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SUBMITTED ELECTRONICALLY

Hon. Scott S. Harris, Clerk
Supreme Court of the United States
Washington, DC 20543

Re: *Shaw v. United States*, No. 22-118

Dear Mr. Harris:

The letter filed earlier today from the Solicitor General accurately describes the announcement yesterday by the U.S. Sentencing Commission of its decision not to act this year on any proposal to codify a Guidelines provision on “acquitted conduct.” The Chair stated that the Commission intends to act “next year.” If so, no change would be effective until November 1, 2024, at the earliest. In this light, petitioner asks that the Court act on his long-pending petition (and the similar petitions that are apparently being held along with his).

The Commission’s proposal, if adopted, would not have mooted the constitutional and related arguments made in our petition. Petitioner Shaw has proposed a narrower and stricter (and thus more workable) definition of what is meant by “acquitted conduct” than the Commission had suggested, but the rule we seek would bar any and all judicial reliance on such conduct, which the Commission’s would not have. Indeed, this Court’s action on the Questions Presented could never pre-empt Commission policymaking, but rather would set a constitutional floor for a wide range of options the Commission might still adopt. The Commission could always enact a broader prohibition if it so chose, and concomitantly has no authority to determine the underlying constitutional issue. Petitioner Shaw therefore asks that his petition be granted.

Thank you for calling these thoughts to the Court’s attention.

Respectfully,


PETER GOLDBERGER
Attorney for Petitioner Shaw

cc: Solicitor General