

No. 25-5343

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IN THE  
**Supreme Court of the United States**

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KENDRICK JARRELL BEAIRD,  
*Petitioner,*  
v.  
UNITED STATES OF AMERICA,  
*Respondent.*

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**On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

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**BRIEF FOR PETITIONER**

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June 30, 2026

## **QUESTION PRESENTED**

Whether *Stinson v. United States*, 508 U.S. 36 (1993), still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines.

**PARTIES TO THE PROCEEDING**

Petitioner is Kendrick Jarrell Beaird, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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## INTRODUCTION

Three decades ago, this Court imported into criminal sentencing a reflexive deference doctrine, which bound courts to subordinate their own legal judgments to those of an administrative body. At the time, the law required district courts to sentence within Guidelines ranges promulgated by the U.S. Sentencing Commission, barring special circumstances. *See* 18 U.S.C. 3553(a)(4) (1988). In *Stinson v. United States*, 508 U.S. 36 (1993), this Court also required lower courts to defer to the commentary of the Sentencing Commission interpreting the Guidelines, just as courts at the time deferred to executive agencies’ interpretations of their own legislative rules. *Id.* at 44-45. The commentary, the Court held, carried “controlling weight” unless “plainly erroneous or inconsistent” with the Guideline it construed. *Id.* at 45 (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)).

Much has changed since *Stinson*. Courts are no longer bound to follow the Guidelines in setting a criminal sentence. *See United States v. Booker*, 543 U.S. 220, 245 (2005). This Court has also reconsidered its approach to agency deference more broadly. In *Kisor v. Wilkie*, 588 U.S. 558 (2019), the Court disavowed the “reflexive” deference that *Stinson* adopted. *Id.* at 574. More recently, in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Court categorically rejected deference to administrative agencies’ interpretations of the statutes they administer, *id.* at 411-412, overruling the deference doctrine set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

In light of those intervening developments, this Court granted certiorari to decide whether *Stinson* “still correctly states the rule for deference that courts must give the commentary to the Sentencing Guidelines.” Order of April 20, 2026. It does not. *Stinson* departs from the “elemental” proposition that “courts decide legal questions by applying their own judgment.” *Loper Bright*, 603 U.S. at 391-392. In the criminal setting, deference is especially pernicious, as it undermines liberty, fair notice, and the separation of powers. This Court should not perpetuate that atextual and constitutionally dubious deference regime. Instead, it should hold that the proper interpretation of the Guidelines is a question of law committed to courts, without deference to the commentary.

The government agrees that *Stinson*’s deference standard cannot survive *Kisor*, and it accordingly does not defend the reasoning of the court of appeals below. See Br. in Opp’n 9. Instead, the government maintains that “*Kisor* sets the standard for determining whether particular Guidelines commentary is entitled to deference.” *Ibid.* Several courts of appeals have likewise held that “*Kisor*’s gloss” applies to *Stinson*. *United States v. Dupree*, 57 F.4th 1269, 1275 (11th Cir. 2023) (en banc); see also *United States v. Nasir*, 17 F.4th 459, 471 (3d Cir. 2021) (en banc); *United States v. Riccardi*, 989 F.3d 476, 485 (6th Cir. 2021); *United States v. Castillo*, 69 F.4th 648, 655-656 (9th Cir. 2023).

If deference to commentary is appropriate, petitioner agrees that the correct framework is set forth in *Kisor*. Properly applied, *Kisor* deference will leave courts in much the same place as a no-deference regime: Courts should rarely, if ever, defer to interpretive commentary. They certainly should not do so

when the commentary increases a defendant's Guidelines range. But rather than needlessly complicate sentencing through a multi-step deference test, the better path is to reject deference categorically. Courts should not substitute the Commission's interpretation of the Guidelines for their own—whether under *Stinson* or *Kisor*.

In all events, the court of appeals' decision cannot stand. The courts below considered themselves bound to follow the commentary when they applied U.S.S.G. 2K2.1(a)(3), notwithstanding petitioner's argument that the enhancement's plain text did not apply to him. *See* Pet. App. A2; *see also* J.A. 18. The Court should vacate and remand so that the court of appeals may consider in the first instance the proper interpretation of Section 2K2.1(a)(3).

### **OPINION BELOW**

The Fifth Circuit's opinion (Pet. App. A1-A3) is available at 2025 WL 1410410.

### **JURISDICTIONAL STATEMENT**

The Fifth Circuit issued its decision on May 15, 2025. The petition for a writ of certiorari was filed on August 11, 2025, and granted on April 20, 2026. This Court has jurisdiction under 28 U.S.C. 1254(1).

### **RELEVANT LEGAL PROVISIONS**

Relevant statutory and Guidelines provisions are reproduced in the addendum to this brief. *See* App. 1a-15a.

### **STATEMENT OF THE CASE**

#### **A. Legal Background**

1.a. The Sentencing Reform Act of 1984 (SRA), Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, established

the U.S. Sentencing Commission, and charged it with creating “guidelines” for use in criminal sentencing. 28 U.S.C. 994(a)(1), (b)(1). The Guidelines use a “set of inputs specific to a given case”—chiefly, the seriousness of the offense and the defendant’s criminal history—to “yield[] a predetermined . . . range of months within which the defendant c[an] be sentenced.” *Peugh v. United States*, 569 U.S. 530, 535 (2013).

The Guidelines “provide the framework for the tens of thousands of federal sentencing proceedings that occur each year.” *Molina-Martinez v. United States*, 578 U.S. 189, 192 (2016). When Congress first established the Guidelines, it required courts to treat them as mandatory, fixing the upper and lower bounds of a defendant’s sentence in the ordinary case. *See* 18 U.S.C. 3553(b) (Supp. II 1984); *see also* *Peugh*, 569 U.S. at 535. In *United States v. Booker*, 543 U.S. 220 (2005), the Court held that mandatory guidelines violated the Sixth Amendment where they required judicial factfinding that increased the maximum penalty for a crime. *Id.* at 244-245. To remedy the violation, the Court required that the Guidelines be treated as advisory. *Id.* at 245-259. District courts, however, must still consult the Guidelines before imposing a sentence, 18 U.S.C. 3553(a)(4), and if a court varies outside the Guidelines range, it must offer a justification “sufficiently compelling to support the degree of the variance,” *Gall v. United States*, 552 U.S. 38, 50 (2007); *see also* 18 U.S.C. 3553(c). Courts of appeals, too, use the Guidelines “as a benchmark” and “may ‘consider the extent of the deviation’ from the Guidelines as part of their reasonableness review.” *Peugh*, 569 U.S. at 542 (citation omitted). The Guidelines thus “anchor both the district court’s discretion and the appellate review process.” *Id.* at 549.

The SRA sets forth rigorous procedural safeguards to ensure that the Commission promulgates the Guidelines with due care and oversight. The Commission’s “power to establish general policy statements and guidelines” is non-delegable, 28 U.S.C. 995(b), and the Commission must promulgate Guidelines by the “affirmative vote of at least four members,” 28 U.S.C. 994(a). The Commission must also “periodically” “review and revise” the Guidelines, in consultation with various stakeholders—the Department of Justice, Federal Defenders, Probation Officers, the Bureau of Prisons, the Judicial Conference, and defendants themselves. 28 U.S.C. 994(o), (s). When amending the Guidelines, the Commission must comply with the Administrative Procedure Act’s notice-and-comment provisions “relating to publication in the Federal Register and public hearing procedure.” 28 U.S.C. 994(x). The Commission must therefore convene public hearings, give notice of proposed rules, and offer an opportunity for public comment. *See* 5 U.S.C. 553. In addition, Congress kept an oversight role for itself: The Commission must submit proposed amendments, accompanied by a statement of reasons, to Congress, which then has 180 days to review (and potentially reject) them before they take effect. 28 U.S.C. 994(p).

b. Since it first issued the Guidelines Manual, the Commission has also included “Application Notes” in “commentary” that accompanies the Guidelines. *See, e.g.,* U.S.S.G. 2B1.1 comment. (nn.1-8) (1987). The SRA does not subject commentary to the procedural requirements that apply when the Commission issues or amends the Guidelines. And the Commission’s rules confirm that it “may promulgate commentary and policy statements, and amendments

thereto, without regard to the provisions of 28 U.S.C. § 994(x).” U.S. Sent. Comm’n, R. 4.3.

The Commission has explained that its commentary “may serve a number of purposes,” including, as particularly relevant here, to “interpret the guideline or explain how it is to be applied.” U.S.S.G. 1B1.7.<sup>1</sup> When it first introduced Application Notes, the Commission expected that courts would “likely” look to its interpretive commentary “for guidance as an indication of the intent of those who wrote them . . . much like legislative history or other legal material that helps determine the intent of a drafter.” U.S.S.G. 1B1.7, comment. (1987).

Shortly after the Commission first issued commentary, Congress amended 18 U.S.C. 3553(b) to provide “official commentary” a role in the sentencing process. *See* Sentencing Act of 1987, Pub. L. No. 100-182, § 3, 101 Stat. 1266. In the pre-*Booker* regime of mandatory guidelines, Section 3553(b) allowed a court to depart from the Guidelines range only if the case presented a circumstance “not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.” 18 U.S.C. 3553(b)(1). And to determine whether the Commission had adequately accounted for a particular circumstance,

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<sup>1</sup> This case involves only interpretive commentary, *i.e.*, commentary that gives substantive content to the terms appearing in the Guidelines. The Commission also issues other types of commentary, including illustrative commentary and operational commentary, *i.e.*, rules necessary to facilitate the orderly administration of the Guidelines Manual. *See* NACDL Br. 13-20 (describing different categories of commentary). The Court need not decide in this case what deference, if any, applies to those other types of commentary, which often do not construe the text of a Guideline.

district courts could consider the “sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.” *Ibid.*; *see also* 18 U.S.C. 3553(b)(2) (same in cases involving sexual crimes and crimes against children).

2. In *Stinson v. United States*, 508 U.S. 36 (1993), this Court addressed the role of commentary in construing the Guidelines. *Id.* at 38. The Court there considered U.S.S.G. 4B1.2(1), which defined “crime of violence” for purposes of a sentencing enhancement. *Stinson*, 508 U.S. at 38. After it promulgated the Guideline, the Commission added commentary exempting the offense of felon in possession of a firearm from the definition of a “crime of violence.” *Id.* at 39.

The Court held that the commentary at issue was “binding” on federal courts. *Stinson*, 508 U.S. at 47. It viewed the commentary as “akin to an agency’s interpretation of its own legislative rules,” and it thus directed lower courts to afford commentary the deference set forth in *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), and its progeny. *Stinson*, 508 U.S. at 45. That is, commentary “must be given ‘controlling weight unless it is plainly erroneous or inconsistent with’” the Guideline it interprets. *Id.* at 45 (quoting *Seminole Rock*, 325 U.S. at 414).

In *Kisor v. Wilkie*, 588 U.S. 558 (2019), this Court reinforced the limits of *Seminole Rock* deference—or, as it came to be known, *Auer* deference, after *Auer v. Robbins*, 519 U.S. 452 (1997). The doctrine rested on a presumption about congressional intent, namely that “Congress intended for courts to defer to agencies when they interpret their own ambiguous rules.” *Kisor*, 588 U.S. at 573. *Kisor* recognized, however, that sometimes “the reasons for that presumption do not apply, or countervailing reasons outweigh them.”

*Ibid.* Thus, the Court reinforced the limits of *Auer* deference and “emphasize[d] the critical role courts retain in interpreting rules.” *Id.* at 589. And it cautioned that deference should never be “reflexive,” disavowing *Seminole Rock*’s “classic formulation” of the deference standard—“whether an agency’s construction is ‘plainly erroneous or inconsistent with the regulation.’” *Id.* at 574 (quoting *Seminole Rock*, 325 U.S. at 414).

Two Terms ago, this Court again considered the propriety of agency deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 377-378 (2024). In *Loper Bright*, the Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See* 603 U.S. at 412. *Chevron* had required courts to defer to “permissible” agency interpretations of a statute, “even when a reviewing court reads the statute differently.” *Id.* at 377-378. That form of deference, this Court explained, upset the “traditional understanding,” “reflected by judicial practice dating back to *Marbury*,” that courts exercise independent judgment when interpreting statutory text. *Id.* at 390, 391-392.

## **B. The Present Controversy**

In 2022, officers encountered petitioner Kendrick Beaird and found an unloaded Glock 17 firearm in his waistband. *See* PSR ¶ 10; C.A. ROA 147. The Glock 17, one of the country’s most popular and iconic firearms, comes standard with a seventeen-round magazine. *See* Paul M. Barrett, *Glock: The Rise of America’s Gun* 13, 24 (2013). Mr. Beaird’s firearm was equipped with the standard magazine but contained no ammunition. PSR ¶ 10; *see* C.A. ROA 147-148. After discovering Mr. Beaird’s prior felony conviction, the officers arrested him. PSR ¶ 10.



Mr. Beaird pleaded guilty to one count of possessing a firearm after a felony conviction in violation of 18 U.S.C. 922(g)(1). J.A. 4-5. Relevant here, the Presentence Report recommended applying the enhanced base offense level found in U.S.S.G. 2K2.1(a)(3). PSR ¶ 18. That Guideline requires a base offense level of 22 if “(A) the offense involved a . . . semiautomatic firearm that is capable of accepting a large capacity magazine”; and “(B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense.” U.S.S.G. 2K2.1(a)(3). The commentary defines “a semiautomatic firearm that is capable of accepting a large capacity magazine” as a firearm with a magazine “that could accept more than 15 rounds of ammunition.” U.S.S.G. 2K2.1, comment. (n.2).

The district court applied Section 2K2.1(a)(3)’s enhanced base offense level because Mr. Beaird’s standard magazine, though empty, could hold 17 rounds of ammunition. J.A. 18; *see* PSR ¶ 18. Mr. Beaird objected to the enhanced offense level, arguing that the court should not rely on the commentary insofar as it defined “large capacity magazine” to include any magazine that can hold more than 15 rounds. C.A. ROA 201-202. The district court considered itself bound by the commentary, which increased the Guidelines range from 51-63 months of imprisonment to 63-78 months. J.A. 18-19; *see* U.S.S.G. 2K2.1(a)(3), (a)(4). The court imposed 72 months of imprisonment. J.A. 6.

On appeal, Mr. Beaird contended that the district court erred in deferring to the commentary, which defines a seventeen-round magazine as a “large capacity magazine.” U.S.S.G. 2K2.1, comment. (n.2). He maintained that *Stinson*’s deference standard conflicts

with *Kisor*, which requires courts to, among other things, exhaust all the ordinary tools of construction before deferring to an agency’s interpretation of its own legislative rule. *Kisor*, 588 U.S. at 574-575. As Mr. Beaird explained, the best reading of “large capacity magazine”—after exhausting the traditional tools of construction—excludes standard-issue magazines that can hold only 17 rounds. *See* Pet. 6.

The court of appeals affirmed in an unpublished opinion. Pet. App. A1-A3. It held that circuit precedent foreclosed Mr. Beaird’s argument as to the proper meaning of Section 2K2.1. In *United States v. Vargas*, 74 F.4th 673 (5th Cir. 2023) (en banc), the Fifth Circuit held that *Stinson* still set forth the appropriate standard of deference to commentary, notwithstanding *Kisor*. *Id.* at 680-683. In the Fifth Circuit’s view, “*Stinson* sets out a deference doctrine distinct from the one refined by *Kisor*”—a regime where “the commentary controls even unambiguous guidelines.” *Id.* at 678, 682. Without further guidance from this Court, the Fifth Circuit felt obligated to “apply [*Stinson*] faithfully.” *Id.* at 678.

In *United States v. Martin*, 119 F.4th 410 (5th Cir. 2024), the Fifth Circuit applied *Vargas* to hold that the commentary’s definition of a “large capacity magazine” was “authoritative.” *Id.* at 415. In this case, the Fifth Circuit considered itself bound by *Martin*, rejecting Mr. Beaird’s challenge to the commentary regarding “large capacity magazines.” Pet. App. A2 (adhering to *Martin*).

## SUMMARY OF THE ARGUMENT

In *Stinson v. United States*, 508 U.S. 36 (1993), this Court held that courts should defer to the commentary unless it represents a “plainly erroneous” interp-

retation of the Guidelines. *Id.* at 38. Such reflexive deference is inconsistent with the text and structure of the SRA, incompatible with criminal sentencing, and contrary to the Court's subsequent case law. The Court should disavow it, and remand for the court of appeals to interpret U.S.S.G. 2K2.1(a)(3) for itself.

I. Courts should not defer to the commentary when interpreting the Guidelines.

A. Nothing in the SRA requires deference to interpretive commentary, thus leaving in place the ordinary rule that courts must independently resolve questions of law. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391-392 (2024). Deference to the commentary conflicts with the SRA's text, which assigns courts, not the Commission, the duty to interpret and apply Guidelines. Deference also undercuts the Act's procedural requirements for Guideline amendments. The Act demands public deliberation and legislative oversight when the Commission amends the Guidelines, but leaves the Commission a free hand in amending the commentary. And deference threatens the separation of powers in two ways. First, it allows the Commission to have the final word on interpretive questions, thus encroaching on the judicial power. Second, it allows the Commission to exercise legislative power over criminal punishments without adequate oversight.

B. The Court grappled with none of those concerns in *Stinson*. It did not locate any basis for its deference standard in the text or structure of the SRA. Instead, it analogized the commentary to an administrative agency's interpretation of its own legislative rules, importing wholesale the deference doctrine set forth in *Seminole Rock* and its progeny. But whatever the validity of that deference doctrine elsewhere, it has no place in criminal sentencing. The doctrine is

incompatible with criminal law, at least to the extent it makes a Guideline more punitive than the court's best reading of the text. And none of the traditional justifications for *Seminole Rock* deference—an agency's expertise, its insight into its own rules, or its ability to promote uniformity—justify deference to the Commission's interpretation of the Guidelines.

II. Alternatively, this Court should make clear that deference to the commentary must comport with the framework set forth in *Kisor*. Under that rule, courts would usually determine the meaning of a Guideline without deference to the commentary.

A. In *Kisor*, this Court disavowed the reflexive formulation of *Seminole Rock* deference recited in *Stinson*. 588 U.S. at 574. *Kisor* requires courts to exhaust all traditional tools of construction before deferring to an agency's interpretation of its own regulation. *Id.* at 575. *Kisor* further specifies that an agency's construction must be reasonable, *id.* at 575-576, and that even some reasonable readings do not merit deference, *id.* at 576-579. This Court should make clear that those limits apply with full force in the federal sentencing context.

B. Properly applied, *Kisor* will rarely permit district courts to defer to the commentary, at least when it calls for harsher punishment than the Guideline does. *Kisor* requires courts to exhaust all the traditional tools of statutory construction before deferring to an agency, and one of those tools is lenity. When faced with “genuinely ambiguous” Guidelines, *Kisor*, 588 U.S. at 573-574, the answer is to construe them in favor of lenity, not to defer to the commentary. Moreover, the “character and context” of the Guidelines, which govern criminal sentencing, also counsel against deference. *Id.* at 576.

III. *Stare decisis* does not require a different result. The Court need only “formalize” here “what is evident” from its intervening decisions: *Stinson* no longer correctly states the rule for deference to the commentary. *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019). Rather than perpetuate or replace *Stinson*’s superseded deference regime, this Court should confirm that courts must exercise their own judgment in interpreting the Guidelines, in keeping with “judicial practice dating back to *Marbury*.” *Loper Bright*, 603 U.S. at 391-392.

IV. The Court should vacate and remand so that the court of appeals can determine the proper interpretation of Section 2K2.1(a)(3). That enhancement, which increases the Guidelines range for offenses involving a “semiautomatic firearm that is capable of accepting a large capacity magazine,” cannot apply to the factory-issued magazine of the Glock 17, a common handgun in the consumer market. U.S.S.G. 2K2.1(a)(3). The court of appeals has never construed Section 2K2.1(a)(3) without deference, and it should do so in the first instance on remand.

### ARGUMENT

In *Stinson v. United States*, 508 U.S. 36 (1993), this Court held that commentary to the Sentencing Guidelines “must be given ‘controlling weight unless it is plainly erroneous or inconsistent with’” the Guideline it purports to interpret. *Id.* at 45 (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)). The parties here agree that *Stinson* no longer correctly states the controlling rule.

As the government recognizes, *Stinson*’s deference standard cannot survive this Court’s subsequent decision in *Kisor v. Wilkie*, 588 U.S. 558 (2019), which

disavowed the reflexive formulation of *Seminole Rock* deference recited by *Stinson*. But rather than replace or modify *Stinson*'s deference standard, this Court should categorically reject deference to interpretive commentary, consistent with the ordinary rule that courts must independently decide questions of law. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391-392 (2024). At the very least, this Court should make clear that the *Kisor* framework applies to the commentary.

Either way, the decision below cannot stand. The court of appeals considered itself bound to defer to the commentary unless it was “plainly erroneous.” This Court should therefore vacate and remand so that the court of appeals may consider in the first instance whether Section 2K2.1(a)(3) applies to Mr. Beaird's conduct.

### **I. COURTS SHOULD AFFORD NO DEFERENCE TO COMMENTARY THAT INTERPRETS THE GUIDELINES**

Two Terms ago, this Court reaffirmed an “unremarkable, yet elemental proposition”: Courts should “decide legal questions by applying their own judgment.” *Loper Bright*, 603 U.S. at 394. The meaning of the Guidelines is plainly a “legal question,” so it is the province of courts—not the Commission—to consider and apply the Guidelines in each criminal sentencing. And courts must answer any “legal question” that arises in applying the Guidelines by exercising their independent judgment. Deference to commentary is inconsistent with the text and structure of the SRA, incompatible with criminal sentencing, and contrary to this Court's subsequent case law. This Court should reject it.

### **A. Deference To The Commentary Conflicts With The Sentencing Reform Act**

The SRA sets forth distinct roles for the Commission, courts, and Congress with respect to the Guidelines. The Commission is charged with policy-making: It promulgates and amends Guidelines. *See* 28 U.S.C. 994(a)(1), (b)(1). Courts are charged with the interpretive work: They consider and apply the Guidelines to individual criminal defendants at sentencing. *See* 18 U.S.C. 3553(a)(4); 18 U.S.C. 3742. And Congress reserved for itself the ultimate legislative power: It can review and reject amendments to the Guidelines before they take effect. *See* 28 U.S.C. 994(p).

Deference upends those statutory roles. It conflicts with the text and structure of the SRA, and it undermines the constitutional separation of powers.

#### *1. Deference conflicts with the Sentencing Reform Act's text*

The SRA assigns courts—not the Commission—the duty to interpret the Guidelines. Section 3553(a)(4) requires courts to “consider” the Guidelines range when selecting a sentence for a criminal defendant, 18 U.S.C. 3553(a)(4), which they must correctly calculate, *Gall v. United States*, 552 U.S. 38, 49 (2007). Similarly, courts of appeals determine the “applicable guideline range” in reviewing a criminal sentence, 18 U.S.C. 3742(a)(3), (b)(3), and must vacate a sentence imposed “as a result of an incorrect application of the guidelines,” 18 U.S.C. 3742(f)(1).

To discharge those responsibilities, courts must determine for themselves what the applicable Guidelines mean. The statute as enacted did not mention the commentary, and later amendments include only passing references to it. There is accordingly no

textual call to depart from the traditional rule that courts resolve questions of law without deference to the views of rulemakers.

a. The SRA sets forth the Commission’s responsibilities in 28 U.S.C. 994, which charges the Commission with promulgating two types of public enactments: “guidelines,” “for use of a sentencing court in determining the sentence to be imposed in a criminal case,” 28 U.S.C. 994(a)(1), and “policy statements,” to guide courts in the “application of the guidelines or any other aspect of sentencing or sentence implementation,” 28 U.S.C. 994(a)(2). Section 994 specifies in extensive detail the function and domain of both Guidelines and policy statements. *See* 28 U.S.C. 994(a)-(n). But Section 994 is silent as to commentary. It contains no requirement that the Commission issue commentary at all, let alone any requirement that courts defer to commentary that interprets the Guidelines’ text.

Likewise, Section 3553 provides no support for a deference regime. Section 3553(a) establishes the factors that district courts must consider when imposing a criminal sentence. *See* 18 U.S.C. 3553(a). It expressly requires district courts to “consider” the “kinds of sentence[s]” and “sentencing range” set forth in the “guidelines.” 18 U.S.C. 3553(a)(4). Courts must also consider “any pertinent policy statement” issued by the Commission. 18 U.S.C. 3553(a)(5). The provision, however, makes no mention of the commentary.

Congress’s decision to omit commentary from Section 3553(a)’s required considerations is especially notable when viewed in light of the next subsection, Section 3553(b). That subsection *does* refer to the “official commentary of the Sentencing Commission,” alongside the “sentencing guidelines” and “policy



statements.” 18 U.S.C. 3553(b). “When Congress includes particular language in one section of a statute but omits it from a neighbor, [the Court] normally understand[s] that difference in language to convey a difference in meaning.” *Bittner v. United States*, 598 U.S. 85, 94 (2023). And Section 3553(b) assigns commentary a far more limited function at sentencing than Section 3553(a)(4) assigns the Guidelines: Before *Booker*, Section 3553(b) allowed district courts to consider the Commission’s “official commentary,” alongside “sentencing guidelines” and “policy statements,” to determine whether it could depart from the Guidelines range. 18 U.S.C. 3553(b)(1); *see* 18 U.S.C. 3553(b)(2) (same for child crimes and sexual offenses).

That is all Congress had to say about the “official commentary of the Sentencing Commission”—that it may be useful in applying a now-obsolete departure standard. 18 U.S.C. 3553(b)(1), (2). In that single reference, Congress gave no indication that courts must, or even should, consider the commentary when determining the proper interpretation of the Guidelines themselves. On the contrary, Section 3553(b)’s limited role for commentary supported the Commission’s original vision for commentary when it first issued the Guideline Manual: Courts could look to interpretive commentary to determine the “intent” of the Commission, and the factors it considered as it formulated the Guidelines, “much like” courts use “legislative history or other legal material.” U.S.S.G. 1B1.7, comment. (1987). Section 3553(b)—like the SRA it amended—does nothing to suggest courts should assign controlling weight to commentary that interprets the Guidelines.

b. In the face of that statutory silence, this Court should not presume that Congress departed from the

“traditional” rule—that courts must decide “questions of law” by “applying their own legal judgment,” just as they have done “[s]ince the start of our Republic.” *Loper Bright*, 603 U.S. at 390, 392 n.4. Absent a contrary statutory instruction, courts have a duty to decide the “single, best” meaning of the text before them by applying the ordinary tools of construction. *Id.* at 400.

Consistent with that default rule, the Court this Term declined to defer to the Commission’s policy statement interpreting the term “extraordinary and compelling” in 18 U.S.C. 3582(c)(1)(A)(i). See *Rutherford v. United States*, 146 S. Ct. 1320, 1334 (2026). Congress expressly authorized the Commission to promulgate policy statements “that describe what should be considered extraordinary and compelling reasons for sentence reduction,” 28 U.S.C. 994(t), and authorized district courts to modify a term of imprisonment only if “consistent with” those policy statements, 18 U.S.C. 3582(c)(1)(A). Nevertheless, the Court reaffirmed that “courts have a duty to ‘independently interpret the statute and effectuate the will of Congress.’” *Rutherford*, 146 S. Ct. at 1334 (quoting *Loper Bright*, 603 U.S. at 395). It thus construed Section 3582(c)(1)(A) independently, see *ibid.*, notwithstanding a policy statement meant to “fill up the details of the statutory scheme,” *id.* at 1338 (Sotomayor, J., dissenting). Courts must likewise independently review the Guidelines, notwithstanding interpretations found in the commentary.

## 2. *Deference conflicts with the Sentencing Reform Act’s structure*

Deference is also inconsistent with the structure of the SRA, which imposes rigorous procedural requirements for amending the Guidelines and preserves

Congress’s role in overseeing the Commission’s policymaking work. This Court should not invite the Commission to circumvent those safeguards through its commentary.

The Commission may promulgate Guidelines only by affirmative vote of at least four of its seven voting members. 28 U.S.C. 994(a); *see* 28 U.S.C. 991(a). Congress required the Commission to submit the original Guidelines for its review, Pub. L. No. 98-473, § 235(a)(1), 98 Stat. 1837, 2031-2032, and the Commission must afford Congress a 180-day window to review and potentially reject Guidelines amendments, 28 U.S.C. 994(p). Congress also requires that Guidelines amendments undergo notice-and-comment rulemaking. *See* 28 U.S.C. 994(x) (cross-referencing 5 U.S.C. 553).

Commentary is not subject to those procedural requirements. The Commission may issue commentary through the vote of a simple majority of members present, the same way it can take any action “[o]ther than for the promulgation of guidelines and policy statements.” 28 U.S.C. 995(d). Arguably, it might delegate the issuance of commentary to even a single member. *See* 28 U.S.C. 995(b). Consistent with Section 994, the Commission’s own rules recognize that it “may promulgate commentary . . . and amendments thereto[] without regard to the provisions of 28 U.S.C. § 994(x).” U.S. Sent. Comm’n, R. 4.3; *see also* R. 4.1 (“Amendments to . . . commentary may be promulgated and put into effect at any time.”). Thus, the Commission can unilaterally issue commentary without the strictures of public notice, public comment, or congressional review.

If commentary can change or control the meaning of a Guideline, the procedural protections of Sections 994

and 995 would become hollow. The Commission could effectively amend the Guidelines through the guise of interpretive commentary. That would defeat Sections 994's requirements of pre-submission and notice and comment. *See* 28 U.S.C. 994(p), (x). And it would disregard Section 995(d)'s express distinction between Guidelines, policy statements, and all other Commission business (including commentary). 28 U.S.C. 995(d). Worse, the Commission could purposefully enact vague Guidelines, leaving it the power to "do what it pleases" through the commentary down the road. *Talk Am. Inc. v. Mich. Bell Tel. Co.*, 564 U.S. 50, 69 (2011) (Scalia, J., concurring).

This Court should foreclose that end-run around Section 994's (and Section 995's) procedural protections. Congress would not have erected so many guardrails just to invite such easy circumvention, particularly when Congress intended the Guidelines to dictate mandatory sentencing ranges. *See* p. 4, *supra*. The SRA created a "single, finely wrought" procedure for amendments to the Guidelines, *Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919, 951 (1983), and the Court should respect Congress's considered judgment in doing so.

It is no answer that the Commission, as a matter of practice, generally submits commentary for congressional review and "endeavor[s] to" provide "comparable opportunities for public input" when it proposes commentary. U.S. Sent. Comm'n, R. 4.1, 4.3. The Commission, as explained, has reserved the right to amend the commentary "without regard to the provisions of 28 U.S.C. § 994(x)." U.S. Sent. Comm'n, R. 4.3. And even when the Commission voluntarily submits commentary to Congress, "nothing alerts Congress that it must (or even should) review

proposed changes to the guidelines’ commentary.” *United States v. Havis*, 929 F.3d 317, 320 (6th Cir. 2019) (Sutton, J., concurring in denial of rehearing en banc). In all events, the Commission’s “voluntary self-denial” is no reason for deference. *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 473 (2001). This Court should not leave the SRA’s careful procedural safeguards “at the mercy of noblesse oblige.” *United States v. Stevens*, 559 U.S. 460, 480 (2010).

### 3. *Deference raises separation-of-powers concerns*

If the statutory text and structure left any doubt that the Court should reject deference, the constitutional-avoidance canon would dispel it. This Court ordinarily construes statutes in a manner that avoids posing “serious constitutional doubts.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). “This canon is followed out of respect for Congress, which [the Court] assume[s] legislates in the light of constitutional limitations.” *Rust v. Sullivan*, 500 U.S. 173, 191 (1991). If this Court construed the SRA to require deference to the commentary, however, two distinct constitutional concerns would arise.

First, deference could intrude on the courts’ core Article III powers. “It is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *The Federalist* No. 78, at 467 (Alexander Hamilton) (“The interpretation of the laws is the proper and peculiar province of the courts.”). Deference, however, forces a court to disregard its independent judgment regarding the “single, best” interpretation of a legal provision, and to substitute that of an administrative body that operates outside Article III’s strictures. *Loper Bright*, 603 U.S. at 400.

The Court should always hesitate to allow agencies “license to exercise judicial power,” *Loper Bright*, 603 U.S. at 415 (Thomas, J., concurring), and the concern is especially pronounced for the Commission. The Commission is *sui generis*—“an independent commission in the judicial branch,” 28 U.S.C. 991(a)—that exercises quasi-legislative and quasi-judicial powers simultaneously. In *Mistretta v. United States*, 488 U.S. 361 (1989), the Court upheld this unusual entity against constitutional attack because the Commission, though “located in the Judicial Branch,” did not exercise “the powers of the Judiciary.” *Id.* at 393. Deference erodes that barrier, as it allows the Commission to both promulgate guidelines *and* interpret them.

Second, deference undercuts Congress’s role in defining criminal punishments. *See Mistretta*, 488 U.S. at 393-394. The SRA, as explained, contains a number of safeguards to ensure that the Commission remains “fully accountable to Congress, which can revoke or amend any or all of the Guidelines as it sees fit” within the statute’s 180-day period for review. *Id.* at 393-394; *see* 28 U.S.C. 994(p). Not so for commentary, which the Commission can promulgate without congressional authorization and without any opportunity for congressional review and disapproval. *See* Part I.A.2, *supra*. Thus, when a court assigns the Commission’s interpretive commentary authoritative weight, it allows the Commission to expand (or contract) the range of conduct giving rise to enhanced penalties without congressional oversight. The Court should reject that scheme, ensuring that legislative power over criminal punishments remains with Congress, not a quasi-legislative body located within the judicial branch. *See United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (“It is the legislature,

not the Court, which is to define a crime, and ordain its punishment.”).

### **B. The Presumption Underlying *Stinson*’s Deference Standard Is Unfounded**

In *Stinson*, this Court did not draw its deference rule from the text or structure of the SRA. Instead, it borrowed from the deference doctrine set forth in *Seminole Rock* and its progeny: Commentary, the Court reasoned, was “akin to an agency’s interpretation of its own legislative rules,” and thus entitled to the same form of deference afforded in the regulatory setting. *Stinson*, 508 U.S. at 45. *Seminole Rock* deference, in turn, is nothing more than a court-created presumption that Congress intended to delegate interpretive authority to an administrative body. *See Kisor*, 588 U.S. at 569 (plurality opinion).

Recently, this Court has called into question the validity of such presumptions more broadly. In *Loper Bright*, this Court repudiated *Chevron*, which had created a presumption that Congress intends for courts to defer to agency interpretations of relevant statutes. *See* 603 U.S. at 399-406. This Court rejected that doctrine because it could not “match *Chevron*’s presumption to reality.” *Id.* at 404. Members of this Court have also disagreed about *Seminole Rock*’s presumption—a putative congressional intent for courts to defer to an agency’s interpretation of its own regulations. *Compare Kisor*, 588 U.S. at 566-573 (plurality opinion), *with id.* at 609-612 (Gorsuch, J., concurring in the judgment).

But regardless of the presumption’s validity as to agencies generally, it has no place here. To start, the presumption is incompatible with criminal law, where concerns for liberty, fair notice, and separation of

powers are most pronounced. *Stinson* had no occasion to consider those principles, as the commentary before the Court *narrowed* the scope of a sentencing enhancement. In any event, none of the traditional reasons undergirding *Seminole Rock* deference—an agency’s expertise, its insight into its own rules, or its ability to promote uniformity—justify deference to the Commission’s interpretation of the Guidelines.

1. *Deference is incompatible with criminal sentencing*

This Court is ordinarily reluctant to presume that Congress intends for courts to abdicate their interpretive function when construing criminal provisions. See *Abramski v. United States*, 573 U.S. 169, 191 (2014) (“[C]riminal laws are for courts, not for the Government, to construe.”). The Court should be equally reluctant to presume as much when it comes to the Guidelines, at least where the commentary would make a Guideline more punitive.

a. Deference to an agency’s interpretation is appropriate—if at all—only when the text is genuinely ambiguous. *Kisor*, 588 U.S. at 574; see Part II.A.1, *infra*. In criminal provisions, however, ambiguity triggers a different doctrine—the rule of lenity—that requires courts to construe penal laws in favor of the defendant. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); see *Wiltberger*, 18 U.S. (5 Wheat.) at 95. When a court “wave[s] the ambiguity flag” in the civil sphere, it can turn to an agency’s interpretation to resolve the question. *Kisor*, 588 U.S. at 575. When it encounters ambiguity in the criminal sphere, however, it should resolve that ambiguity in favor of lenity.

Lenity governs the proper construction of the Guidelines notwithstanding their advisory nature. The



Guidelines have a “real and pervasive effect” on criminal sentencing. *Molina-Martinez v. United States*, 578 U.S. 189, 199 (2016). Courts are required by statute to consult the Guidelines, 18 U.S.C. 3553(a)(4), and to explain with specificity their reasons for any deviation from the Guidelines range, 18 U.S.C. 3553(c)(2); *see also Gall*, 552 U.S. at 50. The Guidelines serve as an “anchor” for the defendant’s sentence, *Molina-Martinez*, 578 U.S. at 198-199 (citation omitted), and create mandatory obligations for district courts that disregard them. Thus, when the commentary makes the Guideline more punitive, the “purpose and effect” of the commentary is to “increase the rates and length of incarceration.” *Peugh v. United States*, 569 U.S. 530, 545 (2013) (citation omitted); *cf. Beckles v. United States*, 580 U.S. 256, 267 (2017) (recognizing that some changes to the Guidelines create a “significant risk of a higher sentence”) (internal quotation marks omitted). Lenity counsels against exactly that result.<sup>2</sup>

At any rate, the Congress that enacted the SRA expected that the Guidelines would set forth *mandatory* “penalties” for criminal offenses. *Bifulco*, 447 U.S. at 387. “[E]very statute’s meaning is fixed at the time of enactment.” *Loper Bright*, 603 U.S. at 400 (quoting *Wisc. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)); *see also United States ex rel.*

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<sup>2</sup> In addition, some Guidelines remain binding even after *Booker*. Section 3553(f)(1), for instance, creates a “safety valve” for certain low-level, non-violent offenders, and its eligibility criteria are expressly keyed to the Guidelines. *See* 18 U.S.C. 3553(f)(1) (excluding offenders based on “criminal history points . . . as determined under the sentencing guidelines”). Similarly, with narrow exceptions, sentence reductions based on retroactive Guidelines amendments are limited to the Guidelines range. *See Dillon v. United States*, 560 U.S. 817, 827-830 (2010).

*Marcus v. Hess*, 317 U.S. 537, 547 (1943) (“Conditions may have changed, but the statute has not.”). This Court should not presume that Congress intended to, *sub silentio*, turn the normal rules of construction for penal provisions “upside-down, replacing the doctrine of lenity with a doctrine of severity.” *Crandon v. United States*, 494 U.S. 152, 178 (1990) (Scalia, J., concurring in the judgment); see *United States v. Nasir*, 17 F.4th 459, 473 (3d Cir. 2021) (en banc) (Bibas, J., concurring).

b. Even putting aside the rule of lenity, deference in the criminal context “collide[s] with the norm” that “only the *legislature* may define crimes and fix punishments.” *Whitman v. United States*, 574 U.S. 1003, 1004, 1005 (2014) (Scalia, J., opinion respecting the denial of certiorari) (emphasis in original). “Congress may make it a crime to violate a regulation, but it is quite a different matter for Congress to give agencies—let alone for [the Court] to *presume* Congress gave agencies—power to resolve ambiguities in criminal legislation.” *Ibid.* (citations omitted). When courts give “unelected commissioners . . . carte blanche to decide when an ambiguous statute justifies sending people to prison”—or how long a person must spend there—they diminish the “serious business” that is criminal law. *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 731 (6th Cir. 2013) (Sutton, J., concurring).

The Guidelines, like other criminal enactments, implicate the “ultimate governmental power, short of capital punishment—the power to take away someone’s liberty.” *United States v. Havis*, 927 F.3d 382, 385 (6th Cir. 2019) (en banc) (citation omitted). And the Commission, no less than an executive agency, consists of appointed officials who have limited political accountability unless they operate within

Section 994’s strictures. *See* Part I.A.2, *supra*. This Court should ensure that if the Commission alters federal sentencing policy, it does so within the limits set by Congress.

c. These concerns are not theoretical. The commentary often works significant changes to the Guidelines’ meaning, and in many cases with a “clear tilt toward harshness.” *Nasir*, 17 F.4th at 474 (Bibas, J., concurring).

Before a 2023 amendment, for example, Section 4B1.2(b) defined a “controlled substance offense” for purposes of the career-offender Guideline to include only “the manufacture, import, export, distribution, or dispensing” of a controlled substance, or the possession of a controlled substance with the intent to perform those acts. U.S.S.G. 4B1.2(b) (2022). The commentary defined “controlled substance offense” to add inchoate versions of those offenses, U.S.S.G. 4B1.2, comment. (n.1) (2022), and many courts applying *Stinson* deferred to it, *see, e.g., United States v. Smith*, 989 F.3d 575, 584-585 (7th Cir. 2021).

Section 4B1.2(b) is no isolated example. Take Section 2B1.1, which keys the defendant’s base offense level for economic crimes to “loss,” U.S.S.G. 2B1.1(b)(1), a term that ordinarily refers only to the economic harm that a defendant actually inflicted, *see United States v. Boler*, 115 F.4th 316, 329 (4th Cir. 2024) (Quattlebaum, J., dissenting). Until a 2024 amendment, however, courts deferred to commentary that defined “loss” as “intended loss.” *Boler*, 115 F.4th at 327 (majority opinion) (citing U.S.S.G. 2B1.1 comment. (n.3(A))). Or consider Section 2A2.2(b)(2)(C), which provides an enhancement for use of a “dangerous weapon.” The commentary significantly expands the enhancement’s application by defining “dangerous

weapon” to include an object that merely resembles a dangerous weapon such as a finger wrapped under a towel to resemble a gun. *See* U.S.S.G. 1B1.1, comment. (n.1(E)).<sup>3</sup>

Or consider this case. The commentary treats the Glock 17’s standard magazine as a “large capacity magazine.” U.S.S.G. 2K2.1, comment. (n.2). It thus penalizes possession of a popular pistol together with its standard magazine just as severely as it does dangerous weapons like sawed-off shotguns, machine guns, and explosives. *See* p. 47, *infra*. Here, as with the other examples, the Commission’s commentary broadens the reach of the Guidelines beyond the best reading of the text.

d. This Court did not confront these concerns in *Stinson*. That case concerned Sections 4B1.1 and 4B1.2(1), which premised a sentencing enhancement on whether the defendant had committed a “crime of violence.” *Stinson*, 508 U.S. at 38 (citation omitted). After promulgating the Guideline, the Commission added commentary specifically excluding possession of a firearm by a felon from the definition of a “crime of violence.” *Id.* at 39. Because that commentary narrowed the scope of the sentencing enhancement, deference did not conflict with the rule of lenity or any of the principles that animate it. But where, as here, commentary increases the harshness of the Guidelines, the Court cannot presume that Congress would want courts to defer to the commentary.

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<sup>3</sup> Numerous other Guideline provisions contain an enhancement for a “dangerous weapon.” *See, e.g.*, U.S.S.G. 2A2.3(a)(1); 2A2.4(b)(1)(B); 2B3.1(b)(2)(D). The commentary to Section 1B1.1 expands the scope of those provisions in the same way.

2. *None of the traditional justifications for deference apply to the commentary*

Even on its own terms, *Stinson*'s rationales are unfounded. None of the traditional bases for deference to executive agencies apply.

a. *Comparative Expertise.* This Court affords deference to executive agencies because it assumes that agencies have "comparative expertise in resolving a regulatory ambiguity." *Kisor*, 588 U.S. at 578. In *Stinson*, the Court adopted the same rationale—it thought that the Guidelines implicate the Commission's "particular area of concern and expertise." 508 U.S. at 45.

That is misguided. The Commission "fills an important institutional role" in developing the Guidelines: It can act based "on empirical data and national experience, guided by a professional staff with appropriate expertise." *Kimbrough v. United States*, 552 U.S. 85, 109 (2007) (citation omitted). But while the Commission has expertise in its field, it has "no special competence" in interpreting ambiguous terms or resolving questions of law that arise when applying the Guidelines. *Loper Bright*, 603 U.S. at 401. The Commission exists to make policy, not to answer legal questions.

Further, the Guidelines generally do not implicate the type of "scientific" or "technical" expertise that courts would struggle to understand. *Kisor*, 588 U.S. at 571 (plurality opinion). District courts use the Guidelines as the "starting point" for tens of thousands of federal sentencings each year, *Peugh*, 569 U.S. at 542, and are well able to resolve ambiguities in provisions they encounter "every day," *Loper Bright*, 603 U.S. at 401. The Commission, meanwhile, is made

up of lawyers and, by statute, at least three federal judges, 28 U.S.C. 991(a), who “carry[] out the same basic § 3553(a) objectives . . . at wholesale” as sentencing judges do “at retail.” *Rita v. United States*, 551 U.S. 338, 348 (2007).

Indeed, the Guidelines intentionally “reflect[] the current sentencing practices” of sentencing judges nationwide. U.S.S.G. App. C, amend. 807 (Nov. 1, 2018). The Commission primarily developed the Guidelines “based on data about past sentencing practices,” and courts may freely depart from Guidelines ungrounded in that “empirical data.” *Kimbrough*, 552 U.S. at 96, 109-110 (citation omitted). For that reason, the Commission often updates the Guidelines to more closely match district courts’ sentencing practices. *See, e.g.*, U.S.S.G. App. C, amend. 817 (Nov. 1, 2023) (increasing the base offense level for U.S.S.G. 2A3.3 in response to “the rate and extent of above-range sentences”); U.S.S.G. App. C, amend. 800 (Nov. 1, 2016) (similar rationale for enhancing penalties associated with U.S.S.G. 2E3.1). There is no reason to elevate the Commission’s understanding of Guidelines provisions over those of the district court judges whose practices serve as its model.

In addition, while agencies may sometimes enjoy a comparative advantage over courts in responding to “complex or changing circumstances,” *Kisor*, 588 U.S. at 571 (plurality opinion) (quoting *Martin v. Occupational Safety and Health Review Comm’n*, 499 U.S. 144, 151 (1991)), that rationale does not support deference in federal criminal sentencing. Because district courts can conduct factfinding at sentencing, they can observe and respond to changed circumstances that create gaps in the Guidelines.

Although commentary may inform a court's interpretation to the extent persuasive, courts need not defer to out-of-date commentary that does not match the reality they face at sentencing.

This is a case in point. Section 2K2.1(a)(3)'s enhancement for "large capacity magazine" necessarily requires courts to determine whether the magazine is "large" relative to other magazines in circulation. *See* pp. 46-47, *infra*. And the firearms market has changed dramatically in the two decades since the Commission first issued the commentary. Today, the consumer market offers hundreds of millions of rifle magazines holding 30 rounds or more. *See* pp. 47, *infra*. If the standard-issue Glock 17 magazine warrants an enhancement, even though it is not "large" for the current market, the Commission is free to amend the Guideline. In the meantime, courts must apply the best meaning of the Guideline as written.

b. *Comparative Insight*. This Court also affords deference to executive agencies on the assumption that "the agency that promulgated a rule is in the 'better position [to] reconstruct' its original meaning." *Kisor*, 588 U.S. at 570 (plurality opinion) (quoting *Martin*, 499 U.S. at 152) (alteration in original). Because the Commission "drafts the guidelines as well as the commentary interpreting them," this Court presumed in *Stinson* that "the commentary represent[s] the most accurate indication[] of how the Commission deems that the guidelines should be applied." 508 U.S. at 45.

That rationale is doubly flawed. First, as *Stinson* itself recognized, commentary often comes "well after the guideline it interprets ha[s] been promulgated." 508 U.S. at 44. In those cases, the commentary offers

little insight into the original intent of the Commission that drafted the Guideline. Second, and more fundamentally, the Court went astray in “trying to unearth [the Commission’s] ‘actual intent,’” rather than the “‘objectified intent’—the intent that a reasonable person would gather from the text.” *F.S. Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345 (June 12, 2026), slip op. at 11 n.5 (citation omitted). “The judicial task is to read [the] words” of the Guidelines, “not [the] minds” of the drafters. *Ibid.* After all, it is the Guidelines, not the commentary, that undergo Section 994’s procedural requirements, including notice-and-comment rule-making and congressional review. And it is the Guidelines, not the commentary, that the sentencing court must consider during sentencing. 18 U.S.C. 3553(a)(4).

c. *Uniformity.* Finally, this Court affords deference to agencies on the assumption that Congress prefers “resolving interpretive issues by uniform administrative decision, rather than piecemeal by litigation.” *Kisor*, 588 U.S. at 572 (plurality opinion) (quoting *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 568 (1980)). And in *Stinson*, this Court saw the commentary as “one method” for the Commission to respond to “conflicting judicial decisions.” 508 U.S. at 46 (quoting *Braxton v. United States*, 500 U.S. 344, 348 (2001)).

No doubt, Congress intended the Commission to promote “uniformity,” *Rita*, 551 U.S. at 349 (emphasis omitted), but the SRA creates a single mechanism for the Commission to do so—a regular, yearly amendment cycle for the Guidelines, 28 U.S.C. 994(o). Rather than direct the Commission to predetermine the result of every interpretive issue through



commentary, “[t]he statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process.” *Rita*, 551 U.S. at 350.

That is precisely how it works in practice. The Commission regularly considers appellate decisions when amending the Guidelines, often to resolve circuit splits,<sup>4</sup> or to respond to concerns raised by appellate opinions.<sup>5</sup> When courts preemptively defer to commentary, however, they short-circuit the ongoing dialogue between courts and Commission, elevating the Commission’s interpretation over their own.

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None of that implies, of course, that the commentary can play no role in a court’s analysis of the Guidelines. Courts have long given agency interpretations “respectful consideration,” consistent with the thoroughness and persuasiveness of the agency’s reason-

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<sup>4</sup> See, e.g., U.S.S.G. App. C, amend. 832 (Nov. 1, 2025) (resolving circuit split as to the proper interpretation of Sections 2B3.1 and 4A1.2); U.S.S.G. App. C, amend. 828 (Nov. 1, 2024) (same as to Sections 2K2.1(b)(4)(B) and 3D1.2(c)); U.S.S.G. App. C, amend. 827 (Nov. 1, 2024) (Section 2B1.1); U.S.S.G. App. C, amend. 822 (Nov. 1, 2023) (Section 4B1.2); U.S.S.G. App. C, amend. 820 (Nov. 1, 2023) (Section 3E1.1).

<sup>5</sup> See, e.g., U.S.S.G. App. C, amend. 826 (Nov. 1, 2024) (responding to fairness concerns raised in, among other decisions, *United States v. Settles*, 530 F.3d 920 (D.C. Cir. 2008)); U.S.S.G. App. C, amend. 812 (Nov. 1, 2018) (addressing ambiguities identified in, among other decisions, *United States v. Cramer*, 777 F.3d 597 (2d Cir. 2015)); U.S.S.G. App. C, amend. 811 (Nov. 1, 2018) (responding to administrability concerns raised in *United States v. Starks*, 861 F.3d 306 (1st Cir. 2017)); U.S.S.G. App. C, amend. 803 (Nov. 1, 2016) (responding to constitutional challenges addressed in, among other decisions, *United States v. Munoz*, 812 F.3d 809 (10th Cir. 2016)).

ing. *Loper Bright*, 603 U.S. at 386 (quoting *United States v. Moore*, 95 U.S. 760, 763 (1878)); see also *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The SRA similarly leaves room for respect—courts can give respectful consideration to the Commission’s commentary as they ascertain the Guidelines’ meaning. “Respect, though, [is] just that.” *Loper Bright*, 603 U.S. at 386 (internal quotation marks omitted). The Act ultimately commits to courts the duty to properly interpret the Guidelines, and courts must do so by exercising their own independent judgment.

## **II. AT A MINIMUM, COURTS SHOULD NOT DEFER TO COMMENTARY UNLESS IT SATISFIES THE STANDARD SET FORTH IN *KISOR***

At a minimum, this Court should recognize that *Stinson*’s reflexive deference to the commentary cannot survive *Kisor*. The Court there meaningfully cabined agency deference, and its reasons for doing so apply with even greater force when courts interpret the Guidelines.

### **A. *Stinson*’s Deference Standard Cannot Survive *Kisor***

1. *Kisor* repudiated the reflexive form of deference set forth in *Stinson*

In *Kisor*, the Court cleared up “mixed messages” about how courts should apply *Seminole Rock* deference. 588 U.S. at 574. At times, the Court observed, it had afforded deference to agencies without “significant analysis of the underlying” text or “without careful attention to the nature and context of the interpretation.” *Ibid.* In *Kisor*, however, the Court set the record straight: Deference should never be “reflexive,” and the Court disavowed the “classic

formulation” of *Seminole Rock* deference that suggested otherwise. *Ibid.* (citation omitted).

In place of reflexive deference, *Kisor* reiterated—and reinforced—the limits inherent in *Seminole Rock* deference. First, it explained, courts should defer to an agency’s interpretation only when they determine that a regulation is “genuinely ambiguous,” after exhausting all the traditional tools of construction. *Kisor*, 588 U.S. at 575. Second, even if a regulation exhibits genuine ambiguity, the agency’s reading still must be “reasonable.” *Ibid.* (citation omitted). And finally, “not every reasonable agency reading of a genuinely ambiguous rule should receive *Auer* deference”; instead, courts must independently determine “whether the character and context of the agency interpretation entitles it to controlling weight.” *Id.* at 576. It was with those limits—and only with those limits—that this Court preserved deference in the face of serious statutory and constitutional concerns. *See id.* at 580-586 (plurality opinion); *see also id.* at 590-591 (Roberts, C.J., concurring in part).

At a minimum, this Court should affirm that deference to the commentary must respect those same limits. In *Stinson*, the Court treated the commentary as analogous to “an agency’s interpretation of its own legislative rule.” 508 U.S. at 44. In doing so, it recited the “classic formulation” of *Seminole Rock* deference, *Kisor*, 588 U.S. at 574, *i.e.*, that commentary interpreting or explaining a guideline must be given “controlling weight unless it is plainly erroneous or inconsistent” with the Guideline, *Stinson*, 508 U.S. at 44-45 (quoting *Seminole Rock*, 325 U.S. at 414). *Kisor*, however, cast aside that standard as a “caricature of the doctrine,” 588 U.S. at 574, insisting instead that courts carefully consider “the text, structure, history,

and purpose” of the rule under review, *id.* at 575. Thus, if this Court wishes to continue affording the same deference to the commentary that it affords to “an agency’s interpretation of its own legislative rule,” *Stinson*, 508 U.S. at 44, it should follow the analogy where it leads: Commentary, no less than an executive agency’s interpretation, deserves deference only when it satisfies the standard set forth in *Kisor*.

The reasons to limit agency deference weigh even more heavily when courts interpret the Guidelines. Section 3553(a) calls on courts, not the Commission, to apply the Guidelines in every criminal sentencing, *see* pp. 16-17, *supra*, and reflexive deference leaves no room for “meaningful judicial review.” *Kisor*, 588 U.S. at 581 (citation omitted). Section 994, as explained, sets forth a reticulated scheme for amendments to the Guidelines, one that incorporates Section 553’s notice-and-comment requirements, and preserves for Congress a direct and meaningful role in the Guidelines amendment process. *See* p. 19, *supra*. Reflexive deference allows agencies to circumvent procedural limits on their rulemaking authority by repackaging substantive amendments as mere interpretations. *See Kisor*, 588 U.S. at 583-584. And separation-of-powers concerns loom even larger as to the Commission: Reflexive deference to commentary would vest in an unelected, quasi-judicial body the power to make sentencing policy, without the many procedural and political safeguards built into the statute. *See* Part I.A.3, *supra*. Neither the SRA nor the Constitution tolerates such a categorical deference regime.

## 2. *The court of appeals’ contrary conclusion is unfounded*

Several courts of appeals, including the Fifth Circuit, have nevertheless held that *Kisor* left *Stinson*

“untouched.” *United States v. Vargas*, 74 F.4th 673, 683 (5th Cir. 2023) (en banc); *see also United States v. Zheng*, 113 F.4th 280, 299-300 (2d Cir. 2024); *United States v. Moses*, 23 F.4th 347, 357 (4th Cir. 2022); *United States v. White*, 97 F.4th 532, 537-539 (7th Cir. 2024); *United States v. Maloid*, 71 F.4th 795, 805 (10th Cir. 2023). Those courts continue to assign commentary “controlling weight” unless it is a “plainly erroneous” reading of the Guideline. *Vargas*, 74 F.4th at 681 (citation omitted). That position is wrong, and none of the justifications for it have merit.

a. First, some courts of appeals have suggested that the “the Sentencing Commission’s unique nature and role warrant a distinct deference doctrine.” *Vargas*, 74 F.4th at 683; *see also White*, 97 F.4th at 539; *Maloid*, 71 F.4th at 806-807. *Kisor*, they observe, addressed “executive agencies,” not a commission within the judicial branch. *Maloid*, 71 F.4th at 806. And “[i]nstead of addressing the public, as agencies do,” the Guidelines Manual, including its commentary, “is directed at providing guidance to district judges tasked with the duty of imposing an individualized sentence on a criminal defendant.” *Vargas*, 74 F.4th at 682 (citation omitted); *see also Maloid*, 71 F.4th at 806-807.

True enough, the Commission and executive agencies are “different animals.” *Vargas*, 74 F.4th at 682. But as explained above, their differences mean this Court should afford the Commission *less* deference than that afforded to federal agencies, not *more*. The presumption that underlies deference has an even weaker footing in the criminal context than it does in the civil context. *See Part I.B.1, supra*. And none of the traditional justifications for *Seminole Rock* deference—an agency’s expertise, its insight into its

own rules, or its ability to promote uniformity—justify reflexive deference to the Commission when it interprets the Guidelines. *See* Part I.B.2, *supra*.

b. Second, some courts of appeals have distinguished Guidelines commentary from executive agency interpretations, like “letters, opinions, press releases, and legal briefs.” *Moses*, 23 F.4th at 355. The “formally published Guidelines Manual,” they observe, includes the Guidelines, policy statements, and official commentary. *Ibid*. Thus, these courts view the Guidelines and commentary as a “‘reticulated whole,’ that should be read as such.” *Zheng*, 113 F.4th at 299-300 (quoting *United States v. Rainford*, 110 F.4th 455, 475 n.5 (2d Cir. 2024)).

That view, however, ignores all the ways that the Guidelines are, by statute, different from commentary. Section 994, as explained, expressly authorizes the Commission to promulgate Guidelines (and policy statements), and it sets forth in extensive detail their function and domain. *See* 28 U.S.C. 994(a)-(n). Section 994 also requires that Guideline amendments run a procedural gauntlet before they become effective. *See* p. 19, *supra*. Section 995(d) distinguishes between Guidelines, policy statements, and all other actions for purposes of the quorum necessary to conduct business. *See* 28 U.S.C. 995(d). And section 3553(a) directs courts to consider the Guidelines (and policy statements) before imposing a sentence. 18 U.S.C. 3553(a). Commentary, by contrast, has almost no statutory pedigree (save for one provision—Section 3553(b)—that has been “[s]evered and excised,” *United States v. Booker*, 543 U.S. 220, 245 (2005)), and issues with no procedural safeguards. The Commission cannot collapse the

statutorily distinct roles of Guidelines and commentary simply by promulgating both in the same manual.

If anything, the fact that the Commission regularly issues commentary alongside the Guidelines decreases the case for deference. This Court has historically assigned weight to executive agency interpretations in part because they allow the agency to “answer[] a question that it did not anticipate” at the time it promulgated the rule. C. Sunstein and A. Vermeule, *The Unbearable Rightness of Auer*, 84 U. Chi. L. Rev. 297, 313-314 (2017); *Kisor*, 588 U.S. at 566 (plurality opinion). The same was true for *Chevron* deference—an agency has no power to amend statutes, so regulations were the only way to fill gaps in an “imprecise statute.” *Talk Am.*, 564 U.S. at 68 (Scalia, J., concurring). But when the Commission issues commentary at the same time as the Guidelines, this rationale is inapposite. Further, the Commission does not conduct enforcement actions or adjudications, which might require it to answer an unanticipated question before it can amend the Guidelines. See Sunstein, *supra*, at 313. Anything the Commission can say clearly in the commentary, it can say clearly in the text of the Guidelines itself. If the Commission opts not to do so, the SRA assigns consequences to the choice: Courts are required to “consider” the Guidelines at sentencing, but not the commentary. 18 U.S.C. 3553(a)(4).

c. Third, some courts of appeals have cited the Commission’s statutorily delegated role in promulgating and amending the Guidelines. See *Vargas*, 74 F.4th at 682-683. But executive agencies likewise issue regulations pursuant to their statutory authority. When a statute assigns rulemaking power to an agency, the statute authorizes the agency “to fill out

the statutory scheme.” *Kisor*, 588 U.S. at 572 (plurality opinion). Still, the authority to issue a rule does not carry with it authority to issue a controlling interpretation of that rule. That interpretive task always belongs to courts applying the rule. *See id.* at 574-575.

d. Finally, some courts of appeals have distinguished *Stinson* and *Kisor* because the *Stinson* Court stated that commentary could provide “concrete guidance as to how even *unambiguous* guidelines are to be applied in practice.” *Vargas*, 74 F.4th at 682 (emphasis in original). *Stinson*’s language is best read to refer to the Commission’s operational commentary, which helps facilitate the orderly administration of the Guidelines. *See* n.1, *supra*. That commentary is not at issue here. And the *Stinson* Court could not have meant that interpretive commentary prevails over an unambiguous Guideline. Even in the doctrine’s heyday, this Court never treated deference as a license to override text that speaks clearly, and *Stinson* embraced that rule. *See* 508 U.S. at 45. In any event, *Kisor* repudiated whatever “mixed messages” the Court’s precedent—including *Stinson*—may have sent. 588 U.S. at 574.

### **B. Applying *Kisor*, Courts Should Rarely, If Ever, Defer To The Commission’s Commentary**

Properly applied, *Kisor* should rarely lead courts to defer to the commentary; rather, courts almost always should independently determine the meaning of the Guidelines.

First, courts defer to an agency’s interpretation of its own regulation—if at all—only when a regulation exhibits genuine ambiguity. *Kisor*, 588 U.S. at 574-



575. When courts construe criminal provisions, however, they are bound by a different ambiguity doctrine—the rule of lenity. That doctrine precludes deference to commentary that would call for a harsher punishment. *See* pp. 24-26, *supra*.

This Court has repeatedly recognized that substantive canons, like the rule of lenity, take precedence over conflicting agency views. *See, e.g., SWANCC v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 173-174 (2001) (federalism canon); *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 574-575 (1988) (constitutional avoidance). Thus, when courts have exhausted the other tools of statutory interpretation, the rule of lenity—“the most venerable and venerated of interpretive principles”—must precede deference to the Commission. *Carter*, 736 F.3d at 731 (Sutton, J., concurring); *Wooden v. United States*, 595 U.S. 360, 395 (2022) (Gorsuch, J., concurring in the judgment) (“Where the traditional tools of statutory interpretation yield no clear answer, the judge’s next step . . . is to lenity.”); *cf. id.* at 378 (Kavanaugh, J., concurring) (recognizing that lenity has an “ambiguity trigger”).

Second, under *Kisor*, courts must also consider the “character and context” of the rule under review. 588 U.S. at 576. For the reasons explained in Part I.B, *supra*, the character and context of the Guidelines rarely warrant deference. To start, when the commentary resolves ambiguity in favor of greater punishment, “countervailing reasons”—fair notice, separation of powers, and liberty—all outweigh any case for deference. *Id.* at 573. In addition, the proper interpretation of most Guidelines “fall[s] more naturally into a judge’s bailiwick.” *Id.* at 578; *see* pp. 29-31, *supra*. While many regulations involve scientific or

specialized terms—the meaning of “active moiety” or what counts as a “diagnosis” from chest x-rays—that may be better understood by agencies than courts, *Kisor*, 588 U.S. at 567 (plurality opinion), most Guidelines import common legal terms familiar to courts. Courts that conduct thousands of federal sentencings each year have ample familiarity with the Guidelines and little cause for deference, even under *Kisor*.

### **III. STARE DECISIS DOES NOT PREVENT THIS COURT FROM REVISITING STINSON’S DEFERENCE STANDARD**

*Stare decisis* does not require this Court to retain *Stinson*’s statement of the deference standard.

1. This Court need not consider the *stare decisis* factors to discard *Stinson*’s deference standard. In the years since *Stinson* issued, this Court’s subsequent decisions have done more than “erode[]” the decision’s “underpinnings.” *United States v. Gaudin*, 515 U.S. 506, 521 (1995). The Court has substantially altered its judge-made deference doctrines, and it needs only “formalize what is evident” from *Kisor* and *Loper Bright*: *Stinson* no longer correctly states the rule for deference to the commentary. *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019).

Nor does *stare decisis* require the Court to replace *Stinson*’s deference standard with another form of deference, as the government suggests. See Br. in Opp’n 9. Two Terms ago, this Court reaffirmed that courts ordinarily must answer questions of law according to their independent judgment, and it therefore rejected deference to an agency’s statutory interpretation as “fundamentally misguided.” *Loper Bright*, 603 U.S. at 407. After *Loper Bright*, *Kisor*

itself is something of an “aberration,” *Flood v. Kuhn*, 407 U.S. 258, 282 (1972), and one best confined to the civil context, *see* Part I.B.1, *supra*.

Certainly, *stare decisis* does not compel deference to commentary—like the commentary at issue here—that would make the Guideline *more* punitive than the best reading of the Guideline’s text. This Court in *Stinson*, as explained, addressed interpretive commentary that narrowed the scope of a sentencing enhancement. *See* 508 U.S. at 38-39; *see also* p. 28, *supra*. It accordingly had no occasion to consider whether and how deference applies to commentary that renders a Guideline harsher. Further, the Court in *Stinson* lacked the benefit of a fully adversarial presentation, as the government and defendant agreed that the commentary was entitled to controlling weight. *See* 508 U.S. at 47. It would be “particularly wrongheaded to read [*Stinson*] for more than what it said” where the Court was presented with no counterarguments. *District of Columbia v. Heller*, 554 U.S. 570, 623 (2008).

2. Even if they applied, the *stare decisis* factors would not require adherence to *Stinson*, just as they did not save *Chevron* deference. *See Loper Bright*, 603 U.S. at 407-412.

*Stinson*, for all the reasons explained, embraces an “outmoded” interpretive methodology that “has been steadily eroded over the years,” *Rodriguez de Quijas v. Shearson / Am. Express, Inc.*, 490 U.S. 477, 480, 481 (1989), and which this Court formally rejected in *Loper Bright*. Where, as here, “later law has rendered the decision irreconcilable with competing legal doctrines,” this Court “has not hesitated to overrule an earlier decision.” *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989).

Deference also needlessly complicates sentencing, particularly in a post-*Booker* world. After *Booker*, deference forces courts to engage in a “complicate[d],” multi-step test to determine whether commentary warrants deference, *Loper Bright*, 603 U.S. at 409, all to determine the meaning of a provision the district court need not follow. At best, that process creates needless make-work. At worst, it leaves defendants, families, and victims baffled by the “dizzying breakdance.” *Ibid.*

Conversely, eliminating *Stinson*’s deference standard will not have a destabilizing effect on the law. First, several courts of appeals have already recognized that *Stinson*’s formulation of the deference standard cannot survive *Kisor*. See p. 2, *supra* (collecting cases). Courts in those circuits follow their own legal judgment in determining the best meaning of the Guidelines.

Second, the Commission itself can reaffirm precedents that rely on *Stinson* by moving the commentary to the text. The Commission has a statutory mandate to consider amendments to the Guidelines every year, and it is institutionally designed to respond to legal change. See nn. 4-5, *supra*. Indeed, the Commission is in the process of a “multiyear study of the Guidelines Manual to address case law concerning the validity and enforceability of guideline commentary, and possible consideration of amendments that might be appropriate.” 88 Fed. Reg. 60,536, 60,537 (Sept. 1, 2023). And it has already begun to amend the Guidelines accordingly. See, e.g., U.S.S.G. App. C, amendment 822 (effective Nov. 1, 2023) (“moving, without change,” definitions of terms from commentary “to the text of the guideline,” “to address a circuit conflict regarding the authoritative weight afforded to

certain commentary to § 4B1.2” in light of *Kisor*). Moving forward, if the Commission does not move a piece of commentary to the Guidelines text, that choice may indicate that the Commission has recognized developments that call for a different result. Or, Congress might, as a matter of policy, reject the Commission’s attempt to move commentary. Either way, any precedent that cannot survive without deference will be abrogated for good reason.

In all events, the Commission may continue to issue non-binding commentary to aid courts in their interpretive work, and courts can continue to follow commentary that comports with the Guidelines’ text and that is persuasive on the merits. *See Skidmore*, 323 U.S. at 140. But if and when the commentary does not reflect the best reading of a Guideline, this Court should be clear: The Guideline’s text must control.

#### **IV. THIS COURT SHOULD VACATE AND REMAND FOR THE COURT OF APPEALS TO PROPERLY INTERPRET SECTION 2K2.1(a)(3)**

The Court should vacate and remand so that the court of appeals can consider in the first instance the proper interpretation of Section 2K2.1(a)(3). Section 2K2.1’s sentencing enhancement applies only to offenses involving a “semiautomatic firearm that is capable of accepting a large capacity magazine.” U.S.S.G. 2K2.1(a)(3). The plain text of that enhancement does not cover Mr. Beaird’s offense involving a Glock 17 firearm.

1. The courts below made no effort to analyze the text and structure of Section 2K2.1(a)(3) in order to determine its best meaning. Instead, they applied circuit precedent holding that the “commentary’s

definition of ‘large capacity magazine’ is authoritative under *Stinson*,” such that they were bound to follow the commentary. *United States v. Martin*, 119 F.4th 410, 415 (5th Cir. 2024); *see also* Pet. App. A2 (adhering to *Martin*); J.A. 18 (recognizing that Fifth Circuit law foreclosed Mr. Beaird’s objection). Indeed, the court of appeals believed that, “under *Stinson*, the commentary controls even unambiguous guidelines.” *Vargas*, 74 F.4th at 682.

That was wrong. The court of appeals should not have afforded any deference to the commentary. At a minimum, the court “jumped the gun” in doing so, as it failed to consider whether the Guideline exhibited genuine ambiguity, or whether deference was appropriate in the event of such ambiguity. *Kisor*, 588 U.S. at 589-590.

2. Without deference, there is no basis for applying the large capacity magazine enhancement to Mr. Beaird’s offense, which involved the Glock 17’s factory-issued and industry-standard pistol magazine.

First, “a word is known by the company it keeps.” *Dubin v. United States*, 599 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 568-569 (2016)). Even if the phrase “large capacity magazine,” U.S.S.G. 2K2.1(a)(3), is “indeterminate in isolation,” *Dubin*, 599 U.S. at 124, it is paired with “a semiautomatic firearm,” meaning the relevant question is whether a magazine’s capacity is “large” *for a semiautomatic firearm*.

A seventeen-round magazine is not large for a semiautomatic firearm. The AR-15, “[t]he most popular rifle in the country,” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025), is a semiautomatic that comes standard with a

30-round magazine. Indeed, nearly half—448 million—of the 963 million detachable magazines owned by civilians are rifle magazines with capacities of 30 rounds or more. National Shooting Sports Foundation, *Detachable Magazine Report 1990-2021* at 3 (2024), <https://perma.cc/CU58-C3FT>. Plainly, there is no textual basis for concluding that a standard, seventeen-round pistol magazine is “large capacity” for a semiautomatic firearm, especially when the typical semiautomatic firearm magazine holds 30 rounds or more.

Second, the structure of the enhancement suggests that it is meant to capture unusually dangerous weapons. Section 2K2.1 punishes possession of a “semiautomatic firearm that is capable of accepting a large capacity magazine” in the same way it punishes crimes involving dangerous and unusual weapons like machine guns, sawed-off shotguns, and “destructive device[s].” U.S.S.G. 2K2.1(a)(1), (3), (4)(B); *see* 26 U.S.C. 5845(a). A Glock 17 pistol, perhaps the country’s most ubiquitous firearm, is categorically different from the listed examples.

For all these reasons, the court of appeals erred in its application of U.S.S.G. 2K2.1(a)(3) to Mr. Beaird’s offense. Consistent with this Court’s ordinary practice, it should vacate and remand for the court of appeals to consider in the first instance the proper interpretation of the Guideline.

**CONCLUSION**

The judgment of the Fifth Circuit should be vacated.

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June 30, 2026



## **APPENDIX**

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**18 U.S.C. 3553. Imposition of a sentence**

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress

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(regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

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(7) the need to provide restitution to any victims of the offense.

(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—

(1) In general.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.—

(A) Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a

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sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

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In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule

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of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,[] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.



**18 U.S.C. 3742. Review of a sentence**

(a) **APPEAL BY A DEFENDANT.**—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
- (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(b) **APPEAL BY THE GOVERNMENT.**—The Government may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence--

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment, probation, or supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under section

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3563(b)(6) or (b)(11) than the minimum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

**28 U.S.C. 994. Duties of the Commission**

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11) of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

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(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

(b)(1) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

(2) If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the

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minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment.

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(o) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons

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therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

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(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

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(x) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

**28 U.S.C. 995. Powers of the Commission**

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(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a)(1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b). The Commission shall, with respect to its activities under subsections (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), to the extent practicable, utilize existing resources of the Administrative Office of the United States Courts and the Federal Judicial Center for the purpose of avoiding unnecessary duplication.

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(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994, the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

**United States Sentencing Guideline 2K2.1.  
Unlawful Receipt, Possession, or Transportation  
of Firearms or Ammunition; Prohibited Trans-  
actions Involving Firearms or Ammunition**

(a) Base Offense Level (Apply the Greatest):

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(3) **22**, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

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**Application Notes**

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<2. Semiautomatic Firearm That Is Capable of Accepting a Large Capacity Magazine.—For purposes of subsections (a)(1), (a)(3), and (a)(4), a “semiautomatic firearm that is capable of accepting a large capacity magazine” means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (A) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (B) a magazine or similar device that could accept more than 15 rounds of ammunition was in close proximity to the firearm. This definition does not include a semiautomatic firearm with an attached tubular device capable of operating only with .22 caliber rim fire ammunition.>