

IN THE SUPREME COURT OF THE UNITED STATES

OLADAYO OLADOKUN, PETITIONER

V.

UNITED STATES OF AMERICA

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

REPLY

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

The government's opposition confirms rather than defeats the need for this Court's review. The Second Circuit affirmed petitioner's sentence without resolving whether deference to Sentencing Guidelines commentary defining "loss" to include "intended loss" remains permissible after *Kisor v. Wilkie*, 588 U.S. 558 (2019), and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The government now seeks to shield that unresolved and recurring question by invoking an asserted "independent ground" under U.S.S.G. § 2X1.1(a). That position fails as a matter of law.

I. The Judgment Necessarily Rests on the Commentary Question

Section 2X1.1(a) does not define "loss." It instructs courts to apply the guideline for the substantive offense and to include adjustments for "intended offense conduct." Whether "intended offense conduct" includes intended loss exceeding actual loss depends entirely on how "loss" is defined in § 2B1.1.

At the time of petitioner's sentencing, the text of § 2B1.1 did not define loss to include intended loss. Only the commentary supplied that definition. Accordingly, reliance on § 2X1.1(a) necessarily presupposes the validity of the commentary interpretation petitioner challenges. The conspiracy guideline cannot operate as an independent ground without first assuming that commentary may expand unambiguous guideline text.

II. The Court of Appeals Avoided Rather Than Resolved
A Pure Question of Law

The court of appeals expressly declined to decide whether deference to § 2B1.1's former commentary was warranted, yet affirmed a sentence enhanced by years of imprisonment. Judge Menashi's concurrence makes clear that the panel relied on circuit precedent predating *Loper Bright*

and did not confront whether that precedent remains viable after this Court's recent decisions.

This Court routinely grants review where lower courts avoid a pure question of law that directly controls sentencing outcomes nationwide. Whether judicial deference to Guidelines commentary survives *Kisor* and *Loper Bright* is precisely such a question.

III. The Issue is Live, Recurring and Exceptionally Important

The Sentencing Commission's November 2024 amendment moving the definition of "loss" into the guideline text does not moot the issue. Petitioner and many defendants whose cases remain on direct or collateral review were sentenced under the prior supply substantive definitions carrying major sentencing consequences.

Absent this Court's review, courts will continue to impose substantial sentencing increases based on commentary that exceeds the Commission's authority and conflicts with governing administrative-law principles.

IV. This Case is an Ideal Vehicle

This case cleanly presents the question whether courts may defer to Sentencing Guidelines commentary that expands the plain text of a guideline. There are no disputed facts, no jurisdictional obstacles and no waiver. The government's alternative-ground theory fails as a matter of law and does not insulate the judgment from review.