No. 18-203

IN THE
Supreme Court of the United States

JOEY MONTRELL CHANDLER,
Petitioner,
v.

STATE OF MISSISSIPPI,
Respondent.

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

BRIEF OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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BRIEF OF *AMICI CURIAE*[1]

INTEREST OF THE *AMICI*

Amici curiae have a shared commitment to and expertise in the fair and reliable administration of justice in the adjudication of criminal conduct by juveniles.

California Attorneys for Criminal Justice (CACJ) is one of the two largest statewide organizations of the criminal defense lawyers associated with the National Association of Criminal Defense Lawyers. CACJ has as part of its bylaws "the defense of the rights of persons as guaranteed by the United States Constitution." CACJ has a particular interest in the issues presented because of the number of juveniles sentenced for serious offenses in California, including the large numbers who are represented by members of CACJ.

The Campaign for Fair Sentencing of Youth (CFSY) is a national coalition and clearinghouse that coordinates, develops, and supports efforts to implement just alternatives to the extreme sentencing of America's youth. Their vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and

[1] *Amici* certify that no party or party's counsel authored this brief in whole or in part and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of *Amici*'s intent to file this brief more than 10 days prior to its due date and all parties consented to filing of this brief.

eliminates the imposition of life without parole for people under age eighteen at the time of the offense. They consist of advocates, lawyers, religious groups, mental health experts, victims of crime, members of law enforcement, doctors, teachers, families, and people directly impacted by extreme sentences on juveniles, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in 2009, the CFSY uses a multi-pronged approach, which includes coalition-building, public education, strategic advocacy, and collaboration with impact litigators—on both state and national levels—to accomplish their goal.

The Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

Phillips Black, Inc. attorneys have extensive familiarity and experience with the administration of the harshest penalties under law and the imposition of life without parole upon juveniles in particular. Phillips Black consists of independent practitioners collectively dedicated to providing the highest quality of legal representation to prisoners in the United States sentenced to the severest penalties under law.

Phillips Black further contributes to the rule of law by consulting with counsel, conducting clinical training, and developing research on the administration of criminal justice.

Phillips Black has conducted leading research on the administration of juvenile life without parole sentences and has served as counsel for *amici* and inmates serving such sentences in the state and federal courts across the United States.

The Promise of Justice Initiative (PJI) is a private, non-profit law office located in New Orleans, Louisiana, dedicated to upholding fairness in the criminal justice system. PJI has a particular interest in these issues because of the large number of persons in Louisiana serving sentences of life without the possibility of parole for juvenile offenses.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Sentencing courts that fail to make a finding of permanent incorrigibility before imposing a life without parole sentence on a juvenile offender violate the Eighth Amendment protections that this Court articulated in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). All but the rarest juvenile offenders are ineligible for the sentence of life without parole. "*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." *Montgomery*, 136 S. Ct. at 734. Only the latter, those who are irreparably corrupt, may be lawfully sentenced to life without the possibility of parole. *Miller*, 567 U.S. at 465.

Although states have wide latitude to implement constitutional protections, these substantive guarantees provide the lines within which the states must operate. Otherwise, the protections may become meaningless. *See Hall v. Florida*, 134 S. Ct. 1986, 1999 (2014) (explaining that this Court held that intellectually disabled persons could not be executed consistently with the Eighth Amendment, and states were not permitted to "define intellectual disability as they wished" at risk of nullifying that substantive guarantee). Failing to require a finding of a juvenile's permanent incorrigibility "creat[es] an unacceptable risk" that children who are not permanently incorrigible will be sentenced to die in prison, an unconstitutional sentence. *Montgomery*, 136 S. Ct. at 734. Because the court below declined to provide this basic protection, the Court should grant review and reverse on the first question before it.

However, the Court may also wish to reverse on the narrower second question, which is answered by *Miller*'s requirement to consider a juvenile's potential for rehabilitation and reinforced by the Court's analogous holding in *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Penry v. Lynaugh*, 492 U.S. 302 (1989) (abrogated on other grounds). *Eddings* provides that a refusal to consider the mitigating evidence before the sentencer violates the Eighth Amendment's demand that in the cases with the highest stakes—namely the death penalty and life without the possibility of parole for juveniles—the sentencing decision will be made only after considering the "defendant's character or record," including capacity for rehabilitation. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978); *see also Skipper v. South Carolina*, 476 U.S. 1, 5 (1986) (holding defendant's prospects

for rehabilitation "may not be excluded from the sentencer's consideration."). *Penry* made clear that the mitigating evidence must not merely be before the sentencer, but must also be meaningfully considered. In cases such as Petitioner's these requirements apply with special force because of juvenile offenders' "heightened capacity for change." *Miller*, 567 U.S. at 479.

Instead of making any findings on Mr. Chandler's capacity for or actual rehabilitation, the sentencing court "note[d] the Executive Branch has the ability to pardon and commute sentences . . . ." Pet. App. 26a-27a. The Court should grant review and reverse on the second question to insist that sentencing courts meaningfully consider rehabilitation before imposing a sentence of life without the possibility of parole on a juvenile.

Granting review and reversing is particularly warranted in light of Petitioner's proffer of substantial capacity for and actual rehabilitation. This includes evidence that he has obtained a GED and completed college course work, anger-management and drug counseling, and obtained substantial employment-related skills, including certificates in HVAC maintenance and car repair. He has an exemplary disciplinary record and built a bond with his son. If paroled, he would have a job and home awaiting him.

Requiring a finding on permanent incorrigibility, as urged in Petitioner's first question, or simply requiring meaningful consideration of rehabilitation, as urged in the second, would ensure that Petitioner's case for a parole-eligible sentence was meaningfully considered. As it stands, the sentencing court's decision created an unnecessary risk that Petitioner

was wrongly sentenced to die in prison for a juvenile offense.

ARGUMENT

I. *MILLER* EXCLUDES JUVENILES FROM ELIGIBILITY FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE SENTENCES UNLESS THEY ARE AMONG THE "RARE" JUVENILES WHO ARE "PERMANENTLY INCORRIGIBLE"

Since 2005, the Court has recognized that the relevant justifications for punishment—retribution, deterrence, incapacitation, and rehabilitation—are insufficient to warrant imposing the most severe punishments on most juveniles. On this basis, *Roper v. Simmons*, 543 U.S. 551 (2005), excluded juveniles from capital punishment. *Graham v. Florida*, 560 U.S. 48 (2010), foreclosed life without parole for juveniles convicted of nonhomicide offenses. And, while reserving judgment on whether sentencing a juvenile to life without the possibility of parole was ever constitutionally justifiable, *Miller* definitively foreclosed the sentence for most juveniles. 567 U.S. at 479. *Miller* made it clear that, at a minimum, that sentence can only be imposed after a sentencing hearing determines that the juvenile offender is the rare one who is irreparably corrupt. *Id.* Each of these holdings recognizes what every parent knows: juveniles are fundamentally less culpable and more capable of change than their adult counterparts.

A. *Miller*'s Holding Is Premised On The Acknowledgment That The Characteristics Of Juveniles Rarely, If Ever, Justify An Irrevocable Sentence To Die In Prison.

Three characteristics of juvenile offenders establish their "lessened culpability": "[1] a lack of maturity and an underdeveloped sense of responsibility; [2] they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and [3] their characters are not as well formed." *Graham*, 560 U.S. at 68 (quotations omitted). All three characteristics undermine culpability and, therefore, lessen the penological justifications for imposing the harshest penalties on juvenile offenders. *Id.* at 71-72 (quoting *Roper*, 543 U.S. at 571).

The first characteristic "often result[s] in impetuous and ill-considered actions and decisions," and this fact, along with the second characteristic—susceptibility to outside pressures—undermine both retribution and deterrence. *Id.* at 72 (quotation omitted). The third characteristic reflects the understanding that juveniles are more capable of change than adults, making it difficult at sentencing to distinguish between juveniles whose crimes are the result of "unfortunate yet transient immaturity" and the "rare" irreparably corrupt or incorrigible juvenile offender. *Id.* at 72-73. Therefore the goal of incapacitation does not require a sentence guaranteeing the juvenile offender will die in prison. *Id.* Finally, the third factor also underscores a juvenile's "capacity for change," making an irrevocable sentence to die in prison inconsistent with the rehabilitative ideal. *Id.* at 74. A defendant's status as a juvenile alters the balance for assessing culpability and undermines, perhaps fatally, the justification for irrevocably sentencing juveniles to die in prison.

B. *Miller* Excludes Life Without The Possibility of Parole As A Potential Sentence For All But The Rare Juvenile Who Is Irreparably Corrupt.

In recognition of juveniles' diminished culpability, they must be excluded from life without the possibility of parole if their "crime reflects unfortunate yet transient immaturity, [rather than] . . . irreparable corruption." *Miller*, 567 U.S. at 479. Put another way, juveniles who are not irreparably corrupt are ineligible for a sentence of life without the possibility of parole.

This high bar for imposing such a sentence flows directly from the Court's recognition that juveniles are, as a category, "less deserving of the most severe punishments." *Graham*, 560 U.S. at 67. In light of this recognition, "the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Montgomery*, 136 S. Ct. at 734.

It is undoubtedly for this reason that only the "rarest of juvenile offenders" would be subjected to such a sentence. *Montgomery*, 136 S. Ct. at 734. The challenge of accurately identifying these rare juveniles demands a thoroughgoing consideration of the mitigating aspects of youth as they relate to a finding of eligibility for a sentence of life without the possibility of parole. *Miller*, 567 U.S. at 479.

C. Addressing Categorical Eligibility For A Sentence of Life Without The Possibility Of Parole Is Required For Its Reliable Administration.

Parole boards, who will have decades of information about the juvenile offender's adjustment as an adult, are better suited than the courts to assess

whether an offender is irreparably corrupt. *Montgomery*, 136 S. Ct. at 736 (noting states may wish to "remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them"). However, if a court is considering whether a juvenile offender will be sentenced to die in prison, it must first address precisely this question as part of its determination that a juvenile is eligible for the sentence imposed. *Miller*, 567 U.S. at 479.

Several considerations strongly weigh in favor of requiring the sentencer to determine whether the juvenile is irreparably corrupt before imposing such a sentence, as many jurisdictions have done. *See Malvo v. Mathena*, 893 F.3d 265, 267 (4th Cir. 2018); *Veal v. State*, 784 S.E.2d 403, 410 (Ga. 2016); *but see United States v. Briones*, 890 F.3d 811, 819 (9th Cir. 2018); *see also* Pet. Cert. 13-19 (discussing split of authority on this question). First, imposing such a requirement will reduce the risk that a juvenile is wrongly sentenced to life without the possibility of parole.

This Court's treatment of *Atkins v. Virginia*, 536 U.S. 304 (2002), claims is demonstrative: "If the States were to have complete autonomy . . . *Atkins* could become a nullity, and the Eighth Amendment's protection of human dignity would not become a reality." *See Hall*, 134 S. Ct. at 1999. Without such procedural limitations, the risk of unconstitutional sentences is manifest. *See Moore v. Texas*, 134 S. Ct. 1986, 1990 (2014); *Veal*, 784 S.E.2d at 412 (finding of irreparable corruption is required to ensure defendant is eligible for the sentence). Thus, the Court has required states to fully account for who is, under *Atkins*, ineligible for the death penalty. To hold

otherwise would "create[] an unacceptable risk that persons with intellectual disability will be executed, and thus [would be] unconstitutional." *Hall*, 134 S. Ct. at 1990.

Likewise, it strains the imagination to think that states would be permitted to forgo determining whether a defendant is less than age eighteen before imposing the death penalty. *Roper*, 543 U.S. at 574. Where "[a] line must be drawn," states must respect it. *Id.* In the context of life without the possibility of parole for juvenile offenses, this means finding whether a juvenile is irreparably corrupt before determining whether to impose the sentence. Requiring such a finding will ensure that "an affected defendant [receives] a meaningful procedure 'through which he can show he belongs to the protected class.'" *See Luna v. State*, 387 P.3d 956, 963 (Okla. Ct. Crim. App. 2016) (quoting *Montgomery*, 136 S. Ct. at 735).

Next, requiring such a finding will reduce the number of potential cases where life without the possibility of parole is potentially applicable and will ensure that only the rare juvenile is sentenced to die in prison, as required by *Miller* and *Montgomery*. Prosecutors will not seek life without the possibility of parole sentences for juveniles absent a firm conviction that their proof will establish the difficult to meet standard. American Bar Association, Criminal Justice Standards for the Prosecution Function 3-4.3(a) (Fourth Edition). The high bar for establishing irreparable corruption will limit the instances in which the state will seek such a sentence, and, necessarily, the number of sentencing hearings where it will be at issue.

Finally, requiring such a finding will also alleviate some of the distortions presently apparent in its administration. That is, a handful of *counties* are overwhelmingly responsible for the imposition of sentences of life without the possibility of parole on juveniles. John R. Mills, et al., *Juvenile Life Without Parole In Law And Practice: Chronicling The Rapid Change Underway*, 65 Am. U. L. Rev. 535, 573 (2016) ("Three counties account for over twenty percent of all JLWOP sentences [nationwide]."). Imposing a requirement that a factfinder be persuaded that the juvenile before it is irreparably corrupt will bring greater uniformity to the administration of this sentence.

Requiring such a finding will also alleviate the potential for racial disparities in the application of life without parole sentences for juveniles. As of 2017, while "23.2% of juvenile arrests for murder involve an African American suspected of killing a white person, 42.4% of JLWOP sentences are for an African American convicted of" doing so. The Sentencing Project, *Juvenile Life Without Parole: An Overview* (2017). Requiring that the resentencer consider rehabilitation evidence and find whether or not the juvenile is irreparably corrupt—rather than merely intuiting the correct sentence as the resentencer did for Petitioner—lessens the probability that impermissible outcomes will enter its decision-making process.

Findings of irreparable corruption should be "rare." *Miller*, 567 U.S. at 479 (quoting *Roper*, 543 U.S. at 573). Reliably ensuring as much requires sentencers to determine that those juveniles subject to life without the possibility of parole are actually eligible for the sentence. This means sentencers

would be required to find whether the juvenile is irreparably corrupt before determining the appropriate sentence.

II. THE SENTENCER WAS REQUIRED TO, BUT DID NOT, CONSIDER PETITIONER'S EVIDENCE OF REHABILITATION.

The sentencer's failure to meaningfully consider (if at all) Petitioner's evidence of rehabilitation is contrary to this Court's holdings in *Miller* and *Montgomery*. As *Miller* and *Montgomery* make clear, a sentencer considering whether to impose life without the possibility of parole on a juvenile offender *must* consider whether the juvenile is a likely candidate for rehabilitation. *Montgomery*, 136 S. Ct. at 734 ("*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption."). The sentencing court's deferral of consideration of rehabilitation to the Executive Branch is an abdication of its own responsibility and is contrary to the requirements of the Eighth and Fourteenth Amendments. *See, e.g.*, *Graham*, 560 U.S. at 57 (defining life without the possibility of parole as a sentence that "gives a defendant no possibility of release unless he is granted executive clemency.").

Consideration of rehabilitation is at the heart of the reasoning of *Miller*. A mandatory sentence of life without the possibility of parole was problematic specifically because it "disregards the possibility of rehabilitation even when the circumstances most suggest it," *i.e.* for all but the rare juvenile offender. *Miller*, 567 U.S. at 478. *Miller* and the cases applying it repeatedly emphasize the importance considering actual and potential rehabilitation. *See, e.g.*, *Montgomery*, 136 S. Ct. at 733, 736; *Miller*, 567 U.S. at

479; *United States v. Grant*, 887 F.3d 131, 141 (3d Cir. 2018) (quoting *Miller*'s requirement to consider the "possibility of rehabilitation") *reh'g en banc granted* No. 16-3820, 2018 U.S. App. LEXIS 28139 (Oct. 4, 2018); *Landrum v. State*, 192 So.3d 459, 466 (Fla. 2016) (noting requirement to consider "possibility of rehabilitating the defendant" in light of *Miller*); *see also Graham*, 560 U.S. at 75 (noting life without the possibility of parole "foreswears altogether the rehabilitative ideal" and requiring nonhomicide juvenile offenders to be provided "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."). *Miller* on its own requires careful consideration of rehabilitation in assessing whether a juvenile is eligible for a sentence of life without the possibility of parole.

The Court's holdings in *Eddings v. Oklahoma*, 455 U.S. 104 (1982), *Skipper v. South Carolina*, 476 U.S. 1 (1986), and *Penry v. Lynaugh*, 492 U.S. 302 (1989) (abrogated on other grounds), further prove that failure of a sentencer to consider the factors required by *Miller* is reversible error. In light of the Court's decision to place juveniles facing life without the possibility of parole into the same category as adults facing a sentence of death, the principles embodied in those cases apply with equal force to Petitioner. Samuel Weiss, *Into The Breach: The Case For Robust Noncapital Proportionality Review Under State Constitutions*, 49 Harv. C.R.-C.L. L. Rev. 569, 575 (2014) (noting the Court "appeared . . . to dismantle the distinction between capital and noncapital proportionality review in *Graham v. Florida* in 2010 and *Miller v. Alabama* in 2012."). The sentencing court's deferral of all consideration of rehabilitation to Mississippi's Executive Branch is contrary to

this Court's holding in *Miller* and earlier precedents requiring a sentencer to consider mitigating evidence for those facing the harshest punishment under law.

In *Eddings*, the judge at a capital sentencing hearing was presented with "substantial evidence . . . of [Mr. Eddings'] troubled youth," including enduring "excessive physical punishment" from his father and living under the guidance of an alcoholic mother. 455 U.S. at 107. The judge also had before him evidence of Eddings' prospects for rehabilitation in light of his status as a juvenile. The evidence indicated that although Eddings was "emotionally disturbed in general at the time of the crime," he was a good candidate for rehabilitation and with therapy would "no longer pose a serious threat to society." *Id.* at 107-08. In sentencing Eddings, the court "would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance," necessarily also refusing to consider evidence of his ability to recover from those circumstances *Id.* at 109. Instead, the sentencing court confined its consideration of youth as mitigation to Eddings' literal chronological age.

The Court held that this refusal violated the principle that a sentencer in a capital case must "'not be precluded from considering, as a *mitigating factor*, any aspect of the defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.'" *Id.* at 110 (quoting *Lockett*, 438 U.S. at 604). The Court held that the Eighth and Fourteenth Amendments prevented the sentencer from failing to consider the proffered mitigating evidence. The evidence was relevant to the sentence because "just as chronological age of a minor is itself a relevant

mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in sentencing." *Id.* at 115-16.

Similarly, in *Skipper*, the Court held that a capital sentencing court's exclusion of evidence indicating that the defendant would adjust well to prison violated the Eighth and Fourteenth Amendments. The Court ruled that such evidence must be considered as mitigating against a sentence of death. *Skipper*, 476 U.S. at 7. Excluding the evidence "impeded the sentencing jury's ability to carry out its task of considering all relevant facets of the character and record of the individual offender." *Id.* at 8. In *Penry*, a jury *was* presented with mitigating evidence of mental disability, but the jury was not instructed that it could give effect to the mitigating evidence and the questions they were obligated to answer to determine eligibility for a capital sentence did not incorporate the mitigating evidence. The Court held the scheme unconstitutional, requiring that a sentencing body be not merely presented with mitigating evidence but also a meaningful opportunity to consider it in imposing its sentence. *See Penry*, 492 U.S. at 318.

Courts across the country have applied similar reasoning to reverse sentences in light of *Miller*. *Bear Cloud v. State*, 294 P.3d 36 (Wyo. 2013). There, the Supreme Court of Wyoming remanded specifically for "meaningful review and consideration" of the "factors of youth," including whether the defendant's potential and actual rehabilitation. *Id.* at 47; *see also Briones*, 890 F.3d at (O'Scannlain, J., dissenting) (noting the sentencing court failed to consider defendant's "capacity to change"); *State v. Riley*, 110

A.3d 1205, 1216-17 (Conn. 2015) (remanding for resentencing where the record must "reflect that the trial court has considered and given due mitigating weight to these factors."). *Miller*, like the death penalty jurisprudence it draws upon, requires meaningful consideration of the mitigating aspects of youth.

Here, *Eddings*, *Skipper,* and *Penry* and the *Miller*-related cases, *supra*, support reversing the decision below for the sentencer's failure to consider Petitioner's evidence of rehabilitation as required by *Miller*. The sentencing court's deferral of consideration of rehabilitation to the Executive Branch is an abdication of its own responsibility and is contrary to the requirements of the Eighth and Fourteenth Amendments.

The sentencing court here made clear that it did not engage in any meaningful inquiry into whether, among seventeen-year-olds who commit homicide, Petitioner is the "rare" one who was "irreparably corrupt." Instead of the court addressing Petitioner's extensive rehabilitation evidence, it discussed instead the maturity levels of *all* seventeen-year-olds, noting that they can join the military, receive a pilot's license and driver's license, and obtain an abortion without parental consent. Pet. App. 23a. The sentencing court also discussed Jack Lucas, a United States marine who jumped on a grenade at the Battle of Iwo Jima in 1945 at the age of seventeen. Pet. App. 23a.

Had the sentencing court here meaningfully considered Petitioner's evidence, it would likely have concluded he was not eligible for the sentence imposed. While all homicides are tragic and cause profound pain for those left behind, to properly

determine the range of potential sentences, the sentencer was required to consider Petitioner's evidence that he was not irreparably corrupt. This evidence included an exemplary disciplinary history in prison, maintaining positive connections with the outside world, a plan to productively reintegrate into society, and evidence that the crime itself was evidence of the peer pressure characteristic of youthfulness.

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Especially in the context of the sentence imposed, Petitioner's requests here are modest. First, he has asked that a factfinding court hold that he is eligible for the sentence imposed. Second, he has asked that the sentencer consider the most probative sentencing evidence in his case, evidence of rehabilitation. A sentence of life without the possibility of parole is the "most severe penalty permitted by law" for juveniles: "[It] means denial of hope; . . . it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days." *Graham*, 560 U.S. at 70 (internal punctuation omitted). The basic protections requested here are required for the reliable administration of this severest penalty under law.

CONCLUSION

The Court should grant the petition for certiorari.

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