No. 25-6679

IN THE SUPREME COURT OF THE UNITED STATES

SHAWN BALDWIN, 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

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Petitioner contends (Pet. 22, 25) that the lower courts' determination of the amount of "loss" attributable to him under Sentencing Guidelines § 2B1.1(b)(1) (2018), which provides for increases in an offense level based on that amount, is infirm. His claim warrants neither certiorari nor holding the petition pending the disposition of Beaird v. United States, No. 25-5343 (cert. granted Apr. 20, 2026).

Consistent with former Application Note 3(A) to Section 2B1.1, petitioner stated in the court of appeals that "the loss amount" properly considered under Section 2B1.1 "is 'the greater of actual loss or intended loss'" and that "[i]ntended loss" is "'the pecuniary harm that the defendant purposefully sought to inflict.'" Pet. C.A. Br. 50-51 (quoting former Sentencing Guidelines § 2B1.1 comment. (n.3(A) and (A)(ii)) (2018)). The court of appeals applied that definition and rejected petitioner's particular arguments challenging the district court's application of that definition. See Pet. App. 19-20.[1]

In this Court, petitioner argues that the court of appeals erred in its application of the concept of "intended loss" to the particular facts in this case on the theory that he could not have "inten[ded] to permanently deprive [the] victim" of the value of certain stock because "a foreign court had already returned [that stock] to th[e] victim." Pet. 25. That contention is incorrect. The fact that the victim successfully sued petitioner in state court over the stock and then convinced a foreign court to direct the reissuance of the stock in the victim's name, D. Ct. Doc. 268, at 8-9 (July 20, 2021); see Sent. Tr. 62 (district court's adoption of loss calculation at pages 2-9 of Document 268), is fully consistent with a finding that petitioner intended to keep the stock and thus intended to deprive the victim of its value.

Nor, in any event, would petitioner's factbound challenge to the application of Section 2B1.1 warrant this Court's review. See United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific

[1] This memorandum cites the pages of the PDF document of the petition appendix on the Court's website because the petition appendix is not itself consecutively paginated.

facts."); see also Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) (observing that under "the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when [the] district court and court of appeals are in agreement as to what conclusion the record requires") (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)). While petitioner asserts (Pet. 25) that the court of appeals' decision "deepens a conflict regarding the application of [Section] 2B1.1," petitioner does not identify any decision that reaches a contrary decision concerning the method of determining an "intended loss" under Section 2B1.1.

There is likewise no need to hold this case pending the disposition of Beaird, No. 25-5343, in which the Court will address an issue concerning deference to Guidelines commentary. Although a single court of appeals has determined that no deference is owed to the former commentary in Application Note 3(A) to Section 2B1.1 stating that "loss" includes "intended loss," see United States v. Banks, 55 F.4th 246, 255-258 (3d Cir. 2022), petitioner does not argue -- and has never argued -- that it was error to consider intended loss under Section 2B1.1. Instead, he accepted below, and appears to accept here, that Section 2B1.1 is properly understood to consider intended loss. See Pet. 25; Pet. C.A. Br. 50-51 (quoting and following former Application Note 3(A)).

The petition for a writ of certiorari should be denied.[2]

Respectfully submitted.

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MAY 2026

[2] The government waives any further response to the petition unless this Court requests otherwise.