No._____

IN THE SUPREME COURT OF THE UNITED STATES

DEONTE COURTEZ GATES, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent,

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Dated: December 5, 2022

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the relevant conduct sentencing guideline is unconstitutional under the Eighth Amendment as applied to conduct committed by a juvenile defendant.

II. Whether the Sixth Circuit Court of Appeals decided an important question of federal law in a way that conflicts with this Court's holdings in *Blakely v. Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005).

PARTIES TO THE PROCEEDING

Petitioner Deonte Gates was the petitioner-appellant below.

Respondent United States of America was the respondent-appellee below.

DIRECTLY RELATED PROCEEDINGS

The proceedings directly related to this petition are:

- United States v. Deonte Gates, No. 20-2221. United States Court of Appeals for the Sixth Circuit. Judgment entered September 6, 2022.

- United States v. Deonte Courtez Gates, No. 1:19-CR-157. United States District Court for the Western District of Michigan. Judgment entered December 9, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Deonte Gates respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion denying Deonte Gates' appeal in docket number 20-2221 was issued on September 6, 2022. The opinion was recommended for publication. It is reported as United States v. Gates and can be located at 2022 U.S. App. LEXIS 24954.

STATEMENT OF JURISDICTION

The United States Sixth Circuit Court of Appeals had jurisdiction over Gates' appeal under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. The Sixth Circuit filed its opinion on September 6, 2022. Gates did not file a petition for rehearing. The Sixth Circuit's mandate issued on September 28, 2022. Gates timely filed this petition. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL AUTHORITY

The Eighth Amendment to the Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

U.S.S.G. §1B1.3 provides, in relevant part, that "[u]nless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

> (1) (A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, willfully caused by the defendant; and
>
> (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were –
>
> > (i) within the scope of the jointly undertaken criminal activity,
> >
> > (ii) in furtherance of that criminal activity, and
> >
> > (iii) reasonably foreseeable in connection with that criminal activity;
> >
> > that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense."

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the

State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

STATEMENT OF THE CASE

On June 26, 2019, a Grand Jury sitting in the Western District of Michigan returned a six-count indictment against Deonte Gates (Deonte or Gates) and his older brother, Trevon Gates (Trevon). Counts 1-3 pertained to Deonte. Count 1 alleged that Deonte knowingly conspired with his brother and others from December 2018 through April 2019 "to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine." (Indictment, R. 1, Page ID # 1.) Count 2 alleged that on March 26, 2019, Deonte "did knowingly and intentionally possess with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine." (Indictment, R. 1, Page ID # 2.) Count 3 alleged that Deonte and Trevon "did [jointly] knowingly possess the following firearm in furtherance of the drug trafficking crime of conspiracy to distribute and possess with intent to distribute methamphetamine . . . a .410 caliber Harrington & Richardson shotgun, serial number AY 439400." (Indictment, R.1, Page ID # 3.)

According to the government, Trevon and Deonte sold 1.41 kilograms of methamphetamine throughout the duration of the entire conspiracy. (Government Sentencing Memorandum, R.153, Page ID ## 834, 838.) Deonte was 17 years old when the conspiracy began and turned 18 years old on February 22, 2019, just one month prior to the end of the conspiracy. Law enforcement arrested him on March 26, 2019.

On July 14, 2020, the morning his trial was scheduled to begin, the government offered a last-minute plea due in large part to Deonte's young age, which he accepted.

Pursuant to the government's offer, Deonte pleaded guilty to two individual acts that occurred after his eighteenth birthday. (Presentence Investigation Report, R. 150, Page ID # 805.) He pleaded guilty to one count of possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine (Count 2) on March 26, 2019, and one count of possessing a firearm in furtherance of drug trafficking on that same date (Count 3). (*Id.*) In exchange, the prosecution agreed to dismiss the conspiracy charge (Count 1), during which Deonte allegedly participated for one month as an adult.

The presentence investigation report (PSIR) calculated the quantity of methamphetamine that Deonte and his brother sold for the duration of the entire conspiracy as well as for dates prior to the conspiracy. For instance, the government held the Gates brothers accountable for methamphetamine sold to individuals beginning in June 2019. (*Id.* at Page ID ## 814-815.) The government based its calculation of the quantity of methamphetamine sold by the Gates brothers on the amount seized during two search warrant executions of the Gates' home, and from testimony from witnesses who claimed to have bought methamphetamine from the Gates brothers leading up to their arrest on March 26, 2019. (*Id.*) As a result, the government held both Deonte and Trevon responsible for selling 1.41 kilograms of methamphetamine. After concluding that Deonte was responsible for 1.41 kilograms of methamphetamine, the U.S. Probation Office calculated Deonte's base offense level to be 30 points under U.S.S.G. § 2D1.1(a)(5). (*Id.* at Page ID # 816.) Probation

calculated Deonte's advisory guideline range as 110 to 137 months' incarceration on Count 2 followed by a 60-month consecutive term for Count 3. (*Id.* at Page ID # 825.)

Deonte objected to being held accountable for methamphetamine sold throughout the duration of the entire conspiracy, including during that time that he was a minor. (Sentencing Memorandum, R. 154, Page ID ## 844-847.) After hearing both parties' arguments, the district court overruled Deonte's objection, and held him accountable for the methamphetamine sold throughout the duration of the conspiracy which included methamphetamine sold while Deonte was a juvenile. The district court sentenced Deonte to serve a term of 110 months' incarceration on Count 2 and 60 months' incarceration on Count 3 to be served consecutively, for a total of 170 months. (*Id.* at Page ID # 965.)

Deonte appealed his sentence to the United States Sixth Circuit Court of Appeals. He argued that the district court erred in considering his pre-eighteen conduct when calculating the total quantity of drugs for sentencing purposes. Had the district court not considered his pre-eighteen conduct, Deonte's Guideline range would have been substantially lower and would have resulted in a sentence far less severe than those of adults sentenced for the same crime. On September 6, 2022, the Sixth Circuit issued an opinion denying Deonte's appeal and affirming his sentence. (Appendix A.)

REASONS FOR GRANTING THIS PETITION

Deonte now seeks further review in this Court and offers the following reasons why a writ of certiorari is warranted.

I. The Court of Appeals Decided Important Questions of Federal Law That Have Not Been, but Should Be, Settled by this Court.

The United States Court of Appeals for the Sixth Circuit affirmed Deonte's sentence, in part, because U.S.S.G. §1B1.3 allows for sentencing courts to consider juvenile conduct when calculating a defendant's sentencing guidelines range. This Court has held that juveniles should be treated differently than their adult counterparts when being sentenced, specifically in the arena of sentences involving the death penalty and life without the possibility of parole. This Court, however, has not addressed the Eighth Amendment's prohibition on cruel and unusual punishment when the defendant is a juvenile for part of the time considered as relevant conduct for federal sentencing purposes. Because juveniles are different from adults, Deonte's juvenile conduct should not have been considered as relevant conduct. The Court considered Deonte's juvenile conduct the same as if it were committed by an adult and as a result his sentence was akin to that of an adult sentenced for the same conduct. As applied, the Guidelines in this case are unconstitutional since it creates a system where juveniles and adults receive the same punishment.

A. The Relevant Conduct Sentencing Guideline is Unconstitutional Under the Eighth Amendment as Applied.

Pursuant to the United States Sentencing Guidelines, the sentencing court must determine the quantity and type of controlled substance for which a defendant

should be held responsible before imposing a sentence. *Edwards v. United States*, 523 U.S. 511, 514 (1998). The Guidelines further instruct the court to base a defendant's sentence on his "relevant conduct." U.S.S.G. §1B1.3. Under the Guidelines, "relevant conduct" includes both conduct that constitutes the "offense of conviction," and conduct that is "part of the same course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. §§1B1.3(a)(1)-(a)(2). The Sixth Circuit has held that a district court can, in certain drug conspiracy cases, consider as relevant conduct the quantity of drugs sold prior to the defendant's eighteenth birthday. *See United States v. Hough*, 276 F.3d 884, 898 (6th Cir. 2002) (rejecting the defendant's argument that the district court should not be allowed, under § 1B1.3(a)(2), to consider the defendant's juvenile conduct for sentencing purposes). The effect of allowing a district court judge to consider pre-eighteen conduct, however, results in district courts sentencing young offenders, based on their juvenile conduct, to the same or similar sentence an adult would receive for the same offense conduct committed as an adult.

1. This Court and the states have identified juvenile and young offenders as different from adult offenders.

The overarching trend in state courts, and supported by this Court, is that youth matters. It matters for charging purposes, and it matters for sentencing purposes. Federal courts have been slow to make changes to how juveniles and young offenders are sentenced in the federal criminal system.

Beginning in the 1970s, states began enacting "tough on crime" policies to combat threats to public safety. Those "tough on crime" policies arbitrarily deprived some youth of the juvenile justice system's protections, viewing juveniles not as

children or delinquents but as fully matured adults and criminals. As a 2010 study from the University of California, Los Angeles School of Law's Juvenile Justice Project found, there was little to no deterrent effect on juveniles prosecuted in adult court, and in many states, recidivism rates among young offenders increased.[1]

Over time, states have slowly recognized the societal harm in prosecuting juveniles in the adult criminal justice system, and have enacted sentencing policies in favor of young criminal defendants. Further, many states have extended their safeguards to both juveniles and youthful offenders above the age of eighteen. For example, Michigan enacted the Holmes Youthful Trainee Act (HYTA), which provides that youthful offenders, like Deonte, between 17 and 26 years are eligible to keep a criminal offense, including most felonies, off their record. *See* Mich. Comp. Law § 762.11. Likewise, in 2020, Vermont became the first state to expand juvenile court jurisdiction to include 18-year-old offenders. *See* 33. V.S.A. § 5103. Also, several states, such as New York, introduced "raise the age" legislation, which increased the minimum age that a child can be prosecuted as an adult to 18 years old.[2] Some policy pundits have even opined that the minimum age for criminal court should fall somewhere between 21 and 24 years of age.[3]

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[1] UCLA School of Law Juvenile Justice Project, The Impact of Prosecuting Youth in the Adult Criminal Justice System, (July 2010) accessed at http://www.antoniocasella.eu/restorative/UCLA_july2010.pdf.
[2] NYCourts.Gov, Raise the Age (RTA), accessed at https://www.nycourts.gov/courthelp/Criminal/RTA.shtml.
[3] National Institute of Justice Office of Juvenile Justice and Delinquency Prevention, Young Offenders: What Happens and What Should Happen, (Feb 2014), accessed at https://www.ojp.gov/pdffiles1/nij/242653.pdf.

This Court has also consistently held that juveniles are constitutionally different from adults for sentencing purposes. *See Thompson v. Oklahoma*, 487 U.S. 815, 818-838 (1988) ("adolescents, particularly in the…teen years, are more vulnerable, more impulsive, and less self-disciplined than adults…[and] they deserve less punishment."); *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005) ("as any parent knows and as the scientific and sociological studies … tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young . . . [and] the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed); *Graham v. Florida*, 560 U.S. 48, 68 (2010) ("developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (holding that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments'"); *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016) (reaffirming the holding in *Miller*, and finding it retroactive); *Jones v. Mississippi*, 2021 U.S. LEXIS 2110, *5-6 (Apr. 22, 2021) (upholding the holding in *Miller*, but also finding that a sentencing court does not need to make a finding of "permanent incorrigibility."). From *Roper* to *Graham* to *Miller*, this Court broadened the scope of precedent establishing that juveniles should be treated

differently than adults for sentencing purposes, as the focus should be more on rehabilitation and less on punishment.

2. The Federal Juvenile Delinquency Act exists to protect juvenile offenders, but its application is unconstitutional as it pertains to juveniles engaged in conspiracies.

Although the Federal Juvenile Delinquency Act (FJDA) was established to encourage the state courts to prosecute juveniles in separate courts than adults, it does not address the treatment of youthful offenders: those who are technically adults but are still sentenced differently because of their youth. In its opinion denying Deonte's appeal, the Sixth Circuit wrote that "the [Federal Juvenile Delinquency Act] does not get Deonte's public policy argument to the finish line. Like the Supreme Court's recent holdings, the focus of the [Federal Juvenile Delinquency Act] is juvenile convictions, not adult sentencing." (App. 16.) The FJDA allows federal authorities to prosecute a person whose active participation in a conspiracy that bridges his eighteenth birthday. Thus, while a defendant might be charged as an adult, the FJDA allows the defendant's juvenile conduct to be considered in both the charging process and sentencing process. This portion of the FJDA is unconstitutional because it fails to consider the differences between juvenile conduct and adult conduct, which this Court has recognized in *Roper* and its progeny.

By enacting the FJDA, Congress recognized the distinctions between juvenile and adult prosecutions. In fact, the purpose behind enacting the Federal Juvenile

Delinquency Act (FJDA), was to keep "juveniles apart from adult criminals."[4] *See United States v. Chambers*, 944 F.2d 1253, 1257 (6th Cir. 1991) ("Congress enacted the FJDA in order to remove juveniles from the ordinary criminal justice system and to provide them with protections not available to adults accused of crimes."). The FJDA originally provided juveniles with the right not to be sentenced to a term beyond the age of 21.[5]

In 1974, Congress adopted changes to the FJDA, which sought "to provide basic procedural rights to juveniles who come under federal jurisdiction and to bring federal procedures up to standards set by various model acts, many state codes, and court decisions." S.Rep.No. 1011, 93d Cong., 2d Sess. 19 (1974). *See also, United States v. One Juvenile Male*, 40 F.3d 841, 844 (6th Cir. 1994) (*quoting United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990) (explaining that the purpose of the FJDA is "to 'remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation'"); *United States v. Juvenile Male*, 864 F.2d 641, 644 (9th Cir. 1988) (describing that Congress' clear intent in enacting the FJDA was "to help ensure that state and local authorities would deal with juvenile offenders wherever possible, keeping juveniles away from the less appropriate federal channels."). The FJDA recognizes that state juvenile courts are the appropriate venue for youthful offenders and proscribes

[4] The United States Department of Justice, Juvenile Delinquency Prosecution – Introduction, accessed at https://www.justice.gov/archives/jm/criminal-resource-manual-116-juvenile-delinquency-prosecution-introduction.
[5] *Id.*

federal criminal prosecution of an individual for acts committed under the age of 18, subject to various exceptions. *See* 18 U.S.C. §§ 5031, 5032.

Under the FJDA, a jury may only convict a defendant for conduct that occurred prior to a defendant's eighteenth birthday if it finds beyond a reasonable doubt that the conduct was part of a continuing criminal conspiracy, and that defendant ratified the conspiracy after his eighteenth birthday. This is unconstitutional under the Eighth Amendment since juvenile conduct should not be treated the same as adult conduct. *See United States v. Marshall*, 736 U.S. 492, 499 (6th Cir. 2013) (citing to Supreme Court precedent and explaining that eighteen is society's reference point to adulthood, and that conduct committed as a juvenile is likely due to the juvenile's diminished culpability).

Federal circuit courts are split as to whether or how juvenile conduct in conspiracy cases plays a role in trials. The Sixth Circuit, for example, does not permit evidence of juvenile conduct to show proof of guilt unless the government proves the juvenile ratified his involvement in a conspiracy after he turned eighteen. Thus, pre-eighteen conduct can be relevant to put post-eighteen conduct in context. *See United States v. Maddox*, 944 F.2d 1223, 1233 (6th Cir. 1991) ("the government must make a threshold demonstration that the defendant who joined a conspiracy prior to his eighteenth birthday 'ratified' his membership in that conspiracy after his eighteenth birthday. He cannot be held liable for pre-eighteen conduct, but such conduct can, of course, be relevant to put post-eighteen actions in proper context"); *United States v. Machen*, 576 Fed. Appx. 561, 566-567 (6th Cir. 2014) (finding plain error to fail to

instruct jury that it could not convict unless it first found that the defendant ratified drug conspiracy)*; United States v. Gjonaj*, 861 F.2d 143, 144 (6th Cir. 1988) (emphasis added) (the government charged the defendant with "committing overt acts in furtherance of the conspiracy *subsequent* to his eighteenth birthday"); *United States v. Odom*, 13 F.3d 949, 957 (6th Cir. 1994) (deciding that evidence of pre-eighteen conduct was admissible in trial, but finding that such conduct could not support criminal liability).

The First, Second, Ninth, Tenth, and Eleventh Circuits permit a jury to consider pre-eighteen conduct either as substantive proof of the crime, or, like the Sixth Circuit, to put post-majority conduct into context. *See United States v. Welch*, 15 F.3d 1202, 1211 (1st Cir. 1993) ("evidence of both pre- and post-bar date conduct is fully admissible" in "age-of-majority spanning conspiracies" for all purposes); *United States v. Wong*, 40 F.3d 1347, 1368 (2d Cir 1994) (finding that "an adult defendant may properly be held liable under RICO for predicate offenses committed as a juvenile"); *United States v. Camez*, 839 F.3d 871, 875-876 (9th Cir. 2016) (in a racketeering case, finding that defendant's pre-eighteen conduct was admissible as substantive evidence of guilt because "[n]othing in the [F]JDA or in any other statute suggests that Congress intended to create a loophole resulting in no rehabilitation or punishment whatsoever for persons who indisputably committed a serious continuing crime, merely because the crime happened to span the defendant's eighteenth birthday"); *United States v. Delatorre*, 157 F.3d 1205, 1210 (10th Cir. 1998) (stating that "any decision denying the admissibility of evidence of an adult defendant's pre-

eighteen conduct to prove his guilt for continuing crimes incorrectly suggests that the JDA changes the substantive standard of criminal liability for a racketeering enterprise or conspiracy spanning a defendant's eighteenth birthday"); *United States v. Cruz*, 805 F.2d 1464, 1475 (11th Cir. 1986) (holding that "once sufficient evidence has been introduced that would allow a jury to reasonably conclude that the defendant's participation in a conspiracy continued after his eighteenth birthday, then he may be tried as an adult. In his trial as an adult, only the strictures imposed by the Federal Rules of Evidence may limit the activities of the prosecutor."). The District of Columbia, however, has held that juries may only consider post-eighteen conduct as proof of guilt. *See United States v. Thomas*, 114 F.3d 228, 265-266 (D.C. Cir. 1997) (holding that the jury may only consider post-majority conduct as proof of guilt, and that pre-majority acts may be admitted, if at all, only under Federal Rule of Evidence 404(b) to help the jury understand post-majority acts.)

Although courts are split as to the issue of whether pre-eighteen conduct is admissible in trial, they generally agree that the FJDA permits them to provide adult punishment to juvenile conduct, once convicted as an adult. *See Thomas*, 114 F.3d 228 at 264 (explaining that the government must "prove that the defendant personally engaged in some affirmative act in furtherance of the conspiracy after turning eighteen before the court may attribute to him as relevant conduct drugs sold by co-conspirators before he reached age eighteen"); *United States v. Whittington*, 395 F. Supp. 2d 392, 393 (W.D. Va. Oct. 2005) (finding that "although a court has no power to hold a defendant criminally liable for acts committed prior to his attaining

majority, it may hold him accountable for those acts during the sentencing process"); *United States v. Jarrett*, 133 F.3d 519, 533 (7th Cir. 1998) ("[i]f a juvenile was involved in a criminal conspiracy, the Guidelines command a judge to look past the actual charges brought against the juvenile; the inquiry focuses solely on whether the conspiracy's distribution activities were reasonably foreseeable to the defendant.").

Unlike recently enacted state policies seeking to protect juvenile offenders from sentences akin to those of adult criminals, the statutory language of the FJDA has no such special protections, and is thus behind nationwide trends to protect juvenile and youthful offenders from excessive sentences. The FJDA allows juveniles to be charged as adults in some circumstances, but it does not specifically proscribe young offenders involved in conspiracies prior to the age of eighteen from having their pre-eighteen conduct considered for sentencing purposes; thus, sentences for young offenders are often the same as their adult counterparts.

On appeal to the Sixth Circuit, Gates asked that the Court reconsider its opinion in *United States v. Hough*, 276 F.3d 884, 898 (6th Cir. 2002). In *Hough*, the Sixth Circuit considered whether the defendant's pre-eighteen conduct that was committed during the duration of the conspiracy could be considered relevant conduct. *Hough*, 276 F.3d at 897-98. Hough was initially convicted of conspiracy to distribute crack cocaine, possession with intent to distribute, and using firearms in relation to drug trafficking. *Id.* at 888-89. On his first appeal, the Court reversed *Hough's* conspiracy conviction, and during a resentencing hearing, the government dismissed the defendant's conspiracy conviction. *Id.* at 897. The defendant then

argued that, because he was no longer convicted of conspiracy, "the district court was divested of subject matter jurisdiction to consider this activity in sentencing because it occurred prior to his eighteenth birthday." *Id.* In support of his argument, the defendant relied on the FJDA, and the Sixth Circuit's decision in *United States v. Chambers*, 944 F.2d 1253, 1258-1259 (6th Cir. 1991), which held that "[i]f juveniles generally commit no 'crimes' when performing [acts that would have been crimes had they been an adult,] the district court and government cannot rely upon the criminal statutes as a basis for the court's assumption of jurisdiction over the prosecution of juveniles." *Chambers*, 944 F.2d at 1258. Although the Sixth Circuit found the defendant's argument "creative," *Hough*, 276 F.3d at 897, it rejected the defendant's argument and found that U.S.S.G. § 1B1.3(a)(2) allowed the district court to consider the defendant's juvenile conduct for sentencing purposes. *Id.* at 898. *See also, United States v. Gibbs*, 182 F.3d 408, 442 (6th Cir. 1999) (concluding that the district court may "take into account quantities of crack cocaine [defendant] sold before he reached age eighteen as relevant conduct.").

The Sixth Circuit's holding in *Hough,* as well as the various circuits' findings that FJDA allows courts to consider pre-eighteen conduct as relevant conduct, is contrary to the policy behind the enactment of the FJDA. "In short, Congress 'recognized that the federal court system is at best ill equipped to meet the needs of juvenile offenders.'" *Chambers*, 944 F.2d at 1258 (*quoting United States v. Juvenile*, 599 F. Supp. 1126, 1130 (D. Ore. 1984)). By stripping the federal district courts of unrestricted subject matter jurisdiction over criminal prosecutions against juveniles,

Congress' intent that juvenile conduct should not be treated the same as adult conduct, including for sentencing purposes, became clear. However, the FJDA's application to individuals, such as Deonte, who were engaged in a conspiracy as a minor that continued into adulthood, is in contravention to this Court's ever-expanding position on the treatment afforded to juvenile conduct.

Further, the Sixth Circuit's holding in Hough and the language of the FJDA is contrary to the Guidelines themselves. The Guidelines do not apply to juveniles. *See United States v. M.R.M.*, 513 F.3d 866, 868 (8th Cir. 2008) (citing to *United States v. R.L.C.*, 503 U.S. 291, 307 n. 7 (1992) and U.S.S.G. § 1B1.12) (stating that "the sentencing guidelines, even in their advisory capacity, do not apply to juveniles"). Furthermore, 18 U.S.C. § 5037, the statute governing juvenile dispositions, does not incorporate the sentencing factors to be considered during adult sentences pursuant to 18 U.S.C. § 3553(a). To apply the relevant conduct Guideline to pre-eighteen conduct in conspiracies that continue past a defendant's eighteenth birthday is violative of the Guidelines themselves. Because the Guidelines are not applicable to juveniles, they should also be inapplicable to juvenile conduct.

II. The Sixth Circuit Court of Appeals Decided an Important Question of Federal Law in a Way that Conflicts with this Court's Holdings in *Blakely v. Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005).

By allowing the district court to consider Deonte's pre-eighteen conduct – the amount of methamphetamine sold prior to his eighteenth birthday – the district court effectively increased Deonte's sentence based upon its own factual findings, in violation of Deonte's Sixth Amendment rights, according to *Blakely v. Washington*,

542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005). The Sixth Circuit pre-*Blakely* and *Booker* held that juvenile conduct can be considered as relevant conduct in a case such as Deonte's. *See Hough*, 276 F.3d at 898. However, *Hough* is inconsistent with the later holdings in *Booker* and *Blakely*. Indeed, in *Blakely*, this Court explained that its "precedents make clear . . . that the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose solely *on the basis of the facts reflected in the jury verdict or admitted by the defendant*." *Blakely*, 542 U.S. at 303 (emphasis in original). Thus, allowing the district court to sentence Deonte based upon facts beyond those underlying the offenses of conviction goes to the heart of the fear that this Court expressed in *Blakely* regarding the application of the sentencing guidelines.

The purpose of *Blakely* and *Booker* was to ensure that criminal defendants are sentenced to statutory minimums only after a jury finds the statutory threshold beyond a reasonable doubt. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"); *Blakely v. Washington*, 542 U.S. 296, 305 (2004) (explaining that the judge could not have imposed the higher sentence based only on the facts admitted in the guilty plea, and holding that the defendant's Sixth Amendment right to a jury trial can be violated any time the court imposes a sentence greater than that called for in the guidelines, even when the sentenced imposed is below the maximum punishment permitted); *United States v. Booker*, 543 U.S. 220,

245-246, 260-265 (2005) (holding that the Federal Sentencing Guidelines are advisory, and requiring the federal sentencing courts to consider the guidelines range during sentencing, but allowing the sentencing courts to tailor sentences as deemed appropriate subject to appellate review for reasonableness). In *Booker*, the sentencing court's finding that the defendant had quantities of crack over and above the quantities the jury found was the primary reason that the court of appeals invalidated Booker's sentence after *Blakely*.

While evidence of juvenile conduct is probative of guilt for conduct that occurred as an adult, it is not the conduct for which a defendant should be punished unless found beyond a reasonable doubt by a jury. The same should be true for sentencing purposes. Juveniles should be punished for their juvenile behavior as juveniles, while adults should be punished as adults for adult behaviors. The FJDA recognized that the federal government is ill-equipped to deal with juveniles and that juveniles should not be punished as if they were adults. Policies regarding the treatment of juvenile and young offenders have substantially changed within the last fifteen years nationwide, so the application of *Blakely* and *Booker* in a case such as Deonte's must also shift to reflect and take into consideration leniency in sentencing youthful offenders.

Here, Deonte pleaded guilty to two individual acts – possession with intent to distribute and use of a firearm in furtherance of drug trafficking – that occurred after his eighteenth birthday, and the government dismissed the conspiracy charge that included acts that occurred while Deonte was 17 years old. (Presentence Investigation

Report, R. 150, Page ID # 805.) Had Deonte's case proceeded to trial, his juvenile conduct likely would have been admissible; however, such conduct could not have been used to support criminal liability. Indeed, if Deonte had not turned 18, or had ended his role in the drug conspiracy prior to turning 18, the government could not have charged Deonte. *See United States v. Maddox*, 944 F.2d 1223, 1233 (6th Cir. 1991) (explaining that, in order to be charged as an adult, a defendant charged in a conspiracy that begins prior to his eighteenth birthday must do something to ratify the involvement in the conspiracy after reaching 18 years old).

Deonte Gates should not be held responsible for conduct that was not – and could not – be proven at trial or that was admitted at the time of his plea. Doing so is contrary to this Court's holdings in *Blakely* and *Booker*. While the Sixth Circuit has held that drug quantity is not an element of a drug conspiracy that must be found by the jury, that holding applies to cases where the defendant challenging the quantity calculation is convicted of conspiracy. *See United States v. Robinson*, 547 F.3d 632, 638-639 (6th Cir. 2008) (denying defendant's challenge to being sentenced to mandatory minimum for participation in drug conspiracy, and finding that drug quantity focuses "on the threshold quantity involved in the entire conspiracy." Also, distinguishes "culpability for the conspiracy itself from culpability for the substance offenses of co-conspirators. Although a 'small-time' drug seller may not be responsible for all the transactions or actions of his associates, he is responsible for the conspiracy in which he participated"); *United States v. Gibson*, No. 15-6122, 2016 U.S. App. LEXIS 21141 (6th Cir. 2016) (upholding the defendant's sentence to the mandatory

ten-year minimum for his participation in a drug conspiracy that involved 50 grams or more of methamphetamine because "the relevant quantity determination is the quantity involved in the conspiracy, which [defendant] admitted was fifty grams or more of methamphetamine," which triggered the mandatory minimum "regardless of whether [defendant] could reasonably foresee the drug quantity.").

Here, Deonte was not convicted of conspiracy, so the quantity of methamphetamine for which he should be held accountable should be based on his individual actions and the crimes of which he was convicted. *See United States v. Swiney*, 203 F.3d 397, 405-406 (6th Cir. 2000) (finding that the district court erred in not applying the reasonable foreseeability analysis of U.S.S.G. §1B1.3(a)(1)(B)); *United States v. Pizarro*, 772 F.3d 284, 292-294 (1st Cir. 2014) (for a possession conviction, "a crime that by its nature only assesses the conduct of an individual, rather than the conduct of co-conspirators, the jury must find that the defendant (1) knowingly or intentionally possessed with intent to distribute" (2) the quantity of drugs specified in the statute); *United States v. Foster*, 507 F.3d 233, 250-251 (4th Cir. 2007) ("the jury must determine that the threshold drug amount was reasonably foreseeable to the individual defendant."). Deonte Gates was a 17-year-old kid who turned 18 at the tail end of a drug conspiracy involving his older brother. He pleaded guilty to one substantive act of drug trafficking that he committed after he turned 18. He should not be punished as an adult participating in a months-long adult conspiracy that largely occurred prior to his eighteenth birthday.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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Respectfully submitted,

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