No. 22-

IN THE
Supreme Court of the United States

TRAVIS WADE AMARAL,
Petitioner,

v.

DAVID SHINN, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

JEFFREY T. GREEN*
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8291
jgreen@sidley.com

COLLIN P. WEDEL
NICOLE M. BAADE
SIDLEY AUSTIN LLP
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013
(213) 896-6000

Counsel for Petitioner

* Counsel of Record

July 25, 2022

QUESTIONS PRESENTED

1. Does the constitutional prohibition against mandatory life sentences for juvenile offenders in *Miller* v. *Alabama* apply to mandatory term-of-years sentences that are so lengthy they functionally imprison the offender until death?

2. Is the requirement in *Miller* that a sentencing court consider an offender's juvenile nature when deciding whether to impose a life-without-parole sentence satisfied by a generic reference to the "age"?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Travis Wade Amaral, an inmate incarcerated at Lewis Arizona State Prison Complex.

Respondents are David Shinn, Director of the Arizona Department of Corrections, and Mark Brnovich, Attorney General for the State of Arizona.

There are no corporate parties involved in this case.

RULE 14.1(B)(III) STATEMENT

This case arises from the following proceedings in the United States District Court for the District of Arizona and the United States Court of Appeals for the Ninth Circuit:

Amaral v. *Ryan*, No. 19-15003, 2021 WL 5984981 (9th Cir. Dec. 16, 2021);

Amaral v. *Ryan*, No. CV-16-00594-PHX-JAT, 2018 WL 6695951 (D. Ariz. Dec. 20, 2018)

There are no other proceedings in state or federal trial or appellate courts, or in this Court directly related to this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—continued

OTHER AUTHORITIES

TABLE OF AUTHORITIES—continued

PETITION FOR A WRIT OF CERTIORARI

Travis Wade Amaral respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals (Pet. App. 1a–4a) is not reported in the Federal Reporter or the Federal Appendix but is available at 2021 WL 5984981. The orders accepting and adopting the Report & Recommendation of the Magistrate Judge of the district court (Pet. App. 5a–13a) are not published in the Federal Supplement but are available at 2018 WL 6695951.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on December 16, 2021. Pet. App. 1a. Mr. Amaral filed a timely motion for rehearing, which the Ninth Circuit denied on February 24, 2022. Pet. App. 14a. Justice Kagan then issued two orders extending the deadline to file a petition for a writ of certiorari by 30 days each, for a total of 150 days from the order denying the petition for rehearing. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the U.S. Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

INTRODUCTION

The circuits are sharply divided on whether the Eighth Amendment's prohibition against mandatory life-without-parole ("LWOP") sentences for juveniles, see *Miller* v. *Alabama*, 567 U.S. 460, 479 (2012), applies to term-of-years sentences that have the effect of dooming a juvenile to die in prison. Petitioner Travis Amaral was sentenced to spend *at least* 57.5 years in prison for a crime he committed at age 16, giving him his first chance at a life outside of prison bars at or after the upper limit of human life expectancy. At least three circuits—the Fourth, Seventh, and Tenth—would have evaluated the practical effect of Mr. Amaral's sentence to determine whether it comports with *Miller*. Other circuits (including the Ninth), categorically hold that a term-of-years sentence, no matter what length, can *never* contravene *Miller*.

This Court has consistently held that, when it comes to sentencing, "youth matters." *Miller*, 567 U.S. at 473; see also *Montgomery* v. *Louisiana*, 577 U.S. 190 (2016); *Graham* v. *Florida*, 560 U.S. 48 (2010); *Roper* v. *Simmons*, 543 U.S. 551 (2005). Children are constitutionally different from adults for the purposes of sentencing because, as "any parent knows," children have diminished culpability for their bad acts and greater prospects for reform. *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569). Given those constitutional distinctions, the lower courts are divided as to whether *Miller* can ever apply to term-of-years sentences (as its logic and Eighth Amendment principles suggest it should), or whether it *never* can (as the Ninth Circuit held here).

In addition to that primary question presented, lower courts are also confused about what *Miller*'s mandate to "consider[] an offender's youth and at-

tendant characteristics" actually requires at sentencing. *Id.* at 483. The logic of *Miller* dictates that a court consider the *fact* that an offender is not just colloquially *young*, but that the offender is a *juvenile* who necessarily must carry less moral culpability than a similarly situated offender with a fully developed brain. The Ninth Circuit, however, held that a court satisfies its obligations under *Miller* merely by mention of the offender's "*age*." But even though a sixteen- and an eighteen-year-old may have similar mitigation arguments based on "age," the Constitution requires that the sixteen-year-old offender be treated differently. This Court should grant review to clarify a sentencer's duty to consider an offender's juvenile status.

Finally, this case is a suitable vehicle for addressing these two important issues. To be sure, the Ninth Circuit held in the alternative that Mr. Amaral's sentence here would not be considered either "mandatory" nor a "functional equivalent of a life sentence" within the meaning of *Miller*. But given that very few pre-*Miller* cases will have a spotless record and the questions presented need to be resolved, those alternative holdings do not preclude this Court's review. The core questions presented are highly important and raise issues on which courts are hotly divided. Once this Court has granted certiorari and resolved the questions presented, the Ninth Circuit can and should revisit its alternative holdings in light of this Court's guidance.

STATEMENT OF THE CASE

1. Petitioner Travis Wade Amaral was sixteen years old, but functioning at the equivalent of a thirteen- or fourteen-year old, 2-ER-196, when, in 1991, the man who had been his counselor at a psychiatric institution—and who had repeatedly raped Mr. Amaral for more than a year of institutionalization—coerced Mr.

Amaral for to rob and murder two people. 4-ER-646–47; 6-ER-1275–77, 1301–02. The rapist, Gregory Scott Dickens, was sentenced to death for his heinous crimes and died in prison in 2014. Due to the quirk of Mr. Amaral having received a lengthy term-of-years sentence, the Ninth Circuit's interpretation of *Miller* has resulted in the irony that Mr. Amaral will remain incarcerated for a crime he committed as a child for more than twice as long as the adult who raped and manipulated him into committing those crimes.

Mr. Amaral had a markedly difficult childhood. See 6-ER-1229–32, 1289–97. He was prescribed numerous psychotropic medications starting at the age of ten, including Ritalin, Buspar, Mellaril, Lithium, Thorazine, and Imipramine. 6-ER-1237, 1261, 1280, 1313. He was diagnosed as being bipolar and as requiring special attention for learning disabilities. 6-ER-1237, 1281. As a result of these unique developmental challenges, he was often committed to psychiatric hospitalizations. 6-ER-1269–70. In these instances, a very young Mr. Amaral was further traumatized: at one institute, Mr. Amaral was repeatedly raped by Dickens, who served as a counselor. 6-ER-1275–77, 1301–02.

In September 1991, Mr. Amaral's rapist, Dickens, asked sixteen-year-old Mr. Amaral to meet him in Yuma, Arizona. . 4-ER-645–46. After two to three days together, Mr. Amaral and Dickens were having lunch when Dickens allegedly claimed that he was running out of money and that Mr. Amaral would have to commit a robbery. 4-ER-646. When Mr. Amaral asked him why he would have to be the one to commit the robbery, Dickens proposed that they flip a coin. *Id.* Mr. Amaral "won" the coin toss and had to commit the robbery. *Id.* Dickens then gave Mr. Amaral a gun. *Id.* Mr. Amaral went up to the two victims and asked them for their wallets, which were given to him. 4-ER-647. Via

walkie-talkie, Dickens then instructed Mr. Amaral repeatedly to leave "no witnesses." *State* v. *Dickens*, 926 P.2d 468, 474 (Ariz. 1996). Mr. Amaral then told the victims to walk around five feet away from their car and once they had their backs to him, he shot them. 4-ER-647.

2. Mr. Amaral pleaded guilty to two counts of first-degree murder and one count of attempted armed robbery in order avoid the death sentence (4-ER-669, 676); a sentence which, at the time, had not yet been held unconstitutional for a juvenile under *Roper*, 543 U.S. 551. Despite his young age and unique developmental circumstances, the Arizona state court sentenced Mr. Amaral to life imprisonment, without the possibility of parole until he had served twenty-five years for each of the murder convictions and 7.5 years for the attempted armed robbery, all to run consecutively. 4-ER-682–83; 6-ER-1339–40. This sentence required Mr. Amaral to serve a minimum of 57.5 years without any chance of release.

In explaining this sentence, the court stated: "consecutive sentences have been imposed, *not only because the statute in Arizona mandated consecutive sentences* unless there are reasons for imposing concurrent sentences, but because I could find no reasons in mitigation, *apart from your age*, that would justify my imposing concurrent sentences . . . ." 6-ER-1341 (emphasis added).

3. In 2012, Mr. Amaral filed a state post-conviction relief proceeding, arguing that his sentence violated the Eighth Amendment under *Miller*. 7-ER-1515, 1520–21. This request was summarily denied. 7-ER-1540.

Mr. Amaral then filed a petition for review in the Arizona Court of Appeals, which granted review, but denied relief. 7-ER-1491, 1512. The court rejected Mr. Amaral's claim on three grounds. First, the court held that Mr. Amaral was "not sentenced to life without parole" because "both life sentences provided for the possibility of parole after twenty-five years." 7-ER-1513. Second, the court held that "although the consecutive nature of [Amaral's] three sentences require[d] that Amaral serve a minimum of 57.5 years, the length of consecutive sentences [did] not make them the functional equivalent of a life sentence without parole." *Id.* Third, and finally, the court held that the consecutive nature of the sentences was not mandatory because under Arizona law, the trial judge has discretion to impose consecutive or concurrent sentences. *Id.* Specifically, the court argued that the trial court only determined consecutive sentences were appropriate after considering testimony at the mitigation hearing which considered Mr. Amaral's age. 7-ER-1514 But no further details of the process of this consideration were provided. See *id.*

Mr. Amaral next petitioned the Arizona Supreme Court for review. 7-ER-1469. While his petition for review was pending, Mr. Amaral filed a notice of supplemental authority. 6-ER-1364–65. In that notice, Mr. Amaral alerted the Court to *Montgomery* v. *Louisiana*, 577 U.S. 190, in which this court held that a state court must give a new substantive rule of constitutional law retroactive effect in the state-court proceeding. *Id.* at 200; 6-ER-1364. Despite this ruling, the Arizona Supreme Court denied Mr. Amaral relief. 6-ER-1355.

4. Mr. Amaral then filed a *pro se* habeas corpus petition in the District Court for the District of Arizona. 7-ER-1428–1541. A magistrate judge issued a Report and Recommendation denying Mr. Amaral's Amended

Petition. 2-ER-69–86. The District Court affirmed, denying Mr. Amaral habeas relief on three issues. Pet. App. 6a–13a. The court considered (1) whether Mr. Amaral's sentence was the functional equivalent of a life sentence, (2) whether, even if Mr. Amaral received a functional equivalent life sentence, the sentence is barred by *Miller*, and (3) whether *Miller* applies to non-mandatory life sentences. *Id.* at 7a. The court resolved all three issues against Mr. Amaral. *Id.* at 7a–12a.

On the first issue, the court pointed to the lack of case law that draws the line between what sentences could be considered a functional life equivalent and what sentences cannot. *Id.* at 8a. Based on this technicality, the court dismissed the fact that Mr. Amaral's sentence prevented him from being eligible for parole until he is at least seventy-four years old, an age that could exceed his life expectancy because of the toll taken by prolonged incarceration. *Id.* at 8a–9a. Despite the well documented effects of prolonged incarceration on life expectancy,[1] the court flatly stated that it did not agree that "attaining the age of 74 is the equivalent of death." *Id.* at 8a.

On the second issue—whether *Miller* prohibits sentences that are the equivalent of a life sentence—the court held that it could not resolve the issue because that issue had not been addressed yet by the Ninth Circuit. *Id.* at 9a–10a.

---

[1] *See* Emily Widra, *Incarceration Shortens Life Expectancy*, Prison Pol'y Initiative (June 26, 2017), https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy; *see also* Sebastian Daza, Alberto Palloni, & Jerrett Jones, *The Consequences of Incarceration on Mortality in the United States*, 57 Demography 577, 577–98 (2020).

Finally, as to whether *Miller* applies to non-mandatory sentences, *id.* at 10a–12a, the court noted the open question that this Court has now answered in the negative in *Jones* v. *Mississippi*, 141 S. Ct. 1307 (2021), *i.e.*, whether a sentencer is required to make a separate factual finding of permanent incorrigibility before imposing a discretionary sentence of life without parole on a juvenile homicide offender. *Id.* at 1314.

5. The Court of Appeals for the Ninth Circuit upheld Mr. Amaral's sentence on three independent grounds. First, the court held that "it is *not* clearly established that the Eighth Amendment bars sentences that are functionally equivalent to LWOP for juvenile offenders." Pet. App. 2a–3a (citing *Demirdjian* v. *Gipson*, 832 F.3d 1060, 1076–77 (9th Cir. 2016). Second, the court held that "the Arizona Court of Appeals also did not contradict or unreasonably apply clearly established federal law by finding that Amaral's sentence was not the functional equivalent of LWOP." *Id.* at 3a. Finally, the court held that the "Arizona Court of Appeals did not contradict or unreasonably apply clearly established federal law in concluding that *Miller* applies to only *mandatory* LWOP sentencing schemes." *Id.*. Specifically, the Ninth Circuit reasoned that it was not mandatory that Mr. Amaral's sentences run consecutively because "the sentencing judge was permitted to and did consider Amaral's age and its attendant characteristics and circumstances in determining whether the sentences should run consecutively or concurrently." *Id.*

Mr. Amaral timely filed a petition for rehearing, which was denied without further comment. Pet. App. 14a.

REASONS FOR GRANTING THE PETITION

I. This Case Presents Pressing Questions Regarding the Constitutional Protections Required for Juvenile Offenders.

A. The Circuits Are Divided as to Whether *Miller* Applies to Term-of-years Sentences for Juveniles That Will Not Be Survivable.

The Fourth, Seventh, and Tenth Circuits have determined that term-of-years sentences that have the result of sending a juvenile to prison for the rest of his or her life are constitutionally no different from LWOP sentences. In *United States* v. *Friend*, 2 F.4th 369 (4th Cir. 2021), the Fourth Circuit concluded that, based on the logic of *Miller*, while "lengthy sentences are not ipso facto life sentences . . . a court *could* impose a sentence that is so long as to equate to a life sentence without parole" that would violate *Miller*. *Id.* at 378 (emphasis added). Similarly, the Seventh Circuit in *McKinley* v. *Butler*, 809 F.3d 908 (7th Cir. 2016), held that the logic from *Miller* applied to a juvenile offender who was sentenced to two consecutive 50-year prison terms without parole. *Id.* at 909, 911. This is because, as the Seventh Circuit explained: *Miller* "cannot logically be limited to *de jure* life sentences, as distinct from sentences denominated in number of years yet highly likely to result in imprisonment for life." *Id.* at 911. Similarly, the Tenth Circuit emphasized in *Budder* v. *Addison*, 851 F.3d 1047 (10th Cir. 2017), that "[t]he Constitution's protections do not depend upon a legislature's semantic classifications." *Id.* at 1056. Considering the difference between "a sentence for a term of years so lengthy that it 'effectively denies the offender any material opportunity for parole' and one that will imprison him for 'life' without the opportunity for parole" under *Graham*, the court could find none:

"both are equally irrevocable." See *id.* (quoting *Graham*, 560 U.S. at 113).

On the other side of the split are the formalist circuits that hold that *Miller* can apply *only* to sentences that are denominated as LWOP. For example, the Third Circuit in *United States* v. *Grant*, 9 F.4th 186 (3d Cir. 2021) (en banc), concluded that a juvenile defendant's lengthy sentence of 65 years did not violate *Miller*, "even if it amounts to [a] de facto LWOP [sentence]." *Id.* at 193. Similarly, the Eighth Circuit in *Ali* v. *Roy*, 950 F.3d 572 (8th Cir. 2020), stated: "the United States Supreme Court has not 'clearly established' that the rule in *Miller* and *Montgomery* applies to consecutive sentences functionally equivalent to life-without-parole." *Id.* at 575; see also *United States* v. *Sparks*, 941 F. 3d 748, 754 (5th Cir. 2019) ("[A] term-of-years sentence cannot be characterized as a *de facto* life sentence."); *Atkins* v. *Crowell*, 945 F.3d 476, 478 (6th Cir. 2019) ("*Miller*'s holding simply does not cover a lengthy term of imprisonment that falls short of life without parole.").

This split alone merits review.

B. This Court Should Also Grant Certiorari to Clarify Whether *Miller* Is Satisfied by a Generic Reference to an Offender's "Age."

As this Court in *Miller* clearly stated: "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we *require* it to take into account *how children are different*, and *how those differences counsel against irrevocably sentencing them to a lifetime in prison*." 567 U.S. at 480 (emphasis added).

Subsequently, while this Court has affirmed that a sentencer is not required to provide an on-the-record sentencing explanation with an implicit finding of an

offender's permanent incorrigibility, a sentencer must still consider the offender's "diminished culpability and heightened capacity for change." *Jones*, 141 S. Ct. at 1316 (quoting *Miller*, 567 U.S. at 479). Just because trial courts are not required to make a finding of fact regarding a child's incorrigibility "speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee," *Montgomery*, 577 U.S. at 211, not the constitutional imperative to undertake such an analysis.

Some lower courts have explicitly held that the rule of *Miller* requires something more than a simple reference to an offender's age. For example, in *United States* v. *Delgado*, 971 F.3d 144 (2d Cir. 2020), the Second Circuit emphasized that even though a juvenile's sentence was not mandatory and therefore did not fall under the categorical ban of *Miller*, his sentence was "nonetheless improper" because the sentencing hearing did "not indicate that there was *deliberate consideration* of his character as a juvenile." *Id.* at 159 (emphasis added). The Second Circuit specified that this deliberate consideration should include an "additional reflection on the special social, psychological, and biological factors attributable to youth." *Id.* The Fourth Circuit has taken this logic even further. In *Malvo* v. *Mathena*, 893 F.3d 265 (4th Cir. 2018), the Fourth Circuit stated that a sentencing judge violates *Miller* "any time it imposes a *discretionary* life-without-parole sentence on a juvenile homicide offender without first concluding that the offender's 'crimes reflect permanent incorrigibility' as distinct from 'the transient immaturity of youth.'" *Id.* at 274 (quoting *Montgomery*, 577 U.S. at 208–09).

Here, in contrast, Mr. Amaral's sentencing highlights the problems courts have had in determining

what *Miller* actually requires. Mr. Amaral's sentencing judge stated that "consecutive sentences have been imposed, not only because the statute in Arizona mandated consecutive sentences unless there are reasons for imposing concurrent sentences, but because I could find no reasons in mitigation, *apart from your age*, that would justify my imposing concurrent sentences." 6-ER-1341 (emphasis added). This four-word sentence fragment represents the totality of the trial court's consideration of Mr. Amaral's youth, which was nothing more than a chronological reality that would be substantively (but not constitutionally) the same for an eighteen-year-old offender. The trial court gave no indication of a more holistic consideration of the "characteristics and circumstances" related to youth, nor of Mr. Amaral's "diminished culpability and heightened capacity for change." *Jones*, 141 S. Ct. at 1316 (quoting *Miller*, 567 U.S. at 479).

The court's lack of analysis is hardly surprising given that the sentencing occurred in 1993—over a decade before *Roper* illuminated the studies showcasing the specific developmental characteristics of youth,[2] and two decades before *Miller* iterated a specific process for considering these characteristics. See *Roper*, 543 U.S. at 569–70; *Miller*, 567 U.S. at 480. Nevertheless, simply because "*Miller* did not impose a

---

[2] For example, this Court in *Roper* cited to a foundational social science study which came out after 1993. *See Roper*, 543 U.S. at 569 (citing Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1014 (2003)). Moreover, in 2012, this Court in *Miller* affirmed that "[a]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusions," which was absent when the Arizona trial court conducted Mr. Amaral's sentencing hearing. 567 U.S. at 472 n.5 (citation omitted).

formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Montgomery*, 577 U.S. at 211. Certiorari is warranted to clarify under what circumstances a state may sentence a child to life in prison.

II. The Questions Presented Are Exceptionally Important.

In addition to requiring this Court's clarification of long-standing splits, the questions presented are exceptionally important. The constitutional rule from *Miller*, *Graham*, and *Roper* is that punishment for juveniles must offer a chance for rehabilitation. As this Court explained in *Roper*, this "right flows from the basic precept of justice that punishment for crime should be graduated and proportioned to the offense." 543 U.S. at 560 (cleaned up) (quoting *Weems* v. *United States*, 217 U.S. 349, 367 (1910)). Ultimately, by "protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons." *Id.* at 560.

In the context of juvenile offenders, this Court has held that proportionality means that juveniles are constitutionally entitled to a chance for rehabilitation in all but the rarest of circumstances. See *Miller*, 567 U.S. at 473 ("Life without parole 'forswears altogether the rehabilitative ideal' . . . [and is] at odds with a child's capacity for change." (quoting *Graham*, 560 U.S. at 74)); *Graham*, 560 U.S. at 75 ("A State is not required to guarantee eventual freedom . . . [but must provide] some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."); *Roper*, 543 U.S. at 570 ("[I]t would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.").

Children are given this substantive right because the logic of adult punishment simply does not apply to them. *Miller*, 567 U.S. at 471. As this Court explained nearly twenty years ago in *Roper*, there are significant developmental gaps between children and adults as confirmed by scientific and sociological studies. First, children have a "lack of maturity and an underdeveloped sense of responsibility," which "often result in impetuous and ill-considered actions and decisions." *Roper*, 543 U.S. at 569 (quoting *Johnson* v. *Texas*, 509 U.S. 350, 367 (1993)). Second, children "are more vulnerable . . . to negative influences and outside pressures" because they have limited "control[] over their own environment" and lack the ability to extricate themselves from crime-producing settings. *Id.* Third, a child's character is not as "well formed" as an adults and their actions are less likely to be "evidence of irretrievably depraved character." *Id.* at 570.

Since then, the science supporting these conclusions has become even stronger. In 2012, this Court in *Miller* noted that it was "increasingly clear that adolescent brains are not fully mature in regions and systems related to . . . impulse control, planning ahead, and risk avoidance." 567 U.S. at 472 n.5 (citation omitted).

These unique developmental differences have counseled caution when dealing with children in the sentencing context. Specifically, this Court has deemed that a sentencer cannot simply decide a "juvenile offender forever will be a danger to society"; such a finding of "incorrigibility is inconsistent with youth." *Miller*, 567 U.S. at 472–73 (quoting *Graham*, 560 U.S. at 72–73). Rather, an LWOP sentence is prohibited by the Eighth Amendment because it "alters the remainder of [one's] life 'by a forfeiture that is irrevocable.'" *Miller*, 567 U.S. at 474–75 (quoting *Graham*, 560 U.S.

at 69). Such a sentence is "an 'especially harsh punishment for a juvenile,' because he will almost inevitably serve 'more years and a greater percentage of his life in prison than an adult offender.'" *Id.* at 475 (quoting *Graham*, 560 U.S. at 70).

For these reasons, there is no sound basis for a formalistic approach that denies *Miller*'s protection for term-of-years sentences that are equivalent to explicit LWOP sentences. The entire thrust of *Miller* is that children deserve a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. As *Graham* emphasized, and *Miller* made applicable to all juvenile offenders, the Eighth Amendment strictly prohibits states from "making the judgment at the outset" that juvenile offenders "never will be fit to reenter society." *Graham*, 560 U.S. at 75. This is because an LWOP sentence for a juvenile defendant "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days." *Id*. at 70 (cleaned up) (quoting *Naovarath* v. *State*, 779 P.2d 944, 944–45 (Nev. 1989)). Term-of-years sentences that have the effect of dooming a juvenile to die in prison have the exact same consequences.

Moreover, for similar reasons, sentencing courts should follow *Miller*'s mandate for a careful and specific consideration of age, rather than generic one. Again, as this Court in *Miller* clearly stated: "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we *require* it to take into account *how children are different*, and *how those differences counsel against irrevocably sentencing them to a lifetime in prison*." 567 U.S. at 480 (emphasis added). A court's mere mention of a juvenile's age is not

enough to ensure that the Eighth Amendment's protections are respected under *Miller*.

The Ninth Circuit's reading of *Miller* dilutes the Eighth Amendment's protection for children by giving state courts the power to circumvent the prohibition against LWOP sentences by imposing term-of-years sentences and to avoid meaningful adherence to *Miller*'s requirement that courts consider a juvenile's opportunities for rehabilitation. Without clarification from this Court, the right to rehabilitation for juveniles will remain far from constitutionally guaranteed. Rather, the right will depend on the linguistic preferences of whether the court or legislature decides to sentence a child to "life" or "100 years in prison." See *Budder*, 851 F.3d at 1056 ("Limiting the Court's holding by this linguistic distinction would allow states to subvert the requirements of the Constitution by merely sentencing their offender's to terms of 100 years instead of 'life.'"). Further, without this Court's intervention to specify the process required for a consideration of age in the sentencing context, state courts will be free to satisfy this requirement with nothing more than superficial allusions to age, rendering Eighth Amendment protections for juveniles increasingly "malleable." *Id.* The Constitution should not be so easily circumvented.

Allowing state courts to have such discretion comes at exactly the wrong time. Studies have made it increasingly clear that children are distinctly developmentally different from adults and require increased

protection.[3] Not only do a "relatively small proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior that persist into adulthood," but the practices that characterize juvenile confinement actually compromise children's rehabilitative prospects. See *Roper*, 543 U.S. at 570 (quoting Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1014 (2003)); Lilah Wolf, *Purgatorio: The Enduring Impact of Juvenile Incarceration and a Proposed Eighth Amendment Solution to Hell on Earth*, 14 Stan. J. C.R. & C.L. 89, 92 (2018). Studies have found that children who endure juvenile confinement are more likely to recidivate.[4] This effect impacts a child's ability to finish school[5] as well as exacerbates mental health illness.[6]

---

[3] As a result of the MacArthur Foundation's support, the Network on Adolescent Development and Juvenile Justice has been able to publish eight books, monographs, and 212 articles in peer reviewed journals and books on child and adolescent development in the American justice system. *See* MacArthur Found., *Research Network on Adolescent Development & Juvenile Justice* (last visited July 21, 2022), https://www.macfound.org/networks/research-network-on-adolescent-development-juvenil.

[4] *See*, *e.g.*, Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 4 (Just. Pol'y Inst. 2006).

[5] Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 19102).

[6] *See*, *e.g.*, Linda A. Teplin et al., *Prevalence and Persistence of Psychiatric Disorders in Youth After Detention: A Prospective Longitudinal Study*, 69 Archives Gen. Psych. 1031, 1037 (2012).

Review is therefore warranted on these exceptionally important issues.

III. This Case Is a Suitable Vehicle for Addressing the Questions Presented.

Because this decision presents constitutional questions of great significance, it does not matter that only one question presented involves a circuit conflict, nor do the Ninth Circuit's alternative holdings regarding whether Mr. Amaral's sentence would amount to a mandatory, functional equivalent of a life sentence matter. Those issues can be dealt with on remand. As this Court has held numerous times, when the stakes are high, a circuit split is unnecessary.[7] Protecting juveniles from cruel and unusual punishment is a core matter of exceptional importance that reaches "beyond the academic." See *Rice* v. *Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955). Moreover, because a circuit conflict has already materialized around whether de facto life sentences fall under *Miller*, there is no reason to await further "percolation" in the lower courts on other issues. See *Arizona* v. *Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting).

---

[7] *See*, *e.g.*, *Advocate Health Care Network* v. *Stapleton*, 137 S. Ct. 1652, 1657 (2017) (granting certiorari without a genuine split "[i]n light of the importance of the issue"); *Haywood* v. *Drown*, 556 U.S. 729, 733 (2009) (granting certiorari without a genuine split because of "the importance of the question decided" by the lower court).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JEFFREY T. GREEN*
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8291
jgreen@sidley.com

COLLIN P. WEDEL
NICOLE M. BAADE
SIDLEY AUSTIN LLP
555 West Fifth Street
Suite 4000
Los Angeles, CA 90013
(213) 896-6000

Counsel for Petitioner

July 25, 2022

* Counsel of Record