No. _____

In the Supreme Court of the United States

STATE OF MICHIGAN, PETITIONER
v.

SIDNEY EDWARDS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth Amendment requires a state to impanel a jury to find facts relating to a determination of parole eligibility.

PARTIES TO THE PROCEEDING

The petitioner is the State of Michigan, which was the appellee in the Michigan Supreme Court. The respondent is Sydney Edwards, who was the appellant in the Michigan Supreme Court.

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The order of the Michigan Supreme Court requiring remand (App. 1a) is reported at 870 N.W.2d 721. The opinion of the Michigan Court of Appeals (App. 123a) is not reported, but is available at 2014 WL 7157616.

JURISDICTION

The Michigan Supreme Court entered its order requiring a remand on October 28, 2015. App. 1a. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), because "the validity of a statute of [a] State is drawn into question on the ground of its being repugnant to the Constitution . . . of the United States[.]"

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides in part:

> In 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; . . . .

Mich. Comp. Laws § 769.34 provides in part:

> (2) Except as otherwise provided . . . the minimum sentence imposed by a court of this state for a felony . . . shall be within the appropriate sentence range under the version of those sentencing guidelines in effect on the date the crime was committed. . . .

(3) A court may depart from the appropriate sentence range under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.

Mich. Comp. Laws § 791.234 provides in part:

(1) Except as provided in [Mich. Comp. Laws § 791.234a], a prisoner sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years . . . is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted, less good time and disciplinary credits, if applicable.

INTRODUCTION

The Sixth Amendment provides a criminal defendant with the right to have a jury determine, beyond a reasonable doubt, any fact that increases his *sentence*—that is, the amount of time he must serve before he will have a legal right to be released. This principle applies to facts that increase a defendant's maximum possible sentence, *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), or his minimum possible sentence, *Alleyne* v. *United* States, 133 S. Ct. 2151 (2013).

But this Court has never required that a jury determine facts relating to the *parole eligibility date* of an indeterminate sentence. Quite unlike a sentence, a parole eligibility date is not a right to be released—indeed, it is not a *right* at all, but rather a date on which the government may exercise *grace* by releasing the convicted defendant before he has a right to be released. As this Court explained in *Blakely* v. *Washington*, "[i]ndeterminate sentencing does not" "infringe[] on the province of the jury" for a simple reason: "the facts do not pertain to whether the defendant has a legal *right* to a lesser sentence—and that makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned." 542 U.S. 296, 308–09 (2004).

Here, the Michigan Supreme Court departed sharply from this Court's precedents and in so doing struck down an important state statute based on its misunderstanding of the Sixth Amendment. This Court should grant certiorari here and reverse to vindicate the state democratic process and its efforts promote an equitable and uniform parole process.

STATEMENT OF THE CASE

A. Indeterminate sentencing

Michigan's statutory regime for sentencing is an indeterminate sentencing system. Indeterminate sentencing means that the defendant receives a fixed maximum sentence but may be released early, before completing the sentence, on parole. BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "indeterminate sentence" as "1. A sentence of an unspecified duration, such as one for jail time of 10 to 20 years. 2. A maximum jail term that the parole board can reduce, through statutory authorization, after the inmate has served the minimum time required by law."). In contrast, a determinate sentencing system is a "jail term of a specified duration." BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "determinate sentence").

The terms "maximum sentence" and "minimum sentence" have different meanings in these different sentencing systems. For example, consider a sentence of 10 to 20 years. In an indeterminate system like Michigan's, that range means a prisoner will not have a right to be released until he has served a fixed term of 20 years (his "maximum sentence"), but he will be eligible for parole consideration after 10 years (his "minimum sentence"). In contrast, a determinate sentence of 10 to 20 years means that a judge will select a fixed term somewhere within that range; if the judge selects a 12-year sentence, then the prisoner is entitled to be released after 12 years; both the 10-year minimum possible sentence and the 20-year maximum possible sentence fall away, and the prisoner has an actual sentence of 12 years.

For an indeterminate sentence, then, the maximum sentence *is* the actual sentence, and the minimum sentence is the parole eligibility date, while for a determinate sentence, the maximum and minimum sentences are simply the outer bounds of the actual fixed term the judge will impose.

B. Edwards' crime and punishment

The facts of the underlying crime are not important to the legal question presented and so are only briefly recited here.

Sidney Edwards, along with Kris Ayotte and Sarah Burnett, cooperated to obtain materials needed to make methamphetamine. App. 123–24a. The police investigation led to Ayotte's garage. *Id.* at 124a. When the police arrived, they found Ayotte manufacturing meth. *Id.* All three were charged with controlled-substance offenses; Burnett pled guilty and testified against Edwards. *Id.* A jury convicted Edwards of one count of conspiracy to manufacture methamphetamines, Mich. Comp. Laws §§ 333.7401(2)(b)(1) & 750.157a, and of four counts of operating a meth lab, § 333.7401c(2)(f).

The trial court scored Edwards' guidelines to determine his parole eligibility date. It assigned 10 points under offense variable (OV) 12, based on a finding that "three or more contemporaneous felonious criminal acts involving other crimes were committed," Mich. Comp. Laws § 777.42(1)(c), and it assigned 5 points under OV 15, based on a finding that property damaged "had a value of $1,000.00 or more but not more than $20,000.00," § 777.46(1)(c).

This led to a guidelines range of 78 to 130 months for Edwards' parole eligibility date. The maximum sentence was set by statute at 40 years. §§ 333.7401c(2)(f) (setting a 20-year maximum) & 333.7413(2) (doubling the maximum sentence for a repeat controlled-substance offense). Edwards was sentenced to 40 years for each conviction, all running concurrently, with parole eligibility after 7 years.

Just before Edwards was sentenced, this Court decided *Alleyne* v. *United States*, 133 S. Ct. 2151 (2013), which extended the rule of *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), to cover mandatory minimum sentences. Edwards did not raise any argument at sentencing based on *Alleyne*.

On appeal, however, Edwards, like many other Michigan defendants at the time, claimed that *Apprendi* and *Alleyne* rendered Michigan's statutory guidelines scheme unconstitutional. The Michigan Court of Appeals rejected Edwards' claim as it did all such claims.

The instant case and scores of other cases raising this question were brought to the Michigan Supreme Court. That Court granted leave to appeal in *Lockridge*, 846 N.W.2d 925 (Mich. 2014), and held many of the rest in abeyance, e.g., *People* v. *Herron*, 846 N.W.2d 924 (Mich. 2014).

On July 29, 2015, the Michigan Supreme Court struck down the mandatory guidelines as unconstitutional. *People* v. *Lockridge*, 870 N.W.2d 502 (Mich. 2015). The Court's remedy was similar to the remedy this Court imposed in *United States* v. *Booker*, 543 U.S. 220 (2005): the guidelines would henceforth be

advisory only. The Court concluded that Lockridge himself had suffered no Sixth Amendment violation, and denied him any relief. *Id.* at 521–22.

The local prosecutor filed, for the people of Michigan, a petition for certiorari in this Court in *Lockridge*, No. 15-416. In opposition, Lockridge pointed out only that he had received no relief and that Michigan was the prevailing party in the Michigan Supreme Court. This Court denied the petition. *Michigan* v. *Lockridge*, 136 S. Ct. 590 (2015).

While the *Lockridge* petition was pending in this Court, the Michigan Supreme Court issued more than one hundred orders in various cases, including this case, remanding for an inquiry "to determine whether [the trial court] would have imposed a materially different sentence under the sentencing procedure described in [*Lockridge*]." App. 2a.

REASONS FOR GRANTING THE PETITION

I. The Michigan Supreme Court's decision is contrary to *Blakely*, where this Court recognized that indeterminate sentencing does not infringe on the role of the jury.

As this Court explained in *Blakely*, "the Sixth Amendment by its terms is not a limitation on judicial power, but *a reservation of jury power*." 542 U.S. at 308 (emphasis added). This Court further explained that indeterminate sentencing regimes do not implicate the jury's factfinding role: "[The Sixth Amendment] limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury. Indeterminate sentencing does not do so." *Id.* at

308–09. While indeterminate sentencing "increases judicial discretion," it does not do so "at the expense of the jury's traditional function of finding the facts essential to lawful imposition of the penalty." *Id.* at 309. "Of course indeterminate schemes involve judicial factfinding, in that a judge (like a parole board) may implicitly rule on those facts he deems important to the exercise of his sentencing discretion." *Id.* "But"—here is the critical reasoning—"the facts do not pertain to whether the defendant has a legal *right* to a lesser sentence." *Id.* As this Court concluded, "*that makes all the difference* insofar as judicial impingement upon the traditional role of the jury is concerned." *Id.* (emphasis added). Indeed, the *Blakely* majority recognized that a State could eliminate "*Apprendi* infirmities" by "reestablishing indeterminate sentencing." *Id.*; accord *id.* at 332 (O'Connor, J., dissenting) ("A second option for legislators [after *Blakely*] is to return to a system of indeterminate sentencing.").

The Michigan Supreme Court failed to acknowledge this critical difference between Michigan's indeterminate sentencing regime and the determinate sentencing regimes at issue in *Apprendi* and its progeny, up to and including *Alleyne*. The lower court, citing Justice O'Connor's dissent in *Blakely*, argued that Michigan's system was a *determinate* system (not indeterminate) because it placed "mandatory constraints on a court's discretion when sentencing a defendant within a range of possible sentences." App. 23a. But a parole eligibility date is not a sentence in the first place, and in any event, the *Blakely* majority explained that judicial discretion is not the issue:

"[t]he Sixth Amendment by its terms is not a limitation on judicial power, but a reservation of jury power." 542 U.S. at 308. For these reasons, Michigan has an indeterminate system as that term is properly defined.

Facts relating to parole eligibility do not pertain to "a legal *right* to a lesser sentence," *id.*, but rather to an opportunity for legislative grace. Rather than recognizing that this distinction "makes all the difference" under the Sixth Amendment, the Michigan Supreme Court ignored the difference.

II. The Michigan Supreme Court failed to grasp the differences between determinate and indeterminate sentencing.

Like most states, Michigan offers many of its prisoners the opportunity to be released on parole before they have completed their sentences and become entitled to release. This approach to sentencing arguably promotes rehabilitation more than determinate sentencing, because it leaves room for the government to release a prisoner if it is persuaded that he may be safely released early to become a contributing member of society. E.g., *Greenholtz* v. *Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 8 & n.3 (1979) (identifying "rehabilitation" as one of the "traditional justifications advanced to support the adoption of a system of parole"); *Graham* v. *Florida*, 560 U.S. 48, 73, as modified (July 6, 2010) (explaining that "rehabilitation [is] a penological goal that forms the basis of parole systems").

The decision when and whether to grant parole is in the discretion of the parole board (not the judge or

jury). Unlike most states, though, Michigan requires its sentencing judges, rather than simply the parole board, to determine when a prisoner becomes eligible for parole.

For most felony convictions, a Michigan judge will impose a sentence composed of two numbers, known as the "minimum sentence" and the "maximum sentence." It was confusion over these terms that led the Michigan Supreme Court to err.

A. The "minimum sentence" at issue in this case is different from the "minimum sentence" at issue in *Alleyne*.

The main source of the *Lockridge* majority's error was confusion over the different meanings of the term "minimum sentence" in the respective sentencing systems—much like the confusion that might result if a U.S. football fan began talking with a European football fan (i.e., a soccer fan). In the sentences at issue in this Court's cases—in *Harris* v. *United States*, 536 U.S. 545 (2002), in *Apprendi*, and in *Alleyne*—this Court addressed *determinate* sentencing systems, where a judge does not impose a minimum or a maximum sentence. Instead, a judge imposes a sentence that consists of one number. The "minimum sentence" discussed in *Harris* and *Alleyne* is the lowest number of the range from which the judge is authorized to select a sentence, and it matters because, if imposed, it is the *actual* sentence the defendant must serve.

In Michigan, though, the term "minimum sentence" refers to something entirely different. It is not a possible number of years that could pass before the

prisoner had a right to be released; instead, it is a parole eligibility date. Rather than leaving parole eligibility dates to be determined by a parole board or to be set by statute, the sentencing-guidelines legislation requires judges to score a number of "offense variables" (using facts about the crime) and "prior record variables" (using facts about the offender's prior record) and to use these scores to determine an appropriate sentencing range. The judge may depart upward or downward from the sentencing guidelines, but only for "substantial and compelling" reasons stated on the record. Mich. Comp. Laws § 769.34(3).

Thus, the *Lockridge* majority was correct in *some* sense, when it said, "*Alleyne* now prohibits increasing the *minimum* as well as the maximum sentence . . . ," 870 N.W.2d at 512, when it referred to "*Alleyne*'s extension of the *Apprendi* rule to minimum sentences," *id.* at 513, and when it said, "In *Alleyne* the United States Supreme Court overruled *Harris* and held for the first time that the *Apprendi* rule applied with equal force to minimum sentences," *id.* True, those cases did use those words. But it was not correct in the sense that matters. *Alleyne* extended *Apprendi*—and the Sixth Amendment—to minimum sentences in the sense of the "floor" of a sentencing range because that floor is an *actual* sentence—a period of time after which the prisoner is entitled to release. But it did not extend *Apprendi* or the Sixth Amendment to parole eligibility dates, which is what minimum sentences are under Michigan sentencing law.

In Michigan, a "minimum sentence" is nothing more or less than a determination of when a defendant will become eligible to be considered by the parole

board for release on parole. And Michigan is not required, under the federal Constitution, to provide *any* opportunity for parole. *Greenholtz*, 442 U.S. at 7 ("There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.").

Further, there is no right to a jury determination on parole eligibility at all; it is often controlled by statute, such that a prisoner must serve a certain percentage of his sentence before becoming eligible. E.g., *Carroll* v. *Hobbs*, 442 S.W.3d 834, 836 (Ark. 2014) (statute required prisoner "to serve at least seventy percent of his sentence before being eligible for parole").

Nor is Michigan required to leave the determination of when a prisoner becomes parole eligible to a jury, as opposed to a judge or a parole board or a department of corrections. In other words, a state could adopt a system where parole eligibility was determined solely by prison officials without offending the Sixth Amendment, which confirms that parole eligibility is not even a jury question. And the jury verdict alone in this case, combined with Edwards' prior controlled-substance conviction, authorized a sentence up to 40 years in prison. It is only by legislative grace, through a process that need not involve a jury at all, that Edwards now has the potential to serve only seven years, rather than the full 40-year sentence authorized by the jury verdict.

B. *Alleyne* broke no new ground on the question whether Michigan minimum sentences are subject to *Apprendi*.

In light of the distinction between the two uses of the term "minimum sentence," Michigan Supreme Court erred when it held that *Alleyne* extended *Apprendi* to cover Michigan minimum sentences.

After *Apprendi*, and especially after *Blakely*, defendants brought several cases challenging the constitutionality of Michigan's sentencing guidelines. At the time of these challenges, *Harris*, which held that an increase to a minimum sentence based on a judicial finding of fact did not violate the Sixth Amendment, 536 U.S. at 568, was still good law. Accordingly, there would be no basis to claim that raising the floor of a guidelines range based on judge-found facts would present any Sixth Amendment issue. But a guidelines range has a ceiling as well as a floor, and that ceiling could be subject to attack based on *Apprendi*.

But the Michigan Supreme Court rejected such challenges four times, in *People* v. *Claypool*, 684 N.W.2d 278, 286 n.14 (Mich. 2004), in *People* v. *Drohan*, 715 N.W.2d 778 (Mich. 2006), in *People* v. *Harper*, 739 N.W.2d 523 (Mich. 2007), and in *People* v. *McCuller*, 739 N.W.2d 563 (Mich. 2007). In other words, the Michigan Supreme Court previously recognized that indeterminate-sentencing regimes do not infringe on the Sixth Amendment because they do not displace jury factfinding. E.g., *Claypool*, 684 N.W.2d at 286 n.14; see generally *Drohan*, 715 N.W.2d 778.

As noted, the new ground broken by *Alleyne* was not that it extended *Apprendi* from definite prison

terms to early-release dates. The new ground was that it extended *Apprendi* from ceilings of determinate-sentence ranges to floors of determinate-sentence ranges. In the face of repeated holdings that *Apprendi* does not apply to a Michigan minimum sentence range at all—floor *or* ceiling—the Michigan Supreme Court erred in holding that *Alleyne* had any impact on the question.

C. The *Lockridge* decision is a significant break from precedent.

In every case in the *Apprendi* line in which this Court has struck down a sentence based on a Sixth Amendment violation, the sentence has either been a term-of-years sentence at the end of which the defendant has a right to release (*Apprendi*, *Blakely*, *United States* v. *Booker*, 543 U.S. 220 (2005), *Alleyne*), a life sentence (*Cunningham* v. *California*, 549 U.S. 270 (2007)), or a death sentence (*Ring* v. *Arizona*, 536 U.S. 584 (2002), *Hurst* v. *Florida*, __ S. Ct. __ (2016)).

In contrast, when this Court has considered decisions affecting whether and when a prisoner might be released without serving his full sentence, it has never held that there is a right to have facts found by a jury.

For example, in *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), this Court examined Nebraska's system of good-time credits—credit awarded to prisoners who behave themselves in prison, which ultimately reduces the time spent in prison below the sentence imposed. E.g., Neb Rev Stat § 83-1,107(2). When a state revokes those credits based on sufficiently serious misconduct, it increases the amount of time until the prisoner's release. This Court held that the revocation

of statutorily guaranteed good-time credits deprives a prisoner of a liberty interest, and thus implicates the Due Process Clause. 418 U.S. at 556–57. But this Court also held that a state may revoke good-time credits without impaneling a jury. *Id.* at 570–71 (upholding Nebraska's procedure of allowing an "Adjustment Committee" to determine the revocation of good-time credits). And even though the Court specifically mentioned the Sixth Amendment in the opinion, *id.* at 575–76, it did not given any indication that this early-release mechanism implicated the right to a jury trial and deprived a prisoner of that process specifically required by the Constitution.

The *Lockridge* majority gave *Wolff* short shrift, dismissing it as merely "involv[ing] a criminal defendant's rights in parole proceedings." 870 N.W.2d at 517 n. 23. But *Wolff* did not involve a criminal defendant's rights in parole proceedings. It involved a permutation of the very question at issue in *Lockridge* and here. The revocation of good-time credits in *Wolff* and the increase of a guidelines range here have the same effect: they increase the amount of time a prisoner must serve before being released *early*.

Morrissey v. *Brewer*, on the other hand, did involve a criminal defendant's rights in parole proceedings. 408 U.S. 471 (1972). Significantly, *Morrissey* held that no jury is required in parole revocations, but that factual findings can be made by a "traditional parole board" without violating due process. *Id.* at 489. Again this Court mentioned the Sixth Amendment in the opinion without concluding that this factfinding by someone other than the jury violated the Amendment. Because a revocation of parole increases the

portion of a sentence that is served in prison, the fact that no jury is required is relevant here. And as noted earlier, "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz*, 442 U.S. at 7.

By injecting a jury-trial right into an early-release question, the Michigan Supreme Court did something remarkable in Sixth Amendment jurisprudence. Whether this was error, as the State contends, or not, this extraordinary expansion of a fundamental federal constitutional right deserves this Court's close examination.

III. Review is also warranted because the lower court struck down an important state statute based on federal law.

Michigan's sentencing regime is an important state law, governing every criminal sentence Michigan imposes. A court has now struck that statutory regime down, based on its misinterpretation of federal law. Just as this Court routinely reviews decisions by lower courts when they strike down *federal* statutes based on federal law, States also deserve this Court's careful review when lower courts strike down *state* statutes based on federal law. (Indeed, until 1988, Congress required this Court to review decisions by federal courts of appeal that struck down state statutes. Compare 28 U.S.C. § 1254(2) (1982 ed.) (providing that review in such instances was "[b]y appeal"), with 28 U.S.C. § 1254(2) (1988 ed.). While this Court's review of such decisions is discretionary, that discre-

tion should be exercised to recognize that democratically enacted laws at the state level deserve just as much respect as those at the federal level.

Further, decisions like this, if left uncorrected, will affect other States with indeterminate sentencing regimes and will discourage other States from adopting a system like Michigan's. Rather than leaving States free to establish different penological goals (such as promoting rehabilitation through the parole process, and promoting uniform treatment through mandatory guidelines concerning parole-eligibility dates) as this Court contemplated in *Blakely*, the reasoning of the Michigan Supreme Court will eliminate this valid and constitutional sentencing regime and in so doing improperly deprive the people of their authority to govern themselves in this area.

IV. Unlike *Michigan* v. *Lockridge*, this case presents a case and controversy.

Recently, the State of Michigan filed a petition for certiorari directly attacking the Michigan Supreme Court's *Lockridge* decision. In response, Lockridge did not argue that the *Lockridge* decision was correctly decided, nor did he argue that the question was not significant enough to merit a place on this Court's docket. His only argument was that the State was the prevailing party in the Michigan Supreme Court. This Court denied certiorari.

No such vehicle problem appears here. Edwards has been granted relief by the Michigan Supreme Court, in the form of a remand to trial court. The remand order refers to the mandatory guidelines as an

"unconstitutional constraint on [the trial court's] discretion." App. 2a. The State objects to the relief granted to Edwards, and disagrees that there was any unconstitutional constraint on the trial court.

CONCLUSION

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

Respectfully submitted,

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