

Statement of KAVANAUGH, J.

**SUPREME COURT OF THE UNITED STATES**

DAYONTA McCLINTON *v.* UNITED STATES

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

No. 21–1557. Decided June 30, 2023

Statement of JUSTICE KAVANAUGH, with whom JUSTICE GORSUCH and JUSTICE BARRETT join, respecting the denial of certiorari.

As JUSTICE SOTOMAYOR explains, the Court’s denial of certiorari today should not be misinterpreted. The use of acquitted conduct to alter a defendant’s Sentencing Guidelines range raises important questions. But the Sentencing Commission is currently considering the issue. It is appropriate for this Court to wait for the Sentencing Commission’s determination before the Court decides whether to grant certiorari in a case involving the use of acquitted conduct.