No. __

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL A. BETTY,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether relying on U.S.S.G. commentary to support the imposition of both (i) a multiple-count, four-point offense level increase under U.S.S.G. §§ 3D1.2 and 3D1.4 *and* (ii) a five-point "pattern of activity" enhancement under U.S.S.G. § 4B1.5(b)(1) for a first-time offender's course of conduct with a single minor victim that involved the production of two photos and one meeting over the course of 14 days constitutes impermissible double counting and misapplication of the Sentencing Guidelines when §§ 3D1.2, 3D1.4, and 4B1.5(b)(1) were not ambiguous.

2. Whether, as this Court is currently considering in *Beaird v. United States*, No. 25-5343 (argued October 13, 2026) and *Poore v. United States*, No. 25-227, *Stinson v. United States* still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines.

3. Whether a court of appeals on plain-error review may rely on a counterfactual, unraised cross-reference under U.S.S.G. § 2G2.2(c)(1) to manufacture a fourth grouping unit under U.S.S.G. §§ 3D1.2, 3D1.4 to defeat a substantial-rights showing under *Molina-Martinez v. United States*, 578 U.S. 189 (2016).

PARTIES TO THE PROCEEDING

Petitioner is Daniel A. Betty, Defendant-Appellant below. Respondent is the United States of America, Plaintiff-Appellee below.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Daniel A. Betty, respectfully prays that a writ of *certiorari* issue to review the August 12, 2026 judgment and opinion of the United States Court of Appeals for the Seventh Circuit, which denied Betty's appeal and affirmed the district court's September 10, 2020 Judgment in a Criminal Case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (*see* App. A, *infra*, 1a–15a) is reported at 184 F.4th 1009. The sentencing judgment of the United States District Court for the Central District of Illinois (*see* App. B, *infra*, 16a–22a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 12, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). On November 10, 2026, in accordance with the Supreme Court Rules, Betty filed and served a petition for writ of *certiorari*.

STATUTORY AND CONSTITUTIONAL PROVISIONS

Relevant provisions of U.S.S.G. §§ 2G2.1, 2G2.2, 3D1.2, 3D1.4, and 4B1.5(b)(1) are set forth in the appendix. (*See* App. F, *infra*, 71a-123a.)

STATEMENT OF THE CASE

This petition presents an ideal vehicle for a grant, vacate, and remand ("GVR") pending the resolution of *Beaird v. United States*, No. 25-5343 (argued October 13, 2026) and *Poore v. United States*, No. 25-227 (cert. petition fully briefed).

A. Factual Background and Indictment

In September 2019, Petitioner Daniel A. Betty, then 27 years old, used a teen dating app, Spot-a-Friend, and communicated with a 14-year-old. App. 2a. Over a 14-day period (September 23 to October 6, 2019), Betty exchanged messages with the victim, requested two photographs (Counts 1 and 2) and received the first photograph (Count IV), all on September 26, and met the victim at a park on October 6, where they engaged in sex (Count 3). App. 2a-3a.

A federal grand jury in the Central District of Illinois returned a four-count indictment charging Counts 1–2 under 18 U.S.C. § 2251(a), Count 3 under 18 U.S.C. § 2422(b), and Count 4 under 18 U.S.C. § 2252A(a)(2)(A). App. 3a. Betty had no prior criminal history. App. 5a.

B. Change of Plea and Sentencing Proceedings

Betty entered a timely open guilty plea. The Presentence Investigation Report (PSR) calculated an adjusted offense level of 36 for Count 1, 38 for Count 2, 34 for Count 3, and 25 for Count 4. App. 3a-4a. The District Court adopted the PSR's calculations, including the PSR's conclusion that the language of U.S.S.G. § 3D1.2(d), *i.e.*, "[s]pecifically excluded from the operation of this subsection are: . . . §

2G2.1," precluded grouping of Counts 1 and 2 since they were subject to U.S.S.G. § 2G2.1. App. 4a-5a. Because the offense level for Count 4 was 25 (13 points less than Count 1), treating each count as a separate Group under U.S.S.G. § 3D1.4(a), (c) added 3 levels, yielding a combined offense level of 41. *Id*. The District Court also adopted a 5-level "pattern of activity" enhancement based on Guidelines manual commentary, Application Note 4(B) to U.S.S.G. § 4B1.5(b)(1), and applied a 3-level reduction for acceptance of responsibility, arriving at a total offense level of 43 and an advisory guidelines range of Life imprisonment. App. 5a.

Betty objected the District Court's calculations at sentencing, arguing that stacking the three-level grouping increase and the five-level pattern enhancement on a first-time offender's single, continuous course of conduct involving a single victim constituted impermissible double counting (App. 42a:7-20, 43a:3-7, 44a:4-12), but the District Court rejected this argument based on Seventh Circuit precedent (App. 45a:4-9, 45a14-24). *See, e.g., United States v. Vizcarra,* 668 F.3d 516 (7th Cir. 2012). In *Vizcarra*, the circuit court held, based solely on Application Note 4 to U.S.S.G. § 1B1.1, that "double counting is the default rule" under the Guidelines. *Id*. at 524. The District Court sentenced Betty to 264 months' imprisonment. App. 6a.

C. The Seventh Circuit's Decision

On appeal, the Seventh Circuit affirmed. The panel summarily rejected Betty's double-counting challenge, reiterating that Application Note 4 to U.S.S.G. § 1B1.1, means that "double counting is generally permissible" in the Seventh Circuit.

App. 7a (citing *Vizcarra* and *United States v. Cook*, 850 F. 3d 328 (7th Cir. 2017)). The panel also adopted an argument first made by the Government on appeal that Count 4, which the District Court handled via U.S.S.G. § 2G2.2, should have been cross-referenced to U.S.S.G. § 2G2.1. *See* App. 9a (citing U.S.S.G. § 2G2.2(c)(1)). According to the panel, Betty's Count IV offense level should have been 36 and Betty should have received plus four points pursuant to §§ 3D1.2, 3D1.4. (In the District Court, neither the Government nor the District Court mentioned U.S.S.G. § 2G2.1 as a basis for calculating Count IV's offense level. (*See* App. 41a-65a.)

But even if the panel was right about the cross-reference, it erred by refusing to apply the grouping rules in § 3D1.2(a), (b), or (c). *See* 6/20/2025 Betty Reply below at 9-19. Instead, the panel brushed aside Betty's argument that the language of § 3D1.2(d), which excludes Counts sentenced pursuant to U.S.S.G. § 2G2.1 from being grouped pursuant to § 3D1.2(d), but does not preclude grouping pursuant to subsections (a), (b), or (c). App. 9a-10a. In so doing, the Panel relied on a Fourth Circuit case that relied on Guideline commentary to justify not grouping claims similar to Betty's. App. 10a (citing *United States v. Hoover*, 95 F.4th 763, 777 (4th Cir. 2024) (refusing to group charges similar to Betty's based on Application Note 5 to U.S.S.G. § 3D1.2)).

The panel never explicitly addressed Betty's argument that Counts I-IV should have been grouped pursuant to the other subsections of § 3D1.2, *i.e.,* (a), (b), or (c). *See* 6/20/2025 Betty Reply below at 11 (citing *United States v. Tank*, 200 F. 3d 627, 632-633 (9th Cir. 2000) (citing last sentence of § 3D1.2(d), noting "the list of

exclusions under § 3D1.2(d) only bars grouping of the listed offense sections under subsection § 3D1.2(d) itself;" "the district court should have considered grouping under subsections § 3D1.2(a) through § 3D1.2(c) for offenses precluded from grouping under § 3D1.2(d)"). Instead, the Seventh Circuit panel held Count IV should have had an offense level of 36 (based on the cross-reference) and that none of Betty's Counts should have been grouped, which would have led to plus four levels pursuant to §§ 3D1.2, 3D1.4 for a total offense level of 44, one point higher than the District Court had calculated. App. 9a-10a. Consequently, the panel held that Betty failed to show substantial-rights prejudice under *Molina-Martinez* because a Betty's guidelines range would still be Life. App.10a.

REASONS FOR GRANTING THE WRIT

I. Seventh Circuit Precedent, including as Applied in its Decision Below, Fails to Take Into Account the Effect that *Kisor v. Wilkie* has on the Validity of *Stinson v. United States*, and Continues to Treat Guidelines commentary as Authoritative Even When the Specific Guidelines Provisions at Issue are not Ambiguous.

28 U.S.C. § 994(a)(1) authorizes the Sentencing Commission to promulgate Guidelines for the sentencing of federal offenders. This Court has held that although those Guidelines are advisory, district courts must correctly calculate them. *United States v. Booker*, 543 U.S. 220 (2005); *Rita v. United States*, 551 U.S. 338 (2007). Section 994 also calls for "general policy statements regarding application of the guidelines…" 28 U.S.C. §994(a)(2). The Commission has produced Application Notes or Commentary construing every Guideline it has promulgated.

In *Stinson v. United States*, 508 U.S. 36 (1993), this Court held that courts construing a Guideline must follow the commentary unless "commentary and the guideline it interprets are inconsistent in that following one will result in violating the dictates of the other." *Stinson*, 508 U.S. at 43. It described this circumstance as one of "flat inconsistency." *Id*. In doing so, it applied its prior holding in *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), which governs an agency's interpretations of its own legislative rule. Under *Seminole Rock*, "provided an agency's interpretation of its own regulations does not violate the Constitution or a federal statute, it must be given 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" *Stinson*, 508 U.S. at 43.

Kisor v. Wilkie, 588 U.S. 558 (2019), however, emphasized important

limitations on *Seminole Rock*, casting doubt on *Stinson*. *See Kisor*, 588 U.S. at 568, n. 3. *Kisor* held that an agency's interpretation of its own regulation is not entitled to deference until a reviewing court has "exhaust(ed) all the 'traditional tools' of construction," and only if the regulation thereafter remains "genuinely ambiguous." *Kisor*, 588 U.S. at 574-575. The "court must carefully consider the text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on." *Id*. at 575.

Following *Kisor*, the circuit courts have reached opposite conclusions as to whether *Kisor* upended *Stinson*. *Compare United States v. Dupree*, 57 F.4th 1269, 1275 (11th Cir. 2023) (*en banc*) (*Kisor* requires reevaluation of *Stinson*); *United States v. Nasir*, 17 F.4th 459, 471 (3d Cir. 2021) (same); *United States v. Riccardi*, 989 F.3d 476, 479 (6th Cir. 2021) (same); *United States v. Castillo*, 69 F.4th 648, 656 (9th Cir. 2023) (same) *with United States v. Vargas*, 74 F.4th 673, 683 (5th Cir. 2023) (*en banc*) (*Stinson* unaffected); *United States v. Moses*, 23 F.4th 347, 357 (4th Cir. 2022) (same); *United States v. Maloid*, 71 F.4th 795, 806 (10th Cir. 2023) (same).

Since at least 2012, the Seventh Circuit has held that "commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." *United States v. Vizcarra*, 668 F.3d 516, 520 (7th Cir. 2012). This includes Seventh Circuit decisions with respect to "double counting," grouping, and a "pattern of activity" enhancement under U.S.S.G. §

4B1.5(b). With respect to Betty's double counting argument, for example, the Seventh Circuit continues to defer to U.S.S.G. § 1B1.1 commentary indicating that "[a]bsent an instruction to the contrary," (a) "offense level adjustments from more than one specific offense characteristic within an offense guideline are applied cumulatively" and (b) "enhancements under Chapter Two, adjustments under Chapter Three, and determinations under Chapter Four are to be applied cumulatively." U.S.S.G. § 1B1.1, Application Note 4.

Moreover, the Seventh Circuit defers to U.S.S.G. commentary as authoritative even when the guideline itself is not ambiguous and continues to hold that both *Kisor* and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), have no impact on *Stinson*. *See, e.g., United States v. White*, 97 F.4th 532, 539 (7th Cir. 2024). Thus,, the circuit court holds that *Stinson* remains good law. "Because *Kisor* did not unsettle *Stinson*, we decline to reconsider our circuit caselaw deferring to [Guidelines Manual commentary]." *White*, 97 F.4th at 539. "*Kisor* did not disturb *Stinson* or our circuit precedent." *Id.* at 535. Even after *Loper Bright*, the Seventh Circuit continues to treat Guidelines commentary as authoritative. *See, e.g., United States v. Ponle*, 110 F.4th 958, 961 n.3, 962 (7th Cir. 2024) (post-*Loper Bright* holding that "Stinson controls"); *United States v. Poore*, No. 22-3154, 2025 U.S. App. LEXIS 9941, *5, *7-*8 (7th Cir. Apr. 25, 2025) ("*Kisor's* effect on *Stinson* is unclear" and "*Loper Bright* did not purport to overrule or even modify *Auer* or *Stinson*;" "we continue to follow *Stinson*.").

The Seventh Circuit's dogged reliance on *Stinson* affected Betty's sentence in

several ways:

Relying on U.S.S.G. § 1B1.1, Application Note 4, the court reiterated its long-held position that the "default rule" under the Guidelines permits "double counting," *i.e.*, cumulative application of enhancements. App. 7a (citing *Vizcarra*) and *United States v. Cook*, 850 F. 3d 328 (7th Cir. 2017)).

Relying on the U.S.S.G. § 3D1.2, which includes Application Notes 3, 4, and § 3D1.4, to not group any of the Betty's four counts. App. 9a-10a.

Relying on U.S.S.G. § 4B1.5(b), Application Note 4(b), the court affirmed the production of two photos, receipt of one photo, and one meet as involving a "pattern of activity." App. at 7a-8a.

This circuit split merits review. It is balanced and widespread, and therefore unlikely to resolve spontaneously. Further, the courts of appeals have themselves acknowledged the conflicts associated with this issue, *see White*, 97 F.4th at 539; *Vargas*, 74 F.4th at 684, and at least one commentator has noted a circuit split. Kevin O. Leske, *A New Split in the Rock: Reflexive Deference under* Stinson *or Cabined Deference under* Kisor, 74 Admin. L. Rev. 761 (Fall 2022) (identifying and discussing split).

Finally, the issue is important and recurrent. The Guidelines Manual is replete with Commentary that interprets the Guidelines in ways that the reader would not predict from the text. *See, e.g.,* U.S.S.G. § 2B1.1, Application Note 3(E)(i) ("loss" defined to be no less than $500 multiplied by the number of access devices involved in the offense, irrespective of amount defendant steals or intends to steal);

U.S.S.G. §2B2.1, Application Note 4(C)(ii) (theft from certain mail containers defined to involve ten victims, irrespective of the number actually affected); U.S.S.G. § 2B3.1, Application Note 2 (fake gun defined as "dangerous weapon); U.S.S.G. § 2K2.1, Application Note 10 (excluding certain convictions from the term "felony convictions"); U.S.S.G. § 2S1.1, Application Note 1 (defining "laundering funds" to include any transaction in ill-gotten funds, whether or not undertaken with intent to make criminal proceeds appear innocent). Accordingly, the differing views about *Kisor* and *Stinson* can be expected to frustrate the goal of a uniform set of Sentencing Guidelines, and accordingly to frustrate the goal of sentencing uniformity generally. *See Rita*, 551 U.S. at 349.

The level of deference paid to Guidelines commentary will likely be dispositive in this case, which turns on whether treating each of the counts against Betty as separate groups pursuant to §§ 3D1.2, 3D1.4 (plus four levels) while simultaneously finding a "pattern of activity" pursuant to U.S.S.G. § 4B1.5(b)(1) (plus five levels) constitutes impermissible "double counting" under the Guidelines. The text and structure of the Guidelines suggests that applying both enhancements to a first-time offender with respect to two photos and one meet involving one minor victim over the course of two weeks cannot be justified. Blind deference to the Guidelines commentary is not defensible after *Kisor* and *Loper Bright*.

II. Alternatively, the Court Should Hold the Petition Pending *Beaird v. United States*, No. 25-5343, and *Poore v. United States*, No. 25-227.

If the Court does not grant plenary review, it should hold this petition pending its decision in *Beaird v. United States*, No. 25-5343 (argued October 13,

2026), which presents the question of whether courts are bound by Sentencing Guidelines commentary post-*Kisor* and *Loper Bright*. Moreover, this petition raises the same arguments as the petition in *Poore v. United States*, No. 25-227, which has been extensively briefed, but has not yet been granted or denied.

In *Beaird*, the Solicitor General has conceded that *Stinson v. United States*, 508 U.S. 36 (1993) no longer governs and that *Kisor's* strict limits apply to commentary. Similarly, in *Poore*, the Government acknowledges (11/19/2025 Resp. to Petition at 17) that "deference to the Commission's commentary must be applied in a manner consistent with this Court's decision in *Kisor*."

Because the Seventh Circuit's rejection of Betty's double-counting challenge rested entirely on Guidelines commentary (Application Note 4 to U.S.S.G. § 1B1.1 and Application Note 4(B) to § 4B1.5), the outcome of *Beaird* and *Poore* will impact (and may dictate) whether the Seventh Circuit will continue to rely on Guidelines commentary as authoritative, including with respect to the double counting and pattern of activity commentary that caused the Seventh Circuit to affirm a Guidelines range of life. A GVR in light of *Beaird* and *Poore* is warranted.

III. The Seventh Circuit Erred Under *Molina-Martinez* by Constructing an Unraised Counterfactual Cross-Reference to Defeat Plain-Error Prejudice.

But even if this Court were to hold that *Stinson* remains good law, the Seventh Circuit's refusal to find plain-error prejudice under *Molina-Martinez v. United States*, 578 U.S. 189 (2016), rested on a legal fiction. On plain-error review, the panel constructed an unraised, counterfactual cross-reference under U.S.S.G. §

2G2.2(c)(1) to assert that Count 4 would become a fourth standalone Group, generating four levels under § 3D1.4.

This holding directly violates U.S.S.G. § 3D1.2(a), (b), and (c) because Count 4's receipt of Photo 1 embodied the exact same production conduct charged in Count 1. Under § 3D1.2(a), (b), and (c) and the precedent of several other circuits, cross-referencing Count 4 to § 2G2.1 requires grouping Count 4 with Count 1 into a single Group, rather than manufacturing a 4th Unit. *See, e.g., United States v. Tank*, 200 F.3d 627 (9th Cir. 2000). Moreover, the plain language of U.S.S.G. § 3D1.2(a), (b), and (c) applied to the facts of this case requires grouping at least Counts 1, 2, and 3. By using an erroneous counterfactual calculation to shield an incorrect Guidelines range, the Seventh Circuit undermined the core protections of *Molina-Martinez*.

CONCLUSION

Petitioner respectfully requests that this Court grant *certiorari* to review the judgment of the United States Court of Appeals for the Seventh Circuit, or based on the outcome of *Beaird* and *Poore*, to grant, vacate, and remand the judgment for further proceedings consistent with this Court's disposition of *Beaird*.

Dated: November 10, 2026

Respectfully Submitted,

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