States v. Havis](#). The very idea of an Article III court deferring to mere commentary of the Sentencing Commission presents constitutional concerns that have not been considered or discussed in any prior Supreme Court ruling. As it stands, *Stinson* deference unjustly forces real people to spend more time in prison than Congress sanctioned.

Mr. Wynn’s petition presents the Supreme Court a critical opportunity to clarify once and for all that courts do not owe deference to Commission commentary that expands the Sentencing Guidelines. Be sure to tune in to the

November 27 episode of NCLA’s “Administrative Static” podcast for further discussion of the *Wynn* case and the *Stinson* deference issue.

NCLA released the following statement:

“After the Court denied a dozen certiorari petitions challenging *Stinson* deference last June, including NCLA’s in *Broadway*, it looked like the Court was not interested in this issue. That the Court has called for the views of the Solicitor General in Mr. Wynn’s case restores some hope in advocates. NCLA has been pressing this issue for years now and helped convinced judges on the Third and Sixth Circuits that lenity must come before deference. It’s high time for the Supreme Court to finally step in and make the other circuits follow suit before thousands more defendants receive Draconian sentences that Congress never approved.”

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

For more information about this issue visit [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.

###