No. 25-5343

IN THE

Supreme Court of the United States

KENDRICK JARRELL BEAIRD,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF OF COURT-APPOINTED AMICUS CURIAE ANTHONY J. DICK

Anthony J. Dick
Counsel of Record
Bijan M. Aboutorabi
Nicholas J. Grandpre
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
ajdick@jonesday.com

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, Kendrick Jarrell Beaird, was the defendant-appellant in the court below. Respondent, the United States of America, was the plaintiff-appellee.

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INTEREST OF AMICUS CURIAE

This Court invited Anthony J. Dick to brief and argue this case as amicus curiae in support of the position that *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.[1]

PROVISIONS INVOLVED

Relevant statutes, guidelines, and rules are reproduced in the appendix to this brief.

[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae and his firm made a monetary contribution to this brief's preparation or submission.

INTRODUCTION

In *Kisor v. Wilkie*, a fractured bare majority of this Court relied on *stare decisis* to preserve a controversial "presumption" that Congress implicitly delegates authority to agencies to resolve whatever ambiguities may exist in the binding regulations they promulgate. 588 U.S. 558, 573 (2019). To salvage that doctrine, the Court recognized a series of "limits" on when the presumption of implied delegation arises. *Id*. at 574. Those limits reflect that, "when the reasons for that presumption do not apply . . . courts should not give deference" to the agency. *Id*. at 573.

Whatever the merits of *Kisor*'s approach, it does not apply here. This case involves an *express* authorization, not any "presumption" of implied delegation. In the Sentencing Reform Act, Congress authorized the United States Sentencing Commission to promulgate not only sentencing guidelines, but also authoritative "policy statements" on how the guidelines should be applied. 28 U.S.C. § 994(a)(2). The Guidelines Manual's commentary is an exercise of that explicit authority. Thus, the commentary controls so long as it stays within the bounds of legitimate interpretation—unless it is "inconsistent with, or a plainly erroneous reading of" the guidelines. *Stinson v. United States*, 508 U.S. 36, 38 (1993).

Stinson's holding was right on day one, and it remains right now. It is not subject to *Kisor*'s limits on the supposed implied presumption that "Congress would generally want the agency to play the primary role in resolving regulatory ambiguities." 588 U.S. at 569. *Stinson* does not depend on any such implied presumption. It rests on express statutory authority that is just as sturdy today as it was then.

If anything, *Stinson's* merits have only strengthened over time. Since the guidelines became "effectively advisory" after *United States v. Booker*, 543 U.S. 220, 245 (2005), deferring to the Commission's reading of them does not create any of the serious rule-of-law concerns that usually come from deferring to agencies' interpretation of binding regulations. Under *Booker*, the guidelines do not bind any private actor or even limit the discretion of courts in sentencing. They simply give the Commission's recommendation on the proper sentence within the statutory range, to provide a consistent starting point for sentencing in like cases. Although courts must properly calculate the guidelines range and reasonably consider it as a recommendation, they need not follow it. Given that purely advisory role, it makes sense for courts to defer to the commentary on the meaning of the Commission's own non-binding advice.

By contrast, importing the *Kisor* framework into the sentencing guidelines would be a serious mistake. Because *Kisor* makes "ambiguity" the trigger for deference, it collides with this Court's more recent recognition that any such ambiguity-based approach is hopelessly "unworkable." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407-08 (2024). After all, since "ambiguity has always evaded meaningful definition," this "impressionistic and malleable concept cannot stand as an every-day test for allocating interpretive authority between courts and agencies." *Id*. To the extent *Kisor*'s approach remains viable at all after *Loper Bright*, it should be strictly quarantined. It should not be spread to the new context of criminal sentencing.

The primary concern about *Stinson* is that it allows commentary to authoritatively interpret the guidelines without undergoing the two-track process of notice and comment and congressional review required for the guidelines themselves. But that is simply a feature of the statute Congress enacted, which expressly requires that process only for "guidelines." 28 U.S.C. § 994(p), (x). Congress did not require the same process for subsidiary interpretive commentary because its scope is much more limited. Commentary must operate within the bounds of the guidelines; it can only interpret and apply them, but cannot fundamentally change them or say anything "inconsistent" with them. *Stinson*, 508 U.S. at 38.

Moreover, this process concern is almost entirely academic, as the Commission's longstanding practice has been to promulgate the commentary alongside the guidelines as part of the same two-track process of notice and comment and congressional review. Indeed, the Commission's own internal regulations require that the commentary follow this process by default, which it almost always has. As a result, virtually all commentary—including the provision at issue here—went through the full process alongside the guidelines. The guidelines and commentary appear together in the Guidelines Manual as an integrated whole that went through the same process, with only rare exceptions. Accordingly, virtually all commentary can be independently justified as an exercise of the Commission's core authority to promulgate the guidelines themselves. It would make no sense to say that the guidelines should be interpreted separately like standalone statutes, ignoring the intertwined commentary promulgated with them.

Finally, if there were any doubt, the *stare decisis* factors eliminate it. Far from being egregiously wrong, *Stinson*'s holding on the Commission's statutory power to issue commentary interpreting the guidelines is simply correct. Congress has long been aware of *Stinson*'s holding on the Commission's statutory authority, it has been reviewing guidelines and commentary all throughout that time, and yet it has never acted to overturn *Stinson*. The rule established in *Stinson* has also proved workable for decades—far more so than the alternatives—and the reliance interests are robust. For nearly 40 years, the Guidelines Manual has been built on the understanding that the commentary authoritatively interprets the guidelines. The Commission has even drafted the guidelines with critical terms specifically defined in the commentary, as this case illustrates. And countless criminal sentences have been calculated based on *Stinson* deference. Overruling *Stinson* now would thus create a mess for the Commission and the lower courts, sowing confusion and subverting the guidelines' purpose of promoting consistency and predictability in sentencing.

STATEMENT OF THE CASE

A. The Sentencing Reform Act

In 1984, Congress passed and President Reagan signed the Sentencing Reform Act. Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987. The Act was a sweeping "overhaul" of "federal sentencing practices" that sought to "channel" federal district courts' previously unguided sentencing discretion toward more determinate and consistent outcomes. *Tapia v. United States*, 564 U.S. 319, 325 (2011).

1. The Act created the Sentencing Commission to "establish sentencing policies and practices for the Federal criminal justice system." 28 U.S.C. § 991(b). The Act makes the Commission responsible for "promulgat[ing]" and periodically amending "guidelines" to be used by federal sentencing courts. *Id.* § 994(a)(1), (o), (p). It also tasks the Commission with "promulgat[ing]" "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 substantive "purposes" of sentencing, *id.* § 994(a)(2), which the Act specifies, *see* 18 U.S.C. § 3553(a)(2).

The Commission is not an executive agency, so the Administrative Procedure Act (APA) does not generally apply to it. *United States v. Lopez*, 938 F.2d 1293, 1297 (D.C. Cir. 1991). Under the Act's procedural provisions, however, "guidelines" promulgated under § 994(a)(1) must follow the notice-and-comment process that the APA requires for executive-agency rulemaking. 28 U.S.C. § 994(x) (incorporating 5 U.S.C. § 553). "[G]uidelines" must also be submitted to Congress at least 180 days before taking effect. *Id.* § 994(p). By their terms, however, those procedural provisions do not apply to "policy statements" promulgated under § 994(a)(2).

The Act empowers the Commission to "establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of" the Act. *Id.* § 995(a)(1). Under that authority, the Commission has established internal Rules of Practice and Procedure that it follows in issuing "guidelines" and "policy statements." *See, e.g.*, U.S. Sent. Comm'n R. 2.2(b), 4.1, 4.3.

2. The Act also created a provision, 18 U.S.C. § 3553(a), that regulates district courts' discretionary sentencing decisions in both substantive and procedural ways. Substantively, every sentence must be "sufficient, but not greater than necessary to comply with" the Act's approved penological "purposes." *Id.* Procedurally, sentencing courts must "consider" several factors when determining what "particular sentence" is "sufficient" in each case. *Id.* Those factors include "the kinds of sentence and the sentencing range" specified in the "applicable" "guidelines" "issued by the Sentencing Commission pursuant to [§] 994(a)(1)," § 3553(a)(4), as well as "any pertinent policy statement" "issued by the Sentencing Commission pursuant to [§] 994(a)(2)," § 3553(a)(5).

Sentencing courts thus have a procedural obligation to "consult th[e] Guidelines and take them into account." *Booker*, 543 U.S. at 264 (citing § 3553(a)(4)-(5)). But they are "not bound to apply the Guidelines." *Id.* The guidelines merely "guide district courts in exercising their discretion" in finding the correct sentence for each case; they "do not constrain that discretion." *Beckles v. United States*, 580 U.S. 256, 265 (2017). They are, in a word, "advisory." *Id.* A sentencing court is free to reject the Commission's recommendation by sentencing outside the advisory guidelines range; it is even free to "categorically reject" the Commission's policy judgments. *Spears v. United States*, 555 U.S. 261, 263 (2009) (per curiam); *see also Kimbrough v. United States*, 552 U.S. 85, 101 (2007). The sentencing court has the ultimate responsibility for determining what sentence is "sufficient, but not greater than necessary." § 3553(a).

To be sure, Congress "intended to create" a "mandatory Guidelines system." *Booker*, 543 U.S. at 265. That is why 18 U.S.C. § 3553(b) (eventually, § 3553(b)(1)) made the guidelines "range[] referred to in [§ 3553(a)](4)" an iron cage in nearly all cases, leaving courts minimal discretion to reweigh any "circumstances" that the Commission had "adequately taken into consideration in formulating the guidelines." 18 U.S.C. § 3553(b) (Supp. II 1984). But, in *Booker*, this Court "severed and excised" that provision, which was unconstitutional in too many applications to remain a workable part of the "statutory scheme." 543 U.S. at 245, 247. So § 3553(a) now stands alone and "functions independently," *Booker*, 543 U.S. at 259 (cleaned up), making the guidelines advice that must be "consider[ed]" but not necessarily followed, 18 U.S.C. § 3553(a).

3. Another of the Act's reforms was enabling widespread appellate review of sentences within statutory limits. *See id.* §§ 3557, 3742. Congress wanted the Courts of Appeals to police application of the guidelines. *See id.* § 3742(e), (f). But, here too, it did not get the system it intended. *Booker*, 543 U.S. at 245. Under this Court's severability-based reading of the Act, "appellate review of sentencing decisions is limited to determining whether they are 'reasonable'" under "the familiar abuse-of-discretion standard of review." *Gall v. United States*, 552 U.S. 38, 46 (2007). Since "the Guidelines are advisory," that deferential standard applies "[r]egardless of whether the sentence imposed is inside or outside the Guidelines range," and appellate courts "may not apply a presumption of unreasonableness" to outside-guidelines sentences. *Id.* at 46, 51.

B. The Guidelines Manual

The Sentencing Reform Act did not specify any format for the "guidelines" and "policy statements" that the Commission would issue. Since 1987, however, the Commission has annually published the Guidelines Manual: an integrated, book-length document presenting the Commission's work "as a reticulated whole." *United States v. Moses*, 23 F.4th 347, 355 (4th Cir. 2022). The Manual is organized into "chapters," "parts," "subparts," and alphanumerically labeled sections. U.S.S.G. § 1B1.6 (1987; 2025). Most sections are considered "individual guidelines," while others are identified as "[p]olicy statements." *Id.*

In many Manual sections, the main text is followed by what the Commission has called "commentary," often also labeled "application notes." These labels, unlike "guidelines" and "policy statements," did not come from the Act, but were the Commission's own nomenclature. Every public draft of what became the Guidelines Manual contained extensive "commentary," and each made clear that the commentary would interpret and explain the guidelines.[2] "The initial guidelines, policy statements, and commentary" were drafted as an integrated whole, and it was in that form that they were first "submitted to Congress on April 13, 1987." 52 Fed. Reg. 18,046, 18,046 (May 13, 1987).

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[2] 51 Fed. Reg. 35,080, 35,085 (Oct. 1, 1986) ("A commentary is provided where necessary to explain the guideline in greater detail[.]"); 52 Fed. Reg. 3920, 3924 (Feb. 6, 1987) (similar); 52 Fed. Reg. 18,046, 18,055 (May 13, 1987) (similar). They also used commentary to define operative terms. *E.g.*, 51 Fed. Reg. at 35,093, 35,099; 52 Fed. Reg. at 3929.

Every edition of the Manual has included a guideline entitled "Significance of Commentary," explaining that the commentary "may interpret the guideline or explain how it is to be applied." U.S.S.G. § 1B1.7 (1987; 2025). From the start, § 1B1.7 and its commentary have characterized "commentary" as "the legal equivalent of a policy statement," and as "hav[ing] the force of policy statements." U.S.S.G. § 1B1.7 & comment. (1987). And the entire Manual—"guidelines, policy statements, and commentary"—is "promulgated" "pursuant to" 28 U.S.C. § 994(a), the provision authorizing the promulgation of guidelines and policy statements. U.S.S.G. § 1A1.1 (2025).

The Commission's Internal Rules also address the issuance of "commentary." For example, the Rules provide that the "[p]romulgation of guidelines, policy statements, official commentary, and amendments thereto shall require the affirmative vote of at least four members at a public meeting." U.S. Sent. Comm'n R. 2.2(b) (citing 28 U.S.C. § 994(a)). And while the Rules recognize that "policy statements and commentary," unlike "guidelines," need not follow the two-track process of notice and comment and congressional review, they also state that the Commission "shall endeavor," "to the extent practicable," to submit any new or amended commentary through the same process and on the same timetable. U.S. Sent. Comm'n R. 4.1, 4.3.

Consistent with those Rules, the Commission's practice is to propose, receive comments and hold hearings on, approve, and transmit to Congress a slate of amendments to the "guidelines, policy statements, and official commentary" each year. *See, e.g.*, 90 Fed. Reg. 59,660 (Dec. 19, 2025) (notice of proposed

2026 amendments); 91 Fed. Reg. 24,088 (May 4, 2026) (notice of submission to Congress); 90 Fed. Reg. 128 (Jan. 2, 2025) (notice of proposed 2025 amendments); 90 Fed. Reg. 19,798 (May 9, 2025) (notice of submission to Congress). The Guidelines Manual, born as an integrated whole, has remained one ever since.

After the Commission began issuing "commentary" that it deemed the equivalent of "policy statements," both Congress and this Court accepted such commentary as part of the Guidelines Manual. In December 1987—mere weeks after the first Guidelines Manual took effect—Congress added a sentence to § 3553(b) identifying the Commission's published "sentencing guidelines, policy statements, *and official commentary*" as the touchstones for determining what the Commission had "taken into consideration" in the guidelines. Sentencing Act of 1987, § 3(3), Pub. L. No. 100-182, 101 Stat. 1266 (emphasis added). And this Court, shortly after holding that "a policy statement" was "an authoritative guide to the meaning of the applicable Guideline," *Williams v. United States*, 503 U.S. 193, 201 (1992), acknowledged that *Williams* "applie[d] with equal force" to "commentary," *Stinson*, 508 U.S. at 42-43. The Court even quoted § 1B1.7 and its commentary equating "'commentary'" with "'policy statements'" and explaining that commentary "may 'interpret [a] guideline or explain how it is to be applied.'" *Id.* at 41, 43. Thus, like the Commission itself, both Congress and this Court have treated commentary as the legal equivalent of policy statements.

After *Stinson*, the Commission updated § 1B1.7's commentary to explicitly quote this Court's formulation of the commentary's significance: "'Commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.'" U.S.S.G. § 1B1.7, comment. (1993) (quoting *Stinson*, 508 U.S. at 38; alteration omitted). That commentary remains in the Guidelines Manual to this day. *Id.* (2025). So does the language stating that commentary "ha[s] the force of policy statements." *Id.*

In 2025, the Commission—complying with the two-track process—updated and simplified the main text of § 1B1.7. *See* 90 Fed. Reg. at 158; 90 Fed. Reg. at 19,828. That guideline still provides that commentary "may interpret the guideline or explain how it is to be applied." U.S.S.G. § 1B1.7 (2025).

C. The Proceedings Below

Petitioner pleaded guilty to unlawfully possessing a firearm in violation of 18 U.S.C. § 922(g)(1). J.A.4-5. Since 2006, the guideline for that offense has prescribed a higher offense level if "the offense involved a . . . semiautomatic firearm that is capable of accepting a large capacity magazine." U.S.S.G. § 2K2.1(a)(3)(A)(i) (2006; 2025). Also since 2006, Application Note 2 of the commentary has defined that phrase to "mean[] 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." *Id.* § 2K2.1, comment. (n.2) (2006; 2025).

Application Note 2 and the relevant guideline text have never existed separately. They were proposed for public comment together in the same notice. 71 Fed. Reg. 4782, 4789-90 (Jan. 27, 2006). They were approved by the Commission together, and they were submitted to Congress together. 71 Fed. Reg. 28,063, 28,069 (May 15, 2006).

There is no dispute that the firearm Petitioner possessed falls within the commentary's definition of a "semiautomatic firearm that is capable of accepting a large capacity magazine." *See* Pet. Br. 9. Petitioner's advisory guidelines range was calculated accordingly, and his sentence fell within it. J.A.19-21.

Before and at sentencing, Petitioner made two arguments about the "large capacity magazine" enhancement. First, he urged the district court to "reject" the advisory guidelines range "on policy grounds," arguing that the Commission's 15-round line was "arbitrary" and resulted in a substantively excessive advisory range. D.Ct. Dkt. 62 at 13-14. Second, though "foreclosed" by circuit precedent, Petitioner preserved the procedural argument that his advisory range was miscalculated because Application Note 2 misinterprets "large capacity magazine." J.A.18; *see* Pet. Br. 45-47.

The district court rejected both arguments. It concluded, after "a lot of thought," that a 72-month sentence was "sufficient but not greater than necessary," adding, "for the record," that it "would have imposed the same sentence" "even if the guideline range was not calculated . . . correctly." J.A.18, 20-21. The Fifth Circuit affirmed. J.A.1-3.

This Court granted certiorari "limited to the following question: 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." The Court appointed the undersigned to brief and argue the affirmative position as amicus curiae.

SUMMARY OF ARGUMENT

In *Stinson*, this Court held that the Guidelines Manual's commentary to the guidelines is "controlling" unless it is "plainly erroneous or inconsistent with" the guidelines. 508 U.S. at 45. Nothing "has changed since *Stinson*," Pet. Br. 1, so as to require modifying that simple rule. Quite the opposite.

I. Guideline commentary is an exercise of the express statutory power to issue policy statements on how to interpret and apply the guidelines under 28 U.S.C. § 994(a)(2). *Kisor*'s framework about *implied* delegations is thus inapplicable, and extending *Kisor* to this context would be a mistake.

A. Congress expressly authorized the Commission to promulgate both "guidelines" and "policy statements regarding application of the guidelines." *Id.* § 994(a)(1)-(2). This Court has held that policy statements promulgated under § 994(a)(2) "authoritative[ly]" interpret the guidelines promulgated under § 994(a)(1), *Williams*, 503 U.S. at 201, and the Guidelines Manual has always made clear that "commentary" is just a label used for a subset of policy statements issued under § 994(a)(2). As *Stinson* rightly held, commentary thus authoritatively interprets the guidelines.

B. For all the ink spilled on *Kisor*'s impact on *Stinson*, *Kisor* is simply inapplicable to the Guidelines Manual. *Kisor* rested on a presumption that Congress *impliedly* gives agencies interpretive authority over their own legislative rules. But the Commission has *express* authority to interpret guidelines under § 994(a)(2), making *Kisor* irrelevant here.

C. Extending *Kisor* to displace *Stinson* would conflict with this Court's more recent holdings in *Loper Bright* that implied delegation is "a fiction" and that the "impressionistic and malleable concept" of "ambiguity" cannot function "as an every-day test for allocating interpretive authority." *Loper Bright*, 603 U.S. at 404, 408. *Kisor* rests on the same fiction, and extending it here would make deference turn on exactly that malleable concept. To the extent there is any daylight between *Kisor*'s "genuinely ambiguous" and *Stinson*'s "plainly erroneous" formulations, *Loper Bright* makes clear that the latter is far more workable.

II. The usual rule-of-law concerns about deferring to executive agencies' interpretations of their own binding legislative rules do not exist here. The Commission is not an executive agency, the guidelines are not legislative rules, and they are not even binding on sentencing courts. The guidelines are purely advisory. The Sentencing Reform Act requires sentencing courts to consider them, which necessarily requires understanding and thus correctly interpreting them, but those courts retain the independent duty and discretion to determine appropriate sentences based on their "individualized assessment" in each case. *Gall*, 552 U.S. at 50.

A. One problem with agency deference is eroding fair notice by letting agencies change binding rules through *post hoc* reinterpretation. There is no such concern with the non-binding advisory guidelines. *See Beckles*, 580 U.S. at 265-67. Accordingly, the rule of lenity also has no application here.

B. Deference to guideline commentary also does not threaten the separation of powers by concentrating executive, legislative, and judicial responsibilities in the same hands. The Commission has none of those powers. It does not prosecute cases, it does not promulgate binding sentencing rules, and its only function in sentencing is to *advise* independent courts that are required to make their own sentencing judgments.

C. Unlike the deference rejected in *Loper Bright*, deferring to the Commission on the meaning of its own advice is no problem under the APA or Article III. Section 706 of the APA does not apply, and Article III is not implicated because the guidelines are not law. Even if there were some Article III question, the Commission's express authority to "give meaning to" the advisory guidelines would fall comfortably within *Loper Bright*'s allowance for express interpretive delegations where permitted by the non-delegation doctrine. 603 U.S. at 394-95.

III. Even if commentary could not be justified as an exercise of the Commission's express authority to promulgate "policy statements" under § 994(a)(2), it could be independently justified under § 994(a)(1), as an exercise of the authority to promulgate *the guidelines themselves*. The commentary would then still be entitled to *Stinson* deference because that is the weight the Manual assigns it.

A. The Commission's authority to promulgate "guidelines" includes the power to promulgate controlling commentary about how such guidelines should be interpreted. For this power to be effective, the commentary would simply need to go through the same statutory process required for issuing guidelines.

B. In practice, this approach would require only a very minor modification of *Stinson*, because virtually all commentary in the Guidelines Manual has gone through the full process required for promulgating the guidelines themselves.

IV. As a *stare decisis* matter, any concerns with the commentary fall short of justifying overturning the statutory precedent of *Stinson*.

A. *Stinson* is a statutory precedent, entitled to "enhanced" *stare decisis* effect. *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015). It addressed the Commission's authority to issue controlling commentary, based on "the role the Sentencing Reform Act contemplates for the Sentencing Commission." *Stinson*, 508 U.S. at 45. Congress has been closely involved in reviewing and amending the Guidelines Manual for decades, and it has never cut back on the Commission's commentary power.

B. The *stare decisis* factors strongly favor retaining *Stinson*'s rule. *Stinson* was correct, it has not been undermined but only strengthened, and it is entirely workable. The recent confusion about commentary in the lower courts is attributable not to *Stinson* but to *Kisor*. The Commission has relied on *Stinson* in structuring the Guidelines Manual for decades. And overturning it now would be an entirely pointless disruption for the Commission and the lower courts.

ARGUMENT

I. *STINSON* CORRECTLY RECOGNIZED THE COMMENTARY AS AUTHORITATIVE.

Stinson correctly held that courts should defer to the commentary in the Guidelines Manual to interpret the sentencing guidelines. Congress expressly authorized the Commission to issue authoritative statements about how the guidelines should be interpreted and applied, and the commentary is an exercise of that power. By contrast, *Kisor* imposed limits on when courts should find a general *implied* delegation of authority for agencies to resolve "ambiguities" in the regulations they promulgate. That approach does not apply to the express delegation at issue here. And it would make no sense to inject *Kisor*'s confusing "ambiguity" framework into guidelines calculations.

A. Congress Expressly Authorized the Commission to Promulgate Statements Interpreting the Guidelines.

1. In the Sentencing Reform Act, Congress expressly authorized the Commission to set guidelines for criminal sentencing. That grant of authority has two main components. First and foremost, the Commission is authorized to promulgate "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 subsidiary to that power, the Commission is also authorized to promulgate "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" of the Act. *Id.* § 994(a)(2).

Early on, this Court held that when the Commission issues a policy statement under § 994(a)(2), that statement is "an authoritative guide to the meaning of the applicable Guideline." *Williams*, 503 U.S. at 201. That holding reflects Congress's explicit choice to "grant[] the Commission the authority to promulgate both 'guidelines' and 'general policy statements regarding application of the guidelines'" under § 994(a)(1) and (2), respectively. *Id.* at 200 (citations omitted).

The "commentary" that appears in the Guidelines Manual is an exercise of the Commission's express authority to issue "policy statements" interpreting the guidelines under § 994(a)(2). The Commission has made this point explicit in the Guidelines Manual, which states that "[t]he guidelines, policy statements, *and commentary* . . . are promulgated by the United States Sentencing Commission pursuant to . . . section 994(a) of title 28." U.S.S.G. § 1A1.1 (2025) (emphasis added). The Manual also makes clear that the official commentary accompanying each guideline plays the same role as policy statements, as its primary function is to "interpret the guideline or explain how it is to be applied." *Id.* § 1B1.7 (1987; 2025). And the Manual expressly states that commentary carries "the force of policy statements." *Id.* § 1B1.7, comment. The commentary is thus issued pursuant to the Commission's express statutory authority to promulgate policy statements that authoritatively interpret the guidelines under § 994(a)(2).

It makes no difference that the Commission has chosen to use the label of "commentary" instead of "policy statements" for some of the statements that it promulgates under § 994(a)(2) to interpret the guidelines. That type of labeling decision is irrelevant to the Commission's substantive authority to issue authoritative guidance on how its guidelines should be interpreted. And if there were any doubt, such formatting matters would fall easily within the Commission's supplemental authority to "perform such other functions as may be necessary to carry out the purposes of this chapter." 28 U.S.C. § 995(b).

Of course, since commentary is promulgated pursuant to § 994(a)(2), its scope is limited by the terms of that statutory authorization. While commentary can address the proper interpretation or "application" of the guidelines, *id.*, it cannot change or rewrite them. Interpreting the guidelines is part of the authority to direct how they should be applied. But since interpretation has its limits, the commentary can serve as "an authoritative guide to the meaning" of the guidelines only within the limits set by the guidelines themselves—i.e., within the range of meanings the guidelines can bear. *Williams*, 503 U.S. at 201.

This Court's holding in *Stinson* tracks this understanding. It recognizes that the legitimate scope of commentary is limited to "assist[ing] in the interpretation and application of" the guidelines. *Stinson*, 508 U.S. at 45. Thus, while courts must endeavor to read the guidelines and the commentary together as part of an integrated whole, the guidelines take priority in case of any conflict. The commentary is authoritative only insofar as "the guideline [it] interprets will bear the construction." *Id.* at 46. And if the two cannot be reconciled—if there is a "flat inconsistency"—then the guideline controls. *Id.* at 43.

2. The primacy of the guidelines is also reflected in the heightened procedural requirements that apply to them. To promulgate new or amended guidelines, the statute requires the Commission to follow a specific two-track process. First, under 28 U.S.C. § 994(x), it must comply with the notice-and-comment provisions of the APA. And second, under § 994(p), it must "submit to Congress" any proposed change to the guidelines for a 180-day review period, to give Congress a chance to modify or disapprove the change. Notably, however, both procedural requirements apply only to "guidelines" themselves, *id.*, which are promulgated under § 994(a)(1). They do not apply to subsidiary "policy statements" promulgated under § 994(a)(2), including those the Commission chooses to label as "commentary."

Stinson correctly recognizes this point too. It notes that "commentary is binding on the federal courts" even if it does not follow the same process and is "not reviewed by Congress." 508 U.S. at 46. But just as commentary is not subject to the same procedures, it is not entitled to the same authority. If the "commentary and the guideline it interprets are inconsistent," then "the Sentencing Reform Act . . . commands compliance with the guideline." *Id.* at 43. This gives the Commission a choice. If it wants to fundamentally amend or rewrite the guidelines, it must follow the two-track process of notice and comment and congressional review. But if it wants to issue an *interpretation* of the guidelines within the existing bounds, it can do so via commentary without the full process. This does not "circumvent" any "safeguards," Pet. Br. 19, but simply respects the statute Congress enacted.

3. Given the above, Petitioner is wrong (at 15-20) that *Stinson* somehow conflicts with the statute. Petitioner first notes (at 16) that § 994 and 18 U.S.C. § 3553(a) do not refer to "commentary" by that label. But that is just because the label postdates those provisions. *Supra* 5-7, 9-11. When Congress drafted the statute in 1984, it did not know that the Commission would later use the term "commentary" to refer to some parts of the Manual.

What matters is not the label chosen by the Commission, but the substantive authority granted by the statute. Section 994(a)(2) expressly authorizes "policy statements" that "authoritative[ly]" give "meaning" to the guidelines, *Williams*, 503 U.S. at 201, and the commentary does exactly that. The mere choice of label—"policy statement" or "commentary"—cannot make any difference to the underlying authority. Indeed, most commentary (including that at issue here) also bears the label of "application notes," reflecting that it is an exercise of the authority to issue statements about "*application* of the guidelines." 28 U.S.C. § 994(a)(2) (emphasis added).

Petitioner is likewise wrong to suggest (at 16) that because § 3553(a)(4) and (5) require sentencing courts to consider "guidelines" and "policy statements," courts need not consider "commentary." As discussed, commentary is just a relabeled subset of the "policy statements" referenced in § 3553(a)(5). Moreover, § 3553(a)(4)'s instruction to consider "the guidelines" plainly requires consulting authoritative texts (like policy statements and commentary) that give meaning to "the guidelines." *See Williams*, 503 U.S. at 201 (noting that even the "Sentencing Table, from which all Guidelines sentencing ranges are derived," is not specifically "designated as a 'guideline'"). Section 3553(a) thus requires "consider[ing]" the guidelines, policy statements, and commentary in the Manual, without irrelevant distinctions based on later-adopted labels. *Booker*, 543 U.S. at 259-60.

Petitioner next argues (at 16-17) that because § 3553(b) refers to "official commentary" alongside "guidelines" and "policy statements," commentary must be its own legally distinct category. But Congress added that sentence in 1987 *after* the Commission promulgated the Manual using the label "commentary" for major portions of its text. *Supra* 11. The addition made clear that the "guidelines, policy statements, and official commentary" are the authoritative sources for "whether a circumstance was adequately taken into consideration" "in formulating the guidelines." § 3553(b)(1). The only thing this shows is that Congress understood that the new Manual's "commentary," like its above-the-line "guidelines" and "policy statements," "also express[ed] the policy of the Commission." U.S.S.G. § 1B1.7, comment. (1987).

Nothing about that choice suggests that Congress viewed the commentary as anything other than an exercise of the Commission's authority to issue "policy statements" under § 994(a)(2). To the contrary, when Congress first used the term, the 1987 Manual already characterized "commentary" as "the legal equivalent of a policy statement." U.S.S.G. § 1B1.7 (1987); *see also id.* § 1B1.7, comment (unlabeled passages "are to be construed as commentary *and thus have the force of policy statements*" (emphasis added)). And Congress presumably acted with that understanding when referring to the commentary that the Manual then contained.

Petitioner's argument only confirms the pitfalls of mechanically applying "the meaningful-variation canon" to provisions "drafted . . . at different times." *Pulsifer v. United States*, 601 U.S. 124, 151 (2024). The commentary was simply a label the Commission adopted when exercising its authority to promulgate the Manual. Congress's embrace of that label did not somehow cut back on the Commission's authority.[3]

Petitioner also gets no mileage (at 18) from *Rutherford v. United States*, which simply held that even when Congress "empower[s] the Commission to 'give meaning' to" a statutory term, it must still respect "the governing statute." 146 S. Ct. 1320, 1334 (2026). That just means that even express interpretive authority has limits. *Stinson* itself held as much; commentary is not "authoritative" if it bucks a statute or even is "inconsistent with" the guidelines. 508 U.S. at 38.

Finally, Petitioner is wrong (at 19) that commentary can be promulgated by a mere quorum majority or delegated to one member. Since commentary is a subset of "policy statements," it needs four affirmative votes under 28 U.S.C. §§ 994(a) and 995(d) and cannot be delegated under § 995(b). The Commission's Internal Rules recognize as much, requiring "the affirmative vote of at least four members" for "guidelines, policy statements, [and] official commentary." U.S. Sent. Comm'n R. 2.2.

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[3] Further, Petitioner's claim (at 17) that § 3553(b) was "all Congress had to say" about commentary is mistaken. Later laws have directly edited the commentary and urged the Commission to stiffen the guidelines by changing definitions in the commentary. *United States v. Rivera*, 76 F.4th 1085, 1090 (8th Cir. 2023) (collecting examples).

B. *Kisor*'s Holding on Implied Agency Delegations Does Not Affect *Stinson*.

The Commission's express statutory authority to promulgate commentary as a type of policy statement interpreting the guidelines under § 994(a)(2) makes this a unique case outside the scope of *Kisor* and the broader controversy about agency deference. As Petitioner recognizes (at 23), *Kisor*'s rule is that when Congress is *silent* about who should resolve regulatory ambiguities, courts should generally presume that Congress impliedly delegated that authority to the agency, subject to certain limits. The "limits" that *Kisor* imposed are about when that presumption of implied delegation arises. But in a case like this one, where Congress has *expressly* granted authority to the Commission to issue statements interpreting the guidelines, there is no need to rely on any *implied* delegation at all. *Kisor*'s limits on implied delegation are thus wholly inapplicable here.

1. *Kisor* was a case about the general presumption of implied delegation. Unlike the Sentencing Reform Act, the statute in *Kisor* did not expressly give the agency authority to interpret the regulations it promulgated. Indeed, as four Justices noted, "Congress almost never explicitly assigns responsibility to deal with" the "problem" of how to interpret ambiguous regulations. 588 U.S. at 569 (opinion of Kagan, J.). Thus, according to those Justices, in the face of congressional silence, there is a "need to presume, one way or the other, what Congress would want." *Id*. And in their view, "Congress would generally want the agency to play the primary role in resolving regulatory ambiguities." *Id*.

The opinion of the Court likewise embraced the rule that, absent any express delegation of interpretive authority, "we presume that Congress intended for courts to defer to agencies when they interpret their own ambiguous rules." *Id.* at 573. At the same time, the Court adopted a series of "limits" on when courts should "presume" that Congress impliedly delegated such interpretive authority to the agency. *Id.* Those limits reflect the Court's view that, "when the reasons for that presumption do not apply, or countervailing reasons outweigh them, courts should not give deference to an agency's reading." *Id.*

The Court's opinion thus made clear that the *Kisor* limits apply only in the realm of *implied* delegations, but have nothing to say about the scope of authority that may be conferred on agencies by *express* delegations. The entire case was about "the *presumption* that Congress delegates interpretive lawmaking power to the agency." *Id.* at 577-78 (emphasis added). And the point of the *Kisor* limits is that deference cannot be justified if it cannot be safely "presum[ed]" that "Congress intended to invest interpretive power" in the agency. *Id.* at 578; *see also id.* at 573.

Justice Gorsuch's separate opinion for four Justices likewise understood the case as addressing only the general presumption of *implied* delegations. He criticized the Court for relying on the "theory" that Congress "*implicitly* gives the agency the power authoritatively to interpret whatever rules the agency chooses to adopt." *Id.* at 609 (Gorsuch, J., concurring in the judgment) (emphasis added). And he said the Court was wrong "to 'presume' that Congress really, secretly, wanted courts to treat agency interpretations as binding" when no statute says so. *Id.* at 610.

2. By contrast, when Congress expressly authorizes an agency to promulgate statements with interpretive authority, there is no reason to rely on any presumption of implied delegation—or to think about how implied delegations might be "limited," as *Kisor* did. As this Court has recognized, "some statutes 'expressly delegate' to an agency the authority to give meaning" to a legal term. *Loper Bright*, 603 U.S. at 394. In that situation, the Court's role is simply to "effectuate the will of Congress" by "fix[ing] the boundaries of [the] delegated authority." *Id.* at 395. This requires interpreting the statute to determine the scope of authority Congress has given the agency. The text of the statute controls.

Here, that means the scope of the Commission's authority to interpret the guidelines rests on the text of the Sentencing Reform Act. As already discussed, *supra* I.A, the Act expressly authorizes the Commission to promulgate "general policy statements regarding application of the guidelines." 28 U.S.C. § 994(a)(2). And since the commentary in the Guidelines Manual is about how to interpret the guidelines to ensure their proper "application," it is a proper exercise of the Commission's express authority under § 994(a)(2). The "boundaries" of that authority, *Loper Bright*, 603 U.S. at 395, limit the Commission to genuine interpretation or "application" of the guidelines, as opposed to the wholesale revision or rewriting of them. *Stinson* tracks that line by making the commentary binding as long as "the guideline [it] interprets will bear the construction." 508 U.S. at 46. And *Kisor*'s gloss on implied delegation has nothing to say about the scope of the Commission's *express* authority.

3. Petitioner and the government are therefore wrong to argue that *Kisor*'s limits on agency deference necessarily apply to *Stinson*. Pet. Br. 22-28; U.S. Br. 18-19. They emphasize that *Stinson* drew an "analogy" between commentary interpreting a guideline and "an agency's interpretation of its own legislative rule." 508 U.S. at 44. But the nature of analogies is that the objects are similar in some ways and different in others. And while commentary and agency interpretations are similar in their legal force—they are controlling as long as they do not exceed the bounds of legitimate interpretation—they are not similar in the *source* of that authority. Commentary flows from an express statutory authorization, while *Kisor* deals with agencies' *implied* authority.

Stinson analogized commentary to agency regulatory interpretations simply because that was a "helpful characterization[] of the legal force of commentary." *Id.* at 43. Like agency interpretations, commentary interpreting a guideline "must be given 'controlling weight unless it is plainly erroneous or inconsistent with'" the guideline. *Id.* at 45.

But the analogy breaks down when it comes to the underlying interpretive authority. As discussed, the Commission is *expressly* authorized to promulgate commentary interpreting the guidelines. By contrast, agencies generally are only *impliedly* authorized to interpret their own "genuinely ambiguous" regulations. *Kisor*, 588 U.S. at 574. *Kisor* imposed limits on when such authority can be fairly implied. But those limits do not apply to express interpretive authority like that granted to the Commission under § 994(a)(2).

C. Extending *Kisor* to the Commentary Would Conflict with *Loper Bright*.

Kisor also should not be extended to displace *Stinson* for the additional reason that doing so would conflict with this Court's more recent decision in *Loper Bright*. As *Loper Bright* made clear, it is unworkable to make the vague test of "ambiguity" the trigger for agency deference, which is exactly what *Kisor* did. And it is also unwarranted to "presume," as *Kisor* did, that Congress would want agencies instead of courts to have interpretive authority over legal terms, when Congress has not enacted any statutory provision conferring such authority. The reasoning of *Loper Bright* thus definitively rejects the core rationale underlying *Kisor*'s approach. It is thus *Kisor* that has been undermined, not *Stinson*. And extending *Kisor* to supersede *Stinson* would be exactly backwards.

In *Kisor* itself, there was no rationale for deference that commanded a majority. The Chief Justice supplied the fifth vote to uphold a limited form of deference based on *stare decisis*. *Kisor*, 588 U.S. at 590-91 (Roberts, C.J., concurring in part). But the point of that *stare decisis* holding was not that *Kisor*'s theory of agency deference was correct on the merits. It was rather that precedent generally should not be overruled without special justification. Thus, even on its own terms, *Kisor* provides no sound basis for overruling or modifying *Stinson*. The shaky rationale underlying *Kisor* was barely strong enough to survive overruling in that case. Much less is it strong enough to be extended to the new context of criminal sentencing, supplanting the longstanding precedent of *Stinson* in that context.

In *Loper Bright*, this Court systematically dismantled every aspect of the reasoning that the *Kisor* plurality invoked to justify its theory of agency deference on the merits. *Loper Bright* thus makes clear that whatever remains of *Kisor* should not be extended to override *Stinson*.

Although *Loper Bright* was about deference to agency interpretations of statutes, not regulations, it involved the same general question as *Kisor*: whether courts should generally "presume" that Congress has impliedly delegated authority for agencies rather than courts to resolve "ambiguities" in legal provisions. Indeed, as the Court explained, the now-discredited doctrine of *Chevron* deference "rested on a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.'" *Loper Bright*, 603 U.S. at 398 (citation omitted). That is indistinguishable from the rule of *Kisor*, which "presume[s] that Congress intended for courts to defer to agencies when they interpret their own ambiguous rules." 588 U.S. at 573.

As *Loper Bright* recognized, however, that "justifying presumption" of agency deference is simply "a fiction." 603 U.S. at 404. Congress has never said anything to displace the presumption—rooted in Article III—that courts, not agencies, generally have the duty to "say what the law is." *Id*. at 385. Courts thus should not "pretend that ambiguities are necessarily delegations" of interpretive authority. *Id*. at 404. And that is just as true for *regulatory* ambiguities as statutory ones.

Loper Bright thus shows that *Kisor* was fundamentally misguided to base deference on the "presumption that Congress would generally want the agency to play the primary role in resolving regulatory ambiguities." *Kisor*, 588 U.S. at 569 (plurality op.); *see also id.* at 573 (opinion of the Court) ("presum[ing] that Congress intended for courts to defer to agencies when they interpret their own ambiguous rules"). That presumption is baseless even when ambiguity implicates agency "expertise" or "policy" interests, because the meaning of a legal term is a question of "legal interpretation" that falls within the presumptive authority of the judiciary. *Loper Bright*, 603 U.S. at 403. Unless a statute "'expressly delegate[s]' to an agency the authority to give meaning to" a term, courts must be the ones to interpret it. *Id*. at 394-95.

Loper Bright also held that making deference turn on ambiguity is fundamentally "unworkable." *Id*. at 407. The problem is that "the concept of ambiguity has always evaded meaningful definition," as it has "different meanings for different judges." *Id*. at 408. Thus, because any ambiguity-based rule "is so wholly in the eye of the beholder," it "invites different results in like cases and is therefore 'arbitrary in practice.'" *Id*. "Such an impressionistic and malleable concept cannot stand as an every-day test for allocating interpretive authority between courts and agencies." *Id*.

Given that holding, it would make no sense to import *Kisor* into this context by keying deference to whether a guideline is "genuinely ambiguous." *Kisor*, 588 U.S. at 575. Nor would it make sense to import *Kisor*'s other "limits," *id*. at 573, which arise from the very same fictional "presumption" of implied delegation that *Loper Bright* repudiated.

It may well be—as the government argues at length (at 22-28)—that *Kisor*'s various "limits" would "frequently," "necessarily," or "'by definition'" be satisfied by commentary. Indeed, since commentary is formally approved and published as part of the Manual by a majority of the Commission, it necessarily expresses the Commission's "authoritative policy" and "'considered judgment'" on sentencing matters that "implicate its substantive expertise." *Kisor*, 588 U.S. at 577-579. But that just underscores what a poor fit the *Kisor* framework is here. The point of the *Kisor* factors is to ensure Congress has *impliedly* granted interpretive authority to an agency. But since Congress has *expressly* granted the Commission authority to promulgate statements interpreting the guidelines (like the commentary), the *Kisor* apparatus for divining implied authority is wholly inapplicable.

In practice, the only live factor under *Kisor* would be whether there is enough "ambiguity" in the guidelines to trigger deference to the commentary. But using "ambiguity" as a deference trigger is exactly what *Loper Bright* held courts should not do, because it is excessively complicated and confusing. 603 U.S. at 408. It is far simpler to skip the conceptual morass of "ambiguity" and just do what *Stinson* says: Defer to the commentary unless it is "inconsistent with, or a plainly erroneous reading of" the guidelines. 508 U.S. at 38. The Court should not discard that simple instruction in favor of *Kisor*'s erroneous and overcomplicated ambiguity-based approach. It should not extend *Kisor* to a context where it does not belong—if it belongs anywhere after *Loper Bright*.

II. *STINSON* DOES NOT RAISE THE RULE-OF-LAW CONCERNS THAT USUALLY PLAGUE AGENCY DEFERENCE.

Deferring to guidelines commentary has none of the problems associated with agency deference in general. As the opinions in *Kisor* highlighted, deferring to agencies' interpretation of their own legally binding regulations raises a host of rule-of-law concerns. First, it can upset reliance interests or result in "unfair surprise" by subjecting parties to liability under binding interpretations without fair notice. *Kisor*, 588 U.S. at 579 (Kagan, J.). Second, it can compromise the separation of powers by allowing executive officials to dictate their own "self-interested" reading of the binding rules they promulgate and enforce. *Id.* at 605 (Gorsuch, J.). And third, it can usurp the core authority of the judiciary to "say what the law is." *Id.* at 612.

By contrast, no rule-of-law concerns arise from deferring to commentary on the meaning of the *advisory* guidelines. The guidelines are not "law." They just recommend sentencing ranges that courts may choose to follow or reject. Deferring to the Commission's commentary on the meaning of its own non-binding advice thus does not intrude on the province of the judiciary to interpret the law. It does not threaten the separation of powers by putting the meaning of the law in the hands of biased enforcement officials. And it does not deprive anyone of fair notice, because—as this Court has held—the discretionary statutory range already informs the public of the possible penalties for committing a crime. For the same reasons, the rule of lenity has no role to play here because commentary does not subject anyone to liability or enhanced penalties beyond the discretionary range set by statute.

A. This Court has already held that the guidelines pose no fair-notice concerns because "[a]ll of the notice required is provided by the applicable statutory range." *Beckles*, 580 U.S. at 266. Since the guidelines are "advisory," they do not have the force and effect of law: They "do not bind or regulate the primary conduct of the public" or change "the permissible bounds of the court's sentencing discretion." *Id.* They "guide district courts in exercising their discretion," but "do not constrain" it. *Id.* at 265.[4] If crimes are duly defined by statute and citizens are warned they could receive any sentence in the statutory range, fair notice is satisfied however the guidelines are construed.

True, sentencing courts must properly calculate the guidelines range (and "normally" "begin" with that task). *Rita v. United States*, 551 U.S. 338, 351 (2007). That follows from § 3553(a)(4); properly "consider[ing]" the advisory guidelines requires understanding what the advice is, so misunderstanding the guidelines is a "procedural error." *Gall*, 552 U.S. at 51. But that creates no fair-notice concerns where the governing *statute* explains what conduct is illegal and what penalties are possible. Were more notice needed, § 3553(a) advertises that courts must impose sentences they deem "sufficient, but not greater than necessary," to further § 3553(a)(2)'s goals.

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[4] *Contra* Petitioner (at 25 n.2), no "Guidelines remain binding." The 18 U.S.C. § 3553(f)(1) "safety valve" effectively waives statutory sentencing minimums in certain cases, and § 3582(c)(2) sometimes allows reducing already-final sentences. Nothing about those "congressional act[s] of lenity" makes the guidelines binding rules for sentencing courts. *Dillon v. United States*, 560 U.S. 817, 828 (2010).

The lack of any fair-notice concern for the advisory guidelines also explains why Petitioner is wrong (at 24-28) to worry about the rule of lenity. "Lenity works to enforce the fair notice requirement." *Wooden v. United States*, 595 U.S. 360, 389 (2022) (Gorsuch, J., concurring). Deference thus may run afoul of the rule of lenity if agencies can reinterpret the law "to penalize conduct Congress never clearly proscribed." *Loper Bright*, 603 U.S. at 435 (Gorsuch, J., concurring). But the commentary's reading of the guidelines cannot "penalize" any conduct, or even impose any enhanced penalty, beyond what the statute itself already warns of. Just as it does not violate lenity when a judge chooses a sentence within the discretionary range advertised by statute, so too when the guidelines or commentary *recommend* a sentence within that range.[5]

Beckles was undoubtedly correct that the guidelines are not binding law that could cause any fair-notice problem because they are only advisory recommendations on how to apply the § 3553(a) factors. The Commission makes those recommendations "at

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[5] Petitioner suggests (at 25) that lenity is required because Congress "expected" mandatory guidelines, and a "'statute's meaning is fixed at the time of enactment.'" But Congress did not get what it expected—the guidelines are advisory. Petitioner also misapplies the fixity principle. *Booker*'s remedial reconstruction of the Sentencing Reform Act in light of its constitutional flaws "is [the] authoritative statement of what the statute meant before as well as after" that decision. *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994). The legally operative meaning that was fixed at enactment is not the unconstitutional one Congress intended, but the one that this Court adopted on severability grounds upon recognizing the constitutional infirmity. *Booker*, 543 U.S. at 246; *see also Lester v. United States*, 921 F.3d 1306, 1313-15 (11th Cir. 2019) (W. Pryor, J., respecting denial of en banc rehearing).

wholesale," but it is the sentencing court that must "carry[] out the same basic § 3553(a) objectives" "at retail." *Rita*, 551 U.S. at 348. The sentencing court must apply its own judgment and discretion to determine what sentence is "sufficient, but not greater than necessary" for each case under § 3553(a). Indeed, the court cannot even "presume that the Guidelines range is reasonable"; the court "must make an individualized assessment based on the facts presented" and the § 3553(a) factors. *Gall*, 552 U.S. at 50.

The farthest this Court has gone in treating the advisory guidelines as "law" is *Peugh v. United States*, where a splintered Court held guidelines have "sufficient legal effect to attain the status of a 'law' within the meaning of the *Ex Post Facto* Clause." 569 U.S. 530, 546 (2013). Petitioner (at 25) and the government (at 21) place significant emphasis on *Peugh*. But, as *Beckles* explained, *Peugh* applied a prophylactic "significant risk of a higher sentence" standard that is peculiar to this Court's "*ex post facto* cases." *Beckles*, 580 U.S. at 267 (quoting *Peugh*, 569 U.S. at 541-42). *Beckles* correctly cabined *Peugh*'s holding to that specific doctrinal context, *id.* at 267-68, and the Court should not further extend it. That would not only make *Beckles* essentially incoherent, *id.* at 266-67, it would also fundamentally contradict *Booker*'s remedial solution of making the guidelines advisory recommendations as opposed to binding law, 543 U.S. at 264.[6]

[6] *Peugh* itself further mitigates any fair-notice concern by allowing a potential *Ex Post Facto* challenge to commentary that increases the guidelines range after the time of the offense. *See* 569 U.S. at 541, 549; U.S.S.G. § 1B1.11(b)(1) & comment. (2025) (instructing courts to apply the version of the Manual from the time of offense if necessary to avoid an *Ex Post Facto* problem).

B. Deferring to the commentary does not violate the separation of powers by putting interpretive authority in the hands of "self-interested" enforcement officials. *Kisor*, 588 U.S. at 605 (Gorsuch, J.). That concern is especially acute for agencies that have the power to enact binding rules, enforce them, *and* interpret them. That raises the specter of the "accumulation of all powers, legislative, executive, and judiciary, in the same hands," which "may justly be pronounced the very definition of tyranny." The Federalist No. 47, p. 324 (J. Cooke ed. 1961) (J. Madison).

Unlike administrative agencies, however, the Commission has none of these powers. It simply promulgates the advisory guidelines and commentary in a neutral and disinterested manner, to advise courts on how to exercise their *own* sentencing discretion in enforcement actions brought by prosecutors. The Commission thus neither promulgates binding rules, nor enforces them, nor interprets them. It simply publishes commentary to construe *advisory* guidelines, which it issues without any enforcement interest, any power to issue binding rules, or any power to interpret binding rules.

C. Deferring to the commentary on the meaning of advisory guidelines also does not intrude on the province of the judiciary to say what the law is. In *Loper Bright*, this Court held that deferring to agency interpretations of statutes conflicts with the APA's rule that courts, not agencies, "decide all relevant questions of law." 603 U.S. at 411 (quoting 5 U.S.C. § 706). But that APA provision does not apply to the Sentencing Commission or the guidelines, so deferring to the commentary to interpret the guidelines cannot conflict with it.

To be sure, the judiciary's duty to interpret the law comes not only from the APA, but also from Article III. *Id.* at 384-85. But that poses no problem for deferring to commentary for two reasons. First and foremost, deferring to commentary to interpret advisory guidelines does not intrude on the judiciary's interpretation of "the law" because, as discussed above, the guidelines are not law. They do not "regulate the public by prohibiting any conduct or by 'establishing minimum and maximum penalties for [any] crime.'" *Beckles*, 580 U.S. at 266 (quoting *Mistretta v. United States*, 488 U.S. 361, 396 (1989)). They are only advice that courts must consider, but need not follow. Thus, it is *not* the province of the judiciary to say what the meaning of the advisory guidelines is.

Even if the advisory guidelines were "law" in some sense, Congress can delegate authority to an agency to promulgate controlling guidance to "give meaning" to a legal term. *Loper Bright*, 603 U.S. at 394. So long as the non-delegation doctrine allows it, the controlling guidance then becomes part of "the law" for courts to interpret.[7] The commentary interpreting the guidelines fits that definition. Both the guidelines and the commentary are authoritative texts that the Commission is expressly authorized to promulgate pursuant to § 994(a). If they are "law," then the court's Article III duty is fulfilled by interpreting them together.

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[7] In *Mistretta*, this Court upheld the guidelines against a non-delegation challenge. 488 U.S. at 379. Justice Scalia dissented, arguing forcefully that Congress may not delegate away its power to make sentencing rules with the "force and effect of laws." *Id*. at 413. But, now that the guidelines are only advisory, even that concern is diminished.

III. AT MINIMUM, COMMENTARY MERITS DEFERENCE WHEN PROMULGATED AS PART OF THE GUIDELINES.

Even if commentary could not be issued under the "policy statement" authority of § 994(a)(2), it could still be issued under the authority to promulgate "guidelines" under § 994(a)(1). The only difference is that guidelines, unlike policy statements, must go through the two-track process of notice and comment and congressional review required by 28 U.S.C. § 994(p) and (x). But since virtually all commentary has gone through that process—including the commentary at issue here, and in all cases making up the underlying circuit split on *Stinson*—treating the commentary as an exercise of the (a)(1) power would require only a modest modification of *Stinson*. Commentary would then still be entitled to the same weight the Guidelines Manual assigns to it (i.e., *Stinson* deference) except in rare cases where it has not gone through the process. *Stinson* would thus continue to be the rule, with very few exceptions.

A. Section 994(a)(1) Authorizes Commentary.

Under § 994(a)(1), a "guideline" is a provision promulgated by the Commission "for use of a sentencing court in determining the sentence to be imposed in a criminal case." Commentary fits that definition because it is used in calculating sentencing ranges. There is thus no reason the Commission could not use its guidelines authority to promulgate "commentary" as part of the Guidelines Manual, while specifying that this subset of the guidelines should carry only subsidiary weight as contemplated in *Stinson*.

Nothing in the Sentencing Reform Act mandates the existing layout of the Manual, which did not exist when the Act was written. Nor does the Act say that a § 994(a)(1) "guideline" must be the main text in a Manual section above the "commentary." And this Court long ago rejected the idea that the Manual's "officially designated . . . 'guideline[s]'" should be artificially separated from its other parts. *Williams*, 503 U.S. at 201. The division between "guidelines" and "commentary" is just a formatting convention.

While this reframing would not track *Stinson*'s reasoning, it would effectively preserve its rule. The Commission has undoubted authority to issue guidelines under § 994(a)(1), and nothing precludes it from issuing some guidelines specifying how to interpret others. In Guideline § 1B1.7, which applies to every guideline, the Commission has exercised that authority to declare that the role of the "commentary" is to "interpret the guideline or explain how it is to be applied," not to rewrite or override the guidelines. Thus, the guidelines themselves direct courts not to apply commentary provisions that are flatly "inconsistent" with the main text. *Stinson*, 508 U.S. at 43.

B. Situating Commentary Under § 994(a)(1) Would Largely Preserve *Stinson*.

The primary "downside" of treating commentary as an exercise of the (a)(1) "guideline" power instead of the (a)(2) "policy statement" power is that commentary amendments would then be invalid unless they went through congressional review and notice and comment as required by 28 U.S.C. § 994(p) and (x). Those procedural requirements apply to "guidelines," but not "policy statements."

Accordingly, understanding the commentary as an exercise of the (a)(1) power would require jettisoning *Stinson*'s holding that binding commentary could (like policy statements) be promulgated without those procedures. 508 U.S. at 46. That would be a very minor modification of *Stinson*, however, because commentary almost always goes through the same process as the guidelines. The Internal Rules provide that the Commission "shall," "to the extent practicable," submit new or amended commentary through the same process used for issuing guidelines. U.S. Sent. Comm'n R. 4.1, 4.3. And in practice, the Commission has virtually always done so.

Every year, the Commission gives notice of, receives comments and holds hearings on, and transmits to Congress a suite of "amendment[s]" to the Guidelines Manual as a whole: "the sentencing guidelines, policy statements, and commentary." *E.g.*, 91 Fed. Reg. 24,088 (May 4, 2026); 90 Fed. Reg. 59,660 (Dec. 19, 2025). Thus, apart from occasional, non-substantive "technical edits," "the Commission ordinarily uses the same procedure to revise the commentary as it does to revise the Guidelines." *United States v. Dupree*, 57 F.4th 1269, 1281 (11th Cir. 2023) (*en banc*) (W. Pryor, C.J., concurring).

Stinson addressed one of the rare instances of a substantive change to guideline commentary outside the standard process. The Commission did not follow the usual process in 1991 when it changed the commentary to "clarif[y]" that possessing a firearm unlawfully is not a categorical "crime of violence." U.S.S.G. App. C (Amend. 433); 56 Fed. Reg. 22,762, 22,777 (May 1, 1991) (version submitted to Congress not including this change). But that appears to have been a historical anomaly. After the Eleventh Circuit held that the commentary was not entitled to deference because it was not "officially passed upon by Congress," *United States v. Stinson*, 957 F.2d 813, 815 (11th Cir. 1992) (per curiam) (denying rehearing), the Commission promptly went through the process to repromulgate and ratify the commentary. *See* 57 Fed. Reg. 20,148, 20,157 (May 11, 1992) (submitting amendment to commentary for congressional review to "ratif[y]" Amendment 433). Thus, by May 1993 when this Court held in *Stinson* that the full process was not required, the commentary had already gone through the process anyway.

A key premise of the Eleventh Circuit's no-deference holding in *Stinson* was that "the commentary does not go through the same intensive review process as the guidelines themselves, for if they did share the same procedure, there would no basis for a distinction between the guidelines and the commentary; and there would be no reason for them to exist separately." *Stinson*, 957 F.2d at 815 n.2. Thus, the court implicitly recognized that if commentary *did* go through the full process with the guidelines, it should be entitled to whatever significance the Guidelines Manual assigns to it, up to the maximum weight assigned to main guidelines text itself.

This case illustrates why it makes no sense to treat commentary provisions as distinct from the guidelines they are promulgated with. Guideline § 2K2.1(a)(3) applies an enhancement for unlawfully possessing a "semiautomatic firearm that is capable of accepting a large capacity magazine." In isolation, it might be doubtful whether a 17-round magazine counts as "large." But the commentary eliminates any doubt: "For purposes of" the guideline, "a 'semiautomatic firearm that is capable of accepting a large capacity magazine' *means*" (*inter alia*) "a semiautomatic firearm that . . . had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition." *Id.*, comment. (n.2) (emphasis added). This definition removes any vagueness in the word "large," drawing a bright line at "more than 15 rounds."

This commentary was promulgated through the same process alongside the guideline it defines. *Supra* 12-13. The Commission has never proposed, adopted, or submitted to Congress any version of this guideline language without the commentary explaining it. It would thus be odd for courts to assess what the word "large" means in isolation, without looking to how the accompanying text defined that term. Petitioner says (at 20-21) the joint process does not matter because "'nothing alerts Congress that it must (or even should) review'" the commentary promulgated with guidelines. But *Stinson* told Congress about commentary's force 33 years ago. And the Manual says the same. U.S.S.G. § 1B1.7 (1987; 2025). Congress has thus long known to review commentary—and has actively done so. *See, e.g., Rivera*, 76 F.4th at 1090 (listing examples); Pub. L. No. 104-38, § 1, 109 Stat. 334, 334 (1995) (rejecting amendments to "'Commentary'").

Notably, all cases in the post-*Kisor* circuit split on *Stinson* involved commentary that would independently merit deference under § 994(a)(1) because it was promulgated through the full guideline process. *First*, most cases addressed commentary treating inchoate offenses as "controlled substance offense[s]" under § 4B1.2.[8] That commentary went through the full process alongside a rewritten version of § 4B1.2(b). 54 Fed. Reg. 9122, 9162 (Mar. 3, 1989); 54 Fed. Reg. 21,348, 21,379 (May 17, 1989).

Second, other cases involved two commentary provisions on § 2B1.1, which ties theft offense levels to the amount of "loss." U.S.S.G. § 2B1.1(b)(1) (1987; 2025). One tells courts to consider "the greater of actual loss or intended loss." *Id.* § 2B1.1, comment. (n.2(A)(i)) (2001), (n.3(A)(i)) (2023).[9] That language went through the full process in 2001. 66 Fed. Reg. 30,512, 30,529, 30,542 (June 6, 2001); 66 Fed. Reg. 7962, 7993 (Jan. 26, 2001). The other provision establishes a $500 "loss" floor for any stolen "access device" (e.g., a credit card). U.S.S.G. § 2B1.1, comment. (n.3(E)(i)) (2025).[10] That language went through the full process in 2000. 65 Fed. Reg. 2663, 2668 (Jan. 18, 2000); 65 Fed. Reg. 26,880, 26,892 (May 9, 2000).

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[8] *See United States v. White*, 97 F.4th 532 (7th Cir. 2024); *United States v. Vargas*, 74 F.4th 673 (5th Cir. 2023) (*en banc*); *United States v. Castillo*, 69 F.4th 648 (9th Cir. 2023); *United States v. Dupree*, 57 F.4th 1269 (11th Cir. 2023) (*en banc*); *United States v. Nasir*, 17 F.4th 459 (3d Cir. 2021) (*en banc*); *United States v. Lewis*, 963 F.3d 16 (1st Cir. 2020); *United States v. Tabb*, 949 F.3d 81 (2d Cir. 2020); *see also United States v. Maloid*, 71 F.4th 795 (10th Cir. 2023) (kindred "crime of violence" definition).

[9] *See United States v. Horn*, 129 F.4th 1275 (11th Cir. 2025); *United States v. Boler*, 115 F.4th 316 (4th Cir. 2024); *United States v. Ponle*, 110 F.4th 958 (7th Cir. 2024); *United States v. Rainford*, 110 F.4th 455 (2d Cir. 2024); *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022); *see also United States v. Yafa*, 136 F.4th 1194 (9th Cir. 2025).

[10] *See United States v. Johnson*, 104 F.4th 662 (7th Cir. 2024) (per curiam); *United States v. Kirilyuk*, 29 F.4th 1128 (9th Cir. 2022); *United States v. Riccardi*, 989 F.3d 476 (6th Cir. 2021).

Third, the circuits embracing *Kisor* over *Stinson* have wrongly disregarded various other commentary provisions that also went through the full process. For example, the Third Circuit rejected career-offender commentary defining "'commencement of the instant offense'" to "'include[] any relevant conduct.'" *United States v. Josey*, 155 F.4th 234, 241 (3d Cir. 2025); *see* U.S.S.G. § 4A1.2, comment. (n.8) (2025). Equivalent language was in the original Manual, U.S.S.G. § 4A1.1, comment. (nn.4-5) (1987), and this language was promulgated through the full process in 1989, 54 Fed. Reg. at 9160; 54 Fed. Reg. at 21,379.

The Third Circuit also wrongly declined to give deference to Application Note 4 to Guideline § 3B1.1 on the terms "organizer," "leader," "manager," and "supervisor" in that guideline. *United States v. Riddy*, 179 F.4th 211 (3d Cir. 2026); *United States v. Adair*, 38 F.4th 341 (3d Cir. 2022); *see* U.S.S.G. § 3B1.1, comment. (n.4) (2025). Substantively similar commentary went through the full process as part of the original Manual, U.S.S.G. § 3B1.1, comment. (n.3) (1987), and was in the advance drafts as well, *see* 52 Fed. Reg. at 3972.

Circuits that apply *Kisor* instead of *Stinson* have split over whether to defer to the commentary in Application Note 6(B) to Guideline § 2G2.2(b)(7), which counts a child-pornography video as 75 "images."[11] That commentary went through the full process in 2004. *See* 68 Fed. Reg. 75,340, 75,353 (Dec. 30, 2003); 69 Fed. Reg. 28,994, 29,004 (May 19, 2004).

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[11] *United States v. Kluge*, 147 F.4th 1291 (11th Cir. 2025); *United States v. Haggerty*, 107 F.4th 175 (3d Cir. 2024); *United States v. Phillips*, 54 F.4th 374 (6th Cir. 2022).

Finally, Petitioner highlights (at 27-28) the § 1B1.1 commentary defining "dangerous weapon," on which courts are split as to "ambiguity."[12] But the Manual has defined the term to include *apparent* dangerous weapons since a 1989 amendment promulgated through the standard process. 54 Fed. Reg. at 21,348. The current language was first promulgated through the standard process in 2000, 65 Fed. Reg. 26,880, 26,898 (May 9, 2000), and was repromulgated in 2003 in an amendment required by Congress, 68 Fed. Reg. 60,154, 60,173 (Oct. 21, 2003).

Accordingly, treating commentary as an exercise of the power to issue "guidelines" under § 994(a)(1) would fully resolve the circuit split by making clear that *Stinson* deference applies in all these cases, since all the commentary was promulgated through the same full process required to issue guidelines.

* * *

To be sure, none of this is to say that the distinction between guidelines and commentary should be collapsed. Indeed, the Manual itself adopts that very distinction. U.S.S.G. § 1B1.7 & comment. (2025). The Manual is built on the view that "commentary" is the equivalent of a "policy statement" issued under § 994(a)(2). But if this Court were to reject that view, *Stinson* would still survive because commentary can be independently justified as an exercise of the core "guidelines" power under § 994(a)(1). Commentary would then be entitled to the weight the Manual gives it—*Stinson* deference—as long as it has gone through the process for guidelines under § 994(p) and (x).

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[12] *United States v. Chandler*, 104 F.4th 445 (3d Cir. 2024); *United States v. Tate*, 999 F.3d 374 (6th Cir. 2021).

IV. THE *STARE DECISIS* FACTORS DO NOT SUPPORT OVERRULING *STINSON*.

A. Statutory *Stare Decisis* Applies Here.

Although *stare decisis* "is not an inexorable command," *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), this Court has repeatedly made clear that "[o]verruling precedent is never a small matter," *Kisor*, 588 U.S. at 586 (Kagan, J.) (citation omitted). Discarding precedent requires a "special justification" beyond its being "wrongly decided." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014). That is all the more true when this Court considers its statutory precedent. *See, e.g.*, *Kimble*, 576 U.S. at 456. Unlike constitutional decisions, statutory rulings allow Congress to "correct any mistake it sees." *Id.*

The "enhanced force" of statutory *stare decisis* applies here. *Id. Stinson*'s holding is about the specific statutory power that Congress gave the Commission to promulgate commentary that authoritatively interprets the guidelines. That power is based on "the role the Sentencing Reform Act contemplates for the Sentencing Commission." *Stinson*, 508 U.S. at 45. Congress has been intimately aware of that statutory power for decades: It reviewed the guideline equating commentary with policy statements, U.S.S.G. § 1B1.7 (1987); it has received countless amendments showing how the commentary and guidelines are intertwined; and it is presumably well aware of *Stinson's* holding that commentary, like policy statements, can be issued without the full process required for promulgating guidelines. And yet Congress has never cut back on that power.

B. The *Stare Decisis* Factors Favor Retaining *Stinson*.

1. As discussed, *Stinson* was correctly decided, and changes in the law have not remotely "eroded" it, but have instead strengthened it over time. *Kimble*, 576 U.S. at 458. The biggest change came in *Booker*, which mitigated any rule-of-law concern by making the guidelines advisory. *Supra* II. *United States v. Kukoyi*, 126 F.4th 806, 820 (2d Cir. 2025) (Menashi, J., concurring) ("If legislative rules were merely advisory, *Kisor* would make no sense."). There is thus no reason to worry about deferring to executive agencies' reading of their own binding regulations of private conduct: The Commission is not executive, the guidelines are not binding, and they do not regulate private conduct.

Nor does *Kisor* undermine *Stinson*. As explained, *Kisor* was about a fictional presumption of implied delegation, but *Stinson* rests firmly on an *express* delegation—the Commission's explicit statutory power to promulgate "policy statements" and "guidelines" under § 994(a). *Supra* I.A-B. If any case has been undermined, it is not *Stinson*, but *Kisor*—a decision that could not garner five votes for the merits of its deference rationale, and whose reasoning *Loper Bright* repudiated. *Supra* I.C.

Loper Bright also strengthens *Stinson* by recognizing that courts "uphold[] the traditional conception of the judicial function" in part "by recognizing constitutional delegations." 603 U.S. at 395-96. Thus, as long as Congress's grant of power to the Commission to promulgate commentary that authoritatively interprets the advisory guidelines does not somehow violate the non-delegation doctrine, *Stinson* presents no Article III problem even in a post-*Chevron* world.

2. *Stinson*'s rule is also eminently "workable." *Kimble*, 576 U.S. at 459. Courts followed it for decades with no notable problems. It was not until *Kisor* came along, with its confusing "ambiguity"-based approach, that a deep circuit split developed over whether and how that case should affect the *Stinson* framework, along with many subsidiary splits about which guidelines would be impacted. Moreover, since *Stinson* treats commentary as the legal equivalent of "policy statements," it does not require any bespoke approach. It simply requires the same approach for commentary and policy statements: they must be given effect unless they are flatly inconsistent with the guidelines, or any statute or constitutional provision. *See Williams*, 503 U.S. at 201; *Stinson*, 508 U.S. at 43.

Stinson is likewise more workable than a regime of *no deference* to the commentary. Such a regime would only invite conflicting interpretations of the guidelines, thus increasing "unwarranted sentencing disparities among defendants with similar records." 28 U.S.C. § 991(b)(1)(B). That approach "would vitiate the core purpose of the Sentencing Reform Act." *Moses*, 23 F.4th at 357. It would also make no sense for courts to put aside the commentary and come up with their own balkanized views on the meaning of the *advisory* guidelines. In a world where the guidelines are purely advisory, the sensible and far simpler approach is to defer to the Commission on the meaning of its own advice, and then have courts decide for themselves whether to *follow* that advice. This would avoid time-consuming technical disputes over what the Commission's non-binding advice means, and instead focus attention on the more salient question of how courts should exercise their sentencing discretion.

3. Reliance interests likewise favor retaining *Stinson*. The Commission itself has relied on *Stinson* in structuring the Guidelines Manual over the past four decades. The Manual regularly defines guidelines terms in the commentary, which is often issued at the same time as the guidelines they define. *See, e.g.*, U.S.S.G. § 1B1.1, comment. (n.1) (defining frequently used terms, including "bodily injury," "firearm," and "offense") (2025); *id.* § 2B1.1, comment. (n.1) (defining various terms, including "equity security," "firearm," and "victim"). Had the Commission known that the parts of the Manual that it labeled "commentary" would not be entitled to deference, it plainly would not have used the commentary to define operative terms throughout the Manual. And declaring the commentary inoperative now would make a hash of the entire Manual.

Petitioner suggests (at 44) that upending the Manual in this way is no big deal because the Commission could just relabel commentary as "guidelines" and put it through the full process. But that would be a pointless exercise because virtually all commentary already *has* gone through that full process, and there is no reason the superficial "commentary" label should make any substantive difference. *See, e.g., Universal Health Servs. v. United States ex rel. Escobar*, 579 U.S. 176, 181 (2016) ("What matters is not the label the Government attaches . . . .").

Finally, overruling *Stinson* would risk deluging the lower courts with challenges to countless existing sentences. At minimum, many direct-review cases would require reevaluating for potential guidelines-range-calculation errors. And even post-*Beckles*, some circuits have held some guidelines errors retroactively cognizable on collateral review. *See, e.g.*, *United States v. Arrington*, 4 F.4th 162, 167-68 (D.C. Cir. 2021). Indeed, courts generally have "struggled" with how collateral-review rules apply to such claims. *United States v. London*, 937 F.3d 502, 510 (5th Cir. 2019) (Costa, J., concurring in the judgment). Thus, the inevitable flood of "*Beaird* claims" would impose substantial costs on the lower courts for no good reason.

CONCLUSION

The Court should affirm the Fifth Circuit's holding that *Stinson* remains good law.

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Respectfully submitted,

Anthony J. Dick
Counsel of Record
Bijan M. Aboutorabi
Nicholas J. Grandpre
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
ajdick@jonesday.com