IN THE SUPREME COURT OF THE UNITED STATES

NO. __________

CHRISTOPHER MILLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of Certiorari
To The United States Court of Appeals For the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. WHETHER THE THIRD CIRCUIT ERRED IN HOLDING THAT APPLICATION NOTE 3 OF U.S.S.G. § 3B1.1 DOES NOT IMPROPERLY EXPAND THE GUIDELINE BEYOND THE OUTER BOUNDS OF PERMISSIBLE INTERPRETATION BY DIRECTING COURTS TO COUNT UNKNOWING OUTSIDERS AND NON-PARTICIPANTS WHEN DETERMINING WHETHER CRIMINAL ACTIVITY WAS "OTHERWISE EXTENSIVE" WITHIN THE MEANING OF THE GUIDELINE?

LIST OF PARTIES

Petitioner – Christopher Miller.

Respondent – United States of America.

RELATED CASES

Undersigned Counsel is not aware of any related case or proceeding before this Court or any other court.

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TABLE OF AUTHORITIES

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

Petitioner, Christopher Miller, by and through his undersigned attorney, respectfully petitions for a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Third Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit appears in the Appendix.

JURISDICTION

On April 3, 2026, the Court of Appeals entered its judgment affirming the judgment of the District Court. Appx21. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CASE LAW HOLDING

The pertinent case law holdings include *Kisor v. Wilkie*, 588 U.S. 558 (2019) and *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022).

STATEMENT OF THE FACTS

On April 18, 2023, Christopher Miller ("Miller") was charged in an Indictment with the following: COUNTS 1 THROUGH 16, Wire Fraud in violation of 18 U.S.C. § 1343, 1349, and 2; COUNTS 17 AND 18, Bank Fraud in violation of 18 U.S.C. § 1344 and 2; COUNTS 19 AND 20, False Loan Application in violation of 18 U.S.C. § 1014 and 2; COUNTS 21 THROUGH 37, False Statements to the SBA in violation of 15 U.S.C. § 645(a) and 18 U.S.C. § 2; COUNT 38, Aggravated Identity Theft in violation of 18 U.S.C. § 1028A(a)(1) and 2; and COUNTS 39 THROUGH 54, Unlawful Monetary Transactions in violation of 18 U.S.C. § 1957 and 2. Appx25-59. The fifty-four (54) count Indictment stemmed from an alleged scheme to fraudulently obtain funds through the Paycheck Protection Program ("PPP"), the Economic Injury Disaster Loan ("EIDL") program, and the Pandemic Unemployment Assistance ("PUA") program. Appx34-35.

On November 9, 2023, an executed written Plea Agreement was filed to the docket. Appx63-95. Pursuant to the written Plea Agreement, Miller entered a plea of guilty to COUNTS 17, 38, and 39. Appx63-95.

The final Presentence Investigation Report ("PSR") calculated Miller's criminal history score to be seven (7) placing him in a criminal history category IV. Appx4. The PSR calculated Miller's total adjustment offense level to be twenty-seven (27), which included the four-level leadership enhancement under U.S.S.G. § 3B1.1(a). Appx4. Miller was subjected to a two (2) year consecutive mandatory sentence on Count 3. Appx4. The PSR calculated the aggregate guideline sentence range as 124 to 149 months' imprisonment. Appx4.

On June 24, 2024, Miller filed a Sentencing Memorandum that provided an argument to support Miller's objection to the inclusion of the four (4) level leadership enhancement pursuant to U.S. SENTENCING GUIDELINES MANUAL § 3B1.1(a) (2023). Appx4. Also, on June 24, 2024, the Government filed a

Sentencing Memorandum with an argument to support the Government's position that the inclusion of the four (4) level leadership enhancement was appropriate. Appx4.

The District Court ultimately ruled that Robert Reynolds and Kelly Moran were "participants" and overruled Miller's objection to the four (4) level leadership enhancement. Appx4. The District Court adopted the PSR's findings and sentenced Miller to 149 months' imprisonment. Appx4.

On July 2, 2024, Miller filed a Notice of Appeal to the federal docket. Appx96. On October 9, 2025, the United States Court of Appeals for the Third Circuit issued an order requesting that each party address: "1. Whether intervening precedent, primarily *United States v. Nasir*, 17 F.4th 459 (3d Cir. 2021) (en banc), and *United States v. Adair*, 38 F.3d 341 (3d Cir. 2022), affect the applicability of *United States v. Helbling*, 209 F.3d 226 (3d Cir. 2000)? 2. How 'criminal activity that involved five or more participants or was otherwise extensive,' U.S. Sent'g Guidelines manual Section: 3B1.1(a) (U.S. Sent'g Comm'n 2024), should be interpreted after *United States v. Nasir*, 17 F.4th 459 (3d Cir. 2021) (en banc), and *United States v. Adair*, 38 F.3d (3d Cir. 2022)." Appx98.

The United States Court of Appeals for the Third Circuit held an oral argument in this matter on December 10, 2025. Appx1. On April 3, 2026, the

United States Court of Appeals for the Third Circuit issued an Opinion and Judgment Affirming the District Court's judgment entered on July 1, 2024. Appx1-19, Appx21-22.

REASON FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS FOR THE THIRD CIRCUIT ERRED IN DETERMINING THAT U.S.S.G. § 3B1.1 APPLICATION NOTE 3 DOES NOT IMPROPERLY EXPAND THE GUIDELINE BEYOND THE OUTER BOUNDS OF PERMISSIBLE INTERPRETATION.

In referring to U.S.S.G. § 3B1.1, Application Note 3, the Third Circuit states, "[t]his does not expand the Guideline but rather narrows the focus of the inquiry upon the number and roles of the individuals knowingly, and unknowingly, involved." Appx12.

The Court in *Kisor* identified the process for deferring to a guideline's commentary if a word in the guideline is genuinely ambiguous. "If genuine ambiguity remains, moreover, the agency's reading must still be 'reasonable.'" *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019). "In other words, it must come within the zone of ambiguity the court has identified after employing all its interpretive tools." *Id*. at 576. "The text, structure, history, and so forth at least establish the outer bounds of permissible interpretation." *Id*. Thus, ambiguity alone does not authorize an agency to adopt any interpretation it chooses. Rather, the interpretation must remain within the "outer bounds of permissible interpretation." *Id*.

Similarly, the Third Circuit has recognized that the Sentencing Commission commentary is not reasonable when it "improperly expands the Guideline". *United States v. Banks*, 55 F.4th 246, 253 (3d Cir. 2022). Thus, the commentary may interpret the Guideline's text, but it may not create substantive criteria absent from the Guideline itself.

U.S.S.G. § 3B1.1(a) provides for a four-level enhancement where a defendant was "an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). Looking at the plain text of the Guideline, there is no mention of counting "all persons involved" or counting "the unknowing services of many outsiders". U.S.S.G. § 3B1.1, Application Note 3. Those concepts only appear in Application Note 3 rather than the Guideline text itself.

Furthermore, nothing in the actual text of U.S.S.G. § 3B1.1(a) suggests that the extent of criminal activity should be measured by counting those "unknowingly[] involved." Appx12. Thus, by directing courts to include unknowing services of outsiders when determining extensiveness, the commentary introduces a substantive consideration absent from the text of the Guideline itself.

The structure of U.S.S.G. § 3B1.1(a) further demonstrates that Application Note 3 expands the Guideline. The enhancement applies where a defendant was an "organizer or leader" of "criminal activity" that "involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). The relevant question should be whether the criminal activity itself was otherwise extensive. Criminal activity is done by individuals who knowingly participate in unlawful conduct. By contrast, unknowing outsiders and innocent third parties do not engage in criminal activity because they lack the appropriate *mens rea*.

This structural focus is reinforced by the Guideline's own definitional framework, which ties the concept of participant to mean "a person who is criminally responsible for the commission of the offense, but need not have been convicted. A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant." U.S.S.G. § 3B1.1, Application Note 1. Thus, the measurement of criminal activity is defined by criminally responsible actors rather than all persons involved in the offense. Therefore, when the Guideline asks whether the criminal activity was "otherwise extensive", the focus should remain on the scope and size of the criminal enterprise and the individuals who knowingly participate.

The purpose of U.S.S.G. § 3B1.1 further demonstrates why Application Note 3 exceeds the permissible bounds of interpretation. As the Sentencing Commission explained in the Guideline's Background Commentary, "[t]his section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (i.e., the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense." U.S.S.G. § 3B1.1, Background (emphasis added).

Significantly, the Commission identified organizational size by reference to "the number of participants in the offense." U.S.S.G. § 3B1.1, Background (emphasis added). The Guideline's Background Commentary does not mention non-participants, all persons involved, or unknown individuals involved during the course of the entire offense. U.S.S.G. §3B1.1, Application Note 3. Application Note 3 shifts the focus away from the size of the criminal organization toward the total number of persons used in the offense, regardless of their participation. Since the Commission's own explanation of U.S.S.G § 3B1.1 ties organizational size to participants, Application Note 3 expands the enhancement beyond the purpose identified in the Guideline itself.

The enhancement is not a loss enhancement, a victim enhancement, or a sophistication enhancement. Instead, U.S.S.G § 3B1.1 focuses on the size of the criminal organization and the defendant's leadership role within that organization. The purpose is to have "participants" counted toward the extent of the criminal organization and criminal activity. Thus, including "all persons" or "unknowing" persons would expand the Guideline beyond what is permissible by allowing courts to count individuals who are not members of the criminal organization or by counting those who were not participants in the criminal activity. U.S.S.G. § 3B1.1, Application Note 3.

The Third Circuit recognized that "[t]he history of Guideline § 3B1.1 does little to clarify the meaning of 'otherwise extensive.'" Appx11.

Thus, the text, structure, purpose, and history of the Guideline suggest that including "all persons involved during the course of the entire offense" or "unknowing" individuals exceeds the "outer bounds of permissible interpretation." U.S.S.G. § 3B1.1, Application Note 3; *Kisor v. Wilkie*, 588 U.S. 558, 576 (2019).

Furthermore, the commentary introduces multiple undefined and contestable concepts. For example, what does it mean to be "involved", the scope of "all persons", and the relevance of "unknowing services". Each of these terms is itself capable of multiple meanings and is not defined anywhere in the Guideline. Therefore, Application Note 3 does not narrow the ambiguity identified in the Guideline; it expands it.

This is relevant under *Kisor* because an interpretation cannot be deemed reasonable simply by offering one possible way of applying an ambiguous term. Rather, it must interpret the term in a way that remains relevant to the regulatory text, structure, and history. *Kisor*, 588 U.S. at 576. Where the interpretation depends on additional ambiguous concepts not found in the Guideline itself, it cannot be said to fall within the "zone of ambiguity" established by U.S.S.G. § 3B1.1(a). *Id*. Instead, it extends that zone by introducing new uncertainties that the text never contemplated. Therefore, Application Note 3 does not resolve the ambiguity; it shifts the inquiry from one ambiguous phrase to another with undefined terms.

The District Court identified only three participants. The participants included Miller, Reynolds, and Moran. The enhancement became available because Application Note 3 authorized the court to count additional non-participants and unknowing outsiders. Without that commentary, the Government established only a three-person criminal organization. While the offense may have involved a number of applications and a financial loss, those factors are addressed elsewhere in the Sentencing Guidelines and do not establish that Miller led a criminal organization comparable in size to one involving five or more participants. Accordingly, the Third Circuit erred in holding that Application Note 3 falls within the permissible bounds of interpretation recognized by *Kisor* and *Banks*.

The criminal activity at issue here was not "otherwise extensive" within the meaning of U.S.S.G. § 3B1.1(a). The alleged scheme consisted primarily of Miller obtaining personal identifying information and submitting fraudulent loan applications using that information. Reynolds and Moran allegedly assisted in the operation. Beyond those three individuals, however, the Government identified no additional criminally responsible participants and no evidence of a larger criminal organization.

At its core, this case involved one individual orchestrating the alleged fraudulent scheme. Miller's use of personally identifiable information of numerous individuals does not convert those individuals into members of a criminal organization. Thus, the Government established only three participants and failed to prove the existence of "otherwise extensive" criminal activity within the meaning of U.S.S.G. § 3B1.1.

Accordingly, the Third Circuit erred in holding that Application Note 3 falls within the permissible bounds of interpretation recognized by *Kisor* and *Banks*. Since the commentary expands the Guideline beyond its textual and structural limits by introducing "all persons involved" and unknowing outsiders into the measurement of "criminal activity" that is "otherwise extensive," it exceeds the outer bounds of permissible interpretation and cannot be afforded deference.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Court should grant the petition for writ of certiorari.

Date: July 1, 2026

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CERTIFICATE OF SERVICE

I, Christopher R. Opiel, hereby certify that on this 1st day of July 2026, I served copies of the Petition for Writ of Certiorari in the above-captioned case via first-class mail, postage prepaid to the following:

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I certify that all parties required to be served have been served.

Date: July 1, 2026

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CERTIFICATIONS

1. I am an attorney appointed under the Criminal Justice Act of 1964.
2. The text of the documents electronically filed with the Court are identical to the text of the paper copies mailed to the Court
3. A virus check was performed on the electronic document with AVG software, and the documents are virus free.
4. This filing contains 2,871 words.
5. On July 1, 2026, one copy of the foregoing Petition for Writ of Certiorari was placed in the United States mail, first class, postage pre-paid addressed to: U.S. Attorney's Office, William J. Nealon Federal Building, Suite 311, 235 N. Washington Avenue, Scranton, PA 18503.
6. On July 1, 2026, ten copies of the same were placed in the United States mail, first class, postage pre-paid, addressed to: Supreme Court of the United States, Office of Clerk, 1 First Street NE, Washington, D.C. 20543.

Date: July 1, 2026

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