No. 18-1500

IN THE

Supreme Court of the United States

JONSHA BELL,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

REPLY FOR PETITIONER

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Mississippi offers no colorable basis to deny review. The State does not dispute that the question presented has produced a deep, acknowledged, and lasting split among state and federal courts. *See* Br. in Opp. 5, 9. Instead, Mississippi argues that the Court should deny certiorari because the state court majority in this case reached the correct result. That argument disregards this Court's precedent—and is beside the point at the certiorari stage. Right or wrong, the decision below falls squarely on one side of a six-to-seven split. This Court alone can resolve that intractable division of authority and decide definitively whether the Eighth Amendment prohibits an aggregate sentence without parole that exceeds the life expectancy of a juvenile nonhomicide offender. The Court should grant certiorari and answer that question here.

1. Mississippi devotes the majority of its brief in opposition to arguing that this Court should deny review because the lower court majority was right and the dissenters were wrong. Contrary to Mississippi's argument, the petition explains why the central logic of this Court's holding in *Graham v. Florida*, 560 U.S. 48 (2010), necessarily dictates a categorical rule against de facto life without parole sentences for juvenile nonhomicide offenders. *See* Pet. 13-14. Mr. Bell will not belabor this point at the certiorari stage. For now, it suffices to say that the question has produced a deep and lasting division of authority. Mississippi does not dispute the split on the question presented and resolving splits of authority is this Court's core function.

2. There is no vehicle problem based on Mr. Bell's criminal history. Mississippi claims that "[t]here is a distinction between juveniles who have little to no criminal history and those, like Bell, who faced multiple felonies prior to their 18th birthday." Br. in Opp. 11. But the question presented has nothing to do with criminal history. Instead, the question concerns a categorical rule—whether *any* juvenile may be sentenced to die in prison for nonhomicide offenses. By definition, a categorical rule does not depend on individual circumstances.

That is clear from looking at *Graham*. There, Terrence Graham's own escalating criminal history offered no impediment to review because his case, like Mr. Bell's, presented a categorical question. 560 U.S. at 61-62. Graham pled guilty to two felonies—"armed burglary with assault or battery" and "attempted armed robbery"—less than six months before he "violated his probation by committing a home invasion robbery, by possessing a firearm, and by associating with persons engaged in criminal activity." *Id.* at 53-54, 55; *see also id.* at 122 (Thomas, J., dissenting, joined by Scalia and Alito, JJ.) ("[A] run-of-the-mill burglary or robbery is not at all similar to Graham's criminal history, which includes a charge for armed burglary with assault, *and* a probation violation for invading a home at gunpoint."). Indeed, Mississippi's argument that "[i]t is important to note that in a matter of a few years, Bell's criminal conduct escalated quite dramatically," Br. in Opp. 5, uncannily echoes *Graham*, which made the same observation *en route* to precisely the opposite conclusion:

> Here one cannot dispute that this defendant posed an immediate risk, for he had committed, we can assume, serious crimes early in his term of supervised release and despite his own assurances of reform. Graham deserved to be separated from society for some time in order to prevent what the trial court described as an "*escalating pattern of criminal conduct*," App. 394, but it does not follow that he would be a risk to society for the rest of his life. Even if the State's judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset.

560 U.S. at 73 (emphasis added). Mr. Bell's criminal history presents no reason to deny review.

3. Mississippi also argues the Court should deny certiorari because it has done so in at least six previous petitions involving a similar question. Br. in Opp. 9-10. In fact, the question's recurrence only confirms the need for review. Most of the prior cases had vehicle problems not present here,[1] and the Court denied review in the

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[1] *See* Br. in Opp. at 1-2, *Lucero v. Colorado*, 138 S. Ct. 641 (2018) (No. 17-5677) (explaining that Lucero and Rainer would "become parole eligible within their natural life expectancy" and that each committed crimes beyond the scope of the nonhomicide offenses addressed in *Graham*); Br. in Opp. at 8-9, *Florida v. Henry*, 136 S. Ct. 1455 (2016) (No. 15-871), 2016 WL 537502 (explaining that Florida's recent legislation reforming its system of sentencing juvenile offenders as adults "vitiate[d] or moot[ed]" the conflict); Br. in Opp. at 8, *Bunch v. Bobby*, 569 U.S. 947 (2013) (No. 12-558), 2013 WL 1143719 ("This case does not involve the question presented in

remaining cases more than two years ago after respondents acknowledged the split of authority, but argued for more percolation.[2] At this point, however, the split's depth and durability make it impossible to credibly argue that further percolation is necessary. Sensibly, Mississippi does not even try. The split will not resolve itself, and the time for this Court's intervention has arrived.

4. The question is undeniably important because it recurs regularly and concerns the permanent deprivation of liberty, the most devastating punishment a juvenile in America can face. The Court will find no better opportunity to answer it than this case, where the trial judge made an explicit finding that Mr. Bell had only 40 years left to live but nonetheless sentenced him to 95 years without parole. As Mississippi concedes, "[t]his obviously means that he will serve the remainder of his life in prison." Br. in Opp. 6. Mr. Bell did not take a life, but without this Court's intervention, he will

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the Petition because Bunch's habeas petition is subject to the restrictions of 28 U.S.C. § 2254(d)."); Pet. at 33, *Byrd v. Budder*, 138 S. Ct. 475 (2017), (No. 17-405), 2017 WL 4149024 ("Courts of appeals are split on whether law can be 'clearly established' for purposes of AEDPA review when there is a significant division among courts on the issue on direct review.").

[2] Br. in Opp. at 19, *Willbanks v. Mo. Dep't of Corr.*, 138 S. Ct. 304 (2017) (No. 17-165), 2017 WL 3701804 ("[I]f this Court were to grant review now, it would cut off future benefits that might accrue from further percolation of this issue in the lower courts."); Br. in Opp. at 17, *Vasquez v. Virginia*, 137 S. Ct. 568 (2016) (No. 16-5579), 2016 WL 7557454 ("The Court should let the matter percolate . . . .").

spend the rest of his life behind bars serving a sentence for crimes he committed as a juvenile.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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