

No. 26-5113

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL MAO, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 7-9, 11-16) that the court of appeals improperly relied on commentary in a previous version of Sentencing Guidelines § 4B1.2 (2021) in determining that his prior conviction for conspiring to distribute drugs is a “controlled substance offense” that could support a determination that he is a career offender. See Pet. App. 13A-20A; compare Sentencing Guidelines § 4B1.2(b) (2021) (defining “controlled substance offence”) and id. § 4B1.2, comment. (n.1) (2021), with id. § 4B1.2(d) (2025) (now expressly addressing conspiracy offenses in guideline text). This Court has granted a writ of certiorari in Beaird v. United States,

No. 25-5343 (Apr. 20, 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 may affect the proper disposition of the petition for a writ of certiorari, this case should be held pending this Court's decision in Beaird and then disposed of as appropriate in light of that decision. See Pet. 11.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

SEPTEMBER 2026

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