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PRESS RELEASE

Wiley Files Supreme Court Petition for Certiorari in *Lomax v. United States*

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Washington, DC – Working with the Supreme Court Program at the University of North Carolina School of Law, Wiley Rein LLP filed a petition for a writ of certiorari in *Lomax v. United States*, asking the U.S. Supreme Court to resolve a disagreement among the federal courts of appeal regarding federal sentencing guidelines.

The petition seeks a Supreme Court review of a Seventh Circuit decision that upheld a 25-year prison sentence stemming from a felony conviction. The petitioner is represented on a pro bono basis by Wiley partner Richard A. Simpson and special counsel Morgan L. Chinoy. The Wiley team filed the petition along with co-counsel Johanna M. Christiansen of the Office of the Federal Public Defender for the Central District of Illinois and Professor F. Andrew Hessick of the University of North Carolina School of Law. Law student David Burns Woodlief and Wiley project assistants Sophia Winston-Mendoza and Jack Neary also participated in preparing the petition.

The petition, highlighted by SCOTUSblog, addresses a critical issue of whether and when courts should give deference to commentary by the U.S. Sentencing Commission that explains or interprets the federal sentencing guidelines, an issue as to which there is a deep split among the federal courts of appeals.

The petition argues that, because the Commission's commentary is not subject to the public input and congressional review required for the guidelines themselves, courts should not defer to guidelines commentary without first considering whether the guideline is genuinely ambiguous and, if so, whether the Commission's interpretation is reasonable. Absent such review by the courts, the Commission would be able to use its commentary to substantively

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modify the guidelines without oversight, as it did for the career offender guideline at issue in *Lomax* by expanding the range of offenses that may cause a defendant to be deemed a "career offender."

The consequences of a career offender designation can be severe, increasing the recommended sentencing ranges for some defendants by years.

Whether the Commission's commentary is entitled to deference "can dictate whether a criminal defendant is designated as a 'career offender,' and thus faces a significantly longer potential sentence," according to the petition. Because the federal courts of appeals disagree regarding this deference, "defendants in some circuits are likely to be given longer sentences than they would be given in other circuits."

That disparity undermines the U.S. Sentencing Guidelines' goal of achieving "uniformity across federal courts in sentencing for similar criminal offenses," according to the petition.