No. 18-1259

IN THE

# Supreme Court of the United States

BRETT JONES,

*Petitioner*,

—v.—

STATE OF MISSISSIPPI,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

## BRIEF OF SCHOLARS OF CRIMINAL LAW AS *AMICI CURIAE* IN SUPPORT OF PETITIONER


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## INTEREST OF *AMICI CURIAE*[1]

Professors Andrea Armstrong, Beth Colgan, Sharon Dolovich, Eric Freedman, Craig B. Futterman, Jennifer Givens, Martin Guggenheim, Shani King, Issa Kohler-Hausmann, Jeffrey L. Kirchmeier, Mae C. Quinn, Sarah French Russell, Alison Siegler, Cara Suvall, Madalyn Wasilczuk, Gideon Yaffe, and Steven Zeidman are scholars of federal courts, sentencing, juvenile justice, and criminal law. They have a shared interest in the enforcement of rules limiting the punishments that can constitutionally be imposed on children.

This Court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) hold that a lifetime of imprisonment without possibility of parole is disproportionate under the Eighth Amendment for all but the rarest of juvenile offenders whose crimes reflect irreparable corruption. These decisions require sentencers to make a finding of permanent incorrigibility before imposing this drastic sentence. Allowing sentencers to impose the harshest punishment constitutionally permissible for juvenile offenders without making a finding of permanent

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[1] All counsel of record received timely notice of the intent to file this *amicus* brief under Supreme Court Rule 37.2(a), and all parties have consented in writing to its filing. *Amici* appear in their individual capacities; institutional affiliations are provided here for identification purposes only. Pursuant to Rule 37.6, *amici curiae* certifies that this brief was not written in whole or in part by counsel for any party, and no person or entity other than *amici curiae* and its counsel has made a monetary contribution to the preparation and submission of this brief.

incorrigibility or recognizing evidence of rehabilitation as relevant to incorrigibility demeans a substantive right and imperils the rule of law by subjecting juvenile offenders whose crime may reflect the transient immaturity of youth to punishments that are disallowed under the Eighth Amendment. Because Mississippi courts have held they can impose a life without parole sentence on juvenile offenders without such a finding, *amici* urge this Court to grant *certiorari*.

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## SUMMARY OF ARGUMENT

This Court has held that the Eighth Amendment's prohibition on "cruel and unusual punishments" limits the types of punishments that may be imposed on children. Specifically, this Court has barred mandatory life without parole "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734 (citing *Miller v.* Alabama, 567 U.S. 460 (2012)).

As held by this Court in *Montgomery*, *Miller* announced a substantive rule of proportionality in punishment under which a specific penalty (a lifetime of imprisonment without the possibility of parole) was deemed unconstitutional for an entire class of defendants because of their status (juveniles who are capable of rehabilitation and reform). *Id*. Therefore, when a court sentences a juvenile to life without parole without determining that he is not among the "rarest of children, those whose crimes reflect 'irreparable corruption,'" *Montgomery*, 136 S. Ct. at 726, that court has violated a principle central to the Eighth Amendment: proportionality. *Graham v. Florida*, 560 U.S. 48, 59. (2010).

*Miller*, after all, "did more than require a sentencer to *consider* a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Montgomery*, 136 S.Ct. at 734 (emphasis added). To effectuate the substantive guarantee of proportionate punishment, this Court directed lower courts to evaluate if the child at issue is capable of

rehabilitation, or is among the rare "permanently incorrigible" children. Although the Court did not mandate the procedure necessary to ensure that only "permanently incorrigible" children were sentenced to life without parole, it warned that this lack of guidance "should not be construed to demean the substantive character of the federal right at issue." *Id.* at 735. To the contrary, the Court made clear that to impose a life without parole sentence on children whose crimes reflect transient immaturity would be a "deprivation of a substantive right." *Id.* at 734.

The rule of law announced in *Miller* and confirmed in *Montgomery* is imperiled in the decision below. In sentencing Brett Jones to life without parole, the lower court nowhere declared that he was permanently incorrigible. Nor did it reckon with the ample evidence he presented showing not only that his rehabilitation was possible, but that it had occurred over the decade he had already spent incarcerated, and therefore that he does not belong to a class of people for whom a sentence of life without parole is constitutional. *See Miller*, 567 U.S. at 478. In fact, the lower court did not, as this Court commands, consider "youth [as] more than a chronological fact." *Id.* at 476. In failing to do so, it overlooked how youths (including Jones) have "diminished culpability and greater prospects for reform" and therefore are "less deserving of the most severe punishments." *Id.* at 471 (internal quotation marks and citations omitted). Accordingly, the scheme that produced Jones's penalty is an unconstitutional one, as it allows for the imposition of illegal, disproportionate sentences.

Without requiring a finding of permanent incorrigibility for sentencing a child to spend his entire life and die in prison, *Montgomery*'s determination that *Miller*'s rule is substantive is rendered meaningless. *Amici* respectfully urge the Court to grant *certiorari* to clarify that the sentencer must find a juvenile permanently incorrigible before condemning him to life in prison, and moreover that evidence of actual rehabilitation militates against a finding that a particular juvenile offender is among the "rarest of children, those whose crimes reflect 'irreparable corruption.'" *Id*. at 726. This Court's consideration of this case is necessary to ensure implementation of its substantive rules and uphold the rule of law.

## ARGUMENT

### I. THIS COURT'S LONGSTANDING PRECEDENT REQUIRING SOME MEASURE OF PROPORTIONALITY IN PUNISHMENT HAS SPECIAL EFFECT FOR JUVENILE OFFENDERS

Life without parole for a juvenile who is not permanently incorrigible runs afoul of the longstanding precedent requiring proportionality in punishment, and contravenes the law laid out by this Court in *Roper*, *Graham*, *Miller*, and *Montgomery*.

This Court has made definitive pronouncements with regard to the application of the Eighth Amendment's ban on "cruel and unusual punishments" to juvenile offenders: "[J]uvenile offenders are generally less culpable than adults who

commit the same crimes," *Graham v. Fla.*, 560 U.S. 48, 86 (2010), *as modified* (July 6, 2010) (Roberts, C.J., concurring) (citing *Roper v. Simmons,* 543 U.S. 551 (2005)), and therefore sentences of life imprisonment without the possibility of parole are only for "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible." *Montgomery*, 136 S. Ct. at 733. That finding has implications for the Court's line of cases requiring some measure of punishment proportionality, albeit a "narrow proportionality principle" in the noncapital context. *Harmelin v. Michigan*, 501 U.S. 957, 996 (1991) (Kennedy, J., concurring in the judgment). Namely, allowing a sentencer to impose the most severe sentence legally available on a juvenile who has not been found to be irretrievably depraved violates this principle of proportionality in punishment. *Graham*, 560 U.S. at 59 ("The concept of proportionality is central to the Eighth Amendment."); *Weems v. United States,* 217 U.S. 349, 367 (1910) ("[I]t is a precept of justice that punishment for crime should be graduated and proportioned to offense.").

In *Roper*, this Court held that juvenile offenders cannot "reliably be classified among the worst offenders," for whom the death penalty is reserved. *Roper v. Simmons*, 543 U.S. 551, 569, 570 (2005). The Court based this holding on the reality that the "personality traits of juveniles are more transitory, less fixed." *Id.* Juveniles, as a class, have a "lack of maturity and an underdeveloped sense of responsibility," and have "a heightened susceptibility to negative influences and outside pressures." *Graham*, 560 U.S. at 89 (Roberts, C.J., concurring).

This Court in *Graham* applied the reasoning of *Roper* to reach the conclusion that imposing a life without parole sentence on a juvenile for a nonhomicide crime violated the Eighth Amendment's proportionality principle. Even Chief Justice Roberts, who rejected the conclusion that *Roper* required a categorical ban on life without the possibility of parole sentences for juveniles, confirmed that, "[that] does not mean that a criminal defendant's age is irrelevant to those sentences. On the contrary, our cases establish that the 'narrow proportionality' review applicable to noncapital cases itself takes the personal 'culpability of the offender' into account in examining whether a given punishment is proportionate to the crime." *Graham*, 560 U.S. at 90 (Roberts, C.J., concurring).

This Court held in *Miller* that the Eighth Amendment forbids sentencing schemes that impose mandatory life without parole sentences on children because those schemes "preclude[] consideration of [children's] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller*, 567 U.S. at 477. Those schemes, as this Court has explained, present "too great a risk" that a child's crimes reflect "unfortunate yet transient immaturity" as opposed to "irreparable corruption," leading to a constitutionally disproportionate punishment. *Id*. at 479. But the majority declined to extend a categorical bar on the imposition of life without parole sentences on juveniles. Instead, the majority reserved the right of states to impose the most severe penalty available for children for "the rare juvenile offender whose crime reflects

irreparable corruption." 567 U.S. 460, 479-80 (citing *Roper*).

This exception reflects the Court's longstanding precedent interpreting the Eighth Amendment's ban on cruel and unusual punishments to require, at least, narrow proportionality in the noncapital context. *See, e.g.*, *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003); *Harmelin,* 501 U.S. at 996–97; *Ewing v. California,* 538 U.S. 11, 20 (2003) (plurality opinion). As Chief Justice Roberts noted in *Graham*, life without the possibility of parole "is the second-harshest sentence available under our precedents for *any* crime." *Graham*, 560 U.S. at 92 (emphasis in original). It is the *most* severe sanction available for juveniles. By declining to foreclose a sentencer's ability to sentence a juvenile to life without parole, therefore, the Eight Amendment's proportionality principle is vindicated only by "requir[ing] [a sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480.

Most recently, *Montgomery* made clear that the right to be free of disproportionate punishment is a substantive right due juvenile offenders. Accordingly, "sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption," thereby "render[ing] life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth."

*Montgomery*, 136 S. Ct. at 734 (citing *Miller*, 567 U.S. 460 (2012); *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)) (internal quotation marks omitted).

Under *Miller* and *Montgomery*, a sentencer is constitutionally forbidden from handing down a sentence of life without parole unless it deems a defendant "permanently incorrigib[le]." *Montgomery*, 136 S. Ct. at 734. To vindicate proportionality principles, sentencers are constitutionally required not merely "to consider" a defendant's youth and its attendant characteristics before sentencing him to life without parole. *Id.* at 734 ("*Miller* [ ] did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'"). Rather, a sentencer must actually evaluate whether, in light of particularized evidence, the individual child at issue is irreparably corrupt or is capable of demonstrating maturity and rehabilitation. *Miller*, 567 U.S. at 480 (courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison").

Allowing a sentencing court to impose the most severe sentence legally authorized on a juvenile offender without a finding that he is the rare child for whom what is *generally* true of their class—less culpable by virtue of impulsiveness and immaturity, and more capable of rehabilitation—is not true of *this* particular offender, is to allow sentencing courts to impose a grossly disproportionate sentence in

violation of longstanding Eighth Amendment precedent.

## II. THE LOWER COURT'S HOLDING UNDERMINES *MILLER* AND *MONTGOMERY*

The lower court's analysis in Brett Jones's case flipped these constitutional sentencing commands on their head, converting a substantive right into a mere procedural rule. The Mississippi courts ignored the clear holding of *Montgomery*—that *Graham* and its progeny announced substantive rules of proportionality in punishment for the special case of juvenile offenders.

As discussed above, these rules are based on two precepts: that certain facts are *generally* true of children as a class (diminished culpability and enhanced capacity for rehabilitation) and, therefore, before imposing the most severe sanction available the sentencer must find these facts do not apply to the *specific* offender in question. Contrary to these rules, Mississippi courts held that so long as a sentencer "considered" the *Miller* factors, the imposition of a life sentence without the hope of parole is permissible for a child, even if that child is not permanently incorrigible or irreparably depraved. In doing so, the Mississippi Supreme Court essentially adopted the dissenting opinion in *Montgomery*, arguing that *Miller* mandates only that a sentencer *follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty.

*Montgomery* is the law of the land. To allow a sentence of life without parole for a juvenile without a finding of permanent incorrigibility—especially when evidence of *actual rehabilitation* is dismissed as irrelevant to the question of proportionality—would effectively overrule *Montgomery*. To preserve the rule of law, this Court should grant certiorari to require that sentencers make a finding of "permanent incorrigibility" before sentencing a juvenile to die in prison.

In *Montgomery*, this Court rejected the notion that *Miller* only required sentencers to engage a specific process, namely mere "consideration" of a defendant's juvenile status at the time of the crime. 136 S. Ct. at 734. *Miller* "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole." *Id.* at 734. Rather, *Miller* announced a substantive rule of proportionality in punishment that barred "a particular form of punishment for a class of persons," namely children who commit even heinous crimes. *Id.* at 735. "[I]t established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Id.* at 734.

The Court, therefore, directed that "before sentencing a juvenile to life without parole, the sentencing judge take into account 'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Id.* at 733 (quoting *Miller*, 567 U.S. at 480). "Like other substantive rules," it declared the rule retroactive because of the risk that "a defendant—here, the vast majority of juvenile offenders—faces a

punishment that the law cannot impose upon him." *Id.* at 734 (internal citations, quotation marks, and alterations omitted).

It follows that where a sentencer hands down a sentence of life without parole without finding that the defendant belongs to a class for whom such a sentence *is* constitutional—*i.e.*, permanently incorrigible children—it fails to protect the substantive right articulated in *Montgomery*.

Although this Court did not specify the precise requirements of the procedure necessary to implement the substantive rule, it warned that this lack of guidance "should not be construed to demean the substantive character of the federal right at issue." *Id.* "That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.* "To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.* Because the lower court's application of this Court's substantive rule was no more than a talismanic incantation of the *Miller* factors at a hearing intended to insulate its lack of substantive engagement with procedural formalism, its holding represents an unacceptable affront to the longstanding rule of proportionality in punishment under the Eighth Amendment.

If the lower court's decision is allowed to stand, *Montgomery* means nothing. By declining to hear Jones's case, this Court would effectively condone the imposition of life without parole on juveniles even where a juvenile is potentially capable

of rehabilitation—and indeed has already shown rehabilitation—provided that a sentencing court offers a ceremonial nod toward the *Miller* factors without engaging them for the purpose to which they were espoused, which is to individualize punishment as to a particular juvenile offender. Such an outcome would not only demean the substantive right confirmed in *Montgomery*. It would demean the Court's rule-making authority generally, and, thereby, the rule of law.

A permanent incorrigibility requirement, by contrast, would effectuate this Court's vision that the "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," and ensure against the "risk of disproportionate punishment" for juveniles who are not irretrievably depraved—the vast majority. *See Miller*, 567 U.S. at 479; *Montgomery*, 136 S. Ct. at 733-34. A requirement that a sentencer make a finding to distinguish between children whose crimes reflect "permanent incorrigibility" and those with the potential for rehabilitation also would safeguard against States "sentenc[ing] a child whose crime reflects transient immaturity to life without parole." *See Montgomery*, 136 S.Ct. at 735. And, more fundamentally, it would reaffirm respect for the substantive rules articulated by this Court.

In a functioning justice system, lower courts must adhere to the substantive rules announced by this Court, even if they may fashion their own procedure to ensure adherence. Where this Court has left enforcement of a substantive right to the States and a State court's procedure has failed to

adequately protect a substantive right, this Court has acted to preserve the rule of law. For example, in *Atkins v. Virginia*, this Court held that the Constitution "restrict[s] . . . the State's power to take the life of an [intellectually disabled] offender," but left it to the States to choose a method for determining whether an individual fell within the class of people who could not constitutionally be executed. 536 U.S. 304, 321 (2002). Twelve years later, in *Hall v. Florida*, this Court cabined the discretion States have in determining whether an individual is too intellectually disabled to be executed. 134 S. Ct. 1986 (2014); *see also Moore v. Texas*, 137 S. Ct. 1039, 1048 (2017). There, this Court held that a State cannot implement a bright-line rule that a defendant with an IQ score above 70 is not intellectually disabled. *Hall*, 134 S. Ct. at 1996. In such circumstances, this Court held, a State court must entertain other evidence of intellectual disability offered by a defendant. *Id.* "Although *Atkins* and *Hall* left to the States the task of developing appropriate ways to enforce the restriction on executing the intellectually disabled, States' discretion, [this Court] cautioned, is not unfettered." *Moore*, 137 S. Ct. at 1048 (internal quotation marks and citations omitted); *see also* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1178 (1989) (noting that a "discretion-conferring approach," does "not satisfy [the] sense of justice very well," particularly, "with issues so heartfelt").

Requiring a finding of permanent incorrigibility also ensures that the law is applied in a uniform manner, thereby increasing confidence in

the legal system—a critical component to respect for rule of law. Today, the application of this Court's pronouncements regarding the constitutionality of life without parole for juveniles varies across the country. Some states already require a permanent incorrigibility finding. *See Commonwealth v. Batts*, 163 A.3d 410, 443 (Pa. 2017) (imposing a presumption against JLWOP and holding that "for a sentence of life without parole to be proportional as applied to a juvenile murderer, the sentencing court must first find, based on competent evidence, that the offender is entirely unable to change . . . that there is no possibility that the offender could be rehabilitated at any point later in his life . . . ."); *Veal v. State*, 784 S.E.2d 403, 411 (Ga. 2016) (holding that under *Miller* a court must make a "specific determination that the [defendant] is irreparably corrupt"); *Luna v. State*, 387 P.3d 956, 963 (Okla. Crim. App. 2016) (remanding case for "resentencing to determine whether the crime reflects Luna's transient immaturity, or an irreparable corruption and permanent incorrigibility. . . "); *People v. Holman*, 91 N.E. 3d 849, 863 (Ill. 2017) ("Under *Miller* and *Montgomery*, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation."); *Davis v. State*, 415 P.3d 666, 695 (Wyo. 2018) ("*Miller* and *Montgomery* require a sentencing court to make a finding that . . . the juvenile offender's crime reflects irreparable corruption resulting in permanent incorrigibility, rather than transient immaturity."); *State v. Sweet*, 879 N.W.2d 811, 833 (Iowa 2016) (noting that for a

life without parole sentence to be imposed on a child the "burden was on the state to show that an individual offender manifested irreparable corruption") (internal citations and quotation marks omitted); *Landrum v. State*, 192 So. 3d 459, 466 (Fla. 2016) ("[T]he Eighth Amendment requires that sentencing of juvenile offenders be individualized in order to separate the 'rare' juvenile offender whose crime reflects 'irreparable corruption,' from the juvenile offender whose crime reflects 'transient immaturity.'") (quoting *Montgomery*, 136 S. Ct. at 734).

Others do not. *See State v. Skinner*, 917 N.W.2d 292, 302 (Mich. 2018) (holding that the sentencing court need not make a finding of permanent incorrigibility but noting that this Court's cases on the subject are "not models of clarity"); *State v. Ramos*, 387 P.3d 650, 665 (Wash. 2017) (holding that a sentencing court does not need to "make an explicit finding that the juvenile's homicide offenses reflect irreparable corruption before imposing life without parole"); *Johnson v. State*, 395 P.3d 1246, 1258 (Idaho 2017) (rejecting the view that a finding of permanent incorrigibility is required); *State v. Valencia*, 386 P.3d 392, 395-96 (Ariz. 2016) (holding "the failure of the sentencing courts to expressly determine whether the juvenile defendants' crimes reflected irreparable corruption" does not "entitle [them] to post conviction relief") (internal quotation marks and citations omitted). And the same conflict is present in federal courts. *Compare Malvo v. Mathena*, 893 F.3d 265, 267 (4th Cir. 2018) (finding of permanent incorrigibility is required) *with U.S. v. Briones*, 890 F.3d 811 (9th Cir. 2018) *vacated*, 915

F.3d 591 (9th Cir. 2019) (no finding of permanent incorrigibility required). But uniformity "is critical to prevent erosion of public confidence in the rule of law." *United States v. Barkley*, 369 F. Supp. 2d 1309, 1316 (N.D. Okla. 2005); *see also* Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. at 1179 (suggesting that uniformity is an important objective).

The lower court's decision shows that the erosion for respect for rule of law *amici* raise is not hypothetical. For a juvenile to be sentenced to die in prison, the sentence must "reflect an irrevocable judgment about [a child's] value and place in society," *Miller*, 567 U.S. at 473 (internal quotation marks omitted)—a judgment that "rehabilitation is impossible." *Montgomery*, 136 S. Ct. at 733. Even if sentencers are to be permitted some latitude to formulate rules of procedure to vindicate the substantive right, this Court should set boundaries for those procedural rules. One such boundary that is susceptible to easy application by sentencers is that a sentencer must account for rehabilitation evidence and make a finding of permanent incorrigibility. And because no such finding was made and, furthermore, the court dismissed as irrelevant actual evidence of rehabilitation that had taken place over Mr. Jones's decade of incarceration, the trial court trampled on the substantive rule that sentencing a child to life without the possibility of parole is only for the "rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S. Ct. at 733.

*Amici* urge this Court to use this case to strengthen and uphold the rule of law by mandating sentencers to make a finding of permanent incorrigibility before sentencing children to life in prison. *See Miller*, 567 U.S. at 481

## III. ALLOWING SENTENCERS TO SENTENCE JUVENILES TO LIFE IN PRISON WITHOUT A FINDING OF PERMANENT INCORRIGIBILITY WOULD IMPERIL THE RULE OF LAW

This case animates *amici*'s concerns about proportionality in punishment and rule of law.

Nowhere did the lower court determine that Jones was permanently incorrigible. And nowhere did it make a finding on the record as to how each *Miller* factor applied to Jones's case, instead merely asserting that it had, "considered each and every [*Miller*] factor." Pet. App. 70a. The "considera[tion]" of those factors is suspect at least, and at worst sounds in a hollow incantation of process to ward off the substantive inquiry into proportionality at the heart of these Eight Amendment cases.

True, the court mentioned Jones's age, but did so only in the most perfunctory manner, noting "Brett Jones[] was 15 years old" at the time of the crime. Pet. App. 73a. Beyond recognizing that mere "chronological fact," the lower court did not consider the "hallmark features [of Jones's youth] . . . [his] immaturity, [his] impetuosity, and [his] failure to appreciate risks and consequences." *See Miller*, 567 U.S. at 477. The lower court failed to meaningfully take into account, as this Court requires, "how those

differences counsel against irrevocably sentencing [Jones] to a lifetime in prison." *Id.* at 480.

The lower court's failure to take into account Jones's mental health is similarly troubling. As this Court has held, "the background and mental and emotional development of a youthful defendant [must] be duly considered in assessing [the proper imposition of a life without the possibility of parole sentence.]" *Miller*, 567 U.S.at 476 (internal quotation marks and citation omitted). And, although Jones presented evidence of his mental afflictions, there is no indication in the record that the trial court meaningfully weighed how this factor shaped his juvenile psychology, much less how it impaired his decision-making at the time of the crime and therefore his culpability.

The lower court's off-hand remark regarding Jones's maturity underscores its flawed reasoning. It cited Jones's sexual relationship with his girlfriend at the time of the crime as evidence of "some degree of maturity." Pet. App. at 73a. But, to the extent a teen's sexual activity is relevant to his sentencing, it indicates "an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking," not the opposite. *See Montgomery*, 136 S. Ct. at 733.

At bottom, the lower court's analysis is the inverse of that demanded by *Miller* and *Montgomery*. The point of evaluating the *Miller* factors is not to establish whether the defendant is criminally responsible for the tragic loss of life he occasioned or if he should be punished. The point of evaluating the *Miller* factors is to decide whether, given that the

defendant had committed a crime for which he is criminally responsible despite his juvenile status, the state's *harshest* penalty of a lifetime of imprisonment is proportionate for this particular defendant. The sentencer must decide whether he cannot be reformed and rehabilitated, or if "hope for some years of life outside prison walls" ought to be maintained. *Montgomery*, 136 S. Ct. at 737.

In addition to failing to make a finding that Jones was permanently incorrigible before sentencing him to life in prison, the lower court ignored evidence showing that Jones was not among the "rarest of juvenile offenders" who have no hope for rehabilitation. *Id*. at 734. This Court has provided examples of the type of evidence that lower courts should take into account in determining that the defendant is in the class of defendants for whom life without parole is unconstitutional. For example, the petitioner in *Montgomery* outlined "his evolution from a troubled, misguided youth to a model member of the prison community," including statements that "he helped establish an inmate boxing team, of which he later became a trainer and coach" and "contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates." *Montgomery*, 136 S. Ct. at 736. The Court noted that these submissions were "relevant . . . as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." *Id*. At the very least, implementation of *Montgomery* requires that a court afford a defendant a meaningful opportunity to show that he is in the class of defendants for whom life without parole is unconstitutional.

After this Court's decision in *Miller*, Jones moved to be resentenced to life with the possibility of parole. He submitted compelling evidence in support of that petition, evidence which showed not only that he was capable of rehabilitation and reform but that he had in fact already achieved significant rehabilitation and reform. Jones had obtained a GED, abstained from any gang affiliations despite the prevalence of gangs in prison, and boasted a nearly unblemished disciplinary record.[2] Furthermore, he had enrolled in vocational training programs, completed anger management classes, reconciled with family members, and participated in religious community. Pet. App. 74a. All of these activities have been, according to Jones, the "avenue[s] that [he has] take[n] in prison to rehabilitate [himself]." *Id.* at 74a. Yet, none of this evidence is mentioned in the lower court's decision. Likewise, the court is silent as to Jones's admission of responsibility and regret for his conduct. The court also brushes aside the testimony of Officer Benton, a first-hand witness who, as both Jones's supervisor and correction officer, observed Jones's rigorous commitment to rehabilitation. Officer Benton testified that Jones was a "very good employee" and also "a good kid . . . [who] tried to do what was the right thing . . . and [who] got along with everybody." *Id.* at 63a.

All this evidence is of the type the Court in *Graham* and *Montgomery* declared relevant to the constitutionality of a sentence imposed on a juvenile

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[2] Aside from a single disciplinary write-up, Jones's disciplinary record has been pristine, as acknowledged by correctional staff. Pet. App. 28a, 67a.

because it is relevant to the specific offender's culpability, and therefore proportionality of the sentence. It is especially important to the imposition of the harshest sentence available for child offenders: the sentence to live the remainder of their natural life and die in prison. *See Montgomery*, 136 S. Ct. at 736. But rather than engaging with the evidence that this Court deemed "relevant," the trial court does not even mention it. In so doing, the trial court ignored a long line of cases demanding a specific inquiry into the proportionality of sentences for juvenile offenders.

Because the lower court made no finding of permanent incorrigibility and ignored evidence of Jones's rehabilitation, he has received an unconstitutional punishment. To allow it to stand would undermine this Court's rule-making authority, deepen discord amongst courts applying *Miller*, and deflate confidence in the law.

## CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to grant the petition.

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