NO. 18-680

IN THE
Supreme Court of the United States

ERICA HUSS,
Petitioner,

v.

LOREN ROBINSON,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly applied *Alleyne* v. *United States*, 570 U.S. 99 (2013) when it held that the Michigan trial court's use of judge-found facts to score mandatory sentencing guidelines that resulted in an increase of Respondent's minimum sentence violated his Sixth Amendment rights.

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INTRODUCTION

This case was properly decided below, and in any event comes nowhere close to meriting the extreme remedy of summary reversal. The Court should deny review.

The Sixth Amendment requires a jury to find any "facts that increase the prescribed range of penalties to which a criminal defendant is exposed." *Apprendi* v. *New Jersey,* 530 U.S. 466, 490 (2000). In *Alleyne* v. *United States,* 570 U.S. 99 (2013), this Court extended *Apprendi's* Sixth Amendment principles to facts that raise the floor of the prescribed sentencing range. "Facts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." *Alleyne*, 570 U.S. at 108.

Based on the facts found by the jury, Respondent Loren Robinson would have been exposed to a minimum

sentence range under Michigan law of 36-75 months. However, the sentencing judge found additional facts to apply multiple "Offense Variables" that significantly raised the floor of the applicable sentencing range. Because the judge was *required* to impose a minimum sentence within the heightened range, Respondent was given a minimum sentence that was multiple times longer than what could have been supported by the facts found by the jury. Nonetheless, the Michigan appellate courts affirmed Robinson's sentence and rejected his argument that *Alleyne* prohibited increasing his minimum-sentence exposure based on judicially-found facts.

In the decision below, the court of appeals correctly granted habeas relief because the Michigan appellate court's holding was contrary to the law clearly established by *Alleyne*. That straightforward result is directly supported by this Court's decisions. Respondent seeks no extension of *Alleyne*, which would be barred by AEDPA, but only to apply *Alleyne*'s stated holding to the Michigan sentencing scheme.

Petitioner mischaracterizes the court of appeals' holding as extending *Alleyne* to questions of parole eligibility. Nothing in Michigan law, not to mention the decision below, supports that creative interpretation. Respondent is challenging his minimum sentence, imposed by a judge, under the state's statutory sentencing regime. No parole guidelines, entities, procedures, proceedings, standards, or rulings are implicated here. The decision below is necessarily limited to the minimum sentence imposed by the state court judge. As the court of appeals explained, "*Alleyne* proscribed exactly that which occurred at petitioner's sentencing hearing—the use of '[f]acts that increase the mandatory minimum sentence' that were never submitted to the jury and found beyond a reasonable doubt." Pet. App. 13a.

At bottom, the Petition essentially complains that the court of appeals misunderstood Michigan law—hardly a topic fit for this Court's review. For Petitioner to prevail, this Court would have to hold that what Michigan law deems "minimum sentences" are not "minimum sentences" for Sixth Amendment purposes, but mere parole-eligibility determinations. But that proposition has been squarely rejected by Michigan's highest court. See *People* v. *Lockridge*, 870 N.W.2d 502, 517 (Mich. 2015). So understood, these minimum sentences fall squarely under *Alleyne*, and there is no reason for this Court to revisit that state-law determination.

In short, nothing about the court of appeals' decision warrants certiorari, much less summary reversal. The Petition should be denied.

STATEMENT

A. This Court's Sixth Amendment Precedent

This Court first considered the constitutionality of using judge-found facts to set a "minimum sentence" that would determine the earliest possible release date in *McMillan* v. *Pennsylvania*, 477 U.S. 79 (1986). As Petitioner notes (Pet. 12), the sentencing provision at issue in *McMillan* was nearly identical to Michigan's mandatory "minimum sentences": it "neither alter[ed] the maximum penalty for the crime committed nor create[d] a separate offense calling for a separate penalty." *McMillan*, 477 U.S. at 87-88. Instead, "it operate[d] solely to limit the sentencing court's discretion in selecting a penalty within the range already available to it" based on the facts found by the jury. *Id.* at 88. This Court concluded that the enhancement to the minimum sentence was a mere "sentencing consideration" rather than an "element of any offense" and therefore Sixth Amendment protections did not attach. *Id.* at 93.

Fourteen years later, however, this Court held that any fact that increases the penalty for a crime is considered an element of that crime, and the Sixth Amendment requires that it be submitted to a jury and proved beyond a reasonable doubt. *Apprendi*, 530 U.S. at 490. The Court explained that "[i]f a defendant faces punishment beyond that provided by statute when an offense is committed under certain circumstances but not others, it is obvious that both the loss of liberty and the stigma attaching to the offense are heightened." *Id.* at 484. Therefore, the relevant inquiry in identifying elements of an offense is whether the finding exposes the defendant to a greater punishment.

Shortly thereafter, the Court addressed "whether *McMillan* [stood] after *Apprendi*." *Harris* v. *United States*, 536 U.S. 545, 550 (2002). *Harris* reaffirmed *McMillan* and declined to extend *Apprendi*, reasoning that a fact that only increased the mandatory minimum sentence, but not the maximum, was not an element of the crime and therefore did not have to be submitted to a jury. *Id.* at 557.

In *Blakely* v. *Washington*, the Court clarified that the "statutory maximum" for *Apprendi* purposes is the sentence a judge can impose "solely on the basis of the facts reflected in the jury verdict." 542 U.S. 296, 303 (2004). Where the fact of conviction requires a sentence within a specified range, a court violates the Sixth Amendment when it makes additional factual findings that increase that range. *Id.* at 308-309. The Court applied this principle to strike down the Federal Sentencing Guidelines to the extent they required judges to set penalties based on facts not submitted to the jury, even though guideline departures were allowed under certain narrow circumstances. *United States* v. *Booker*, 543 U.S. 220, 234 (2005). To remedy the constitutional violation, the Court rendered the guidelines advisory by severing the provi-

sion requiring sentencing within the applicable guidelines range. *Id.* at 246.

Finally, in *Alleyne*, this Court revisited whether *Apprendi's* rule applies to increases in minimum sentences—the very question the Court had answered negatively in *McMillan* and *Harris*. 570 U.S. at 111. The Court reached a different result this time. *Alleyne* reasoned that there is "no basis in principle or logic to distinguish facts that raise the maximum from those that increase the minimum," because "a fact increasing either end of the range produces a new penalty." *Id.* at 112, 116. It therefore held that "facts increasing mandatory minimum sentences" which "alter the prescribed range of sentences to which a defendant is exposed" are "elements [of a crime which] must be submitted to the jury and found beyond a reasonable doubt." *Id.* at 108, 116. As the separate opinions aptly summarized, *Alleyne* "persuasively explains why *Harris* * * * and *McMillan* * * * were wrongly decided." *Id.* at 113 (Sotomayor, J., concurring); see also *id.* at 133 (Alito, J., dissenting) (noting that *Harris* and *McMillan* have been "cast aside").

B. Michigan Sentencing Regime

As this Court's Sixth Amendment precedent has evolved, Michigan's sentencing scheme has had to adapt. Petitioner mischaracterizes the nature of that scheme, so a thorough description is warranted.

Michigan law requires judges to sentence defendants to both a maximum and a minimum sentence, each of which is determined through a statutory, multi-step process. Judges set the minimum sentencing range by determining the offense class, Prior Record Variables, Offense Variables, and habitual offender status. See Pet. App. 12a. The maximum sentence ultimately imposed represents the longest time that a defendant can be re-

quired to serve in prison, and the minimum represents the time a defendant will definitely serve.

As in the pre-*Booker* federal system, until 2015 Michigan trial courts were bound by the sentencing range produced by the statutory scheme. *People* v. *Lockridge*, 870 N.W.2d 502, 518 (Mich. 2015). "[O]nce the sentencing court calculates the defendant's guidelines range, it must, absent substantial and compelling reasons, impose a minimum sentence within that range." *People* v. *McCuller*, 739 N.W.2d 563, 569-570 (Mich. 2007); Mich. Comp. Laws § 769.34(2).

After *Alleyne*, the Michigan Supreme Court held that the "Offense Variables" portion of Michigan's sentencing scheme violated the Sixth Amendment because it required judicial fact-finding that mandatorily altered minimum sentence ranges. *Lockridge*, 870 N.W.2d at 511. The court declared:

> Because Michigan's sentencing guidelines scheme allows judges to find by a preponderance of the evidence facts that are then used to compel an increase in the mandatory minimum punishment a defendant receives, it violates the Sixth Amendment to the United States Constitution under *Alleyne*."

Id. at 524.

C. Respondent's conviction and sentencing

This case arises because Respondent is one of a very few Michigan defendants whose appeals became final after this Court's 2013 decision in *Alleyne*, but before the Michigan Supreme Court's 2015 *Lockridge* decision invalidated Michigan's sentencing scheme.

In 2010, Joshua Karamalegos went to a party and consumed large amounts of cocaine. Pet. App. 3a, 66a-67a. The next morning, he learned he owed $1,000 for the drugs he had used and shared. *Ibid.* According to Karamalegos, Respondent provided the drugs and in-

structed another man to beat and detain Karamalegos until he called his father to pay the drug debt. *Id.* at 67a. A Michigan jury convicted Respondent of four offenses: extortion, Mich. Comp. Laws § 750.213; delivery of a controlled substance, § 333.7401; unlawful imprisonment, § 750.349; and assault with intent to do great bodily harm, § 750.84. Pet. App. 3a. These convictions resulted in imposition of concurrent maximum sentences of 40, 30, and 22.5 years, which are not at issue in this appeal. *Id.* at 4a.

Respondent's convictions, standing alone, would also have subjected him to fairly short mandatory minimum sentence ranges, the longest of which would have been 36-75 months.[1] But at the time of Respondent's sentencing, the trial judge was *required* under Michigan's sentencing guidelines to engage in judicial fact-finding to score Offense Variables that, if applicable, *mandatorily* altered the minimum range to which he was exposed for each offense. Mich. Comp. Laws § 769.34(2).

The sentencing judge found eight Offense Variables applied, seven of which were based on facts never found by a jury or admitted by Respondent. Pet. App. 74a-82a. Because of these findings, Respondent was exposed to significantly longer mandatory minimum sentence ranges, the longest of which was 84-175 months. *Id.* at 4a. The judge ultimately sentenced Respondent to a mini-

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[1] This would have been Respondent's minimum sentence range for extortion, after the base sentence was enhanced based on Respondent's habitual offender status and Prior Record Variable (PRV), another enhancing mechanism that takes into account previous convictions. See Mich. Comp. Laws §§ 777.21, 777.63. The minimum sentence ranges (with habitual offender status and PRV) for the controlled substance violation and unlawful imprisonment charge would have been 0-17 months and 12-30 months, respectively. *Id.* at §§ 777.21, 777.64-.65. By statute, the scoring guidelines were not used to establish sentencing for the aggravated assault charge.

mum sentence of 150 months—a term twice as long as the longest the court would have been allowed to choose without Offense Variable enhancements. *Id.* at 5a.

Respondent's sentencing process and direct appeals were not finalized until after *Alleyne*, but unfortunately were finalized before Michigan recognized the unconstitutionality of its sentencing scheme in the *Lockridge* decision. Respondent's direct appeal challenged the constitutionality of the use of judicial fact-finding to increase his sentence. The Michigan courts denied the appeal (without even acknowledging *Alleyne*), so Respondent timely sought habeas relief.

D. The decisions below

Robinson timely filed a habeas petition in the district court, raising multiple grounds for relief, including a claim that "his sentences were invalid because they were based on improper scoring of the legislatively imposed sentencing guidelines." Pet. App. 40a. The district court denied the petition, citing *Harris* and incorrectly stating that despite being overruled by *Alleyne*, *Harris* still applied to Respondent because he was sentenced in 2011. *Id.* at 42a-43a. Robinson moved the Sixth Circuit for a certificate of appealability, which it granted as to the sentencing issue.

In analyzing Respondent's habeas claim, the court of appeals echoed the holding in *Alleyne* that "'facts that increase the prescribed range of penalties to which a criminal defendant is exposed' are elements of the crime" and therefore subject to Sixth Amendment protections. Pet. App. 11a. The court of appeals reasoned that "[a]t bottom, Michigan's sentencing regime violated *Alleyne's* prohibition on the use of judge-found facts to increase mandatory minimum sentences." *Ibid.* In reaching its decision, the court noted that *Alleyne* is "clearly established federal law," ultimately holding that the "Michigan

trial court's use of judge-found facts to score mandatory sentencing guidelines that resulted in an increase of a petitioner's minimum sentence violated petitioner's Sixth Amendment rights." Pet. App. 16a. The court of appeals therefore granted a conditional writ of habeas corpus with instructions for the district court to remand to the state court for sentencing proceedings.

REASONS FOR DENYING THE PETITION

I. NOTHING ABOUT THE PETITION WARRANTS THIS COURT'S ATTENTION

While Petitioner largely pursues summary reversal, it halfheartedly requests plenary review as well. Pet. 15. It is thus worth emphasizing at the outset the utter unsuitability of this case for the Court's review. Petitioner seeks nothing more than error correction of the court of appeals' decision, which is tied inextricably to the specific facts of the Michigan sentencing regime. Petitioner cannot identify any split among the courts of appeals on an important question of federal law. Nor can Petitioner even claim that answering the question presented would provide helpful guidance to other states or courts throughout the Nation. That is because it would not.

What is more, certiorari would not even meaningfully clarify *Alleyne*'s effect on *Michigan* law. Most Michigan prisoners sentenced before Respondent are not eligible to challenge their sentence on similar grounds because their sentences became final before *Alleyne*. And most prisoners sentenced after Respondent were not subjected to a similarly unconstitutional process because the Michigan Supreme Court promptly recognized and rectified the Michigan scheme's violation of *Alleyne*.

In short, the outcome of this case is material to a small group of prisoners in a single state. It is difficult to imagine a less appropriate matter on which to expend this

Court's resources—whether through summary review or otherwise.

II. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT RESPONDENT'S SENTENCING WAS CONTRARY TO THE SIXTH AMENDMENT HOLDING CLEARLY ESTABLISHED IN *ALLEYNE*

The decision below falls far short of the high bar for summary reversal. See, *e.g.*, *Wyrick* v. *Fields*, 459 U.S. 42, 50 (1982) (Marshall, J., dissenting) ("A summary reversal is an exceptional disposition. It should be reserved for situations in which the applicable law is settled and stable, the facts are not disputed, and the decision below is clearly in error."). In fact, the court of appeals' opinion is correct. Petitioner's argument to the contrary depends on a rewriting of Michigan law and a hackneyed reading of *Alleyne* that leaves *McMillan* intact. At a minimum, Petitioner's arguments are not so self-evidently right that summary reversal is merited, especially in a case of such infinitesimal importance.

A. A federal court must grant habeas relief where the state court proceedings result in a decision "contrary to * * * clearly established Federal law." 28 U.S.C. § 2254(d)(1). *Alleyne's* holding could not have been clearer: "Facts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." 570 U.S. at 108. The Michigan court "us[ed] judge-found facts [to score sentencing variables] that increased [Respondent's] mandatory minimum sentence." Pet. App. 2a. The court of appeals therefore held:

> Because *Alleyne* clearly established that mandatory minimum sentences may only be increased on the basis of facts found by a jury or admitted by a criminal defendant, *Alleyne*, 570 U.S. at 108, the Michigan Court of Appeals' disposition of Robinson's case "was contrary to, or involved an unreasonable ap-

> plication of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1).

Id. at 2a-3a.

The court of appeals' decision is syllogistically unimpeachable. The only way to attack that decision is to contest one of its premises, which is why Petitioner now asserts that Respondent's "minimum sentence" was not really a minimum sentence. But even if Petitioner were correct—and she is not—the asserted error would constitute only a misunderstanding of state law, not a misapplication of the Constitution or this Court's precedents.

B. "A federal habeas court may issue the writ under the 'contrary to' clause if the state court applies a rule different from the governing law set forth in our cases, or if it decides a case differently than we have done on a set of materially indistinguishable facts." *Bell* v. *Cone*, 535 U.S. 685, 694 (2002) (citing *Williams* v. *Taylor*, 529 U.S. 362, 404-406 (2000) (emphasis added)). The Sixth Circuit correctly held that the state court here did both.

In determining that the Michigan court's decision was contrary to governing law, the court of appeals relied on the portion of *Alleyne* that expressly extended *Apprendi* to facts that increase the mandatory minimum sentence. Pet. App. 11a. The Michigan appellate court failed to apply—or even acknowledge—*Alleyne*, and then applied a rule that contradicted its holding, declaring that facts used to increase a mandatory minimum sentence need not be found by a jury. Pet. App. 74a (noting Respondent's argument that "the trial court improperly scored the offense variables because the facts used to support the scoring of them were not found beyond a reasonable doubt by the jury," but finding it without merit because the Michigan Supreme Court had held that "*Blakely* does not apply to Michigan's indeterminate sentencing

scheme.") Indeed, the state court's terse dismissal of Respondent's argument was based principally on state precedent that relied on *Harris*, the very case which *Alleyne* held was "wrongly decided." *Ibid.* (citing *People* v. *Drohan*, 715 N.W.2d 778, 792 (Mich. 2006)).

Michigan courts also decided Respondent's case differently despite the nearly-identical circumstances in *Alleyne*. The *Alleyne* defendant was convicted of using or carrying a firearm in relation to a crime of violence, which carried a minimum sentence of five years. 570 U.S. at 103-104. Federal law required the minimum potential sentence to be increased based on the judicially-found fact that the firearm was "brandished." *Ibid.* This Court observed that the judicially-determined fact triggered an increased mandatory minimum, which changed the "legally prescribed range * * * [for] the penalty affixed to the crime," even though the "maximum" remained unchanged. *Id.* at 112. On those facts, the Supreme Court held a Sixth Amendment violation had occurred. *Id.* at 117. The relevant facts here were virtually indistinguishable from those in *Alleyne*: the mandatory minimum to which Respondent was exposed was increased based on facts found by the judge instead of the jury. Pet. App. 2a. "At bottom, Michigan's sentencing regime violated *Alleyne*'s prohibition on the use of judge-found facts to increase mandatory minimum sentences," and habeas relief was properly granted. *Id.* at 13a.

Because "'facts that increase the prescribed range of penalties to which a criminal defendant is exposed' are elements of the crime" and therefore subject to Sixth Amendment protections, 570 U.S. at 111, Michigan's mandatory minimum sentences were governed by *Alleyne*, and the Sixth Circuit's decision was a clear application of this Court's precedent.

C. Petitioner nonetheless asserts that "[n]o case in the *Apprendi* line, including *Alleyne*, applies the Sixth

Amendment jury right to facts that bear on a parole-eligibility determination." Pet. 8. But Petitioner acknowledges that "this Court has considered" precisely that fact pattern in *McMillan*. *Id.* at 11. Just as here, *McMillan* involved a state-court sentencing regime in which a defendant is exposed to both a maximum and minimum sentence, where the latter determines the earliest possible date of release from prison. *McMillan*, 477 U.S. at 86, 88. And just as here, the *McMillan* defendant's maximum sentence remained unchanged, but he was exposed to a higher minimum sentence based on a fact found only by a judge. *Id.* at 82-83.

The *McMillan* Court held that "the judge, rather than the jury, [could] find this fact by a preponderance of evidence without violating the Constitution" because the alteration of the minimum sentence made it merely a "sentencing consideration" instead of an "element of the offense." *Alleyne*, 570 U.S. at 104-105 (summarizing *McMillan*). The Court then reaffirmed *McMillan*'s holding in *Harris*, reasoning that *Apprendi*'s rationale did not extend to facts that increase a mandatory minimum sentence. 536 U.S. at 563.

But much has changed since *McMillan* and *Harris*. *Alleyne* discussed both *Harris* and *McMillan* at length and expressly overruled *Harris* (and thus *McMillan*). The Court declared that "a distinction between facts that increase the statutory maximum and facts that increase only the mandatory minimum * * * is inconsistent with our decision in *Apprendi* * * *." *Alleyne*, 570 U.S. at 103. While *Harris* and *McMillan* stood for the idea that "a fact increasing the mandatory minimum" could be found by a judge, *Alleyne* squarely overruled those holdings and concluded that "facts that increase mandatory minimum sentences must be submitted to the jury." *Id.* at 116.

The Petition expressly acknowledges that *McMillan's* "holding is no longer good law after *Alleyne*," and that its "reasoning fell to *Alleyne*." Pet. 12. Yet Petitioner makes the baffling argument that *McMillan* "has not been overruled." *Id.* at 13. Petitioner therefore argues that the court of appeals was bound to apply not *Alleyne*, but a decision that "is no longer good law" and whose "reasoning fell to *Alleyne*." *Ibid.* AEDPA does not require such nonsense.

Petitioner's "magic words" argument denies the language of *Alleyne* itself, which acknowledged that *Harris* validated "the continuing vitality * * * of *McMillan's* holding," but went on to state that "*Harris* was wrongly decided." *Alleyne*, 570 U.S. at 106-107. The Court did not need to incant the precise word "overruled" to denote that *McMillan* was in fact a dead letter. Indeed, both the concurring and dissenting opinions in *Alleyne* noted that obvious reality. The concurrence observed that "the opinion of the court * * * persuasively explains why *Harris* * * * and *McMillan* * * * were wrongly decided," *Alleyne*, 570 U.S. at 118 (Sotomayor, J., concurring), while the dissent lamented that "*Harris* * * * and *McMillan* * * * [have been] cast aside." *Id.* at 133 (Alito, J., dissenting). Other courts agree, including the Pennsylvania Supreme Court, which invalidated under *Alleyne* the same mandatory-minimum scheme that this Court had upheld in *McMillan*. See, *e.g.*, *United States* v. *Cassius*, 777 F.3d 1093, 1095 (10th Cir. 2015) ("[T]he Supreme Court explicitly overruled *Harris* and *McMillan*."); *Commonwealth* v. *Hopkins*, 117 A.3d 247, 256 (Pa. 2015) ([I]n *Alleyne*, the Supreme Court overruled *Harris* and *McMillan** * *.").

In sum, *McMillan* involved a minimum-sentencing provision that Petitioner concedes is virtually identical to the one in this case. *Alleyne* squarely held that such minimum sentences cannot be altered through judicially-

found facts. The court of appeals rightly concluded that the plain language of *Alleyne* entitles Respondent to habeas relief.

D. Petitioner's examples of summary reversal are inapposite. None of the cited cases in which the Court reversed habeas relief involved a court of appeals' faithful application of the plain language of this Court's holding to a state statute. In those instances, courts improperly extended this Court's holding to materially different contexts. See *White* v. *Woodall*, 572 U.S. 415, 421 (2014) (reversing habeas relief where court of appeals combined the rules announced in *Carter* v. *Kentucky*, 450 U.S. 288 (1981) and *Mitchell* v. *United States*, 526 U.S. 314 (1999) to create a new rule); *Woods* v. *Donald*, 135 S. Ct. 1372, 1375 (2015) (per curiam) (reversing habeas relief where court of appeals improperly relied upon *Bell* v. *Cone*, 535 U.S. 685 (2002) to extend the rule in *United States* v. *Cronic*, 466 U.S. 648 (1984) to a new context); *Virginia* v. *LeBlanc*, 137 S. Ct. 1726, 1727 (2017) (reversing habeas relief where the appellate court did not hold that the state court failed to apply federal law, but believed the state's method of applying federal law was inadequate). Petitioner's argument that the court of appeals extended *Alleyne* rests upon its mischaracterization of *Alleyne* and its relationship to *Harris* and *McMillan*. Properly understood, the court of appeals did nothing more than apply the express holding from *Alleyne* to a context indistinguishable from that of *McMillan*—a decision *Alleyne* overruled when it repudiated *Harris*. Summary reversal is unjustified here, especially since the court of appeals' decision has virtually zero prospective effect, even in Michigan.

III. THE COURT OF APPEALS DID NOT "EXTEND" *ALLEYNE* TO "PAROLE-ELIGIBILITY DETERMINATIONS"

The petition argues at length that *Alleyne*'s reference to "minimum sentences" does not encompass *Michigan's*

minimum sentences because Michigan's minimum sentences are merely "parole-eligibility determination[s]." *E.g.*, Pet. 8. As discussed above, this fabricated distinction is foreclosed by *Alleyne*'s overruling of *McMillan*, which Petitioner concedes involved an indistinguishable sentencing scheme. Petitioner's argument also runs afoul of *Alleyne*'s rationale and Michigan courts' interpretation of Michigan law. Petitioner's parsing of state law is both meritless and far afield from this Court's domain.

A. *Alleyne* applies to all minimum sentencing thresholds because the Sixth Amendment governs any alteration in the sentencing range to which a defendant is exposed

As Petitioner acknowledges, "in *Alleyne*, this Court extended [*Apprendi*] to cover factual findings that restrict a judge's discretion by eliminating available punishments at the low end of the sentencing range." Pet. 9. Petitioner nonetheless proposes to limit *Alleyne* by claiming that "every sentence" struck down under the *Apprendi* line of cases "has been a definite sentence—a single number that entitles the prisoner to release at its end." *Ibid.* In short, Petitioner would eliminate *Alleyne*'s minimum-sentence protections simply because Michigan sentences are comprised of two numbers instead of one. But the fact that Michigan defendants are sentenced to both a maximum and a minimum sentence does not remove the latter from *Alleyne*'s constitutional protections.

Alleyne's holding was unequivocally *not* about the minimum sentence ultimately imposed; it was about the "prescribed *range* of sentences to which a defendant is *exposed*." 570 U.S. at 108 (emphases added). Thus, for constitutional purposes, it is irrelevant whether a person is sentenced to one number or two. *Alleyne* held that "the legally prescribed range *is* the penalty affixed to the

crime." *Id.* at 112. Consequently, a judge's factual finding that alters the relevant sentencing range violates the Sixth Amendment even if the ultimate sentence falls within the range that could have been supported by the jury's finding. *Id.* at 115 ("Indeed, if a judge were to find a fact that increased the statutory maximum sentence, such a finding would violate the Sixth Amendment, even if the defendant ultimately received a sentence falling within the original sentencing range* * *.").

When the trial judge made factual findings to score Offense Variables, Respondent was exposed to a "narrowed range" of expected punishment: his prescribed, or statutorily-possible, sentencing range should have been, at best, 36 months to 40 years, and at worst, 75 months to 40 years. See Mich. Comp. Laws §§ 777.21, 777.63-.65. Instead, based solely on facts found by the sentencing judge, his prescribed sentencing range changed. The new mandatory ranges within which the sentencing court was required to act became, at best, 84 months to 40 years, and at worst, 175 months to 40 years. *Ibid.* "The essential point is that the aggravating fact[s] produced a higher range." *Alleyne*, 570 U.S. at 115-116.

B. Michigan's Supreme Court confirms that its minimum sentences are sentencing provisions, not mere parole-eligibility determinations

Petitioner asserts that what Michigan defines as mandatory "minimum sentences" are not sentences at all, but merely parole determinations not governed by the Sixth Amendment. But this argument contravenes the statutes' plain meaning and the Michigan Supreme Court's interpretation of its own state's law.

In previous litigation, the State *unsuccessfully* argued in the Michigan courts that Michigan's "minimum sentence" provision is nothing more than a parole determination—and the state's highest court rejected that inter-

pretation of state law. *Lockridge*, 870 N.W.2d at 514. In fact, the *Lockridge* court noted that cases involving "rights in parole proceedings" are "inapposite" to the question here. *Id.* at 517 n.23.

Alleyne's holding expressly applies to any alteration of the minimum sentence to which a defendant is exposed. Petitioner nonetheless asserts that *Alleyne* does not apply unless the minimum sentence at issue constitutes the date when someone is entitled to release. But the Petition provides no constitutional grounding for this unnatural reading of *Alleyne*'s more expansive language. In fact, a "minimum sentence," in its plainest meaning, is understood to be a date of eligibility, not entitlement: it is "[t]he least amount of time that a convicted criminal must serve in prison before becoming eligible for parole." SENTENCE, Black's Law Dictionary (10th ed. 2014). As the Michigan Supreme Court observed, Petitioner can cite no case for the "novel proposition that application of [this rule] hinges on whether a defendant is entitled to immediate release upon completion of the sentence at issue or whether the defendant is simply eligible for release or to be paroled." *Lockridge*, 870 N.W.2d at 517.

In Michigan, just as in *Alleyne*, "[e]levating the low-end of a sentencing range heightens the loss of liberty associated with the crime," *Alleyne*, 570 U.S. at 113, because a Michigan defendant knows that the shortest time he can possibly expect to serve—the "loss of liberty" at risk—is the minimum sentence set by statute. The court of appeals correctly held that *Alleyne* clearly governs such statutes.

"[C]riminal statutes have long specified both the floor and ceiling of sentence ranges, which is evidence that both define the legally prescribed penalty." *Id.* at 112. In both *Alleyne* and the present case, the law specified a mandatory range from which the court chose a sentence, but "available punishments at the low end of the sentenc-

ing range" were eliminated by judge-made "factual findings." Pet. 9; Pet. App. 4a. Petitioner concedes, as she must, that *Alleyne* applies in such circumstances. Pet. 9. Because that holding applies whether the low end constitutes a release date or an eligibility date, the Sixth Amendment require juries to find all relevant facts.

CONCLUSION

Alleyne held that a jury must find facts that are used to mandatorily "alter the prescribed range of sentence to which a defendant is exposed and do so in a manner that aggravates the punishment." 570 U.S. at 108. The court of appeals properly granted habeas relief because Respondent was sentenced in direct violation of this clearly established rule. The Petition should be denied.

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