

**No. 19-399**

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IN THE  
**Supreme Court of the United States**

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BARRY CAESAR GARCIA, PETITIONER,

v.

STATE OF NORTH DAKOTA, RESPONDENT.

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On Petition For A Writ Of Certiorari To  
The Supreme Court of North Dakota

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**SUPPLEMENTAL BRIEF FOR PETITIONER**

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## SUPPLEMENTAL BRIEF

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Pursuant to Rule 15.8, Petitioner Barry Garcia files this supplemental brief related to *Jones v. Mississippi*, No. 18-1259, slip op. (U.S. Apr. 22, 2021). In *Jones*, the Court confronted two questions raised by the Petitioner, namely whether a sentencer is required to make a factual finding of permanent incorrigibility before sentencing a juvenile to life without parole for homicide, and whether in the alternative, a sentencer must provide an on-the-record sentencing explanation making an implicit finding of incorrigibility. Slip Op. at 1. In answering both of these questions in the negative, the Court underscored the role of discretion under *Miller* [v. Alabama, 567 U.S. 460 (2012)]” in ensuring the constitutional protection is respected. *Id.* at 9–14, 19. In this case such guided discretion is noticeably absent in the Petitioner’s sentence from prior to even *Roper v. Simmons*, 543 U.S. 551 (2005).

In *Jones*, this Court noted its expectation that sentencers would have at least one opportunity to exercise discretion “under *Miller*.” *Id.* at 12 n.4. The Court reiterated what *Miller* and *Montgomery v. Louisiana*, 577 U.S. 190, 210 (2016) required: “A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate out those juveniles who may be sentenced to life without parole from those who may not.”). Such a hearing is informed by the line of jurisprudence laid down in both *Roper* and *Graham* on the point that: “Youth matters in sentencing.” *Id.* at 10. Further, a hearing under *Miller* “affords individualized ‘consideration’ to, among other things, the

defendant’s ‘chronological age and its hallmark features.’” No. 18-1259, Slip op. at 9–10 (quoting *Miller*, 567 U.S. at 477).

In this case, the pre-*Roper* sentencing did not afford Petitioner the benefit of “individualized consideration” of his “chronological age and its hallmark features.” *Id.* In contrast, the sentencing court was left to apply its “personal philosophy” and common-sense understanding of adolescence. Pet. at 14. Yet, such reasoning fails to consider the penological consequences of youth, and juvenile’s “diminished culpability and heightened capacity for change.” *Id.* at 9 (quoting *Miller*, 567 U.S. at 479); Pet. at 14–15. Without the benefit of this Court’s guidance, the sentencing court was unable to incorporate the shift in youth sentencing that began with *Roper* and was embraced in *Miller*. *See Bobby v. Bies*, 556 U.S. 825, 837 (2009).

Because Garcia has never had an opportunity to present evidence in light of *Miller*’s protections and no court has determined whether he is eligible for a sentence of life without parole under the standard articulated in *Miller*, this case provides an opportunity for the court to ensure the process actually required under *Miller* is applied.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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