No. 19-

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL BRANDON SAMRA,
Petitioner
- vs -
STATE OF ALABAMA,
Respondent

On Petition for Writ of Certiorari to the
Alabama Supreme Court

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE:
MR. SAMRA IS SCHEDULED TO BE EXECUTED ON
MAY 16, 2019

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QUESTION PRESENTED

In *Roper v. Simmons*, 543 U.S. 551, 578 (2005), this Court held that the Eighth Amendment forbids the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. Since *Roper* was decided, neuroscientific research has proven that a juvenile's brain development – the primary basis upon which *Roper* was decided – continues well beyond the age of 18. At the same time, society has significantly evolved in its treatment of young persons and its capital sentencing laws more generally.

Accordingly, the question presented in this case is whether, under the Eighth Amendment, the "the evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958), permit the execution of youthful offenders who, like Michael Brandon Samra, were 19 years old at the time of their crime.

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Michael Brandon Samra appeals from the Alabama Supreme Court's order of April 11, 2019, setting an execution date of May 16, 2019, which is attached as Appendix A. The State's motion to set an execution date was filed in the Alabama Supreme Court on March 20, 2019, and is attached as Appendix B. Samra's objection to the State's motion to set an execution date was filed on March 26, 2019, and is attached as Appendix C. The State's response to Samra's objection was filed on April 1, 2019, and is attached as Appendix D. Samra's reply to the State's motion was filed on April 2, 2019, and is attached as Appendix E.

Samra also filed a second successive state Rule 32 post-conviction petition on March 26, 2019, which is attached as Appendix F. The April 10, 2019, order of the Shelby County Circuit Court dismissing the petition is attached as Appendix G.

Samra refiled the second successive state Rule 32 post-conviction petition on April 29, 2019, and the petition is attached as Appendix H. On the same day, Samra filed motions for a stay of execution in both the Alabama Supreme Court (attached as Appendix I) and Shelby County Circuit Court (attached as Appendix J) because the Alabama Supreme Court has set an execution date against the issues raised in the petition.

The prior procedural history is described in the Statement of the Case, as it is not relevant to the issues raised in this certiorari petition.

STATEMENT OF JURISDICTION

The Alabama Supreme Court on April 11, 2019, entered its order setting an

execution date of May 16, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment to the United States Constitution provides:

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

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. The Crime and Trial

On March 23, 1997, the bodies of Randy Gerald Duke, Dedra Mims Hunt, and Ms. Hunt's two daughters, Chelisa Nicole Hunt and Chelsea Marie Hunt were found in Mr. Duke's house in Pelham, Alabama. According to the evidence established at trial and by Samra's own confession, Randy Duke's 16-year-old son, Mark Anthony Duke ("Duke"), devised the murder following an argument where Randy Duke refused to allow Duke to use a pickup truck. After planning the murder with 19-year-old Samra and two other friends, David Collums and Michael Ellison, the group obtained two guns and returned to Duke's house. Samra and Duke entered the house while Collums and Ellison waited nearby. *Samra v. Warden, Donaldson Corr. Facility*, 626 F. App'x 227, 229 (11th Cir. 2015); *Samra v. State*, 771 So. 2d 1108, 1111-12 (Ala. Crim. App. 1999).

Once inside, Duke went to the living room and shot his father, killing him. Meanwhile, Samra shot Dedra non-fatally in the cheek, and she fled upstairs, locking herself in the master bedroom's bathroom with her six-year-old daughter Chelisa. Duke broke down the bathroom door and shot Dedra to death. But because they had run out of bullets, Duke went downstairs to retrieve kitchen knives; he then slit Chelisa's throat with a kitchen knife. Dedra's seven-year-old daughter Chelsea was hiding under a bed in another bedroom when Duke found her. According to Samra's statement, Chelsea pled with Duke to stop and, as also evidenced by the defensive wounds on her body, vigorously fought for her life. Unable to kill her by himself, Duke held Chelsea down while Samra slit her throat. *Samra v. Warden,* 626 F. App'x at 229; *Samra v. State*, 771 So. 2d at 1111-12.

After committing the murders, Samra and Duke ransacked the house to make it appear as though a burglary had gone wrong. Duke later returned to his house on March 23, 1997, where he called 911 to report the murders. After a couple of days of investigating, the police determined that Duke, Samra, Collums, and Ellison were the perpetrators. Samra confessed his role in the crime during questioning and assisted police in recovering weapons. *Samra v. Warden,* 626 F. App'x at 229; *Samra v. State*, 771 So. 2d at 1111-12.

Samra was convicted of capital murder on March 16, 1998, based solely on the fact that two or more people were killed by one act or pursuant to one scheme or course of conduct. The jury recommended that Samra be sentenced to death, and

the trial court agreed, finding Samra eligible for the death penalty based solely on the statutory aggravating factor that the capital offense was especially heinous, atrocious, or cruel. The trial court noted a number of mitigating factors, including Samra's cooperation with authorities and his expressions of remorse. *Samra v. State*, 771 So. 2d at 1121.

Following Samra's trial, Duke was also convicted and sentenced to death. At Duke's trial, Samra testified about the murders. *Duke v. State*, 889 So. 2d 1, 12 (Ala. Crim. App. 2002). Duke's sentence of death was vacated in light of *Roper v. Simmons*, 543 U.S. 551 (2005), which banned the execution of offenders who were under 18 years old at the time of their crimes.

B. Previous Appeals and Collateral Proceedings

The Alabama Court of Criminal Appeals and the Alabama Supreme Court affirmed Samra's conviction and sentence. *Samra v. State*, 771 So. 2d 1108 (Ala. Crim. App. 1999) (attached as Appendix K); *Ex Parte Samra*, 771 So. 2d 1122 (Ala. 2000) (attached as Appendix L). This Court denied Samra's petition for writ of certiorari on October 10, 2000. *Samra v. Alabama*, 531 U.S. 933 (2000).

On October 1, 2001, Samra filed a petition for post-conviction relief pursuant to Rule 32 of the Alabama Code of Criminal Procedure. The third amended petition was filed on August 16, 2002.

An evidentiary hearing was held on one portion of the claim of ineffective assistance of trial counsel, the failure to adequately investigate and introduce evidence of organic brain damage and brain dysfunction. Following the evidentiary

hearing in November 2003, the Circuit Court denied the Rule 32 petition on January 12, 2005.

On February 9, 2005, Samra filed an appeal in the Alabama Court of Criminal Appeals, which was denied on August 24, 2007. *Samra v. State*, 14 So. 3d 196 (Ala. Crim. App. 2007). Rehearing was denied on September 28, 2007. The Alabama Supreme Court denied certiorari on September 19, 2008. *Ex Parte Samra*, 34 So. 3d 737 (Ala. 2008).

On September 27, 2007, Samra filed a petition for a successor Rule 32 petition for post-conviction relief. The petition was summarily dismissed by the Shelby County Circuit Court on September 19, 2011 (attached as Appendix M). The Court of Criminal Appeals affirmed on August 10, 2012. *Samra v. State*, 152 So. 3d 456 (Ala. Crim. App. 2012) (table) (attached as Appendix N). The Alabama Supreme Court denied certiorari on September 20, 2013. *Ex Parte Samra*, 170 So. 3d 720 (Ala. 2013) (attached as Appendix O).

On October 26, 2007, Samra filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of Alabama. The petition was held in abeyance pending the conclusion of the state court proceedings. Samra filed an amended habeas petition on February 21, 2014. The district court denied the petition on September 5, 2014 (attached as Appendix P). The Eleventh Circuit Court of Appeals granted a certificate of appealability on two issues and then affirmed the judgment of the district court. *Samra v. Warden, Donaldson Correctional Facility*, 626 F. App'x 227 (11th Cir.

Sept. 8, 2015) (attached as Appendix Q). On April 18, 2016, this Court denied certiorari review. *Samra v. Price*, 136 S. Ct. 1668 (2016) (mem.).

C. Instant Proceedings

On March 20, 2019, the State moved in the Alabama Supreme Court to set an execution date. On March 26, 2019, Samra filed an objection to the State's motion, arguing that it would violate the Eighth Amendment to execute Samra because society's evolving standards of decency prohibit the imposition of the death penalty of offenders up to the age of 21. On the same day, Samra filed a second successor Rule 32 petition for post-conviction relief, also raising the Eighth Amendment claim.

On April 1, 2019, the State responded to Samra's objection in the Alabama Supreme Court, arguing, in part, that Samra was not entitled to relief on his Eighth Amendment claim. The State relied on *Roper v. Simmons*, 543 U.S. 551 (2005), in which the United States Supreme Court drew the line of death eligibility at 18 years old. Samra filed a reply to the State's response on April 2, 2019.

On April 10, 2019, the Shelby County Circuit court summarily dismissed Samra's Rule 32 petition. On April 11, 2019, the Alabama Supreme Court ordered that Samra be executed on May 16, 2019. Samra filed a motion for a stay of execution in the Alabama Supreme Court on April 29, 2019.

Samra's Eighth Amendment claim is exhausted and ripe for this Court's

review.[1] The pleadings filed in the Alabama Supreme Court, within Case No. 1982032, demonstrate that the parties litigated the issue of whether Samra's death sentence violates the Eighth Amendment, and the Alabama Supreme Court was given the opportunity to rule on the claim. This claim is therefore exhausted. Though the Alabama Supreme Court did not expressly discuss the claim, this Court may presume the state court order setting an execution date serves as a rejection of the merits of Samra's claim. This Court has explained that when a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary. *Harrington v. Richter*, 562 U.S. 86, 99 (2011). Also, because the Alabama Supreme Court did not articulate any state procedural grounds upon which Samra's claim was rejected, federal courts should presume reliance on federal grounds and exercise jurisdiction. *Harris v. Reed*, 489 U.S. 255, 265-66 (1989).

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD CONSIDER THE IMPORTANT QUESTION OF WHETHER THE EIGHTH AMENDMENT PROHIBITS THE DEATH PENALTY AGAINST OFFENDERS WHO WERE UNDER 21 AT THE TIME OF THEIR CRIME.

In *Roper v. Simmons*, 543 U.S. 551, 578 (2005), this Court held that the Eighth Amendment categorically forbids the imposition of the death penalty on

[1] If, however, this Court finds that this claim is not exhausted, this Court should exercise its authority to grant an original writ of habeas corpus. Samra has filed a corresponding petition for an original writ of habeas corpus to this Court arguing the reasons that an original writ is appropriate in this case.

offenders who were under the age of 18 when their crimes were committed. Since that time, research has shown that the science and logic underlying *Roper* extend to those who were under the age of 21. Accordingly, the "the evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958), should no longer permit the execution of offenders who, like Samra, were under 21 years old at the time of their crime.

In its analysis, this Court in *Roper* first looked to whether there was a national consensus on this form of punishment. This Court found there was a consensus against the execution of offenders under 18, upon considering "the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice." *Roper*, 553 U.S. at 567.

This Court then exercised its own independent judgment on whether the death penalty was disproportionate for juveniles. It considered the unique characteristics of juvenile offenders that diminish their culpability, regardless of the nature of the offense: specifically, (1) they have a "lack of maturity and an underdeveloped sense of responsibility" that "often result in impetuous and ill-considered actions and decisions"; (2) they are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and (3) their characters are "not as well formed" and their personalities "more transitory, less fixed" than those of adults. *Id.* at 569-70. Given these differences, the penological objectives of the death penalty apply to juveniles with lesser force than to adults. *Id.*

at 570-71.

Since *Roper* was decided, new scientific research has called into question the line drawn by this Court—18 years of age—as too low. This research has shown people under 21 share the same traits that this Court identified as diminishing culpability and undermining the penological justifications for the death penalty. Accordingly, at least one court and legal scholars have concluded that the ban on executing offenders under 18 should be extended to offenders to the age of 21.

In Kentucky, a trial court found that the execution of offenders who were under the age of 21 violates the Eighth Amendment. *Commonwealth v. Efrain Diaz*, 15 CR 584-001 (Fayette Cir. Ct. Order Sept. 6, 2017) (transfer granted, 2017-SC-000536) (order attached as Appendix R). The court heard expert testimony on the issue and evaluated the scientific studies. The studies showed that during a person's late teens and early 20's, the brain continues to undergo rapid changes in self-regulation and higher-order cognition. Compared to adults, persons in their late teens and early 20's are: (1) more likely to poorly assess risk, (2) more likely to engage in sensation-seeking, (3) less able to control their impulses and consider the consequences of their actions, (4) have underdeveloped basic cognitive abilities as compared to emotional abilities, (5) are more affected by peer pressure. The research also demonstrated that like juveniles, young adults had heightened plasticity of the brain. That is, young adults, even those who have committed violent crimes, have a strong potential for behavioral change. *Diaz*, Order at 6-10 (citing studies). The court therefore concluded that the research shows that 18- to

21-year-olds are categorically less culpable for the same reasons identified in *Roper*. *Id.* at 10.

Legal scholars synthesizing the neuroscientific research recently explained that people under 21 share two defining class-wide characteristics: "On the one hand, their brains are physiologically like those of younger children, unable to fully regulate emotion or evaluate risk. On the other hand, they are experiencing rapid changes in social control, with the end of high school and the beginning of college or employment." Blume, et al., *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles From 18 to 21*, TEXAS L. REV. at 14 (forthcoming 2019) (electronic copy available at: https://ssrn.com/abstract=3341438).

These are precisely the qualities of youthfulness that led the *Roper* Court to find the penological justifications for the death penalty to be categorically inapplicable to persons under 18. The post-*Roper* research confirms that the reduced culpability of young offenders extends to the age of 21.

Turning to the national consensus, since *Roper*, the number of offenders under 21 who have been sentenced to death has declined each year. Blume et al., *Death by Numbers*, at 20. Only 13 states have handed down new death sentences to offenders under 21 since *Roper*. *Id.* at 23. Those death sentences were concentrated in five states and in a few counties. *Id.* at 21-22. The state with the largest number of youthful offenders sentenced to death—California, with 34—recently imposed a statewide moratorium on the death penalty. *Id.* at 22. Considering the downward

trend in the number of states with the death penalty, a majority of states, 30, would not permit the execution of a youthful offender. That number is 10 more than in *Roper*, 17 more than in *Graham v. Florida*, 560 U.S. 48, 69 (2010) (barring life without parole for non-homicide offenses), and nine more than in *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (barring mandatory life without parole for homicide). Blume et al., *Death by Numbers*, at 23. Since *Roper* was decided, only 140 death sentences nationwide have been imposed on offenders under 21—an amount comprising about 12 percent of death sentences handed down in that time period. *Id.* at 19. The statistics therefore reflect a clear and growing trend against the execution of offenders under 21 years old.

The American Bar Association has also urged jurisdictions to categorically prohibit death sentences for offenders under the age of 21 at the time of their offense. An ABA resolution detailed legislative developments that reflected society's increased understanding of adolescent brain development. For instance, many child welfare and education systems extend their services to persons through age 21. American Bar Association Report 111, p. 8-9 (adopted Feb. 5, 2018) (available at https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/111/). Forty-five states allow youth up to age 21 to remain under the jurisdiction of the juvenile criminal justice system. *Id.* at 9.

There is therefore a very clear national consensus trending toward the prohibition of the death penalty for those under 21. *See Diaz*, Order at 4-5 (finding such a national consensus). This is the same direction of change that this Court

found in *Roper*.

In a forthcoming law review article, legal scholars concluded that *Roper*'s reasoning extends to persons under 21. As the scholars wrote:

> In the fifteen years since *Roper*, the country has witnessed dramatic developments in neuroscience, social attitudes, and most significantly, the law and attendant sentencing practices. The same considerations that motivated the Court to extend *Thompson* to apply to people under 21: their reduced moral culpability—embodied by an increased reluctance by sentencing bodies to inflict the ultimate punishment—removes them from the category of people who can be considered the worst of the worst.

Blume et al., *Death by Numbers*, at 31.

Although this Court in *Roper* set the age of death eligibility at 18, society's standards have evolved in the last 14 years, and the time has come to reconsider that line. For evidence of how rapidly society's standards can evolve, one needs to look no further than *Roper*, where this Court began its opinion by observing that it was addressing the constitutionality of executing 15- to 17-year-old offenders "for the second time in a decade and a half." *Roper*, 543 U.S. at 555. Only 16 years earlier, the Court had reviewed the relevant data and found "no modern societal consensus" forbidding the imposition of capital punishment on juvenile offenders. *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989). But by the time this Court decided *Roper*, the "objective indicia of consensus" had changed, and the execution of juvenile offenders was no longer consistent with the standards of decency that inform Eighth Amendment analysis. *Roper*, 543 U.S. at 574.

The rapid pace of evolving standards can also be seen in this Court's evaluation of capital punishment for intellectually disabled offenders. In *Penry v.*

Lynaugh, 492 U.S. 302, 335 (1989), this Court examined the data and found that "at present, there is insufficient evidence of a national consensus against executing [intellectually disabled] people convicted of capital offenses."[2] A mere 13 years later, this Court re-examined the data in *Atkins v. Virginia*, 536 U.S. 304 (2002), and found that "[m]uch has changed" since *Penry* was decided. During that time, "the American public, legislators, scholars, and judges [] deliberated over the question whether the death penalty should ever be imposed on a[n intellectually disabled] criminal," and those deliberations informed the Court's conclusion that such executions had come to violate the Eighth Amendment. *Atkins*, 536 U.S. at 307.

With regard to young offenders, recent findings by the scientific community and the emerging national consensus compel the conclusion that the execution of offenders who were under 21 at the time of their offense is barred by the Eighth Amendment. In light of this recent authority supporting this constitutional claim, this Court should extend its decision in *Roper* to those under the age of 21.

II. SAMRA'S PENDING EXECUTION DATE AND THE CIRCUMSTANCES OF THE CASE JUSTIFY THIS COURT'S REVIEW.

Unless this Court intervenes, Michael Brandon Samra is set to be executed on May 16, 2019. Before he is put to death, this Court should decide the important question of constitutional law presented in this case – a question that goes to the core of the Eighth Amendment's ban on cruel and unusual punishment and would

[2] Further evincing society's rapidly evolving standards, this Court has acknowledged that the term "mentally retarded" has become disfavored, and the term "intellectually disabled" should be used instead. *Hall v. Florida*, 572 U.S. 701, 704 (2014).

determine whether Samra is in fact eligible for the death penalty.

The facts of Samra's case perfectly illustrate why *Roper*'s teachings should apply with equal force to those just over the age 18. At the time of the offenses in this case, Samra was 19 years old – just over *Roper*'s bright line age of 18. Mark Duke, the co-defendant and the more culpable offender, was 16 years old. Duke was sentenced to death, but his death sentence was ruled unconstitutional in light of *Roper*.

The State has already admitted that Duke was the "mastermind" behind the offense, while Samra was merely a "minion." Brief of the States of Alabama, Delaware, Oklahoma, Texas, Utah, and Virginia as Amici Curiae in Support of Petitioner, *Roper v. Simmons*, 2004 WL 865268, *7 (U.S. Apr. 20, 2004) (No. 03-633). Indeed, while Samra bore responsibility for the death of one person, his culpability paled in comparison to that of his co-defendant who plotted, planned, and killed three of the victims for revenge. *See Duke v. State*, 889 So. 2d 1, 3-6 (Ala. Crim. App. 2002), vacated by 544 U.S. 901 (2005).

Samra's lesser role in this crime evinces the diminished culpability of youthful offenders as recognized by this Court. Youth are "vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 567 U.S. at 471. Samra was undoubtedly influenced by his friend, a fellow gang member who planned this crime for his own personal revenge and further pressured Samra to

kill the last victim. *See Samra v. State*, 771 So. 2d at 1121. Youth are uniquely susceptible to such pressure – even past the age of 18. *See* Blume et al., *Death by Numbers*, at 11-12 (citing studies).

Furthermore, the significance of young persons' continuing brain development is particularly salient in this case. Evidence from the trial and sentencing hearing revealed that Samra fell within the borderline range of intelligence, meaning below low average intelligence. *Samra v. Warden*, 626 F. App'x at 231. The post-conviction hearing included testimony from experts who examined Samra and concluded that he had impaired brain functioning. *Id.* at 234-37. Samra's developmental difficulties, exacerbated by his young age, show that his culpability is far less than that of an adult offender.

Also, after his arrest, Samra cooperated with authorities, confessing to his role in the murders. Samra also testified about what happened at Duke's trial. *Duke*, 889 So. 2d at 12.

Samra's background and the circumstances of this case demonstrate that *Roper*'s reasoning applies with equal force to young offenders, those under 21 whose brains are not yet fully developed and whose personalities are not set in stone. This Court's Eighth Amendment jurisprudence should reflect the reality that a person's neurological and psychological development does not suddenly stop on his 18th birthday. This Court should decide this issue before it is too late for Samra. This Court should either grant certiorari or grant a stay of execution pending certiorari review.

In addition, this Court's grant of certiorari in *Mathena* v. *Malvo*, 18-217 (cert. granted March 18, 2019), is set to shed light on the questions in this case.[3] The issues in that case surround the scope of *Miller* and *Montgomery* – this Court's watershed decisions involving the Eighth Amendment principles as applied to youthful offenders. This Court should alternatively grant a stay of execution pending this Court's decision in *Mathena v. Malvo*.

[3] The question presented in that case is:

> In *Miller v. Alabama*, 567 U.S. 460 (2012), this Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Id.* at 465. Four years later, in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Court held that "*Miller* announced a substantive rule of constitutional law" that, under *Teague v. Lane*, 489 U.S. 288 (1989), must be given "retroactive effect" in cases where direct review was complete when Miller was decided. *Montgomery*, 136 S. Ct. at 736.
>
> The question presented is:
>
> Did the Fourth Circuit err in concluding—in direct conflict with Virginia's highest court and other courts—that a decision of this Court (*Montgomery*) addressing whether a new constitutional rule announced in an earlier decision (*Miller*) applies retroactively on collateral review may properly be interpreted as modifying and substantively expanding the very rule whose retroactivity was in question?

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, this Court should grant a stay of execution pending this Court's decision on the petition for certiorari and pending this Court's decision in *Mathena v. Malvo*.

Respectfully submitted,

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