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**In the Supreme Court of the United States**

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**MICHAEL MAURICIO,**

Petitioner,

v.

**STATE OF CALIFORNIA,**

Respondent.

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI**

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CAPITAL CASE  
**QUESTION PRESENTED**

Should this Court grant certiorari to vacate and remand this case in light of *Miller v. Alabama*, 132 S. Ct. 2455 (2012), which prohibits a sentencing scheme that mandates a term of life without the possibility of parole (“LWOP”) for a juvenile offender, when California’s sentencing scheme is not mandatory but instead permits a trial court to exercise its discretion to impose a punishment other than LWOP, and the trial court in this case considered petitioner’s youth and other mitigating circumstances before imposing LWOP?

TABLE OF CONTENTS

	<b>Page</b>
Question Presented .....	i
Statement of the Case .....	1
Reasons To Deny the Petition.....	3
There Is No Need To Remand This Case in Light of <i>Miller</i> .....	3
Conclusion.....	7

TABLE OF AUTHORITIES

Page

CASES

*Jackson v. Hobbs*

No. 10-9647, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011).... 2, 3

*Miller v. Alabama* No. 10-9646, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011)..... 2, 3

*Miller v. Alabama*, \_\_\_ U.S. \_\_\_ [132 S. Ct. 2455] (2012)..... passim

STATUTES

Cal. Penal Code

§ 187 ..... 1  
§ 190.2 ..... 1, 6  
§ 190.5 ..... 2

CONSTITUTIONAL PROVISIONS

Eighth Amendment ..... 4

## STATEMENT OF THE CASE

Petitioner, a Ward Lane Crips gang member, was the driver in two sets of gang-involved shootings that resulted in the deaths of three persons. First, on November 6, 2006, petitioner drove a car next to Jeffrey Shade, who was riding his bicycle. Shade was a member of Lueders Park Pirus, a Blood gang. The front passenger in petitioner's car fired four to six shots at Shade, killing him. (Pet. App. A at 2.) Second, on November 19, 2006, petitioner drove a car by a bus bench. Multiple gunshots were fired from that car at Shudray Jenkins and Deaundre Hunt, killing both. (*Id.* at 3.)

Also, on December 4, 2006, petitioner was arrested while preparing to commit another drive-by shooting. Law enforcement recovered a loaded rifle from the car. Besides petitioner, four other persons were in the car, including Ward Lane Crips gang members. (Pet. Att. A at 3-4.)

A California jury found petitioner guilty of three counts of first-degree murder (Cal. Penal Code § 187) with "special circumstance" findings including that petitioner had intentionally killed the victim while an active participant in a street gang (Cal. Penal Code § 190.2(a)(22)). (Pet. Att. A at 2.)

Exercising its discretion at sentencing, the trial court declined to sentence petitioner to terms of twenty-five years to life, and instead imposed LWOP. The trial court considered several factors, including that petitioner was not the actual shooter, that petitioner lacked a prior criminal record, and

the likelihood that, due to petitioner's age, had been influenced by peer pressure. (Pet. Att. A at 15-16.)

In petitioner's appeal, the California Court of Appeal noted that California Penal Code section 190.5, subdivision (b), provides that LWOP is the presumptive sentence for a sixteen or seventeen year old defendant convicted of a special circumstance murder, but that the statute also permits a trial court to exercise its discretion to impose a different sentence of twenty-five years to life. The court of appeal found that the trial court had not abused its discretion by declining to exercise its discretion to sentence petitioner to terms of twenty-five years to life instead of LWOP, noting that the trial court had weighed a number of factors, including petitioner's youth, before imposing LWOP terms. (Pet. Att. A at 15.)

The Court of Appeal also rejected petitioner's claim that his sentences violated the state and federal constitutional prohibitions against cruel and/or unusual punishment. Applying a proportionality analysis, the court found that the gravity of petitioner's offenses outweighed mitigating factors, including his youth. The court of appeal noted at the time, however, that this Court had granted certiorari in *Jackson v. Hobbs*, No. 10-9647, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011). (Pet. Att. A at 18, n.10.)

Petitioner filed a petition for review in the California Supreme Court, which denied review on February 29, 2012.

In the instant certiorari petition, petitioner asked this Court to hold this case for disposition pending its decision in *Miller v. Alabama*, No. 10-9646, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011) and *Jackson v. Hobbs*, No. 10-9647, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011). (Pet. at 8.) Since then, this Court decided both of those cases in *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

### **REASONS TO DENY THE PETITION**

#### **THERE IS NO NEED TO REMAND THIS CASE IN LIGHT OF *MILLER***

Petitioner asked that this case be held for disposition pending its decisions in *Miller v. Alabama*, No. 10-9646, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011) and *Jackson v. Hobbs*, No. 10-9647, cert. granted, \_\_\_ U.S. \_\_\_ [132 S. Ct. 548] (November 7, 2011), on the theory that this Court's disposition of those cases would "be determinative" of the constitutionality of petitioner's sentence. Petitioner further asserted that certiorari should be granted, and that this Court should vacate the judgment of the California Court of Appeal and remand the case for further proceedings in light of these cases. (Pet. at 7-8.) But this Court should neither grant certiorari nor vacate and remand this case. For this Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), resolving the cases noted by petitioner, does not affect the constitutionality of petitioner's sentence. *Miller* does not prohibit LWOP sentences for seventeen-year-old murders where as the sentencing court, as it did here, adequately considered whether to reduce

the sentence considering the seriousness of the offenses and the juvenile's personal circumstances, including age.

In *Miller*, this Court held that “the Eighth Amendment forbids a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders. [Citation.]” 132 S. Ct. at 2469, emphasis added. *Miller* did not hold that the Eighth Amendment requires a categorical bar on LWOP sentences for juveniles convicted of homicide. *Id.* at 2469. This Court instead held that a mandatory sentencing scheme that precludes “the sentencing authority [from] hav[ing] any discretion to impose a different punishment” violated the Eighth Amendment because such a system prevented the sentencing authority from “considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change.’ [Citation.]” *Id.* at 2460. This Court in *Miller* stated that its cases require “individualized sentencing” for defendants facing the most severe penalties. *Id.* at 2460, 2466.

Here, petitioner was not sentenced under a sentencing scheme requiring that he be sentenced to life without the possibility of parole for his first degree murder convictions. California law does not mandate LWOP for juvenile offenders convicted of homicide. Rather, as noted by the California Court of Appeal in this case:

Under [California Penal Code] section 190.5, subdivision (b), the penalty for a defendant convicted of first degree murder with one or more special circumstances found true, who was 16 years of age or older and under the age of 18 years at the time of the

commission of the murder, ‘shall be [LWOP] *or, at the discretion of the court, 25 years to life.*”

(Pet. Att. A at 15, emphasis added.)

Thus, California’s sentencing scheme does not conflict with this Court’s holding in *Miller* because it is not a mandatory scheme that requires LWOP for juvenile offenders. Rather, California law permits a trial court to exercise its discretion to impose the less severe sentence of twenty-five years to life.

Further, the trial court in this case conducted “individualized sentencing” and considered petitioner’s youth and related factors in making its decision to sentence petitioner to three terms of LWOP, instead of terms of twenty-five years to life. In this regard, the trial court weighed a number of factors in this sentencing decision, including petitioner’s youth, and his lack of a prior criminal record, and determined that the gravity of the instant crimes outweighed these mitigating factors. (Pet. Att. A at 15-16.)

Moreover, the California Court of Appeal considered petitioner’s youth in finding that his sentence did not constitute cruel and unusual punishment. (Pet. Att. A at 16 [“we are left then to examine [petitioner’s] punishment under a more general principle of proportionality”].) The Court of Appeal noted that petitioner had conceded that the crimes of which he was convicted “are the most serious and violent of all crimes.” The court of appeal considered mitigating factors including that petitioner was not the actual shooter, lacked a prior criminal record, and the likelihood that due to petitioner’s age, that he was influenced by peer pressure. The court of appeal

nevertheless found that petitioner's punishment was not cruel and unusual, in light of the severity of the crimes he committed. (Pet. Att. A at 17-18.)

Thus, the facts of this case show that the trial court conducted an "individualized sentencing" and considered petitioner's youth before imposing the LWOP sentences, and that the state appellate court also considered petitioner's youth as part of its analysis in determining whether his sentences constituted cruel and unusual punishment.

Accordingly, this Court should not grant certiorari in this case to vacate the California Court of Appeal's judgment and remand the case for further proceedings in light of *Miller*. The rule in *Miller* prohibiting a mandatory sentencing scheme requiring an LWOP sentence for a juvenile convicted of first degree murder does not apply to this case, and the state courts here provided petitioner with "individualized sentencing."

As a final matter, respondent notes an apparent misstatement of fact in the certiorari petition. Petitioner, in framing his first question presented, suggests that he was "not shown to have anticipated or intended anyone to be killed." (Pet. at 1.) But the jury specifically found, as to all three murders, that petitioner had "*intentionally* killed the victim while an active participant in a street gang ([California Penal Code] § 190.2, subdivision (a)(22))." (Pet.

Att. A at 2.) Contrary to petitioner's suggestion, petitioner intended to kill three persons, and the jury made that finding.

### CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: September 24, 2012  
Respectfully submitted

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