No. 18-203

IN THE

Supreme Court of the United States

JOEY MONTRELL CHANDLER,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Mississippi

BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS, DEPARTMENT OF JUSTICE OFFICIALS, AND JUDGES IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES--Continued

Page(s)

Other Authorities:

INTEREST OF AMICI CURIAE

Amici are current and former federal, state, and local prosecutors, Department of Justice officials, and judges with experience prosecuting, establishing policy for prosecuting, and sentencing for violent crimes, including those committed by juveniles. Amici recognize the importance of fair and proportionate sentencing to the credibility of the criminal justice system and the need to balance the impact of the crime on victims and survivors with the characteristics of the offender, including youth and the possibility of rehabilitation. Amici believe that states have an obligation to provide minimal procedural safeguards to effectuate this Court's direction to reserve the ultimate penalty of life without possibility of parole for only the rare juvenile homicide offender for whom rehabilitation is impossible. The procedures used by the state court below were constitutionally insufficient and undermine confidence that juveniles will be treated fairly in the criminal justice system.[1]

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amici certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amici and their counsel, made a monetary contribution intended to fund this brief's preparation or submission. Counsel of record for all parties received timely notice of the filing of this brief and consented to its filing.

SUMMARY OF ARGUMENT

Prosecutors and judges recognize that every homicide is tragic for the victims and survivors and that the punishment for those found guilty of such crimes should be substantial. But prosecutors and judges also have an interest in ensuring that those punishments are fair and proportionate, taking into account not only the circumstances of the crime and its impact on victims and survivors, but also the characteristics of the offender. This Court has recognized that juveniles are "constitutionally different from adults for purposes of sentencing," and that a sentencing scheme that imposes mandatory life without parole on juvenile homicide offenders "poses too great a risk of disproportionate punishment." *Miller v. Alabama*, 567 U.S. 460, 471, 479 (2012). Indeed, this Court has required that sentences of life imprisonment without the possibility of parole be reserved solely for "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016). Accordingly, the Court expects that sentencing juveniles "to this harshest possible penalty will be uncommon." *Miller*, 567 U.S. at 479.

The trial court's handling of Joey Chandler's resentencing in this case, and its approval by the Mississippi Supreme Court, fail to effectuate this Court's mandate and undermine confidence in the fairness of the criminal justice system. The trial court resentenced Joey Chandler to life without parole, while failing to evaluate in any meaningful way his "youth and attendant characteristics" and, most

importantly, his "possibility of rehabilitation." *Miller*, 567 U.S. at 483, 478. If left undisturbed, the Mississippi Supreme Court's approval of such an approach would allow courts in the state to sentence almost any juvenile homicide offender to life without parole, so long as they profess to have considered the factors set out in this Court's precedents. This case presents the opportunity to ensure that such sentences are imposed only in the rare circumstances this Court envisioned.

ARGUMENT

I. PROPORTIONATE SENTENCING PRINCIPLES FORBID THE MOST SEVERE PUNISHMENTS FOR MOST JUVENILE OFFENDERS

The Eighth Amendment's prohibition of cruel and unusual punishment "'flows from the basic precept of justice that punishment for crime should be graduated and proportioned' to both the offender and the offense." *Miller*, 567 U.S. at 469 (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). Therefore, when proscribing a particular punishment for a particular category of offenders, this Court considers "the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question," and "whether the challenged sentencing practice serves legitimate penological goals." *Graham v. Florida*, 560 U.S. 48, 67 (2010).

As experienced prosecutors and judges, amici understand that proportionality in sentencing is

important to the credibility of the criminal justice system. And although homicide is the ultimate crime—permanently ending a person's life and forever altering the lives of others—amici also understand that the culpability of juveniles is often different than that of adults. Disproportionate sentences undermine the perception that justice has been done in a particular case and give the impression of unfairness on a broader scale. As Justice Frankfurter put it, "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954).

In a series of decisions spanning just over a decade, this Court has recognized that "children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at 471. Thus, some sentences that may be appropriate for adults are invalid under the Eighth Amendment when imposed on juvenile offenders. First, in *Roper v. Simmons*, the Court held that the Eighth Amendment prohibits capital punishment for crimes committed by juveniles because "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability." 543 U.S. at 572–73. The Court extended the logic of *Roper* in *Graham v. Florida* to bar sentences of life imprisonment without the possibility of parole for non-homicide offenses committed by juveniles. In doing so, the Court noted that, like a capital sentence, a sentence of life without parole "alters the offender's life by a forfeiture that is irreparable" and that the "twice diminished moral culpability" of a juvenile non-homicide offender undermines the justification for

such a severe sentence. 560 U.S. at 69. Finally, in *Miller v. Alabama*, as further explained in *Montgomery v. Louisiana*, the Court held that life-without-parole sentences are disproportionate for "the vast majority" of juvenile homicide offenders. 136 S. Ct. at 734.

These limitations on juvenile sentencing derive from the fact that, due to their "diminished culpability and greater prospects for reform," children "are less deserving of the most severe punishments." *Miller*, 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68). In particular, this Court has identified three crucial differences between children and adults for purposes of sentencing:

> First, children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more 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. And third, a child's character is not as "well formed" as an adult's; his traits are less fixed and his actions less likely to be "evidence of irretrievable depravity."

Miller, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569–70) (brackets and citations omitted).

The Court's recognition that children are different accords with evolving understandings of child psychology and the neuroscience of adolescent development. In recent years, "studies of adolescent brain anatomy clearly indicate that regions of the brain that regulate such things as foresight, impulse control, and resistance to peer pressure" are not fully developed at age 17. Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, Issues in Sci. & Tech., Spring 2012, http://issues.org/28-3/steinberg/. At that time, a child is still growing into who she will become as an adult. *See, e.g.*, Mass. Inst. Of Tech., *Brain Changes*, Young Adult Dev. Project (2008), http://hrweb.mit.edu/worklife/youngadult/brain.html ("The brain isn't fully mature at" age 18.).

Considering the ways in which juveniles are different from adults, *Miller* and *Montgomery* concluded that, under the Eighth Amendment, a life sentence without the possibility of parole must be reserved for "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S. Ct. at 733. In other words, because adolescents' "transient rashness, proclivity for risk, and inability to assess consequences" lessen their "'moral culpability' and enhance[] the prospect that, as the years go by . . . , [their] 'deficiencies will be reformed,'" *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 68), "a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" *Montgomery*, 136 S. Ct. at 726 (quoting *Miller*, 567 U.S. at 479).

II. CONSTITUTIONALLY ADEQUATE PROCEDURES ARE REQUIRED TO PROTECT *MILLER*'S SUBSTANTIVE GUARANTEE

Although *Miller*'s primary holding is its substantive guarantee, *Miller* and *Montgomery* also recognize that certain procedural safeguards are necessary to effectuate that guarantee—that is, to minimize the risk that a juvenile offender whose crimes reflect "transient immaturity," rather than "permanent incorrigibility," will be erroneously subject to an unconstitutionally harsh sentence. *Montgomery*, 136 S. Ct. at 734. *Miller* therefore "requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." *Id*. In particular, the sentencing court must "consider a child's 'diminished culpability and heightened capacity for change.'" *Id.* at 726 (quoting *Miller*, 567 U.S. at 479).

It is true that, in order to "avoid intruding more than necessary" on state sovereignty, this Court in *Miller* did not dictate specific procedures that state courts must follow. *Montgomery*, 136 S. Ct. at 735. Nonetheless, in amici's view, certain minimum procedures are constitutionally required to effectuate *Miller*'s substantive guarantee and ensure proportionate sentences.

In the death penalty context, for comparison, state sentencing regimes must meet certain constitutional requirements, even though states generally have flexibility to create their own procedures within the confines of those rules. *See, e.g.*, *Moore v. Texas*, 137

S. Ct. 1039, 1048 (2017) ("Although *Atkins* and *Hall* left to the States 'the task of developing appropriate ways to enforce' the restriction on executing the intellectually disabled, States' discretion, we cautioned, is not 'unfettered[.]'" (citations omitted) (quoting *Hall v. Florida*, 134 S. Ct. 1986, 1998 (2014))). Likewise, here, the Eighth Amendment makes impermissible a particular sentence for a particular category of offenders and therefore demands certain minimum procedural protections to safeguard that distinction. *See Montgomery*, 136 S. Ct. at 735 ("That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole.").

In *Miller*, the Court made clear its expectation that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." 567 U.S. at 479. As prosecutors and judges, amici appreciate that only consistent minimum procedural requirements can ensure the fair application of proportionate sentencing principles—and therefore the evenhanded administration of justice—nationwide. When state-court procedures fail to ensure that sentencers impose life-without-parole sentences on juveniles only in the rare circumstances envisioned by this Court, those procedures fail to meaningfully fulfill *Miller*'s constitutional promise.

III. THE STATE COURT'S PROCEDURES WERE CONSTITUTIONALLY INSUFFICIENT

At issue in this case is whether state courts like Mississippi's have fulfilled this Court's direction to ensure that sentencing practices sufficiently minimize the risk that juveniles whose crimes reflect only "transient immaturity" will receive sentences that are constitutionally disproportionate. As evidenced by the facts of this case, the answer to that question is *no*. For the families of homicide victims, every murder is a profound tragedy. Amici have witnessed firsthand the enormous toll that the crime exacts on survivors. Under *Miller* and *Montgomery,* however, it is only "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S. Ct. at 733. Here, the facts in the record do not suggest that Joey Chandler is one of those offenders.

A. Facts and Procedural History

At age 17, petitioner Joey Chandler killed his 19-year-old cousin, Emmitt Chandler.[2] At the time, Joey's girlfriend was pregnant and he intended to sell marijuana in order to earn extra income. The marijuana that Joey intended to sell was stolen from his car and he believed that his cousin, Emmitt, was

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[2] Except as otherwise noted, the facts of this case are drawn from Petitioner's direct appeal of his criminal conviction. *See Chandler v. State*, 946 So. 2d 356 (Miss. 2006) (en banc). Amici adopt herein Petitioner's reference to himself as "Joey" to avoid confusion with his cousin, who bears the same last name.

the thief. Frightened that he or his family would be killed if he did not "get the money back or get the drugs back," *Chandler v. State*, 946 So. 2d 356, 357 (Miss. 2006) (en banc), Joey borrowed a gun from his uncle and went to find Emmitt. Joey ultimately shot Emmitt twice. After the shooting, Joey fled the scene, but later returned to help his cousin and then turned himself in to the Sheriff's office that same night. A jury convicted Joey of murder and he was sentenced to a mandatory term of life without parole under Mississippi Code § 97-3-21.

Following the Court's decision in *Miller*, Joey moved to be resentenced to life with the possibility of parole and a hearing was held in the Circuit Court of Clay County, Mississippi, in January 2015. At the hearing, Joey put on significant evidence of his rehabilitation while incarcerated, "including the testimony of [his] wife, father, and two family friends, as well as numerous letters submitted on his behalf by other family members, friends, and members of the community." Pet. App. 14a (Waller, C.J., dissenting). The record also showed that Joey's prison time was "virtually without disciplinary blemish and that he excelled in job training programs offered at the prison." *Id.* Indeed, Joey earned his GED and completed college-level coursework in Bible studies. Supp. Tr. 60, 61.[3] He earned certificates in construction-related trade skills, such as HVAC maintenance. *Id.* at 29, 61. And he finished 1200 of

[3] References to "Supp. Tr." are to the record transcript of the resentencing hearing on file with the Supreme Court of Mississippi, No. 2015-KA-01636-SCT.

1600 hours of work required for a certificate in automotive repair. *Id.* at 61–62. The record also established that Joey would have a job and a place to live if he were released from prison. Pet. App. 14a.

In a written opinion filed in October 2015, the trial court resentenced Joey to life without the possibility of parole. In doing so, it first concluded that "nothing in the record" suggested that Joey "suffered from a lack of maturity when he killed Emmitt Chandler." Pet. App. 23a. As proof of Joey's maturity, the trial court listed things that 17-year-olds are legally allowed to do (obtain an abortion, receive a pilot's license, obtain a driver's license) and stated that Joey was "mature enough to father a child with his girlfriend[.]" Pet. App. 23a–24a. In a footnote rejecting the argument that Joey's actions in this case were indicative of his immaturity, the trial court commented that a 17-year-old had received a medal of honor in the Second World War. *Id.* at 23a n.4. Rather than consider how Joey's "'youth and its attendant characteristics'" might indicate "transient immaturity" for which life without parole is an excessive sentence, *Montgomery*, 136 S. Ct. at 735 (quoting *Miller*, 567 U.S. at 465), the court proclaimed Joey "very mature" because he planned the crime and shot his cousin twice, came from a nuclear family, and did not suffer from mental illness. Pet. App. 26a.

The trial court next noted that this Court in *Miller* "talks about rehabilitation and the defendant's prospects for future rehabilitation," but the court did not even acknowledge, much less consider, the evidence of rehabilitation that Joey had introduced at the hearing. *Id.* Instead, the court dispensed with its

obligations under *Miller* by commenting that "the Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted." *Id.* at 26a–27a.

The Supreme Court of Mississippi affirmed the trial court's decision to reimpose a life-without-parole sentence in a 5-4 decision. It held that "the trial court comported" with *Miller*'s requirements "because it afforded Chandler a hearing and sentenced Chandler after considering and taking into account each factor identified in *Miller*," and it concluded that the trial court's sentence was not an abuse of discretion. *Id.* at 6a–7a.

Chief Justice Waller and three other justices dissented. They concluded that "the trial court, at a minimum, should have addressed Chandler's capacity for rehabilitation and made an on-the-record finding that Chandler was one of the rare juvenile offenders whose crime reflected permanent incorrigibility before imposing" a sentence of life without parole. Pet. App. 16a (Waller, C.J., dissenting). The dissenting justices disagreed with the majority's conclusion that the trial court had adequately considered Joey's prospects for rehabilitation when it reasoned that the Executive Branch had the authority to pardon him or commute his sentence, stating that "the possibility of receiving a pardon or commuted sentence at some unspecified future date is in no way relevant to the consideration of Chandler's capacity for rehabilitation under *Miller*." *Id.* at 13a. And they emphasized that "[c]onsideration of the defendant's capacity for rehabilitation is a crucial step in the *Miller* analysis, because a life-without-parole

sentence 'reflects an irrevocable judgment about [an offender's] value and place in society, at odds with a child's capacity for change.'" Pet. App. 13a–14a (quoting *Miller,* 567 U.S. at 473) (brackets in original).

Recognizing that this Court's opinion in *Miller* did not impose a specific factfinding requirement on lower courts, the dissenting justices nevertheless cited with favor several state Supreme Court decisions that required factual determinations on the record as "necessary to implement *Miller* effectively," and concluded that the trial court's resentencing of Joey was "insufficient as a matter of law." *Id.* at 14a–17a.

B. The Record Does Not Support the Trial Court's Conclusion that a Life-Without-Parole Sentence Was Warranted.

As prosecutors and judges, amici appreciate that for those who knew and loved a victim of murder, each case is rare and exceptional. The act of taking a life is necessarily an extreme departure from the norms we expect of every person living in society. But "*Miller*'s central intuition" is "that children who commit even heinous crimes are capable of change." *Montgomery*, 136 S. Ct. at 736. Indeed, *Miller* applies only to homicide cases—as *Graham* bars life-without-parole sentences for all juvenile non-homicide offenses—and makes clear that only the rare juvenile homicide offender may be denied the opportunity to seek parole. Therefore, under this Court's case law, more than an intentional killing is required to make a life-without-parole sentence for a juvenile constitutionally permissible.

The trial court's handling of Joey's resentencing, and its approval by the Mississippi Supreme Court, fail to effectuate this Court's direction and, in turn, undermine confidence in the fairness of the criminal justice system. That is because the trial court failed to evaluate in any meaningful way Joey's "youth and attendant characteristics" to determine if they place him within the category of offenders who exhibit "such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery,* 136 S. Ct. at 733–34.

First, the trial court's reasoning contradicts the growing body of scientific evidence that adolescent brains are not fully developed at age 17. *See supra* at 6. And in amici's experience, the facts of Joey's case suggest the very immaturity that the trial court dismissed. Fathering a child at a young age, for example, may reflect adolescent impulsive decision-making. Joey's decision to sell marijuana in order to raise money and his fear for his safety after finding the marijuana missing could suggest a lack of appreciation of consequences and foresight characteristic of youth of his age. *See Miller*, 567 U.S. at 477 ("hallmark features" of juveniles include "immaturity, impetuosity, and failure to appreciate risks and consequences"). And neither the legal entitlements of teenagers generally nor the actions of a war hero are in any way probative of the maturity of any particular juvenile offender, nor do they distinguish Joey from the vast majority of juvenile offenders.

Second, the trial court's failure to even mention, much less meaningfully consider, Joey's

demonstrated evidence of rehabilitation suggests that it paid no more than lip service to its obligation under *Miller*. A sentence of life without parole is permitted only when "rehabilitation is impossible." *Montgomery*, 136 S. Ct. at 733. But rather than consider whether the evidence indicated the possibility that Joey could become a productive member of society were he to be released on parole someday, as *Miller* requires, the trial court shirked its responsibility and transferred any consideration of rehabilitation to the Executive Branch, referencing its pardon and clemency power. As the dissenting Mississippi Supreme Court justices recognized, "the possibility of receiving a pardon or commuted sentence at some unspecified future date" does not satisfy *Miller*. Pet. App. 13a; *see also Graham*, 560 U.S. at 70 (executive clemency—a "remote possibility"—did not mitigate the severity of a life-without-parole sentence); *Parker v. State*, 119 So. 3d 987, 997 (Miss. 2013) (possibility of "conditional release" was insufficient to render a life sentence proportionate for a juvenile offender who was capable of rehabilitation).

The court's failure to meaningfully consider Joey's potential for rehabilitation highlights what is at stake in this case. Joey sought resentencing merely to be allowed the *possibility* of parole should he prove himself worthy of release at some point in the future. As this Court recognized in *Graham*, the possibility of parole does not "guarantee eventual freedom to a juvenile offender." 560 U.S. at 75. But for the vast majority of juvenile homicide offenders, the State must give the defendant "some meaningful opportunity to obtain release based on demonstrated

maturity and rehabilitation." *Id.* In amici's experience, the unrefuted evidence that Joey introduced at his resentencing—after 10 years of incarceration—suggests that he has already begun the process of maturing and rehabilitating himself.

In sum, nothing in the record suggests that Joey is hopelessly and permanently incorrigible. With only a nod to *Miller* and the Eighth Amendment's proportionality requirement, the sentencing court failed to appropriately distinguish Joey from an offender whose crime reflects irretrievable depravity.

C. The Procedures Approved by the Mississippi Supreme Court Are Constitutionally Insufficient.

As evidenced by this case, the Mississippi Supreme Court's approval of the trial court's perfunctory review under *Miller* does not adequately ensure that juvenile homicide offenders in Mississippi will receive constitutionally permissible sentences. Should that court's opinion be left undisturbed, sentencing courts in the state would be permitted to sentence any juvenile homicide offender to life without parole so long as the court holds a hearing, recites the *Miller* factors, and professes to have considered them, even when the record suggests otherwise. Under this scenario, there can be no meaningful appellate review of a juvenile sentencing decision.

This cannot be what this Court intended in *Miller* and *Montgomery*. Such a procedure effectively would nullify the Eighth Amendment's substantive limitations on juvenile sentencing. If a punishment that the Constitution considers cruel and unusual for

most children threatens to become the norm, rather than the exception, the integrity of the criminal justice system is compromised. Amici urge this Court to take this opportunity to make clear that the procedures approved by the Mississippi Supreme Court are constitutionally inadequate to ensure that the most severe penalty available for children is reserved for only the "rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S Ct. at 733.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to grant the petition.

Respectfully submitted,

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