No. 18-1259

In the
Supreme Court of the United States

BRETT JONES,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Writ of Certiorari to the
Supreme Court of Mississippi

BRIEF FOR JONATHAN F. MITCHELL AND ADAM K. MORTARA AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

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STATEMENT OF INTEREST

Amici curiae write and teach about this Court's criminal law and habeas corpus jurisprudence.[1] Jonathan F. Mitchell has taught federal habeas corpus as a professor and visiting professor at several law schools and is the former Solicitor General of the State of Texas. Mr. Mitchell recently served as a court-appointed *amicus curiae* in *In re Hall*, No. 19-10345 (5th Cir.), in which a federal prisoner is seeking authorization to file a second or successive motion under 28 U.S.C. § 2255. Adam K. Mortara is a Lecturer in Law at the University of Chicago Law School, where he has taught federal courts, federal habeas corpus, and criminal procedure since 2007. Mr. Mortara has also served as a court-appointed *amicus curiae* in criminal law and federal habeas cases, including by this Court in *Beckles v. United States*, No. 15-8544, and by the Eleventh Circuit in *Wilson v. Warden*, No. 14-10681, and *Bryant v. Warden, FCC Coleman-Medium*, No. 12-11212. The arguments made herein are solely those of *amici* and are not necessarily the views of the law schools where *amici* have taught or their other faculty.

SUMMARY OF ARGUMENT

This Court in *Miller v. Alabama* considered the constitutionality of state laws requiring a mandatory minimum sentence of life-without-parole for homicide offenders, without any exception for juveniles. *See*

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[1] Counsel for all parties have consented to this filing. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

Miller v. Alabama, 567 U.S. 460, 469 (2012). Holding that these "mandatory" sentencing schemes were unconstitutional as applied to juveniles, *Miller* requires sentencers to consider a juvenile homicide offender's "youth and attendant characteristics" before imposing a life-without-parole sentence. *Id.* at 480, 483. But *Miller* left it for the states to decide what particular factfinding requirements or further procedures might be required when sentencing juveniles. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016). To comply with *Miller*, a sentencing court need not consider any particular set of factors, let alone utter magic words such as "permanent incorrigibility."

Of course, this Court could announce a new procedural rule requiring consideration of particular factors in this case, thereby expanding *Miller*. But as of now, the Constitution, as interpreted by this Court, permits life-without-parole sentences for juvenile homicide offenders so long as the sentencer retains some discretion in sentencing. *Miller*, 567 U.S. at 483; *see also Roper v. Simmons*, 543 U.S. 551, 572 (2005) (assuring states that life-without-parole sentences could have a similar deterrent effect as now-outlawed death sentences for juveniles).

Montgomery did not and could not expand *Miller* to require a factual finding of "permanent incorrigibility." *Montgomery* itself disclaims that *Miller* "require[d] trial courts to make a finding of fact regarding a child's incorrigibility." 136 S. Ct. at 735. Even had this Court wished to expand *Miller*, it could not have done so given *Montgomery*'s posture—a case on collateral review and altogether the wrong vehicle to an-

nounce new procedural rules. Expanding *Miller* to require a "permanent incorrigibility" finding would not have been retroactively applicable to Montgomery. *Teague*'s retroactivity bar would prohibit the application of that "new constitutional rul[e] of criminal procedure . . . to those cases which have become final before the new rules are announced," Montgomery's case included. *Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality op.). This Court should clarify that *Montgomery* did not and could not have expanded *Miller* by adding new procedural requirements, lest this Court condone the issuance of advisory opinions.

Just as new Eighth Amendment procedural rules could not have applied in *Montgomery*, any new Eighth Amendment rules adopted by the Court in this case cannot be applied in cases pending on collateral review. Should this Court expand *Miller* by adding new procedural requirements, those new procedural rules cannot be retroactively applied to habeas petitioners whose sentences are already final. *Teague* would preclude it.

ARGUMENT

I. *Miller* Holds Only That A Sentencer Must Have Discretion In Sentencing Juvenile Homicide Offenders And Does Not Require Particular Procedures For Exercising That Discretion

This Court has declared various state sentencing schemes unconstitutional when applied to juvenile offenders. *See Roper*, 543 U.S. at 578; *Graham v. Florida*, 560 U.S. 48, 74–75 (2010); *Miller*, 567 U.S. at 480. But this Court has yet to require a state sentencing court to make particular findings of fact—and then

subject those findings to federal review—before sentencing juvenile offenders to an otherwise constitutional sentence.

Neither *Miller* nor *Montgomery* required that a state sentencing court find juvenile homicide offenders "permanently incorrigible." They dealt only with sentencing schemes leaving sentencers with no discretion but to sentence all offenders to a minimum life-without-parole sentence. *See Miller*, 567 U.S. at 469; *Montgomery*, 136 S. Ct. at 726 (noting Montgomery's sentence "was automatic upon the jury's verdict"). So long as a state does not apply "mandatory" life-without-parole sentencing schemes to juvenile homicide offenders, *Miller* leaves it for the state to further structure its sentencing regime, be it with factfinding requirements or other procedures. And whether a state court followed those procedures remains a question for the state appellate courts to decide, not this Court or any other federal court under the guise of *Miller*.

A. *Miller* Addressed "Sentencing Schemes" and Did Not Further Impose Juvenile Sentencing Guidelines

Miller considered the constitutionality of "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" without first considering the offender's youth. *See Miller*, 567 U.S. at 479. Because this mandatory sentencing scheme "remov[ed] youth from the balance" of sentencing considerations, the Court declared it unconstitutional. *Id.* at 474. *Miller* of course did not categorically foreclose courts from sentencing juvenile offenders to life without the possibility of parole. It expressly dis-

claimed such a holding: "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*." *See id.* at 483.

Miller "mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* All *Miller* said about that required "process" was this: the sentencer must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. Beyond that, *Miller* did not require the consideration of any one particular feature of youth, let alone require a recitation of fact-findings about the defendant's youth.

To be sure, *Miller* describes some of the differences between juvenile and adult offenders. But *Miller* did so not to create *de facto* sentencing guidelines for future courts and instead to explain why mandatory life-without-parole sentencing schemes are problematic when applied to juveniles. According to *Miller*, mandatory sentences preclude a court from considering certain "hallmark features" of youth, such as:

- "immaturity, impetuosity, and failure to appreciate risks and consequences,"
- "taking into account the family and home environment . . . from which he cannot usually extricate himself—no matter how brutal or dysfunctional,"
- "the circumstances of the homicide offense," including whether "his participation in the conduct and the way familial and peer pressures may have affected him" or whether "he

might have been charged and convicted of a lesser offense if not for incompetencies associated with youth," and

- "the possibility of rehabilitation even when the circumstances most suggest it."

Miller, 567 U.S. at 477–78.

But again, *Miller* does not require sentencers to make factual findings regarding any one of these nonexhaustive "features" of youth. *Miller* holds only that sentencers must have discretion to decide whether a juvenile is parole eligible. *Id.* at 483. How a sentencer exercises that discretion remains the state's prerogative under *Miller*.

And indeed, after *Miller* some state courts have adopted the above "hallmark features" of youth as factors that sentencers must consider. That includes Mississippi, adopting those so-called "*Miller* factors" to guide *Miller* hearings. *See Parker v. State*, 119 So. 3d 987, 995–96 (Miss. 2013).[2] But because *Miller* did not itself require the state courts to consider these nonexhaustive youth-related factors, a state's adoption of them as sentencing factors is not an invitation to second-guess any one particular sentencer's consideration of those factors or the sentencing outcome. Mississippi has complied with *Miller* by eliminating mandatory life-without-parole sentences for juvenile homicide offenders. What more a state court chooses to do

[2] In *Parker*, the Mississippi Supreme Court read *Miller* to *require* the consideration of each of *Miller*'s "hallmark features." 119 So. 3d at 995. Discussed above, *Miller* is better read to generally require discretion to consider youth in sentencing, but it does not further require consideration of any one particular youth-related factor.

beyond that is a matter of state law and beyond the federal courts' review. *See Coleman v. Thompson*, 501 U.S. 722, 729–30 (1991).

If there were any doubt that *Miller* did not require a "permanent incorrigibility" or other factfinding, *Montgomery* squelches it. Discussed further below, this Court could not have stated more plainly in *Montgomery* that "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility." 136 S. Ct. at 735. Such a "degree of procedure" was and is not required. *Id.* Why not? Because "[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 in their criminal justice systems." *Id.* (citing *Ford v. Wainwright*, 477 U.S. 399, 416–17 (1986) ("[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences")); *see also*, *e.g.*, *Graham*, 560 U.S. at 75 ("It is for the State, in the first instance, to explore the means and mechanisms for compliance" with *Graham*'s rule that juvenile nonhomicide offenders be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.").

That *Miller* and *Montgomery* refused to require state courts to make formal, on-the-record factfindings is no surprise. And while the Court could adopt that rule here, *supra*, II.B, doing so would depart from this Court's typical approach, giving wide berth to criminal trial courts to decide an offender's guilt and to impose an appropriate punishment.

B. *Miller* Does Not Require "Magic Words" In Sentencing

Wordsmithing the judicial opinions of state courts (or worse, sentencing transcripts) departs from this Court's usual approach. This Court and others ordinarily presume that judges know what they are doing, without requiring those judges to make laborious assurances to that effect.

Imagine, for example, that this case were to arise in the federal habeas context. There would be no requirement that the state court list a "statement of reasons" for its decision to re-sentence an offender to life without parole: "[D]etermining whether a state court's decision resulted from an unreasonable legal or factual conclusion does not require that there be an opinion from the state court explaining the state court's reasoning." *Harrington v. Richter*, 562 U.S. 86, 98 (2011). Such opinion-writing requirements interfere with the states' management of busy judicial dockets. *Id.* at 99. Indeed, here the Mississippi resentencing court could have held a *Miller* hearing and then said nothing further, and still the sentence would be entitled a presumption of reasonableness in a federal habeas court. In his federal habeas case, Jones would have had to "show that the state court's ruling" on his *Miller* claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103.

Similarly, federal sentencing courts need not explain their decisions in endless detail. It suffices for the sentencing court to calculate the presumptively reasonable guidelines range and state, "even if brief,"

the reasons for imposing the sentence. *Rita v. United States*, 551 U.S. 338, 356–58 (2007). How much a judge must include in that statement of reasons is largely left "to the judge's own professional judgment." *Id.* at 356. There is no "rigorous requirement of articulation by the sentencing judge" about the § 3553(a) sentencing factors. *United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 2005). No "robotic incantations" about why a particular sentence would be imposed. *Id.* (quotation marks omitted). Nor the "recit[ation of] any magic words to prove that it considered the various factors Congress instructed it to consider." *United States v. Benally*, 541 F.3d 990, 997 (10th Cir. 2008) (quotation marks omitted). As this Court instructed in *Rita*, a sentencing judge need only "set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for his own legal decisionmaking authority" and "doing so will not necessarily require a lengthy explanation." 551 U.S. at 356. And while some subset of cases might "call for a lengthier explanation," even then the additional reasoning may still be both "brief" and "legally sufficient," even if it were possible for the judge to have "said more." *Id.* at 357-59.

Likewise in the death-penalty context, defendants may present any relevant mitigating evidence, but this Court has not further imposed a quasi-federal code of required mitigating factors or required fact-finding regarding the same. *See Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality op.). Quite the opposite—*Lockett* acknowledged that "[t]here is no perfect procedure for deciding in which cases governmental authority should be used to impose death." *Id.* at 605. As long as the sentencer's "discretion is guided in a

constitutionally adequate way, and as long as the decision is not so wholly arbitrary as to offend the Constitution, the Eighth Amendment cannot and should not demand more." *Barclay v. Florida*, 463 U.S. 939, 950–51 (1983) (plurality op.) (citation omitted). The Constitution does not transform death-penalty sentencing "into a rigid and mechanical parsing of statutory aggravating factors." *Id.*

So too in *Miller*. By addressing only sentencing schemes, *Miller* might have required a change in the available punishments under state law, but it did not further require "robotic incantations" about the defendant's youth in particular sentencing hearings. *See*, *e.g.*, *United States v. Sparks*, 941 F.3d 748, 756 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 1281 (2020) ("We reject the view that a procedurally proper sentence imposed under § 3553(a) can be vacated merely because the district court failed to quote certain magic words from the Supreme Court's *Miller* decision.").

In this case, for example, the resentencing judge more than complied with *Miller* when he said unequivocally that he had "considered each and every factor that is identifiable in the *Miller* case and its progeny. . . ." App. 148. The judge added he was "cognizant of the fact that children are generally different; 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" and that "[a]ll such factors must be considered on a case-by-case basis." *Id.* at 149. For this federal court's review, that is ample assurance that the court understood and applied *Miller*.

Perhaps in this case the Court will decide that the Eighth Amendment demands more, such as a specific factfinding of "permanent incorrigibility" as petitioner requests. But under *Miller*, a federal court has no power to reweigh the defendant's youth against the circumstances of his crime and other factors. All *Miller* asks is *whether* the sentencer considered an offender's "youth and attendant characteristics," *Miller*, 567 U.S. at 483, not *how* the sentencer did so.

II. *Montgomery*, a Case on Collateral Review, Could Not Have Announced a New Rule Requiring a Formal Factfinding of "Permanent Incorrigibility"

This Court's decision in *Montgomery* did not—and could not—expand *Miller*. *Montgomery* involved a state habeas petitioner and asked only whether *Miller* could apply retroactively to invalidate his long-final sentence—framing the question presented as "whether *Miller*'s prohibition on mandatory life without parole for juvenile offenders indeed did announce a new substantive rule that, under the Constitution, must be retroactive." 136 S. Ct. at 732. Resolving that question, *Montgomery* neither enlarged *Miller*'s rule nor added new procedures to enforce it. It asked only what legal regime, pre- or post-*Miller*, applied to evaluate the final sentence of a state habeas petitioner.

Montgomery includes various passages describing the *Miller* rule. Some hew closely to *Miller*—for example, summarizing *Miller* as a "prohibition on mandatory life without parole" sentencing schemes. 136 S. Ct. at 732, 734–35. And, to be sure, others expound on *Miller* to recast its seemingly "procedural" require-

ment that the sentencer hold a hearing as a "substantive" rule and thus retroactive for habeas petitioners. To do so, *Montgomery* had to explain how *Miller* rendered a punishment unconstitutional for "a class of defendants" (even though *Miller* itself said it did "not categorically bar a penalty for a class of offenders"). *Compare Montgomery*, 136 S. Ct. at 734, *with Miller*, 567 U.S. at 483. And that is why *Montgomery* emphasized that life-without-parole sentences, while not categorically foreclosed, are "disproportionate . . . for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" *Montgomery*, 136 S. Ct. at 726. None of that prose changes what was at issue in *Montgomery*—*Miller*'s retroactivity and nothing more.

Indeed, *Montgomery* itself confirms that *Miller* does not require particularized factfindings before imposing a life-without-parole sentence. *See id.* at 735. According to *Montgomery*, such procedural requirements risk "intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *Id.* The Eighth Amendment instead requires only "[a] hearing where 'youth and its attendant characteristics' are considered." *Id.* It is this general procedure that, in *Montgomery*'s terms, "gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.* How the states choose to carry out that procedure is a matter of state law under *Miller*, not a sentencing regime to be policed by federal courts.

A. This Court Does Not Announce New Rules In Cases Involving Final Sentences

Nor could *Montgomery* have expanded *Miller*. The procedural posture of *Montgomery* was an appeal from a state postconviction court. 136 S. Ct. at 727. Montgomery's sentence had been final for decades. Accordingly, the Court could not have used Montgomery's case to announce a new "permanent incorrigibility" factfinding requirement, lest the Court issue an advisory opinion. Under *Teague*'s retroactivity bar, such a rule could not apply in a postconviction case like Montgomery's. *See Teague*, 489 U.S. at 310; *Schriro v. Summerlin*, 542 U.S. 348, 351–52 (2004).

The rules existing at the time a defendant's sentence becomes final generally govern the defendant's later postconviction case, not new rules announced decades later. *See id.* Applied here, a "permanent incorrigibility" factfinding rule could apply only to cases still pending on direct review; its application would be barred for cases pending on collateral review. That rule would be "new" (an expansion of *Miller*'s more modest holding that mandatory sentencing schemes are unconstitutional and thus not dictated by precedent). *See Beard v. Banks*, 542 U.S. 406, 416 (2004). And it would be "procedural" (versus "substantive" and thus excluded from *Teague*'s retroactivity bar). *See id.* at 416-17. Requiring a factfinding of "permanent incorrigibility" merely alters the "range of permissible methods a court might use to determine" the sentence, *Welch v. United States*, 136 S. Ct. 1257, 1265 (2016), or "the manner of determining" the sentence, *Schriro*, 542 U.S. at 353.

A new rule adding procedural trappings to a *Miller* hearing is little different than rules governing the consideration of mitigating evidence in death-penalty sentencing. In both cases, the defendant is constitutionally entitled to present evidence to mitigate his punishment. But in neither case would changes to procedures for presenting mitigating evidence apply retroactively to reopen long-final sentences. *See*, *e.g.*, *Beard*, 542 U.S. at 417 (holding that *Mills v. Maryland*, disapproving capital sentencing schemes requiring jurors to find mitigators unanimously, was not retroactive); *see also Welch*, 136 S. Ct. at 1266 (noting "the Court has adopted certain rules that regulate capital sentencing procedures in order to enforce the substantive guarantees of the Eighth Amendment" and that "[t]he consistent position has been that those rules are procedural, even though their ultimate source is substantive").[3]

Requiring additional procedures in a *Miller* hearing is also akin to new procedural rules for *Atkins* hearings. *See Atkins v. Virginia*, 536 U.S. 304 (2002). These rules prescribe the way in which state judges

[3] It stretches the imagination that *Teague*'s exception for "watershed" rules of criminal procedure would apply here—marking the first-ever application of that exception—but not to other landmark criminal procedure cases such as *Apprendi* or *Crawford*. *See Beard*, 542 U.S. at 417-19 (cataloguing procedural rules that the Court has rejected as "watershed," including those intended to "enhance the accuracy of capital sentencing" (quotation marks omitted)); *see also Mackey v. United States*, 401 U.S. 667, 693-94 (1971) (Harlan, J., concurring in judgments in part and dissenting in part) (describing "watershed" rules as those "alter[ing] our understanding of the bedrock procedural elements that must be found to vitiate the fairness of a particular conviction" such as "the right to counsel at trial").

must conduct hearings for a particular class of offenders; they are not retroactive, however. They merely add procedural safeguards to ensure that *Atkins*'s (or *Miller*'s) substantive rule is enforced. The newly required procedures "defin[e] the appropriate manner for determining who belongs to that class of defendants" ineligible for a certain punishment, but they do not themselves alter that class of defendants. *Smith v. Comm'r, Ala. Dep't of Corrs.*, 924 F.3d 1330, 1338-39 (11th Cir. 2019) (Wilson, J.) (explaining "*Moore* [*v. Texas*, 137 S. Ct. 1039 (2017)] effectively narrowed the range of permissible methods—the procedure—that states may use to determine intellectual disability" and is thus not retroactive even if "*Moore* may have the effect of expanding the class of people ineligible for the death penalty"), *cert. pending*, No. 19-7745 (U.S.); *see also*, *e.g.*, *Williams v. Kelley*, 858 F.3d 464, 474 (8th Cir. 2017); *but see Smith v. Sharp*, 935 F.3d 1064, 1084-85 (10th Cir. 2019) (rejecting that post-*Atkins* rules were "new" rules subject to *Teague*), *cert. pending*, No. 19-1106 (U.S.). Just as these "rules that regulate capital sentencing procedures" are procedural, *Welch*, 136 S. Ct. at 1266, a rule specifying further requirements for *Miller* hearings would be procedural.[4]

[4] Nor could a "permanent incorrigibility" factfinding requirement be made retroactive by likening it to an "element" of the offense. *See Schriro*, 542 U.S. at 354 ("A decision that modifies the elements of an offense is normally substantive rather than procedural."). *Miller* and *Montgomery* limit only when a life-*without-parole* sentence may be automatically imposed, and the *Miller* hearing is required only to decide whether the defendant will be parole-eligible. Neither *Miller* nor *Montgomery* doubted the constitutionality of life sentences for homicide offenders, even juveniles. So unlike, for example, death-penalty cases involving

Such new rules of criminal procedure, under *Teague*, cannot invalidate sentences that became final before the new rule's pronouncement. *See Schriro*, 542 U.S. at 351–52. It thus would have made little sense for this Court to have expanded *Miller* in *Montgomery* by adding new procedural requirements that would have had no effect in Montgomery's own case.

As Justice Harlan implored time and again, the function of postconviction review is to assess the application of law existing at the time of sentencing, not to address any "supervening constitutional interpretation." *Mackey*, 401 U.S. at 687–88 (Harlan, J., concurring in judgments in part and dissenting in part); *compare Griffith v. Kentucky*, 479 U.S. 314, 322-23 (1987) ("failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication"). Since this Court adopted Justice Harlan's retroactivity framework, beginning with *Teague*, it has avoided willy-nilly pronouncements of new rules in cases where they cannot apply. Before deciding whether to establish a new rule, the Court "should ask whether such a rule

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aggravating factors treated as an "element" to decide whether a defendant is death eligible, whether a defendant is *parole eligible* is not subject to the same *Apprendi* rule. *Compare Ring v. Arizona*, 536 U.S. 584, 609 (2002), *with Miller*, 567 U.S. at 489 ("a *judge* or jury must have the opportunity to consider mitigating circumstances" (emphasis added)); *see also*, *e.g.*, *Cook v. State*, 242 So. 3d 865, 876 (Miss. App. 2017) (rejecting argument that parole eligibility must be found by a jury, either because "'irreparable corruption' is not considered an objective, provable 'fact' for purposes of *Apprendi*" or because "'irreparable corruption' is something that a defendant must disprove in order to mitigate his punishment, rather than something the State must prove in order to increase the penalty").

would be applied retroactively to the case at issue." *Teague*, 489 U.S. at 301. *Montgomery* is no exception. The only juvenile-sentencing requirement contemplated in *Montgomery* was that already announced by the Court in *Miller*.

B. This Court Could Adopt Formal Factfinding Requirements In This Case, But Those Requirements Would Be Inapplicable To Cases Pending on Collateral Review

This Court could decide in this case that a sentencer must find the defendant "permanently incorrigible" before imposing a life-without-parole sentence.[5] This case is not in the same postconviction posture as *Montgomery*. The Mississippi Supreme Court vacated Jones's pre-*Miller* sentence and ordered that he be resentenced. *See Jones v. State*, 122 So. 3d 698, 703 (Miss. 2013). This appeal follows that resentencing. In this posture, he arguably escapes *Teague*'s retroactivity bar, and this Court could announce and apply a new rule to resolve his appeal. *See Griffith*, 479 U.S. at 322–23; *cf. McKinney v. Arizona*, 140 S. Ct. 702, 709 n.* (2020) (noting that "a State, by use of a collateral label" cannot "conduct a new trial proceeding in violation of current constitutional standards").

If this Court were to announce such a new rule, however, that new rule would not apply to all juvenile sentencings. Pending or future habeas cases involving

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[5] *Amici* take no position on the adoption of these added procedures except for their observation that imposing them as a matter of federal constitutional law would depart from the Court's approach in analogous cases. *Supra*, I.B.

defendants whose sentences are now final cannot avail themselves of a new "permanent incorrigibility" fact-finding requirement in a future habeas petition. Explained above, such a rule would be procedural and could not apply retroactively under *Teague*. *See supra*, II.A. No federal court has the power to grant a petitioner the benefit of a new procedural rule that a state postconviction court could otherwise refuse to confer. *See Coleman*, 501 U.S. at 730 ("When a federal habeas court releases a prisoner held pursuant to a state court judgment that rests on an independent and adequate state ground, it renders ineffective the state rule just as completely as if this Court had reversed the state judgment on direct review.").

CONCLUSION

For the foregoing reasons, this Court's existing caselaw imposes no factfinding requirements for juvenile sentencing, and any new decision announcing such a rule cannot apply retroactively to habeas petitioners seeking the benefit of that rule.

Respectfully submitted,

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