No.

In the Supreme Court of the United States

WAYNE SELLERS IV,

Petitioner,

v.

PEOPLE OF THE STATE OF COLORADO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Colorado

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner received a mandatory sentence of life imprisonment without the possibility of parole for felony murder. He was twenty years old at the time of the offense, did not kill or injure the victim, and was not alleged to have had any mens rea regarding the killing.

The question presented is whether a mandatory sentence of life imprisonment without the possibility of parole, imposed for felony murder on a defendant who did not participate in or intend the death of the victim and was twenty years old at the time of the offense, violates the Eighth Amendment to the U.S. Constitution.

PARTIES TO THE PROCEEDING

The parties in the Colorado Supreme Court are identified in the case caption.

STATEMENT OF RELATED PROCEEDINGS

There are no related proceedings in state or federal courts, including this Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Wayne Sellers IV respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Colorado in this case.

OPINIONS BELOW

The opinion of the Colorado Supreme Court (App., *infra*, 1a-21a) is reported at 2024 WL 4342852. The opinion of the Colorado Court of Appeals (App., *infra,* 22a-46a) is reported at 521 P.3d 1066.

JURISDICTION

The judgment of the Colorado Supreme Court was entered on September 30, 2024. On January 24, 2025, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to February 27, 2025. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the U.S. Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT

Petitioner was convicted of felony murder and mandatorily sentenced to life imprisonment without the possibility of parole (LWOP). He challenges the sentence as a cruel and unusual punishment under the Eighth Amendment.

As described by the court below, Sellers was involved in a robbery that led to the death of the victim, who was shot by another participant in the robbery. It is undisputed that Sellers, who was twenty years old

at the time of the crime, did not kill or injure anyone and was not alleged to have had an intent to kill. The State nevertheless charged him with first-degree felony murder, a crime that did not require proof of any mens rea with respect to the victim's death and that state courts characterized as a "strict liability" offense. At the time of Sellers' trial, Colorado punished that offense with a *mandatory* LWOP sentence. After Sellers was convicted and sentenced to life in prison, the Colorado Supreme Court rejected his Eighth Amendment challenge to the sentence.

That decision rests on a misunderstanding of this Court's holdings. As the Court has explained, challenges to the constitutionality of a sentence must be resolved by looking to "the Eighth Amendment's text, history, meaning, and purpose." *Kennedy* v. *Louisiana*, 554 U.S. 407, 421 (2008). This standard requires a court to consider the "culpability of the offenders * * * in light of their crimes and characteristics," along with the "severity of the punishment." *Graham* v. *Florida*, 560 U.S. 48, 67 (2010). Here, these considerations point decisively against the constitutionality of Sellers' punishment. He was young at the time of the offense; he did not kill or injure the victim, or anyone; he was not alleged to have acted with *any* mens rea regarding the victim's death. But he received the State's harshest available sentence for *any* crime. He will spend his entire life in prison, after a sentencing proceeding in which the judge was precluded from considering mitigating factors at all.

This Court has not hesitated to set aside sentences as cruel and unusual in analogous circumstances. It should do so here because Sellers' mandatory sentence was not "graduated and proportioned to both the offender and the offense." *Miller* v. *Alabama*,

567 U.S. 460, 469 (2012) (citations and internal quotation marks omitted).

A. The constitutional principles

The Eighth Amendment "guarantees individuals the right not to be subjected to excessive sanctions." *Roper* v. *Simmons*, 543 U.S. 551, 560 (2005). This mandate flows from the basic precept, grounded in constitutional history, that "punishment for crime should be graduated and proportioned" to the offense. *Weems* v. *United States*, 217 U.S. 349, 367 (1910). Such proportionality is "central" to Eighth Amendment jurisprudence. *Graham* v. *Florida*, 560 U.S. 48, 59 (2010); see also *Solem* v. *Helm*, 463 U.S. 277, 285-286 (1983) ("When the Framers of the Eighth Amendment adopted the language of the English Bill of Rights, they also adopted the English principle of proportionality."). Consequently, the Eighth Amendment "prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed." *Solem*, 463 U.S. at 284.

In applying this general test, the Court determines whether particular types of punishment are categorically unconstitutional under the Eighth Amendment both by taking account of objective indicia of excessiveness and by exercising its own independent judgment. See *Roper*, 543 U.S. at 572, 564. Under this approach, "objective indicia of society's standards" are used to determine whether there is a "national consensus" against the challenged sentencing practice. *Id.* at 563, 567. The "'clearest and most reliable objective evidence'" of contemporary standards is legislation "enacted by the Nation's legislatures"—that is, state laws. *Id.* at 589 (O'Connor, J., dissenting (quoting *Penry* v. *Lynaugh*, 492 U.S. 302,

331 (1989))). The Court has found a national consensus against a given practice when more than 40 jurisdictions precluded its use. See, *e.g.*, *Enmund* v. *Florida*, 458 U.S. 782, 789-791 (1982) (42 jurisdictions). Indication of a consistent direction of change across states also supports a finding of national consensus: "It is not so much the number of these States that is significant, but the consistency of the direction of change." *Atkins* v. *Virginia*, 536 U.S. 304, 315 (2002). Similarly, even if a sentencing practice is permitted in multiple states, "infrequent" or "uncommon" use of that practice would be an objective indication of national consensus against it. *Id.* at 316; *Roper*, 543 U.S. at 564; see *Miller*, 567 U.S. at 495-96 (Roberts, C.J., dissenting).

Exercise of the Court's independent judgment regarding a sentencing practice is guided by its "understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose." *Kennedy*, 554 U.S. at 421. Under this prong of the analysis, the Court will consider the "culpability of the offenders * * * in light of their crimes and characteristics," as contrasted with the "severity of the punishment." *Graham*, 560 U.S. at 67. The Court also takes account of whether the sentencing practice "serves legitimate penological goals." *Ibid.*

Factors bearing on this relationship between culpability and punishment that the Court has found relevant include the defendant's youth, the defendant's mens rea, the nature of the punishment, and whether the sentence is mandatory. In particular, the Court has repeatedly held that youth matters when determining the offender's level of culpability. See *Thompson* v. *Oklahoma*, 487 U.S. 815, 838 (1988) (striking down the death penalty for offenders under sixteen);

Roper, 543 U.S. at 568 (same for offenders under eighteen); *Graham*, 560 U.S. at 74 (striking down life imprisonment without parole for nonhomicide offenders under age eighteen); *Miller*, 567 U.S. at 465(striking down mandatory LWOP for all offenders under eighteen). And the Court has found problematic especially severe sentences, including the death penalty and life without parole, in instances where there was no showing that the defendant intended to kill. See *Enmund*, 458 U.S. at 798 (striking down the death penalty for felony murder when the defendant did not kill, attempt to kill, or intend death to result from the crime); *Graham*, 560 U.S. at 74 (striking down LWOP for nonhomicide offenders under eighteen, in part because of the lesser culpability of nonhomicide offenders).

B. Facts and proceedings below

1. At the time of the events at issue here, petitioner Sellers was twenty years old. He was then addicted to drugs and staying in a motel with Tyler Wheeler. Wheeler and another man, Beslim Torres-Valle, set up a series of drug transactions with the intention of robbing the dealers. Although there is evidence that Sellers was reluctant to participate in the robberies, he and his girlfriend rode along with Wheeler, Torres-Valle, and a driver, Kyle Watts.[1]

After an initial robbery (against a different victim who was not injured), Sellers, his girlfriend, and Watts wanted to return to the motel. But Wheeler and Torres-Valle misled them into staying with the group,

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[1] See Sept. 11, 2019 Tr. 34-38; Oct. 8, 2019 Tr. 20-22, 84:8-1, 84:13-15, 156-57; Oct. 4, 2019 Tr. 55:7-16; EX 310 at 4:09, 13:22, 26:22; Jan. 3, 2019 Tr. 31:22-25, 84:2-23.

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claiming that Torres-Valle needed a ride home. In reality, Wheeler had set up another drug deal with Kenyatta Horne, whom Wheeler would ultimately kill. Oct. 8, 2019 Tr. 38:10-24, 43:18-21, 61:6-10; Jan. 3, 2019 Tr. 94:10-95:14.

When the group arrived to meet Horne, Wheeler ordered Sellers out of the car. EX 310 at 40:20. Wheeler and Torres-Valle walked about sixty feet away from the parked car and stopped at mailboxes just outside Horne's home. Sellers stayed by the car and did not follow the two down the street. At that meeting, Horne fired first, suddenly shooting in Sellers' direction. EX 310 at 9:45; Oct. 9, 2019 Tr. 141-142. Under fire, Sellers discharged his own gun, mostly firing into a nearby fence. His shots didn't kill, injure, or hit anyone. Oct. 10, 2019 Tr. 44:9-17. Meanwhile, Wheeler and Horne engaged in a close-range shootout, in the course of which Wheeler shot and killed Horne. Oct. 10, 2019 Tr. 43:3-5.

The State did not charge Sellers with attempted murder or seek to show that he intended to kill Horne. Instead, it charged Sellers with several other crimes, including aggravated robbery and—most relevant here—one count of felony murder. App., *infra*, 5a. At that time, Colorado classified felony murder as first-degree murder, although conviction did not require proof of any mens rea regarding the killing. Rather, "[t]here [wa]s no requirement that the principal intend the death of the victim in felony murder; felony murder [wa]s a strict liability crime." *People* v. *Fisher*, 9 P.3d 1189, 1191 (Colo. App. 2000) (citing *People* v. *Meyer*, 952 P.2d 744, 776 (Colo. App. 1997)). Also at that time, conviction of felony murder in Colorado carried a mandatory sentence of life imprisonment without the possibility of parole. App., *infra*, 6a.

The jury convicted Sellers. He was sentenced to 32 years' imprisonment for aggravated robbery—and life imprisonment without the possibility of parole for felony murder. App., *infra*, 5a. This was the same sentence that would have applied had Sellers killed Horne after deliberation, even though the jury was not required to find that he had acted with any mens rea regarding the homicide. Because the LWOP sentence was mandatory for a felony murder conviction in Colorado at the time, Sellers was unable to present any mitigating evidence. He thus was precluded from attempting to show that he should not spend his entire adult life in prison because he had not wanted to be at the crime scene, did not intend to kill the victim, and had not harmed anyone.

2. Sellers appealed his sentence, arguing, as relevant here, that the Eighth Amendment's bar on cruel and unusual punishments categorically prohibits a mandatory LWOP sentence for felony murder of a nonkiller with no mens rea as to the causation of the death. App., *infra*, 4a.[2] The Colorado Court of Appeals rejected that contention. *Id.* at 38a-46a.

The Colorado Supreme Court affirmed. App., *infra*, 1a-21a. In so doing, the court found no national consensus against the imposition of LWOP sentences for felony murder because other states have upheld such sentences; the court did not specifically address Sellers' argument that there is such a consensus

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[2]. Sellers argued alternatively that the court should remand his case for review of the proportionality of his sentence. The courts below rejected that argument (App., *infra*, 15a-21a, 42a-46a), which is not renewed here.

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against imposition of *mandatory* LWOP sentences for felony murder. App., *infra*, 11a-12a.

The Colorado court also opined that it was "unaware of any court that has applied the categorical approach to cases not involving either the death penalty or juvenile offenders." App.*, infra,* 11a. In doing so, the court below did not address decisions of this Court, cited by petitioner, that did approve categorical challenges in such circumstances. See Pet. Sup. Ct. Br. 12 (citing *Trop* v. *Dulles*, 356 U.S. 86 (1958) (holding revocation of citizenship an unconstitutional punishment for desertion from the military); and *Weems*, 217 U.S. at 366-67 (holding a sentence of "hard and painful labor" in irons an unconstitutional punishment for the falsification of public documents)).

When the court exercised its independent judgment regarding the LWOP penalty, it recognized that LWOP sentences cannot serve rehabilitative purposes. App., *infra*, 14a-15a. But the court below did not evaluate other permissible penological goals. *Ibid.* Instead, it found what it regarded as the lack of a national consensus against LWOP sentences for felony murder to be controlling. *Ibid.*

3. While the case was on appeal, the Colorado Legislature eliminated LWOP as a punishment for felony murder, reducing felony murder from a class one felony (first-degree murder) to a class two felony (second-degree murder). Ch. 58, sec. 1, § 18-3-102, sec. 2, § 18-3-103, 2021 Colo. Sess. Laws 235. Felony murder is now punishable in Colorado by a sentence of 16 to 48 years. See Colo. Rev. Stat. §§ 18-1.3-401(1)(a)(V.5)(A), 18-3-103(1)(b), (3)(a), (4) (2024). Explaining the rationale for this change, the amendment's sponsor stated that the "most severe sanction of life without parole should be reserved where the proof [of intent to

kill] has been made." Hearing on S.B. 124 Before the H. Judiciary Comm., Colo. 73rd Gen. Assembly (April 7, 2021) (House Hearing), at 4:26:19.[3] This change brought Colorado "closer to a sentencing scheme that punishes people for what they actually did and with punishment proportional to culpability." Hearing on S.B. 124 Before the S. Judiciary Comm., Colo. 73rd Gen. Assembly (March 18, 2021) at 3:43:41.[4]

Because the Legislature did not make this change retroactive, the revision had no effect on Sellers' sentence. App., *infra*, 16a-17a. The amendment was made prospective, however, not for reasons of policy, but out of concern that retroactive sentencing legislation would violate state separation of powers restrictions. See Michael Karlik, *As Colorado Supreme Court Weighs Life Without Parole for Felony Murder, Ex-Lawmaker Casts Doubt on State's Argument*, Co. Politics (June 17, 2024), https://bit.ly/4kkrMEH.

REASONS FOR GRANTING THE PETITION

This Court has repeatedly invalidated punishments as unconstitutional under the Eighth Amendment when there are objective indicia of a national consensus against the sentencing practice and when, in the Court's independent judgment, historical and penological considerations bearing on proportionate

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[3] Audio of the House hearing is at https://bit.ly/3QI0NFr. The General Assembly heard testimony from University of Denver Sturm College of Law Professor Ian Farrell, who noted the "almost unanimous consensus [among legal scholars] that felony murder should be abolished entirely. They have condemned felony murder as morally indefensible and an anachronistic and primitive relic of medieval law. * * * Felony murder has been all but abolished in the rest of the world." House Hearing at 5:22:13.

[4] Audio of the Senate hearing is at https://bit.ly/3ES3ylc.

punishment point against the validity of the practice in the circumstances of the case. Under these principles, the Court should find the punishment here unconstitutional.

In applying the Eighth Amendment, the Court first considers whether there is a national consensus on the propriety of the challenged sentence, looking at the number of jurisdictions that would not permit the sentence and also examining whether the sentencing practice, even if authorized by statute, is infrequently imposed in practice. See *Roper*, 543 U.S. at 572. Then, the Court uses its independent judgment to assess the offender's culpability, the severity of the punishment, and whether the challenged sentencing practice serves legitimate penological goals. See *Graham*, 560 U.S. at 67.

Here, these considerations all compel the conclusion that the challenged sentence is unconstitutional. The states have overwhelmingly rejected mandatory LWOP for felony murder. This Court has understood homicide defendants to be less culpable when, as here, they had no intent to kill. And the Court has deemed young people categorically less culpable than fully formed adults because of their relative immaturity and inability to account completely for the consequences of their actions. Additionally, a life sentence without the possibility of parole as imposed upon a youthful offender who did not kill is a penalty of extraordinary severity and cruelty—particularly when that sentence was mandatory, so that mitigating factors could not be considered.

This case also offers the Court an opportunity to provide much-needed guidance in an area of the law that, as the Court itself has noted, "ha[s] not been a model of clarity." *Lockyer* v. *Andrade*, 538 U.S. 63, 72

(2003). Twenty years ago, a commentator observed that "Eighth Amendment doctrine [is] in [a] current state of confusion" (Samuel B. Lutz, Note, *The Eighth Amendment Reconsidered: A Framework for Analyzing the Excessiveness Prohibition*, 80 N.Y.U. L. REV. 1862, 1866 (2005))—and just last year, another scholar observed that tools *still* are needed to "better grapple with the confusing nature of the Supreme Court's Eighth Amendment jurisprudence." Erin E. Braatz, *Democratizing the Eighth Amendment*, 68 VILL. L. REV. 1, 28 (2023). In fact, "confusion" is the term most often applied to Eighth Amendment law. See Jency Megan Butler, *Shocking the Eighth Amendment's Conscience: Applying a Substantive Due Process Test to the Evolving Cruel and Unusual Punishments Clause*, 43 HASTINGS CONST. L.Q. 861, 876 (2016) (Court has left "Eighth Amendment jurisprudence confused"); Meghan J. Ryan, *Does the Eighth Amendment Punishments Clause Prohibit Only Punishments That Are Both Cruel and Unusual?*, 87 WASH. U. L. REV. 567, 569 (2010) (describing Court's "inconsistent and confusing Eighth Amendment Punishments Clause jurisprudence").

The decision below reflects this muddle. The Colorado Supreme Court concluded, for example, that this Court has applied the categorical approach under the Eighth Amendment only in cases involving juveniles or the death penalty. App., *infra*, 10a-11a. But in fact, the Court has applied the approach outside those contexts. See *Trop*, 356 U.S. 86 (revocation of citizenship), and *Weems*, 217 U.S. 349 (sentence of "hard and painful labor" in irons). And the court below paid no attention to considerations, like the mandatory nature of the penalty, that should be of obvious relevance to an inquiry into both national consensus and proportionality.

The court below got it wrong. The sentence in this case was cruel and unusual. The Court should set it aside.

I. THERE IS A NATIONAL CONSENSUS AGAINST USE OF MANDATORY LWOP AS A PENALTY FOR FELONY MURDER WHERE THE DEFENDANT NEITHER KILLED NOR INTENDED DEATH.

1. As objective indicia of national consensus for Eighth Amendment purposes, this Court has looked to the number of jurisdictions permitting the challenged sentencing practice and indications of a consistent direction of change away from that practice. For example, in *Enmund*, forty-two states forbidding the death penalty for vicarious felony murder sufficiently demonstrated a national consensus against the practice. 458 U.S. at 789-91. Similarly, in *Kennedy*, forty-five jurisdictions prohibiting the death penalty for the rape of a child were sufficient to show national consensus against the death penalty for nonhomicide crimes. 554 U.S. at 426.

The Court considers the number of states permitting the challenged practice in the context of broader societal trends. Even if that practice is legally permitted, consistent movement against the practice signals national consensus: "It is not so much the number of these States that is significant, but the consistency of the direction of change." *Atkins*, 536 U.S. at 315. In *Roper*, although just thirty states prohibited the juvenile death penalty as a matter of state law, five states had abandoned the practice in the prior fifteen years. 543 U.S. at 565. The Court found this a sufficiently consistent change in direction to support finding a consensus against the practice, particularly considering the general popularity of anticrime legislation and

the fact that no state prohibiting the juvenile death penalty had reinstated it. *Id.* at 566.

The Court's determination of a national consensus also takes account of the actual frequency of the sentencing practice's use. In *Atkins*, the Court found it significant that the practice of executing mentally disabled offenders was "uncommon," "even in those States that allowed the[ir] execution." 536 U.S. at 316. Some states authorized executions but had not carried out any "in decades." *Ibid.* Others regularly performed executions but only rarely executed mentally disabled defendants. *Ibid.* Similarly, in *Roper*, the practice of executing juveniles was "infrequent," even though it was permitted in twenty states. 543 U.S. at 564. Only three of those states had actually executed prisoners for juvenile crimes in the preceding decade. *Id.* at 564-65.

2. Here, *all* these factors support Sellers' challenge to his sentence. Forty-two states (now including Colorado) do not impose mandatory LWOP for felony murder absent a showing that the defendant caused, or had mens rea with respect to, a death. This number evinces a strong national consensus, on the model of *Enmund* and *Kennedy*.

- Nineteen states never allow LWOP sentences for felony murder: seventeen do not impose

LWOP for felony murder[5] and two lack felony murder laws entirely.[6]

- Twenty-three other states either have a discretionary regime permitting the consideration of mitigating factors or require the State to prove aggravating factors or special circumstances—such as sexual violence, a prior murder conviction, or death of a law enforcement officer—to impose LWOP for felony murder.[7]

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[5] States that do not impose LWOP sentences for felony murder convictions are Alabama (Ala. Code 1975 §§ 13A-5-6(a)(1), 13A-6-2(c) (2024)), Alaska (Alaska Stat. § 12.55.125(b) (2024)); Colorado (Colo. Rev. Stat. §§ 18-1.3-406, 18-1.3-401(1)(a)(V.5)(A) (2024)), Illinois (730 Ill. Comp. Stat. 5/5-4.5-20(a) (2024)) Kansas (Kan. Stat. Ann. § 21-6620(b)(1) (2024)), Maine (Me. Stat. tit.17-A, §§ 1604(1)(A), (3)(A) (2023)), Minnesota (Minn. Stat. § 244.05 (2024)), Missouri (Mo. Rev. Stat. § 558.011(1)(1) (2025)), Montana (Mont. Code. Ann. § 45-5-102(2) (West 2023)), New Jersey (N.J. Stat. Ann. § 2C:11-3(b) (West 2024)), New York (N.Y. Penal Law §§ 70.00(2)(a), (3)(a)(i) (McKinney 2024)), Ohio (Ohio Rev. Code Ann. § 2929.02(B)(1) (LexisNexis 2024)), Oregon (Or. Rev. Stat. § 163.115(5) (2024)), Texas (Tex. Penal Code Ann. § 12.32(a) (West 2023)), Utah (Utah Code Ann. § 76-5-203(3)(a) (LexisNexis 2024)), Washington (Wash. Rev. Code §§ 9.94A.540(1)(a), 9A.20.021(1)(a) (2024)), and Wisconsin (Wis. Stat. § 940.03 (2025)).

[6] Hawai'i and Kentucky do not have felony murder laws.

[7] See Ark. Code Ann. §§ 5-10-101(c)(1)(A), 5-10-101(c), 5-4-401(a)(1), (West 2024); Cal. Penal Code § 190 (West 2024); Conn. Gen. Stat §§ 53a-35a(2), 53a-54b (2024); Del. Code Ann. tit 11, § 4209 (2024); Ga. Code Ann. § 16-5-1(e)(1) (2024); Idaho Code § 18-4004 (2024); Ind. Code § 35-50-2-3 (2024); Md. Code Ann., Crim. Law § 2-201(b) (2024); *Commonwealth* v. *Brown*, 81 N.E.3d 1173, 1178–79 (Mass. 2017); Mich. Comp. Laws § 750.316 (2024); Miss. Code. Ann. § 97-3-21(1)(c) (2024); Nev. Rev. Stat. § 200.030(4) (2023); N.H. Rev. Stat. Ann. §§ 630:1-a(III), 630:1-b(II) (2024); N.J. Stat. Ann. § 2C:11-3(b) (West 2024); N.M. Stat.

- This leaves only eight states that impose mandatory LWOP sentences for defendants over age 18 who are convicted of felony murder without a showing of mens rea regarding the killing.[8]

Further reinforcing the consensus is the fact that LWOP sentences are rare in states that permit but do not require LWOP for felony murder. As the Court has said, a national consensus against a sentencing practice may exist when use of the practice is "infrequent" or "uncommon," even if permitted by some states. *Roper*, 543 U.S. at 564; *Atkins*, 536 U.S. at 316. Here, just a few states (Florida, Pennsylvania, Michigan, California, and Louisiana) comprise the vast majority of felony-murder LWOP sentences. See page 30, *infra*. This means that most of the states permitting LWOP sentences for felony murder rarely impose them in practice. And on this, counting the raw number of LWOP sentences for felony murder is inapposite "because the mandatory nature of the sentences here necessarily makes them more common." *Miller*, 567 U.S.

Ann. § 31-18-14 (West 2024); N.D. Cent. Code § 12.1-32-01 (2024); Okla. Stat. tit. 21, § 701.9(A) (2024); 11 R.I. Gen. Laws § 11-23-2 (2024); S.C. Code. Ann. § 16-3-20 (2024); Tenn. Code Ann. § 39-13-202(c)(1) (2024); Vt. Stat. Ann. tit. 13, §§ 2301(a), (b) (2024); Va. Code Ann. §§ 18.2-32, 18.2.10(b) (2024); W. Va. Code §§ 61-2-2, 62-3-15 (2025).

[8] See Ariz. Rev. Stat. Ann. §§ 13-1105(A)(2), 13-1105(D), 13-751(A)(3), 13-752(A) (2024); Fla. Stat. §§ 782.04(3), 775.082 (2024); Iowa Code §§ 707.2(1)(b), 902.1 (2024); La. Stat. Ann. § 14:30.1(A)(2), (B) (2024); Neb. Rev. Stat. §§ 28-303, 28-105(1), 83-1,110 (2024); N.C. Gen. Stat. § 14-17 (a) (2024); 18 Pa. Cons. Stat. §§ 2502(b), 1102(b) (2024); Wyo. Stat. Ann. § 6-2-101(a), (b) (2024). South Dakota mandates a LWOP punishment, but certain offenders become eligible for parole after reaching 70 years of age and serving 30 years in prison. S.D. Codified Laws §§ 22-16-4, 22-16-12, 24-15A-55, 22-6-1 (2024).

at 483 n.10. "The higher ratio is mostly a function of removing the sentencer's discretion." *Ibid.* Much more relevant is whether LWOP is imposed when sentencers have a choice in the matter. The numbers suggest that a LWOP sentence for felony murder is generally considered inappropriate at all, which necessarily casts further doubt on the propriety of *mandatory* LWOP.

The bottom line: mandatory LWOP for felony murder has been widely rejected across the states. This is manifestly not a case where "most States impose such mandatory sentences." *Miller*, 467 U.S. at 494 (Roberts, C.J., dissenting). Quite the contrary: here, the "tall[y of] legislative enactments" points decisively toward rejection of the challenged practice. *Id.* at 483 (majority opinion). Consequently, legislative enactments offer "tangible evidence of societal standards [that] enables us to determine * * * [that] there is a consensus against [the] sentencing practice." *Id.* at 494 (Roberts, C.J., dissenting) (citations and quotation marks omitted). This strong national consensus against the practice gives powerful support for the conclusion that it is categorically unconstitutional.

II. MANDATORY LWOP FOR FELONY MURDER IMPOSES THE HARSHEST SENTENCE ON OFFENDERS WITH NO MENS REA AND DOES NOT SERVE LEGITIMATE PENOLOGICAL GOALS.

The conclusion that the sentence in this case violates the Eighth Amendment is confirmed by the other prong of the Court's inquiry: the Court has not hesitated to strike down punishments when, in an exercise of its independent judgment, it has found the penalty categorically disproportionate to the crime. In

making that determination, the Court assesses the offender's culpability, the severity of the punishment, and whether the challenged sentencing practice serves legitimate penological goals. See *Graham*, 560 U.S. at 67. The Court has found severe sentences categorically disproportionate to the crime when the defendant is youthful, intellectually disabled, or commits a nonhomicide offense.

These considerations strengthen the case for unconstitutionality of mandatory LWOP in this case. Although Sellers did not kill or intend to kill the victim, he was sentenced as though he had. He was just twenty years old at the time at the time of the offense. And the sentence fails to meaningfully serve the goals of retribution, deterrence, incapacitation, or rehabilitation. It thus "runs afoul of [the Court's] cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Miller*, 567 U.S. at 465.

A. A felony murder defendant who did not kill or intend to kill has lesser culpability than a defendant who kills.

For Eighth Amendment purposes, the Court has repeatedly distinguished between the culpability of defendants who themselves commit homicide and those who do not. Although nonhomicide crimes can be "devastating," they do not compare to murder in their "'severity and irrevocability'" or in terms of their "'moral depravity and of the injury to the person and to the public.'" *Kennedy*, 554 U.S. at 438 (quoting *Coker* v. *Georgia*, 433 U.S. 584, 598 (1977)); see also *ibid.* ("[I]n determining whether the death penalty is excessive, there is a distinction between intentional first-degree murder on the one hand and nonhomicide crimes against individual persons * * * on the other.").

For example, in *Enmund*, the Court held that the death penalty was a cruel and unusual punishment for an accomplice to a robbery where a murder occurred. 458 U.S. at 797. The defendant was in a parked car near the location of the robbery and murder. Because the defendant did not himself commit the murder or intend for it to occur, the Court held that his culpability was limited to his participation in the robbery, making capital punishment excessive and unconstitutional. *Ibid.*

That same conclusion applies here. Felony murder rests on "transferred intent," the idea that the defendant's intent to commit a felony satisfies the intent to kill required for murder. *Miller*, 567 U.S. at 491 (Breyer, J., concurring). The Court rejected the death penalty in *Enmund* because it was insupportable to infer culpability for murder absent a finding that the defendant intended to kill. Analogously, Sellers was sentenced to mandatory LWOP because Colorado classified felony murder as first-degree murder on a "strict liability" basis. Despite having neither killed nor intended to kill, Sellers was sentenced as though he had committed intentional murder. Just as in *Enmund*, his culpability is limited to his participation in the robbery—meaning that a sentence of mandatory LWOP far outstrips his culpability.

B. Young adults have both diminished culpability and a capacity for reform.

1. Sellers also has diminished culpability for an additional reason: he was just twenty years old at the time of the offense. The Court repeatedly has noted that the defendant's youthfulness bears substantially on culpability because young offenders are less mature, less able to fully account for the consequences of their actions, and more amenable to rehabilitation.

See *Thompson*, 487 U.S. at 838 (requiring that offenders be at least sixteen to be sentenced to death); *Roper*, 543 U.S. at 568 (raising age threshold for death sentences from sixteen to eighteen); *Graham*, 560 U.S. at 74 (striking down life without parole for nonhomicide offenders under eighteen); *Miller*, 567 U.S. at 465 (striking down mandatory LWOP for all offenders under eighteen).

The Court has recognized that young offenders are less culpable than adults for three key reasons. First, they are susceptible to immature and irresponsible behavior; "[i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct." *Thompson*, 487 U.S. at 835. Second, juveniles are "much more apt to be motivated by mere emotion or peer pressure than * * * an adult." *Ibid.* They are vulnerable and may lack control over their immediate surroundings, so it is harder for them "to escape negative influences in their whole environment." *Roper*, 543 U.S. at 570. And third, juveniles are still "struggl[ing] to define their identity." *Ibid.* Their characters are not yet fully formed, so committing serious crimes is not clear "evidence of irretrievably depraved character." *Ibid.*

This is not a controversial proposition. The legal system takes account of juveniles' limited decision-making capacity in a range of contexts, imposing numerous restrictions on those under age eighteen—for example, on the right to vote or purchase alcohol. See U.S. CONST. amend. XXVI; National Minimum Drinking Age Act of 1984, 23 U.S.C. § 158 (2018). "The reasons why juveniles are not trusted with the same privileges and responsibilities as an adult also explain why their irresponsible conduct is not as morally reprehensible as [that of] an adult." *Thompson*, 487 U.S.

at 835. At a minimum, this consideration accentuates the impropriety of imposing a *mandatory* LWOP sentence on young adult defendants, which precludes consideration of a powerful mitigating factor.

2. To be sure, Sellers was (just barely) no longer a teenager at the time of the offense. But the same behaviors that the Court has attributed to those under age eighteen apply here. The Court has recognized that young people are categorically less culpable than fully grown adults, and the attributes that diminish their capacity are present to a very substantial degree in the youngest adults. Science and society, too, recognize that young adults are much like those under eighteen. That understanding is reflected in myriad limits on the rights of young adults.

- The national minimum drinking age is 21. National Minimum Drinking Age Act of 1984, 23 U.S.C. § 158 (2018).
- The minimum age for gambling is 21 in many states. See, e.g., La. Stat. Ann. § 27:260 (2024) (Louisiana); Miss. Code Ann. § 75-76-155 (West 2024) (Mississippi); Nev. Rev. Stat. Ann. § 463.350 (West 2023) (Nevada).
- The minimum age to become a police officer is 21 in many states. See, e.g., Conn. Agencies Regs. § 7-294e-16 (2024) (Connecticut); Mass. Gen. Laws Ann. ch. 31 § 64 (West 2024) (Massachusetts); N.J. Stat. Ann. § 40A:14-127 (West 2024) (New Jersey).
- The minimum age to serve in Congress is 25. U.S. Const. art. I, § 2, cl. 2.

These restrictions are grounded "not only on common sense—on what 'any parent knows'—but on science and social science as well." *Miller*, 567 U.S. at 471. There is a clear cognitive distinction between twenty-year-olds and older adults. In "negative emotional arousal" situations, or situations in which one perceives a threat, eighteen to twenty-one-year-olds show diminished cognitive control compared to even slightly older adults. Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 PSYCH. SCI. 549, 559 (2016). Thus, people at Sellers' age at the time of the crime make worse decisions and are more vulnerable to negative emotional influences than are older adults, just as those under eighteen are. Emerging adults ages 18-20 "often have difficulty controlling their impulses, especially in emotionally arousing situations." Lauren Steinberg & Grace Icenogle, *Using Developmental Science to Distinguish Adolescents and Adults Under the Law*, 1 ANN. REV. DEV. PSYCH. 21, 32 (2019).

This explains why adults may not legally drink or smoke until they turn twenty-one. Lauren Steinberg & Grace Icenogle, *supra,* at 34 (noting that legal situations requiring "mature self-regulatory capacities," which come about with a fully developed pre-frontal cortex, include "consuming alcohol, gambling, and resisting impulses and urgings to engage in criminal behavior"). "[C]ritical developmental processes clearly occur during young adulthood." Richard J. Bonnie et al., INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS 41 (2015).

In fact, research shows that the brain doesn't fully develop until age 25. "[A]dolescence may extend well beyond the teenage years * * *. It is well established

that the brain undergoes a 'rewiring' process that is not complete until approximately 25 years of age." Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 451 (2013). The development of the prefrontal cortex, which "is responsible for cognitive analysis, abstract thought, and the moderation of correct behavior in social situations," is not complete until age 25. *Id.* at 453. Thus, before that age, young people are still developing "the part of the brain that helps [them] to inhibit impulses and to plan and organize [their] behavior." NPR, *Brain Maturity Extends Well Beyond Teen Years* (Oct. 10, 2011), https://n.pr/3QFJLru.

The Office of Justice Programs (OJP) reached this same conclusion. See Rolf Loeber et al., U.S. Dep't of Just., Office of Just. Programs, Nat'l Criminal Just. Reference Serv., *Bulletin 1: From Juvenile Delinquency to Young Adult Offending* (July 2013), https://bit.ly/3XldgCK. The OJP found that "young adults aged 18-24 are more similar to juveniles than to adults with respect to their offending, maturation and life circumstances." *Id.* at 20. And "[m]any young people who offend at ages 18-20 * * * would have been likely to desist naturally in the next few years." *Id.* at 7. These findings confirm what science and common sense have shown: even after age eighteen, the youngest adults have diminished culpability and increased capacity for reform.

These factors have led states to trend consistently toward increasing the threshold age for the imposition of LWOP, indicating a consensus against imposing such a harsh sentence on young people. Most states have banned juvenile LWOP sentences entirely. And seven states have expanded such protections beyond

eighteen-year-olds, with some prohibiting LWOP sentences for young *adults* altogether.[9] This trend away from the imposition of mandatory LWOP on young people is similar to the movement away from the juvenile death penalty that, in *Roper*, the Court found sufficient to guide its Eighth Amendment analysis. 543 U.S. at 566.

C. LWOP sentences for young adults who commit felony murder do not serve the penological goals that are central to the Eighth Amendment.

These considerations are compounded by the reality that sentencing young people to LWOP does not advance any of the legitimate goals of punishment: retribution, deterrence, incapacitation, or rehabilitation. This, too, points against the constitutionality of such a sentence.

Not Retributive. Underlying the theory of retribution is the principle that wrongdoers should be punished in proportion to their degree of culpability. *Edmund*, 458 U.S. at 798. For reasons already noted, a twenty-year-old who did not kill, and had no intent to kill, falls on the low end of the culpability spectrum.

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[9] The states that have expanded protection from LWOP beyond 18-year-olds are: California (no LWOP for those under 25), Cal. Penal Code § 3051 (West 2024) (see *People* v. *Briscoe*, 105 Cal. App. 5th 479 (2024), review denied (Dec. 11, 2024)); Massachusetts (no LWOP for those under 25), *Commonwealth* v. *Mattis*, 493 Mass. 216 (2024); Colorado (no LWOP for those under 21), Colo. Rev. Stat. § 17-34-102 (West 2024); Connecticut (no LWOP for those under 21), Conn. Gen. Stat. § 54-125a (West 2024); Washington (no LWOP for those under 21), *In re Pers. Restraint of Monschke*, 482 P.3d 276 (Wash. 2021); and Kentucky (prohibiting LWOP for "youthful offenders" without specifying the relevant age), Ky. Rev. Stat. Ann. § 640.040 (West 2024).

For one thing, the Court has held that young offenders are less culpable given their "capacity for growth, and society's fiduciary obligations to its children." *Thompson*, 487 U.S. at 836-37. And punishment is not proportional to the crime if "the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Roper*, 543 U.S. at 571. Moreover, the "lengthiest possible incarceration is an 'especially harsh punishment for a juvenile'" because a young defendant will almost inevitably serve "'more years and a greater percentage of his life in prison than an adult offender.'" *Miller*, 567 U.S. at 475 (quoting *Graham*, 560 U.S. at 70). Thus, a young offender and an older person sentenced to LWOP serve sentences that are "the same . . . in name only." *Ibid.* (quoting *Graham*, 560 U.S. at 70).

And for another, Sellers was sentenced to LWOP for felony murder, a crime that has no mens rea requirement. Not only was Sellers young and immature at the time of the crime—he was not proved to have intended that any homicide occur. He is therefore far less culpable than a killer who intended to kill the victim. Yet he has been subjected to the maximum punishment available under Colorado law for any crime.

Not deterrent. "The theory of deterrence * * * is predicated upon the notion that the increased severity of the punishment will inhibit criminal actors from carrying out murderous conduct." *Atkins*, 536 U.S. at 320. Yet the Court has found that there is a "virtually nonexistent" likelihood that a teenage offender "made the kind of cost-benefit analysis that attaches any weight to the possibility of execution." *Thompson*, 487 U.S at 837. See *Roper*, 543 U.S. at 571 (finding it "unclear whether the death penalty has a significant or

even measurable deterrent effect on juveniles"). That doubtless is equally true of the prospect of LWOP being imposed on a 20-year-old.

Deterrence becomes even more untenable in the context of felony murder, where the defendant had no intention to commit and did not participate directly in the murder. *Enmund*, 458 U.S. at 799. Imposing mandatory LWOP to deter killing makes no sense where, as here, the defendant did not kill or intend to kill anyone.

This leaves LWOP, under the deterrence theory, as a method to deter only the commission of the felony and not the murder. But sentences are most deterrent when they accord with people's intuitions of justice. See Paul H. Robinson, *Life Without Parole Under Modern Theories of Punishment*, *in* ALL FACULTY SCHOLARSHIP 138, 140 (2012). A LWOP sentence for felony murder, where the defendant did not intend and did not commit homicide, does not comport with common intuitions of justice; it therefore does little to deter the crime. See also U.S. Dep't of Just., Nat'l Inst. of Just., *Five Things About Deterrence* (2016), https://bit.ly/4h5BRm1 (finding that increasing criminal sanctions does little to deter crime because "criminals know little about the sanctions for specific crimes").

Not justified by incapacitation. Life without parole for juveniles assumes that juvenile offenders would forever be a danger to society, even though their characters can change as they mature. *Graham*, 560 U.S. at 72-73. "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible," and denies those defendants the "chance to demonstrate growth

and maturity." *Ibid*. The same is true of the youngest adults. The odds of a defendant re-offending significantly decrease as they age. But rather than release the defendant when he or she has proven that they are no longer likely to offend, mandatory LWOP keeps them locked up well beyond what is necessary. See Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. REV. 113, 114, 118 (2018) ("[L]engthy prison terms are counterproductive for public safety as they result in incarceration of individuals long past the time that they have 'aged out' of the high crime years.").

Not rehabilitative. Life without parole completely denies the offender the opportunity to reenter the community. *Graham*, 560 U.S. at 72. Although the state "does not execute the offender sentenced to life without parole," "the sentence alters the offender's life by a forfeiture that is irrevocable," leaving them "without hope of restoration." *Id.* at 69-70. A sentence of LWOP "'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 (quoting *Naovarath* v. *State*, 779 P.2d 944, 944 (Nev. 1989)); see *"I Just Want to Give Back": The Reintegration of People Sentenced to Life Without Parole*, HUMAN RIGHTS WATCH 4 (2023), https://bit.ly/4bkExLw ("While life without [parole] is a terrible thing for those of us who receive the sentence, it is far worse * * * for society to come to the conclusion that a human being can't be better than they were at their worst moments.").

For these reasons, mandatory LWOP for those twenty years old and younger serves no penological

purpose. It is not retributive because the youngest adults are categorically less culpable than older offenders. *Roper*, 543 U.S. at 571. It is no deterrent because such offenders are unable to fully consider the consequences of their actions. *Ibid.* It is not incapacitating because it erroneously assumes that the young offender would be dangerous as an adult for the rest of their life. *Graham*, 560 U.S. at 72-73. And it is not rehabilitative because the young offender never has the chance to demonstrate that they can safely return to society. *Ibid.*

D. Mandatory LWOP shares key similarities with the death penalty but lacks its procedural safeguards.

One additional consideration also strongly suggests the unconstitutionality of the sentence in this case. As noted, the Court has "liken[ed] life-without-parole sentences imposed on juveniles to the death penalty itself," given the profound and irrevocable nature of the punishment inflicted on someone whose whole life is ahead of them. *Miller*, 567 U.S. at 474. That also is true of the youngest adults, who will spend virtually their entire lives in prison under such a sentence. What the Court said about a LWOP sentence for a juvenile offender is substantially as true of a twenty-year-old: "this lengthiest possible incarceration is an especially harsh punishment * * *, because [the defendant] will almost inevitably serve more years and a greater percentage of his life in prison than an adult offender. * * * The penalty when imposed on a [20-year-old], as compared with an older person, is therefore the same . . . in name only." *Id.* at 475 (citations and internal quotation marks omitted; final ellipsis added by the Court).

Yet, although a LWOP sentence is a sentence to die in prison and thus "akin to the death penalty" (*Miller*, 567 U.S. at 475), those facing the punishment are not accorded the same procedural safeguards as persons sentenced to death. In *Woodson* v. *North Carolina*, the Court held that mandatory capital sentences are unconstitutional because they do not take the individual or their particular mitigating circumstances into account:

> A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind.

428 U.S. 280, 304 (1976), Without consideration of mitigating factors and individual circumstances, *Woodson* deemed the death penalty unconstitutional under the Eighth Amendment. *Ibid*; see *Miller*, 567 U.S. at 475-76 (citing cases finding consideration of mitigating factors constitutionally required in capital cases). The same reasoning applies to mandatory LWOP, at least for the very youngest adults, which also forbids the consideration of mitigating factors and individual circumstances in the "blind infliction" of a penalty that will lead to death in prison. *Woodson*, 428 U.S. at 304; see also *Miller*, 567 U.S. at 474-77 (explaining need for individualized determination in LWOP sentences for juveniles).

And in *Gregg* v. *Georgia*, while affirming Georgia's use of the death penalty, this Court reaffirmed the principle that "[w]hen a defendant's life is at stake,

the Court has been particularly sensitive to insure that every safeguard is observed." 428 U.S. 153, 187 (1976). There, the Court paid special attention to the procedural safeguards that prevented the arbitrary and capricious use of the death penalty. *Id.* at 189. Especially relevant was the requirement that a capital-sentencing authority must "specify the factors it relied upon in reaching its decision" to facilitate "meaningful appellate review." *Id*. at 195.

Life without parole imposed on a youthful offender is substantially analogous to the death penalty. But capital defendants always have the chance to obtain a sentence less than death by presenting individual mitigating factors. In contrast, *mandatory* LWOP requires the sentencer to impose an extreme penalty without any consideration of individualized mitigation information. Thus, the mandatory imposition of LWOP in circumstances where offenders may have widely varying degrees of culpability creates a constitutionally impermissible risk of over-punishment. And this, too, indicates that the punishment here categorically violates the Eighth Amendment. Cf. *Hall* v. *Florida*, 572 U.S. 701, 704 (2014) (striking down a state law on Eighth Amendment grounds because it "create[d] an unacceptable risk" of unconstitutional punishment).

III. THE CONSTITUTIONALITY OF MANDATORY LWOP, IMPOSED ON A YOUTHFUL OFFENDER FOR FELONY MURDER, IS AN ISSUE OF GREAT IMPORTANCE.

The issue presented in this petition is a matter of great importance that warrants this Court's attention, for several reasons.

First, the question here may affect a significant number of cases. Although only a handful of states mandate LWOP for felony murder, they account for the vast majority of felony-murder LWOP sentences.[10] And although no precise data are available on how many *young* adults have been sentenced to mandatory LWOP for felony murder across the country; the question doubtless affects a substantial number of people.

Pennsylvania illustrates the scope of the problem. Of the eight states that impose mandatory LWOP for felony murder, only Pennsylvania provides reliable data. In that state alone, more than 850 people who were 25 or younger at the time of the offense have been sentenced to mandatory LWOP for felony murder. See Nazgol Ghandnoosh et al., The Sentencing Project, *Felony Murder: An On Ramp for Extreme Sentencing* 5 (May 2024) ("[N]early three-quarters of [the 1,166] people serving LWOP for felony murder in 2019 were age 25 or younger at the time of their offense."). And Pennsylvania has a higher median age for felony murder convictions than other states imposing mandatory LWOP sentences for felony murder. See Felony Murder Reporting Project, *State Data* (2024), https://bit.ly/4kecP7h (median age of a felony murder conviction in Pennsylvania is 25; in Florida, 23; and in Michigan, 23). Thus, we can infer that a significant

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[10] Of the more than 50,000 people sentenced to LWOP in the United States, just five States, Florida, Pennsylvania, Michigan, California, and Louisiana, account for over half the total. Ashley Nellis, The Sentencing Project, *No End in Sight: America's Enduring Reliance on Life Imprisonment* 10 (2021), https://bit.ly/4ihlBQ1. Of those five states, four (Florida, Louisiana, Michigan, and Pennsylvania) impose mandatory LWOP for felony murder. Michigan's felony murder statute, however, has a mens rea requirement. Mich. Comp. Laws § 750.316(b) (2024); *People* v. *Aaron*, 299 N.W.2d 304, 326 (Mich. 1980).

number of defendants in mandatory-LWOP states were twenty or younger at the time of the crime.

Although the issue here affects the lives of many people, it bears emphasis that the challenged punishment—mandatory LWOP for felony murder—is not only cruel, but also "unusual" in the constitutional sense. This is not a case where "the prevalence of the sentence in question results from the number of statutes requiring its imposition." *Miller*, 567 U.S. at 496 (Roberts, C.J., dissenting). Again, quite the contrary: the challenged sentencing practice has been rejected by the overwhelming majority of jurisdictions. The significant number of such sentences is wholly attributable to the small handful of states that have retained it as a punishment. And surely, that a small number of states make use of an unconstitutional sentencing practice (and, because that practice is mandatory, use it to affect many sentences) cannot, by reverse osmosis, render that practice constitutional across the Nation. *Cf. id.* at 495 (emphasizing importance of how "many jurisdictions have embraced the sentencing practice at issue" (Roberts, C.J., dissenting)).

Second, significant racial disparities underlie LWOP sentencing of young adults and for felony murder. Of the nearly 12,000 young people sentenced to LWOP from 1995 to 2017, two-thirds were Black (compared to 51% of persons sentenced to LWOP beyond this age group), suggesting that *young* Black men are disproportionately sentenced to LWOP. Ashley Nellis & Niki Monazzam, The Sentencing Project, *Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole* 2 (2023), https://bit.ly/3F6JzyZ. At the same time, there is a notable racial disparity among those convicted of felony murder. Ghandnoosh,

supra, at 5-6. For example, in Pennsylvania, "four of every five imprisoned individuals with a felony murder conviction were people of color in 2020, and 70% were African American." *Id.* at 5. This disproportionality is not by happenstance; one study found that "black defendants face significantly more severe charges than whites even after controlling for criminal behavior, * * * age, education, * * * defense counsel type, district, county economic characteristics, and crime rates." Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and Its Sentencing Consequences* 2, Program in L. & Econ. Working Paper Series, Working Paper No. 12-00 (2012), http://dx.doi.org/10.2139/ssrn.1985377.

Third, felony murder charges are often used to coerce plea bargains because the charge carries severe penalties but has a minimal mens rea requirement. Ghandnoosh, *supra*, at 4 (citing Kat Albrecht, *Data Transparency and the Disparate Impact of the Felony Murder Rule*, Duke Center for Firearms Law: Second Thoughts Blog (Aug. 11, 2020), https://bit.ly/41wz94I). "Because fighting a felony murder charge at trial can feel impossible, people are incentivized to accept plea deals for other crimes carrying still-lengthy sentences out of proportion to their actual offense." *Ibid.* Indeed, the high rate at which prosecutors bring and subsequently drop felony murder charges points to a practice of threatening felony murder charges specifically to coerce pleas. See Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 MISS. L.J. 481, 510 (2023); see also CARISSA BYRNE HESSICK, PUNISHMENT WITHOUT TRIAL: WHY PLEA BARGAINING IS A BAD DEAL 16-35 (2021) (discussing coercive plea-bargaining tactics used by prosecutors). In states imposing mandatory LWOP sentences for fel-

ony murder, it is especially disturbing that a constitutionally dubious penalty may be threatened for its coercive effect.

Finally, the punishment imposed in this case is shockingly disproportionate. Without minimizing Sellers' responsibility for engaging in criminal conduct, he did not commit a homicide: he did not kill, and the State did not attempt to prove—and the jury was not asked to find—that he intended to cause or had any expectation that his actions would result in death. The State's theory of transferred intent nevertheless means he will spend his *entire* adult life in prison, beginning at an age when he was too young even to lawfully drink alcohol or buy tobacco. Yet Colorado's mandatory LWOP sentence for felony murder prevented him from offering any individualized evidence that could have mitigated this extraordinarily harsh sentence. That is the very definition of a cruel and unusual punishment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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