

ALITO, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

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No. 08–7412

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TERRANCE JAMAR GRAHAM, PETITIONER *v.*  
FLORIDA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIRST DISTRICT

[May 17, 2010]

JUSTICE ALITO, dissenting.

I join Parts I and III of JUSTICE THOMAS’s dissenting opinion. I write separately to make two points.

*First*, the Court holds only that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of *life without parole*.” *Ante*, at 23–24 (emphasis added). Nothing in the Court’s opinion affects the imposition of a sentence to a term of years without the possibility of parole. Indeed, petitioner conceded at oral argument that a sentence of as much as 40 years without the possibility of parole “probably” would be constitutional. Tr. of Oral Arg. 6–7; see also *ante*, at 28, n. 12 (THOMAS, J., dissenting).

*Second*, the question whether petitioner’s sentence violates the narrow, as-applied proportionality principle that applies to noncapital sentences is not properly before us in this case. Although petitioner asserted an as-applied proportionality challenge to his sentence before the Florida courts, see 982 So. 2d 43, 51–53 (Fla. App. 2008), he did not include an as-applied claim in his petition for certiorari or in his merits briefs before this Court. Instead, petitioner argued for only a categorical rule banning the imposition of life without parole on *any* juvenile convicted of a nonhomicide offense. Because petitioner abandoned his as-applied claim, I would not reach that issue.

ALITO, J., dissenting

See this Court's Rule 14.1(a); *Yee v. Escondido*, 503 U. S. 519, 534–538 (1992).