

In the
Supreme Court of the United States

AKEEM ASAD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

**BRIEF OF AMICI CURIAE
CRIMINAL LAW SCHOLARS
AND LEGAL ORGANIZATIONS
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

Amici are law professors and legal organizations that collectively teach, study, and practice criminal law. As this Court has recognized, and amici' professional experience confirms, the Sentencing Guidelines are exceptionally important to federal criminal law. To practitioners and their clients, the Guidelines are often the most influential legal text in federal criminal defense—certainly the most ubiquitous.

Petitioner has pointed out, however, that this Court generally abstains from interpreting the Sentencing Guidelines, even when entrenched, unresolved, highly consequential circuit conflicts persist. The Petition raises a consequential circuit conflict that shatters national uniformity in sentencing and engenders disparate sentences for identically situated defendants. Amici are concerned that a misinterpretation of *Braxton v. United States*, 500 U.S. 344 (1991), has effectively blocked this Court's review of such conflicts and write separately to ensure that this Court does not decline review on that basis. Amici therefore support the Petition.

Amici are as follows:

The **ALABAMA CRIMINAL DEFENSE LAWYERS ASSOCIATION (ACDLA)** serves as the unified voice of Alabama's criminal defense community. Our members practice in both State and Federal Courts. The primary

¹ All parties have received timely notice of amici' intent to file this brief. Neither party objected to the filing of this brief. In accordance with Rule 37.6, Amici certify that no counsel for either party authored this brief in whole or in part, and no person or entity other than named amici made a monetary contribution for the preparation or submission of this brief.

mission of ACDLA is to promote excellence in the practice of criminal law to benefit both criminal defense attorneys and the clients that we serve.

The **FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (FACDL)** is a state-wide non-profit organization of criminal defense practitioners committed to protecting the rights of individuals in the criminal justice system. Many of FACDL's members practice in federal court, where they routinely advise clients on the application of the Sentencing Guidelines. The question presented is therefore of substantial importance to FACDL and its members.

The **KENTUCKY ASSOCIATION OF CRIMINAL DEFENSE LAWYERS ("KACDL")** is a non-profit organization dedicated to improving the criminal justice system by educating attorneys and judges, proposing reforms of statutes and rules of procedure, and advocating as amicus curiae in cases that affect criminal practice in Kentucky. Its members are attorneys who are retained or appointed advocates for persons charged with criminal offenses in the state and federal courts in Kentucky, and, in that capacity, they are vitally interested in the controversy at the center of this action, particularly as it concerns the proper understanding of the United States Sentencing Commission's career offender guideline and the extent to which the Supreme Court should defer to the Commission's interpretation of the Sentencing Guidelines.

CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN (CDAM) is a 501(c)(3) non-profit organization with a purpose of promoting expertise in criminal law, constitutional law, and procedure. CDAM sponsors seminars, training conferences, and advocates for the

criminal defense bar's views before state and legislative bodies. For more than forty years, CDAM has filed amicus briefs in the Michigan Supreme Court, the Michigan Court of Appeals, and the United States Supreme Court.

The **NORTH CAROLINA ADVOCATES FOR JUSTICE (NCAJ)** is a nonprofit, non-partisan professional association of more than 1,800 North Carolina attorneys who are dedicated to protecting people, preventing injustice, and promoting fairness. NCAJ has an active Criminal Defense Section comprised of North Carolina attorneys whose practices and clients are directly affected by the issue in this case. These attorneys, and many like them throughout the state, rely on consistent well-established sentencing procedures to represent their clients effectively.

The **VIRGINIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (VACDL)** is a statewide nonprofit, non-partisan organization of over 650 lawyers who primarily practice criminal defense. VACDL seeks to improve the fairness and quality of justice in Virginia's criminal law system. This goal is achieved by providing continuing legal education courses to its members on criminal defense; providing a network system to enhance collaboration in addressing issues that arise in cases; and by filing briefs as amicus curiae in cases presenting important issues relating to principles of justice and fairness.

The **DUE PROCESS INSTITUTE** is a non-profit bipartisan public interest organization that seeks to ensure procedural fairness in the criminal justice system. Ensuring that individuals receive fair sentencing is among Due Process Institute's top priorities.

IRA P. ROBBINS is Distinguished Professor of Law and Barnard T. Welsh Scholar at American University Washington College of Law and a founding member of its Criminal Justice Practice & Policy Institute. He is an expert on criminal law and procedure, the death penalty, habeas corpus, prisoners' rights, privatization of prisons and jails, and other legal issues. He was Acting Director of the Federal Judicial Center's Education and Training Division and has served as a Supreme Court Fellow and as a special consultant to the Judicial Conference of the United States' Advisory Committee on Criminal Rules. His recent books include *Habeas Corpus Checklists* (two vols., 2026) and *Prisoners and the Law* (seven vols., 2026).

KYLE SINGHAL is a Professorial Lecturer in Law at the George Washington University Law School and a regular practitioner in the federal appellate courts. He is often appointed under the Criminal Justice Act to represent indigent criminal defendants on appeal from Sentencing Guideline errors.

SUMMARY OF THE ARGUMENT

The Sentencing Guidelines are, in practice, the most consequential legal text in federal criminal law. Yet this Court has abstained from interpreting the Guidelines for decades. That practice is anomalous in the federal judiciary and should end. District courts must correctly calculate every defendant's guideline range at every sentencing hearing. Courts of Appeals routinely hear appeals asserting guideline mistakes. And differences of appellate opinion over purely legal, highly consequential questions often arise. This Court apparently declines to hear such cases because the Sentencing Commission could resolve those conflicts. *See Braxton v. United States*, 500 U.S. 344, 347–48 (1991).

That rationale is anomalous because it applies to every non-constitutional conflict this Court encounters. Congress can (and does) resolve conflicts over the meaning of federal statutes. Agencies can (and do) resolve conflicts over the meaning of federal regulations. Rules Committees can (and do) resolve conflicts over the meaning of Federal Rules. Yet this Court weighs in from time to time on each of these legal sources to declare what the law is.

Shared accountability and control over the meaning and content of federal law is a feature, not a bug, of our legal system. There is always another entity that *could* step in to determine what non-constitutional law means. But in our constitutional order, this Court has the solemn duty to fix the law's meaning—at least until the proactive branches unfix, or refix, it. That duty is no less implicated by the hallmark of modern federal sentencing: the imperfect

algorithm that is the Sentencing Guidelines. *Mistretta v. United States*, 488 U.S. 361, 390 (1989).

Amici argue that this Court should evaluate petitions seeking review of circuit-splitting Guidelines issues under the ordinary criteria for granting certiorari. *See* S. Ct. R. 10(a). There is no coherent doctrinal, precedential, or theoretical basis for treating the Sentencing Guidelines differently than other important sources of federal law. Unlike Congress, Agencies, and Rules Committees, the Sentencing Commission is often rendered inoperable by being denied a quorum. *Braxton* does not demand a contrary rule and should not be understood broadly to preclude review of circuit conflicts over the Sentencing Guidelines.

ARGUMENT

The question presented implicates an entrenched 4 to 7 circuit conflict over the career-offender guideline. Pet. at 17–20. Career-offender status increases a person’s guideline range about 91.3% of the time. U.S.S.C., *Report to the Congress: Career Offender Sentencing Enhancements*, at 21 (Aug. 2016). Yet whether a person is deemed a career offender often depends solely on geography. *Guerrant v. United States*, 142 S. Ct. 640, 640 (2022) (statement of Sotomayor, J., and Barrett, J., respecting the denial of certiorari). To put that in context, an average, low-level drug trafficking defendant with two prior state drug offenses prosecuted in Texas faces a guideline minimum of 127 months’ imprisonment; if that same person is prosecuted in Indiana, he faces a 211-month minimum. *Report to the Congress: Career Offender Sentencing Enhancements*, at 21. That disparity is antithetical to Congress’ goal of eliminating unwar-

ranted sentencing disparity, 28 U.S.C. § 991(b)(1)(B), the purpose of federal sentencing, 18 U.S.C. § 3553(a)(6), and the Guidelines, *Gall v. United States*, 552 U.S. 38, 54 (2007).

The Commission’s intermittent ability to resolve the split—despite its persistent refusal to do so—does not preclude this Court’s review. Waiting for a soon-to-be quorumless Commission to act is fruitless and perpetuates unwarranted disparities. There is no coherent reason for this Court categorically to refuse to interpret the most practically important text in modern federal criminal law. *Braxton* has been misinterpreted to block review of Guideline interpretation conflicts. But *Braxton* imposes no such categorical bar. Rather than abstain from interpreting the Sentencing Guidelines, this Court should apply its ordinary criteria for granting certiorari. *See* S. Ct. R. 10(a).

I. The Sentencing Guidelines influence nearly every federal criminal case and are among the most important legal texts in modern federal criminal law.

The Sentencing Guidelines are the essential feature of modern federal criminal law. Every step of the federal criminal process, from pretrial detention through sentencing—and every bargain struck or battle fought along the way—is negotiated in the Sentencing Guidelines’ shadow. The Guidelines’ central role derives from a simple reality: About 99% of all non-dismissed federal criminal cases end in a conviction. Admin. Off. of the U.S. Courts, *U.S. Dist. Cts. – Criminal Defs. Terminated, by Type of Disposition and Offense*, Table D-4 (Sept. 30, 2025). And most of those convictions arise from guilty

pleas. *Id.* (in FY2025, 75,151 defendants pled guilty compared to 1,363 who were convicted at trial). So not only is ours “for the most part a system of pleas, not a system of trials,” *Lafler v. Cooper*, 566 U.S. 156, 170 (2012), but it is also one oriented toward a single “lodestar”—the Guidelines, *Molina-Martinez v. United States*, 578 U.S. 189, 200 (2016). This Court should not categorically abstain from deciding what that lodestar means.

A. District Courts must begin every sentencing hearing with an in-depth, often-complicated Guidelines analysis.

The “district courts *must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Peugh v. United States*, 569 U.S. 530, 541 (2013) (quoting *Gall*, 552 U.S. at 50 n.6 (emphasis in *Peugh*)). Though the Guidelines are no longer binding, *see United States v. Booker*, 543 U.S. 220 (2005), “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range,” *Gall*, 552 U.S. at 49. Once calculated, that range cannot be ignored. For the district court “must consider the extent of [any] deviation” and justify to a “sufficiently compelling” degree any such deviation. *Id.* at 50.

The Guidelines, then, create “the essential framework ... for sentencing proceedings.” *Molina-Martinez*, 578 U.S. at 198. They are not just the “starting point[,] ... initial benchmark,” and “anchor” for every sentencing decision, but the “lodestar” too. *Id.* at 198, 200 (quotations omitted). As such, “the Guidelines are in a real sense the basis for the sentence” in most cases. *Peugh*, 569 U.S. at 542 (italics omitted).

Yet even as the Guidelines dominate sentencing hearings, calculating the correct range is a multi-step process rife with complexity. *Rosales-Mireles v. United States*, 585 U.S. 129, 133–34 (2018). The court must first determine the final offense level—a numerical value derived from a “base offense level” plus myriad aggravating and mitigating facts. U.S.S.G. § 1B1.1(a)(1)–(5). Then the court must determine the person’s criminal history score, which includes some (but not all) of the person’s prior convictions. *Id.* § 1B1.1(a)(6). Taken together, the final offense level and criminal history score produce an advisory sentencing range stated in months of recommended imprisonment. *Id.* § 1B1.1(a)(7).

B. The Courts of Appeals cannot abstain from interpreting the Guidelines, which inevitably leads to unresolved, highly consequential conflicts.

Because of that complexity, “district courts sometimes make mistakes,” and appellate courts must resolve them. *Rosales-Mireles*, 585 U.S. at 134. Beyond the generic statutory right to appeal criminal judgments, 28 U.S.C. § 1291, defendants are specifically entitled to appeal Guidelines errors, 18 U.S.C. § 3742(a)(2). Guidelines errors are staple fare for the federal appellate courts. Sentencing Commission data shows that in FY2025, at least 74.6% of the 6,159 documented criminal appeals involved a sentencing challenge. U.S.S.C., *2025 Sourcebook of Federal Sentencing Statistics*, p. 152 fig. A-1 (30th ed.).

Appeals challenging guideline errors are as significant as they are common. For “[t]he Guidelines’ central role in sentencing means that an error related to the Guidelines can be particularly serious.”

Molina-Martinez, 578 U.S. at 199. As a “rule,” this Court has taught, “an incorrect Guidelines calculation is procedural error,” *Peugh*, 569 U.S. at 542, and a “significant procedural error,” at that, *Gall*, 552 U.S. at 51. Now, not every such error requires correction. See FED. R. CRIM. P. 51(a). But “[i]n most cases” a court commits prejudicial error by relying on an incorrect Guideline range, *Molina-Martinez*, 578 U.S. at 200, 203. And when a court relies on an incorrect Guideline range, that error also presumptively requires correction on appeal, *Rosales-Mireles*, 585 U.S. at 137.

All in, the Guidelines’ centrality at sentencing, plus the standards of appellate review for Guideline errors, create unmistakable incentives to challenge the meaning of the Guidelines’ many provisions. That is so because “[t]o a prisoner, [the] prospect of additional ‘time behind bars is not some theoretical or mathematical concept.’” *Id.* (quoting *Barber v. Thomas*, 560 U.S. 474, 504 (2010) (Kennedy, J., dissenting)). And when error is shown, “the public legitimacy of our justice system” is implicated by “obvious errors of [the courts’] own devise.” *Id.* at 141 (quoting *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333–34 (10th Cir. 2014) (Gorsuch, J.)). So this Court has instructed the appellate courts ordinarily to correct Guideline errors—whether preserved or not. *Id.* at 140–42.

C. The Sentencing Commission does not and cannot resolve every important circuit conflict over the Guidelines.

Congress vested the Sentencing Commission with the authority to “periodically” “review and revise” the Sentencing Guidelines. 28 U.S.C. § 994(o). That author-

ity, however, does not imply either a duty or an ability to resolve every circuit conflict that arises. *See, e.g.,* Diana Murphy, *The Murphy Commission’s First Oversight Hearing*, 13 Fed. Sent’g Rep. 98, 103 (2000) (noting that the Commission only planned to resolve 16 of 40 outstanding circuit splits). Perhaps the most conspicuous example is the nearly 15-year stalemate over entrenched circuit splits in the child pornography guidelines. *See* U.S.S.C., *Report to the Congress: Federal Child Pornography Offenses* 14, n. 73 (2012) (noting then-existing circuit splits); Pet. for Writ of Cert. at i, *Demma v. United States*, No. 19-1260, *cert. denied*, 141 S. Ct. 620 (2020) (identifying a six-circuit split over U.S.S.G. § 2G2.2).

The most consequential example is implicated by Akeem Asad’s own Petition—the longstanding, unresolved split over the term “controlled substance offense” in the career-offender Guideline. *See Wiggins v. United States*, 145 S. Ct. 2621, 2622 (2025) (statement of Sotomayor, J., and Barrett, J., respecting the denial of certiorari) (noting the “important,” “persist[ing]” circuit split over the meaning of a “controlled substance offense”); *Guerrant*, 142 S. Ct. at 640 (noting the split and acknowledging that it results in “far higher terms of imprisonment” based solely on geography). That split matters because the career-offender Guideline is among the most punitive provisions in the Guidelines as it almost always increases a person’s final offense level or criminal history category, and often both. *Report to the Congress: Career Offender Sentencing Enhancements*, *supra*, at 21.

Even when the Commission acts, it can take years or decades to do so. For nearly 20 years, the Commission did not resolve a circuit conflict over U.S.S.G. § 3E1.1(b). In brief, some circuits let the government withhold credit for accepting responsibility if the defendant sought to suppress evidence; others did not. *Compare, e.g., United States v. Marquez*, 337 F.3d 1203, 1212 (10th Cir. 2003), *with United States v. Longoria*, 958 F.3d 372, 376 (5th Cir. 2020). Eventually, members of this Court urged the Commission to resolve that “important and longstanding split.” *Longoria v. United States*, 141 S. Ct. 978, 979 (2021) (statement of Sotomayor, J., and Gorsuch, J., respecting the denial of certiorari). The Commission responded with Amendment 820, which may resolve the conflict. Similar examples of delayed action abound. *E.g., United States v. Jones*, 980 F.3d 1098, 1104 (6th Cir. 2020) (noting that the Commission took 22 years to issue a congressionally mandated compassionate release policy statement).

None of this is meant as criticism of the Commission per se. By taking a comprehensive, empirically informed, and stakeholder-driven approach, the Commission “has developed a broad perspective on sentencing practices” and can adjust the Guidelines to promote parsimonious sentencing. *Buford v. United States*, 532 U.S. 59, 66 (2001). But for a variety of structural, practical, and political reasons, the Commission is often unable or unwilling to resolve these conflicts. See Dawinder S. Sidhu, *Sentencing Guidelines Abstention*, 60 AM. CRIM. L. REV. 405, 434–36 (2023). Amending the Guidelines is a time- and resource-intensive process that takes at least a year-and-a-half in a best-case scenario. Sidhu, *Sentencing Guidelines Abstention*, *supra*, at 436. Add

in that the Commission has been denied a quorum for about 10% of its existence—and may soon be denied a quorum again—and it is unsurprising that the Commission cannot and does not resolve every conflict it sees. *Id.* at 435–36.

There’s much to commend in the Commission’s approach when it is empowered to fulfill its role. Yet the reality remains that identically situated defendants are subject to “significantly different sentencing ranges based solely on geography” until the Commission acts—if it acts at all. *Wiggins*, 145 S. Ct. at 2622.

II. This Court should not categorically decline review of circuit-splitting Guideline conflicts just because the Commission could act.

Given how important the Guidelines are to the mission, stability, and legitimacy of the Judiciary, this Court’s reluctance to determine the Guidelines’ meaning is difficult to reconcile with its usual practice of resolving important circuit conflicts. To the extent that *Braxton* has been read to block this Court’s intervention in circuit-splitting Guidelines cases, that reading should be corrected. This Court should instead apply its ordinary criteria under Rule 10 to assess whether to grant certiorari in such cases.

A. *Braxton* neither holds nor supports the proposition that the Sentencing Commission alone may resolve circuit conflicts over the Guidelines’ meaning.

The word “*Braxton*” has become shorthand for the idea that this Court does not review even entrenched circuit splits over purely legal interpretive disputes

over the Sentencing Guidelines. The Solicitor General routinely invokes it when ordered to respond to petitions raising such issues. *E.g.*, Br. in Opp’n at 6, *Wiggins v. United States*, No. 24-6410, *cert. denied*, 145 S. Ct. 2621 (2025); *see also* Sidhu, *Sentencing Guidelines Abstention*, *supra*, at 439–46 (collecting 35 examples). Skilled petitioners’ counsel routinely seek preemptively to distinguish or minimize its import. *E.g.*, Pet. for a Writ of Cert. at 19, *Bryant v. United States*, No. 20-1732, *cert. denied*, 142 S. Ct. 583 (2021); Pet. for a Writ of Cert. at 32, *Rodriguez-Rivera v. United States*, No. 21-143, *cert. denied*, 142 S. Ct. 235 (2021). And this Court’s few writings about the denial of certiorari in such cases reveal that *Braxton* is a real, perhaps categorical, barrier to Supreme Court review—even when the Commission is inoperable or steadfastly gridlocked. *E.g.*, *Longoria*, 141 S. Ct. at 979; *Guerrant*, 142 S. Ct. at 640; *Wiggins*, 145 S. Ct. at 2622.

A close look at *Braxton* reveals no such categorical imperative, though. As the Court recognized, “resolv[ing] conflicts” over the meaning of federal law is “[a] principal purpose” of the certiorari power and jurisdiction. *Braxton*, 500 U.S. at 347. Though other bodies can eliminate non-constitutional conflicts over the meaning of federal law, that “task [belongs] initially and primarily” to this Court. *Id.* at 348. So too with the Guidelines—except in narrow circumstances: when “the Commission has already undertaken a proceeding that will eliminate circuit conflict over the meaning of” the precise Guideline provision before the Court. *Id.* at 348–49. In those circumstances, the *Braxton* Court declined to weigh in. *Id.* at 348.

Braxton thus reflects a pragmatic principle: this Court usually avoids displacing ongoing, parallel proceedings. *See id.* In that way, *Braxton* echoes the broader principles that animate limited abstention doctrines aimed at honoring the special province of other governmental entities and ensuring judicial efficiency. *E.g.*, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976) (ongoing state court proceedings); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (ongoing state administrative proceedings).

Yet that approach is a general principle, not an inflexible rule. *Braxton* supports “restrain[t] and circumspect[ion]” when “the precise question raised” by a petitioner is being resolved by the Commission. 500 U.S. at 348. But it does not support, let alone compel, total abstention “regardless of whether the Commission is addressing the same issue.” Sidhu, *Sentencing Guidelines Abstention*, *supra*, at 422.

Deriving a limited, general principle from *Braxton* reflects this Court’s typical practices. That another body can review and revise federal law is not ordinarily a reason to decline review of important circuit-splitting questions. Congress can, and does, amend statutes to resolve circuit conflicts. *E.g.*, *United States v. Green*, 158 F.4th 1347, 1378 (11th Cir. 2025) (noting that Congress recently amended the MVRA to resolve a circuit conflict). Rules Committees can and do too. Yet this Court weighs in to resolve important disputes anyway, *see Kemp v. United States*, 596 U.S. 528, 538–39 (2022); *id.* at 541–42 (Gorsuch, J., dissenting), even when that process is already underway, *Parrish v. United States*, 605 U.S. 376, 390 (2025).

Dual responsibility for resolving questions of federal law should lead to circumspection, not categorical abstention. Concurrent authority to clarify the law does not eliminate the need for this Court to say what the law is, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386–87 (2024), even when an agency could clarify the same text’s meaning. And when conflicts arise, the Courts of Appeals generally defer to their own precedent until this Court or the Commission speaks. *United States v. Davis*, 714 F.3d 474, 475 (7th Cir. 2013) (Easterbrook, J.) (“Resolution of this conflict [over U.S.S.G. § 3E1.1(b)] is the province of the Supreme Court or the Sentencing Commission.”). If this Court bows out of that process, the rule of law suffers, and geography alone will dictate disparate results.

B. There is no coherent basis for treating Guideline conflicts differently than other conflicts.

Amici cannot discern a coherent rationale for the Court ceding sole authority over the meaning of the Sentencing Guidelines to the Sentencing Commission. *Braxton* did not so hold and its reasoning did not extend that far. When the Commission has not acted and a circuit-splitting Guideline conflict persists, the ordinary reasons for this Court’s review should apply with full force.

Admittedly, the Commission is a “peculiar institution within the framework of our Government.” *Mistretta v. United States*, 488 U.S. 361, 384 (1989). Though located in the Judicial Branch, it is, in many ways, a non-adjudicatory expert body in the mold of an executive agency. See *Stinson v. United States*, 508 U.S. 36, 44–45 (1993). Yet in other ways,

it is a “junior-varsity Congress,” *Mistretta*, 488 U.S. at 427 (Scalia, J., dissenting), equipped with significant discretion to engage in forward-looking policymaking to set presumptive punishments for every crime in the U.S. Code, *id.* at 377, 407 (majority op.).

No matter how one conceives of the Commission, though, there is no basis to give it ultimate authority over the Guidelines’ meaning—particularly in the face of the Commission’s inaction. When an agency fails (or refuses) to resolve a circuit split, this Court can, and does, step in to clarify what the law is. *See, e.g., Auer v. Robbins*, 519 U.S. 452, 460–61 (1997) (resolving a circuit split over the meaning of a Department of Labor regulation, albeit with a now-inappropriate reflexive deference to the agency). If the Commission is an expert agency engaged in rulemaking and interpretation of its own rules, this Court owes the Commission’s views “respectful consideration,” not reflexive deference. *See Loper Bright*, 603 U.S. at 386. The “solemn duty” of the Judiciary” is to interpret the fixed meaning of the law. *Id.* (quoting *United States v. Dickson*, 15 Pet. 141, 152 (1841) (Story, J., for the Court)).

That duty does not vanish just because agencies generally should “play the primary role in resolving regulatory ambiguities.” *Kisor v. Wilkie*, 588 U.S. 558, 569 (2019). Primary, of course, does not mean exclusive. It remains the Judiciary’s duty “to perform their reviewing and restraining functions.” *Id.* at 574. “When the agency has no comparative expertise,” courts cannot defer to agency action—or, relevant here, inaction. *Id.* at 578. This Court is not a subordinate expert on discerning legal meaning or resolving circuit splits.

Alternatively, the Commission, by design and operation, may be an extension of Congress (if the term “junior-varsity Congress” seems pejorative). Sidhu, *Sentencing Guidelines Abstention*, *supra*, at 429–30. The Commission was designed (in part) to insulate Congress from political backlash over recommended sentences. *Id.* at 429–30 & ns. 156–59. Operationally, Congress approves (either expressly or tacitly) or rejects every guideline, *see* 28 U.S.C. § 994(p); *Mistretta*, 488 U.S. at 393–94, which resembles congressional rulemaking.

This Court does not abstain from deciding circuit-splitting statutory questions that Congress could resolve. *E.g.*, *Mathis v. United States*, 579 U.S. 500, 508 (2016) (resolving split over the Armed Career Criminal Act’s meaning). On the contrary, those are the “principal” cases in which this Court grants review. *Braxton*, 500 U.S. at 347. Nor does this Court abstain from reviewing the Federal Rules of Civil Procedure, even though Congress and Rules Committees can (and do) revise them. *E.g.*, *Berk v. Choy*, 607 U.S. 187, 192 (2026) (resolving circuit split over the meaning of Rule 8 in diversity cases alleging state tort claims).

There is no principled reason to think that the Commission’s ability to resolve circuit conflicts excludes or precludes this Court’s review. The Sentencing Reform Act is silent about this Court’s role in resolving circuit conflicts over the Guidelines’ meaning. Sidhu, *Sentencing Guidelines Abstention*, *supra*, at 432. Nothing in its legislative history supports the notion “that Congress intended for the Commission to be the exclusive body responsible for resolving relevant splits,” either. *Id.* Ultimately, no

matter how one conceptualizes the Commission's work, this Court grants review in similar circumstances.

Our argument should not be misunderstood to suggest that this Court either (1) *must* grant review of circuit-splitting Guideline questions, or (2) should place a thumb on the scale in *favor* of review. Instead, the point is that there is no compelling reason to depart from this Court's usual standards for evaluating and granting review of circuit-splitting questions of federal law. The Guidelines are an exceptionally important font of federal criminal law; this Court should not categorically abstain from interpreting them.

III. The issue presented is exceptionally important.

The consequences of abstaining from deciding Guidelines questions are squarely implicated by this Petition. By any measure, the Petition raises an exceptionally important question of federal law. The circuits are intractably split over a purely legal question: whether the term “controlled substance offense” depends on federal law alone or not. Pet. at 17–19. The consequence of that split cannot be overstated. The difference between the two positions is measured in years, and often decades, of human life and liberty. See U.S.S.C., *QuickFacts Career Offenders*, at 1 (2026) (“In 91% of such cases, the career offender status increased the guideline range.”). Drug trafficking priors are by far the most common basis for career-offender status. *Id.* But as it stands, geography alone decides whether a person's state drug trafficking offense qualifies the person for career offender status and its massive sentencing consequences. *Wiggins*, 145 S. Ct. at 2622.

Do not let statistics and rhetoric obscure the toll the career-offender conflict extracts. Consider Robert Crayton’s story. He pled guilty to conspiring to distribute cocaine after his untimely bankruptcy returned him to old habits. *United States v. Crayton*, 2:23-cr-45, Dkt. 165, at 2–6 (N.D. Ind. 2025). He would have faced an advisory sentencing range of 51 to 63 months’ imprisonment for that conduct. *Id.* at 17. But his Illinois conviction for dealing a few grams of heroin made him a career offender. So his advisory guideline quadrupled to 210 to 262 months’ imprisonment. *Id.* Had he been sentenced in Texas, California, or Maine, he would already be home raising his kids. Instead, he faces about another decade in federal prison.

Sentencing severity should not depend on geography. *Hughes v. United States*, 584 U.S. 675, 684 (2018). But for career offenders, it does. *Wiggins*, 145 S. Ct. at 2622. The Commission has not resolved this “important” issue, despite multiple entreaties from this Court to do so. *Id.*; *Guerrant*, 142 S. Ct. at 641. Meanwhile, people like Mr. Asad are subject to “dramatically higher sentencing ranges” based on the fortuity of where they are prosecuted. *Wiggins*, 145 S. Ct. at 2622. Those disparities are antithetical to the goals of federal sentencing, 18 U.S.C. § 3553(a)(6), and the Guidelines’ very purpose, *Molina-Martinez*, 578 U.S. at 192.

The Commission has not resolved this issue and there is no indication it will do so imminently. Pet. 29-31. More: the Commission appears likely to be without a once again. *Id.* In these circumstances, *Braxton* does not block review, and this Court should no longer countenance the remarkable disparities this unresolved conflict creates.

CONCLUSION

The Sentencing Guidelines are a critical source of federal criminal law. The lower courts interpret them day-in and day-out, so conflicts inevitably arise. No doubt, the Commission *can* resolve those conflicts. But often, as here, it does not. Properly understood, *Braxton* does not impose anything close to a categorical bar on this Court's review of circuit-splitting Guidelines issues. Doubly so when the Commission's inaction undermines the very purposes of sentencing. This Court should apply its ordinary rules and review this exceptionally important Petition.

Respectfully submitted,

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