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No. 19-7086

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In the  
**Supreme Court of the United States**

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**WALTER DANIEL PREZIOSO**, Petitioner

v.

**UNITED STATES OF AMERICA**, Respondent

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

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**Reply to Memorandum for the  
United States In Opposition**

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The government does not dispute that Mr. Prezioso’s sentence was based, in part, on conduct for which he was acquitted. Nor does it raise any doubt that Mr. Prezioso’s petition squarely presents the constitutionally questionable practice of using acquitted conduct at sentencing.

Instead, the government’s two page memorandum merely incorporates its briefing in another case. *See* Br. in Opposition, *United States v. Asaro*, 19-107 (Nov. 2019) (“Asaro Br.”). That brief does not dispute that there is a split between Michigan’s court of last resort and the federal courts. Though it relies on *United States v. Watts*, 519 U.S. 148 (1997) (per curiam), it does not address the limits of that case raised in the petition. It argues that, “Although *Watts* specifically addressed a challenge to acquitted conduct based on double-jeopardy principles, its clear import is that sentencing courts may

take acquitted conduct into account at sentencing without offending the Constitution.” Asaro Br. at 9. But there is no reasoned basis for this conclusion, which has been questioned by numerous federal judges and justices. *See* Petition at 7-9. Finally, it suggests--without any real basis--that other actors can step into the void and solve the problem. But none have, in the two decades since *Watts* was decided. *See* Petition at 9-11.

In short, none of the government’s arguments are good reason to dodge review of this question. Petitioner requests that the Court grant his petition.

Respectfully submitted,

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Interim Federal Public Defender

DATED: March 9, 2020

By:   
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