

# Montgomery Momentum

## Two Years of Progress since *Montgomery v. Louisiana*

SNAPSHOT | January 25, 2018



The **CAMPAIGN** for the  
**FAIR SENTENCING**  
of **YOUTH**



# PORTRAITS OF JUVENILE LIFERS RETURNING HOME

More than 250 individuals previously serving life without parole for crimes committed as children are now free. Collectively, they have served thousands of years in prison. These former juvenile lifers now have the chance to contribute meaningfully to their communities.

## John Pace

John Pace was sentenced to JLWOP in Philadelphia at the age of seventeen. Pace served 31 years in prison before being paroled following *Montgomery*. While incarcerated, Pace earned his associate's degree and bachelor's degree from Villanova University, with minors in sociology and criminal justice. Pace now supports former juvenile lifers returning home as the Juvenile Life without Parole Reentry Coordinator at the Youth Sentencing and Reentry Project<sup>4</sup> in Philadelphia.



## Marshan Allen

When Marshan Allen was just a teenager, a reluctant judge sentenced him to two mandatory life sentences, sealing his fate to die behind bars. But thanks to *Miller* and *Montgomery*, Allen, now 41 years old, has been free and living in his hometown of Chicago for just over a year. Despite spending his formative years in prison, today Allen is a Starbucks barista, a youth advocate and mentor, and is pursuing a bachelor's degree.

## Andrew Hundley

Andrew Hundley was only fifteen years old when he received a life-without-parole sentence with hard labor in Louisiana. After he served nineteen years, *Montgomery* afforded Hundley with his first-ever parole hearing. The board granted him release at that hearing in June 2016. Hundley has been helping fellow returning citizens in Louisiana ever since. As Executive Director of the Louisiana Parole Project,<sup>5</sup> Hundley helps juvenile lifers prepare for release and parole hearings, implements their release plans, and provides reentry coaching.



# CONTINUING CHALLENGES TO *MONTGOMERY* IMPLEMENTATION

## **Henry Montgomery Remains in Prison**

Henry Montgomery, the petitioner in *Montgomery v. Louisiana*, remains incarcerated. The U.S. Supreme Court recognized Mr. Montgomery's "evolution from a troubled, misguided youth to a model member of the prison community."<sup>6</sup> Montgomery was resentenced and is now eligible for parole, but because of delays at the parole board and prosecutor opposition, the 71-year-old remains in prison, where he has been since 1963.



## **Children of Color Disproportionately Sentenced to JLWOP**

Children of color are disproportionately sentenced to life without parole. When *Montgomery* was decided, over 70 percent of all individuals serving JLWOP were people of color. These extreme disparities have persisted during the resentencing process following *Montgomery*, underscoring the racially disparate imposition of JLWOP.

## **Inconsistent Compliance with *Montgomery* Mandate**

In *Montgomery*, the Supreme Court made clear that "life without parole is disproportionate for the vast majority of juvenile offenders."<sup>7</sup> Yet compliance with *Montgomery* has varied significantly around the country to date, and whether an individual serving JLWOP has a meaningful opportunity for release depends foremost on the state in which he or she was sentenced.<sup>8</sup>

## **High Alternative Sentences to JLWOP**

For the approximately 1,300 individuals whose unconstitutional JLWOP sentences have been altered through legislative reform or judicial resentencing to date, the median sentence nationwide is 25 years before parole or release eligibility.<sup>9</sup> This means that most individuals who were unconstitutionally sent to die in prison as children will not be eligible for review or release until at least their 40s. Although *Montgomery* suggested that providing review after 25 years is an avenue for minimal compliance with *Miller*,<sup>10</sup> these lengthy sentences continue to violate international human rights standards and far outstrip terms of incarceration for youth in the rest of the developed world.<sup>11</sup>

# RECOMMENDATIONS FOR FUTURE REFORM

## **Ban Extreme Sentences for Youth through State Legislation**

It is crucial that all state legislatures join the national movement to ban life-without-parole sentences for children. Since *Miller v. Alabama* was decided in 2012, the number of states that ban JLWOP has quadrupled, from five to twenty.<sup>12</sup> And another five do not impose JLWOP, though the sentence is technically available. The movement to end life sentences for children is notable not just for its rapid rate of change, but also for the geographic and cultural diversity of states enacting reform, the bipartisan nature in which bills have passed, and the overwhelming support within the state legislatures that have acted to ban life sentences for children.

## **Abolish JLWOP at the U.S. Supreme Court**

The U.S. Supreme Court looks to state legislative trends as evidence of the nation's understanding of cruel and unusual punishment. The rapid movement away from life without parole for children reflects national consensus that all children in the United States, regardless of their crime, must have the opportunity for release. It is time that the U.S. Supreme Court categorically ban life without parole for all children.

## **Apply Same Standards of Accountability to Children of Color as White Children**

From arrest to incarceration, children of color endure disproportionately harsh treatment in the criminal justice system.<sup>13</sup> Yet *Montgomery* underscores that *all* children must be treated differently from adults at sentencing—regardless of race or ethnicity. It is critical that state court systems collect data on racial disparities at youth transfer to adult court and sentencing outcomes in order to hold stakeholders accountable when children of color are punished more harshly than their white counterparts.

## **Combat All Extremes Sentences Imposed on Youth**

In addition to the 1,300 individuals still serving JLWOP, countless more have been sentenced to extreme terms of incarceration that are the functional equivalent of life without parole. No child should be sentenced to JLWOP or any other sentence that precludes a meaningful opportunity for release. The Constitutional and legislative protections afforded to juvenile lifers must be extended to children serving *de facto* life sentences.

## **Support Juvenile Lifers Returning to the Community**

Juvenile lifers were told as children that they would die in prison. But because of *Montgomery*, juvenile lifers are returning home and experiencing free society for the first time as adults. They are learning how to apply for jobs, drive, use technology, and navigate the modern world. It is incumbent upon the entire community—including faith groups, national corporations, local businesses, and housing providers—to support juvenile lifers as they establish a life outside of prison.

## **Ensure Effective Legal Representation for Youth**

Youth are constitutionally and developmentally different from adults, and the representation of youth in adult court facing extreme sentences is a highly specialized area of legal practice.<sup>14</sup> To ensure more faithful implementation of *Miller* and *Montgomery*, youth prosecuted for serious offenses in adult court must be represented by experienced defense teams, and trial courts must adequately fund defense teams to hire mitigation specialists and relevant experts. Furthermore, individuals sentenced as youth must have access to effective legal counsel when they become eligible for parole or judicial review.

The cover photo highlights members of CFSY’s Incarcerated Children’s Advocacy Network (ICAN), all of whom were incarcerated as children for serious crimes and who are now free—some directly because of the U.S. Supreme Court’s decision in *Montgomery v. Louisiana*.



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<sup>1</sup> In *Montgomery*, the Supreme Court applied its 2012 *Miller v. Alabama* decision retroactively. *Miller* struck down mandatory life-without-parole sentences for offenses committed by children, and *Montgomery* struck down all mandatory life-without-parole sentences previously imposed on children. As a result of *Montgomery*, individuals previously sentenced to mandatory juvenile life without parole are entitled to a new sentencing hearing, and a second chance at life outside of prison.

<sup>2</sup> Arkansas, California, Iowa, New Jersey, North Dakota, South Dakota, Utah, and the District of Columbia banned JLWOP in 2016 and 2017.

<sup>3</sup> In classifying as having no one serving JLWOP or as having banned JLWOP, we include states that provide an opportunity for review either by a judge or through parole. This classification should not be interpreted as a comment on or an evaluation of the sufficiency of the review mechanism.

<sup>4</sup> Youth Sentencing & Reentry Project, YSRP.org.

<sup>5</sup> Louisiana Parole Project, paroleproject.org.

<sup>6</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 724 (2016).

<sup>7</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

<sup>8</sup> Prosecutors in Michigan and Louisiana are seeking to re-impose JLWOP at a rate that far outstrips the rest of the country. Prosecutors are seeking JLWOP at resentencing in over 50 percent of cases in Michigan, and over 30 percent in Louisiana—despite the U.S. Supreme Court’s mandate in *Montgomery* that JLWOP be imposed on none but the “rarest of children.” In Virginia, prosecutors continue to fight the applicability of *Miller* and *Montgomery* to any individual serving mandatory JLWOP. In Pennsylvania, by contrast—historically the national leader in sentencing children to life without parole—the overwhelming majority of resentencings to date have resulted in parole-eligible sentences, and over 100 juvenile lifers in Pennsylvania have been released on parole.

<sup>9</sup> Some states have enacted laws that fall well below this median. For example, in 2014, West Virginia legislated parole eligibility for all individuals under the age of 18 after no more than 15 years in prison. Other states enacted reactionary legislation following the *Miller* decision in 2012, instituting high mandatory minimums as an alternative to JLWOP. For example, Pennsylvania enacted legislation in 2012, which imposes a minimum term of 35 years as its alternative to life without parole for most of its juvenile lifers. While this legislation was not retroactive, a subsequent Supreme Court of Pennsylvania decision—*Commonwealth v. Batts*—gave judges the discretion to use the statutory sentencing range as its guide when resentencing juvenile lifers. As a result, the median sentence for those who have been resentenced to date is approximately 33 years—regardless of their age or amount of time served—which is eight years longer than the national median.

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<sup>10</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

<sup>11</sup> See Connie de la Vega, *Sentencing Our Children to Die in Prison* (Center for Law and Global Justice: University of San Francisco School of Law, 2007). [usfca.edu/sites/default/files/law/2007/jlwopreport.pdf](http://usfca.edu/sites/default/files/law/2007/jlwopreport.pdf).

<sup>12</sup> Pre *Miller*: Alaska, Colorado, Kansas, Kentucky, Montana. As of January 25, 2018: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Washington DC, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, South Dakota, Texas, Utah, Vermont, West Virginia, Wyoming.

<sup>13</sup> See Nazgol Ghandnoosh, *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies* (The Sentencing Project, 2014). [sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/](http://sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/). See also Laura Ridolfi and Tracy Benson, *Decriminalizing Childhood for Youth of Color* (Burns Institute, 2016). [Drive.google.com/file/d/0B5OY2mjvIznSDhsTkU2LVV3SkU/view](https://drive.google.com/file/d/0B5OY2mjvIznSDhsTkU2LVV3SkU/view).

<sup>14</sup> *Trial Defense Guidelines: Representing a Child Client Facing Life in Prison* (The Campaign for the Fair Sentencing of Youth, 2015). [fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf](http://fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf)