

Wiley Rein Files Supreme Court *Amicus* Brief in *Smith v. United States*

ASKS COURT TO HEAR CASE, ARGUING FOR TIMELY NOTICE REQUIREMENT IN CONFRONTATION CLAUSE CASES

October 21, 2019

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Washington, DC—On behalf of The Constitution Project at the Project On Government Oversight, Wiley Rein urged the U.S. Supreme Court to adopt a timely notification requirement to protect defendants' Sixth Amendment confrontation right. Wiley Rein argued the government should be required to provide timely notice of a potential prosecution witness's unavailability prior to admission of deposition testimony in criminal trials. Wiley Rein advocated for this rule in an *amicus* brief filed in *Renado Smith and Richard Delancy v. United States of America*, No. 19-361.

The case emanated from a decision by the U.S. Court of Appeals for the Eleventh Circuit affirming Petitioners' convictions for conspiracy to commit alien smuggling and attempted illegal reentry. Both Petitioners claim the trial court violated their right to confrontation by admitting deposition testimony of an alleged smuggled alien found in Petitioners' boat. The trial court allowed the deposition into evidence having found, based on the existing "good faith" standard, that the prosecution had made a sufficient attempt to procure the alien's appearance for trial. The Eleventh Circuit affirmed this decision, despite the fact that the prosecution never informed defendants, or the trial court, until after trial commenced that it mistakenly released the witness nearly two months prior to trial, lost her before trial, did

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not try to find her until the eve of trial, and failed to take readily available steps to locate her.

Wiley Rein's brief argues the Eleventh Circuit's error is a prime opportunity to cure an existing circuit split on the application of the unavailable witness rule under the Sixth Amendment's Confrontation Clause. The brief emphasizes that the prosecution's untimely disclosure of the witness's unavailability exacerbated the prejudice to Petitioners from the government's lackluster effort. The brief urges the Court to grant *certiorari* to apply the well-established timely disclosure jurisprudence under *Brady* to enhance and clarify the current ambiguous good faith standard.

Kevin B. Muhlendorf, partner in the firm's White Collar Defense & Government Investigations Practice, is Counsel of Record to The Constitution Project at the Project On Government Oversight. The Wiley Rein team also includes founding partner Bert W. Rein, and associates Tatiana Sainati and Michelle B. Bradshaw.

The Constitution Project at the Project On Government Oversight is a nonpartisan, nonprofit organization that seeks solutions to contemporary issues through scholarship and public education. One of the key areas of the organization's focus is the constitutional imperative of procedural fairness and due process in the criminal justice system, particularly at trial.

To read the *amicus* brief, [click here](#).