No. 25-1115

IN THE
Supreme Court of the United States

STATE OF UTAH,

Petitioner,

v.

MORRIS T. MULLINS,

Respondent.

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

BRIEF IN OPPOSITION

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INTRODUCTION

The State of Utah petitions this Court to review a decision of the Utah Supreme Court. But this Court does not have jurisdiction over state-court cases that have not reached final judgment. 28 U.S.C. § 1257(a). In the criminal context, the final judgment is the final sentence. *See Berman v. United States*, 302 U.S. 211, 212 (1937). There is no such final sentence in this case: The Utah Supreme Court vacated respondent Morris Mullins's sentence, resentencing has yet to take place, and petitioner maintains that the sentencing court may, consistent with the Utah Supreme Court's opinion, still impose life without parole. Petitioner does not acknowledge this glaring jurisdictional defect, let alone attempt to surmount it.

Even setting aside that threshold jurisdictional problem, this interlocutory dispute does not warrant this Court's review. Petitioner cites a bevy of lower-court cases dealing generally with the issue of juvenile life without parole, but only one other court has decided the specific question presented here. And even if this Court decided the question presented, this case would not be resolved; the Utah Supreme Court vacated Mr. Mullins's sentence on two independent grounds, meaning that any resolution of the question presented would result in an advisory opinion.

Besides, the question presented has little significance for Mr. Mullins; still less for Utah; and virtually none for other states around the country. As for Mr. Mullins: Even if he were to receive a sentence less than life without parole *and* someday receive parole in Utah, he still would not be a free man. Instead, he would face a consecutive life sentence for another crime.

As for Utah: Utah passed a statute a decade ago that outlawed new juvenile life without parole sentences altogether. Aside from Mr. Mullins, only one defendant in Utah is serving life without parole for a crime he committed as a child.

And as for the rest of the country: Only a small and shrinking number of states ever impose life without parole on juvenile offenders. And even in those states, the circumstances that give rise to the question presented are highly unlikely to resurface. This Court has made clear that a sentencing court need not make any finding at all regarding a defendant's capacity for change, so it will be the rare sentencing court that goes out of its way to announce that a juvenile defendant is corrigible but nonetheless imposes a life without parole sentence. *See Jones v. Mississippi*, 593 U.S. 98, 101 (2021).

Because petitioner has not even shown that *this* case would be affected by a decision on the question presented, let alone that any other case would be, this Court should deny certiorari.

STATEMENT OF THE CASE

1. In 2001, respondent Morris Mullins, then 17, was charged with rape and aggravated murder for assaulting and killing an elderly woman, Amy Davis. Pet. App. 3a. At that time, Utah still permitted capital punishment for juveniles. *Id.*[1] In exchange for the State taking the death penalty off the table, Mr. Mullins pled guilty to aggravated murder. *Id.*

[1] The Supreme Court would later hold that the Eighth Amendment forbids imposing the death penalty on juvenile offenders. *See Roper v. Simmons*, 543 U.S. 551, 568 (2005).

At sentencing, defense counsel presented evidence that Mr. Mullins had a "profoundly dysfunctional upbringing and rearing and family life" marked by intellectual disability and physical and sexual abuse. Pet. App. 3a-4a; Pet. 3-4.

The judge sentenced Mr. Mullins to life without the possibility of parole (LWOP). He did not say anything specific about how Mr. Mullins's age at the time of the crime factored into his sentence. Pet. App. 114a. However, at the close of the proceeding, the judge acknowledged the possibility that Mr. Mullins could mature and become rehabilitated, explaining that Mr. Mullins would "be with us for a long time and have chance to change." *Id.* 115a. The judge thus expressed "hope" that Mr. Mullins would "find some way to be productive." *Id.*

2. In the ensuing years, this Court issued a trio of Eighth Amendment decisions about juvenile LWOP. First, *Miller v. Alabama*, 567 U.S. 460, 465 (2012), outlawed mandatory LWOP for juveniles. As relevant here, *Miller* also held that LWOP is appropriate only for the "'rare juvenile offender whose crime reflects irreparable corruption.'" *Id.* at 479-80 (citation omitted). For the vast majority of juvenile offenders "'whose crime[s] reflect[] unfortunate yet transient immaturity,'" LWOP is not a constitutional sentence. *Id.* at 479 (citation omitted). Second, *Montgomery v. Louisiana*, 577 U.S. 190 (2016), held that *Miller* announced a substantive rule of constitutional law—that is, it "prohibit[ed] 'a certain category of punishment'" (LWOP) "'for a class of defendants'" (juvenile offenders who are not permanently incorrigible)—and that *Miller* therefore applied retroactively. *Id.* at 206, 208 (citation omitted). Finally, *Jones v. Mississippi*, 593 U.S. 98 (2021) held that courts are not

required to make any finding of permanent incorrigibility before sentencing a juvenile to LWOP. *Id.* at 101.

Jones expressly refused to overrule *Miller* or *Montgomery*, despite calls to do so. *Id.* at 118. Instead, it reiterated that *Miller* was retroactive and that states are not "free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.* at 106 n.2 (quoting *Montgomery*, 577 U.S. at 211).

3. Shortly after this Court issued its decision in *Miller*, Mr. Mullins filed a motion in trial court to vacate his LWOP sentence under Utah Rule of Criminal Procedure 22(e).[2] Rule 22(e) authorizes Utah courts to "correct an illegal sentence, or a sentence imposed in an illegal manner" on direct appeal. *Id.*; Pet. App. 1a. (A separate Utah rule governs state collateral review. *See* Utah Code § 78B-9-104; *Archuleta v. State*, 472 P.3d 950, 957 (Utah 2020).) The trial court rejected Mr. Mullins's Rule 22(e) motion. Pet. App. 6a.

4. Mr. Mullins appealed to the Utah Supreme Court, which vacated his LWOP sentence. Pet. App. 3a. The Utah Supreme Court initially held that Mr. Mullins's LWOP "sentence" was "illegal" under Rule 22(e). *State v. Mullins*, 2025 WL 796220, *17 (Utah 2025). Although it acknowledged that, under *Jones*, the sentencing judge was not constitutionally required to make any finding of Mr. Mullins's corrigibility or capacity for change, it believed that the sentencing judge may have nonetheless

[2] Utah Rule of Criminal Procedure 22(e) was amended in 2019. Pet. App. 8a. All references in this brief are to the pre-2019 version of Rule 22(e), which is the version that the Utah Supreme Court held applied to Mr. Mullins's claim at issue here. Pet. App. 34a-35a.

"implicitly" done so. *Id.* at *15, *17. If the sentencing judge found that Mr. Mullins was capable of change, the court reasoned, Mr. Mullins could not be the sort of "permanently incorrigible" juvenile offender who can constitutionally be sentenced to LWOP. *Id.* at *1. The Utah Supreme Court had "real concerns" that the sentencing court had done exactly that, and under Rule 22(e), those concerns were enough to render Mr. Mullins's sentence "illegal." *Id.* at *17.

Two justices dissented. They argued there was "no need" to "decipher the sentencing court's remark about a 'chance to change,'" because "[e]ven if the sentencing court believed that Mullins had the capacity to change, it would not render Mullins's sentence unconstitutional." *Id.* at *23.

5. The State petitioned for rehearing. Pet. App. 1a. In response, the Utah Supreme Court amended its opinion and provided an alternative reason for vacating Mr. Mullins's sentence: The sentencing judge "misapprehended its constitutional obligation to properly consider Mullins's youth." Pet. App. 2a.

For instance, after expressing "concerns" that the trial court had implicitly deemed Mr. Mullins capable of change, the Utah Supreme Court added the following sentences:

> The court's comments also raise significant concerns that it misapprehended its constitutional obligation to consider youth in the proper manner under the retroactive reach of *Miller* and its progeny. Indeed, the comments appear to contemplate leaving the full consideration of Mullins's youth to the Board of Pardons and Parole, making it unclear whether the court was appropriately assessing Mullins's youth in its decision to impose a JLWOP sentence.

Pet. App. 46a.

6. The State again petitioned for rehearing. Pet. 1. In its second petition, it acknowledged that the amended decision had "established a new basis for reversing Mullins's sentence"—namely, the sentencing judge's inadequate consideration of youth. State's Pet. for Reh'g at 5 (Nov. 21, 2025). The Utah Supreme Court denied that petition. Pet. 1.

REASONS FOR DENYING THE WRIT

There is no reason for the Court to take up this case. It doesn't have jurisdiction to review the Utah Supreme Court's not-yet-final decision, and in any event, none of the criteria for certiorari are met.

I. This Court lacks jurisdiction because there is no final judgment here.

Petitioner bears "the burden of affirmatively establishing this Court's jurisdiction." *Republic Nat. Gas Co. v. Oklahoma*, 334 U.S. 62, 70-71 (1948). The petition invoked 28 U.S.C. § 1257(a), which gives this Court jurisdiction over "*[f]inal* judgments or decrees rendered by the highest court of a State." Pet. 1 (quoting 28 U.S.C. § 1257(a)) (emphasis added). But the Utah Supreme Court's decision isn't final. And none of the exceptions to Section 1257's finality requirement apply here.

1. "Final judgment in a criminal case means sentence"; "[t]he sentence is the judgment." *Berman v. United States*, 302 U.S. 211, 212 (1937). In this case, the Utah Supreme Court vacated Mr. Mullins's existing sentence on "direct appeal," Pet. App. 1a, and remanded for a resentencing that has yet to take place. *Id.* 3a. Mr. Mullins thus has no sentence, and there is no "final judgment[]," 28 U.S.C. § 1257(a), to review. *See Berman*, 302 U.S. at 212-13 (vacated sentence is not a final judgment).

2. This Court has listed four narrow circumstances in which it treats a state-court decision as a final judgment notwithstanding the possibility of further proceedings in state court: (i) where "for one reason or another the federal issue is conclusive or the outcome of further proceedings preordained"; (ii) where the federal issue "will survive and require decision regardless of the outcome of future state-court proceedings"; (iii) where "later review of the federal issue cannot be had, whatever the ultimate outcome of the case"; and (iv) where "a refusal immediately to review the state-court decision might seriously erode federal policy." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479-83 (1975); *see T.M. v. Univ. of Md. Med. Sys. Corp.*, No. 25-197, 2026 WL 1751823, at *10 (U.S. June 18, 2026) (confirming four *Cox* exceptions). This case does not fit within any of those exceptions, nor does petitioner argue otherwise.

First, the outcome of further proceedings is not "preordained," *Cox*, 420 U.S. at 479: The sentencing court could, consistent with the Utah Supreme Court's decision, either reimpose LWOP (so long as it did not find Mr. Mullins corrigible) or impose a lesser sentence. Pet. App. 50a.[3]

Second, the federal issue is not guaranteed to "survive and require decision," *Cox*, 420 U.S. at 480: The sentencing court could impose a sentence other than LWOP

[3] Though a new Utah statute bars LWOP for juvenile offenders, "[t]he State does not believe this statute will preclude JLWOP for Mullins at resentencing because he was 'sentenced' before May 10, 2016," the date the statute was passed. State's Pet. for Reh'g at 11 (Mar. 27, 2025) (citations omitted). The outcome on remand is thus not "preordained" within the meaning of *Cox* because the Utah courts have not yet resolved that state-law dispute.

without addressing Mr. Mullins's capacity for change, in which case the Eighth Amendment question presented would not "require decision." *Id.*

Third, "later review of the federal issue" is possible, *Cox*, 420 U.S. at 481: The sentencing court might refuse to impose LWOP on the ground that Mr. Mullins is corrigible and that the Eighth Amendment requires a lesser punishment. Petitioner could then seek review of the question presented, including up to this Court, after resentencing. *See United States v. DiFrancesco*, 449 U.S. 117, 132 (1980) (no Double Jeopardy bar to appellate review of a sentence); *State v. Trafny*, 799 P.2d 704, 709 & n.18 (Utah 1990) (interpreting Utah double jeopardy provision in line with federal provision).

Fourth, and finally, "a refusal immediately to review the state-court decision" will not "seriously erode federal policy," *Cox*, 420 U.S. at 483. This Court has not expressly relied on that fourth exception in more than three decades. *See Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 57 (1989). This case provides no reason to deviate from that practice. The fourth *Cox* exception turns not on the importance of the underlying federal issue, but on whether postponing review until final judgment would inflict some immediate and substantial harm. *Cox*, 420 U.S. at 483. The classic example is a First Amendment case, where delay in vindicating a petitioner's rights may chill protected speech. *Fort Wayne Books*, 489 U.S. at 57. There is no such harm here. Indeed, this Court has rejected the notion that splits over ordinary criminal-law disputes are a sufficient basis for interlocutory review. *See, e.g.*, *Florida v. Thomas*, 532 U.S. 774, 780 (2001) (suppression claim); *Johnson v. California*, 541 U.S. 428, 430 (2004) (*Batson* claim).

II. There is no split.

Petitioner reels off some 24 cases—a hodgepodge of state intermediate appellate court decisions, decisions based on state law, and cases that discuss the question presented only in dicta. It claims these 24 cases amount to a 16-8 split. But even a little scrutiny makes clear there is no split at all on the question presented.

In most of the cases that petitioner says disagreed with the decision below, there was no mention of a finding or suggestion that a defendant was corrigible, so the question presented here never arose. In the remainder, any argument on the question presented was either waived or irrelevant.

And in the cases purportedly agreeing with the decision below, only one other state (Maryland) has squarely weighed in on the question presented. The upshot is that only two cases—the decision below and one other—have actually answered the question presented, and both have decided it the same way.

A. No court has offered an answer to the question presented that conflicts with the decision below.

1. Petitioner asks this Court to decide whether "a sentencing court can impose a sentence of LWOP on a juvenile murderer even if the court finds that the juvenile is not permanently incorrigible or at least suggests that the juvenile is capable of change and reform." Pet i. But in 13 of the 16 cases petitioner claims conflict with the decision below—cases out of Alabama, Arizona, Arkansas, Georgia, Illinois, Indiana, Kansas, Mississippi, Ohio, Oklahoma, Pennsylvania, South Carolina, and

Wisconsin—there was no mention of any finding or suggestion that the juvenile was capable of change.[4]

Indeed—contrary to petitioner's misleading parentheticals—to the extent the sentencing judges in some of these cases even considered capacity for change, they suggested *in*corrigibility. For example, in the Wisconsin case, petitioner claims the "sentencing court[] 'expressed hope' for change." Pet. 18 (quoting *State v. Walker*, 2022 WL 1574255, *2 (Wis. Ct. App. 2022)). But the sentencing court did not express hope that the *defendant* would change. It expressed hope that *society* would change and "someday 'find ways of helping people through the dark tunnel.'" *Id.* at *2 (citation omitted). That was the only thing the sentencing court could hope for; available remediation methods "had not worked on [the defendant], and he was 'dangerous as a result'"—strongly suggesting that the defendant was incorrigible. *Id.* (citation omitted).

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[4] *Wynn v. State*, 354 So. 3d 1007, 1027 (Ala. Crim. App. 2021) (intermediate appellate court); *State ex rel. Mitchell v. Cooper*, 535 P.3d 3, 8 (Ariz. 2023); *Elliott v. State*, 653 S.W.3d 776, 780 (Ark. 2022); *Holmes v. State*, 859 S.E.2d 475, 481 (Ga. 2021) (trial court "did not make" a determination of corrigibility); *People v. Wilson*, 220 N.E.3d 1068, 1077-78 (Ill. 2023) ("[T]he sentencing court did not make a finding that Wilson was 'neither incorrigible nor irredeemable.'") (citation omitted); *Conley v. State*, 183 N.E.3d 276, 284 (Ind. 2022); *Williams v. State*, 500 P.3d 1182, 1187 (Kan. 2021); *Johnson v. State*, 396 So. 3d 1073, 1082 (Miss. 2024); *State v. Morris*, 222 N.E.3d 568, 572 (Ohio 2022) ("[T]rial court made no statements on the record or in its sentencing entry that demonstrate that it considered Morris's youth."); *White v. State*, 499 P.3d 762, 767 (Okla. Crim. App. 2021) (sentence imposed by jury); *Commonwealth v. Felder*, 269 A.3d 1232, 1240 (Pa. 2022); *State v. Smart*, 889 S.E.2d 573, 576-77 (S.C. 2023); *State v. Walker*, 2022 WL 1574255, *2 (Wis. Ct. App. 2022) (intermediate appellate court) (sentencing court "recognized that efforts to rehabilitate Walker had failed").

And in the Georgia case, petitioner claims the sentencing court "'regret[ted]'" imposing LWOP. Pet. 18-19 (quoting *Holmes v. State*, 859 S.E.2d 475, 479 (Ga. 2021). But the court actually regretted that there was no "redeeming part" to the defendant and that an LWOP sentence was therefore justified—again, strongly hinting at incorrigibility. *Holmes*, 859 S.E.2d at 479.

2. With no finding or suggestion of corrigibility in these 13 cases, it's hardly surprising that 12 of them did not even purport to resolve whether finding a defendant corrigible precludes a juvenile LWOP sentence.

The Alabama, Georgia, Illinois, Kansas, Mississippi, Ohio, Oklahoma, Pennsylvania, and Wisconsin cases simply reiterated *Jones*'s procedural holding that an affirmative finding of incorrigibility isn't required. *See Wynn v. State*, 354 So. 3d 1007, 1027 (Ala. Crim. App. 2021); *Holmes*, 859 S.E.2d at 481; *People v. Wilson*, 220 N.E.3d 1068, 1077 (Ill. 2023); *Williams v. State*, 500 P.3d 1182, 1186 (Kan. 2021); *Johnson v. State*, 396 So. 3d 1073, 1082 (Miss. 2024); *State v. Morris*, 222 N.E.3d 568, 572 (Ohio 2022); *White v. State*, 499 P.3d 762, 767 (Okla. Crim. App. 2021); *Commonwealth v. Felder*, 269 A.3d 1232, 1246 (Pa. 2022); *Walker*, 2022 WL at *2.

The Arkansas, Indiana, and South Carolina cases applied *Jones* to state-law procedural questions that are even further afield of the question presented here. In the Arkansas case, for instance, the court rejected the defendant's request for irretrievable-depravity jury instructions based on Rule 37 of the Arkansas Rules of Criminal Procedure. *See Elliott v. State*, 653 S.W.3d 776, 780 (Ark. 2022). *See also Conley v. State*, 183 N.E.3d 276, 283-84 (Ind. 2022) (ineffective assistance of counsel claim); *State v. Smart*, 889 S.E.2d 573, 575 (S.C. 2023) (burden of proof issue).

In the last of these 13 cases, the Arizona Supreme Court did opine that a finding of "transient immaturity" would not preclude a juvenile LWOP sentence. *State ex rel. Mitchell v. Cooper*, 535 P.3d 3, 14 (Ariz. 2023). However, neither the parties nor the court thought the sentencing judge had made a finding or suggestion to that effect. *Id.* at 14-15. Indeed, the sentencing judge had strongly suggested the opposite, determining that the defendant's conduct was "evidence of a hardened heart." *Id.* at 15.

3. That leaves three cases out of the 16 petitioner cites. In these three cases, there was arguably a finding that the defendant was corrigible. But those cases still have no bearing on the question presented.

In the Montana case, the sentencing judge did not impose LWOP. *State v. Keefe*, 512 P.3d 741, 746 (Mont. 2022). As such, the Supreme Court's trio of cases about juvenile LWOP were beside the point.

In the Ninth Circuit case, the defendant did not timely raise—and thus the court expressly said it would not consider—the argument at issue in this petition. *United States v. Briones*, 35 F.4th 1150, 1158 n.6 (9th Cir. 2021). The court made clear that defendant "waived" the argument that "insofar as his 'crime reflect[ed] transient immaturity' rather than 'permanent incorrigibility,' his juvenile LWOP sentence is 'disproportionate under the Eighth Amendment.'" *Id.* (citation omitted).

The case that comes closest to resolving the question presented here differently from the decision below is *United States v. Grant*, 9 F.4th 186, 197 (3d Cir. 2021). But in that case, the sentencing took place after *Miller*, and the Third Circuit emphasized that "[b]ecause the District Court imposed Grant's sentence after

considering his youth at the time of the offense and related factors in mitigation, no *Miller* violation occurred." *Id.* at 198. In this case, by contrast, the sentencing proceeding took place pre-*Miller*, Pet. App. 47a, and the Utah Supreme Court held that the sentencing court had *not* adequately considered Mr. Mullins's youth at the time of the offense. *See supra* at 5; *infra* at 15. There is thus no reason to think that the Third Circuit would have reached a different result from the Utah Supreme Court on the facts of this case.

B. On the other side of the alleged split, only one case actually answered the question presented.

Petitioner cites seven cases that, it claims, agree with the Utah Supreme Court on the question presented. Petitioner is wrong as to six of those cases, and the seventh does not have any practical effect.

1. Two of the seven cases—one out of Wyoming and the other out of the Second Circuit—predate *Jones*. *See Davis v. State*, 415 P.3d 666 (Wyo. 2018); *United States v. Delgado*, 971 F.3d 144 (2d Cir. 2020). If petitioner's reading of *Jones* is correct, it presumably thinks those jurisdictions would overturn their prior decisions if the question presented ever arose again.

Two more cases did not reach the question presented. In *State v. McInnis*, 962 N.W.2d 874, 893 (Minn. 2021), the Minnesota Supreme Court decided a case where the defendant faced not LWOP, but a life sentence with the possibility of parole after 30 years—a sentence for which the court had already declined to extend "the *Miller/Montgomery* rule." *State v. Ali*, 895 N.W.2d 237, 246 (Minn. 2017). And in the other, the Michigan Supreme Court discussed only the allocation of burdens of

proof—and it did so in the course of interpreting a state law, not the federal Eighth Amendment, to boot. *See People v. Taylor*, 987 N.W.2d 132, 140 (Mich. 2022).

And although two other cases held that a finding of corrigibility takes juvenile LWOP off the table, they based their decisions on their respective state constitutions, not just the federal Eighth Amendment. *See Fletcher v. State*, 532 P.3d 286, 307 (Alaska Ct. App. 2023) (intermediate appellate court); *State v. Kelliher*, 873 S.E.2d. 366, 387 (N.C. 2022). So nothing this Court could say regarding the question presented would have a bearing on juvenile LWOP in those states.

2. That leaves only Maryland, whose high court has squarely answered the question presented in agreement with the Utah Supreme Court. *See Malvo v. State*, 281 A.3d 758, 762 (Md. 2022). But Maryland has outlawed juvenile LWOP by statute, meaning the state court's Eighth Amendment holding no longer makes any difference. Md. Code of Crim. P. § 6-235.

With no split and only two courts nationwide having meaningfully answered the question presented, there is no reason for this Court to grant certiorari.

III. This case is not an appropriate vehicle to answer the question presented.

Even apart from the jurisdictional problem, *see supra* at 6-7, this case is a poor vehicle for answering the question presented. Although the court below articulated the rule that petitioner challenges here, the outcome of this case was equally driven by a second holding, one that petitioner ignores. Because petitioner challenges only one of the two bases on which the Utah Supreme Court vacated Mr. Mullins's conviction, any decision of this court on the question presented would be advisory. Moreover, other peculiarities of this case complicate review of the question presented.

1. The decision below vacated Mr. Mullins's sentence under Utah's Rule 22(e) on two separate and independently sufficient grounds, yet the petition seeks review of only one of them.

The decision below first held that Mr. Mullins's sentence must be vacated because there was a "significant risk" that the sentencing court had found him corrigible, which would make an LWOP sentence unconstitutional. Pet. App. 43a. That's the only holding petitioner challenges. Pet. i.

But the decision below did not stop there. It identified a separate Eighth Amendment defect in Mr. Mullins's case: The sentencing "court's comments *also* raise significant concerns that it misapprehended its constitutional obligation to consider youth in the proper manner." Pet. App. 46a (emphasis added). Indeed, the sentencing court's "comments appear to contemplate leaving the full consideration of Mullins's youth to the Board of Pardons and Parole, making it unclear whether the court was appropriately assessing Mullins's youth in its decision to impose a JLWOP sentence." *Id.*

The opinion makes clear that each holding independently supported resentencing Mr. Mullins. At the outset of its analysis, the opinion explained how "the sentencing record raises significant concerns about the constitutionality of Mullins's sentence *and* the sentencing court's apprehension of the constitutional task before it." Pet. App. 49a-50a (emphasis added). Likewise, in its concluding discussion, the court identified two distinct reasons for vacating the sentence: first, the sentencing court's "ambiguous comments on the record about Mullins's capacity for change," and second, the court's failure to appreciate the "full constitutional import"

of the fact that Mr. Mullins committed his crime when he was still a child. *Id.* 51a-52a.

Lest there be any doubt, consider the procedural history of the opinion. Recall that the Utah Supreme Court amended its opinion to include that second holding, adding language about the sentencing court's "misapprehen[sion]" of "its constitutional obligation to properly consider Mullins's youth." Pet. App. 3a. Petitioner filed a petition for rehearing complaining that the amended decision had "established a new basis for reversing Mullins's sentence." State's Pet. for Reh'g at 5 (Nov. 21, 2025). In other words, petitioner itself previously recognized that the failure to correctly apprehend youth's "full constitutional import," Pet. App. 51a, was a separate and independent basis for vacating Mr. Mullins's sentence.

2. Petitioner presumably intends to argue that the Utah Supreme Court did not, in fact, issue two separate holdings—that the concern about the sentencing court's suggestion of corrigibility and the concern about its failure to appreciate youth's constitutional import were part and parcel of a single holding. But even on that telling, this Court should be wary of granting certiorari. If the two errors were intertwined, it's not clear whether an opinion from this Court on the question presented would actually undermine the basis for vacatur below.

3. Even if a decision on the question presented were anything more than advisory, this Court should await a better vehicle. To start, the sentencing record does not squarely tee up the question presented. The Utah Supreme Court was unable to determine whether the trial court found or suggested corrigibility. Pet. App. 45a, 51a. That's not surprising: Mr. Mullins was sentenced before *Miller*, so the sentencing

court had no reason to think that capacity for change was constitutionally significant. The resulting lack of clarity in the record would impede this Court's review.

A better vehicle would postdate *Miller* and include an actual finding of corrigibility. If petitioner's characterization of the extent of the split is correct, such a vehicle will arrive at this Court in short order.

IV. The question presented is not consequential enough to warrant review.

The question presented does not really matter either for Utah or for the rest of the country.

1. The decision below will have virtually no impact on Utah's ability to punish Mr. Mullins or other juvenile defendants.

As for Mr. Mullins himself, petitioner has argued that a sentencing court on remand can still impose an LWOP sentence. State's Pet. for Reh'g at 11 (Mar. 27, 2025). And even if Mr. Mullins received a parole-eligible sentence *and* were eventually granted parole in Utah, he still would not be a free man. Instead, he would face a consecutive life sentence in Arizona for another crime. *See* Pet. 2 n.2; *State v. Mullins*, No. S-1400-CR-200601067 (Ariz. Super. Ct. Yuma County, judgment entered June 13, 2007), https://apps.azcourts.gov/publicaccess/caselookup.aspx (search "S-1400-CR-200601067") (last visited June 2, 2026).

As for the rest of Utah, only one person besides Mr. Mullins is serving an LWOP sentence in Utah for crimes committed as a juvenile. *See* J.Z. Bennett et al., *In the Wake of Miller and Montgomery: A National View of People Sentenced to Juvenile Life Without Parole*, 93 J. Crim. Just. 1, 10 (2024). In that case, there was no finding or suggestion of corrigibility, so the question presented would have no

bearing. *See State v. Houston*, 353 P.3d 55, 63 (Utah 2015) (noting that sentence was imposed by a jury). And the issue is irrelevant to Utah going forward because the State has barred juvenile LWOP by statute since 2016. *See* Utah Code § 76-3-209.

2. The question presented is also of little significance to the rest of the country.

a. First, the question presented is unlikely to affect the sentences of previously convicted offenders. As this Court recognized, "[M]ost offenders who could seek collateral review as a result of *Montgomery* have done so." *Jones*, 593 U.S. at 110 n.4. As of 2024, over 90 percent of individuals serving juvenile LWOP had either been resentenced or deemed ineligible for resentencing. Bennett et. al, *supra*, at 5.

b. The question presented is also unlikely to affect criminal sentencing going forward. To start, *Jones* makes clear that a sentencing court need not make any finding at all regarding corrigibility before imposing LWOP. *Jones*, 593 U.S. at 113-14. So it will be the rare sentencing court that imposes LWOP on a juvenile offender but makes a gratuitous finding that the defendant is corrigible.

In any event, juvenile LWOP is rare—and becoming rarer still—for reasons that have nothing to do with the question presented. Twenty-eight states and the District of Columbia bar juvenile LWOP altogether, by statute or on state constitutional grounds. Campaign for the Fair Sentencing of Youth (home page), https://perma.cc/ESK5-Q6RJ. Still others have state constitutional protections that well exceed the federal Eighth Amendment floors. *Supra* at 14.[5]

[5] All six states that, according to petitioner, align with the decision below fall within those categories—three of the states have statutes banning LWOP for

In the remaining states, there is an active and ongoing legislative debate over whether to ban juvenile LWOP altogether (or at least severely limit it).[6] And in the federal system, a combination of statutes makes it exceedingly unlikely that juveniles are prosecuted federally in the first place, let alone that they receive an LWOP sentence. *See, e.g.*, 18 U.S.C. § 5032.

Even without formal statutory or constitutional bars to juvenile LWOP, sentencing courts are imposing the sentence less and less frequently. All told, between 2019 and 2024, only four of the 50 states imposed five or more juvenile LWOP sentences. Campaign for the Fair Sentencing of Youth, *Unusual & Unequal: Juvenile Life Without Parole* at 6 (April 2024), https://perma.cc/5ZRS-ZY5U.

That landscape likely explains why not a single other state filed an amicus brief in support of Utah's petition for certiorari. That's a striking omission: A coalition of states has filed an amicus brief in virtually every state petition this Court has granted in recent terms—even where the petition raised seemingly one-off issues of criminal procedure. *See, e.g.*, Brief for Oklahoma et al. as Amici Curiae Supporting Petitioner, *D.C. v. R.W.*, 146 S. Ct. 1069 (2026) (No. 25-248); Brief for Idaho et al. as

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juveniles, and the other three have state constitutional protections that exceed the federal floor. *See* Md. Code Crim. P. § 6-235; Wyo. Stat. Ann. § 7-13-402(a); Minn. Stat. § 609.106; *Fletcher*, 532 P. 3d at 306; *Kelliher*, 873 S.E.2d at 393; *Taylor*, 987 N.W.2d at 137 n.9.

[6] *See* H.B. 524, 2025 Leg. (Ala. 2025); S.B. 232, 2021 Leg. (Fla. 2021); H.B. 1214, 2021 Leg. (Ga. 2024); S.B. 368, 2021 Leg. (Ind. 2021); H.B. 254, 2021 Leg. (La. 2021); S.B. 119-23, 2023 Leg. (Mich. 2023); S.B. 2362, 2021 Leg. (Miss. 2021); L.B. 339, 2023 Leg. (Neb. 2023); H.B. 632, 2021 Leg. (N.H. 2021); S.B. 390, 2025 Leg. (Okla. 2025); H.B. 1441, 2025 Leg. (Pa. 2025); S.B. 21, 2024 Leg. (S.C. 2024); H.B. 2229, 2025 Leg. (Tenn. 2025); S.B. 882, 2026 Leg. (Wis. 2026).

Amici Curiae Supporting Petitioner, *Hamm v. Smith*, No. 24-872 (S. Ct. May 21, 2026). But no other state supported Utah's petition here—further proof that the question presented has no broader practical significance.

V. The rule announced below is correct.

Petitioner does not even attempt to argue that its preferred answer to the question presented is consistent with this Court's precedents. Nor could it.

1. Although *Miller* did not "categorically bar" LWOP for juvenile offenders, it did bar LWOP for a subset of juvenile offenders—those "whose crime reflects unfortunate yet transient immaturity." 567 U.S. at 480-481. *Miller* distinguished between that mine run of juvenile offenders and "the rare juvenile offender whose crime reflects irreparable corruption." *Id.* Only the latter could constitutionally be sentenced to LWOP.

Were there any doubt about *Miller*'s substantive holding, this Court quelled it in *Montgomery*. The question in *Montgomery* was whether *Miller* was retroactive. As relevant here, only substantive rules—those that "prohibit[] a particular form of punishment for a class of persons"—are retroactive. *Montgomery*, 577 U.S. at 210. *Miller* announced just such a substantive rule: It "prohibited a particular form of punishment" (LWOP) for a class of persons (those juvenile offenders whose crimes reflect transient immaturity). *Id.* The Court's recognition that *Miller* announced this substantive rule was thus necessary to *Montgomery*'s conclusion that *Miller* applied retroactively.

In *Jones*, this Court rejected the argument that *Miller* and *Montgomery* required a sentencing court to make a finding of permanent incorrigibility before

imposing LWOP. 593 U.S. 98, 101 (2021). But *Jones* reiterated three separate times that it was *not* overruling *Miller* or *Montgomery*. *Id.* at 106 n.2, 110-111, 118. Indeed, it restated *Montgomery*'s "key paragraph" on the point: A State may not "sentence a child whose crime reflects transient immaturity to life without parole." *Id.*

2. The Utah Supreme Court's opinion exactly mirrors the rule from *Miller*, *Montgomery*, and *Jones*. If a juvenile offender has the capacity to change, his crime does not reflect "permanent incorrigibility." Pet. App. 43a. Per *Miller* and *Montgomery*, he therefore cannot be sentenced to LWOP. Consistent with *Jones*, a sentencing court need not make a finding regarding capacity for change. *Id.* But if it nonetheless finds that the juvenile offender is capable of change, LWOP is an unconstitutional sentence. *Id.* Any other rule would fly in the face of *Jones*'s reassurance that *Miller* and *Montgomery* are still good law.

In *Jones*, this Court reiterated its determination to "avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." 593 U.S. at 106 n.2. It should honor that principle here and leave the Utah Supreme Court's attempt to faithfully apply *Miller*, *Montgomery*, and *Jones* alone.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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