

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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**TYRON YOUNG,**  
**Petitioner,**  
**v.**

**UNITED STATES,**  
**Respondent.**

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**On Petition for a Writ of Certiorari**  
**To the United States Court of Appeals for the Eighth Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

I. Whether the Sixth Amendment right to confront and cross-examine adverse witnesses applies at a sentencing hearing where the court bases the sentence on the unsworn, out-of-court allegations of a government informant.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Tyron Young respectfully requests this Court to issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on April 26, 2018.

### **OPINION BELOW**

The Eighth Circuit's judgment affirming Mr. Young's conviction and sentence in *United States v. Young*, 720 F.3d 803 (8th Cir. 2018) (unpublished), and is included in Appendix A.

### **JURISDICTION**

On April 26, 2018, the Court of Appeals affirmed Mr. Young's appeal from his conviction and sentence. In accordance with Supreme Court Rule 13.3, this Petition for Writ of Certiorari is filed within ninety days of the date on which the Court of Appeals entered its final order. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254, 28 U.S.C. § 2253 and Sup. Ct. R. 13.3 and 13.5.

### **CONSTITUTIONAL PROVISION INVOKED**

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. U.S. Constitutional Amendment VI.

## **STATEMENT OF THE CASE**

### District Court Proceedings

Mr. Young was indicted for being a felon in possession of a firearm. Mr. Young pled guilty. A presentence investigation report applied a guideline cross-reference based on the statement of a confidential informant that Mr. Young had used the firearm in an attempted murder, which produced a guideline range above the ten-year statutory maximum term.

At sentencing Mr. Young objected to the court's reliance on the statement as a violation of his right of his Sixth Amendment right to confront adverse witnesses, and as unreliable hearsay that lacked indicia of reliability. The district court overruled the objection, and relied on the statement to sentence Mr. Young to 115 months of imprisonment.

### Appeal to the Eighth Circuit

On appeal before the Eighth Circuit, the court affirmed the district court's admission of the statement based on *United States v. Wise*, 976 F.2d 393 (8 th Cir. 1992) (en banc). The court in *Wise* held that "the Guidelines' standard for consideration of hearsay testimony at sentencing meets the appropriate constitutional test and fulfills the Confrontation Clause's basic purpose of promoting the integrity of the fact finding process."

## **REASONS FOR GRANTING THE WRIT**

The judgment of the Eighth Circuit Court of Appeals, as well as other Courts

of Appeal, have decided an important question of federal law in a way that should be rectified by this Court. Specifically, this Court should hold that the right to confront and cross-examine adverse witnesses applies to the sentencing hearing of criminal proceedings.

The text of the Sixth Amendment begins: “In all criminal prosecutions, the accused shall enjoy . . . .” U.S. CONST., amend VI. Generally, this prefatory language has been interpreted to include sentencing proceedings. *See Mempa v. Rhay*, 389 U.S. 128, 134 (1967) (right to counsel applies at sentencing); *United States v. Booker*, 543 U.S. 220, 231 (2005) (right to jury trial applies at sentencing); *United States v. Thompson*, 713 F.3d 388, 393-94 (8th Cir. 2013) (Sixth Amendment right to public trial extends to sentencing).

Historically sentencing has been deemed a part of a “criminal prosecution.” At the time the Sixth Amendment was adopted, a trial encompassed both a determination of guilt and the sentence that resulted by law from that determination. White, P., “He Said,” “She Said,” and Issues of Life and Death: The Right to Confrontation at Capital Sentencing Proceedings, 19 Regent U. L. Rev. 387, 396-97 (2007). In 1828, “Webster’s An American Dictionary of the English Language defined ‘prosecution’ as the ‘institution or commencement and continuance of a criminal suit; the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment.’” *Id.* at 396 (emphasis added).

The plain text of the Sixth Amendment compels the conclusion that Mr.

Young had the right to confront and cross-examine his accusers at sentencing. The district court should not have applied the cross-reference without requiring the government to produce the informant in court to provide Mr. Young with an opportunity for cross-examination. The “minimum requirements of due process” include “the right to confront and cross-examine adverse witnesses” absent a finding of good cause. *See Morrissey v. Brewer*, 408 U.S. 471, 488-89 (1972)).

#### **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, Mr. Young respectfully requests that this Court grant his petition for certiorari.

Respectfully submitted,

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#### **APPENDIX**

Appendix A - Judgment of the Eighth Circuit Court of Appeals