



## NCLA Applauds Sixth Circuit's Grant of Rehearing en Banc in *U.S. v. Havis*

*U.S. v. Jeffrey Havis*

Washington, D.C. — The New Civil Liberties Alliance (NCLA) is celebrating a victory in the United States Court of Appeals for the Sixth Circuit, which today granted a petition for rehearing en banc in [United States v. Jeffery Havis](#). NCLA filed an [amicus brief](#) in November urging the Court to rehear the case in order to re-examine the circuit's treatment of "*Stinson* deference."

In a now-vacated opinion, the Sixth Circuit originally extended judicial "deference" to commentary found in the U.S. Sentencing Guidelines, even though Congress only votes to accept the guidelines and not the commentary. The ruling extended a 1993 Supreme Court decision, [Stinson v. United States](#), in such a way as to command federal judges to abandon their duty of independent judgment and assign weight to a non-judicial entity's interpretation of the law when imposing criminal sentences.

NCLA believes that due process and the judicial duty to provide independent judgment absolutely forbid a regime in which courts give automatic weight to a non-judicial entity's interpretation of the law. While courts may consider an agency's views and adopt them *when persuasive*, prior Sixth Circuit law erred by instructing lower federal courts to treat the Sentencing Commission's mere commentary as "authoritative." Mandatory deference raises due process and other grave constitutional concerns. Rehearing en banc is well warranted to enable the Sixth Circuit as a whole to correct circuit law and rein in undue—and unconstitutional—deference.

"By granting en banc review, the Sixth Circuit has signaled its willingness to reconsider its prevailing, unconstitutional deference regime. Article III gives federal judges life tenure and salary protection to ensure that judicial pronouncements will reflect a court's independent judgment rather than the desires of the political branches. And the Due Process Clause forbids judges to display any type of bias in favor of—or against—a litigant when resolving disputes. Yet the judiciary flouts these foundational constitutional commands whenever it 'defers' to an agency's interpretation of the law." —**Caleb Kruckenberg, Litigation Counsel, NCLA**

“NCLA is pleased by the Sixth Circuit’s willingness to reconsider its troubling circuit precedent. Whether it travels under the name *Chevron*, *Auer*, or *Stinson*, judicial deference violates defendants’ due process rights. As applied by the panel here, *Stinson* would require far more than respectful consideration of an agency’s sentencing views. Assuming the en banc Sixth Circuit follows through on today’s grant by fixing circuit law, it will have restored an important due process right of criminal defendants.”

—**Mark Chenoweth, Executive Director and General Counsel, NCLA**

#### **ABOUT NCLA**

NCLA is a nonprofit civil rights organization 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 unchecked power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights. For more information visit us online: [NCLAlegal.org](http://NCLAlegal.org).

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