No. 25-6038

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL STEWART, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 21-25) that his advisory Guidelines range was incorrectly calculated under Section 4B1.1(c)(2) of the Sentencing Guidelines, which applies when a career offender is found guilty of violating 18 U.S.C. 924(c) and one or more additional counts of conviction. Sentencing Guidelines § 4B1.1(b) and (c)(2)(A) (2023). As relevant here, Section 4B1.1(c)(2) provides that the Guidelines range is determined by adding the statutory-minimum consecutive sentence for the Section 924(c) count to the "otherwise applicable guideline range" determined for the other counts of conviction. Id. § 4B1.1(c)(2)(A). Petitioner argues (Pet. 23-25) that the "otherwise applicable guideline

range" cannot reflect a career-offender enhancement under Section 4B1.1(b), even if the defendant would qualify for it without the Section 924(c) count; notes (Pet. 15) that the Commission's relevant commentary contradicts his position; but contends (Pet. 15-16) that Kisor v. Wilkie, 588 U.S. 558 (2019), limits deference to Guidelines commentary under Stinson v. United States, 508 U.S. 36 (1993), to contexts in which the Guideline's text is genuinely ambiguous. Although the government agrees that Kisor applies to the Guidelines-deference context, the court of appeals correctly rejected petitioner's interpretation of Section 4B1.1(c)(2) and its decision does not warrant further review.

1. This Court in Stinson drew an "analogy," albeit one that was "not precise," between the "measure" of deference given to such agency interpretations under Bowles v. Seminole Rock & Sand Co., 325 U.S. 410 (1945), and the appropriate measure of deference that should be afforded to the Sentencing Commission's interpretation of the Sentencing Guidelines in its official commentary. Stinson, 508 U.S. at 44-45. In Kisor, the Court clarified that Seminole Rock deference (also called Auer deference) applies, among other things, only where a federal regulation is "genuinely ambiguous." Kisor, 588 U.S. at 573-575; see id. at 563. The government has thus taken the position, including in this Court, that Kisor sets the standard for determining whether particular guideline commentary is entitled to deference. See, e.g., Br. in Opp. at 17, Poore v. United States, No. 25-227 (Nov. 19, 2025);

Br. in Opp. at 15, Tabb v. United States, 141 S. Ct. 2793 (2021) (No. 20-579).

To the extent that petitioner argues (Pet. 22-23) that Kisor now governs the degree of deference owed to the Sentencing Commission's interpretation of the Guidelines in its commentary, the government agrees. But for reasons set forth in the government's brief in opposition in Ratzloff v. United States, 144 S. Ct. 554 (2024), that question does not warrant this Court's review. Like the petitioner in Ratzloff, petitioner overstates the degree of any conflict about whether and how Kisor applies in the distinct context of the Sentencing Commission's commentary to the guidelines. See Br. in Opp. at 15-17, Ratzloff, supra (No. 23-310). And in his own assertion of a circuit disagreement, every decision that petitioner identifies as incorrectly decided resulted in a denial of certiorari. See Pet. 17 (citing United States v. Vargas, 74 F.4th 673 (5th Cir. 2023) (en banc), cert. denied, 144 S. Ct. 828 (2024) (No. 23-5875); United States v. Maloid, 71 F.4th 795 (10th Cir. 2023), cert. denied, 144 S. Ct. 1035 (2024) (No. 23-6150); and United States v. Lewis, 963 F.3d 16 (1st Cir. 2020), cert. denied, 141 S. Ct. 2826 (2021) (No. 20-7387)).

Those denials of certiorari are part of a longer series of denials, in which this Court has recently and repeatedly denied petitions for writs of certiorari seeking review of questions concerning the applicability of Kisor to the Guidelines. See, e.g., Munoz v. United States, No. 25-5114 (Oct. 6, 2025); Elwell

v. United States, No. 25-5110 (Oct. 6, 2025); Cook v. United States, 145 S. Ct. 2830 (2025) (No. 24-7265); Zheng v. United States, 145 S. Ct. 1899 (2025) (No. 24-604); see also, e.g., Br. in Opp. at 10 n.2, Zheng, supra (citing 18 additional denials of certiorari petitions seeking review of similar Kisor-based challenges to the Guidelines commentary). The Court should likewise deny certiorari in this case.[1]

Review is particularly unwarranted because the Sentencing Commission is fully capable of resolving disputes concerning the application of particular commentary by amending the text of the Guidelines. In fact, the Commission has undertaken a "multiyear study of the Guidelines Manual to address case law concerning the validity and enforceability of guideline commentary, and possible consideration of amendments that might be appropriate." 88 Fed. Reg. 60,536, 60,537 (Sept. 1, 2023). And it has, in fact, begun to amend the Guidelines accordingly. See, e.g., Sentencing Guidelines, App. C (Vol. IV), Amend. 822, at 246 (2025) (effective Nov. 1, 2023) (explaining "changes to address a circuit conflict regarding the authoritative weight afforded to certain commentary to §4B1.2" in light of Kisor that "mov[ed], without change," definitions of terms from commen-tary "to the text of the guideline");

[1] Other petitions raising a similar issue are currently pending in this Court. See Poore v. United States, No. 25-227 (filed Aug. 25, 2025); Beaird v. United States, No. 25-5343 (filed Aug. 11, 2025); Nock v. United States, No. 25-6158 (filed Nov. 3, 2025); James v. United States, No. 25-6267 (filed July 30, 2025); Rahmankulov v. United States, No. 25-6464 (filed Dec. 24, 2025); Baldwin v. United States, No. 25-6679 (filed Nov. 6, 2025).

cf. Braxton v. United States, 500 U.S. 344, 348 (1991) (explaining that this Court should be "restrained and circumspect in using [its] certiorari power" to resolve Guidelines issues in light of the Commission's "statutory duty 'periodically to review and revise' the Guidelines") (brackets and citation omitted).

2. In any event, petitioner cannot demonstrate that any disagreement about the degree of deference owed to Guidelines commentary would change the outcome of his Guidelines calculation. Kisor clarified that deference will apply "only if a regulation is genuinely ambiguous." Kisor, 588 U.S. at 573. But the court of appeals rejected each of petitioner's statutory arguments, Pet. App. 12A-15a, and ultimately concluded that, when Section 4B1.1's text is "[r]ead as a whole," the district court applied the "far more 'reasonable understanding of the Guideline,'" id. at 14A-15A (citation omitted).

The court of appeals, for instance, rejected petitioner's argument that Section's 4B1.1(b)'s use of the phrase "'[e]xcept as provided in subsection (c)'" meant that the district court had to "blind itself" to subsection (b) once it determined that subsection (c) applied, Pet. App. 13A (quoting Section 4B1.1(b)), reasoning that such clauses dictate what happens when two provisions "'clash,'" but do not otherwise expand or contract the scope of either provision when they can be read consistently with each other. Ibid. (quoting Atlantic Richfield Co. v. Christian, 590 U.S. 1, 15 (2020)). The court also rejected petitioner's invoca-

tion of the "presumption of consistent usage," observing that the phrase "the offense level otherwise applicable" in Section 4B1.1(b) and the phrase "otherwise applicable guideline range" in Section 4B1.1(c)(2)(A) are different phrases and, in any event, that context shows that Section 4B1.1(c)(2)(A)'s reference to the "otherwise applicable guideline range" ultimately refers to a career-offender range when the defendant is a career offender even absent his Section 924(c) conviction. Id. at 14A-15A.

Although petitioner repeats his statutory arguments (Pet. 23-25), he fails to provide any response to the court of appeals' analysis. And significantly, petitioner fails to identify any decision supporting his own view that Section 4B1.1(c)(2)(A)'s text unambiguously compels his interpretation.

3. Finally, even if the question presented would otherwise warrant review in some case, this case would be a poor vehicle for considering it because petitioner's challenge is entitled only to review for plain error. As the court of appeals made clear, petitioner's contentions are subject only to plain-error review because petitioner did not object to the determination of his Guidelines range in district court. Pet. App. 5A; see id. at 15A (holding that the district court "did not * * * plainly err"); see also Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993). To establish reversible plain error, petitioner has the burden of demonstrating (1) an error; (2) that is plain or obvious; (3) that affected substantial rights; and (4) that

seriously affected the fairness, integrity, or public reputation of judicial proceedings. Olano, 507 U.S. at 732-736; see, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009). Petitioner, however, does not address plain-error review, let alone show that he could carry his burden of establishing a reversible plain error. See Pet. 15-29. Petitioner's failure to identify even one decision adopting his reading of Section 4B1.1(c)(2)(A) confirms that he cannot do so.[2]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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[2] Copies of the government's briefs in opposition in Poore, supra (No. 25-227), Zheng, supra (No. 24-604), Ratzloff, supra (No. 23-310), and Tabb, supra (No. 20-579), are being served on petitioner. They are also publicly available at the Court's online docket, https://www.supremecourt.gov/docket/docket.aspx.