No. 24A___

IN THE

Supreme Court of the United States

RAYMOND POORE,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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APPLICATION

To the Honorable Amy Coney Barrett, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Raymond Poore respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case. Because the 30th day after the current deadline for seeking certiorari falls on Saturday, August 23, 2025, the extension would make the petition due on August 25, 2025.

1. The Seventh Circuit issued its decision on April 25, 2025. *See United States* v. *Poore*, 2025 WL 1201946 (Appendix). Mr. Poore did not seek rehearing en banc. Unless extended, the time to file a petition for certiorari will expire on July 24, 2025. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Mr. Poore was charged with possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). App. 2a. He pleaded guilty in 2022, and the probation officer recommended an enhancement under Section 4B1.2(a) of the Sentencing Guidelines because Mr. Poore had a prior felony conviction for being a party to another person's battery offense—an inchoate offense that the probation officer classified as a "crime of violence." App. 2a; *see* U.S.S.G. § 4B1.2(a). The proposed enhancement more than doubled Mr. Poore's Guidelines range—from 21-27 months to 57–71 months. *See* App. 3a; U.S.S.G. § 2K1.2(a)(6).

3. Mr. Poore objected to the enhancement, explaining that Section 4B1.2(a) does not include inchoate offenses. App. 2a. But the district court applied the enhancement because

the Sentencing Commission's commentary in Application Note 1 defined a "crime of violence" to include "aiding and abetting, conspiring, and attempting to commit such offense[]." App. 3a; *see* U.S.S.G. § 4B1.2 cmt. n.1 (2021).[1] The Court sentenced Mr. Poore to 42 months' imprisonment, followed by three years of supervised release. App. 2a; D.Ct. Dkt. 27, at 2.

4. Mr. Poore's appeal to the Seventh Circuit turned on whether this Court's precedent requires unqualified judicial deference to the Guidelines commentary even after this Court's decisions in *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024), and *Kisor* v. *Wilkie*, 588 U.S. 558 (2019). In *Stinson* v. *United States*, this Court held that Guidelines commentary receives the same deference that courts give agencies' interpretations of their own rules, typically known as *Auer* or *Seminole Rock* deference. 508 U.S. 36, 45 (1993) (citing *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)). Since deciding *Stinson*, however, this Court has substantially cabined judicial deference to agency interpretations. This Court has held that courts "should not afford *Auer* deference" to agency interpretations unless the regulation at issue is "genuinely ambiguous." *Kisor*, 588 U.S. at 574. And the Court recently reaffirmed that courts, not agencies, have "special competence" in resolving legal questions. *Loper Bright*, 603 U.S. at 400-401. Mr. Poore accordingly argued on appeal that *Kisor* and *Loper Bright* prohibit courts from deferring to the Guidelines commentary where, as here, the underlying Guideline provision is unambiguous.

5. The Seventh Circuit affirmed. The panel did not dispute that Section 4B1.2 "unambiguously excluded inchoate offenses." App. 3a-5a. The panel also acknowledged that

[1] The Sentencing Commission subsequently amended the text of Section 4B1.2—non-retroactively—to include inchoate offenses and deleted the Application Note. *See* U.S.S.G. § 4B1.2(d) (2023).

this Court in *Kisor* held agency deference impermissible "unless the court first finds that a regulation is genuinely ambiguous after exhausting the traditional tools of construction." App. 5a. And the panel further acknowledged that this Court in *Loper Bright* "held that courts 'may not defer to an agency interpretation of the law simply because a statute is ambiguous.'" App. 6a (quoting *Loper Bright*, 603 U.S. at 413). But the panel nonetheless deemed itself bound by circuit precedent "to apply *Stinson*." App. 7a. In the panel's view, *Kisor*'s effect on *Stinson* was "unclear" because "the Sentencing Commission is not an executive agency," and the court therefore was obligated to follow circuit precedent mandating deference to the Guidelines commentary. App. 5a. Similarly, because *Loper Bright* abrogated *Chevron* rather than *Auer* deference, the court saw no reason to "upset recent precedent." App. 7a (discussing *United States* v. *White*, 97 F.4th 532, 538-539 (7th Cir. 2024)).

6. The Seventh Circuit recognized that there is "an entrenched circuit split" regarding whether deference to the Guidelines commentary remains appropriate after *Kisor* and *Loper Bright*. App. 6a. But given that the split was so "closely balanced," the panel believed it was "best to leave well enough alone." App. 8a. Though the panel acknowledged the tension between *Stinson* and this Court's recent decisions, it concluded it was bound to "follow a controlling Supreme Court decision even if it 'appears to rest on reasons rejected in some other line of decisions.'" App. 7a (quotation marks and citation omitted).

7. The Seventh Circuit's decision warrants this Court's review. As the panel acknowledged, its conclusion that *Kisor* does not apply to the commentary implicates a "closely divided" and "entrenched circuit split." App. 8a. Indeed, all twelve circuits that hear criminal cases have weighed in, and they are split 6-6 on this question. The Third, Fourth, Sixth, Ninth, Eleventh, and D.C. Circuits have held that "*Kisor* applies to the Guidelines'

commentary." *United States* v. *Castillo*, 69 F.4th 648, 655 (9th Cir. 2023); *see United States* v. *Nasir*, 982 F.3d 144, 160 (3d Cir. 2020) (en banc), *vacated on other grounds*, 142 S. Ct. 56 (2021) (mem.); *United States* v. *Mitchell*, 120 F.4th 1233, 1239 (4th Cir. 2024); *United States* v. *Riccardi*, 989 F.3d 476, 485 (6th Cir. 2021); *United States* v. *Dupree*, 57 F.4th 1269, 1275 (11th Cir. 2023) (en banc); *see also United States* v. *Winstead*, 890 F.3d 1082, 1092 (D.C. Cir. 2018) (declining to defer to commentary in a pre-*Kisor* decision).

8. By contrast, six circuits continue to treat Guidelines commentary as binding. *See United States* v. *Lewis*, 963 F.3d 16, 25 (1st Cir. 2020); *United States* v. *Tabb*, 949 F.3d 81, 87 (2d Cir. 2020); *United States* v. *Vargas*, 74 F.4th 673, 678 (5th Cir. 2023) (en banc); *United States* v. *Rivera*, 76 F.4th 1085, 1091 (8th Cir. 2023); *United States* v. *Maloid*, 71 F.4th 795, 805 (10th Cir. 2023); *White*, 97 F.4th at 535. Like the panel below, those circuits have concluded that they are "bound to follow" pre-*Kisor* circuit precedent deferring to the commentary. *Maloid*, 71 F.4th at 806, 809. These courts are clear that they have no intention to switch sides "[u]ntil the Supreme Court overrules *Stinson*." *Vargas*, 74 F.4th at 678.

9. Under this Court's precedent, deference to the Guidelines commentary is impermissible unless the Guidelines provision is genuinely ambiguous. *Stinson* held that Guidelines commentary should receive the deference typically afforded to an agency's interpretation of its own rules—namely, *Seminole Rock*/*Auer* deference. *Stinson*, 508 U.S. at 45 (citing *Seminole Rock*, 325 U.S. at 414); *see also Auer* v. *Robbins*, 519 U.S. 452, 461 (1997). And *Kisor* then identified "the limits inherent in the *Auer* doctrine" and "cabined * * * its scope." 588 U.S. at 563, 574. The Court therefore "has spoken directly to the issue" and has decisively "affirm[ed] that the commentary should be treated the same as the agencies' interpretations" of their rules. *Dupree*, 57 F.4th at 1277.

10. That conclusion is even more straightforward after *Loper Bright*, which clarified the "unremarkable, yet elemental proposition" that courts "decide legal questions by applying their own judgment." 603 U.S. at 391-392. Although the Court was speaking about statutory interpretation, *Loper Bright* still "calls into question the viability of *Auer* deference." *United States* v. *Boler*, 115 F.4th 316, 322 n.4 (4th Cir. 2024); *see also United States* v. *Deleon*, 116 F.4th 1260, 1267 n.8 (11th Cir. 2024) (Rosenbaum and Abudu, JJ., concurring) (suggesting that *Loper Bright* might prohibit even *Kisor* deference to the Commission's commentary).

11. The question presented is extremely important. Applying *Stinson*, courts often treat the commentary as binding in practice, a result that is especially problematic because the Commission has a history of expanding Guidelines language through commentary. *E.g.*, U.S.S.G. § 2B1.1 cmt. n.3A (2023) (expanding definition of "loss" through commentary); *id.* § 2B3.1 cmt. n.2 (same with definition of "dangerous weapon"); *id.* § 2K2.1 cmt. n.2 (same with definition of "semiautomatic firearm that is capable of accepting a large capacity magazine"). The implications of this case therefore sweep much more broadly than Section 4B1.2's definition of a "crime of violence." And the question of whether courts must defer to Guidelines commentary is a methodological one that the Commission cannot resolve. Only this Court can resolve it.

12. Counsel of record is new to the case in this Court, and an extension will allow counsel to research the relevant issues and prepare a petition that fully addresses the important questions raised in the proceedings below. An extension is also warranted because Mr. Poore's incarceration makes communication with counsel more difficult. And counsel has upcoming briefing deadlines and oral argument in several matters: a response

brief due on June 25, 2025, in *KalshiEX LLC* v. *Martin*, No. 1:25-cv-01283 (D. Md.); a court-appointed amicus brief due on June 30, 2025, in *Jolley* v. *Unknown Named BOP Directors*, No. 24-5111 (D.C. Cir.); a response brief due on July 8, 2025, and an en banc merits argument on July 31, 2025, in *V.O.S. Selections, Inc.* v. *Trump*, No. 25-1812 (Fed. Cir.); a response brief due on July 24, 2025, in *KalshiEX LLC* v. *Flaherty*, No. 25-1922 (3d Cir.); oral argument on July 24, 2025, in *Roberts* v. *Progressive Preferred Ins. Co.*, No. 24-03454 (6th Cir.); and a summary judgment hearing on July 29, 2025, in *Federated Indians of Graton Rancheria* v. *Burgum*, No. 24-cv-08582 (N.D. Cal.).

13. For these reasons, Mr. Poore respectfully requests that an order be entered extending the time to file a petition for certiorari to and including August 25, 2025.

Respectfully submitted,

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