No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

LUIS BELTRAN,

Petitioner,

– v. –

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

First Question Presented

In *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana,* 136 S. Ct. 718 (2016), this Court held that sentencing a juvenile defendant (i.e., a defendant who was younger than 18 at the time of the commission of an offense) to a mandatory sentence of life imprisonment violates the Eighth Amendment's "proportionality principle." Does the Fifth Amendment's Due Process Clause provide defendants who were between 18 and 22 an opportunity to demonstrate they are similarly situated, for Eighth Amendment purposes, to the juvenile defendants in *Miller* and *Montgomery*?

Second Question Presented

In determining whether a mandatory sentence of life imprisonment violates the Eighth Amendment's "proportionality principle," should this Court raise the relevant age of majority from 18 to 22 to reflect the scientific consensus concerning adolescent brain development?

LIST OF PARTIES

In addition to the parties identified in the caption to this petition, parties to the proceeding below whose judgment is sought to be reviewed in connection with the instant petition include Mr. Beltran's two codefendants:

Carlos Lopez

and

Felix Lopez-Cabrera

LIST OF RELATED PROCEEDINGS

- *United States v. Felix Lopez-Cabrera, Carlos Lopez & Luis Beltran, et al.*, No. 11 Cr. 1032 (PAE), U.S. District Court for the Southern District of New York. Memorandum order entered June 22, 2015. Judgment entered July 10, 2015.

- *United States v. Leonides Sierra, et al.*, Nos. 15–2220 (L); 15–2247 (CON); 15–2257 (CON), U.S. Court of Appeals for the Second Circuit. Opinion and summary order issued August 1, 2019. Order denying petition for *en banc* rehearing issued November 7, 2019.

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The petitioner, Luis Beltran, respectfully prays that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in *United States v. Leonides Sierra, et al.,* 15–2220 (L); 15–2247 (CON); 15–2257 (CON), 933 F.3d 95 (2d Cir. 2019), which is attached to this petition as Appendix A.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was published in the Federal Reporter at 933 F.3d 95, and is attached as Appendix A.

The Court of Appeals' decision affirmed rulings in a opinion and order dated June 22, 2015, by the Honorable Paul A. Engelmayer of the United States District Court for the Southern District of New York, in case number 11-cr-1032, which denied the motion of Mr. Beltran and his codefendants Carlos Lopez and Felix Lopez-Cabrera for relief from the mandatory-minimum sentence of life imprisonment established by 18 U.S.C. § 1959(a)(1). The district court's opinion is attached as Appendix B.

JURISDICTIONAL STATEMENT

The United States District Court for the Southern District of New York assumed jurisdiction over Mr. Beltran's criminal trial pursuant to 18 U.S.C. § 3231. The district court entered a judgment against Mr. Beltran on July 10, 2015.

Mr. Beltran filed a notice of appeal to the United States Court of Appeals for the Second Circuit on July 16, 2015. The Second Circuit assumed jurisdiction pursuant to 28 U.S.C. § 1291 and affirmed the district court's judgment in an opinion dated August 1, 2019. Mr. Beltran filed a petition for *en banc* rehearing to

the Second Circuit on August 15, 2019. The Second Circuit denied Mr. Beltran's petition for *en banc* rehearing in an order dated November 7, 2019.

Mr. Beltran invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1), through the timely filing of the instant petition for writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution states, in relevant part, "No person shall . . . be deprived of life, liberty, or property, without due process of law." *See* U.S. Const. amend. v.

The Eighth Amendment of the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *See* U.S. Const. amend. viii.

STATEMENT OF THE CASE

Mr. Beltran was convicted, following a three-month trial, of four counts of a fifth superseding indictment, which charged Mr. Beltran and some 38 codefendants with racketeering activities connected with the Bronx Trinitarios street gang. (A 104.[1]) Among the counts of which Mr. Beltran was convicted was murder-in-aid-of-racketeering, an offense punishable by a mandatory-minimum sentence of life imprisonment. See 18 U.S.C. § 1959(a)(1). This count pertained to Mr. Beltran's

[1] References to record materials included in the appellate appendix are indicated by "A," followed by the relevant page number.

retaliatory killing of a member of the rival Bloods street gang, which occurred when Mr. Beltran was 21 years old. As indicated in the Presentence Investigation Report, Mr. Beltran had been a part of the Trinitarios gang from at least as early as 2004, the year Mr. Beltran turned 16.

On May 22, 2015, following his conviction at trial but prior to sentencing, Mr. Beltran and his two codefendants at trial — Carlos Lopez and Felix Lopez-Cabrera — filed a joint motion seeking to extend the reasoning of *Miller v. Alabama*, 567 U.S. 460 (2012). As argued in the motion, the three codefendants, who were all between the ages of 18 and 22 at the time of their respective offenses, were nevertheless similarly-situated for Eighth Amendment purposes to the juvenile defendants before this Court in *Miller*. Attached to the motion were more than one thousand pages of scientific studies and supporting data concerning the cognitive and neurological development of the human brain, evidencing the fact that the process of myelination of the prefrontal cortex — a process essential to risk-assessment and executive decisionmaking — is not substantially complete in most brains until well into an adolescent's mid-20s.[2]

The government filed an opposition to the defendants' motion on June 12, 2015, and the defendants jointly filed a reply memorandum on June 19, 2015. In an order dated June 22, 2015, the district court denied the defendants' motion,

[2] Myelination refers to the development of a fatty sheath, called myelin, that surrounds and insulates the axons of neurons in the brain.

explaining that *Miller* applies only to defendants who were younger than 18 at the time of the offense, and declining to extend *Miller*'s reasoning to Mr. Beltran and his codefendants. (Appendix B.) In doing so, however, the district court signaled that reconsideration of this issue by the Second Circuit and by this Court would not be inappropriate:

> Defendants have preserved their claim that *Miller*'s requirement for individualized sentencings for juveniles should be extended to defendants up to age 22. They are at liberty to make this claim on appeal, and to bring the voluminous scientific evidence that they have marshaled to the attention of the Second Circuit and the Supreme Court.

(Appendix B at 6.)

Accordingly, the district court sentenced Mr. Beltran to the mandatory-minimum term of life imprisonment on the § 1959(a)(1) count. (A 233.) The court explained, however, that but for the fact that a life sentence was mandatory, the court might have been inclined to impose a lesser sentence:

> In three prior cases of Trinitarios defendants convicted at trial of crimes carrying mandatory life sentences, and by those I am referring to Carlos Urena, Felix Lopez-Cabrera, and Carlos Lopez, I stated that [even] without the mandatory life sentence, I would have imposed a life sentence simply as an application of the 3553(a) factors. It is entirely possible that I would have done so here in this case, too.
>
> But, in fairness, I cannot say that with certainty. Your record of violence, although deplorable, is not at the level of theirs. And quite understandably, because a mandatory life sentence was required, defense counsel, as Mr. Ginsberg candidly explained a moment ago, did not submit the full range of materials in mitigation, letters,

> biographical detail about you, that I otherwise would have received had a sentence other than life been within my discretion.

(A 231–32.) The district court thus reiterated, "I do not know whether, were there no mandatory life sentence, I would have imposed a life sentence or merely an extremely long period of years." (A 232.)

Mr. Beltran filed a notice of appeal, arguing (among other things) that the mandatory life sentence required by 18 U.S.C. § 1959(a)(1) violated the Eighth Amendment's proportionality principle as applied in the particular facts of Mr. Beltran's case. Accordingly, Mr. Beltran argued that notwithstanding the "bright-line" drawn at age 18, he should be permitted to demonstrate that he was similarly situated in relevant constitutional respects to the juvenile defendants considered in *Miller*. In an opinion issued August 1, 2019, and attached as Appendix A to the instant petition — the Second Circuit denied Mr. Beltran's Eighth Amendment argument.[3] The Second Circuit explained that because this Court, in *Miller*, had "chosen to draw the constitutional line at the age of 18 for mandatory minimum life sentences . . . the defendants' age-based Eighth Amendment challenges to their sentences must fail." (Appendix A at 5.)

Mr. Beltran filed a motion for an *en banc* rehearing on August 15, 2019, which the Second Circuit denied in a three-sentence order dated November 7,

[3] The Second Circuit denied Mr. Beltran's additional theories of relief in a separately-issued summary order. Those issues are not raised in the instant petition.

2019.[4] Mr. Beltran, through counsel appointed pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, now files this petition *in forma pauperis* for a writ of certiorari to the Second Circuit.

REASONS FOR GRANTING THE WRIT

I. This Court should grant certiorari pursuant to U.S. Sup. Ct. R. 10(c) because the Questions Presented raise important issues concerning the constitutionality of imposing mandatory life sentences upon young offenders.

Few matters of constitutional criminal procedure have engaged this Court's attention as continually over the past several decades as the constitutionality of imposing terminal sentences on young offenders. The trend arguably began in 1982 with *Eddings v. Oklahoma*, 455 U.S. 104, 113 (1982), in which this Court reversed the death sentence imposed upon a 16-year old defendant where the sentencing court erroneously believed it could not consider the defendant's violent family background as a relevant mitigating factor. As this Court explained, "Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults." *See id.* at 115–16. Six years later, a plurality of this Court found that imposing the death penalty for *any* defendant below the age of 16 at the time of the offense violated the Eighth Amendment. *See Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988).

[4] Two *amici curiae* — Juvenile Law Center and law professor Douglas A. Berman — also filed briefs urging the Second Circuit to grant the *en banc* petition.

The following year, a majority of this Court would agree, in *Stanford v. Kentucky*, 492 U.S. 361 (1989), that imposing the death penalty on defendants who were 16 or 17 years old at the time of the offense did not violate the Eighth Amendment. That holding would be overruled, however, in *Roper v. Simmons*, 543 U.S. 551, 578 (2005), which held that the Eighth and Fourteenth Amendments indeed proscribed the imposition of the death penalty for defendants who were under 18 at the time of the offense conduct.[5] *Roper* identified "three general differences between juveniles under 18 and adults" that diminish the culpability of juvenile defendants: their "lack of maturity and . . . underdeveloped sense of responsibility"; their greater susceptibility to "negative influences and . . . peer pressure"; and their "more transitory" personality. *See id.* at 569–70. As a result of such diminished culpability, this Court explained, "it is evident that the penological justifications for the death penalty apply to [juveniles] with lesser force than to adults." *See id.* at 571.

Graham v. Florida, 560 U.S. 48, 82 (2010), followed, and held that the Eighth Amendment also prohibits sentencing juvenile defendants to life without the possibility of parole in non-homicide cases. *Miller v. Alabama*, 567 U.S. 460,

[5] In 2002, this Court also held that the Eighth Amendment prohibits the death penalty for mentally impaired defendants, who "by definition . . . have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *See Atkins v. Virginia*, 536 U.S. 304, 318, 321 (2002).

489 (2012), discussed in more detail below, held that *mandatory* sentences of life without parole violate the Eighth Amendment when imposed upon juveniles, even in homicide cases. And *Montgomery v. Louisiana*, 136 S. Ct. 718, 734, 736 (2016), in holding that *Miller* announced a substantive rule of constitutional law retroactively applicable to cases on collateral review, opined that imposing a sentence of life without parole on juvenile defendants ordinarily required a finding of "permanent incorrigibility" or "irreparable corruption." As recently as October 16, 2019, this Court heard oral argument in the matter of *Mathena v. Malvo*, No. 18–217, a case implicates further questions concerning the substantive reach and applicability of this Court's *Miller* and *Montgomery* holdings.[6]

The instant petition should be granted because it represents the logical next step in the evolution of this jurisprudence, asking in sum and substance: what does it mean to be a "juvenile" for Eighth Amendment purposes? Is being a "juvenile" merely a formal semantic designation, arrived at through arbitrary line drawing, such as the line presently drawn at 18 years of age? Or, rather, may slightly older defendants also possess the relevant qualities of a "juvenile" that define, for constitutional purposes, whether such a defendant may be sentenced to die in prison absent a finding of permanent incorrigibility or irreparable corruption?

[6] *Malvo* has not yet been decided as of the filing of this petition.

This Court's *Miller* and *Montgomery* precedents suggest the latter. Thus, in *Miller*, this Court held that sentencing juvenile defendants to mandatory sentences of life-without-parole, without permitting a sentencing court to consider the defendant's individual characteristics and culpability, violates the Eighth Amendment's proportionality principle. *See Miller*, 567 U.S. at 489; *see also Montgomery*, 136 S. Ct. at 734 ("*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."). Juveniles, the *Miller* Court explained, are "constitutionally different" from fully-formed adult defendants, both insofar as their age reflects their diminished capacity and culpability for the crime and also insofar as their youth provides "greater prospects for reform." *See id*. at 471. Saliently, *Miller*'s conclusion rested not merely on "common sense," but on biological and social science. *See id*. at 471–72 (citing scientific literature). As this Court explained, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds — for example, in parts of the brain involved in behavior control." *See id*. (quoting *Graham*, 560 U.S. at 68) (internal quotation marks omitted). These "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 472.

This Court should grant certiorari to resolve the question of how to treat defendants, such as Mr. Beltran, who were within several years of 18 at the time they committed their offenses, but who otherwise possess "the distinctive aspects of youth" — especially with respect to their psychological and neurological development — comparable to the juvenile defendants in *Miller*. As explained below, due-process considerations ought to allow such defendants an affirmative opportunity to demonstrate that they are similarly situated with respect to their cognitive functioning and criminal culpability, and thus should be considered equally for Eighth Amendment purposes. Alternatively, were this Court to continue to prefer a categorical bright-line age cut-off, that line should at least be drawn at 22 rather than at the present age of 18, as the current line fails to reflect the scientific consensus that development of regions of the brain critical to executive decisionmaking remains incomplete well into a defendant's mid-20s. Thus, a sentencing scheme that is unconstitutional — indeed, "cruel and unusual" — for defendants below the age of 18, precisely as a result of such defendants' diminished cognitive functioning, ought to be deemed equally unconstitutional for marginally older defendants who are otherwise similarly situated to the *Miller* defendants with respect to their incomplete brain development and the diminished culpability this entails.

At least one district court has reached a similar conclusion. *See Cruz v. United States*, No. 11-cv-787, 2018 U.S. Dist. LEXIS 52924 (D. Conn. Mar. 29, 2018) (applying *Miller*'s reasoning to find that imposing a sentence of life-without-parole to an 18-year-old defendant violates the Eighth Amendment). As the *Cruz* opinion explains, nothing about applying *Miller*'s reasoning to an 18-year-old contradicts *Miller*, because while *Miller* holds that mandatory life sentences for those under 18 are categorically unconstitutional, it contains no parallel finding that a mandatory life sentence for a defendant *over* 18 must be deemed categorically *constitutional*. *See id*. at *37–41. "In drawing the line at 18, then, *Roper*, *Graham*, and *Miller* drew lines . . . protecting offenders that fall under the line while remaining silent as to offenders that fall above the line." *Id*. at *41.

Indeed, this Court has frequently adopted "bright-line" rules that impose a categorical result on one side of a line, while adopting merely a rebuttable presumption (albeit, sometimes a very strong presumption) on the other side, with perhaps the most obvious example being the rule established in *Miranda v. Arizona*, 384 U.S. 436 (1966). Thus, while a non-Mirandized custodial confession is categorically treated as a coerced confession, the same is not true of the inverse situation, where a defendant may still challenge, on a particular-case basis, the voluntariness of even a Mirandized statement. *See, e.g., Missouri v. Seibert*, 542 U.S. 600, 609 (2004) (plurality opinion). Similarly, *Miller* should not be read to

foreclose a defendant in Mr. Beltran's position from demonstrating that a mandatory life sentence violates the Eighth Amendment in his particular case, even if he cannot enjoy the *categorical* presumption of unconstitutionality *Miller* establishes for defendants below the age of 18.

Saliently, several U.S. Courts of Appeals have interpreted *Miller* in terms of its practical, "de facto" consequences. Thus, in *United States v. Grant*, 887 F.3d 131, 142 (3d Cir. 2018), the Third Circuit held that *Miller*'s rule applies not only where a juvenile defendant has specifically been sentenced to life without the possibility of parole (LWOP), but also to term-of-years sentences that act as "de facto" LWOP sentences because the length of the sentence matches or exceeds the defendant's life expectancy. The Third Circuit's holding in *Grant* followed similar conclusions reached by the Seventh, Ninth, and Tenth Circuits. *See McKinley v. Butler*, 809 F.3d 908, 911 (7th Cir. 2016); *Moore v. Biter*, 725 F.3d 1184, 1194 (9th Cir. 2013); *Budder v. Addison*, 851 F.3d 1047, 1056 (10th Cir. 2017). The *Grant* court justified its holding, in part, on the rationale that extending *Miller*'s holding beyond its most narrow holding was necessary to give effect to the opinion's broader penological concerns about constitutionally disproportionate sentencing:

> We reach this conclusion for three reasons. First, *Miller* reserves the sentence of LWOP only for juvenile homicide offenders "whose crimes reflect permanent incorrigibility." Second, ***the Supreme Court's concerns about the diminished penological justification for***

> ***LWOP sentences for juvenile offenders apply with equal strength to de facto LWOP sentences.*** Third, de facto LWOP is irreconcilable with *Graham* and *Miller*'s mandate that sentencing judges must provide non-incorrigible juvenile offenders with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

See Grant, 887 F.3d. at 142 (emphasis added). Insofar as federal courts have already adopted a de facto approach to defining which kinds of *sentences* are covered by *Miller*, the obvious corollary is to ask why such a de facto approach should not be equally guide the definition of which kinds of *defendants* are covered by *Miller*.

That is the question underlying the Questions Presented in this petition, which represent two alternative approaches to remediating the same overarching Eighth Amendment concern. That constitutional concern is that establishing a "bright-line" rule at 18 and excluding marginally-older but similarly-situated defendants from the benefits of *Miller*'s rule, is substantially underinclusive, resulting in an unacceptable risk that young offenders will be disproportionately sentenced to die in prison absent any finding that they are "permanently incorrigible." *See Montgomery*, 136 S. Ct. at 734; *accord Hall v. Florida*, 572 U.S. 701, 704 (2014) (declaring unconstitutional a Florida law that deemed prisoners with an IQ above 70 categorically eligible to be executed, as such a rule "creates an unacceptable risk that persons with intellectual disability will be executed.").

Respecting the first Question Presented, procedural due-process concerns should thus permit defendants between the ages of 18 and 22 an opportunity to demonstrate that they are "de facto" juveniles for purposes of applying *Miller*. A workable way to do so would be to follow a similar procedure to that applicable under *Miranda*, where the fact that a defendant is over 18 raises a presumption that a mandatory life sentence may be constitutional, but that this presumption could be rebutted by the defendant's production of affirmative evidence. If the defendant either fails to make such a showing, or if such a showing is itself rebutted by contrary evidence presented by the government, then the district court would apply the mandatory life sentence specified by § 1959(a)(1). Yet if, in contrast, the sentencing court determines that the defendant has made out a *prima facie* showing that the *Miller* considerations are applicable in the defendant's particular case, the sentencing court could proceed to consider such evidence as part of an individualized assessment of the defendant's culpability, in connection with the ordinary sentencing analysis already required to be performed by the sentencing court under 18 U.S.C. § 3553(a).

In considering what procedures are "due" under the Due Process Clause, federal courts apply the familiar three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). These factors are:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through

> the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

See id.

Applying the first prong, a defendant has a compelling liberty interest in not being sentenced to die in prison. As this Court explained in *Miller*, "Imprisoning an offender until he dies alters the remainder of his life by a forfeiture that is irrevocable." *See Miller*, 567 U.S. 474–475; *see also Graham*, 560 U.S. at 69 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (opinion of Kennedy, J.) (a sentence of life without the possibility of parole is "the second most severe penalty permitted by law"). And such a sentence represents "an especially harsh punishment" given the young age of Mr. Beltran and other defendants between the ages of 18 and 22 because, as this Court explained in *Graham*: "a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *See Graham*, 560 U.S. at 70.

The second *Mathews* factor also supports a finding that additional procedures are "due" to safeguard against a constitutionally disproportionate sentence. As explained above, the extensive scientific evidence concerning brain development demonstrates that the age of 18 is not a reliable proxy for the

psychological maturity, decisionmaking capacity, and ability to weigh the consequences of one's actions that are ordinarily necessary to justify a mandatory life sentence. Myelination of the prefrontal cortex is the biological process most responsible for these functions in the human brain, yet the myelination process is generally not complete until well into an adolescent's mid-20s. Accordingly, setting a bright line at 18 without also including a procedure for defendants in their early 20s to demonstrate that they too are in a transitional state of cognitive functioning and ethical maturity poses an intolerably high risk that such defendants will be sentenced to die in prison in defiance of the legitimate penological objectives of criminal sentencing. In short, it is precisely because the categorical bright-line rule imperfectly reflects the contemporary scientific understanding of brain development that additional procedures are necessary to guard against a grave deprivation of liberty.

With respect to the final *Mathews* factor, while it is true that adopting such a procedure would impose some additional burdens on the government and the courts, these marginal costs would be relatively minimal as a practical matter. Mr. Beltran's own case involved a three-month trial, to say nothing of the many hours expended by the parties and the district court in preparation for the case. Expanding this process to include a round of additional briefing and perhaps a short evidentiary hearing would represent a fleetingly small, even *de minimus*,

marginal expenditure of resources. And, indeed, when one considers the administrative costs to the government and to taxpayers of incarcerating a young defendant for the entire remainder of their life, the net "fiscal and administrative burdens" of incorporating the procedure sought by Mr. Beltran would be expected to actually result in a net *savings*, to the extent that it eliminates unnecessary and unwarranted periods of incarceration. Accordingly, every prong of the *Mathews* test supports permitting defendants such as Mr. Beltran an opportunity to demonstrate that they are similarly-situated, for proportionality-analysis purposes, to the juvenile defendants in *Miller*. This Court should thus grant certiorari to hold that some such procedure is "due," under the Due Process Clause, before a court sentences a defendant between the ages of 18 and 22 to a term of mandatory life incarceration.

Yet even were this Court to prefer the ease of applicability of hewing to a categorical "bright line" rule, to the exclusion of any other procedural safeguards, Mr. Beltran respectfully suggests that this line should be drawn at 22 rather than 18. Revising the line would bring it into greater conformity with the scientific consensus and with the needs and requirements of the Eighth Amendment. Administratively, a bright-line rule set at age 22 is no more onerous for district courts and state courts to apply than a line set at age 18, and thus imposes no greater burdens on the government or on the courts. Further, insofar as "the

greater includes the lesser," enforcing the line at 22 rather than 18 would merely expand, rather than contradict, this Court's holding in *Miller*. Accordingly, this Court should grant certiorari to review the Second Question Presented.

II. This petition is an appropriate vehicle for considering the Questions Presented.

This petition offers an appropriate vehicle for resolving the Questions Presented, for several reasons.

First, Mr. Beltran is representative of the defendants who would be affected by an extension of this Court's *Miller* and *Montgomery* precedents. Mr. Beltran was 21 years old at the time of the offense conduct, an age that the scientific consensus recognizes as being still neurologically immature with respect to crucial aspects of brain development relevant to an Eighth Amendment proportionality analysis. Moreover, the record indicates that Mr. Beltran's involvement with the Bronx Trinitarios began when he was just 15 or 16 years of age; thus, even if the actual offense conduct for which Mr. Beltran received the life sentence was committed when he was 21, it represents in many respects the consequence or continuation of poor choices made by Mr. Beltran while he was unquestionably still a *de jure* juvenile. In this respect, Mr. Beltran is representative of a tragically high number of young defendants in urban environments who are recruited into violent gangs as mere children and subsequently find themselves lacking an

effective intervention and pathway back to lawful society. For these reasons, Mr. Beltran is a representative petitioner for the Questions Presented.

Second, this petition presents an appropriate vehicle for this Court's review because of the fully-developed record in the district court. As noted above, the joint motion filed in the district court by Mr. Beltran and his two codefendants included over 1,000 pages of supporting documentation — including scientific studies and related evidence — concerning the neurological basis for finding defendants like Mr. Beltran constitutionally similar to the juvenile defendants in *Miller*. It is likely, were this petition to be granted, that various *amici* would seek to supplement that record with additional evidence reflecting the scientific consensus concerning adolescent neurological development. Yet even the present record amply supports the scientific underpinnings of Mr. Beltran's argument for relief.

Finally, the instant petition presents an appropriate vehicle because there is a substantial likelihood that Mr. Beltran will obtain a favorable remedy in the district court should he prevail in this Court. As Judge Engelmayer explained at sentencing, Mr. Beltran's conduct, while "deplorable," nevertheless did not rise to the level of his codefendants; thus, Judge Engelmayer explained, "I do not know whether, were there no mandatory life sentence, I would have imposed a life sentence or merely an extremely long period of years." (A 231–32.) Were this

matter to be remanded for *de novo* resentencing, with Mr. Beltran provided an opportunity to present "the full range of materials in mitigation . . . that [the sentencing court] otherwise would have received" (A 232), there is a substantial likelihood that Mr. Beltran would receive a lesser sentence that being required to die in prison.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that this Court grant a writ of certiorari to the Second Circuit regarding both of the Questions Presented.

Respectfully submitted,

/s/ Daniel S. Nooter

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CERTIFICATION OF COMPLIANCE WITH RULE 33(G)

Undersigned counsel hereby certifies that this petition for certiorari complies with the word-limitation provision of Supreme Court Rule 33(g)(1), as it contains 4,673 words, including footnotes.

/s/ Daniel S. Nooter
Daniel S. Nooter, Esq.