

No. 25-6464

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IN THE SUPREME COURT OF THE UNITED STATES

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DJONIBEK RAHMANKULOV, 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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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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. i, 17-23) that the district court's calculation of the loss amount attributable to him under Sentencing Guidelines § 2B1.1, which included the amount of intended loss, is infirm. In his view, that calculation rests on deference to the Sentencing Commission's commentary in former Application Note 3(A) to Section 2B1.1 that is inappropriate under Kisor v. Wilkie, 588 U.S. 558 (2019). As petitioner observes (Pet. 17), the court of appeals rejected his contention based on its prior precedent, including its recent decision in United States v. Zheng, 113 F.4th 280, 299-300 (2d Cir. 2024), cert. denied, 145 S. Ct. 1899 (2025),

which involved a similar claim of unwarranted deference. See Pet. App. A10-A11.

This Court has repeatedly denied certiorari on this and similar Guidelines-deference issues, including in Zheng itself. 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); Ratzloff v. United States, 144 S. Ct. 554 (2024) (No. 23-310); see also Br. in Opp. at 10 n.2, Zheng, supra (No. 24-604) (citing 18 additional denials of certiorari petitions seeking review of similar Kisor-based challenges to the Guidelines commentary). The Court should follow the same course in this case.<sup>1</sup>

For reasons set forth in the government's brief in opposition to the petition for a writ of certiorari in Zheng, although the government agrees that Kisor applies to the Guidelines and commentary, the proper degree of deference that applies the former Guidelines commentary in this case does not warrant the Court's review. See Br. in Opp. at 15-22, Zheng, supra. Section 2B1.1's reference to "loss" would include both actual and intended loss

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<sup>1</sup> 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); Oladokun v. United States, No. 25-5964 (filed May 12, 2025); Stewart v. United States, No. 25-6038 (filed Oct. 31, 2025); Nock v. United States, No. 25-6158 (filed Nov. 3, 2025); James v. United States, No. 25-6267 (filed July 30, 2025); Baldwin v. United States, No. 25-6679 (filed Nov. 6, 2025).

under either the Stinson or Kisor framework, and nearly every court of appeals to consider the issue has rejected petitioner's view that the "intended loss" commentary is invalid, whether under or Stinson or Kisor. See id. at 17-18. Only the Third Circuit has reached a contrary conclusion, see United States v. Banks, 55 F.4th 246 (2022) (cited at Pet. 21-22), and for reasons that the government has explained, that outlier decision does not furnish any substantial basis for further review in this case. See Br. in Opp. at 19, Zheng, supra; see also Br. in Opp. at 15-18, Ratzloff v. United States, 144 S. Ct. 554 (2024) (No. 23-310) (explaining that the question of deference to the Commission's commentary more generally does not warrant review).<sup>2</sup>

Review is particularly unwarranted in the context of the loss-amount commentary because it has been removed from the Sentencing Guidelines. 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). As part of that ongoing study, the Commission deleted former Application Note 3(A) to Section 2B1.1 and, in its place, amended Section 2B1.1's text to directly

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

define “[l]oss” to mean “the greater of actual loss or intended loss.” Sentencing Guidelines § 2B1.1(b)(1), note (A) (2025).

The Commission adopted that amendment specifically to resolve the division of authority created by the Third Circuit’s outlier decision, by moving the definition of “loss” “from the commentary to the guideline itself.” 88 Fed. Reg. 89,142, 89,143–89,144 (Dec. 26, 2023). Although the amendment to Section 2B1.1 is not retroactive, it both ensures that any division of authority regarding intended loss will have limited prospective importance and underscores why this Court’s review is unwarranted in this context. See 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).

Finally, review is unwarranted for the additional reason that resolution of the question presented would not be outcome-determinative in petitioner’s case. Petitioner himself acknowledges (Pet. 23) that, regardless how the Kisor question that he presents may be resolved, it “would technically not impact [his] Guidelines level” and thus have no effect on the determination of the proper Guidelines range in his case. And, in addition, the court of appeals found that any error would be harmless, because the district court made clear that it would have imposed the same

sentence irrespective of any error in calculating the loss amount.  
See Pet. App. A11-A12.

The petition for a writ of certiorari should be denied.<sup>3</sup>

Respectfully submitted.

D. JOHN SAUER  
Solicitor General

MARCH 2026

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<sup>3</sup> The government waives any further response to the petition unless this Court requests otherwise.