

Jones v. Mississippi: Juvenile Life Without Parole Back at the Supreme Court

October 30, 2020

On November 3, 2020, the Supreme Court is scheduled to hear oral argument in *Jones v. Mississippi*, a case concerning whether the [Eighth Amendment](#)'s ban on cruel and unusual punishments requires a finding that a juvenile offender is permanently incorrigible before the juvenile may be sentenced to life in prison without the possibility of parole. Last term, the Court heard argument in *Mathena v. Malvo*, which also raised an Eighth Amendment challenge to a juvenile life without parole sentence; however, as a [previous Legal Sidebar](#) explained, the Court ultimately [dismissed](#) *Malvo* when a change in state law rendered that case moot. Soon after dismissing *Malvo*, the Court granted certiorari in *Jones*. As discussed further below, the legal issue presented in *Jones* is similar to the issue presented in *Malvo*, although the Court itself has changed in the interim due to the [death of Justice Ruth Bader Ginsburg](#) and the [confirmation of Justice Amy Coney Barrett](#) to fill her seat. This Legal Sidebar first surveys key Eighth Amendment jurisprudence relevant to *Jones* before briefly presenting the background of the case and the parties' arguments before the Supreme Court. The Sidebar concludes by discussing possible outcomes in *Jones* and their implications for Congress.

The Eighth Amendment

The [Eighth Amendment](#), which applies to both the states and the federal government, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Eighth Amendment's ban on cruel and unusual punishments limits the sanctions that may be imposed [as a result of a criminal conviction](#). As a procedural matter, criminal sentences are usually determined by a judge in [separate proceedings](#) following conviction, though some states [allow juries to determine sentences](#). Federal and state law may create a range of possible penalties for a given offense and provide guidance for sentencers determining what penalty to impose. Some criminal offenses carry [mandatory minimum penalties](#), which in some circumstances may include a mandatory life sentence without the possibility of parole.

The Supreme Court has interpreted the Eighth Amendment's ban on cruel and unusual punishments to prohibit the use of certain forms of punishment categorically, including [drawing and quartering](#), "[hard and painful labor](#)," and [revocation of the citizenship](#) of a natural-born citizen. In addition, the Court has [held](#) that certain punishments that are permissible in some circumstances are nonetheless unconstitutional as

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LSB10548

applied to particular classes of defendants. For example, the Supreme Court has held that the Eighth Amendment prohibits imposing the death penalty on [cognitively disabled](#) defendants or on any defendant who has committed a [non-homicide crime](#) against an [individual person](#).

One class of offenders that has been the subject of considerable Eighth Amendment litigation is juvenile offenders—a category that includes any criminal defendant who was [under 18](#) years old at the time of the offense, regardless of whether the defendant was [tried as an adult](#). In the past decade and a half, the Supreme Court has issued several opinions outlining constitutional limitations on punishing juvenile offenders. First, in the 2005 case *Roper v. Simmons*, the Court held that juvenile offenders may not constitutionally be sentenced to death. Five years later, in *Graham v. Florida*, the Supreme Court held that juveniles may not be sentenced to life without parole for *non-homicide* offenses.

Two subsequent decisions, *Miller v. Alabama* and *Montgomery v. Louisiana*, further refined the Court’s constitutional jurisprudence with respect to sentencing juvenile offenders. In *Miller*, the Supreme Court struck down laws in two states that imposed *mandatory* sentences of life without parole for juveniles convicted of certain homicide offenses. Justice Kagan, writing for a five-Justice majority, [drew on](#) “two strands of precedent reflecting [the Court’s] concern with proportionate punishment.” The [first line of cases](#), embodied in decisions including *Roper* and *Graham*, “adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty.” With respect to juvenile offenders, the Court [explained](#), those cases held that the harshest punishments were rarely or never warranted because of juveniles’ “lesser culpability.” The [second line of cases](#) that Justice Kagan invoked required individualized consideration of “the characteristics of a defendant and the details of his offense before sentencing him to death.” Justice Kagan cited two cases from the 1970s, *Woodson v. North Carolina* and *Lockett v. Ohio*, in which the Court construed the Eighth Amendment to forbid the mandatory imposition of capital punishment and to require courts to consider mitigating factors before issuing a death sentence.

The Court’s opinion in *Miller* invoked both of the two foregoing lines of cases in [holding](#) that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders” but allowed the possibility that such a sentence might be imposed in specific homicide cases. Citing the first line of cases establishing that juvenile offenders as a class should be treated differently, the Court [required](#) that the sentencer consider “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” And, referring to the second line of cases requiring individualized consideration in sentencing, the Court [stated](#) that sentencers should consider each juvenile offender’s chronological age and maturity level, his home environment, the circumstances of the homicide offense, the ways in which the “incompetencies associated with youth” may have hampered the juvenile’s criminal defense, and the possibility of rehabilitation. The *Miller* majority further [opined](#) that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.”

In 2016, the Supreme Court decided *Montgomery*, the Court’s most recent case addressing the Eighth Amendment’s application to juvenile offenders. The Court [held](#) that *Miller*’s prohibition on mandatory sentences of life without parole for juvenile offenders applied retroactively to convictions that were final before *Miller* was decided. Whether *Miller* applied retroactively hinged on whether its holding was substantive or procedural. The Supreme Court has held that new *substantive* rules of constitutional law must have [retroactive effect](#), while new *procedural* rules generally need not. Justice Kennedy, joined by five other Justices, [concluded](#) that *Miller* announced a new substantive rule by “bar[ring] life without parole ... for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” The Court [acknowledged](#) that “*Miller*’s holding has a procedural component”: requiring a sentencer “to consider a juvenile offender’s youth and attendant characteristics before determining that life without parole is a proportionate sentence.” However, the Court [stated](#) that *Miller* also created a substantive change in the law, given that it interpreted the Eighth Amendment’s “[p]rotection against

disproportionate punishment.” The majority opinion [ruled](#) that *Miller* did more than just change sentencing procedures; “it established that the penological justifications for life without parole collapse in light of ‘the distinctive attributes of youth.’” Thus, the *Montgomery* Court [explained](#), “[e]ven if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’”

The Supreme Court was poised to consider the Eighth Amendment’s application to juvenile offenders again during the October 2019 term in *Mathena v. Malvo*. In that case, Lee Boyd Malvo, the juvenile defendant in the well-known [D.C. sniper attacks](#), challenged life without parole sentences he received in Virginia for his role in the shootings. Malvo argued that *Miller* and *Montgomery* require the sentencer to actually consider youth and its attendant characteristics before any juvenile can be sentenced to life without parole and that a scheme merely granting the sentencer discretion to consider those factors was not constitutionally sufficient. The Commonwealth of Virginia countered that *Miller* and *Montgomery* apply only to mandatory life without parole sentences and that Malvo’s sentence was discretionary. After the Supreme Court heard argument in the case, but before it issued a decision, Virginia Governor Ralph Northam signed into law [HB 35](#), which effectively abolished juvenile life without parole sentences in Virginia. The parties in *Malvo* filed a stipulation of dismissal in light of HB 35, and on February 26, 2020, the Supreme Court [dismissed](#) the case. Less than two weeks later, the Court granted certiorari in *Jones v. Mississippi*.

Jones v. Mississippi

As recounted in his [Supreme Court brief](#), Brett Jones was 15 years old when he stabbed his grandfather to death during a fight. A jury rejected Jones’s claim of self-defense and found him guilty of murder. The court imposed a then-mandatory sentence of life in prison without the possibility of parole.

In 2013, the Mississippi Supreme Court granted Jones’s motion for post-conviction relief based on *Miller* and remanded his case for resentencing. During resentencing proceedings, the State of Mississippi again sought a sentence of life without parole. Jones [argued](#) that *Miller* precluded the court from imposing a sentence of life without parole because nothing in the record supported a finding that his “offense reflects irreparable corruption.” Jones testified on his own behalf and presented five other witnesses who spoke of Jones’s history of abuse and neglect, his mental health struggles, and his rehabilitation in prison. The state circuit court nonetheless [resentenced Jones to life without parole](#). In doing so, the court did not find that Jones was permanently incorrigible or otherwise explicitly consider his capacity for rehabilitation. The court did, however, state that it had “considered each of the *Miller* factors” and discussed various mitigating and aggravating factors including the circumstances of the crime, Jones’s home environment, and his maturity level. Jones appealed, and the state appeals court affirmed, relying in relevant part on a prior Mississippi case [holding](#) that “*Miller* did not require trial courts to make a finding of fact regarding a child’s incorrigibility.” The Supreme Court of Mississippi granted review, but following oral argument, dismissed the case. Jones then filed a petition for a writ of certiorari in the U.S. Supreme Court, which was granted on March 9, 2020.

Before the U.S. Supreme Court, Jones [argues](#) that the Eighth Amendment, as interpreted in *Miller* and *Montgomery*, “prohibits sentencing juvenile homicide offenders to life without parole unless they are permanently incorrigible.” To comply with that prohibition, he [contends](#), “[w]hen a juvenile homicide offender asserts that he is not permanently incorrigible ... a court must resolve the question of corrigibility before it may impose a life-without-parole sentence.” While Jones grants that states have discretion to choose the procedures they use to make such a finding and disclaims any “[magic phrase](#)” that courts must recite, he asserts that the sentencer must, at a minimum, make an “evident ruling” on the issue. Because the Mississippi courts did not rule that Jones was permanently incorrigible, Jones asks the Supreme Court to [remand his case](#) for consideration of that question. In the alternative, Jones [argues](#) that

the record shows he is not incorrigible and asks the Court to remand with an instruction that he is ineligible for life without parole.

The State of Mississippi disputes Jones's argument that *Miller* and *Montgomery* require specific consideration of incorrigibility before a juvenile may be sentenced to life without parole. The state argues that *Miller* invalidated mandatory sentences of life without parole for juveniles but "looked to discretionary life-without-parole sentencing schemes" like the one under which Jones was resentenced "as a benchmark for what is constitutional." The State further asserts that in relying on *Montgomery*, Jones seems to be reading that case as "announc[ing] a new rule of constitutional law applicable to discretionary sentencing regimes." However, the State argues, *Montgomery* merely held that *Miller* applies retroactively without expanding the scope of the right at issue, and *Montgomery* did not invalidate—or even address—discretionary sentencing schemes. The State contends that the Eighth Amendment "does not require a 'finding' of permanent incorrigibility," but simply mandates "that sentencers consider youth and its attendant characteristics before sentencing a juvenile to life without parole." The State notes that following the decision in *Miller*, Mississippi "eliminated mandatory life without parole for juveniles and developed an individualized sentencing process for juvenile homicide offenders." Because Jones received such individualized review, the State argues that his resentencing proceedings satisfied the requirements of *Miller* and *Montgomery*.

Numerous outside parties, including the federal government and a group of 16 states, have filed amicus curiae ("friend of the court") briefs in this case, and the federal government will participate in oral argument. The federal government, like Mississippi, argues that the Eighth Amendment does not require a finding of incorrigibility before a juvenile can be sentenced to life without parole. The federal government further contends that even if findings related to incorrigibility are required, the burden of proof properly rests on a juvenile defendant to prove a mitigating circumstance of "transient immaturity" rather than on the prosecution to prove incorrigibility.

Possible Outcomes and Considerations for Congress

As a general matter, it is often difficult to predict how the Supreme Court will rule in a case, and the recent changes in the composition of the Court create particular uncertainty around *Jones*. The Court's latest high-profile juvenile life without parole cases were closely divided: Justice Ginsburg joined a five-justice majority in *Miller* and a six-justice majority in *Montgomery*. On October 26, 2020, the Senate confirmed Justice Amy Coney Barrett to fill Justice Ginsburg's seat. Justice Barrett's prior jurisprudence provides little guidance on how she might vote in *Jones*. Specifically, while sitting on the U.S. Court of Appeals for the Seventh Circuit, Justice Barrett participated in one Eighth Amendment case, which raised legal issues entirely distinct from the question presented in *Jones*. In that case, Justice Barrett authored a dissent arguing for a stringent standard for prisoners' Eighth Amendment claims of excessive force.

Turning to the specific issues presented in *Jones*, there are several possible outcomes in this case. The Supreme Court could side with Jones and rule that *Miller* and *Montgomery* categorically ban the imposition of life without parole on a juvenile who is not clearly found to be permanently incorrigible. If the Court came to that conclusion, it might hold that Jones's life without parole sentence violates the Eighth Amendment because the court that resentenced Jones did not make findings related to incorrigibility. In the alternative, the Supreme Court could accept Mississippi's invitation to interpret *Miller* and *Montgomery* more narrowly. For instance, the Court might hold that those cases require general consideration of youth and its attendant characteristics before a juvenile may be sentenced to life without parole but decline to impose any specific fact-finding requirements on courts conducting that inquiry. The Court could also hold that the limits articulated in *Miller* and *Montgomery* apply only to mandatory sentences, not to discretionary sentences such as Jones's. In either of those circumstances, the Court would be more likely to affirm Jones's sentence.

Even if the Supreme Court determines that Jones's current sentence violates the Eighth Amendment, Jones could still spend the rest of his life in prison. A ruling that accepted Jones's legal arguments would not secure his immediate release. Most likely, it would simply require Mississippi to bring his sentence into compliance with the Eighth Amendment, which could potentially be accomplished through a new sentencing hearing. (While Jones asks the Supreme Court to instruct the Mississippi courts on remand that he is ineligible for life without parole, it is unlikely that the Court would make such a fact-based determination in the first instance, because appellate courts generally [do not engage in fact-finding](#), and the Supreme Court normally does not consider legal questions [not addressed by the lower courts](#).) As an alternative to new sentencing proceedings deciding whether Jones is permanently incorrigible, Mississippi could allow Jones to be [considered for parole](#) or could follow Virginia in making all juvenile offenders eligible for parole. However, even if Jones became eligible for parole, the parole board could deny his applications (as has happened with [the petitioner in *Montgomery*](#)).

Nonetheless, *Jones v. Mississippi* has broader national implications beyond Jones's individual situation that may be of interest to Congress. The case could affect prisoners across the country serving life without parole for offenses committed while they were juveniles—a small minority of inmates overall, but a group that commentators [estimate](#) may number around a thousand or more. Moreover, federal law currently allows juvenile offenders to be sentenced to life without parole and, in fact, a small number of [federal inmates](#) are currently serving juvenile life without parole sentences. Following *Montgomery*, some federal inmates who had received mandatory life without parole sentences for crimes committed as juveniles sought resentencing. If the Court holds in *Jones* that *Miller* and *Montgomery* require explicit consideration of whether a juvenile offender is permanently incorrigible, the ruling could allow additional federal inmates to seek resentencing.

Regardless of the outcome in *Jones*, Congress could pass legislation to alter juvenile life without parole sentencing under federal law. (While Supreme Court decisions articulating substantive constitutional rights [bind the states](#) as well as the federal government, Congress [lacks the constitutional authority](#) to alter state criminal law, which is traditionally considered an area of state and local concern.) Federal legislation could not modify the constitutional limits articulated in *Miller*, *Montgomery* or any other applicable cases. If the Supreme Court ruled in *Jones* that the Eighth Amendment requires a finding of incorrigibility before sentencing a juvenile to life without parole, Congress could not alter that holding through legislation. On the other hand, if the Court ruled that Jones's sentence is constitutional, Congress could nonetheless pass legislation requiring federal courts to make certain findings before imposing a juvenile life without parole sentence or otherwise limiting the availability of such sentences under federal law. Congress could also expand resentencing options for federal juvenile offenders serving life without parole sentences. As an example, the [Next Step Act of 2019](#) would, among other things, allow courts to reduce the sentence of a federal juvenile offender tried as an adult if the offender had served at least 20 years in prison and the court found that (1) the offender did not pose a safety risk and (2) the interests of justice warranted a sentence modification. The [Second Look Act of 2019](#) would allow federal inmates sentenced to more than 10 years in prison to petition for sentence reductions. The Second Look Act would not limit such petitions to juvenile offenders but would direct courts to consider factors including “the diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, if the defendant was a juvenile at the time of the offense.”

As noted above, the Supreme Court plans to hear oral argument in *Jones* on November 3, 2020. Oral argument may provide additional insight into how the judges will rule in this case.

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