

No. 25-5343

In the Supreme Court of the United States

KENDRICK JARRELL BEAIRD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

**BRIEF OF THE CATO INSTITUTE AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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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.

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INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

This case interests Cato because it involves an extra-legislative power to make law-like interpretations that can cost people years of freedom.

¹ Rule 37 statement: No party's counsel authored this brief in any part and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The American government operates on a division of labor: the legislature makes law, the executive implements law, and the judiciary interprets law. In *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), this Court definitively rejected agencies’ appropriation of the power to interpret ambiguous statutes. Here, we ask the Court to reject agencies’ appropriation of the power to interpret ambiguous regulations. Allowing agencies to wield both the power to make law and the power to interpret it violates the separation of powers, encourages agencies to make bad rules, and displaces traditional canons of construction.

Petitioner Kendrick Jarrell Beaird entered a guilty plea to a single count of felon-in-possession of a firearm under 18 U.S.C. § 922(g)(1). Pet. Br. 9. The Presentence Report applied an enhanced sentence based on Mr. Beaird’s possession of a “large capacity magazine, increasing his guideline range from 51–63 months to 63–78 months.” *Id.* This finding was based on the district court’s deference to U.S. Sentencing Guidelines commentary, which defined “large capacity magazine” as any magazine that accepts more than 15 rounds of ammunition. *Id.* Mr. Beaird objected to the court’s reliance on the commentary, but the district court overruled his objection. On appeal, the Fifth Circuit affirmed. *Id.* This Court granted certiorari to determine what deference is owed to the commentary.

Stinson v. United States sets the current standard. 508 U.S. 36 (1993). In *Stinson*, this Court held that because the U.S. Sentencing Commission “drafts the guidelines as well as the commentary interpreting

them,” the latter should be treated as “an agency’s interpretation of its own legislative rule”—and so receive the deference an agency receives when interpreting its own regulations. *Id.* at 45. This variety of deference provides that an agency’s interpretation becomes the “ultimate criterion” for what an agency’s own regulation means. *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945); *see also Auer v. Robbins*, 519 U.S. 452 (1997). *Stinson* thus held that the commentary controls unless it “violates the Constitution or a federal statute” or is “plainly erroneous or inconsistent with the regulation.” 508 U.S. at 45 (quoting *Seminole Rock*, 325 U.S. at 414 (internal citation omitted)).

Seminole Rock deference gives agencies both the power to make the law and the power to determine what the law means, collapsing the Constitution’s careful division of power. It also encourages them to write regulations poorly and then come up with convenient post hoc interpretations. This deference is uniquely dangerous in the hands of the U.S. Sentencing Commission given how insulated it is from public pressure and political accountability. Damage to the coherence of the law as a whole has followed from *Seminole Rock* as agency deference replaces core legal principles—such as the rule of lenity—with regulators’ own glosses. This Court should overrule *Seminole Rock* and reverse the decision below.

ARGUMENT

I. *SEMINOLE ROCK* DEFERENCE VIOLATES THE SEPARATION OF POWERS.

Seminole Rock violates the separation of powers because it places the power to make law and the power to interpret it in the same hands. *See Decker v. Nw.*

Env't Def. Ctr., 568 U.S. 597, 619 (2013) (Scalia, J., concurring in part and dissenting in part). Montesquieu warned: “When the legislative and executive powers are united in the same person . . . there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.” *Id.* (quoting 11 BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* [1748] 151–52 (O. Piest ed., T. Nugent trans. 1949)). Blackstone condemned the practice of resolving legal ambiguity by submitting the question to the sovereign who enacted the law in the first place. *Id.* at 620 (citing 1 WILLIAM BLACKSTONE, *COMMENTARIES* *58).

The Framers agreed with these authorities and believed that the integrity of legal interpretation depends on the judiciary’s independence from lawmaking. *See Kisor v. Wilkie*, 588 U.S. 558, 614 (2019) (Gorsuch, J., concurring in the judgment) (explaining that Article III insulates courts from political pressure to guarantee “an independent judiciary” that “could better guard the people from the arbitrary use of governmental power”). The Constitutional Convention considered establishing a “Council of Revision” that would have given the judiciary a role in lawmaking. John F. Manning, *Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 COLUM. L. REV. 612, 643 (1996). But they ultimately rejected this proposal because combining “Legislators” with “Expositors of the Laws . . . ought never to be done.” *Id.* at 643–44 (quoting 2 *THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, at 73, 75 (Max Farrand ed., 1966) (quotation marks omitted)). They likewise “resisted proposals that would have subjected judicial decisions to review by political actors.” *Kisor*, 588 U.S.

at 614 (Gorsuch, J., concurring in the judgment) (citing THE FEDERALIST No. 81 (Hamilton)). They designed a judiciary “able to interpret the laws ‘free from potential domination by other branches of government.’” *Id.* (quoting *United States v. Will*, 449 U.S. 200, 218 (1980)).

Accordingly, Article III vests “judicial Power” exclusively in the federal courts. *Id.* at 612 (citing U.S. CONST. art. III, § 1). Judges are “dutybound to exercise independent judgment in applying the law.” *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 122 (2015) (Thomas, J., concurring in the judgment). Further, they are insulated from pressures that may distort legal interpretation: they apply neutral and established tools of construction, are bound by precedent, and have no institutional stake in the outcome.

As Justice Thomas has observed, this makes them the best authority for resolving ambiguities in regulations. *Id.* The independence guaranteed to the judiciary is absent from most agencies (though the U.S. Sentencing Commission is unusual in this regard, as discussed below). Each new administration brings new agency leadership and policy goals, which may drive the reinterpretation of rules and regulations. This dynamic is essential for political accountability, *see generally Trump v. Slaughter*, 609 U.S. ____ (June 29, 2026) (slip op.)—yet it conflicts with the consistency and independence that the law demands. *See Perez*, 575 U.S. at 122 (Thomas, J., concurring in the judgment) (“Interpreting agency regulations calls for [the] exercise of independent judgment.”); THE FEDERALIST No. 81 (Hamilton) (“The same spirit which had operated in making [laws] would be too apt in interpreting them.”).

Seminole Rock deference flouts these principles. Whenever a regulation is ambiguous, this doctrine gives the agency that wrote it the power to decide its meaning. *Seminole Rock*, 325 U.S. at 413–14. Unlike Congress, which must make law through bicameralism and presentment, the agency does this through an internal act—and one not subject to the procedural constraints of rulemaking at that. It is one thing for the resulting interpretive judgments to guide agencies in applying their rules to particular circumstances. But *Seminole Rock* deference has agency interpretations trespass upon the prerogatives of a separate branch of government—it requires Article III courts to yield their independent judgment to the Article II agency’s (policy preference-shaped) reading.

Seminole Rock cited nothing in support of this deference. It simply declared that an agency’s interpretation “becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.” *Id.* at 414. Thus was born a doctrine under which an agency “both made the law, via promulgation of its regulation, and interpreted that ‘law,’ by receiving controlling deference for its interpretation.” Kevin O. Leske, *Splits in the Rock: The Conflicting Interpretations of the Seminole Rock Deference Doctrine by the U.S. Courts of Appeals*, 66 ADMIN. L. REV. 787, 790 (2014); see also *Decker*, 568 U.S. at 616–17 (Scalia, J., concurring in part and dissenting in part) (noting that *Seminole Rock* gives “agencies the authority to say what their rules mean, under the harmless-sounding banner of ‘defer[ring] to an agency’s interpretation of its own regulations’”) (internal citation omitted). This violates “a fundamental principle of separation of powers” by placing “the power to write a law and the power to in-

terpret it . . . in the same hands.” *Decker*, 568 U.S. at 619 (Scalia, J., concurring in part and dissenting in part).

This Court’s opinion in *Kisor v. Wilkie* tried to patch the problems *Seminole Rock* causes by requiring courts to exhaust all “traditional tools” of construction and make an “independent inquiry” before deferring to an agency. 588 U.S. at 575. But *Kisor* is a Band-Aid, not a cure. It still requires courts to defer to an agency’s construction of its own ambiguous regulation. *Id.* at 567. Any rule that gives an agency’s reading “controlling weight” over a court’s independent judgment violates Article III.

Seminole Rock deference creates “a fusion of law-making and law-exposition” that “is especially dangerous to our liberties.” Manning, *supra*, at 617. This Court should overrule *Seminole Rock*.

II. SEMINOLE ROCK DEFERENCE ENCOURAGES THE CREATION OF BAD RULES.

In addition to its doctrinal shortcomings, *Seminole Rock* deference rewards agencies for producing bad rules. *See id.* If an agency authors an ambiguous regulation, it enjoys controlling weight over its meaning. “Whether purposeful or not, the agency’s failure to write a clear regulation winds up increasing its power, allowing it to both write and interpret rules that bear the force of law” *Kisor*, 588 U.S. at 618 (Gorsuch, J., concurring in the judgment). *Seminole Rock* incentivizes agencies to make vague rules.

This effect is compounded by the complexities involved in actual rulemaking. Agency rulemaking is expensive and time-consuming. *See Manning, supra*, at

655. In the notice-and-comment system, the public and Congress have opportunities to weigh in before a regulation takes effect. The “political and monetary” costs “rise with each increase in the precision and clarity of administrative rules.” *Id.*

Under *Seminole Rock*, agencies have an easy alternative. By keeping regulations vague, they avoid the burdens of precise drafting while saving the hard work for mere “commentary.” *See Perez*, 575 U.S. at 126–27 (Thomas, J., concurring in the judgment); Matthew C. Stephenson & Miri Pogoriler, *Seminole Rock’s Domain*, 79 GEO. WASH. L. REV. 1449, 1461 (2011). The upshot for agencies is “a significantly enhanced, and potentially destructive, freedom to exercise less care in expression—whether deliberately or by omission.” Manning, *supra*, at 656. Interpretations evade “the ex ante constraint of meaningful procedural safeguards or the ex post check of rigorous judicial review.” Stephenson & Pogoriler, *supra*, at 1461.

This arrangement shifts the burdens of regulation from agencies onto the regulated, who often receive no forewarning of the standards to which they will be held. *See Perez*, 575 U.S. at 126 (Thomas, J., concurring in the judgment) (explaining that agencies can “change the meaning of regulations at their discretion and without any advance notice to parties.”).

The federal criminal sentencing context exemplifies the dangers this scheme poses to ordered liberty. Unlike many agencies whose officials serve at the pleasure of the president, U.S. Sentencing Commission members serve fixed terms and are removable only “for neglect of duty or malfeasance in office or for other good cause shown.” *Mistretta v. United States*,

488 U.S. 361, 368 (1989). The Commission is not even “subject to the control of the President.” *Id.* at 420 (Scalia, J., dissenting). It escapes even the limited checks that ordinarily apply to regulation. *See generally Slaughter*, 609 U.S. ____.

Yet the Sentencing Guidelines it enacts “have the force and effect of laws, prescribing the sentences criminal defendants are to receive.” *Mistretta*, 488 U.S. at 413 (Scalia, J., dissenting) (“A judge who disregards [the Guidelines] will be reversed.”). The Guidelines “affect significant liberty interests,” deciding the length of people’s prison sentences. Kevin O. Leske, *A New Split in the Rock: Reflexive Deference under Stinson or Cabined Deference under Kisor?*, 74 ADMIN. L. REV. 761, 766 (2022).

Removed though the Commission is from direct presidential control, at least it can change the Guidelines themselves only through a multi-step process. John S. Acton, *The Future of Judicial Deference to the Commentary of the United States Sentencing Guidelines*, 45 HARV. J.L. & PUB. POL’Y 349, 351 (2022). It must first consult with various authorities, “including the Judicial Conference of the United States, the Criminal Division of the Department of Justice, and the Federal Public Defenders”—then follow the Administrative Procedure Act’s notice-and-comment rulemaking process. *Id.* at 351–52. Finally, it must submit any proposed amendments to Congress for approval. *Id.* at 352.

By contrast, Guideline commentary is written and approved by the Commission alone. *Id.* It is not subject to notice-and-comment rulemaking and is not submitted to Congress. *Id.*

The practical effect of the *Seminole Rock* deference the Commission enjoys under *Stinson* is that it can do through commentary what it cannot do through the Guidelines themselves—impose binding legal rules without congressional review, without public notice and comment, and without any outside check, including from the president’s removal powers.

One might object that the Commission’s insulation from political pressure cuts the other way: because *Mistretta* upheld the Commission as a body exercising “peculiarly” judicial-branch-adjacent functions, 488 U.S. at 407, the usual separation-of-powers objection to combining lawmaking and interpretation may not apply with full force. But the danger of *Seminole Rock* deference is not that an agency exercising interpretive power is not accountable to the president—it is that the same body writes the ambiguity and then resolves it, with no institutional check in between. The Commission’s insulation from removal does not cure that defect—it removes the one external constraint (political oversight) that might otherwise discipline an ordinary agency’s temptation to draft loosely and interpret expansively. The Commission cannot borrow judicial legitimacy for its lawmaking while claiming executive deference for its interpretation of those same laws.

For Mr. Beaird, the license to regulate matters. The Guidelines do not define “large capacity magazine.” Rather than amend them through formal rulemaking, the Commission simply appended commentary determining what counts as a “large capacity magazine” and triggers an enhanced sentence. Pet. Br. 9. A vague Guideline is the foundation upon which the Commission’s precise commentary rests, and that commentary

is the reason why Mr. Beaird will serve 72 months—instead of a maximum of 63 months—in prison. *Id.*

This result undermines not just the separation of powers, but other core legal principles as well.

III. *SEMINOLE ROCK* DEFERENCE DAMAGES CORE LEGAL PRINCIPLES.

Seminole Rock deference surmounts other key interpretive tools—most notably for Mr. Beaird, the rule of lenity. The rule of lenity is among the oldest canons of construction in the common law. This Court has described it as “perhaps not much less old than construction itself.” *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820). It originated in 16th-century England, gained broad acceptance in the 17th century, and has been applied by American courts since the Founding. *Johnson v. United States*, 576 U.S. 591, 613–14 (2015) (Thomas, J., concurring in the judgment). It directs courts to resolve ambiguity in criminal laws in favor of the defendant’s liberty, burdening the government with clarifying the law before it can impose penal consequences. *United States v. Davis*, 588 U.S. 445, 464–65 (2019). It exists to promote “fair notice to those subject to the criminal laws, to minimize the risk of selective or arbitrary enforcement, and to maintain the proper balance between Congress, prosecutors, and courts.” *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

Seminole Rock deference endangers the rule of lenity. See *United States v. Nasir*, 17 F.4th 459, 473–74 (3d Cir. 2021) (en banc) (Bibas, J., concurring). Under *Stinson*, Guidelines commentary controls unless it “violates the Constitution or a federal statute” or is “plainly erroneous,” 508 U.S. at 38. This has resulted

in confusion among the lower courts. Since *Kisor*, lower courts have splintered as to how and whether to apply *Stinson*. Some hold that *Kisor*’s command to exhaust traditional tools of construction before deferring necessarily includes the rule of lenity. See *Nasir*, 17 F.4th at 473–74 (Bibas, J., concurring); *United States v. Riccardi*, 989 F.3d 479, 485–86 (6th Cir. 2021). Others hold that *Stinson* survives *Kisor* intact. See *United States v. White*, 97 F.4th 532, 539 (7th Cir. 2024); *United States v. Maloid*, 71 F.4th 795, 817 (10th Cir. 2023). As the D.C. Circuit has summarized, “it is not obvious how the rule of lenity is squared with *Stinson*’s description of the commentary’s authority to interpret guidelines.” *United States v. Winstead*, 890 F.3d 1082, 1092 n.14 (D.C. Cir. 2018).

This circuit split reflects a serious problem. Under *Seminole Rock*, even as glossed by *Kisor*, courts cannot decide when a traditional canon like the rule of lenity gets to operate. A court can follow *Stinson* literally and ask only whether the commentary is “plainly erroneous.” In this scenario, the commentary controls regardless of the rule of lenity. Or a court can follow *Kisor* and ask whether a Guideline is “genuinely ambiguous” after exhausting traditional tools of construction—but this begs the question of whether the rule of lenity is one such rule. The place of the rule of lenity, and other interpretive doctrines, is itself ambiguous.

This difficulty is not unique to criminal sentencing and does not justify carving out a mere exception to *Seminole Rock*. Yet the rule of lenity’s tenuous position—and the resulting stakes for defendants—shows the extent of the rot this extraordinary deference causes. The confusion on display here is the predicta-

ble result of a doctrine that contorts the law to conform to agency preference.

CONCLUSION

This Court should extinguish *Seminole Rock* deference and restore the division between lawmaking and interpretation reflected in the constitutional design.

Respectfully submitted,

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