



Our right to trial by jury is under attack, the Supreme Court can affirm and protect it

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Today, the Supreme Court will be hearing oral arguments in a case that raises important questions regarding both the right to counsel and trial by jury.

Jae Lee came to the United States from South Korea in 1982. At the time, he was just a boy in the care of his parents. Now 48 years old, Lee has lived in the U.S. as a lawful permanent resident for decades. He went to school in New York, but eventually moved to Memphis and got into the restaurant business. According to federal prosecutors, Lee also became a small time drug dealer and, after his arrest, he was facing serious criminal charges.

Like many persons who are accused of a crime, the prosecution offered Lee some leniency in prison time if he would agree to surrender his constitutional right to trial by jury. Naturally, Lee wanted to know all of the legal consequences of accepting the government's plea offer — so he asked his attorney whether he would be subject to deportation to South Korea. Lee's attorney assured him that deportation would not be a problem and advised him to accept the plea bargain.

On that recommendation, Lee pled guilty.

As it turned out, Lee received bad legal advice. His conviction meant he was now subject to deportation under federal law. After serving several years in prison, he would eventually be deported to South Korea and essentially banished from the U.S.

On appeal, Lee argues that he only pled guilty because of the recommendation from his lawyer. He wants to take his case before a jury. Prosecutors agree that Lee received lousy legal advice, but they say his conviction should still stand because the evidence against him is so strong that a jury trial will not change his legal predicament. They say a jury would find Lee guilty and, as a result, he would still be facing deportation.

The Supreme Court should reject the government's argument that there doesn't have to be a trial because everyone already knows what the outcome would be. The Constitution guarantees our right to a jury trial in "all criminal prosecutions." Our commitment to this constitutional safeguard is tested when the government haughtily claims a trial isn't necessary.

Some appellate courts have rejected pleas for new trials by persons in similar circumstances as Lee's. Why order a new trial, they say, when the accused can only succeed by "jury nullification," which is the doctrine that says a jury can return a "not guilty" verdict even after it has concluded that the person on trial violated the law?

Well, for one thing, there's nothing wrong with jury nullification. The Framers of our Constitution believed that jury nullification was part and parcel of what a jury trial was all about. Our second president, John Adams, wrote that it was not only a juror's right, but his duty to "find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court."

The Supreme Court itself has noted that the jury is supposed to be the "conscience of the community" and should check the government when necessary to protect individuals from injustice or oppression. The jury cannot perform that function if it is told that it must always apply the law mechanically, without regard to justice.

Take the case of John David Mooney. In 2002, Mooney's wife pulled a gun on him during a heated argument. He took the gun away from her and he went to a nearby police station to turn in the weapon because, as an ex-felon, he was not allowed to possess firearms. Unbelievably, prosecutors turned around and filed charges against Mooney for unlawful possession of a firearm!

Mooney's attorney advised him to accept a plea bargain because the case against him was open and shut. His status as an ex-felon was an undeniable fact and he had already admitted to possessing the firearm. Very reluctantly, Mooney pled guilty to a crime.

However, like Lee, Mooney got bad legal advice. Had he gone to trial, he could have made a "justification" defense to a jury. Upon learning this, Mooney appealed his case with the complaint that he received bad legal advice, and that had he received correct legal advice he would have insisted on his right to a jury trial. When an appeals court overturned Mooney's conviction, the prosecutors dropped the case entirely instead of going to trial.

Jae Lee is facing prison time and banishment from the United States. Before that happens, Lee wants to have his day in court. The Constitution is supposed to guarantee his right to trial by jury. We will soon see whether the Supreme Court will come to the defense of that guarantee.

Tim Lynch is director of the Cato Institute's Project on Criminal Justice and filed an amicus brief in the Supreme Court in support of Jae Lee.