

IN THE SUPREME COURT OF THE UNITED STATES

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OLADAYO OLADOKUN, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court correctly determined the loss attributable to petitioner's offenses for purposes of Sentencing Guidelines § 2B1.1(b)(1) (2021) based on the official commentary to that provision.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

United States v. Oladokun, No. 1:20-cr-3 (Feb. 7, 2023)

United States Court of Appeals (2d Cir.):

United States v. Kukoyi, No. 23-6141 (Jan. 24, 2025)

IN THE SUPREME COURT OF THE UNITED STATES

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No. 25-5964

OLADAYO OLADOKUN, PETITIONER

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 4-32)<sup>1</sup> is reported at 126 F.4th 806.

JURISDICTION

The judgment of the court of appeals was entered on January 24, 2025. A petition for rehearing was denied on March 24, 2025 (Pet. App. 2). The petition for a writ of certiorari was filed on May 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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<sup>1</sup> This brief cites the pages of the PDF document of the petition appendix on the Court's website because the petition appendix is not itself consecutively paginated.

## STATEMENT

Following a guilty plea in the United States District Court for the Southern District of New York, petitioner was convicted of bank-fraud conspiracy, in violation of 18 U.S.C. 1344 and 1349, and money-laundering conspiracy, in violation of 18 U.S.C. 1956(a) (1) (B) (i) and (h). Judgment 1-2. The district court sentenced petitioner to 125 months of imprisonment, to be followed by three years of supervised release. Id. at 3-4. The court of appeals affirmed. Pet. App. 4-32.

1. Petitioner was a leader and organizer of a bank-fraud and money-laundering scheme in which he and his coconspirators opened more than 60 business bank accounts at banks in Virginia and Maryland using the personal identifying information of others for the purpose of depositing stolen or fraudulent checks or fraudulently induced wire transfers and then withdrawing the funds. Pet. App. 6; see PSR ¶¶ 23-24, 29-31. The scheme's victims lost approximately \$18 million. PSR ¶ 26. Petitioner was responsible for an "intended loss" of over \$4.1 million. PSR ¶¶ 32, 107, 115.

Petitioner pleaded guilty to both counts in his federal indictment. Pet. App. 8. At sentencing, the district court calculated petitioner's advisory Sentencing Guidelines range based in part on Sentencing Guidelines § 2B1.1(b) (1) (J) (2021), which provides an 18-level enhancement if the "loss" for a fraud offense exceeds \$3.5 million. See Pet. App. 10-11. The court determined that petitioner was responsible for a \$4.1 million "loss" trigger-

ing that enhancement based on two alternative grounds. Id. at 11. First, the court applied the (now former) commentary to Section 2B1.1, which at the time provided that "loss is the greater of actual loss or intended loss," Sentencing Guidelines § 2B1.1, comment. (n.3(A)) (2021). See Pet. App. 11 & n.1.<sup>2</sup> Second, in the alternative, the court determined that a different Sentencing Guideline for conspiracy offenses -- which instructs courts to apply sentencing adjustments based on "any intended offense conduct" using Guidelines for the underlying substantive offense, Sentencing Guidelines § 2X1.1(a) (2021) -- independently warranted use of petitioner's \$4.1 million "intended loss." See Pet. App. 11-12 (citation omitted).

2. The court of appeals affirmed. Pet. App. 4-32. As relevant here, the court observed that petitioner had argued that "the district court erred in relying on the commentary to Section 2B1.1(b) (1)," which had defined "'loss' \* \* \* to include intended loss,'" but the court concluded that it "need not address [petitioner's] arguments regarding [that] commentary" because it affirmed the district court's use of "intended loss" on an independent basis. Id. at 11-12 (citation omitted). The court stated that petitioner did "not challenge the district court's alternative ground for using the \$4,178,501 intended loss amount based on

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<sup>2</sup> Since November 2024, the text of Section 2B1.1 has itself defined "[l]oss" to mean "the greater of actual or intended loss." Sentencing Guideline § 2B1.1(b) (1), note (A) (2025); see Pet. App. 11 n.1.

the conspiracy guideline" and, for that reason, the court "affirm[ed] the district court's use of [petitioner's] intended loss amount pursuant to the language of Section 2X1.1(a)." Ibid.

Judge Menashi concurred in part and concurred in the judgment. Pet. App. 21-32. He observed that the court of appeals had determined that "it 'need not address [petitioner's] arguments regarding the Guidelines commentary to Section 2B1.1(b) (1)'" and that the court had therefore "decline[d] to cite" its earlier precedents addressing that issue. Id. at 22 (citation omitted). Judge Menashi stated that he did "not join that part of the court's opinion" and, instead, "concur[red] in the judgment on the ground that [petitioner's] argument is foreclosed by [Second Circuit] precedent." Ibid.; see id. at 21.

#### ARGUMENT

Petitioner contends (Pet. 1-3) that the district court erred in determining that the "loss" amount attributable to him under Sentencing Guideline § 2B1.1(b) (1) includes the "intended loss" from his offenses because, he argues, the district court should not have deferred to the interpretation of "loss" in the former commentary to Section 2B1.1. In petitioner's view (Pet. 1-3), such deference is inconsistent with Kisor v. Wilkie, 588 U.S. 558 (2019), and Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). The decision of the court of appeals is correct, does not conflict with any decision of any other court of appeals, and does not warrant this Court's review.

The court of appeals did not resolve whether deference to Section 2B1.1's former commentary was warranted. The court made clear that it "need not address" that issue because it affirmed the district court's use of "intended loss" on the "'independent ground'" that the text of a different Guidelines provision for conspiracy offenses -- Section 2X1.1(a) -- separately warranted use of petitioner's "intended loss." Pet. App. 12 (citation omitted); see pp. 3-4, supra. The judgment of the court of appeals thus does not turn on the Sentencing-Guidelines-commentary question on which petitioner seeks this Court's review.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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