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# Locked Away for Life: The Case against Juvenile Life without Parole for Felony Murder

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Comment

# LOCKED AWAY FOR LIFE: THE CASE AGAINST JUVENILE LIFE WITHOUT PAROLE FOR FELONY MURDER

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## INTRODUCTION

At the age of seventeen, Riley Briones was sentenced to life without the possibility of parole[1] for his involvement in a robbery that resulted in a murder.[2] Abused by his father throughout his childhood, Briones' use of alcohol and drugs began early at the age of eleven.[3] While he had aspired to attend college, Briones became a teen parent which required him to leave school to work full time.[4] Briones, his father, and his brother subsequently started a gang.[5]

Briones participated in gang-related crimes, one of which was the robbery of a Subway restaurant.[6] His brother came up with the idea of the robbery, and Briones agreed to participate.[7] Briones drove four of the gang members to the restaurant, but he remained in the vehicle.[8] The group ordered food from the lone store clerk, Brian Lindsey.[9] The only armed member of the group left the restaurant to speak to Briones.[10] Upon reentering he shot Lindsey, who later succumbed to his injuries.[11] The group grabbed the food and money from the store, and they rushed back to Briones' vehicle.[12]

Lindsey was a student at Northern Arizona University, home for the summer.[13] At the time of his death, he was working a solo shift at the Subway restaurant.[14] He had worked there during previous summer

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[1] *Life Without Parole*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining life without parole as "lifetime imprisonment without the possibility of early release").

[2] United States v. Briones, 929 F.3d 1057, 1060 (9th Cir. 2019).

[3] *Id.*

[4] *Id.*

[5] *Id.* (the gang was known as the "Eastside Crips Rolling 30's").

[6] *Id.* at 1060-61.

[7] *Id.* at 1061.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.; see also* Terry Green Sterling, *Crime Spree on the Reservation*, PHOENIX NEW TIMES (July 3, 1997), https://www.phoenixnewtimes.com/news/crime-spree-on-the-reservation-6422945.

[12] *Briones*, 929 F.3d at 1061.

[13] Felicia Fonseca, *Juvenile Lifer Seeks Reprieve Amid Broader Push for Leniency*, KARE 11 (April 9, 2022), https://www.kare11.com/article/news/crime/juvenile-lifer-seeks-reprieve-amid-broader-push-for-leniency-riley-briones/507-26925755-0e97-409f-a853-a7c156087bf0.

[14] *Id.*

breaks.[15] Lindsey worked hard in school and got along with everyone.[16] His death came as a shock to the people who knew him.[17]

In *United States v. Briones*, Riley Briones was charged with first-degree felony murder.[18] He, along with five other co-defendants, including his brother and father, were each offered plea deals of twenty years in prison.[19] Briones' father adamantly refused to enter into a plea agreement, and he influenced his sons to reject their own plea deals.[20] Briones' father, who indoctrinated Briones into the gang, was released in January of 2022.[21] Briones' brother, who planned the robbery, is set to be released in April of 2024.[22] On the other hand, Briones rejected the offer and was sentenced to the most severe sentence a juvenile could receive at the time—a mandatory term of life without the possibility of parole for felony murder.[23]

Fifteen years after Briones was sentenced, the United States Supreme Court made major changes to juvenile sentencing in *Miller v. Alabama*[24] and in *Montgomery v. Louisiana*,[25] cases which both provided greater protections for juvenile offenders.[26] In *Miller*, the Court forbade mandatory life without parole sentences for juvenile offenders and instead required that a sentencer consider how children are different[27] before sentencing them to a life sentence without the possibility of parole.[28] The differences between adults and juveniles diminish juveniles' fitness to serve a lifetime in prison.[29] In *Montgomery*, the Court held that

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[15] Sterling, *supra* note 11.

[16] *Id.*

[17] *Id.*

[18] United States v. Briones, 929 F.3d 1057, 1061 (9th Cir. 2019); Ariz. Rev. Stat. Ann. § 13-1105 (defining the commission of first-degree murder as when a person has intent or knowledge that their "conduct will cause death, the person causes the death of another person . . . with premeditation").

[19] *Briones,* 929 F.3d at 1061.

[20] *Id.*

[21] Appellant's Supplemental Brief at 33, United States v. Briones, 929 F.3d 1057 (9th Cir. 2019) (No. 16-10150); *see* Federal Bureau of Prisons Inmate Locator, https://www.bop.gov/inmateloc/ (Riley Sr Briones, Register Number: 42440-008).

[22] *See Id.* (Ricardo Briones, Register Number: 42207-008).

[23] *Briones*, 929 F.3d at 1061.

[24] Miller v. Alabama, 567 U.S. 460 (2012).

[25] Montgomery v. Louisiana, 577 U.S. 190 (2016).

[26] United States v. Briones, 18 F.4th 1170, 1173 (9th Cir. 2021).

[27] *See generally* Shobha L. Mahdev & Steven Drizin, *Felony Murder, Explained*, APPEAL (Mar. 4, 2021), https://theappeal.org/the-lab/explainers/felony-murder-explained/#felony-murder-targets-youth,-women,-and-nonwhite-people (explaining that the human brain does not fully mature until a person's mid-20s because the prefrontal cortex does not fully develop in adolescence).

[28] *Miller*, 567 U.S. at 479-80.

[29] *Id.*

*Miller* applied retroactively,[30] effectively allowing courts to apply the rule established in *Miller* to earlier cases like *Briones*.

Briones filed a motion in federal court to vacate his sentence of life without the possibility of parole.[31] In light of *Miller* and *Montgomery*, Briones argued that a lesser sentence was appropriate considering his youth and his youth-related characteristics.[32] The United States District Court for the District of Arizona granted Briones' motion and held a resentencing hearing.[33] Briones' counsel argued that a life without parole sentence was inappropriate because his criminal activity was a product of "youthful immaturity and a desire for the 'feeling of banding together'" by pointing to Briones' "dysfunctional childhood environment, including parental drug and alcohol abuse," and an extensive history of family criminality.[34] Briones' counsel additionally pointed to the fact Briones had limited education since he did not complete high school and that he had difficulties as an indigenous person attending school off the reservation where he lived.[35] Briones' counsel also highlighted the fact that the Subway robbery was not Briones' idea, and he was not the shooter.[36] Additionally, his counsel pointed to evidence of his rehabilitation: he was never written up for any disciplinary infraction, nor was he involved with any gangs while in prison; he had been working continuously during his incarceration; and he married the mother of his child after he was incarcerated.[37] The district court observed that Briones was bright, articulate, and improved himself during his prison sentence.[38]

The court acknowledged the history of Briones' abusive father, his youth and immaturity, his adolescent brain at the time, which was harmed by regular and constant abuse of alcohol and other drugs, and that Briones had been a model inmate.[39] However, the court noted that Briones had been the leader of a violent and cold-blooded gang that terrorized the Salt River Reservation community for many years.[40] Further, it pointed to the fact that Briones "'appeared to be the pillar of strength for the people involved to make sure they executed the plan [to murder Lindsey],' and he 'was involved in the final decision to kill the young

[30] *Montgomery*, 577 U.S. at 206, 212.
[31] *Briones*, 18 F.4th at 1173.
[32] *Id.* (quoting *Miller*, 567 U.S. at 483).
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.* at 1174.
[39] *Id.*
[40] *Id.*

clerk.'"[41] Ultimately, the court reinstated the life without parole sentence.[42] On appeal, the United States Court of Appeals for the Ninth Circuit determined that the district court erred in focusing on Briones' criminal history[43] instead of answering the question presented by *Miller*—whether the juvenile defendant was capable of change.[44] The Ninth Circuit ruled in favor of Briones, vacated his sentence of life without parole, and remanded his case so that the district court could explain its sentence sufficiently to permit for meaningful review.[45]

After the Ninth Circuit decided *Briones*, the U.S. Supreme Court decided *Jones v. Mississippi,* holding that a sentencer is not required to make a separate factual finding that a juvenile is permanently incorrigible, meaning incapable of being reformed,[46] when sentencing the juvenile to life without the possibility of parole.[47] The United States government appealed the Ninth Circuit's decision in *Briones*.[48] The Supreme Court granted certiorari and remanded *Briones* to the Ninth Circuit for review in light of *Jones*.[49] Ultimately, the Ninth Circuit affirmed Briones' life without parole sentence[50] even though the court had noted in its prior decision that Briones had demonstrated the capacity for change, which is key in determining whether a juvenile defendant is permanently incorrigible.[51] Briones, and juveniles like him who commit felony murder but demonstrate a capacity for change, were offered hope, but the *Jones* decision withdrew this hope for another opportunity at life.

The punishment of life without parole for juveniles who are convicted under a theory of felony murder is a disproportionate punishment that fails to reflect youths' moral culpability and criminal responsibility.[52] The felony murder rule allows for individuals to be prosecuted for homicide even if they never intended for a death to occur and even if the deceased person was a co-felon who dies at the hands of a third party.[53] Generally, the felony murder rule functions like strict liability, failing to sufficiently account for characteristics, like juvenile status and un-

[41] *Id.*

[42] *Id.*

[43] United States v. Briones, 929 F.3d 1057, 1066 (9th Cir. 2019).

[44] *Id.*

[45] *Id.* at 1067.

[46] *Incorrigible*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining incorrigible as "[i]ncapable of being reformed; delinquent").

[47] Jones v. Mississippi, 141 S. Ct. 1307, 1321 (2021).

[48] United States v. Briones, 141 S. Ct. 2589 (2021).

[49] *Id.*

[50] United States v. Briones, 18 F.4th 1170, 1179 (9th Cir. 2021).

[51] United States v. Briones, 929 F.3d 1057, 1067 (9th Cir. 2019).

[52] Erin H. Flynn, *Dismantling the Felony-Murder Rule: Juvenile Deterrence and Retribution Post-Roper v. Simmons*, 156 U. Pa. L. Rev. 1049, 1076 (2008).

[53] *Felony-Murder Rule*, Black's Law Dictionary (11th ed. 2019).

derdevelopment, that diminish culpability.[54] Currently, the most severe punishment available for juveniles who commit felony murder is life without the possibility of parole, which is the same for adult offenders.[55] After *Miller*, life without the possibility of parole was only available when a sentencer found that the juvenile's crimes reflected "irreparable corruption."[56] However, *Jones* declared that a sentencer acting under *Miller* has discretion when considering the characteristics of youth, and that there is no need for the sentencer to make an actual finding that the juvenile is permanently incorrigible or incapable of reform.[57]

This Comment argues that life without the possibility of parole is not an appropriate sentence for juveniles who commit felony murder because of the inherent characteristics of juveniles, such as their immaturity and inability to foresee consequences.[58] Part I explores the origins, rationales, and critiques of the felony murder rule. Central to this examination are *Enmund v. Florida* and *Tison v. Arizona*, two pivotal Supreme Court cases which have assessed whether the death penalty is an appropriate punishment for felony murder. In addition, Part I discusses Supreme Court cases that have shaped juvenile sentencing, with a focus on the sentence of juvenile life without the possibility of parole. Part II explores the problems that have developed after *Jones*. Part III compares the divergent outcomes of *Briones* under *Miller* and *Jones*, respectively. Part IV concludes that life without parole for juveniles is a disproportionate punishment for criminal liability under the felony murder rule.

## I. BACKGROUND

### A. THE FELONY MURDER RULE

The felony murder rule has become an increasingly controversial theory of criminal liability, holding felons strictly liable for deaths that result during the commission of a felony even though the defendants lack an intent to kill. Since its inception there has been ongoing debate about whether the rationale for the felony murder rule justifies its use.[59] Multi-

[54] Flynn, *supra* note 52.

[55] Kokkalera, S. S., Strah, B. M., & Bornstein, A., *Too Young for the Crime, Yet Old Enough to do Life: A Critical Review of How State Felony Murder Laws Apply to Juvenile Defendants*, JOURNAL OF CRIMINAL JUSTICE AND LAW, (JUNE 1, 2021), https://assets.pubpub.org/gaetmm6o/31630588928962.pdf.

[56] Jones v. Mississippi, 141 S. Ct. 1307, 1329 (2021) (Sotomayor J., dissenting) (citing Miller, 567 U.S. 460 at 479-80).

[57] *Id.* at 1318.

[58] *See generally* Mahdev, *supra* note 27.

[59] Guyora Binder, *The Origins of American Felony Murder Rules*, 57 STAN. L. REV. 59, 125 (2004).

ple Supreme Court decisions have addressed whether the most severe punishment, the death penalty, is an appropriate sentence for someone who commits felony murder.[60] The *Enmund* Court decided that the death penalty cannot constitutionally be imposed where the defendant neither took life, attempted to take life, nor intended to take life.[61] Conversely, the U.S. Supreme Court has also found that major participation in a felony together with reckless disregard for human life can merit the death penalty.[62] Understanding the debate around the felony murder rule and the reasons for which the imposition of the most severe punishment—the death penalty—have been limited illustrates why the application of the felony murder rule and life without parole sentences on juvenile offenders is contrary to the Court's jurisprudence.[63]

*1. The Justification for the Felony Murder Rule*

The felony murder rule has been largely criticized for effectively holding felons strictly liable for deaths occurring during the commission of a felony.[64] Under the common law, an individual is guilty of felony murder if the individual killed another human being during the commission of any felony.[65] This rule applies regardless of whether the felon killed the victim "intentionally, recklessly, negligently, or accidentally and unforeseeably."[66] In the 1820s, state legislatures began passing felony murder statutes that held defendants culpable for a death if it occurred during the attempt or commission of certain inherently dangerous felonies.[67] These felony murder rules predicated murder liability on inherently dangerous felonies, which required that felons kill the victims intentionally or by acting recklessly with respect to life.[68] A notable difference between early felony murder rules and the modern rule is that felony murder rules at their inception did not punish individuals for accidental deaths.[69] Currently, under the Model Penal Code, criminal homicide occurs when it is committed purposefully, knowingly, or under circumstances demonstrating "extreme indifference to the value of

[60] *See* Enmund v. Florida, 458 U.S. 782, 797 (1982); *see also* Tison v. Arizona, 481 U.S. 137, 158 (1987).

[61] *Enmund*, 458 U.S. at 797.

[62] *Tison*, 481 U.S. at 158.

[63] *See Enmund*, 458 U.S. at 797; *see also Tison*, 481 U.S. at 158.

[64] Binder, *supra* note 59.

[65] JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 515 (3d ed. 2001).

[66] *Id.*

[67] Binder, *supra* note 59.

[68] *Id.*

[69] *Id.*

human life."[70] Extreme indifference is presumed if the offender is involved in the "commission of, or an attempt to commit, or flight after committing or attempting to commit" certain enumerated felonies.[71] These enumerated felonies are burglary, arson, robbery, rape, kidnapping, and felonious escape.[72]

The felony murder rule is justified on theories of deterrence and retribution.[73] There are two primary arguments for the deterrence rationale.[74] The first argument claims the doctrine is intended to deter negligent and accidental killings during the commission of a felony.[75] Critics point out that this view is unsubstantiated because there is no way to deter an act that was not intended.[76] They further argue that this is especially true when the felony murder rule is applied to a defendant for murder even though a third party, over whose acts the defendant had no control, caused the killing.[77]

The second argument for the deterrence rationale of the felony murder rule focuses on the dangerousness of the underlying felony.[78] This view posits that punishing both accidental and deliberate killings equally serves as "the strongest possible deterrent" from engaging in dangerous felonies.[79] This view lacks a basis since there is considerable doubt that serious crimes will be deterred by creating a harsher punishment.[80] In addition, critics contend that courts should strike at the harm intended by offenders rather than at the "greater harm" that flows from their acts, which was neither intended nor desired.[81] Some critics of the felony murder rule argue that the rule is not necessary to deter the underlying felonies because the felonies themselves could be deterred by increasing punishment of the felonies the offender intended.[82] If offenders do not know how the felony murder rule works, or they do not believe that a killing will occur, then the rule will have no deterrent effect.[83]

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[70] MODEL PENAL CODE § 210.2(1)(b).

[71] *Id.*

[72] *Id.*

[73] Nelson E. Roth & Scott E. Sundby, *The Felony-Murder Rule: A Doctrine at Constitutional Crossroads*, 70 CORNELL L. REV. 446, 450 (1985).

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.* (quoting People v. Washington, 62 Cal. 2d 777, 790-91 (1965) (Burke, J., dissenting)).

[80] Roth, *supra* note 72.

[81] *Id.* (quoting Norval Morris, *The Felon's Responsibility for the Lethal Acts of Others,* 105 U. PA. L. REV. 50, 67 (1956)).

[82] Flynn, *supra* note 52.

[83] Roth, *supra* note 72.

Additionally, the felony murder rule is rationalized by concepts of retribution.[84] This view justifies a conviction for murder without the requisite mens rea[85] simply on the grounds that a felony was committed and a killing occurred.[86] It punishes the offender for the harm that was caused even if it was far beyond any harm intended.[87] This view is directly in conflict with the assumption that criminal law is concerned with proportionate degrees of criminal liability.[88] The retributive view effectively eliminates the intent element of murder and ultimately means that the felony murder rule operates as a strict liability basis for murder.[89]

The felony murder rule relies on the theory of transferred intent, which argues that the intent to commit the underlying felony is transferred to the act of killing.[90] This argument essentially relieves the state of its burden to prove premeditation or malice.[91] Analyzing the mens rea[92] element of a felony and culpability for a killing makes clear that the transferred intent theory should not apply to felony murder.[93] This theory does not work since the mens rea required for homicide is usually considered to be distinct from the mens rea needed for the felony.[94]

### *2. U.S. Supreme Court Jurisprudence on Felony Murder*

The Supreme Court has weighed in on the appropriateness of imposing the death penalty for felony murder in *Enmund v. Florida* and *Tison v. Arizona*.

#### *a.* Enmund v. Florida

In *Enmund v. Florida*, the Supreme Court held that imposing the death penalty where a defendant did not take a life, did not attempt to take a life, and did not intend to take a life is inconsistent with the Eighth and Fourteenth Amendments.[95] Sampson Armstrong robbed and fatally

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[84] *Id.*

[85] *Mens Rea*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining mens rea as "[t]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime").

[86] *Id.*

[87] Flynn, *supra* note 52.

[88] Roth, *supra* note 72.

[89] Flynn, *supra* note 52.

[90] Roth, *supra* note 72 (quoting State v. O'Blasney, 297 N.W.2d 797, 798 (S.D. 1980)).

[91] *Id.* (quoting Richard Bonnifield, *An Assault Resulting in Homicide May be Used to Invoke the Felony-Murder Rule*, 13 GONZ. L. REV. 268, 271 (1977)).

[92] BLACK'S LAW DICTIONARY, *supra* note 85.

[93] Roth, *supra* note 72.

[94] *Id.*

[95] Enmund v. Florida, 458 U.S. 782, 787-88 (1982).

shot Thomas and Eunice Kersey at their farmhouse in Florida.[96] Two witnesses stated that there was a car parked alongside the road near the scene of the crime.[97] The only evidence of Earl Enmund's participation in the robbery was circumstantial evidence that he was the person in the car.[98] The jury found Enmund guilty of two counts of first-degree murder, and he was sentenced to death.[99]

On appeal, the Supreme Court looked to the sentencing decisions of juries to determine that society had rejected the death penalty for accomplice liability.[100] Out of 362 cases surveyed, there were only six where the non-triggerman charged with felony murder was sentenced to death.[101] The Court recognized that juries generally reject the imposition of the death penalty in cases like *Enmund*, where the defendant did not actually commit the homicide, was not present, and did not plot the murder.[102] The Court referred to its opinion in *Gregg v. Georgia,*[103] in which it had explained that the death penalty serves "two principal social purposes: retribution and deterrence of capital crimes."[104] The Court reasoned that the fact that the death penalty may be imposed for murder will not deter an individual who does not intend to kill.[105] The Court found that a defendant's criminal culpability should be limited to his or her participation in the felony, and his or her punishment should be determined according to his or her level of responsibility and moral guilt.[106] The Court held that there must be a demonstration that a defendant killed, attempted to kill, or intended to kill in order to impose the death penalty.[107]

*b.* Tison v. Arizona

In *Tison v. Arizona,* the Supreme Court held that major participation in a felony paired with reckless indifference to human life meets the culpability requirement needed to justify the death penalty.[108] The Tison brothers entered the Arizona State Prison with an ice chest containing

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[96] *Id.*at 784.
[97] *Id.* at 786.
[98] *Id.*
[99] *Id.* at 785.
[100] *Id.* at 794.
[101] *Id.*
[102] *Id.* at 795.
[103] Gregg v. Georgia, 428 U.S. 153 (1976).
[104] *Enmund*, 458 U.S. at 798 (quoting *Gregg*, 428 U.S. at183).
[105] *Id.* at 798-99.
[106] *Id.* at 801.
[107] *Id.*
[108] Tison v. Arizona, 481 U.S. 137, 158 (1987).

guns with the intent to help their father, Gary Tison, escape prison.[109] Gary Tison had been sentenced to life in prison for killing a guard during a previous attempt to escape prison.[110] Gary Tison insisted that his cell-mate be included in the prison break.[111] After leaving the prison, the group learned that their car had a flat tire, so they flagged down a passing vehicle, intending to steal it.[112] The Lyons family pulled over to offer assistance to the Tisons.[113] Ultimately, Gary Tison and his cell-mate shot and killed the family.[114] The Tison brothers did not attempt to help the Lyons family, and the group fled in the Lyons' vehicle.[115]

In *Enmund,* the Court recognized two types of felony murder cases where the defendants had different mental states and levels of participation, and it analyzed how states approached differently each of these two types of cases.[116] The first type of case is illustrated in *Enmund*: the defendant was a minor participant in the felony, was not on the scene, did not intend to kill, and did not have a culpable mental state.[117] The second type of case is one in which the defendant actually killed, attempted to kill, or intended to kill.[118] The *Enmund* Court held that in the latter types of cases the death penalty was permissible when warranted.[119]

The facts in *Tison* did not fall into either of these categories since the defendants were major participants, and the defendants had a culpable mental state of reckless indifference to human life.[120] The Court examined different approaches in other cases that fell between the two types of cases recognized in *Enmund*.[121] It found four variations: four states authorized the death penalty in these cases; two states required that the defendant's participation be substantial; six states authorized the death penalty for felony murder; and three states required an additional aggravating factor when imposing the death sentence for felony murder.[122] The Court interpreted this difference in approach to mean that society does not categorically reject the death penalty for felony murder

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[109] *Id.* at 139.
[110] *Id.*
[111] *Id.*
[112] *Id.* at 139-40.
[113] *Id.* at 141.
[114] *Id.* at 140-41.
[115] *Id.* at 141.
[116] *Id.* at 149.
[117] *Id.*
[118] *Id.* at 150.
[119] *Id.*
[120] *Id.* at 151.
[121] *Id.* at 152-55.
[122] *Id.*

even though intent to kill is not required.[123] The *Tison* Court held that a sufficiently culpable mental state is implied from an individual's engaging in a felony known to bear a grave risk of death, thereby demonstrating a reckless disregard for human life.[124]

## B. SUPREME COURT JURISPRUDENCE ON JUVENILE SENTENCING

Over the course of the last fifteen years, the Supreme Court has made pivotal decisions in seminal cases that have significantly impacted and shaped juvenile justice sentencing.[125] In *Roper v. Simmons,* the Supreme Court held that the death penalty cannot be imposed on juveniles.[126] In *Graham v. Florida,* the Court held that a juvenile cannot be sentenced to life without parole for a nonhomicide offense.[127] In *Miller v. Alabama,* the Court held that mandatory life without parole[128] for juveniles is unconstitutional.[129] However, in *Jones v. Mississippi*, the Court has counterintuitively decided that a sentencer need not find that a juvenile is permanently incorrigible to sentence the juvenile to life without the possibility of parole.[130]

### *1.* Roper v. Simmons

In *Roper v. Simmons,* the Supreme Court held that imposing the death penalty on juveniles under the age of eighteen is a violation of the Eighth and Fourteenth Amendments.[131] At the age of seventeen, Christopher Simmons was charged with burglary, kidnapping, stealing, and murder in the first degree.[132] The jury considered the aggravating factors proposed by the prosecution, which were that Simmons had acted with the purpose of receiving money, avoided lawful arrest, committed acts involving "depravity of mind[,] and was outrageously and wantonly vile,

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[123] *Id.* at 154.

[124] *Id.* at 157.

[125] *See, e.g.,* Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 560 U.S. 48 (2010); Miller v. Alabama, 567 U.S. 460 (2012); Jones v. Mississippi, 141 S. Ct. 1307 (2021).

[126] *Roper*, 543 U.S. at 57.

[127] *Graham*, 560 U.S. at 8.

[128] *Juvenile Life Without Parole,* RESTORE JUSTICE, https://www.restorejustice.org/learn/juvenile-life-without-parole/ (explaining that mandatory sentences are required by law and must be imposed regardless of a sentencer's opinion and regardless of the age of the defendant).

[129] *Miller*, 567 U.S. at 465.

[130] *Jones*, 141 S. Ct. at 1321.

[131] *Roper*, 543 U.S. at 578.

[132] *Id.* at 557.

horrible, and inhuman."[133] In light of these aggravating factors, the trial court ultimately imposed the death penalty.[134]

The Court noted that the death penalty is reserved for offenders who have committed the most serious crimes and who are the most culpable.[135] There are three distinctions between juveniles and adults that illustrate why juveniles should not be categorized amongst the worst offenders.[136] First, juveniles lack maturity and have an underdeveloped sense of responsibility, so they tend to make rash decisions.[137] Second, juveniles can be more susceptible to negative influences and peer pressure,[138] environmental factors over which they have little to no control.[139] Third, juveniles' characters are not well formed because their personality traits are less fixed than adults' personality traits.[140] The Court reasoned that these differences set apart juveniles from the worst offenders.[141]

The Court then determined that neither retribution nor deterrence adequately justified the imposition of the death penalty on juvenile offenders.[142] Retribution is not justified if the death penalty is imposed on one whose "culpability or blameworthiness is diminished . . . by reason of youth and immaturity."[143] The death penalty does not have a significant deterrent effect on juveniles since the characteristics that make juveniles less culpable than adults also make them less receptive to deterrence.[144] Specifically, the likelihood that a juvenile has made the cost-benefit analysis that weighs possibility of execution is virtually nonexistent.[145]

*2.* Graham v. Florida

In *Graham v. Florida*, the Supreme Court held that it is unconstitutional to impose a life without parole sentence on a juvenile who did not commit a homicide.[146] At the age of sixteen, Terrance Jamar Graham and

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[133] *Id.*
[134] *Id.* at 558.
[135] *Id.* at 568.
[136] *Id.* at 569.
[137] *Id.* (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).
[138] *Id*. at 569 (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).
[139] *Id.* at 569.
[140] *Id.* at 570.
[141] *Id.*
[142] *Id.*at 572.
[143] *Id.* at 571.
[144] *Id.*
[145] *Id.* at 571-72 (quoting Thompson v. Oklahoma, 487 U.S. 815, 837 (1988)).
[146] Graham v. Florida, 560 U.S. 48, 82 (2010).

three other boys attempted to rob a barbecue restaurant.[147] One of the boys struck the restaurant manager twice in the back of the head with a metal bar.[148] Graham pleaded guilty to attempted armed robbery and armed burglary with assault or battery.[149] He told the court that this would be the first and last time he got in trouble, and he asked for a second chance.[150] The court sentenced him to three years of probation.[151] At the age of seventeen, Graham was arrested again for participation in a home invasion robbery.[152] He admitted to committing at least two more robberies prior to that night.[153] The trial court sentenced Graham to the maximum sentence allowed for each charge, which was life imprisonment for the armed burglary and fifteen years for the attempted armed robbery.[154]

The Court observed that sentencing practices in jurisdictions that allowed sentencing a juvenile to life without parole demonstrated a consensus against its use.[155] When *Graham* was decided there were eleven jurisdictions in the United States that imposed life without parole sentences on juvenile nonhomicide offenders, but they did so rarely.[156]

The Court reasoned that life without parole sentences and death penalty sentences share some characteristics, since a life without parole sentence is irrevocable and deprives the offender of their basic liberties without the opportunity for a second chance.[157] A juvenile offender who receives a life without parole sentence will serve more years and a greater percentage of his or her life in prison than an adult offender.[158] The Court produced the example of a sixteen-year-old and a seventy-five-year-old who receive sentences of life without parole, and observed that the two are given the same punishment in name only.[159] The Court held that the sentence of life without parole for juvenile offenders who do not commit homicide is cruel and unusual due to their limited culpability and the severity of this type of punishment.[160]

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[147] *Id.* at 53.

[148] *Id.*

[149] *Id*. at 53-54.

[150] *Id.* at 54.

[151] *Id.*

[152] *Id.*

[153] *Id.* at 55.

[154] *Id.* at 57.

[155] *Id.* at 62.

[156] *Id.* at 64 (noting the majority of juveniles serving life without parole for nonhomicide offenses were sentenced in Florida).

[157] *Id*. at 69-70 (citing Solem v. Helm, 463 U.S. 277, 300-01 (1983)).

[158] *Id.* at 70.

[159] *Id.*

[160] *Id.* at 73-74.

*3.* Miller v. Alabama *and* Montgomery v. Louisiana

In *Miller v. Alabama*, the Supreme Court held that mandatory life without parole for juveniles is a cruel and unusual punishment and therefore a violation of the Eighth Amendment.[161] Kuntrell Jackson[162] and Evan Miller[163] were both fourteen years old when they committed crimes for which they were convicted of capital felony murder and sentenced to life without the possibility of parole.[164] State law mandated life without parole for those crimes, so the trial court did not have any sentencing authority or discretion to impose a different sentence in either of the juveniles' cases.[165]

The Court explained that although it did not completely forbid a sentence of life without parole for juveniles who commit homicide offenses, it did require that a sentencer consider how children are different from adults and how those differences advise against sentencing them to a lifetime in prison.[166] The Court noted that removing a sentencer's ability to consider the offender's juvenile status would prohibit a sentencer from determining whether a life without parole sentence proportionately punishes a juvenile offender.[167] Additionally, this type of sentencing would preclude the consideration of the characteristics of youth such as "immaturity, impetuosity, and failure to appreciate risks and consequences."[168] This type of sentencing would fail to consider the juvenile's family and home environment, circumstances from which juveniles cannot remove themselves.[169] The Court predicted that it would be difficult to distinguish between juvenile offenders whose crimes are due to their transient immaturity and the rare juvenile offender whose crime demonstrates "irreparable corruption," resulting in an uncommon sentencing of life without the possibility of parole.[170] Therefore, when sentencing a juvenile to life without parole, the sentencer must have discretion to con-

[161] Miller v. Alabama, 567 U.S. 460, 465 (2012).

[162] *Id.* (noting that Kuntrell Jackson was convicted of felony murder for the death of a store clerk at the hands of one of his coconspirators occurring during the course of a robbery).

[163] *Id*. at 467 (noting that Evan Miller was convicted of felony murder for the death of his neighbor occurring during the course of arson).

[164] *Id*. at 465-67.

[165] *Id.* at 465.

[166] *Id.* at 480.

[167] *Id.* at 474.

[168] *Id.* at 477.

[169] *Id.*

[170] *Id.* at 479-80 (quoting Roper, 543 U.S. at 573).

sider mitigating circumstances.[171] Subsequently, in *Montgomery v. Louisiana*, the Supreme Court held that *Miller* applies retroactively.[172]

In his concurrence in *Miller*, Justice Breyer argued that the Eighth Amendment forbids the imposition of a life without the possibility of parole sentence on a juvenile who did not kill or intend to kill.[173] Justice Breyer relied on *Graham*, where the Court recognized that when compared to an adult offender, a juvenile who did not kill or intend to kill had a twice-diminished culpability.[174] First, juveniles lack maturity, a fully developed sense of responsibility, fully formed character, and the ability to resist peer pressure.[175] Second, a lack of intent usually diminishes moral culpability.[176] Justice Breyer concluded that juveniles who did not kill or intend to kill should not be subjected to life in prison without the possibility of parole.[177]

*4.* Jones v. Mississippi

In *Jones v. Mississippi*, the Supreme Court held that a sentencer is not required to make a finding that a juvenile is permanently incorrigible when sentencing the juvenile to life without the possibility of parole.[178] At the age of fifteen, Brett Jones and his grandfather got into an argument that started with shouts and resulted in Jones stabbing his grandfather eight times.[179] Jones's defense attorney argued that Jones's "'chronological age and its hallmark features' diminished the 'penological justifications for imposing the harshest sentences'" and that nothing in the record supported a finding that the offense demonstrated irreparable corruption.[180] Despite this argument, the sentencer determined that life without the possibility of parole was the appropriate punishment.[181]

The *Jones* Court interpreted *Miller* as not requiring a sentencer to make a separate factual finding of permanent incorrigibility before imposing a life without the possibility of parole sentence.[182] In addition, the Court noted that *Montgomery* "explicitly stated that 'a finding of fact

[171] *Id*. at 489.

[172] Montgomery v. Louisiana, 577 U.S. 190, 208-09 (2016) (quoting Schriro v. Summerlin, 542 U.S. 348 (2004) (finding that *Miller* announced a substantive rule of constitutional law, and like other substantive rules, it applies retroactively)).

[173] *Miller*, 567 U.S. at 489-90 (Breyer, J., concurring).

[174] *Id.* at 490-91 (quoting Graham, 560 U.S. at 69).

[175] *Id.* at 489-90.

[176] *Id.* (citing Graham, 560 U.S. at 69).

[177] *Id.*

[178] Jones v. Mississippi, 141 S. Ct. 1307, 1307 (2021).

[179] *Id.* at 1312.

[180] *Id.*

[181] *Id.* at 1313.

[182] *Id.* at 1316.

regarding a child's incorrigibility . . . is not required.' "[183] The *Jones* Court explained that *Miller* and *Montgomery* merely made a sentence of life without parole discretionary in order to allow a sentencer to consider the offender's youth, which would ensure that these sentences are only imposed where appropriate.[184] Jones argued that there is a distinction between a "sentencer's discretion to consider youth" and "the sentencer's actual consideration of youth."[185] The Court found that a separate factual finding is not needed to ensure that a sentencer consider the juvenile offender's youth.[186] The Court noted that death penalty cases do not require an "on-the-record explanation of mitigating circumstances by the sentencer," so it would be "incongruous to require an on-the-record explanation of the mitigating circumstance of youth by the sentencer in life-without-parole cases."[187] The Court found that its precedent did not require an on-the-record explanation of a finding of permanent incorrigibility before sentencing a juvenile offender to life without parole.[188]

## II. Problematic Interpretation of Miller in the Jones Decision

Contrary to the findings in *Jones*, *Miller* required sentencers to consider whether juveniles can demonstrate that they are capable of rehabilitation, such that they may have the opportunity of leaving prison and reentering society.[189] Justice Breyer and Justice Kagan joined Justice Sotomayor in her dissent, emphasizing that *Miller*'s holding was that a life sentence is a disproportionate sentence for all juveniles except " 'the rarest children, those whose crimes reflect 'irreparable corruption.' "[190] A sentence of life without parole would violate the Eighth Amendment for a juvenile whose "crime reflects unfortunate yet transient immaturity."[191] Only those rare juveniles whose crimes reflect irreparable corruption are constitutionally eligible for life without parole, and a sentencer must actually make this judgement.[192] The majority in *Jones* breaks from precedent and reduces *Miller* merely to requiring discretionary sentencing where youth is considered.[193]

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[183] *Id.* at 1317 (quoting Montgomery v. Louisiana, 577 U.S. 190, 211 (2016)).

[184] *Id.* at 1318.

[185] *Id.* at 1319.

[186] *Id.* at 1320.

[187] *Id.* at 1320-21.

[188] *Id.* at 1321.

[189] *See* Miller v. Alabama, 567 U.S. 460, 479-80 (2012).

[190] *Jones*, 141 S. Ct. at 1328 (Sotomayor, J., dissenting) (quoting Montgomery v. Louisiana, 577 U.S. 190, 195 (2016)).

[191] *Id.* (quoting *Montgomery*, 577 U.S. at 208).

[192] *Id.* at 1329 (citing *Montgomery*, 577 U.S. at 195 and *Miller*, 567 U.S. at 480).

[193] *Id.* at 1328.

*Miller* considered two lines of Supreme Court precedent.[194] Through the first line of cases, the Court recommended a sentencing procedure similar to that of capital cases, which includes an "individualized consideration of mitigating circumstances."[195] *Miller* primarily used the second line of precedent established by *Roper* and *Graham,* both of which set categorical bans on sentencing "practices based on mismatches between the culpability of a class of offenders and the severity of a penalty."[196] In *Miller,* the Court elevated the importance of considering mitigating and aggravating circumstances when determining whether a life without parole sentence is appropriate for juveniles.[197] *Miller* barred life without parole for juveniles whose crimes reflect "'unfortunate yet transient immaturity'" and allowed this sentence for those juveniles whose crimes demonstrate permanent incorrigibility.[198]

Justice Sotomayor noted that in *Montgomery,* the Court held that *Miller* applied retroactively based on the exception to the substantive rules[199] laid out in *Teague v. Lane.*[200] Therefore, *Miller* must have eliminated a state's power to impose a punishment.[201] However, the majority's holding essentially undoes "*Teague*'s distinction between substantive and procedural rules."[202] The majority distorts *Miller* into merely requiring a discretionary sentencing procedure.[203]

Justice Sotomayor argued that the majority erroneously rested its conclusion on *Montgomery*'s statement that *Miller* did not impose a factfinding requirement.[204] Specifically, *Montgomery* clarified that despite the absence in *Miller* of a formal factfinding requirement, states are not allowed to freely sentence a child whose crime reflects transient immaturity to life without parole.[205] *Miller* and *Montgomery* make it clear that the only individuals eligible for a sentence of life without the possibility of parole are individuals whom the sentencer deems to be incorrigible.[206] The term "incorrigible" is defined as someone who is incapable of being reformed.[207]

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[194] *Id.* at 1332 (quoting *Miller*, 567 U.S. at 470).
[195] *Id.*
[196] *Id.* (citing *Miller*, 567 U.S. at 470).
[197] *Id.* at 1332-33.
[198] *Id.* (quoting *Miller*, 567 U.S. at 479).
[199] *Id*. at 1334 (Sotomayor, J., dissenting).
[200] Teague v. Lane, 489 U.S. 288 (1989).
[201] *Jones*, 141 S. Ct. at 1334 (quoting Montgomery v. Louisiana, 577 U.S. 190, 201 (2016)).
[202] *Id.* at 1335.
[203] *Id.*
[204] *Id.* at 1331 (quoting *Montgomery*, 577 U.S. at 211).
[205] *Id.*
[206] *Montgomery*, 577 U.S. at 212.
[207] *Incorrigible*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Juveniles are immature in that they have difficulty recognizing the risks of their actions and are unable to remove themselves from their home environments.[208] As juveniles age, they usually gain maturity, appreciation of risks, and the ability to remove themselves from hostile home situations.[209] Juveniles have the capacity to demonstrate change, but they are denied an opportunity to change if sentenced to life without the possibility of parole.[210] It is possible that in a world post *Jones,* juveniles who may be capable of change may still be sentenced to die in prison and may not be given the opportunity to live life outside of prison.

## III. APPLYING NEW PRECEDENT TO THE *BRIONES* DECISION

After *Miller* and *Montgomery* were decided, Briones filed a motion to vacate his sentence.[211] *Miller* and *Montgomery* were decided when Briones had already been sentenced, but those cases could have changed Briones' legal status if applied retroactively.[212] Subsequently, the district court granted Briones' motion to vacate his sentence, and the court held a resentencing hearing.[213] At that point, Briones was almost forty years old, and he had already served eighteen years in prison.[214] For all eighteen years, Briones was a model inmate.[215] He had not received a single infraction for breaking prison rules, had held a job in food service, had volunteered to talk with young inmates about how to change their lives, had finished his GED, and had married the mother of his child.[216]

In his motion, Briones asked the court to consider the characteristics of youth as laid out in *Miller*, such as "immaturity, impetuosity, and failure to appreciate risks and consequences," as well as the family and home environments from which juveniles cannot remove themselves.[217] In addition to those mitigating considerations, he asked the court to take note of his rehabilitation efforts.[218] During the resentencing hearing, Briones asked the district court to reduce the remainder of his sentence to 360 months.[219] The district court refused, relying heavily on the Sentenc-

[208] *See* Roper v. Simmons, 543 U.S. 551, 569-70 (2005).

[209] *See generally* Miller v. Alabama, 567 U.S. 460, 477 (2012).

[210] Joshua Rovner, *Juvenile Life Without Parole: An Overview*, THE SENTENCING PROJECT (April 7, 2023), https://www.sentencingproject.org/policy-brief/juvenile-life-without-parole-an-overview/.

[211] United States v. Briones, 929 F.3d 1057, 1060 (9th Cir. 2019).

[212] *Id.* at 1060-61.

[213] *Id.* at 1060.

[214] *Id.* at 1061.

[215] *Id.* at 1061-62.

[216] *Id.*

[217] *Id.* at 1062 (citing Miller, 567 U.S. at 477-78).

[218] *Id.*

[219] *Id.*

ing Guidelines calculation, which dictated a life sentence.[220] The court stated that for purposes of mitigation it would consider Briones' rehabilitation efforts, youth, immaturity, and his adolescent brain.[221] The court interpreted Briones' role as the getaway driver in the robbery as "be[ing] the pillar of strength for the people involved to make sure they executed the plan."[222] The court stated that "some decisions have lifelong consequences" and reimposed the life sentence, recognizing that because there is no parole in the federal system, Briones' sentence was in effect a sentence of life without the possibility of parole.[223]

The Ninth Circuit reviewed the district court's resentencing of Briones.[224] The court explained that when the Sentencing Guidelines indicate that life without parole is a possible sentence, the sentencer must consider the totality of the evidence to inform the question posed by *Miller*: "whether the defendant is one of the rare juvenile offenders who is irredeemable, or whether the defendant is capable of change."[225] In doing so, the court considers the severity of the crime committed when making those sentencing decisions.[226] However, *Miller* also requires the sentencer to consider the characteristics of youth that undermine the penological justification for lifelong punishment.[227] In addition, the court must look forward toward the defendant's capacity for change or incorrigibility rather than solely focusing on the defendant's criminal history.[228]

The Ninth Circuit found that the district court had erroneously focused on Briones' criminal history instead of looking forward to determine whether he was redeemable.[229] The district court laid out factors it considered in mitigation, which indicated that it erroneously began with the presumption that a sentence of life without the possibility of parole was appropriate.[230] The Ninth Circuit found that if successive events show that a defendant has changed or is capable of changing, then a sentence of life without the possibility of parole is no longer an option for resentencing.[231] The court noted that although no magic words are needed, the district court must provide sufficient explanation for its sen-

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[220] *Id.*
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] *Id.* at 1064.
[225] *Id.* at 1065 (citing Montgomery v. Louisiana, 577 U.S. 190, 208-11 (2016)).
[226] *Id*. at 1065 (citing Miller v. Alabama, 567 U.S. 460, 472 (2012)).
[227] *Id.*
[228] *Id.* at 1066.
[229] *Id.*
[230] *Id.*
[231] *Id.* at 1067 (emphasis omitted).

tencing decision to permit meaningful review.[232] Briones had no hope ever to be released, yet he maintained a spotless prison record.[233] The timing of the *Miller* decision revealed that his motivation was "improvement for improvement's sake."[234]

Subsequently, the Supreme Court delivered its *Jones* decision.[235] In that case, the Court removed the requirement to make a court record of the bases for sentencing to inform appellate review, as had been required in *Miller*.[236] The government appealed the Ninth Circuit's decision in *Briones* to the United States Supreme Court, presumably in light of the *Jones* decision.[237] The Court granted certiorari and remanded *Briones* to the Ninth Circuit for review, taking note of its decision in *Jones*.[238]

The Ninth Circuit affirmed the life without parole sentence imposed at the resentencing hearing by the district court.[239] The Ninth Circuit pointed to the district court's statement that it considered Briones' "youth and its attendant characteristics" as being more than what is required of a sentencer under *Jones*.[240] It further adopted the idea that a sentencer with discretion to consider youth "'*will* consider' it," especially in cases where the defense counsel forms an argument around the defendant's youth.[241] The Ninth Circuit added that the district court considered the evidence of Briones' post-conviction rehabilitation.[242] The court said that in its decision prior to *Jones,* it had remanded *Briones* because the district court failed to consider Briones' rehabilitation evidence, which was "precisely the sort of evidence of capacity for change that is key to determining whether a defendant is *permanently* incorrigible."[243] The court noted that *Jones* indicated "that 'permanent incorrigibility is not an eligibility criterion' for juvenile" life without parole, so the court's initial reasoning for remand was not proper.[244] The court reasoned that there is no requirement that a sentencer "'meaningfully engage' in a permanent-incorrigibility analysis."[245] As a result, the Ninth Circuit affirmed the reimposition of Briones' life without the possibility of parole sen-

[232] *Id.* at 1067.
[233] *Id.* at 1066-67.
[234] *Id.*
[235] Jones v. Mississippi, 141 S. Ct. 1307, 1307 (2021).
[236] *Id.* at 1321.
[237] United States v. Briones, 141 S. Ct. 2589 (2021) (mem.).
[238] *Id.*
[239] United States v. Briones, 18 F.4th 1170, 1179 (9th Cir. 2021).
[240] *Id.* at 1175-76 (quoting *Jones*, 141 S. Ct. at 1317).
[241] *Id.* at 1176 (quoting *Jones*, 141 S. Ct. at 1319).
[242] *Id.* at 1177.
[243] *Id.*
[244] *Id.* (quoting *Jones*, 141 S. Ct. at 1315).
[245] *Id.*

tence.[246] The decision in *Jones* permits courts to sentence juveniles like Briones to receive severe punishment and does not require courts to explain whether they have given adequate consideration to the juvenile offender's transient immaturity.[247]

The *Jones* Court created a new rule even though it claimed it did not reverse *Miller*.[248] The Court in *Miller* held that a life sentence is only appropriate where the juvenile shows irreparable corruption.[249] The Court in *Jones* held that there is no need to make an actual finding that the juvenile defendant is permanently incorrigible when deciding whether to impose a sentence of life without the possibility of parole.[250] These two holdings are in direct conflict with each other. The Ninth Circuit is bound by the precedent set by the Supreme Court, so Briones' resentencing depended on the new holding in *Jones.*[251]

The *Jones* holding does not require that the sentencer give any explanation for imposing a life without the possibility of parole sentence.[252] *Jones* merely asserts that the sentencer has discretion to consider the characteristics of youth.[253] The district court stated that it considered the history of the defendant's abusive father, his youth and immaturity, his adolescent brain at the time, and the fact that it was impacted by regular abuse of alcohol and other drugs, and the fact that he has been a model inmate.[254] The district court declared in a superficial statement that these mitigating factors are insufficient to overturn the life without the possibility of parole sentence.[255] Although the district court asserted that it did consider Briones' youth at the time of the crime, it did not explain sufficiently for meaningful review, as would have been required under *Miller*, why it disregarded Briones' growth and reimposed the life without parole sentence.[256]

Briones is in a unique situation because he has already demonstrated his capacity for rehabilitation, and he has taken steps to turn his life around. Yet the district court still sentenced him to serve a life without the possibility of parole sentence by focusing on Briones' criminal history instead of his potential for change. There will be juveniles who,

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[246] *Id.* at 1179.
[247] *See id.* at 1178.
[248] *See Jones*, 141 S. Ct. at 1333.
[249] *Jones*, 141 S. Ct. at 1328 (Sotomayor, J., dissenting) (quoting Montgomery v. Louisiana, 577 U.S. 190, 195 (2016)).
[250] *Id*. at 1321.
[251] *Id.*
[252] *Id.*
[253] *Id.* at 1318-19.
[254] United States v. Briones, 929 F.3d 1057, 1069 (9th Cir. 2019) (Bennett J., dissenting).
[255] *See id.* at 1069-70.
[256] *See id.*

unlike Briones, have not been able to demonstrate their ability to change since their sentences will be imposed at the outset of their terms in prison. If Briones was stripped of the opportunity to receive a lesser sentence even though he had proven his ability to change, then other juveniles will inevitably suffer severe punishments for their crimes without meaningful consideration of their transient immaturity.

Even though Briones was capable of change and was not one of the rare incorrigible juveniles for whom *Miller* reserved the life without parole sentence, the Ninth Circuit was bound to affirm his life without the possibility of parole sentence. The *Jones* decision allows courts to sentence juveniles to life without the possibility of parole without giving proper weight to juveniles' transient immaturity and potential for reform. Juveniles make irrational decisions due to their immaturity and inability to foresee the possible outcomes for their actions.[257] Courts are no longer required to justify their balancing of these traits.[258] It is assumed that since courts have the discretion to consider a juvenile's youth, then they will necessarily consider it.[259] This discretionary leeway leaves open the possibility that a sentencer may err in failing to consider the defendant's youth at all.[260] People like Briones, who have demonstrated the capacity to change, will likely be barred from receiving a lesser sentence.

## IV. JUVENILE LIFE WITHOUT PAROLE IS NOT AN APPROPRIATE SENTENCE FOR THE CRIME OF FELONY MURDER

### A. COGNITIVE DIFFERENCES BETWEEN ADULTS AND CHILDREN

Proponents of the felony murder rule claim that it deters the commission of felonies, but this rule cannot deter juveniles who fail to anticipate the series of events that could ultimately result in a murder.[261] The deterrent effect does not work on adolescents since they are likely to misperceive the risk associated with committing the felony and less able to remove themselves from situations that place them at risk.[262] The felony murder rule is rationalized as a tool to deter felonious behavior, but people, especially juveniles, do not necessarily know that it exists or how

[257] *See generally* Mahdev, *supra* note 27.

[258] *See* United States v. Briones, 18 F.4th 1170, 1176 (9th Cir. 2021).

[259] *Id.*

[260] *See id.*

[261] Flynn, *supra* note 52 (citing Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, CRIM. JUST., Summer 2000, at 26, 27 (noting that adolescents often view the consequences of their actions as "accidental," whereas adults would have foreseen the consequences)).

[262] Flynn, *supra* note 52.

it applies.[263] Additionally, felony murder laws do not deter individuals from engaging in crimes because people cannot be deterred by consequences for actions they do not intend.[264]

The rationales for felony murder hardly make sense for adults, and even less for juveniles who have diminished capacities.[265] The rationales for felony murder for juveniles assume that juveniles will be able to foresee the dangers and consequences of their actions.[266] Adolescents cannot be expected to appreciate the risks that result from their actions.[267] The *Tison* Court found that a defendant's punishment should be determined according to his or her responsibility and moral guilt.[268] Following this logic, adolescent defendants who commit felony murder should not be sentenced to life without parole because this punishment is wholly disproportionate to their moral culpability.[269]

Adolescents are developmentally immature, which means they are unable to think through their actions and are less capable of considering all the consequences of their actions.[270] They are less blameworthy than adults for their criminal conduct because their immaturity makes them more susceptible to negative peer influences.[271] This is particularly true when a young individual is influenced by an adult.[272] Neuroscience findings indicate that young people's "decision making capabilities are not fully developed," which makes them less in control of their actions than adults.[273] The prefrontal cortex, the part of the "brain that is responsible for executive function, judgment, and long-term thinking," does not fully mature until a person's mid-20's.[274] The felony murder rule accepts as fact that an adolescent should foresee how his or her actions could ultimately result in another person's death.[275] This standard essentially demands that a young person use his or her cognitive functions, which are

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[263] Mahdev, *supra* note 27.

[264] Molly Greene, *States Should Abolish "Felony Murder" Laws*, THE APPEAL (Mar. 30, 2021), https://theappeal.org/the-point/states-should-abolish-felony-murder-laws/.

[265] Flynn, *supra* note 52.

[266] Cameron Casey, Comment, *Cruel and Unusual: Why the Eighth Amendment Bans Charging Juveniles with Felony Murder*, 61 B.C. L. REV. 2965, 2994 (2020).

[267] Flynn, *supra* note 52.

[268] Enmund v. Florida, 458 U.S. 782, 801 (1982);.

[269] *See* Flynn, *supra* note 52.

[270] Eileen Grench, *What Happens When a Kid Is Charged with a Felony Murder?*, THE CITY (Dec. 17, 2019), https://www.thecity.nyc/2019/12/17/21210636/what-happens-when-a-kid-is-charged-with-a-felony-murder.

[271] *Juvenile Life Without Parole (JLWOP)*, *Issues*, JUV. L. CTR., https://jlc.org/issues/juvenile-life-without-parole (last visited Feb. 5, 2023).

[272] *See id.*

[273] Grench, *supra* note 260.

[274] Mahdev, *supra* note 27.

[275] *Id.*

not fully developed, to foresee whether risky behavior may have deadly consequences.[276] Adolescents should not be punished for lacking the mental capacity to foresee potential consequences.[277] Research demonstrates that with time most youths grow out of criminal behavior.[278] Life without parole sentences do not allow youths to live lives outside of prison once they have been rehabilitated.[279] Young people have greater potential to rehabilitate themselves than adults do, but sentencing a juvenile to life without parole terminates any possibility of their ever rejoining society.[280]

Adolescents should be considered to have diminished capacity for felony murder liability, like they do in many other areas of the law.[281] Youths are not considered responsible and mature enough to enter into contracts, to vote, to marry, or to leave school.[282] Ironically, they are allowed to "plead guilty, go through complicated legal proceedings, and be sent to prison to die" without giving their age and accompanying immaturity a second thought.[283] If juveniles are considered to have diminished capacity to do something as banal as entering into a contract, then it would logically follow that a court should consider them to have a diminished capacity when sentencing them for committing a crime.[284] It is not enough for courts to have the discretion to consider a juvenile's youthful characteristics. Adolescents in general have diminished capacity and lack the ability to understand the consequences of their actions, so they should not be forced to serve life sentences for crimes for which they were unable to formulate the requisite intent.

### B. INTERNATIONAL LAW TRENDS

Internationally, there has been a movement towards abolishing the life without parole sentence for juveniles. The United Nations Convention on the Rights of Children provides that "[n]o child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

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[276] *Id.*

[277] *See id.*

[278] *Juvenile Life Without Parole (JLWOP)*, *Issues, supra* note 261.

[279] *Id.*

[280] *Id.*

[281] *Capacity*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining diminished capacity as "[a]n impaired mental condition — short of insanity . . . that prevents a person from having the mental state necessary to be held responsible for a crime).

[282] Pat Arthur & Brittany Star Armstrong, *Locked Away Forever: The Case Against Juvenile Life Without Parole*, NAT'L CTR. FOR YOUTH L. (Oct. 6, 2006), https://youthlaw.org/news/locked-away-forever.

[283] Arthur, *supra* note 269.

[284] *See id.*

Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age."[285] The United States is the only country that has not ratified this provision.[286] Twenty-five states and the District of Columbia have banned life without the possibility of parole for juveniles.[287] An additional seven states have limited their laws for juveniles by eliminating life without the possibility of parole for felony murder or by limiting its application.[288]

This trend towards abolishing juvenile life without parole sentences shows that society is realizing that children are different from adults on a multitude of levels, and they should be allowed the opportunity to grow into the model citizens that they have the potential to become.[289] The world has reached a consensus that juveniles should not remain in prison for the remainder of their lives for crimes they commit in their adolescence.[290] The Eighth Amendment forbids the imposition of cruel and unusual punishments.[291] The sentence of life without the possibility of parole for juveniles has been deemed cruel and unusual internationally.[292] Therefore, the United States should join the rest of the world in abolishing this punishment for juveniles.[293]

### C. DISPROPORTIONATE IMPACT ON UNDERPRIVILEGED YOUTH

The felony murder rule disproportionately affects youths of color.[294] Similar to other areas of the criminal justice system, the enforcement of felony murder laws is permeated with racism.[295] A study conducted in Cook County, Illinois, indicates that 81.3% of defendants sentenced under felony murder laws were African American.[296] Across the United States, black youths are sentenced to life without parole at a rate ten

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[285] G.A. Res. 44/25, Convention on the Rights of the Child, at 37(a) (Sept. 2, 1990).

[286] *Id.*

[287] Joshua Rovner, SENT'G PROJECT, JUVENILE LIFE WITHOUT PAROLE: AN OVERVIEW 1 (2021), https://www.sentencingproject.org/app/uploads/2022/08/Juvenile-Life-Without-Parole.pdf.

[288] *Id.*

[289] *See id.*

[290] *See* Convention on the Rights of the Child*, supra* note 282.

[291] U.S. CONST. amend. VIII.

[292] *See* Convention on the Rights of the Child*, supra* note 282.

[293] *Id.*

[294] Greene, *supra* note 257.

[295] *Id.*

[296] Kat Albrecht, *Data Transparency & The Disparate Impact of the Felony Murder Rule,* DUKE CTR. FOR FIREARMS L. (Aug. 11, 2020), https://firearmslaw.duke.edu/2020/08/data-transparency-the-disparate-impact-of-the-felony-murder-rule/; *see also* Molly Greene, *States Should Abolish "Felony Murder" Laws*, APPEAL (Mar. 30, 2021), https://theappeal.org/the-point/states-should-abolish-felony-murder-laws/.

times greater than that of white youths.[297] This disparity in rates of prosecution for felony murder is astounding and worrisome.[298] Some of this disparity can be associated with differential treatment in the criminal justice system generally.[299] Additionally, a high number of young offenders come from "poor, high-violence neighborhoods," which "can contribute to higher rates of involvement in serious crime."[300] Almost half of juvenile lifers experienced physical abuse prior to being convicted.[301] A third of juvenile lifers were raised in public housing, and fewer than half were attending school at the time they committed their offense.[302] The clear solution is to invest in these communities, so they have greater access to education, mental health support, jobs, and economic opportunities.[303] Communities must invest in the education system, as well as programs that serve youth in search of guidance.[304]

Addressing the longstanding issue of the foster-care-to-prison pipeline will disrupt the path that foster youths follow into the criminal justice system.[305] One-quarter of youths in the foster care system will become involved with the criminal justice system within two years of leaving foster care.[306] The foster-care-to-prison pipeline primarily affects youths of color, LGBTQ youths, and youths with mental illnesses, all of whom are more likely to be in foster care and therefore even more likely to be pushed into the criminal justice system.[307] Neglect is the leading cause for removal of children from their homes.[308] Studies show that neglect allegations tend to be connected to a family's financial distress.[309] Policies do not address the main risk factor of parental child abuse and neglect: family poverty.[310] Policymakers invest in foster care rather than in granting benefits to families who need them, which essen-

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[297] Arthur, *supra* note 269.

[298] *Id.*

[299] *See* Ashley Nellis, *The Lives of Juvenile Lifers: Findings from a National Survey*, SENT'G PROJECT 3 (Mar. 1, 2012), https://dataspace.princeton.edu/bitstream/88435/dsp01n583xz14d/3.

[300] *Id.*

[301] *Id.*

[302] *Id.*

[303] *Id.*

[304] *See id.*

[305] *What Is the Foster Care-to-Prison Pipeline?*, *supra* note 261.

[306] *Id*.

[307] *Id*.

[308] *The common thread in child removal – neglect not abuse*, CASA GAL (Oct 27, 2022) https://nationalcasagal.org/the-common-thread-in-child-removal-neglect-not-abuse/#:~:text=neglect%20is%20the%20most%20common,9%25%20percent%20of%20child%20removals.

[309] Melody R. Webb, *Building a Guaranteed Income to End the "Child Welfare" System*, 12 COLUM. J. RACE & L. 668, 675-676 (2022).

[310] *Id*.

tially prioritizes family separation over child welfare.[311] Economic assistance to families who are struggling financially is necessary to ensure that families are able to meet their children's needs.[312] Addressing the root cause for which youths end up in foster care could assist in reducing the likelihood that they will have contact with the justice system.[313]

### D. IMPACT OF *JONES*

The Supreme Court took a step in the wrong direction with its decision in *Jones* because it stepped away from the science-based direction in which juvenile sentencing was headed. *Miller* did not go as far as abolishing the imposition of life without parole sentences on juveniles, but it did attempt to place a limit on the types of juveniles who could be eligible for this sentence.[314] The Supreme Court had the opportunity to, at the very least, reemphasize the limits set by *Miller*, but it instead allowed a sentencer to have broad unchecked discretion when considering whether a life without parole sentence is appropriate.[315] This decision will result in exactly what *Miller* attempted to prevent—locking juveniles capable of change in prison for life.[316]

Since *Miller,* data have shown that sentencing discretion, standing alone, will not make life without parole a less likely sentence for juveniles.[317] Mississippi courts merely require that a sentencer consider youth-related factors, whereas Pennsylvania has adopted procedures which guide sentencers in applying the rule set forth in *Miller*, including a presumption against life without parole that must be rebutted beyond a reasonable doubt.[318] The disparity and general lack of uniformity among sentencing approaches for juvenile defendants varies depending on the state.[319] *Briones* is the perfect example of why making life without the possibility of parole sentencing discretionary is simply not enough. There will be juveniles who, like Riley Briones, will be sentenced to die in prison even though they can and will change for the better.

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[311] *Id*.

[312] *See The common thread in child removal*, *supra* note 290.

[313] *What Is the Foster Care-to-Prison Pipeline?*, *supra* note 261.

[314] *See* Miller v. Alabama, 567 U.S. 460, 465 (2012).

[315] *See* Jones v. Mississippi, 141 S. Ct. 1307, 1318 (2021).

[316] *See id.*

[317] *Jones*, 141 S. Ct. at 1333 (Sotomayor, J., dissenting).

[318] *Id*. at 1333-34 (citing Commonwealth v. Batts, 163 A.3d 410, 433, 435 (2017)).

[319] *A state-by-state look at juvenile life without parole*, THE ASSOCIATED PRESS (July 31, 2017), https://apnews.com/article/9debc3bdc7034ad2a68e62911fba0d85.

## CONCLUSION

The sentence of life without the possibility of parole should not be an option for juveniles who commit felony murder.[320] *Miller* did not go as far as abolishing this sentence for juveniles, but it did limit the sentence by preventing juvenile defendants whose crimes reflect transient immaturity from receiving life without the possibility of parole.[321] Juveniles who commit felony murder fit within this class of juveniles who are not permanently incorrigible.[322] Unfortunately, *Jones* declared that *Miller* did not require a factual finding that a juvenile is permanently incorrigible.[323] As a result, *Jones* allows a sentencer to disregard the characteristics of youth.

As Riley Briones's case demonstrates, some juveniles will fall through the cracks. Briones received a life without parole sentence for a murder that occurred during a robbery, even though he was not the person who committed the murder.[324] Briones demonstrated his capacity for rehabilitation and in fact has successfully undergone rehabilitation for the past eighteen years.[325] Yet, *Jones* barred him from ever reentering society by giving his sentencer the discretion to ignore his transient immaturity and by not requiring the sentencer to explain his determination of whether Briones was incorrigible.[326] The most effective way to shield juveniles from serving life sentences is to reject the logic in *Jones* and to adhere to society's trend toward rehabilitative punishment by abolishing the sentence of life without the possibility of parole for juveniles convicted of felony murder.[327]

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[320] *See* Rovner, *supra* note 207.

[321] *See* Miller v. Alabama, 567 U.S. 460, 489 (2012).

[322] *See* Kokkalera, *supra* note 55.

[323] Jones v. Mississippi, 141 S. Ct. 1307, 1307 (2021).

[324] *See* United States v. Briones, 929 F.3d 1057, 1060-61 (9th Cir. 2019).

[325] *Id*. at 1061-62.

[326] *See Jones*, 141 S. Ct. at 1307.

[327] *See* Kokkalera, *supra* note 55l; *see also* Convention on the Rights of the Child, *supra* note 275.