No. 22-644

In the Supreme Court of the United States

ANTHONY LOMAX

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the limits on agency deference announced in *Kisor* constrain the deference that courts may accord to the commentary to the Sentencing Guidelines.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute, founded in 1977, is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

This case is of central concern to Cato because it involves an extra-legislative power to make law-like interpretations that can cost people years of freedom.

SUMMARY OF ARGUMENT

In *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), this Court preserved some form of judicial deference to administrative agencies' interpretations of their own regulations, as previously recognized in *Auer v. Robbins*, 519 U.S. 452 (1997), *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), and, importantly here, in *Stinson v. United States*, 508 U.S. 36 (1993). The *Kisor* Court placed restraints on so-called *Auer* deference by making clear the limited circumstances in which deference is warranted and explaining the steps courts must take before applying it. *Kisor*, 139 S. Ct. at 2420. The lower courts' application of these doctrinal developments would reveal whether the *Kisor* majority was correct that the doctrine simply

[1] Rule 37 statement: All parties were timely notified to the filing of this brief. Further, no party's counsel authored this brief in any part and *amicus* alone funded its preparation and submission.

needed tightening or was instead completely beyond repair as the dissent maintained.

In *Kisor*, this Court instructed lower courts to withhold deference to an agency's interpretation of its own regulations unless the regulation is "genuinely ambiguous" after exhausting all "traditional tools of construction." *Kisor*, 139 S. Ct. at 2415. But that rule is incompatible with this Court's 1993 decision in *Stinson*, which required deference to the Sentencing Commission's commentary to its Sentencing Guidelines even when the Guidelines were unambiguous. The result of that decision was largely to put lower courts in a "slumber of reflexive deference" to the commentary. *United States v. Nasir*, 17 F.4th 459, 472 (3d Cir. 2021) (en banc) (Bibas, J., concurring). The present case implicates an ongoing discussion and debate among the courts of appeals in the wake of *Kisor* regarding a key question: whether *Kisor*'s limitations on *Auer* deference apply to the strong level of deference called for in *Stinson*.

This case presents a prime opportunity for the Court to provide much-needed guidance to the lower courts on that divisive question. Here, the Seventh Circuit affirmed a substantial increase in Anthony Lomax's sentencing range solely because Guidelines commentary said it should. The court put little effort into analyzing the text of the Guidelines itself. Such "reflexive deference" is incompatible with this Court's holding in *Kisor*.

Moreover, the petition presents the opportunity for this Court to resolve a larger problem that has plagued doctrines of deference to agency interpreta-

tions of law more generally: namely, whether in criminal cases courts should apply the rule of lenity to otherwise ambiguous statutes and regulations or instead give deference to agencies' interpretations of such provisions. The Court's command to exhaust all "traditional tools of construction" before granting deference to an agency's interpretation would seem to preclude deference to an agency when the rule of lenity is otherwise applicable—the rule of lenity is, after all, a longstanding tool of construction. *E.g.*, *Kisor*, 139 S. Ct. at 2415. Unfortunately, lower courts remain divided on that important question, and this case provides the Court with an opportunity to expand upon its rationale in *Kisor* and clarify that lenity should come before deference to agencies' interpretations of their regulations in the criminal setting.

ARGUMENT

I. *KISOR* RESTRICTED THE APPLICATION OF *AUER* DEFERENCE AND INVALIDATED ANY JUSTIFICATION FOR *STINSON*.

Stinson, which was the foundation for the Seventh Circuit's holding here, made clear that it was applying *Auer* deference. 508 U.S. at 45. After considering alternatives—including analogizing the commentaries to statements of intent and agency interpretation of statutes—Justice Kennedy's unanimous opinion concluded that the deference the Court would give to the sentencing-guideline commentaries was the

same that it customarily gave to agency interpretations of regulations. *Id.*

The commentaries are agency interpretations subject to a level of deference that needs to be reevaluated in the light of *Kisor*. While this Court explicitly declined to jettison *Auer* deference in *Kisor*, it didn't leave the doctrine entirely intact either, at least not as the Court has employed it in prior cases. 139 S. Ct. at 2448 (Kavanaugh, J., concurring in the judgement) (noting that courts "rigorously applying" *Kisor* "should lead in most cases to" them withholding *Auer* deference to agency interpretations). *Kisor* restricted *Auer* by laying out several preconditions that courts must find before deference may be applied. *Id.* at 2414–18. The result of *Kisor*'s version of *Auer* deference, as Justice Gorsuch described it, is to make *Auer* subject to the same two-step structure as *Chevron*—beginning with the discernment of ambiguity, and then, only if genuine ambiguity is found, asking whether the agency's determination is reasonable. *Id.* at 2448 (Gorsuch, J., concurring in the judgement). The Court acknowledged that it has given confusing guidance and that some cases have not observed these preconditions. *Id.* at 2414. Because "the Court has given *Auer* deference without careful attention to the nature and context of the interpretation," some *Auer*-based rulings must have been set aside by *Kisor*. *Id.* *Stinson* is one of them.

In establishing preconditions for *Auer* deference, *Kisor* effectively prescribed the order in which courts must consider sources of legal authority and interpre-

tative tools when a question of regulatory interpretation arises. *Id.* A court must first consider the text of the regulation in question. Next come the canons of interpretation and other normal interpretive aids, then consideration of the relevance of the interpreting agency's expertise to the question at hand. Finally, there is a potential inquiry into whether the agency has offered a reasonable and authoritative interpretation. *Id.* at 2414–19. If these conditions are met, *Auer* deference can be applied to the interpretation of the agency.

A court may not move beyond the text unless it can find a genuine material ambiguity. Nor is it enough for the regulation to be ambiguous upon initial inspection. A court must employ the full range of normal interpretative tools, including dictionaries and all the relevant traditional canons, before declaring a bona fide ambiguity. *Id.* at 2415. If, at that stage, a court does not find any such ambiguity, it need not look to any other material, nor should other materials color its discernment of ambiguity. The modified *Auer* analysis is thus similar to the deference given to agency statutory interpretations under *Chevron*, with *Kisor* having removed any exceptional deference given to regulatory interpretations. *Id.* at 2416.

Contrary to all the above, *Stinson* looked first to the agency interpretation: the commentaries. The Sentencing Commission's commentary can govern, the Court said, unless it "is inconsistent with, or a plainly erroneous reading of" the guidelines themselves. *Stinson*, 508 U.S. at 38. More than just a useful interpre-

tation, the Court in *Stinson* seemed to regard the commentaries as a binding expression of law when it said: "Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal." *Id.* at 43 (quoting U.S. Sent'g Guidelines Manual § 1B1.7 (U.S. Sent'g Comm'n 1987)).

Whereas this Court in *Kisor* held that a court should not find a regulation to be ambiguous merely because it can't be deciphered on first reading, *Stinson* doesn't even require a first regulatory reading, at least not before bringing in the commentaries. *Id. Stinson* treats the commentaries as presumptively ambiguous unless they can be shown to be materially clear in a way that disfavors the interpretation made by the Sentencing Commission's guidelines. *Id.* at 43–44.

Stinson is incompatible with *Kisor*, reversing the order of consideration of authorities. Under *Stinson*, there will be fewer cases where an agency interpretation will be found to be plainly inconsistent with a regulation than under *Kisor*. Even unambiguous guidelines could be supplemented in various ways by agency interpretations under the *Stinson* approach. That type of super-deference is simply unwarranted and ripe for this Court's correction.

II. THIS IS A PRIME OPPORTUNITY FOR THE COURT TO PROVIDE GUIDANCE ON THE RULE OF LENITY'S PLACE IN THE POST-*KISOR* FRAMEWORK.

This case also gives the Court the ability to address the rule of lenity's place in the Post-*Kisor* framework. The rule of lenity provides "that ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United States v. Davis*, 139 S. Ct. 2319, 2333 (2019). Between the rulings in *Stinson* and *Kisor*, however, the heightened deference that was owed to the Guidelines commentary *arguably* precluded the use of the rule of lenity when the Guidelines were ambiguous but the commentary was on point.[2] *See Stinson*, 508 U.S. at 38. But now that an agency's interpretation of its own regulations can only receive deference after a court has made an independent determination that the regulation is still "genuinely ambiguous" even *after* exhausting "*all* the 'traditional tools' of construction," the rule of lenity—which is certainly an historical tool of construction—should apply to ambiguous Sentencing Guidelines before giving deference to the agency commentary. *See Kisor*, 139 S. Ct. at 2415; *id.* at 2448 (Gorsuch, J., concurring in the judgment) (noting that the tools of construction "include all sorts of tie-breaking rules for resolving ambiguity even in the closest cases"); *id.* at 2448 (Kavanaugh, J., concurring in the judgment) ("If a reviewing court employs all of the traditional tools of construction, the court will almost always reach a

[2] By itself, *Stinson* may not necessarily preclude application of lenity. In *Stinson*, the commentary at issue favored the defendant, which means deference to the commentary and the rule of lenity were not in conflict. However, this Court's phrasing of the rule of deference was not limited to situations in which the commentary's interpretation benefited the defendant. As such, in *Stinson*, this Court left open the question whether deference or lenity would take precedence when the commentary was unfavorable to the defendant.

conclusion about the best interpretation of the regulation at issue.").

Unfortunately, the Court's treatment of lenity and how it interacts with the doctrine of deference to agency interpretations generally has engendered disagreement among the lower courts, which are in conflict about how to apply the rule of lenity when agencies are interpreting statutes or their own regulations. This case presents a timely opportunity to resolve that confusion by making clear that genuinely ambiguous Guidelines questions should be resolved in a defendant's favor.

A. This Court Has Provided Conflicting Guidance for the Interaction of the Rule of Lenity with Deference to Agency Interpretations.

Although this Court has not explicitly discussed the rule of lenity's function in the context of *Auer* deference, several of its decisions—usually in the context of the parallel doctrine of *Chevron* deference—have provided conflicting guidance for lower courts. Lately, the Court's approach has tended to favor the rule of lenity over deference to agency interpretations. Criminal laws, the Court has emphasized, "are for courts, not for the Government, to construe." *Abramski v. United States*, 573 U.S. 169, 191 (2014). Thus, even when the basic requirements for an agency to receive deference appear to be satisfied (e.g., a statute or regulation is ambiguous and the agency's formal interpretation is "reasonable"), this Court has still "never *held* that the Government's reading of a criminal statute [or regulation] is entitled to any deference."

United States v. Apel, 571 U.S. 359, 360 (2014) (emphasis added). Rather, when a criminal statute or regulation is ambiguous, members of this Court have taken the position that the rule of lenity should prevail over deference doctrines. *See Leocal v. Ashcroft*, 543 U.S. 1, 3–4, 11 n.8 (2004) (noting, in a context where *Chevron* deference was arguably applicable, that the rule of lenity would buttress the Court's interpretation of the statute *if* it were ambiguous); *see also Whitman v. United States*, 574 U.S. 1003, 1003–04 (2014) (Scalia, J., statement respecting denial of certiorari); *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 S. Ct. 789, 790 (2020) (Gorsuch, J., statement respecting denial of certiorari).

Notably, despite the persuasive value of these observations, none of them is technically binding on the lower courts. The statements in *Abramski*, *Apel*, and *Leocal* were all arguably "made outside the context" of a deference-eligible interpretation. *See Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 25 (D.C. Cir. 2019). In *Abramski* and *Apel*, the agency interpretations at issue may not have been promulgated "with the force of law." *Id.* And in *Leocal*, this Court interpreted the statute without reference to *Chevron* deference at all. *See Gallardo v. Barr*, 968 F.3d 1053, 1060 (9th Cir. 2020). The controlling nature of these statements is therefore at least debatable.

Further compounding the uncertainty, on at least two occasions in the past, statements or decisions of this Court have suggested that deference to agency interpretations supersedes the rule of lenity. *See Eh-*

lert v. United States, 402 U.S. 99, 104–05 (1971) (appearing to uphold defendant's conviction based on an agency's "reasonable" interpretation of an ambiguous regulation); *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 703–04, 704 n.18 (1995) (suggesting in a footnote that even in criminal cases *Chevron* deference can displace the rule of lenity). But again, the binding nature of these decisions on lower courts is debatable. In *Ehlert*, because neither party even raised the rule of lenity, this Court didn't have the opportunity to determine whether it would overcome (what is now) *Auer* deference. *See United States v. Phifer*, 909 F.3d 372, 384 (11th Cir. 2018). And as for *Babbitt*, the Court simply "brushed the rule of lenity aside in a footnote," "with scarcely any explanation" in what Justice Scalia described as a "drive-by ruling." *Whitman*, 574 U.S. at 1005 (Scalia, J., statement respecting denial of certiorari). It is doubtful whether *Babbitt*'s footnote should receive substantial weight. *Id.*; *Esquivel-Quintana v. Lynch*, 810 F.3d 1019, 1030–31 (6th Cir. 2016) (Sutton, J., concurring in part and dissenting in part).

The confusion is exacerbated by this Court's shifting takes on the canonical status of lenity. On the one hand (and most consistent with common law), this Court has characterized the rule of lenity as a "traditional rule of construction." *See e.g.*, *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 985 (2005) (implying that the *Brand X* rule *might* be inapposite when a court uses the rule of lenity to construe an otherwise ambiguous statute before an agency promulgates a contrary regulation); *Davis*, 139 S. Ct. at 2333 (suggesting that the canon of constitutional avoidance must be employed in a

manner consistent with the rule of lenity); *United States v. R. L. C.*, 503 U.S. 291, 307 (1992) (Scalia, J., concurring in part and concurring in the judgment) ("[I]t is not consistent with the rule of lenity to construe a textually ambiguous penal statute against a criminal defendant on the basis of legislative history."). In fact, this Court once described the rule of lenity as "perhaps not much less old than construction itself." *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820). Viewed in this way, the Court's command in *Kisor* to grant *Auer* deference only after exhausting "all the 'traditional tools' of construction" would seem to entail that courts should withhold *Auer* deference when an agency's interpretation of an ambiguous regulation in a criminal case is unfavorable to a defendant. *See Kisor*, 139 S. Ct. at 2415.

That said, some members of this Court have described the rule of lenity as a somehow lesser rule of construction: start with the text; then apply all other methods of interpretation (maybe including deference doctrines?); and if the statute or regulation is still "grievously ambiguous," then apply the rule of lenity. Under such a rubric, "the rule of lenity rarely comes into play." *Shular v. United States*, 140 S. Ct. 779, 787–89 (2020) (Kavanaugh, J., concurring). And if this methodology is rigidly employed, it is not difficult to see why some courts would assume that *Chevron* or *Auer* deference supersedes the rule of lenity.

Given these variegated statements regarding the rule of lenity, lower courts need clear guidance from

this Court that the rule of lenity should take precedence over doctrines of deference to agency interpretations.

B. The Lower Courts Are Similarly Divided on the Application of Lenity.

Not surprisingly, there is disagreement among lower courts about whether the rule of lenity trumps deference to agency interpretations of ambiguous criminal statutes or regulations. The Third, Fifth, and Eleventh Circuits have all held or suggested that the rule of lenity overrides deference to agency interpretations. *Nasir*, 17 F.4th at 472–74 (Bibas, J., concurring) (joined by five judges of the en banc court to extoll the importance of the rule of lenity over the commentary when interpreting the Sentencing Guidelines); *Diamond Roofing Co. v. Occupational Safety & Health Rev. Comm'n*, 528 F.2d 645, 649 (5th Cir. 1976) ("If a violation of a regulation subjects private parties to criminal or civil sanctions, a regulation cannot be construed to mean what an agency intended but did not adequately express."); *United States v. Moss*, 872 F.3d 304, 314–15 (5th Cir. 2015) (appearing to reaffirm *Diamond Roofing*'s holding regarding *Auer* deference in the criminal context); *Phifer*, 909 F.3d at 384–85 (holding that the rule of lenity can be invoked to "defeat *Auer* deference whenever a defendant faces civil or criminal penalties").

By contrast, the First, Sixth, and Tenth Circuits consider that the rule of lenity has no place whenever the standard prerequisites for *Auer* or *Chevron* deference are met. *De Lima v. Sessions*, 867 F.3d 260, 264–65 (1st Cir. 2017); *Esquivel-Quintana v. Lynch*, 810 F.3d 1019, 1023–24 (6th Cir. 2016); *Aposhian v. Barr*,

958 F.3d 969, 982–84 (10th Cir. 2020), *vacated for rehearing*, 973 F.3d 1151 (10th Cir. 2020) (en banc), *reinstated*, *Aposhian v. Wilkinson*, 989 F.3d 890 (10th Cir. 2021) (en banc). But even among those courts, there is disagreement among judges about giving deference to agency interpretations in criminal contexts. *See Lewis*, 963 F.3d at 27–28 (Torruella and Thompson, JJ., concurring); *Esquivel-Quintana*, 810 F.3d at 1027–32 (Sutton, J., concurring in part and dissenting in part); *United States v. Havis*, 907 F.3d 439, 451–52 (6th Cir. 2018) (Thapar, J., concurring), *vacated for rehearing en banc*, 927 F.3d 382, 386–87 (6th Cir. 2019) (en banc); *Aposhian*, 958 F.3d at 998–99 (Carson, J., dissenting); *Aposhian*, 989 F.3d at 898–902 (en banc) (Tymkovich, J., dissenting) (joined by the four other dissenting judges); *id.* at 904–06 (Eid, J., dissenting) (same).

Finally, the D.C. and Fourth Circuits have panel decisions embracing both approaches. *Campbell*, 22 F.4th at 446 (suggesting that the rule of lenity should apply instead of *Auer* deference); *Winstead*, 890 F.3d at 1092 n.14 (same); *but see Yi v. Fed. Bureau of Prisons*, 412 F.3d 526, 535 (4th Cir. 2005) (holding that *Chevron* applies instead of lenity); *United States v. Kanchanalak*, 192 F.3d 1037, 1050 n.23 (D.C. Cir. 1999) (same); *Guedes*, 920 F.3d at 23–28 (same).

The time is ripe to harmonize the lower courts by holding by making clear that *Kisor* requires the rule of lenity, as a traditional tool of statutory construction, to apply before *Stinson*/*Auer* deference.

C. The Rule of Lenity Should Apply to Interpretations of the Sentencing Guidelines.

The rule of lenity is a longstanding rule of construction grounded in the "instinctive distaste against [individuals] languishing in prison unless the lawmaker has clearly said they should[.]" *R. L. C.*, 503 U.S. at 305 (cleaned up). The rule originated "in 16th-century England," and gained "broad acceptance" in the 17th century as a tool to mitigate Parliament's multiplication of capital offenses. *Johnson v. United States*, 576 U.S. 591, 613–14 (2015) (Thomas, J., concurring in the judgment). Today, that rule still "serves our nation's strong preference for liberty." *Nasir*, 17 F.4th at 473 (Bibas, J., concurring). And it does so not only by resolving "issues about the substantive scope of criminal statutes, but [also by answering] questions about the severity of sentencing." *R. L. C.*, 503 U.S. at 305 (cleaned up).

When "applying *Auer* would extend [a defendant's] time in prison, alarm bells should be going off." *Havis*, 907 F.3d at 450 (Thapar, J., concurring). The rule of lenity requires courts "to favor a more lenient interpretation of a criminal statute [or regulation]." *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 16 (2011). Using *Auer*/*Stinson* deference to increase a defendant's punishment turns that "normal construction of criminal statutes [and regulations] upside-down, replacing the doctrine of lenity with a doctrine of severity." *Cf. Crandon v. United States*, 494 U.S. 152, 178 (1990) (Scalia, J., concurring in the judgment).

While the *Auer*/*Stinson* doctrine is relatively new and rooted largely in policy views regarding things like agency expertise, the rule of lenity embodies more profound common law and constitutional concerns. *Kisor*, 139 S. Ct. at 2413 (noting some policy objectives

of *Auer* deference); *Aposhian*, 989 F.3d at 899 (en banc) (Tymkovich, J., dissenting) (noting the constitutional purposes of the rule of lenity). The rule of lenity exists to promote "fair notice to those subject to the criminal laws, to minimize the risk of selective or arbitrary enforcement, and to maintain the proper balance between Congress, prosecutors, and courts." *United States v. Kozminski*, 487 U.S. 931, 952 (1988). Those objectives are advanced when the rule of lenity applies to the Guidelines before giving *Auer*/*Stinson* deference to the commentary.

First, the rule of lenity is designed to further the requirement of due process that laws are written so as to give "fair warning" to the "common world" of their implications. *United States v. Lanier*, 520 U.S. 259, 265–66 (1997). It would require "an uncommon level of acuity from average citizens to know that they must" look not just to the statutory language and Sentencing Guidelines to know the consequences of their actions, but also "to the interpretive gap-filling of" the commentary "which may or may not be upheld" as consistent with the statute and Guidelines by the court. *Cf. Aposhian*, 989 F.3d at 899–900 (en banc) (Tymkovich, J., dissenting); *accord Guedes*, 140 S. Ct. at 790 (Gorsuch, J., statement regarding denial of certiorari). A requirement that the Sentencing Commission make the rules clear in the Guidelines themselves if it wants deference when imposing harsher sentences gives individuals much greater notice and better preserves due process. *See The Enterprise*, 8 F. Cas. 732, 734 (C.C.D.N.Y. 1810) (No. 4499) (Justice Livingston) ("If it be the duty of a jury to acquit where [reasonable] doubts exist concerning a fact, it is equally incumbent on a judge not to apply the law to

a case where he labours under the same uncertainty as to the meaning of the legislature.").

Second, applying the rule of lenity to the Guidelines also protects separation of powers interests. *See Kozminski*, 487 U.S. at 952; *Wiltberger*, 18 U.S. at 95. Because criminal penalties, like the criminalizing of certain acts, "represents the moral condemnation of the community," Congress generally should define both criminal activities and penalties. *See United States v. Bass*, 404 U.S. 336, 348 (1971). It is true, the Court has held that the Sentencing Commission promulgating its Guidelines does not violate the intricate balance of power created by Constitution. *Mistretta v. United States*, 488 U.S. 361, 393 (1989). Nevertheless, the legislative (or at least quasi-legislative) power that the Sentencing Commission wields is no small thing. *See generally id.* at 413–27 (Scalia, J., dissenting). And it can only constitutionally promulgate these Guidelines "because they must pass two checks: congressional review and the notice and comment requirements of the Administrative Procedure Act." *Lewis*, 963 F.3d at 27–28 (Torruella and Thompson, JJ., concurring) (internal quotation marks omitted). While the Sentencing Commission may often follow a similar process in adopting the commentary, app. at 13a, the Commission nonetheless still holds that it can promulgate and amend official commentary without congressional review or administrative rulemaking. United States Sentencing Commission, Rules of Practice and Procedure 6–7 (as amended Aug. 18, 2016). *Lewis*, 963 F.3d at 27–28. When the rule lenity comes before *Auer*/*Stinson* deference to the

commentary in interpreting the Guidelines, the concerns surrounding Sentencing Commission's lawmaking authority are better assuaged.

The rule of lenity is a "venerable" rule of construction that reflects important common-law values. *R. L. C.*, 503 U.S. at 305; *Wiltberger*, 18 U.S. at 95. Importantly, it also protects and enhances constitutional guarantees to defendants. *Auer*/*Stinson* deference, while it may serve valuable goals, can often frustrate those constitutional guarantees. The petition should be granted so this Court can clarify that its instruction in *Kisor* to apply the tools of statutory interpretation before a court gives deference to an agency interpretation of its own regulations applies to the Sentencing Guidelines.

CONCLUSION

For all the foregoing reasons, we urge the Court to grant the petition.

Respectfully submitted,

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