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NCLA Amicus Brief Encourages Fifth Circuit to Reject Judicial Deference to Sentencing Commission

United States of America v. Andres Vargas

Washington, DC (October 3, 2022) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [amicus brief](#) in *United States v. Vargas*, urging the *en banc* U.S. Court of Appeals for the Fifth Circuit to decide that *Stinson* deference should not be applied when it results in a more severe criminal sentence. NCLA argues that existing Fifth Circuit precedent, which the panel was bound to apply in its vacated decision, follows flawed reasoning and causes courts to defer reflexively to United States Sentencing Commission commentary, even when Sentencing Guidelines are unambiguous. The Fifth Circuit should stop according *Stinson* deference, which endangers individual liberty, compromises the independent judiciary, and institutes judicial bias.

A 1993 Supreme Court decision, *Stinson v. United States*, commands federal judges to defer to the commentary of the U.S. Sentencing Guidelines, even though the U.S. Sentencing Commission’s commentary does not receive an up-or-down vote from Congress, as the Guidelines themselves do. Judges who defer, and thereby assign weight to a non-judicial entity’s interpretation of the law when imposing criminal sentences, abandon their duty of independent judgment in violation of Article III and their judicial oaths. The Supreme Court cut back on the uncritical and broad deference granted to agencies’ interpretations of their own rules in a 2019 decision, *Kisor v. Wilkie*. Following that decision, the Third, Fourth, and Sixth Circuits have recognized that *Kisor* only permits deference to genuinely ambiguous rules, so they no longer apply *Stinson* deference to unambiguous Guidelines. The rule of lenity, principles of due process, and the independence of the judicial office all call on courts to interpret the Sentencing Guidelines for themselves, without deference to the Commission’s commentary.

In 2020, NCLA filed a petition for a writ of certiorari on behalf of client Marcus Broadway, asking the U.S. Supreme Court to overturn *Stinson* deference in [Broadway v. United States](#). NCLA has also filed several *amicus* briefs in similar lawsuits challenging *Stinson* deference, including [United States v. Lenair Moses](#), [Jayren Wynn v. United States](#), [United States v. Tabb](#), [United States v. Nasir](#), [United States v. Lovato](#), and [United States v. Havis](#). As it stands, *Stinson* deference unjustly forces real people to spend more time in prison than Congress sanctioned.

NCLA released the following statements:

“Deference regimes create untold constitutional harms for criminal defendants and civil litigants every day. This problem is particularly pernicious here, where someone’s physical liberty interest is at stake. The Fifth Circuit should join several of its sister circuits in declaring *Stinson* deference a thing of the past.”

— **Kara Rollins, Litigation Counsel, NCLA**

“The Fifth Circuit should not look anywhere but the Guidelines Congress approved. To defer to any outside entity abandons the judicial function of imposing sentences and deprives defendants of due process of law.”

— **Jenin Younes, 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.

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