NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD PINCHON,

Petitioner

vs.

RAYMOND BYRD,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

At age 17, Edward Pinchon was convicted of first-degree murder for the killing of a middle-aged man who was sexually abusing him. Tennessee law mandated that he receive a sentence of at least "life." Tennessee courts have interpreted this "life" sentence to entail service of a sentence of 60 years, which can be reduced to 51 years by earning good-time credits.

Did the Sixth Circuit err in (a) concluding that the *Miller v. Alabama*, 567 U.S. 460 (2012) held merely that sentences expressly articulated as life without the possibility of parole violate the Eighth Amendment when imposed, pursuant to mandatory sentencing schemes, against juvenile offenders, and (b) thereby holding that the state court decision denying Pinchon relief was not "contrary to" *Miller* and that Pinchon was thus not entitled to habeas relief under 28 U.S.C. § 2254(d)?

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PRAYER

Petitioner Edward Pinchon prays that a writ of certiorari issue to review the judgment entered by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's unpublished order is attached in the Appendix.

JURISDICTION

The Court of Appeals entered its judgment on December 21, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

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

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides, in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States . . . .

28 U.S.C. § 2254.

BACKGROUND

In April 1997, then 17-year-old Edward Pinchon shot and killed Leslie Handy, who was a middle-aged man and who, for some time, had been sexually abusing and exploiting Pinchon. (App. 1, Op. at 1.) The State of Tennessee charged Pinchon with first-degree murder. (*Id.*)

Although Pinchon had been determined to be intellectually disabled as a small child and had long received special education services, his lawyer never even realized Pinchon was intellectually disabled. Pinchon stood trial and was convicted of first-degree murder. (*Id.* at 2.) Under Tennessee law, there are three sentencing options for a defendant convicted of first-degree murder: death, life without parole, and "imprisonment for life." *See* Tenn. Code Ann. § 39-13-202(b). Pinchon was too young to receive the death penalty, and the State did not seek life without parole, and consequently he mandatorily received a sentence of "life." (*Id.*)

According to Tennessee law, that life sentence is a determinate sentence of 60 years. *Vaughn v. State*, 202 S.W.3d 106, 118 (Tenn. 2006). Pinchon might be able to earn up to 15% in good-time reductions, making him eligible for release after 51 years. *Id.* But that eligibility for a reduction is not set in stone; the legislature—over the course of the ensuing decades—could remove it at any time. *See Allen v. Campbell*, 2002 Tenn. App. LEXIS 198, *11-14 (Tenn. App. March 11, 2002).

In 2012, the U.S. Supreme Court, interpreting the Eighth Amendment, issued a new rule in *Miller v. Alabama*, 567 U.S. 460 (2012), which "rendered life without parole an unconstitutional penalty for a class of defendants because of their

status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery v. Alabama*, 136 S. Ct. 718, 734 (2016). In January 2016, this Court held that *Miller*'s new rule was substantive and that the States are constitutionally required to give it retroactive effect. *Id.* at 731-32. When doing so, the Court indicated it is unconstitutional to require a juvenile to serve a sentence longer than, for example, 46 years without being "given the opportunity to show [his] crime did not reflect irreparable corruption." *Id.* at 737.

Seeking relief under *Miller* and *Montgomery*, Pinchon filed a motion to reopen his post-conviction proceedings in Tennessee state court. (App. 1, Op. at 3.) The Tennessee court denied relief. (*Id.*) It recognized that "*Miller*'s logic could extend to sentences similar to Pinchon's sentence," but it "declined to expand *Miller* to" Pinchon's case. (*Id.* at 3-4.)

Pinchon then filed a petition under 28 U.S.C. § 2254 in federal court arguing, *inter alia*, that the Tennessee court has ruled contrary to *Miller* by holding that *Miller* does not apply to a term-of-years sentence that will confine a juvenile for essentially the rest of his or her life. (*Id.* at 4.) The Sixth Circuit Court of Appeals, bound by its decision in *Atkins v. Crowell*, 945 F.3d 476 (6th Cir. 2019), held that a "sentence that provides for the possibility of release, even after 51 years, . . . is materially distinguishable from a sentence without the possibility of release, which was Miller's sentence," and hence the Tennessee court's denial of relief did not run afoul of 28 U.S.C. § 2254(d)(1), which prohibits a federal court from granting relief to a state prisoner unless the state adjudication of a claim "resulted in a decision

that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d). (*See* App. 1, Op. at 6.)

REASON FOR GRANTING THE WRIT

Under 28 U.S.C. § 2254(d), federal courts have limited authority to grant a writ of habeas corpus. One narrow circumstance supporting habeas relief exists when the state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Here, to support its denial of habeas relief, the Sixth Circuit misstated the "clearly established" law announced by this Court in *Miller v. Alabama*. The Sixth Circuit essentially limited *Miller*'s application to the precise facts in that case, and thereby insulated the state court decision denying Eighth Amendment relief from meaningful federal habeas review. Because the Sixth Circuit decision conflicts with the actual holding of *Miller*, a writ of certiorari should be granted.

I. Pinchon was entitled to habeas relief if the state court decision denying his Eighth Amendment claim was "contrary to, or involve[d] an unreasonable application of, [the] clearly established . . . law" of *Miller*.

Section 2254(d) of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) establishes a deferential standard of review for federal habeas courts considering claims already raised and adjudicated in state court. The standard of review allows the federal habeas court to grant relief if the state court's

adjudication resulted in a decision that was either (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings." 28 U.S.C § 2254(d). As this Court explained in *Williams v. Taylor*, "[a] state-court decision will certainly be contrary to our clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases." 529 U.S. 362, 405 (2000) (opinion of O'Connor, J.).

Here, Pinchon raised a claim in state court that his life sentence violated the Eighth Amendment because it was mandatorily imposed upon his conviction for murder and afforded him no prospect of release within his life expectancy. In denying relief, the Tennessee Court of Criminal Appeals limited this Court's holding in *Miller v. Alabama*, to sentences that are expressly articulated as life without the possibility of parole (LWOP). Because Pinchon's sentence was the functional equivalent of LWOP, but was not expressly articulated as LWOP, the Tennessee courts found *Miller* inapplicable and denied Pinchon post-conviction relief.

Under 2254(d), the Sixth Circuit had the authority to grant a writ of habeas corpus only if the state court decision "contradicted the governing law set forth" in *Miller*. In determining its authority under 2254(d), the Sixth Circuit, therefore, had to determine how broadly or narrowly to interpret this Court's holding in *Miller*. If *Miller* is read extremely narrowly, then the Tennessee court's decision limiting

Miller's reach to sentences precisely articulated as life without the possibility of parole cannot be disturbed. But, if instead the rule of *Miller* is broader and prohibits any mandatory sentence that affords no meaningful opportunity for release, the Tennessee court's decision is "contrary to" *Miller*.

II. The Sixth Circuit misread the holding of *Miller* to apply only to sentences expressly articulated as "life without the possibility of parole."

The Sixth Circuit essentially limited *Miller* to its facts, finding that only sentences expressly articulated as life without the possibility of parole violate the Eighth Amendment. But a careful review of the *Miller* decision, as well as the precedent upon which it is based, shows that the Sixth Circuit misstated this Court's holding. The holding in *Miller* is not limited to sentences of life without the possibility of parole but instead encompasses any sentence that affords no meaningful prospect of release within life expectancy.

The Eighth Amendment encompasses "the essential principle [that] the State must respect the human attributes even of those who have committed serious crimes," *Graham v. Florida*, 560 U.S. 48, 59 (2010), thereby ensuring that the government exercises its power to punish "within the limits of civilized standards." *Trop v. Dulles*, 356 U.S. 86, 100 (1958). In three recent cases – *Roper, Graham,* and *Miller* – this Court recognized that juveniles are different from adults both psychosocially and neurologically. More specifically, this Court emphasized that juveniles have "lessened culpability" because (1) their "lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-

considered actions and decisions," *Graham*, 560 U.S. at 72; (2) they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure," *id*; (3) they may have been subject to "brutal or dysfunctional" home environments from which they could not extricate themselves; (4) they are more amenable to rehabilitation because their character is "not as 'well formed' as an adult's;" and (5) they often have a diminished ability to deal with police officers/prosecutors, and an incapacity to assist their own attorneys, resulting in a less favorable resolution of their charges. *Miller v. Alabama*, 567 U.S. 460, 477-79 (2012).

Based on these distinctive attributes of youth, this Court has held that juveniles cannot always be subject to the same severe sentences as adult offenders. In *Roper*, the Court held that the Eighth Amendment prohibits the "imposition of the death penalty on offenders who were under the age of [eighteen] at the time of their crime." *Roper v. Simmons*, 543 U.S. 551, 578 (2005). Then, in *Graham*, the Court held that the Eighth Amendment bars life-without-parole sentences for juvenile offenders convicted of offenses other than homicide. 560 U.S. at 82. Finally, in *Miller v. Alabama*, the Court held that a mandatory sentence of life without parole for juvenile offenders convicted of homicide is also unconstitutional under the Eighth Amendment. 567 U.S. at 489.

The *Miller* court did not categorically ban sentences of life without parole for juvenile offenders. Instead, the Court concluded that *mandatory* sentences of life

without parole – wherein a sentencing court must impose a sentence of life without parole upon the defendant's conviction of homicide – were unconstitutional when imposed on juvenile offenders. *Id.* As the Court explained:

> By removing youth from the balance – by subjecting a juvenile to the same life-without-parole sentence applicable to an adult – these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as if they were not children.

Id. at 474.

At issue in the instant case is whether *Miller* applies to sentences that are not articulated as "life without parole," but that nevertheless afford no prospect of release within a juvenile offender's life expectancy. The language of both *Miller* and its precedent readily demonstrate that *Miller* must be read to apply to any sentence that affords essentially no prospect of release within a juvenile offender's life expectancy. Indeed, the *Miller* court emphasized that juveniles cannot be mandatorily subject to a term of natural life that "forswears altogether the rehabilitative ideal," reflects "an irrevocable judgment about an offender's value and place in society at odds with a child's capacity for change," and denies the offender a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 472-73 (internal punctuation omitted). Whatever the name of a sentence – "life" or "life without parole" – the measure of its constitutionality is whether it offers a realistic prospect of release within the offender's life expectancy.

Several state courts have adopted this precise reading of *Miller.* These courts – including the Iowa Supreme Court and the Connecticut Supreme Court – have correctly held that a sentence that provides no meaningful prospect of parole is the functional equivalent of a life without parole sentence and thus violates the Eighth Amendment under *Miller. See, e.g., State v. Null*, 836 N.W. 2d 41, 72 (Iowa 2013) (holding *Miller* applicable to sentence of 75 years with no prospect of release for 52.5 years as applied to juvenile offender); *State v. Null*, 836 N.W. 2d 41, 72 (Iowa 2013) (holding that *Miller* applies to 50-year sentence); *Bear Cloud v. State*, 294 P.3d 36, 45 (Wyo. 2013) (finding that juvenile offender's sentence of "life imprisonment according to law" – rather than available sentence of "life imprisonment without the possibility of parole" – allowed for parole only after commutation of sentence by governor to term of years, "exclude[d] any real possibility of parole," and was thus unconstitutional under *Miller*); *Parker v. State*, 119 So.3d 987, 997 (Miss. 2013) (finding that sentence of life – rather than sentence of life without parole available only in capital cases – violated *Miller* because it afforded the possibility of "conditional release" at age 65, but otherwise provided no opportunity for parole); *State v. Ronquillo*, 361 P.3d 765, 774-77 (Wash. Ct. App. 2015) (holding that aggregate sentence of 51.75 years – which would keep defendant in prison until the age of 68 – constituted a de facto life sentence and thus violated *Miller*); *People v. Argeta*, 210 Cal. App. 4th 1478, 1482, 149 Cal. Rptr. 3d 243, 245 (Cal. App. 2d Dist. 2012) (reversing sentence of 100 years for homicide committed when defendant was 15 years old, because the sentence – which allowed for no

parole eligibility for 75 years – was "the functional equivalent of a life sentence without possibility of parole and was thus unconstitutional under *Miller*); *State v. Moore*, 76 N.E.3d 1127 (Ohio 2016) (same; juvenile not eligible for parole until age 92).

The Sixth Circuit misread *Miller* by interpreting it far more narrowly than the state court decisions cited above. If the Sixth Circuit's interpretation of *Miller* is allowed to stand, then a state can comply with the Eighth Amendment by sentencing juveniles to 100 years rather than life without parole. No state legislature to modify its sentencing scheme in the wake of *Miller* has interpreted the *Miller* decision so narrowly. Indeed, every state legislature that has modified its sentencing scheme to comply with *Miller* has set parole eligibility at different points between 15 and 40 years, and not beyond life expectancy.

To allow the Sixth Circuit's decision to stand means that Kutrell Jackson, one of the petitioners in *Miller*, is entitled to resentencing, but Edward Pinchon is not. Yet, Starks and Jackson committed the same crime (murder) and were both sentenced, without consideration of their age, to prison terms that afforded no meaningful opportunity for release. Vacating Mr. Jackson's sentence and not Mr. Pinchon's, though their cases are materially indistinguishable, cannot be what this Court intended in *Miller*.

CONCLUSION

Edward Pinchon asks that this Court grant certiorari to clarify that its holding in *Miller* applies to any sentence that affords no prospect of release within a juvenile offender's life expectancy. Numerous state courts and legislatures have adopted that reading of *Miller*. Moreover, the narrower reading adopted by the Sixth Circuit would allow the absurd result that any sentence not expressly articulated as life without parole – no matter how long it incarcerates a juvenile offender – is compatible with the Eighth Amendment.

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