No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2019

CHRISTOPHER T. SHANAHAN
Petitioner,

v.

IDAHO
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Idaho

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Christopher Shanahan was convicted of first-degree murder and robbery in Idaho state court, crimes that he committed in 1995 when he was 15 years old. He was sentenced to life in prison, with 35 years before he is eligible for parole. In 2017, he filed a motion to correct an illegal sentence in Idaho District Court based on this Court's recent line of cases that worked a fundamental change in constitutional law related to juvenile sentencing. The District Court denied the motion, and the Idaho Supreme Court affirmed that denial in a written opinion. Mr. Shanahan presents the following questions to this Court.

1. Does a juvenile life sentence, with parole eligibility after a lengthy term for years, in a state with no guarantee that the mitigating qualities of youth will ever be considered violate the Eighth Amendment's prohibition against cruel and unusual punishment?

2. Must a Court reviewing an Eighth Amendment challenge to a juvenile offender's adult prison sentence consider and assess the mitigating qualities of youth as a constitutional requirement?

3. Does a State violate equal protection of the law under the Fourteenth Amendment when it grants some juvenile offenders an opportunity to be resentenced but denies that same opportunity to other juvenile offenders who are within the same class?

PARTIES TO THE PROCEEDING
AND CORPORATE DISCLOSURE STATEMENT

Christopher Shahan, the petitioner, was the appellant below. The state of Idaho, the respondent here, was also the respondent below.

There are no parent corporations or publicly held companies in this case.

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The decision by the Idaho Supreme Court affirming the District Court's denial of Mr. Shanahan's motion to correct an illegal sentence is *State v. Shanahan*, __ P.3d __, Docket No. 45716 (Idaho, July 11, 2019). It is attached as Appendix A. Mr. Shanahan did not file a petition for rehearing.

The Idaho District Court's unpublished order in *State v. Shanahan*, Jefferson County Case No. CR 95-502, is attached as Appendix B.

JURISDICTION

The Idaho Supreme Court entered its judgment on July 11, 2019. App. A. Mr. Shanahan has filed this petition for purposes of Supreme Court Rule 13.3 within 90 days of that judgment. The Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment to the Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the Constitution, Section I, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Original proceedings in the 1990s

In 1995, Chris Shanahan was a 15-year-old boy when he, along with two of his young high-school friends from eastern Idaho, went to a convenience store near Rigby with the intention of robbing the store and running away to Las Vegas. Pet. App., pp. 1a-2a. Shanahan fired one shot that killed the store clerk while she was stocking the cooler. *Id.* at 2a. The boys stole money, beer, and cigarettes before driving off to Las Vegas. Quickly realizing that three Idaho kids living a "gang" lifestyle was not going to happen, and homesick, they started driving back toward Idaho. *Id.* They were arrested in Utah, where Shanahan confessed to law enforcement officers. *Id.* at 2a. He has been incarcerated ever since.

The state of Idaho charged Shanahan with first-degree murder, robbery, and the use of a firearm during the commission of an offense. App., p. 2a. Though he was not yet 16-years-old, he was automatically prosecuted as an adult under Idaho law. Idaho Code § 20-509(1). The charge of first-degree murder ostensibly carried the potential for a death sentence. Idaho Code § 18-4004.

Eventually, Shanahan's attorneys reached an agreement with the prosecution. In exchange for entering guilty pleas to first degree murder and robbery, and testifying for the State against his co-defendants, the State agreed not to seek the death penalty, not to recommend a specific term of years, and to dismiss the weapons enhancement. App., p. 2a.

Taking away the death penalty was the material part of this deal, but it was based on a false promise. App., pp. 2a-3a, fn. 3. Almost a decade before, this Court had held that the Eighth Amendment prohibited capital punishment against children who committed their crimes under the age of 16. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988). That ruling should have applied squarely to Shanahan's case, but it seemed to slip the notice of all parties in this rural county, including Shanahan's counsel and even the judge. App., pp. 2a-3a, fn. 3. The illusory threat of a death sentence was a powerful motivating force for the teenager in all aspects of his dealings with counsel and the prosecution.

Before sentencing, Shanahan's counsel filed a motion for a sentencing hearing under Idaho's Juvenile Corrections Act. App., p. 2a. The trial court denied that motion, meaning that Idaho law would require that Shanahan thereafter be treated "in all respects" as an adult. Idaho Code § 20-509(3).

And he was. The trial court held an "aggravation and mitigation" hearing as it would in any death penalty case under Idaho law at the time. Idaho Code § 19-2515 (1995 Supp.). It is true that at outset of the sentencing hearing, the court noted that it did not think that a death sentence "would be an appropriate penalty" due to Shanahan's age. Rec., D. Ct. Tr., p. 907. But all other adult dispositions were still on the table.

At the hearing, Shanahan's counsel presented the testimony of two mental health experts, who testified about his psychological profile, which included significant immaturity, struggles from his parent's divorce and his father's

emotional absence, and his peer influences and desire to impress one of his friends. App. 3a.

The district court later issued written Findings of the Court and Imposition of Sentence, also as required by cases potentially subject to a death sentence. App, pp. 27a-35a. The court noted that it had "focused primarily on the age of the defendant in determining the death penalty was not an appropriate sentencing option," and that its opinion remained unchanged. *Id.* at 27a. The only findings related specifically to Shanahan's youth, however, were under a four-sentence analysis of "rehabilitation," where the court wrote that due to his young age "there is hope that he may eventually become a contributing member of society." *Id.* at 33a. The court concluded that "[t]he defendant's actions require a severe punishment even considering his age." *Id.*

In contrast, in the "deterrence" section, the court noted that "murders continue in our society and, alarmingly, they are all too often committed by teenagers." App., p. 33a. The court concluded that "[t]he defendant's actions require a severe punishment even considering his age." *Id.* It sentenced him to life in prison for both murder and robbery, concurrent, with 35 years fixed for murder and 10 years fixed for robbery. *Id.* at 34a-35a.

Shanahan's counsel appealed to the Idaho Court of Appeals. The Court of Appeals concluded that the trial court did not abuse its discretion in denying the motion for sentencing under the Juvenile Corrections Act. *State v. Shanahan*, 994 P.2d 1059, 1062 (Idaho Ct. App. 1999). Then the Court of Appeals found that the

sentence was not "out of proportion" to the offense and it declined further analysis on a claim under the Cruel and Unusual Punishment Clause of the Eighth Amendment. *Id.* at 1063.

B. Proceedings after *Miller* and *Montgomery*

For over 20 years, Chris Shanahan quietly did his time. He is a model inmate and has become fully rehabilitated. App., pp. 36a-38a, Declaration of Christopher Shanahan (filed as an exhibit to the motion to correct illegal sentence.) He did not file any post-conviction petitions or any other actions seeking relief from his convictions until he submitted his motion to correct an illegal sentence in Idaho District Court in 2017.

The motion was based on the constitutional change in juvenile sentencing law that had occurred since his sentencing in 1990s. Shanahan contended that his sentence now violates the Eighth and Fourteenth Amendments, as interpreted by *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. __, 136 S.Ct. 718 (2016). App., p. 3a. He argued that he had been deprived of the constitutionally required consideration of the mitigating qualities of youth before sentencing and that there is no guarantee under Idaho law that he will receive that consideration. Rec., D. Ct., pp. 13-22. The Idaho District Court denied the motion. App., pp. 17a-26a.

Shanahan appealed. Interpreting the Eighth Amendment, and joining several other jurisdictions, the Idaho Supreme Court held that a sentence that is the "functional equivalent" to a sentence of life without the possibility of parole

would trigger scrutiny under *Miller* and *Montgomery*. App., pp. 4a-7a. But the Idaho Supreme Court concluded that Shanahan's sentence was not the functional equivalent of a life sentence because he is parole eligible after 35 years, when he will be 50 years old. App., pp. 8a-10a. It further held that his claim of an unconstitutionally disproportionate sentence under the Eighth Amendment, which he asserted was a new claim in the wake of *Miller* and *Montgomery*, was barred by res judicata because he had raised an Eighth Amendment claim in 1999. *Id.* at 15a. It also concluded that, on the merits, that the sentence was not grossly disproportionate. *Id.* Finally, it turned aside Shanahan's claim that his right to equal protection was violated under the Fourteenth Amendment because other juvenile offenders with "worse" crimes and sentences were receiving *Miller* review and he – despite being able to show that his crime reflected the transient immaturity of youth – was not given that same fundamental right. *Id.* at 11a. The Idaho Supreme Court concluded that he was not in the same class as juveniles serving life without parole. *Id.*

REASONS FOR GRANTING THE PETITION

A. This case would clarify the reach of the Court's recent Eighth Amendment jurisprudence as it relates to juvenile offenders serving life sentences but with the possibility of parole after a lengthy term for years.

The Court's recent cases have fundamentally altered the constitutional landscape for juvenile sentencing but have also left unresolved questions about the

scope and reach of those decisions. This case follows in that tradition and presents an issue of national importance that should be settled.

In *Roper v. Simmons*, 543 U.S. 551, 569-71 (2005), the Court held that the diminished culpability of children rendered the death penalty unconstitutionally disproportionate for child offenders as a class.

Next, in *Graham v. Florida*, 560 U.S. 48, 76 (2010), the Court relied on advances in scientific knowledge showing that an adolescent's brain does not fully develop until his mid-twenties to hold that, "[a]n offender's age is relevant to the Eighth Amendment, and [so] criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* at 76. The Court declared that states must "give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75.

Two years later, in *Miller v. Alabama*, the Court took another step, holding that mandatory sentences of life without parole for juveniles who have committed homicide offenses also violates the Eighth Amendment. 567 U.S. 460 (2012). The Court later determined that *Miller* is retroactive to cases that were final before it was decided. *Montgomery v. Louisiana*, 577 U.S. __, 136 S.Ct. 718, 734 (2016).

The *Montgomery* Court held that, "[i]n light of what this Court has said in *Roper*, *Graham*, and *Miller*... [juvenile lifers] must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." *Id. Miller* "rendered life without parole an unconstitutional penalty for 'a class of defendants because of

their status'— that is, juvenile offenders whose crimes reflect the transient immaturity of youth." 136 S. Ct. at 734.

Lower courts have since struggled with defining the contours of the constitutional right. Some courts have held that *Graham* and *Miller* only apply to juvenile whose life sentences are mandatory under state law. *E.g.*, *State v. Nathan*, 522 S.W.3d 881, 891 & fn.8 (Mo. 2017) (listing cases). Many courts have held that these principles apply to all juveniles who have received the "functional equivalent" of a sentence of life without the possibility of parole, as the Idaho Supreme Court did in the present case. *E.g.*, *Casiano v. Comm'r of Corr.*, 115 A.3d 1031 (Conn. 2015) (holding that "a fifty year term and its grim prospects for any future outside of prison effectively provide a juvenile offender with 'no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope' " (quoting *Graham*, 560 U.S. at 79)); *Bear Cloud v. State*, 334 P.3d 132, 136, 141–42 (Wyo. 2014) (holding that a sentence that would keep the defendant in prison until age sixty-one was the functional equivalent of a life sentence). This Court is now considering that issue in *Methena v. Malvo*, Docket No. 18-217.

Still other courts have concluded that consulting actuarial tables is contrary to the principles of *Graham* and *Miller* and have held that simply a lengthy term for years will implicate those decisions *E.g.*, *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013) (holding that "*Miller*'s principles are fully applicable to a lengthy term-of-years sentence")' *People v. Contreras*, 4 Cal.5th 349, 363 (Cal. 2018) ("[a]n opportunity to obtain release does not seem 'meaningful' or 'realistic' within the

meaning of *Graham* if the chance of living long enough to meet that opportunity is roughly the same as a coin toss."); *see also People v. Buffer*, 75 N.E.3d 470 (Ill. Ct. App. 2017) (given the harsh realities of life in prison, the possibility of release at an age that may not be full life expectancy is still sufficient to trigger *Miller* scrutiny); *State v. Pearson*, 836 N.W.2d 88, 96 (Iowa 2013) (parole eligibility in non-homicide case at age 52 "effectively deprived [Pearson] any chance of an earlier release and the possibility of leading a more normal adult life.") The linchpin of these cases is the common-sense notion that the possibility of few years out of prison later in life does not comport with the essential promise of *Graham* and *Miller*.

Here, Christopher Shanahan is not serving a formal sentence of life without the possibility of parole. But he is serving a life sentence under Idaho law with the possibility of parole only after 35 years, and he is asking the Court to conclude that *Miller* applies to him and those similarly situated. That is so because he is serving his sentence in a state that does not guarantee that he will receive full consideration of the mitigating qualities of youth before deciding whether he should ever be released.

Parole eligibility in Idaho after 35 years does not comport with *Graham* and *Miller*. Idaho courts have long held that parole is an act of grace in which no liberty interest arises and there are no due process protections during parole hearings. *See, e.g., Izatt v. State*, 661 P.2d 763, 766 (Idaho 1983) (finding no liberty interest); *Leavitt v. Craven*, 302 P.3d 1, 8 (Idaho 2012) (citation omitted) (calling early release an act of grace). Unlike many other states, Idaho has not enacted legislation in response to this Court's constitutional juvenile sentencing decisions, either for

governing the sentencing of juveniles prospectively or by providing standards for the Idaho Parole Commission when it considers juvenile offenders for parole.

Granted, this Court determined that states may implement the new substantive constitutional rule either by resentencing lifers or by offering parole review. But Shanahan submits that, to allow for a "meaningful opportunity for release" within a juvenile's lifetime consistent with *Graham* and *Miller*, a state must channel the parole commissioners' discretion and require them to consider the *Graham* and *Miller* factors when assessing suitability for release. Other states have done so. *See, e.g.* Cal. Pen. Code § 3051 and § 4801 (allowing juvenile offenders an earlier opportunity for parole and requiring the parole board to consider the *Miller* factors).

Idaho has not enacted any new statutes or any new parole procedures in response to *Graham* and *Miller*. Its current laws and regulations focus on the facts of the crime, rehabilitation, and risk to the community, but do not contain specific guidelines requiring the Parole Commission to asses and apply any mitigating weight for juvenile characteristics. Idaho Code § 20-223(6); Idaho Admin. Proc. Act 50.01.01.250.01(c). The Commission has complete discretion to ignore those factors altogether. Nothing prevents it from simply relying on the heinousness of the crime, a fact that will never change, to deny parole. *Cf. Graham*, 130 S.Ct. at 2011 (stating that the Eighth Amendment prohibits courts "from sentencing a juvenile nonhomicide offender to life without parole based on a subjective judgment that the defendant's crimes demonstrate an 'irretrievably depraved character' " (quoting

Roper, 543 U.S. at 572)). Under Idaho law, decisions by the Parole Commission are almost unreviewable in court except to determine whether it was supported by a rational basis. *Banks v. State*, 920 P.2d 905, 907–08 (Idaho 1996).

In short, this Court should take the case up to resolve whether the Eighth and Fourteenth Amendments *require* some decision-maker within the states – whether it is a court at a resentencing hearing or a parole board on parole review – to consider the now constitutionally mandated mitigating factors of youth and rehabilitative potential to ensure that juveniles serving life have a *meaningful* opportunity for release during their lifetimes.

A similar issue has come before the Court once before. In *Virginia v. LeBlanc*, a prisoner argued that a possibility of a discretionary release in his early 60s under Virginia's "geriatric release" program was not meaningful because the Virginia Parole Board could deny release for any reason whatsoever. *See LeBlanc v. Mathena*, 841 F.3d 256, 268 (4th Cir. 2016) (overruled by *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017)). The Fourth Circuit concluded that this unfettered discretion by the Board did not afford the prisoner a meaningful opportunity for release on his life sentence as required by *Graham*, and it granted habeas relief. *Id.* at 274.

This Court summarily reversed. It held that the Virginia court's decision affirming the prisoner's life sentence was not an "unreasonable application" of the Court's clearly established law. 137 S. Ct. at 1729. Critical to the Court's decision was the application of the deferential standards for habeas corpus review in the Anti-Terrorism and Effective Death Penalty Act. *Id.* The Court wrote that

"'[p]erhaps the logical next step from' *Graham* would be to hold that a geriatric release program does not satisfy the Eighth Amendment, but 'perhaps not.'" *LeBlanc*, 137 S. Ct. at 1729 (citation omitted). "These arguments cannot be resolved on federal habeas review." *Id.*

That next logical step is here. Unlike *LeBlanc*, this case is on direct review from a state supreme court and is not subject to AEDPA. This Court should decide whether the possibility of release from a juvenile life sentence after 35 years under a regime that does not require a decision-maker to assess and weigh *Graham* or *Miller* factors is unconstitutional.

* * *

Roper, *Graham*, *Miller*, and *Montgomery* lead in a straight line to the conclusion that juveniles sentenced as adults, whose crimes reflect transient immaturity, are a constitutionally distinct class and must be treated differently. Shanahan is a member of that class. He was sentenced in the 1990s, when treating children as adults was at its apex. He faced an illusory threat of the death penalty to get him to plead guilty. He was required to deal with police and prosecutors as an immature teenager. Even after the District Court removed the death sentence from consideration based on Shanahan's youth (which could never happen anyway), he still faced a possible sentence of life without the possibility of parole. Despite that, what this Court has now defined as weighty mitigating factors related to adolescent

development and behavior have not been assessed in a constitutionally significant way.[1]

In support of his motion to correct an illegal sentence, Shanahan presented evidence in the District Court that he is a rehabilitated man in his late 30s. *See* App. D, pp. 36a-38a; *see also* Exhibits C-G to Motion to Correct Illegal Sentence, R., D. Ct., pp. 40-74. He is a paradigmatic example of the capacity for change about which *Graham*, *Miller*, and *Montgomery* speak. He is not a threat to society. Yet he has served 24 years and must serve another 11 before he can even be considered for parole. This furthers no legitimate penological purpose.

Any other child in Shanahan's exact circumstances being sentenced for the same crime *today* would receive the benefit of full consideration of the "*Miller* factors." Any other person who committed a crime as a child and who is now serving a sentence of life without the possibility of parole will also receive that benefit retroactively after *Montgomery*. There is no logical or jurisprudential reason to withhold that same benefit to those who committed a crime as children and who are serving life sentences with parole eligibility after a lengthy term for years, at least in a state where there is no requirement that these factors will ever be considered.

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[1] The Idaho District Court ruled, in part, that the sentencing court had adequately considered Shanahan's youth as a mitigator before sentencing him. App., p. 24a. The Idaho Supreme Court did not rest its decision on that ruling. In any event, it was incorrect. The sentencing court was assessing the propriety of a *death sentence* vis-à-vis youth; sentencing occurred long before *Graham*, *Miller*, and *Montgomery*; and the mental health evidence that the court heard was related to Shanahan as an individual, not the vulnerability, lessened culpability, and changeability of adolescents that are now codified in the law.

B. Just as "death is different," children are different too. This Court should clarify what the Eighth Amendment standard is when a juvenile offender serving an adult sentence of any length raises a claim that his or her sentence is unconstitutionally disproportionate.

Shanahan argued below that the legal landscape had changed so dramatically since he had been sentenced that he had a new Eighth Amendment claim of gross disproportionality. App., p. 11. This was an independent claim from his argument that his constitutional rights were violated in the absence of a *Miller* hearing.

"[T]he [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Shanahan argued that standards have evolved to the point that, on these facts and circumstances, a life sentence with 35 years fixed is cruel and unusual punishment.

The Idaho Supreme Court rested its decision on this claim both on a state procedural bar of res judicata and alternatively on the merits. App., pp. 12a-14a. It concluded that the same claim had been decided against Shanahan in 1999 on direct appeal. *Id.* This Court typically will not take up a question of federal law presented in a case "if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). The state procedural bar in this case, however, was not clear, firmly established, or consistently applied. *E.g.*, *James v. Kentucky*, 466 U.S. 341, 348 (1984) (holding that state procedural bar was not

"firmly established and regularly followed" and therefore did not bar review of the federal claim). It is inadequate to prevent federal review.

Idaho's "[r]es judicata is comprised of claim preclusion (true res judicata) and issue preclusion (collateral estoppel)." *Hindmarsh v. Mock*, 57 P.3d 803, 805 (Idaho 2002). "Under principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties upon the same claim." *Id.* (citation omitted). The doctrine of res judicata contains exceptions that are often applied, including "ineffective assistance of counsel, newly discovered evidence, or changes in the controlling law." *State v. Lankford*, 903 P.3d 1305, 1315 (Idaho 1995) (citing *Aragon v. State*, 760 P.2d 1174 (Idaho 1988)).

While Shanahan raised an Eighth Amendment claim nearly 20 years earlier, there were clear "changes in the controlling law" in this case. The Idaho Supreme Court's reliance on res judicata arbitrarily imposed and inconsistently applied this procedural bar. It does not prevent review.

On the merits, the Idaho Supreme Court erred in applying the test from *Harmelin v. Michigan*, 501 U.S. 957 (1991). App., pp. 13a-15a. The *Miller* Court worte, "*Harmelin* had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders. We have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children." *Miller*, 567 U.S. at 481. Just as "death is different" in capital case review, "children are different too." *Id.* That is, "children are constitutionally different from adults for

the purposes of sentencing." *Id.* at 471. Juvenile offenders facing or serving an adult prison sentence are a constitutionally distinct and vulnerable class.

The Court should take this opportunity to define the parameters of "children are different" under the Eighth Amendment. At a minimum, those standards would require consideration of disproportionality based on the *Miller* factors, the lessened culpability of juvenile offenders, whether the crime reflected the transient immaturity of youth or some greater incorrigibility, and the nature of the offense.

Shanahan's sentence of life with 35 years fixed is disproportionate in light of what we now know about the science of juvenile crime and the law that reflects that science. His characteristics fit squarely with all of the factors that *Miller* described: immaturity, impulsivity, recklessness, outsized influence of peer pressure, a failure to appreciate the wrongfulness of the conduct, an inability to deal with police and prosecutors, and a strong capacity for change. In the ensuing years, that latter point has been borne out.

The trend and growing consensus in states other than Idaho is to give prisoners like Shanahan an opportunity for release at a much earlier time. This is a societal recognition that lengthy terms for years for juveniles are excessive absent extreme circumstances. Had Shanahan committed this very crime in California today at the same age as he was, he could not even be prosecuted as an adult. Cal. Welf. and Inst. Code § 707(a)(2). No penological purpose is served by requiring him to be warehoused in prison, perhaps for the remainder of his natural life.

C. The Idaho Supreme Court incorrectly defined the class, and incorrectly applied the Fourteenth Amendment, to reject Shanahan's claim that he had been denied a fundamental right that other similarly situated juvenile offenders had received.

Shanahan also raised an equal protection claim. He asserted that, if he did not receive a *Miller* hearing, he would be denied a fundamental right that other similarly situated individuals will receive. R. Brief of Appellant, pp. 22-23. The Idaho Supreme Court turned aside this claim after defining the relevant class as juvenile offenders who have received a sentence of life without the possibility of parole. App. p.11a. As Shanahan at least has the opportunity for release after 35 years, according to the Idaho Supreme Court, he is not a member of the same class. *Id.*

This is an incorrect definition of the class. It is instead those juveniles serving adult sentences based on adult sentencing criteria whose crimes otherwise reflect the transient immaturity of youth. Shanahan is a member of that class and yet he has never received proper mitigating consideration of his youth when he committed this offense and is not guaranteed that he ever will. Others, who received life without parole and arguably committed more egregious offenses, will now get that consideration under *Miller* and *Montgomery*. Those individuals will also be given an opportunity to offer evidence of their post-incarceration good behavior as a factor in resentencing, a benefit that Shanahan has likewise been denied even though his evidence would be extensive. *See, e.g., United States v. Briones*, No. 16-1150, 2019 WL 2943490 * 14, -- F. 3d -- (9th Cir. July 9, 2019) ("a

juvenile's conduct after being convicted and incarcerated is a critical component of the resentencing court's analysis.").

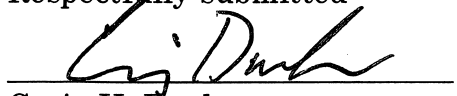
This is a fundamental Eighth and Fourteenth Amendment right. The discriminatory denial of a fundamental right is subject to strict scrutiny. *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) ("Thus we have treated as presumptively invidious those classifications that disadvantage a 'suspect class,' or that impinge upon the exercise of a 'fundamental right.'") There is no compelling state interest in granting that right to some and denying to those in the same position.

This Court should grant certiorari to define the class at issue in its juvenile sentencing decisions – did it mean to apply the constitutional principles just to those juvenile offenders serving life without the possibility of parole or do the same principles apply to juvenile offenders serving adult sentences more broadly? And it should resolve what the test is to be applied when some prisoners receive the benefit of a *Graham* or *Miller* hearing and others who are similarly situated do not.

CONCLUSION

For any, or all, of these reasons, Christopher Shanahan asks this Court to grant certiorari.

Respectfully submitted



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