

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-217

RANDALL MATHENA, WARDEN, PETITIONER

v.

LEE BOYD MALVO

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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

This case presents the question whether Miller v. Alabama, 567 U.S. 460 (2012), which "h[e]ld that mandatory life without

parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment[],” id. at 465, retroactively invalidated life-without-parole sentences irrespective of whether they were mandatory. The court of appeals affirmed the vacatur of respondent’s four Virginia life-without-parole sentences on the premise that this Court’s decision in Montgomery v. Louisiana, 136 S. Ct. 718 (2016) -- which “h[eld] that Miller announced a substantive rule of constitutional law” that is retroactive to sentences that were already final when Miller was decided, id. at 736 -- “made clear that Miller’s rule has applicability beyond those situations in which a juvenile homicide offender received a mandatory life-without-parole sentence,” Pet. App. 19a. The United States has filed a brief as amicus curiae supporting petitioner, contending that Miller did not retroactively invalidate life-without-parole sentences imposed as a matter of discretion.

The United States has a substantial interest in whether federal prisoners sentenced to discretionary sentences of life imprisonment without parole before Miller, for homicide offenses those prisoners committed as juveniles, may collaterally attack their sentences. The United States also has a substantial interest in the circumstances in which this Court’s rulings are given retroactive effect in criminal cases. The United States previously presented oral argument as amicus curiae in Montgomery. We therefore believe that participation by the United States in oral

argument in this case would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JULY 2019