

No. 25-970

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

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RAMI GHANEM, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### QUESTION PRESENTED

Petitioner was indicted on seven counts arising out of his unlawful export of military equipment to Libya. He pleaded guilty to six counts and proceeded to trial on the seventh. The jury found him guilty beyond a reasonable doubt, but the court of appeals vacated the conviction on that count because the jury was improperly instructed as to venue. On remand, the government chose to dismiss that count without prejudice rather than to retry petitioner.

The question presented is whether the district court violated petitioner's Fifth and Sixth Amendment rights by considering conduct underlying that seventh count, which the court found by a preponderance of the evidence, in determining petitioner's sentence on the other six counts to which he pleaded guilty.

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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-38a) is reported at 143 F.4th 1114. A prior opinion of the court of appeals is reported at 993 F.3d 1113.

## **JURISDICTION**

The judgment of the court of appeals was entered on July 17, 2025. A petition for rehearing was denied on October 16, 2025 (Pet. App. 92a-93a). On December 1, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including February 13, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Following a guilty plea in the United States District Court for the Central District of California, petitioner

was convicted on two counts of exporting defense articles without a license, in violation of Section 38 of the Arms Export Control Act (AECA), Pub. L. No. 90-629, 82 Stat. 1320, as amended (22 U.S.C. 2778); one count of conspiring to export defense articles without a license, in violation of 18 U.S.C. 371; one count of smuggling goods from the United States, in violation of 18 U.S.C. 554; and two counts of money laundering, in violation of 18 U.S.C. 1956(a)(2)(A). Pet. App. 4a; D. Ct. Doc. 522, at 1 (Oct. 31, 2022) (Judgment). Following a jury trial, petitioner additionally was convicted of conspiring to acquire, transport, and use anti-aircraft missiles, in violation of 18 U.S.C. 2332g. Pet. App. 4a. He was sentenced to 360 months of imprisonment, to be followed by five years of supervised release. D. Ct. Doc. 448, at 1-2 (Aug. 19, 2019).

The court of appeals vacated the Section 2332g conviction because the jury was improperly instructed as to venue. 993 F.3d 1113. On remand, the government dismissed the Section 2332g count without prejudice. Pet. App. 11a. Petitioner was sentenced on the remaining counts of conviction to 360 months of imprisonment, to be followed by three years of supervised release. Judgment 1. The court of appeals affirmed. Pet. App. 1a-38a.

1. Petitioner, an American citizen, was a prolific international arms dealer for customers in the Middle East. 993 F.3d at 1117. When an undercover federal law enforcement agent posing as a black-market arms seller approached petitioner, petitioner agreed to order U.S.-made weapons from the undercover agent that would be exported to Libya without a license. Pet. App. 5a-7a. Petitioner's initial order, which petitioner agreed would be falsely labeled on export documents to avoid

detection, was for approximately \$90,000 of pistols, rifles, ammunition, and night-vision scopes. *Id.* at 6a-8a.

When petitioner met the undercover agent in Greece to inspect the shipment, petitioner was arrested by Greek authorities. Pet. App. 6a. Searches of petitioner's electronic devices and email accounts uncovered extensive evidence of petitioner's black-market arms trafficking activities. *Ibid.* The evidence showed that petitioner had brokered sales of rocket launchers, grenade launchers, anti-tank missile launchers, machine guns, and other arms to buyers in countries like Libya, Syria, and Iraq, and had used forged and falsified export documentation to hide the scheme. *Id.* at 13a-14a, 77a; Gov't C.A. Br. 8-12.

The evidence also showed that petitioner had brokered several transactions involving anti-aircraft missiles. Pet. App. 8a-10a. Petitioner had falsified export documents to facilitate the sale of fifty anti-aircraft missiles and five anti-aircraft missile launchers from a Georgian weapons broker to Libya Dawn, an insurgent group fighting the U.S.-recognized Libyan government. *Id.* at 8a-9a. Petitioner's company had also wired approximately \$400,000 to the Georgian broker to hire a crew to operate the anti-aircraft missiles in Libya, and petitioner had arranged the crew's travel to Libya. *Id.* at 9a-10a. Petitioner had promised to pay a \$50,000 bonus for each airplane the anti-aircraft missile operator shot down. *Id.* at 10a.

2. A grand jury in the Central District of California indicted petitioner on one count of attempting to export defense articles without a license, in violation of 22 U.S.C. 2778(b)(2) and (c); one count of smuggling goods from the United States, in violation of 18 U.S.C. 554; and two counts of money laundering, in violation of 18

U.S.C. 1956(a)(2)(A). Pet. App. 6a-7a. A second indictment additionally charged petitioner with one count of conspiring to export defense articles without a license, in violation of 18 U.S.C. 371; one count of brokering the export of defense articles without a license, in violation of 22 U.S.C. 2778(b)(1)(A)(ii) and (c); and one count of conspiring to acquire, transport, and use anti-aircraft missiles, in violation of 18 U.S.C. 2332g. Pet. App. 7a-8a. Petitioner pleaded guilty, without a plea agreement, to all save the Section 2332g count. *Id.* at 6a.

Petitioner proceeded to trial on the Section 2332g count relating to the sale of anti-aircraft missiles. Pet. App. 8a. Following a trial, the jury found petitioner guilty. Pet. App. 10a. The district court sentenced petitioner to 360 months of imprisonment, which included 240 months of imprisonment on the AECA attempted-export count to run consecutively to 120 months in prison on the smuggling count. *Id.* at 10a. The court also imposed concurrent sentences of 240 months of imprisonment on each of the money laundering counts, 60 months of imprisonment on the Section 371 count, 240 months of imprisonment on the AECA brokering count, and 360 months of imprisonment on the Section 2332g count. *Id.* at 11a.

3. The court of appeals vacated petitioner's conviction on the Section 2332g count, concluding that the jury had been erroneously instructed as to venue. 993 F.3d at 1121-1131. The court remanded for resentencing. *Id.* at 1133-1134. On remand, the government dismissed the Section 2332g count without prejudice. Pet. App. 11a. At resentencing, the district court reimposed the same sentences it had previously imposed on the remaining counts of conviction, for a total of 360 months of imprisonment. Judgment 1.

The district court found that petitioner’s conduct, which involved engaging in “repeated high-volume transactions involving costly military equipment over the course of several years,” “unequivocally endangered the security and foreign policy interests of the United States as well as the safety and security of far less stable nations.” Pet. App. 80a. The court overruled petitioner’s objection to the consideration of the conduct underlying the Section 2332g count, finding that petitioner’s relevant conduct for the counts of conviction “remained unchanged” from the prior sentencing. *Id.* at 13a; see *id.* at 12a-13a, 67a, 70a.

4. The court of appeals affirmed. Pet. App. 1a-38a. As relevant here, the court rejected petitioner’s argument that consideration of the conduct underlying the Section 2332g count violated the Fifth and Sixth Amendments because he had not been convicted on that count. *Id.* at 30a-33a. Citing *United States v. Watts*, 519 U.S. 148 (1997) (per curiam), the court explained that “conduct underlying a charge of which the defendant was *acquitted* may be considered at sentencing, where the burden of proof is only a preponderance of the evidence,” and the court found no reason “why conduct underlying a dismissed charge should be treated with *more* solicitude than conduct underlying a charge rejected by acquittal.” Pet. App. 31a.

The court of appeals observed that the “evidence at trial showed that” petitioner “was involved in several transactions involving” anti-aircraft missiles. Pet. App. 8a. And it recognized that the “district court permissibly put great weight on the fact that the offense conduct, which specifically concerned planned unlawful arms exports to Libya, was part of a broader pattern of high-volume, black-market arms-trafficking,” and that

petitioner had “acted with a callous ‘lack of respect for human life.’” *Id.* at 28a (citation omitted).

Judge Collins issued a concurring opinion, which recognized that the court of appeals’ opinion “faithfully applie[d] current precedent concerning the review of federal sentences.” Pet. App. 33a; see *id.* at 33a-38a. He expressed the view, however, that the separate majority opinions in *United States v. Booker*, 543 U.S. 220 (2005), are “logically irreconcilable” and “incongru[ous].” Pet. App. 35a, 38a.

#### ARGUMENT

Petitioner contends (Pet. 9-17) that the district court violated his Fifth Amendment right to due process and his Sixth Amendment right to trial by jury by relying for sentencing purposes on conduct underlying the conviction for violating 18 U.S.C. 2332g that was later vacated on venue grounds and voluntarily dismissed without prejudice. The court of appeals correctly rejected that contention. This Court has long upheld a district court’s authority to find relevant conduct by a preponderance of the evidence and to consider such conduct in determining an appropriate sentence. And as petitioner correctly acknowledges, every federal court of appeals with criminal jurisdiction has recognized a sentencing court’s ability to rely on conduct that the court finds by a preponderance of the evidence, even if a jury did not find that conduct beyond a reasonable doubt. This Court has recently and repeatedly denied petitions for writs of certiorari raising similar issues and it should follow the same course here.<sup>1</sup>

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<sup>1</sup> See, e.g., *Perricone v. United States*, 145 S. Ct. 1142 (2025) (No. 24-5339); *O’Bannon v. United States*, 144 S. Ct. 572 (2024) (No. 23-554); *Merry v. United States*, 143 S. Ct. 2692 (2023) (No. 22-6815);

1. When selecting an appropriate sentence, a district court may, consistent with the Fifth and Sixth Amendments, consider conduct that was not intrinsic to the underlying conviction. Although the Sixth Amendment requires that, other than the fact of a prior conviction, “any fact that increase[s] the prescribed statutory maximum sentence” or the statutory “minimum sentence” for an offense “must be submitted to the jury and found beyond a reasonable doubt,” *Alleyne v. United States*, 570 U.S. 99, 106, 108 (2013) (plurality opinion), judges have broad discretion to engage in factfinding to determine an appropriate sentence within a statutorily authorized range, see, e.g., *id.* at 116 (majority opinion) (“[B]road sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment.”); *United States v. Booker*, 543 U.S. 220, 233 (2005) (“[W]hen a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.”); see also 18 U.S.C. 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States

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*Martin v. United States*, 143 S. Ct. 2692 (2023) (No. 22-6736); *Sanchez v. United States*, 143 S. Ct. 2691 (2023) (No. 22-6386); *Cain v. United States*, 143 S. Ct. 2691 (2023) (No. 22-6212); *Bullock v. United States*, 143 S. Ct. 2691 (2023) (No. 22-5828); *Karr v. United States*, 143 S. Ct. 2691 (2023) (No. 22-5345); *Luczak v. United States*, 143 S. Ct. 2690 (2023) (No. 21-8190); *Shaw v. United States*, 143 S. Ct. 2689 (2023) (No. 22-118); *McClinton v. United States*, 143 S. Ct. 2400 (2023) (No. 21-1557); see also U.S. Br. in Opp. at 14-15, *McClinton*, *supra* (No. 21-1557) (listing additional cases). The pending petition for a writ of certiorari in *Pharms v. United States*, No. 25-1086 (filed Mar. 13, 2026), raises a similar issue.

may receive and consider for the purpose of imposing an appropriate sentence.”).

Contrary to petitioner’s contention (Pet. 10-13), neither the Fifth Amendment nor the Sixth Amendment precludes sentencing courts from finding facts about relevant conduct under that framework when the defendant is not convicted of that conduct under a higher standard of proof at trial. As this Court explained in *United States v. Watts*, 519 U.S. 148 (1997) (per curiam), in addressing judicial factfinding under the then-mandatory federal Sentencing Guidelines, “a jury’s verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.” *Id.* at 157.

The Court observed that under the pre-Guidelines sentencing regime, it was “well established that a sentencing judge may take into account facts introduced at trial relating to other charges, even ones of which the defendant has been acquitted,” and that “[t]he Guidelines did not alter this aspect of the sentencing court’s discretion.” *Watts*, 519 U.S. at 152 (citation omitted). And the Court explained that a jury’s determination that the government failed to prove a fact beyond a reasonable doubt does not have preclusive effect in contexts in which a lower standard of proof applies. *Id.* at 156 (“[A]n acquittal in a criminal case does not preclude the Government from relitigating an issue when it is presented in a subsequent action governed by a lower standard of proof.”) (citation omitted). That reasoning applies with even greater force where, as here, a sentencing court considers not acquitted conduct, but conduct underlying a charge that the jury found beyond a

reasonable doubt and that was later vacated on a non-merits ground.

Petitioner's effort (Pet. 15-16) to characterize *Watts* as an inapposite double-jeopardy case lacks merit. Although *Watts* specifically addressed a challenge to acquitted conduct based on double-jeopardy principles, its clear import is that sentencing courts may take unconvicted conduct into account at sentencing without offending the Constitution. See 519 U.S. at 157; see also, e.g., *Alabama v. Shelton*, 535 U.S. 654, 665 (2002); *United States v. Grubbs*, 585 F.3d 793, 798-799 (4th Cir. 2009) (describing *Watts* as "clear Supreme Court \* \* \* precedent holding that a sentencing court may consider uncharged and acquitted conduct in determining a sentence, as long as that conduct is proven by a preponderance of the evidence"), cert. denied, 559 U.S. 1022 (2010). Indeed, *Watts* is incompatible with petitioner's core premise: that consideration of acquitted, dismissed, or uncharged conduct as part of sentencing contravenes the jury's verdict or punishes the defendant for a crime for which he was not convicted. If consideration of such conduct at sentencing were in fact a re-prosecution of the prior charges, it is difficult to see how *Watts* could have found it compatible with the Double Jeopardy Clause.

This Court's decision in *United States v. Booker* confirms that a judge may constitutionally base a defendant's sentence on conduct that was not found by the jury, so long as the sentence is at or below the statutory maximum. In discussing the type of information that a sentencing court could consider under the advisory guidelines, *Booker* made no distinction between acquitted, dismissed, or uncharged conduct and other relevant conduct. See, e.g., 543 U.S. at 252 (emphasizing the

need to consider all relevant conduct to achieve “the sentencing statute’s basic aim of ensuring similar sentences for those who have committed similar crimes in similar ways”). To the contrary, after emphasizing the judge’s “broad discretion in imposing a sentence within a statutory range,” *id.* at 233, *Booker* cited *Watts* for the proposition that “a sentencing judge could rely for sentencing purposes upon a fact that a jury had found unproved (beyond a reasonable doubt),” *id.* at 251 (emphasis omitted). And after *Booker*, the majority opinion in *Alleyne v. United States* expressly distinguished “facts that increase either the statutory maximum or minimum” from those “used to guide judicial discretion in selecting a punishment ‘within limits fixed by law.’” 570 U.S. at 113 n.2 (citation omitted). The Court made clear that although the latter “may lead judges to select sentences that are more severe than the ones they would have selected without those facts, the Sixth Amendment does not govern that element of sentencing.” *Ibid.*

Petitioner repeatedly invokes (Pet. 4, 5, 7, 12, 14, 20, 27) Justice Scalia’s dissent from the denial of certiorari in *Jones v. United States*, 574 U.S. 948 (2014), highlighting his suggestion “that any fact necessary to prevent a sentence from being substantively unreasonable \* \* \* must be either admitted by the defendant or found by the jury,” *id.* at 949. But petitioner elides Justice Scalia’s observation that the Court could “eliminate the Sixth Amendment difficulty by acknowledging that all sentences below the statutory maximum are substantively reasonable.” *Id.* at 950; cf., e.g., *Gall v. United States*, 552 U.S. 38, 60 (2007) (Scalia, J., concurring) (“I continue to believe that substantive-reasonableness review is inherently flawed.”). Accordingly, were the Court inclined to revisit long-settled precedent affirm-

ing judicial factfinding at sentencing, the Court would have to confront the argument that Congress’s specification of a statutory range necessarily reflects its policy judgment that a term of imprisonment at or below the maximum of that range is not an unreasonably long sentence for the offense. Petitioner’s proposal that a jury must determine all facts required to maintain the substantive reasonableness of a sentence is also unworkable: reasonableness is an *appellate* standard applied after the fact, not a standard that district courts apply—or can necessarily predict—in carrying out their duty to determine an appropriate sentence in the first instance. See 18 U.S.C. 3553(a); *Holguin-Hernandez v. United States*, 589 U.S. 169, 174-175 (2020).

Petitioner’s Fifth Amendment argument (Pet. 13-14) is likewise unsound. Notwithstanding that judges have historically enjoyed discretion to impose sentences based on additional facts found by a preponderance of the evidence at sentencing, petitioner essentially proposes (Pet. 13) to create an exception for factual findings concerning acquitted, dismissed, or uncharged conduct. That exception is logically unsound because factual findings that satisfy the preponderance standard do not conflict with a jury’s verdict of acquittal under the more demanding beyond-a-reasonable doubt standard. See *Watts*, 519 U.S. at 156; cf. 18 Charles Alan Wright et al., *Federal Practice and Procedure* § 4422, at 634 (3d ed. 2016) (explaining that an acquittal is not issue preclusive in civil cases when the standard of proof is lower, and that the same rule “applies also when further criminal proceedings do not require proof beyond a reasonable doubt”).

Petitioner’s proposed rule would be particularly unsound as to uncharged conduct, as it would perversely

preclude a judge from considering relevant conduct simply because it is prohibited by criminal laws. Conduct that society so disapproves, however, would naturally be *more* relevant, not less. Petitioner’s rule also would simply encourage prosecutors to charge every conceivable crime arising out of a course of activity solely to preserve the possibility of considering the full range of relevant conduct at a sentencing proceeding. Nothing in the Constitution requires that result. Indeed, if petitioner’s rule were accepted, prosecutors likely would put all potentially aggravating facts before the jury, perhaps to be found by special verdict, which would hardly inure to the defendant’s benefit. Cf. *Old Chief v. United States*, 519 U.S. 172, 189 (1997) (reaffirming “the accepted rule that the prosecution is entitled to prove its case free from any defendant’s option to stipulate the evidence away”).

2. As petitioner acknowledges (Pet. 22 & n.1), every federal court of appeals with criminal jurisdiction has recognized that a district court may consider acquitted or uncharged conduct for sentencing purposes.<sup>2</sup> Peti-

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<sup>2</sup> See, e.g., *United States v. Gobbi*, 471 F.3d 302, 313-314 (1st Cir. 2006); *United States v. Vaughn*, 430 F.3d 518, 526-527 (2d Cir. 2005) (Sotomayor, J.), cert. denied, 547 U.S. 1060 (2006); *United States v. Ciavarella*, 716 F.3d 705, 735-736 (3d Cir. 2013), cert. denied, 571 U.S. 1239 (2014); *Grubbs*, 585 F.3d at 798-799 (4th Cir.); *United States v. Farias*, 469 F.3d 393, 399-400 & n.17 (5th Cir. 2006), cert. denied, 549 U.S. 1272 (2007); *United States v. White*, 551 F.3d 381, 386 (6th Cir. 2008) (en banc), cert. denied, 556 U.S. 1215 (2009); *United States v. Waltower*, 643 F.3d 572, 574-578 (7th Cir.), cert. denied, 565 U.S. 1019 (2011); *United States v. High Elk*, 442 F.3d 622, 626 (8th Cir. 2006); *United States v. Mercado*, 474 F.3d 654, 656-658 (9th Cir. 2007), cert. denied, 552 U.S. 1297 (2008); *United States v. Magallanez*, 408 F.3d 672, 683-685 (10th Cir.), cert. denied, 546 U.S. 955 (2005); *United States v. Siegelman*, 786 F.3d 1322,

tioner asserts (Pet. 23) that “this Court’s intervention” is warranted because “every circuit has refused to reconsider the question en banc.” See Pet. 23 n.2 (emphasis omitted) (listing cases). But that uniformity on the question presented is a reason to deny review, not to grant it. See Sup. Ct. R. 10.

Petitioner’s reliance on state-court decisions from Minnesota, North Carolina, and New Jersey (Pet. 17-20) is misplaced. Several of those decisions predate *Watts*. *E.g.*, *State v. Peterson*, 329 N.W.2d 58 (Minn. 1983); *State v. Barnes*, 313 N.W.2d 1 (Minn. 1981); *State v. Chase*, 343 N.W.2d 695 (Minn. App. 1984); *State v. Marley*, 364 S.E.2d 133 (N.C. 1988); *State v. Mack*, 359 S.E.2d 485, 489-490 (N.C. App. 1987). And the others either do not cite *Watts* or rely on state law and thus do not create a conflict on the federal constitutional question presented here. See *Taylor v. State*, 670 N.W.2d 584, 586-589 (Minn. 2003) (citing state sentencing guidelines); *State v. Simpson*, No. COA24-1092, 2026 WL 40886, at \*5-\*6 (N.C. App. Jan. 7, 2026); *State v. Melvin*, 258 A.3d 1075, 1094 (N.J. 2021) (explaining that the “State Constitution offers greater protection against the consideration of acquitted conduct in sentencing than does the Federal Constitution”); *State v. Bunn*, No. A-2206-18, 2022 WL 3022381, at \*3 (N.J. Super. Ct. App. Div. Aug. 1, 2022) (per curiam).

3. Nor is this Court’s intervention necessary to address any of petitioner’s asserted policy concerns. Cf. Pet. 20-26. Congress could pass a statute to preclude reliance on unconvicted conduct at sentencing. See *United States v. Bell*, 808 F.3d 926, 928 (D.C. Cir. 2015)

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1332-1333 & n.12 (11th Cir. 2015), cert. denied, 577 U.S. 1092 (2016); *United States v. Settles*, 530 F.3d 920, 923-924 (D.C. Cir. 2008), cert. denied, 555 U.S. 1140 (2009).

(per curiam) (Kavanaugh, J., concurring in the denial of rehearing en banc). Indeed, Congress currently is considering legislation to amend 18 U.S.C. 3661 to prohibit consideration of acquitted conduct at sentencing except in mitigation. See S. 3483, 119th Cong., 1st Sess. (introduced in the Senate on Dec. 15, 2025).

This Court’s intervention is particularly unwarranted now that the Sentencing Commission has amended the Sentencing Guidelines to instruct courts not to consider conduct “charged and acquitted in federal court” when calculating a defendant’s guidelines range. Sentencing Guidelines § 1B1.3(c); see *McClinton v. United States*, 143 S. Ct. 2400, 2403 (2023) (Sotomayor, J., statement respecting the denial of certiorari) (citing Commission’s efforts to “resolve questions around acquitted-conduct sentencing”); *McClinton*, 143 S. Ct. at 2403 (Kavanaugh, J., respecting the denial of certiorari) (similar).

In particular, in 2024, the Commission amended the guidelines to provide that the “relevant conduct” that courts may consider to calculate the guidelines range “does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction.” Sentencing Guidelines § 1B1.3(c). Moreover, even in the limited circumstances where the Sentencing Guidelines still *permit* courts to consider conduct underlying acquitted conduct, the Guidelines do not *require* it. And sentencing courts always retain discretion to consider whether such conduct should carry weight in their assessment of each defendant’s “background, character, and conduct” for the purpose of imposing a sentence in a given case.

18 U.S.C. 3661; see *Bell*, 808 F.3d at 928 (Kavanaugh, J., concurring in the denial of rehearing en banc).

Petitioner emphasizes (Pet. 25) that the recent amendment does not apply to conduct underlying a conviction (like his) that is vacated on a non-merits ground. But that simply underscores the Commission's policy judgment that such conduct could continue to guide sentencing courts' determinations of the applicable advisory guideline range and ultimate sentence. That judgment could change in later amendment cycles, or be overridden by Congress. Either of those institutions is the appropriate one through which to channel policy concerns like the ones petitioner posits.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2026