

No. 26-5037

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 5-11) that the court of appeals incorrectly deferred to commentary to Sentencing Guidelines § 3B1.1(a) in upholding his sentencing enhancement as “an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive,” ibid. See Pet. App. 3, 5-15 (upholding enhancement because petitioner led an “extensive” three-participant scheme involving at least 13 other individuals); cf. Sentencing Guidelines § 3B1.1, comment. (n.3) (stating that extensiveness considers “all persons involved during the course of the entire offense,” including non-participant “outsiders” whose “unknowing services” were used in a fraudulent scheme). The court of appeals

concluded that this Court's clarification of Seminole Rock deference in Kisor v. Wilkie, 588 U.S. 558 (2019), governs what deference is owed to such commentary. See Pet. App. 5-7. Petitioner does not dispute that Kisor's clarification applies but contends (Pet. 5-11) that the court erred in its application of Kisor here.

This Court has granted a writ of certiorari in Beaird v. United States, No. 25-5343 (oral argument scheduled for Oct. 13, 2026), to consider whether Stinson v. United States, 508 U.S. 36 (1993), still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines. Because the Court's decision in Beaird could conceivably affect the proper disposition of the petition for a writ of certiorari, the petition in this case should be held pending this Court's decision in Beaird and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

D. JOHN SAUER
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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.