01No. _____

In The
SUPREME COURT OF THE UNITED STATES

EDWIN GONZALEZ, a/k/a SANGRIENTO,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT (DN: 19-1351)

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QUESTION PRESENTED

In Miller v. Alabama, 132 S. Ct. 2455, (2012), this Court held mandatory life sentences without parole for juvenile homicide offenders violates the Eighth Amendment prohibition against cruel and unusual punishments. This holding relied primarily on scientific findings that the brain of a juvenile under age 18 is not fully developed and therefore a juvenile cannot be subject to a sentence of life without parole unless there is a finding by the sentencing court of permanent incorrigibility. The question is whether the Miller ban of life without parole sentences should be extended to youths under the age of 21 since unconroverted scientific findings have been made that there is no difference in the brain development of a youth of 21 as opposed to youths under the age of 18. Hence, the same standards set forth in Miller and later expanded in Montgomery v. Louisiana, 136 S. Ct. 718 (2016) should apply to life sentences without parole to youths of 20 years.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings were Petitioner Edwin Gonzalez and Appellee United States of America,

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

Petitioner Edwin Gonzalez petitions this Court for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the First Circuit affirming his convictions and sentence.

OPINION BELOW

The decision of the Court of Appeals for the First Circuit, *United States v. Edwin Gonzalez, a/k/a/ Sangriento,* is attached as A.1-30 to this petition. The First Circuit affirmed on November 17, 2020.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. ¶ 1254 (1). This Petition is timely.

CONSTITUTIONAL AMENDMENT INVOLVED

U.S. Constitution; Amendment VIII – "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

EDWIN GONZALEZ was convicted after a jury trial of the crime of conspiracy to conduct enterprise affairs through a pattern of racketeering activities (18 USC §1962 (d)). The jury specifically found that Gonzalez knowingly

participated in committing the murders of Wilson Martinez on September 7, 2015 and Cristofer de la Cruz on January 10, 2016. Gonzalez was sentenced to life imprisonment without parole (Saylor, J.).

Edward Gonzalez does not contest the facts elicited at trial, which are gruesome. The jury found petitioner guilty. The issue here is punishment. The question is whether this young man is a candidate for rehabilitation in the future. It is submitted that petitioner's sentence of life without parole offends the 8th Amendment mandate against cruel and inhuman treatment. It is also contended that before the sentencing court could impose a life without parole sentence on this 20 year old, the 8th Amendment requires the court to make a finding that petitioner was "permanently incorrigible".

Government's Case

A. Background

GEORGE MORRIS, gang investigator for the Maryland State's Attorney Office, explained that MS-13 is organized on a clique level, which is a smaller sub-group of the larger MS-13 gang. (3-60-62, 67,70). Members of MS-13 are recruited at very young ages such as 10 through 13 (3-92). They control their territory through violence. The more violent they are the more likely that the gang members will be promoted (3-80).

Investigator Morris stated that a gang member can never leave the gang. They would be killed (3-88). You are a MS-13 member for life (3-88). The ultimate goal of MS-13 is to be the most dominant gang in the area which is achieved by violence, fear, and intimidation (3-89). MS-13 is not a democracy. There are no negotiations (3-93).

In January of 2015, JEFFREY WOOD, Special Agent for the FBI, was assigned as the lead case investigator of the operation of the MS-13 cliques in Massachusetts (3-97-98). Agent Wood identified the photograph of petitioner - "Sangriento (Gonzalez) as a MS-13 member (3-98). The main rival of MS-13 in Massachusetts is the 18th Street gang (3-101). The first time petitioner came to the attention of law enforcement was in December of 2015 (4-39). The investigation concluded on January 29, 2016, the day of the arrest of petitioner (4-25).

B. THE MURDER OF WILSON MARTINEZ

RENE MEJIA FLORES, 19 years old, was a member of MS-13 (7-107-08). He is presently incarcerated for the murder of Wilson Martinez (7-08). He pleaded guilty to racketeering conspiracy pursuant to a plea agreement (7-108-09).

Flores was born in El Salvador and came to United States when he was 14 years of age (7-114). Flores entered the ninth grade in the public school in East Boston. He learned that there were MS-13 members at the school (7-119). When he

joined MS-13, he understood that he was supposed to kill as many 18 Street members as he could (8-28). Flores killed Wilson Martinez to become a homeboy (7-127).

On September 7, 2015, Flores met petitioner at the beach to tell him where they had previously buried a machete (8-33-34). Petitioner told him that a chavala (rival gang member) is going to be killed (8-38-39). Petitioner suggested the plan to bring Martinez to the beach (8-44). When Martinez arrived, they started beating him (8-49). Petitioner kicked Martinez. Street Danger stabbed him. Chuchito was both hitting and stabbing him. Petitioner also used a knife (8-50-51). Martinez was stabbed many times by Petitioner and Street Danger (9-51-52). When they were about to leave, Martinez tried to stand up. They went back to finish the job. Flores took Petitioner's knife and stabbed Martinez about two or three times while Chuchito stabbed him four or five times (8-52-53). The knife broke when Chuchtio stabbed Martinez in the heart (8-54). When they left, Petitioner threw all the knives in the water (8-54-55).

Flores and Petitioner became home boys after the murder (8-59, 20-21).

JOSE REVAS RENDEROS (Junior), 20 years of age, lived in East Boston in 2015 (10-28). He associated with the MS-13 gang.

Renderos was born in El Salvador and left when he was 15 years old. He was not a member of the MS-13 gang (10-30). He attended East Boston High School

where he met fellow students who were MS-13 members (10-34-35). Renderos saw Petitioner almost every day (10-39).

Renderos knew Wilson Martinez from school (10-52). Before Wilson was killed, he talked to Petitioner, who said Wilson was in the 18 gang (10-53). Petitioner said that he was going to try to trick Wilson with a fake Facebook, take him to an isolated place, and kill him (10-54-55). Gasper told him that he, Chuchito, Street Danger, and Petitioner had killed Wilson on the beach where they beat, stabbed and hit Wilson with rocks (10-57-58).

When Renderos saw how dangerous the group was becoming, he went to a school resource officer to report information about MS-13 (10-61).

C. THE MURDER OF CRISTOFER DE LA CRUZ

De la Cruz' Facebook account revealed that he received a message on December 18, 2015 from Zimaro Franco, who told him she loved him. De la Cruz gave her his address at 13 Gilman Street, Worcester, Mass. (5-113). After seeing Franco's photograph, De la Cruz told her that she was very beautiful (5-117). The messages from Franco came from Petitioner's phone (5-111). In a recording made the day after the murder, Petitioner stated that they have been following De la Cruz for four months (7-80). De la Cruz was also lured to his death by the same method as Martinez — "catfishing",

In a recording on January 10, 2016, Demente told CW-1 that they killed De la Cruz on Falcon Street with knives and finished him off with a gun (5-37). Demente said that Petitioner called him when he was with De la Cruz in a car (5-38). De la Cruz fought in the car so Petitioner gave him marijuana to smoke. Upon arrival at Falcon Street, Petitioner forcibly removed De la Cruz from the car (5-41, 50). Petitioner went on to say, "But the knife, you know, it was as if it was cutting rocks because it was really dull, dull." (5-68). While he was stabbing the guy, it was as if "I was cutting into rock like." (5-69). He said that the blade got bent (5-69). "It was like the guy's head was hardened on the head, like the head." (5-69). Petitioner said that Ninja (Rigoberto Mejia) fired the shots at De la Cruz (5-70).

SENTENCE (November 27, 2018)

The prosecutor recommended life in prison without parole (id. at 13-14). The prosecutor characterized the crimes as "unspeakable" which came "from medieval times because society was trying to come up with a word that was so horrible that we felt uncomfortable even mentioning out loud" (id. at 16). The prosecutor asserted that the crimes here were "unspeakable" where a 15 year old boy "get lured and butchered with knives and killed and repeatedly stabbed and gets left to die on a public beach" (id. at 16-17). The next victim (De La Cruz), a 16 year old boy, is killed in the same manner a few months after (id. at 17-18). Because of his disregard

"for the sanctity of life, the prosecutor asked for a life term (id. at 20-21).

In response, counsel urged that Petitioner, who was 20 years old at the time of the crimes, was young enough so that rehabilitation is possible. According to counsel, this is what the Miller case and the Eighth Amendment are about. Dealing with juvenile mentality is different, meaning that change cannot be ruled out despite the horrific nature of the crimes (id. at 22-23). Counsel also stressed that once in gang, it is hard to get out. A member must follow the rules. Therefore, Petitioner did what his cousin, the leader, demanded of him. Counsel suggested a sentence of 40 years (id. at 24).

Petitioner also submitted an affidavit from Robert Kinscherff, PhD, JD in Doctoral Clinical Psychology. He taught courses in law and child behavioral health. Dr. Kinscherff served as Science Faculty at the Center for Law, Brain, and Behavior (CLBB) at Massachusetts General Hospital. In that capacity, between 2015-2017 he was Senior Fellow in Law and Applied Neuroscience at Harvard Law School . His focus was on the implications of developmental neuro science and behavioral science. He has been involved in case consultations in post *Miller* case resentencing and developmental neuroscience. He has participated during the past three years among the Federal Judicial Center, CLBB, and Harvard Law School for training federal district courts on science-based decision-making in courts. He has been a presenter

numerous time before the courts regarding the implications of adolescent and young adult social and brain development.

Dr. Kinscherff noted that Supreme Court in *Miller* struck down mandatory sentences of Life without Parole for capital offense committed under the age of 18. This decision requires an individualized sentencing hearing where the court is bound to consider a number of factors, one of which includes the possibility of rehabilitation. *Miller,*132 S.Ct. At 2468. According to Dr. Kinscherff, *Miller* made clear that a LWOP sentence is reserved for the "Rare juvenile offender whose crime reflects irreparable corruption." *Miller*. 32 S. Ct. At 2469. Hence, the findings of developmental behavioral science and neuroscience provide the support for the shifts in constitutional jurisprudence regarding adolescents since the *Roper* decision.

Dr. Kinscherff's report stressed developmental behavioral science and neuroscience findings since *Miller* reinforce the Jurisprudence but reveals that drawing a "bright line" at age 18 is not supported by the science. Dr. Kinscherff found: 'In short, from a neuro-developmental or behavioral science perspective, "there is no developmentally informed magical line of demarcation at eighteen, particularly when factoring in emotional arousal, influence of peers and other social influences, and other contextual factors." (Kinshherff report, p.8).

The prosecutor responded that it was not asking the Court to ignore age and

that an individualized determination should be made. However, in this case, the prosecutor argued that Petitioner would have continued to kill until stopped (id. at 259).

The Court first noted that while Petitioner was not a teenage boy, he was close enough (age 20) to a teenager when the crimes were committed. The Court also recognized that the brain is not fully developed until one becomes older (id. at 25). The Court stated:

> "I'm certainly very much aware of the possibility of change, in fact, the likelihood of change over the course of a lifetime. I'm aware of the poverty in El Salvador, the circumstances of the defendant's upbringing, the fact that he's from a separated and otherwise broken family, the difficulty of migrating here with the lack of language skills and other related issues.
>
> I'm aware of the nature of the gang, in all likelihood why he joined and maybe why he wanted to be promoted and why it's hard perhaps to walk away, and all of those factors are important, and they weigh on me heavily, but I think they were overwhelmed here by the nature of the crime, and that is the deliberate murder of two teenage boys, not one murder, two, a 15 year old boy and a 16 year old boy, both lured to their deaths, brutal deaths, basically boys who were butchered as well as beaten and left to die.
>
> As the government points out, these were not impulsive acts, not something stupid that he did because he was drunk or high. It wasn't a street fight that escalated, it wasn't an episode involving jealousy over a girl or a fight about money or drug, it wasn't a hazing ritual or a prank that got out of control, it was a calculated and deliberate, elaborate, deliberate plan to murder someone.
>
> He did it not once but twice. He wasn't ordered to do it, he wasn't compelled to do it, and the murders were senseless, pointless, again, not committed out of anger or rage, not for money, not for addiction or drugs, not over lover or

jealousy but just because these two boys were suspected rival gang members, and that's really it, and, of course, he bragged about it afterwards in horrific fashion, which was captured on recordings.

I'm also aware of the sentences that I've given to other defendants. That's important as well. Probably the most similar defendant, similarly situated defendant, is Joel Martinez, to whom I gave a 40 year sentence, and Joel Martinez pleaded guilty, accepted responsibility, and that was his tradeoff for pleading guilty was he got some portion of his life back in return for it.

Anyway, all of this make me sick at heart, sick about everything, about the victims, about their families, about Mr. Gonzalez himself and his family. I'm very cognizant of what it means to give a 23 year old man a lengthy sentence, much less life in prison, and I take no pleasure in imposing the sentence, but I feel it's appropriate under the circumstances, and I am going to give him life in prison. That is the guideline sentence, and I think it's also the appropriate sentence under Section 3553 (a) "(id. at 25-27, 29)

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to decide whether this Court's decisions in Roper-Graham-Miller-Montgomery should be expanded to ban life sentences without parole to those adolescents in the age group of 19 to 21 years which tenet is universally supported by science; further, this age ban should be applicable to all youths that are not deemed incapable of rehabilitation or not found to be *permanently incorrigible.*

The Eighth Amendment mandate against cruel and inhumane treatment of youthful offenders in our criminal justice system is rapidly evolving. In a line of cases, this Court has found that certain prescribed punishment may be grossly disproportionate when applied to youthful offenders. Youth plays a pivotal role in

the determination of sentence.

This Court in Miller v. Alabama, 132 S. Ct. 2455, 567 U.S. 460 (2012) held that mandatory life sentences without parole for juvenile homicide offenders violated the Eighth Amendment's prohibition against cruel and unusual punishment. The *Miller* rule constituted a ban on life without parole for nearly all child offenders up to age 18 years. This case seeks to extend *Miller* and its progeny to youthful offenders through age 21. Roper v. Simmons, 125 S. Ct. 1183 (2005); Graham v. Florida, 130 S. Ct. 2011 (2014).

The rationale of Miller and later Montgomery rests on the premise that there are manifest differences between the culpability of juveniles as opposed to adults when considering the punishment to be imposed even for the most heinous of crimes. According to this Court, these differences manifest themselves in three ways:

> "First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable to negative influences and outside pressures,' including from their family and peers; they have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.'" Miller, supra, 132 S. Ct. at 2464.

The unconstitutional risk found to exist by this Court in *Miller* exists here. Petitioner was 20 years of age when he committed the charged crimes and was given the

extreme punishment of life without parole for his crimes. He will perish in prison despite the scientific fact that the brain of this 20 year old is in reality no different than that of the 18 year old. The fact is that there is no magical line of demarcation finding that the development of the brain stops at age18.

The arbitrary cut off age of 18 by *Miller* has wrongfully barred courts from considering unconroverted scientific evidence that brain development in adolescents continue till their early twenties. The First Circuit in affirming petitioner's conviction found that *Miller* was the "roadblock" to the relief asked here in that it invalidated only "mandatory life-without-parole sentences" for juveniles (up to age 18). According to the First Circuit, the *Miller* Court made no constitutional rule with respect to a discretionary life without parole sentence that was imposed here (A.).

The First Circuit drew a distinction without a difference. A life sentence is a life sentence whether mandatory or discretionary. Indeed, this Court subsequently in Montgomery v. Louisiana, 136 S. Ct. 718, 734 (2016) held that a life sentence without parole sentence - *whether mandatory or discretionary* - violates the Eighth Amendment for a youth whose crime reflects *transient immaturity.* This statement alone undermines the First Circuit's holding and should prompt re-examination of its position.

The First Circuit went on to hold that this Court drew a line in the sand that

could not be crossed when setting its protection to only those youths under age eighteen. The Circuit minimized conclusive scientific findings regarding the development of the brain in young adult by claiming "scientific evidence is merely one factor, among an array of factors, that the Court has considered when invalidating certain criminal sentences imposed on juveniles." (A.15). Ironically, all the factors the Circuit delineated fell into the realm of scientific findings such as lack of maturity, the susceptibility of juveniles to environmental pressers, and the fact that the juvenile's overall character is not yet fully formed because of their youth (A.16).

Every single one of these factors were employed by this Court because they were confirmed by scientific and sociological studies. The conclusion that the brain of a youth is not fully developed until after the age of 21 and therefore a youth should not be subject to the same punishment standards as an adult was based on science. In any event, every single factor set forth by the First Circuit apply equally to a youth of 20 years. In this context, the First Circuit's conclusions make no sense in light of the specific language of *Roper, Miller,* and *Montgomery.* It is up to this Court to articulate how science was in fact the cornerstone of its decisions. The First Circuit's decision laid the foundation for this challenge by stating "Had the Supreme Court articulated that its conception of youth treated exclusively on the physiological development of the brain, this argument might have some bite." (A.19).

In tandem with the issue of the expansion of the *Miller* age restriction, this Court should resolve the equally pressing issue of whether the Eighth Amendment, at a minimum, requires an explicit finding of permanent incorrigibility before a life without parole sentence, whether mandatory or discretionary, may be imposed on a youthful offender 20 years of age. (A.21). The First Circuit erred when it reviewed petitioner's claim under the "plain error" standard. This claim was specifically raised in the affidavit of Dr. Kinscherff, which was attached to his sentencing memorandum. Dr. Kinscherff stressed the need to ascertain whether petitioner was capable of rehabilitation. While not using the specific terminology of permanent incorrigibility, a finding that a youth is capable of rehabilitation negates any conclusion of incorrigibility. A youth's fate should not be determined in a game of semantics.

Neither Miller or Montgomery required the sentencing court to use the specific term of *incorrigibility* when determining whether to impose a life without parole sentence on a youth. See, Montgomery, 136 S. Ct. at 735.[1]

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[1]The sentencers must just determine whether a youth's crimes reflected"permanent incorrigibility" or "transient immaturity," but did not prescribe any specific form of words sentencers must use. (quoting Montgomery, 136 S. Ct. at 734) "Incorrigible" means "incapable of being corrected or amended." Merriam-Webster's Dictionary (2020). The concept has a long pedigree in the history of juvenile justice in America: "[T]he primary meaning of the word 'incorrigible' is: '1. Not corrigible; incapable of being corrected or amended; not reformable.'" Shinn v. Barrow, 121 S.W.2d 450, 451 (Tex. Civ. App. 1938); See Also, Scott v. Flowers, (continued...)

The inconsistency in the First Circuit's conclusions is shown by its statement that "[A]lthough the court did not make an explicit finding of permanent incorrigibility, it did consider the defendant's capacity for rehabilitation" but went on to reject his prospects for rehabilitation because of the heinous nature of the crimes which placed him beyond the "hope of redemption" (A. Fn.7). This Court has repeatedly expressed its opposition to this approach. Montgomery,136 S. Ct. At 734; Adams v. Alabama 136 S. Ct. 1796, 1800.

The First Circuit's reasoning contradicts the repeated holdings of this Court. No matter how heinous the crimes committed by the youth are, the sentencing court must still make a specific finding that this youth is *permanently incorrigible.* To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. Montgomery expressly stated that "[p]risoners like Montgomery 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." 136 S. Ct. at 736. Crimes are not mature, immature, corrigible, or

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[1](...continued)
84 N.W. 81, 82 (Neb. 1900), on reh'g, 85 N.W. 857 (1901) (describing a youth charged with incorrigibility as "incapable of being corrected or amended, bad beyond correction, irreclaimable"). In plaint terms, the youth cannot be rehabilitated.

incorrigible—people are. A crime cannot reflect the incorrigibility of a person who is corrigible. The nature and circumstances of a crime can inform—but not replace—a court's determination of a youth's capacity for rehabilitation. This Court repeatedly has warned that an exclusive focus on the crime in juvenile cases creates "an 'unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course.'" Graham, 560 U.S. at 78 (quoting Roper, 543 U.S. at 573). Focusing on the crime alone disregards "Miller's central intuition—that children who commit even heinous crimes are capable of change." Montgomery, 136 S. Ct. at 736.

The only fair method to determine incorrigibility is for the courts to rely on established science to make such a finding. This Court has held that medical science must inform a "court's intellectual-disability determination," Moore v. Texas, 137 S. Ct. 1039, 1048 (2017), and that States cannot "bar[] consideration of evidence that must be considered in determining whether a defendant in a capital case has intellectual disability." Hall v. Florida, 572 U.S. 701, 723 (2014). So, too, irrefutable conclusions reached by science regarding the developmental stages of a youth's brain must be the main factor in determining the issue of incorrigibility.

For the above reasons, this Court should grant petitioner's petition for certiorari.

CONCLUSION

FOR THE REASONS GIVEN ABOVE, THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

Dated: January 27, 2021

Respectfully Submitted,

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