

No. 17-____
IN THE
SUPREME COURT OF THE UNITED STATES

SHYMEL JEFFERSON,
Petitioner

v.

STATE of NORTH CAROLINA,
Respondent.

ON
PETITION FOR A WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JENNY W.L. OSBORNE
Phillips Black Project
1901 S. 9th St., Suite 510
Philadelphia, PA 19148

JOHN R. MILLS
Counsel of Record
Phillips Black Project
836 Harrison Street
San Francisco, CA 94107
j.mills@phillipsblack.org
888-532-0897

December 27, 2017

QUESTION PRESENTED

For a crime committed when he was a homeless fifteen year old, Shymel Jefferson was sentenced to a mandatory term of life in prison with the possibility of parole after twenty-five years pursuant to a statute that categorically precludes consideration of the mitigating aspects of youth and provides for a mandatory punishment. This case presents the following question:

Whether this Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), prohibits the mandatory imposition of the state's most severe penalties on a juvenile without any discretion to consider the mitigating aspects of youth.

TABLE OF CONTENTS

QUESTION PRESENTED	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
RELEVANT CONSTITUTIONAL PROVISIONS	1
STATEMENT OF THE CASE.....	1
A. A Homeless Juvenile, Jefferson Committed Felony Murder Under the Instruction and Influence of His Adult Relative.	3
B. The North Carolina Courts Twice Sentenced Jefferson to Life Without Considering His Youth.	7
REASONS FOR GRANTING THE WRIT.....	9
A. North Carolina’s Criminal Procedure Violates <i>Miller’s</i> Requirement to Individually Consider a Juvenile’s Youth.....	10
B. Jefferson’s Mandatory Sentence of Up to Life in Prison Was Imposed with No Judicial Discretion to Consider Youth.....	12
C. North Carolina Conflicts with the Consensus Against Exposing Children to Mandatory Adult Sentences Without Consideration of Youth.....	14
CONCLUSION.....	16
APPENDICES:	
APPENDIX A-Opinion of the North Carolina Court of Appeals	
APPENDIX B-Memorandum Order of the North Carolina Supreme Court	

TABLE OF AUTHORITIES

CASES

<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	10, 11, 15
<i>Hayden v. Keller</i> , 134 F. Supp. 3d 1000 (E.D. N.C. Sept. 15, 2015)	9
<i>J.D.B. v. North Carolina</i> , 564 U.S. 261 (2011)	13
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	passim
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	10
<i>State v. Jefferson</i> , 798 S.E.2d 121 (N.C. Ct. App. 2017).....	1, 9, 14
<i>State v. Jefferson</i> , 804 S.E.2d 527 (mem.) (N.C. Sept. 28, 2017)	1, 9

STATUTES

28 U.S.C. § 1257	1
Ala. Code § 12-15-204	15
Alaska Stat. § 47.12.030	15
Ariz. Rev. Stat. Ann. § 13-501	15
Del. Code Ann. tit. 11, § 1447A	15
Ky. Rev. Stat. Ann. § 635.020.....	15
La. Child Code Ann. art. 305.....	15
Md. Code Ann. Cts. & Jud. Proc. § 3-8A-03.....	15
Minn. Stat. § 260B.007	15
Minn. Stat. § 260B.101	15
N.C. Gen. Stat. § 14-17	9
N.C. Gen. Stat. § 15A-1340.16.....	9, 10
N.C. Gen. Stat. § 15A-2000.....	9
N.C. Gen. Stat. § 7B-2200.....	7, 9, 13

N.C. Gen. Stat. § 15A-1340.19.....	8, 9, 13
N.D. Cent. Code § 27-20-34	15
Ohio Rev. Code Ann. § 2152.10	15
Okla. Stat. tit. 10A, § 2-5-205(B).....	15
Or. Rev. Stat. § 137.707	15
R.I. Gen. Laws § 14-1-3.....	15
Utah Code Ann. § 78A-6-701	15
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. VIII.....	1, 9
OTHER AUTHORITIES	
Jennifer S. Breen & John R. Mills, <i>Mandating Discretion: Juvenile Sentencing Schemes After Miller v. Alabama</i> , 52 Am. Crim. L. Rev. 293 (2015)	15

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Shymel Jefferson, respectfully petitions for a writ of certiorari to review the judgment of the North Carolina Court of Appeals.

OPINIONS BELOW

The published opinion of the North Carolina Court of Appeals, *State v. Jefferson*, 798 S.E.2d 121 (N.C. Ct. App. 2017), is attached as Appendix A. The unpublished Order of the North Carolina Supreme Court denying discretionary review, *State v. Jefferson*, 804 S.E.2d 527 (mem.) (N.C. Sept. 28, 2017), is attached as Appendix B.

JURISDICTION

The judgment of the North Carolina Court of Appeals was issued on March 7, 2017. *State v. Jefferson*, 798 S.E.2d 121 (N.C. Ct. App. 2017). The petition for discretionary review of the North Carolina Court of Appeals decision was denied by order of the North Carolina Supreme Court on September 28, 2017. *State v. Jefferson*, 804 S.E.2d 527 (mem.) (N.C. Sept. 28 2017). Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a)(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment of the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

STATEMENT OF THE CASE

Shymel Jefferson was convicted of felony murder for his involvement in a shooting when he was fifteen years old. His youth was irrelevant to the mandatory

sentence he received of life in prison with the possibility of parole after twenty-five years. At no point throughout any stage of the proceedings in his case—from his automatic transfer to adult court to his sentencing—has there been discretion to fashion a sentence based on the fact that Jefferson was a child when he committed the crime. Jefferson’s original mandatory sentence of life without parole was overturned after this Court’s decision in *Miller*. At Jefferson’s resentencing proceeding, the judge was presented with a wealth of mitigating information about Jefferson. The judge learned that Jefferson’s life was chaotic, impoverished, and unstable from the start; that his mentally ill mother had abandoned him leaving him homeless in the months leading up to the incident and vulnerable to his older cousin’s negative influence; that at his young age he had already suffered severe traumas, violence, and loss. The judge also learned that Jefferson had shown great promise in a structured environment both before his arrest and in prison, with teachers remarking on his focus, motivation, and assistance to others in need.

The judge, however, had no discretion to consider any of this age-related mitigating information in determining how to sentence Jefferson because a life sentence was mandated by the state legislature. Jefferson’s mandatory sentence exposes him to a lifetime in prison with no individualized consideration of his youth as required by *Miller* because North Carolina’s parole statute fails to provide a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Jefferson's case presents important constitutional questions about whether this Court's decision in *Miller* permits a state's harshest penalties to be mandatorily imposed upon a fifteen-year-old juvenile offender with no discretion to consider the mitigating aspects of youth. The failure to provide discretion in juvenile sentencing *at all* is growing increasingly rare, with North Carolina in the minority of states that, while being forced to abolish mandatory life without parole, do not otherwise consider a juvenile's age and its attendant circumstances either in the decision to transfer or as a factor in sentencing. But states are inconsistent in their application of *Miller*, with most recognizing that *Miller* applies to the harshest penalties that do not provide a meaningful opportunity for release and others refusing to apply *Miller*'s mandate to sentences other than those labeled mandatory life without parole. Supreme Court intervention is needed to clarify its decision in *Miller* and correct the North Carolina Court of Appeals' error in upholding Jefferson's mandatory sentence.

A. A Homeless Juvenile, Jefferson Committed Felony Murder Under the Instruction and Influence of His Adult Relative.

At the time of the shooting, in November 2009, Jefferson did not have a stable, permanent place to live. His mother, who had long suffered with mental illness and drug abuse, had recently abandoned him, after losing the apartment they shared and leaving town to "get herself together." His father was in prison for stabbing his father's girlfriend.

Jefferson's life was chaotic from the start. He was "born into an impoverished, highly unstable family." R. 41. His father had the primary

responsibility for raising him and his older brother. They lived with their “elderly relatives in a small cinderblock house” in Gretna, Virginia. Jefferson’s mother had been absent since shortly after his birth, when she was hospitalized after attempting suicide. Throughout his childhood, incarceration and drug abuse prevented her from being a part of his life. R. 42.

In Junior High School, Jefferson participated in football and basketball and developed a strong relationship with his coach. R. 41. However, it was in junior high school that his family began to deteriorate. Jefferson’s father had his own set of problems. He attempted suicide when Jefferson was ten years old and again when he was twelve. His father was also a violent man, “stabbing Mr. Jefferson’s mother on at least three different occasions,” two of which occurred in Mr. Jefferson’s presence. R. 42.

When Jefferson was thirteen, his father went to prison for stabbing his girlfriend. What little stability he and his brother had at that point was lost, as they began “passed from relative to relative.” R. 42. At some point, Jefferson’s mother learned of their difficulties. Interested in obtaining the food stamp benefits they received, she encouraged them to join her in Martinsville, Virginia. In Martinsville, Jefferson and his brother lacked “meaningful supervision” and would skip school. They were also exposed first hand to their mother’s problems with cocaine and other drugs. R. 42.

Jefferson and his brother eventually got in trouble for truancy and they were placed in a local group home. Despite having a state order to provide them with

care, the home allowed Jefferson and his brother to return to their mother's home, where the same problems plagued them.

After a year in Martinsville, Jefferson himself attempted suicide and was hospitalized. When the emergency responders told his mother that he had been hospitalized, she responded that she did not "give a f***" and never went to see him in the hospital. R. 42.

At age fourteen, he was again hospitalized when he suffered a "moderate to severe" head injury after being repeatedly hit in the head with the butt of a pistol. Jefferson's uncle confronted the person who pistol-whipped Mr. Jefferson, and he was shot in the stomach as Jefferson looked on. His uncle had an extended period of hospitalization from the injuries. After that incident, Jefferson began carrying a gun after being told to do so for his own protection.

Jefferson first entered state supervision again shortly after his fifteenth birthday. It was in this stable and structured environment, away from his mother and the violence and turbulence of his home life, that Jefferson thrived. He earned good grades and was described as "cooperative, attentive, at ease, slow and careful in responding, persistent with difficult tasks." One of his teachers observed that he "always goes above and beyond," that he was a "good student and needs no redirection," "follows all rules," and "helps others when in need." R. 42-43.

He was so successful that the facility released him early. In order to maintain his success, the facility recommended "substance abuse counseling, family and

individual therapy, and a mentor.” Jefferson returned to Martinsville to stay with his mother and these recommendations were never followed. R. 43.

Jefferson was with his mother only a short time before she lost her apartment and left town without him. She called Jefferson to let him know she was “going to Roanoke for rehab” and to tell him where “she’d left the food stamp card.” Jefferson’s father was still incarcerated for stabbing his girlfriend. R. 43.

Alone, Jefferson would, in the few months before the offense, spend the “nights wherever he could find a place to sleep,” including the apartment of his older cousin, Shavon Reid, in Martinsville, Virginia. Mr. Reid would take Jefferson to Icehouse, a bar on the North Carolina side of the North Carolina/Virginia state border, where the bartenders did not require Jefferson to show identification to enter or to drink. Reid gave Jefferson a gun and ammunition and told him to carry it because they needed protection at all times, advice reminiscent of his experience watching his uncle being shot in front of him. Tr. 1135.

On the night of the shooting, Mr. Reid took Jefferson to the Icehouse again. Jefferson brought his gun as instructed, but left it in then car when they arrived at the adults-only establishment. Tr. 1134. A fight broke out inside the bar. Many people were involved, including Jefferson. The bouncers cleared the bar. Jefferson, drunk by this point, went to Mr. Reid’s car, where he grabbed his jacket and a gun. Tr. 1173. Jefferson heard shots being fired, and started shooting in the direction of the first gunshot.

None of Jefferson's shots were fatal, but they caused injuries to Terris Dandridge, Jason Gallant, and Timothy Seay. Mr. Reid also fired his weapon. It was Mr. Reid's shot that struck Mr. Timothy Seay in the head, instantly killing him. Tr. 410, 855.

Mr. Reid drove Jefferson back to Martinsville, and Jefferson called his girlfriend, who testified that Jefferson was not "in the right state of mind." Tr. 588. The next day, Mr. Reid called his brother, Demetrius Reid. Mr. Demetrius Reid, at his brother's request, drove from the naval base where he was stationed in Norfolk, Virginia to pick up Jefferson. Mr. Demetrius Reid, not knowing about the homicide, agreed to have Jefferson move in with his family, believing he would be a better role model for Jefferson than Mr. Reid was. On the drive, Jefferson broke down crying and told Mr. Reid about the shooting. Mr. Reid told Jefferson that he must turn himself in. Mr. Reid drove Jefferson to the police station, where he ultimately admitted to being involved in the shooting. Tr. 747-48

B. The North Carolina Courts Twice Sentenced Jefferson to Life Without Considering His Youth.

In juvenile court, Jefferson was charged by petition with first-degree murder. After a finding of probable cause that the offense occurred, the case was mandatorily transferred to adult court as required by statute. N.C. Gen. Stat. § 7B-2200. After a jury trial, Jefferson was convicted of first-degree murder on a theory of felony murder alone, with the jury rejecting the state's theory of premeditated and deliberated murder. On June 8, 2012, Mr. Jefferson received a mandatory sentence of life without parole. While his case was on appeal, this Court issued its decision in

Miller, and the North Carolina legislature responded by enacting a new sentencing statute. S.B. 635, 2011 Gen. Assemb. Reg. Sess. (N.C. 2012) (enacting N.C. Gen. Stat. §§ 15A-1340.19A-1340.19D). The new statute provides that a juvenile convicted of first-degree murder on the basis of felony murder must be sentenced to life in prison with a mandatory minimum of twenty-five years to serve before becoming eligible for parole. N.C. Gen. Stat. §§ 15A-1340.19A & -1340.19B. The North Carolina Court of Appeals reversed Mr. Jefferson’s sentence and remanded for resentencing pursuant to the newly enacted statute.

At Jefferson’s resentencing proceeding, the sentencing judge was presented with the information presented above, relating to Mr. Jefferson’s age and the circumstances attendant to it—(1) the lack of control over his chaotic and unstable environment, (2) impulsivity, (3) history of exposure to severe traumas, violence and loss, (4) lack of criminal history, (5) positive adjustment to prison, and (6) maturity and commitment to rehabilitation. This mitigating information could have provided a basis for a mitigated sentence, had North Carolina’s statutory framework made such a sentence unavailable. In response to Mr. Jefferson’s objection to the lack of discretion, the court noted that the “Court of Appeals didn’t mandate [him] to be resentenced The legislature did.” Tr. 7 (Feb. 29, 2016). For a juvenile offender like Jefferson who did not actually kill or attempt to kill, the state mandated life in prison with the possibility of parole after twenty-five years.

Jefferson filed a timely appeal. The North Carolina Court of Appeals denied Jefferson’s appeal on the merits on March 7, 2017. *State v. Jefferson*, 798 S.E.2d 121

(N.C. Ct. App. 2017). It explained that the North Carolina Parole Board was empowered to consider “any” information presented and, therefore, Jefferson’s youth would be considered.¹ *Id.* at 125. The North Carolina Supreme Court denied Mr. Jefferson’s timely petition for discretionary review on September 28, 2017. *State v. Jefferson*, 804 S.E.2d 527 (mem.) (N.C. Sept. 28, 2017). This petition follows.

REASONS FOR GRANTING THE WRIT

This Court should grant review to clarify that the Eighth Amendment requires discretion to consider at sentencing the mitigating aspects of youth before imposing the state’s harshest penalties on juvenile offenders.

In North Carolina, only sentencing judges addressing juveniles convicted of first-degree murder lack any discretion to consider the youth of the offender. If the defendant is an adult, the jury can consider youth as mitigation against a death sentence. N.C. Gen. Stat. § 14-17; N.C. Gen. Stat. § 15A-2000. If the defendant is a juvenile convicted of premeditated and deliberative murder, state law requires the judge to consider youth in fashioning the sentence. N.C. Gen. Stat. § 15A-1340.19B. If a juvenile is facing non-homicide charges, youth is considered at a transfer proceeding *and* at sentencing. N.C. Gen. Stat. § 15A-1340.16; N.C. Gen. Stat. § 7B-2200 (mandating transfer only for Class A felonies, which are effectively limited to first-degree murder). If an adult is facing non-homicide charges, youth must be considered. N.C. Gen. Stat. § 15A-1340.16. Effectively, only juveniles such as

¹ North Carolina’s appeal to the Fourth Circuit is currently pending in a case where the District Court found, among other things, that the Parole Board fails to give either notice or an opportunity to be heard to juveniles sentenced to life with possibility of parole. *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1002-03 (E.D. N.C. Sept. 15, 2015).

Jefferson, convicted on a theory of felony murder, are sentenced without any prior consideration of youth.

This state of affairs conflicts with the practices of most states and is in conflict with this Court's observation that the a criminal trial that fails to account for youth would be flawed.

A. North Carolina's Criminal Procedure Violates *Miller's* Requirement to Individually Consider a Juvenile's Youth.

"Children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at 471 (citing *Roper v. Simmons*, 543 U.S. 551 (2005) and *Graham v. Florida*, 560 U.S. 48 (2010)). *Miller* established that individualized consideration of the mitigating aspects of youth must be part of the juvenile sentencing process. Before imposing the harshest penalties on juvenile offenders, courts must undertake individualized sentencing that accounts for the juvenile's age at the time of the offense. This rule hinges not on the crime or the punishment, but on the unique characteristics of youth.

Graham and *Miller* imported the heightened reliability and individualized consideration requirements salient in the death penalty context to juvenile justice. With that analysis, *Graham* also established that in sentencing juvenile offenders, in addition to imposing the death penalty, courts must assess whether a sentencing practice furthers the penological rationales of retribution, deterrence, rehabilitation, and incapacitation. 560 U.S. at 62-63, 67.

In *Graham*, the Court concluded that such a sentence did not sufficiently serve any penological rationale. *Id.* at 67. Although the narrow holding of *Graham*

reached only a substantive sentence—life without parole for non-homicide offenses committed by juveniles—this Court observed that “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.* at 76.

Miller marked a further shift in this Court’s Eighth Amendment jurisprudence. Among other things, *Miller* imposed a procedural requirement to consider the influence of youth before imposing the “harshest penalties” on juveniles. 567 U.S. at 477. This Court held for the first time that a juvenile’s age must be considered in fashioning an appropriate sentence, noting that none of what *Graham* “said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.” *Id.* at 473. Individualized consideration of a juvenile’s age was required because if a particular sentencing scheme “mak[es] youth (and all that accompanies it) irrelevant to that harsh sentence, such a scheme poses too great a risk of disproportionate punishment.” *Id.* at 479.

The Court noted, that if “death is different,” then “children are different too.” *Miller*, 567 U.S. at 481. Thus, the Court explicitly imported the heightened need for reliability in sentencing from the death penalty context to the context of juvenile justice. “[B]ecause juveniles are different from adults, they must be sentenced differently. . . . There is no clear reason that principle would not bar all mandatory sentences for juveniles.” *Id.* at 501 (Roberts, C.J. dissenting). Indeed, this Court repeatedly emphasized the importance of providing an individualized consideration of a juvenile’s status at sentencing. *See, e.g., id.* at 473.

This Court’s repeated references to a State’s “harshest penalties” and to the differences in juveniles without respect to the crime, make it clear that some discretion at some point in the process is required before imposing the harshest penalties on juveniles. The principle applies with particular force where the sentence, like the one imposed on Shymel Jefferson, exposes a juvenile defendant to “a lifetime in prison.”

B. Jefferson’s Mandatory Sentence of Up to Life in Prison Was Imposed with No Judicial Discretion to Consider Youth.

At no point did the North Carolina courts have discretion to fashion a sentence based on Shymel Jefferson’s youth. Mr. Jefferson’s mandatory transfer out of juvenile court and his mandatory sentence of life in prison with the possibility of parole after twenty-five years violates this Court’s decision in *Miller* and the Eighth Amendment prohibition against cruel and unusual punishment. Mr. Jefferson’s sentence was imposed in violation of *Miller*’s directive to consider the juvenile’s “chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences”; to take “into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional”; to consider “the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him”; and to consider, for example, that “he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth.” *Miller*, 567 U.S. at 477

(citing *Graham*, 560 U.S. at 78 and *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011)).

Although Jefferson's age at the time of the offense meant he was initially charged via petition in juvenile court (R. 2), the only question for that court before automatic transfer was whether probable cause existed to believe that first-degree murder occurred, a question having nothing to do with Mr. Jefferson's age or the appropriate sentence. N.C. Gen. Stat. § 7B-2200. The juvenile court was explicit about its reason for transferring Mr. Jefferson to Superior Court: "This is a class A felony and transfer is required by statute." R. 2. When the court was deciding whether Mr. Jefferson would be transferred to Superior Court, the court had no authority to consider the mitigating impact of youth.

Upon conviction of felony murder, Mr. Jefferson initially received a mandatory sentence of life without parole. While his case was on appeal, this Court issued its decision in *Miller* and the North Carolina legislature responded by enacting a new sentencing statute. S.B. 635, 2011 Gen. Assemb. Reg. Sess. (N.C. 2012) (enacting N.C. Gen. Stat. §§ 15A-1340.19A & -1340.19B). For a juvenile offender like Mr. Jefferson who did not actually kill or attempt to kill, the North Carolina legislature enacted a mandatory life sentence and established an arbitrary mandatory minimum term of years before a juvenile felony murder offender would be eligible for parole. N.C. Gen. Stat. §§ 15A-1340.19A & -1340.19B.

The sentencing court rejected Mr. Jefferson's objection to his lack of discretion, noting that the sentence was mandated by statute. The North Carolina

Court of Appeals upheld Mr. Jefferson’s sentence on appeal. While acknowledging that *Miller* and *Graham* “make clear that the trial court must consider the juvenile defendant’s relative inability to exercise self-control, as well as the limited applicability of legitimate penological justifications such as retribution to defendants with reduced moral agency,” the court of appeals nonetheless refused to apply that directive to Mr. Jefferson’s mandatory life sentence. *Jefferson*, 798 S.E.2d at 124.

In doing so, the court of appeals limited *Miller* to the specific facts of that case without considering how this Court’s Eighth Amendment jurisprudence applies to Mr. Jefferson. “Because the Supreme Court has not indicated the individualized sentencing required in *Miller* extends to sentences beyond life without parole, we must presume the statute is constitutional, and defer to the legislature.” *Jefferson*, 798 S.E.2d at 123. Supreme Court intervention is needed to clarify that the Eighth Amendment requires the mitigating aspects of youth to be considered at some point in the criminal process before imposing the most severe penalties on juvenile offenders.

C. North Carolina Conflicts with the Consensus Against Exposing Children to Mandatory Adult Sentences Without Consideration of Youth.

Virtually every state incorporates consideration of a juvenile offender’s age in all cases at some point in the criminal justice process, either by reserving the availability of juvenile court for all offenses—and therefore discretion to consider the mitigating aspects of youth—or by permitting the court to take account of how children are different in fashioning a sentence. *See* Jennifer S. Breen & John R.

Mills, *Mandating Discretion: Juvenile Sentencing Schemes After Miller v. Alabama*, 52 Am. Crim. L. Rev. 293, 310-11 (2015).

North Carolina belongs to a small minority of states that limits *Miller* to abolition of mandatory life without parole and otherwise completely eliminates consideration of a juvenile's age in sentencing when the juvenile is charged with a homicide offense. Only fifteen states and the District of Columbia employ schemes that automatically transfer juveniles into adult court if there is probable cause to believe a homicide has been committed.²

But North Carolina goes further. It singles out felony murder by a juvenile for unique treatment, excluding for the sentencer for that offense alone any discretion. A juvenile in North Carolina facing felony murder charges is exposed to a mandatory sentence with no consideration of youth at any point, thereby violating this Court's observation in *Graham* that "criminal procedure laws that fail to take defendants' youthfulness into account *at all* would be flawed." 560 U.S. at 76 (emphasis added).

North Carolina has excluded juveniles charged with felony murder with any individualized consideration of their youth, standing in sharp conflict with the

² In addition to North Carolina, states with mandatory transfer statutes for juvenile homicide offenders include Alabama (Ala. Code § 12-15-204); Alaska (Alaska Stat. § 47.12.030); Arizona (Ariz. Rev. Stat. Ann. § 13-501(A)); Delaware (Del. Code Ann. tit. 11, § 1447A(f)); Kentucky (Ky. Rev. Stat. Ann. § 635.020(4)); Louisiana (La. Child Code Ann. art. 305); Maryland (Md. Code Ann. Cts. & Jud. Proc. § 3-8A-03; Crim. Proc. § 4-202(c)); Minnesota (Minn. Stat. §§ 260B.007(6)(b), 260B.101(2)); North Dakota (N.D. Cent. Code § 27-20-34(1)(b)); Ohio (Ohio Rev. Code Ann. § 2152.10(A)); Oklahoma (Okla. Stat. tit. 10A, § 2-5-205(B)); Oregon (Or. Rev. Stat. § 137.707(1)(a)); Rhode Island (R.I. Gen. Laws § 14-1-3(1)); and Utah (Utah Code Ann. § 78A-6-701).

overwhelming majority of states providing this consideration and this Court's mandates.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/John R. Mills

JOHN R. MILLS
Counsel of Record
Phillips Black Project
836 Harrison St.
San Francisco, CA 94107
j.mills@phillipsblack.org
s.wallace@phillipsblack.org
888-532-0897

JENNY W.L. OSBORNE
Phillips Black Project
1901 S. 9th Street, Suite 510
Philadelphia, PA 19148

December 27, 2017