No. _____

In the

Supreme Court of the United States

LILRON RAVON JONES, Petitioner,

v.

STATE OF CALIFORNIA, Respondent.

On Petition for Writ of Certiorari to the California Court of Appeal,
First Appellate District, Division Two

Petition for Writ of Certiorari

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Question Presented

In *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), this Court held that "[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." This case concerns the application of *Apprendi* to non-jury juvenile adjudications.

California courts here have held that petitioner's juvenile adjudication fell within *Apprendi's* prior conviction exception and hence could be used to enhance his sentence for a subsequent criminal conviction without being proved to a jury. That decision implicates an important and recurring constitutional question, which has split federal and state courts of appeal.

The importance of resolution of this conflict is particularly great in light of this Court's decisions in in *Descamps* and *Mathis*. Under those cases, a fact cannot be used to enhance a sentence unless *it is found true by a jury* (as an element of the prior charge). This narrowed the reading of the prior conviction exception to *Apprendi* and underscored that the right to a jury trial is an *indispensable* procedural protection,

without which the prior cannot be used for enhancement purposes. *Descamps* and *Mathis* counsel in favor of not allowing the use of prior juvenile adjudications to enhance a current adult sentence if the right to a jury trial was not available in the prior juvenile adjudication proceeding.

And the question presented is whether it is constitutionally permissible to use a prior juvenile adjudication to enhance a sentence regardless of whether the juvenile had a right to a jury trial in that prior proceeding?

Parties to the Proceeding

Petitioner is Lilron Ravon Jones.

Respondent is the State of California.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Lilron Ramon Jones respectfully petitions this Court for a writ of certiorari to review the judgment of the California Court of Appeal, First Appellate District, Division Two, which affirmed his first-degree murder conviction (though vacated his sentence).

Opinions Below

An unpublished opinion of the California Court of Appeal was filed November 30, 2018. A copy of the opinion can be found at Cert App-001, as well as at *People v. Bhushan*, et al, 2018 WL 6261489.

Jurisdiction

The California Supreme Court denied petitioner's petition for discretionary review on March 13, 2019. (Cert App-021). Jurisdiction of this Court is thus timely invoked under 28 U.S.C. § 1254 (1). *Hohn v. United States*, 524 U.S. 236 (1998).

Constitutional and Statutory Provisions

The Sixth Amendment to United States Constitution provides:

> 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, 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.
>
> California Penal Code § 667 is also involved in this case.

Because the text of this statute is too large to describe here, it is presented in the appendix. Sup. Ct Rule 14(f); Cert App-022.

Statement of the Case

A California jury convicted petitioner of first-degree murder he committed when he was a juvenile. The trial court sentenced petitioner to an indeterminate term of 114 years to life in prison. (Cert App-003).

On appeal, which challenged both the murder conviction and the sentence, petitioner argued that the trial court violated his Sixth and Fourteenth Amendment rights by enhancing his sentence under the Three Strikes Law based on a juvenile adjudication for second-degree robbery. Petitioner recognized that the California Supreme Court has rejected this argument in *People v. Nguyen*, 46 Cal.4th 1007 (Cal. 2009). But petitioner argued that *Nguyen* has been implicitly overruled by this Court's decisions in *Descamps v. U.S.* (2013) 570 U.S. 254 and *Mathis v. U.S.* (2016) 136 S. Ct. 2243.

The Court of Appeal rejected petitioner's constitutional argument, declaring itself bound by *Nguyen*, and noting that *Descamps* and *Gallardo* did not involve a juvenile adjudication. Cert App-012; *Bhushan*, 2018 WL 6261489, * 17 & fn. 23.

Jones petitioned for discretionary review, raising the same issue, but that court summarily denied the petition.

Reasons for Granting the Petition

This Court should grant the petition because federal and state courts are divided on the issue of nationwide importance. The need to resolve this conflict is acute, given this Court's holdings in *Descamps* and *Mathis*. As noted earlier, those decisions narrowed the prior conviction exception to *Apprendi* and reinforced the continuing importance of a jury trial right in the prior proceeding to allow the use of the prior for enhancement purposes.

And this case is a great vehicle to resolve the conflict because the issue is presented without procedural obstacles.

A. There Is a Deepening and Intractable Three-Way Split Among Federal and State Courts Over the Use of Prior Non-jury Juvenile Adjudications In Extended Sentencing.

Many courts—six circuits and six states—hold that prior non-jury juvenile adjudications are convictions for the purposes of *Apprendi*. These courts interpret *Apprendi* as being mainly concerned with reliability, as opposed to the right to a jury trial. Thus, as long as there were constitutionally sufficient safeguards in the juvenile proceedings, the outcome of those proceedings has "more than sufficient [safeguards] to

ensure the reliability that *Apprendi* requires." See, e.g., *United States v. Smalley*, 294 F.3d 1030, 1033 (8th Cir. 2002).

California courts here have adopted this view. But it conflicts with the Ninth Circuit and those of supreme courts in Louisiana, Ohio, and Oregon. These courts reject the reliability-based reading of *Apprendi*. Instead, these courts interpret *Apprendi* as mainly being concerned with the jury's role as a structural protection against the tyranny of the state. The Ninth Circuit, Ohio, and Louisiana never allow prior juvenile adjudications to be used for enhancement purposes. And Oregon allows the use of juvenile adjudications as prior convictions under *Apprendi* only if the defendant admits it or it is proven to a jury beyond reasonable doubt.

1. The view of the Ninth Circuit and the Supreme Courts in Ohio, Oregon, and Louisiana

a. The Ninth Circuit:

The Ninth Circuit was the first circuit court to address whether juvenile adjudications qualified as prior convictions under *Apprendi*. In *United States v. Tighe*, 266 F.3d 1187 (9th Cir. 2001), the defendant pled guilty to, among other things, being a felon in possession of a firearm in

violation of 18 U.S.C. § 922(g)(1); that statute carries a maximum sentence of 10 years, without previous convictions for violent felonies, see id. § 924(a)(2). *Tighe*, 266 F.3d at 1190. The district court relied on the defendant's prior juvenile judication to increase his sentence above the 10-year maximum. *Id.* at 1191.

The Ninth Circuit held that use of the prior juvenile adjudication to enhance a sentence violates the Sixth and the Fourteenth Amendments. *Tighe* reasoned that the right to a jury trial has been of the three fundamental protections intended to guarantee the reliability of a prior criminal conviction. *Tighe*, 266 F.3d at 1193. *Tighe* reasoned also that the validity of the prior conviction exception to *Apprendi* was based on the prior convictions being obtained in a proceeding that gives the accused the right to a jury trial. *Id.* at 1194. The prior conviction exception thus does not apply to juvenile adjudications, to which a jury trial right does not attach. *Id.*

b. Supreme Courts in Ohio and Louisiana

While acknowledging the split of authority among the circuits and states, both Ohio and Louisiana hold—in line with *Tighe*— that non-jury juvenile adjudications may not be used to enhance later adult sentences.

State v. Hand, 149 Ohio St.3d 94 (2016); *State v. Brown*, 879 So.2d 1276 (La. 2004).

In *Brown*, the Louisiana Supreme Court held that the use of a non-jury juvenile adjudication to increase a penalty beyond the statutory maximum violated the defendant's due process rights guaranteed by the Fourteenth Amendment. *Id.* at 1290. The court explicitly rejected the majority's reliability-based rationale and instead focused on the important structural differences between the juvenile and adult criminal systems. Id. *Brown* reasoned also that using juvenile adjudications to enhance a sentence in an adult criminal case is illogical and unfair:

> It would be incongruous and illogical to allow the non-criminal adjudication of a juvenile delinquent to serve as a criminal sentencing enhancer. To equate this adjudication with a conviction as a predicate offense . . . would subvert the civil trappings of the juvenile adjudication to an extent to make it fundamentally unfair and thus, violative of due process. . . . It seems contradictory and fundamentally unfair to provide youths with fewer procedural safeguards in the name of rehabilitation and then to use adjudications obtained for treatment purposes to punish them more severely as adults.

Id. at 1289.

And in *State v. Hand*, the Ohio Supreme Court held that juvenile adjudications could not be used to enhance a defendant's sentence during subsequent criminal proceedings because doing so violated due process.

Hand, 149 Ohio St. 3d at 103-04. Agreeing with *Tighe* and citing this Court's emphatic pronouncements about the importance of the jury trial right, *Hand* limited the prior conviction exception to those cases when the prior conviction was obtained in a proceeding with a jury trial right. *Id.* at 104.

c. Oregon

Like the Ninth Circuit and the Ohio Supreme Court, the Supreme Court of Oregon recognized that reliability "is not the sine qua non of the Sixth Amendment." *State v. Harris*, 118 P.3d 236, 245 (Or. 2005). Instead, *Harris* found, *Apprendi* was mainly concerned with the structural importance of the jury as "the people's check on judicial power" that "serves to divide authority between judge and jury." *Id.* at 242–43, 245. *Harris* thus held that the "Sixth Amendment requires that when . . . an adjudication is offered as an enhancement factor to increase a criminal sentence, its existence must be proved to Oregon's position thus represents what the court below described as the "middle ground position."

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2. Six circuits and six state supreme courts hold that prior non-jury juvenile adjudications are prior-convictions under *Apprendi*

The position of the majority of the circuit courts of appeal is that prior juvenile adjudications can be used to enhance a sentence without violating *Apprendi*.

This line of authority originated with *United States v. Smalley*, 294 F.3d 1030 (8th Cir. 2002). *Smalley* held that prior convictions are excepted from *Apprendi's* general rule because of the "'certainty that procedural safeguards,' such as trial by jury and proof beyond a reasonable doubt, undergird them." *Id.* at 1032 (quoting *Apprendi*, 530 U.S. at 488). Because juvenile adjudications are afforded all constitutionally required protections, see *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (holding that juveniles in juvenile proceedings are not entitled to a jury trial by the Sixth or Fourteenth Amendments), juvenile adjudications are reliable enough that their exemption from Apprendi's rule does not offend due process. *Smalley*, 294 F.3d at 1033.

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In the fourteen years since *Smalley*, five other circuits have embraced its reasoning and held that juvenile adjudications "are sufficiently reliable so as to not offend constitutional rights if used to qualify for the Apprendi exception." *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003). These courts reason that, "when a juvenile is adjudicated guilty beyond a reasonable doubt in a bench trial that affords all the due process protections that are required, the adjudication should be counted as a conviction for purposes of subsequent sentencing." *Jones*, 332 F.3d at 696; see also *United States v. Wright*, 594 F.3d 259, 265 (4th Cir. 2010) (*Apprendi* "hinges in part on whether non-jury adjudications are so reliable that due process of law is not offended by their inclusion in the prior conviction exception"); *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007) (same); *Welch v. United States*, 604 F.3d 408, 426 (7th Cir. 2010) (same); *United States v. Burge*, 407 F.3d 1183, 1190 (11th Cir. 2005) (same).

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And six other states, including California, embrace the same position (though in opinions that include dissenting views on the issue).[1] In *Nguyen*, the California Supreme Court agreed that the Fifth, the Sixth, and the Fourteenth Amendments, as read by *Apprendi*, does not preclude the use of a prior juvenile adjudication to enhance an adult sentence if the juvenile adjudication provided all constitutional protections available (even if they do not include a right to a jury trial).[2]

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[1] Many of these decisions included dissenting opinions, further highlighting that the split in authority results from fundamentally different interpretations of the rationale underlying *Apprendi* and the importance of the jury trial right. See, e.g., *Welch*, 604 F.3d at 431–32 (Posner, J., dissenting) (explaining that *Apprendi* mandated that "a prior conviction used to increase the length of the sentence must be the outcome of a proceeding in which the defendant had a right to have a jury determine his guilt"); *Nguyen*, 46 Cal.4th at 1028 (Kennard, J., dissenting) (stating that the majority opinion "misses the point" because "[t]he problem is that the facts underlying a juvenile court adjudication were determined by . . . the judge); *State v. McFee*, 721 N.W.2d at 622 (Meyer, J., dissenting) ("The proper inquiry under Apprendi is not whether McFee's juvenile adjudications were 'fairly' or 'reliably' determined [but] whether the fact of McFee's prior juvenile adjudication was ever determined by a jury."); *Weber*, 149 P.3d at 663–64 (Madsen, J., dissenting) ("There is no substitute for the right to trial by jury.").

[2] As for California's view, while the California Supreme Court has not repudiated *Nguyen*, the recent decision in *People v. Gallardo*, 4 Cal.5th 120 (2017) critically undermines it. Citing *Descamps* and *Mathis*, *Gallardo* held that the prior conviction exception must be read more narrowly to prohibit enhancement with facts that are not established by

Nguyen, 46 Cal.4th at 1019; see also *State v. McFee*, 721 N.W.2d 607, 616–618 (Minn. 2006) (adopting explicitly the rationale and conclusions reached in *Jones*, *Smalley*, and *Burge*); *State v. Weber*, 149 P.3d 16 646, 652 (Wash. 2006) (en banc); *Ryle v. State*, 842 N.E.2d 320, 323 (Ind. 2005) (stating that *Apprendi*'s "main concern was whether the prior conviction's procedural safeguards ensured a reliable result, not that there had to be a right to a jury trial"); *State v. Hitt*, 42 P.3d 732, 739 (Kan. 2002).

3. The split is mature and entrenched; there is no need for further percolation

The lower courts have repeatedly recognized the existing three-way split and exhibited no willingness to alter their positions. The Ninth Circuit has acknowledged the split in cases since Tighe, but has indicated it is not inclined to overrule on *Tighe*. See, e.g., *United States v. Strickland*, 601 F.3d 963, 978 (9th Cir. 2010) (noting that *Almendarez-Torres* stands on "shaky constitutional ground" and citing *Tighe* approvingly); *Boyd v. Newland*, 467 F.3d 1139, 1152 (9th Cir. 2006) (refusing to entertain suggestion that Tighe was incorrectly decided).

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the elements of the prior conviction found by the jury. *Nguyen*, 46 Cal.4th at 1019.

There is no need for further percolation. Over the past decade the split has only deepened and solidified. Courts on all sides believe that their reasoning is mandated by, or at least, firmly supported by *Apprendi*. The contradictory approaches reflect a fundamental philosophical split on the scope of the due process right and the constitutional significance and structural importance of the jury trial right in the context of the criminal justice system. This is not a division that will be resolved without the intervention of this Court.

B. Importance of the Question Presented

The rule adopted by the California appellate courts raises serious constitutional issues for three reasons. First, the absence under California law of the right to a jury trial removes a critical constitutional safeguard. This Court's decisions in *Descamps* and *Mathis* underscores this point. Second, apart from the jury trial right, the special nature of juvenile proceedings precludes the use of prior juvenile adjudications as a sentence enhancement. Third, the split creates tensions in outcomes between defendants and within our federal system.

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1. The rule adopted by California violates defendants' Sixth and Fourteenth Amendment rights

Apprendi's logic is firmly rooted in the fundamental importance of the right to a jury trial as the embodiment of the protections enshrined in the Sixth and Fourteenth Amendments. Beyond a "mere procedural formality" aimed at guaranteeing the accuracy of judicial proceedings, the jury trial right was understood to be a "fundamental reservation of power in our constitutional structure." *Blakely v. Washington*, 542 U.S. 296, 306 (2004). As the structural "intermediary between the State and criminal defendants," *Alleyne v. United States*, 133 S. Ct. 2151, 2161 (2013), a jury therefore stands as "the great bulwark of [our] civil and political liberties." *Apprendi*, 530 U.S. at 477 (quoting 2 J. Story, Commentaries on the Constitution of the United States 540–41 (4th ed. 1873)). Without Apprendi's requirement that a jury find all facts used to enhance a sentence beyond a term statutorily authorized, "the jury would not exercise the control that the Framers intended." Id.

So, in carving out the prior-conviction exception, the *Apprendi* court recognized it as "at best an exceptional departure from the historic practice" of proving facts relied on to enhance a sentence before a jury.

Apprendi, 530 U.S. at 487. This Court has made clear that "a prior conviction must itself have been established through procedures satisfying the fair notice, reasonable doubt, and jury trial guarantees." *Jones v. United States*, 526 U.S. 227 (1999) (emphasis added).

But when a judge bases a sentencing enhancement on a juvenile adjudication—a proceeding without a jury trial guarantee—the judge facilitates an illicit transfer of power from jury to judge, leading to an erosion of the jury right that conflicts with the Sixth Amendment. This result is not supported by *Apprendi*.

This conclusion is especially apt given this Court's decisions in *Descamps* and *Mathis.* Though *Descamps* and *Mathis* did not deal explicitly with juvenile adjudications, they addressed a closely related issue of whether the Sixth Amendment permits a sentencing judge to enhance a defendant's sentence by making findings of fact beyond those established by elements of a prior jury trial. This Court held that the Sixth Amendment prohibits non-elemental judicial fact-finding, i.e., judicial reliance on facts that were not found true by a jury in the prior proceeding. *Descamps*, *supra*, 133 S. Ct. at p. 2288; *Mathis*, *supra*, 136 S. Ct. at p. 2252.

In reaching that conclusion, *Descamps* pointedly observed that "[t]he Sixth Amendment contemplates that a jury—not a sentencing court—will find such facts, unanimously and beyond a reasonable doubt." *Descamps*, 133 S. Ct. at 2288. Similarly, in *Mathis*, this Court reaffirmed that except for a simple fact of a prior conviction, "only a jury, and not a judge, may find facts that increase a maximum penalty, except for the simple fact of a prior conviction." *Mathis*, 136 S. Ct. at 2252.

Both *Descamps* and *Mathis* reflect this Court's continuing view that availability of the jury trial in the prior proceeding is critical in allowing the use of the prior conviction to enhance a current sentence. Allowing the use of juvenile adjudications to enhance the sentence when the juvenile did not have a right to a jury trial is inconsistent with that view.

2. Fundamental differences between the juvenile court and criminal justice systems prohibit a juvenile adjudication from qualifying as a "prior conviction."

Beyond absence of a jury, three aspects of the juvenile court system show the significant constitutional concerns that arise from classifying an adjudication as a "prior conviction."

First, although a criminal court's responsibility is to establish a defendant's culpability, the role of the juvenile court is "not to ascertain

whether the child [is] 'guilty' or 'innocent,'" but to determine whether the child needs the state's "care and solicitude." *In re Gault*, 387 U.S. 1, 15 (1967) (quoting Julian Mack, The Juvenile Court, 23 HARV. L. REV. 104, 119–20 (1909)). Indeed, California's juvenile justice system's purpose is to rehabilitate, in contrast to the purpose of the state's criminal justice system to punish. *In re Myresheia W.*, 61 Cal. App. 4th 734, 740–41 (Cal. Ct. App. 1998).

Second, the unique nature of the juvenile system creates an environment in which judges are more likely to convict the juvenile than a jury would be an adult defendant in a criminal trial. Juvenile court judges are exposed to inadmissible evidence.[3] They repeatedly hear the same stories from defendants, leading them to treat defendants' testimony with skepticism.[4] They become chummy with the police and

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[3] Joseph B. Sanborn, Jr., Second-Class Justice, First-Class Punishment: The Use of Juvenile Records in Sentencing Adults, 81 JUDICATURE 206, 212 (1998).

[4] Barry C. Feld, The Constitutional Tension Between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts, 38 Wake Forest L. Rev. 1111, 1164 (2003); Martin Siim & Randy Hertz, Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials, 33 Wake Forest L. Rev. 553, 574–75 (1998).

apply a lower standard of scrutiny to the testimony of officers they trust.[5] And they make their decisions alone, meaning their decisions lack the benefits of group deliberation.[6]

As Judge Posner has commented, research confirms that the "noncriminal 'convictions [of the juvenile courts] may well lack the reliability of real convictions in criminal courts." *Welch*, 604 F.3d at 432 (Posner, J., dissenting). Indeed, the Louisiana Supreme Court adopted the minority position when faced with the fact that the defendant before it had, with "no evidence of being an accessory to anyone, [been] adjudicated as guilty [of attempted second degree murder] by a judge and sent to juvenile prison," while, paradoxically, his adult "accomplice" was tried before a jury and acquitted of all charges. *State v. Brown*, 853 So.2d 8, 13 (La. Ct. App. 2003), aff'd 879 So.2d 1276 (La. 2004).

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[5] Martin Guggenheim & Randy Hertz, Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials, 33 Wake Forest L. Rev. 553, 574–75 (1998).

[6] This Court has recognized that "[j]uries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feelings, intuitions and habits . . . [and] may reach completely different conclusions than would be reached by specialists in any single field." *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 18 (1955); cf. *Ballew v. Georgia*, 435 U.S. 223, 233–34 (1978).

Third, as this Court has recognized, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham v. Florida*, 560 U.S. 48, 68 (2010). The same lack of maturity, vulnerability to outside pressure, and underdeveloped character that render children "constitutionally different from adults for the purposes of sentencing," cast a cloud of doubt over the reliability and due process sufficiency of juvenile adjudications when wielded to enhance adult sentences. *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012).

For example, although well over 90 percent of juveniles waive their protection against self-incrimination, they often neither understand the function nor the consequences of waiving Miranda rights, rendering a knowing and intelligent waiver near impossible to obtain. See Steven A. Drizin & Greg Luloff, Are Juvenile Courts a Breeding Ground For Wrongful Convictions?, 34 N. Ky. L. Rev. 257, 266, 268 (2007). The combination of juveniles' lack of cognitive capacity with their

susceptibility to coercive pressure leads to an omnipresent danger of false confessions nearly unparalleled in the justice system.[7]

3. The split creates tensions in outcomes between defendants and in our federal system.

The conflicting approaches in the lower courts have produced substantially disparate treatment among criminal defendants, based solely on the accident of location. Indeed, the split between circuit and states courts within their geographic boundaries means that defendants will receive different procedure based solely on whether a defendant is indicted under federal or state law. Compare *Tighe*, 266 F.3d at 1194–95, and *Hand*, 149 Ohio St.3d at 104 with *Crowell*, 493 F.3d at 750, and *Nguyen*, 46 Cal.4th at 118-20. Such disparate results undermine a core precept of criminal proceedings— "justice must satisfy the appearance of

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[7] See *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (recognizing that a fourteen year-old is "a person who is not equal to the police in knowledge and understanding of the consequences of the questions . . . and who is unable to know how to protest his own interests or how to get the benefits of his constitutional rights"); *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (describing a fifteen-year- old child as "an easy victim of the law"); Barry C. Feld, Behind Closed Doors: What Really Happens When Cops Question Kids, 23 Cornell J.L. & Pub. Pol'y 395, 440 (2013) (finding that 58.6% of juveniles in the study confessed "within the first few minutes waiving Miranda").

justice." *Levine v. United States*, 362 U.S. 610, 616 (1960) (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)).

The conflicting approaches also disrupt "the very essence of a healthy federalism" by creating a "needless conflict between state and federal courts." *Mapp v. Ohio*, 367 U.S. 643, 657–58 (1961) (quoting *Elkins v. United States*, 364 U.S. 206, 221 (1960)). Currently, in both the Ninth and Sixth Circuits "a federal prosecutor may" present prior convictions in one way during sentencing, while a "State's attorney across the street may" use it in another, "although he supposedly is operating under the enforceable prohibitions of the same Amendment." *Id.* at 657.

In short, this is an issue as to which this Court should not tolerate the lack of uniformity between state and federal courts.

C. This Case is an Ideal Vehicle to Resolve the Split

The California statute scheme is unambiguous about the question presented (§ 667 (e) clear permits the use of juvenile adjudications as qualifying prior convictions) and the California Court of Appeal's decision raises the question presented. *Bhushan*, 2018 WL 6261489, * 17 & fn. 23.

Plus, petitioner's prior juvenile adjudication was the sole statutory basis for enhancing petitioner's adult sentence under the Three Strikes Law.

It led to the doubling of the petitioner's base term for murder (25 to life, times two), attempted murder (7 to life, times two), and the gun use enhancement as to each of the two counts (20 years, times two). *Bhushan*, 2018 WL 6261489, * 4. It also added two five-year determinate terms to the sentence under § 667(a). And use of the prior juvenile adjudication as a strike also disqualifies petitioner from the Youth Offender parole system under California law – which would have given him the first parole hearing in the 25th year of incarceration. *Id.* at * 21.

Thus, the validity of petitioner's unsurvivable indeterminate life sentence rests largely on whether it is permissible to enhance his sentence based on his prior juvenile adjudication.[8]

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[8] California Court of Appeal did remand petitioner's case for the juvenile court to consider whether the court would have transferred this case to adult court (at the time of filing, the law allowed the prosecution the directly file petitioner's case in adult criminal court). And if the juvenile court decides it would have still transferred the case, the appellate court ordered the trial court to consider whether the 114-to-life sentence should be reduced under *Miller v. Alabama*, 567 U.S. 460.

Conclusion

For these reasons, this Court should grant this petition for a writ of certiorari.

Respectfully submitted,

DATE: June 10, 2019

By: *s/ Gene D. Vorobyov*

Supreme Court Bar No. 292878
Counsel of Record for Petitioner
LILRON RAVON JONES