

No. 25-6267

IN THE SUPREME COURT OF THE UNITED STATES

ALPHONSO LATAUREAN JAMES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH 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 asserts (Pet. 2, 8)¹ that the district court's calculation of his base offense level under Sentencing Guidelines § 2K2.1(b)(6)(B) for possession of a firearm "in connection with" another felony offense rests on inappropriate deference to the Commission's commentary in Application Note 14(B) to Section 2K2.1. Cf. Pet. App. 6-7. To the extent that petitioner contends that the court of appeals erroneously deferred to the Guidelines commentary in Application Note 14(B) under Kisor v. Wilkie, 588

¹ The petition for a writ of certiorari is not consecutively paginated. This brief refers to the page numbers of the pdf file for the petition available from the Court's online docket.

U.S. 558 (2019), that contention is incorrect, and the case does not warrant this Court's review.

As a threshold matter, the petition for a writ of certiorari is untimely. The court of appeals entered its judgment on April 30, 2025. See 135 F.4th 1329; C.A. Doc. 52 (Apr. 30, 2025). Petitioner did not petition for rehearing and did not seek an extension of the time for seeking certiorari. As a result, the time for filing a certiorari petition expired on July 29, 2025, 90 days after the entry of judgment. See Sup. Ct. R. 13.1, 13.3, 13.5. According to the Court's docket and file-stamp on the petition, however, the petition was not filed until July 30, 2025, and was therefore filed out of time.² This Court has discretion to relax the nonjurisdictional time limit, but has indicated that it will do so only "when the ends of justice so require." Schacht v. United States, 398 U.S. 58, 64 (1970).

On the merits, petitioner raises (Pet. 2) the issue of whether the district court erred by deferring to Application Note 14(B) to Sentencing Guidelines § 2K2.1(b)(6)(B), apparently on the view that the Application Note "unreasonably interprets" the text of

² The petition, as it appears in the Court's online docket, bears a stamp indicating that the Court received the petition on August 12, 2025. See Pet. 1. The Rules of the Court provide that a document is timely filed by an incarcerated inmate like petitioner if deposited in the prison's internal mail system on or before the filing deadline, as evidenced by a notarized statement or declaration. Sup. Ct. R. 29.2. Petitioner signed the petition with the handwritten date of July 30, 2025, see Pet. 26, and the petition bears a file-stamp indicating that the petition was filed on that date, Pet. 1.

the Guideline “such that no deference to the commentary is justified.” The body of the petition, however, does not appear to contain any argument to that effect; instead, the only two paragraphs relating to Application Note 14(B) concern the “interpret[ation]” of the Application Note, an issue that would not warrant this Court’s review. See Pet. 2, 8; see also 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).

To the extent that an issue of the general framework for deference to Guidelines application notes may have been preserved, it does not warrant this Court’s review. The court of appeals’ decision in this case stated that it follows the “Kisor framework to determine whether [it] may defer to [the] Sentencing Commission’s commentary when interpreting and applying the Sentencing Guidelines.” Pet. App. 8. Applying that framework here, it found “no need to consider, let alone defer to, the [relevant] Application Notes” because it found the text of Section 2K2.1(b)(6)(B) to be “unambiguous with respect to [this] case, based on the plain meaning of ‘in connection with’ and precedent.” Id. at 14. And while it noted that the Third Circuit had applied Kisor differently, id. at 12-14, the two courts did not differ in their view that Kisor governs deference to application notes, see id. at 8;

United States v. Perez, 5 F.4th 390, 394-395, 398-399 (3d Cir. 2021).

If petitioner's claim is in fact that the court of appeals should have deferred to Application Note 14(B) under a different interpretation of that Note, see Pet. 8, that claim would not be outcome-determinative in his case. The court of appeals' determination that "the gun's logical relationship to the offense" justified application of the enhancement, Pet. App. 14, would satisfy petitioner's interpretation of the Application Note "to require that even if guns and drugs are in 'close proximity,' there must be some said relationship between them," Pet. 8 (citing Perez, 5 F.4th at 398-399).³

The petition for a writ of certiorari should be denied.⁴

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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³ Petitioner dedicates (Pet. 8-25) most of his certiorari petition to the argument, raised for the first time in this Court, that "[18 U.S.C.] 922(g)(1) is unconstitutional as applied to [him]," Pet. 2. That issue was neither pressed in, nor passed on by, the court of appeals. See Pet. App. 1-15; Pet. C.A. Br. 1, 12-31. It also lacks merit. The issue accordingly provides no basis for certiorari.

⁴ The government waives any further response to the petition unless this Court requests otherwise.