No. 26-___

In The
Supreme Court of the United States

NOAH CRADDOCK,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Sentencing Guidelines, a four-level enhancement applies to certain firearm offenses if "any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." U.S.S.G. § 2K2.1(b)(4)(B)(i) (2024). That provision, which is at issue in hundreds of cases each year, is the subject of a circuit split concerning the enhancement's applicability when a firearm has both legible and illegible markings of its serial-number information.

In the Third Circuit, where petitioner was sentenced, a sentencing court "need only identify whether a firearm has a single modified serial number that is illegible," and "[t]he presence of a separate legible serial number does not prohibit the application of § 2K2.1(b)(4)(B)(i)'s four-level enhancement." Pet. App. 7a. But in the Fourth Circuit, "the enhancement does not apply if the unique sequence of digits assigned to the firearm remain[s] legible elsewhere on the firearm, because in that circumstance the 'original information' has not been rendered illegible or unrecognizable." *United States v. Smith*, 188 F.4th 770, 778 (4th Cir. 2026).

The Question Presented is:

Whether the four-level enhancement in § 2K2.1(b)(4)(B)(i) applies when a firearm has multiple markings of its serial number, and the serial-number information remains legible in at least one marking.

PARTIES TO THE PROCEEDINGS

Petitioner Noah Craddock was the defendant in the Middle District of Pennsylvania and the appellant in the Third Circuit. The United States was the plaintiff in the district court and the appellee in the court of appeals.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States of America v. Noah Lee Craddock*, No. 1:22-CR-0050 in the United States District Court for the Middle District of Pennsylvania (Judgment and Sentence Pronounced at Sentencing Proceedings of August 12, 2025, excerpted at Pet. App. 8a);

- *United States of America v. Noah Craddock*, No. 25-2573 in the United States Court of Appeals for the Third Circuit (Judgment and Opinion issued July 1, 2026, Pet. App. 1a).

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OPINIONS BELOW

The Third Circuit affirmed the sentence imposed by the District Court for the Middle District of Pennsylvania through an opinion that was published at 179 F.4th 156 (3d Cir. 2026) and is included at Pet. App. 1a-7a. The district court's oral findings of fact and conclusions of law regarding the U.S.S.G. § 2K2.1(b)(4)(B)(i) (2024) sentencing enhancement at issue in petitioner's case were made during a hearing excerpted at Pet. App. 8a-11a.

JURISDICTION

The Third Circuit entered its opinion and judgment on July 1, 2026. Pet. App. 1a. On September 11, 2026, Justice Alito granted petitioner's application to extend the time to file this petition for a writ of certiorari until October 29, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

SENTENCING GUIDELINES PROVISION INVOLVED

Petitioner received a four-level sentencing enhancement pursuant to U.S.S.G. § 2K2.1(b)(4)(B)(i) (2024).[1] Pet. App. 1a. The entirety of § 2K2.1(b)(4) states:

> If (A) any firearm was stolen, increase by **2** levels; or (B)(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye; or (ii) the

[1] Unless otherwise noted, all Guidelines citations refer to the 2024 Guidelines in effect when petitioner was sentenced. *See* Pet. App. 1a n.1.

> defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by **4** levels.

U.S.S.G. § 2K2.1(b)(4) (emphasis in original).

STATEMENT

I. BACKGROUND OF U.S.S.G. § 2K2.1(b)(4)(B)(i)

The United States Sentencing Guidelines provide "the essential framework" for sentencing federal defendants, establishing advisory ranges of punishment that play a "central role" in shaping the sentence a defendant receives. *See Molina-Martinez v. United States*, 578 U.S. 189, 198-99 (2016). "[D]istrict 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 v. United States*, 552 U.S. 38, 50 n.6 (2007) (emphasis in *Peugh*)). Thus, "the Guidelines are not only the starting point for most federal sentencing proceedings but also the lodestar." *Molina-Martinez*, 578 U.S. at 200.

The Guidelines determine a defendant's advisory sentencing range based on a combination of that defendant's criminal history and offense level. *See Rosales-Mireles v. United States*, 585 U.S. 129, 133-34 (2018). "[A]n offense level is calculated by identifying a base level for the offense of conviction and adjusting that level to account for circumstances specific to the defendant's case, such as how the crime was

committed and whether the defendant accepted responsibility." *Id.* (citing U.S.S.G. § 1B1.1(a)(1)-(5) (2016)). For example, petitioner was sentenced under § 2K2.1, which governs crimes involving "Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition" and specified a base offense level of 20 for petitioner's unlawful possession of a firearm. *See* U.S.S.G. § 2K2.1(a)(4). Petitioner's offense level was then increased pursuant to § 2K2.1(b)(4)(B)(i), an enhancement that directs the district court to add four levels if "any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." *Id.* § 2K2.1(b)(4)(B)(i).[2]

That language is the product of a 2024 amendment to § 2K2.1(b)(4)(B)(i). *See* U.S.S.G. app. C, amend. 828 (effective Nov. 1, 2024). Previously, that subsection directed district courts to add four levels if "any firearm had an altered or obliterated serial number." U.S.S.G. § 2K2.1(b)(4)(B)(i) (2023). In amending this subsection of § 2K2.1(b)(4)(B), the Commission said the change "resolves the differences in how the circuits interpret[ed] the term 'altered' in the 4-level enhancement at § 2K2.1(b)(4)(B), which applies when the serial number of a firearm has been 'altered or obliterated.'" Sentencing Guidelines for United States Courts, 89 Fed. Reg. 36853, 36858 (May 3, 2024). Specifically, the Commission described courts' disagreement "as to whether the serial number must

[2] Petitioner's total offense level was reduced three levels for his acceptance of responsibility pursuant to U.S.S.G. § 3E1.1. Pet. App. 10a.

be illegible for this enhancement to apply and as to what test for legibility should be employed." *Id.*

The Commission noted that some circuits had deemed the enhancement applicable when a serial-number marking was merely "less legible" or damaged, "even though the damage did not render the serial number unreadable." *Id.* By contrast, other circuits required that a serial-number marking be not only defaced but also "illegible" to "the naked eye." *Id.* The Commission explained that it was amending § 2K2.1(b)(4)(B)(i) to adopt the latter approach, requiring illegibility to the naked eye as opposed to mere alteration. *See id.* at 36859.

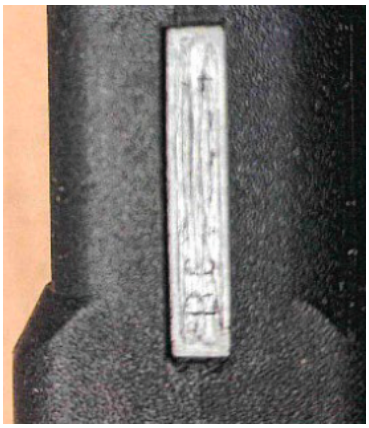
The Commission also amended the Commentary to § 2K2.1 specific to this enhancement, replacing references to the previous phrasing of § 2K2.1(b)(4)(B)(i) with the new language focused on legibility. *Compare* U.S.S.G. § 2K2.1 cmt. n.8 (2024), *with* U.S.S.G. § 2K2.1 cmt. n.8 (2023).

And the Commission noted that its amendment of § 2K2.1(b)(4)(B)(i) was "consistent with [its] recognition in 2006 of 'both the difficulty in tracing firearms with altered and obliterated serial numbers, and the increased market for these types of weapons.'" 89 Fed. Reg. at 36859 (quoting U.S.S.G. app. C, amend. 691 (effective Nov. 1, 2006)).

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner was arrested in November 2020 while in possession of a "single firearm with one illegible serial number and one legible serial number." Pet. App. 2a.

The markings are pictured below.





Id. at 17a, 18a. Petitioner pleaded guilty to illegally possessing a firearm under 18 U.S.C. § 922(g)(1), a conviction that carries a base offense level of 20 under the Sentencing Guidelines. *Id.* at 2a, 10a.[3]

At sentencing, no party questioned the base offense level of 20, and the government did not object to a three-level downward adjustment for petitioner's acceptance of responsibility to bring that level to 17. *See id.* at 10a. The parties did, however, disagree about the applicability of the four-level enhancement under § 2K2.1(b)(4)(B)(i), which applies to firearm offenses like petitioner's if "any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to

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[3] Prior to sentencing, petitioner filed a motion to withdraw his guilty plea, asserting that his prosecution violates the Second Amendment. *See* Pet. App. 12a, 15a. The district court denied the motion, *id.* at 16a, petitioner did not reassert the Second Amendment challenge in the Third Circuit, and that issue is not before this Court.

the unaided eye." U.S.S.G. § 2K2.1(b)(4)(B)(i). Petitioner objected to the enhancement because the firearm in question had two separate markings of its serial number, and—as the district court expressly acknowledged—one of the two markings "was not altered in any manner." Pet. App. 8a. Nonetheless, the district court agreed with the government that it made no difference "that there was another legible serial number on the firearm." *Id.* at 9a.[4]

The court applied the four-level enhancement in § 2K2.1(b)(4)(B)(i) to reach a total offense level of 21 that, together with petitioner's criminal-history score, produced a Guidelines range of 77-96 months. *Id.* at 10a. The court then noted both parties' request "to look at the issue of sentencing disparities" and ultimately sentenced petitioner to 71 months, "the average length of imprisonment imposed nationwide" based on "the data that's relevant to [petitioner's] sentencing." *Id.* at 11a.

On appeal to the Third Circuit, petitioner raised one issue: whether § 2K2.1(b)(4)(B)(i)'s four-level enhancement applies when, as in petitioner's case, it is undisputed that the firearm at issue has multiple markings of its serial number and, in one of those

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[4] The district court invoked pre-2024 amendment cases from other circuits that had applied the § 2K2.1(b)(4)(B)(i) enhancement for a "single iteration" of an "altered or obliterated" serial-number marking, even when there was "another legible serial number on the same firearm." *See* Pet. App. 9a. The court did not acknowledge that those cases predated the 2024 amendment or that the enhancement's current text differs from the enhancement's text when those cases were decided. *See id.*; *cf. id.* at 5a n.3 (collecting cases).

markings, the serial-number information is legible to the unaided eye. *See id.* at 1a-3a. Petitioner highlighted the new language the Sentencing Commission added in its 2024 amendment, requiring that a serial-number marking be "modified such that the original information is rendered illegible or unrecognizable" to qualify for the enhancement. *See id.* at 6a; U.S.S.G. app. C, amend. 828. As petitioner contended, the "original information" referenced in the amended enhancement is the unique serial number assigned to the firearm, so "the four-level enhancement cannot apply when a firearm 'as a whole' bears a 'complete and accurate serial number.'" Pet. App. 6a (quoting in part petitioner's opening brief while summarizing his argument on appeal).

The Third Circuit agreed with petitioner's factual premise, acknowledging the legibility of one of the two serial-number markings on the firearm in question. *See id.* at 2a. Moreover, the court noted that, even within the illegible marking, "certain characters could still be identified and matched the visible serial number." *Id.* But it rejected petitioner's legal argument that the still-legible serial number rendered the enhancement inapplicable. *Id.* at 7a.

Looking at the text of § 2K2.1(b)(4)(B)(i), the Third Circuit walked through dictionary definitions of "any," "a," "modify," and "illegible" before concluding that "the most relevant language" in § 2K2.1(b)(4)(B)(i) was "*a* serial number." *See id.* at 3a-6a (emphasis in original). The court read that phrase to signal that a firearm with a single illegible marking of its serial number sufficed, even if the original serial-number information remained legible in another marking on

the same firearm. *Id.* at 6a.[5] The court rejected petitioner's focus on § 2K2.1(b)(4)(B)(i)'s newly added language about "original information" and his reading of that phrase as the unique sequence of letters and numbers originally assigned to the firearm rather than a particular marking of that information. *Id.* The Third Circuit held instead that "a sentencing court need only identify whether a firearm has a single modified serial number that is illegible or unrecognizable to the naked eye." *Id.* at 7a. Accordingly, "[t]he presence of a separate legible serial number does not prohibit the application of § 2K2.1(b)(4)(B)(i)'s four-level enhancement." *Id.*[6]

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[5] Like the district court, Pet. App. 9a, the Third Circuit looked to decisions from other circuits that interpreted the pre-2024 amendment language of § 2K2.1(b)(4)(B)(i) to apply if any one of a firearm's markings of its serial number was "altered or obliterated." *See id.* at 5a n.3. The Third Circuit emphasized that the indefinite article "a" before "serial number" is the same in both versions. *Id.* But the court did not acknowledge that those other circuits had no chance to consider the *new and different* language the Commission added in 2024—language at the heart of petitioner's argument that the enhancement is inapplicable if the original serial-number information is legible in at least one marking on the firearm. *See* U.S.S.G. app. C, amend. 828; *see also infra* Part III.

[6] The Third Circuit has applied the holding in petitioner's case to a subsequent sentencing appeal involving § 2K2.1(b)(4)(B)(i) in which "the rifle in question had a serial number that was engraved in three locations, only one of which had been rendered unreadable." *United States v. Stratton-Kielmeier*, No. 25-1218, 2026 WL 2199535, at *3 & n.22 (3d Cir. July 30, 2026) (citing *United States v. Craddock*, 179 F.4th 156, 159-60 (3d Cir. 2026)).

REASONS TO GRANT THE PETITION

This Court should grant certiorari to resolve a square split among the federal courts of appeals over the application of U.S.S.G. § 2K2.1(b)(4)(B)(i). That four-level enhancement addresses firearms with modified serial-number markings, and it arises in hundreds of sentencing proceedings each year. The Third Circuit's decision below held that the enhancement applies whenever there is a single illegible marking of a serial number on a firearm—even if another marking of the serial-number information on the same firearm remains legible. This approach directly conflicts with the Fourth Circuit's determination that the enhancement does not apply when—as in petitioner's case—a firearm has *at least one* legible marking of its serial number, meaning its traceability is not materially impeded. *See infra* Part I. Had petitioner been sentenced in the Fourth Circuit instead of in the Third Circuit, his Guidelines range would have been 26-33 months lower.

Congress established the Sentencing Commission and directed it to promulgate the Guidelines to promote uniformity in sentencing. But the circuit split on the meaning of § 2K2.1(b)(4)(B)(i) frustrates that purpose—creating geographic disparities in sentencing and leaving lower courts, defense counsel, prosecutors, and the United States Probation Office without the consistent understanding of the Guidelines they need to properly do their jobs. And this case provides the ideal vehicle to address the split: The issue of § 2K2.1(b)(4)(B)(i)'s applicability when a firearm has both an illegible *and* legible marking of its serial number was preserved in the district court and was the sole issue examined by the Third Circuit.

This case also provides an excellent opportunity for this Court to reaffirm its core role "to say what the law is," *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2257 (2024) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 173, 177 (1803))—even when that law is a sentencing guideline. While *Braxton v. United States*, 500 U.S. 344 (1991), has been overread by some as a bar to this Court's review when circuits conflict over Guidelines interpretations, nothing in *Braxton* requires this Court to abstain from its foundational responsibility to supervise the lower courts in the sentencing context. This Court fulfills that role when lower courts conflict over interpretations of statutes and regulations that Congress and agencies, respectively, also have the power to clarify on their own. The same judicial supervision is warranted when conflicts over Guidelines interpretations undermine the administration of criminal justice by the federal judiciary.

On the merits, this Court should hold that the enhancement in § 2K2.1(b)(4)(B)(i) does not apply when the firearm with multiple serial-number markings has at least one legible marking that allows the serial-number information to be discerned. The plain language and structure of the enhancement, along with the Commission's purpose in promulgating it, compel this result.[7]

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[7] At a minimum, this Court should hold the petition pending its decision in *Beaird v. United States*, No. 25-5343, in which this Court heard oral argument on October 13, 2026. The Court's analysis of the question presented in *Beaird*, regarding the level of deference that should be afforded to Guidelines Commentary, may be relevant to

I. AN ACKNOWLEDGED, SQUARE SPLIT EXISTS AMONG THE COURTS OF APPEALS AS TO THE MEANING OF § 2K2.1(b)(4)(B)(i).

The Third and Fourth Circuits squarely conflict as to whether § 2K2.1(b)(4)(B)(i) applies when a firearm has multiple markings of its serial-number information; at least one marking has been modified such that it is illegible; and another marking remains legible. *Compare* Pet. App. 7a, *with United States v. Smith*, 188 F.4th 770, 772, 778 (4th Cir. 2026).

As previously discussed, the Third Circuit held in petitioner's case that a single illegible marking of a serial number sufficed for a four-level enhancement under § 2K2.1(b)(4)(B)(i)—even though a legible marking of the serial-number information was visible elsewhere on the firearm at issue. *See* Pet. App. 7a; *see also supra* pp.7-8.

By contrast, in the Fourth Circuit, § 2K2.1(b)(4)(B)(i) does not apply when at least one marking of a firearm's serial-number information remains legible—even if other serial-number markings on a firearm do not. *See Smith*, 188 F.4th at 778.[8] The Fourth Circuit reasoned that

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judicial interpretation of § 2K2.1(b)(4)(B)(i). *See infra* Part IV.

[8] Under the Fourth Circuit's approach, the government must prove the enhancement's applicability by a preponderance of the evidence, showing that a firearm's serial-number markings "were modified such that the firearm was no longer traceable"—a burden it could not carry in *Smith*, where one of the markings on the firearm remained legible. 188 F.4th at 782-84. The Fourth Circuit recognized that "a serial number need not be scientifically

§ 2K2.1(b)(4)(B)(i) focuses on the legibility of the serial number's "unique sequence of digits identifying the firearm"—its "original information." *Id.* Thus, even if one marking of those digits is illegible, "the enhancement does not apply if the unique sequence of digits assigned to the firearm remain legible elsewhere on the firearm, because in that circumstance the 'original information' has not been rendered illegible or unrecognizable." *Id.* The Fourth Circuit's interpretation of the enhancement's amended language thus matched the reading petitioner had advanced unsuccessfully in the Third Circuit. *See* Pet. App. 6a.

The Fourth Circuit expressly rejected the government's argument that the enhancement applies whenever a "*specific marking* is illegible or unrecognizable to the unaided eye," even if other markings of the serial-number information are legible. *See Smith*, 188 F.4th at 778 (emphasis in original). The court acknowledged that the Third Circuit in petitioner's case had "opined on this exact issue" and adopted the government's position, holding that the enhancement requires only "a single modified serial number that is illegible or unrecognizable to the naked eye." *Id.* (quoting *United States v. Craddock*, 179 F.4th 156, 159 (3rd Cir. 2026)). But in the Fourth Circuit's view, the opinion in petitioner's case "notably" had not fully considered the enhancement's new language concerning "original information," determining only that the phrase did not mean

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untraceable for the enhancement to apply," but "that does not mean weapons that are otherwise traceable should be encompassed by the enhancement." *See id.* at 780 (internal quotation marks and citation omitted).

"complete and accurate information," as petitioner had contended in that court. *See id.* at 779. The Fourth Circuit reasoned that "original information" was better read as "the unique sequence of digits assigned to that firearm" and not, as the Third Circuit concluded, "the information contained in the serial number marking that was modified." *Id.* at 778-79.[9]

Despite disagreeing with the Third Circuit's textual interpretation of § 2K2.1(b)(4)(B)(i), the Fourth Circuit did not think it unreasonable. *Id.* at 779. The Fourth Circuit therefore treated the enhancement as "ambiguous" and turned to "the Guideline's amendment history, the practical use of serial numbers in identifying and recovering firearms, and the Guideline Commentary." *Id.*[10] The Fourth

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[9] The partial dissent in the Fourth Circuit, like the Third Circuit in petitioner's case, pointed to pre-2024 amendment opinions concluding that a single alteration of a serial-number marking sufficed for the enhancement. *Smith*, 188 F.4th at 786-87 (Agee, J., concurring in part and dissenting in part). But, as previously noted, *see supra* note 5, those opinions were not interpreting the new language added to § 2K2.1(b)(4)(B)(i) in 2024, which requires the extent of a modification to be "such that the original information is rendered illegible or unrecognizable to the unaided eye." The partial dissent went on to consider the new language and reached the same conclusion. *Id.* at 785-86.

[10] The Fourth Circuit cited the Commission's decision in 2024 to choose "the more narrow of the two tests" that had previously divided the circuits as to whether § 2K2.1(b)(4)(B)(i) applied when a marking was altered to be "less" legible but not illegible. *See Smith*, 188 F.4th at 779-80; *see also supra* pp.3-4. Applying the enhancement for merely "less legible" but still traceable markings of

Circuit concluded that "the purpose of the enhancement is clear—deterring the flow of untraceable firearms." *Id.* The Third Circuit also had recognized that traceability, along with deterring black-market sales, informed the Commission's 2024 amendment. Pet. App. 7a.

But whereas the Third Circuit had invoked that rationale to condemn petitioner's reading of the enhancement—contending that it would "permit an escape hatch for criminals using guns with multiple serial numbers," Pet. App. 6a—the Fourth Circuit concluded that it was actually the government's and Third Circuit's readings of the enhancement that would "lead to absurd results." *Smith*, 188 F.4th at 780. "When only one iteration of a serial number is modified on a weapon, but two other serial numbers remain unaltered, that weapon is clearly traceable." *Id.*

As in *Smith*, it is undisputed in petitioner's case that the firearm at issue had at least one marking of its serial-number information that was visible and legible. Pet. App. 2a, 8a, 19a. Had petitioner been sentenced in the Fourth Circuit rather than in the Third Circuit, he would not have received a four-level sentencing enhancement under § 2K2.1(b)(4)(B)(i).

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serial numbers had "encapsulated conduct *not* consistent with the Guideline's purpose." *Id.* at 780 (emphasis in original). The Fourth Circuit "follow[ed] the Sentencing Commission's lead" and took "the narrower approach" regarding the enhancement's applicability to firearms with both legible and illegible markings of its serial number. *Id.*

II. THIS CASE PROVIDES AN EXCELLENT VEHICLE TO RESOLVE A SQUARE CONFLICT OVER AN IMPORTANT SENTENCING ISSUE THAT CREATES GEOGRAPHIC DISPARITIES AND LEAVES LOWER COURTS, THE GOVERNMENT, AND DEFENDANTS WITHOUT SUFFICIENT GUIDANCE ON "WHAT THE LAW IS."

A. The Courts Of Appeals' Conflicting Interpretations Of U.S.S.G. § 2K2.1(b)(4)(B)(i) Create The Type Of Significant Geographic Sentencing Disparities That Congress Intended The Guidelines To Prevent.

Congress created the Sentencing Commission and directed it to promulgate Sentencing Guidelines to promote uniformity and help ensure that "defendants with similar records who have been found guilty of similar conduct" receive consistent sentences. *See* 18 U.S.C. § 3553(a)(6); Sentencing Reform Act of 1984, Pub. L. No. 98–473, ch. II, 98 Stat. 1987, 2018 (1984). But the circuit split here defeats that purpose: Some courts will apply a four-level enhancement under § 2K2.1(b)(4)(B)(i) when a defendant possesses a firearm with both legible and illegible serial-number markings, while other courts will not. This inconsistency will produce materially disparate sentences in a significant number of cases. And, beyond geographic disparities, the uncertainty created by the split will impact all parties involved in the sentencing process. That includes defendants and their counsel, who may be evaluating plea agreements, as well as prosecutors, probation officers, and judges—all of whom need a consistent understanding of the Guidelines to properly perform their jobs.

The split over § 2K2.1(b)(4)(B)(i) causes defendants with the same criminal-history score and base offense level to face different sentencing ranges under the Guidelines depending on the circuit in which they are convicted. In petitioner's case, for example, the four-level enhancement under § 2K2.1(b)(4)(B)(i) raised his offense level from 17 to 21, producing a Guidelines range of 77-96 months. *See* Pet. App. 10a. Had petitioner instead been sentenced within the Fourth Circuit, where *Smith* controls, his adjusted offense level would have stayed at 17, producing a Guidelines range of 51-63 months. *See* Pet. App. 10a; U.S.S.G. ch. 5 pt. A (sentencing table). In other words, petitioner faced a Guidelines range that became 26-33 months longer solely because of where he was prosecuted. And, "in our federal system, a defendant's location should not determine the severity of his punishment." *Wiggins v. United States*, 145 S. Ct. 2621, 2622 (2025) (Sotomayor, J., statement respecting denial of certiorari, joined by Barrett, J.).

Additionally, the split over § 2K2.1(b)(4)(B)(i)'s applicability is important to resolve because that enhancement not only significantly impacts individual defendants but also frequently arises in sentencing proceedings. Federal courts applied § 2K2.1(b)(4)(B)(i) to hundreds of defendants in 2025 alone.[11]

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[11] Although it is unclear exactly how many cases involved a gun with multiple serial-number markings, at least one of which remained legible, statistics establish the general prevalence of the enhancement in sentencing proceedings. In fiscal year 2025, 440 defendants had their offense level enhanced under § 2K2.1(b)(4)(B)(i) (290 under the language of the 2024 amendment and 150 under the prior

Moreover, although the Guidelines are advisory, they nonetheless play a "central role" in federal sentencing, "provid[ing] the framework for the tens of thousands of federal sentencing proceedings that occur each year." *Molina-Martinez*, 578 U.S. at 192, 199. That means inconsistent applications of § 2K2.1(b)(4)(B)(i) will have very real effects on the sentences district courts ultimately impose. This Court has instructed lower courts to treat the Guidelines as "the starting point and the initial benchmark" in order to "secure nationwide consistency." *Gall*, 552 U.S. at 49; s*ee also Peugh*, 569 U.S. at 541 (explaining that the post-*Booker* federal sentencing scheme "aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines"). And because sentences within the Guidelines range are typically presumed reasonable on appeal, *Rita v. United States*, 551 U.S. 338, 347 (2007), practical incentives exist for the Guidelines to become "*in a real sense the basis for the sentence*" imposed by the district court. *Molina-Martinez*, 578 U.S. at 199 (emphasis in original) (quoting *Peugh*, 569 U.S. at 542).

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version). *See* U.S. SENTENCING COMM'N, USE OF GUIDELINES AND SPECIFIC OFFENSE CHARACTERISTICS GUIDELINE CALCULATION BASED 131 (2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2025/Ch2_Guideline_FY25.pdf. And the total number of cases in which § 2K2.1(b)(4)(B)(i) was at issue is somewhat larger, because this number does not reflect cases in which the court did not ultimately apply the enhancement.

Given that the Guidelines "are not only the starting point for most federal sentencing proceedings but also the lodestar," *Molina-Martinez*, 578 U.S. at 200, an interpretive conflict between the courts of appeals over a particular enhancement inevitably creates sentencing disparities between district courts bound by conflicting precedents. This is the opposite of Congress's intent to foster "a Guidelines system that would bring about greater fairness in sentencing through increased uniformity." *Rita*, 551 U.S. at 354. When interpretive conflicts over the Guidelines stay unresolved, they create sentencing disparities that thwart Congress's goal for the Commission to "provide certainty and fairness." *See* 28 U.S.C. § 991(b)(1)(B).

Resolving the split over § 2K2.1(b)(4)(B)(i) is also important because every person involved in criminal prosecutions needs accurate and consistent information about the potential sentence for a conviction. Even post-*Booker*, district courts "*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." *Peugh*, 569 U.S. at 541 (quoting *Gall*, 552 U.S. at 50 n.6 (emphasis in *Peugh*)). Clear instructions on how to apply the Guidelines are essential for district courts to discharge their sentencing obligations—especially because it is a "significant procedural error" to miscalculate the Guidelines range, *Gall*, 552 U.S. at 51, and defendants are specifically entitled to appeal Guidelines errors. 18 U.S.C. § 3742(a)(2). And even before a district court determines a sentence, the United States Probation Office needs accurate information to calculate the Guidelines range for the presentence report. *See Molina-Martinez*, 578 U.S. at 193. Moreover, prosecutors and defendants need to anticipate what the Guidelines range of punishment

may be to determine what to offer or accept as part of a plea bargain. If they do not know whether an enhancement applies in a particular case, they will not know whether a plea makes sense in connection with a particular charge, because the range "usually does[ ] exert controlling influence on the sentence that the court will impose." *Peugh*, 569 U.S. at 545 (plurality opinion).

Petitioner's case provides an excellent vehicle for this Court to resolve the conflict over § 2K2.1(b)(4)(B)(i). Whether that enhancement applies when the firearm at issue has more than one marking of its serial number, and the serial-number information is legible in at least one of those markings, was preserved in the district court and was the sole issue addressed by the Third Circuit. *See* Pet. App. 1a-2a, 8a-10a. And, as illustrated above, the interpretation had a significant effect on the length of petitioner's Guidelines range, which would have been 26-33 months lower had he been convicted within the Fourth Circuit. *See supra* p.16.

B. This Court's Decision In *Braxton* Is Not A Barrier To Review Here.

Braxton v. United States, 500 U.S. 344 (1991), has been overread by some as a bar to this Court's review of lower courts' interpretations of the Sentencing Guidelines, even when those interpretations conflict. *See* Dawinder S. Sidhu, *Sentencing Guidelines Abstention*, 60 AM. CRIM. L. REV. 405, 414-28, 434-38 (2023) (documenting this misperception of *Braxton* and explaining the important need for this Court's guidance on Sentencing Guidelines conflicts). But nothing in *Braxton* prohibits this Court's review when circuits disagree about a guideline's meaning; and

Braxton certainly does not require this Court to depart from its core institutional role under Article III "to say what the law is," *Loper Bright*, 144 S. Ct. at 2257 (quoting *Marbury*, 5 U.S. at 177), simply because the law at issue is a sentencing guideline.

In *Braxton*, this Court addressed a very specific and limited circumstance that, as the opinion explained, drove its decision not to answer the Guidelines-interpretation question at issue in that case. *See* 500 U.S. at 348-49. The Sentencing Commission—after this Court granted certiorari—announced its intention to address the guideline at issue in *Braxton*. *Id.* at 348. Accordingly, this Court stated two reasons why it would not interpret that guideline: "We choose not to resolve" the conflict over the meaning of that provision "because the Commission has already undertaken a proceeding that will eliminate circuit conflict over the meaning of § 1B1.2, and because the specific controversy can be decided on other grounds." *Id.* at 348-49.

Neither of those circumstances exists in petitioner's case. There is no pending proceeding that the Commission has undertaken to eliminate the split over § 2K2.1(b)(4)(B)(i)'s meaning.[12] And this

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[12] Each year, the Sentencing Commission's announced priorities include the same boilerplate language about circuit splits in general, but that is not an announcement of a pending or forthcoming proceeding to amend any particular guideline. *See, e.g.*, Final Priorities for Amendment Cycle, 91 Fed. Reg. 56732, 56732 (Sep. 3, 2026) (nodding at "[r]esolution of circuit conflicts"); Final Priorities for Amendment Cycle, 90 Fed. Reg. 39263, 39264 (Aug. 14, 2025) (same); Final Priorities for Amendment Cycle, 89 Fed. Reg. 66176, 66177 (Aug. 14, 2024) (same).

enhancement's meaning is the sole question petitioner presents, so there are no "other grounds" to affirm or reverse the Third Circuit's ruling in this specific controversy. Moreover, the present conflict is the byproduct of the Commission's previous attempt to resolve a different circuit split on this same guideline. *See* U.S.S.G. app. C, amend. 828. At this point, a ruling from this Court is essential to provide lower courts with much-needed guidance on the interpretation of § 2K2.1(b)(4)(B)(i) so that geographic disparities in sentencing do not persist. *See supra* Part II.A.

Despite *Braxton*'s limited holding, the government repeatedly overreads that decision, citing it as a complete bar to this Court's review when petitions implicate the Guidelines. Indeed, the government has reflexively invoked *Braxton* as a free pass of sorts, even when responding to petitions this Court deemed cert-worthy and subsequently granted. *See, e.g.*, Brief for the United States in Opposition at 18-19, *Beckles v. United States*, 580 U.S. 256 (2017) (No. 15-8544) (invoking *Braxton* to oppose review of question whether possession of a sawed-off shotgun is a crime of violence under U.S.S.G. § 4B1.2); Brief for the United States in Opposition at 12-13, *Buford v. United States*, 532 U.S. 59 (2001) (No. 99-9073) (invoking *Braxton* to oppose review of a question concerning deference owed to a district court's determination whether prior convictions are "related" under U.S.S.G. § 4A1.2); Brief for the United States in Opposition at 5-6, *Melendez v. United States*, 518 U.S. 120 (1996) (No. 95-5661) (invoking *Braxton* to argue that it is unnecessary for this Court to determine whether a U.S.S.G. § 5K1.1 motion permits a district court to depart downward from the sentencing level set by the

Guidelines and from a lower statutory minimum); Brief for the United States in Opposition at 11, *Koon v. United States*, 518 U.S. 81 (1996) (Nos. 94-1664, 94-8842) (arguing that, in light of *Braxton,* it would be unwarranted for this Court to decide whether a deferential standard of review should be used when assessing a district court's downward departure from the Guidelines sentencing range). And the government has continued arguing for a hands-off approach by this Court when it comes to the Guidelines as recently as *Beaird v. United States* (No. 25-5343), which the Court will decide this term. *See* Brief for the United States in Opposition at 11-12, *Beaird v. United States* (No. 25-5343) (citing *Braxton* in discouraging review of conflicts regarding Guidelines interpretations in Commentary). The *Braxton* pitch did not prevent this Court from granting certiorari in *Beaird*, and this Court should grant the petition here as well to resolve the square split over the proper interpretation of § 2K2.1(b)(4)(B)(i).

There is no legal or institutional reason that this Court should categorically abstain from resolving circuit conflicts over Guidelines interpretations. Nothing in the text or the legislative history of the Sentencing Reform Act (28 U.S.C. §§ 991-994) divests this Court of the power to resolve lower courts' conflicting interpretations of the Guidelines. *See* Sidhu, *supra*, at 428-34. The Commission has allowed longstanding conflicts over Guidelines interpretations to fester, and when this Court does not intervene in those instances, the lower courts are left to choose among competing judicial interpretations. *See id.* at

425 (noting that "the federal appeals courts do not have the luxury of declining review").

Furthermore, while it is true that the Sentencing Commission may amend the Guidelines to address splits in interpretation, the same possibility of amendment exists when interpretive splits develop in the courts of appeals over agency regulations and rules—but this Court nevertheless grants petitions in those administrative contexts. *See, e.g.*, *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012) (withholding *Auer* deference for the Department of Labor's interpretation of "outside salesmen" regulations and finding "DOL's interpretation of its regulations quite unpersuasive"); *Talk Am., Inc. v. Mich. Bell Tel. Co.*, 564 U.S. 50, 67 (2011) (considering the proper interpretation of FCC regulations while deferring to the reasonable interpretation of the FCC as *amicus curiae*).

Similarly, while this Court has noted that the Sentencing Commission has the "unusual explicit *power* to decide whether and to what extent its amendments reducing sentences will be given retroactive effect," *Braxton*, 500 U.S. at 348 (emphasis in original), Congress possesses that same power as to statutes—yet this Court does not avoid reviewing conflicts that develop in the courts of appeals over the meaning of congressional enactments. *See, e.g.*, *Hewitt v. United States*, 145 S. Ct. 2165, 2169 (2025) (reviewing circuit split over the First Step Act, which this Court described as having "addressed the potential for retroactive application" of a penalty reduction).

Indeed, this Court routinely grants certiorari to resolve conflicts among the courts of appeals

concerning the meaning of statutes—despite Congress's ability to address competing interpretations through a statutory amendment. *See, e.g.*, *Garland v. Cargill*, 144 S. Ct. 1613, 1619 (2024) (resolving conflict over the interpretation of "machinegun" in the National Firearms Act); *Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1787-88 (2022) (resolving conflict over whether airline ramp supervisors are exempt from the Federal Arbitration Act); *Mathis v. United States*, 579 U.S. 500, 508-09 (2016) (resolving conflict over use of the categorical approach to interpret "burglary" in the Armed Career Criminal Act); *Yates v. United States*, 574 U.S. 528, 536 (2015) (plurality opinion) (considering the meaning of "tangible object" in the Sarbanes-Oxley Act); *Vance v. Ball State Univ.*, 570 U.S. 421, 430-31 (2013) (interpreting "supervisor" in Title VII). And of course the classic example of this Court exercising its power "to say what the law is" in the statutory context remains *Marbury v. Madison*. 5 U.S. at 177 (interpreting Section 13 of the Judiciary Act of 1789).

If *Braxton*, in practice, functions as a categorical bar, it not only allows uncertainty about "what the law is" to perpetuate geographic sentencing disparities but also leaves lower courts in a lurch. Yet, "[t]his Court has the responsibility to supervise the administration of criminal justice by the federal judiciary." *Rosenberg v. United States*, 346 U.S. 273, 287 (1953); *see also McNabb v. United States*, 318 U.S. 332, 340-41 (1943) (discussing "[j]udicial supervision of the administration of criminal justice in the federal courts" to ensure "proper standards for the enforcement of the federal criminal law in the federal courts").

Supervising the lower courts is particularly important when their disagreements over the meaning of Guidelines provisions stem from ambiguous and vague language. That is because criminal defendants, after *Beckles v. United States*, cannot challenge Guidelines provisions as unconstitutionally vague under the Due Process Clause. 580 U.S. 256, 258 (2017) (holding that advisory Guidelines do not actually impose punishment and therefore do not implicate due process vagueness concerns). So if an unclear guideline yields conflicting interpretations in the courts of appeals that this Court categorically will not review, the interplay between *Braxton* and *Beckles* effectively cedes judicial supervision to the Commission. And that is the case even when the Commission may do nothing to clarify an unclear guideline to help ensure lower courts' consistent Guidelines calculations across jurisdictions. This Court should grant the petition and confirm that *Braxton* creates no categorical barrier to this Court's review when Guidelines provisions, such as § 2K2.1(b)(4)(B)(i) here, result in conflicting interpretations in the courts of appeals that cause precisely the kind of geographic sentencing disparities that the Guidelines are intended to prevent.

III. THE ENHANCEMENT IN § 2K2.1(b)(4)(B)(i) DOES NOT APPLY WHEN THERE ARE MULTIPLE MARKINGS OF A FIREARM'S SERIAL NUMBER AND THE SERIAL-NUMBER INFORMATION IS LEGIBLE IN AT LEAST ONE MARKING.

The plain language of § 2K2.1(b)(4)(B) establishes that its four-level enhancement does not apply when a firearm's original serial-number information remains

legible in at least one serial-number marking, even if other serial-number markings on the firearm are not legible. That conclusion is unambiguously borne out by the text of § 2K2.1(b)(4)(B)(i) and the context in which it appears in § 2K2.1(b)(4)(B) as a whole. Moreover, this reading is most consistent with the Commission's stated goal in amending § 2K2.1(b)(4)(B)(i) in 2024, which was to facilitate the traceability of firearms without enhancing punishment when firearms had markings of serial numbers that were less legible but not illegible. *See* 89 Fed. Reg. at 36858-59; *supra* pp.3-4.

Section 2K2.1(b)(4)(B) specifies two grounds for imposing a four-level enhancement, both of which describe circumstances in which a firearm has no legible marking from which to discern its original serial-number information. The first circumstance (and the one at issue in petitioner's case) is if "(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye." U.S.S.G. § 2K2.1(b)(4)(B)(i). The second circumstance is when "(ii) the defendant knew" or "was willfully blind to or consciously avoided knowledge of" the fact that the firearm at issue "was not otherwise marked with a serial number." *Id.* § 2K2.1(b)(4)(B)(ii). In both circumstances, § 2K2.1(b)(4)(B) addresses the same concern: the absence of a recognizable serial number. That absence either could be because every one of the firearm's serial-number markings were modified such that the serial-number information is illegible, or because the firearm never had a serial-number marking at all. *See id.* § 2K2.1(b)(4)(B).

The court below and all parties agree that the original serial-number information assigned to the firearm at issue in petitioner's case remained legible and recognizable to the naked eye in one of two locations on the firearm. *See* Pet. App. 1a-2a, 8a. The only question is whether the alteration to the firearm's other serial-number marking qualifies for the four-level enhancement. And the language the Commission added to the enhancement in 2024 provides the answer.

In amending § 2K2.1(b)(4)(B)(i), the Commission did not merely add the words "illegible or unrecognizable to the unaided eye," which resolved the previous circuit split as to whether "less legible" serial-number markings sufficed even if the serial number still could be detected with the naked eye. *See* 89 Fed. Reg. at 36858-59. The Commission did more. Whereas the previous version of the Guideline applied to any firearm that "had an altered or obliterated serial number," *see* U.S.S.G. § 2K2.1(b)(4)(B)(i) (2023), the amended Guideline applies to any firearm that "had a serial number that was modified *such that the original information is rendered* illegible or unrecognizable to the unaided eye," U.S.S.G. § 2K2.1(b)(4)(B)(i) (2024) (emphasis added). Thus, the amended enhancement requires not merely the modification of a "serial number," but a modification "such that the original information" is illegible or unrecognizable. Both phrases must be given effect—something the Third Circuit's reading of the enhancement fails to do.

To reach the conclusion that a single illegible marking of a serial number suffices for the enhancement—notwithstanding the presence on the

firearm of a legible marking—the Third Circuit necessarily read "serial number" and "original information" to mean the same thing: any marking on the firearm of the unique sequence of numbers and letters assigned to that firearm. *See* Pet. App. 5a-6a. But within a single provision, "different terms usually have different meanings." *Pulsifer v. United States*, 144 S. Ct. 718, 735 (2024) (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW 170-71 (2012)). The fact that the newly added term "original information" appears in the same clause as "serial number" is strong textual evidence that the two do not mean the same thing. *See id.*

ATF regulations indicate that a "serial number" is a unique combination of Arabic numerals and Roman letters that are engraved, cast, or stamped on a firearm. *See* 27 C.F.R. § 479.102(a)(1), (a)(7) (2023); BUREAU OF ALCOHOL, TOBACCO, FIREARMS, & EXPLOSIVES, U.S. DEP'T OF JUST., e-Pub No. 5320.8, NATIONAL FIREARMS ACT HANDBOOK 43 (2009), https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/national-firearms-act/handbook. The phrase "original information" does not appear in the regulations or elsewhere in the Sentencing Guidelines. However, the general definition of "information" is "knowledge communicated concerning some particular fact, subject, or event." *Information*, OXFORD ENGLISH DICTIONARY (online ed. 2024), https://web.archive.org/web/20240717032837/https://www.oed.com/dictionary/information_n?tl=true#41640 7 (captured July 17, 2024) (last visited October 24, 2026). Given that ATF regulations indicate that the "serial number" is engraved, cast, stamped, or otherwise placed on a firearm, 27 C.F.R. § 479.102(a)(1), the

most natural reading is that the "original information" to which § 2K2.1(b)(4)(B)(i) refers is the unique combination of numbers and letters assigned by the manufacturer to a firearm—information that is the same in each place it is marked on the firearm. As such, the amended language of § 2K2.1(b)(4)(B) requires not only that a serial-number marking be modified, but that the modification render the original information about the unique serial number illegible or unrecognizable to the unaided eye. That is not the case when the original information about the unique serial number is plainly legible to the unaided eye in another marking on the firearm.

The Fourth Circuit noted that, if the language of § 2K2.1(b)(4)(B)(i) were read in a vacuum, it might be open to two possible readings: either that the unique serial-number information must be illegible on the firearm as a whole, or that it is sufficient for the serial-number information to be illegible in a specific, modified serial-number marking. *See Smith*, 188 F.4th at 778-79. But it would be improper to interpret § 2K2.1(b)(4)(B)(i) in a vacuum because phrases must be read in context. *See, e.g.*, *United States v. Morton*, 467 U.S. 822, 828 (1984); *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). And the context and structure of § 2K2.1(b)(4)(B) dictate that the two subparts be read together: § 2K2.1(b)(4) says if "(B)(i) . . . or (ii) . . . increase by 4 levels." It provides *one* four-level enhancement that may be satisfied in two ways: either with a serial number "modified such that the original information is rendered illegible" *or* when the defendant "knew" or "was willfully blind to or consciously avoided knowledge of" the fact that the firearm at issue "was not otherwise marked with a serial number." U.S.S.G. § 2K2.1(b)(4)(B).

The use of the word "otherwise" in (B)(ii)—a clause that follows the conjunction "or"—indicates that the previous clause ((B)(i)) also describes a way that a firearm can be not "marked with a serial number." *See Campos-Chaves v. Garland*, 144 S. Ct. 1637, 1647 (2024) (noting that the word "or" is disjunctive and generally used "to indicate . . . an alternative") (alteration in original) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1585 (1993)). A firearm with one illegible serial-number marking and one legible serial-number marking is not a firearm that is not "marked with a serial number." *See* U.S.S.G. § 2K2.1(b)(4)(B)(ii). So a reading that applies (B)(i) to such a firearm is not tenable. In this case, because the serial-number information about the firearm was easily legible from the unmodified serial-number marking, *see* Pet. App. 2a, 8a, it does not satisfy the requirement for the enhancement.

Even if the language of § 2K2.1(b)(4)(B) were ambiguous, the purpose of the section would make it clear that it applies only to firearms on which the original serial-number information is not legible in any marking. The purpose of § 2K2.1(b)(4)(B) is to address "the difficulty in tracing firearms with altered and obliterated serial numbers, and the increased market for these types of weapons." 89 Fed. Reg. at 36859; *see also Bondi v. VanDerStok*, 145 S. Ct. 857, 863 (2025) (noting that Congress intended the requirement that firearms be marked with serial numbers to aid in the tracing of firearms). Altering one serial-number marking on a firearm while leaving another marking of the same original information

legible does not increase "the difficulty in tracing," 89 Fed. Reg. at 36859, that firearm.

For the Fourth Circuit, the Commission's choice to adopt the narrower test for the degree of modification—illegible rather than merely less legible—was a signal not to read the amended § 2K2.1(b)(4)(B)(i) as encompassing firearms that still have a legible serial-number marking. *See Smith*, 188 F.4th at 779-80. That makes sense. The Commission expressly stated that the enhancement addresses concerns about traceability, not concerns about *any* modification of a serial-number marking. *See* 89 Fed. Reg. at 36859. And separate statutes already criminalize the act of modifying a firearm's serial-number marking or the *knowing* possession of a firearm with a modified serial number. *See* 26 U.S.C. § 5861(g), (h); 18 U.S.C. § 922(k). The lack of a conduct or *mens rea* requirement for the enhancement indicates that it functions differently, not redundantly. It punishes modifications that compromise traceability by rendering the original serial-number information illegible. *See* 89 Fed. Reg. at 36859 (linking the 2024 amendment to the Commission's ongoing recognition of the difficulty of tracing firearms with illegible serial numbers). As a matter of text, context, and the Commission's stated purpose in amending § 2K2.1(b)(4)(B)(i), the

enhancement should not apply when the firearm at issue still has legible serial-number information.[13]

IV. AT A MINIMUM, THIS COURT SHOULD HOLD THE PETITION PENDING RESOLUTION OF *BEAIRD V. UNITED STATES*.

This Court should grant the petition to resolve the circuit split over § 2K2.1(b)(4)(B)(i), reaffirming that this Court's role is "to say what the law is," *Loper Bright*, 144 S. Ct. at 2257 (quoting *Marbury*, 5 U.S. at 177), regarding conflicts among lower courts over interpretations of Sentencing Guidelines—just as this Court resolves conflicts over the meaning of rules and regulations promulgated by other agencies, as well as conflicts over the interpretation of statutes enacted by Congress. *See supra* Part II.B. At a minimum, this Court should hold the petition pending resolution of *Beaird v. United States*, No. 25-5343, in which the Court heard oral argument on October 13, 2026.

Like petitioner's case, *Beaird* involves § 2K2.1—albeit a different subsection, § 2K2.1(a)(3). *See* Brief for Petitioner at 9, *Beaird v. United States* (No. 25-5343). Specifically, *Beaird* presents the question

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[13] If the Court were instead to conclude that § 2K2.1(b)(4)(B)(i) is ambiguous, the rule of lenity should apply and would favor petitioner's reading of the enhancement. Petitioner raised the rule of lenity below, but the district court and Third Circuit did not address that argument because both courts determined that the guideline was not ambiguous. *See* Pet. App. 9a ("I'm also not resorting to the rule of lenity because I do not perceive any ambiguity in the guideline section at issue."); Pet. App. 3a ("We start and end our analysis with the text of § 2K2.1(b)(4)(B)(i).").

"[w]hether *Stinson v. United States*, 508 U.S. 36 (1993), still correctly states the rule for deference that courts must give the commentary to the Sentencing Guidelines." *Id.* at i. This Court's resolution of that question may include analysis relevant to the interpretation of § 2K2.1(b)(4)(B)(i) in petitioner's case. The Commission revised the Commentary to § 2K2.1(b)(4)(B)(i) to reflect the new language it added when amending that provision in 2024; and the Commission discussed the intended reach of that new language in the Commission's Federal Register notice. *See supra* pp.3-4 (discussing 89 Fed. Reg. at 36858-59; U.S.S.G. app. C, amend. 828).

CONCLUSION

This Court should grant the petition and reverse the judgment of the Third Circuit.

Respectfully submitted,

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