No. 20-6775

In the
Supreme Court of the United States

Dantazias Raines,
Petitioner,

v.

State of Georgia,
Respondent.

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

BRIEF IN OPPOSITION

Christopher M. Carr
Attorney General

Andrew A. Pinson
Solicitor General
Counsel of Record

Beth A. Burton
Deputy Attorney General

Ross W. Bergethon
Deputy Solicitor General

Paula K. Smith
Senior Asst. Attorney General

Miles C. Skedsvold
Assistant Attorney General

Office of the Georgia
Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3409
apinson@law.ga.gov

Counsel for Respondent

QUESTION PRESENTED

If the Eighth Amendment requires a sentencer to make an affirmative factual finding that a juvenile offender is "permanently incorrigible" before imposing a discretionary life-without-parole sentence for murder, is that finding a "fact that increases the penalty for a crime beyond the prescribed statutory maximum" that must be found by a jury under *Apprendi*?

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The Supreme Court of Georgia's decision affirming petitioner's conviction for malice murder is reported at *Raines v. State,* 820 S.E.2d 679 (Ga. 2018); the Court's decision affirming the denial of his motion to have a jury decide his eligibility for life without parole is reported at *Raines v. State,* 845 S.E.2d 613 (Ga. 2020).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

> 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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

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

STATEMENT

A. Factual Background

On the evening of December 20, 2011, petitioner Dantazias Raines went to a friend's house to ask the friend, Traylor, to participate in a robbery. *Raines*, 820 S.E.2d at 683. Petitioner flagged down a cab, and, once he and Traylor were inside, pulled a gun on the driver, Brandy Guined. *Id.* Traylor fled the car, hearing a gunshot and a woman's scream as he went. *Id.* Traylor

called petitioner later that night and asked if he had shot the cab driver; petitioner responded "Hell, yeah." *Id.* When Traylor asked the next day *why* petitioner had shot the cab driver, petitioner explained that she had tried to grab the gun and he got nervous and shot her. *Id.* Petitioner was 17 years old at the time. Pet. App. B at 29.

Police were called to the scene in the early morning hours of December 21, 2011, where they found a vehicle trapped in a fence with the wheels spinning at a high rate of speed. *Raines*, 820 S.E.2d at 683. Officers were eventually able to break a window and shut off the engine before the car could break through the fence. *Id.* Guined, who had suffered a gunshot wound to the chest, was unconscious behind the wheel. *Id.* She died later at the hospital. *Id.*

B. Proceedings Below

A jury convicted petitioner of malice murder and several other crimes in March 2013. *Id.* at 682. Petitioner was sentenced to life without parole for the murder and a term-of-years sentence of 19 years for his other crimes. *Id.*

The Georgia Supreme Court affirmed petitioner's convictions and sentences in part, reversed his convictions for misdemeanor obstruction, and vacated his term-of-years sentence. *Id.* at 679. The court also remanded the case for resentencing under its decision in *Veal v. State,* 784 S.E.2d 403, 412 (Ga. 2016), which relied on this Court's decision in *Montgomery v. Louisiana*, 577 U.S. 190, 206–12 (2016). *Id.*

On remand, petitioner filed a motion for a jury to decide the appropriateness of a life without parole sentence under *Veal* and *Miller*. Pet. App. B at 30. The trial court denied the motion, but certified its order for

immediate review. *Id.* The Georgia Supreme Court granted interlocutory review to consider whether "a defendant facing a sentence of life without parole for an offense committed when he was a juvenile has a constitutional right to have a jury (as opposed to a judge) make the requisite determination of whether he is 'irreparably corrupt' or 'permanently incorrigible.'" *Id.*; Pet. App. C. Petitioner argued that, under the Sixth Amendment, a jury—not a judge—must decide whether he is "irreparably corrupt" or "permanently incorrigible" before imposing a sentence of life without parole. *Id.* at 30.

The court held that "a defendant who is convicted of committing murder when he was a juvenile does not have a federal constitutional right to have a jury determine … whether he is irreparably corrupt or permanently incorrigible such that he may be sentenced to [life without parole]." *Id.* at 32. The Court first rejected petitioner's attempt to "equate[] the 'maximum punishment' with the 'statutory maximum' under *Apprendi* and its progeny." *Id.* at 42. "Georgia's murder sentencing statute," the Court explained, "authorizes a sentence of LWOP for a defendant convicted of murder, and a jury verdict finding a defendant guilty of murder demonstrates that the jury has found [the necessary facts] beyond a reasonable doubt." *Id.* at 43. Thus, unlike state statutes which required some additional finding by a judge to impose that sentence, the Court reasoned that a *Miller* determination is a "*constitutional* constraint." *Id.* at 45 (emphasis in original). "In other words … [*Miller* and *Montgomery*] do not speak to what punishment a state statute authorizes for a given offense," and thus do not represent the "statutory maximum" for *Apprendi* purposes. *Id.* at 47. As a result, "where LWOP is authorized by [a] state statute," it "does not constitute a 'sentence enhancement' for Sixth Amendment purposes—and thus does not require

that a jury make specific findings to justify [the] imposition of that sentence—even when the Eighth Amendment has imposed additional constitutional limitations on the availability of that sentence." *Id.* at 50. Finally, the court also rejected petitioner's "assumption that the 'specific determination' of irreparable corruption … is the type of 'fact' *Apprendi* contemplated." *Id.* at 51. Neither *Miller* nor *Montgomery* characterized juvenile LWOP as an "enhanced punishment," the court reasoned, because both repeatedly used terms like "sentencer," "sentencing authority," "sentencing court," and "sentencing judge." *Id.* at 52 (citing *Montgomery,* 577 U.S. at 195, 208–09, 224–26 and *Miller v. Alabama,* 567 U.S. 460, 465, 474, 478–80, 483, 489 (2012)). Thus, the court sided with the "great weight of authority" rejecting the argument that the Sixth Amendment requires a jury to decide eligibility for juvenile life without parole. *Id.* at 61 n.12.

REASONS FOR DENYING THE PETITION

In *Miller v. Alabama*, this Court held that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment," because a sentencer must be able to consider "an offender's youth and attendant characteristics" before imposing that penalty. 567 U.S. at 465, 483. And in *Apprendi v. New Jersey*, the Court held that, "other than the fact of a prior conviction," the Sixth Amendment requires that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum … must be submitted to a jury and proved beyond a reasonable doubt." 530 U.S. 466, 466 (2000). From these limited holdings, petitioner extrapolates two further constitutional requirements: he contends that even a discretionary life-without-parole sentence for a juvenile violates the Eighth Amendment if that

sentence is imposed without an affirmative factual finding that the juvenile offender is "permanently incorrigible." Pet. at 13. And he contends that, under *Apprendi*, the Sixth Amendment requires that factual finding to be made by a jury beyond a reasonable doubt. *Id.* Because the trial court imposed a discretionary life-without-parole sentence based on the judge's determination that he was permanently incorrigible, petitioner contends that his Sixth Amendment rights were violated. The Georgia Supreme Court rejected this contention, holding that "a defendant who is convicted of committing murder when he was a juvenile does not have a federal constitutional right to have a jury determine … whether he is irreparably corrupt or permanently incorrigible such that he may be sentenced to [life without parole]." *Id.* at 32.

Further review is not warranted. This Court has denied review of the question whether *Apprendi* requires a jury to find the "fact" of "permanent incorrigibility" as a prerequisite to imposing a discretionary life-without-parole sentence at least four times. *See Skinner v. Michigan*, No. 18-6782, 139 S. Ct. 1544 (Apr. 15, 2019); *Beckman v. Florida*, No. 18-6185, 139 S. Ct. 1166 (Feb. 19, 2019); *Blackwell v. California*, No. 16-8355, 138 S. Ct. 60 (Oct. 2, 2017); *Fletcher v. Louisiana*, No. 15-5500, 577 U.S. 904 (2015). The few state courts that have addressed petitioner's argument have uniformly rejected it: although petitioner alleges a 7-1 split among state courts, the lone court on the short side has clarified that its prior decision did not recognize the right to the jury finding that petitioner claims. Even if there were a conflict that might otherwise warrant review, granting review here would be premature, as this Court is now considering whether *Miller* requires a factual finding of permanent incorrigibility in the first place—a premise central to

petitioner's argument. Finally, in any event, the decision below is correct. *Miller* does not require a finding of fact, but even if it did, that fact would not "increase" the "statutory maximum," and therefore would not trigger *Apprendi*'s mandate. The petition for a writ of certiorari should be denied.[1]

I. There is no conflict of authority.

A handful of state courts have addressed the question presented, and every one has rejected petitioner's argument. These courts generally reason that where the relevant state statutes authorize a life-without-parole sentence for a defendant convicted of murder, any further determination required by *Miller* is not properly considered a factual finding that "increases the statutory maximum" under *Apprendi*. *See, e.g*, *State v. Keefe*, 478 P.3d 830, 840 (Mon. 2021) (noting that, under *Miller*, youth is essentially "a mitigating factor which can reduce the possible sentence for deliberate homicide"); *Raines*, 845 S.E.2d at 618–19 (explaining that equating "maximum punishment" with "statutory maximum," as used in *Apprendi*, "conflates [this Court's] Sixth Amendment analysis … with its analysis in Eighth Amendment precedent"); *McGilberry v. State*, 292 So.3d 199, 207 (Miss. 2020) ("[T]he *Miller* factors are not elements of the crime that the sentencer must find beyond a reasonable doubt to impose a life-without-parole sentence."); *People v. Skinner*, 917 N.W.2d 292, 306 (Mich. 2018) ("[G]iven that a life-without-parole sentence is authorized by the jury's

[1] Because there is no conflict of authority, and further percolation would be necessary whatever the outcome of *Jones*, there is no substantive reason to hold this case pending *Jones*. That said, the State recognizes that the Court may wish to hold this petition pending the decision in *Jones* to avoid telegraphing any particular outcome in that case. After *Jones* is decided, however, the petition should be denied for the reasons set out here.

verdict alone, additional fact-finding … is not prohibited by the Sixth Amendment."); *State v. James*, 813 S.E.2d 195, 209 n.7 (N.C. 2018) (declining to address the defendant's *Apprendi* argument "given [the court's] conclusion that a valid statutory scheme for the sentencing of juveniles convicted of first-degree murder does not require the sentencing authority to find the existence of aggravating circumstances before imposing a sentence of life imprisonment without the possibility of parole"); *Commonwealth v. Batts*, 163 A.3d 410, 456 (Pa. 2017) ("A finding of 'permanent incorrigibility' cannot be said to be an element of the crime committed; it is instead an immutable characteristic of the juvenile offender."); *Beckman v. State*, 230 So.3d 77, 96 (Fla. App. 2017) (explaining that "where a sentencing judge imposes a sentence within the range prescribed by statute, 'any facts found function[] as mere sentencing factors, rather than elements of an aggravated offense") (quoting *Apprendi*, 530 U.S. at 481); *People v. Blackwell*, 207 Cal. Rptr. 3d 444, 466 (2016) (holding that a finding required by *Miller* need not be made by jury because *Miller* mandates consideration of youth as a mitigating factor, not an increase in the punishment authorized by a jury's verdict); *State v. Fletcher*, 149 So.3d 934, 943 (La. App. 2014) (holding that *Apprendi* does not apply in this context because *Miller* does not require proof of an additional element of "irrevocable corruption"); *see also* 6 Wayne R. LaFave et al., *Criminal Procedure* § 26.4 (i) (4th ed. 2019 Update) ("[C]ourts have rejected arguments that *Apprendi* reaches the factors listed in *Miller* that must be considered before imposing a life without parole sentence on a juvenile offender in order to comply with the Eighth Amendment.").

Petitioner cites two cases to show that the question presented here "divides" the lower courts, but neither establishes any such division.

Petitioner admits that *State v. Hart,* 404 S.W.3d 232 (Mo. 2013), did not decide the Sixth Amendment question, but remanded for a jury finding based on a state statute. Pet. 19. As for the second case, petitioner contends that the Oklahoma Court of Criminal Appeals held that a juvenile offender has a Sixth Amendment right to put the question of permanent incorrigibility to a jury. *Id.* (citing *Stevens v. State,* 422 P.3d 741, 750 (Okla. Crim. App. 2018)). But the Oklahoma Court of Appeals itself disagrees. As that court recently explained, citing *Stevens,* "neither the Supreme Court *nor this Court* have found a Sixth Amendment right to jury sentencing." *Bever v. State,* 467 P.3d 693, 700 (Okla. Crim. App. 2020) (emphasis added). "In fact," it reasoned, "both *Miller* and *Montgomery* recognized that it is appropriate for a judge to make sentencing decisions." *Id.* The court clarified that *Stevens* instead holds only that "*the trial* necessary to impose life without parole on a juvenile homicide offender must be a trial by jury." *Id.* (citing *Stevens,* 422 P.3d at 750) (emphasis added). Finally, the court noted that, "under [Oklahoma] state law, criminal defendants have a *statutory* right to have a jury help determine the sentence." *Id.* (emphasis added); *compare Stevens,* 422 P.3d at 750 (requiring the prosecutor to allege permanent incorrigibility). This holding puts to rest petitioner's assertion that *Stevens* creates a state-court split on the question presented.

II. Review is premature in light of *Jones v. Mississippi.*

Even if there were a conflict of authority that might otherwise warrant review, it would be too soon for this Court to consider the question. Petitioner's *Apprendi* claim is dependent on the premise that a sentencer must make an affirmative factual finding that the juvenile offender is

"permanently incorrigible" before imposing a discretionary life-without-parole sentence. But this Court is now considering that premise in *Jones v. Mississippi,* No. 18-1259, and its answer is likely to either scuttle petitioner's argument altogether or, at the least, require percolation in the lower courts.

The forthcoming decision in *Jones* could moot the question presented altogether. Under *Apprendi*, "[i]f a State makes an increase in a defendant's authorized punishment contingent on the finding of fact, that fact … must be found by a jury beyond a reasonable doubt." *Ring v. Arizona,* 536 U.S. 584, 602 (2002) (citing *Apprendi,* 530 U.S. at 482–83). The relevant "statutory maximum" for Sixth Amendment purposes is what "the jury's verdict alone … allow[s]." *Blakely v. Washington*, 542 U.S. 296, 303–04 (2004). If this Court concludes in *Jones* that *Miller* does not require a sentencer to make any formal finding, petitioner's *Apprendi* argument fails at its premise. Pet. at 14 (explaining that "if a finding of 'irreparable corruption' or 'permanent incorrigibility' is required before a juvenile can be sentenced to life without parole, the Sixth Amendment guarantees the right to a jury to make that finding"); *see also Cabana v. Bullock*, 474 U.S. 376, 385–86 (1986) (holding that a judge could make Eighth Amendment findings required by *Enmund v. Florida,* 458 U.S. 782 (1982), and *Tison v. Arizona,* 481 U.S. 137, 158 (1987)) *overruled in part on other grounds by Pope v. Illinois,* 481 U.S. 497, 503 n.7 (1987).

Even if the Court were to hold in *Jones* that *Miller* requires some kind of determination or finding—be it a "historical fact" or "more a judgment," *see Jones v. Mississippi,* No. 18-1259, Tr. of Oral Argument at 8–9, 34 (Nov. 3, 2020)—before imposing any life-without-parole sentence on a juvenile offender, it would be premature to take up petitioner's question at that time.

Even now, only a handful of lower courts have addressed petitioner's specific argument at all. And, of course, none of those courts had the benefit of whatever opinion this Court will hand down in *Jones.* Some courts that have already addressed the question rejected any *Apprendi* arguments at the threshold because they concluded that *Miller* does not require an affirmative factual finding of permanent incorrigibility is required. *See, e.g.*, *Raines*, 845 S.E.2d at 621 (noting that *Miller* and *Montgomery* had not "characterized the determinations of irreparable corruption … as a factfinding"); *McGilberry,* 292 So. 3d at 206 (rejecting *Apprendi* argument as "counter to *Montgomery,* which confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility") (citations omitted); *Skinner,* 917 N.W. 2d at 310 ("[J]ust as whether a sentence is proportionate is not a factual finding, whether a juvenile is 'irreparably corrupt' is not a factual finding."); *Fletcher,* 149 So.3d at 943 ("*Miller* does not require proof of an additional element of 'irretrievable depravity' or 'irrevocable corruption.'"). If this Court were to hold otherwise, those courts would need a chance to revisit their holdings and engage in the rest of the *Apprendi* analysis.

Other courts' rejections of petitioner's *Apprendi* argument do not hinge on whether *Miller* requires formal factfinding. *See, e.g.*, *Keefe*, 478 P.3d at 840 ("[N]either 'irreparable corruption' nor 'permanent incorrigibility' are [the type of] facts which could *increase* a possible sentence. Rather, youth is a mitigating factor which can reduce the possible sentence for deliberate homicide in Montana.") (emphasis added); *Raines,* 845 S.E.2d at 613 (holding, in the alternative, that even if *Miller* requires a formal finding of permanent incorrigibility, juvenile life without parole is not a "sentence enhancement" for Sixth Amendment purposes because it is authorized by state statute);

Batts, 163 A.3d at 456 ("A finding of 'permanent incorrigibility' cannot be said to be an element of the crime committed; it is instead an immutable characteristic of the juvenile offender."); *Blackwell*, 207 Cal. Rptr. at 466 (explaining that "*Miller* … avoids disproportionate punishment by mandating consideration of mitigating circumstances specific to youth[,]" which is different from "increasing the punishment authorized by a jury's verdict based on a fact not found by the jury"). These courts, too, may need to reassess their holdings in light of *Jones*, depending on whether their view of a finding under *Miller* tracks with whatever *Jones* says about it. Finally, many other lower courts could soon face a similar *Apprendi* argument in light of *Jones*. If the Court were to take up petitioner's *Apprendi* question at this time, it would do so in the absence of a single lower court decision addressing *Apprendi* arguments after *Jones*, let alone any conflict of authority on how to do so. The ordinary and better course would be to allow the lower courts to address any such arguments in the first instance. If a meaningful conflict emerges, the Court could then take up the question with the benefit of those courts' reasoned decisions.

III. The decision below is correct.

In any event, petitioner's argument fails on the merits, because the Georgia Supreme Court correctly concluded that a juvenile offender does not have a Sixth Amendment right to have a jury decide his eligibility for life without parole under *Miller* and *Montgomery*. Pet. App. B at 32. As a threshold matter, the argument rests on a flawed legal premise. In arguing that "the jury trial right conferred by the Sixth Amendment requires that the irreparable corruption finding be made by a jury," Pet. 14, petitioner assumes

that "permanent incorrigibility" is a "fact" that triggers *Apprendi* analysis. But Mississippi has the right of it in *Jones*: *Miller* does not require a factual finding as a prerequisite to a discretionary sentence for a juvenile offender. *Miller* held that mandatory life without parole sentencing schemes are unconstitutional as applied to juveniles. 567 U.S. at 460. In *Montgomery,* the Court held that *Miller*'s prohibition was a substantive, retroactive rule of constitutional law because the Eighth Amendment requires consideration of "youth and its attendant characteristics" before sentencing a juvenile to life without parole. 577 U.S. at 210. Yet in the same breath, the Court emphasized that "*Miller* did not impose a formal factfinding requirement." *Id.* Indeed, *Miller* explained that the Eighth Amendment "mandates only that a sentencer … consider[] an offender's youth and attendant characteristics" before imposing life without parole. 567 U.S. at 483. This, *Miller* reasoned, is because "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," a mandatory life sentence without parole "poses too great a risk of disproportionate punishment." *Id.* at 479. So when a sentencing authority considers youth and attendant circumstances before imposing life without parole, *Miller* is satisfied. That dooms petitioner's Sixth Amendment claim because *Apprendi* applies only to "[a] *fact* that increases the penalty for a crime beyond the prescribed statutory maximum." 530 U.S. at 490 (emphasis added). If *Miller* does not require a factual finding at all, it also cannot require the type of fact which must be proved to and found by a jury.

But even if *Miller* required some kind of affirmative finding, the Georgia Supreme Court correctly held that such a finding would still not be a sentence-enhancing fact which must be proved to a jury under *Apprendi*. Pet.

App. B at 42–50. The Sixth Amendment guarantees the right to have a jury find facts which increase the maximum statutory sentence. *Apprendi*, 530 U.S. at 490. This guarantee follows from the bedrock principle that the government must prove to a jury "all *facts* necessary to constitute a statutory offense … beyond a reasonable doubt." *Id*. at 483–84 (emphasis added). So, if proof of some fact would raise the penalty that state law authorizes for the offense, that amounts to a greater offense which must be proved beyond a reasonable doubt. *See, e.g.*, *Ring*, 536 U.S. at 609 (an Arizona statute requiring a judge to find at least one aggravating factor to impose the death penalty violated the Sixth Amendment). In other words, and as the Georgia Supreme Court held, the "statutory maximum" for Sixth Amendment purposes depends on what "the jury's verdict alone ... allow[s]." *Blakely*, 542 U.S. at 303–04; *cf.* Pet. App. B at 42–43. This Court emphasized in *Oregon v. Ice* that "the Sixth Amendment does not countenance *legislative* encroachment on the jury's traditional domain" and that "*Apprendi*'s core concern" is "a *legislative* attempt to remove from the province of the jury the determination of facts that warrant punishment for a specific statutory offense." 555 U.S. 160, 168, 170 (2009) (citation and punctuation omitted) (emphasis added); *cf.* Pet. App. B at 55–58. *Miller*'s requirements are constitutional thresholds, not statutory benchmarks—so they do not factor into the *Apprendi* calculus. *See, e.g.*, *Cabana,* 474 U.S. at 385–86 (holding that although the Eighth Amendment forbids imposition of the death penalty unless the defendant himself killed, intended to kill, or attempted to kill, that required finding is not one that a jury must make); *cf.* Pet. App. B at 48–50. Indeed, *Miller* and *Montgomery* themselves say that the "sentencing court" or "sentencing judge" may decide whether the defendant is eligible for life

without parole. *Montgomery*, 577 U.S. at 195, 208–09, 224–26; *Miller*, 567 U.S. at 465, 474, 478–80, 483, 489.

Just so here. Georgia law authorizes a sentence of life without parole for a defendant convicted of murder. O.C.G.A. § 16-5-1(e)(1). That means that a guilty verdict for murder carries with it all of the factual findings necessary to impose life without parole. Pet. App. B at 42–45; *see Lewis v. State*, 804 S.E.2d 82, 89 (Ga. 2017) ("The language of the murder statute clearly states the range of sentence that may be imposed upon conviction. It clearly establishes that no additional facts are required to be found by the jury for the imposition of life without parole.") (citation omitted); *Babbage v. State*, 768 S.E.2d 461, 466 (Ga. 2015) ("[L]ife without parole is now within the range of statutorily authorized punishments .... Because life without parole falls *within* the statutory range, *Apprendi* simply does not apply to this sentencing scheme.") (citation omitted; emphasis in original); *see also Ring*, 536 U.S. at 602 ("[A] defendant may not be exposed ... to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone."). Put differently, unlike the laws this Court has struck down under *Apprendi,* Georgia law authorizes life without parole on the jury's guilty verdict alone—not contingent on some additional factual finding. *Compare Apprendi*, 530 U.S. at 468–69 (maximum sentence for Sixth Amendment purposes was the 10-year maximum authorized by the New Jersey statute, because the statute required a trial judge to find facts beyond the jury verdict to authorize an extended term of imprisonment for between 10 and 20 years); *Ring*, 536 U.S. at 603–04 (Arizona statute required a judge to find at least one aggravating circumstance to authorize the sentence of death instead of life imprisonment); *Blakely*, 542 U.S. at 303–04 (Washington

statute required a trial judge to make additional factual findings beyond the jury verdict to authorize the maximum 10-year sentence); *Cunningham v. California*, 549 U.S. 270, 293 (2007) (California statute required a judge to find facts to authorize an elevated sentence of 16 years); *Hurst v. Fla.*, 577 U.S. 92, 93 (2016) (where a jury verdict for first-degree murder authorized only a sentence of life without parole, and a Florida statute required a judge to make additional findings of fact to increase punishment to the death penalty, the maximum sentence for Sixth Amendment purposes was life without parole). If *Miller* bears on that framework at all, it is by requiring the consideration of potential mitigating factors—not implicitly amending the code to recast permanent incorrigibility as an *aggravating* factor. *See Blackwell,* 207 Cal. Rptr. at 466 ("*Miller*, like *Enmund* [and] *Tison,* avoids disproportionate punishment by mandating consideration of mitigating circumstances specific to youth. This is not the same as increasing the punishment authorized by a jury's verdict."). Simply put, because Georgia's sentencing scheme for murder allows life without parole for juvenile offenders upon conviction, any additional constitutional requirement imposed by *Miller* is not an increased or "enhanced" sentence that would trigger *Apprendi.*

The Georgia Supreme Court thus correctly rejected petitioner's *Apprendi* argument, and so that decision does not warrant further review.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted.

Christopher M. Carr
Attorney General

Andrew A. Pinson
Solicitor General
Counsel of Record

Beth A. Burton
Deputy Attorney General

Ross W. Bergethon
Deputy Solicitor General

Paula K. Smith
Senior Asst. Attorney General

Miles C. Skedsvold
Assistant Attorney General

Office of the Georgia
Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3409
apinson@law.ga.gov

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2021, I served this brief on all parties required to be served by mailing a copy of the brief to be delivered by email, per prior agreement, addressed as follows:

Mark Aaron Loudon-Brown
The Southern Center for Human Rights
60 Walton Street NW
Atlanta, GA 30303
mloudonbrown@schr.org
Counsel for Petitioner

/s/ *Andrew A. Pinson*
Andrew A. Pinson