
No. _____

In the Supreme Court of the United States

EMILIANO NAVA MUNOZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Petition for a Writ of Certiorari to
the United States Supreme Court*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court's decision in *Kisor v. Wilkie*, 588 U.S. 558, 558 (2019) abrogated or overruled its earlier decision in *Stinson v. United States*, 508 U.S. 36 (1993).

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**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

Petitioner to this Court is Emiliano Nava Munoz, who was the defendant-appellant in the proceedings below.

Respondent is the United States of America, who was the plaintiff-appellee below.

There are no corporate parties involved in this case.

RELATED PROCEEDINGS

United States Court of Appeals (8th Cir.):

- *United States v. Munoz*, United States v. Munoz, 134 F. 4th 539 (8th Cir. 2025)

United States District Court (S.D. Iowa):

- *United States v. Munoz*, No. 4:23-CR-00064, Doc. 66 (Jul. 20, 2023).

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In the Supreme Court of the United States

No. 25-_____

EMILIANO NAVA MUNOZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Emiliano Nava Munoz respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this matter.

OPINIONS BELOW

The Eighth Circuit’s opinion is reproduced at Pet. App. 15a. The judgment of the United States District Court for the Southern District of Iowa is reproduced at Pet. App. 7a.

JURISDICTION

On March 11, 2024, the Honorable Judge Stephanie Rose entered judgment in the United States District Court for the Southern District of Iowa. On April 15, 2025, the Eighth Circuit affirmed the judgment of the District Court for the Southern District of Iowa. The Eighth Circuit’s

jurisdiction was pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.S.G. §2D1.1(b)(12) provides:

If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels.

STATEMENT OF THE CASE

A. Legal Background

The Guidelines provide that a district court may apply a two-level enhancement where a defendant maintains a premise for the purpose of manufacturing or distributing a controlled substance. U.S.S.G. §2D1.1(b)(12). In determining whether a defendant qualifies for the two-level reduction under §2D1.1(b)(12), the commentary provides that the district court should consider:

(A) whether the defendant held a possessory interest in (e.g., owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises. Manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses

for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.

U.S.S.G. § 2D1.1, comment. (n.17).

B. Procedural Background

The government filed an indictment against Mr. Munoz, charging him with Count 1: Conspiracy to Distribute of 50 Grams or More of Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846; Count 4: Distribution of 50 Grams or More of Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A); and Count 6: Distribution of 50 Grams or More of Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A). Mr. Munoz pleaded guilty to the indictment pursuant to a plea agreement.

The initial PSIR also said that the enhancement for maintaining a drug premises under USSG § 2D1.1(b)(12) should be applied for two points. Munoz objected to the application of the enhancement in the PSIR and argued that the enhancement did not apply at his sentencing hearing. The district court overruled the objection to the enhancement and ruled that USSG § 2D1.1(b)(12) applied to Mr. Munoz's case, raising his total offense level by an additional two levels.

Munoz appealed to the Eighth Circuit Court of Appeals, challenging the district court's application of the two-level enhancement for maintaining a drug premise. The Eighth

Circuit conducted a brief analysis, using the commentary to affirm the district court's application.

This petition follows.

REASONS FOR GRANTING THIS PETITION

This Court has not had the opportunity to review and interpret U.S.S.G. §2D1.1(b)(12). Moreover, there is a current deep circuit split that the court has so far avoided about the use of commentary to interpret guidelines

This petition is an ideal vehicle for addressing the circuit split. The 8th Circuit's decision relied heavily on the commentary rather than their own interpretation of the Guidelines.

Auer v. Robbins, 519 U.S. 452 (1997) and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945) gave us the names for the concept of *Auer* or *Seminole Rock* deference. This deference is that a court should defer to reasonable agency interpretations of their own ambiguous regulations if the regulation is genuinely ambiguous. *Kisor v. Wilkie*, 588 U.S. 558, 558 (2019). Under this deference, courts were required to defer to an agency's reasonable interpretation of an ambiguous statute that the agency administered. *Id.* at 571.

The court has used *Auer* deference to make rulings about how the courts should treat commentary to the Sentencing Guidelines. In *Stinson v. United States*, 508 U.S. 36, 45 (1993), this court found that guidelines are reviewed and approved by Congress, like a statute, while commentary is not. This Court did not find that commentary is like *Chevron* deference. *Id.* at 44.

Commentary has a different function than an agency's legislative rule, because it is not the product of delegated authority or rulemaking. *Id.* Commentary "explains the guidelines and provides concrete guidance as to how even unambiguous guidelines are to be applied in practice." *Id.* Guidelines are the equivalent of legislative rules adopted by federal agencies. *Id.* at 44-45. Commentary, on the other hand, is "akin to an agency's interpretation of its own legislative rules." *Id.* at 45. This makes the commentary more akin to *Auer*/*Seminole Rock* deference. *Id.* (citing *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945)). Thereofr, this Court found that "commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of that guideline." *Id.* at 38.

The court upheld this deference in *Kisor v. Wilkie*, 588 U.S. 558 (2019). However, the court wanted to reinforce the limits and "cabin[]" the scope of *Auer* deference. *Kisor v. Wilkie*, 588 U.S. 558, 563-64 (2019). Rules and regulations must be "genuinely ambiguous" to receive deference. *Id.* To conclude that a rule is genuinely ambiguous, courts must exhaust all "traditional tools" of interpretation. *Id.* Even then, the agency's reading must be reasonable and "come with the zone of ambiguity the court has identified after employing all its interpretive tools." *Id.*

This has led to an entrenched circuit split over whether the circuit courts should be applying *Kisor's* less deferential standards to the Sentencing Guidelines, considering *Stinson* overturned or abrogated. The 3rd Circuit has found that they "have gone too far in affording deference to the guidelines' commentary under the standard set forth in *Stinson*. Indeed, after the Supreme

Court's recent decision in *Kisor*[], it is clear that such an interpretation is not warranted.” *United States v. Nasir*, 17 F.4th 459, 470-71 (3d Cir. 2021) (en banc) The 4th Circuit held “*Kisor* limited when courts will afford *Seminole Rock/Auer* deference” and as such, when interpreting Guidelines it would turn to the “traditional tools” of statutory construction before deferring to commentary. *United States v. Campbell*, 22 F.4th 438, 44-45 (4th Cir. 2022). The 6th Circuit found that “*Stinson* thus told courts to follow basic administrative-law concepts despite Congress's decision to locate the relevant agency (the Commission) in the judicial branch rather than the executive branch.” *United States v. Riccardi*, 989 F.3d 476, 485 (6th Cir. 2021). The 9th Circuit found it should “follow *Stinson*'s instruction to treat the commentary like an agency's interpretation of its own rule, we must apply *Kisor*'s clarification of *Auer* deference to *Stinson*.” *United States v. Castillo*, 69 F.4th 648 (9th Cir. 2023) (cleaned up). The 11th Circuit found that the only way to harmonize *Stinson* and *Kisor* was “to conclude that *Kisor*'s gloss on *Auer* and *Seminole Rock* applies to *Stinson*.” *United States v. Dupree*, 57 F.4th 1269, 1275 (11th Cir. 2023) (en banc) (cleaned up).

Other circuits are still giving substantial deference to the Sentencing Commission commentary. The 4th Circuit found “subjecting Guidelines commentary to the *Kisor* framework would deny courts the benefit of much of the Guidelines commentary that both Congress and the Sentencing Commission intended courts to apply when sentencing defendants.” *United States v. Moses*, 23 F.4th 347, 349 (4th Cir. 2022). The 5th Circuit found that “nothing in *Kisor* suggests it meant to modify *Stinson*.” *United States v. Vargas*, 74 F.4th 673, 679 (5th Cir. 2023) *cert. denied*, — U.S. —, 144 S.Ct. 828 (2024). The 10th

Circuit agreed, adhering to vertical stare decisis. *United States v. Maloid*, 71 F.4th 795 (10th Cir. 2023).

Despite this entrenched split, the court previously refused to grant cert to resolve the issue. *See, e.g., United States v. Vargas*, 74 F.4th 673, 679 (5th Cir. 2023) *cert. denied*, — U.S. —, 144 S.Ct. 828 (2024). The court must take up the issue eventually and may as well do so now.

CONCLUSION

Emiliano Nava Munoz respectfully requests that the Supreme Court grant his petition for a writ of certiorari for all the reasons stated herein.

Respectfully submitted,

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