

No. 26-5172

IN THE SUPREME COURT OF THE UNITED STATES

SYLVAIN GNAHORE, 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

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Petitioner contends (Pet. 4-8) that the court of appeals incorrectly relied on commentary to a previous version of Sentencing Guidelines § 2B1.1 (2021) to reject his claim that defense counsel was ineffective for failing to object to a calculation of “loss” that included “intended loss.” See Pet. App. A1-A2; compare Sentencing Guidelines § 2B1.1(b)(1) (2021) and id. § 2B1.1, comment. (n.3(A)) (2021), with id. § 2B1.1(b)(1), Note A (2025) (now expressly defining “loss” in guideline text). In doing so, it relied on circuit precedent deferring to commentary to the

guideline. Pet. App. A1-A2; see United States v. Rainford, 110 F.4th 455, 475 n.5 (2d Cir. 2024).

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, 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
Solicitor General

SEPTEMBER 2026

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