

IN THE SUPREME COURT OF THE UNITED STATES

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JANE DOE, FEMALE JUVENILE, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the court of appeals correctly determined that petitioner's Eighth Amendment challenge to the sentence that she might receive in adult proceedings if she were convicted of first-degree murder, in violation of 18 U.S.C. 1111, is not ripe.

2. Whether the court of appeals correctly determined that the district court applied the correct legal standard for whether a juvenile defendant's transfer to adult proceedings is warranted under 18 U.S.C. 5032.

3. Whether the court of appeals correctly determined that the district court did not abuse its discretion in determining that the factors set forth in Section 5032 weighed in favor of petitioner's transfer to adult proceedings.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Okla.):

United States v. Sealed, No. 21-cr-131 (2022)

United States Court of Appeals (10th Cir.):

United States v. Doe, No. 23-9900 (Jan. 20, 2023)

United States v. Sealed, No. 22-7019 (Jan. 20, 2023)

IN THE SUPREME COURT OF THE UNITED STATES

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No. 22-7753

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 58 F.4th 1148. The order of the district court (Supp. Pet. App., Attachment 4) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 20, 2023. A petition for rehearing was denied on February 17, 2023 (Supp. Pet. App., Attachment 3). The petition for a writ of certiorari was filed on May 17, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following proceedings in the United States District Court for the Eastern District of Oklahoma under the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. 5031 et seq., the district court ordered petitioner's transfer to adult criminal proceedings, pursuant to two charges of first-degree murder in Indian country, in violation of 18 U.S.C. 1111(a), 1151, 1153, and 2. Pet. App. 5-6; see C.A. ROA 9-10. The court of appeals affirmed. Pet. App. 1-16.

1. Petitioner is a member of the Choctaw Nation. Pet. App. 5-6. When she was 17-and-a-half years old, she orchestrated the murder of her two parents, who lived on the Choctaw Nation Reservation. Ibid. After falsely telling her 15-year-old boyfriend that she was pregnant and "lamenting her parents' opposition to their relationship," petitioner "asked her boyfriend and another friend to kill her mother and father." Id. at 5. "While [petitioner] hid in the bathroom of her parents' home, the two boys snuck into the home," "beat and stabbed [petitioner's] mother multiple times," and "buried the body in a crude grave." Ibid. When petitioner's father later showed up at the home, "the boys clubbed him and set him on fire," and he "died of blunt force trauma and smoke and soot inhalation." Ibid. Petitioner and her accomplices "fled but were soon apprehended." Ibid.

In 2021, the government filed a juvenile information against petitioner, together with a certification under the FJDA to proceed in federal court. See Pet. App. 5-6; C.A. R.O.A. 9-10, 17-18; 18 U.S.C. 5032. The information alleged that petitioner had killed her mother and father and that petitioner's conduct, had she been an adult at the time, would have qualified as first-degree murder in Indian Country, in violation of 18 U.S.C. 1111(a), 1151, 1153, and 2. See Pet. App. 5-6; C.A. ROA 9-10. Section 1111 defines murder as "the unlawful killing of a human being with malice aforethought." 18 U.S.C. 1111(a). It provides that certain types of murder -- including "murder perpetrated by \* \* \* willful, deliberate, malicious, and premeditated killing" -- qualify as first-degree murder, ibid., punishable "by death or by imprisonment for life," 18 U.S.C. 1111(b). "Any other murder" qualifies as second-degree murder, 18 U.S.C. 1111(a), punishable by imprisonment "for any term of years or for life," 18 U.S.C. 1111(b).

2. The government filed a motion to transfer petitioner to adult proceedings pursuant to 18 U.S.C. 5032. See Pet. App. 6; C.A. R.O.A. 21-23. Section 5032 provides that juveniles who commit certain types of offenses, including a "crime of violence," may be prosecuted as an adult in the "interest of justice." 18 U.S.C. 5032. It further provides that in determining whether the "interest of justice" supports a transfer to adult proceedings, a

court "shall" consider the following factors: (1) the juvenile's "age and social background," (2) "the nature of the alleged offense," (3) "the extent and nature of the juvenile's prior delinquency record," (4) "the juvenile's present intellectual development and psychological maturity," (5) "the nature of past treatment efforts and the juvenile's response to such efforts," and (6) "the availability of programs designed to treat the juvenile's behavioral problems." Ibid.

After an evidentiary hearing, a magistrate judge recommended that the case be transferred to adult court. See Pet. App. 6; Supp. Pet. App., Attachment 5. The district court adopted the magistrate judge's recommendation and granted the government's transfer motion. See Pet. App. 6; Supp. Pet. App., Attachment 4. After considering each of the factors set forth in Section 5032, the court determined that petitioner's "risk to society outweighed the potential benefits of a juvenile adjudication." Pet. App. 9. The court "acknowledged that the penalties for first-degree murder are unconstitutional when applied to a juvenile." Id. at 6. But the court explained that a constitutional challenge to that scheme was not yet ripe because "the Eighth Amendment's proscription against cruel and unusual punishment is only applicable following a determination of guilt after a trial or plea." Id. at 6-7 (citation omitted). The court "noted that it would revisit the issue should [petitioner] be convicted." Id. at 7.

3. Petitioner filed an interlocutory appeal challenging the district court's transfer order. Pet. App. 6. The court of appeals affirmed. Id. at 1-16.

a. The court of appeals rejected petitioner's contention that "her case cannot be transferred from juvenile to adult court because the punishments for first-degree murder under 18 U.S.C. § 1111 violate the Eighth Amendment when applied to a juvenile." Pet. App. 6. Citing this Court's decisions in Roper v. Simmons, 543 U.S. 551 (2005), and Miller v. Alabama, 567 U.S. 460 (2012), the court of appeals recognized that the punishments of "death" and "life imprisonment without parole" are "unconstitutional when applied to juveniles." Pet. App. 6. But the court agreed with the district court that petitioner's Eighth Amendment challenge was "unripe" because "future contingencies can play out without the need to impose an unconstitutional sentence." Id. at 7. The court of appeals noted that petitioner "could be acquitted, be convicted of second-degree murder, plea[d] to a lesser-included offense, or even be convicted for first-degree murder but receive a lower sentence." Ibid. And the court emphasized that while petitioner's Eighth Amendment challenge was "not ripe" at this juncture, she could raise the challenge again "at a future point in the proceedings." Id. at 8.

The court of appeals also rejected petitioner's argument that "the district court applied an incorrect legal standard in granting



the government's motion to transfer." Pet. App. 6. The court of appeals explained that the district court had "relied on 18 U.S.C. § 5032 and Tenth Circuit cases" in articulating the "test for transfer." Id. at 9. And the court of appeals understood the district court's citation of the Sixth Circuit's decision in United States v. One Juvenile Male, 40 F.3d 841 (1994), as "consistent with" the correct standard, and not indicative of any failure to apply the correct legal standard. Pet. App. 9; see id. at 15 n.2. The court of appeals therefore determined that "[t]he district court correctly framed the legal test for transferring a juvenile to adult court." Id. at 9.

Finally, the court of appeals rejected petitioner's contention that "the district court abused its discretion when applying the six transfer factors." Pet. App. 6. The court of appeals explained that "[t]o constitute an abuse of discretion, the district court must have failed to find facts or the factual findings must be clearly erroneous." Id. at 10. But the court of appeals found "neither error" to be "present in this case." Ibid.; see id. at 9-10, 15 n.3. The court accordingly determined that "given [petitioner's] age -- nearly 18 years old -- at the time of the alleged offense, the heinousness of the crime, the callousness of her participation, and her leadership role," "the district court did not abuse its discretion in granting the government's motion to transfer." Id. at 10.

b. Judge Briscoe concurred in part and dissented in part. Pet. App. 10-15. She agreed that an Eighth Amendment claim was unripe and that "the district court properly identified and at least minimally discussed the statutory factors outlined in" Section 5032. Id. at 10. But she expressed the view that "the district court abused its discretion in granting the government's motion to transfer" by "adopt[ing] clearly erroneous factual findings," by "adopt[ing] a legally incorrect interpretation" of the fifth factor set forth in Section 5032, and by "fail[ing] to offer" an adequate "explanation" of the court's reasoning. Ibid. Judge Briscoe would have vacated and remanded "to afford the district court an opportunity to more carefully address the § 5032 factors." Id. at 15; see id. at 10.

4. After petitioner was transferred to adult proceedings, a federal grand jury in the Eastern District of Oklahoma indicted petitioner on one count of conspiring to commit murder in Indian country, in violation of 18 U.S.C. 1111(a), 1117, 1151, and 1153; two counts of first-degree murder in Indian country, in violation of 18 U.S.C. 1111(a), 1151, 1153, and 2; and one count of carjacking resulting in death, in violation of 18 U.S.C. 2119(3) and 2. 23-cr-59 D. Ct. Doc. 2, at 1-5 (Apr. 13, 2023). Petitioner pleaded guilty solely to the conspiracy count. 23-cr-59 D. Ct. Doc. 28, at 1 (July 26, 2023). In light of petitioner's guilty plea, the district court vacated the scheduled trial date. 23-

cr-59 Docket Entry No. 30 (July 26, 2023). A sentencing hearing has not yet been scheduled.

#### ARGUMENT

Petitioner challenges (Pet. 14-17) her transfer to adult proceedings on the theory that the punishments for first-degree murder would violate the Eighth Amendment as applied to her. The interlocutory posture of this case, however, renders further review of petitioner's Eighth Amendment challenge unwarranted at this time. In any event, the court of appeals correctly determined that petitioner's challenge is unripe, and its decision does not conflict with any decision of this Court or another court of appeals. This Court has previously denied review of a similar claim, see J. B. R. v. United States, 139 S. Ct. 1258 (2019) (No. 18-192), and it should follow the same course here. Petitioner also contends (Pet. 17-26) that, in her particular case, the district court applied an incorrect legal standard and abused its discretion in ordering petitioner's transfer to adult proceedings. But the court of appeals correctly rejected those contentions, and they likewise do not warrant this Court's review. The petition for a writ of certiorari should therefore be denied.

1. Petitioner's Eighth Amendment challenge (Pet. 14-17) to her transfer to adult proceedings does not warrant this Court's review.

a. As a threshold matter, this Court's review of petitioner's Eighth Amendment challenge is unwarranted at this time because this case is in an interlocutory posture. Petitioner's constitutional challenge is predicated on the sentence that she could receive if convicted of first-degree murder in violation of 18 U.S.C. 1111. See Pet. i (arguing that the "death penalty" and "a mandatory life sentence" are unconstitutional as applied to juvenile offenders). But as both the court of appeals and the district court emphasized, petitioner can challenge the constitutionality of any sentence "at a future point in the proceedings." Pet. App. 8; see *id.* at 7 ("The district court noted that it would revisit the issue should [petitioner] be convicted."). The interlocutory posture of this case alone "furnishe[s] sufficient ground for the denial" of the petition under the circumstances. Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916); see Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967) (per curiam); Thompson v. Henderson, 143 S. Ct. 2412, 2412 (2023) (statement of Alito, J., respecting the denial of certiorari).

Indeed, denying review because of the interlocutory posture of the case is particularly appropriate here, in light of petitioner's recent guilty plea limited to one count of conspiring to commit murder, in violation of 18 U.S.C. 1117. See 23-cr-59

D. Ct. Doc. 28, at 1; p. 7, supra. A conviction for that offense does not expose a defendant to either of the punishments -- the death penalty or a mandatory term of life imprisonment without parole -- that would be unconstitutional if imposed on a juvenile. See 18 U.S.C. 1117; Miller v. Alabama, 567 U.S. 460, 465 (2012); Roper v. Simmons, 543 U.S. 551, 578 (2005). Instead, a defendant convicted of that offense faces a discretionary sentence of a "term of years" or "life." 18 U.S.C. 1117. If petitioner receives such a sentence and the remaining counts in the indictment are dismissed, petitioner's Eighth Amendment concerns will have been obviated.

b. In any event, for related reasons, the court of appeals correctly determined that petitioner's Eighth Amendment challenge is not ripe. Pet. App. 6-8. "A claim is not ripe for adjudication if it rests upon contingent future events that may never occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300 (1998) (citation and internal quotation marks omitted). Here, petitioner's Eighth Amendment claim (Pet. i) rests on the possibility that she could receive the death penalty or a mandatory life-without-parole sentence if she were convicted of first-degree murder under Section 1111.

As the court of appeals correctly recognized, however, "future contingencies can play out without the need to impose" either of those sentences. Pet. App. 7. Indeed, as noted,

petitioner recently pleaded guilty to conspiring to commit murder in violation of Section 1117, an offense that is not punishable by death or a mandatory life-without-parole sentence. See p. 10, supra. That development bears out the court's observation that addressing petitioner's Eighth Amendment challenge at this juncture would be "premature." Pet. App. 8 (citation omitted).

c. Contrary to petitioner's contention (Pet. 15-17), the court of appeals' decision on ripeness does not conflict with the Fourth Circuit's decision in United States v. Under Seal, 819 F.3d 715 (2016). The juvenile defendant in that case was charged with murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(1). Under Seal, 819 F.3d at 717. The Fourth Circuit noted that the offense was punishable by "death or life imprisonment," 18 U.S.C. 1959(a)(1), neither of which could be imposed consistent with the Eighth Amendment. See Under Seal, 819 F.3d at 720. And the court declined to import the statute's lesser penalties for kidnapping offenses, explaining that "combin[ing] the penalty provisions for two distinct criminal acts" -- murder and kidnapping -- would "go[] beyond the permissible boundaries of severance and tread[] into the legislative role." Id. at 723-724.

The Fourth Circuit therefore upheld the district court's denial of the government's motion to transfer the juvenile defendant to adult proceedings. Under Seal, 819 F.3d at 728. The Fourth Circuit emphasized, however, that its decision would have

been different if "an acceptable punishment that Congress had specifically authorized" for murder in aid of racketeering "remained intact." Id. at 724. In that circumstance, the court reasoned, "excising the unconstitutional \* \* \* penalty provision and enforcing the remainder would have been an appropriate judicial action." Ibid.

The decision below in this case does not conflict with Under Seal, which arose in a different posture and concerned a different statute. In Under Seal, the district court denied transfer on constitutional grounds, and the government took an interlocutory appeal. 819 F.3d at 719. No "future contingencies" (Pet. App. 7) could have prevented the constitutional issue from ever ripening for decision, because the constitutional issue had already been dispositive of the denial of transfer. Presumably for that reason, the defendant in Under Seal did not dispute that the controversy was ripe, and the Fourth Circuit did not address ripeness. Here, in contrast, the district court granted transfer and expressly reserved petitioner's Eighth Amendment challenge for later review, if necessary. Id. at 6-7. This case thus reached the court of appeals in a different posture, presenting an issue of ripeness that did not exist in Under Seal.

Section 1111 is also materially different from the murder-in-aid-of-racketeering statute that the Fourth Circuit addressed in Under Seal. As the Fourth Circuit acknowledged there,

transferring a juvenile to adult proceedings for trial under a statute that provides both constitutional and unconstitutional punishments for the same underlying offense presents no constitutional concern. Under Seal, 819 F.3d at 724. Here, Section 1111 provides punishments for second-degree murder that are undisputedly constitutional as applied to petitioner. See 18 U.S.C. 1111(b) (providing that second-degree murder shall be punishable by a discretionary sentence of a “term of years” or “life”).

The fact that those punishments relate to second-degree murder is irrelevant, because a conviction under Section 1111 for first-degree murder necessarily includes all the elements of the lesser-included offense of second-degree murder. Accordingly, unconstitutional applications of Section 1111’s punishments for first-degree murder can be “excis[ed]” while leaving the statute’s punishments for second-degree murder “intact,” without engaging in the sort of “impermissible judicial rewriting” that concerned the Fourth Circuit in Under Seal. 819 F.3d at 724; see United States v. Bonilla-Romero, 984 F.3d 414, 418-419 (5th Cir. 2020) (finding it “appropriate to sever” Section 1111’s unconstitutional applications so as to allow a juvenile offender convicted of first-degree murder to be sentenced to a discretionary sentence of a “term of years” or “life”) (citation omitted), cert. denied, 142 S. Ct. 482 (2021). Under Seal therefore provides no sound basis



for concluding that the Fourth Circuit would have reached a different outcome in this case.

2. Petitioner's contention (Pet. 23-26) that the district court applied an incorrect legal standard in ordering transfer lacks merit and does not warrant this Court's review.

a. As the court of appeals observed, the "test for transfer" is set forth in 18 U.S.C. 5032. Pet. App. 9. Section 5032 requires a court to "assess[] whether a transfer would be in the interest of justice," and it identifies six factors that "shall be considered" in making that assessment. 18 U.S.C. 5032. The district court in this case "relied on 18 U.S.C. § 5032" and "considered each factor, ultimately concluding [petitioner's] risk to society outweighed the potential benefits of a juvenile adjudication." Pet. App. 9; see Supp. Pet. App., Attachment 4, at 2-9. Thus, as the court of appeals found, "[t]he district court correctly framed the legal test for transferring a juvenile to adult court." Pet. App. 9.

Contrary to petitioner's contention (Pet. 23-24), the district court's quotation of a sentence from United States v. One Juvenile Male, 40 F.3d 841 (6th Cir. 1994) -- which stated that "a motion to transfer is properly granted where a court determines that the risk of harm to society posed by affording the defendant more lenient treatment within the juvenile justice system outweighs the defendant's chance for rehabilitation," id. at 844

-- does not suggest that the district court applied an incorrect legal standard. As the court of appeals explained, the quoted sentence simply describes an "example" of when "courts considering the six-factor test" may find transfer appropriate. Pet. App. 9. The court of appeals accordingly found "no basis to believe the district court" -- which addressed and weighed the statutory factors -- "was not applying applicable law." Id. at 15 n.2.

b. Petitioner asserts (Pet. 24) that the decision below conflicts with a district court's articulation of the applicable legal standard in United States v. E. K., 471 F. Supp. 924 (D. Or. 1979). But a district-court decision cannot establish a circuit conflict that warrants this Court's review. Sup. Ct. R. 10(a); cf. Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (citation omitted).

In any event, the language from E. K. on which petitioner relies (Pet. 24) merely reflects one judge's method of balancing the Section 5032 factors, see 471 F. Supp. at 932, not a specific prescription for how every judge must exercise his or her discretion in every case. Indeed, another decision that petitioner cites (Pet. 24) specifically cautions that the language should not be read as embracing a rigid rule that attaches near-dispositive

weight to particular considerations. See United States v. Doe, 871 F.2d 1248, 1253 (5th Cir. 1989) (rejecting the implication that "E.K. endorses rehabilitation at almost any cost").

3. Finally, petitioner's factbound contention (Pet. 17-23) that the district court abused its discretion in its consideration of the Section 5032 factors in her case likewise lacks merit and does not warrant this Court's review.

a. The court of appeals correctly determined that "the district court did not abuse its discretion in granting the government's motion to transfer." Pet. App. 10. As the court of appeals recognized, the district court's factual findings were not "clearly erroneous," and the district court permissibly "weigh[ed] the six factors for juvenile transfer" in "light of the overarching transfer standard: 'in the interest of justice.'" Ibid. (quoting 18 U.S.C. 5032).

Petitioner contends that the magistrate judge clearly erred in finding that petitioner's "relationship with her parents appeared to be relatively routine since 2016." Pet. 22 (citation omitted). But petitioner takes that statement out of context; the magistrate judge did not mean "routine" in the sense of "normal compared to other parent-child relationships," and she did not rely on such a rationale in evaluating that factor. Moreover, in reviewing the magistrate judge's report, the district court "acknowledged" the "dysfunction" in petitioner's "family life" and

"correctly considered [her] social background alongside age" in assessing the first Section 5032 factor. Pet. App. 16 n.4; see Supp. Pet. App., Attachment 4, at 4. Accordingly, the court of appeals correctly found no clear error in "the [district] court's analysis" of that factor. Pet. App. 16 n.4.

Petitioner also contends that the magistrate judge erred in declining to consider petitioner's "ability to benefit from future treatment" as part of assessing the fifth Section 5032 factor. Pet. 21 (citation omitted). But in reviewing the magistrate judge's report, "[t]he district court considered future treatment in its determination of factor five, as [petitioner] requested," and found that the factor still "weighed in favor of transfer." Pet. App. 9; see Supp. Pet. App., Attachment 4, at 7. Petitioner further contends (Pet. 21) that the court erred in relying on petitioner's role in the murders as evidence that past treatment efforts had been unsuccessful. But in fact, "the district court did not hold [petitioner's] crime against her while assessing her response to past treatment or amenability to future treatment." Pet. App. 15 n.3; see Supp. Pet. App., Attachment 4, at 7.

With respect to the sixth Section 5032 factor, petitioner asserts (Pet. 22) that the magistrate judge did not mention "parts of the testimony of the government's witness regarding treatment available in juvenile facilities" and "adult prisons." But the magistrate judge stated that she "consider[ed]" the "entirety of

the record” in making her recommendation. Pet. App. 10 (citation omitted); see Supp. Pet. App., Attachment 5, at 37. Nothing required the magistrate judge or the district court to explicitly address every piece of testimony in their written opinions. See Pet. App. 8, 10. The court of appeals therefore correctly found no abuse of discretion in the district court’s evaluation of the sixth Section 5032 factor. Id. at 9; see Supp. Pet. App., Attachment 4, at 7.

b. Contrary to petitioner’s contention (Pet. 22-23), the decision below does not conflict with United States v. Juvenile Male, 492 F.3d 1046 (9th Cir. 2007) (per curiam). In Juvenile Male, the Ninth Circuit vacated an order transferring a juvenile defendant to adult proceedings because it determined that the district court in that particular case had “made findings that were clearly erroneous.” Id. at 1049. The findings that the Ninth Circuit deemed clearly erroneous, however, were specific to the facts of that case. See, e.g., ibid. (“[T]he district court’s determination that the defendant experienced ‘no domestic violence . . . while living with his grandparents’ is contrary to the evidence of record.”).

Petitioner’s reliance on Juvenile Male is thus misplaced. The challenges to the district court’s transfer determinations both there and here were inherently factbound. And such factbound issues do not warrant this Court’s review. See Sup. Ct. R. 10.

c. In any event, this case would be a poor vehicle for this Court's review because the court of appeals found harmless the errors that petitioner purported to identify in the district court's analysis of the Section 5032 factors. For example, the court of appeals found "harmless" "[a]ny error" attributable to "the magistrate judge's finding that [petitioner's] family life was 'routine.'" Pet. App. 16 n.4. In addition, the court of appeals found that "[e]ven if factors five and six favored placement in a juvenile facility, these factors are not so persuasive as to make the district court's contrary determination, in aggregate, an abuse of discretion." Id. at 9-10. Accordingly, this Court's review of the purported errors that petitioner has identified would not be "outcome-determinative." Id. at 9.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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