No. 18-6777

In the Supreme Court of the United States

KENYA ALI HYATT, PETITIONER

v.

MICHIGAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Michigan's procedural statute enacted in response to *Miller v. Alabama* violates the Sixth Amendment or the Fourteenth Amendment because it does not require a jury determination of any specific fact prior to the imposition of a life without parole sentence for a juvenile convicted of first-degree murder?

2. Whether the Eighth Amendment requires the finding of narrowing criteria, such as permanent incorrigibility or irreparable corruption, prior to allowing the imposition of a life without parole sentence on a juvenile convicted of first-degree murder?

PARTIES TO THE PROCEEDING

There are no parties to the proceedings other than those listed in the caption. The petitioner is Kenya Hyatt, an individual convicted of first-degree murder as a juvenile. The respondent is the State of Michigan. This case was consolidated in the Michigan Supreme Court with *Skinner v. Michigan*, 18-6782, and Petitions were filed at the same time in this Court on both cases.

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JURISDICTION

The State of Michigan accepts Petitioner's statement of jurisdiction and agrees that this Court has jurisdiction over the petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . . [U.S. Const. Amend. VI.]

The Eighth Amendment to the United States Constitution provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII.

The Fourteenth Amendment to the United States Constitution provides in part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. Amend. XIV.

Section 769.25 of the Michigan Code of Criminal Procedure controls the procedure in Michigan for sentencing a juvenile offender who has been convicted of first-degree murder and states, in relevant part:

> (2) The prosecuting attorney may file a motion under this section to sentence a [juvenile] defendant [convicted of first-degree murder] to imprisonment for life without the possibility of parole . . . .
>
> (3) . . . The motion shall specify the grounds on which the prosecuting attorney is requesting the court to impose a sentence of imprisonment for life without the possibility of parole.
>
> (4) If the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for in that subsection, the court shall sentence the defendant to a term of years as provided in subsection (9).
>
> (5) If the prosecuting attorney files a motion under subsection (2) requesting that the individual be sentenced to imprisonment for life without parole eligibility, the individual shall file a response to the prosecution's motion within 14 days after receiving notice of the motion.
>
> (6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v Alabama*, 5[67] US [460]; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

> (7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.
>
> * * *
>
> (9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years. [Mich. Comp. Laws § 769.25.]

INTRODUCTION

Kenya Hyatt, the Petitioner herein, and Tia Skinner, the Petitioner in *Skinner v. Michigan*, 18-6782, have each filed a Petition to this Court seeking a Writ of Certiorari to review the Michigan Supreme Court's ruling in their consolidated case, *People v. Skinner*, 917 N.W.2d 292 (Mich. 2018). As each petitioner has made the same legal arguments, this Brief in Opposition is being filed contemporaneously with the one in *Skinner*, and the Respondent refers to the "Petitioners" throughout this Brief.

In *Skinner*, the Michigan Supreme Court held that Mich. Comp. Laws 769.25 does not violate either the Sixth Amendment or the Eighth Amendment because a sentence of life without parole is authorized by the jury's verdict alone and any additional factfinding does not expose the defendant to an enhanced sentence. Further, the *Skinner* court found that there is no requirement that a sentencing court make a finding of fact regarding a child's incorrigibility. Rather, the sentencing court

must follow a process to consider an offender's youth and attendant characteristics before imposing a particular penalty.

The Petitioners contend that these rulings were incorrect, and that this Court should resolve whether the Sixth Amendment requires that a jury make a factual finding before a juvenile convicted of murder may receive a life without parole sentence. There is no split of authority among the states on this issue, however, and no indication that the states have not applied this Court's Sixth Amendment precedent properly in the context of *Miller* and the sentencing of these juveniles.

The Petitioners also urge this Court to review the decision of the Michigan Supreme Court because they believe that state supreme courts are divided on the issue of whether the Eighth Amendment requires a finding of some narrowing criteria, such as permanent incorrigibility or irreparable corruption, prior to imposition of a life without parole sentence. While there is some disagreement among states on this issue, it is not the type of split that demands resolution by this Court, but rather reflects the implementation of this Court's holding in *Miller* in state-specific ways.

Because the decision in *Skinner* complies with *Miller* and does not violate the Sixth Amendment or the Eighth Amendment, and further because there is no split of the nature requiring resolution by this Court, the Respondent requests that this Court deny the Petition.

STATEMENT OF THE CASE

A. People v Kenya Hyatt

Kenya Hyatt was sentenced to life without parole for his conviction for first-degree felony murder in 2014 for a murder he committed in August of 2010—three months after his 17th birthday—under Michigan's statute passed to implement this Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012). Under Mich. Comp. Laws § 769.25 a juvenile convicted of first-degree murder is subject to a maximum sentence of life without parole. While the statute requires a hearing at which a defendant has the opportunity to present evidence of mitigating factors, including the characteristics of youth delineated by this Court in *Miller*, and requires the sentencing court to place on the record "the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed," the statute does not require the finding of additional facts beyond the jury verdict to impose a sentence of life without parole. Therefore, the statute does not violate the Sixth Amendment as the sentence of life without parole is authorized by the jury verdict alone.

In *People v. Skinner*,[1] the Michigan Supreme Court held that *Miller* and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), do not require a sentencing court

[1] The Michigan Supreme Court consolidated Petitioner Kenya Hyatt's case with Tia Skinner's case, *Skinner v Michigan*, 18-6782, to address the Sixth Amendment and Eighth Amendment challenges to Michigan's implementation of Mich. Comp. Laws 769.25, passed by the legislature in response to *Miller v. Alabama*. Both Tia Skinner and Kenya Hyatt have filed petitions with this court making identical legal arguments and, therefore, the State of Michigan is responding to each case with identical arguments.

to make findings of fact that a juvenile murderer is "irreparably corrupt" or "permanently incorrigible" prior to imposing a sentence of life without parole. Contrary to assertions by the Petitioners, the Michigan Supreme Court did not hold that there is a presumption of life without parole. Mich. Comp. Laws § 769.25 requires a hearing at which the court must consider aggravating and mitigating circumstances and place reasons on the record prior to imposing either a term of years sentence or life without parole. Indeed, the *Skinner* court recognized a sentence of life without parole would be disproportionate and therefore unreasonable and an abuse of discretion where the *Miller* factors—and any other evidence presented—mitigate against such a sentence and, thus, demonstrate that a particular defendant in a particular case is not irreparably corrupt. *Skinner*, 917 N.W.2d at 310-311.

B. Procedural History of the Case

1. The incident occurred substantially as the Petitioner alleges, however Kenya Hyatt was more directly involved in the killing than he reveals. Hyatt agreed, along with two of his cousins—co-defendants Aaron Williams and Floyd Perkins—to assault a security guard at Williams's apartment complex to rob him of his service pistol so that Perkins could obtain a firearm to protect himself and his family. Pet. App. 78a, 80a, 86a. Williams borrowed a pistol from someone and provided it to Hyatt to use in the robbery. *Id*. at 78a, 86a. Williams acted drunk to lure the victim out of his security car. *Id*. at 78a. When the victim approached Williams to provide assistance, Perkins grabbed the victim and held him while Hyatt drew the firearm

provided by Williams and pointed it at the victim. *Id*. According to both Hyatt and Perkins, "the victim reached for Hyatt's gun and the gun discharged. *Id*. After that first shot, Perkins grabbed the victim's side-arm and ran away. *Id.* Perkins heard additional shots as he was fleeing. *Id*. Hyatt maintained that the first shot was accidental and that he subsequently 'blacked out' and could not remember what happened afterwards." *Id.* "An autopsy revealed that the victim had been shot three times," once in the chest and twice in the back of the head. *Id*. at 78a, 86a.

Hyatt was convicted of first-degree felony murder, Mich. Comp. Laws § 750.316(a)(b), conspiracy to commit armed robbery, Mich. Comp. Laws § 750.157(a), armed robbery, Mich. Comp. Laws § 750.529, and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b(1). Pet. App. 77a.

2. Consistent with Mich. Comp. Laws § 769.25(3), the prosecuting attorney filed a motion seeking a sentence of life without parole. A hearing was subsequently conducted for the court to "consider the factors listed in Miller v Allabama, . . . and . . . any other criteria relevant to its decision, including the individual's record while incarcerated," as required by Mich. Comp. Laws § 769.25(6). At this *Miller* hearing, Hyatt presented evidence of mitigation, including his background and family life as referenced by Hyatt in the Petition. Pet. at 5. Among other things, Psychologist Karen Noelle testified that Hyatt "was a 'seriously disturbed young man' with 'serious maladjustment . . . .'" Pet. App., 95a.

> Noelle believed Hyatt had the intellectual capacity to be rehabilitated. She was "not sure" whether Hyatt was capable of remorse before the

> incident occurred because he clearly failed to appreciate the consequences of his prior actions. Hyatt was immature and irresponsible. Noelle testified: "I don't know that he has no sense of remorse and no conscience at all. . . . I do feel that he is not a sensitive, compassionate young man. I do feel that he's pretty disconnected from societal morals and mores. I think that's concerning, yes I do." Noelle testified that she could not predict whether Hyatt was going to change. It would "require extreme effort and dedication on his part." But she could not say that he was "irredeemable." "[I]f I were to predict in five years, it would not be possible." [Pet. App., 95a.]

Petitioner fails to mention that at the *Miller* hearing, the detective, Chief Terrence Green, testified that, "unlike the other defendants, Hyatt showed "no remorse, no concern" for what happened. Green acknowledged that the robbery was Perkins' idea and that the other defendants were older than Hyatt. Hyatt's school records revealed assaultive behavior and a threat to "put a cap" in a teacher, resulting in his suspension. A counselor had worried that Hyatt appeared to have no remorse or conscience. *Id.*

The sentencing court considered the *Miller* factors and concluded, "'I don't think any factor that I've considered has anything to do with his age.' Hyatt's criminal acts were not the result of 'impetuosity or recklessness.' After extensively reviewing the evidence before it, the sentencing court concluded that '[i]n considering all of that and the nature of the crime itself and the defendant's level of participation as the actual shooter in this case, the principle of proportionality requires this Court to sentence him to life in the State prison without parole.'" Pet. App., 96a.

3. A three judge panel of the Michigan Court of Appeals affirmed Hyatt's convictions, but was compelled to remand the case to the trial court based on a two-

judge majority opinion in *People v. Skinner*, 877 N.W.2d 482 (2015), which held that juries, not judges, were to determine the sentence of a juvenile murderer under Mich. Comp. Laws 769.25. Pet. App. 71a. The *Hyatt* panel, however, explicitly disagreed and declared a conflict with *Skinner*, stating that "[w]ere it not for *Skinner*, we would affirm the sentencing court's decision to sentence Hyatt to life imprisonment without the possibility of parole," because judges, not juries, were to determine such sentences. Pet. App., 88a, 96a.

4. Subsequently, the Michigan Court of Appeals convened a conflict panel to resolve the disparity between *Perkins* and *Skinner*. Pet. App., 33a. The conflict panel unanimously held that judges, not juries, are to determine the sentence of a juvenile murderer under Mich. Comp. Laws 769.25, and such a holding is consistent with the Sixth and Eighth Amendments of the U.S. Constitution. *Id*. The majority of the conflict panel also reversed the trial court's sentence of life without parole and held that the Eighth Amendment requires the trial court to consider not only the *Miller* factors, but also to "decide whether [a] defendant is the truly rare juvenile mentioned in *Miller* who is incorrigible and incapable for reform." Pet. App, 60a.

5. The Michigan Supreme Court consolidated appeals from both *Skinner* and *Hyatt* and issued one opinion on both cases. Pet. App. 1a. The court held that Mich. Comp. Laws 769.25 does not violate either the Sixth Amendment or the Eighth Amendment. Life without parole is authorized by the jury's verdict alone and any additional factfinding does not expose the defendant to an enhanced sentence. Pet. App. 12a. Moreover, nothing in *Miller* or *Montgomery* "require trial courts to make a

finding of fact regarding a child's incorrigibility." Pet. App. 14a. Rather, the Eighth Amendment only requires the sentencing court to "follow a certain *process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty." Pet. App. 13a. Finally, the Michigan Supreme Court held that it was not required "to deviate from its traditional abuse-of-discretion standard in reviewing a trial court's decision to impose life without parole." Pet. App. 16a. The court recognized, however, that after consideration of the *Miller* factors, imposition of a sentence of life without parole on a juvenile who was not irreparably corrupt would constitute an abuse of discretion. Pet. App. 17a-18a, 26a.

C. Michigan's response to *Miller v. Alabama*

In response to this Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2016), which made mandatory life without parole sentences unconstitutional for juveniles, the Michigan legislature enacted Mich. Comp. Laws § 769.25 to provide a sentencing process for prosecutors, defendants, and trial courts. Pet. App. 75a. After a juvenile is convicted of first-degree murder in Michigan, a range of penalties is available to the sentencing court, all authorized by the jury's verdict alone. What sentence the court ultimately imposes depends on the *Miller*-compliant procedure set forth in Mich. Comp. Laws § 769.25. In *People v. Skinner*, 917 N.W.2d 292 (Mich. 2018), the Michigan Supreme Court found that this statute did not violate the Sixth Amendment because neither the statute nor the Eighth Amendment requires a judge to find any particular fact before imposing life without parole, which is authorized by the jury's verdict. In seeking this Court's review of the decision in *Skinner*, the

Petitioners incorrectly construe a number of aspects of Mich. Comp. Laws § 769.25, all of which are significant in a Sixth Amendment analysis.

Mich. Comp. Laws § 769.25 provides that the prosecutor may elect to seek a life without parole sentence, and if the prosecutor so elects, a motion must be filed specifying the grounds on which the prosecuting attorney is requesting the court impose the maximum sentence. The trial court then conducts a hearing on the motion as part of the sentencing process and considers the factors listed in *Miller*. The sentencing court may also consider any other criteria relevant to its decision, including the defendant's record while incarcerated. The court must specify all aggravating and mitigating circumstances on the record and its reasons for the sentence imposed. The "aggravating circumstances" referenced in the statute do not have the effect of increasing the defendant's sentence beyond the range allowable by the jury's verdict, however. The sentencing court does not have to find that an "aggravating circumstance" exists before it can sentence a juvenile to life without parole.

If the prosecutor does not seek life without parole, the statute provides that the court shall sentence the defendant to a term of years sentence. Once the prosecutor files a timely motion seeking the maximum allowable penalty, the sentencing court must conduct a hearing and may choose either a term of years, or life without parole. Notably, there is nothing in Mich. Comp. Laws § 769.25 that requires the finding of a particular fact before a court can impose life without parole.

Any juvenile convicted of first-degree murder in Michigan is aware of the potential for a life sentence without the possibility of parole. Juveniles will not necessarily receive this most severe sentence, but no defendant is certain of the sentence he or she will receive at the time of trial. A juvenile in Michigan convicted of first-degree murder is not "automatically eligible for a term of years sentence, or "statutorily entitled to be sentenced to a term of years" as the Petitioners suggest. Pet. 8. Rather, once convicted, the juvenile is still subject to any sentence within the range of available penalties, including life without parole. The juvenile offender knows he or she is risking life imprisonment without an opportunity for parole when he or she commits first-degree murder.

The Petitioners also erroneously refer to "the usual statutory term of years sentence," where there is no such sentence provided in the statute. Pet. at 8. Further, the Petitioners state "upon the jury's determination of guilt, a juvenile defendant can only receive a term of years." *Id.* This is not the way the statute works. Recognizing that life without parole sentences will not and should not be sought in every first-degree murder case committed by a juvenile, Michigan's legislature provided a process to promote judicial economy and efficient allocation of resources, so that a *Miller* hearing would not be required after all first-degree juvenile murder convictions, but only those where the prosecutor files a motion seeking the maximum available penalty. The existence of this process, which the *Skinner* decision calls a "legislative procedural precondition," does not create a default to a term of years. *Skinner*, 917 N.W.2d at 304.

D. The *Montgomery* decision

In *Miller*, this Court held that:

> the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. . . . By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. . . . But given all we have said . . . we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.". . . Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, *we require it 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 479-480 (emphasis added) (footnote and internal citations omitted).]

Miller's holding was premised on the prior rulings of *Roper v. Simmons*, 543 U.S. 551 (2005) and *Graham v. Florida*, 560 U.S. 48 (2010). Nowhere within the holdings of *Miller, Roper*, or *Graham* did this Court *require* sentencers *to determine* particular facts. Rather, as simply put by the Court, "*we require* [the 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. In obiter dicta, the Court anticipated that life-imprisonment-without-parole sentences would be "uncommon." *Id.* at 479. *As recognized in Miller* itself, this suggestion was not essential to the holding. *Id.* In *Montgomery*, the Court reiterated that in *Miller*, "a juvenile convicted of a homicide offense could not be sentenced to life in prison

without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." 136 S. Ct. at 725.

The *Miller* decision focused on the requirement for an individualized sentence, insisting that a sentencer have the ability to consider the "mitigating qualities of youth." *Miller*, 567 U.S. at 476. "By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment *proportionately* punishes a juvenile offender." *Id.* at 474 (emphasis added). In *Montgomery*, the Court recognized "that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." 136 S. Ct. at 733. Nevertheless, neither *Montgomery* nor *Miller* defined who the "rare" juvenile is—or *could* be—nor required a specific finding that such a defendant is depraved or incorrigible.

To conform to *Miller*'s individualized-sentencing mandate, a sentencing court must consider all relevant evidence bearing on the "distinctive attributes of youth" discussed in *Miller* and how those attributes "diminish the penological justifications for imposing the harshest sentences on juvenile offenders." *Miller*, 567 U.S. at 472. In order to accomplish an individualized sentence, the Court listed "considerations," that must be taken into account, *Miller*, 567 U.S. at 476-478, but this Court imposed no particular fact-finding requirement in either *Miller* or *Montgomery*.

REASONS FOR DENYING THE PETITION

I. Michigan's procedural statute in response to *Miller v. Alabama* does not violate the Sixth Amendment or the Fourteenth Amendment.

In seeking review of the Michigan Supreme Court decision, the Petitioners claim that a split exists on whether a criminal defendant is entitled to a jury decision to receive a life sentence without an opportunity for parole or a sentence to a term of years. All of the courts that have reviewed this issue on constitutional grounds, however, have found that no such right to a jury decision exists under the Sixth Amendment. This Court's review is not necessary. *Cf.* Rule 10 of Supreme Court Rules.

There is good reason that the lower courts have all reached the same conclusion as the Michigan Supreme Court. This decision may be properly given to a sentencing court. In fact, this Court suggested as much in its decision in *Montgomery,* as this Court twice made reference to "sentencing courts." 136 S Ct at 726, 734.

A. State courts are not split on the Sixth Amendment issue.

Although the Petitioners urge the Court that the states need clarification between what constitutes constitutionally barred judicial fact-finding and what is constitutionally permissible discretionary sentencing, the Petitioners have not pointed to any state decision where the highest court has found that the Sixth Amendment requires a jury to determine whether a juvenile can be sentenced to life without parole after *Miller*. The Petitioners concede that all states that have considered such a challenge on Sixth Amendment grounds have upheld the sentencing statutes in question.

The Petitioners suggest that Michigan is "at the center of the national debate" on the Sixth Amendment issue, but based on the outcomes of the cases where such challenges have been raised, there really is no question. At this time, lower courts are not split on the issue of whether there is a right to a jury determination of a life without parole sentence.[2] The other courts that have expressly addressed this issue about whether a jury is required have reached the same conclusion, apparently without exception. See, e.g., *Commonwealth v. Batts,* 163 A.3d. 410 (Pa. 2017) (released June 26, 2017), slip. op., p 78 ("We further disagree with Batts that a jury must make the finding regarding a juvenile's eligibility to be sentenced to life without parole"); *People v. Blackwell,* 3 Cal. App. 5th 166, 207 Cal. Rptr. 3d 444, 458–460 (2016) (rejecting the argument that a jury was necessary to make a factual determination of irreparable corruption before imposing LWOP); *Utah v. Houston,* 353 P.3d 55, 68 (Utah 2015) ("the *Apprendi* rule d[oes] not apply, and there is no violation"); *Louisiana v. Fletcher,* 149 So.3d 934, 943 (La. Ct. App. 2014) (finding *Apprendi* inapplicable and stating that "*Miller* does not require proof of an additional element of 'irretrievable depravity' or 'irrevocable corruption.' "). This demonstrates that the guidance provided by this Court in its Sixth Amendment jurisprudence has been clear, and properly applied by the state courts.

The Petitioners present only one contrast to these state court decisions: a Missouri statute, where the state legislature affords a juvenile convicted of first

[2] This same point was noted by the Respondent in a recent Brief in Opposition to this Court in Jason *Beckman v. State of Florida*, Case No. 18-6185. This Court denied the Petition on February 19, 2019.

degree murder a right to a jury to consider the *Miller* factors. This does not create a conflict among states because states are generally free to provide greater protections to their citizens. See *Danforth v. Minnesota*, 552 U.S. 264, 275 n.12 (2008). The fact that one state has given juveniles convicted of homicide a statutory right to a jury determination of their sentence does not bear on other states' interpretations of the Sixth Amendment of the U.S. Constitution and its application to state statutes.

A decision from this Court whether Michigan's Supreme Court correctly decided the Sixth Amendment question as it relates to the state-specific language of its statute does not ensure uniform application throughout the nation, because each state has approached *Miller*-compliant sentencing of juveniles differently. In some states a life without parole sentence was discretionary prior to *Miller*. Other states banned a life without parole sentence entirely, or had already done so when *Miller* was decided. Some states have enacted statutes like Michigan's statute, providing a process to impose a sentence within a range of a minimum term of years to a maximum of life without parole.

At the time this Court decided *Miller*, it likely expected that states would implement the requirements of individualized sentencing of juveniles in homicide cases in different ways. This Court has historically placed the responsibility of implementing its decisions on the states: "we leave to the State the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences." *Ford v. Wainwright*, 477 U.S. 399 (1986).

In *Montgomery*, this Court reiterated this principle relating to *Miller*: "[w]hen a new substantive rule of conditional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *Montgomery*, 136 S. Ct. at 735. While this Court has warned that the absence of a "formal factfinding requirement does not leave the states free to sentence a child whose crime reflects transient immaturity," *id.*, to a sentence of life without parole, it is logical to conclude that the manner in which sentencings proceed after *Miller* may differ from one state to another, so long as the offender's youth and attendant characteristics are considered. Michigan's statute fully complies in this regard.

B. On the merits, the Michigan Supreme Court correctly decided that no jury right exists in a sentencing after *Miller* under this Court's Sixth Amendment precedent.

The sentencing factors considered in mitigation of the maximum allowable sentence, such as those in Mich. Comp. Laws § 769.25, are not required to be found by a jury. The focus of this Court's decision in *Miller* is on the juvenile offender's opportunity to present facts in mitigation of a sentence of life without the possibility of parole.[3] The *Skinner* decision correctly observes this aspect, and distinguishes between impermissible fact-finding that increases the potential penalty beyond what

[3] As this Court stated: "[a]lthough we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, at 479-480.

the jury's verdict supports, and the proper judicial consideration of mitigating circumstances in choosing an appropriate, individualized sentence for each juvenile. This distinction is critical because the process that is detailed in Mich. Comp. Laws §769.25 is a mitigating exercise, and therefore does not violate the Sixth Amendment.

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), this Court discussed this distinction, explaining:

> If facts found by a jury support a guilty verdict of murder, the judge is authorized by that jury verdict to sentence the defendant to the maximum sentence provided by the murder statute. If the defendant can escape the statutory maximum by showing, for example, that he is a war veteran, then a judge that finds the fact of veteran status is neither exposing the defendant to the deprivation of liberty greater than that authorized by the verdict according the statute, nor is the judge imposing upon the defendant a greater stigma than that accompanying the jury verdict alone. Core concerns animating the jury and burden-of-proof requirements are thus absent from such a scheme. [*Apprendi*, at 491, n.16.]

Therefore, as in the example in *Apprendi*, the consideration of mitigating circumstances in Mich. Comp. Laws § 769.25 does not require a jury determination nor proof beyond a reasonable doubt. The Sixth Amendment is not implicated.

The sentencing hearings that *Miller* requires are intended to allow for consideration of individualized circumstances of the juvenile and his or her case, not to create an additional element for a jury to find before a life without parole penalty may be imposed. Sentencing courts have always had the ability to choose from a range of punishments already prescribed by statute without necessitating a jury finding.

A court's finding of facts considered in the proper exercise of sentencing discretion is not in violation of the Sixth Amendment. In *Apprendi*, this Court stated: "[w]e should be clear that nothing in this history suggests that it is impermissible for judges to exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing a judgment within the range prescribed by statute." *Apprendi*, 530 U.S. at 481. In *Alleyne v. United States*, 570 U.S. 99 (2013), this Court again affirmed judicial sentencing discretion:

> In holding that the fact that increased mandatory minimum sentences must be submitted to the jury, we take care to note what our holding does not entail. Our ruling today ***does not mean that any fact that influences judicial discretion must be found by a jury. We have long recognized that broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment***. [*Alleyne*, 530 U.S. at 2163 (emphasis added).]

The statutes at issue in *Apprendi* and *Alleyne* required the finding of specific facts by a jury *before* the punishments at issue could be imposed. Mich. Comp. Laws § 769.25, however, does not provide specific facts that must be found prior to imposition of a sentence. Instead, the statute requires only that the court evaluate the considerations enumerated in *Miller*. A judicial sentencing determination under Mich. Comp. Laws § 769.25 involves the evaluation of an array of circumstances and considerations, but no "fact" must be found.

Under Mich. Comp. Laws § 769.25, the defendant is not entitled to a term of years absent some additional finding. In the context of indeterminate sentencing,

this Court discussed the significance of this aspect in *Blakely v. Washington*, 542 U.S. 296 (2004):

> [T]he Sixth Amendment by its terms is not a limitation on judicial power, but a reservation of jury power. It limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury. Indeterminate sentencing does not do so. It increases judicial discretion, to be sure, but not at the expense of the jury's traditional function of finding the facts essential to lawful imposition of the penalty. Of course indeterminate schemes involve judicial factfinding, in that a judge (like a parole board) may implicitly rule on those facts he deems important to the exercise of his sentencing discretion. But the facts do not pertain to whether the defendant has a legal right to a lesser sentence—and that makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned. In a system that says the judge may punish burglary with 10 to 40 years, every burglar knows he is risking 40 years in jail. In a system that punishes burglary with a 10–year sentence, with another 30 added for use of a gun, the burglar who enters a home unarmed is entitled to no more than a 10–year sentence—and by reason of the Sixth Amendment the facts bearing upon that entitlement must be found by a jury. [*Blakely*, at 308-309.]

Michigan's statute does not violate the Sixth Amendment, nor does it operate in contradiction of this Court's decisions applying the Sixth Amendment to various types of sentencing schemes. Therefore, the Michigan Supreme Court correctly determined that no jury finding is required by Mich. Comp. Laws § 769.25.

II. The Eighth Amendment does not require any particular factual findings prior to imposition of a life without parole sentence on a juvenile murderer, and Michigan's statutory sentencing scheme is constitutional.

In attempting to identify a split among the state courts on the second question presented, the Petitioners fail to recognize that the state courts may take different approaches to the sentencing schemes they create without establishing a conflict of interpretation of what is constitutionally required. The variation among the states confirms that the states are independent, sovereign actors who may enact differing processes under their respective laws. These differences are manifestations of federalism and do not require this Court's review. On the narrower point about whether Michigan's sentencing process conforms to constitutional requirements, it does. Michigan has faithfully applied the requirements of this Court's decisions.

A. A legitimate diversity of state approaches does not require this Court's review, as confirmed by this Court's decision to reject a petition challenging the Florida juvenile homicide sentencing scheme, in *Beckman v. Florida*.

In *Beckman v. Florida*, No. 18-6185, the Court recently denied a petition challenging the juvenile homicide sentencing scheme enacted by Florida to conform to *Miller*. In enacting § 921.1401 Fla. Stat., the Florida Legislature effectively created a hearing on whether to *mitigate* a juvenile's sentence, rather than to aggravate it. Before § 921.1401 Fla. Stat. was passed, a juvenile convicted of first-degree murder could be sentenced *only* to life without parole. § 775.082(1), Fla. Stat. (2013). Under the amended law, the trial court conducts an individualized hearing to determine the

"appropriate" sentence after considering mitigating factors and other case-specific evidence. *See* § 921.1401, Fla. Stat.

Florida's statute does not contain "a clear factfinding directive," or indeed any factfinding directive at all. Instead, § 921.1401 Fla. Stat. allows the judge to "conduct a separate sentencing hearing to determine" if life without parole "is an appropriate sentence," during which the judge must "consider factors relevant to the offense and the defendant's youth and attendant circumstances." § 921.1401(2) Fla. Stat. The judge need not make any particular findings on those factors to conclude that life without parole is an appropriate sentence. Nor must the judge make any findings of fact in order to impose a sentence below the statutory maximum of life without parole. Under § 775.082(1)(b)1 Fla. Stat. and § 921.1401(1) Fla. Stat., a judge may sentence a juvenile to life without parole without any additional findings of fact.

Put simply, the role of the individualized sentencing hearing in Florida's scheme is not to obtain the additional findings of fact needed to increase a sentence beyond the statutory maximum, but instead to satisfy *Miller*'s command that sentencers must "have the ability to consider the 'mitigating qualities of youth'" when exercising their discretion to sentence a juvenile defendant within a statutory range. *Miller*, 567 U.S. at 476.

As the Michigan sentencing scheme is strikingly similar to that employed by Florida, the Court should likewise deny the Petition and allow Michigan to resentence

its juvenile offenders consistent with *Miller*, *Montgomery*, and the Eighth Amendment.

B. The Michigan sentencing scheme does not violate the Eighth Amendment.

Michigan's law is consonant with this Court's decisions in *Miller* and *Montgomery*. It allows a sentencing court to impose a life-without-parole sentence but does not create a presumption of a sentence of a term of years, and creates no necessary factual predicates to impose a life without parole sentence. The disagreement of some courts does not mean this Court's review is warranted.

1. Michigan's sentencing scheme authorizes the court to impose life without parole as a sentence and does not require any finding as a prerequisite to this decision.

Under the Michigan statute, enacted to conform to the holding in *Miller*, once a juvenile is convicted of a listed homicide offense, the statute allows the prosecuting attorney to "file a motion under this section to sentence" the juvenile murderer "to imprisonment for life without the possibility of parole[.]" Mich. Comp. Laws § 769.25(2). As previously discussed, Mich. Comp. Laws § 769.25 explains the sentencing process:

> (6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v. Alabama*, 5[67] U.S. [460]; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

> (7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.
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> * * *
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> (9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.

In *Skinner*, the Michigan Supreme Court held that neither the statute nor the Eighth Amendment require the sentencing court to find that a juvenile murderer is the truly rare juvenile mentioned in *Miller* who is incorrigible and incapable of reform. 917 N.W.2d at 295. The Eighth Amendment, under either *Miller* or *Montgomery*, does not require additional fact-finding before a life-without-parole sentence can be imposed. Although there was language in those cases that could be read to suggest that the sentencer must find that the juvenile offender's crime reflects irreparable corruption before a life-without-parole sentence could be imposed, *Miller* simply held that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment and that before such a sentence could be imposed on a juvenile, the sentencer must consider the mitigating qualities of youth. *Skinner*, 917 N.W.2d at 307-308.

Similarly, *Montgomery* expressly stated that *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. *Skinner*, 917 N.W.2d at 309. *Montgomery* held that while the substantive rule is that juveniles who are not

irreparably corrupt cannot be sentenced to life without parole, the states were free to develop their own procedures to enforce this new substantive rule. *Id*. In this sense, the "irreparable corruption" standard was analogous to the proportionality standard that applied to all criminal sentences: just as courts are not allowed to impose disproportionate sentences, courts are not allowed to sentence juveniles who are not irreparably corrupt to life without parole. *Id*. at 310-311. Just as whether a sentence is proportionate is not a factual finding, whether a juvenile is "irreparably corrupt" is not a factual finding. *Id.* at 310. "[Mich. Comp. Laws Section] 769.25 requires trial courts to consider the *Miller* factors before imposing life without parole in order to ensure that only those juveniles who are irreparably corrupt are sentenced to life without parole. *Id.* at 311, n. 18. The statutory scheme encompassed in Mich. Comp. Laws § 769.25 and Mich. Comp. Laws § 769.25a do not violate the Eighth Amendment.

In *Miller*, the Court emphasized that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." 567 U.S. at 489. There was no requirement that any particular factual findings be made by the sentencing court, only that a juvenile defendant have the opportunity to present mitigating factors that must be considered by the court prior to imposing a life without parole sentence.

The number of juvenile murderers not yet resentenced in Michigan as compared to other states is irrelevant to the question whether factual findings of irreparable corruption or permanent incorrigibility are required under *Miller* and

Montgomery and the Eighth Amendment. The Petitioners assert that Michigan has taken the "most extreme interpretation," Pet. at 10, but *Skinner* simply held that before sentencing a juvenile murderer to life without parole a sentencing court must consider the mitigating qualities of youth and make findings as to those *Miller* factors on the record. This is consistent with the requirements of *Miller* and *Montgomery*. The mere fact that some states require more specific findings of fact does not invalidate the *Skinner* court's interpretation.

2. That some states impose additional limitations and requirements, including specific factual findings, prior to imposition of a life without parole sentence on juvenile offenders does not undermine the validity of Michigan's system.

The Respondent does not contest that there is a difference in approach among various states regarding whether specific factual findings of irreparable corruption or permanent incorrigibility are required prior to imposition of a life without parole sentence. Nonetheless, where the Michigan Supreme Court's holding in *Skinner* is consistent with the holdings of *Miller* and *Montgomery*, these state-specific differences do not present sufficient justification to grant this Petition and further delay resolution of the many pending Michigan cases referred to by the Petitioners. Pet. at 13.

Additionally, the Petitioners assert that "in Michigan, a child convicted of felony murder or premeditated murder faces no constitutional limitations . . . on the arbitrary imposition of a life without parole punishment." Pet. at 9. This is not true. Mich. Comp. Laws § 769.25 requires a particular procedure with findings as to

aggravating and mitigating factors placed on the record as well as the reasons underlying the court's sentencing decision. The Michigan Supreme Court held this statutory scheme to be constitutional because the defendant has an opportunity to present evidence mitigating against a life without parole sentence, as required by *Miller*. Through this procedure, requiring the court to consider these factors before imposing life without parole, Michigan's statute "ensure[s] that only those juveniles who are irreparably corrupt are sentenced to life without parole." *Skinner*, 917 N.W.2d at 311, n. 18.

Contrary to Petitioner's assertion, the Michigan Supreme Court did not hold that there is a presumption of a life without parole sentence, only that life without parole is authorized based on the jury verdict alone. A Michigan court cannot, however, impose a sentence of life without parole without first holding a hearing, considering the mitigating factors indicated in *Miller*, and placing findings of aggravating and mitigating factors on the record. Only then may a court impose its sentence, stating its reasons for the individualized sentence on the record to facilitate appellate review for reasonableness. The *Skinner* court held that life without parole would be a disproportionate sentence—and therefore unreasonable and unconstitutional—where the characteristics of youth mitigate against such a sentence, as where the defendant is not irreparably corrupt. Thus, while a specific factual finding of irreparable corruption or permanent incorrigibility is not required, the sentencing court may not impose a life without parole sentence where a juvenile murderer does not embody such character. *See Skinner*, 917 N.W.2d at 311, n. 18.

Because the Eighth Amendment does not require the finding of any particular fact before imposing a life-without-parole sentence, the Michigan statutory scheme is consistent with *Miller*, *Montgomery*, and the Eighth Amendment.

CONCLUSION

Because the Michigan Supreme Court's determination that the sentencing provisions contained in Mich. Comp. Laws § 769.25 do not violate the Sixth, Eighth, or Fourteenth Amendments of the U.S. Constitution, the Respondent requests that this Court deny certiorari to the Petitioners.

Respectfully submitted,

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