No. 18-1259

IN THE
Supreme Court of the United States

BRETT JONES,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

BRIEF OF ERWIN CHEMERINSKY, ERIC M. FREEDMAN, CRAIG FUTTERMAN, MARTIN GUGGENHEIM, BERNARD E. HARCOURT, SHANI M. KING, JEFFREY L. KIRCHMEIER, ISSA KOHLER-HAUSMANN, LEAH LITMAN, CHRISTOPHER SEEDS, ALISON SIEGLER, CAROL STEIKER, DAVID A. STRAUSS, CARLOS MANUEL VÁZQUEZ, GIDEON YAFFE, STEVEN ZEIDMAN AS *AMICI CURIAE IN SUPPORT OF PETITIONER*

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INTEREST OF *AMICI CURIAE*[1]

Amici are scholars of federal courts and/or criminal law, studying the operation and purposes of federal jurisdiction and criminal law.[2] Although they have divergent legal and political outlooks, *amici* share a keen interest in the federal courts and criminal law, having published extensively on these topics and collected decades of experience examining issues implicated in this case.

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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* certify 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.

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Amici share a concern that the lower court's judgment threatens the rule of law this Court announced in *Miller v. Alabama*, 567 U.S. 460 (2012)

and affirmed in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) that life without the possibility of parole for a child is disproportionate for all but the rarest of juvenile offenders whose crimes reflect irreparable corruption and for whom rehabilitation is impossible.

SUMMARY OF ARGUMENT

This case concerns the scope of the constitutional rule announced in *Miller v. Alabama*, 567 U.S. 460 (2012), and declared retroactive in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). *Miller* established a substantive rule that renders life without parole disproportionate for the vast majority of juveniles in light of their "diminished culpability and heightened capacity for change." *Id.* at 479. Under *Miller*, only those juveniles who are permanently incorrigible are constitutionally eligible for life without parole.

Petitioner Brett Jones, who was sentenced to life without parole for crimes committed as a juvenile, maintains that his sentence should be vacated because the sentencing court failed to find him permanently incorrigible.

To conform to *Miller*, a sentencing scheme must require the sentencing authority to separate juveniles who cannot be subjected to life without parole (juveniles whose crimes reflect "transient immaturity") from the rare juveniles who can (those whose crimes reflect "irreparable corruption"). *Miller*, 567 U.S. at 479-80 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)). A life-without-parole sentence is permitted solely when an offender is permanently

incorrigible. Otherwise, juvenile offenders are constitutionally immune from receiving that sentence. *Id*.

Because the sentencing court here made no effort to address and engage with how Jones's youth made him different than an adult defendant—and how those differences counseled against life without parole—the sentencing scheme fell short of what *Miller* requires.

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. 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 "permanent[ly] incorrigib[le]" 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. On 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.

Amici respectfully urge the Court to clarify that a sentencer must engage with youth and its attendant circumstances in order to distinguish between youthful immaturity and irreparable corruption

before condemning a juvenile to life in prison, and 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. Such a clarification is necessary to ensure implementation of this Court's substantive rules and uphold the rule of law.

ARGUMENT

I. *MILLER* HELD THAT STATES MAY NOT IMPOSE LIFE WITHOUT PAROLE ON JUVENILES WHOSE CRIMES REFLECT TRANSIENT IMMATURITY, ANNOUNCING A SUBSTANTIVE RULE OF CONSTITUTIONAL LAW.

The question in this case is whether Mississippi violated the Eighth Amendment when it sentenced Brett Jones to a lifetime of imprisonment without first resolving whether he was eligible for such a sentence. It did. The fact that the sentencing scheme was "discretionary," the judge "considered" Jones's juvenile status at the time of the crime, and that the judge weighed aggravating and mitigating factors has no bearing on that answer. In *Miller*, this Court announced a substantive—not procedural—rule, holding that imposing life without parole on the class of juveniles who were capable of maturation and rehabilitation constituted cruel and unusual punishment, constitutionally beyond the substantive power of any state. Thus, to pass constitutional muster under *Miller*, a sentencing authority must separate the vast majority of juveniles who cannot be

sentenced to life without parole from the rare irreparably corrupt juvenile offenders who can be. 567 U.S. at 479–80.

Substantive rules exempt either certain conduct from criminal punishment or certain classes of individuals from particular punishments. *Penry v. Lynaugh* 492 U.S. 302, 330 (1989). These rules are "substantive" because, no matter what process a state follows, the penalty cannot be imposed. For example, regardless of procedure, a state may not criminalize flag burning. *See, e.g., United States v. Eichman,* 496 U.S. 310 (1990); *Texas v. Johnson,* 491 U.S. 397 (1989). Likewise, regardless of procedure, a state may not impose the death penalty on juveniles, the intellectually disabled, or those who have not killed. *Roper,* 543 U.S. at 578; *Atkins v. Virginia,* 536 U.S. 304, 321 (2002); *Kennedy v. Louisiana,* 554 U.S. 407, 413 (2008). The latter sentences would be unconstitutional even if the death penalty scheme were discretionary, if the sentencing judge "considered" the defendant's age/intellectual disability/crime during sentencing, or weighed the aggravating factors of the crime against the mitigating factors prior to imposing sentence.

Similarly, *Miller* held that life without parole is an unconstitutional penalty for "'a class of defendants'"—namely, "juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery,* 136 S. Ct. at 734 (quoting *Penry,* 492 U.S. at 330). Almost all juveniles, by virtue of their youth, have "diminished culpability and heightened capacity for change" and so are members of the class and cannot constitutionally be sentenced to life

without parole. *Miller*, 567 U.S. at 479. *Miller* "established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Montgomery,* 136 S. Ct. at 734.

For this class of defendants, "'even the use of impeccable factfinding procedures could not legitimate a verdict' where 'the conduct being penalized is constitutionally immune from [the] punishment [imposed].'" *Id.* at 730 (quoting *United States v. United States Coin & Currency,* 401 U.S. 715, 724 (1971) (alterations added)). 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. The Court emphasized that *Miller* "did more than require a sentencer to *consider* a juvenile offender's youth before imposing life without parole." *Id.* at 734 (emphasis added).

Mere "consideration" does not render the sentence lawful unless the sentencing body finds the defendant to be in the class of persons for whom the sentence is not disproportionate. "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.' "*Id.* at 734.

Contrary to these rules, the Mississippi Supreme Court held that so long as a sentencing authority "considered each of the *Miller* factors," , life

without parole for a child is constitutional. Pet. 47a.[3] By this logic, such a sentence would be constitutional even if that child is not permanently incorrigible. In understanding *Miller* as mandating only a certain process, the Mississippi Supreme Court essentially adopted the dissenting opinion in *Montgomery*.

A sentencing scheme that is discretionary and allows for youth merely to be "considered," however, does not comply with *Miller*. Such a scheme does not enforce the substantive rule of punishment proportionality for juveniles, which requires distinguishing between youthful immaturity and irreparable corruption. Such a scheme thus falls short of ensuring the sentencing authority separates the class of juveniles who cannot constitutionally be sentenced to life without parole from the rare exceptions who are constitutionally eligible for this punishment. Mere formal sentencing discretion or ceremonial "consideration" of youth fail to ensure that the constitutionally required distinction will be drawn, as it must be, in *every* case.

Although this Court did not specify the precise requirements of the procedure necessary to implement this substantive rule announced in *Miller*

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[3] These factors include age; family circumstances; circumstances surrounding the crime; whether the offender might have been charged and convicted of a lesser offense if not for incompetencies associated with youth; and possibility of rehabilitation. Pet. App. 43a-44a. But the Mississippi Supreme Court said that a court need not identify or discuss on the record which factors it considered in reaching a sentence so long as "[t]he judge recognized the correct legal standard ('the *Miller* Factors')." *Id.* at 47a.

and affirmed in *Montgomery*, it warned that this lack of guidance "should not be construed to demean the substantive character of the federal right at issue." *Montgomery*, 136 S. Ct. at 735. "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.* Rather, the law requires sorting between those for whom the penalty of life without the possibility of parole is proper, and those for whom the penalty is improper and indeed disproportionate—which is the vast majority of youth.

Plainly, a scheme directing life without parole in all instances would not be constitutional. A scheme allowing for discretion may or may not be. It would not be constitutional if it merely gives juries and trial courts discretion without specifying the relevant constitutional standard.[4] It would not be

[4] Similarly, a death penalty scheme would be unconstitutional if it merely listed mandatory aggravating factors for "consideration," but allowed unfettered discretion to decide if a defendant is a member of the class made eligible for that penalty without specifying any statutory standard whatsoever that places defendants in "'a narrow category of the most serious crimes' [ ] whose extreme culpability makes them 'the most deserving of execution.'" *Roper*, 543 U.S. at 553 (2005) (internal citations omitted). ("The guiding principle that emerged from *Furman* was that States were required to channel the discretion of sentencing juries in order to avoid a system in which the death penalty would be imposed in a 'wanton' and 'freakish' manner." *Johnson v. Texas*, 509 U.S. 350, 359 (1993) (internal citations omitted)); *see also Lowenfield v. Phelps,* 484 U.S. 231, 244 (1988) ("[T]o pass constitutional muster, a capital sentencing scheme must 'genuinely narrow the class of persons eligible for the death penalty.'" (quoting *Zant v. Stephens,* 462 U.S. 862, 877 (1983)).

constitutional if it merely allowed, without requiring, juries and judges to take account of "'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). A discretionary sentencing scheme complies with *Miller* if, and only if, it requires the sentencing authority to engage with youth and its attendant circumstances in order to distinguish between youthful immaturity and irreparable corruption.

II. THE SENTENCING SCHEME HERE RUNS AFOUL OF PRINCIPLES OF PROPORTIONALITY.

Allowing the lower court's decision to stand runs afoul of longstanding precedent requiring proportionality in punishment, and contravenes the law laid out by this Court in *Montgomery*.

This Court has made definitive pronouncements on 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. Florida*, 560 U.S. 48, 86 (2010), *as modified* (July 6, 2010) (Roberts, C.J., concurring) (citing *Roper,* 543 U.S. 551). 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.

In *Roper*, this Court held that juvenile offenders cannot "with reliability be classified among the worst offenders," for whom the death penalty is reserved. *Roper*, 543 U.S. at 569, 570. The *Graham* Court 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 those on the Court who rejected the conclusion that *Roper's* reasoning required a categorical ban on life without the possibility of parole sentences for juvenile nonhomicide offenders 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).

Indeed, *Miller*'s exception of life without parole only for the rare, irreparably corrupt juvenile reflects the Court's longstanding precedent interpreting the Eighth Amendment's ban on cruel and unusual punishments to require, at least, narrow proportionality even in the noncapital context. *Miller*, 567 U.S. at 479–80 (citing *Roper*, 543 U.S. at 573); *see also Lockyer v. Andrade*, 538 U.S. 63, 73 (2003);

Harmelin v. Michigan, 501 U.S. 957, 996–97 (1991); *Ewing v. California,* 538 U.S. 11, 20 (2003) (plurality opinion).

As the Chief Justice noted in his concurrence 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. *See Miller*, 567 U.S. at 474 ("[*Graham*] liken[ed] life-without-parole sentences imposed on juveniles to the death penalty itself."). By declining to "foreclose a sentencer's ability to make that judgment [that the most severe sanction could never be imposed on juvenile offenders] in homicide cases," therefore, the Eighth Amendment's proportionality principle is vindicated only by "requir[ing] [a sentencing authority] 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.

Allowing a sentencing court to impose the most severe sentence legally authorized on a juvenile offender without ensuring that he is the rare child who is incapable of rehabilitation (and who is more culpable than the ordinary juvenile offender) is to allow sentencing courts to impose a grossly disproportionate sentence in violation of longstanding Eighth Amendment precedent.

Moreover, Mississippi's sentencing scheme runs afoul of this Court's requirement "of individualized sentencing for defendants facing the most serious penalties." *Miller*, 567 U.S. at 465. The

sentencing court here did not engage with a meaningful consideration of youth for the purpose *Miller* required: to individualize punishment as to a particular juvenile offender. By sustaining the decision below, this Court would condone the imposition of life without parole even where a juvenile is capable of rehabilitation—indeed, has already shown rehabilitation—provided that a sentencing authority offered a ceremonial nod toward a defendant's youth.

After all, the problem with the mandatory life-without-parole sentences for children in *Miller* was not just that mandatory sentencing schemes produce some disproportionate sentences in the class of juvenile offenders. The problem was also that the right sentences could not be matched to the right people within the class under a mandatory scheme. Insofar as the Court maintained the constitutionality of life without parole sentences for "irreparably corrupt" juvenile offenders, mandatory sentencing guaranteed that sentences would not be proportionate in an *individualized* fashion. *See Miller*, 567 U.S. at 475 ("*Graham*'s [t]reatment [of] juvenile life sentences as analogous to capital punishment makes relevant here a second line of our precedents, demanding individualized sentencing when imposing the death penalty.") (internal citations and quotations omitted, alternations in original). Mississippi's scheme suffers the same defect.

To alleviate these concerns, the Court should require that the sentencing authority address age and age-related factors and permit a life-without-parole sentence solely in the case of an offender who, because

of "irreparable corruption," is not a member of the constitutionally immune class. Only such a system will 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.

III. ALLOWING THE SENTENCING SCHEME HERE TO STAND WOULD DEMEAN THE RULE ANNOUNCED IN *MILLER*.

Upholding a sentencing scheme without a limitation on the authority to impose a life-without-parole sentence to those rare juveniles whose crimes reflect irreparable corruption rather than transient immaturity would also undermine this Court's rule-making authority and deflate confidence in the law.

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 safeguard 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. 572 U.S. 701 (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 in order to effectuate the substantive rule: that members of the protected class are not subject to the death penalty. *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 Chapman v. California*, 386 U.S. 18, 21 (1967) (overturning conviction because violation of rule against prosecutorial comments on defendant's declining to testify was not harmless beyond a reasonable doubt); 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"). And despite the discretion this Court has granted the States to determine how to enforce substantive constitutional rules, there has, until now, been no argument that state courts were not required to determine whether the litigant before it qualified for that protection. *See, e.g.*, *Graham*, 560 U.S. 48; *Panetti v. Quarterman*, 551 U.S. 930 (2007); *Roper*, 543 U.S. 551.

Requiring a system to determine whether a juvenile is permanently incorrigible also helps ensure that the law is not applied in an arbitrary manner, thereby increasing confidence in the legal system—a critical component to respect for rule of law. *See* Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. at 1179 (explaining that "establishing as soon as possible a clear, general principle of decision" aids in the important objectives of uniformity and predictability). Just as certain safeguards have developed to address concerns of arbitrariness in the application of the death penalty, so too should this Court require that sentencing authorities meaningfully sort juveniles who are eligible from those who not eligible for life without parole. *See Ring v. Arizona*, 536 U.S. 584, 615–16 (2002) (Breyer, J., concurring) (noting procedural rules are required to keep the death penalty from being unconstitutionally cruel and unusual, including as a result of arbitrary application).

Requiring a finding on whether a particular juvenile is within the class potentially subject to a sentence of life without the possibility of parole would ensure that, should such a sentence be imposed, that it is in accordance with this Court's limits on imposing it.

IV. THE LOWER COURT'S SENTENCING SCHEME DID NOT CONFORM TO THE SUBSTANTIVE CONSTIUTIONAL RULE RECOGNIZED IN *MILLER*.

As this Court explained in *Montgomery,* the function of the sentencing hearing required in *Miller* is to effectuate *"Miller's* substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." 136 S. Ct. at 735. The sentencing authority is "required" to deliberate upon the distinctive attributes of youth and to give appropriate weight to age and age-related factors *in order to* "separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* A hearing is necessary, therefore, to determine whether a particular juvenile does not exhibit the "diminished culpability and heightened capacity for change" that typically make life without parole a disproportionate punishment for most juveniles. *Miller,* 567 U.S. at 471, 479.

The sentencing court's analysis in Brett Jones's case flipped these constitutional sentencing commands on their head, converting a substantive right into a procedural rule. Its application of this Court's substantive rule was no more than a talismanic incantation of youth at a hearing intended to insulate its lack of substantive engagement with procedural formalism. As such, the sentencing scheme here presents an unacceptable risk that "a defendant—here, the vast majority of juvenile offenders—faces a punishment that the law cannot impose upon him." *Montgomery,* 136 U.S. at 734 (internal citations, quotation marks, and alterations omitted).

Nowhere did the sentencing court determine that Jones was permanently incorrigible. Nowhere did it make a finding on the record as to how youth

and its attendant circumstances applied to Jones's case. Instead, the sentencing court merely asserted that it had, "considered each and every [*Miller*] factor." Pet. App. 70a. And nowhere did it take account of "'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Montgomery,* 136 U.S. at 733 (quoting *Miller*, 567 U.S. at 480). The court mentioned Jones's age only in the most perfunctory manner, noting "Brett Jones[] was 15 years of age" at the time of the crime. Pet. App. 73a.

This Court has already rejected such rote recitation of a defendant's age as inadequate to uphold the substantive right announced in *Miller*. *Montgomery*, 136 S. Ct. at 734 (*Miller* "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole."). Far from taking into account how Jones's age counseled against life without parole in order to distinguish between youthful immaturity and irreparable corruption, the sentencing court treated age as a mere chronological fact.[5] Yet this Court has observed that "youth is more than a chronological fact." *Miller*, 567 U.S. at 476 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115

[5] 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.

(1982)). Instead, youth is marked by "immaturity, impetuosity, and failure to appreciate risks and consequences." *See Miller*, 567 U.S. at 477.

The lower court also ignored evidence showing that Jones was not among the "rarest of juvenile offenders" who have no hope for rehabilitation. *Montgomery,* 136 S. Ct. 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." *Id.* at 736. 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.[6] Furthermore, he had enrolled in vocational training programs, completed anger management classes, reconciled with family members, and participated in religious community. Pet. App. 75a. 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 sentencing court's decision. Likewise, the sentencing court is silent as to Jones's admission of responsibility and regret for his conduct. The sentencing 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 61a, 63a.

Jones's sentencing court did not even mention this evidence when it pronounced the harshest possible punishment. In failing to engage with facts that this Court has deemed "relevant" in cases like these, the sentencing court ignored a long line of cases demanding a specific inquiry into the proportionality of sentences for juvenile offenders. *See, e.g.*, *Montgomery*, 136 S. Ct. at 736; *Graham*, 560 U.S. 48. This failure further underscores the inadequacy of the procedure below to protect the substantive character

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

of the federal right at issue. *See Montgomery*, 136 S. Ct. at 734.

At bottom, the lower court's analysis is the inverse of that demanded by *Miller* and *Montgomery*. The point of evaluating a defendant's youth 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 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 sentencing authority 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.

It is for this reason that the lower court's apparent comparison to capital sentencing proceedings, where the sentencer weighs aggravating and mitigating circumstances, misses the mark. Pet. App. 45a. If capital sentencing is the analogy, a finding of irreparable corruption is akin to the required finding of an "'aggravating circumstance' (or its equivalent) at the guilt or penalty phase." *Tuilaepa v. California*, 512 U.S. 967, 971–72 (1994). Similarly, in the context of imposing the most severe punishment for juveniles of lifetime imprisonment, Mississippi courts create a "grave risk" that otherwise redeemable juveniles are subject to a sentence "akin to the death penalty." *Miller,* 567 U.S. at 475.

The scheme employed here fell far short of implementing *Miller*'s substantive guarantee. Under

Miller, states must ensure they do not sentence a child whose crime reflects transient immaturity to life without parole, as "*Miller* established that this punishment is disproportionate under the Eighth Amendment." *Montgomery*, 136 S. Ct. at 735. To only consider Jones's age in passing at sentencing without addressing the specific concern presented by *Miller* poses an unacceptable risk that Jones faces a punishment that the law cannot impose upon him. *Id.* at 734 (internal citations, quotation marks, and alterations omitted).

CONCLUSION

Amici respectfully urge that the judgment below be reversed.

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Respectfully submitted,

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* This brief has been prepared by an individual affiliated with Yale Law School, but does not purport to present the school's institutional views, if any.