

No.

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**XIAORONG YOU,**  
*Applicant,*

**v.**

**UNITED STATES OF AMERICA,**  
*Respondent.*

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On Application for an Extension of Time to File Petition for a Writ of Certiorari to  
the United States Court of Appeals for the Sixth Circuit

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**PETITIONER'S APPLICATION FOR AN EXTENSION OF TIME TO FILE  
PETITION FOR A WRIT OF CERTIORARI**

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Attorney for Applicant

To the Honorable Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Applicant Dr. Xiaorong You respectfully requests that the time to file her petition for a writ of certiorari be extended for 60 days, up to and including Monday, February 5, 2024.<sup>1</sup> The United States Court of Appeals for the Sixth Circuit issued its opinion on July 11, 2023 (Exhibit B) and denied rehearing en banc on September 7, 2023 (Exhibit A). Absent an extension, Dr. You's petition would be due December 6, 2023. The government does not oppose this request.

### **BACKGROUND**

Dr. You was convicted of conspiracy to commit economic espionage, conspiracy to commit theft of trade secrets, and other offenses. At sentencing, it was undisputed that Dr. You's alleged conduct had caused no actual loss. But the district court found that she had intended to cause a loss of \$121,800,000 and accordingly increased her offense level under U.S.S.G. § 2B1.1 by 24 levels. After a downward variance, the court sentenced Dr. You to imprisonment for 168 months.

On appeal, Dr. You challenged her sentence on two grounds: (1) that the district court erred in considering *intended* loss, because § 2B1.1 refers only to "loss," and the Sentencing Commission's interpretation of that term in the Guidelines

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<sup>1</sup> The 60th day of the extension falls on Sunday, February 4, 2024. Under Sup. Ct. R. 30.1, Dr. You's petition would be due on Monday, February 5.

commentary to include harm that was intended but never materialized should receive no deference under *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), and (2) that the district court erred in its calculation of intended loss.

In a published opinion, *United States v. You*, 74 F.4th 378 (6th Cir. 2023), the court of appeals rejected Dr. You's *Kisor* argument, expressly disagreeing with the Third Circuit's contrary decision in *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022) (holding, under *Kisor*, that courts should not defer to the Sentencing Commission's interpretation of "loss" to include intended loss). Exhibit B at 21-23. The court of appeals found, however, that the district court had erred in calculating intended loss and remanded to the district court for resentencing. Exhibit B at 23-25. The district court has set resentencing for February 26, 2024, with briefing to be completed by January 22, 2024.

### **REASONS FOR GRANTING THE APPLICATION**

In light of the clear conflict between the Sixth Circuit's decision in Dr. You's case and the Third Circuit's decision in *Banks*, Dr. You currently intends to file a petition for a writ of certiorari presenting the *Kisor* issue. It is possible, however, that the resentencing process in the district court, including briefing due January 22, 2024, will moot or render unnecessary further proceedings in this Court. In the interest of judicial economy, therefore, Dr. You seeks a 60-day extension in which to

file her petition. The extension will permit her to determine in light of the proceedings on remand in the district court whether the petition is warranted.

### **CONCLUSION**

Applicant requests that the time for filing her petition for a writ of certiorari be extended for 60 days, up to and including February 5, 2024.

DATED: November 24, 2023

Respectfully submitted,



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John D. Cline

Attorney for Applicant  
XIAORONG YOU