



# Advisory

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## JONES DECISION A MAJOR VICTORY FOR VICTIMS' RIGHTS

*Decision upholds juvenile murderer's life-without-parole sentence*

In a 6-3 decision announced on April 22, the U. S. Supreme Court rejected a juvenile murderer's claim that the Court's 2016 holding in **Montgomery v. Louisiana** invalidates his sentence of life in prison without the possibility of parole (LWOP). At issue in the case of **Jones v. Mississippi** was whether the **Montgomery** ruling changed the rules regarding what judges are required to do in order to sentence a murderer who was under 18 years old at the time of the crime to LWOP.

The Criminal Justice Legal Foundation had joined the case to argue that the **Montgomery** ruling announced a new rule requiring a judge to find "permanent incorrigibility" before sentencing a juvenile murderer to LWOP, while

suggesting that the rule was already included in the Court's 2012 decision in **Miller v. Alabama**. To the extent that the **Montgomery** opinion implied such a requirement, it was a misinterpretation of **Miller**.

The Court's majority opinion by Associate Justice Brett Kavanaugh states, "In light of that explicit language in the

Court's prior decisions, we must reject Jones's argument.... In short, **Miller** followed the Court's many death penalty cases and required that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence. **Miller** did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence."

In a rare move, CJLF also filed a second brief on behalf of the National Organization of Victims of Juvenile Murderers and Arizona Voice for Crime Victims, Inc. to encourage consideration of the added impact that juvenile murder cases have upon the families of their victims each time a juvenile murderer's

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*Brett Jones, at age 15, within a month of having moved in with his grandparents, stabbed his grandfather to death.*

## NEW BAIL REQUIREMENT INTRODUCED BY COURT RULING

There was broad news coverage of the California Supreme Court's March 25, 2021 ruling in the case of **In re Humphrey**. In a unanimous opinion, the Court announced that the Constitution requires judges to consider a suspect's "ability to pay" when deciding if he can be released on bail. The Associated Press story by Don Thompson was picked up not only by most California newspapers and broadcasters, but by the Miami Herald, U.S. News, Chicago Tribune, The Baltimore Sun, NBC News and many more. The ruling was characterized as "landmark" because the court added a requirement to the decision to set bail, not provided under state law, noting that setting a bail amount that the suspect cannot afford "accords insufficient respect to the arrestee's crucial state and federal equal protection rights against wealth-based detention as well as the arrestee's *state and federal substantive due process rights to pretrial liberty*."

To support its contention that an arrestee's "ability to pay" is a right provided by the U. S. Constitution, the Court cited several federal circuit court rulings to suggest that, "[t]he com-

mon practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional." While **Humphrey** is a state supreme court ruling, it comes from the largest and most litigious state in the nation. It is worth pointing out that former California Attorney General Xavier Becerra and San Francisco District Attorney Chesa Boudin gave cover to the court by arguing in support of the defendant's claim and declining to oppose it. Other states such as Illinois, New York, Minnesota, and Washington looking to inject more "social justice" into their criminal law will likely cite the ruling as legal support for their efforts to abolish or severely restrict bail.

The bail industry was quick to note that the ruling will turn more bail decisions into litigation. "The lens of due process is going to be on every bail, because prosecutors are going to have to prove, by clear and convincing evidence, a flight risk or danger' if they seek to keep a lower-income suspect in custody," said an industry spokesperson.

Other law enforcement groups offered nuanced responses to

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# FOUNDATION DEBUNKS LA DISTRICT ATTORNEY GASCÓN'S CLAIM

“...the effect of incarceration length on recidivism appears too heterogeneous to be able to draw universal conclusions. We argue that a deepened understanding of the causal mechanisms at play is needed to reliably and accurately inform policy.”

Progressive Los Angeles District Attorney George Gascón has repeatedly claimed “science and data” support his sentencing reduction policies because they show that longer sentences for repeat offenders actually increase crime. A review of the research by CJLF indicates that this claim is false.

Upon taking office last December, District Attorney George Gascón announced a policy that “sentence enhancements or other sentencing allegations ... shall not be filed in any cases and shall be withdrawn in pending matters.” Sentence enhancements are additions to a convicted criminal’s sentence for aggravating factors, such as causing great bodily injury, using a gun, or having previously been convicted of a serious or violent felony.

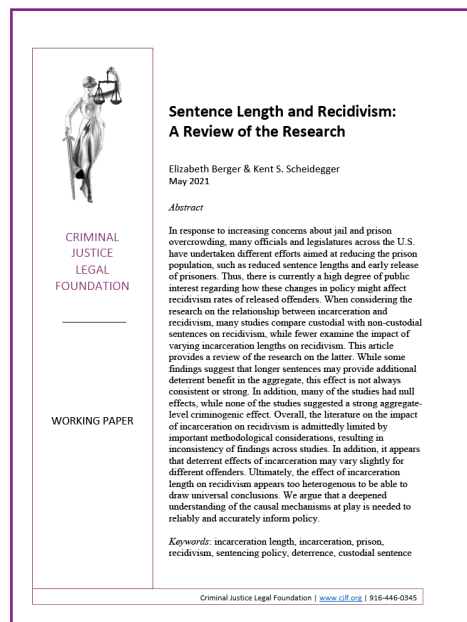
In Special Directive 20-08, the new DA supported this policy with a claim that “studies show” that longer sentences cause a large increase in the rate at which felons commit new crimes after release, so large that it overcomes the benefit of preventing them from committing new crimes while they are in prison. In a press release on March 17, 2021, Gascón asserted in support of this policy and others, “We are doing all of this because the science and data tell us so.” However, with regard to sentence length and recidivism, the District Attorney’s Office has cited only one unpublished, non-peer-reviewed manuscript in support of the claim.

Earlier this year CJLF undertook a review of published research on this subject to determine if, in fact, “studies show” what Gascón claims. CJLF released the results on May 11, 2021, in the form of a working paper, *Sentence Length and Recidivism: A Review of the Research*. The paper is co-authored by CJLF Research Associate Elizabeth Berger and Legal Director Kent Scheidegger.

“There is no strong basis in the published research for the claim that longer sentences increase recidivism relative to shorter ones,” said Berger. “Most studies on the effect of sentence length suggest either no effect on recidivism or slight reductions in recidivism.”

“Cherry-picking a single unpublished paper for what ‘studies show’ when the body of published literature is contrary is a blatant misrepresentation,” said Scheidegger. “The state of our knowledge in this area is still limited, but what we do know tends to refute rather than support Gascón’s claims.”

CJLF’s working paper, *Sentence Length and Recidivism: A Review of the Research*, is available at <https://www.cjlf.org/publications/papers/SentenceRecidivism.pdf>.



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# LIVES ARE LOST WHEN POLICE BACK OFF

The claim that America's criminal justice system is systematically racist is not new. It was the basis of the 1991 riots in Los Angeles after a jury acquitted four police officers caught on video beating a black man named Rodney King. The video was damning, but it did not show King, who was drunk and just one year out of prison for robbery, leading police on a 117-mph chase through Los Angeles. It did not show King's two passengers obey officers' orders and remain unmolested, nor King's refusal to comply and actually charge at one of the officers. The riot resulted in 63 deaths and \$1 billion in damages. Whatever had been done to close the racial divide in the years following the Rodney King riots seems to have evaporated in recent years.

In 2008, America elected its first black president. A major focus of the Obama administration was the narrative that racial bias was baked into just about every aspect of the nation's founding and its institutions. The "police are racist" theme was the basis of policy at the Obama Department of Justice, which forced consent decrees upon police departments in several large U. S. cities to reduce claimed racial bias in policing. The fatal shooting of Trayvon Martin, a 17-year-old black man, by a Hispanic neighborhood watchman in 2012, was reported for weeks as the unjustified racial killing of a young unarmed black man by a white bigot. Shortly after the shooting was reported, the President told the nation, "If I had a son, he would look like Trayvon." Months later the watchman, George Zimmerman, was found not guilty on all counts and an Obama Justice Department investigation failed to find a racial motive for the shooting or any violation of Martin's civil rights.

Two years later a white veteran police officer in Ferguson, Missouri, shot and killed Michael Brown, an 18-year-old black man in front of several witnesses. It was immediately reported as the racially-based killing of a promising black teen who was shot while holding his hands up. There were eight nights of rioting in Ferguson, as the President told the media that the shooting exposed a racial divide in the American justice system that "stains the hearts of black children." Months later, a grand jury, after interviewing several mostly black eyewitnesses, found that the evidence indicated that the 6'4", 290 lb. teen had attacked the officer and was actually charging at him when he was shot. On March 4, 2015, the Obama Justice Department announced that its investigation could not find sufficient evidence that the killing was racially motivated.

The net effect on police, resulting from these and several other incidents involving the deaths of black suspects between the time of the Michael Brown shooting and the May 2020 death of George Floyd, was easily predictable. Officers backed off on the policing of minority neighborhoods where most crimes are committed. When responding to a call involving a resisting black suspect, officers are now making a cost-benefit analysis which counsels not to engage. As one deputy put it, an officer opting for the use of force "could lose his career, his life, or his liberty."

By the time George Floyd was killed by a rogue police officer in late May of last year, a national anti-police infrastructure had been formed around an organization called Black Lives Matter. The group had direct ties to the national media, headquarters with paid staff in every major U. S. city, and millions of dollars contributed by liberal billionaires, prominent entertainers, and corporations purchasing credibility as nonracist. Days after Floyd, a violent felon high on Fentanyl, was killed by the officer attempting the arrest, riots broke out in hundreds of cities with buildings set on fire, widespread looting, and violent attacks on police and civilians. For anyone paying attention, it became clear that the thousands breaking into local Target, Walmart, Macy's, and pharmacies to steal televisions, appliances, watches, and tennis shoes were not there to honor George Floyd. They were being allowed to commit these crimes because, in most big cities, police were being prohibited from making arrests.

Excellent research by Professor Paul Cassell, examining 2020 arrest rates in Chicago, the number of pedestrian stops in Los Angeles, and the number of vehicle stops in Philadelphia, indicates a significant decline in police contacts in these cities that cannot be explained by the pandemic. In Philadelphia and Los Angeles, police contacts understandably dropped during the March thru May lockdowns, but fell even lower and stayed there as these cities were overcome with rioting after the Floyd killing. Both cities suffered unprecedented increases in homicides, which began during the riots. In Chicago, the arrest rate dropped during the lockdowns, spiked briefly during the riots, then dropped to about half of normal and stayed there through the summer and fall, even as homicides reached historic levels. "The best, currently available evidence strongly supports the conclusion that the Great 2020 Homicide Spike resulted from the widespread anti-police protests, which in turn lead [sic] to a reduction in policing activity directed at fighting gun crimes," writes Professor Cassell.

An unfortunate example of the real-world impact of reduced policing is provided in a recent news story in the Sacramento Bee. On Monday, February 6, black repeat offender Raymond



Raymond Weber

Weber was arrested for the murders of two women in a Vacaville, CA, apartment. Weber actually livestreamed the dead victims lying on the floor as he is seen carrying a handgun. Two months earlier, on November 29, 2020, a young Sacramento woman called the police after Weber, a man she had been dating, pistol-whipped her and attempted to shoot her before she was able to exit his car and run away. When the police arrived, the woman, who was black, was bleeding. She pointed to her

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# B O X S C O R E

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

**Jones v. Mississippi:** 4/22/21. A U. S. Supreme Court 6-3 decision rejecting a juvenile murderer’s claim that his life-without-the-possibility-of-parole (LWOP) sentence is a violation of his constitutional rights. In 2004, less than one month after his grandparents took him in, 15-year-old Brett Jones stabbed his 67-year-old grandfather eight times, killing him. After hiding the body and cleaning up the blood, he was arrested while trying to leave town. At trial, Jones claimed that he killed his grandfather in self-defense. The jury found him guilty of deliberate-design murder and he was sentenced to LWOP. Six years later, the Supreme Court held in **Miller v. Alabama** that a mandatory LWOP sentence for a juvenile murderer was unconstitutional. Jones was resentenced under the new rules and again received LWOP. The following year the Supreme Court handed down a new juvenile sentencing requirement in **Montgomery v. Louisiana**, which the Court claimed was actually included in the **Miller** decision. Jones argued that he is now entitled to another resentencing. CJLF joined the case to argue that the Court clearly misinterpreted **Miller** to justify a new rule not required by the Constitution. The high court utilized CJLF’s arguments and research in its decision. WIN

**In re Humphrey:** 3/25/21. California Supreme Court ruling announcing that the decision to set bail for a habitual felon must be based on his ability to pay it, not public safety. The case involves a repeat felon charged with robbery after he followed an elderly man into his San Francisco apartment and robbed him. At the bail hearing, Humphrey asked to be released without bail because of his ties to the community. The judge refused, setting bail at \$350,000. On appeal, Humphrey won a ruling ordering the trial judge to base the decision regarding bail on his ability to pay. When the Supreme Court agreed to review that ruling, CJLF joined the case to argue that making cash bail contingent on a suspect’s ability to pay violates state law that allows for the consideration of the safety of the public and the victim, the seriousness of the alleged crime, the suspect’s criminal record, and the likelihood that he or she will flee. Then-California Attorney General Xavier Becerra and San Francisco Chesa Boudin both encouraged the court to interpret state law to require “ability to pay” as a factor when setting bail. Only the bail industry and CJLF encouraged the court to follow the law. LOSS

**O.G. v. Superior Court:** 2/25/21. California Supreme Court ruling announcing that a law (SB 1391) passed by the state Legislature in 2018, which *prohibits* the very worst under-16 murderers from being tried in adult court, conforms with a 2016 ballot measure that *allows* juvenile murderers to be tried in adult court. Any criminal, including murderers, who are convicted in juvenile court can only be imprisoned *until age 25*. In this case, O.G., a 15-year-old street gang member, murdered two people, one with a gun and another with a knife, to gain respect from his fellow gang members. When the Ventura County District Attorney requested that the killer be tried in adult court, the presiding judge agreed, questioning the validity of SB 1391. The murderer appealed, and a unanimous panel of the Second District Court of Appeal held that SB 1391 violated Jerry Brown’s 2016 Proposition 57, which allows the prosecution of juveniles in adult court. Proposition 57 specified that it could not be amended by the Legislature unless the amendment furthers the intent of the initiative. When the Supreme Court agreed to hear the murderer’s appeal, CJLF filed argument stressing that the intent of Proposition 57 was to give judges the discretion to order the prosecution of a violent juvenile in adult court. SB 1391 ignores that intent by taking away that discretion. Then-California Attorney General Xavier Becerra filed argument in the case supporting the murderer’s claim. In its unanimous ruling, California Supreme Court held that SB 1391 “is fully consistent with and furthers” the intent and purpose of Proposition 57. LOSS

**Deck v. Jennings (formerly Deck v. Steele):** 10/19/20. Unanimous Eighth Circuit Court of Appeals decision reinstating the death sentence of a double murderer. Undisputed evidence proved that Carman Deck robbed and executed an elderly couple in their Missouri home in 1996. On appeal, Deck raised claims successfully challenging his sentencing hearing twice, and juries sentenced him to death at each new hearing. After the third hearing in 2008, Deck petitioned the federal district court on habeas corpus, arguing that the length of time spent between his conviction in 1998 and on his third resentencing trial in 2008 violated his rights and that his attorney for the third sentencing trial was incompetent because he failed to raise that claim. The district court agreed and overturned his sentence. When the Eighth Circuit agreed to review that ruling, CJLF submitted argument on behalf of the family of the victims, noting that the district court invented a new constitutional right for Deck with no legal precedent to support it. CJLF also noted that a lawyer who does not present a claim never raised before and unsupported by precedent is not incompetent. The Eighth Circuit followed that argument in its decision. WIN

**DHS v. Thuraissigiam:** 6/25/20. U. S. Supreme Court decision overturning a March 2019 Ninth Circuit ruling granting constitutional rights to an illegal alien caught walking across the U. S. border. The case involves an illegal from Sri Lanka arrested 25 yards inside the California/Mexico border. The alien asked for asylum, claiming that he was a persecuted minority in his home country who had been beaten for his political beliefs. After the claim was determined not credible, he was ordered deported. Represented by the ACLU, the alien appealed to the federal district court in San Francisco. That DRAW

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court rejected the claim that he was entitled to sue the government because federal law sharply limits judicial review of the deportation of certain recent arrivals, including those in Thuraissigiam's situation. The Ninth Circuit reversed the lower court announcing that the federal law limiting habeas corpus review was unconstitutional. CJLF has joined the case to argue that the Ninth Circuit was flat wrong. Congress, not the courts, holds the power to determine if an illegal alien who steps across the border and seeks asylum is entitled to the constitutional rights afforded to U. S. citizens and persons who have established residence here. The high court upheld the statute as applied to this case, although on different reasoning.

**Mathena v. Malvo:** 2/26/20. U. S. Supreme Court case reviewing a 2018 ruling by the Fourth Circuit Court of Appeals that voided the four life sentences given to Lee Boyd Malvo, one of the notorious DC snipers. In that ruling, the Fourth Circuit held that Supreme Court decisions announced after Malvo's conviction prohibited the trial court from sentencing him to life without parole (LWOP) under the law in effect in Virginia at the time. In 2002, 17-year-old Malvo and John Muhammad terrorized the Washington metropolitan area, indiscriminately murdering 12 people and critically injuring 6 others over a 6-week period. Malvo personally killed 3 of the victims. He robbed several other victims after they were killed by Muhammad. The Supreme Court's 2012 ruling in **Miller v. Alabama** prohibited a *mandatory* LWOP decision for murderers under the age of 18 years old. Later in **Montgomery v. Louisiana**, the Court held that an LWOP sentence would be permitted for the "rare juvenile offender whose crime reflects irreparable corruption." CJLF joined the case to argue that in Malvo's case the LWOP sentence was not mandatory and that the murders he helped commit easily met the "irreparable corruption" exception. In February 2020, the Court dismissed the case after Virginia passed a law prohibiting LWOP for juvenile murderers.

**DRAW**

**Hernández v. Mesa:** 2/25/20. U. S. Supreme Court decision rejecting a lawsuit seeking to hold a U. S. Border Patrol agent personally liable for the shooting of a Mexican juvenile on the Mexican side of the border. The case stems from a border patrol agent's attempt to arrest a Mexican national trying to sneak across the border in El Paso, Texas. As the agent detained the suspect, a group of juveniles on the Mexican side began pelting him with rocks. The agent responded by firing at the juveniles, killing Sergio Adrian Hernández Guereca, a known smuggler of aliens across the U. S. border. Sergio's parents, who are also Mexican citizens, filed a federal lawsuit claiming that their son's U. S. constitutional rights were violated by the border patrol agent and that they are entitled to hold him personally liable for the excessive force he used. CJLF joined the case to argue that Mexican citizens killed or injured in Mexico by the actions of a U. S. agent have no U. S. constitutional rights unless Congress passes a law giving rights to them. The Court's 5-4 decision adopted that argument to dismiss the lawsuit.

**WIN**

**McKinney v. Arizona:** 2/25/20. U. S. Supreme Court decision which *utilized CJLF arguments* to reject a condemned double-murderer's claim that he was entitled to a new sentencing hearing. James McKinney was sentenced to death after he and an accomplice intentionally killed two people during a 1991 spree of residential burglaries. In 1993, a jury found him guilty, and the judge identified and weighed the aggravating and mitigating factors and sentenced McKinney to death. In 2002, the U. S. Supreme Court changed the rules, announcing in **Ring v. Arizona** that a jury, rather than a judge, must make the finding of at least one aggravating factor that makes a case eligible for capital punishment, but did not apply this change retroactively. In 2015, the Ninth Circuit overturned McKinney's sentence, ruling that the sentencing judge did not properly weigh the aggravating and mitigating factors in reaching the final sentencing decision. After the Arizona Supreme Court reweighed the sentencing factors and reaffirmed the death sentence, the U. S. Supreme Court accepted McKinney's appeal for review. CJLF joined the case to argue that the Arizona Supreme Court's reweighing procedure was valid. **Ring** requires a jury only for the finding that makes a case eligible to be considered for the death penalty. Whether the weighing of the factors and final decision of the sentence is done by judges or juries is a matter of state law. Expanding **Ring**, as McKinney requested, would have invited hundreds of challenges of lawful sentences in settled cases. The Court's 5-4 decision *utilized arguments* made only by CJLF in this case.

**WIN**

**TOTAL**

**4 Wins**

**2 Losses**

**2 Draws**

## "WHEN POLICE BACK OFF"

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attacker's car and spotted Weber walking into an apartment. "I said, 'There's his car right there'.... He had my cell phone, he had my car keys, my house keys.... 'Officers, he's right there.... He's walking into that apartment there.... He's armed and dangerous,'" she later told reporters. Instead of making any contact with Weber, the officers drove the woman home. At that time, Weber was free on bail awaiting trial on charges of domestic violence and assault with a deadly weapon. An attorney who filed a complaint on the beating victim's behalf told reporters,

"it certainly appears that the Sac Police missed an opportunity to prevent a double homicide and also ignored compulsory domestic violence laws.... Something's gone terribly wrong. If there is an explanation for this we want to hear it...."

It is possible that we already know the explanation. The officers made a cost-benefit analysis about confronting an armed black suspect who was likely to resist. It is easy to imagine that this is happening hundreds of times a day in squad cars in almost every medium to large U. S. city. In the world of woke policing, black lives really don't matter.

Michael Rushford  
President & CEO

**People v. McDaniel:** California Supreme Court case involving a Los Angeles gang member convicted and sentenced to death for the 2004 murders of two people and the attempted murder of two others. One of Donte McDaniel's victims was shot so many times in the face his head collapsed. He also killed a 52-year-old woman and attempted to kill two younger women, leaving them permanently disabled. On direct appeal, McDaniel claims that his death sentence is invalid because the jury did not unanimously find the aggravating circumstances that weigh in favor of a death sentence or agree on his sentence *beyond a reasonable doubt* (the standard required to find guilt). CJLF has joined the case to argue that nothing in California law or state legal history requires jurors meet that standard for finding aggravating circumstances or sentencing. Nobody can explain how a jury would even go about sentencing a murderer to death *beyond a reasonable doubt*. A decision upholding the murderer's claim would mean that California has been misapplying its death penalty law ever since jurors have played a role in sentencing.

**People v. Friend:** California Supreme Court case involving a death-sentenced murderer's request that the court effectively invalidate voter-enacted limits to repeated appeals. In 1989, an Alameda County jury found habitual felon John Friend guilty of the 1984 robbery and stabbing murder of bartender Herbert Pierucci. At trial, witnesses testified about Friend's plan to rob the bartender, placed him at the murder scene with a knife, and testified about hearing his admission to killing Pierucci for roughly \$300. Friend's conviction and sentence were upheld by the California Supreme Court in July 2009. His habeas corpus challenge was reviewed and denied in 2015. In 2016, state voters adopted Proposition 66, which prohibits state courts from reviewing successive habeas corpus petitions except in cases where there is significant evidence questioning the defendant's guilt. In this case, the murderer has no credible claim of innocence. Instead, he argues that the initiative's prohibition of successive petitions does not include successive petitions where the defendant adequately explains why some new claims were not included in the first petition. CJLF, which authored this provision of Proposition 66, argues that "successive" means any petition after the first one, period. Former California Attorney General Xavier Becerra filed argument *supporting the murderer's claim*.

**In re Mohammad:** California Supreme Court case to consider whether California's 2016 Proposition 57 requires early parole consideration for inmates currently serving a sentence for both violent and nonviolent felony offenses. The defendant in this case was convicted in 2012 of nine violent crimes and six non-

violent crimes. While the initiative was advertised as permitting early parole eligibility for state prisoners "convicted of a nonviolent felony offense" after completing the full term of their primary offense, a state appeals court held that, because Mohammad had a nonviolent crime among his convictions, Proposition 57 requires he be eligible for early release. CJLF has joined the case to argue that the lower court has misinterpreted the initiative to create the absurd result that criminals convicted of multiple violent crimes and at least one nonviolent crime are required to receive a shorter sentence than a criminal convicted of only one violent crime.

**Borden v. United States:** U. S. Supreme Court case to review a habitual criminal's claim that one of his prior assault convictions should not be considered a violent crime. In 2017, habitual felon Charles Borden was caught with a handgun during a traffic stop in Tennessee. Because Borden had three prior convictions for aggravated assault, he qualified for a ten-year prison sentence under the federal Armed Career Criminal Act (ACCA). Borden pleaded guilty to having the gun, but claimed that because one of his priors was for "reckless" aggravated assault, it should not count as a violent felony. CJLF joined the case to argue that aggravated assault, be it reckless or intentional, qualifies as a violent crime under federal law. If the high court upheld Borden's claim, it would open the door to sentencing challenges for thousands of career felons with prior convictions for crimes that included recklessness as a factor.

**In re Alexander:** Federal Ninth Circuit review of a CJLF petition on behalf of families of five murder victims asking the court to vacate 24 invalid stays of execution, prohibit the district court from granting any additional stays, and lift restrictions on California's preparations for executions. For 13 years, a federal district court in San Francisco has blocked the executions of every death-sentenced murderer in California who has exhausted his appeals and become eligible for execution. The original 2006 order stayed the execution of Michael Morales—sentenced to death for the 1981 kidnap, rape, and brutal murder of a high school cheerleader on the claim that the state's three-drug protocol amounted to cruel and unusual punishment in violation of the Eighth Amendment. Since 2006, two precedent-setting U. S. Supreme Court decisions provided the state with opportunities to challenge the stays, but the state has failed to take action. CJLF filed its petition in the Ninth Circuit in January 2019 after the district court rejected a similar petition filed by district attorneys and refused to consider the Foundation's *amicus curiae* (friend of the court) brief.

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# “NEW BAIL REQUIREMENT”

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the ruling. California Police Chiefs Association Past President Eric Nuñez said no one should be jailed solely because they can't afford bail, but “a rigid zero-dollar bail scheme shouldn't prevent a judge from considering public safety risks for serious and repeat offenders.” The California District Attorneys Association didn't object and said prosecutors have long felt there should be thoughtful bail reform, including on the financial issue. Some even parroted the “woke” narrative: “The research is clear, the negatives of cash bail fall disproportionately on Black and Brown communities without improving safety,” said Karen Pank, Executive Director of Chief Probation Officers of California.

But there was one advocate that did oppose it. In its *amicus curiae* (friend of the court) brief, the Criminal Justice Legal Foundation argued that judicially creating a new “ability to pay” consideration violates the Victims' Bill of Rights Act, also known as Marsy's Law, approved by California voters in 2008. The foundation pointed out that making cash bail contingent on

a suspect's ability to pay violates state law, which allows for considering the safety of the public and the victim, the seriousness of the alleged crime, the suspect's criminal record, and the likelihood that he or she will flee. “Judges already have the ability to release suspects on their own recognizance,” foundation Associate Attorney Kymberlee Stapleton said after the ruling. “Money bail is there to ensure that arrestees show up to their future court hearings and is necessary to protect the victim and the public.”

One thing is certain, even though the California Supreme Court has discovered that the “ability to pay” is a federal constitutional right, California does not have an Attorney General willing to appeal that holding. Testing its validity will require some other state Attorney General, who is not a crusader for the “social justice” movement, to challenge a future ruling from his or her state supreme court that adopts California's reasoning of adding a similar requirement that reduces the number of arrestees held on bail.

# “VICTORY FOR VICTIMS' RIGHTS”

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release eligibility is reconsidered due to changes in rules and procedures.

**Jones v. Mississippi** involves the LWOP sentence given to Brett Jones for the 2004 murder of his paternal grandfather. Jones was 15 at the time of the murder. According to the trial record, in the summer of 2004, while Jones was living with his mother and stepfather in Florida, he injured his stepfather during a fight and was arrested for domestic violence. In late July, Jones left Florida and moved into the home of his grandparents in Mississippi. In early August, Michelle Austin ran away from her parents' nearby home and became Jones' girlfriend, sneaking

into Jones' bedroom at night, and spending most days in a nearby abandoned restaurant. On August 9, the grandfather, 67-year-old Bertis Jones, caught the girl in his grandson's bedroom and ordered her out of the house. The couple fled to the abandoned restaurant where Jones told Austin and his cousin that he was going to “hurt his granddaddy.”

Later that day, Jones returned to his grandparents' house and stabbed his grandfather to death. When the steak knife bent during the assault, Jones grabbed a filet knife to continue. The victim was stabbed eight times, and there were defensive wounds on his hands. Jones dragged his grandfather's body

into the laundry room, cleaned up the blood, and went outside. A handyman working next door, who had heard the victim screaming, saw Jones covered in blood and holding a knife and ran inside to call 911. The homeowner returned to find the handyman in hysterics, and when he looked outside, he saw Jones hiding in the bushes. He asked Jones where his grandfather was, and Jones replied, “he's gone.” A short time later, Jones and his girlfriend were arrested. During a pat-down, an officer found a pocket knife and asked Jones if it was the knife he used in the murder. Jones replied, “No, I already got rid of it.”

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In many parts of the U. S., real consequences for crime have been eliminated, leading to unprecedented spikes in shootings, murders, car jackings, drug overdoses, and all types of theft. To put a stop to this, we need an informed public to demand action. Aside from our legal work, we are stepping up our effort to ensure law-abiding citizens understand what policies make their neighborhoods less safe and who is responsible for enacting them. We cannot stay in this fight without annual support from our loyal contributors. Please make your 2021 tax-deductible contribution today by returning the card on the right with your check, giving at [www.cjlf.org](http://www.cjlf.org), or calling us at (916) 446-0345 to contribute with your credit card. **Many thanks.**

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Winter/Spring 2021

# “VICTORY FOR VICTIMS’ RIGHTS”

*continued from page 7*

At trial in 2006, Jones testified that he was in the kitchen making a sandwich when his grandfather attacked him, and Jones accidentally stabbed him. Then when his grandfather continued the attack, Jones stabbed him again because he “was afraid.” He claimed that he tried to administer CPR, but his grandfather had stopped breathing. He admitted putting the body in the laundry room and trying to clean up the blood.

The unanimous jury returned a verdict of deliberate-design murder. Had Jones been over 18 he could have been sentenced to death. The judge sentenced him to LWOP, noting that there was no evidence that the grandfather had attacked Jones, that the murder was particularly brutal, that Jones attempted to cover up the crime, and that the grandfather had provided Jones with a home away from his troubled family environment in Florida.

Following the Supreme Court’s 2012 ruling in **Miller v. Alabama**, Jones won a Mississippi Supreme Court decision ordering that he be resentenced under the new requirements announced by the high court. In April 2015, having reconsidered the sentence in light of the requirements under **Miller**, including multiple witnesses testifying to Jones’ troubled childhood, the new sentencing court again gave him LWOP. Four years later, in its **Montgomery v. Louisiana** ruling, the U. S. Supreme Court held that **Miller** applied to cases long since final as well as those presently pending on appeal. The Court reached this result by saying that **Miller** established a rule of substantive law, not just procedure, that “juvenile offenders whose crimes reflect the transient immaturity of youth” cannot be sentenced to LWOP, limiting that sentence to juveniles who are “permanently incorrigible.”

Jones appealed, arguing that **Montgomery** requires a specific finding that he is “permanently incorrigible” and that because the judge made no such finding he is entitled to a new sentencing hearing. The Mississippi Court of Appeals rejected that claim, finding that Jones was properly sentenced. The Mississippi Supreme Court denied review. When the U. S. Supreme Court agreed to hear Jones’ appeal, CJLF joined the case.

In two *amicus curiae* (friend of the court) briefs, CJLF attorneys argued that the **Montgomery** ruling misstates what

**Miller** required and that changes in the rules governing the sentencing of juvenile murderers has an enormous impact on victims’ families.

A brief authored by CJLF Legal Director Kent Scheidegger notes that in **Miller** the Court stated, “Our decision does not categorically bar a penalty for a class of offenders or type of crime.... Instead, it mandates only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” The brief then cites the later **Montgomery** ruling where Justice Kennedy wrote, “**Miller**, then, did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole.... [I]t rendered life without parole an unconstitutional penalty for ‘a class of defendants because of their status’—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.” However, the **Montgomery** opinion also contains passages inconsistent with the addition of a fact-finding requirement.

“The Court today interpreted **Montgomery** in a way to make it consistent with **Miller**, discarding the portions that were inconsistent,” said Scheidegger.

In her separate brief, CJLF Associate Attorney Kymberlee Stapleton argued that, over the past 15 years, the Supreme Court has handed down successive rulings which have raised the bar on what is required in order to guarantee the most depraved juvenile murderers never gain release back into society. These rulings forced resentencing of dozens of murderers, requiring the families of brutally killed victims to relive the crimes and fear the possibility that the killer might be released. “With its **Miller** decision, the Court promised that the rules were permanently set,” said Stapleton. “Then, four years later, **Montgomery** implied a subjective new requirement of finding that the murderer be ‘permanently incorrigible,’ leaving the law even more unsettled. Today’s decision is a victory for the families of victims murdered by juveniles,” she added.

The Court’s majority opinion *utilized* CJLF arguments and research.

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