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 SCHOLARS OF CRIMINAL LAW AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Professors Andrea Armstrong, Rabia Belt, Stuart Banner, Josh Bowers, Beth Colgan, Sharon Dolovich, Craig B. Futterman, Jennifer Givens, Martin Guggenheim, Shani King, Issa Kohler-Hausmann, Mae C. Quinn, Laura Rovner, Sarah French Russell, Alison Siegler, Carol S. Steiker, Cara Suvall, Madalyn Wasilczuk, and Gideon Yaffe are scholars of federal courts, sentencing, and criminal law. They have a shared interest in the implementation of rules limiting the punishments that can constitutionally be imposed on children. *Amici* believe this Court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016)—holding that a lifetime of imprisonment without possibility of parole is disproportionate under the Eighth Amendment for all but the rarest of juvenile offenders whose crimes reflect irreparable corruption—requires sentencing authorities to make a finding of permanent incorrigibility before imposing this drastic sentence. Allowing sentencing authorities to impose the harshest punishment constitutionally permissible for juvenile offenders without making a finding of

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[1] *Amici* appear in their individual capacities; institutional affiliations are provided here for identification purposes only. Also, this brief has been prepared or joined by an individual affiliated with Yale Law School, but does not purport to present the school's institutional views, if any. Pursuant to Rule 37.6, *amici curiae* certify that this brief was not written in whole or in part by counsel for any party, and no person or entity other than *amici curiae* and its counsel has made a monetary contribution to the preparation and submission of this brief. Counsel for record for all parties received notice of the filing of this brief and consented to its filing.

permanent incorrigibility or recognizing evidence of rehabilitation as relevant to incorrigibility demeans a substantive right and imperils the rule of law by subjecting juvenile offenders whose crime may reflect the transient immaturity of youth to punishments that are disallowed under the Eighth Amendment. Because Mississippi courts have held they can impose a life without parole sentence on juvenile offenders without such a finding, *amici* urge this Court to grant *certiorari*.

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SUMMARY OF ARGUMENT

This Court's Eighth Amendment jurisprudence has recognized that the distinctive neurological, psychological, and social characteristics of children mean that "children are constitutionally different than adults for purposes of sentencing," *Miller v. Alabama*, 567 U.S. 460, 471 (2012), because they have "diminished culpability and greater prospects for reform." *Montgomery v. Louisiana*, 136 S.Ct. 718, 733 (2016) (quoting *Miller*, 567 U.S. at 471 (citing *Roper*, 543 U.S. at 569-70; *Graham*, 560 U.S. at 68)). In recognition of those differences, this Court has held that the Eighth Amendment's prohibition on "cruel and unusual punishments" limits the types of punishments that may be imposed on children. Most recently, this Court announced that the Eighth Amendment forbids mandatory sentencing schemes that require life without the possibility of parole for children. In *Miller v. Alabama*, this Court barred life without parole "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734.

Miller, however, "did more than require a sentencer to *consider* a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Id.* at 734 (emphasis added). As held by this Court in *Montgomery*, *Miller* announced a substantive rule of proportionality in punishment under which a specific penalty—a lifetime of imprisonment without the possibility of parole—was deemed unconstitutional for an entire class of defendants because of their

status—juveniles who are capable of rehabilitation and reform. *Id.*

Although the Court did not mandate the procedure necessary to ensure that only "permanently incorrigible" children were sentenced to life without parole, it warned that this lack of guidance "should not be construed to demean the substantive character of the federal right at issue." *Montgomery*, 136 S. Ct. at 735. To the contrary, the Court made clear that to impose a life-without-parole sentence on children whose crimes reflect transient immaturity would be a "deprivation of a substantive right." *Montgomery*, 136 S. Ct. at 734. To effectuate the substantive guarantee of proportionate punishment, this Court directed lower courts, at the very *least*, to "enable[] a prisoner to show that he falls within the category of persons" upon whom the law may no longer impose a sentence of life without parole—*i.e.*, that he is not among the rare "permanently incorrigible" children. *Id.* at 735.

Yet, the substantive character of the guaranteed right is at issue in this case. In sentencing Joey Chandler to life without parole, the lower court nowhere declared that he was permanently incorrigible. Nor did it reckon with the ample evidence he presented to show that his rehabilitation is possible, and that he therefore belongs to a class of people for whom a sentence of life without parole is unconstitutional. *See Miller*, 567 U.S. at 478. In fact, the Mississippi Court adopted the precise reading of *Miller* advanced by the State of Louisiana and rejected by the majority in *Montgomery*, that all the Eighth Amendment requires is that "sentencing courts [] take children's age into account before condemning them to die in prison." *Montgomery*, 136 S. Ct. at 734.

Without a finding of permanent incorrigibility, *Montgomery*'s determination that *Miller*'s rule is substantive is rendered meaningless. *Amici* respectfully urge the Court to grant *certiorari* to clarify that sentencing authorities must find a juvenile permanently incorrigible before condemning him to die in prison, and moreover that evidence of actual rehabilitation militates against a finding that a particular juvenile offender is among the "rarest of children, those whose crimes reflect 'irreparable corruption.'" *Id.* at 726. This Court's consideration of this case is necessary to ensure implementation of its substantive rules and uphold the rule of law.

ARGUMENT

I. THIS COURT HAS LIMITED LIFE WITHOUT THE POSSIBILITY OF PAROLE TO THE RAREST OF JUVENILE OFFENDERS

The law is clear: Sentences of life imprisonment without the possibility of parole are only constitutionally permissible 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. That substantive rule—announced in *Miller* and declared retroactive in *Montgomery*—"rendered life without parole an unconstitutional penalty" for an entire class of offenders, children "whose crimes reflect the transient immaturity of youth." *Id.* at 734.

That prohibition stems from this Court's Eighth Amendment jurisprudence that recognizes that "children are constitutionally different from

adults for purposes of sentencing." *Id.* at 733 (quoting *Miller*, 567 U.S. at 471). These differences arise from "children's diminished culpability and greater prospects for reform." *Id.* And these differences, according to this Court, manifest in three principle ways:

> 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.

Id. (internal quotation marks, alterations, and citations omitted).

The "distinctive attributes of youth" that this Court has identified are supported by recent findings in psychology and neuroscience. *See Miller*, 567 U.S. at 472. Those findings show "[c]onsiderable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices." Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILD. 15, 20 (2008). These findings also show that children are both "less likely to

perceive risks and less risk averse than adults," *id.* at 21, and that they are more susceptible to peer pressure. Allison Burton, *A Commonsense Conclusion: Creating a Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 HARV. C.R.-C.L.L. REV. 169, 186-87 (2017). Studies of adolescents also show that the "brain systems responsible for logical reasoning and basic information processing mature earlier than those that undergird more advanced executive functions and the coordination of affect and cognition necessary for psychosocial maturity." Laurence Steinberg, et. al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583, 592 (2009). And these findings show that "'[o]nly a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior.'" *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (quoting Steinberg & Scott, 58 Am. PSYCHOLOGIST 1009, 1014 (2003)).

In light of those "distinctive attributes of youth," this Court has developed a "line of precedent holding certain punishments disproportionate when applied to juveniles." *Montgomery*, 136 S. Ct. at 732. For example, this Court has held that sentencing children to capital punishment or life without parole for a non-homicide offense is prohibited by the Eighth Amendment. *See Graham v. Florida*, 560 U.S. 48, 50 (2010) ("As for punishment, life without parole is the second most severe penalty permitted by law and is especially harsh for a juvenile offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender.") (internal

quotation marks and internal citations omitted); *Roper*, 543 U.S. at 572-73 ("The 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.").

Most recently, this Court has held that the Eighth Amendment forbids sentencing schemes that impose mandatory life without parole sentences on children because those schemes "preclude[] consideration of [children's] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller*, 567 U.S. at 477. Those schemes, as this Court has explained, present "too great a risk" that a child's crimes reflect "unfortunate yet transient immaturity" as opposed to "irreparable corruption," leading to a constitutionally disproportionate punishment. *Id.* at 479.

Accordingly, "sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption," thereby "render[ing] life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery*, 136 S. Ct. at 734 (citing *Miller*, 567 U.S. 460 (2012); *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)) (internal quotation marks omitted). Under *Miller* and *Montgomery*, a sentencing authority is constitutionally forbidden from handing down a sentence of life without parole unless it deems a defendant "permanently incorrigible," and therefore a rare member of a class of persons for whom life

without parole is constitutional. *Montgomery*, 136 S. Ct. at 734. And sentencing authorities are constitutionally required not merely "to consider" a defendant's youth and its attendant characteristics before sentencing him to life without parole, but to actually evaluate whether in light of particularized evidence about a specific defendant if the individual child at issues is irreparably corrupt or is capable demonstrating maturity and rehabilitation. *Miller*, 567 U.S. at 480 (courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison").

II. THE LOWER COURT'S HOLDING UNDERMINES *MILLER* AND *MONTGOMERY*

The lower court's analysis in Joey Chandler's case flipped these constitutional sentencing commands on their head, rendering procedural what is a substantive right. The Mississippi courts ignored the clear holding of *Montgomery*—that *Graham* and its progeny announced substantive rules of proportionality in punishment for juvenile offenders—and instead held that a juvenile may be sentenced to a lifetime of imprisonment with no hope for parole release even if he may not be irreparably corrupt as long as the sentencing body avers it "considered" the defendant's juvenile status. In doing so, the Mississippi Supreme Court essentially adopted the dissenting opinion in *Montgomery*, arguing that *Miller* mandates only that a sentencer *follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty.

Nowhere did the lower court determine that Joey[2] was permanently incorrigible. Rather, it observed that "nothing in the record" suggested that Joey "suffered from a lack of maturity when he killed Emmitt Chandler." Pet. App. 23a. The court pointed out that "[h]e was mature enough to father a child with his girlfriend," *id.* at 24a, was raised in a nuclear family, had no history of mental illness, and planned the crime for which he was convicted. *Id.* at 26a. But the facts the court recited have nothing to do with *Miller* and *Montgomery*'s rule holding a lifetime prison sentence disproportionate except for juvenile offenders who are permanently incorrigible. Joey's girlfriend's unplanned pregnancy, for example, is unrelated to his potential for rehabilitation, and is in fact more consistent with a lack of mature forward-looking thinking. Likewise, the court did not explain how its comments about Joey's misguided plan to provide for his young family by selling marijuana show that he is irredeemably corrupted, as opposed to representing evidence that Joey's deeply misguided and childishly selfish mindset could be reformed. And the lack of mental illness the lower court cited is wholly unrelated to the constitutional rules relating to juvenile punishments.

Indeed, the court considered Joey's age—17 years old—not as separating him from adulthood, but as the opposite. The court used Joey's age as a proxy for maturity, reciting that 17-year olds may obtain abortions and licenses to operate motor vehicles and planes. *Id.* at 23a-24a. The lower court also provided

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[2] *Amici* adopt herein Petitioner's reference to himself as "Joey" to avoid confusion with his cousin, Emmitt, who bears the same last name.

an anecdote about a 17-year-old Marine who valiantly dove onto a grenade to protect his comrades in World War II. *Id.* at 23a n. 4. To be sure, some teenagers are capable of bravery and determination. But by citing a litany of legal entitlements for teenagers and an anecdote of a heroic marine, the trial court failed to properly engage the relevance of the "distinctive attributes" of Joey's youth, *see Miller*, 567 U.S. at 472, and "how [Joey was] different, and how those differences counsel[ed] against irrevocably sentencing [him] to a lifetime in prison." *See Montgomery*, 136 S.Ct. at 733 (internal quotation marks and citation omitted). Pet. App. 26a. Instead, the court operated from an assumption that Joey was an adult, ***by virtue of*** being 17 (and a half) years old.

This analysis is the inverse of that demanded by *Miller* and *Montgomery*. Joey, like the defendant in *Miller*, demonstrated characteristically juvenile attitudes and behaviors, including engaging in unprotected sex and dealing drugs, which catalyzed a series of bad decisions that eventually led him to take the life of his cousin. The point of evaluating the *Miller* factors is not to establish whether the defendant is criminally responsible for the tragic loss of life he occasioned or if he should be punished. The point of evaluating the *Miller* factors is to decide if, given that the defendant had committed a crime for which he is criminally responsibly despite his juvenile status, the state's harshest penalty of a lifetime of imprisonment is proportionate for this particular defendant because he cannot be reformed and rehabilitated or if "hope for some years of life outside prison walls," ought to be maintained. *Montgomery*, 136 S. Ct. at 737.

In addition to failing to make a finding that Joey was permanently incorrigible before sentencing him to die in prison, the court ignored evidence showing that Joey was not among the "rarest of juvenile offenders" who have no hope for rehabilitation. *Id.* at 734. This Court has provided examples of the type of evidence that lower courts should take into account in determining that the defendant is in the class of defendants for whom life without parole is unconstitutional. For example, the petitioner in *Montgomery* outlined "his evolution from a troubled, misguided youth to a model member of the prison community," including statements that "he helped establish an inmate boxing team, of which he later became a trainer and coach" and "contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates." *Montgomery*, 136 S. Ct. at 736. The Court noted that these submissions were "relevant . . . as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." *Id.* At the very least, implementation of *Montgomery* requires that a court afford a defendant a meaningful opportunity to show that he is in the class of defendants for whom life without parole is unconstitutional.

After this Court's decision in *Miller*, Joey moved to be resentenced to life with the possibility of parole. In support of his petition, he presented substantial evidence of rehabilitation, including: (i) "the testimony of [his] wife, father, and two family friends"; (ii) "numerous letters submitted on his behalf by other family members, friends, and members of the community"; (iii) "evidence that he

would have a job and a place to live waiting for him if he were released from prison"; (iv) evidence that "he excelled in job training"; and (v) evidence that "his decade of imprisonment was virtually without disciplinary blemish." Pet. App. 14a (Waller, C.J., dissenting). All this evidence is of the type the Court in *Montgomery* declared relevant to the constitutionality of life without parole. *See Montgomery*, 136 S. Ct. at 736. But rather than engaging with the evidence that this Court deemed "relevant," the trial court's sole mention of rehabilitation was to note that "[t]he United States Supreme Court talks about rehabilitation and the defendant's prospects for future rehabilitation," and conclude that in Joey's case, the "Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted." Pet. App. 26a-27a.

Because the lower court made no finding of permanent incorrigibility and ignored evidence of Joey's rehabilitation, he has received an unconstitutional punishment. That reality is all the more pronounced given the rarity with which this Court expects courts to sentence juveniles to die in prison.

III. ALLOWING SENTENCING AUTHORITIES TO SENTENCE JUVENILES TO DIE IN PRISON WITHOUT A FINDING OF PERMANENT INCORRIGIBILITY WOULD IMPERIL THE RULE OF LAW

The rule of law requires sentencing authorities to limit life without parole to "the rarest juvenile offenders, those whose crimes reflect permanent

incorrigibility." *Montgomery*, 136 S. Ct. at 734. But here the trial court made no such finding and has imperiled the rule of law. That judgment derogates this Court's rule-making authority, deepens discord amongst courts applying *Miller*, and deflates confidence in the law.

Montgomery is the law of the land. To allow a sentence of life without parole for a juvenile without a finding of permanent incorrigibility—especially when evidence of actual rehabilitation is dismissed as irrelevant to the question of proportionality—would effectively evade *Montgomery*. To preserve the rule of law, this Court should grant certiorari to direct sentencing authorities to make a finding of "permanent incorrigibility" before sentencing a juvenile to die in prison.

In *Montgomery*, this Court rejected the notion that *Miller* only required sentencing bodies to engage a specific process, namely mere "consideration" of a defendant's juvenile status at the time of the crime. 136 S. Ct. at 734. The *Miller* rule did more than simply "requir[ing] sentencing courts to take children's age into account before condemning them to die in prison." *Id.* Rather, it held that *Miller* announced a substantive rule of proportionality in punishment that barred "a particular form of punishment for a class of persons," namely children who commit even heinous crimes. *Id.* at 735. *Miller* "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Id.* at 734. The Court directed that "before sentencing a juvenile to life without

parole, the sentencing judge take into account 'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,'" *id.* at 733 (quoting *Miller*, 567 U.S. at 480), and found the rule's retroactivity required because of the risk that "a defendant—here, the vast majority of juvenile offenders—faces a punishment that the law cannot impose upon him." *Id.* at 734 (internal citations, quotation marks, and alterations omitted).

It follows that where a sentencer hands down a sentence of life without parole without finding that the defendant belongs to a class for whom such a sentence is constitutional—*i.e.*, permanently incorrigible children—it fails to protect the substantive right articulated in *Montgomery*. "[W]hen the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class." *Montgomery*, 136 S. Ct. at 735. Joey Chandler was denied such a procedure.

Although this Court did not specify the precise requirements of the procedure necessary to implement the substantive rule, it warned that this lack of guidance "should not be construed to demean the substantive character of the federal right at issue." *Id.* "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." *Id.* "To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Id.* Because the lower court's application of this Court's substantive rule was no more than a superficial

regurgitation of the *Miller* factors at a hearing, its holding represents an unacceptable risk that a court has implemented a punishment that is disproportionate under the Eighth Amendment.

If the procedure followed by the lower court is allowed to stand, *Montgomery* means nothing. By declining to hear Joey's case, this Court would effectively condone the imposition of life without parole on juveniles even where a juvenile is potentially capable of rehabilitation, provided that a sentencing court offers a ceremonial nod toward the *Miller* factors without engaging them for the purpose to which they were espoused, which is to individualize punishment as to a particular juvenile offender. Such an outcome would not only demean the substantive right confirmed in *Montgomery*. It would demean the Court's rule-making authority generally, and, thereby, the rule of law.

A permanent incorrigibility requirement, by contrast, would effectuate this Court's vision that the "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," and ensure against the "risk of disproportionate punishment" for juveniles who are not irretrievably depraved—the vast majority. *See Miller*, 567 U.S. at 479; *Montgomery*, 136 S. Ct. at 733-34. A requirement that a sentencer make a finding to distinguish between children whose crimes reflect "permanent incorrigibility" and those with the potential for rehabilitation also would safeguard against states' "sentenc[ing] a child whose crime reflects transient immaturity to life without parole." *See Montgomery*, 136 S.Ct. at 735. And, more fundamentally, it would

reaffirm respect for the substantive rules articulated by this Court.

In a functioning justice system, lower courts must adhere to the substantive rules announced by this Court, even if they may fashion their own procedure to do so. Where this Court has left enforcement of a substantive right to the States and a state court's procedure has failed to adequately protect a substantive right, this Court has acted to preserve the rule of law. For example, in *Atkins v. Virginia*, this Court held that the Constitution "restrict[s] . . . the State's power to take the life of an [intellectually disabled] offender," but left it to the states to choose a method for determining whether an individual fell within the class of people who could not constitutionally be executed. 536 U.S. 304, 321 (2002). Twelve years later, in *Hall v. Florida*, this Court cabined the discretion States have in determining whether an individual is too intellectually disabled to be executed. 134 S. Ct. 1986 (2014); *see also Moore v. Texas*, 137 S. Ct. 1039, 1048 (2017). There, this Court held that a State cannot implement a bright-line rule that a defendant with an IQ score above 70 is not intellectually disabled. *Hall*, 134 S. Ct. at 1996. In such circumstances, this Court held, a State court must entertain other evidence of intellectual disability offered by a defendant. *Id.* "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, [this Court] cautioned, is not unfettered." *Moore*, 137 S. Ct. at 1048 (internal quotation marks and citations omitted); *see also* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev.

1175, 1178 (1989) (noting that a "discretion-conferring approach," does "not satisfy [the] sense of justice very well," particularly, "with issues so heartfelt").

Requiring a finding of permanent incorrigibility also ensures that the law is applied in a uniform manner, thereby increasing confidence in the legal system—a critical component to respect for rule of law. Today, the application of this Court's pronouncements regarding the constitutionality of life without parole for juveniles varies across the country. Some states require a permanent incorrigibility finding. *See Veal v. State*, 784 S.E.2d 403, 411 (Ga. 2016) (holding that under *Miller* a court must make a "specific determination that the [defendant] is irreparably corrupt"); *Luna v. State*, 387 P.3d 956, 963 (Okla. Crim. App. 2016) (remanding case for "resentencing to determine whether the crime reflects Luna's transient immaturity, or an irreparable corruption and permanent incorrigibility . . . "); *People v. Holman*, 91 N.E. 3d 849, 863 (Ill. 2017) ("Under *Miller* and *Montgomery*, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation."); *Davis v. State*, 415 P.3d 666, 695 (Wyo. 2018) ("*Miller* and *Montgomery* require a sentencing court to make a finding that . . . the juvenile offender's crime reflects irreparable corruption resulting in permanent incorrigibility, rather than transient immaturity."); *State v. Sweet*, 879 N.W.2d 811, 833 (Iowa 2016) (noting that for a life without parole sentence to be

imposed on a child the "burden was on the state to show that an individual offender manifested irreparable corruption") (internal citations and quotation marks omitted); *Landrum v. State*, 192 So. 3d 459, 466 (Fla. 2016) ("[T]he Eighth Amendment requires that sentencing of juvenile offenders be individualized in order to separate the 'rare' juvenile offender whose crime reflects 'irreparable corruption,' from the juvenile offender whose crime reflects 'transient immaturity.'") (quoting *Montgomery*, 136 S. Ct. at 734). Others do not. *See State v. Skinner*, No. 152448, 2018 WL 3059768, at *18 (Mich. June 20, 2018) (holding that the sentencing court need not make a finding of permanent incorrigibility but noting that this Court's cases on the subject are "not models of clarity"); *State v. Ramos*, 387 P.3d 650, 665 (Wash. 2017) (holding that a sentencing court does not need to "make an explicit finding that the juvenile's homicide offenses reflect irreparable corruption before imposing life without parole"); *Johnson v. State*, 395 P.3d 1246, 1258 (Idaho 2017) (rejecting the view that a finding of permanent incorrigibility is required); *State v. Valencia*, 386 P.3d 392, 395-96 (Ariz. 2016) (holding "the failure of the sentencing courts to expressly determine whether the juvenile defendants' crimes reflected irreparable corruption" does not "entitle [them] to post conviction relief") (internal quotation marks and citations omitted). And the same conflict is present in federal courts. *Compare Malvo v. Mathena*, 893 F.3d 265 (4th Cir. 2018) (finding of permanent incorrigibility is required) *with U.S. v. Briones*, 890 F.3d 811 (9th Cir. 2018) (no finding of permanent incorrigibility required). But uniformity "is critical to prevent erosion of public confidence in the rule of law."

United States v. Barkley, 369 F. Supp. 2d 1309, 1316 (N.D. Okla. 2005); *see also* Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. at 1179 (suggesting that uniformity is an important objective).

The lower court's decision shows that the erosion for respect for rule of law *amici* raise is not hypothetical. For a juvenile to be sentenced to die in prison, the sentence must "reflect an irrevocable judgment about [a child's] value and place in society" (*Miller*, 567 U.S. at 473) (internal quotation marks omitted)—a judgment that "rehabilitation is impossible." *Montgomery*, 136 S. Ct. at 733. Even if sentencing authorities are to be permitted some latitude to formulate rules of procedure to vindicate the substantive right, this Court should set boundaries for those procedural rules. One such boundary that is susceptible to easy application by sentencing authorities is that a sentencing authority must account for rehabilitation evidence and make a finding of permanent incorrigibility. The dissenting justices in the Mississippi Supreme Court recognized that "[c]onsideration of the defendant's capacity for rehabilitation is a crucial step in the *Miller* analysis," Pet. App. 13a—a step that the trial court skipped. And in flouting that requirement, the trial court trampled on the substantive rule that sentencing a child to life without the possibility of parole is only 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.

Amici urge this Court to use this case to strengthen the rule of law by mandating sentencing authorities to make a finding of permanent

incorrigibility before sentencing children to die in prison. *See Miller*, 567 U.S. at 481.

CONCLUSION

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

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Respectfully submitted,

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