

Supreme Court to Review Scope of Judicial Deference to the Sentencing Commission's Commentary

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The Supreme Court has agreed to review a case that involves whether the Supreme Court's general standards for agency deference in interpreting its own legislative rules apply to the U.S. Sentencing Commission's commentary in the Guidelines Manual in particular. In a pair of foundational decisions, *Bowles v. Seminole Rock* and *Auer v. Robbins*, the Court held that courts are to defer to an agency's interpretation of an ambiguous regulation *unless* “plainly erroneous or inconsistent with the regulation.” Subsequently, in *Stinson v. United States*, the Court determined that the Commission's “commentary in the Guidelines Manual that interprets or explains a guideline is authoritative,” *unless* the commentary “violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.” After *Stinson*, however, in *Kisor v. Wilkie*, the Court clarified that deference to agencies generally should be extended *only if* the regulation is “genuinely ambiguous, even after a court has resorted to all the standard tools of interpretation.”

The federal appeals courts are presently *divided* as to the viability of *Stinson* after *Kisor*. Some circuits *follow* *Stinson*'s holding that Commission commentary is entitled to “*controlling weight*,” unless the commentary is unlawful, inconsistent with the corresponding guideline, or otherwise plainly erroneous. By contrast, other circuits *abide by* *Kisor*'s limiting instruction that such deference is appropriate only when the applicable guideline is truly ambiguous.

This Sidebar previews the *Beaird v. United States* case that brings this split to the Supreme Court. It first provides an overview of federal sentencing, including information on commentary to the guidelines. It then covers the facts and procedural history of this case. It next summarizes the arguments made by the parties (neither of which defends *Stinson* as a stand-alone standard) and Court-appointed counsel (invited to argue that *Stinson* governs). The Sidebar closes with considerations for Congress.

Federal Sentencing and Commentary

In 1984, Congress responded to concerns about sentencing disparities by enacting the [Sentencing Reform Act](#) (SRA or the Act). This statute [established](#) the U.S. Sentencing Commission, an independent agency

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within the federal judiciary [composed](#) of seven voting members, at least three of whom must be federal judges. The SRA also directed the Commission to publish (1) mandatory [guidelines](#) that, when used by judges at sentencing, would promote greater uniformity in federal sentencing outcomes, and (2) [policy statements](#) on the proper application of the guidelines.

As the Supreme Court [observed](#) in *Stinson*, in addition to guideline provisions and policy statements, a “third variant of text [in the Guidelines Manual] is commentary.” The Court [explained](#) that “both guidelines and policy statements are accompanied by extensive commentary” and that “[a]lthough the [SRA] does not in express terms authorize the issuance of commentary, the Act does refer to it.” With respect to the role of commentary, the Commission [wrote](#) that commentary “may interpret the guideline or explain how it is to be applied,” or “may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline.” Commentary also may include definitions of terms, as was the case in *Stinson* (defining “crime of violence”) and is the case in *Beaird* (defining “large capacity magazine”). All three variants (the guidelines, policy statements, and commentary, which collectively make up the Guidelines Manual) must be voted on and [approved](#) by a majority of the Commission, but the commentary is [not required](#) to proceed through the notice-and-comment rulemaking process.

In 2005, the Supreme Court [held](#) that the mandatory guidelines system [violated](#) the Sixth Amendment right to a jury trial because the Guidelines Manual permitted a judge to enhance a sentence based on a judge’s finding of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant. As a result, the Court [construed](#) the Guidelines Manual as advisory, which, in the Court’s view, avoided the Sixth Amendment issue. Under the current advisory guidelines system, to determine a defendant’s sentence, a federal judge must follow a [two-step process](#). First, the judge will calculate the offense level (1 to 43) that is based on the crime of conviction and how the offense was committed, calculate the defendant’s criminal history category (1 to 6), and then find the intersection of these two inputs on the 258-boxed-grid known as the [Sentencing Table](#). Each box in the grid contains a range of months to which defendants are to be sentenced in typical cases. The Commission has [cautioned](#) that “[f]ailure to follow . . . commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal.” Second, the judge will ensure that the final sentence complies with the sentencing values memorialized in [18 U.S.C. § 3553\(a\)](#), including the principle that the sentence should be “sufficient, but not greater than necessary” to effectuate the purposes of punishment.

Today, the Guidelines Manual serves as the [starting point and anchor](#) for every federal sentence imposed across the country.

Beaird v. United States: Facts and Procedural History

In 2022, an officer [witnessed](#) the defendant “pull a firearm from his waistband and point it at another person,” and responding officers recovered from the defendant a firearm with an attached magazine that could hold seventeen rounds of ammunition. In 2023, the defendant was [indicted](#) on one count of violating [18 U.S.C. § 922\(g\)\(1\)](#), which prohibits individuals convicted of a felony from possessing a firearm. The defendant [pled](#) guilty. In 2024, a federal judge, sitting in the U.S. District Court for the Northern District of Texas, [sentenced](#) the defendant to 72 months in prison.

A contributing factor in the sentence was a sentencing [enhancement](#) for the defendant possessing a firearm with a “large capacity magazine,” a term that is not defined in a guideline provision. The commentary, however, [defines](#) a “large capacity magazine” to mean, in relevant part, a “magazine or similar device that could accept more than 15 rounds of ammunition.” According to the defendant, the government [determined](#) that the firearm satisfied this definition and qualified for the associated enhancement “by counting a 17-round magazine attached to the [defendant’s] firearm.” The defendant [claimed](#) that the definition in the commentary “did not provide the most persuasive reading of the text,”

and that the term “large capacity magazine” means “a magazine larger than the industry standard, which [the defendant’s] was not.” At the sentencing hearing, the district court judge [overruled](#) the defendant’s objection to the enhancement; the judge said,

Courts in the [U.S. Court of Appeals for the] Fifth Circuit are required to apply *Stinson* deference and consider the commentary to the guidelines.... And because the commentary does not violate the statute or federal – the Constitution or a federal statute, nor is inconsistent with or plainly erroneous – or a plainly erroneous reading of the guideline, the Court defers to the commentary[.]

The defendant appealed, and in 2025, the Fifth Circuit [affirmed](#). The circuit court cited to [circuit precedent](#) holding that “*Stinson* remains good law despite *Kisor*” and as such [rejected](#) the defendant’s argument against the application of *Stinson* deference, stating “his argument that the district court erred in relying on the Guidelines commentary to conclude that a 17-round magazine qualified as a ‘large capacity magazine’ for the purposes of the enhancement ... is foreclosed.”

The defendant [sought](#) review from the Supreme Court. In the petition, the defendant [posited](#) that *Kisor* “emphasized important limitations in *Seminole Rock*, casting doubt on *Stinson*.” The defendant asserted that, if *Kisor* [governs](#), the rules of statutory construction support his industry-standard definition of a “large capacity magazine.” Under that definition, according to the defendant, the enhancement would [not apply](#) because “[a] 15-round magazine (and a 17-round magazine, at issue here) is a perfectly ordinary sized magazine in the contemporary consumer market.” The defendant also [pointed to](#) the circuit split that emerged after *Kisor*: “the circuits have reached opposite conclusions as to whether *Kisor* upended *Stinson*.” The defendant [characterized](#) the split as “balanced and widespread, and therefore unlikely to resolve spontaneously,” [adding](#) that “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.”

The government took the same doctrinal side as the defendant, [conceding](#) that, “To the extent that [the defendant] argues that *Kisor* now governs the degree of deference owed to an agency’s interpretation of its regulations, the government agrees.” The government submitted that Supreme Court review was not needed, however, because the defendant “[overstates](#)” the circuit disagreement on deference to guidelines commentary; the Commission is “[fully capable](#)” of resolving any such disagreement through amending the commentary; and that review would [not result](#) in any relevant difference because circuits that have applied *Kisor* to the large capacity magazine commentary have found the definition to be ambiguous and deferred to that commentary.

The Supreme Court [granted](#) the petition on April 20, 2026, setting the [question presented](#) as, “Whether *Stinson v. United States*, 508 U. S. 36 (1993), still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines.” Despite the Court’s reference to commentary generally, the defendant [views](#) the issue before Court to be narrower, namely the possible deference owed to “interpretive” or “substantive” commentary—not “illustrative” or “operational” commentary. Oral argument in the case is [scheduled](#) for October 13, 2026.

The Parties’ Arguments

The Defendant

The defendant primarily claims that [no deference](#) is owed to guideline commentary. For support, the defendant argues that a no-deference rule is [consistent](#) with the Court’s recent decision in *Loper Bright Enterprises v. Raimondo*, overruling judicial deference to administrative rules, notwithstanding any ambiguity; [consistent](#) generally with the role of the courts to exercise their own judgment and give independent meaning to the law; and [consistent](#) with the SRA, the text and structure of which do not

dictate judicial deference to the Commission's commentary. The defendant also [contends](#) that no deference should be paid to the commentary for an additional reason: Deference is not appropriate in the criminal law context. If a court were to find through the use of tools of statutory construction that a guidelines provision is ambiguous, the court [should apply](#) the [rule of lenity](#) (i.e., the proposition that the interpretive tie goes to the defendant), the defendant continued.

The defendant offers a fallback position, that if the Court does not accept the proposition that the commentary should be afforded no judicial deference, the Court should [make clear](#) that the deference standard set forth in *Kisor*—not *Stinson*—applies. The defendant [argues](#) that *Kisor* refined *Stinson*, and that at a minimum the same rule applicable to executive agency interpretations of its regulations should govern the Commission's interpretations of its guidelines.

As to *Stinson* itself, the defendant asserts that *Stinson*'s justifications for deference do not apply to the Commission, suggesting [that](#) the Commission's expertise is in developing sentencing policy and not interpreting ambiguous terms in criminal law, a role traditionally reserved for and routinely performed by the courts; [that](#) *Stinson* may be read to support deference for commentary on how to apply the guidelines, not substantive interpretive commentary; [that](#) the commentary may not reflect the objective intent of the associated guideline, as the commentary may be added well after the original guideline was promulgated; that, in any case, it is the guidelines (the first variant of guideline text) that may best demonstrate that intent because these guidelines (not the commentary) must proceed through the notice-and-comment process and pass congressional review; and [that](#) promoting uniformity in law by deferring to agency responses to disparate judicial interpretations of regulations would at most justify judicial deference to amendments to the guidelines. "Anything the Commission can say clearly in the commentary, it can say clearly in the text of the Guidelines itself," and the defendant [claimed](#) that there are consequences for choosing the commentary route over the [amendments process](#).

The defendant [urges](#) the Court to vacate the ruling below and allow the district court to consider the commentary without any deference. Doing so, the defendant [argues](#), will permit the district court to determine that the seventeen-round magazine is not a large capacity magazine within the meaning of the guidelines because that term is designed to capture "unusually dangerous" firearms, not a "ubiquitous" firearm such as the defendant's firearm.

The Government

The Department of Justice also [supports](#) the vacatur of the Fifth Circuit opinion. The government's brief [reasons](#) that the Fifth Circuit "reached the untenable conclusion that 'under *Stinson*, the commentary controls even unambiguous guidelines.'" Put differently, the government [faults](#) the Fifth Circuit for "offer[ing] no sound basis for singling out *Stinson*" as the basis for its analysis.

The government objects to the defendant's frontline theory that no deference is to be extended to guidelines commentary. Rather, according to the government's understanding of Supreme Court jurisprudence on judicial deference to administrative interpretations of their own rules, "*Seminole Rock* provides the [correct standard](#) for [such] deference." The government contends that *Kisor* clarified *Seminole Rock*'s "[classic formulation](#)" by expressly identifying "[limits inherent](#)" in that standard—limits that the Fifth Circuit "[completely disregard\[ed\]](#)" and that *Stinson* merely "[incorporat\[ed\]](#)" the *Seminole Rock* standard. In seeking to harmonize these rulings into a specific rule, the government [posits](#) that where "there is 'genuine ambiguity' in how guideline text should apply, the commentary will typically supply a 'reasonable' interpretation that warrants deference." In other words, the government [states](#) that deference is owed when two conditions are present: The regulation is "genuinely ambiguous" and the agency interpretation of that regulation is "reasonable"; if, however, only "one reasonable construction of a regulation" remains after employing "all the traditional tools of construction," there is no need for deference. The government concedes that it was unlikely that applying the correct standard would lead to

a different sentence for the defendant, but nonetheless [suggests](#) that the prudent course of action would be to vacate the ruling below and allow the district court to apply the proper standard in the first instance.

Court-Appointed Amicus Curiae

Because neither party argues that *Stinson* supplies the operative standard for judicial deference to the commentary, the Supreme Court [invited](#) counsel, [Anthony J. Dick](#), “to brief and argue this case, as *amicus curiae*, in support of the position that *Stinson v. United States* . . . still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines.” Counsel makes two primary arguments. First, counsel argues that *Stinson* applies because in that case Congress [expressly](#) authorized the Commission to promulgate “general policy statements regarding application of the guidelines,” and commentary from the Commission is a “proper exercise” of that authority, whereas in *Kisor*, the Court [inferred](#) that Congress intended for judicial deference to apply to an agency’s interpretation of its own regulation. Second, counsel [contends](#) that *Loper Bright* “dismantled” *Kisor* in that *Loper Bright* repudiated the presumption that legal ambiguity means both that Congress delegated interpretive authority to agencies and that courts are to defer to such agency interpretations, a presumption that *Loper Bright* [characterized](#) as “misguided” and “unworkable.” In any case, counsel [stresses](#), “the *Kisor* apparatus for divining implied authority is wholly inapplicable” because Congress expressly granted the Commission authority to promulgate commentary.

Considerations for Congress

The Supreme Court has [acknowledged](#) that, “Our deference decisions are ‘balls tossed into Congress’s court, for acceptance or not as that branch elects.’” This recognition reflects Congress’s role in determining the scope of agency discretion and, in turn, the extent to which the courts defer to any corresponding agency action. Should the Court adopt the amicus curiae’s argument, Congress may evaluate the use of express delegation to maximize such deference to an agency. Congress also remains free to leave discretion and deference questions to the judicial system for further development.

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