

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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WILLIE DWAYNE MICKEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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## **QUESTION PRESENTED FOR REVIEW**

Whether, under 18 U.S.C. § 3582(c)(2), the Sentencing Commission may render a defendant ineligible for a retroactive sentencing reduction through commentary to U.S.S.G. § 1B1.10, where Congress specified that such determinations must be made by policy statement, and where the Commission lacks independent authority to impose substantive limitations not grounded in statute.

## **PARTIES TO THE PROCEEDING**

Petitioner, Willie Dwayne Mickey, is the defendant in these proceedings and is serving a sentence of 204 months of imprisonment. The United States of America is the Respondent, was the plaintiff in the district court, and the appellee in the Ninth Circuit.

## **STATEMENT OF RELATED PROCEEDINGS**

Counsel for Petitioner is not aware of any related proceedings in state or federal courts, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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### OPINION BELOW

Petitioner, Willie Dwayne Mickey, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit. *United States v. Mickey*, No. 24-6478, 2025 LX 575087 (9th Cir. Dec. 3, 2025) (unpublished).

### JURISDICTION

The Ninth Circuit issued its decision on November 18, 2025. *See* Appendix A (Memorandum of the Ninth Circuit). The Ninth Circuit denied a timely petition for rehearing and a suggestion for rehearing en banc. *See* Appendix B (Order Denying

Rehearing, *United States v. Mickey*, No. 24-6478, 2026 LX 89956 (9th Cir. Feb. 6, 2026)). This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **STATUTORY PROVISIONS INVOLVED**

18 U.S.C. Section 3582(c)(2) provides as follows:

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

## **FEDERAL SENTENCING GUIDELINES INVOLVED**

United States Sentencing Guidelines § 1B1.10 is the policy statement that governs sentence reductions under 18 U.S.C. § 3582(c)(2). It provides that, in determining the amended guideline range, “the court shall substitute only the amendments listed in subsection (d) ... and shall leave all other guideline application decisions unaffected.” U.S.S.G. § 1B1.10(b)(1). The meaning of “guideline application decisions,” however, produced a division among the courts of appeals with some treating departures and variances as ‘guidelines’ decisions’ while others held departures and variances were not guideline range decisions. *See United States v. Ornelas*, 825 F.3d 548, 551 (9th Cir. 2016) (detailing which circuits

were on which side of the split of interpretation). The Sentencing Commission resolved this disagreement with Application Note 3 to § 1B1.10. *See United States v. Leatch*, 858 F.3d 974, 978 (5th Cir. 2017) (explaining Sentencing Commission's resolution and citing *United States v. Muldrow*, 844 F.3d 434, 437 (4th Cir. 2016); *see* U.S.S.G. App. C, Amend. 759 (2011)).

## **STATEMENT OF THE CASE**

Mr. Mickey was convicted after a jury trial of sex trafficking in violation of 18 U.S.C. Section 1591(a) and (b)(1). *United States v. Mickey*, 897 F.3d 1173, 1175 (9th Cir. 2018). The guidelines for Mr. Mickey's offense based on the offense, the specific offense characteristics, and criminal history was 292–365 months. The district court sentenced him to seventeen years of custody. *Id.* at 1177.

In September 2024, Mickey asked the Court to reduce his sentence and the district court construed it as motion for a sentencing reduction based upon the change in status points under Amendment 821. But once the district court reached the merits, it held that the Sentencing Commission had foreclosed relief.

Defendant Mickey moves for a reduction of his sentence based on the November 1, 2023 retroactive amendment to U.S.S.G. Section 4A I. 1(d) and (e) which eliminated the two criminal history points because he was on probation at the time of the offense. Mickey was assessed 5 criminal history points resulting in a criminal history category of III. With an adjusted offense level of 38 and a category III, Mickey's guideline range was 292 to 365 months. With the retroactive amendment, he has 3 criminal history points and is in category II with a guideline range of 262 to 327 months.

However, the Court granted a downward variance to a sentence of 204 months concurrent on both counts. Thus, Mickey was given a sentence lower than the guideline range applying the retroactive amendment. Therefore, a further reduction is not authorized or permitted. *See* Application Note 3 to U.S.S.G. Section 1B 1.10(b).<sup>1</sup>

Mr. Mickey appealed to the Ninth Circuit and argued that the Sentencing Commission lacked the authority to restrict Mr. Mickey's eligibility by way of commentary to the Sentencing Commission due to the inherent limits on agency power as expressed in the *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and *SEC v. Jarkesy*, 603 U.S. 109, 144 S. Ct. 2117 (2024), and contended that Congress required the Commission to act through policy statements—not commentary—when determining eligibility for retroactive relief under 18 U.S.C. § 3582(c)(2).

The Ninth Circuit rejected that argument and affirmed. It held that neither § 3582(c)(2) nor U.S.S.G. § 1B1.10 violates the nondelegation doctrine because Congress supplied a sufficient intelligible principle to guide the Commission's authority. *United States v. Mickey*, 2025 U.S. App. LEXIS 31417, at \*1–2 (9th Cir. Dec. 3, 2025). The court further held that § 1B1.10 remains binding on district courts even after *Loper Bright*, reasoning that Congress itself—not the Commission—made policy statements binding by requiring that any sentence reduction be “consistent with applicable policy statements.” *Id.* at \*2.

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<sup>1</sup> Appendix D (ECF 214).



The Ninth Circuit also rejected Mickey’s argument that the statutory scheme impermissibly intrudes on judicial power, emphasizing that any authority to reduce a sentence under § 3582(c)(2) is “a congressional act of lenity,” not a constitutionally compelled function. *Id.* at \*2–3. The panel did not address whether the Commission may impose substantive eligibility restrictions through commentary rather than through the policy statements Congress required. Instead, it treated § 1B1.10 and its commentary as controlling and affirmed the denial of relief.

Mr. Mickey sought rehearing and rehearing en banc, which the Ninth Circuit denied. *United States v. Mickey*, No. 24-6478, 2026 U.S. App. LEXIS 3834, at \*1 (9th Cir. Feb. 6, 2026)

### **REASONS FOR GRANTING THE WRIT**

#### **THE NINTH CIRCUIT DECISION CONFLICTS WITH THIS COURT’S DECISION IN *UNITED STATES V. RICO***

This Court recently reaffirmed a basic principle governing the interpretation of the Sentencing Reform Act: courts are not free to “adorn” the statute with rules Congress did not enact. *Rico v. United States*, 146 S. Ct. 947, 955 (2026). Where Congress has provided “exacting instructions,” the absence of an additional rule is not a gap to be filled but a limit to be respected. *Id.* at \*10–11.

The guideline provision at issue in Mr. Mickey’s case, 18 U.S.C. Section 3582(c)(2) is a part of the Sentencing Reform Act. *See Dillon v. United States*, 560

U.S. 817, 820, 130 S. Ct. 2683, 2687 (2010) (explaining how retroactive guideline reductions are handled by the Sentencing Reform Act). Section 3582(c)(2) is similar to the provisions at issue in *Rico* as it establishes a detailed and reticulated scheme governing when and how a defendant's sentence may be modified. And like those provisions, it specifies not only the substance of the inquiry but also the mechanism for resolving it: any reduction must be "consistent with applicable *policy statements* issued by the Sentencing Commission." (emphasis added).

Under *Rico*, that specification forecloses the addition of extra-statutory rules—whether by courts or by agencies. The statute identifies the instrument Congress authorized (policy statements), and the absence of any reference to commentary as a vehicle for imposing binding eligibility restrictions is "strongly suggestive" that no such authority exists. *Id.* at \*14.

Yet that is precisely what occurred here. The Sentencing Commission resolved a recognized circuit conflict not through the policy statement itself, but through Application Note 3—commentary that operates to foreclose relief in cases like Mr. Mickey's. The district court treated that commentary as dispositive, and the Ninth Circuit affirmed, treating § 1B1.10 and its commentary as interchangeable.

That reasoning cannot be reconciled with *Rico*. There, the Ninth Circuit imposed a rule extending supervised release that was not found in the Sentencing

Reform Act. This Court reversed, emphasizing that the statute’s detailed provisions left no room for judicial supplementation and that courts are not free to “rewrite the directions Congress has provided.” *Id.* at \*21.

The same error occurred here—only through agency action rather than judicial invention. If courts may not supply rules Congress chose not to enact, then neither may the Sentencing Commission. Section 3582(c)(2) directs courts to follow policy statements, not commentary, and the Commission’s use of commentary to impose substantive eligibility limits “more nearly represents an adornment to Congress’s work than a permissible interpretation of it.” *Id.* at \*14.

This case presents the same structural error identified in *Rico*, in a different posture but with the same consequence—an extra-statutory rule that forecloses relief Congress made available. Review is warranted.

**THIS CASE PRESENTS THE SAME QUESTION NOW  
BEFORE THE COURT IN *BEAIRD* v. *UNITED STATES***

This Court has already granted certiorari in *Beaird v. United States*, No. 25-5343, 2026 LX 172938 (Apr. 20, 2026), to consider the role of Sentencing Guidelines commentary in federal sentencing proceedings. The question presented there concerns the degree of deference owed to commentary and whether it may control the outcome of a case. Mr. Mickey’s case squarely presents the same question.

Mr. Mickey’s eligibility for a sentence reduction turned entirely on Application Note 3 to U.S.S.G. § 1B1.10. The policy statement itself does not

foreclose relief. Rather, it is the commentary that imposes the dispositive limitation—one that bars relief where the defendant’s original sentence fell below the amended guideline range. The district court treated that commentary as binding, and the Ninth Circuit affirmed without addressing whether the Commission may impose such a rule through commentary rather than through the policy statements Congress required.

If commentary may not be used to impose binding substantive limitations—particularly where Congress has specified that policy statements are the operative mechanism—then Mr. Mickey is eligible for relief. Conversely, if commentary may carry dispositive force in this context, then the Commission may effectively legislate through an interpretive vehicle Congress did not authorize. This case thus presents the same structural question now before the Court in *Beaird*: whether commentary may control the outcome of sentencing proceedings or instead must yield to the statutory scheme Congress enacted.

At a minimum, this petition should be held pending this Court’s decision in *Beaird*. And if the Court concludes that commentary cannot impose binding eligibility restrictions of the kind applied here, then the judgment below cannot stand.

## **THE QUESTION PRESENTED IS IMPORTANT AND RECURRING**

The question presented arises in a large and growing number of cases.

Section 3582(c)(2) provides a mechanism for retroactive sentence reductions when the Sentencing Commission lowers guideline ranges. Those proceedings occur routinely in federal courts and affect thousands of defendants nationwide. *See* U.S. Sentencing Comm’n, *Retroactivity Data Reports*; U.S. Sentencing Comm’n, Annual Sourcebook of Federal Sentencing Statistics. The Commission’s recent amendments, including Amendment 821, have generated a new wave of motions seeking relief.

In each such case, courts must determine eligibility for relief under U.S.S.G. § 1B1.10. And in a substantial number of cases, that determination turns not on the text of the policy statement itself, but on commentary interpreting it. Application Note 3 to § 1B1.10 is frequently dispositive, operating as a threshold bar to relief where the defendant’s original sentence fell below the amended guideline range.

The question presented is therefore outcome-determinative. It does not merely affect the extent of a reduction; it determines whether a defendant is eligible for relief at all. And because § 3582(c)(2) proceedings recur whenever the Commission makes amendments retroactive, the issue will continue to arise across the federal system.

The importance of the question extends beyond sentencing administration. Congress directed that sentence reductions be governed by policy statements issued by the Sentencing Commission. Allowing commentary to impose binding eligibility restrictions permits the Commission to exercise authority through a vehicle

Congress did not authorize, raising fundamental questions about the allocation of lawmaking authority within the federal sentencing scheme.

This Court's review is warranted. At bottom, the Congress wrote a law telling the Sentencing Commission to resolve issues regarding retroactive guidelines reductions by policy statements. For whatever reason, the Sentencing Commission did not follow the path that Congress laid out. This agency only exists to the extent Congress enabled it. Congress never gave the Commission the ability to resolve retroactivity issues with binding commentary. This Court's intervention is warranted to ensure that sentence reduction proceedings are governed by the statutory framework Congress enacted, not by extra-statutory limitations imposed by an unelected agency.

## **CONCLUSION**

On the basis of the foregoing, the Court should grant the petition for a writ of certiorari.

DATED: 5/14/2026

Respectfully submitted,

*/s/ David Sillardorf*

Counsel for Willie Dwayne Mickey

## **APPENDIX**

**APPENDIX A:** Unpublished decision of the Ninth Circuit, filed

December 3, 2025

**APPENDIX B:** Denial of Petitions for Rehearing and Petitions for  
rehearing en banc, filed February 6, 2026



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