No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EMMETT GARRISON, IV, AKA "LIL EMMETT",

Petitioner,

Versus

STATE OF LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the
Louisiana Fifth Circuit Court of Appeal

PETITION FOR WRIT OF CERTIORARI

Submitted by:
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QUESTION PRESENTED

The Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. *Miller v. Alabama*, 567 U.S. 460, 479 (2012). While there is no categorical ban on life without parole for this type of crime, a sentencing court must consider how children are different and only impose life without parole in the "uncommon" and "rare" case in which a juvenile's crime is the product of irreparable corruption. State courts are deeply divided on whether this requires a presumption against a sentence of life without parole for a juvenile convicted of homicide, or whether an individual court is at liberty to apply a presumption in favor of life without parole.

Emmett Garrison was sentenced to life without parole for his participation as a principal to second degree murder, which he committed prior to his 18th birthday. In imposing the harshest available penalty, the sentencing court applied a presumption in favor of life without parole and required Emmett Garrison to prove he deserved parole eligibility. This approach is inconsistent with the Eighth Amendment and recent jurisprudence from this Court, and it is internally inconsistent with approaches taken by different district courts within Louisiana. Without further guidance, the protections granted under the Eighth Amendment in a juvenile sentencing hearing will arbitrarily vary depending on the location in which the juvenile is sentenced. This case thus presents the following question:

1. If the Eighth Amendment forbids automatic life without parole sentences for juvenile offenders, does a sentencing court have the discretion to impose a presumption in favor of life without parole?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Emmett Garrison, IV, respectfully petitions for a writ of certiorari to the Louisiana Fifth Circuit Court of Appeal in *State v. Garrison*, 19-62 (La App. 5 Cir. 4/23/2020), 297 So. 3d 190.

PROCEEDINGS BELOW

The trial court issued the sentence in *State of Louisiana v. Emmett Garrison* in trial court case number 16-00654, Division "E" of the Louisiana Twenty-Fourth Judicial District Court. Direct review on appeal of that judgment by the Louisiana Fifth Circuit Court of Appeal (Appendix "A") is reported at *State v. Garrison*, 19-62 (La. App. 5 Cir. 4/23/2020), 297 So. 3d 190. The Louisiana Supreme Court's order denying review of that decision is reported at *State v. Garrison*, 20-547 (La. 9/23/2020), 301 So. 2d 1190.

STATEMENT OF JURISDICTION

The judgement and opinion of the Louisiana Fifth Circuit Court of Appeal affirming Mr. Garrison's sentence was entered on April 23, 2020. The Louisiana Supreme Court denied review of that decision on September 23, 2020. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

PROVISIONS OF LAW INVOLVED

Eighth Amendment to the U.S. Constitution:

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

Fourteenth Amendment to the United States Constitution:

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

Emmett Garrison spent his childhood in the midst of escalating, retaliatory gang violence targeting his family and marked by his parents' substance abuse and neglect, and he will now serve the rest of his life in prison without parole for participating as a principal to second degree murder before his 18th birthday. *See* trial court record D-2, sealed doc. 90103. In imposing this sentence, the sentencing court required Mr. Garrison to prove he was entitled to a sentence of life with parole—applying a presumption in favor of life without parole. *See* Appendix B, 48a-53a.

At Mr. Garrison's sentencing hearing, the prosecution did not introduce any additional evidence beyond the trial court record, relying on the seriousness of the offense for its argument that Mr. Garrison should be sentenced to life without parole. *See* Appendix B, 46a-48a. The only evidence at sentencing about Mr. Garrison's capacity for rehabilitation came from a defense expert witness who concluded that she did not have enough information to say whether Mr. Garrison was one of those rare juveniles whose crime reflects permanent incorrigibility. *See* Appendix B, 45a. Accordingly, the sentencing court did not find that Mr. Garrison was permanently incorrigible but instead found that Mr. Garrison "has no prospect

for any rehabilitation **at this time**." Appendix B, 52a (emphasis added). The court sentenced him to life without parole. *Id.* at 52a-53a.

The lack of evidence regarding Mr. Garrison's rehabilitation is central to the question of this case. Mr. Garrison's procedural orientation places him in a distinctive position before the law: changes to Louisiana law in 2017 allowed the prosecution to seek the harshest possible sentence for second degree murder (which it no longer allows) but without him having been imprisoned long enough to make a showing as to his capacity for rehabilitation. The sentencing court held this lack of evidence against Mr. Garrison and sentenced him to life without the possibility of parole. Mr. Garrison filed a Motion for Reconsideration of Sentence, on grounds that the sentencing court had wrongly applied the burden of proof required under this Court's Eighth Amendment jurisprudence, which was denied. *See* Appendix C, 56a *et seq.*

On direct appeal, the Louisiana Fifth Circuit Court of Appeal affirmed the sentence, framing its analysis as though life without parole is the default sentence under these circumstances. *See* Appendix A, 27a. Finding that the sentencing court "considered all of the aggravating and mitigating factors when sentencing defendant to life imprisonment without the possibility of parole," the court then noted in a footnote that "Where there is a mandatory sentence there is no need for the trial court to justify, under La. C.Cr. P. art. 894.1, a sentence it is legally required to impose." Appendix A, 28a, 28a n. 12. The court concluded: "Defendant has failed to rebut the presumption of the constitutionality of his sentence. The trial

court complied with the principles set forth in *Miller* and adequately considered the factors set forth in Article 894.1 prior to imposing defendant's life [without parole] sentence." *Id.* at 27-28. Mr. Garrison sought review from the Louisiana Supreme Court, which was denied on September 23, 2020.

REASONS FOR GRANTING, VACATING, AND REMANDING

In *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 2469 (2012), this Court held that the Eighth Amendment "forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." While this Court stopped short of an outright prohibition on such sentences, it held that only the rarest juvenile who is irredeemable may receive such a sentence without violating the Eighth Amendment.

Shortly after *Miller*, this Court repeatedly emphasized that only the rarest juvenile could constitutionally receive a sentence of life without the possibility of parole. *Montgomery v. Louisiana*, 136 S.Ct. 718, 734 (2016), used the words "rare" or "rarest" six times in describing when a life-without-parole sentence would be appropriate after *Miller*. The "penological justifications for life without parole collapse in light of the distinctive attributes of youth." *Id.* at 734.

Miller and *Montgomery* declare a life sentence for a juvenile inherently suspect and almost categorically impermissible, but states are split as to whether this declaration includes a presumption. Some states have a presumption in favor of life with parole, some states have a presumption in favor of life without parole, and some states, like Louisiana, purport to be neutral, allowing a wide variety of results

within the state. For example, in the case of Darnell Huntley in Lafayette, Louisiana, the sentencing court directed a ruling for life with parole because the prosecution failed to introduce any additional evidence pertaining to the defendant's capacity for rehabilitation at the sentencing. *See* Appendix D, 96a-98a. Yet in this case, the sentencing court ruled for life without parole, on grounds that Mr. Garrison had not established that he was capable of rehabilitation. *See* Appendix B, 51a-52a.

The ruling in this case is contrary to *Miller*, *Montgomery*, and the case law on which they rest. Many states are grappling with how to meet the Eighth Amendment dictates of this Court's jurisprudence for children who face life in prison. Considering the risk that states continue to enforce rules imposing unconstitutional sentences on children, this Court should grant this petition.

A. The Question Divides State Supreme Courts.

State supreme courts are divided on whether the Eighth Amendment's prohibition on automatic life without parole sentences for juvenile offenders includes a presumption in favor of life with parole. The disagreement among courts arises from conflicting interpretations of this Court's decision in *Miller* and *Montgomery*.

Miller and *Montgomery* explain that the Eighth Amendment prohibits automatic life without parole sentences for juvenile offenders, and it countenances such sentences only for the rarest of juvenile homicide offenders. And this rarity is not because of the rarity of terrible crimes, but because the juveniles as a class are

demonstrably capable of rehabilitation while being fundamentally less blameworthy than adults. *Miller*, 132 S.Ct. 2465; *Montgomery*, 136 S.Ct. at 736. A life sentence constitutes cruel and unusual punishment for all but the most corrupt juvenile convicted of homicide.

The state supreme courts in Connecticut, Iowa, Utah, Missouri, and Indiana all held that there must be a presumption against imposing a life sentence without the opportunity for parole. Alice Reichman Hoesterey, *Confusion in Montgomery's Wake*, 45 Fordham Urb. L.J. 149, 165. Iowa's Supreme Court ruled the sentencing court "must start with the Supreme Court's pronouncement that sentencing a juvenile to life in prison without the possibility of parole should be rare and uncommon" and recognize any child is "constitutionally different" than an adult for purposes of punishment. *State v. Seats*, 865 N.W.2d 545, 555 (Iowa 2015). California likewise rejected as inadequate under *Miller* a limited resentencing petition where the defendant has the opportunity to prove by a preponderance of evidence the existence of qualifying mitigating circumstance. *In re Kirchner*, P.3d 2 Cal.5th 1040, 216 Cal.Rptr.3d 876, *8 (Apr. 24, 2017) ("possibility of consideration is not the same as the certainty that *Miller* and *Montgomery* demand.").

In addition, the Pennsylvania Supreme Court in *Commonwealth v. Batts* has held that there must be a presumption against life without parole, and a juvenile can only receive such a sentence if the state can prove beyond a reasonable doubt that the juvenile cannot ever be rehabilitated. *Id. Commonwealth v. Batts*, 163 A. 3d 410, 416 (Pa. 2017); *State v. Riley*, 110 A.3d 1205, 1214 (Conn. 2015); *State v.*

Houston, 353 P.3d 55, 77, 83 (Utah 2015); *State v. Seats*, 865 N.W. 2d 545, 555 (Iowa 2015); *State v. Hart*, 404 S.W. 3d 232, 241 (Mo. 2013); *Conley v. State*, 972 N.E. 2d 864, 871 (Ind. 2012). North Carolina recently held that sentencing courts may not start with a presumption in favor of life without parole. *State v. James*, 813 S.E. 2d 195 (N.C. 2018).

Other courts have upheld a presumption in favor of life without parole. The Supreme Court of Washington upheld a sentencing scheme that makes life without parole the presumptive sentence and places "the burden on the juvenile offender to prove an exceptional sentence is justified." *Id.* at 166. *State v. Ramos*, 387 P. 3d 650, 659 (Wash. 2017), (*cert. denied*, No. 16-9363, 138 S. Ct. 467 (2017)). Likewise, both the Arizona and Virginia Supreme Courts place the burden on juvenile defendants to show that they are ineligible for a life without parole sentence. *See Jones v. Commonwealth*, 795 S.E.2d 705, 726 (Va. 2017) (Powell, J., dissenting); *State v. Valencia*, 386 P.3d 392, 396 (Ariz. 2016).

Other courts do not impose a presumption either way. The Nebraska Supreme Court held that a presumption against life without parole was "not required by the U.S. Supreme Court . . . and we will not create one." *State v. Mantich*, 888 N.W.2d 376, 384 (Neb. 2016). Addressing an Oklahoma juvenile's challenge to a life without parole sentence imposed under a scheme where a judge was permitted to choose a life sentence, the Tenth Circuit ruled, "*Miller* said nothing about non-mandatory life-without- parole sentencing schemes and thus cannot warrant granting relief from a life- without-parole sentence imposed under

such a scheme." *Davis v. McCollum*, 798 F.3d 1317, 1321 (10th Cir. 2015), cert. denied, 136 S. Ct. 1524 (2016).

In Louisiana, the Supreme Court has not specifically addressed the issue, but lower courts within the state have come to varying conclusions. The Louisiana Third Circuit found that there is no presumption in favor of life with parole. *State v. Hauser*, 19-341, p. 24 (La. App. 3 Cir. 12/30/19), 2019 La. App. LEXIS 2386, *37. Yet a sentencing court in Louisiana imposed such a presumption in order to sentence a juvenile to life with the possibility of parole, because the prosecution had not sufficiently rebutted the presumption against life without parole. *See State of Louisiana v. Darnell Huntley*, Appendix D, 96a-98a. In Darnell Huntley's case, the prosecution introduced three victim impact witnesses in addition to the trial court record, and the sentencing court found that the prosecution had not met its burden:

> The State presented no evidence of this offender's current maturity, character, or capacity for rehabilitation . . .
> . . . Because there is no evidence in this record to support a conclusion that Darnell Huntley is irretrievably depraved, irreparably corrupt, incapable of rehabilitation, or the worst of the worst, this court is compelled to resentence Darnell Huntley to the custody of the Louisiana Department of Corrections and Safety for life at hard labor and declare that he is eligible for parole in accordance with the law, which is more specifically described in Revised Statute 15:574.4E. Appendix D, 97a.

In Emmett Garrison's case, the prosecution introduced no additional evidence beyond the seriousness of the crimes, yet the sentencing court found that Mr. Garrison had not met his burden of proving that he was capable of rehabilitation, noting that Mr. Garrison did not have "even an expert who can say that he has any potential for rehabilitation as of this moment," Appendix B, 51a.

The court again emphasized the seriousness of the crime and admitted it was expecting Mr. Garrison to carry the burden of proving his capacity for rehabilitation, noting that "at this point, as per the expert testimony, he has no prospective for any rehabilitation at this time." *Id.* at 52a. And the Louisiana Fifth Circuit recognized that such a presumption in favor of life without parole was acceptable. Appendix A, 28a.

This variance between and within states means that the Eighth Amendment signifies something different to a juvenile defendant in Iowa or California than it does to a juvenile defendant in Louisiana or Washington. The resolution of this question to clarify the substantive rights guaranteed to juvenile offenders under the Eighth and Fourteenth Amendments would protect the rights of Emmett Garrison as well as others across the nation who are similarly situated.

B. Unless this Question is resolved, sentencing courts can ignore the constitutional significance of youth.

The lack of a clear presumption against life without parole in juvenile sentencing cases allows some courts to disregard the substantive commands of *Miller*/*Montgomery* entirely. It allowed the sentencing court here[1] to follow the **procedure** for safeguarding a juvenile's Eighth Amendment rights set forth in *Miller*/*Montgomery* yet give no effect to its substance. In its ruling, the sentencing

[1] It should be noted that the life without parole sentence was handed down by a different judge from the one who oversaw the trial. And since the prosecution did not introduce any aggravating evidence, his determination that so much of the mitigating evidence was, in fact, aggravating (*see* discussion *infra*) points to a true failure to take into account how children are different, and a failure to meaningfully consider the mitigating evidence.

court completely disregarded the constitutional significance of youth, held Mr. Garrison to an adult standard, and turned mitigating factors like his violent upbringing into aggravating factors. *See* Appendix B, 50a. The sentencing court's ruling turns the principles of *Miller*, *Montgomery*, and this Court's long jurisprudence regarding the appropriate assessment of juvenile offenders, on their heads.

This case shows that under a presumption in favor of life without parole, it is thoroughly impossible to fulfill the commands of *Miller* and *Montgomery*. At the sentencing in this case, the prosecution ordered the entirety of the Court's record as its evidence and did not submit any additional evidence. Appendix B, 42a. The defense presented two items of evidence. The first was the testimony of an expert in psychiatry, who concluded that she did not have enough information to determine whether Mr. Garrison would be responsive to rehabilitation, and she would not likely be able to make that determination for about ten years. Appendix B, 50a. Second, the defense admitted Mr. Garrison's juvenile records, which provided details of the violence and neglect he had endured throughout his childhood along with his juvenile criminal record.[2]

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[2] The contents of these records document chronic neglect, violence, addiction, and chaos within Mr. Garrison's close and extended family. The records show neglect of Emmett Garrison's basic medical needs, his mother's struggle with substance abuse, his parents' lengthy criminal records, violent death of multiple family members in gang-related retaliatory violence, the drive-by-shooting of his grandmother's home, and the death of his grandmother following Emmett Garrison's uncle's shooting death when Emmett was 12 years old. Not coincidentally, age 12 is when his juvenile criminal record began. The records document his inability to extricate himself from the effects of the chaos surrounding him and the behaviors of others in his family. In addition, they document his propensity toward rehabilitation—a court-ordered therapist marveled at his "high level of engagement" in

The sentencing court interpreted both of these offerings of proof—the defense expert testimony and the juvenile record—as aggravating factors. This Court in *Miller* notes the great difficulty that courts will have in finding a juvenile offender "whose crime reflects irreparable corruption." The defense expert here found exactly that difficulty: she **could not determine** that Mr. Garrison is irreparably corrupt. *See* Appendix B, 45a; R. 852, 853. But the sentencing court began from the position that Mr. Garrison is irreparably corrupt and required him to prove that he is not, noting, "The expert . . . cannot form an opinion as to whether Mr. Garrison is one of the rare juveniles whose crimes reflect irreparable corruption. In fact, the expert claims it will be at least ten years after [his] imprisonment before anyone can accurately predict whether or not [he has] any rehabilitative potential." Appendix B, 50a. The defense expert's finding here supported *Miller*'s contention that it is difficult to establish that rare juvenile whose crime is so bad that he cannot be rehabilitated. But the trial court inverted that finding and instead used the absence of evidence to find that Mr. Garrison cannot be rehabilitated, concluding, "at this point, as per the expert testimony, he has no prospective for any rehabilitation **at this time**." Appendix B, 52a. (emphasis added).

The court's finding that he has no prospective for any rehabilitation "at this time" does not support a finding that Mr. Garrison is irreparably corrupt. It is an acknowledgement that his current condition and response to rehabilitation are **temporary**—consistent with what *Miller*, *Graham*, and *Roper* explain is what

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Functional Family Therapy when he was 16 years old, a year before the crimes related to this case. Record exhibit D-2, sealed doc. 90103.

should be generally expected of juvenile offenders.[3] And this is consistent with the expert's testimony: she would need to see how Mr. Garrison responds to the circumstances of his incarceration before any determination could be made that he can not be rehabilitated. *See* Appendix B, 45a. The sentencing court's interpretation of the expert's finding supported a sentence with parole, not a sentence without. A presumption against life without parole would have prevented the sentencing court's faulty reasoning and sentencing.

The trial court likewise misinterpreted the evidentiary role of his family and social history, which should be considered as mitigating circumstances, but which the court interprets as a "pulsating environment of violence" which fueled his criminal activity:

> There are no more programs left for Mr. Garrison, no more alternatives and not even an expert who can say that he has any potential for rehabilitation as of this moment. What any reading of your court record and your transcripts reflects is an escalating life of crime and criminal activity fueled by a pulsating environment of violence and little or no regard for human life except your own. He leaves as his legacy in his community, death, and the maiming of human life. Destruction of the highest degree.
> Appendix B, 51a.

The court concluded that Mr. Garrison's childhood reflects a "life of crime" that began at age 12 and that Mr. Garrison committed these acts because he desired to "achieve ultimate criminal status." *Id.* at 51a. This demonstrates how the court refused to take into account the ways that children's brains are different, and

[3] *See Miller, supra*, at 473, 479: *Montgomery*, *supra* at 726, 733; *Roper v. Simmons*, 543 U.S. 551, 571-573 (2005), *Graham v. Florida*, 560 U.S. 48, 74 (2010).

particularly the testimony of the defense expert regarding the way a child's brain responds to peer pressure, especially when acting in concert with an older individual. *See* Appendix B, 43a-44a; R. 853 *et seq*. The sentencing court must take into account how juveniles are different because, as this Court recognizes, a child is unable to extricate or protect himself from his childhood circumstances.[4] It is for that reason that those circumstances are relevant to sentencing—in that they mitigate **against** the harshest punishment. By requiring that Mr. Garrison be the party who must prove the appropriateness of life with parole, the sentencing court could avoid meaningfully considering the constitutional significance of youth and all attendant mitigating circumstances.

The trial court should not have the discretion to turn a circumstance recognized in the law as mitigating—here, for example, his childhood circumstances—and determine that that circumstance is aggravating. The court could have said that it considered Mr. Garrison's childhood circumstances and other considerations of his youth and found that they were not persuasive. But it cannot turn that consideration into a factor supporting a sentence of life without parole. Such an error could be prevented with the imposition of an explicit presumption against the imposition of life without parole.

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[4] "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects 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." *Miller*, *supra*, at 2468.

In this case, the allocation of a presumption or a burden of proof is outcome-determinative. Because of the timing of Mr. Garrison's indictment and trial, he falls into a small class of juvenile offenders who face life without parole for second degree murder but who have not been in prison for any length of time sufficient to demonstrate that their crimes reflected the transience of youth and that they are responsive to rehabilitation. Under current law, prosecutors in Louisiana can no longer seek a sentence of life without parole for a juvenile offender for second degree murder. *See* La. C.Cr.P. art. 878.1 A. In 2017, the Louisiana Legislature responded to *Montgomery v. Louisiana*, 136 S. Ct. 718 (2015), by recognizing that life without parole for a juvenile offender is an exceptional sentence under the Eighth Amendment. Prosecutors in Louisiana were given until August 1, 2017, to give notice of their intent to seek juvenile life without parole for second degree murder for crimes already indicted but not yet taken to trial. *See* Louisiana Legislature 2017 Act 277. For the crime of second degree murder indicted on or after August 1, 2017, a juvenile offender may only be sentenced to life with parole. *See* La. R.S. 15:574.4. Mr. Garrison was indicted prior to August 1, 2017, and he went to trial the following month, in September 2017. So while the timing of his indictment exposed him to the exceptional sentence of life without parole, his short period of incarceration gave him very little time to build a record of proof that he is responsive to rehabilitation.

Many of the offenders affected by this change in the law have served decades in prison and thus have been able to demonstrate their capacity for rehabilitation.

Had Mr. Garrison been convicted 30 years ago, he would have the benefit of many years in jail to demonstrate his potential for rehabilitation. Mr. Garrison is one of the few offenders who falls in this gap in the law: he was indicted for second degree murder prior to August 1, 2017, but his trial and sentencing took place soon after, so he was not able to make a strong showing of his capacity for rehabilitation. And in this case, the trial court held this lack of evidence against Mr. Garrison, instead of requiring the State to put forth evidence supporting the sentence it was seeking—life without parole. In a case like this, clarification of the presumption and the required considerations under the Eighth Amendment is critical.

Under a fair reading of *Miller* and *Montgomery*, if the sentence of life without parole cannot be automatic, there cannot logically be a presumption in favor of life without parole. Even Louisiana's approach to the sentencing of juveniles after *Montgomery* required the prosecution to provide notice and specifically elect to seek the sentence of life without parole for a juvenile convicted of second degree murder, a recognition that this sentence is exceptional. To impose a presumption in favor of life without parole, after the fact, as was done here by the sentencing court and the court of appeals, undermines due process.

Mr. Garrison requests that the prosecution be held to an explicit burden of proof if it wishes to sentence him to life without parole. Permitting courts to continue imposing a presumption in favor of life without parole renders the substantive guarantees explained in *Miller* and *Montgomery* inert. It further allows

courts like the sentencing court here to ignore the constitutional significance of youth.

C. Resolving the Question Is an Issue of National Importance.

The issue this case raises is nationally important because meaningful enforcement of *Miller* and *Montgomery*'s substantive command demands a presumption in favor of life with parole. *Miller* prohibits sentencing authorities from the automatic imposition of life without parole. 567 U.S. at 489. *Montgomery* instructs sentencing authorities to limit life without parole to "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 136 S. Ct. at 734. That function necessarily precludes a presumption in favor of life without parole. A juvenile life without parole sentence is essentially automatic when a court is going mete out the ultimate punishment unless the juvenile defendant proves he is worthy of life with parole. And it is automatic when the court is going to give it to him unless he proves he is not permanently incorrigible. Without an explicit presumption against life without parole, a sentencing court can give lip service to the Eighth Amendment by holding a hearing, without ever giving effect to its substantive command.

Lower courts throughout the country await this Court's direction. Some courts afford juvenile defendants fair sentencing hearings by holding the prosecution to a burden of proving the appropriateness of the sentence of life without parole—and requiring that they offer some proof of permanent incorrigibility. Other courts, as in this case, adhere to sentencing schemes that flip

the principles of *Miller* and *Montgomery* on their heads—holding the defendant to a burden of proving that he is exceptional—that he deserves something other than the automatic or default imposition of life without parole.

It is the prosecution that must prove that the defendant is permanently incorrigible, and the court must hold the prosecution to some measure of proof of this finding. This Court's resolution of the question would be profoundly consequential for juvenile sentencings throughout the nation, and it would likely be outcome-determinative for Emmett Garrison. Should this Court find that the Eighth Amendment contains a presumption against life without parole, Mr. Garrison would be entitled to a new sentencing hearing. At a hearing, it is unlikely that the prosecution would be able to overcome such a presumption.

CONCLUSION

Mr. Garrison respectfully requests that this Court grant this writ to determine whether the Eighth Amendment's ban on automatic juvenile life without parole sentences includes a presumption against that sentence.

Respectfully submitted,

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APPENDIX