CRIMINAL LAW — JUVENILE LIFE WITHOUT PAROLE SENTENCES — ELEVENTH CIRCUIT HOLDS THAT *MILLER* IS NOT RETROACTIVE. — *In re Morgan*, 713 F.3d 1365 (11th Cir.), *reh'g en banc denied*, 717 F.3d 1186 (11th Cir. 2013).

The Supreme Court's Eighth Amendment juvenile jurisprudence has evolved rapidly over the past decade. In 2005, the Court's landmark decision in *Roper v. Simmons*[1] abolished the juvenile death penalty. Soon after, in *Graham v. Florida*,[2] the Court held that sentencing juveniles who had committed nonhomicide crimes to life without parole (LWOP) was "cruel and unusual" and thus prohibited by the Eighth Amendment. The Court continued this remarkable expansion of juvenile rights in *Miller v. Alabama*,[3] holding that mandatory LWOP for juveniles convicted of murder also violates the Eighth Amendment. This trilogy of cases has left the lower courts scrambling to resolve many lingering questions — particularly with respect to the practical and temporal limits of the Court's *Miller* decision.[4] Recently, in *In re Morgan*,[5] the Eleventh Circuit held that *Miller*'s elimination of mandatory juvenile LWOP was a procedural, rather than substantive, rule that therefore could not apply retroactively. While this decision was doctrinally sound, the practical result is at odds with the Supreme Court's clear trajectory toward greater protection and greater leniency for minors in the criminal context.

In August of 1991, Michael Morgan — who was seventeen years old — and his friend Patrick Howell set out to rob a Fort Lauderdale drug dealer named Alfonso Tillman.[6] As a cover for the robbery, Howell had arranged to purchase one kilogram of cocaine from Tillman.[7] After Tillman arrived, the group took a drive in Howell's rental car with Morgan seated in the rear behind Tillman.[8] During the

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[1] 543 U.S. 551 (2005).

[2] 130 S. Ct. 2011 (2010).

[3] 132 S. Ct. 2455 (2012). The Court consolidated two juvenile LWOP cases — *Miller v. Alabama* and *Jackson v. Hobbs*, 132 S. Ct. 2455 — and discussed both in a joint opinion.

[4] For an example of the former, see *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (holding that, in practice, a lengthy term-of-years sentence imposed on a juvenile is sufficient to trigger "*Miller*-type protections" requiring individualized sentencing even though it is not technically an LWOP sentence as contemplated under *Miller*), and see also David Siegel, *What Hath* Miller *Wrought: Effective Representation of Juveniles in Capital-Equivalent Proceedings*, 39 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 363, 368–69 (2013) (discussing the existing litigation over whether *Miller* protections extend to sentences for which there is a "theoretical but not meaningful possibility of parole," *id.* at 369, and whether such protections can apply to discretionary LWOP sentences).

[5] 713 F.3d 1365 (11th Cir.), *reh'g en banc denied*, 717 F.3d 1186 (11th Cir. 2013).

[6] United States v. Mothersill, 87 F.3d 1214, 1217 (11th Cir. 1996). At that time, Morgan and Howell were both leaders of an extensive drug operation that supplied and distributed crack cocaine throughout the South. *Id.*

[7] *Morgan*, 717 F.3d at 1187 (Pryor, J., respecting the denial of rehearing en banc).

[8] *Id.*

drive, Morgan twice shot Tillman in the back of the head, and together with Howell pushed his body out of the car and left with Tillman's belongings.[9] Two years later, in 1993, Morgan was convicted of various racketeering offenses based in part on the Tillman murder.[10] Because Morgan was a juvenile at the time of the offenses, the district court sentenced him to life without parole as required by the then-mandatory sentencing guidelines.[11] The Eleventh Circuit later affirmed his conviction on direct appeal.[12]

Since 2004, Morgan has filed three motions to vacate, set aside, or correct his sentence, and all three motions have been dismissed.[13] Most recently, he sought an order from the Eleventh Circuit authorizing the district court to consider a fourth motion to vacate his sentence, claiming that he was entitled to relief under *Miller* because he was sentenced to mandatory LWOP for the commission of a homicide as a juvenile.[14] To grant this order, the court had to find that Morgan's application made a prima facie showing of either newly discovered, and convincing, exculpatory evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court."[15] Morgan argued that *Miller* announced a new retroactive rule because — like *Graham*, which the Eleventh Circuit had held to apply retroactively[16] — its holding "addressed a specific type of sentence for an identifiable class of defendants."[17]

The Eleventh Circuit denied the order. Writing for the panel, Judge Pryor[18] held that while both *Miller* and *Graham* announced new constitutional rules, *Miller* was distinguishable as a procedural rather than substantive rule and thus would not extend retroactively. Under *Teague v. Lane*,[19] a rule is new, and therefore presumptively nonretroactive,[20] if it "was not *dictated* by precedent existing at the time the defendant's

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[9] *Id.* After his ex-girlfriend noticed the blood and bullet holes in the car, Morgan became worried that she might report him, so he offered $1000 to a friend to lure his ex-girlfriend to a rest stop where he could kill her. However, the friend refused. *Id.*

[10] *Id.* at 1188.

[11] *Id.* Morgan's commission of these crimes occurred between the ages of thirteen and seventeen. *Id.* at 1196 (Wilson, J., dissenting from denial of rehearing en banc).

[12] United States v. Mothersill, 87 F.3d 1214, 1220 (11th Cir. 1996).

[13] *See id.* At the time of the Eleventh Circuit's decision, one of Morgan's motions remained pending in the district court before a magistrate judge. *Id.* However, that motion has since been dismissed. *See* United States v. Morgan, No. 4:92cr4013-WS, 2013 WL 3293472 (N.D. Fla. June 27, 2013).

[14] *Morgan*, 713 F.3d at 1366.

[15] 28 U.S.C. § 2255(h) (2006 & Supp. V 2011); *see also id.* § 2244(b)(3)(C).

[16] *See In re* Moss, 703 F.3d 1301, 1303 (11th Cir. 2013).

[17] *Morgan*, 713 F.3d at 1366.

[18] Judge Carnes joined Judge Pryor's opinion.

[19] 489 U.S. 288 (1989).

[20] *Id.* at 310 (opinion of O'Connor, J.) ("Unless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.").

conviction became final."[21] Because of *Miller*'s unprecedented application of the Eighth Amendment, the court concluded that the case established a new rule of constitutional law.[22] However, Morgan argued that *Miller* fell into one of the exceptions to *Teague* nonretroactivity — that it announced a new substantive rather than procedural rule.[23] This substantive exception is implicated when a new rule "prohibit[s] a certain category of punishment for a class of defendants."[24] And, according to Morgan, *Miller* prohibited the imposition of a certain category of punishment — mandatory LWOP — for a defined class of defendants — juveniles convicted of homicide.[25]

The court rejected this argument and held that, unlike *Graham*, *Miller* did not categorically prohibit LWOP as a punishment for juveniles. Instead, "*Miller* changed the procedure by which a sentencer may impose a sentence of life without parole on a minor" by requiring an initial consideration of the offender's youth.[26] Relying on *Schriro v. Summerlin*,[27] the court declared *Miller* a procedural rule because it regulated "only the *manner of determining* the defendant's culpability"[28] and did not "place[] an entire class [of offenders] beyond the power of the government to impose a certain punishment regardless of the procedure followed."[29] Because *Miller* announced a nonretroactive, procedural rule, Morgan was not entitled to relief.

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[21] *Id.* at 301.

[22] Although the Court in *Miller* relied on two strains of precedent, Judge Pryor found that neither dictated the outcome: The first line of precedent — adopting categorical bans on sentencing practices that were excessively severe for a certain class of offenders — had never before been extended to include juveniles convicted of murder. The second line of precedent — requiring individualized sentencing in the capital context — had never before been applied beyond the imposition of the death penalty. *See Morgan*, 713 F.3d at 1367.

[23] *Morgan*, 713 F.3d at 1368; *see also* Schriro v. Summerlin, 542 U.S. 348, 351–52 (2004) ("New *substantive* rules generally apply retroactively. . . . New rules of procedure, on the other hand, generally do not apply retroactively."). *Teague* also recognized an exception for "watershed rules of criminal procedure," 489 U.S. at 311 (opinion of O'Connor, J.), that "implicate the fundamental fairness of the trial," *id.* at 312, and "without which the likelihood of an accurate conviction is seriously diminished," *id.* at 313. This exception has been interpreted extremely narrowly, and the Court in *Teague* cautioned that it would be "unlikely" to apply except in rare cases relating to core components of due process. *Id.*

Every court to have considered the issue has concluded that *Miller* announced a new constitutional rule under *Teague*, although courts differ over whether the new rule is procedural or substantive. *Compare* Chambers v. State, 831 N.W.2d 311, 326, 328 (Minn. 2013) (holding that *Miller* announced a new procedural rule), *with* Jones v. State, 122 So. 3d 698, 703 (Miss. 2013) (holding that *Miller* announced a new substantive rule).

[24] Penry v. Lynaugh, 492 U.S. 302, 330 (1989). For example, the Eleventh Circuit extended *Graham* retroactively because that decision barred LWOP as a punishment for those juveniles convicted of nonhomicide crimes. *See In re* Moss, 703 F.3d 1301, 1303 (11th Cir. 2013).

[25] *Morgan*, 713 F.3d at 1367.

[26] *See id.* at 1368.

[27] 542 U.S. 348.

[28] *Morgan*, 713 F.3d at 1368 (quoting *Schriro*, 542 U.S. at 353).

[29] *Id.*

Judge Wilson concurred but wrote separately to emphasize that this question was "closer than it may first appear."[30] While acknowledging that *Miller* contained the "procedural component" discussed by the majority, he noted that *Miller* also "expand[ed] the range of possible outcomes for an individual in Morgan's position" as opposed to merely altering the process by which those outcomes were reached.[31] Thus, *Miller* "arguably include[d] a substantive component" because a defendant in Morgan's position would now "likely receive a different, and *lesser*, sentence."[32] Despite asserting that *Miller* may have announced a "quasi-substantive rule retroactive to cases on collateral review," he decided to "exercise restraint" in the face of such uncertainty, finding *Miller* to be nonretroactive — "at least until the Supreme Court or [the Eleventh Circuit] sitting en banc directs . . . otherwise."[33]

Following this decision, a majority of Eleventh Circuit judges voted against rehearing the case en banc.[34] In her dissent from the denial, Judge Barkett argued that the rule established in *Miller* was "substantive rather than procedural,"[35] because the vast majority of juvenile offenders convicted of homicide will now receive "*substantively* different and lesser sentence[s]."[36] Judge Wilson also dissented.[37] He argued that "to write off as merely procedural a new rule that will compel a different substantive result . . . in the majority of cases that will follow would be to stretch the meaning of 'procedural' too far."[38]

In response to these dissents, Judge Pryor again defended the nonretroactivity of *Miller* as a "straightforward application of Supreme Court and Circuit precedent."[39] He began by addressing the dissents'

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[30] *Id.* (Wilson, J., concurring).

[31] *Id.* at 1369. He further noted that the Department of Justice (DOJ) had taken "the unusual step" of conceding that *Miller*'s holding should be regarded as a retroactive substantive rule in a "nearly identical application currently pending in the Eighth Circuit." *Id.* (discussing Johnson v. United States, 720 F.3d 720 (8th Cir. 2013) (per curiam)). In his decision supporting the court's denial of rehearing en banc in *Morgan*, Judge Pryor declined to give any weight to the DOJ's position, contending that the government could not concede this issue because the bar on successive habeas petitions is jurisdictional — rendering the DOJ's stance irrelevant to the court's consideration of *Miller*'s retroactivity. *See In re* Morgan, 717 F.3d 1186, 1193 (11th Cir. 2013) (Pryor, J., respecting the denial of rehearing en banc).

[32] *Morgan*, 713 F.3d at 1369 (Wilson, J., concurring).

[33] *Id.*

[34] *Morgan*, 717 F.3d at 1187.

[35] *Id.* at 1195 (Barkett, J., dissenting from denial of rehearing en banc).

[36] *Id.* at 1196.

[37] Judge Martin joined Judge Wilson's dissent.

[38] *Morgan*, 717 F.3d at 1198 (Wilson, J., dissenting from denial of rehearing en banc). Because the Court in *Miller* explicitly cautioned that situations appropriate for the application of juvenile LWOP will be "uncommon," Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012), Judge Wilson maintained that *Miller* shifted what was a mandatory outcome to an uncommon outcome — affecting not only the procedure but also the substance of imposing a juvenile LWOP sentence. *Morgan*, 717 F.3d at 1199 (Wilson, J., dissenting from denial of rehearing en banc).

[39] *Morgan*, 717 F.3d at 1189 (Pryor, J., respecting the denial of rehearing en banc).

arguments that the increased likelihood of a different result makes a rule substantive; rather, "a rule is substantive only if it is a 'substantive *categorical* guarantee[] accorded by the Constitution, regardless of the procedures followed.'"[40] LWOP, the punishment at issue, is still available for juveniles post-*Miller*.[41] Therefore, according to Judge Pryor, the only change required by *Miller* is that judges must now apply a different sentencing procedure before declaring such a punishment.[42] He concluded that en banc reconsideration of this straightforward issue would be "a waste of judicial resources" regardless of the importance of the question.[43]

While Judge Pryor's conclusion that *Miller* announced a new procedural rule is supported by existing retroactivity doctrine, *Morgan*'s practical result is at odds with the Court's trend toward affording juveniles greater constitutional protection and leniency in criminal sentencing. As a result of *Morgan* and similar decisions, many defendants who were sentenced as juveniles — with all the mitigating propensities of youth — will not be afforded individualized sentencing hearings simply because of the timing of their decisions, rather than because they are not constitutionally entitled to such protection. Thus, the Court should weigh in to establish *Miller*'s retroactive application, placing that decision fully in line with its recent Eighth Amendment juvenile jurisprudence.

Unlike *Roper* and *Graham*, *Miller* did not categorically bar the punishment at issue for a certain class of offenders: juveniles convicted of homicide.[44] Instead, *Miller* merely changed the process by which a juvenile may be sentenced to LWOP by first requiring a certain procedure, namely an individualized sentencing determination.[45] This reading of *Miller* directly accords with *Schriro*'s definition of a procedural rule as one that affects only the manner in which a punishment is imposed.[46] Still, the Eleventh Circuit's rigid application of the procedural-

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[40] *Id.* at 1191 (alteration in original) (quoting Penry v. Lynaugh, 492 U.S. 302, 329 (1989)).

[41] *Id.* at 1191–92. Judge Pryor explained that, because LWOP remains a viable option if the proper procedure is followed, the court still cannot be sure of any juvenile defendant's sentencing outcome — demonstrating that the rule *Miller* announced was purely procedural. *Id.*

[42] *Id.* at 1192.

[43] *Id.* at 1193; *see also id.* at 1193–95.

[44] *See Morgan*, 713 F.3d at 1368–69 (Wilson, J., concurring).

[45] *See id.*

[46] Schriro v. Summerlin, 542 U.S. 348, 353 (2004). However, as Judge Wilson astutely noted, the question of *Miller*'s retroactivity can be considered a close one: many courts have taken a more flexible view of *Miller*, holding that it may have announced a new *substantive* rule retroactively applicable to cases on collateral review. For example, the Third Circuit and the Eighth Circuit both granted motions similar to Morgan's, finding that the petitioners made prima facie showings that *Miller* announced a new retroactive rule. *See In re* Pendleton, 732 F.3d 280 (3d Cir. 2013) (per curiam); Johnson v. United States, 720 F.3d 720 (8th Cir. 2013) (per curiam). In contrast, the Fifth Circuit held that *Miller* is procedural and cannot provide relief on collateral

substantive divide ignores the recent trend in the Court's juvenile jurisprudence, focusing on the procedure dictated by *Miller* rather than on the reasoning underlying its shift to individualized sentencing.

In the past decade, the Court has clearly established that "kids are different" in the criminal context and thus deserving of greater constitutional protections.[47] This trend began with the *Roper* decision, which banned the death penalty for juveniles because of their lack of maturity, susceptibility to negative influence, and greater capacity for rehabilitation.[48] Five years later, the Court extended this reasoning in *Graham* to prohibit the imposition of LWOP for juveniles convicted of nonhomicide offenses, finding the punishment disproportionate "in light of [the] offender's capacity for change and limited moral culpability."[49] The following year, *J.D.B. v. North Carolina*[50] answered the open question whether the uniqueness of youth had implications outside of the Eighth Amendment context. In *J.D.B.*, the Court held that a suspect's age is relevant to the *Miranda* custody analysis precisely because children are more vulnerable to outside pressure and often lack the experience necessary to make informed choices.[51] The Court's most recent expansion of juvenile constitutional rights in *Miller* echoed these "hallmark features" of youth — especially diminished culpability and heightened capacity for change[52] — and found that they necessitated individualized sentencing in order to constitutionally impose LWOP, the "most serious punishment[]" available for minors.[53]

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review. *See* Craig v. Cain, No. 12-30035, 2013 WL 69128, at *2 (5th Cir. Jan. 4, 2013). *See also* Siegel, *supra* note 4, at 368 n.38 (listing cases that have decided the *Miller* retroactivity question).

It should be noted that the majority of courts holding *Miller* to be retroactive have relied, at least in part, on the procedural posture of *Jackson* — the companion case to *Miller* — which was on collateral review to the Court when the defendant was granted relief, a factor not considered in the *Morgan* decision. While *Jackson* is arguably indicative of the Court's intent to apply the *Miller* safeguards expansively, without regard to the direct-collateral distinction, *Jackson*'s procedural posture is not dispositive because the retroactivity issue was not raised before the Court. *See* Collins v. Youngblood, 497 U.S. 37, 40–41 (1990) (declining to address whether the relief sought by the plaintiff constituted a "new rule" under *Teague* in a case before the Court on collateral review because the state had not raised retroactivity as a defense).

47 Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J.L. & SOC. CHANGE 285, 292 (2012).

48 *See* Roper v. Simmons, 543 U.S. 551, 569–73 (2005) (reasoning that "[r]etribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity," *id.* at 571, and that it is "misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed," *id.* at 570).

49 Graham v. Florida, 130 S. Ct. 2011, 2030 (2010).

50 131 S. Ct. 2394 (2011).

51 *See id.* at 2403–05; *see also* Hillary B. Farber, J.D.B. v. North Carolina*: Ushering in a New "Age" of Custody Analysis Under* Miranda, 20 J.L. & POL'Y 117, 126–38 (2011) (discussing the likely determinative role that *Roper* and *Graham* played in the *J.D.B.* decision).

52 Miller v. Alabama, 132 S. Ct. 2455, 2468 (2012).

53 *Id.* at 2471.

Although these recent cases emphatically caution of the dangers of imposing the harshest sentences on minors, *Morgan*'s prescriptive application of retroactivity doctrine ensures that many juvenile defendants will continue to serve unconstitutional sentences due only to an accident of timing.[54] The Court's language in *Graham* is particularly instructive as it relates to the imposition of juvenile LWOP: There the Court likened LWOP to the death penalty, as "the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration . . . ."[55] This analogy emphasizes the extreme stakes at play when a minor is sentenced to LWOP and implicates the validity of all juvenile LWOP sentences imposed without an individualized sentencing determination, regardless of when a given defendant's conviction became final. In *Graham*, the Court also emphasized that, although the state was not required to release juvenile nonhomicide offenders who still posed a risk of harm to society, the state *was* required under the Eighth Amendment to provide them with "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[56] The Court in *Miller* echoed similar concerns about inattention to the unique features of youth and so held that sentencers could not "proceed as though [the offenders] were not children."[57] But the Eleventh Circuit's denial of retroactivity in *Morgan* foreclosed the possibility of any sentencer giving due consideration to youth. As a result, many juvenile offenders, like Morgan, will spend the remainder of their lives in prison despite their diminished culpability and distinctive potential for rehabilitation.[58]

The stark difference between the likelihood of an LWOP sentence for a minor convicted of homicide pre- and post-*Miller* also raises fundamental fairness concerns, especially in light of the Court's recent findings about the juvenile brain.[59] In *Miller*, as in *Roper* and *Graham*,

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[54] The Court has previously stated that a retroactivity determination does not imply that "the right at issue was not in existence prior to the date the 'new rule' was announced," but rather it is an inquiry into whether the defendant is entitled to relief for a violation that occurred prior to that announcement. Danforth v. Minnesota, 552 U.S. 264, 271 (2008).

[55] *Graham*, 130 S. Ct. at 2027.

[56] *Id.* at 2030.

[57] *Miller*, 132 S. Ct. at 2466. The Court noted that this "foundational principle," *id.*, applies with equal force in the homicide context: "[N]one of what [*Graham*] said about children — about their distinctive (and transitory) mental traits and environmental vulnerabilities — is crime-specific." *Id.* at 2465.

[58] The Court's language in *Miller* underscores this point: "Life without parole 'forswears altogether the rehabilitative ideal.' It reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." *Miller*, 132 S. Ct. at 2465 (alteration in original) (citation omitted) (quoting *Graham*, 130 S. Ct. at 2030).

[59] *See* Levick, *supra* note 47, at 299–314. In particular, in *Graham*, the Court pointed to developmental research demonstrating "fundamental differences between juvenile and adult minds"

the Court relied on neuroscience research to strengthen commonsense claims about juveniles' "transient rashness, proclivity for risk, and inability to assess consequences," all of which lessen their moral culpability and enhance their prospects for rehabilitation.[60] The Court thus cautioned that, with respect to LWOP, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," especially under the new individualized-sentencing regime.[61] At least if sentencing courts follow the spirit of *Miller*, it is unlikely that many juvenile offenders will receive LWOP sentences in the future. In contrast, there is a strong likelihood that *most* of the juveniles sentenced under the mandatory LWOP scheme in the Eleventh Circuit are serving unconstitutional sentences with no hope for release. Based on the developmental research the Court relied on in *Miller*, these juvenile defendants are equally deserving of *Miller*'s extra protections, and so the injustice of drawing an arbitrary line based on timing, rather than on culpability, is intensified.[62]

For the 336 juveniles in the Eleventh Circuit[63] — and for the thousands of juveniles nationwide[64] — serving mandatory life sentences for homicides committed before they turned eighteen, the question of *Miller*'s retroactivity is critical. Unfortunately, the Eleventh Circuit's decision in *Morgan* and similar decisions declining to apply *Miller* retroactively mean that many of those individuals will spend the rest of their lives in prison serving sentences imposed without proper regard for their diminished culpability or their capacity for rehabilitation. This result, while doctrinally sound, is in direct conflict with the Court's clear trend toward ensuring greater protections for juvenile offenders. Thus, the Court should intervene to ensure that *Miller* is applied retroactively to the constitutionally flawed sentences of *all* juveniles, rather than just those with fortuitous timing.

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to conclude that the traditional rationales for punishment were less applicable in juvenile cases. *Graham*, 130 S. Ct. at 2026.

60 *Miller*, 132 S. Ct. at 2465; *see also id.* at 2464 n.5; Kimberly Larson et al., Miller v. Alabama*: Implications for Forensic Mental Health Assessment at the Intersection of Social Science and the Law*, 39 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 319 (2013) (discussing the Court's reliance on developmental research in its recent Eighth Amendment decisions).

61 *Miller*, 132 S. Ct. at 2469.

62 Indeed, this outcome also appears to be in direct conflict with the *purpose* of retroactivity, as articulated by the Court: that rules should be administered retroactively "because they necessarily carry a significant risk that a defendant . . . faces a punishment that the law cannot impose upon him" any longer. Schriro v. Summerlin, 542 U.S. 348, 352 (2004) (quoting Bousley v. United States, 523 U.S. 614, 620 (1998)) (internal quotation mark omitted).

63 *In re* Morgan, 717 F.3d 1186, 1202 (11th Cir. 2013) (Wilson, J., dissenting from denial of rehearing en banc).

64 It is estimated that as many as 2500 individuals are currently serving mandatory LWOP sentences for murders committed as juveniles. Larson et al., *supra* note 60, at 340.