No. 20-1315

In the Supreme Court of the United States

STATE OF LOUISIANA,

Petitioner,

v.

AARON G. HAUSER

Respondent.

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

REPLY BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

REPLY BRIEF FOR PETITIONER

Respondent Aaron Hauser committed brutal, premeditated murders when he was nearly eighteen—which led the sentencing court on collateral review to conclude (1) he was one of the worst offenders in one of the worst cases and (2) his life sentence should remain undisturbed despite a clean prison record. Pet. App. 055; *see Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). The state appellate court reversed and resentenced Hauser to life *with* the possibility of parole after ignoring Hauser's crimes and focusing almost entirely on Hauser's prison record. The State of Louisiana petitioned this Court for a writ of certiorari after the Louisiana Supreme Court denied review by a 4-3 vote. Pet. App. 002.

The confusion evidenced by the courts below is not limited to this case. Courts around the country disagree about how to weigh evidence of rehabilitation against the brutality of juveniles' crimes when conducting hearings required by *Miller* and *Montgomery*. The Court should take this opportunity to clarify its precedent and prevent a murderer from walking free.

Hauser opposes the State's petition on three grounds: He contends (1) the State's petition for certiorari was untimely; (2) the State's petition "manufactures" a controversy between lower courts that does not exist; and (3) the appellate court did not err or misapply this Court's precedent. Each of these points is without merit.

1. The State's petition to this Court is timely. Hauser contends the State's petition for certiorari is

untimely because of a quirk in the Louisiana Supreme Court's rules stating that rehearing applications in that court *will not be considered* if the court did not grant plenary review. *See* La. Supreme Ct. R. IX § 6 ("An application for rehearing will not be considered when the court has merely granted or denied an application for a writ of certiorari . . . ."). According to Hauser, because the Louisiana Supreme Court did not grant plenary review, the State's rehearing application was not *considered* by the Louisiana Supreme Court. That, in turn, means the State's petition was late here because the State filed its petition for certiorari 150 days after the Louisiana Supreme Court denied the State's application for rehearing, not 150 days after the Louisiana Supreme Court denied the State's petition for certiorari. *See* Supreme Ct. R. 13.3; Order, 589 U.S. – (Mar. 19, 2020).

Hauser is wrong because the Louisiana Supreme issued a ruling that disposed of the State's rehearing application—over the dissent of one of the justices. *See* Pet. App. 001. Moreover, as even Hauser acknowledges, the Louisiana Supreme Court does occasionally grant rehearing applications even when plenary review is not granted. *See* Pet. 9 (citing *Dynamic Constructors, LLC v. Plaquemines Par Gov't*, 180 So. 3d 1284 (La. Dec. 7, 2015) (Crichton, J., concurring) (collecting cases)). And, perhaps most importantly, this Court recently issued a GVR in a Louisiana case—*Victor v. Louisiana*—under almost identical circumstances. *See* 140 S. Ct. 2715 (2020) (granting certiorari, vacating the judgment, and remanding

to the Court of Appeal of Louisiana, Fifth Circuit, for further consideration of *Ramos v. Louisiana*, despite a timeliness objection from the State that is nearly identical to Hauser's objection); *see also* La. Br. in Opposition, *Victor v. Louisiana*, (19-5989) pp. 8–12 (making the same arguments Hauser raises in his BIO nearly point for point).[1] This Court could not have issued a GVR in *Victor* if the petition were untimely. The State merely asks the Court to treat this petition the same way it treated the petition in *Victor*. *See June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2134 (2020) (Roberts, C.J., concurring) ("The legal doctrine of *stare decisis* requires us, absent special circumstances, to treat like cases alike.").

2. The State's petition does not "manufacture[]" a controversy: The confusion generated by *Miller* and *Montgomery* is well documented. *See* Pet. 14–18. Even this Court has recently observed that it is possible for reasonable jurists to maintain "a good-faith disagreement" over how to interpret *Miller* and *Montgomery*. *Jones v. Mississippi*, 141 S. Ct. 1307, 1321 (2021).

Confusion abounds about how to weigh evidence of rehabilitation against the heinous nature of a juvenile's crime when conducting a hearing required by *Miller*/*Montgomery*. Some jurisdictions have concluded that "[a] juvenile's conduct after being convicted and incarcerated is a critical component of the

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[1] The brief is available at https://www.supremecourt.gov/DocketPDF/19/19-5989/134002/20200224155213963_Errol%20Victor%20BIO%20-Final.pdf.

resentencing court's analysis." *United States v. Briones*, 929 F.3d 1057, 1064, 1067 (9th Cir. 2019) (judgment vacated by *United States v. Briones*, No. 19-720, 2021 WL 1725145, at *1 (U.S. May 3, 2021)); *see also State v. Keefe*, 478 P.3d 830 (Mont. 2021). By contrast, other jurisdictions, such as the State of Washington, do not require *any* consideration of a defendant's behavior while incarcerated: "While a resentencing court may certainly exercise its discretion to consider evidence of subsequent rehabilitation where such evidence is relevant to the circumstances of the crime or the offender's culpability, . . . the court is [not] constitutionally required to consider such evidence in every case." *State v. Ramos*, 387 P.3d 650, 665 (2017), as amended (Feb. 22, 2017). The intermediate appellate court in this action interpreted *Miller* and *Montgomery* as requiring sentencing courts to *ignore* the facts of the crime when determining whether a juvenile should remain incarcerated for life. If the appellate court had factored the details of Hauser's crimes into its analysis, it would have arrived at the same conclusion as the sentencing court: Hauser is one of the worst offenders in one of the worst cases. Pet. App. 055.

This Court's decisions should not yield such disparate results. The Constitution does not mean one thing in Louisiana and another thing in Washington.

3. Finally, the state appellate court's misinterpretation of *Miller* and *Montgomery* caused it to err. To be sure, as this Court recently observed in *Jones v. Mississippi*, not every court will always reach the

same conclusion in a given case: "[O]ne sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case." 141 S. Ct. at 1319. And there is no dispute that model prison behavior may be "an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." *Montgomery*, 577 U.S. at 213. But here the appellate court gave virtually *no* consideration to Hauser's crime when determining whether to reform his sentence—instead focusing entirely on his years of imprisonment. *See* Pet. App. 017–028. That is not what *Miller* and *Montgomery* require.

Allowing the confusion among the lower courts to go unchecked will result in nothing but injustice. Murderers like Hauser will walk free in some jurisdictions but not others. Louisiana respectfully asks the Court to grant certiorari and hold that, when conducting a hearing required by *Miller*/*Montgomery*, a court must carefully consider the facts of the crime—and not merely evidence of rehabilitation—before reforming a sentence to allow for the possibility of parole.

CONCLUSION

Louisiana respectfully asks the Court to grant the petition for a writ of certiorari.

Respectfully Submitted,

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