

No. 25-6038

IN THE
Supreme Court of the United States

——
DANIEL STEWART,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

—
*On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Seventh Circuit*

REPLY BRIEF FOR PETITIONER

Thomas W. Patton
Federal Public Defender

Michael Will Roy
*Assistant Federal
Public Defender*

OFFICE OF THE FEDERAL
PUBLIC DEFENDER
1515 Fourth Avenue, Suite 201
Rock Island, Illinois 61201
309-948-7190
michael_roy@fd.org

David A. O’Neil
Counsel of Record

DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-383-8000
daoneil@debevoise.com

Attorneys for Petitioner

(Additional Counsel on the Reverse)

April 8, 2026

Steven Tegrar
James Stramm
Anita Kapyur
Emily Morgan
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, New York 10001
212-909-6000
sgtegrar@debevoise.com
jstramm@debevoise.com
askapyur@debevoise.com
elmorgan@debevoise.com

Attorneys for Petitioner

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REPLY BRIEF FOR PETITIONER

There is no dispute that a deep circuit split exists over the level of deference courts should give to the U.S. Sentencing Commission’s commentary to the Guidelines. The Government “agrees that *Kisor* applies to the Guidelines-deference context” and makes no effort to defend circuit precedent holding otherwise, including the decision below. U.S. Br. 3; *cf. Kisor v. Wilkie*, 588 U.S. 558 (2019), *with* Pet. App. 10a (holding that “a court must abide by a relevant application note ‘unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of,’ the applicable Guideline”). The courts of appeals remain firmly divided on whether *Kisor*’s clarification of *Auer* deference applies to *Stinson* and the Sentencing Guidelines. And although the Government argues that the tension between courts of appeals over the appropriate level of deference is “overstate[d],” the continued filing of petitions with this Court requesting review demonstrates that the issue remains pressing.

Petitioner presents a strong vehicle to decide the issue. The Seventh Circuit applied a standard that the Government concedes is incorrect, and the circumstances would require remand under any standard of review, including plain error. His case is not moot nor at risk of becoming moot, distinguishing it from other petitions. *See, e.g., Pet., Poore v. United States*, No. 25-227 (filed Aug. 25, 2025). And favorable resolution by this Court may result in a corrected sentence that is years lower than the one Petitioner is currently serving. The Court should grant certiorari.

I. The Government Agrees That There is an Intractable Circuit Split and that the Seventh Circuit Misapplied This Court’s Precedent.

The Government does not contest that *Kisor* “governs the degree of deference owed to the Sentencing Commission’s interpretation of the Guidelines in its commentary.” U.S. Br. 3. But the Seventh Circuit failed to apply that standard, aligning with several other wayward circuits in ignoring this Court’s precedent. The Seventh Circuit thus never performed the analysis that *Kisor* demands: it did not ask whether Section 4B1.1 is genuinely ambiguous after exhausting the traditional tools of interpretation, nor did it evaluate whether the commentary fell within any permissible zone of ambiguity. In short, the court applied precisely the type of reflexive deference that *Kisor*—and subsequently *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)—repudiated.

The resulting dissonance between the agreed upon governing legal standard and the methodology employed by the Seventh Circuit is reason enough to grant review. Only this Court can resolve that conflict and restore uniformity to the law.

The Government’s principal response is not to defend the Seventh Circuit’s deference framework on the merits but rather to note that this Court has previously denied certiorari on the question presented. U.S. Br. 3–4. Previous denials neither dissolve an entrenched circuit split nor speak to this Petition, which arrives in a materially different posture. Petitions are denied for a variety of reasons: the petition may not properly present the issue; often a circuit split is developing yet not mature. *See* Sup. Ct. R. 10. In any

event, the fact that the issue has percolated in the courts of appeals for years without resolution weighs in favor of granting certiorari, not against it.

Nor can the Government wish away this profound split by delegating its resolution to the Commission. True, the Commission itself can resolve disputes over the application of the Guidelines' commentary by simply amending the Guidelines' text. U.S. Br. 4. And the Government is correct that if the Commission amends the text of a particular Guideline, that amendment may resolve a dispute over that Guideline's interpretation. But that is not the question presented in this Petition. The question this Court (and this Court alone) must resolve is what level of deference courts must give to the Commission's commentary. *See* Pet. i, Questions Presented. The Commission, just like an agency, cannot dictate what level of deference an Article III court affords the Commission's own interpretation of the Guidelines. *See Kisor*, 588 U.S. at 609 (Gorsuch, J., concurring) (“[A] court always retains the power to decide at least whether the interpretation is entitled to deference.”). Any other conclusion would improperly supplant the judiciary's role.

The fact that the Commission could hypothetically, some day in the future, resolve competing interpretations of the commentary by amending the Guidelines is cold comfort for individuals like Petitioner, for whom years of liberty hinge on the deference given to the commentary. And the string of petitions that the Government cites (which now date back more than five years) demonstrate that the Commission is not resolving these commentary disputes in a way that obviates the need for judicial review.

In 2024, there were 61,678 individuals sentenced in the federal system.¹ Of those individuals, 27,105 were sentenced in circuits that either prohibit deference to the commentary unless the underlying Guideline is genuinely ambiguous, or decline to defer where the commentary expands the corresponding Guideline's substantive meaning.² The remaining 34,573 individuals were sentenced in circuits that either reflexively defer to the commentary unless it is plainly erroneous or violates federal law, or have suggested that their pre-*Kisor* rule for deferring to the Guidelines commentary still applies.³ This stark circuit

¹ U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – First Circuit* (2024), at 1.

² U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Third Circuit* (2024), at 1 (2,487 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Fourth Circuit* (2024), at 1 (3,984 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Sixth Circuit* (2024), at 1 (4,330 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Ninth Circuit* (2024), at 1 (10,775 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Eleventh Circuit* (2024), at 1 (4,993 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – D.C. Circuit* (2024), at 1 (536 federal offenders sentenced).

³ U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – First Circuit* (2024), at 1 (2,010 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Second Circuit* (2024), at 1 (3,061 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Fifth Circuit* (2024), at 1 (17,741 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Seventh Circuit* (2024), at 1 (2,013 federal offenders sentenced); U.S. Sent'g Comm'n, *Statistical Information Packet: Fiscal Year 2024 – Eighth Circuit*

split has fractured the circuits, and so long as this Court declines to resolve it, federal defendants will continue to face disparate sentences based solely on the geography of the sentencing court. Neither the courts of appeals nor the Sentencing Commission can resolve this deeply important issue. Only this Court can provide uniformity.

II. This Case Is an Ideal Vehicle to Resolve the Dispute.

Petitioner’s case presents an ideal vehicle. *First*, the sentencing court reflexively deferred to the Commission’s commentary on Section 4B1.1 even though the plain text of the Guideline is unambiguous, leaving “no plausible reason for deference” to the commentary. *Kisor*, 588 U.S. at 575. *Second*, Petitioner’s position at sentencing was that the lower end of the Guidelines range should be 360 months under the text of the Guideline, not 420 months. *Third*, the Seventh Circuit applied a level of deference to the Commission’s commentary that even the Government cannot defend under this Court’s precedent. *Fourth*, Petitioner has a current release date of 2040 with no risk of his case becoming moot. And *fifth*, had the sentencing court correctly interpreted the Guideline, Petitioner would likely have received a sentence 5 years lower. Given Petitioner’s extraordinary record in prison, he deserves those years back.

Competing petitions cited by the Government have various issues rendering them unsuitable or

(2024), at 1 (4,864 federal offenders sentenced); U.S. Sent’g Comm’n, *Statistical Information Packet: Fiscal Year 2024 – Tenth Circuit* (2024), at 1 (4,884 federal offenders sentenced).

incomplete vehicles. Certain petitions are either moot or at a substantial risk of becoming moot, *see* Pet. 7, *Poore v. United States*, No. 25-227 (filed Aug. 25, 2025) (acknowledging the petitioner started serving his term of supervised release), because the district court can terminate supervision at any time after just one year, *see* 18 U.S.C. § 3583(e)(1) (allowing a judge to terminate supervised release “at any time after the expiration of one year of supervised release” if “such action is warranted by the conduct of the defendant released and the interest of justice”). Other petitions raise the issue as an academic exercise, *see* Pet., *Rahmankulov v. United States*, No. 25-6464 (filed Dec. 24, 2025) and Pet., *Nock v. United States*, No. 25-6158 (filed Nov. 3, 2025), because courts of appeals almost uniformly reach the same conclusion about the Guidelines language of “intended loss” whether they apply the *Stinson* or *Kisor* framework. And other pro se petitions are untimely and do not cleanly present the issue. *See* Pet., *James v. United States*, No. 25-6267 (filed July 30, 2025). At a minimum, should the Court be inclined to review this question, Petitioner’s case should be consolidated with another petition to ensure a cleanly presented issue that overcomes vehicle shortcomings.

The standard of review to be applied in Petitioner’s case presents no issue either. Precedent from this Court and the Seventh Circuit make clear that the district court committed plain error. “When a defendant is sentenced under an incorrect Guidelines range . . . the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.” *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016). The Seventh Circuit routinely finds plain error under similar

circumstances. See *United States v. Ruth*, 966 F.3d 642, 651 (7th Cir. 2020) (“We have repeatedly held that [a] sentencing based on an incorrect Guidelines range constitutes plain error and warrants a remand for resentencing. . . .”(vacating and remanding sentence on plain-error review) (internal quotations omitted)); *United States v. Turner*, 55 F.4th 1135, 1144 (7th Cir. 2022) (remanding for resentencing due to plain error where “[b]ased on the sentencing hearing transcript, it [was] not clear the district court would have imposed the same sentence absent the error” (internal quotations omitted)). Like *Ruth* and *Turner*, the error here involves complicated textual-interpretation issues of first impression; nevertheless, that error is clear and obvious once the Seventh Circuit applies the correct test (*Kisor*).

Petitioner’s appeal would satisfy plain-error review should the Court reverse the Seventh Circuit’s erroneous application of the *Stinson* doctrine because the error would be plain “at the time of appellate review.” *Henderson v. United States*, 568 U.S. 266, 1123 (2013); see also *United States v. Caputo*, 978 F.2d 972, 975 (7th Cir. 1992) (“[W]hile the error must be straightforward, it can be so in hindsight.”).

In an attempt to downplay the very real consequences this Court’s decision would have for Petitioner, the Government wrongly suggests that this Court’s decision would have no practical effect on the analysis below. In doing so, the Government misconstrues the order of operations. Whether or not the Court’s decision in this case would disturb the Seventh Circuit’s previous analysis is a question for remand, not a barrier that precludes this Court’s review. In any event, it is clear that the Seventh Circuit would need to revisit its decision should the Court

confirm that *Kisor* abrogated *Stinson*. *Kisor*'s more exacting standard requires a three-step test for courts to determine whether the Guideline is ambiguous using all traditional tools of construction. *Id.* at 574–75. Next, the court must consider the “text, structure, [and] history” to “establish the outer bounds of permissible interpretation.” *Id.* at 576. Finally, even if the agency reading is reasonable, the court must “make an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight.” *Id.*

The Seventh Circuit's analysis does not comport with *Kisor*, so that court would need to reconsider its opinion. As a preliminary step, the court below did not evaluate whether the Guideline at issue was ambiguous. While it did find that the Commission offered a “reasonable understanding of the Guideline,” Pet. App. 15a, *Kisor* demands more. The Seventh Circuit must also consider whether the Commission's interpretation is entitled to controlling weight. The court did not do so.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID A. O'NEIL
Counsel of Record
DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Ave. N.W.
Washington, D.C. 20004
daoneil@debevoise.com

(202) 383-8000

STEVEN TEGRAR
JAMES STRAMM
ANITA KAPYUR
EMILY MORGAN
DEBEVOISE & PLIMPTON LLP
66 Hudson Blvd.
New York, NY 10001

THOMAS W. PATTON
Federal Public Defender
MICHAEL WILL ROY
Assistant Federal Public De-
fender
OFFICE OF THE FEDERAL PUBLIC
DEFENDER
1515 4th Avenue, Suite 201
Rock Island, IL 61201
michael_roy@fd.org
(309) 948-7190

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