No. 18-1259

In the Supreme Court of the United States

BRETT JONES, PETITIONER

v.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI
TO THE MISSISSIPPI COURT OF APPEALS

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the Eighth Amendment requires a sentencer to make an affirmative factual finding that a juvenile homicide offender is "permanently incorrigible" before imposing a discretionary sentence of life imprisonment without parole.

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INTEREST OF THE UNITED STATES

This case concerns the scope of this Court's decision in *Miller* v. *Alabama*, 567 U.S. 460 (2012), which "h[e]ld that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment[]." *Id.* at 465. The United States seeks life-without-parole sentences, as appropriate, for juvenile homicide offenders in federal criminal cases and has an interest in the constitutional standards that govern those sentences. The United States has filed a petition for a writ of certiorari in one such federal criminal case, which presents issues similar to the ones presented here. See *United States* v. *Briones*, petition for cert. pending, No. 19-720 (filed Dec. 6, 2019).

STATEMENT

Following a jury trial in Mississippi state court, petitioner was convicted of murder. 938 So. 2d 312, 315-

316. The trial court imposed a mandatory sentence of life imprisonment without parole. *Id.* at 315; see 122 So. 3d 698, 700-702. The Mississippi Court of Appeals affirmed. 938 So. 2d at 312-317. Petitioner subsequently filed a motion for postconviction relief, asserting that his sentence violated the Eighth Amendment. 122 So. 3d 725, 729-730, 740-741. After the trial court denied petitioner's motion, *id.* at 729, and the Mississippi Court of Appeals affirmed, *id.* at 740-742, the Supreme Court of Mississippi vacated petitioner's sentence and remanded for resentencing in light of this Court's intervening decision in *Miller* v. *Alabama*, 567 U.S. 460 (2012). 122 So. 3d at 700-703. Following a new sentencing hearing, the trial court resentenced petitioner, as a matter of discretion, to life imprisonment without parole. Pet. App. 57a. The Mississippi Court of Appeals affirmed. *Id.* at 31a-47a. The Supreme Court of Mississippi dismissed petitioner's petition for review. *Id.* at 1a.

A. Petitioner's Offense Conduct

In 2004, when petitioner was living with his mother and stepfather in Florida, he was arrested after injuring his stepfather during an argument. Pet. App. 38a; see J.A. 126-129. That summer, petitioner moved to Shannon, Mississippi, to live with his grandparents, Bertis and Madge Jones. Pet. App. 32a, 38a; J.A. 37-38. Petitioner was 15 years old at the time. J.A. 96, 117.

On August 9, 2004, petitioner's grandfather discovered petitioner's girlfriend, Michelle Austin, in petitioner's bedroom. Pet. App. 32a. Petitioner's grandfather directed Austin to leave. *Ibid.* Petitioner went to see Austin later that day and told her that he was "in big trouble" with his grandfather. *Ibid.* Petitioner told Austin "that he was going to hurt his granddaddy." *Id.* at 33a.

That afternoon, petitioner was making a sandwich in his grandparents' kitchen when his grandfather came in. Pet. App. 33a. Petitioner and his grandfather began to argue. *Ibid.* In the course of the argument, petitioner used a steak knife to stab his grandfather. *Ibid.* When the steak knife broke, petitioner grabbed a fillet knife and stabbed his grandfather several more times. *Id.* at 33a, 35a, 72a. Although petitioner's grandfather was ultimately able to make it outside, he collapsed and died there, "leaving a great amount of blood on the ground." *Id.* at 72a; see 938 So. 2d at 314.

Petitioner dragged his grandfather's body into a laundry room in the back of the carport and shut the door. Pet. App. 33a, 35a, 72a. Petitioner then started trying to cover up the murder by throwing his blood-soaked clothing in the garbage, attempting to wash away the blood on his arms with a hose, and driving his grandfather's car into the carport to conceal pools of blood on the floor. *Id.* at 33a-35a, 72a; 122 So. 3d at 728. In the course of his activities, he encountered a neighbor, Robert Ruffner, who had heard petitioner's grandfather screaming. Pet. App. 34a. Ruffner observed that petitioner was "covered in blood," holding a knife, and saying, "Kill, kill." *Ibid.* Ruffner ran into his house and called the police. *Ibid.*

Another neighbor, Thomas Lacastro, saw petitioner standing in some bushes near his grandparents' house and asked petitioner to come out. Pet. App. 34a. Lacastro observed that petitioner was pale and had "some blood on him." *Ibid.* Lacastro asked petitioner where his grandfather was, and petitioner stated that his grandfather was not at home. *Ibid.* Lacastro pointed out that his grandfather's car was "right there" in the carport. *Ibid.* Petitioner nevertheless insisted that his grandfather

was not at home and that the blood on him was "a joke." *Ibid.* Lacastro responded that he knew petitioner was "lying" and that the situation was "not a joke." *Ibid.* Following the conversation with Lacastro, petitioner returned to the bushes and met up with Austin. 938 So. 2d at 315. Petitioner and Austin walked "up and down" outside the house before fleeing on foot to a nearby convenience store. *Ibid.* They then hitched a ride to Nettleton, Mississippi, about 20 miles away. *Ibid.*; Pet. App. 72a.

After petitioner and Austin left, Lacastro went over to the bushes and saw an oil pan covered in blood. Pet. App. 35a. Lacastro also went into the carport, where he saw more blood. *Ibid.* After the police arrived, they discovered the body of petitioner's grandfather concealed in the laundry room. *Ibid.* His body had eight stab wounds, including a fatal stab wound to the chest, and he had cuts on his hand from trying to defend himself. *Ibid.*; 122 So. 3d at 729. In the kitchen, the police found a bent and bloody steak knife, a fillet knife in the sink, blood spatter on the walls, and blood-stained clothing in a garbage can. Pet. App. 35a. In the carport, the police discovered pools of blood hidden beneath a mat, an oil pan, and petitioner's grandfather's car. *Ibid.*

The police apprehended petitioner and Austin at a gas station in Nettleton later that night. Pet. App. 35a; 938 So. 2d at 315. Petitioner and Austin gave false names to the arresting officers. Pet. App. 35a. During a pat-down search, a police officer discovered a pocketknife in petitioner's pocket. *Ibid.* The officer asked petitioner whether the knife was the same one he "did it with," and petitioner responded, "No, I already got rid of it." *Ibid.*

B. Petitioner's Conviction And Sentencing

Petitioner was charged with murder, in violation of Miss. Code Ann. § 97-3-19(1) (2000). At his trial, petitioner claimed that he had stabbed his grandfather in self-defense after his grandfather had attacked him. 938 So. 2d at 314, 316. The jury rejected petitioner's claim of self-defense and found him guilty of murder with deliberate design to kill. *Id.* at 316; 122 So. 3d at 741.

Under Mississippi law at the time, the punishment for murder was life imprisonment. Miss. Code Ann. § 97-3-21 (2000); 122 So. 3d at 699. Mississippi law further provided that a defendant convicted of murder was ineligible for parole. See Miss. Code Ann. § 47-7-3(g) (2004); Pet. App. 36a. Accordingly, the trial court sentenced petitioner to a mandatory term of life imprisonment without parole. 122 So. 3d at 699-702. The Mississippi Court of Appeals affirmed. 938 So. 2d at 312-317.

C. Collateral Proceedings And Petitioner's Resentencing

1. In 2008, petitioner filed a motion for postconviction relief in the state trial court. 122 So. 3d at 729. He alleged, among other things, that his life-without-parole sentence violated the Eighth Amendment's prohibition on cruel and unusual punishment. *Id.* at 740. The trial court denied petitioner's motion, *id.* at 729, and the Mississippi Court of Appeals affirmed, *id.* at 725-742. The court of appeals acknowledged that, under this Court's decision in *Graham* v. *Florida*, 560 U.S. 48 (2010), the Eighth Amendment categorically prohibits sentences of life without parole for juveniles convicted of nonhomicide offenses. 122 So. 3d at 740. The court of appeals declined, however, to extend *Graham* "to juveniles who commit murder," and it rejected petitioner's contention that his life sentence was "grossly disproportionate" to his crime. *Id.* at 741.

While petitioner's petition for review in the Supreme Court of Mississippi was pending, 122 So. 3d at 699-700, this Court held in *Miller* v. *Alabama*, *supra*, that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment[]," 567 U.S. at 465. The Supreme Court of Mississippi vacated petitioner's sentence and remanded for resentencing in light of *Miller*. 122 So. 3d at 700-703. The court reasoned that *Miller* entitled petitioner to a new sentencing hearing at which the trial court would have discretion, after considering the various "characteristics and circumstances unique to juveniles" that *Miller* had identified, to impose a parole-eligible life sentence. *Id.* at 702; see *id.* at 700 (setting forth the *Miller* factors). The court stated, however, that the trial court could again impose a sentence of life without parole if petitioner "fail[ed] to convince" the trial court that the considerations set forth in *Miller* were "sufficient to prohibit" such a sentence. *Id.* at 702.

2. On remand, the trial court granted petitioner's motion for appointment of counsel and authorization to retain an investigator and an expert, but denied his request for a sentencing hearing before a jury. 1 Record 32; Pet. App. 37a. A sentencing hearing was held before the same judge who had presided over petitioner's trial. J.A. 23.

At the hearing, petitioner's counsel made an opening statement about "what *Miller* [says] about how juvenile sentencing should work." J.A. 25. He recited the various factors that *Miller* had identified as relevant to juvenile sentencing, *ibid.*; emphasized the three "significant" differences that *Miller* had identified between juveniles and adults, J.A. 26; and quoted *Miller*'s explanation of how the "distinctive attributes of youth" can

"diminish[]" the "penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes," J.A. 27 (emphasis omitted).

Petitioner's counsel then called six witnesses to testify in favor of a parole-eligible life sentence. J.A. 36-103. Petitioner and four of his family members testified mainly about his difficult childhood, which included dealing with his stepfather's verbal and physical abuse and his mother's mental-health issues. J.A. 36-103, 116-135; see Pet. App. 37a-39a. Jerome Benton, a supervisor at a correctional facility where petitioner had been incarcerated, testified that petitioner had been a "very good" worker who had helped "clean up and wax floors." J.A. 106. Benton further testified that petitioner struck him as "[m]ature," J.A. 113, and that to the extent that they had discussed petitioner's crime, petitioner had described it as "an accident" and "something that he regretted," J.A. 112.

In his closing argument, petitioner's counsel framed the dispositive issue as whether the case involved "mitigating circumstances that show that life with the possibility of parole is the appropriate sentence here." J.A. 138. He quoted from the passage in *Miller* in which this Court stated that it thought "appropriate occasions for sentencing juveniles to the harshest possible penalty will be uncommon" because of the "great difficulty" of distinguishing between the "juvenile offender whose crime reflects unfortunate yet transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption." J.A. 143 (emphasis omitted). And petitioner's counsel argued that this "is not the kind of case that should lead to an uncommon life sentence without parole" because, in his view, "transient immaturity was quite likely involved here." J.A. 144.

3. Following the hearing, the trial court resentenced petitioner, as a matter of discretion, to life imprisonment without parole. J.A. 148-152. The court emphasized that it had "considered each and every factor that is identifiable in the *Miller* case." J.A. 148. It also explained that it was "cognizant of the fact that children are generally different" and "that consideration of the *Miller* factors and others relevant to the child's culpability might well counsel against irrevocably sentencing a minor to life in prison." J.A. 149. The court made clear that it could "hypothesize many scenarios that would warrant * * * a sentence which would allow the defendant to be eligible for consideration for parole." *Ibid.* Having "considered each of the *Miller* factors" in the context of this particular case, however, the court found that petitioner was not "entitled to be sentenced in such manner as to make him eligible for parole consideration." J.A. 152; see Pet. App. 57a (finding that petitioner was not "entitled to the benefit of the leniency provided" in *Miller*).

The trial court explained its consideration of various factors identified in *Miller*. J.A. 149-152. It recognized that petitioner was "15 years of age at the time that he stabbed his grandfather to death." J.A. 150. The court observed, however, that the jury had rejected petitioner's claim of "self-defense" and had declined to find him guilty of the "lesser-included offense" of manslaughter. *Ibid.* The court also observed that the murder had been "particularly brutal," *ibid.*, and stressed that "no evidence" suggested that "anyone other than [petitioner] participated in the killing" or that he "acted under the pressure of any family or peer," J.A. 150-151. The court also noted that petitioner had exhibited "some degree of maturity" in maintaining an "intimate"

relationship with his girlfriend, whose presence he had concealed from his grandparents. J.A. 151. And the court determined that, although petitioner had grown up in "troubled" circumstances, those circumstances had not been "brutal or inescapable." *Ibid.* "In fact," the court observed, petitioner had moved in with his grandparents precisely because their home "provide[d] him with a home away from the circumstances existing in Florida." J.A. 151-152; see J.A. 151 (finding "no evidence of mistreatment or threat by [petitioner's grandfather], except the self-defense claim asserted and rejected by the jury").

4. Petitioner appealed his sentence to the Mississippi Court of Appeals. While that appeal was pending, this Court decided *Montgomery* v. *Louisiana*, 136 S. Ct. 718 (2016), which held that "*Miller* announced a substantive rule of constitutional law" that applies retroactively to cases on collateral review. *Id.* at 736. Although petitioner had already been granted collateral relief from his original mandatory life-without-parole sentence in light of *Miller*, he relied on *Miller* to challenge his discretionary resentencing. See Pet. C.A. Br. 20-22. In particular, petitioner contended that, under *Miller* as "clarified" by *Montgomery*, a juvenile homicide offender may not be sentenced to life without parole without a finding that he is "irreparably corrupt," Pet. C.A. Supp. Br. 1, and that the Sixth Amendment requires that the government bear the burden of proving "irreparable corruption" to a jury beyond a reasonable doubt, *id.* at 9. Petitioner argued that the trial court in his case had erred by not convening a jury, had itself "failed to make the necessary finding," and had "improperly shifted the burden to the defense to prove that [petitioner]

should not be sentenced to life without parole." Pet. C.A. Reply Br. 4 n.1.

The Mississippi Court of Appeals affirmed. Pet. App. 31a-47a. The court cited its decision in *Cook* v. *State*, 242 So. 3d 865 (Miss. Ct. App. 2017), cert. denied, 139 S. Ct. 787 (2019), which had explained that Mississippi law permissibly "places the burden on the offender to persuade the judge that he is entitled to relief under *Miller*" and that a juvenile homicide offender "does not have a constitutional right to be resentenced by a jury." *Id.* at 873, 876; see Pet. App. 40a. And, emphasizing this Court's statement in *Montgomery* that "'*Miller* did not impose a formal factfinding requirement,'" the court of appeals rejected petitioner's contention that the trial court had erred in "not mak[ing] a specific 'finding' that he is irretrievably depraved." Pet. App. 41a-42a (citations omitted). The court of appeals further noted that, although the trial judge "did not specifically discuss on the record each and every factor mentioned in the *Miller* opinion," "the judge expressly stated that he had 'considered each of the *Miller* factors.'" *Id.* at 47a (emphasis altered). The court found that "[t]he judge's bench ruling was sufficient to explain the reasons for the sentence." *Ibid.*

Judge Westbrooks concurred in part and dissented in part. Pet. App. 47a-56a. In her view, petitioner was entitled to resentencing because the trial court had not made "specific on-the-record findings of fact that illustrate that he is among the very rarest of juvenile offenders who are irreparably corrupt." *Id.* at 56a.

5. The Supreme Court of Mississippi granted petitioner's petition for review, but subsequently found "no need for further review" and dismissed the petition. Pet. App. 1a. Justice Kitchens dissented, in a statement

joined by three other justices. *Id.* at 2a-29a. Although Justice Kitchens agreed with the court of appeals that "*Montgomery* did not interpret *Miller* to require a finding of fact on a particular juvenile's permanent incorrigibility," he would have "impose[d] [such a] formal fact finding requirement" as a matter of state law. *Id.* at 23a-24a. Justice Kitchens also disagreed with the trial court's sentencing decision and would have held that petitioner was not one of the "rare offenders whose crime[] reflect[s] permanent incorrigibility." *Id.* at 29a; see *id.* at 25a-29a.

SUMMARY OF ARGUMENT

Petitioner's sole claim in this Court is that "the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole." Br. i. The Eighth Amendment imposes no such requirement.

This Court set forth the process that the Eighth Amendment requires in *Miller* v. *Alabama*, 567 U.S. 460 (2012), which "h[e]ld that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment[]." *Id.* at 465. In so holding, the Court explained that what renders a mandatory sentencing scheme unconstitutional is that it "mak[es] youth (and all that accompanies it) irrelevant to imposition" of a life-without-parole sentence. *Id.* at 479. *Miller* accordingly interpreted the Eighth Amendment to require "that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* at 483. That is the process that the trial court followed here. After permitting petitioner to pre-

sent "any evidence that he was entitled to parole eligibility under *Miller*," Pet. App. 37a, the court "considered" petitioner's youth and attendant characteristics and whether they "counsel[ed] against irrevocably sentencing [him] to life in prison," J.A. 148-149.

Petitioner accordingly received the process that the Eighth Amendment, as interpreted by *Miller*, requires. "*Miller* did *not* require trial courts to make a finding of fact regarding a child's incorrigibility." *Montgomery* v. *Louisiana*, 136 S. Ct. 718, 735 (2016) (emphasis added). Instead, *Miller* used the terms "'irreparable corruption'" and "'transient immaturity'" only to describe the ultimate "*judgment*" that a sentencer reaches about what is "reflect[ed]" by a defendant's "crime." 567 U.S. at 479-480 (emphasis added; citations omitted). It did not use those terms to refer to some separate finding of fact. Where a sentencer decides that a life-without-parole sentence is appropriate, after "tak[ing] into account how children are different[] and how those differences counsel against irrevocably sentencing them to a lifetime in prison" as part of its evaluation of the circumstances of the crime, it has done all that *Miller* requires. *Id.* at 480. Whether the crime reflects "permanent incorrigibility," as opposed to "transient immaturity," is not an inquiry distinct from the judgment that such a discretionary sentence represents.

In any event, even if sentencers were required to treat "transient immaturity" as a distinct inquiry, petitioner would still not be entitled to relief. As this Court emphasized in *Montgomery*, the Eighth Amendment "leave[s] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." 136 S. Ct. at 735 (citation omitted; second and third sets of brackets in

original). One way is to treat "transient immaturity" as a mitigating circumstance for the offender to prove. When a State adopts that approach, a sentencer need not make an affirmative finding of "permanent incorrigibility" before imposing a sentence of life without parole. Rather, it is enough to find, as the trial court did here, that the offender did not meet his burden of proof.

ARGUMENT

THE EIGHTH AMENDMENT DOES NOT REQUIRE AN AFFIRMATIVE FINDING OF "PERMANENT INCORRIGIBILITY" TO SENTENCE A JUVENILE HOMICIDE OFFENDER TO LIFE WITHOUT PAROLE

Petitioner objects to his discretionary life-without-parole sentence, on the theory that the Eighth Amendment requires sentencers to "make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole," Br. i, and "no court has ever asked or answered the question of whether [he] is permanently incorrigible," Br. 14. Petitioner's objection reads too much into *Miller* v. *Alabama*, 567 U.S. 460 (2012), which invalidated mandatory—not discretionary—life-without-parole sentences for juvenile offenders. As the Court confirmed in *Montgomery* v. *Louisiana*, 136 S. Ct. 718 (2016), "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility" as a prerequisite for a discretionary life-without-parole sentence. *Id.* at 735. Instead, a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors" affords all of the process necessary to distinguish offenders "whose crimes reflect transient immaturity" from those whose crimes reflect "incorrigibility." *Ibid.* (quoting *Miller*, 567 U.S. at 465).

Petitioner received such a hearing when he was resentenced after *Miller*, and his sentence is accordingly consistent with *Miller* and *Montgomery*. Petitioner's view of "permanent incorrigibility" as an independent fact, which a sentencer must affirmatively find, is misconceived. The terms "transient immaturity" and "irreparable corruption" (*i.e.*, "permanent incorrigibility") are descriptive labels for the two possible outcomes of the discretionary "*judgment*" that a sentencer reaches about what a defendant's "crime reflects." *Miller*, 567 U.S. at 479-480 (emphasis added; citations and internal quotation marks omitted). It reaches such a judgment when—as was the case here—it "take[s] into account how children are different[] and how those differences counsel against irrevocably sentencing them to a lifetime in prison" when considering the appropriate punishment for the crime. *Id.* at 480. And even if those labels did refer to some independent fact, States would have the constitutional leeway to treat "transient immaturity" as a mitigating circumstance that a juvenile offender bears the burden to prove—a burden that the trial court found that petitioner did not meet in this case.

A. "Transient Immaturity" Is Not An Inquiry Distinct From Consideration Of A Juvenile Offender's Youth And Attendant Characteristics Under *Miller*

Miller announced a rule barring mandatory life-without-parole sentences for juvenile offenders, but continued to permit discretionary ones where a sentencer has "the ability to consider the mitigating qualities of youth." 567 U.S. at 476 (citation and internal quotation marks omitted); see *id.* at 479-480; *id.* at 489 (explaining that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles"). As *Miller*

recognized, a juvenile homicide offender who is spared a life-without-parole sentence following consideration of such mitigating qualities will be one "whose crime reflects * * * transient immaturity" rather than "irreparable corruption." *Id.* at 479-480 (citations omitted). The conclusion that a crime reflects "'transient immaturity'" is a "judgment," not a fact, *ibid.* (citations omitted), and "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility," *Montgomery*, 136 S. Ct. at 735. The hearing in this case at which petitioner's youth and attendant characteristics were considered thus afforded him all of the process that *Miller* requires.

1. **Miller** ***requires a sentencer to consider a juvenile offender's youth and attendant characteristics, which the trial court did in this case***

In "hold[ing] that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders," *Miller* required that sentencers have the ability to "take into account" an offender's youth and attendant characteristics before imposing such a sentence. 567 U.S. at 479-480; see *id.* at 476, 489. Where the sentencer has done so—as the trial court did here—the resulting discretionary sentence is consistent with *Miller*.

a. The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. Amend. VIII. This Court's precedents have interpreted that prohibition to include "a 'narrow proportionality principle,' that 'does not require strict proportionality between crime and sentence' but rather 'forbids only extreme sentences that are "grossly disproportionate" to the crime.'" *Graham* v. *Florida*, 560 U.S. 48, 59-60 (2010) (citation omitted); see *Lockyer* v. *Andrade*, 538 U.S. 63, 72 (2003); *Solem*

v. *Helm*, 463 U.S. 277, 284-290 (1983). Under that line of precedent, juvenile homicide offenders have long been able to claim that a life-without-parole sentence is excessive because the offender "committed the relevant offense[] when he was a juvenile." *Graham*, 560 U.S. at 91 (Roberts, C.J., concurring in the judgment).

In *Miller*, this Court considered whether a life-without-parole sentence for a juvenile homicide offender automatically "violate[s] th[e] principle of proportionality" whenever the sentencer lacked discretion to impose any other sentence. 567 U.S. at 489. In considering that question, the Court identified "two strands of precedent reflecting [the Court's] concern with proportionate punishment." *Id.* at 470. The first strand consists of decisions that have "adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Ibid.* The Court identified *Roper* v. *Simmons*, 543 U.S. 551 (2005), which "held that the Eighth Amendment bars capital punishment for children," and *Graham* v. *Florida*, *supra*, which "concluded that the Amendment also prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense," as examples. *Miller*, 567 U.S. at 470.

The second line of relevant precedent the Court identified consists of decisions "demanding individualized sentencing when imposing the death penalty." *Miller*, 567 U.S. at 475. The Court cited *Woodson* v. *North Carolina*, 428 U.S. 280 (1976) (plurality opinion), which "held that a statute mandating a death sentence for first-degree murder violated the Eighth Amendment." *Miller*, 567 U.S. at 475. The Court also cited "[s]ubse-

quent decisions [that] have elaborated on the requirement that capital defendants have an opportunity to advance, and the judge or jury a chance to assess, any mitigating factors," including the "'mitigating qualities of youth.'" *Id.* at 475-476 (citation omitted).

The Court in *Miller* determined that "the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 567 U.S. at 470. The Court explained that, "[b]y making youth (and all that accompanies it) irrelevant to imposition" of life without parole, "a sentencing scheme that mandates" such a sentence for juvenile offenders "poses too great a risk of disproportionate punishment." *Id.* at 479. The Court therefore held that such "mandatory-sentencing schemes * * * violate th[e] principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." *Id.* at 489.

b. Under *Miller*, the key feature that makes a mandatory sentencing scheme unconstitutional is that it precludes a sentencer from considering a juvenile offender's youth and attendant characteristics in deciding whether a life-without-parole sentence is appropriate. 567 U.S. at 474, 476. Thus, in order to address that constitutional flaw, *Miller* requires that "a sentencer follow a certain process" before imposing a life-without-parole sentence. *Id.* at 483.

That process requires giving the juvenile offender "an opportunity" to show that the "'mitigating qualities of youth'" render a life-without-parole sentence unwarranted. *Miller*, 567 U.S. at 475-476 (citation omitted); see *id.* at 476 (explaining that a sentencer must "have the ability to consider the 'mitigating qualities of youth'"); *id.* at 489 (explaining that "a judge or jury must

have the opportunity to consider mitigating circumstances"). The decision in *Miller* itself lists those mitigating qualities, which include "immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477; see *id.* at 477-478. And *Miller* directs sentencers to consider how such qualities may "diminish the penological justifications" for punishment, *id.* at 472, and thereby "counsel against irrevocably sentencing [the offender] to a lifetime in prison," *id.* at 480; see *id.* at 483 (explaining that the process requires "considering [the] offender's youth and attendant characteristics").

The trial court in this case followed the process that *Miller* prescribes. After the state supreme court remanded for resentencing in light of *Miller*, the trial court held a new sentencing hearing. At that hearing, the trial court permitted petitioner to present "any evidence that he was entitled to parole eligibility under *Miller*." Pet. App. 37a. The court listened to petitioner's arguments as to why that evidence "show[ed] that life *with* the possibility of parole is the appropriate sentence here." J.A. 138 (emphasis added). And it "considered each and every factor that is identifiable in the *Miller* case and its progeny." J.A. 148. The court then resentenced petitioner to life without parole and explained the reasons for that sentence, including why it did not believe that petitioner's youth and attendant characteristics warranted a lesser punishment. J.A. 148-152. In doing so, the trial court imposed a discretionary sentence that is consistent with *Miller*.

2. The Eighth Amendment does not require a distinct finding on "transient immaturity"

Although petitioner did not object in the trial court to the process that he received, J.A. 153, he now contends that his sentencing was flawed. In petitioner's

view, *Miller*'s invalidation of mandatory life-without-parole sentences for juvenile homicide offenders also invalidates discretionary life-without-parole sentences for such offenders, unless the sentence is supported by an affirmative finding of "permanent incorrigibility" of a sort that is not reflected in his case. Pet. Br. 14; see *id.* at 19-32. Petitioner's argument misinterprets both *Miller* and the Court's follow-up decision in *Montgomery*.

a. The Court in *Miller* emphasized that its "holding" that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" was "sufficient to decide the[] cases" before it. 567 U.S. at 479. It accordingly recognized that sentencers could continue to impose life-without-parole sentences as a matter of discretion. See *id.* at 479-480. In doing so, the Court expressed its view that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," "especially * * * because of the great difficulty * * * of distinguishing * * * between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Id.* at 479-480 (citations omitted). "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases," the Court continued, "we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480.

Petitioner errs in reading (*e.g.*, Br. 13) *Miller*'s descriptive references to a "'crime reflect[ing] unfortunate but transient immaturity,'" and a "'crime reflect[ing] irreparable corruption,'" as requiring a *factual* inquiry—distinct from "tak[ing] into account how

children are different[] and how those differences counsel against irrevocably sentencing them to a lifetime in prison"—when considering the appropriate sentence for the crime. 567 U.S. at 479-480 (citations omitted). The terms "transient immaturity" and "irreparable corruption" (or "permanent incorrigibility") are descriptive labels for the "*judgment*" a sentencer necessarily reaches about the "crime" through a *Miller*-compliant process that includes the consideration of youth. *Id.* at 479-480 (emphasis added; citations and internal quotation marks omitted). If the sentencer concludes that a defendant's youth and attendant characteristics render inappropriate the life-without-parole sentence that an adult might receive, that is a judgment that the offender's crime reflects "transient immaturity." If the sentencer instead reaches the conclusion that a life-without-parole sentence is nevertheless warranted, that is a judgment that the offender's crime reflects "irreparable corruption" or "permanent incorrigibility." The terms serve as shorthand for the sentencer's assessment of whether "the distinctive attributes of youth diminish the penological justifications" for a life-without-parole sentence. *Id.* at 472.

The Eighth Amendment does not require the sentencer to undertake a separate inquiry—and make a distinct finding—about whether the juvenile offender's crime reflects "transient immaturity" or "permanent incorrigibility." Rather, the procedure "necessary to implement" *Miller*'s "substantive guarantee" is simply the procedure that *Miller* itself prescribes. *Montgomery*, 136 S. Ct. at 734. The practices in the 15 jurisdictions that *Miller* favorably cited as "mak[ing] life without parole discretionary for juveniles," 567 U.S. at 484 n.10, are illustrative. None of the general or juvenile-specific

statutes that provided for individualized sentencing in those jurisdictions required sentencers to make a finding that the crime reflected "transient immaturity" or "permanent incorrigibility."* And *Miller* cast no doubt on the lawfulness of those statutes. To the contrary, it created a constitutional regime that it anticipated would replicate the sentencing outcomes of those very schemes. Compare *ibid.* (noting infrequency of life-without-parole sentences in those jurisdictions), with *id.* at 479-480 (predicting same prospective result under new constitutional rule).

b. Petitioner's assertion that a finding of "permanent incorrigibility" was required in his case primarily focuses not on *Miller* itself, but on the discussion of *Miller* in the Court's subsequent decision in *Montgomery*. See Br. 17-19. In *Montgomery*, which involved an undisputedly mandatory life-without-parole sentence, the Court held that "*Miller*'s prohibition on mandatory life without parole for juvenile offenders * * * announce[d] a new substantive rule that, under the Constitution, must be retroactive" to final convictions. 136 S. Ct. at 732; see *id.* at 726, 736. But far from supporting petitioner's claim that *Miller*'s substantive rule requires an

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* See Cal. Penal Code § 190.5(b) (West 2012); Ga. Code Ann. §§ 16-5-1, 17-10-31 (2011 & Supp. 2012); Ind. Code Ann. § 35-50-2-3(b) (LexisNexis 2009); Me. Rev. Stat. Ann. tit. 17-A, § 1251 (Supp. 2005); Md. Code Ann., Crim. Law §§ 2-201 to 2-203, 2-304 (LexisNexis 2012); Nev. Rev. Stat. §§ 176.025, 200.030 (2011); N.M. Stat. Ann. §§ 31-18-13(B), 31-18-14, 31-18-15.2 (2010); N.D. Cent. Code §§ 12.1-32-01, 12.1-32-09.1 (2012); Okla. Stat. tit. 21, §§ 13.1, 701.9 (2011); R.I. Gen. Laws § 11-23-2 (2002); S.C. Code Ann. § 16-3-20 (2003 & Supp. 2014); Tenn. Code Ann. §§ 39-13-202, 39-13-204, 39-13-207 (2010); Utah Code Ann. §§ 76-3-206, 76-3-207 (LexisNexis 2012); W. Va. Code Ann. § 62-3-15 (LexisNexis 2010); Wis. Stat. §§ 939.50, 973.014 (2012).

affirmative finding of "permanent incorrigibility," *Montgomery* refutes it.

The Court in *Montgomery* explained that the "procedure *Miller* prescribes"—namely, a "hearing where 'youth and its attendant characteristics' are considered"—"*gives effect* to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." 136 S. Ct. at 735 (quoting *Miller*, 567 U.S. at 465) (emphasis added). And it agreed with the state respondent that "*Miller* did *not* require trial courts to make a finding of fact regarding a child's incorrigibility." *Ibid.* (emphasis added). *Montgomery* thus directly contradicts petitioner's argument here.

Petitioner's reliance on other language from *Montgomery* is misplaced. He observes (*e.g.*, Br. 18), for example, that *Montgomery* described *Miller* as "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," 136 S. Ct. at 734 (citation omitted). But that description does not suggest that "transient immaturity" is a finding of fact, rather than the discretionary judgment that a sentencer that considers youth reaches when it imposes a parole-eligible life sentence. *Ibid.* To the contrary, *Montgomery* makes clear that what is "necessary to separate those juveniles who may be sentenced to life without parole from those who may not" is a "*hearing* where 'youth and its attendant characteristics' are considered as sentencing factors." *Id.* at 735 (quoting *Miller*, 567 U.S. at 465) (emphasis added). And in requiring such a hearing, "*Miller* did *not* impose a formal factfinding requirement." *Ibid.* (emphasis added).

Other statements in *Montgomery* distinguishing "transient immaturity" and "permanent incorrigibility" similarly fail to show that those terms describe an independent fact, rather than the discretionary judgments that sentencers reach following a *Miller*-compliant process. Petitioner cites (Br. 17-18), for example, *Montgomery*'s statement that "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" 136 S. Ct. at 734 (citation and internal quotation marks omitted). That statement simply acknowledges that a hearing involving "age" does not categorically preclude a later Eighth Amendment claim. If a sentencing court considers a child's "age," but is nevertheless legally foreclosed from considering certain "attendant characteristics" of it, *Miller*, 567 U.S. at 465, the sentence may not constitute a proper judgment about whether the crime reflects transient immaturity. See *id.* at 479-480; *Montgomery*, 136 S. Ct. at 735-736. Or, even in the absence of such a structural impediment at sentencing, a reviewing court might later conclude that the sentencer's case-specific judgment was erroneous, such that the life-without-parole sentence is in fact unconstitutionally disproportionate. See *Graham*, 560 U.S. at 91-96 (Roberts, C.J., concurring in the judgment) (applying "narrow proportionality" framework to find a particular juvenile offender's life-without-parole sentence unconstitutional).

Petitioner here, however, is not raising an as-applied claim of disproportionality. He instead contends (Br. i) that "the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life

without parole." *Montgomery* and *Miller* confirm that the Eighth Amendment contains no such requirement. See *Montgomery*, 136 S. Ct. at 735.

c. Petitioner errs in arguing (Br. 21-22) that the need for a finding of "permanent incorrigibility" here is no different from the need for a finding of an offender's intellectual disability under *Atkins* v. *Virginia*, 536 U.S. 304 (2002), incompetence to be executed under *Ford* v. *Wainwright*, 477 U.S. 399 (1986), or mental state and degree of participation in a murder under *Enmund* v. *Florida*, 458 U.S. 782 (1982). The inquiry under each of those other decisions involves the finding of a discrete fact that either exists or does not exist, independent of any sentencing decision or the equitable considerations that would inform such a decision. See, *e.g.*, *Ford*, 477 U.S. at 411-412 (plurality opinion) (explaining that "the ascertainment of a prisoner's sanity * * * will turn on the finding of a single fact, not on a range of equitable considerations," and contrasting such a finding with an individualized sentencing determination under *Woodson*).

Whether a "crime reflects * * * transient immaturity," *Miller*, 567 U.S. at 479 (citations omitted), in contrast, is a sentencing conclusion, not a fact about the defendant. The Court has described "[w]hether mitigation exists" as "largely a judgment call (or perhaps a value call)," *Kansas* v. *Carr*, 136 S. Ct. 633, 642 (2016), and whether a crime reflects "transient immaturity" is no exception. That "judgment" about the crime is simply a judgment about the appropriate sentence, made at the end of the process that *Miller* prescribes, 567 U.S. at 480, after "considering an offender's youth and attendant characteristics," *id.* at 483. Thus, although a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to

separate those juveniles who may be sentenced to life without parole from those who may not," "a finding of fact regarding a child's incorrigibility" is "not required." *Montgomery*, 136 S. Ct. at 735 (quoting *Miller*, 567 U.S. at 465).

B. Even If A Distinct Factual Finding Were Required, The Eighth Amendment Does Not Require States To Affirmatively Prove "Permanent Incorrigibility"

Even assuming that "transient immaturity" were a distinct fact, rather than a sentencing judgment about what the crime reflects, that still would not entitle petitioner to relief in this case. As this Court made clear in *Montgomery*, the Eighth Amendment does not require that a sentencer make an explicit affirmative finding of "permanent incorrigibility" in order to sentence a juvenile homicide offender to life without parole. Instead, States have the flexibility to treat "transient immaturity" as a mitigating circumstance that the offender bears the burden to prove. And the record shows that the trial court found that petitioner failed to carry that burden here.

1. The Eighth Amendment permits States to treat "transient immaturity" as a mitigating circumstance for the juvenile offender to prove

Petitioner urges (Br. 23) this Court to hold that a sentencing court must "determine that a juvenile defendant is permanently incorrigible before imposing a life-without-parole sentence." To do so, the Court would have to conclude not only that "transient immaturity" is a discrete and provable fact, but also that it is the State's burden to disprove it by affirmatively establish-

ing "permanent incorrigibility." Even assuming petitioner were correct on the first point, he is wrong on the second.

a. The Court in *Montgomery* made clear that "*Miller* d[oes] not require trial courts to make a finding of fact regarding a child's incorrigibility." 136 S. Ct. at 735. The Court favorably quoted the State's observation to that effect and confirmed that "*Miller* did not impose a formal factfinding requirement." *Ibid.* In asking the Court to impose such a requirement now, petitioner attempts (Br. 28) to characterize *Montgomery*'s statement as merely describing what "*Miller* did not address" and leaving the issue open. But that characterization disregards *Montgomery*'s own express endorsement of the procedural flexibility that *Miller* allows.

Montgomery explained that "[w]hen a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." 136 S. Ct. at 735. Decisions like *Miller* thus "leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." *Ibid.* (quoting *Ford*, 477 U.S. at 416-417) (brackets in original).

Accordingly, to the extent that sentencing courts are required to explicitly and separately address the issue at all, States have flexibility in how to determine whether a juvenile offender's homicide crime reflects "transient immaturity" or "irreparable corruption." *Miller*, 567 U.S. at 479-480 (citations omitted). A State could, if it chose, convert "permanent incorrigibility" into an aggravating factor, which the prosecution would

have to prove in order for a juvenile offender to be eligible for life without parole. But nothing in *Miller* or *Montgomery* compels a State to do so, or forecloses a State from instead treating "transient immaturity" as a mitigating factor that a juvenile offender must himself establish.

b. Various portions of *Miller* and *Montgomery* directly support the mitigation approach. In *Miller*, for instance, the Court repeatedly referred to youth as a "mitigating" circumstance. See, *e.g.*, 567 U.S. at 475, 476, 489. *Miller* also relied on decisions requiring individualized sentencing for capital defendants as precedent for giving juvenile homicide offenders a similar opportunity to present "mitigating qualities of youth." *Id.* at 476 (citation omitted). And given that the Eighth Amendment permits States to place on those capital defendants the burden of proving such mitigating circumstances, it follows that States may place on juvenile offenders the same burden. See *Delo* v. *Lashley*, 507 U.S. 272, 276 (1993) (per curiam) (reaffirming that a capital defendant's Eighth Amendment rights "are not violated by placing on him the burden of proving mitigating circumstances sufficiently substantial to call for leniency") (citation omitted).

Montgomery, in turn, explained that "prisoners like Montgomery must be *given the opportunity to show* their crime did not reflect irreparable corruption." 136 S. Ct. at 736 (emphasis added). The Court thus made clear that States could place the burden of proof on juvenile offenders under *Miller*. More generally, *Montgomery* explained that "when 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." *Id.* at 735 (emphasis added). A "procedure" through which a defendant may make a "show[ing]" is properly understood as one in which the burden of proof is—or, at a bare minimum, may permissibly be—on the defendant. *Ibid.* Indeed, two of the decisions that *Montgomery* cited in its discussion of the procedures necessary to implement a substantive Eighth Amendment rule—*Atkins* and *Ford*—allow States to place on defendants the burden of showing that they fall within the protected class. See *ibid.*

Under *Ford*, for example, States "may properly presume that [a prisoner] remains sane at the time sentence is to be carried out, and may require a substantial threshold showing of insanity merely to trigger the hearing process." 477 U.S. at 426 (Powell, J., concurring in part and concurring in the judgment) (footnote omitted); see *Panetti* v. *Quarterman*, 551 U.S. 930, 949 (2007) (explaining that Justice Powell's concurrence in *Ford* is controlling). Likewise, under *Atkins*, States have placed on defendants the burden of showing that they fall within the protected class of persons with intellectual disabilities. See, *e.g.*, *Chase* v. *State*, 873 So. 2d 1013, 1029 (Miss. 2004) (requiring a defendant to prove intellectual disability by a preponderance of the evidence under *Atkins*); Ark. Code Ann. § 5-4-618(c) (2020) ("The defendant has the burden of proving intellectual disabilities at the time of committing the offense by a preponderance of the evidence."). And petitioner, who himself relies on *Ford* and *Atkins* as procedural models (Br. 21), provides no reason why the procedures under *Miller* should be any less flexible.

Indeed, States have good reason to decide that requiring a juvenile offender to prove "transient immaturity" makes sense as a practical matter. The mitigating qualities of youth implicate the juvenile offender's own background and history. See *Miller*, 567 U.S. at 477-478. As the hearing in this case illustrates, see J.A. 36-136, juvenile offenders will typically be in a better position than prosecutors to present relevant evidence about those circumstances. The Eighth Amendment does not preclude States from making the reasonable choice to place the burden of proof on those more likely to have relevant information. Cf. *Smith* v. *United States*, 568 U.S. 106, 112 (2013) ("Where the facts with regard to an issue lie peculiarly in the knowledge of a party, that party is best situated to bear the burden of proof.") (brackets, citation, and internal quotation marks omitted).

c. Petitioner's rigid factfinding rule would also invite further constitutional constraints on state sentencing procedures that would be at odds with *Miller* and *Montgomery*. If petitioner were correct that States must treat "permanent incorrigibility" as an aggravating factor—requiring a finding of "permanent incorrigibility" before imposition of a life-without-parole sentence—the Sixth Amendment might well require that the finding be made by a jury. See *Apprendi* v. *New Jersey*, 530 U.S. 466, 483 (2000) (determining that, under the Sixth Amendment, a defendant may not be "expose[d] * * * to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone"); *id.* at 491 n.16 (recognizing a "distinction" between "facts in aggravation of punishment and facts in mitigation" for Sixth Amendment purposes). Neither *Miller* nor *Montgomery*, however, gives any indication that a jury finding is required.

To the contrary, *Miller* stated that "a *judge or* jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." 567 U.S. at 489 (emphasis added). And *Montgomery* explained that "*Miller* requires 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.'" 136 S. Ct. at 733 (emphasis added; citation omitted). Although petitioner argued below that a jury finding was required, see Pet. App. 40a, he has not repeated that argument here. But his argument implies that he, or some future defendant, will in fact seek to impose that additional constraint on States. That would go well beyond what either *Miller* or *Montgomery* contemplated, and further deny States the procedural flexibility that those decisions promise.

2. The trial court found that petitioner failed to present sufficient evidence of "transient immaturity" in this case

Mississippi law permissibly places the burden on the juvenile offender to show how his youth and attendant characteristics mitigated his homicide crime. See Pet. App. 40a; 122 So. 3d at 702 (explaining that life without parole remains appropriate for "juveniles who fail to convince the sentencing authority that *Miller* considerations are sufficient to prohibit its [imposition]"); *Cook* v. *State*, 242 So. 3d 865, 873 (Miss. Ct. App. 2017), cert. denied, 139 S. Ct. 787 (2019) ("*Jones* places the burden on the offender to persuade the judge that he is entitled to relief under *Miller*."). The trial court's sentencing de-

cision demonstrates that the court determined that petitioner failed to meet his burden of showing "transient immaturity" here.

a. After the Supreme Court of Mississippi vacated petitioner's mandatory life-without-parole sentence, the trial court "held a new sentencing hearing to permit [petitioner] to introduce any evidence that he was entitled to parole eligibility under *Miller*." Pet. App. 37a. Following petitioner's presentation of evidence, his counsel argued that "transient immaturity was quite likely involved here." J.A. 144. The trial court's explanation of its sentence indicates that the court disagreed. Although that explanation did not expressly reference "transient immaturity" or "permanent incorrigibility," even petitioner acknowledges (Br. 25) that "what matters is not the precise words used by a court," but instead the substance of its consideration. And the trial court's sentencing decision makes clear that it found the evidence underlying petitioner's "transient immaturity" argument to be insufficient.

With respect to petitioner's "family and home environment," *Miller*, 567 U.S. at 477, the court found "no evidence of brutal or inescapable home circumstances," and "no evidence of mistreatment or threat by [his grandfather], except the self-defense claim asserted and rejected by the jury," J.A. 151. With respect to "the extent of his participation in the [murder]," *Miller*, 567 U.S. at 477, the court found "no evidence that indicates that anyone other than [petitioner] participated in the killing," which it regarded as "particularly brutal," J.A. 150. With respect to "the way familial and peer pressures may have affected him," *Miller*, 567 U.S. at 477, the court found "no evidence that [petitioner] acted under the pressure of any family or peer," J.A. 150-151.

With respect to "immaturity," *Miller*, 567 U.S. at 477, the court found that petitioner "had reached some degree of maturity" in his relationship with his girlfriend, J.A. 151. And with respect to whether "he might have been charged and convicted of a lesser offense," *Miller*, 567 U.S. at 477, the court observed that the jury had declined to find him guilty of the "lesser-included offense" of manslaughter, J.A. 150.

The trial court thus found no merit to those specific bases for petitioner's argument that his crime reflected "transient immaturity." And although the court did not use the words "possibility of rehabilitation" in explaining its sentence, *Miller*, 567 U.S. at 478, the court expressly rejected petitioner's reliance on particular evidence that might suggest such a possibility, such as evidence that his behavior improved after he stopped living with his mother and stepfather. J.A. 137; see J.A. 151-152 (emphasizing that petitioner had already moved away from his mother and stepfather by the time he committed the murder). The fact that the court did not specifically address other evidence of rehabilitation on which petitioner had relied—such as the testimony of Jerome Benton, a supervisor at a correctional facility where petitioner had been incarcerated—simply suggests that the court likewise found that evidence equivocal or unpersuasive, as the prosecution had argued. See, *e.g.*, J.A. 113 (Benton testifying that petitioner was "[m]ature," even for his age); J.A. 141 (prosecution emphasizing that Benton testified that petitioner was "mature"). As this Court has recognized with respect to the Sentencing Guidelines, a sentencer need not "respond[] to every argument" that the defendant makes, particularly where its reasoning would be clear from "context and the parties' prior arguments," *Rita* v. *United States*,

551 U.S. 338, 356 (2007), and petitioner identifies nothing in the Eighth Amendment that required the trial court to give a more extensive explanation of how it weighed particular testimony here.

The record therefore does not support petitioner's suggestion (Br. 29) that the trial court found petitioner to be "corrigible" but "proceed[ed] to sentence" him to life without parole anyway. Rather, the record indicates that the court considered petitioner's "claim that he is not permanently incorrigible," Pet. Br. 1, and simply rejected it.

b. Petitioner contends (Br. 29) that the record does not reflect that the trial court "recognize[d] any substantive limitation on its sentencing discretion." But any limitation on the court's ability to impose a life-without-parole sentence would have come into play only if the court had found persuasive petitioner's arguments that his crime reflected "transient immaturity." Had petitioner "disprove[d]" that his crime reflected "'irreparable corruption,'" state law would have recognized the court's ability to "mitigate his punishment." *Cook*, 242 So. 3d at 876. But because the court found unpersuasive petitioner's arguments that his crime reflected "transient immaturity," it could impose a sentence of life without parole. See *id.* at 873, 876. Neither *Miller* nor *Montgomery* precluded such a sentence.

Petitioner also contends (Br. 32-36) that the evidence in this case demonstrates that his crime does not, in fact, reflect permanent incorrigibility. That fact-specific contention—which is directed to the substantive proportionality of the trial court's sentencing determination in the circumstances of this particular case—is not encompassed by the question presented, see Pet. i, and the United States takes no position on it. The only issue

before this Court is whether, as a procedural matter, the Eighth Amendment required the trial court to make an affirmative finding that "[petitioner] is permanently incorrigible" before sentencing him to life without parole. *Ibid.* Because the answer to that question is no, this Court should affirm the judgment below.

CONCLUSION

The judgment of the Mississippi Court of Appeals should be affirmed.

Respectfully submitted.

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