No. 14-280

IN THE

Supreme Court of the United States

HENRY MONTGOMERY,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Writ of Certiorari to the Louisiana Supreme Court

BRIEF OF FORMER JUVENILE COURT JUDGES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

DOUGLAS T. KENDALL
ELIZABETH B. WYDRA*
BRIANNE J. GOROD
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th Street NW
Suite 501
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org

Counsel for Amici Curiae

* Counsel of Record

July 28, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES – cont'd.

Page(s)

TABLE OF AUTHORITIES – cont'd.

Page(s)

TABLE OF AUTHORITIES – cont'd.

Page(s)

TABLE OF AUTHORITIES – cont'd.

Page(s)

INTEREST OF *AMICI CURIAE*[1]

Amici are former juvenile court judges who have extensive experience interacting with and sentencing juvenile offenders. Because of these experiences as juvenile court judges, *amici* know that juvenile offenders are generally less mature and more impressionable than adult offenders, making them at once "less culpable" for their offenses and also more amenable to change, *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012) (quoting *Graham v. Florida*, 560 U.S. 48, 72 (2010)). For these reasons, *amici* believe that *no* juvenile should be sentenced to mandatory life without parole, and that this Court should apply its decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), retroactively to cases currently on collateral review.

Individual *amici* are as follows:

- Judge Michael A. Corriero (ret.) served as a judge in the criminal courts of New York State for twenty-eight years. In the last fifteen years of his tenure, he presided over Manhattan's Youth Part, a special court established within the adult criminal court system where he was responsible for resolving the cases of thirteen-, fourteen-, and fifteen-year-olds who were charged with serious offenses and who were tried as adults pursuant to New York's Juvenile Offender Law. Judge Corriero is the Founder and Ex-

---

[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

ecutive Director of the New York Center for Juvenile Justice.

- Judge Margaret S. Fearey (ret.) served as an Associate Justice in the Juvenile Court Department of the Trial Court of the Commonwealth of Massachusetts from 1996 until January 2012. In that capacity, she heard and decided numerous felony cases involving juveniles, including those involving adult sentencing options.

- Judge Gail Garinger (ret.) served as an Associate Justice in the Juvenile Court Department of the Massachusetts Trial Court from 1995-2001 and as the First Justice of the Middlesex County Division of the Juvenile Court Department from 2001-2008. From 2008 to 2015, she served as The Child Advocate for the Commonwealth of Massachusetts.

- Judge Martha P. Grace (ret.) served as Chief Justice of the Massachusetts Juvenile Court from 1998-2009 and as a Massachusetts Juvenile Court Judge for Worcester County from 1990-1998.

- Judge Julian Houston (ret.) served as Presiding Justice of the Juvenile Session of the Roxbury (Massachusetts) District Court from 1979-1990 before being appointed to the Massachusetts Superior Court.

- Judge Gordon A. Martin, Jr. (ret.) served as a judge of the Massachusetts Trial Court from 1983-2004 where he heard both juvenile and adult cases. He was previously a Trial Attorney in the Civil Rights Division of the U.S. Department of Justice and First Assistant U.S. Attorney for the District of Massachusetts.

- Judge H. Ted Rubin (ret.) served as a judge on the Denver Juvenile Court for six years and then

spent twenty-two years as Director for Juvenile Justice for the Institute for Court Management, National Center for State Courts. He has also served as a private consultant for juvenile courts and is the author of six books on juvenile justice, including *Juvenile Justice: Policies, Practices, and Programs*.

- Judge Irene Sullivan (ret.) served as a juvenile court judge, handling abuse, neglect, and delinquency cases in Pinellas County, Florida for nine years. She teaches juvenile law at Stetson University College of Law, is the author of *Raised by the Courts: One Judge's Insight into Juvenile Justice*, and speaks around the country on juvenile justice issues.

- Judge Darlene A. Whitten (ret.) served twenty years as a Judge on the Court at Law #1, Designated Juvenile Court for Denton County, Texas. Prior to going to law school, Judge Whitten taught junior high school.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2012, this Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012). Recognizing that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes," the Court concluded that the sentence of mandatory life without parole is categorically inappropriate for juvenile offenders because it "preclude[s] a [sentencing judge] from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2465, 2467.

In 1969, Petitioner Henry Montgomery was sentenced to mandatory life imprisonment for murder. Even though Montgomery was only 17 when he committed the offense for which he received the mandatory sentence of life in prison, the Louisiana state courts held that no relief was available because this Court's decision in *Miller* should not be applied retroactively to cases on collateral review.

As Petitioner demonstrates in his brief, *Miller* should be applied retroactively because this Court's decisions have recognized that "[n]ew *substantive* rules generally apply retroactively," *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004), and the Court's decision in *Miller* plainly announced such a new substantive rule. Among other things, *Miller* "deprive[d] the State of the power to impose a certain penalty," that is, mandatory life without parole, on juvenile offenders, *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002).

As former juvenile court judges, *amici* appreciate the importance of *Miller*'s rule because they know that there are significant differences between juvenile offenders, including those who commit homicide, and adult offenders. They also know that those distinguishing features make the sentence of mandatory life without parole categorically inappropriate for juvenile offenders, as this Court held in *Miller*. *Amici* believe *no* juvenile should be incarcerated pursuant to an unconstitutional mandatory life without parole sentence, and they know that *Miller*'s new rule can be applied just as readily to cases on collateral view as to cases on direct review.

As this Court made clear in *Miller*, mandatory life without parole sentences are categorically inappropriate for juvenile offenders because they prevent a "sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Miller*, 132 S. Ct. at 2466. Indeed, as the Court made clear, this "harshest possible penalty" will only rarely be appropriate for juvenile offenders because of a number of factors, *id.* at 2469, including not only the "offender's age and the wealth of characteristics and circumstances attendant to it," *id.* at 2467, but also the "possibility of rehabilitation," *id.* at 2468. Indeed, the Court's opinion in *Miller* reflects what *amici* know based on their collective decades of experience in the juvenile courts: the circumstances attendant to youth make juvenile offenders less culpable for their offenses and more susceptible to rehabilitation. Therefore, the sentence of mandatory life without parole is categorically inappropriate for this class of offenders.

Amici submit this brief to demonstrate that the criminal justice system is equipped to revisit the sentences of juvenile offenders pursuant to this Court's

decision in *Miller*, even when those offenders' cases are no longer on direct review and even when a substantial amount of time has passed since the offense was committed. As not only *Miller*, but also lower court decisions applying *Miller*, make clear, many of the factors that will be most relevant for judges and parole boards assessing offenders whose crimes were committed long ago will be their age at the time of the offense and their record in prison, and those factors can readily be assessed just as easily on collateral review as on direct review.

Indeed, courts have successfully applied retroactively both *Miller* and this Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), holding that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses. These cases make clear that there is no practical bar to applying *Miller* retroactively. Moreover, whatever minimal practical burden retroactive application might impose on the criminal justice system, that burden does not trump the constitutional prohibition on mandatory life without parole sentences for juvenile offenders that this Court recognized in *Miller*. In *Miller*, this Court recognized that mandatory life without parole is an unconstitutional sentence when imposed on juvenile offenders. That substantive rule should apply to *all* juvenile offenders, regardless of whether their case is on direct or collateral review.

In sum, *Miller* can be applied retroactively on collateral review, and it should be so applied. Juvenile offenders are categorically different than adult offenders; and, as this Court recognized in *Miller*, those differences make mandatory life without parole an unconstitutional sentence to impose on a juvenile offender. The decision of the court below should be reversed.

ARGUMENT

THIS COURT SHOULD APPLY *MILLER V. ALABAMA* RETROACTIVELY AND RECOGNIZE THAT NO JUVENILE CAN BE SENTENCED TO MANDATORY LIFE WITHOUT PAROLE CONSISTENT WITH THE EIGHTH AMENDMENT

In *Miller*, this Court held that mandatory life without parole sentences categorically violate the Eighth Amendment's prohibition on cruel and unusual punishments because "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." *Miller*, 132 S. Ct. at 2475, 2465. As former juvenile court judges, *amici* are familiar with juvenile offenders and the considerations relevant to sentencing them, and they know that the criminal justice system is equipped to revisit the sentences of juvenile offenders consistent with *Miller* even if their cases are now on collateral view.

Significantly, *Miller* itself makes clear that many of the factors that will be most relevant to such reconsideration are ones that can be just as easily assessed on collateral review as on direct review, such as the age of the offender when he committed the offense and his efforts toward rehabilitation while in prison. Indeed, in the aftermath of both *Miller* and this Court's decision in *Graham*, numerous states have successfully applied those decisions retroactively. There is thus no insuperable obstacle to retroactive application of *Miller*, and whatever marginal burden that application might impose on state criminal justice systems is more than outweighed by the constitutional imperative that this Court recognized in *Miller*: mandatory life without parole is a disproportionate sentence when imposed on juvenile offenders. The only way to fully vindicate this Court's holding in *Miller* is to apply it retroactively.

A. *Miller* Itself Makes Clear that Many of the Factors Relevant to Reviewing Juvenile Offenders' Sentences Can and Should Be Applied to Cases on Collateral Review in the Same Way They Would Be Applied to Cases on Direct Review

As petitioner's brief shows, *Miller* established a new substantive rule that a sentence of mandatory life without parole cannot be imposed on juvenile offenders. Consistent with that rule, *Miller* provided concrete guidance regarding what factors judges should consider when resentencing individuals who had been unconstitutionally sentenced to mandatory life without parole, as numerous lower courts have recognized in the short time since *Miller* was decided. *See, e.g.*, *State v. Ragland*, 836 N.W.2d 107, 122 (Iowa 2013) (defendant "was entitled to be sentenced with consideration of the factors identified in *Miller*"); *Jones v. State*, 122 So. 3d 698, 702 (Miss. 2013) ("Our sentencing scheme may be applied to juveniles only after applicable *Miller* characteristics and circumstances have been considered by the sentencing authority."); *Ex parte Maxwell*, 424 S.W.3d 66, 76 (Tex. Crim. App. 2014) (providing that court on remand can sentence to "life with the possibility of parole" or "life without parole after consideration of applicant's individual conduct, circumstances, and character"). That guidance makes clear that many of the factors most relevant to reviewing juvenile offenders' sentences can be applied to cases on collateral review in the same way they would be applied to cases on direct review.

Most significantly, this Court held that "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of pa-

role." *Miller*, 132 S. Ct. at 2465. As this Court explained (and *amici* know from their collective experiences as juvenile court judges), juveniles are more impressionable and less mature than adults, making them both "less culpable" and more susceptible to rehabilitation than adult offenders. *Id.* at 2465 (quoting *Graham*, 560 U.S. at 72); *see id.* at 2467 (noting that youth "is a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness'" (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)) and a time when "'a person may be most susceptible to influence and to psychological damage'" (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982))).

As a result, any sentence that does not meaningfully take into account a juvenile offender's age risks being unconstitutionally disproportionate. Put differently, "[b]y removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—[a] law[] prohibit[s] a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Id.* at 2466; *id.* at 2467 ("Such mandatory penalties, by their nature, preclude a [sentencing judge] from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."); *id.* at 2468 ("Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.").

In addition, because of juveniles' greater impressionability, this Court made clear that consideration of a defendant's background and home environment is particularly important in the context of juvenile offenders. Referencing an earlier case in which this Court "invalidated [a juvenile offender's] death sen-

tence because the judge did not consider evidence of his neglectful and violent family background (including his mother's drug abuse and his father's physical abuse) and his emotional disturbance," *Miller* explained that such evidence is "'particularly relevant'—more so than it would have been in the case of an adult offender.'" *Id.* at 2467 (quoting *Eddings*, 455 U.S. at 115). Thus, the Court explained that another reason why mandatory life without parole sentences are categorically inappropriate for juvenile offenders is because they "prevent[] taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional." *Id.* at 2468.

Finally, the Court in *Miller* recognized another critical feature of juveniles that *amici* are very familiar with based on their collective experience working with and sentencing juvenile offenders: the hallmark immaturity of youth not only makes juvenile offenders less culpable for their crimes, it also means that they are uniquely capable of change. In other words, juvenile offenders, even the most serious among them, are capable of reform and rehabilitation. Thus, the Court in *Miller* also made clear that judges sentencing juvenile offenders should consider the possibility that the offenders before them will change and evolve over time, noting that mandatory life without parole is also categorically inappropriate for juvenile offenders because it "disregards the possibility of rehabilitation even when the circumstances most suggest it." *Id.*

Thus, while a judge or parole board considering a juvenile offender's case would, of course, consider the "circumstances of the homicide offense, including the extent of his participation in the conduct and the way

familial and peer pressures may have affected him," *id.* at 2468, it would also consider a host of other factors, as well—factors that would be just as easily identified and assessed on collateral review as on direct review, such as the offender's age at the time of the offense and subsequent efforts at rehabilitation. Thus, as the next section demonstrates, the criminal justice system is equipped to apply *Miller*'s dictates to cases on collateral review just as readily as it would apply them to cases on direct review.

B. The Criminal Justice System Is Equipped to Apply *Miller* to Cases on Collateral Review Even When Significant Time Has Passed Since the Offense

Although states are still determining how exactly to apply this Court's decision in *Miller*, and not all states have taken the same approach, an examination of how states have begun to apply *Miller* nonetheless makes clear that state criminal justice systems can apply it to the cases on collateral review just as readily as they can apply it to cases on direct review.

Consider, for example, Iowa. In *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013), the Iowa Supreme Court held that *Miller* should be applied retroactively because it imposed a "substantive constitutional prohibition against mandatory life-without-parole sentences." *Ragland*, 836 N.W.2d at 115. The court recognized that even though "[f]rom a broad perspective, *Miller* does mandate a new procedure," that new procedure, "the procedural rule for a hearing[,] is the result of a substantive change in the law that prohibits mandatory life-without-parole sentencing." *Id.*; *see id.* at 116 (noting that "the cases used by the Court in *Miller* to support its holding have been applied retroactively on both direct and collateral re-

view" and "[t]he procedural posture of the *Miller* decision further supports retroactive application").[2] Because the court held that *Miller* should be applied retroactively, it also concluded that the defendant in that case "was entitled to be sentenced with consideration of the factors identified in *Miller*," and that "the district court [had] properly resentenced [him] in light of *Miller*." *Id.* at 122.

In describing the defendant's resentencing, the Iowa Supreme Court gave no indication that the lower court faced any difficulty in its effort to resentence Ragland consistent with the guidance set out in *Miller*, even though the crime in his case had been committed in 1986, that is, nearly 30 years earlier. Ragland, at the age of 17, was involved in a fight with some other boys in a grocery store parking lot. According to the court, "[the defendant] instigated the fight by making aggressive comments," and "[o]ne of the boys with [him] then promptly swung a tire iron he was carrying and struck one of the boys in the other group . . . in the head." *Id.* at 110. That boy "died from the blow." *Id.* Ragland was charged with first-degree murder, prosecuted as an adult, and sentenced to mandatory life without parole.[3]

---

[2] The court also held that the governor's decision to commute the defendant's sentence to life with no possibility of parole for 60 years was "the functional equivalent of a [mandatory] life sentence without parole," and that *Miller* applies to such a sentence. *Ragland*, 836 N.W.2d at 121-22.

[3] Notably, one of the other boys involved in the fight testified at the initial hearing before the district court that he was "solely responsible for the death." *Ragland*, 836 N.W.2d at 112. He pleaded guilty to second-degree murder and only spent three years in prison, and so he asked "[h]ow can it be that I, the person who is actually directly responsible for [the] death was given a second chance . . . but Jeff Ragland is not?" *Id.*

At Ragland's resentencing hearing roughly 25 years later, "[s]everal persons testified . . . that they believed [his] sentence should be lessened" based on the rehabilitation of other boys involved in the fight and the significant support network that was in place to help him get a new start in life if he were released. *Id.* at 112. After considering all of this testimony, the lower court resentenced Ragland to life in prison with the possibility of parole after 25 years, a sentence that made him immediately eligible for parole.

California also illustrates how effectively states have been able to respond to this Court's decision in *Miller*. Following *Miller*, California passed a law that allowed most persons who were sentenced to life without parole for a crime they committed as a juvenile to submit a request for a new sentencing hearing, S.B. 9, 2011-2012 Reg. Sess. (Cal. 2012), as well as a law that required parole commissioners to consider the lesser culpability of juvenile offenders, S.B. 260, 2013-2014 Reg. Sess. (Cal. 2013).[4]

The first person to be resentenced under the new law was Edel Gonzalez, who had been sentenced to life without parole for a crime he committed in 1991 at the age of 16. Gonzalez was convicted for participating, with a number of adult gang members, in an

---

[4] Prior to this Court's decision in *Miller*, the California courts had interpreted California law to create "a presumption in favor of life without parole as the appropriate penalty for juveniles convicted of special circumstance murder." *People v. Gutierrez*, 324 P.3d 245, 249 (Cal. 2014). Following *Miller*, the California Supreme Court held that California law, "properly construed, confers discretion on a trial court to sentence a 16- or 17-year-old juvenile convicted of special circumstance murder to life without parole or to 25 years to life, with no presumption in favor of life without parole." *Id.*

attempted carjacking that resulted in the death of a victim. Gonzalez was not the shooter and was intoxicated during the crime, but he was given the same sentence as the shooter. At his resentencing hearing, his attorneys offered significant evidence that he had changed and evolved during his time in prison, noting that "[he] had severed all ties to gangs both inside and outside prison, freed himself of his prior addictions and had availed himself of almost every educational and rehabilitation program offered to him in prison."[5] At his sentencing hearing, Gonzales testified that "'[t]here isn't a day that goes by when I'm not reminded of the wrong, the harm and the pain I've caused. If given the opportunity, I hope one day to help young kids stay away from gangs and their lies – kids that think there's no way out, as I did in my youth. I want to share with those kids my personal experiences of this life.'"[6]

The example of Massachusetts is also instructive. After concluding that *Miller* should be applied retroactively because it announced a new substantive rule, *Diatchenko v. Dist. Att'y for Suffolk Dist.*, 1

---

[5] Press Release, Irell & Manella, *First Resentencing Under SB 9 for Juvenile Sentenced to Life Without Parole* (Dec. 2013), http://www.irell.com/news-item-231.html [hereinafter Irell Press Release]; *see also* Jovana Lara, *California Man Convicted at 16 Resentenced Under New Law*, ABC7.com (Dec. 18, 2013), http://abc7.com/archive/9365713/. Significantly, the "California Youth Authority had found [Gonzales] amenable to change in 1997." Irell Press Release, *supra*.

[6] Irell Press Release, *supra* note 5; *see also* Chris McGuinness, *Man Sentenced to Life at 16 Freed 22 Years Later*, New Times (May 6, 2015), http://www.newtimesslo.com/news/12334/man-sentenced-to-life-at-16-freed-22-years-later/ (describing the 2015 resentencing of an individual who was in prison for a crime he committed in 1993 at the age of 16).

N.E.3d 270, 281 (Mass. 2013),[7] the Massachusetts Supreme Judicial Court concluded that the life sentences imposed on offenders remained "in full force and effect, but the statutory exception to parole eligibility no longer applie[d]." *Id.* at 286. The court explained that "[a]t the appropriate time, it is the purview of the Massachusetts parole board to evaluate the circumstances surrounding the commission of the crime, including the age of the offender, together with all relevant information pertaining to the offender's character and actions during the intervening years since conviction." *Id.* at 287.

As a result of that decision, 63 incarcerated adults became eligible for early release after serving at least 15 years, and the Massachusetts parole board has proven capable of assessing whether parole is appropriate for those adults, notwithstanding the fact that a significant amount of time may have elapsed since those individuals committed their offenses. In one case, for example, the board considered the case of a 40-year-old man who had spent 22 years in prison for a murder he committed when he was 17. The parole board went "through the day of the crime, [the individual's] personal history, and [his] prison record in detail" and also considered whether the offender would have a support network if released. The board ultimately granted parole, providing for the individual's release after a year in a lower security prison during which he could complete his high school equivalency test. Jean Trounstine, *What Happens at a Juvenile Lifer Hearing?*, Boston Daily (Feb. 20,

---

[7] *Diatchenko*, 1 N.E.3d at 281 ("Its retroactive application ensures that juvenile homicide offenders do not face a punishment that our criminal law cannot constitutionally impose on them.").

2015), http://www.bostonmagazine.com/news/blog/2015/02/20/happens-juvenile-lifer-hearing/.[8]

These post-*Miller* examples are consistent with the criminal justice system's experiences following this Court's decision in *Graham*. Indeed, Graham's case itself is illustrative. Although that case was not on collateral review, Graham's sentencing hearing illustrates the significant extent to which judges and parole boards considering the cases of juvenile offenders sentenced to mandatory life without parole will consider factors particularly pertinent to youth. Eight years after Graham committed the offense that resulted in a sentence of life without parole, he was resentenced following a three-day hearing that "covered [his] troubled childhood and a debate over whether [Graham], [then] 25, was capable of maturing into a responsible adult or was forever stuck in adolescence." Jeff Kunerth, *Life Without Parole Becomes 25 Years for Terrance Graham, Subject of U.S. Supreme Court Case*, Orlando Sentinel (Feb. 24, 2012), http://articles.orlandosentinel.com/2012-02-24/features/os-life-without-parole-terrance-graham-20120224-12_1_terrance-graham-resentencing-parole. The hearing also examined Graham's record in prison, with witnesses describing Graham's "determination to get his high school diploma in prison, which is not normally available to inmates serving

---

[8] Other states, too, have used their existing parole systems to help respond to this Court's decision in *Miller*. In Iowa, for example, a woman was resentenced to life in prison with the possibility of parole nearly 30 years after she was originally sentenced to life in prison without the possibility of parole, and will now be able to seek parole on an annual basis. Chris Minor, *Convicted Killer Re-Sentenced in 1985 Slaying*, WQAD.com (Feb. 27, 2014), http://wqad.com/2014/02/27/convicted-killer-re-sentenced-in-1975-slaying/.

life without parole," his limited record of "disciplinary infractions" while in prison, and the results of personality and psychological tests. *Id.* The sentencing judge also considered whether Graham would have a support system if he were released. *Id.*

Moreover, in the years since *Graham* was decided, many courts have recognized that it, too, should be applied retroactively, *see, e.g.*, *In re Moss*, 703 F.3d 1301, 1302 (11th Cir. 2013); *In re Sparks*, 657 F.3d 258, 260 (5th Cir. 2011) (per curiam); *Bonilla v. State*, 791 N.W.2d 697, 700-01 (Iowa 2010), and courts have successfully resentenced juvenile offenders whose cases were on collateral review.

In Florida, for example, Kenneth Young was sentenced to life in prison for his participation in a series of armed robberies in 2000. As he explained at his resentencing hearing, "his mother's then-24-year-old crack dealer had threatened to kill her unless the boy helped rob the hotels." No one was injured during any of the robberies, and Young had no prior serious offenses, and yet he was sentenced to life in prison. At his resentencing hearing, his attorney argued that "Young should be set free after 11 ½ years in prison, noting that he had matured, been rehabilitated, served as a model prisoner and earned a GED (even though the state wouldn't pay for his education because he was a lifer)." Young testified that "'I have lived with regret every day. . . . I have been incarcerated for 11 years and I have taken advantage of every opportunity available for me in prison to better myself.'" The judge ultimately sentenced Young to 30 years in prison, with credit for time served, and 10 years of probation.[9]

---

[9] Gary Gately, '15 to Life' Chronicles Quest for Release of Man Sentenced to Life at Age 15, Juvenile Justice Info. Exch. (Aug.

In another case from Florida, Ralph Brazel was resentenced and released after serving 22 years for selling drugs at the age of 17. At his original sentencing, the judge told him "not to waste his time in prison and he didn't. He got his GED a few months after his arrest. He learned Spanish and American Sign Language, and received excellent performance evaluations for skills he acquired ranging from graphic arts and typesetting to auditing, document control and licensing to do residential and commercial wiring."[10] Since his release, he has been an advocate for sentencing reform.[11]

Thus, although different states will surely handle application of *Miller* in different ways, all states should be able to apply it retroactively to cases on collateral review, as the criminal justice system's experiences following both *Miller* and *Graham* demonstrate.[12] Indeed, applying *Miller* retroactively is the

---

15, 2014), http://jjie.org/15-to-life-chronicles-quest-for-release-of-man-sentenced-to-life-at-age-15/107440/.

[10] *Ralph Brazel*, The Sentencing Project, http://sentencingproject.org/template/person.cfm?person_id=270 (last visited July 6, 2015).

[11] *ICAN Member Profiles*, The Campaign for the Fair Sentencing of Youth, http://fairsentencingofyouth.org/stories-from-ican-members/ (last visited July 6, 2015).

[12] While *amici* take no view on the appropriateness of any of the specific sentencing decisions discussed in this brief, they note that retroactive application of this Court's decision in *Miller* does not mean that every juvenile resentenced pursuant to *Miller* will receive a meaningfully shorter sentence on remand. To the contrary, some juveniles have been resentenced post-*Miller* and received life sentences or substantial terms of years. *See, e.g.*, Joan Murray, *Man Spared Life Sentence in Deadly Homeless Attack*, CBS4.com (Nov. 15, 2012), http://miami.cbslocal.com/2012/11/15/new-sentencing-hearing-for-man-in-deadly-homeless-attack-2/ (juvenile offender resen-

only way to vindicate this Court's holding that mandatory life without parole is unconstitutional when applied to juvenile offenders.

C. Collateral Application of *Miller* Is the Only Way To Vindicate this Court's Holding that Mandatory Life Without Parole Sentences Are Inappropriate for Juvenile Offenders

As former juvenile court judges, *amici* have collectively spent decades presiding over cases involving thousands of serious (often violent) juvenile offenders. Based on their experiences and interactions with these juvenile offenders, *amici* believe strongly that *Miller* correctly recognized that the sentence of mandatory life without parole is categorically inappropriate for juvenile offenders, and that *no* juvenile should be given such a sentence, regardless of whether his case is now on direct or collateral review.

As this Court recognized in *Miller* and *amici* know from their experiences as juvenile court judges, juveniles are categorically different than adults. They have a "'lack of maturity and an underdeveloped sense of responsibility,'" 132 S. Ct. at 2464 (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)), making them "'more vulnerable . . . to negative influences and outside pressures,' including from their family and peers." *Id.* (quoting *Roper*, 543 U.S. at 569); *Johnson*, 509 U.S. at 367; *Eddings*, 455 U.S. at 115-16; *see supra* at 9-10. Related, their characters are "not as 'well formed' as" those of adults, *Miller*, 132 S.

---

tenced to 40 years); *Convicted Murderer Adolfo Davis Re-Sentenced to Life in Prison*, ABC7.com (May 4, 2015), http://abc7chicago.com/news/convicted-murderer-adolfo-davis-re-sentenced-to-life-in-prison/695272/ (juvenile offender re-sentenced to life in prison).

Ct. at 2464 (quoting *Roper*, 543 U.S. at 570), and they have "less control, or less experience with control, over their own environment," *Roper*, 543 U.S. at 569.

These characteristics that distinguish juveniles from adults are true of *all* juveniles, regardless of the seriousness of any offenses they might commit. As a result of these characteristics, juveniles are both less morally culpable and more capable of reform and rehabilitation than adults who commit the same offense, as this Court recognized in *Miller*. 132 S. Ct. at 2465; *see Graham*, 560 U.S. at 68 (juveniles "actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults" (quoting *Roper*, 543 U.S. at 570)).

Indeed, during their time serving as juvenile court judges, *amici* were repeatedly impressed by the ability of juvenile offenders, including very serious ones, to turn their lives around and change and reform as they grew older. It is true, of course, that not every juvenile offender will ultimately be rehabilitated, but *amici* firmly believe many are capable of such reform if they are only given the opportunity, and it is impossible to predict at the time of sentencing which juveniles will be capable of reform, especially without very individualized consideration of a host of factors related to both the offender and his offense. *See Miller*, 132 S. Ct. at 2469 (recognizing the "great difficulty [the Court] noted in *Roper* and *Graham* of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption'" (quoting *Roper*, 543 U.S. at 573)).

Significantly, one of the reasons that mandatory life without parole is such an inappropriate sentence for juvenile offenders is that it significantly limits a

juvenile's ability to reform and change. As this Court recognized in *Graham*, life without parole is "an irrevocable judgment about that person's value and place in society." 560 U.S. at 74; *see Naovarath v. State*, 779 P.2d 944, 947 (Nev. 1989) (life without parole reflects a judgment that the child "can never be reformed"). It is difficult to imagine a crueler message to send to a young person, particularly one who may already feel as though he has been abandoned by parents or other family members. *See, e.g.*, Rolf Loeber & Magda Stouthamer-Loeber, *Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency*, 7 Crime & Just. 29, 29 (1986) ("Analyses of longitudinal data show that socialization variables, such as lack of parental supervision, parental rejection, and parent-child involvement, are among the most powerful predictors of juvenile conduct problems and delinquency."); *see also* Irene Sullivan, *Raised by the Courts: One Judge's Insight into Juvenile Justice* 97 (2010) ("The link between child abuse and juvenile delinquency is well established; indeed, irrefutable."); H. Ted Rubin, *Juvenile Justice: Policies, Practices, and Programs* P4-1 (2003) ("Court juveniles' problems include . . . drug addicted parents, serious neglect by parents, violent victimization.").

Moreover, being sentenced to life without parole will often make it that much more difficult for juvenile offenders to take advantage of educational and self-help programs available at the institutions in which they are incarcerated because such programs are often unavailable to individuals sentenced to life without parole. *See, e.g.*, Human Rights Watch, *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States* 27 (2012), http://www.hrw.org/sites/default/files/reports/us0112

ForUpload_1.pdf (noting that in at least 22 states "educational and vocational programs ordinarily available to most inmates are frequently denied to those serving life without parole, including those sentenced as juveniles"); Ill. Coal. for the Fair Sentencing of Children, *Categorically Less Culpable: Children Sentenced to Life Without Possibility of Parole in Illinois* 21 (2008), http://webcast-law.uchicago.edu/pdfs/00544_Juvenile_Justice_Book_3_10.pdf (noting that "educational programs . . . often were, and are, expressly denied to those serving life without parole sentences").

Juvenile offenders' inability to participate in such programs is particularly alarming because such programs often provide "an important step on the path toward rehabilitation," Ill. Coal. for the Fair Sentencing of Children, *supra*, at 22; *see, e.g.*, Michael A. Corriero, *Judging Children as Children: A Proposal for a Juvenile Justice System* 59-60 (2006) (noting importance of education to rehabilitation), and this is particularly true for young offenders who will spend many of their most formative years in prison, *see* Human Rights Watch, *supra*, at 32 ("young offenders are incarcerated during the period of their lives when education and skill development are most crucial").

Amici have witnessed firsthand the transformative power of prison educational and rehabilitative programs, and they strongly believe that juvenile offenders are uniquely well-positioned to take advantage of such programs and change and grow over time. Consequently, they believe that *no* juvenile offender should be denied the possibility to reform and change, especially without individualized consideration of whether such a sentence is proportionate to the offense that was committed given the offender's age and "the wealth of characteristics and circumstances

attendant to it," *Miller*, 132 S. Ct. at 2467. The only way to vindicate *Miller*'s holding that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" is to apply *Miller* retroactively so that no juvenile offender is sentenced to mandatory life in prison. *Id.* at 2469.

CONCLUSION

The judgment of the court below should be reversed.

Respectfully submitted,

DOUGLAS T. KENDALL
ELIZABETH B. WYDRA*
BRIANNE J. GOROD
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW
Suite 501
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org

Counsel for Amici Curiae

July 28, 2015 * Counsel of Record