Nos. 20-830, 20-831

IN THE
SUPREME COURT OF THE UNITED STATES

The State of Washington,

Petitioner,

v.

Said Omer Ali,

Respondent.

The State of Washington,

Petitioner,

v.

Endy Domingo-Cornelio,

Respondent.

On Petitions for Writs of Certiorari
To the Supreme Court of Washington

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In Petition No. 20-830 and No. 20-831:

1. Where state law sets a minimum sentence for a non-homicide offense and allows the sentencing court to impose an "exceptional sentence" below that minimum only if it finds one or more mitigating factors, whether the Eighth Amendment requires a juvenile offender's youth to be a permissible mitigating circumstance.

In Petition No. 20-830 only:

2. Whether the Eighth Amendment requires Washington sentencing courts to have discretion to deviate below an otherwise-mandatory firearm sentence enhancement based on the offender's youth, where statutory silence leaves doubt as to whether the state legislature truly intended the enhancement to apply to juveniles.

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INTRODUCTION

In recent years, this Court has decided a series of cases about the propriety of adult punishments for juvenile offenders. Most relevant here, the Court held in *Miller v. Alabama*, 567 U.S. 460 (2012), that juveniles convicted of homicide—unlike similarly situated adult offenders—cannot be subject to a mandatory sentence of life imprisonment without possibility of parole. *Id.* at 471. Since that decision, many lower courts have considered several serious questions about the reach of *Miller*'s holding, including whether and how it applies to term-of-years sentences that exceed a juvenile's life expectancy.

The instant cases do not present any of those questions. Instead, the State asks this Court to consider whether the Washington Supreme Court correctly interpreted the Eighth Amendment in *State v. Houston-Sconiers*, 391 P.3d 409, 420 (Wash. 2017). *Houston-Sconiers* held that, under Washington's sentencing scheme—which allows judges to impose sentences below otherwise-mandatory statutory ranges if they find one or more mitigating factors—judges must be able to consider youth as a mitigating factor in cases in which defendants are juveniles. The court similarly concluded that, because the Legislature did not clearly intend otherwise-mandatory firearm enhancements to be mandatory for juveniles, courts in such cases must be able to deviate on account of youth from those enhancements. The decisions below merely applied *Houston-Sconiers* in post-conviction proceedings to respondents, both of

whom received sentences at the bottom of the standard ranges, and one of whom (respondent Ali) received mandatory firearm enhancements.

This Court should deny the petitions. This Court has repeatedly denied petitions in the wake of *Miller* raising questions about the reach of its Eighth Amendment holding. And even if this Court were interested in addressing the reach of *Miller*, the decisions below would be poor vehicles to undertake that task because they arise out of the interplay between Washington's unusual sentencing scheme and its standards for post-conviction relief. Furthermore, even if this Court disagreed with the Washington Supreme Court's interpretation of the Eighth Amendment, it would have no practical, prospective impact. In 2015 and 2017, the Washington Supreme Court made clear that state *statutory* law requires the same result as its Eighth Amendment holding that youth is a mitigating factor that allows judges to impose exceptional sentences. *See State v. O'Dell*, 358 P.3d 359, 366 (Wash. 2015); *Houston-Sconiers*, 391 P.3d at 420-22. And the Washington Legislature recently amended state law to require judges to consider youth as a reason to forgo otherwise-mandatory firearm enhancements. It has also authorized release for juvenile offenders after 20 years, regardless of any enhancements or their underlying sentence—a change that renders the firearm enhancements in Ali's case irrelevant.

STATEMENT OF THE CASES[1]

A. This Court's Eighth Amendment precedents.

Time and again, this Court has held that "less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult." *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). This conclusion flows from both common sense and neuroscientific research. *See Roper v. Simmons*, 543 U.S. 551, 569-70 (2005). Studies show that "[o]nly a relatively small proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior." *Id.* at 570 (internal quotation marks omitted). Research also confirms that there are "fundamental differences between juvenile and adult minds," including in "parts of the brain involved in behavior control." *Graham v. Florida*, 560 U.S. 48, 68 (2010). These neurological differences diminish a juvenile's "moral culpability," *id.* at 69, and enhance the likelihood that any character "deficiencies will be reformed," *id.* at 68 (quoting *Roper*, 543 U.S. at 570). Thus, although "[c]rimes committed by youths may be just as harmful to victims as those committed by older persons, . . . they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults." *Thompson*, 487 U.S. at 834 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 n.11 (1982)).

[1] References to the petition in Case No. 20-830 are "Ali Pet." and references to the petition in Case No. 20-831 are "Domingo-Cornelio Pet." All "Pet. App." references refer to the appendix in Case No. 20-830, which contains both decisions below.

This Court's recognition that youth "is itself a relevant mitigating factor of great weight," *Eddings*, 455 U.S. at 116, has led it to bar certain forms of punishment for juvenile offenders as inconsistent with the Eighth Amendment's requirement that the punishment be "proportional[]" to the offense. *Graham*, 560 U.S. at 59. Specifically, this Court has held that the Eighth Amendment prohibits capital punishment for all juveniles, *Roper*, 543 U.S. at 564; *Thompson*, 487 U.S. at 838, and the imposition of sentences of life without the possibility of parole (LWOP) for non-homicide juvenile offenders, *Graham*, 560 U.S. at 71.

In 2012, this Court relied on the reasoning of these cases, as well as a second line of Eighth Amendment cases restricting the use of mandatory punishments, to hold that LWOP sentences cannot be mandatory for juveniles convicted of homicide. *Miller*, 567 U.S. at 471. As *Miller* explained, the traditional rationales for sentencing—retribution, deterrence, incapacitation, and rehabilitation—provide inadequate justification for automatically punishing juveniles so harshly. "Because the heart of the retribution rationale relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." *Id.* at 472 (internal quotation marks and alteration omitted). "Nor can deterrence do the work in this context, because the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* (internal quotation marks omitted). Similarly, incapacitation cannot automatically support such harsh mandatory sentences:

"Deciding that a juvenile offender forever will be a danger to society would require making a judgment that he is incorrigible—but incorrigibility is inconsistent with youth." *Id.* at 472-73 (internal quotation marks and alterations omitted). And "for the same reason," rehabilitation cannot automatically justify an LWOP sentence because juveniles are already on the path to rehabilitation simply by virtue of being on the path to maturity. *Id.* at 473. Accordingly, *Miller* held that courts may impose LWOP on juveniles only if they first engage in individualized sentencing that specifically considers an offender's youth as a mitigating factor. *Id.* at 477-78.[2]

B. Washington's sentencing regime.

Most States sentence adult offenders—or juveniles sentenced as adults—using either indeterminate sentences or advisory sentencing guidelines. *See infra* at 18-19. Washington law, by contrast, establishes standard narrow sentencing ranges for all felonies in the State, but grants sentencing courts discretion to impose "exceptional sentences" above or below the standard range if—and only if—they find "substantial and compelling reasons" to do so. Wash. Rev. Code § 9.94A.535. The relevant statute sets forth eleven factors that the court may consider in exercising its discretion to impose an exceptional sentence, including whether the victim initiated or provoked

[2] On November 3, 2020, this Court heard argument in *Jones v. Mississippi*, No. 18-1259, which presents the question whether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing an LWOP sentence. As the State concedes, that question is distinct from the questions presented here. *See* Ali Pet. 1, 15. *Jones* addresses what *Miller* requires. These cases involve whether *Miller* applies at all.

the incident, *id.* § 9.94A.535(1)(a), whether the defendant suffered from diminished capacity, *id.* § 9.94A.535(1)(e), or whether the defendant committed the crime under duress or compulsion, *id.* § 9.94A.535(1)(d). The list is not exhaustive and the trial court may consider qualifying non-enumerated mitigating factors, too. *See State v. Law*, 110 P.3d 717, 721 (Wash. 2005).

Before this Court's decision in *Roper*, Washington courts had indicated that a juvenile's age alone did not provide a valid basis for imposing an exceptional sentence. *See id.* at 723. Following *Roper*, the Washington Legislature amended its sentencing laws to clarify that, because "adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults," it is "appropriate to take these differences into consideration when sentencing juveniles tried as adults." Wash. Rev. Code § 9.94A.540, note (2005); *see O'Dell*, 358 P.3d at 362 (identifying *Roper* as the reason for this change).

After that legislative change, the Washington Supreme Court clarified in *O'Dell* that, although youth does not "automatically" entitle a juvenile to a reduced sentence, youth is a valid mitigating factor that Washington courts must consider as a potential reason to impose an exceptional sentence below the standard range. *O'Dell*, 358 P.3d at 366. That decision turned solely on the court's interpretation of Washington statutes, not on the Eighth Amendment.

Two years later, the Washington Supreme Court held in *State v. Houston-Sconiers*, 391 P.3d 409 (Wash. 2017), that the Eighth Amendment compelled the same

result that *O'Dell* reached under state law. That is, it held that the Eighth Amendment requires judges sentencing juvenile offenders to consider youth as a mitigating factor that could warrant an exceptional sentence. *Id.* at 414, 420. The Washington Supreme Court also held that state law and the Eighth Amendment require a sentencing court, when sentencing a juvenile, to have discretion to deviate below any mandatory sentencing enhancements based on the offender's youth. *Id.* at 422. As the court explained, the Washington statute authorizing juveniles to be tried as adults does not mention application of any mandatory sentencing enhancements to juveniles, and the court held that this "silence . . . could not be read as silent authorization to impose" the enhancements on juvenile offenders. *Id.* at 421-22.

As of June 11, 2020, the Washington Legislature amended the firearm enhancement statute to codify the requirement that, in any case in which the defendant is a juvenile, the judge must consider youth before imposing any otherwise-mandatory firearm enhancement. Going forward, all such enhancements are explicitly discretionary. *See* Wash. Rev. Code § 9.94A.533(15). Additionally, as of 2014, any "person convicted of one or more crimes committed prior to the person's eighteenth birthday" (with exceptions not relevant here) can petition "for early release after serving no less than twenty years of total confinement." Wash. Rev. Code § 9.94A.730(1).

C. The decisions below.

1. In 2008, a jury convicted respondent Ali of five counts of first-degree robbery, two counts of attempted first-degree robbery, and one count of first-degree assault. Pet. App. 2a. Even though he was a juvenile when the offenses occurred, he was tried and sentenced as an adult. Ali's standard sentencing range was 20 to 26.5 years, plus six consecutive years for three, mandatory deadly weapon enhancements. *Id.* at 3a.

Ali asked the sentencing court to impose a below-range sentence of ten years, arguing that his youth and difficult childhood rendered the presumptive range excessive. *Id.* at 3a-4a. The sentencing court considered Ali's youth, but concluded that his age did not provide "any justification under the law" to deviate below the state sentencing range. *Id.* at 5a. The judge stated that "the law does not allow me to depart from" that range "simply because of your age," and made a point "to note, for the record[,] that the sentence that was imposed was the lowest sentence that I legally felt I had the option of imposing in this case." *Id.* at 5a-6a. Ali received a bottom-of-the-range sentence of 20 years for his underlying offenses, plus six years for mandatory enhancements. *Id.* at 3a. In 2011, Ali's convictions were affirmed on direct appeal. *See id.* at 6a.

In 2017, after the decision in *Houston-Sconiers*, Ali filed a petition for state post-conviction relief (termed a "personal restraint petition"), arguing that his sentence was illegal. Because he filed his petition more than a year after his conviction became final, he had to show that there had "been a significant change in

the law" that was "material to [his] conviction" and that "the legislature has expressly provided that the change in the law is to be applied retroactively, or a court . . . determines that sufficient reasons exist to require retroactive application of the changed legal standard." Wash. Rev. Code § 10.73.100(6).

The Washington Supreme Court deemed *Houston-Sconiers* a qualifying change in the law that was retroactively applicable to Ali's case, which made his petition timely. Pet. App. 11a-24a. The court explained that, although the "sentencing judge considered the mitigating factors of Ali's youth and arguments for an exceptional sentence," the sentencing judge believed that she lacked "discretion to impose any sentence below the standard [statutory] range and mandatory enhancements," because Ali was sentenced before *O'Dell* and *Houston-Sconiers*. *Id.* at 26a-27a. Because those decisions give Washington courts "absolute discretion to impose any sentence below the standard range" and any mandatory enhancements "based on youthful diminished culpability," Ali was entitled to resentencing. *Id.* at 27a.

After the proceedings below, Ali became eligible for release after 20 years because of the change to Washington Revised Code Section 9.94A.730(1) described above. *See supra* at 7; Ali Pet. 8. That change "effectively removed" the firearm enhancements from Ali's sentence, providing an entirely independent basis for the reduction in Ali's sentence following from the decision below. Ali Pet. 8.

2. In 2014, respondent Domingo-Cornelio was convicted of one count of first-degree rape of a child and three counts of child molestation. Pet. App. 42a. Domingo-

Cornelio was between 15 and 17 at the time of his crimes. *Id.* He faced "no mandatory sentencing provisions," Ali Pet. 13, but his sentencing range was "between 240 and 318 months." Pet. App. 42a. The sentencing judge "'consider[ed] all of the information before the Court,' but she made no mention of Domingo-Cornelio's youth in her ruling." *Id.* at 44a. He received a sentence at the low end of the guidelines: 240 months' imprisonment and 36 months' community custody supervision upon release. *Id.* Domingo-Cornelio's sentence was affirmed on direct appeal and became final on August 31, 2016. *Id.*

After the Washington Supreme Court decided *Houston-Sconiers*, Domingo-Cornelio filed a personal restraint petition, arguing (among other things) that *Houston-Sconiers* required him to be resentenced. *Id.* Because Domingo-Cornelio filed his petition within one year of his conviction becoming final, he—unlike respondent Ali—did not have to satisfy the requirements of Section 10.73.100(6) of the Washington Code. *See id.* at 46a n.3. But he had to satisfy effectively the same requirement under Washington's Rule of Appellate Procedure 16.4(c)(4), which allows relief if "[t]here has been a significant change in the law" that was "material" to the prisoner's conviction or sentence. Wash. R. App. Proc. 16.4(c)(4); Pet. App. 46a n.3.

The Court of Appeals denied relief, reasoning that state law "has always provided the opportunity to raise youth for the purpose of requesting an exceptional sentence downward." *In re Domingo-Cornelio*, 2019 WL 1093435, at *16 (Wash. Ct. App. Mar. 8, 2019) (quoting *In re Light-Roth*, 422 P.3d 444, 448 (Wash. 2018)).

The Washington Supreme Court reversed. It held that Domingo-Cornelio was entitled to resentencing because *Houston-Sconiers* made clear that a sentencing court "*must* consider his youth before imposing a standard range sentence," even though he already "could have, and did, argue for a low end standard range sentence based, in part, on his youth." Pet. App. 47a. The Washington Supreme Court also reiterated its conclusion in *Ali* that *Houston-Sconiers* applies retroactively. *Id.* at 50a-51a. It accordingly granted Domingo-Cornelio's petition and ordered him to be resentenced in a manner consistent with current state law. *Id.* at 55a.

Because Domingo-Cornelio faced no mandatory sentencing enhancements, the second question presented here is irrelevant to his case.

REASONS FOR DENYING THE PETITIONS

This Court has recently and repeatedly denied certiorari in cases asking the Court to address the reach of its Eighth Amendment decisions in *Graham* and *Miller*. *See, e.g.*, *Steilman v. Michael*, 407 P.3d 313 (Mont. 2017), *cert. denied*, 138 S. Ct. 1999 (2018); *State v. Ramos*, 387 P.3d 650 (Wash.), *cert. denied*, 138 S. Ct. 467 (2017); *State v. Zuber*, 152 A.3d 197 (N.J.), *cert. denied*, 138 S. Ct. 152 (2017); *State v. Dull*, 351 P.3d 641 (Kan. 2015), *cert. denied*, 136 S. Ct. 1364 (2016); *Casiano v. Comm'r of Corr.*, 115 A.3d 1031 (Conn. 2015), *cert. denied sub nom. Semple v. Casiano*, 136 S. Ct. 1364 (2016); *State v. Riley*, 110 A.3d 1205 (Conn. 2015), *cert denied*, 136 S. Ct. 1361 (2016). There is no reason for a different result here. To the contrary, there are additional, especially powerful reasons to deny these petitions. They arise from unusual features

of state law and do not present any question of forward-looking relevance in Washington.

I. The questions presented are insufficiently important to warrant this Court's review.

Washington law permits sentencing courts to impose exceptional sentences above or below the standard range based on a host of specific factors. *See supra* at 5-6. In *Houston-Sconiers*, the Washington Supreme Court clarified that, in cases involving juveniles, the Eighth Amendment (i) requires youth to be a valid mitigating factor under that scheme and (ii) requires the sentencing court to consider youth as a potential reason to deviate below the terms of years required by otherwise-mandatory firearm enhancements. The decisions below deemed *Houston-Sconiers* retroactively applicable to respondents.

The State does not challenge that retroactivity analysis. Ali Pet. 11 n.7; Domingo-Cornelio Pet. 11 n.3. Instead, the State challenges the underlying interpretation of the Eighth Amendment in *Houston-Sconiers*. But the import of that interpretation in Washington State is narrow because of recent changes to state statutory law and because the Washington Supreme Court would likely reach the same result under the state constitution even if this Court reversed its Eighth Amendment holdings. Furthermore, the Washington Legislature is currently considering codifying the rights at stake here as a matter of state law as well. And the questions presented matter little outside Washington because of differences in other States' sentencing schemes.

A. The questions presented affect small, and diminishing, classes of Washington defendants.

1. Regardless of whether or how this Court answers the first question presented, Washington statutes will continue to require sentencing courts to consider a juvenile offender's youth during sentencing and to have discretion to impose exceptional sentences below the standard ranges on that basis. The Washington Supreme Court made clear in *O'Dell* and *Houston-Sconiers* that state statutory law requires that result, and those decisions will govern all future cases. *O'Dell*, 358 P.3d at 366; *Houston-Sconiers*, 391 P.3d at 420-22. Moreover, those decisions are retroactive for properly raised claims on collateral review because they construed a statute (and thus say what the statute always meant). *See In re Johnson*, 933 P.2d 1019, 1023 (Wash. 1997) ("Once the Court has determined the meaning of a statute, that is what the statute has meant since its enactment.").

All that the decisions below held was that *Houston-Sconiers*'s additional Eighth Amendment holding applies retroactively and allows state prisoners like Ali to seek relief outside the statutory one-year period for filing state post-conviction petitions. *See* Wash. Rev. Code § 10.73.100(6) (requiring a "significant" retroactive change in the law to permit petitions outside the one-year limit). The Washington Supreme Court had previously held that *O'Dell* did not constitute a "significant" change sufficient to waive the one-year bar because, even before that decision, defendants "could have argued youth as a mitigating factor." *Light-Roth*, 422 P.3d at 449. The decision below in respondent Ali's case simply held that the Eighth

Amendment holding in *Houston-Sconiers* was a qualifying significant change in the law "because it *requires* the sentencing court to consider the youthfulness of the defendant." Pet. App. 12a. And the court held this change was "material" to both respondents because they were each "sentenced to a standard adult range," *id.* at 13a (Ali); *id.* at 47a (Domingo-Cornelio), and because Ali was sentenced to "mandatory consecutive weapon enhancements," *id.* at 13a.

Thus, *Houston-Sconiers*'s holding that the Eighth Amendment requires consideration of youth when determining whether to impose an exceptional sentence is of practical relevance to only the limited class of juvenile offenders whose convictions became final more than one year before they filed for state post-conviction relief. All other juvenile offenders are already protected by the Washington Supreme Court's statutory interpretation rulings. And even among those offenders who, for the moment, stand to benefit from retroactivity of *Houston-Sconiers*, many are steadily approaching the 20-year mark that will entitle them to seek early release in any event under Washington law. The closed and continually shrinking set of cases that could be affected by a grant of certiorari on the first question presented counsels against review.

2. The second question presented is of similarly limited practical relevance. The Washington Supreme Court based this holding partly on the Washington statute authorizing juveniles to be sentenced as adults, which "contain[s] no explicit reference" to mandatory sentencing enhancements. *Houston-Sconiers*, 391 P.3d at

422. Based on this silence, the court doubted that the Legislature intended such enhancements to be mandatory for juveniles. *Id.*

The Legislature later confirmed that these enhancements do not apply to juveniles. As of June 11, 2020, Washington statutes make firearm enhancements non-mandatory for juvenile offenders in the State. *See* Wash. Rev. Code § 9.94A.533(15); S.B. 5488, 66th Leg., Reg. Sess. (Wash. 2020). And since 2014, all juvenile offenders have been able to petition for early release after 20 years, effectively nullifying the effect of mandatory firearm enhancements for many offenders (including respondent Ali here). Wash. Rev. Code § 9.94A.730(1). As with the exceptional-sentence issue, the Washington Supreme Court's Eighth Amendment holding (to the extent it can be separated from the court's statutory analysis) matters to only a closed and diminishing class of juvenile defendants who were sentenced before March 2017 (when *Houston-Sconiers* became law).

B. Any ruling from this Court would likely have no practical significance in Washington.

Even if this Court granted review in these cases and disagreed with the Eighth Amendment holdings on one of the questions presented, the Washington Supreme Court would likely reach the same result in future post-conviction litigation under the Washington Constitution, as it already has under Washington statutes. And respondents could likely obtain the same post-conviction relief following that state constitutional decision, making this Court's ruling utterly irrelevant.

States often provide greater protections to defendants than the federal Constitution requires. *See, e.g.*, Justice William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977). That is particularly true in this context, where other state supreme courts have grounded similar rulings in state constitutional provisions. *See, e.g.*, *Commonwealth v. Perez*, 80 N.E.3d 967, 970 (Mass. 2017) (holding that the Massachusetts Constitution bars courts from requiring juveniles convicted of non-homicide offenses to serve more time before parole-eligibility than juveniles convicted of homicide offenses); *State v. Lyle*, 854 N.W.2d 378, 386, 400 (Iowa 2014) (holding that the Iowa Constitution bars the imposition of mandatory minimum sentences on juvenile offenders); *People v. Womack*, 156 N.E.3d 1265, 1270 (Ill. Ct. App. 2020) (holding, under Illinois Constitution, "that the mandatory imposition of firearm enhancements for juveniles no longer reflects Illinois's evolving standard of decency").

The Washington Supreme Court did not decide whether the state constitution independently justified *Houston-Sconiers*'s holdings because the issue was not properly presented in that case. 391 P.3d at 420 n.6. But nothing would stop the court from reaching the same decision in a future case based on the Washington Constitution's guarantee against cruel punishment. *See* Wash. Const. art. 1, § 14. Although Washington's prohibition on cruel punishment is sometimes coextensive with its federal counterpart, the Washington Supreme Court has "interpreted Const. art. 1, § 14 to provide broader protection than the Supreme Court's interpretation of

the Eighth Amendment." *State v. Bartholomew*, 683 P.2d 1079, 1085 (Wash. 1984) (en banc). Especially because "the language" of Washington's constitutional provision "is different from the analogous federal provision," its courts "are not bound to assume the framers intended an identical interpretation." *State v. Fain*, 617 P.2d 720, 723 (Wash. 1980) (en banc). And, in fact, the Washington Supreme Court has relied on the state constitution to "hold that sentencing juvenile offenders to life without parole or early release constitutes cruel punishment," and to invalidate a statute allowing such punishment. *State v. Bassett*, 428 P.3d 343, 355 (Wash. 2018).

Because the Washington Supreme Court has already concluded that *Houston-Sconiers* applies retroactively on collateral review, it would presumably reach the same conclusion about a comparable decision grounded in Washington constitutional law. Thus, even if this Court granted review and disagreed with *Houston-Sconiers*'s Eighth Amendment holding, respondents could seek exactly the same relief, and would likely obtain it, based on a future decision like *Houston-Sconiers* grounded in the Washington Constitution.

Finally, the Washington Legislature is currently considering codifying the first *Houston-Sconiers* holding as a matter of state statutory law. S.B. 5120, 67th Leg., Reg. Sess. (Wash. 2021) (currently pending in the Senate). The State itself stresses that "the legislature is able to respond appropriately to scientific advancement and shifting societal attitudes about juvenile punishment," and it urges deference to that authority, as does its *amicus*. Ali Pet. 24; Br. of Crim. Justice Legal Found. 6-8, 19-

23. That is exactly what the Washington Legislature did by codifying the *Houston-Sconiers* rule that firearm enhancements must be discretionary for juveniles, and it is what the Legislature is currently considering with S.B. 5120. If that legislation is adopted, this Court's intervention on the questions presented would have no effect at all in Washington.

C. Answering the questions presented would have little effect in other States.

Neither question presented has much force beyond the State of Washington, because each question turns on the unusual features of Washington's sentencing scheme.

1. As to the first question, as explained above, Washington law allows exceptional sentences below the standard ranges for numerous reasons, and *Houston-Sconiers* simply held that youth must be one of those reasons. Most States do not follow Washington's model of establishing narrow sentencing ranges for all felonies, requiring the sentencing judge to find a mitigating fact before imposing a sentence below the standard range. Instead, they have either indeterminate sentences or advisory sentencing guidelines. *See* Nat'l Conf. of State Legislatures, Making Sense of Sentencing: State Systems and Policies, Figure 2 (June 2015), http://ncsl.org/documents/cj/sentencing.pdf (identifying only 11 other States, plus the District of Columbia, that generally follow Washington's determinate, structured sentencing model). Thus, in most States, the first question presented can simply never arise.

Within the small set of States that have adopted sentencing schemes similar to Washington's, several have long determined as a matter of state law that the age of the defendant is a mitigating factor to be considered during sentencing. *See* Ariz. Rev. Stat. § 13-701(E)(1); Fla. Stat. § 921.0026(2)(k)-(*l*); Kan. Stat. § 21-6625(a)(7); N.C. Gen. Stat. § 15A-1340.16(e)(4); Ohio Rev. Code § 2929.04(B)(4). Others have recently eliminated (or allowed judges to depart from) mandatory sentencing ranges for juvenile offenders. *See* Va. Code § 16.1-272; Or. Rev. Stat. § 161.620; D.C. Law § 21-238. And Delaware, Indiana, and Minnesota allow, but do not require, courts to consider youth as a mitigating circumstance in sentencing. *See* Del. Sentencing Accountability Comm'n, Benchbook 119 (2020), https://cjc.delaware.gov/wp-content/uploads/sites/61/2020/02/Benchbook-2020F.pdf (identifying youth and its attendant characteristics as a mitigating circumstance that sentencing courts "should" consider as ground for departure from standard range); *Sanders v. State*, 71 N.E.3d 839, 843 (Ind. 2017); *In re Welfare of A.C.L.*, 2007 WL 447080, at *3 (Minn. Ct. App. Feb. 13, 2007). In these States too, the first question presented would have virtually no practical import.

That leaves California. California expressly permits juvenile offenders tried and convicted as adults to move for sentencing under the juvenile court law, which requires consideration of many of the youth-related factors identified in *Miller*. *See* Cal. Penal Code § 1170.17(b)(2). It also permits juveniles sentenced to LWOP to seek recall and resentencing after 15 years. *See id.* § 1170(d)(2). And California recently

amended its sentencing scheme to require "youth offender parole hearings" for nearly all juvenile offenders (during which the offender's youth must be given "great weight"), effectively eliminating most mandatory minimum sentences for juveniles. *See id.* §§ 3051(e), 4801(c).

2. For much the same reasons, the second question presented is unlikely to arise in other States either. *Houston-Sconiers* deemed firearm enhancements non-mandatory for juvenile offenders tried as adults in part because there was no evidence that the Washington Legislature intended those enhancements to be mandatory for such offenders. *See supra* at 6-7. This reasoning parallels this Court's analysis in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), in which it grappled with whether the Eighth Amendment permitted a state to execute a 15-year-old. *See Houston-Sconiers*, 391 P.3d at 421 n.7 (referencing *Thompson*). In *Thompson*, the Court noted that Oklahoma law authorized capital punishment and authorized 15-year-olds to be tried as adults. 487 U.S. at 826-27 & n.26. Yet the Court declined to read these intersecting statutes as expressing a clear legislative intent to authorize capital punishment of 15-year-olds, because there was no indication that the state legislature had expressly considered or intended that result. *Id.* at 828-29 & nn.28-29. In light of these circumstances, the Court held that the Eighth Amendment precluded the imposition of the death penalty on those under 16 at the time of their offenses. *Id.* at 838. Thus, the second question presented is relevant only to States with unclear law on whether

enhancements are mandatory for juvenile offenders. The petition never identifies any other States in that particular bucket.

And several States clearly fall outside of it because they give sentencing courts discretion when applying otherwise-mandatory enhancements to juveniles. States frequently allow courts to deviate from otherwise-mandatory sentencing enhancements "in the interest of justice," Cal. Penal Code §§ 12022.5(c), 12022.53(h), if the resulting sentence "would be excessive," La. Code Crim. Proc. § 893.3(H), or under similar tests that provide room for the consideration of youth in cases involving juveniles, *see, e.g.*, N.Y. Penal Code § 265.09. Still others expressly preclude mandatory enhancements in cases involving juveniles, *see, e.g.*, Ark. Code § 16-90-120(e) (first-time juvenile offenders); D.C. Law § 21-238; 730 Ill. Comp. Stat. § 5/5-4.5-105; Mont. Code § 46-18-222(1); Or. Rev. Stat. § 161.610(6); Va. Code § 16.1-272, and others are considering doing so, *see, e.g.*, H.873, 102d Leg., Gen. Sess. (Vt. 2020) (allowing court to depart from any penalty enhancement if the court finds mitigating factors, including childhood trauma or adverse experiences); H.B. 2101, 33d Leg., Reg. Sess. (Haw. 2020) (allowing courts to decline to impose a mandatory enhanced sentence). The second question presented does not implicate such regimes.

Other States with mandatory enhancements do not impose any mandatory minimum for the underlying offense. *See supra* at 18. In those circumstances, the sentencing judge can simply reduce the "base" sentence to account for the impact of the enhancement, thus rendering the enhancement practically insignificant. *See, e.g.*,

Ga. Code § 16-11-106 (five-year firearm enhancement); *id.* § 16-8-41 (ten-to-twenty-year sentence for armed robbery). Neither the State nor its *amici* address this issue. In fact, the States' *amicus* brief focuses on non-life sentences generally, ignoring the critical feature here—the issue of mandatory punishments for juveniles. *See* Br. of Indiana et al. 13-16. It thus gives no reason why a ruling on the second question presented would be relevant to any State.

II. The decisions below do not implicate a conflict warranting this Court's review.

Given how few States have sentencing regimes similar to Washington's, it should come as no surprise that most of the cases the State identifies as in conflict with the decisions below are inapposite. The State cites a blizzard of cases. But very few of the cited decisions opined on the Eighth Amendment questions presented in an analogous context, and those that did are not in tension with the decisions below.

1. To start, several of the cases the State cites did not squarely address any relevant Eighth Amendment question. Several rejected challenges that were reviewed for plain error or otherwise not properly preserved. *See United States v. Walton*, 537 F. App'x 430, 436-37 (5th Cir.) (plain error), *cert. denied*, 571 U.S. 1083 (2013); *Burrell v. State*, 207 A.3d 137, 141 n.9 (Del. 2019) (plain error); *Hobbs v. Turner*, 431 S.W.3d 283, 290 (Ark. 2014) (declining to consider whether sentence was disproportionate given the case was a "narrowly circumscribed habeas corpus proceeding").

Likewise, a number addressed whether state prisoners qualified for relief under AEDPA's demanding standard that the sentence be contrary to, or an unreasonable application of, "clearly established" federal law; they did not squarely address the Eighth Amendment questions presented here. *See Sanders v. Eckstein*, 981 F.3d 637, 642-43 (7th Cir. 2020); *Demirdjian v. Gipson*, 832 F.3d 1060, 1064, 1076-77 (9th Cir. 2016), *cert. denied*, 138 S. Ct. 71 (2017); *Davis v. McCollum*, 798 F.3d 1317, 1321-22 (10th Cir. 2015), *cert. denied*, 136 S. Ct. 1524 (2016); *Bell v. Uribe*, 748 F.3d 857, 859, 869-70 (9th Cir. 2013), *cert. denied sub nom. DeMola v. Johnson*, 135 S. Ct. 1545 (2015); *Bunch v. Smith*, 685 F.3d 546, 550-51 (6th Cir. 2012), *cert. denied sub nom. Bunch v. Bobby*, 569 U.S. 947 (2013). Most of these AEDPA cases are distinguishable for the additional reason that they concern juvenile offenders convicted of homicide offenses. *See infra* at 25-26.

Another case is a Section 1983 suit about whether a *parole board* must consider an offender's youth, not whether "juvenile-specific Eighth Amendment protections" apply in sentencing proceedings. *Bowling v. Dir., Va. Dep't of Corrs.*, 920 F.3d 192, 197 (4th Cir. 2019), *cert. denied sub nom. Bowling v. Clarke*, 140 S. Ct. 2519 (2020).

And one case was decided based on the state court's view that it was unable to interpret the Eighth Amendment beyond the strict confines of this Court's jurisprudence. *Vasquez v. Commonwealth*, 781 S.E.2d 920, 924 (Va.), *cert. denied*, 137 S. Ct. 568 (2016) (upholding 133 years' and 68 years' minimum incarceration for

multiple offenses based on view that state courts lack authority to extend this Court's Eighth Amendment holdings).

2. A second group of decisions rejected Eighth Amendment arguments where the sentencing judge explicitly *considered* the offender's juvenile status as a mitigating factor in a discretionary sentencing regime. *See United States v. Sparks*, 941 F.3d 748, 753-56 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 1281 (2020); *United States v. Mathurin*, 868 F.3d 921, 926-27, 931-36 (11th Cir. 2017), *cert. denied*, 139 S. Ct. 55 (2018); *United States v. Jefferson*, 816 F.3d 1016, 1019 (8th Cir. 2016), *cert. denied*, 137 S. Ct. 2290 (2017); *Phon v. Commonwealth*, 545 S.W.3d 284, 290-98 (Ky. 2018); *Jones v. Commonwealth*, 795 S.E.2d 705, 711-13 (Va.), *cert. denied*, 138 S. Ct. 81 (2017); *State v. Diaz*, 887 N.W.2d 751, 765-67 (S.D. 2016); *see also Evans-Garcia v. United States*, 744 F.3d 235, 240-41 (1st Cir. 2014) (denying certificate of appealability because defendant was not sentenced under a mandatory scheme and the sentencing court considered his youth). These cases do not conflict with the decisions below or the Eighth Amendment holding in *Houston-Sconiers*. All that *Houston-Sconiers* requires is that the sentencing court consider youth as a mitigating factor in imposing a discretionary punishment. It does not dictate how the court must exercise that discretion, nor does it ultimately require the court to impose a sentence that is below the range applicable to adults. Because the judges in this group of cases conducted an individualized assessment that took "the defendant's youth into consideration," Pet. App. 20a, they are not in tension with the decisions below.

3. Next, many of the cases on which the State relies address defendants convicted of murder rather than non-homicide offenses, the type of offenses at issue here. *See State v. Soto-Fong*, 474 P.3d 34, 36-37 (Ariz. 2020); *Wilson v. State*, 157 N.E.3d 1163, 1166-68 (Ind. 2020); *State v. Quevedo*, 947 N.W.2d 402, 407-10 (S.D. 2020); *Wiley v. State*, 461 P.3d 413, 414 (Wyo. 2020); *Pedroza v. State*, 291 So.3d 541, 543 (Fla.), *cert. denied*, 141 S. Ct. 341 (2020); *Commonwealth v. Lugo*, 120 N.E.3d 1212, 1215 (Mass. 2019); *State v. Shanahan*, 445 P.3d 152, 154-55, 160 (Idaho), *cert. denied*, 140 S. Ct. 545 (2019); *State v. Smith*, 836 S.E.2d 348, 348-49 (S.C. 2019); *Veal v. State*, 810 S.E.2d 127, 128-29 (Ga.), *cert. denied*, 139 S. Ct. 320 (2018); *State v. Russell*, 908 N.W.2d 669, 671-76 (Neb.), *cert. denied*, 139 S. Ct. 195 (2018); *State v. Ali*, 895 N.W.2d 237, 239-40 (Minn. 2017), *cert. denied*, 138 S. Ct. 640 (2018); *Steilman*, 407 P.3d at 315; *State v. Nathan*, 522 S.W.3d 881, 888-91 (Mo. 2017) (en banc); *State v. Barbeau*, 883 N.W.2d 520, 523-24 (Wis. 2016), *cert. denied*, 137 S. Ct. 821 (2017); *Lewis v. State*, 428 S.W.3d 860, 861-62 (Tex. Crim. App.), *cert. denied sub nom. Nolley v. Texas*, 574 U.S. 901 (2014); *see also Lucero v. People*, 394 P.3d 1128, 1129-30 (Colo. 2017) (attempted murder and conspiracy to commit murder), *cert. denied*, 138 S. Ct. 641 (2018); *State v. Slocumb*, 827 S.E.2d 148, 155 (S.C. 2019) (declining to apply *Graham* to 130-year sentence imposed on defendant "who intend[ed] to commit homicide").[3]

[3] Although one of the three defendants in *Soto-Fong* was not convicted of a homicide offense, that defendant's sentences were based in part on "crimes he

As this Court has explained, non-homicide juvenile offenders "are categorically less deserving of the most serious forms of punishment than are murderers." *Graham*, 560 U.S. at 69; *see Miller*, 567 U.S. at 473 (similar). These homicide cases accordingly say nothing about the propriety of certain punishments for the non-homicide, juvenile offenders here. Indeed, several decisions have expressly relied on this distinction in upholding juvenile sentences for murder. *See Slocumb*, 827 S.E.2d at 155 ("[T]here [is] a moral distinction between defendants who intend to commit homicide and nonhomicide crimes."); *Quevedo*, 947 N.W.2d at 409 (similar); *Shanahan*, 445 P.3d at 160 (similar); *see also Carter v. State*, 192 A.3d 695, 721-36 (Md. 2018) (affirming sentences for two murder defendants, but vacating life sentence with possibility of parole after 50 years for defendant convicted of multiple non-homicide offenses).

Many of these homicide cases are distinguishable for other reasons, too. In several, the sentencing court specifically considered the defendant's youth as a mitigating factor. *See Wilson*, 157 N.E.3d at 1176-77; *Soto-Fong*, 474 P.3d at 45; *Quevedo*, 947 N.W.2d at 407-10; *Nathan*, 522 S.W.3d at 888-90. That means these decisions do not conflict with the decisions below. *See supra* at 24.

In addition, several of these cases involve factual circumstances that would have made it difficult to raise the Eighth Amendment argument that the Washington Supreme Court accepted in *Houston-Sconiers*; they involve defendants who were

committed as an adult," and thus *Graham* and *Miller* did not apply. *Soto-Fong*, 474 P.3d at 45.

sentenced above the mandatory minimum, suggesting that these defendants may not have been able to mount an effective as-applied challenge to that minimum as applied to juveniles, *see Barbeau*, 883 N.W.2d at 525; *Russell*, 908 N.W.2d at 674-75. The Washington Supreme Court has already held that a defendant sentenced above the minimum of the sentencing range could not show actual and substantial prejudice from a *Houston-Sconiers* error, and thus could not obtain post-conviction relief. *In re Meippen*, 440 P.3d 978, 981-82 (Wash. 2019). Here, by contrast, each sentencing judge made a point of noting that it was imposing "the lowest sentence that [it] legally felt [it] had the option of imposing." Pet. App. 5a-6a (Ali); *see id.* at 48a (similar, with respect to Domingo-Cornelio).

4. That leaves only two cases that Washington cites that address Eighth Amendment challenges to term-of-years sentences imposed pursuant to a mandatory sentencing scheme for non-homicide offenses.

The first, *State v. Anderson*, 87 N.E.3d 1203 (Ohio 2017), does not implicate the same questions as the decisions below because the defendant received a sentence *above* the applicable minimum. Although the defendant argued that application of adult sentencing minimums to juveniles violated the Eighth Amendment, *id.* at 1206, he arguably lacked standing to press that claim, or at least failed to mount an as-applied challenge to the statutory regime. Under *Meippen*, the defendant in *Anderson* would likely not be entitled to post-conviction relief in Washington, either. 440 P.3d at 981-82.

That leaves only *State v. Taylor G.*, 110 A.3d 338 (Conn. 2015). There, the Connecticut Supreme Court rebuffed a claim that a juvenile defendant's ten-year aggregate prison sentence, which was based in part on a mandatory minimum applicable to adults, violated the Eighth Amendment. *Id.* at 349 & n.8. The court explained that the defendant's sentences "not only were far less severe than the sentences at issue in *Roper*, *Graham* and *Miller*," but also the sentencing court had "broad discretion to fashion an appropriate sentence that accounted for the defendant's youth and immaturity when he committed the crimes." *Id.* at 346.

In the ocean of post-*Miller* litigation, at best the State has identified one decision from the Connecticut Supreme Court that is potentially in tension with the decisions below. And even that decision does not present a square conflict because Connecticut's sentencing scheme differs significantly from Washington's. *See supra* at 18. Connecticut law generally does not allow judges to impose an exceptional sentence below an otherwise-applicable sentencing range based on a finding of mitigating factors. *See* Conn. Gen. Stat. Ann. § 53a-35a; *but see id.* § 53a-46a (providing for consideration of mitigating factors where a defendant is convicted of a capital felony). Because Connecticut law provides no statutory list of mitigating factors that allow courts to impose exceptionally lenient sentences, there is no need to consider—as *Houston-Sconiers* did—whether youth must be one such permissible factor. And *Taylor G.*, unlike *Houston-Sconiers*, did not suggest that there was any question about whether the Connecticut Legislature intended the mandatory

minimum to apply to juvenile defendants. In other words, *Taylor G.* does not present a clear split of authority.

At the very least, the particular Eighth Amendment questions at issue here are far less worthy of this Court's attention than the others that have divided lower courts after *Miller*, including when and how *Miller* applies to term-of-years sentences. If the prior petitions asking the Court to resolve those conflicts were not worthy of review, then these petitions presenting Washington-centric issues not meaningfully considered by any other jurisdiction surely are not either.

III. These cases are poor vehicles to address even the particular questions presented.

Even if the questions presented by the State's petitions were worthy of this Court's attention, these cases would be poor vehicles for resolving them. The first question—whether the Eighth Amendment requires youth to be a permissible mitigating circumstance allowing for an "exceptional sentence" below Washington's standard ranges—was not presented in either case in the proceedings below. *See* Pet. App. 23a n.6 (Ali); *id.* at 48a (Domingo-Cornelio). The rule the State challenges was established in *Houston-Sconiers*, and the State gave no indication in either of the cases below that it contested that rule. Rather, the State merely argued that *Houston-Sconiers* did not apply to respondents. *See* Resp.'s Answer, *In re Ali*, No. 95578-6 (Wash. July 19, 2018); Supp. Resp. Br., *In re Ali*, No. 95578-6 (Wash. Dec. 10, 2019); Resp.'s Answer, *In re Domingo-Cornelio*, 2019 WL 6119105, at *3, 11-16 (Wash. June 13, 2019). By failing to raise this issue below, the State deprived the Washington

courts of any notice of the State's position on the federal issue it pushes here. That failure could be considered jurisdictional because the State failed to abide by state-law preservation requirements. *Beck v. Washington*, 369 U.S. 541, 553 (1962) ("[T]he failure of petitioner to argue the constitutional contention in his brief … is considered by the Washington Supreme Court to be an abandonment or waiver of such contention."); *see also* Wash. R. App. Proc. 10.3. At the very least, that failure unfairly deprived the Washington courts of notice that they might want to consider whether the rule established by *Houston-Sconiers* is also (as both respondents argued) compelled by the Washington Constitution or other state law. *See* Ali Personal Restraint Pet. 9, 11-17 (presenting argument based on *O'Dell*); Domingo-Cornelio Personal Restraint Pet. 44-48 (discussing *O'Dell*).

If this Court were inclined to address what *Miller* means for mandatory terms-of-years sentences applied to juveniles who commit non-homicide offenses, now is not the right time to do so. As noted above, many States have enacted or are in the process of enacting legislation that allows courts, when sentencing juveniles, to depart from standard ranges established for adult offenders. *See, e.g.*, D.C. Law § 21-238; Mont. Code § 46-18-222(1); Or. Rev. Stat. § 161.620; Va. Code § 16.1-272. Still other States are in the process of revising other laws involving other sorts of mandatory sentences to allow for the consideration of youth in cases involving juveniles.[4]

[4] *See* H.B. 409, 2021 Leg., 442d Sess. (Md. 2021) (allowing courts to impose a sentence lower than the minimum term required by law where the defendant is a

2. These cases are also poor vehicles to address the second question presented: whether the Eighth Amendment requires consideration of youth before imposing an otherwise-mandatory sentence enhancement for use of a firearm. Like the first question presented, the State did not challenge this aspect of the *Houston-Sconiers* decision in these cases. *See TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 464 (1993) (declining to address constitutional question that petitioner "did not squarely argue" to state court of last resort). Moreover, this question has no relevance to respondent Domingo-Cornelio (who had no mandatory firearm enhancement), and does not have any ongoing relevance to respondent Ali. As the State concedes, a subsequent legislative enactment in Washington "effectively removed the six-year mandatory" enhancement portion of Ali's sentence. Ali Pet. 8. And the Legislature has also codified *Houston-Sconiers*'s holding that such enhancements must be discretionary for juvenile offenders going forward.

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minor convicted as an adult); H.873, 102d Leg., Gen. Sess. (Vt. 2020) (allowing court to depart from any mandatory minimum sentence if the court finds mitigating factors, including childhood trauma or adverse experiences); H.B. 218, 30th Leg., Reg. Sess. (Haw. 2019) (allowing judges to depart from mandatory minimum sentences when sentencing minors for non-violent offenses); L.B.34, § 1, 107th Leg. (Neb. 2021) (eliminating mandatory minimum for juveniles convicted of certain felonies); A.1915(3)(d)(5), 219th Leg. (N.J. 2020) (eliminating mandatory post-incarceration supervision term for juvenile offenders); S.B. 159, 58th Leg., 1st Sess. (Okla. 2021) (eliminating LWOP and mandatory minimums over 20 years for juvenile offenders, and requiring sentencing courts to consider an offender's youth when imposing a sentence); S.B. 53, § 33(6), 124th Gen. Assembly (S.C. 2021) (eliminating mandatory minimum for juvenile homicide offenders); *see also, e.g.*, S.B. 60, Reg. Sess. (Ky. 2021) (eliminating LWOP for juvenile homicide offenders).

The time is not right to consider how *Miller* applies to mandatory firearm (or other sentencing) enhancements either. Many States (like Washington) have eliminated mandatory sentencing enhancements for juveniles, or are in the process of doing so. *See supra* at 21.

IV. The decisions below are correct.

This Court's intervention is unwarranted for the final reason that the Washington Supreme Court's decision in *Houston-Sconiers*, applied to respondents below, is correct. In a sentencing system that allows judges to consider mitigating factors other than youth, judges must have discretion to impose sentences below adult mandatory sentencing ranges and to forgo otherwise-applicable enhancements when sentencing juvenile offenders.

Miller started from the premise established in *Roper* and *Graham* that, relative to adults, children have "diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at 471. That reality means that the retribution and rehabilitation rationales for automatically imposing particular prison sentences on adults cannot justify automatically imposing those same sentences on juveniles. *Id.* at 472. And precisely because juveniles have less well-developed behavior control, long sentences are less likely to deter them. *Id.* Finally, because juveniles are more likely to be reformed simply by virtue of maturing to adulthood, incapacitation also cannot justify automatically sentencing them as comparably situated adults. *Id.* at 472-73.

The same reasons that preclude automatic imposition of LWOP on juvenile offenders preclude applying adult mandatory sentencing ranges and mandatory sentence enhancements to juveniles convicted of non-homicide offenses, without first considering youth as a reason to lessen the punishment. Just as *Miller* said, juveniles (as a class) are less culpable for the same crimes, are less likely to need rehabilitation, are less likely to be deterred by long sentences, and are less deserving of long-term incapacitation. Indeed, the Chief Justice's dissent in *Miller* foresaw *Miller*'s broad applicability: It expressly acknowledged that *Miller*'s driving "principle" would "bar all mandatory sentences for juveniles." *Id.* at 501 (Roberts, C.J., dissenting).

At the very least, the Eighth Amendment requires consideration of youth under Washington's exceptional sentence system given that Washington law already allows sentencing courts to impose exceptional sentences on juveniles for mitigating reasons other than youth (and indeed for youth, too, under *O'Dell*). This Court has long characterized youth as "a relevant mitigating factor of great weight." *Eddings*, 455 U.S. at 116. All *Houston-Sconiers* held is that, when a state legislature grants sentencing courts discretion to impose sentences below the standard range based on mitigating factors, it must also afford courts the ability to treat youth as a mitigating factor for juvenile offenders. This holding says nothing about whether or how *Miller* applies to States that have adopted sentencing schemes that differ from Washington's, much less when post-conviction relief is available in those States based on any application of *Miller* to juvenile offenders convicted of non-homicide offenses.

The State's contrary arguments are unavailing. First, the State argues that this Court's precedents hold that juveniles are different only for certain sentences: death and LWOP. *See* Domingo-Cornelio Pet. 19-21. Although this Court's juvenile-sentencing precedents arose in that factual context, the neuroscientific research and legal principles on which they relied are not so confined. *See supra* at 3; *see also* Suzanne S. La Pierre & James Dold, *The Evolution of Decency: Why Mandatory Minimum and Presumptive Sentencing Schemes Violate The Eighth Amendment for Child Offenders*, 27 Va. J. Soc. Pol'y & L. 165, 175-76 (2020); Nick Straley, *Miller's Promise: Re-Evaluating Extreme Criminal Sentences for Children*, 89 Wash. L. Rev. 963, 984 (2014). Indeed, the Washington Supreme Court's opinion in *O'Dell* cited *Miller*'s "psychological and neurological studies showing that the parts of the brain involved in behavior control continue to develop well into a person's 20s" in holding that a trial court could rely on a defendant's youth to impose an exceptional sentence below the otherwise-applicable range. 358 P.3d at 364-65.

Second, the State argues that the decisions below intrude on state legislatures' prerogative to establish a sentencing scheme. *See* Ali Pet. 23; Domingo-Cornelio Pet. 21-22. But both of *Houston-Sconiers*'s holdings—that youth qualifies as a mitigating factor and that firearm enhancements must be discretionary when applied to juveniles—were driven in part by the Washington Supreme Court's understanding of the Washington's Legislature's intent. The Legislature now has confirmed that the court was right that firearm enhancements must be non-mandatory for juveniles, and

it is considering a bill that would codify youth as a mitigating factor to be considered during sentencing. *See supra* at 7, 14, 17-18.

In any event, an inherent feature of this Court's constitutional holding in *Miller* was that it necessarily constrains legislative power to impose particular sentences on juvenile offenders in certain circumstances. The only question is where *Miller* applies, and the Washington Supreme Court has correctly held that it applies in this setting.

Finally, the State suggests that standard sentencing ranges are necessary to avoid "severe disparities in the sentences served by similarly situated offenders" that follow when the judiciary has "absolute control" over sentences. Domingo-Cornelio Pet. 22-23 (internal citations and quotation marks omitted). But the State presents a false dichotomy: The choice is not between applying mandatory, adult sentencing ranges to juveniles on the one hand, and unfettered discretion on the other. Rather, Washington's sentencing ranges can remain in place; the State simply needs to allow courts consider the fact of youth as a mitigating factor among the many others that may allow an exceptional sentence below that range. Accordingly, Washington's sentencing regime can still "guide the exercise of a court's discretion in choosing an appropriate sentence," *Beckles v. United States*, 137 S. Ct. 886, 892 (2017), helping to avoid unnecessary sentencing disparities.

CONCLUSION

For the forgoing reasons, the petitions for writs of certiorari should be denied.

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