No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEITH WHITE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to 18 U.S.C. § 3006A(d)(7) and Sup. Ct. R. 39, the Petitioner, Keith White, respectfully asks for leave to file the attached *Petition for a Writ of Certiorari* without prepayment of costs and to proceed in forma pauperis.

The undersigned counsel's office was appointed to represent the Petitioner pursuant to 18 U.S.C. § 3006A in the United States District Court for the Southern District of Indiana, and in all proceedings before the United States Court of Appeals for the Seventh Circuit. A copy of the Order appointing counsel is appended hereto this Motion.

TERRY TOLLIVER
CJA Counsel

By: /s/ Terry Tolliver
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Dated: July 2, 2024

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEITH WHITE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an offense under 21 U.S.C. § 846 may be included in the U.S.S.G. § 4B1.2 definition of "controlled substance offenses" for purposes of sentencing a defendant as a career offender?

PARTIES

The caption of the case contains the name of all the parties. The Petitioner is Keith White, and the Respondent is the United States of America. No party is a corporation.

RULE 14(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the Southern District of Indiana, and the United States Court of Appeals for the Seventh Circuit:

- *United States v. White*, No. 22-2014 (7th Cir. June 8, 2022)
- *White v. United States*, No. 1:19-cv-02776-SEB-MJD (S.D. Ind. July 5, 2019)
- *United States v. White*, No. 1:17-cr-00135-SEB-TAB-1 (S.D. Ind. July 18, 2017)

There are no other directly related proceedings in state or federal courts, or in this Court.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Keith White, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit whose judgment is sought to be reviewed is a nonprecedential disposition that is available at *United States v. White*, No. 22-2014 (7th Cir. 2022) (Dkt. #34 and #35) and may be found in the Appendix at 001a and 016a. The judgment of the Southern District of Indiana is unpublished and is available at 1:17-cr-00135-SEB-TAB (S.D. Ind. 2022) (Dkt. #218) and may be found in the Appendix at 017a.

JURISDICTION

The Court of Appeals entered final judgment on April 2, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1) because this Petition is filed by Mr. White, a party in a criminal case, after the rendition of the Court of Appeals' rendition of judgment.

REGULATORY AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 991(b) Purpose of the Sentencing Commission

The two broad purposes of the Sentencing Commission are found in 28 U.S.C. § 991(b) and are to:

(1) establish sentencing policies and practices for the Federal criminal justice system that–

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

28 U.S.C. § 994(h)(1) Career Offender requires a defendant's instant conviction to be:

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46.

STATEMENT OF THE CASE

A. Mr. White is arrested and indicted.

Beginning in or about 2014, Mr. White began a conspiracy to distribute heroin along with fellow in-mate, Elonzo Williams. On July 18, 2017, Mr. White and his co-defendants were indicted for their alleged conspiracy. On August 21, 2017, Mr. White was arrested and charged with one charge of conspiracy to possess with intent to distribute 100 grams or more of a substance containing a detectable amount of heroin. Mr. White and the government enter into a plea agreement on September 17, 2018. The parties did not agree on a specific sentence, but the government agreed to recommend a sentence within the advisory range as determined by the Court.

B. Mr. White is convicted and appeals his initial sentence.

Mr. White was ultimately convicted of his single conspiracy count on February 5, 2019, to 144 months in prison. On July 5, 2019, Mr. White filed a motion to vacate his sentence pursuant to 28 U.S.C § 2255. On May 18, 2021, the District Court granted the Mr. White's motion to vacate for relief pursuant to 28 U.S.C. § 2255 to the extent that Mr. White could appeal the conviction and sentence in his case. On August 17, 2021,

Mr. White and the government filed a joint motion to remand with this Court. On august 30, 2021 the Seventh Circuit Court of Appeals vacated Mr. White's sentence and remanded his case for resentencing.

C. Mr. White is resentenced and appeals.

On May 16, 2022, Mr. White had a second sentencing hearing. Mr. White had his sentence reduced from 144 months to 120 months due to several 18 U.S.C. 3553(a) factors. However, the District Court still sentenced him as a career offender, greatly enhancing his guideline range.

Mr. White appealed his sentence on December 1, 2021, arguing in part that the Sentencing Commission may not legally include an offense under 21 U.S.C. § 846 in their U.S.S.G. § 4B1.2 definition of "controlled substance offenses" for the purposes of sentencing defendants as career offenders because there is no "clear congressional authorization" allowing the Commission to do so. Mr. White was convicted of an inchoate offense, which does not count as a controlled substance offense for the purposes of the sentencing guidelines career offender designation, because U.S.S.G. §4B1.2(b), which defines "controlled substance offense", does not include inchoate offenses.

The Seventh Circuit Court of Appeals, in applying this Court's decision in *Stinson v. United States, 508 U.S. 36 (1993),* deferred to Application Note 1 as the Sentencing Commission's authoritative interpretation of the career-offender guideline and affirmed Mr. White's sentence on April 2, 2024. Following this decision, Mr. White decided to seek review from the Supreme Court of the United States, prompting the filing of this Petition for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

This Court should resolve the Circuit split and decide whether the Sentencing Commission has the authority to include inchoate drug offenses included in the definition of "controlled substance offenses" for the purposes of career offender status.

D. A Circuit split exists that requires this Court's involvement.

A principal purpose for which this Court uses its certiorari jurisdiction is to resolve conflicts among the Circuit courts of appeals and state courts concerning the meaning of provisions of federal law. *See Braxton v. United States*, 500 U.S. 344, 347 (1991); Sup. Ct. R. 10(a). More importantly, this Court will often grant certiorari "to resolve circuit splits that render the state of the law inconsistent and chaotic." *Am. Axle & Mfg. v. Neapco Holdings*, 977 F.3d 1379, 1382 (Fed. Cir. 2020).

Mr. White's case presents an issue on which the Circuits are split. Because the Circuits' disagreement has led to the inconsistent application of a federal guideline to similarly situated defendants throughout the country, the Sentencing Commission has since amended the guidelines to move inchoate offenses from the notes to the Guidelines. However, it is not clear that even that is appropriate given recent decisions from this Court. This Court should now step in and resolve the "inconsistent and chaotic" state of the law regarding the United States Sentencing Guidelines' career offender designation.

In *West Virginia v. Environmental Protection Agency*, 142 S.Ct. 2587 (2022), this Court held that agencies must point to "clear congressional authorization" when exercising power. *Id.* at 2609. The *West Virginia* Court specifically addressed whether Congressional authorization in the Clean Air Act allowing the EPA to determine the "best system of emission reduction . . . which has been adequately demonstrated" allowed the EPA to require coal-fired power plants to reduce their own production of electricity. *Id.* at 2600. The Court reasoned that certain, highly consequential, administrative assertions of authority provide "reason to hesitate before concluding that Congress"

intended to confer the authority an agency is asserting that it has. *Id.* at 2607. The Court, therefore, reversed the appellate court's decision and remanded the case for proceedings consistent with its decision. *Id.* at 2616. There are few more consequential, administrative assertions of authority than those that ultimately take away a person's liberty.

As previously stated, the two broad purposes of the Sentencing Commission are found in 28 U.S.C. § 991(b) and are to:

> *(1) establish sentencing policies and practices for the Federal criminal justice system that–*
>
> *(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;*
> *(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and*
> *(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and*
>
> *(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.*

Under this Court's directive that administrative agencies cannot exercise authority absent "clear congressional authorization" the broad purposes enumerated here would not be sufficient to allow the Sentencing Commission to create Career Offender Guidelines.

The specific duties of the Sentencing Commission are found in 28 U.S.C. § 994. While § 994(h) does give "clear congressional authorization" for the Sentencing Commission to specify a sentence to a term of imprisonment for those deemed Career Offenders, § 994(h)(1) requires that to sentence the defendant's instant conviction must be:

> *(A) a crime of violence; or*
>
> *(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46.*

The fact that of the offenses enumerated in subsection B do not include attempt and conspiracy offenses under 21 U.S.C. § 846 indicates that the Sentencing Commission lacks "clear congressional authorization" to subject defendants convicted of violating § 846 to Career Offender status. Therefore, Mr. White's instant conviction does not support the district court's decision to sentence him as a career offender.

Mr. White finds himself in a unique situation, as he was sentenced prior to recent changes to the Sentencing Guidelines. Under Amendment #822, the Sentencing Commission has amended Section 4B1.2 to include inchoate offenses. This was in response to this Court's decision in *Kisor v. Wilkie*, 139 S. Ct. 2400, 2410-2414 (2019). In *Kisor*, the Court enumerated three factors that a court should consider when determining whether a court should defer to an agency's interpretation of their regulations. *Id*. 2415-2418. First, *Kisor* held that when interpreting an administrative agency's rules, a court should defer to the agency's interpretation of their rules *only if* a regulation is genuinely ambiguous. *Id*. at 2414 (emphasis added). Second, even if a regulation is genuinely ambiguous, an agency's interpretation of the regulation must be reasonable. *Id*. at 2415. Third, even if an agency's reading of a genuinely ambiguous rule is reasonable, "a court must make an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight." *Id*. at 2415-2416. The aforementioned methodology is incorporated into a courts determination of whether to defer to the Federal Sentencing Commission's commentary notes for the sentencing guidelines by *Stinson v. United States*, 508 U.S.

36, 45 (1993). There, like in *Auer* the Court held that the sentencing guideline commentary is authoritative unless it "is inconsistent with, or a plainly erroneous reading of, that guideline." *Id*.

More recently, in *Loper Bright Enterprises v. Raimondo*, 603 U. S. ____ (2024), this Court overruled *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), and found that "by directing courts to 'interpret constitutional and statutory provisions' without differentiating between the two, Section 706 makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference. Under the APA, it thus 'remains the responsibility of the court to decide whether the law means what the agency says.' (Citing *Perez v. Mortgage Bankers Assn.*, 575 U. S. 92, 109 (2015) (Scalia, J., concurring in judgment)."

E. Even under *Kisor*, Mr. White is not a career offender because the plain language of §4B1.2 is unambiguous and does not include inchoate offenses in its definition of controlled substance offenses.

In *Kisor* the Court gave unequivocal instructions for interpreting agency rules stating, "before concluding that a rule is genuinely ambiguous, a court must exhaust all the 'traditional tools' of construction." *Kisor*, 139 S.Ct. at 2415. Accordingly, a court cannot find

that a regulation is ambiguous just because it is difficult to comprehend on its first read. *Id*. As Justice Kagan observed in her opinion, "[a]gency regulations can sometimes make the eyes glaze over." *Id*.

This observation is certainly true of the sentencing guideline's definition for controlled substance offenses, U.S.S.G. §4B1.2(b), states:

> *The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.*

If a first reading of this guideline subsection results in a glazing of the eyes, one may observe upon a second reading that this subsection does not include inchoate offenses. The most logical explanation for not including inchoate offenses from §4B1.2(b) is that inchoate drug offenses do not count as controlled substance offenses under the guidelines.

This interpretation is bolstered by viewing subsection §4B1.2(b) in the context of §4B1.2 as a whole. Specifically, §4B1.2(a) which gives the guideline definition for a "crime of violence" includes any offense that "has an element the use, *attempted* use*, or threatened* use of physical force against the person of another[.]" (emphasis added). Readings

§4B1.2 as a whole, based on the statutory cannon of construction *expression unius est exclusion alterius*, or the expression of one thing is the exclusion of the other, leads to the conclusion that, the inclusion of inchoate offenses in §4B1.2(a), but not §4B1.2(b), means that they are excluded from §4B1.2(b).

F. Even if application note 1 is a reasonable interpretation of an ambiguous rule, it is not entitled to controlling weight because it does not reflect the Sentencing Commission's substantive expertise, or a fair and considered judgment.

Kisor requires that "a court must conduct an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight" before giving the agency's interpretation *Auer* deference. *Id*. The *Kisor* Court recognized that this inquiry cannot be "reduce[d] to any exhaustive test" but did lay out three factors for identifying when *Auer* deference is and is not appropriate. *Id*.

First, the regulatory interpretation must be one made by the agency, or the agency's "authoritative" or "official position," rather than any more ad hoc statement not reflecting the agency's views. *Id*. "Next, the agency's interpretation must in some way implicate its substantive

expertise." *Id*. at 2417. "Finally, an agency's reading of a rule must reflect 'fair and considered judgment' to receive *Auer* deference."

Here, there is there is no reason to infer that the inclusion of inchoate offenses for controlled substance offenses per application note 1 invokes the sentencing commissions substantive expertise because increased sentences for drug offenders have little effect on drug crime in general. This argument is substantiated by the Sentencing Commission themselves in their Fifteen Year Report, which noted that, while incapacitation of violent offenders can protect the public from additional violent crimes, "criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high." U.S. Sentencing Comm'n, *Fifteen Years of Guidelines Sentencing, An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 134 (2004). Based on this observation, the interpretation informed by the commissions' substantive expertise would be the plain language interpretation found in §4B1.2(b).

Furthermore, there is nothing to indicate that the Sentencing Commission's commentary is informed by a "fair and considered judgment." The process for amending the actual sentencing guidelines is subject to a formal process which includes bipartisan scrutiny of proposed amendments.[1] This kind of process is what *Kisor* had in mind when instructing courts to review agency interpretations of their rules to determine that their interpretation was a "fair and considered judgment." In contrast to the process by which the actual guidelines are amended, there is very little information available regarding the process by which the Sentencing Commission writes their commentary. The most logical inference for this lack of procedural transparency is that the commentary is written in an informal, discretionary manner which would directly cut against the fair and considered judgment agency's' interpretations of their rules are subject to by *Kisor*.

CONCLUSION

Based on the foregoing, this Petition for a Writ of Certiorari should be granted.

[1] *See Amendment Process*, United States Sentencing Commission, July 18, 2022, at https://www.ussc.gov/amendment-process.

Respectfully Submitted,

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July 2, 2024

APPENDIX

In the

United States Court of Appeals

for the Seventh Circuit

No. 22-2014

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KEITH WHITE,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 1:17CR00135-001 — **Sarah Evans Barker**, *Judge*.

ARGUED JANUARY 12, 2023 — DECIDED APRIL 2, 2024

Before SYKES, *Chief Judge*, and EASTERBROOK and RIPPLE, *Circuit Judges*.

SYKES, *Chief Judge*. While serving a state sentence at the Pendleton Correctional Facility in Indiana, Keith White and another inmate ran a heroin-distribution ring inside the prison. After three inmates fatally overdosed, the FBI launched an investigation, and White and three accomplices were indicted for conspiracy to distribute heroin. White

pleaded guilty; this is his second appeal challenging his sentence.

White's criminal history includes two Indiana felony convictions for cocaine dealing, which raised the statutory penalties for his heroin conviction, *see* 18 U.S.C. § 841(b)(B)(i), and increased his base offense level under the career-offender provision of the Sentencing Guidelines, *see* U.S.S.G. § 4B1.1–.2. In his first appeal, White successfully challenged the statutory enhancement under *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020). But *Ruth* did not affect his status as a career offender under the Guidelines.

At his resentencing hearing, White raised a new objection to the career-offender guideline based on the Supreme Court's intervening decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019). As relevant here, the guideline applies when a defendant is convicted of a felony "controlled substance offense" and has two or more prior felony convictions for a "controlled substance offense." U.S.S.G. § 4B1.1(a). Under the version of the Guidelines then in effect, the definition of "controlled substance offense" did not address inchoate offenses like conspiracy. *See id.* § 4B1.2(b) (Nov. 1, 2021). But the commentary did: Application Note 1 explained that the term "controlled substance offense" includes "aiding and abetting, conspiring, and attempting to commit such offenses." *Id.* cmt. n.1.

Applying the Supreme Court's decision in *Stinson v. United States*, 508 U.S. 36 (1993), we have repeatedly deferred to Application Note 1 as the Sentencing Commission's authoritative interpretation of the career-offender guideline. *See United States v. Smith*, 989 F.3d 575, 583–85 (7th Cir. 2021); *United States v. Adams*, 934 F.3d 720, 727–30 (7th Cir. 2019);

United States v. Raupp, 677 F.3d 756, 758–59 (7th Cir. 2012) (*overruled on other grounds by United States v. Rollins*, 836 F.3d 737, 743 (7th Cir. 2016) (en banc)). Bound by circuit precedent, the district judge rejected White's argument and again applied the career-offender guideline.

White now asks us to overrule this circuit caselaw and remand for resentencing without the career-offender enhancement. Relying on *Kisor*, he argues that the definition of "controlled substance offense" in § 4B1.2(b) is clear on its face and does not mention inchoate offenses. It follows, he says, that Application Note 1 deserves no deference because the guideline's text unambiguously excludes inchoate offenses. As we noted in *Smith*, this question has divided the circuits, *see* 989 F.3d at 584, and the disagreement has only deepened since then. In *Smith* we declined to switch sides in the circuit split. *Id.* We do so again here. *Kisor* did not disturb *Stinson* or our circuit precedent.[1]

White argues in the alternative that Application Note 1 is invalid under the "major questions doctrine" and the Supreme Court's decision in *West Virginia v. EPA*, 597 U.S. 697 (2022). This argument is meritless. The major questions doctrine does not apply. We therefore affirm the judgment.

I. Background

In 2014 White was serving a state sentence for cocaine trafficking at the Pendleton Correctional Facility in Indiana. He and fellow inmate Elonzo Williams operated a long-running drug-trafficking ring inside the prison, distributing

[1] As we explain later in this opinion, the Sentencing Commission recently amended § 4B1.2, moving Application Note 1 to the text of the guideline.

heroin to other inmates. Williams's sister Lettie served as the courier; she picked up distribution quantities of heroin from White's sources in Chicago and delivered the drugs to Karen Jennings, a prison kitchen worker. Jennings smuggled the drugs into the prison, and White and Williams distributed user quantities to inmates.

After a series of overdoses—three of them fatal—the FBI opened an investigation. Inmates identified White and Williams as their heroin sources. Investigators then reviewed recorded phone calls and discovered that White had used prison phones to organize the pickup and delivery of multiple batches of heroin between 2014 and 2015.

White and his three accomplices were indicted in 2017 for conspiracy to distribute 100 grams or more of heroin. 21 U.S.C. §§ 841(a)(1), 846. Based on his history of drug offenses—specifically, his two Indiana convictions for cocaine dealing—the government filed an information under 21 U.S.C. § 851, which raised the statutory penalties to a minimum of 10 years in prison and a maximum of life (up from the baseline of 5 to 40 years). *See* § 841(b)(1)(B)(i).

White's case was dormant for more than a year, but he eventually pleaded guilty. In addition to the elevated statutory penalties, he faced an enhanced offense level under the career-offender guideline based on his prior drug convictions. *See* U.S.S.G. § 4B1.1–.2. With a final offense level of 34 and a criminal history category of VI, his advisory Guidelines range was 262 to 327 months in prison. In 2019 the district judge imposed a sentence of 12 years—2 years above the statutory minimum but well below the Guidelines range.

White asked his lawyer to file an appeal, but she did not follow through. Based on his lawyer's error, the judge granted White's motion for relief under 28 U.S.C. § 2255 and permitted him to file a late appeal.

In the meantime, we issued our decision in *Ruth*, which held that an Illinois conviction for cocaine dealing is not a predicate for enhanced penalties under §§ 841(b)(1) and 851 because Illinois's statutory definition of cocaine is categorically broader than the parallel definition under federal law. *Ruth*, 966 F.3d at 646–50. The government conceded that under *Ruth*, White's convictions under Indiana's cocaine-trafficking statute could not support the statutory enhancement under § 841(b)(1)(B). That concession had the effect of dropping the statutory penalties to the baseline of 5 to 40 years, so the parties filed a joint motion to vacate the sentence. We granted the motion and remanded for resentencing.

Ruth did not eliminate White's designation as a career offender, but the change in the statutory maximum reduced his base offense level from 37 to 34, *see* U.S.S.G. § 4B1.1(b). That, in turn, resulted in a new adjusted offense level of 31. Because he remained a career offender, his criminal-history category did not change. With the recalculated total offense level of 31 and the same criminal-history category of VI, White's new Guidelines range was 188 to 235 months in prison.

Back before the district judge, White raised a new objection to the career-offender enhancement based on the Supreme Court's intervening decision in *Kisor*. To understand his argument requires a brief explanation of how this familiar provision works. As its name implies, the guideline

applies to recidivists; it raises the base offense level for defendants who repeatedly commit certain kinds of felony offenses. The guideline applies when (1) the offense of conviction is a felony "crime of violence" or "controlled substance offense" and (2) the defendant has two or more prior felony convictions for a "crime of violence" or "controlled substance offense." *Id.* § 4B1.1(a).

Until very recently, the definitions of "crime of violence" and "controlled substance offense" in the career-offender guideline did not address inchoate offenses like conspiracy. *Id.* § 4B1.2(a)–(b) (Nov. 1, 2021). But the Sentencing Commission explained in the commentary that the terms "crime of violence" and "controlled substance offense" include "the offenses of aiding and abetting, conspiring, and attempting to commit such offenses." § 4B1.2 cmt. n.1. Based on the Supreme Court's decision in *Stinson*, 508 U.S. at 38, we have long deferred to Application Note 1 as the Sentencing Commission's authoritative interpretation of the career-offender guideline. *See Smith*, 989 F.3d at 583–85; *Adams*, 934 F.3d at 727–30; *Raupp*, 677 F.3d at 758–59.

At resentencing White argued that the Supreme Court's recent decision in *Kisor* unsettled our circuit caselaw regarding the validity of Application Note 1. Drawing on *Kisor*'s less deferential approach to agencies' interpretations of their own rules, White maintained that because the definition of "controlled substance offense" in § 4B1.2(b) does not itself mention inchoate offenses, the guideline is clear on its face and courts may not consider—much less defer to—Application Note 1.

Bound by circuit precedent, the judge rejected White's argument and once again applied the career-offender Guide-

line. But she also determined that its effect on White's guidelines range may have overstated his culpability. For that reason and several others, she imposed a below-Guidelines sentence of 10 years.

II. Discussion

On appeal White challenges his career-offender designation on two grounds, both centering on the validity of Application Note 1 to § 4B1.2. (The Sentencing Commission recently amended § 4B1.2; we refer here to the November 1, 2021 version of the Guidelines.) White's main argument reiterates his contention that *Kisor*'s modification of agency deference implicates *Stinson* and unsettles our circuit caselaw deferring to Application Note 1. In the alternative, he argues that the application note is invalid under the "major questions doctrine" and the Supreme Court's decision in *West Virginia v. EPA*, 597 U.S. 697.

A. *Kisor* and Application Note 1 to § 4B1.2

Until recently, § 4B1.2—which defines the terms "crime of violence" and "controlled substance offense" as used in the career-offender guideline—was silent on whether convictions for inchoate offenses count as career-offender predicates. Instead, the Sentencing Commission addressed the subject of inchoate offenses in the commentary. In Application Note 1 to § 4B1.2, the Commission instructed sentencing courts that the terms "'[*c*]*rime of violence*' and '*controlled substance offense*' include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses." § 4B1.2 cmt. n.1.

Under the Supreme Court's decision in *Stinson*, the Commission's commentary interpreting or explaining a

guideline is authoritative and entitled to controlling weight "unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." 508 U.S. at 38. Applying *Stinson*, we have repeatedly given Application Note 1 controlling weight as an authoritative interpretation of the term "controlled substance offense" in § 4B1.2. *Smith*, 989 F.3d at 585; *see also Adams*, 934 F.3d at 729 (finding no conflict between the "application note's inclusion of conspiracy" and the "text of the Guideline itself"); *Raupp*, 677 F.3d at 759. Most other circuits agreed.

In *Smith*—the most recent in this line of cases— we acknowledged a newly emerging circuit split on the validity of Application Note 1 but declined an invitation to change our position. 989 F.3d at 584–85. The disagreement among the circuits has widened since *Smith* as more courts of appeals have reconsidered their *Stinson*-based precedents deferring to Application Note 1. Some of these shifts were occasioned by the Supreme Court's 2019 decision in *Kisor*; others slightly predated it.

Here's the current lineup: Six circuits have held that Application Note 1 impermissibly expands § 4B1.2's definition of "controlled substance offense." *See United States v. Castillo*, 69 F.4th 648 (9th Cir. 2023); *United States v. Dupree*, 57 F.4th 1269 (11th Cir. 2023) (en banc); *United States v. Campbell*, 22 F.4th 438 (4th Cir. 2022); *United States v. Nasir*, 982 F.3d 144 (3d Cir. 2020) (en banc), *vacated on other grounds*, 142 S. Ct. 56 (2021) (mem.)); *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (en banc) (per curiam); *United States v. Winstead*, 890 F.3d 1082 (D.C. Cir. 2018).

Six circuits (including ours) have declined to reconsider circuit precedent deferring to Application Note 1. *See United States v. Vargas*, 74 F.4th 673, 689–90 (5th Cir. 2023) (en banc) (holding that *Stinson* governs and "requires us to defer" to Application Note 1); *United States v. Maloid*, 71 F.4th 795, 805 (10th Cir. 2023) (affirming precedent upholding the validity of Application Note 1's inclusion of conspiracy in the definition of "crime of violence"); *Smith*, 989 F.3d at 585 (noting the emerging circuit split but adhering to circuit precedent, seeing "no reason here to diverge from it"); *United States v. Jefferson*, 975 F.3d 700, 708 (8th Cir. 2020) (acknowledging *Winstead* and *Havis* but adhering to circuit precedent holding Application Note 1 valid); *United States v. Lewis*, 963 F.3d 16, 18, 25 (1st Cir. 2020) (adhering to circuit precedent finding Application Note 1 "authoritative" while acknowledging the "question is close"); *United States v. Richardson*, 958 F.3d 151, 154 (2d Cir. 2020) ("Application Note 1 is not 'inconsistent with, or a plainly erroneous reading of[,]' § 4B1.2." (quoting *Stinson*, 508 U.S. at 38)).

We require a compelling reason to overrule circuit precedent. *Campbell v. Kallas*, 936 F.3d 536, 544 (7th Cir. 2019). White urges us to change course based on the Supreme Court's decision in *Kisor v. Wilkie*, which clarified the deference owed to an agency's interpretation of its own regulations under the rule of *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413–14 (1945).

In *Kisor* the Court considered whether to overrule *Seminole Rock* and "discard[] the deference" it "give[s] to agencies."[2] 139 S. Ct. at 2408. The Court declined to do so but

[2] The deference doctrine announced in *Seminole Rock* is also referred to as "*Auer* deference." *See Auer v. Robbins*, 519 U.S. 452 (1997). The Supreme

"reinforce[d]" *Seminole Rock*'s limitations. *Id.* Specifically, the Court held that courts should defer to an agency's interpretation of a regulation only in cases of "genuine ambiguity" after first "exhaust[ing] all the traditional tools of construction." *Id.* at 2415 (quotation marks omitted). If a regulation is genuinely ambiguous, the court should defer to the agency's interpretation only if it is reasonable—that is, only if the interpretation "come[s] within the zone of ambiguity the court has identified." *Id.* at 2415–16. Finally, the court must determine "whether the character and context of the agency interpretation entitles it to controlling weight." *Id.* at 2416. *Kisor* identified some factors that inform this last step in the restated deference formula. First, the interpretation "must be the agency's authoritative or official position" rather than an "ad hoc statement not reflecting the agency's views." *Id.* (quotation marks omitted). Second, the interpretation "must in some way implicate [the agency's] substantive expertise." *Id.* at 2417. And third, the agency's reading "must reflect fair and considered judgment." *Id.* (quotation marks omitted).

It's fair to say that *Kisor*'s refinement of *Seminole Rock* reduced the level of deference owed to an agency's interpretation of its own regulations. But *Kisor*'s effect on *Stinson* is unclear. *Stinson* borrowed from *Seminole Rock* because the Court viewed the Guidelines commentary as in some respects "akin to an agency's interpretation of its own legislative rules." 508 U.S. at 45. But the Court also cautioned that "the analogy is not precise." *Id.* at 44. The Sentencing Commission is not an executive agency; it is an independent commission within the judicial branch. *See* 28 U.S.C. § 991(a).

Court discussed *Auer* and *Seminole Rock* interchangeably in *Kisor*, so the terminology makes no difference here.

And its statutory charge is unique in ways that affect the deference calculus. *See Stinson*, 508 U.S. at 44–45; *Vargas*, 74 F.4th at 682–83; *Maloid*, 71 F.4th at 806–07.

Perhaps most importantly, the Court said nothing in *Kisor* to suggest that it was altering *Stinson*. Indeed, *Stinson* is cited only in a footnote along with 16 other cases as examples of "decisions applying *Seminole Rock* deference." *Kisor*, 139 S. Ct. at 2411 n.3. Because *Kisor* did not address *Stinson* in any meaningful way, we do not see a compelling reason to reconsider our circuit precedent treating Application Note 1 as authoritative gloss on the career-offender guideline.

Indeed, the Supreme Court has instructed us to resist invitations to find its decisions overruled by implication. *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2038 (2023). *Kisor* did not purport to modify *Stinson* (much less overrule it). That's reason enough for us to stay the course. When a Supreme Court decision is directly controlling, our job is to follow it, "leaving to th[e] Court the prerogative of overruling its own decisions." *Id.* (quotation marks omitted). That's true even if "intervening decisions have eroded [its] foundation." *Price v. City of Chicago*, 915 F.3d 1107, 1111 (7th Cir. 2019).

The disagreement among the circuits—now quite entrenched—is another reason not to change positions. Unless our circuit is an outlier, "it makes little sense for us to jump from one side of the circuit split to the other." *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 771 (7th Cir. 2023). As we explained in another case asking us to switch sides in a pronounced circuit split:

> Precedents are not sacrosanct; we have overruled many. But when the issue is closely balanced (the 5 to 4 division among the circuits reveals at least that much), there is less reason to think that a shift will undo rather than create an error. … When one circuit's overruling would convert a 5–4 conflict into a 4–5 conflict, it is best to leave well enough alone.

Buchmeier v. United States, 581 F.3d 561, 565–66 (7th Cir. 2009) (en banc).

Because *Kisor* did not unsettle *Stinson*, we decline to reconsider our circuit caselaw deferring to Application Note 1.

B. "Major Questions Doctrine"

Alternatively, White invokes the "major questions doctrine" and the Supreme Court's decision in *West Virginia*, arguing that the Sentencing Commission lacked clear congressional authorization to include inchoate offenses as career-offender predicates.[3] This argument requires only brief treatment: the major questions doctrine does not apply here.

[3] White did not raise this argument below. His failure to do so is in a sense understandable because the Supreme Court's decision in *West Virginia* was issued about a month after his resentencing hearing. On the other hand, the major questions doctrine is not new, so he could have raised an argument along these lines at his resentencing hearing—or at his initial sentencing in 2019, for that matter. But the government has not raised waiver or forfeiture, choosing instead to address the argument on the merits. *See United States v. Stapleton*, 56 F.4th 532, 541 (7th Cir. 2022) (explaining that a party can "waive waiver" by failing to assert it).

The doctrine derives from the basic principle that statutory texts "must be read in their context and with a view to their place in the overall statutory scheme." *West Virginia*, 597 U.S. at 721 (quotation marks omitted). When a statute "confers authority upon an administrative agency," the judiciary's interpretive task "must be 'shaped, at least in some measure, by the nature of the question presented'—whether Congress in fact meant to confer the power the agency has asserted." *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)). In the "ordinary case," the question of the scope of the agency's authority "has no great effect on the appropriate analysis." *Id.* But in certain "extraordinary cases," a "different approach" may apply. *Id.*

When does a case qualify as extraordinary enough to bring the major questions doctrine into play? The Court explained in *West Virginia*: the doctrine applies when an agency has adopted a regulatory scheme of great economic and political significance, and the "history and the breadth" of its assertion of authority "provide a reason to hesitate before concluding that Congress meant to confer such authority." *Id.* (internal quotation marks omitted). In this limited category of cases, the government must "point to clear congressional authorization" to justify the agency's power "to regulate in that manner." *Id.* at 732 (internal quotation marks omitted).

Though the precise contours of the doctrine remain hazy, *see Biden v. Nebraska*, 143 S. Ct. 2355, 2376 (2023) (Barrett, J., concurring), White's case plainly lacks the hallmarks of the truly extraordinary cases that have triggered it. *West Virginia*, 597 U.S. at 721–23. Application Note 1 to § 4B1.2 can hardly

be characterized as a "transformative expansion" of the Sentencing Commission's statutory authority. *Id.* at 724. The Commission has not "claim[ed] to discover in a long-extant statute an unheralded power" to regulate in an unprecedented way. *Id.* (quotation marks omitted). Nor has the Commission attempted to use vague language in the governing statute to "adopt a regulatory program that Congress ha[s] conspicuously and repeatedly declined to enact itself." *Id.*

On the contrary, the Sentencing Reform Act specifically authorizes the Commission to make decisions like this one concerning sentencing policy. *See* 28 U.S.C. § 991(b)(1) (empowering the Commission to "establish sentencing policies and practices for the Federal criminal justice system"); *see also id.* § 994(a)–(b) (empowering the Commission to promulgate sentencing guidelines and "general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation"). The Act gives the Commission "significant discretion in formulating guidelines," "assess[ing] the relative weight of [certain] offender characteristics," and "exercis[ing] its judgment about which types of crimes and which types of criminals are to be considered similar for the purposes of sentencing." *Mistretta v. United States*, 488 U.S. 361, 377–78 (1989). And the Commission has addressed the issue of inchoate offenses in the commentary to the career-offender guideline ever since it promulgated the first Guidelines Manual in 1987. *See* U.S.S.G. § 4B1.2 cmt. n.2 (1987) (explaining that the definition of "controlled substance offense" in the career-offender guideline "includes aiding and abetting, conspiring, or attempting to commit such offenses").

Indeed, we held 30 years ago that the Commission's broad statutory power to promulgate sentencing guidelines includes the authority to issue commentary treating inchoate offenses as career-offender predicates. *United States v. Damerville*, 27 F.3d 254, 256–57 (7th Cir. 1994). Though the issue was not framed in terms of the present-day major questions doctrine, *Damerville* forecloses White's argument.

* * *

Before closing, we note that the Sentencing Commission recently addressed the circuit split regarding Application Note 1. The Commission amended § 4B1.2 to add inchoate offenses to the definitions of "crime of violence" and "controlled substance offense," moving the text of Application Note 1 to the guideline itself. The amendment became effective on November 1, 2023.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

April 2, 2024

Before

DIANE S. SYKES, *Chief Judge*
FRANK H. EASTERBROOK, *Circuit Judge*
KENNETH F. RIPPLE, *Circuit Judge*

No. 22-2014	UNITED STATES OF AMERICA, Plaintiff - Appellee v. KEITH WHITE, Defendant - Appellant
Originating Case Information:	
District Court No: 1:17-cr-00135-SEB-TAB-1 Southern District of Indiana, Indianapolis Division District Judge Sarah Evans Barker	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

AO 245C (Rev. 09/19) Amended Judgment in a Criminal Case *items identified with an asterisk denotes changes

UNITED STATES DISTRICT COURT

Southern District of Indiana

UNITED STATES OF AMERICA

v.

KEITH WHITE*
a/k/a "Beefy"*

Date of Original Judgment: 02/05/2019
(Or Date of Last Amended Judgment)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17CR00135-001
USM Number: 15908-028

Terry Toliver*
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty

The defendant is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C §§ 841(a)(1) and 846*	Conspiracy to Possess with the Intent to Distribute and/or Distribute 100 grams or more of a Substance Containing a Detectable Amount of Heroin, a Schedule I Controlled Substance	08/31/2015	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

5/16/2022
Date of Imposition of Sentence:

Hon. Sarah Evans Barker, Judge
United States District Court
Southern District of Indiana

5/25/2022
Date

A CERTIFIED TRUE COPY
Roger A.G. Sharpe, Clerk
U.S. District Court
Southern District of Indiana
By Deputy Clerk

DEFENDANT: Keith White a/k/a "Beefy" *
CASE NUMBER: 1:17CR00135-001

IMPRISONMENT*

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months. *

☒The Court makes the following recommendations to the Bureau of Prisons: The Court recommends the defendant participate in substance abuse treatment to include RDAP and mental health counseling. *

☒The defendant is remanded to the custody of the United States Marshal.

☐The defendant shall surrender to the United States Marshal for this district:

☐ at

☐ as notified by the United States Marshal.

☐The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant was delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY: _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Keith White a/k/a "Beefy" *
CASE NUMBER: 1:17CR00135-001

SUPERVISED RELEASE*

Upon release from imprisonment, the defendant shall be on supervised release for a term of 4 years. *

MANDATORY CONDITIONS

1. You shall not commit another federal, state, or local crime.
2. You shall not unlawfully possess a controlled substance.
3. You shall refrain from any unlawful use of a controlled substance. You shall submit to one drug test within 15 days of release from imprisonment and at least two periodic least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You shall make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You shall cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You shall participate in an approved program for domestic violence. *(check if applicable)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant shall comply with the conditions listed below.

CONDITIONS OF SUPERVISION*

1. You shall report to the probation office in the federal judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.

2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.

3. You shall permit a probation officer to visit you at a reasonable time at home or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.

4. You shall not knowingly leave the judicial district without the permission of the Court or probation officer. *

5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege

6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.

7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.

8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.

DEFENDANT: Keith White a/k/a "Beefy" *
CASE NUMBER: 1:17CR00135-001

9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.

10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.

11. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

12. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.

13. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.

14. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.

15. You shall not use or possess alcohol.

16. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.

17. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

I understand that I and/or the probation officer may petition the Court to modify these conditions, and the final decision to modify these terms lies with the Court. If I believe these conditions are being enforced unreasonably, I may petition the Court for relief or clarification; however, I shall comply with the directions of my probation officer unless or until the Court directs otherwise. Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant Date

U.S. Probation Officer/Designated Witness Date

DEFENDANT: Keith White a/k/a "Beefy" *
CASE NUMBER: 1:17CR00135-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00 (Paid)				

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Totals			

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Keith White a/k/a "Beefy" *
CASE NUMBER: 1:17CR00135-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F or ☐ G below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.

G ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s): _____

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEITH WHITE
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

---

PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF SERVICE

I, Terry Tolliver, counsel of record for the Petitioner Keith White, and a member of the bar of this Court and an attorney appointed under the Criminal Justice Act of 1964, hereby certify that on the 2nd day of July, 2024, I caused to be filed eleven (11) copies of the Petition for a Writ of Certiorari and Motion to Proceed *in forma pauperis* in the above-

referenced case by first-class mail, postage prepaid, with the Clerk of the Court for the United States Supreme Court. I further certify that, as required by Sup. Ct. R. 29(3), I served one copy of the foregoing via U.S. first-class Mail and electronic mail upon the counsel for the Respondent as listed below:

Elizabeth Prelogar
Solicitor General of the United States
Room 5616
U.S. Department of Justice
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Washington, DC 20530-0001
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Counsel for the Respondent

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