

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**

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

No one defends *Stinson v. United States*, 508 U.S. 36 (1993), as written. It is a relic of a different era—a time when the Court presumed that Congress had impliedly delegated to every agency authority to interpret its own rules, and when the Court treated those interpretations as binding unless “plainly erroneous.” *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945). In *Stinson*, this Court extended that deference doctrine—known as *Seminole Rock* deference—to the U.S. Sentencing Commission, and adopted verbatim *Seminole Rock*’s statement of the rule for deference. 508 U.S. at 45.

That deference standard conflicts with this Court’s recent decisions. In *Kisor v. Wilkie*, 588 U.S. 558 (2019), members of this Court disagreed about whether to limit *Seminole Rock* deference or overrule it, but all rejected its “reflexive” deference standard. 588 U.S. at 574 (citation omitted); *id.* at 623 (Gorsuch, J.); *id.* at 632 (Kavanaugh, J.). In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Court went further: It rejected the theory that Congress impliedly delegated to agencies the power to interpret statutes—a “fiction” that conflicted with the “elemental proposition” that “courts decide legal questions by applying their own judgment.” *Id.* at 391-392, 404.

In light of those decisions, the court-appointed amicus curiae offers no defense of *Stinson*’s central premise—that Congress impliedly delegated to the Commission the power to interpret the Guidelines through commentary. Instead, amicus tries (Br. 18) to locate some “express” basis for *Stinson*’s deference standard, so that this Court might preserve in criminal sentencing a form of reflexive deference that it has repudiated for every other administrative body.

There is no basis—express or implied—for that anomalous result. Under the Sentencing Reform Act of 1984 (SRA), Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, district courts must determine the appropriate “sentencing range” for an offense by interpreting and applying the “*guidelines*,” 18 U.S.C. 3553(a)(4) (emphasis added)—not the Commission’s “official commentary,” or even its “policy statements,” 18 U.S.C. 3553(a)(5), (b). When a court calculates the applicable sentencing range, there is no room for deference to the Commission, no matter what form its interpretation takes.

If the Court retains *Stinson*’s “caricature” of *Seminole Rock* deference (on amicus’s new theory or any other), it would require courts to defer even when a Guideline is not “genuinely ambiguous.” *Kisor*, 588 U.S. at 574. It would require courts to defer without carefully considering the Guideline’s “text, structure, history, and purpose”; to defer because the Guideline seems “impenetrable on first read.” *Id.* at 575. To affirm the court below, the Court would need to embrace an approach that “commentary controls even unambiguous guidelines.” *United States v. Vargas*, 74 F.4th 673, 682 (5th Cir. 2023) (en banc). That cannot be right.

For its part, the government maintains (Br. 18-22) that *Seminole Rock* deference should still apply, albeit within the limits set forth in *Kisor*. The government is right that *Stinson*’s “plainly erroneous” standard cannot stand. But the government disclaims *Stinson*’s standard in name, only to embrace it in practice. In the government’s view (Br. 22-26), “ambiguity” in the Guidelines will “not be uncommon,” and deference will be “frequently,” “necessarily,” or “by definition” appropriate. The Commission’s commentary, it says, offers a “shortcut” for provisions that ““make the eyes glaze over.”” *Id.* at 24 (quoting *Kisor*, 588 U.S. at 575).

This Court has repeatedly disclaimed such reflexive deference, and it should not retreat here. When courts interpret guidelines, they should do so with no deference to the commentary. At minimum, courts cannot defer to commentary without observing *Kisor*'s limits. Because the court of appeals held otherwise, the Court should vacate the judgment below and remand so that the court of appeals may consider in the first instance the proper interpretation of U.S.S.G. 2K2.1(a)(3).

**I. THE SENTENCING REFORM ACT DOES
NOT EXPRESSLY DELEGATE TO THE
COMMISSION AUTHORITY TO
INTERPRET GUIDELINES**

Every federal criminal sentencing begins the same way: District courts must properly interpret the “guidelines” to calculate the appropriate “sentencing range.” *See* 18 U.S.C. 3553(a)(4). Courts of appeals review that interpretation *de novo* to determine whether the sentence “was imposed as a result of an incorrect application of the sentencing guidelines.” 18 U.S.C. 3742(a)(2). When courts interpret the guidelines, they consider a “legal question.” *Loper Bright*, 603 U.S. at 392. Unless Congress expressly directs otherwise, they must do so according to their “own judgment.” *Ibid*.

Consistent with *Loper Bright*, amicus accepts (Br. 25-32) that deference to the Commission must come from an express delegation. Amicus therefore strains to find a statutory hook for deference. None exists. Deference to commentary conflicts with the SRA's text and structure and poses constitutional concerns.

**A. The Commission’s Authority To Issue
Policy Statements Does Not Support
Deference To Commentary**

Amicus principally contends (Br. 18-25) that the Commission issues commentary under its authority to promulgate “general policy statements.” 28 U.S.C. 994(a)(2). From there, amicus maintains (Br. 25-29) that the SRA expressly authorized the Commission to interpret the Guidelines through policy statements, and that such interpretations control unless “plainly erroneous.”

Every step of that argument is wrong. “Commentary” is not a “policy statement.” The Act does not delegate to the Commission authority to interpret Guidelines through policy statements. And even if it did, that delegation would not trigger the reflexive deference set forth in *Stinson*.

1. *The Commission’s “commentary” is distinct
from the “policy statements” it issues*

Amicus’s argument fails at the threshold: interpretive commentary is not an exercise of the Commission’s authority to issue policy statements.

The SRA contemplates that the Commission will issue three kinds of text. First, the Commission may promulgate “guidelines,” for use “in determining the sentence to be imposed in a criminal case.” 28 U.S.C. 994(a)(1). Second, it may issue “general policy statements regarding application of the guidelines.” 28 U.S.C. 994(a)(2). *Stinson* addressed a “third variant of text”: “commentary.” 508 U.S. at 41. Although the Act did not authorize commentary in “express terms,” the Commission has appended “commentary” to the Guidelines since the first Guidelines Manual. *Ibid.*; see Pet. Br. 5. And Congress later amended the Act to

recognize “official commentary.” Pub. L. No. 100-182, § 3, 101 Stat. 1266.

Section 3553 expressly distinguishes these three categories and assigns each a different role at sentencing. Section 3553(a)(4) requires district courts to consider the applicable “sentencing range” for the defendant “as set forth in the guidelines.” 18 U.S.C. 3553(a)(4). Separately, courts must consider at sentencing “any pertinent policy statement.” 18 U.S.C. 3553(a)(5). Section 3553(b)(1) expressly distinguishes “official commentary,” and assigns it a different role: When the Guidelines were mandatory, courts could consider the Commission’s “official commentary,” alongside “sentencing guidelines” and “policy statements,” to determine which departures were permissible. 18 U.S.C. 3553(b)(1); *see* 18 U.S.C. 3553(b)(2). Those “different terms”—distinguished within the very same provision—must be given different meanings. *Mohamad v. Palestinian Authority*, 566 U.S. 449, 456 (2012).

The Commission’s practice draws the same line. Throughout the Guidelines Manual, it designates some provisions “policy statements” and others “commentary” or “application notes,” and it observes that division section by section. “Policy statements” are labeled as such and occupy their own numbered sections of the Manual, in place of individual Guidelines. *See, e.g.*, U.S.S.G. 1B1.10, 1B1.11, 1B1.12, 1B1.13, 3F1.1, 5D1.4, 5E1.5, 5F1.7, 5J1.1, 5K1.1, 5K1.2, chs. 6 & 7, 8D1.4, 8F1.1. “Commentary” is a different class of text, U.S.S.G. 1B1.7, set off by its own heading and appended to Guidelines and (tellingly) policy statements. The Commission’s consistent, decades-long practice belies any notion that it intended “commentary” to serve as a “policy statement.”

Contra amicus (Br. 19), the Commission has not purported to treat all commentary as an exercise of its policy statement authority. Until *Stinson*, the Commission instructed courts to treat its interpretive commentary “much like legislative history.” 508 U.S. at 46 (quoting U.S.S.G. 1B1.7, comment. (1992)). And until 2025, Section 1B1.7 distinguished between commentary that “interpret[s] the guideline” and commentary that “may suggest circumstances which, in the view of the Commission, may warrant departure from the guidelines.” U.S.S.G. 1B1.7 (2024). Section 1B1.7 specified only that the latter class of commentary should “be treated as the legal equivalent of a policy statement,” *ibid.*, consistent with the role that Section 3553(b) assigned to such commentary.¹

Nor is “commentary” a mere “label,” as amicus maintains (Br. 19-20). Administrative law has long distinguished a “general statement[] of policy” from an “interpretive rule.” See *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1045-1046 (D.C. Cir. 1987). An interpretive rule states “what [an] administrative officer thinks the statute or regulation means”—it is “an agency attempt to give meaning” to a term. *Id.* at 1045 (citation omitted). A general

¹ In 2025, the Commission amended Section 1B1.7 to delete the instruction to treat even departure-related commentary as the “legal equivalent of a policy statement.” U.S.S.G. App. C, amend. 836 (Nov. 1, 2025). It did not alter the commentary to Section 1B1.7, which states that portions of the document not labeled as guidelines or commentary “are to be construed as commentary and thus have the force of policy statements.” U.S.S.G. 1B1.7, comment. Because the pre-amendment text of Section 1B1.7 treated only commentary addressing departures as the “legal equivalent of a policy statement,” the commentary to that provision is best read the same way.

statement of policy is different: It announces the agency's "intentions for the future." *Pacific Gas & Elec. Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). Commentary construing a term in a Guideline does the paradigmatic work of an interpretive rule.

That is true of the commentary at issue here. Application Note 2 to Section 2K2.1 appears immediately beneath a header entitled "Commentary." U.S.S.G. 2K2.1, comment. (n.2). The commentary is interpretive: It defines a phrase ("large capacity magazine") that appears in the Guideline itself. *Ibid.* That is not a policy statement; it is an interpretation of the Guideline's text.

2. *Congress did not expressly delegate to the Commission the authority to interpret Guidelines through policy statements*

Even if commentary could be recast as policy statements, reflexive deference to interpretive policy statements—no less than to interpretive commentary—conflicts with the SRA's text and structure and raises constitutional concerns.

a. The Act provides no textual basis for deference to policy statements, just as it provides none for deference to commentary. *See* Pet. Br. 15-18. Section 994(a)(2) authorizes "general policy statements regarding application of the guidelines." 28 U.S.C. 994(a)(2). That authorizes the Commission to state its general views about how the Guidelines should be implemented and to advise courts on the exercise of sentencing discretion. It is not authority to declare, with controlling force, what Guidelines mean.

In its essentials, the Act is akin to the Administrative Procedure Act. The Commission promulgates "guidelines," which must go through

notice-and-comment and congressional review, 28 U.S.C. 994(a)(1), (p), (x), just as an agency's legislative rule must, 5 U.S.C. 553. And the Commission may issue "policy statements" or "official commentary" exempt from those procedures, 28 U.S.C. 994(a)(2); 18 U.S.C. 3553(b)(1), just as administrative agencies may issue "general statements of policy" or "interpretative rules," 5 U.S.C. 553(b)(A).

No one understands the APA to contain an express delegation of binding interpretive authority. When an agency interprets its own regulations, deference is rooted in an implied delegation—a "presumption that Congress would generally want the agency to play the primary role in resolving regulatory ambiguities." *Kisor*, 588 U.S. at 569 (plurality opinion). Were the APA's reference to "interpretative rule[s]" or "statements of policy" an express delegation to issue authoritative interpretations of regulations, there would be no need for that presumption.

This Court demands more for an express delegation—Congress must assign "an agency the authority to give meaning to a particular . . . term." *Loper Bright*, 603 U.S. at 394. The Secretary of Labor, for instance, may expressly "define[] and delimit[] by regulations" certain statutory terms for purposes of the minimum-wage provisions. *Id.* at 395 n.5 (citing 29 U.S.C. 213(a)(15)). The Nuclear Regulatory Commission may "define[] by regulations" what it means for a defect in a nuclear facility to "create a substantial safety hazard." *Id.* at 395 n.5 (quoting 42 U.S.C. 5846(a)(2)). And the Sentencing Commission was expressly charged with "describ[ing] what should be considered extraordinary and compelling reasons for sentence reduction" under 18 U.S.C. 3582(c)(1)(A). 28 U.S.C. 994(t); see *Rutherford v. United States*, 146 S.

Ct. 1320, 1334 (2026). Section 994(a)(2) stands in stark contrast: It authorizes the Commission to issue policy statements only “regarding application” of the guidelines, not to “define[],” “delimit[],” or even “describe” any term—let alone all terms—in the Guidelines.

b. Reflexive deference to commentary would also conflict with the structure of the SRA, regardless of whether the Commission issues commentary under its authority to promulgate policy statements. The Commission must follow rigorous procedures before promulgating Guidelines, but policy statements (like commentary) are not subject to these safeguards. *See* Pet. Br. 19-20. The Commission must afford Congress a 180-day window to review and potentially reject amendments to “guidelines,” but not policy statements. 28 U.S.C. 994(p). And amendments to “guidelines”—but not policy statements—must undergo notice-and-comment rulemaking. 28 U.S.C. 994(x).

Amicus responds (Br. 39) that the Commission, in practice, often puts commentary (and policy statements) through the notice-and-comment process. That misses the point. The Congress that insisted on congressional oversight and public input when the Commission promulgated (then-mandatory) Guidelines would not have handed the Commission so easy a means of circumventing those safeguards. Congress’s choice to exempt commentary (and policy statements) from the notice-and-comment process confirms that interpretations found in those texts were never meant to bind courts.

c. Deference to commentary—whether or not issued as a “policy statement”—also implicates grave constitutional problems. First, binding deference would give the Commission the final word on interpretive questions, encroaching on the judicial power. *See* Pet.

Br. 22. Amicus responds (Br. 33-34) that Guidelines lack the *force* of law after *United States v. Booker*, 543 U.S. 220, 245 (2005). But even after *Booker*, the proper interpretation of Guidelines remains a *question* of law. Courts must still determine the meaning of a Guideline to calculate the applicable sentencing range, 18 U.S.C. 3553(a)(4), and courts of appeals must do so on review, 18 U.S.C. 3742(f)(1); see *Gall v. United States*, 552 U.S. 38, 50 (2007). Consistent with Article III, courts must “decide [those] legal questions by applying their own judgment.” *Loper Bright*, 603 U.S. at 392.

In addition, deference would allow the Commission to exercise legislative power over criminal punishment without congressional oversight. See Pet. Br. 22. The Guidelines, though no longer binding, still serve as the “benchmark” for every criminal sentence, and courts may vary from them only for reasons “sufficiently compelling” to support the degree of variance. *Gall*, 552 U.S. at 49-50; Pet. Br. 4. The Guidelines thus “anchor” criminal sentences for tens of thousands of individuals each year. *Peugh v. United States*, 569 U.S. 530, 549 (2013). That is a considerable power, and one that must be subject to congressional review.

d. This Court’s decision in *Williams v. United States*, 503 U.S. 193 (1992), does not change matters. Cf. Amicus Br. 19. In *Williams*, the Court considered whether a sentencing court could depart on a ground that a policy statement expressly forbade. 503 U.S. at 199-200. At the time, Section 3553(b) prohibited departures unless the Commission had not adequately considered a circumstance “in formulating the guidelines.” *Id.* at 198 (quoting 18 U.S.C. 3553(b) (1988)). The holding in *Williams* follows from that provision: The Commission cannot have failed to

consider a circumstance that it “expressly rejected” “as an appropriate ground for departure.” *Id.* at 200.

Williams does not suggest, however, that a policy statement is binding any time it interprets a term in the Guidelines. The Court had no occasion to announce such a rule, because the policy statement before it did nothing of the sort. In any event, *Kisor* and *Loper Bright* foreclose a reading of *Williams* that would require reflexive deference to an interpretive policy statement. The Commission has no authority to bind courts to its interpretation of the Guidelines, whether it speaks through commentary or a policy statement.

3. *Even an express delegation would not justify Stinson’s form of reflexive deference*

In all events, amicus’s “express delegation” theory would not salvage *Stinson*’s formulation of the deference standard, let alone the Fifth Circuit’s approach, under which commentary controls even unambiguous Guidelines. *See Vargas*, 74 F.4th at 682. At most, it would provide a textual hook for *Seminole Rock* deference, as refined by *Kisor*.

Whether Congress delegates interpretive authority expressly or by implication, there is no call for deference unless the court encounters ambiguity. Otherwise, the Guideline “just means what it means—and the court must give it effect” when it calculates the sentencing range. *Kisor*, 588 U.S. at 575. Put differently, if the Guideline “gives an answer,” “then a court has no business deferring to any other reading.” *Ibid.* Thus, even if Congress expressly delegated authority to interpret the Guideline, that would not “permit the [Commission], under the guise of

interpreting a [Guideline], to create *de facto* a new [Guideline].” See *Christensen v. Harris Cty.*, 529 U.S. 576, 588 (2000); see also *Rutherford*, 146 S. Ct. at 1334 (“independently” interpreting a statute even where Congress had expressly delegated to the Commission authority to construe the statute’s terms).

At bottom, amicus advocates for a version of *Stinson* that goes beyond even *Seminole Rock*. He urges (Br. 32) this Court to reject ambiguity as the trigger for deference. But if ambiguity is not the trigger, that leaves something worse: A court must defer to commentary even when it contradicts a Guideline that is *unambiguous* under the ordinary tools of construction. See *Vargas*, 74 F.4th at 682. That would turn textual interpretation on its head: “When the words of a [provision] are unambiguous,” the “judicial inquiry is complete.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992) (citation omitted).

B. The Commission’s Authority To Issue Guidelines Does Not Support Deference To Commentary

Finally, amicus presses an alternative (and bolder) argument (Br. 39-46): Commentary may be sustained under the Commission’s authority to promulgate “guidelines,” 28 U.S.C. 994(a)(1), at least where the commentary underwent notice and comment and congressional review. That theory is not *Stinson*’s, and it is unsound.

In *Stinson*, this Court held that commentary binds even when it has not cleared the procedural hurdles imposed on Guidelines. 508 U.S. at 45-46. Amicus’s fallback position abandons that holding—it requires “modif[ying]” *Stinson* to withdraw deference from any commentary that does not satisfy Section 994’s

procedural requirements. Amicus Br. 39, 41. If nothing else, this new theory cannot be defended on the basis of *stare decisis*.

Amicus’s theory is also wrong on its own terms. Guidelines and commentary differ as a matter of statutory text and procedure, and neither the Commission nor courts may reclassify one as the other after the fact. Section 3553, as explained, expressly distinguishes between “guidelines,” “policy statements,” and “official commentary,” and assigns each a different role at sentencing. 18 U.S.C. 3553(a), (b); see p. 5, *supra*. Congress directed courts to “consider” “guidelines” in calculating a “sentencing range,” 18 U.S.C. 3553(a)(4), but omitted “commentary” from that directive, even as it included a reference to “commentary” in the “very next provision,” *Loughrin v. United States*, 573 U.S. 351, 358 (2014). The natural inference is that commentary occupies a distinct—and subordinate—category, set apart from the Guidelines. See Pet. Br. 16-17.

It is therefore beside the point whether “commentary” undergoes notice-and-comment review or is submitted to Congress. *Cf.* Amicus Br. 39-46. “Commentary” does not become a “guideline” simply because the Commission chooses to send it down that procedural path. When a court interprets a “guideline” to properly calculate the “sentencing range,” its task thus remains the same—it must look to the text of the “guideline,” not the “commentary.” 18 U.S.C. 3553(a)(4); 18 U.S.C. 3553(b)(1).

Amicus’s approach would also make sentencing unadministrable. Before considering any piece of commentary, a court would first need to reconstruct whether the commentary in fact satisfied Sections 994(p)’s and 994(x)’s requirements. Then, the court

would need to sort commentary by when it issued, assigning at least the commentary issued before *Stinson* the weight of “legislative history”—consistent with the Commission’s original instructions. *See* Pet. Br. 6. Finally, the court would be left the task of applying *Stinson*: deciding when a commentary’s erroneous reading of the Guideline is “plain” enough to escape deference. 508 U.S. at 45.

The simpler, and correct, approach is to let courts interpret the Guidelines as they interpret any other provision—according to their own best judgment.

II. THIS COURT SHOULD REJECT—OR AT LEAST CAREFULLY LIMIT—DEFERENCE BASED ON AN IMPLIED DELEGATION OF INTERPRETIVE AUTHORITY

In *Stinson*, this Court did not locate any basis for deference in the SRA’s text. Instead, it adopted the deference doctrine set forth in *Seminole Rock*, which is rooted in a “presumption” that Congress intended to delegate binding interpretive authority. *See Kisor*, 588 U.S. at 569 (plurality opinion). That approach is wrong. It “conflict[s],” as amicus recognizes (Br. 15), with this Court’s later decision in *Loper Bright*, which rejected that kind of implied delegation as a “fiction.” 603 U.S. at 404. Because Congress never expressly delegated the power to create binding interpretive commentary, *see* Part I, *supra*, there should be no deference at all.

The government nevertheless urges this Court to afford the commentary a particularly robust form of deference, Br. 22-28, even as it states that *Kisor* applies with “full force” to the Guidelines, Br. 29. That approach is wrong, too. Whether this Court rejects *Stinson*’s implied delegation outright (consistent with *Loper Bright*), or simply reinforces the limits

inherent in the doctrine (consistent with *Kisor*), the result is much the same: Deference is inappropriate.

1. To start, deference is incompatible with the criminal setting. *See Abramski v. United States*, 573 U.S. 169, 191 (2014); *see* Pet. Br. 24-28. Before a court affords *Seminole Rock* deference, it must consider the “character and context” of the interpretation at issue. *Kisor*, 588 U.S. at 576. The “context” when interpreting a Guideline is criminal sentencing, where deference to an agency “can result not just in added regulatory burdens, but in the loss of liberty during months or years of extra prison time.” NAFD Br. 9. The “elemental proposition” that courts must “apply[] their own judgment,” *Loper Bright*, 603 U.S. at 392, is never more important than when an individual’s liberty is at stake.

In response, amicus understates the Guidelines’ “real and pervasive effect” on criminal sentencing. *Molina-Martinez v. United States*, 578 U.S. 189, 199 (2016). The Guidelines “anchor” the defendant’s sentence. *Id.* at 198-199 (citation omitted). A district court cannot vary from the Guidelines unless it explains the variance with specificity, *see Peugh*, 569 U.S. at 542-544; 18 U.S.C. 3553(c)(2), and considers the need to avoid unwarranted disparities, 18 U.S.C. 3553(a)(6). Thus, commentary that makes the Guideline more punitive has the “purpose and effect” of “increas[ing] the rates and length of incarceration.” *Peugh*, 569 U.S. at 545 (citation omitted). That “context” calls for a “strong judicial role,” not deference. *Kisor*, 588 U.S. at 576, 580.

2. Even when applying *Seminole Rock* deference, courts may defer to an agency’s interpretation of its own regulation only in the face of genuine ambiguity, and only after exhausting the traditional tools of construction. *Kisor*, 588 U.S. at 574-575. When a court

applies those tools, it “will resolve many seeming ambiguities out of the box, without resort to [*Seminole Rock*] deference.” *Id.* at 575.

The government resists that approach, maintaining that courts may use commentary as a “shortcut” when interpreting a Guideline that is “impenetrable on first read.” Br. 24 (quoting *Kisor*, 588 U.S. at 575). This Court has held otherwise: Text that “make[s] the eyes glaze over” gives a court no license to “wave the ambiguity flag.” *Kisor*, 588 U.S. at 575. A court must always “carefully consider[] the text, structure, history, and purpose of a [Guideline], in all the ways it would if it had no [commentary] to fall back on.” *Ibid.* When a court does so, “instances of genuine guideline ambiguity” should indeed be “uncommon.” *Cf.* U.S. Br. 24; *Kisor*, 588 U.S. at 632 (Kavanaugh, J., concurring in the judgment).

And if genuine ambiguity remains, the answer is to resolve it in the defendant’s favor, not to defer to commentary. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); Pet. Br. 24-26. The rule of lenity promotes a substantive preference for liberty, and the Guidelines, while advisory, Amicus Br. 33-38, substantially influence prison sentences. *See United States v. Bass*, 404 U.S. 336, 348 (1971). Lenity also promotes fair notice. Although this Court has held that due process does not require fair notice of Guideline provisions, *Beckles v. United States*, 580 U.S. 256, 266, 267 (2017), predictability in criminal sentencing remains an expectation of Congress, *see* 28 U.S.C. 994(x); 28 U.S.C. 991(b)(1)(B); *cf.* Fed. R. Crim. P. 11(b)(1)(M). In all events, the Guidelines became advisory only because this Court in *Booker* excised the provisions that made them mandatory. 543 U.S. at 245-259. Nothing in *Booker*, however, purported to alter how courts

construe the Guidelines, whether then in existence or issued since. *See id.* at 264; NAFD Br. 14.

3. In addition, the ordinary justifications for deference will rarely—if ever—apply to the Commission’s interpretation of the Guidelines. *See* Pet. Br. 29-33; NAFD Br. 9-24.

First, the Commission has no “comparative expertise” in interpreting Guidelines. *Kisor*, 588 U.S. at 578. The government maintains otherwise but relies on the Commission’s expertise in setting “sentencing polic[y].” U.S. Br. 26 (quoting 28 U.S.C. 991(b)(1)) (emphasis added). That is not expertise in resolving legal questions. As this Court explained in *Loper Bright*, an agency’s subject-matter expertise gives it “no special competence” in construing a legal text. 603 U.S. at 400-401. That observation applies with particular force to the Guidelines, which use common legal terms that district courts encounter during sentencings “every day.” *Id.* at 401; *see* Pet. Br. 29-30, 41-42.

Second, the Commission’s role in drafting the commentary offers no basis for deference. *Cf.* U.S. Br. 23 (quoting *Stinson*, 508 U.S. at 45). Commentary may issue “well after the guideline it interprets ha[s] been promulgated.” 508 U.S. at 44. More fundamentally, a court interpreting a Guideline should seek its objective meaning—the understanding a reasonable reader would draw from the text—not its drafters’ “actual intent.” *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. 608, 621 n.5 (2026).

Finally, binding commentary is not needed to achieve uniformity among the lower courts. *Cf.* U.S. Br. 24-25. If the Commission can identify and eliminate ambiguity through commentary, it can do so in the text. So if litigation reveals ambiguities

regarding the meaning of a Guideline, Section 994(o) provides the solution—the regular, annual cycle of Guideline amendments, 28 U.S.C. 994(o), subject to public comment and congressional review. And if the Sentencing Commission “anticipates ambiguities in the guideline text,” the path is even more straightforward: It can “preemptively address[] them” through the text of the Guideline itself. U.S. Br. 25.

* * *

None of this means that courts must construe Guidelines in a vacuum or disregard commentary entirely. *Cf.* Amicus Br. 4. Courts may credit commentary to the extent it persuades—the same “respect” that thorough and well-reasoned guidance has always earned. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *see Loper Bright*, 603 U.S. at 385-386. Courts may also consult commentary where it illustrates the operation of a technical rule, provided that it does not change the rule’s substance. What courts may not do is substitute the Commission’s interpretation of the Guideline for their own judgment as to the text’s single, best meaning.

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

Even as amicus disclaims *Stinson*’s reasoning, he invokes (Br. 47-51) *stare decisis* to save its deference standard. *Stare decisis*, however, does not require this Court to retain *Stinson*’s deference standard, and certainly does not require it to disregard the limits in *Seminole Rock* deference identified in *Kisor*.

1. This Court need not run through the *stare decisis* factors to discard *Stinson*’s deference standard. It has

not hesitated to reject adherence to a “doctrinal dinosaur or legal last-man-standing.” *Nat’l Republican Senatorial Comm. v. FEC*, 146 S. Ct. 2404, 2424 (2026) (citation omitted). In those circumstances, the Court has described its “hollowed-out precedents as ‘so undermined’ by subsequent developments that they are ‘no longer good law’ and ‘retai[n] no vitality.’” *Ibid.* (citation omitted).

That is *Stinson*. The decision rested on an implied delegation to create binding interpretive commentary—a theory that amicus does not defend given *Loper Bright*. But even as amicus disavows *Seminole Rock* deference, he would leave behind its vestiges—its “classic formulation” of the deference standard—for the Sentencing Commission alone. *Kisor*, 588 U.S. at 574. *Stare decisis* is no cause for that odd result. *Loper Bright* and *Kisor* have already hollowed out *Stinson*’s reasoning; discarding *Stinson*’s statement of the deference standard only “formalize[s] what is evident” from those decisions. *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019).

2. “If anything more is left of” *Stinson*’s deference standard, this Court should overrule it. *Trump v. Slaughter*, 146 S. Ct. 2283, 2302 (2026) (emphasis omitted). *Stare decisis*—even were it “enhanced” (Amicus Br. 47)—does not counsel otherwise, just as it did not save the deference doctrine set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The Court’s reasoning in *Stinson* has “eroded” beyond repair. *United States v. Gaudin*, 515 U.S. 506, 521 (1995). Indeed, in light of this Court’s more recent decisions, retaining *Stinson*’s reflexive deference standard would not serve the “evenhanded, predictable, and consistent development of legal principles.”

Gamble v. United States, 587 U.S. 678, 691 (2019) (citation omitted). Rather, it would conflict with *Loper Bright*'s instruction that legal provisions have a "single, best meaning," not a range of "permissible" alternative constructions. 603 U.S. at 400. It would also conflict with *Kisor*, which disclaimed the "plainly erroneous" test as a "caricature" of the doctrine. 588 U.S. at 574.

Stinson, moreover, does not provide a workable rule. As amicus emphasizes (Br. 4, 20, 21, 49), the doctrine requires a court to disregard commentary in plain conflict with the Guideline. But if courts struggle to reach consensus as to whether language is genuinely ambiguous, see Amicus Br. 3, it will prove no easier to distinguish between "flat inconsistency" and *mere* inconsistency. *Stinson*, 508 U.S. at 43. If courts are not to exhaust the interpretive toolkit before deference, when should they stop? After a quick review of the text? A glance at the structure? Applying some (but not all) canons of construction? Now that *Kisor* has awoken courts "from [a] slumber of reflexive deference" in administrative law, the Court should not reinforce that deference in criminal sentencing. *United States v. Nasir*, 17 F.4th 459, 472 (3d Cir. 2021) (en banc) (Bibas, J., concurring).

Conversely, there is nothing disruptive about eliminating *Stinson*'s deference standard. Where the commentary reflects the best reading of the Guideline, courts will follow it. Where it does not, the Commission can move the commentary to the text, after congressional review and public oversight. Indeed, the Commission has already begun the process. Pet. Br. 44-45. If any remaining commentary

cannot survive without deference, it will be abrogated for good reason.²

3. If this Court retains any deference, it must at least enforce *Kisor*'s limits. *Stare decisis* was no obstacle in *Kisor* to reinforcing the limits in *Seminole Rock* deference, 588 U.S. at 574, and it is no obstacle here either.

And once this Court recognizes the “inherent” limits to *Seminole Rock*, *Kisor*, 588 U.S. at 574, the Court need only follow them to their conclusion: There can be no deference, at least to commentary, like that at issue here, that makes the text more punitive. For the reasons explained, deference is ill-suited to the criminal context, conflicts with the rule of lenity, and contravenes the other ordinary justifications for deference. See pp. 15-17, *supra*. Rather than force lower courts to reach that conclusion as to Guideline after Guideline, this Court should confirm as much categorically.

Doing so would not require the Court to jettison the result in *Stinson* itself: That case concerned commentary narrowing the scope of a sentencing enhancement, 508 U.S. at 39, so deference did not conflict with the rule of lenity or the principles that animate it. The Court, however, need not “extend [*Stinson*] to the limits of its logic.” *Hein v. Freedom From Religion Foundation, Inc.*, 551 U.S. 587, 615 (2007) (plurality opinion). There is no reason for

² Amicus (Br. 51) worries that abrogating deference could prompt a “flood” of claims on collateral review. “[E]very circuit to ‘look[] at the issue,’” however, “has agreed that a defendant cannot use a § 2255 motion to vindicate non-constitutional challenges to advisory guideline calculations.” *Bullard v. United States*, 937 F.3d 654, 660-661 (6th Cir. 2019) (citation omitted) (collecting cases).

deference where, as here, the commentary increases the harshness of a guideline.

IV. THIS COURT SHOULD VACATE THE JUDGMENT BELOW AND REMAND

The government agrees (Br. 3, 28-29) that the Court should vacate the decision below and remand. The court of appeals should have the opportunity to interpret Section 2K2.1 without deference to the commentary. *See* Pet. App. A2; J.A. 18.

The government maintains (Br. 31-32) that it will win on remand, but—as it recognizes—its arguments are properly directed to the court of appeals (or the district court) in the first instance. In any event, the government is wrong. Section 2K2.1’s enhancement applies only to offenses involving a “semiautomatic firearm that is capable of accepting a large capacity magazine.” U.S.S.G. 2K2.1(a)(3). As explained in the opening brief (at 45-47), that text cannot cover petitioner’s offense involving a Glock 17, perhaps the country’s most ubiquitous firearm. That is plainly true without deference, and it is true under *Kisor*, too: The text is unambiguous and, even if it were not, this commentary would not warrant deference. *See* NAFD Br. 23-24.

The government questions (Br. 31) whether the court of appeals will revisit circuit precedent when interpreting Section 2K2.1 on remand. But if this Court rejects or cabins deference, its decision would be an intervening development that would “relieve[]” the court of appeals of its duty to follow circuit precedent under the “rule of orderliness.” *Sandoval Argueta v. Bondi*, 137 F.4th 265, 271 (5th Cir. 2025). Regardless of whether that will be true of every precedent relying on *Stinson* deference, *see ibid.* (reserving the question

after *Loper Bright*), it must at least be true of the specific precedent that is under review in this case.

Finally, the government highlights the district court's statement that it "would have imposed the same sentence" even if the range were miscalculated. Br. 32 (quoting J.A. 21). In the Fifth Circuit, however, it is "not enough for the district court to say the same sentence would have been imposed but for the error." *United States v. Tanksley*, 848 F.3d 347, 353 (5th Cir.), *supplemented*, 854 F.3d 284 (5th Cir. 2017). That kind of boilerplate statement is common—some district courts in the Fifth Circuit make it in virtually every case—and the court of appeals often remands in spite of such assurances. *See, e.g., United States v. Ritchey*, 117 F.4th 762, 767-768 (5th Cir. 2024); *United States v. Taylor*, 2022 WL 2752602, at *2 (5th Cir. July 14, 2022) (per curiam); *Tanksley*, 848 F.3d at 353; *United States v. Martinez-Romero*, 817 F.3d 917, 925, 926 (5th Cir. 2016) (per curiam). And on remand, "district courts often impose lighter sentences when confronted with a sentencing error no matter how emphatically they indicate[d] otherwise." *United States v. Redmond*, 965 F.3d 416, 421 (5th Cir. 2020). The courts below should have the opportunity to follow the same course here.

CONCLUSION

For the foregoing reasons and those stated in the opening brief, the judgment below should be vacated and the case remanded for further proceedings.

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