No. 14-6381

IN THE

Supreme Court of the United States

GEORGE TOCA,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Does the rule announced in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), apply retroactively to this case?

2. Is a federal question raised by a claim that a state collateral review court erroneously failed to find a *Teague* exception?

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The decision of the Louisiana Supreme Court below is reported at 2013-1880 (La. 6/20/14); 141 So. 3d 265 and appears at J.A. 87a–89a. The order of the Louisiana Fourth Circuit Court of Appeal is unreported and is found at J.A. 85a–86a. The bench ruling of the Criminal District Court of Orleans Parish, Louisiana, is reflected in the minute entry at J.A. 83a–84a and is transcribed at J.A. 80a.

JURISDICTION

As discussed in detail below in Section II, this Court has jurisdiction under 28 U.S.C. § 1257(a). The Louisiana Supreme Court's decision was entered on June 20, 2014. The petition for certiorari was filed on September 18, 2014.

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

> property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article III of the United States Constitution provides in pertinent part:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.
>
> * * *
>
> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

The Supremacy Clause of Article VI of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

George Toca was barely 17 years old when he was accused of the accidental shooting of his best friend, Eric Batiste, during a botched armed robbery. J.A. 12a, 15a. Mr. Batiste and an accomplice had attempted to rob Anne Marie Collins and Todd Struttmann in the early morning hours of April 23, 1984. J.A. 15a. Ms. Collins and Mr. Struttmann resisted, and, in the ensuing struggle, Mr. Batiste was shot by his accomplice. J.A. 15a–16a. Ms. Collins's account indicates that the shooting was accidental: "After he fired the shot the [gunman] just sort of backed up a few steps, as if he could not believe what he had done. . . . It looked to me like the guy who had the gun did not know what he was doing with the pistol, and was very surprised when he fired the shot. It did not look to me like he aimed the pistol." J.A. 16a–17a.

Mr. Toca was subsequently convicted of second-degree murder, defined under Louisiana law as the killing of any human being during a robbery "even though [the accused] has no intent to kill or to inflict great bodily harm." La. Rev. Stat. Ann. § 14:30.1(A)(2). On appeal, the conviction was upheld "even though [the victim] was committing robbery with defendant." *State v. Toca*, 551 So. 2d 4, 5 (La. Ct. App. 1989). At that time, under Louisiana law, the mandatory sentence for second-degree murder was "life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence." La. Rev. Stat. Ann. § 14:30.1(B). As a result, Mr. Toca was sentenced to die in prison without any consideration of his youth, the circumstances of the crime, or any other mitigating facts. J.A. 12a.

Mr. Toca arrived in adult prison standing only 5'5" and weighing just 125 pounds. J.A. 18a. Because of his size, he was placed in isolation for his own safety. J.A. 18a. Over the following decades, he strived to improve himself. J.A. 17a–25a. Mr. Toca has now been incarcerated for over 30 years. J.A. 17a. Although he entered prison without even a high school diploma, he has since earned a Bachelor's Degree in Christian Ministries from the New Orleans Baptist Theological Seminary. J.A. 20a–22a.

There is also now significant new evidence that casts doubt on Mr. Toca's guilt. J.A. 25a–43a. This evidence, which was not heard at trial, establishes that a different friend of Mr. Batiste's was the last person seen with him, has confessed to shooting him, and matches the witnesses' descriptions of the shooter far better than Mr. Toca. J.A. 28a–34a, 37a–41a. The victim's family, who were never informed about the original trial, strongly believe that Mr. Toca should be released. J.A. 43–44a, 49a–53a.

On June 25, 2012, this Court held in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Id.* at 2460. In light of *Miller*, on May 1, 2013, Mr. Toca filed a Motion to Correct Illegal Sentence in the Orleans Parish Criminal District Court. J.A. 1a, 11a–48a.

The district attorney's office responded that Mr. Toca was not entitled to resentencing because *Miller* does not apply retroactively to cases on collateral review. J.A. 56a–69a. On June 28, 2013, the district court ruled that *Miller* should be applied retroactively to Mr. Toca's case.

J.A. 80a, 83a–84a. The State filed an application for a supervisory writ in the Fourth Circuit Court of Appeal, which denied the State's application on July 31, 2013. J.A. 7a, 85a–86a. The State then filed an application for a supervisory writ in the Louisiana Supreme Court on August 2, 2013. J.A. 8a. As it had in the courts below, the State devoted several pages of its writ application to arguing that Louisiana courts apply the federal retroactivity standard under *Teague v. Lane*, 489 U.S. 288 (1989), and based its analysis primarily on the federal law in the Fifth Circuit's unpublished decision in *Craig v. Cain*, No. 12-30035, 2013 WL 69128 (5th Cir. Jan. 4, 2013). Record, Doc. 1 8–9, 12–15.

On November 5, 2013, in *State v. Tate*, 130 So. 3d 829 (La. 2013), a divided Louisiana Supreme Court held that "*Miller* does not apply retroactively to cases on collateral review as it merely sets forth a new rule of criminal constitutional procedure, which is neither substantive nor implicative of the fundamental fairness and accuracy of criminal proceedings." *Id.* at 831. In reaching this conclusion, the court relied on its previous holding that "the standards for determining retroactivity set forth in *Teague* . . . apply to 'all cases on collateral review in our state courts,'" and determined that, therefore, "our analysis is directed by the *Teague* inquiry." *Id.* at 834 (quoting *State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La. 1992)). On June 20, 2014, relying on its decision in *Tate*, the Louisiana Supreme Court granted the State's writ application and reversed the decision of the district court in Mr. Toca's case. *State v. Toca*, 141 So. 3d 265 (La. 2014). J.A. 87a–89a.

Mr. Toca filed a timely petition for writ of certiorari with this Court. In its brief in opposition, despite having made no argument below that Louisiana should adopt a narrower state law standard for retroactivity than that under *Teague*, the State suggested that, because it was unsettled whether the Louisiana Supreme Court *could* have done so, "[w]hether a federal question is raised in the Petition for Writ of Certiorari filed in these proceedings is by no means clear." Resp't's Br. Opp'n at 7–9. This Court granted review. J.A. 90a.

SUMMARY OF ARGUMENT

This Court's determination in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), that it is cruel and unusual to impose a mandatory life-without-parole sentence on a child under the age of 18 must be applied retroactively to all cases where that punishment has been imposed. *Miller* categorically prohibited an automatic life-without-parole sentence for an entire class of criminal defendants: those who were "under the age of 18 at the time of their crimes." *Id.* at 2460. As such, it is a substantive rule. *Miller* is no different than the Eighth Amendment precedents on which it relied, which have universally been applied retroactively because the determination that a punishment is cruel and unusual is inexorably a substantive one. But even if *Miller* were merely procedural, its recognition of the foundational importance of youth and its direct connection to the risk of disproportionate sentencing would still require its retroactive application as a watershed rule.

This Court can and should find that *Miller* is retroactive in this case because this Court unquestionably has jurisdiction here. The Louisiana Supreme Court

explicitly relied only on federal law in reaching its determination that *Miller* is not retroactive and that is sufficient for this Court's review. But even if Louisiana had purported to rely on state law, state courts cannot, consistent with basic norms of constitutional adjudication, refuse to provide a remedy for constitutional violations that fall within *Teague*'s exceptions.

ARGUMENT

I. *MILLER V. ALABAMA* APPLIES RETROACTIVELY TO CASES ON COLLATERAL REVIEW.

This Court held in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 2469. The Constitution requires that before such a harsh, permanent sanction can be imposed on a child, 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.* Based on this holding, many States have ordered resentencing hearings for individuals who had previously been sentenced to mandatory life without parole as children. But Louisiana, relying on this Court's decision in *Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion), has refused to apply *Miller* retroactively to inmates, like Mr. Toca, whose convictions became final before *Miller* was decided. A proper reading of *Teague* and its progeny requires that *Miller* be applied to Mr. Toca and others on collateral review.

A. *Miller* Announced a New Substantive Rule.

For purposes of retroactivity, this Court has drawn a distinction between substantive and procedural rules. "New *substantive* rules generally apply retroactively." *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004); *see also Mackey v. United States*, 401 U.S. 667, 692 (1971) (Harlan, J., concurring in part and dissenting in part) (noting that "[n]ew 'substantive due process' rules . . . must, in my view, be placed on a different footing" than procedural rules subject to the general principle of non-retroactivity).

This Court's precedents have established that substantive rules:

> include[] decisions that narrow the scope of a criminal statute by interpreting its terms, *see Bousley v. United States*, 523 U.S. 614, 620–621 [] (1998), as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish, *see Saffle v. Parks*, 494 U.S. 484, 494–495 [] (1990); *Teague v. Lane*, 489 U.S. 288, 311 (1989) (plurality opinion).

Summerlin, 542 U.S. at 351–52. This precept applies to rules that "deprive[] the State of the power to impose a certain penalty" as well as those that deprive the State of the "power to punish at all." *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002).

Most fundamentally, however, each description of substantive rules in this Court's cases indicates that

substantive rules are those that reshape permissible outcomes. By contrast, procedural rules merely alter the method of choosing among preexisting outcomes. As such, substantive "rules apply retroactively because they 'necessarily carry a significant risk that a defendant stands convicted of "an act that the law does not make criminal"' or faces a punishment that the law cannot impose upon him." *Summerlin*, 542 U.S. at 352 (quoting *Bousley*, 523 U.S. at 620, quoting in turn *Davis v. United States*, 417 U.S. 333, 346 (1974)). Thus, as this Court has recognized, rules that change the facts defining "the range of conduct . . . [that can be] subjected to . . . [a particular] penalty" are substantive because they reshape the permissible boundaries of the culpability determination. *Summerlin*, 542 U.S. at 353. Where the penalty has been applied without determining "the essential facts" that mark the constitutional boundary line and bring the defendant's case within the range of permissible punishment, there necessarily exists the significant risk that the punishment he suffers is one which the Constitution forbids. *Id.* at 352–53.

Miller's rule is demonstrably substantive within this framework. By depriving the State of the power to mandate a sentence of life without parole, *Miller* placed a substantive limitation on the State's power to punish children. In so doing, it invalidated sentencing statutes (like Alabama's, Arkansas's, and Louisiana's) that had previously provided for only a single punishment, and instead required the possibility of a new, lesser outcome. As a result, these States were required to alter the underlying penalties in these cases to make new sentencing options available. *Cf. Alleyne v. United States*, 133 S. Ct. 2151, 2160 (2013) (recognizing that because "the legally

prescribed range *is* the penalty affixed to the crime," a change to the floor of that range changes the penalty).

As many of these States have concluded, these are quintessentially substantive legal changes. *See People v. Davis,* 6 N.E.3d 709, 722 (Ill. 2014) ("*Miller* mandates a sentencing range broader than that provided by statute for minors convicted of first degree murder who could otherwise receive only natural life imprisonment." (quoting *People v. Morfin*, 981 N.E.2d 1010, 1022 (Ill. Ct. App. 2012))), *cert. denied*, 135 S. Ct. 710 (2014); *Jones v. State*, 122 So. 3d 698, 702 (Miss. 2013) ("*Miller* modified our substantive law by narrowing its application for juveniles."), *reh'g denied* (Sept. 26, 2013); *State v. Mantich*, 842 N.W.2d 716, 731 (Neb. 2014) ("[T]he fact that *Miller* required Nebraska to change its substantive punishment for the crime of first degree murder when committed by a juvenile . . . demonstrates the rule announced in *Miller* is a substantive change in the law."), *cert. denied*, 135 S. Ct. 67 (2014); *Petition of State*, 103 A.3d 227, 234 (N.H. 2014) ("*Miller* changed the permissible punishment for juveniles convicted of homicide."); *Ex parte Maxwell*, 424 S.W.3d 66, 75 (Tex. Crim. App. 2014) ("After *Miller*, there is a range of new outcomes—discretionary sentences that can extend up to life without the possibility of parole but also include the more lenient alternatives." (quoting *Tulloch v. Gerry*, No. 12–CV–849, 2013 WL 4011621, at *7 (N.H. Super. Ct. July 29, 2013))); *State v. Mares*, 335 P.3d 487, 507 (Wyo. 2014) ("[T]he *Miller* holding has effected a substantive change in the sentencing statutes applicable to juvenile offenders.").[1]

1. For this reason, the Department of Justice has conceded that *Miller* is substantive in federal cases. *See, e.g.*, Government's

Moreover, *Miller* narrowed the class of children who can be subjected to a sentence of life without parole. Before *Miller*, every child convicted of homicide could be automatically sentenced to life without parole. But *Miller* recognized that, even in the context of aggravated homicide cases, "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate." 132 S. Ct. at 2465–66. For this reason, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.* at 2469. Thus, after *Miller*, the State's power to sentence children to life without parole has been narrowed from every case to only the uncommon case. As a result, there is what *Summerlin* called "a significant risk" that children who have previously been sentenced to life without parole are currently serving a sentence "that the law cannot impose." 542 U.S. at 352 (internal quotation marks omitted); *see also Aiken v. Byars*, 765 S.E.2d 572, 576 (S.C. 2014) ("Failing to apply the *Miller* rule retroactively risks subjecting defendants to a legally invalid punishment."); *Songster v. Beard*, Civ. Action No. 04-5916, 2014 WL 3731459, at *3 (E.D. Pa. July 29, 2014) ("[*Miller*] eliminated the 'significant risk' that a punishment that the law cannot impose would be imposed—a juvenile would be sentenced to die in prison when he would not otherwise be sentenced because of his peculiar characteristics associated with his youth.").[2]

Resp. to Pet'r's Application for Authorization to File a Second or Successive Mot. Under 28 U.S.C. § 2255 at 10–17, *Johnson v. United States*, 720 F.3d 720 (8th Cir. 2013) (No. 12-3744).

2. This case is illustrative of the cases that now fall outside the ambit of the State's power to impose life without parole. Mr. Toca was convicted in the accidental death of an accomplice in a botched

Miller also altered the essential facts necessary to impose life without parole on a child. *Miller* held that such a sentence can only be imposed after the sentencer has "take[n] into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S. Ct. at 2469. Thus, as the Nebraska Supreme Court recognized, this "Court made a certain fact (consideration of mitigating evidence) essential to imposition of a sentence of life imprisonment without parole." *Mantich*, 842 N.W.2d at 730. This is a substantive rule.

In holding that *Miller* is not retroactive, the Louisiana Supreme Court said that *Miller* "did not alter the range of . . . persons subject to life imprisonment without parole for homicide offenses," but "simply altered the range of *permissible methods* for determining whether a juvenile could be sentenced to life imprisonment without parole." *State v. Tate*, 130 So. 3d 829, 837 (La. 2013). But that is wrong. When a sentencing scheme is mandatory, by definition, there is no "method" for making that determination. *Miller* did not alter an existing method, but rather altered *who* is eligible to receive this harsh sentence.

Indeed, *Miller* is easily distinguishable from procedural "rules that regulate ***only*** the *manner of determining* the defendant's culpability," but do not alter the scope of the culpability determination itself.

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robbery, and, during his lengthy incarceration, has demonstrated his capacity for reform and rehabilitation. J.A. 15a–25a. Since his trial as a teen, significant evidence has been uncovered calling into doubt Mr. Toca's guilt, and the victim's family has strongly urged that he be released. J.A. 25a–44a, 49a–53a.

Summerlin, 542 U.S. at 353 (first emphasis added). In *Summerlin*, this Court found that the rule of *Ring v. Arizona*, 536 U.S. 584 (2002), that a jury rather than a judge must find the aggravating factors necessary to impose the death penalty, was procedural. The Court reached that conclusion because *Ring* merely "allocate[d] decisionmaking authority" without altering state law as to what facts the decisionmaker had to find. *Summerlin*, 542 U.S. at 353–54. Unlike *Ring*, "*Miller* require[s] a sentencer of a juvenile to consider new facts, i.e., mitigation evidence, before imposing a life imprisonment sentence with no possibility of parole." *Mantich*, 842 N.W.2d at 730. Hence, the rule in *Miller* is substantive because "it impose[s] a new requirement as to what a sentencer must consider in order to constitutionally impose life imprisonment without parole on a juvenile." *Id.*; *see also Petition of State*, 103 A.3d at 235 ("Unlike the holding in *Ring*, the *Miller* rule does more than merely 'regulate . . . the manner of determining the defendant's culpability' . . . *Miller* altered the range of outcomes for juveniles convicted of homicide." (quoting *Summerlin*, 542 U.S. at 353)); *Maxwell*, 424 S.W.3d at 75 ("*Miller* is distinguishable from *Ring* because it does not simply reallocate decision making authority from judge to jury; instead, it provides a sentencing court with decision making authority where there once was none . . . ." (internal quotation marks omitted).

Finally, the mandatory nature of the sentences at issue in *Miller* is more accurately characterized as an aspect of the punishment, rather than a procedural mechanism. It is well recognized that legislatures adopt mandatory penalties to "convey the message that certain crimes are deemed especially grave and that people who commit them deserve, and may expect, harsh sanctions"

— in other words, to promote retribution, deterrence, and incapacitation, which are typical purposes of punishment. *See* National Institute of Justice, *Key Legislative Issues in Criminal Justice: Mandatory Sentencing*, at 2 (1997); *see also Sumner v. Shuman*, 483 U.S. 66, 82–85 (1987) (discussing deterrence and retribution rationales for mandatory death sentences and finding them inadequate to justify that punishment). Mandatory sentencing schemes are not adopted to improve the fairness and accuracy of the sentencing proceeding — the typical purpose of procedural rules. In this sense, a mandatory sentence of life without parole is best understood as a particular type of punishment.

This Court in *Penry* said that substantive rules include rules that restrict punishment "for a class of defendants because of their status or offense." 492 U.S. at 330. *Miller* prohibits mandatory life without parole for a class of defendants (those under the age of 18 at the time of the offense) because of their status (as children). *See, e.g.*, *State v. Ragland*, 836 N.W.2d 107, 115 (Iowa 2013) (holding *Miller* rule "bars states from imposing a certain type of punishment on certain people"); *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 281 (Mass. 2013) ("The [*Miller*] rule explicitly forecloses the imposition of a certain category of punishment—mandatory life in prison without the possibility of parole—on a specific class of defendants: those individuals under the age of eighteen when they commit the crime of murder.").

And there is added reason for applying *Penry* in the present setting. *Miller* is the rare case in which nonretroactivity would wholly subvert the core principle of the constitutional right in question. The substantive

heart of *Miller*'s reasoning is that "[l]ife without parole 'forswears altogether the rehabilitative ideal' . . . [and] reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." 132 S. Ct. at 2465 (quoting *Graham v. Florida*, 560 U.S. 48, 74 (2010)). "A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Graham*, 560 U.S. at 73.[3] The fundamental premise of rehabilitation and of the chance to grow is youth's potential for future change. Rehabilitation constitutes a bridge of promise between the past crimes of an immature human creature and the possibility that with maturity the individual will earn "the right to reenter the community," *id.* at 74. As such, it necessarily views the past within a framework of hope that looks ahead to the long-range future.

This Court's decisions in *Graham* and *Miller* did not give Terrance Graham or Evan Miller any present relief from incarceration. To the contrary, those decisions contemplated that both boys — and their cohorts — would spend substantial periods of time in prison before the rights recognized by the Court would accrue to their benefit. The essence of those rights was a guarantee that the end of their lives — not the immediate present but a determinate period of future time — might be lived with dignity if they earned it through "the gradual renewal of a man, . . . his gradual regeneration, . . . his passing from one world into another, . . . his initiation into a new unknown

3. "'A State is not required to guarantee [young offenders] eventual freedom,' but must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Miller*, 132 S. Ct. at 2469 (quoting *Graham*, 560 U.S. at 75).

life."[4] The prohibition against subjecting them to the premature "judgment that [a] . . . juvenile is incorrigible"[5] is in essence a guarantee of *future* consideration for redemption after the expiation of *past* serious crimes. Juveniles who were sentenced to life without parole before *Graham* or before *Miller* are no differently situated than Graham and Miller themselves from this standpoint. The violation of human dignity to which they will be subjected by future lifelong incarceration without ever receiving a chance to be considered for release is temporally as well as logically indistinguishable from Graham's and Miller's.

B. *Miller* Is the Same Type of Rule as the Retroactive Eighth Amendment Precedents from Which It Descended.

That *Miller* is retroactive is further made plain by its pedigree — it is the same type of rule as the retroactive decisions from which it is descended. *See Tyler v. Cain*, 533 U.S. 656, 668–69 (2001) (O'Connor, J., concurring) (explaining that "if we hold in Case One that a particular type of rule applies retroactively to cases on collateral review and hold in Case Two that a given rule is of that particular type, then it necessarily follows that the given rule applies retroactively to cases on collateral review"). Indeed, this Court has never barred a punishment as cruel and unusual under the Eighth Amendment but refused to apply that decision retroactively.

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4. Fyodor Dostoyevsky, Crime and Punishment 532 (Constance Garnett trans., Modern Library paperback ed. 1950).

5. *Graham*, 560 U.S. at 72.

As this Court explained in *Miller* at pages 2463–68, the ban on mandatory life-without-parole sentences for children flows from two strands of Eighth Amendment precedent. The first set of cases "establish that children are constitutionally different from adults for purposes of sentencing." *Id.* at 2464. *Roper v. Simmons*, 543 U.S. 551 (2005), banned death sentences for children, and *Graham v. Florida*, 560 U.S. 48 (2010), banned life-without-parole sentences for children convicted of nonhomicide crimes. Both *Roper* and *Graham* have universally been applied retroactively.[6]

The second line of cases "demand[] individualized sentencing when imposing the death penalty." *Miller*, 132 S. Ct. at 2467. In *Woodson v. North Carolina*, 428 U.S. 280 (1976) (plurality opinion), this Court banned mandatory death sentences in most circumstances, and, in *Lockett v. Ohio*, 438 U.S. 586 (1978), this Court held that the sentencer must be permitted to consider mitigating circumstances before imposing the death penalty. These decisions have also been universally considered to apply retroactively.[7]

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6. *See, e.g.*, *Horn v. Quarterman*, 508 F.3d 306, 307–08 (5th Cir. 2007) (noting retroactive application of *Roper*); *LeCroy v. Sec'y, Fla. Dep't of Corr.*, 421 F.3d 1237, 1239–40 (11th Cir. 2005) (same); and *In re Moss*, 703 F.3d 1301, 1302 (11th Cir. 2013) (holding *Graham* applies retroactively to cases on collateral review); *In re Sparks*, 657 F.3d 258, 262 (5th Cir. 2011) (holding *Graham* was made retroactive on collateral review). In its opposition to the grant of certiorari in this case, the State of Louisiana conceded that *Graham* is retroactive. Resp't's Br. Opp. at 15–16 & n. 9.

7. *See, e.g.*, *Dutton v. Brown*, 812 F.2d 593, 599 n.7 (10th Cir. 1987) (noting that law "require[s] the retroactive application of *Lockett*"); *Songer v. Wainwright*, 769 F.2d 1488, 1489 (11th Cir.

In this second strand of cases, this Court also cited *Sumner v. Shuman*, 483 U.S. 66 (1987). *Miller*, 132 S. Ct. at 2467. In *Shuman*, this Court answered a question explicitly left open in *Woodson* and held that a mandatory death sentence could not constitutionally be imposed on someone who commits murder while serving a life sentence. *Shuman*, 483 U.S. at 85. *Shuman* came before this Court on review of a federal habeas petition, *id.* at 68–69, and, in granting relief, this Court applied the holding in *Shuman* retroactively.[8]

Woodson, *Lockett*, and *Shuman* are particularly apt parallels to *Miller*. This Court has previously described *Lockett* and its progeny not as procedural rules, but as rules that "place clear limits on the ability of the State to define the factual bases upon which the capital sentencing decision must be made." *Saffle v. Parks*, 494 U.S. 484, 490 (1990). Thus, these cases impose substantive limitations on the State's power to punish. *Miller* is no different.[9] The Iowa Supreme Court put it plainly: because "a substantial portion of the authority used in *Miller* has been applied

1985) ("There is no doubt today about this question. *Lockett* is retroactive."); *Riley v. Wainwright*, 517 So. 2d 656, 657 (Fla. 1987) ("*Lockett* clearly is retroactive.").

8. Other courts followed suit. *See, e.g.*, *Campbell v. Blodgett*, 978 F.2d 1502, 1512–13 (9th Cir. 1992) (per curiam) (determining merits of *Shuman* claim in case that became final two years before *Shuman* decided); *Thigpen v. Thigpen*, 926 F.2d 1003, 1005 (11th Cir. 1991) (noting death sentence set aside on *Shuman* grounds in federal habeas corpus case).

9. This Court recognized the strength of this argument by authorizing relief to Kuntrell Jackson whose case was not on direct appeal when this Court ordered relief. *Miller*, 132 S. Ct. at 2461, 2475.

retroactively, *Miller* should logically receive the same treatment." *State v. Ragland*, 836 N.W.2d 107, 116 (Iowa 2013).[10]

The consistent treatment of rules declaring a punishment cruel and unusual makes sense in light of the purpose of the constitutional prohibition at stake. By its very nature, a ruling that a particular punishment is "cruel and unusual" and consequently barred by the Eighth Amendment necessarily constitutes a substantive judgment about evolving standards of decency and the unacceptability of such a punishment. Because this Court's invalidation of mandatory life without parole was rooted in well-established Eighth Amendment principles that are entirely substantive in character, *Miller* must be applied retroactively. It would be violative of the Eighth Amendment to tolerate cruel punishments in some contexts but not others where remedies can be implemented.

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10. Although *Woodson*, *Lockett*, and *Shuman* were decided before *Teague*, substantive rules have been consistently applied retroactively both before and after *Teague*, as the prior test, derived from *Linkletter v. Walker*, 381 U.S. 618 (1965), and *Stovall v. Denno*, 388 U.S. 293 (1967), applied only to rules of criminal procedure. *See United States v. Johnson*, 457 U.S. 537, 548, 550 (1982) (noting, pre-*Teague*, "that in three narrow categories of cases, the answer to the retroactivity question has been effectively determined, not by application of the [*Linkletter*/]*Stovall* factors, but rather, through application of a threshold test," including the principle of "full retroactivity as a necessary adjunct to a ruling that a trial court lacked authority to convict or punish a criminal defendant in the first place"); *see also, e.g.*, *Davis v. United States*, 131 S. Ct. 2419, 2430 (2011) ("In *Linkletter*, we held that the retroactive effect of a new constitutional rule of ***criminal procedure*** should be determined on a case-by-case weighing of interests." (emphasis added)).

C. Alternatively, *Miller* Is a Watershed Rule of Criminal Procedure.

In the alternative, to the extent that *Miller* is procedural, those new procedural requirements amount to a "'watershed rule[] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Saffle v. Parks*, 494 U.S. 484, 495 (1990) (quoting *Teague v. Lane*, 489 U.S. 288, 311 (1989)). A watershed rule is one that is "necessary to prevent an impermissibly large risk" of inaccuracy in a criminal proceeding and "alter[s] our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (internal quotation marks omitted).

In the context of sentencing proceedings, the first requirement focuses on the accuracy of the determination that a particular sentence is a legally appropriate punishment. *See Schriro v. Summerlin*, 542 U.S. 348, 355–56 (2004); *see also Sawyer v. Smith*, 497 U.S. 227, 241–45 (1990). The impermissibly large risk of inaccurate sentences was central to *Miller*'s holding. This Court found that "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders . . . poses too great a risk of disproportionate punishment," *Miller*, 132 S. Ct. at 2469, because without the ability to take into account youth and its "hallmark features," the "sentencer misses too much." *Id.* at 2468.

This risk of inaccuracy is not remote. *Cf. Beard v. Banks*, 542 U.S. 406, 419–20 (2004) ("[T]he fact that a new rule removes some remote possibility of arbitrary infliction of the death sentence does not suffice to bring

it within *Teague*'s second exception."). Because this Court found that such sentences can constitutionally be imposed only in rare cases, the vast majority of children who have been sentenced to mandatory life without parole should never have received that sentence at all. *Miller*, 132 S. Ct. at 2469 ("[W]e think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.").

Indeed, the risk of inaccuracy under a mandatory sentencing scheme is comparable to the risk of inaccuracy resulting from a complete denial of counsel at sentencing. *See Bockting*, 549 U.S. at 419 (comparing new rule to prototypical watershed rule establishing right to counsel in *Gideon v. Wainwright*, 372 U.S. 335 (1963)). This Court has recognized that "the necessity for the aid of counsel in marshaling the facts, introducing evidence of mitigating circumstances and in general aiding and assisting the defendant to present his case as to sentence is apparent," and, therefore, the right to counsel at sentencing "relates to the very integrity of the fact-finding process." *McConnell v. Rhay*, 393 U.S. 2, 3 (1968) (internal quotation marks omitted). Yet the right to counsel is worth little when the sentence is mandatory. Even when the most powerful mitigating circumstances exist, counsel must sit silent because no fact-finding process is permitted. The rule in *Miller*, requiring the consideration of the mitigating qualities of youth, is necessary to prevent the substantial risk of disproportionate sentencing that this creates.

Miller also altered our understanding of what bedrock procedural elements are necessary for any fair proceeding resulting in a sentence of life without parole for a child. In *Miller*, the Court emphasized that it was

implementing a "foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." 132 S. Ct. at 2466. *Miller* relied on the fundamental nature of youth and explained that "[o]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults." *Id.* at 2470 (internal quotation marks omitted); *see also Banks*, 542 U.S. at 417–18 (noting historic importance of right at issue when determining whether rule is watershed). Tellingly, this Court treated the importance of youth as on par with the special legal status accorded the death penalty, noting that just as "death is different, children are different too." *Miller*, 132 S. Ct. at 2470 (internal quotation marks omitted). Thus, in *Miller*, this Court required consideration of mitigating evidence, particularly the "hallmark features" of youth, as an essential part of deciding whether life without parole can be constitutionally imposed in a given case, and made clear that automatically imposing life without parole without such consideration is fundamentally unfair. This Court's treatment of the consideration of youth as "foundational" and "fundamental" demonstrates that this is a bedrock element necessary to the fairness of the proceeding.

This Court has said that watershed procedural rules are relatively rare, but it has also rarely announced rules that fall into the same category as *Miller*. It has been over a quarter of a century since this Court last declared a mandatory sentence unconstitutional. *See Sumner v. Shuman*, 483 U.S. 66, 85 (1987). And, at the time when this Court declared in *Teague* that "we believe it unlikely that many such [watershed] components of basic due process have yet to emerge," 489 U.S. at 313, most

States *did* accord youth the fundamental importance that *Miller* requires, as the tough-on-crime movement away from the juvenile justice system toward adult sanctions like mandatory life-without-parole had not yet begun.[11] It is only because States lost sight of the foundational importance of youth that the need arose to announce a new rule in *Miller* at all. Thus, although it is unusual for this Court to announce a new watershed rule of criminal procedure, that should not prevent it from recognizing that it did so in *Miller*.

II. THE LOUISIANA SUPREME COURT'S REFUSAL TO APPLY *MILLER* TO THIS CASE PRESENTS A FEDERAL QUESTION.

A. The Louisiana Supreme Court Expressly Relied on Federal Law to Deny Relief.

The Louisiana Supreme Court's summary decision below relied entirely on its prior decision in *State v. Tate*, 130 So. 3d 829 (La. 2013). J.A. 87a. In finding that *Miller* should not be applied retroactively, *Tate* cited to only a single Louisiana Supreme Court decision — and that decision was cited for the proposition that "the standards for determining retroactivity set forth in *Teague v. Lane*, 489 U.S. 288 [] (1989), apply 'to all cases on collateral review in our state courts.' Accordingly, our analysis is directed by the *Teague* inquiry." 130 So. 3d at 834 (quoting *State ex. rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La.

11. *See* Br. for Jeffery Fagan et al. as *Amici Curiae* Supp. Pet'rs, at 15–18, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (No. 10-9646) (describing period of increasing adult punishments for children during the 1990s).

1992)). The Louisiana Supreme Court then proceeded to "[a]pply[] the *Teague* analysis [t]herein," quoting at length from this Court's retroactivity decisions and citing to, and relying on, 17 different retroactivity decisions from this Court. *Id.* at 834–41 & n.3.[12] The Louisiana Supreme Court concluded that "under the *Teague* analysis," *Miller* is not retroactive. *Id.* at 844. Because the Louisiana Supreme Court relied explicitly and exclusively on federal law to deny relief, that denial creates a federal question subject to review by this Court.

In *Michigan v. Long*, 463 U.S. 1032 (1983), this Court reviewed a decision from the Michigan Supreme Court that found a police officer's search of a passenger compartment violated *Terry v. Ohio*, 392 U.S. 1 (1968). Mr. Long argued before this Court that the Michigan Supreme Court's decision was based on adequate and independent state grounds because it twice cited the state constitution in reaching its decision; accordingly, he contended this Court was without jurisdiction to review the Michigan Supreme Court's determination of

12. The Louisiana Supreme Court cited to and relied on the following cases from this Court: *Whorton v. Bockting*, 549 U.S. 406 (2007); *Schriro v. Summerlin*, 542 U.S. 348 (2004); *Beard v. Banks*, 542 U.S. 406 (2004); *Tyler v. Cain*, 533 U.S. 656 (2001); *Bousley v. United States*, 523 U.S. 614 (1998); *O'Dell v. Netherland*, 521 U.S. 151 (1997); *Lambrix v. Singletary*, 520 U.S. 518 (1997); *Gray v. Netherland*, 518 U.S. 152 (1996); *Goeke v. Branch*, 514 U.S. 115 (1995); *Caspari v. Bohlen*, 510 U.S. 383 (1994); *Graham v. Collins*, 506 U.S. 461 (1993); *Gilmore v. Taylor*, 508 U.S. 333 (1993); *Sawyer v. Smith*, 497 U.S. 227 (1990); *Saffle v. Parks*, 494 U.S. 484 (1990); *Butler v. McKellar*, 494 U.S. 407 (1990); *Penry v. Lynaugh*, 492 U.S. 302 (1989), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002); *Teague v. Lane*, 489 U.S. 288 (1989).

a constitutional violation. *Id.* at 1037–38. In rejecting Mr. Long's argument, this Court recognized that "there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion." *Id.* at 1040.

This Court continued:

> [W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved.

Id. at 1040–41. This Court found that "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Id.* at 1041. This Court then applied

this framework to the Michigan Supreme Court's decision, and observed that even though the decision cited the state constitution twice, "[n]ot a single state case was cited to support the state court's holding." *Id.* at 1043. As a result, this Court concluded that "the Michigan Supreme Court rested its decision primarily on federal law" and "that the state court 'felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner it did.'" *Id.* at 1044 (quoting *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568 (1977)).[13]

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13. *See also, e.g.*, *Kansas v. Marsh*, 548 U.S. 163, 169 (2006):

> Nor is the Kansas Supreme Court's decision supported by adequate and independent state grounds. Marsh maintains that the Kansas Supreme Court's decision was based on the severability of § 21-4624(e) under state law, and not the constitutionality of that provision under federal law, the latter issue having been resolved by the Kansas Supreme Court in *State v. Kleypas*, 272 Kan. 894, 40 P.3d 139 (2001) (per curiam). Marsh's argument fails.
>
> *Kleypas*, itself, rested on federal law. *See id.,* at 899–903, 40 P.3d, at 166–167. In rendering its determination here, the Kansas Supreme Court observed that *Kleypas*, "held that the weighing equation in K.S.A. 21-4624(e) as written was unconstitutional under the Eighth and Fourteenth Amendments" as applied to cases in which aggravating evidence and mitigating evidence are equally balanced. 278 Kan., at 534, 102 P.3d, at 457. In this case, the Kansas Supreme Court chastised the *Kleypas* court for avoiding the constitutional issue of the statute's facial validity, squarely held that § 21-4624(e) is unconstitutional on its face, and overruled the portion of *Kleypa*s upholding the statute through the constitutional

Here, the only Louisiana Supreme Court case that was cited in the retroactivity section of *Tate* was one that stood for the proposition that the question of retroactivity in Louisiana is controlled entirely by federal law. 130 So. 3d at 834 (quoting *Whitley*, 606 So. 2d at 1297). The Louisiana Supreme Court in *Tate* certainly never "indicate[d] clearly and expressly that [its decision] is alternatively based on bona fide separate, adequate, and independent grounds." *Long*, 463 U.S. at 1041. Rather, the Louisiana Supreme Court repeatedly made clear that it was relying on federal law. *See, e.g.*, *Tate*, 130 So. 3d at 834 ("[O]ur analysis is directed by the *Teague* inquiry."); *id.* at 835 ("Applying the *Teague* analysis herein, we must first determine when Tate's conviction became final."); *id.* at 836 ("The Supreme Court has, however, sought to clarify the difference between substantive and procedural rules."); *id.* at 839 (discussing this Court's analysis of watershed procedural rules); *id.* at 840 (noting that "the Supreme Court has repeatedly explained" what is required for a rule to qualify as a watershed procedural rule). Without question, the Louisiana Supreme Court's decision in *Tate* (and, therefore, in *Toca*) "rest[ed] primarily on federal law." *Long*, 463 U.S. at 1040; *see also Florida v. Powell*, 559 U.S. 50, 57 (2010) (holding that this Court had jurisdiction despite Florida Supreme Court's citations to Florida Constitution and other Florida caselaw); *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985) (holding that general discussion of state procedural bar in lower

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avoidance doctrine and judicial revision. 278 Kan., at 534–535, 539–542, 102 P.3d, at 458, 462. As in *Kleypas*, the Kansas Supreme Court clearly rested its decision here on the Eighth and Fourteenth Amendments to the United States Constitution. We, therefore, have jurisdiction to review its decision.

court's opinion was not "express indication" of adequate and independent state grounds as required by *Long*). The opinion in *Tate* makes clear that the Louisiana Supreme Court "felt compelled" to reach its decision based on its understanding of federal law and not on independent state law. *Long*, 463 U.S. at 1044 (quoting *Zacchini*, 433 U.S. at 568).[14]

In *Danforth v. Minnesota*, 552 U.S. 264 (2008), when addressing whether state courts may apply a decision more broadly than required by *Teague*, this Court acknowledged that there was "solid support for th[e] proposition" that even though a State "may grant its citizens broader protection than the Federal Constitution requires by enacting appropriate legislation or by judicial interpretation of its own Constitution, . . . it may not do so by judicial misconstruction of federal law." *Id.* at 288 (citing *Oregon v. Hass*, 420 U.S. 714 (1975), *Tarble's Case*, 80 U.S. 397 (1871), and *Ableman v. Booth*, 62 U.S. 506 (1858)). However, this Court noted that "the States that give broader retroactive effect to this Court's new rules of criminal procedure do not do so by misconstruing the federal *Teague* standard. Rather, they have developed *state* law to govern retroactivity in state postconviction proceedings." *Id.* at 289. Assuming arguendo the converse of this proposition were true — that state courts could develop state retroactivity law that provides less relief

14. Even the Louisiana State Attorney General has acknowledged that the *Tate* court applied federal law and agreed that this Court has jurisdiction because "a State may not decline to give retroactive effect to a decision this Court has found to be retroactive under *Teague*." Resp't's Br. Supp. Cert. at 6–10, *Tolliver v. Louisiana*, No. 14-6673 (U.S. Dec. 23, 2014).

than *Teague*[15] — the Louisiana Supreme Court has no independent state law governing retroactivity. Instead, it denied relief by "misconstruing the federal *Teague* standard." *Id.*; *see also Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 100 (1993) ("Whatever freedom state courts may enjoy to limit the retroactive operation of their own interpretations of state law, cannot extend to their interpretations of federal law." (internal citations omitted)). This Court has jurisdiction to correct this error.

In *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167 (1990), this Court addressed a very similar question. The Arkansas Supreme Court, in determining whether Arkansas citizens would receive refunds under *American Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266 (1987), "took the view that, whatever else Arkansas law might require, petitioners could not receive tax refunds if *Scheiner* is not retroactive under the [federal retroactivity] test of *Chevron Oil* [*Co. v. Huson*, 404 U.S. 97 (1971)]" and, further, determined that under *Chevron*, *Scheiner* should not be applied retroactively. 496 U.S. at 177–78. A plurality of this Court held that it was "eminently clear that the 'state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law.'" *Id.* at 177 (quoting *Long*, 463 U.S. at 1040). The plurality emphasized that "the Arkansas Supreme Court decided that under *Chevron Oil* our decision in *Scheiner* need only apply prospectively. This decision presents a federal question: Did the Arkansas Supreme Court apply *Chevron Oil* correctly?" *Id.* at 178.

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15. As discussed in Section II.B below, States must, at minimum, apply decisions retroactively when required by *Teague* and its progeny.

As in *Smith*, the Louisiana Supreme Court decided in *Tate* that the new constitutional rule of *Miller* could not be applied retroactively under *federal* retroactivity standards. *See Tate*, 130 So. 3d at 844 (holding that "under the *Teague* analysis," *Miller* is not retroactive). "This decision presents a federal question: Did the [Louisiana] Supreme Court apply [*Teague*] correctly?" *Smith*, 496 U.S. at 178. As a result, this Court has jurisdiction to review the Louisiana Supreme Court's determination that *Miller* is not retroactively applicable under *Teague*.

B. The Minimum Level of Retroactivity That State Postconviction Courts Must Provide Is a Question of Federal Law.

Even if the Louisiana Supreme Court had purported to rely exclusively on state law to deny relief, there would be a federal question. This Court recognized in *Danforth v. Minnesota*, 552 U.S. 264 (2008), that the retroactive applicability of this Court's constitutional decisions in state courts is "a mixed question of state and federal law." *Id.* at 291 (quoting *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 205 (1990) (Stevens, J., dissenting)). This is so because, while state law may set the ceiling for retroactive application, federal law sets the floor. A State "is free to choose which form of relief it will provide," including providing broader retroactivity than required by federal law, but only "so long as that relief satisfies the minimum federal requirements [this Court] ha[s] outlined." *Danforth*, 552 U.S. at 287 (quoting *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 102 (1993), quoting in turn *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep't of Bus. Regulation*, 496 U.S. 18, 51–52 (1990)).

That there must be some federal minimum for the redressibility of constitutional violations in state criminal trials has long been recognized by this Court because "[w]hether a conviction for crime should stand when a State has failed to accord federal constitutionally guaranteed rights is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied." *Chapman v. California*, 386 U.S. 18, 21 (1967). This Court has established that the Supremacy Clause does not allow States to deny remedies for federal rights "by the invocation of a contrary approach to retroactivity under state law." *Harper*, 509 U.S. at 100; *see also id.* at 102 ("State law may provide relief beyond the demands of federal due process, but under no circumstances may it confine petitioners to a lesser remedy." (internal citations omitted)); *Smith,* 496 U.S. at 178–79 (plurality opinion) ("[F]ederal law sets certain minimum requirements that States must meet but may exceed in providing appropriate relief.").

Consistent with this precedent, this Court has required state courts to apply its constitutional decisions retroactively to state criminal convictions in at least two situations. First, States are bound to apply new rules of constitutional law announced by this Court retroactively to all decisions on direct review. *See Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). Second, even on collateral review, States are required to apply decisions of this Court that do not announce new rules. *See Yates v. Aiken*, 484 U.S. 211, 218 (1988).

Griffith held that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all

cases, ***state or federal***, pending on direct review or not yet final, with no exception." 479 U.S. at 328 (emphasis added). *Griffith* came to this Court on direct review of a state criminal conviction that had been affirmed by the Kentucky Supreme Court. *Id.* at 318. By reversing, this Court required all state courts to apply *Batson v. Kentucky*, 476 U.S. 79 (1986), retroactively to all cases on direct review. *Griffith*, 479 U.S. at 328. It could not have done so if retroactivity with respect to state court proceedings was purely a question of state law.

The following year, *Yates* specifically rejected the argument that "South Carolina ha[d] the authority to establish the scope of its own habeas corpus proceedings and to refuse to apply a new rule of federal constitutional law retroactively in such a proceeding." 484 U.S. at 217–18. This Court held that because the rule the South Carolina Supreme Court had refused to apply was not in fact new, the state court was bound to apply it. *Id.* at 218.

The difference between these cases establishing a constitutional floor for retroactivity, and *Danforth*, which held that States are not limited by *Teague*'s general non-retroactivity principle, is the source of this Court's authority to establish the rule. *Danforth* explained that the source of *Teague*'s limitation on the power of federal courts to grant relief in habeas proceedings is "this Court's power to interpret the federal habeas statute" and "to adjust the scope of the writ in accordance with equitable and prudential considerations." 552 U.S. at 278. Because this ceiling on retroactive application was not drawn from any constitutional source that binds the States, *Teague* does not "constrain[] the authority of state courts to give ***broader*** effect to new rules of criminal

procedure than is required by that opinion." *Danforth*, 552 U.S. at 266 (emphasis added); *id.* at 289–90.

Danforth did not address the inverse question of whether States are bound by *Teague*'s floor, and thus must apply a decision retroactively if it is substantive or a watershed rule of criminal procedure. The opinion explicitly left open the question of "whether States are required to apply 'watershed' rules in state post-conviction proceedings." *Id.* at 269 n.4.

Unlike the statutory bases for limiting retroactive application, the bases for requiring it are drawn from "basic norms of constitutional adjudication," originating in the Judicial Power and Due Process Clauses of the Constitution. *Griffith*, 479 U.S. at 322; *see also Teague*, 489 U.S. at 317 (White, J., concurring) (*Griffith* "appear[s] to have constitutional underpinnings."). *Griffith* cited this Court's Article III power to adjudicate cases and controversies, "the nature of judicial review," and "the principle of treating similarly situated defendants the same," as the basis for the Court's decision. 479 U.S. at 322–23; *see also Harper*, 509 U.S. at 95; *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 547 (1991) (Blackmun, J., concurring) (noting that *Griffith*'s rule "derives from the integrity of judicial review" required by the Constitution's grant of authority to review cases and controversies). *Yates* confirms that, although the scope of these constitutional norms might vary between direct and collateral review, the fact that state courts are constitutionally obligated to follow those norms does not. 484 U.S. at 217–18.

Teague's floor is similarly drawn from "components of basic due process." 489 U.S. at 313. Justice Harlan's original formulation of the *Teague* exceptions spoke in terms of violations of due process. *See Mackey v. United States*, 401 U.S. 667, 692–93 (1971) (Harlan, J., concurring in part and dissenting in part). His reference to the standard of *Palko v. Connecticut*, 302 U.S. 319 (1937), indicates that the requirement to apply substantive rules and those procedural rules "'implicit in the concept of ordered liberty'" is drawn from the minimum due process protections that bind the States through the Fourteenth Amendment. *Mackey*, 401 U.S. at 693–94 (quoting *Palko*, 302 U.S. at 325, *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784 (1969)); *see also Palko*, 302 U.S. at 325–27. Because the *Teague* exceptions set a constitutional minimum drawn from the federal judicial power and the Due Process Clause, States are bound to grant at least as much retroactivity as *Teague* provides. The Louisiana Supreme Court's refusal to apply *Miller* retroactively in this case presents a federal question as to whether Louisiana has done so, and, as we contend above, it has not.

Moreover, permitting state courts to provide less retroactivity than *Teague* requires would undermine, rather than promote, interests in comity and finality, thus turning *Teague* on its head. *See Teague*, 489 U.S. at 308 (emphasizing importance of "interests of comity and finality"). The federal courts remain bound by *Teague* and would eventually grant habeas relief to prisoners in States that failed to apply substantive and watershed decisions retroactively in their own state court postconviction proceedings. However, this Court's ability to review those state court decisions by way of certiorari from state postconviction proceedings can significantly limit the

amount of time required to redress those substantive and watershed constitutional violations, thus bringing those cases to a conclusion much more quickly. By contrast, requiring petitioners from those states to proceed to federal court before the issue can be resolved would disserve both federal and state interests in the prompt resolution of postconviction challenges.

It is beyond dispute that this Court could grant certiorari in a federal habeas corpus case and instruct lower federal courts to order state courts to apply retroactively a substantive or watershed constitutional decision. There is no greater intrusion on state power, and it seems to involve no less a federal question, for the Court directly to order state courts to do so by way of granting certiorari in a state postconviction case. And as just mentioned, the interests of finality are promoted by the Court resolving the issue earlier in the process.

Finally, the federal requirement that States provide a minimum level of retroactivity promotes the federal constitutional interest in treating similarly situated defendants the same. *See Teague*, 489 U.S. at 315 ("[T]he harm caused by the failure to treat similarly situated defendants alike cannot be exaggerated: such inequitable treatment hardly comports with the ideal of administration of justice with an even hand." (internal quotation marks omitted)). Although at times in our federal system, this interest must yield to the diversity of state laws, *Danforth*, 542 U.S. at 290, the Federal Constitution also requires that certain minimum constitutional guarantees be available to prisoners in every State. "With faithfulness to the constitutional union of the States, [this Court] cannot leave [entirely] to the

States the formulation of the authoritative laws, rules, and remedies designed to protect people from infractions by the States of federally guaranteed rights." *Chapman*, 386 U.S. at 21. Because federal law sets a minimum floor for retroactive application of this Court's constitutional decisions, this Court must ensure that a minimum level of relief is available to all prisoners impacted by a new rule.

CONCLUSION

The judgment below should be reversed.

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