19-989

To Be Argued By:
JOHN T. PIERPONT, JR.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 19-989

LUIS NOEL CRUZ, aka Noel,
Petitioner-Appellee,

-vs-

UNITED STATES OF AMERICA,
Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

REPLY BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

As set out in the government's opening brief, this case is controlled by *United States v. Sierra*, 933 F.3d 95 (2d Cir. 2019), *petitions for cert. filed*, No. 19-7574 (Feb. 5, 2020), No. 19-7594 (Feb. 7, 2020). There, this Court held that *Miller v. Alabama*, 567 U.S. 460 (2012)—which held that the Eighth Amendment prohibits mandatory life sen-

tences for juveniles—does not extend to individuals, like the petitioner here, who were over 18 at the time of their crimes.

In response, petitioner Luis Noel Cruz argues that *Sierra* is distinguishable, but he made all of his arguments to this Court before it denied rehearing *en banc* in *Sierra* late last year. And those arguments are without merit in any event. At bottom, Cruz and his *amici* disagree with the line drawn by the Supreme Court in *Miller* and seek an extension of that case to cover him. But under governing law, that course is closed to him. Accordingly, the district court's order granting Cruz's successive motion should be vacated and Cruz's life sentence reinstated.

Argument

The government's opening brief discussed *Sierra* and explained why that decision was consistent with Supreme Court precedent and the Eighth Amendment. In addition, the opening brief explained that *Miller* could not be extended to a new class of defendants in a successive motion consistent with 28 U.S.C. § 2255(h). Although Cruz spends large portions of his brief disputing those issues, as a practical matter, those arguments are subsumed in the core question addressed here: is *Sierra* distinguishable? Accordingly, the government relies on its opening brief for responses to Cruz's Eighth Amendment and § 2255(h) arguments, and here focuses on *Sierra*.

Sierra requires reversal in this case.

A. *Sierra* is binding precedent.

"It is a longstanding rule of [the Second] Circuit that a three-judge panel is bound by a prior panel's decision until it is overruled either by this Court sitting *en banc* or by the Supreme Court." *Doscher v. Sea Port Group Sec., LLC*, 832 F.3d 372, 378 (2d Cir. 2016); *see also United States v. Smith*, __ F.3d __, No. 17-3930, 2020 WL 521612, at *3 (2d Cir. Feb. 3, 2020); *United States v. Ng Lap Seng*, 934 F.3d 110, 133 n.25 (2d Cir. 2019).

This case is identical to *Sierra* on every material fact relevant to the applicability of *Miller*. Like each of the defendants in *Sierra*, Cruz: (1) was convicted of a VCAR murder committed when older than eighteen; (2) was sentenced to a mandatory life term; and (3) argued that the rule of *Miller* should be expanded to include individuals over the age of 18.

On these facts, this Court acknowledged the "'objections always raised against categorical rules,'" 933 F.3d at 97 (quoting *Roper*, 543 U.S. at 574), but unambiguously held that "[s]ince the Supreme Court has chosen to draw the constitutional line *at the age of 18* for mandatory minimum life sentences, *Miller*, 567 U.S. at 465, the defendants' age-based Eighth Amendment challenges to their sentences must fail." *Id.* (emphasis added).

Because *Sierra* is directly on point, it controls and requires reversal in this case. None of Cruz's arguments to the contrary change that result because this Court has already heard and rejected them and they are meritless in any event.

B. This Court has already heard and rejected Cruz's arguments.

To begin, this Court has already heard and rejected Cruz's attempts to distinguish *Sierra*. After the panel decision in *Sierra*, the three *Sierra* defendants sought rehearing *en banc*. *See Sierra*, No. 15-2220(L) (Doc. Nos. 302, 308, 364). Cruz joined that effort by filing an *amicus* brief in *Sierra*. No. 15-220(L) (Doc. No. 356 ("*Amicus* br.")).[1]

In Cruz's *amicus* brief challenging the purported breadth of the *Sierra* holding, Cruz raised many of the same arguments he does now. For instance, he argued that the *Sierra* panel:

- Did not consider whether the factors laid out in Supreme Court precedent support finding unconstitutional mandatory life terms on defendants ages eighteen to twenty-two who are not meaningfully different from seventeen-year old defendants. *Amicus* br. at 3, 5–6.

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[1] The *amici* in this case also filed briefs as *amici* in *Sierra*. *See Sierra*, No. 15-2220(L) (Doc. Nos. 361 (Berman *amicus* brief), 365 (Juvenile Law Center *amicus* brief)).

- Failed to consider that the Supreme Court moved a line in *Roper v. Simmons*, 543 U.S. 551 (2001). *Amicus* br. at 4–5.
- Improvidently drew a line at the age of eighteen, despite the fact that the defendants in *Sierra* were aged twenty and older. *Amicus* br. at 7–9.

He also argued that the government purportedly conceded that *Sierra* was not the case to consider reevaluating *Miller*. *Amicus* br. at 7–9.

After hearing Cruz's arguments, as well as those of the *Sierra* defendants and the *amici*, this Court denied rehearing *en banc*. *Sierra*, No. 15-2220(L) (Doc. Nos. 378, 379, 380).

Cruz here has recycled these same rejected arguments in an attempt to circumvent *Sierra*'s holding. Arguing that this Court's reasoning "runs a bit thin," he takes issue with the *Sierra* decision because it did not sufficiently engage with the scientific research (*i.e.* consider that there is no meaningful difference between those older and younger than eighteen) and failed to recognize that *Roper* itself moved a line from sixteen to eighteen. Def. Br. at 53. He tries to distinguish *Sierra* based on the age of the *Sierra* defendants. Def. Br. at 54. And again he argues the government conceded that *Sierra* was not the case in which the Court should consider expanding *Miller*. Def. Br. at 54–55.

In short, this Court has heard and rejected these arguments. It denied the *Sierra* defendants' requests to have their case reheard *en banc* notwithstanding Cruz's arguments. Even if the Court could revisit or reverse its decision in *Sierra*, Cruz has not pointed to anything new or different that would warrant doing so now.

C. Cruz's distinguishing arguments are without merit.

In any event, Cruz's attempts to distinguish his case from *Sierra* are unpersuasive.

First, the age difference between the *Sierra* defendant's and Cruz does not matter in light of the Supreme Court's Eighth Amendment jurisprudence. *See Miller*, 567 U.S. at 465; *Roper*, 543 U.S. at 574. As explained in the government's opening brief—as well as in *Sierra*—where the Supreme Court draws a bright line, there are consequences for those on either side of that line. 933 F.3d at 97. Cruz, as well as the *Sierra* defendants, were all older than eighteen at the time they committed murder. *Miller* does not, therefore, apply to them.

Nor does the fact that the Supreme Court itself moved the line in *Roper* from sixteen to eighteen yield the conclusion that *Sierra* was wrongly decided. *See* Def. Br. at 50, 53. While the Supreme Court has the prerogative to revisit its earlier decisions, lower courts are bound by decisions of the Supreme Court. *See Agostini v. Felton*, 521 U.S.

203, 235-36, 237 (1997) (overturning its earlier precedent and noting that "*stare decisis* [did] not prevent [it] from overruling a previous decision where there has been a significant change in, or subsequent development of, . . . constitutional law," but advising courts of appeals to "follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions"). Thus, it is up to the Supreme Court alone to revisit its binding precedent.

This principle is especially important in this case where Cruz asks this Court to extend a Supreme Court decision for a claim raised for the first time in a successive motion under 28 U.S.C. § 2255. As the government explained in its opening brief, this Court cannot create and apply a new rule of constitutional law in this context. *See* Government br. at 28-32.

Finally, Cruz's argument that *Sierra* was wrongly decided for not grappling with the Supreme Court's decisions in *Hall v. Florida*, 572 U.S. 701 (2014) and *Moore v. Texas*, 137 S. Ct. 1039 (2017) is misplaced. Both *Hall* and *Moore* dealt with the categorical prohibition on executing individuals suffering from intellectual disabilities. *Hall*, 572 U.S. at 708; *Moore* 137 S. Ct. at 1048. At issue in those cases was how to determine whether someone suffers from an intellectual disability. In both cases, the Supreme Court specifically directed lower courts to consult the

medical community's current views and standards to determine whether an individual is disabled. *See Hall*, 572 U.S. at 723 (rejecting IQ test as sole determination of whether an individual suffers from an intellectual disability and holding that "*[c]ourts* must recognize, as does the medical community, that the IQ test is imprecise[]" (emphasis added)); *Moore*, 137 S. Ct. at 1050 (holding that "in line with *Hall*, we require that *courts* continue the inquiry [beyond IQ test] and consider other evidence of intellectual disability where an individual's IQ score, adjusted for the test's standard error, falls within the clinically the clinically established range for intellectual-functioning deficits[]" (emphasis added)).

Unlike in *Hall* and *Moore*, the Supreme Court *has not* directed courts to consider factors beyond age in determining the applicability of *Miller*. To the contrary, the Supreme Court has drawn a bright line at eighteen for the constitutionality of mandatory life terms. *See Miller*, 567 U.S. at 465 ("We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crime violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'"); *Roper*, 543 U.S. at 574 ("Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained

a level of maturity some adults will never reach. . . . [H]owever, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest."); *Graham v. Florida*, 560 U.S. 48, 74–75 (2010) (holding that "for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole" and setting a bright line at age 18 while acknowledging "[c]ategorical rules tend to be imperfect," and that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood"). In this context, the dispositive question—as this Court in *Sierra* held—is the age of the defendant. 933 F.3d at 97. Here, Cruz was older than eighteen, and thus he is not entitled to the protections of *Miller*.

In short, Cruz presents no compelling argument for why this Court's decision in *Sierra* should not control here. Applying the holding of *Sierra* to the facts presented here requires vacatur of the district court's decision with instructions to reinstate the original life sentence.

Conclusion

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded with instructions to reinstate Cruz's life sentence.

Dated: February 20, 2020

Respectfully submitted,

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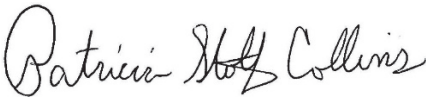

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Federal Rule of Appellate Procedure 32(g) Certification

This is to certify that the foregoing brief complies with the 7,000-word limitation of Second Circuit Local Rule 32.1(a)(4), in that the brief is calculated by the word processing program to contain approximately 1,894 words, exclusive of the Table of Contents, Table of Authorities, Addendum, and this Certification.

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