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**In The
SUPREME COURT OF THE UNITED STATES
October Term 2023**

**Larry Coates,
*Appellant/Petitioner,***

v.

**United States,
*Appellee/Respondent.***

**Application for an Extension of Time in
Which to File a Petition for a Writ of Certiorari
to the Court of Appeals for the Tenth Circuit**

**APPLICATION TO THE HONORABLE
NEIL M. GORSUCH, ASSOCIATE JUSTICE,
AS CIRCUIT JUSTICE**

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December 1, 2023

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APPLICATION FOR EXTENSION OF TIME

Under this Court’s Rule 13.5, Applicant Larry Coates requests a 30-day extension of time within which to file a petition for a writ of certiorari, up to and including Wednesday, January 17, 2024.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Larry Coates*, 82 F.4th 953 (10th Cir. 2023), decided on September 18, 2023. A copy is attached as Exhibit A.

JURISDICTION

This Court will have jurisdiction over a timely filed petition under 28 U.S.C. § 1254(1). Under this Court’s Rules 13.1, 13.3, and 30.1, the petition is currently due by December 18, 2023. In accordance with Rule 13.5, Mr. Coates has filed this application more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari in this case, up to and including January 17, 2024.

1. An extension is warranted because of the importance of the issue presented, the entrenched circuit split, and the seriousness of the error made by the Tenth Circuit. The Court of Appeals reviewed Mr. Coates’s challenge to the application of a sentencing enhancement under the framework of *Stinson v. United States*, 508 U.S. 36 (1993), meaning it treated the commentary to the Sentencing Guideline as controlling unless the commentary was “plainly erroneous or inconsistent with” the relevant Guideline. *United States v. Coates*, 82 F.4th 953, 955

(10th Cir. 2023) (quoting *Stinson*, 508 U.S. at 47). In doing so, the Court of Appeals refused to analyze the Guidelines commentary under this Court’s decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), even though *Kisor* unequivocally modified the deference standard that *Stinson* adopted. The decision below therefore wrongly applied this Court’s precedent, and it undermines a “principal purpose of the Sentencing Guidelines”—the promotion of “uniformity in sentencing imposed by different federal courts for similar criminal conduct.” *Hughes v. United States*, 138 S. Ct. 1765, 1774 (2018) (quoting *Molina-Martinez v. United States*, 578 U.S. 189, 192 (2016)) (quotation marks omitted).

The circuits openly disagree about the deference owed to commentary to the Sentencing Guidelines. And that disagreement results from the precise question on which the decision below turned: does *Stinson* or *Kisor* govern? Four circuits faithfully apply *Kisor*. See *United States v. Nasir*, 17 F.4th 459 (3d Cir. 2021) (en banc); *United States v. Riccardi*, 989 F.3d 476 (6th Cir. 2021); *United States v. Castillo*, 69 F.4th 648 (9th Cir. 2023); *United States v. Dupree*, 57 F.4th 1269 (11th Cir. 2023) (en banc). These courts recognize that *Stinson* applied *Auer* deference (also known as *Seminole Rock* deference) to the Guidelines commentary and that *Kisor*’s clarification of *Auer* deference applies equally to all situations where courts use that deference standard. Seven circuits, however, continue to apply *Stinson* without modification, whether by affirmatively ruling that *Stinson* governs or by rejecting sentencing arguments as foreclosed under circuit precedent rooted in *Stinson*. See *United States v. Lewis*, 963 F.3d 16 (1st Cir. 2020); *United States v. Richardson*, 958

F.3d 151 (2d Cir. 2020); *United States v. Moses*, 23 F.4th 347 (4th Cir. 2022); *United States v. Vargas*, 74 F.4th 673 (5th Cir. 2023) (en banc); *United States v. Smith*, 989 F.3d 575 (7th Cir. 2021); *United States v. Rivera*, 76 F.4th 1085 (8th Cir. 2023); *United States v. Maloid*, 71 F.4th 795 (10th Cir. 2023).

By refusing to apply this Court’s controlling precedent, the Tenth Circuit and other circuits have undermined sentencing uniformity. The Sentencing Guidelines are the basis for every criminal sentencing, even when a judge deviates from the recommended range. *See Peugh v. United States*, 569 U.S. 530, 542 (2013). As illustrated by Mr. Coates’s case, Guidelines commentary can play a major role in sentencing by affecting that range. Currently, that commentary has varying force depending on where in the country the defendant is sentenced. This dual system—reflexive deference under *Stinson* for some defendants, and heightened scrutiny under *Kisor* for others—is untenable because it impairs a core purpose of the Sentencing Guidelines: “uniformity in sentencing imposed by different federal courts for similar criminal conduct.” *Hughes*, 138 S. Ct. at 1774 (quotation marks and citation omitted).

2. An extension of time is also warranted because counsel, who are representing Mr. Coates on a *pro bono* basis, have multiple other obligations that coincide with the current deadline.

Mr. Green presented oral argument to this Court in *Brown v. United States*, No. 22-6389, on November 27. His preparations occupied much of his time in the

preceding weeks. Mr. Green and Mr. Loss-Eaton are also responsible for preparing multiple petitions for writs of certiorari currently due in December.

Mr. Loss-Eaton is additionally responsible for briefing issues remanded by this Court to the Pennsylvania state courts in *Mallory v. Norfolk Southern Railway*, 600 U.S. 122, 127 n.3 (2023), and is preparing to present oral argument before the Sixth Circuit in *Norfolk Southern Railway v. Dille Road Recycling, LLC*, No. 22-4037, on December 6.

Ms. Nichols is preparing opening briefs in *United States v. Tyree-Peppers*, No. 23-3721 (10th Cir.), and *United States v. Peppers*, Nos. 23-3112, 23-3113 (10th Cir.), due by December 4 and December 27, respectively. She is also responsible for directing the post-judgment management of many 28 U.S.C. § 2255 actions dismissed and denied in the aftermath of Tenth Circuit decisions in related cases. *See, e.g., United States v. Ayala-Garcia*, 10th Cir. No. 23-3178 (33 appeals consolidated and resolved on October 31, 2023); D. Kan. No. 2:19-cv-02491-JAR, Docs. 1202, 1203, 1204, 1205, 1207, 1208 (orders dismissing/denying six more § 2255 motions between October 26, 2023 and November 14, 2023).

Finally, students from the Northwestern Supreme Court Practicum will assist with the preparation of this petition, and an extension is warranted to allow their assistance without interfering with their fall semester exams.

CONCLUSION

For these reasons, Applicant respectfully requests an additional extension of 30 days, to and including January 17, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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