

No. 17-165

---

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

---

TIMOTHY S. WILLBANKS, Petitioner,

v.

MISSOURI DEP'T OF CORRECTIONS, Respondent.

---

LEDALE NATHAN, Petitioner,

v.

STATE OF MISSOURI, Respondent.

---

**On Petition for a Writ of Certiorari  
to the Missouri Supreme Court**

---

**REPLY BRIEF FOR PETITIONERS**

---

CRAIG A. JOHNSTON  
WILLIAM J. SWIFT  
Office of the Missouri  
State Public Defender  
Woodrail Centre  
1000 W. Nifong  
Building 7, Suite 100  
Columbia, MO 65203

STUART BANNER  
*Counsel of Record*  
UCLA School of Law  
Supreme Court Clinic  
405 Hilgard Ave.  
Los Angeles, CA 90095  
(310) 206-8506  
banner@law.ucla.edu

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
REPLY BRIEF FOR PETITIONERS .....	1
CONCLUSION .....	3

**TABLE OF AUTHORITIES**

CASES

*Ali v. Minnesota*, No. 17-5578 (filed Aug. 8, 2017) ..... 1

*Graham v. Florida*, 560 U.S. 48 (2010) ..... 2

*Miller v. Alabama*, 567 U.S. 460 (2012) ..... 2

*New Jersey v. Zuber*, No. 16-1496 (filed June 12, 2017) ..... 1, 2

*Ohio v. Moore*, No. 16-1167 (filed Mar. 22, 2017) ..... 1, 2

## REPLY BRIEF FOR PETITIONERS

Missouri concedes (BIO 17-18) that there is a deep lower court conflict on the question presented. The state acknowledges (BIO 24) that this case is an excellent vehicle for resolving the conflict. Missouri even provides (BIO 26-32) additional reasons for granting certiorari. The state nevertheless urges the Court to deny certiorari on two grounds—first (BIO 19), that the Court would benefit from letting the issue percolate in the lower courts, and second (BIO 19-24), that the decision below was correct. The state is mistaken in both respects.

1. There is nothing to be gained from further percolation. The lower courts are already divided fourteen to five. Many of the opinions on both sides are lengthy and thorough. Several of these opinions have long dissents that are just as thoughtful. *See* cases cited at Pet. 19-20. Every conceivable argument has been aired. By now the Court has received at least three other certiorari petitions raising the same issue. *See Ali v. Minnesota*, No. 17-5578 (filed Aug. 8, 2017); *New Jersey v. Zuber*, No. 16-1496 (filed June 12, 2017); *Ohio v. Moore*, No. 16-1167 (filed Mar. 22, 2017). If the Court denies certiorari in all these cases, the conflict will just grow larger, but the Court will not acquire any new information.

Missouri correctly notes (BIO 19) that the Court denied certiorari on this issue while the conflict was still in the process of forming. But that is hardly a reason for denying certiorari now that the conflict is fully formed.

Missouri is just one of seventeen states the Court has recently heard from on this issue. The other six-

teen are urging the Court to decide the issue now, because they recognize that additional percolation would be pointless. *See* Pet. for Cert., *New Jersey v. Zuber*, No. 16-1496; Brief of *Amici Curiae* State of Utah and Thirteen Other States Supporting Petitioner, *New Jersey v. Zuber*, No. 16-1496; Pet. for Cert., *Ohio v. Moore*, No. 16-1167.

2. This is not the place for an extended argument on the merits, but two points deserve emphasis.

First, Missouri’s discussion completely overlooks the rationale of the Court’s cases in this area—that “children are constitutionally different from adults for purposes of sentencing.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012). The difference between juveniles and adults is that “because juveniles have lessened culpability they are less deserving of the most severe punishments.” *Graham v. Florida*, 560 U.S. 48, 68 (2010). Much of what Missouri has to say on the merits would be on point as applied to adults, but the Court has already rejected Missouri’s view when it comes to juveniles.

Second, *Miller* and *Graham* would be virtually meaningless if states could evade them by imposing *de facto*, rather than *de jure*, sentences of life without parole. The Eighth Amendment governs the substance of sentences, not merely their form. It is small comfort to hear that “each offender has an opportunity for parole in old age” (BIO 20), when petitioners are very likely to be dead by then.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CRAIG A. JOHNSTON  
WILLIAM J. SWIFT  
Office of the Missouri  
State Public Defender  
Woodrail Centre  
1000 W. Nifong  
Building 7, Suite 100  
Columbia, MO 65203

STUART BANNER  
*Counsel of Record*  
UCLA School of Law  
Supreme Court Clinic  
405 Hilgard Ave.  
Los Angeles, CA 90095  
(310) 206-8506  
banner@law.ucla.edu