

No. 26-5063

IN THE SUPREME COURT OF THE UNITED STATES

VICTORIA DAVIDSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 9-18) that the court of appeals erred in upholding the application of Sentencing Guidelines § 2B1.1(b)(10)(C), which increases the offense level for fraud offenses that involve "sophisticated means." See Pet. App. 3a-4a; cf. Sentencing Guidelines § 2B1.1, comment. (n.9(B)). The petition for a writ of certiorari suggests that the Court could hold the petition "pending the outcome of another case raising the issue of whether after Kisor [v. Wilkie, 588 U.S. 558 (2019)], courts should defer to U.S. Sentencing Guidelines commentary." Pet. 18; see Pet. 13-14. No such course is warranted.

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. The court below has concluded in previous cases that Guidelines commentary should be treated as authoritative under Stinson. See United States v. Zheng, 113 F.4th 280, 299-300 (2d Cir. 2024), cert. denied, 145 S. Ct. 1899 (2025). And it cited the Commission's commentary for the sophisticated-means enhancement in overturning the enhancement for petitioner's co-defendant in his separate appeal. See Pet. App. 13a-14a. Petitioner, however, does not appear to dispute that the court below properly deferred to commentary to Sentencing Guidelines § 2B1.1(b)(10)(C) -- indeed, she affirmatively relies on that commentary in arguing that the sophisticated-means enhancement should not apply to her. See, e.g., Pet. 14-18. That alone is a dispositive reason to reject petitioner's request that the Court hold the petition for a resolution of a question of deference to guidelines commentary.

Moreover, as the government has elsewhere explained, see Br. in Opp. at 10-11, Poore v. United States, No. 25-227 (filed Nov. 19, 2025), a challenge to a term of imprisonment can be mooted by the expiration of that term.¹ Here, petitioner has already served

¹ The government has served petitioner with a copy of its brief in opposition in Poore, which is also publicly available on this Court's online docket.

her below-guidelines nine-month term of imprisonment, and is currently serving her three-year term of supervised release, which will itself expire by November 2027. See U.S. Dep't of Justice, Federal Bureau of Prisons, Find an Inmate, <https://www.bop.gov/inmateloc/> (showing Nov. 21, 2024 release for register number 76217-054). Petitioner provides no sound reason to conclude that even if an error were identified in calculating the guidelines range, the district court would view that as a reason to reduce whatever unserved portion of her supervised-release term might remain by that point. Indeed, the record indicates that the district court would not do so.

In January 2024, the district court reopened the sentencing proceeding to address certain issues that remained pending. See 1/9/2024 D. Ct. Hr'g Tr. (Tr.) 2, 9 (Doc. 237). During that hearing, petitioner argued that the district court should have considered then-recently amended commentary to Sentencing Guidelines § 5C1.1, which states that "a sentence other than a sentence of imprisonment" is "generally appropriate" for certain offenders with no criminal history points, Sentencing Guidelines § 5C1.1, comment. (n.10(A)) (2023). See Tr. 2-11. The district court made clear that it had given petitioner a below-Guidelines sentence that was "far below what [it] would normally give for [her] crime" because petitioner had "changed her life" and had recently gotten married. Tr. 7, 9. The court stated that it had already "g[iven] her grace" with "a generous sentence" because it thought "she

deserved a different chance,” but that it would not “depart further” and would “not give her any less” than the sentence it imposed. Tr. 8-10; see Tr. 14 (stating that no “further departure would be appropriate”). Later, in early 2025, the Probation Office notified the court that petitioner had violated the terms of her supervised release. See 2/5/2025 and 3/11/2025 D. Ct. Minute Entries. The district court dismissed the pending violation after holding it in abeyance for six months while petitioner came back into compliance. See 9/10/2025 D. Ct. Minute Entry; D. Ct. Doc. 268 (Mar. 10, 2025) (requesting abeyance).

Thus, while the Court may be holding at least one other case for Beaird that the government contends is moot, see Poore, supra, it should not hold this one, even assuming that it actually presented the deference issue.²

Respectfully submitted.

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.