

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

LUIS ANGEL GUTIERREZ,

Defendant and Appellant.

Case No. S206365
(Court of Appeal No. B227606)
(Ventura County Superior Court
No. 2008011529)

**On Appeal from a Judgment of
The Superior Court of the State of California
in and for the County of Ventura**

**The Honorable Patricia M. Murphy
Judge Presiding**

**BRIEF OF JUVENILE LAW CENTER et al. AS *AMICI CURIAE*
ON BEHALF OF APPELLANT**

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I. IDENTITY AND INTEREST OF *AMICI*

The organizations submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. *Amici* are advocates and researchers who have a wealth of experience and expertise in providing for the care, treatment, and rehabilitation of youth in the child welfare and justice systems. *Amici* know that youth who enter these systems need extra protection and special care. *Amici* understand from their collective experience that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* also know that a core characteristic of adolescence is the capacity to change and mature. For these reasons, *Amici* believe that youth status separates juvenile and adult offenders in categorical and distinct ways that warrant distinct treatment.

See Appendix of a list and brief description of all *Amici*.

II. SUMMARY OF ARGUMENT

In *Miller v. Alabama*, 567 U.S.____, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012), the United States Supreme Court held that the mandatory imposition of life without parole sentences on juvenile offenders is unconstitutional. Under current California law, the presumptive sentence for any juvenile age 16 or older convicted of first degree murder with special circumstances is life imprisonment without the possibility of parole.

See Cal. Penal Code § 190.5(b). California’s statute effectively requires the imposition of life without parole on juveniles, in violation of *Miller*, unless the judge finds justification to deviate from this presumptive penalty.

California Penal Code § 190.5(b) therefore fails to provide for an individualized sentence as required by *Miller*, and is contrary to *Miller*’s requirement that juvenile life without parole sentences be uncommon.

Accordingly, Appellant Luis Angel Gutierrez’s sentence must be vacated and a new, constitutional sentence imposed.

III. ARGUMENT

A. ***Miller* Reaffirms The U.S. Supreme Court’s Recognition That Children Are Fundamentally Different From Adults And Categorically Less Deserving Of The Harshest Forms Of Punishments**

Miller held that, prior to imposing a life without parole sentence on a juvenile offender, the sentencer must take into account the juvenile’s decreased culpability and other specific attributes of youth. *Miller*, 132 S. Ct. at 2460. Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court’s rationale for its holding: the mandatory imposition of sentences of life without parole “prevents those meting out punishment from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change,’ and runs afoul of our cases’ requirement of individualized sentencing for defendants facing the most serious penalties. *Id.* (quoting *Graham v. Florida*, 130 S. Ct. 357, 2026-27, 2029-30 (2009)).

The Court grounded its holding “not only on common sense . . . but on science and social science as well,” *id.* at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted “that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Id.* at 2464-65 (quoting *Graham*, 130 S. Ct., at 2027; *Roper v. Simmons*, 543 U.S. 551, 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)).

In *Graham*, which held that life without parole sentences for juveniles convicted of non-homicide offenses violate the Eighth Amendment, the U.S. Supreme Court found that three essential characteristics distinguish youth from adults for culpability purposes:

As compared to adults, juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.” *Roper*, 543 U.S. at 569-70. These salient characteristics mean that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* at 573. Accordingly, “juvenile offenders cannot with reliability be classified among the worst offenders.” *Id.* at 569.

Id. at 2026. The Court concluded that “[a] juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’” *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988)).

The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for review was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U. S. at 570. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”

Id. at 2026-27. The Court’s holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had significant capacity to change and grow.

Both the *Miller* and the *Graham* Courts relied upon an emerging body of research confirming the distinct emotional, psychological and neurological attributes of youth. The Court clarified in *Graham* that, since *Roper*, “developments in psychology and brain science continue to show

fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” *Id.* at 2026. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the “status of the offender” is central to the question of whether a punishment is constitutional. *Id.* at 2027.

Importantly, in *Miller*, the Court found that none of what *Graham* “said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific.” 132 S. Ct. at 2465. The Court instead emphasized “that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* As a result, it held in *Miller* “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders,” *id.* at 2469, because “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467.

B. California Penal Code § 190.5(b) Is Unconstitutional Because It Presumes That Life Without Parole Is The Appropriate Sentence For Juvenile Offenders

Mr. Gutierrez’s life without parole sentence is unconstitutional because the statute under which it was imposed creates a presumption that

life without parole is the appropriate sentence for juvenile offenders. This presumption is counter to *Miller*'s requirement of individualized sentencing in cases such as this. *See Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). Moreover, the statute directly contravenes *Miller*'s command that juvenile life without parole sentences be "uncommon." *Id.* at 2469.

1. California's Presumptive Juvenile Life Without Parole Statute Contravenes *Miller*'s Requirement Of Individualized Sentencing

The California Penal Code *presumes* that life without parole is the appropriate sentence for certain juvenile offenders. California Penal Code Section 190.5(b) dictates that

The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, *shall* be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.

(emphasis added). This statute does not allow for a careful balancing of individualized factors relating to the juvenile's culpability; instead, "the statute has been judicially construed to establish a presumption that [life without parole] is the appropriate term for a 16- or 17-year-old defendant." *People v. Moffett*, 148 Cal. Rptr. 3d 47, 55 (Cal. Ct. App. 2012). *See also People v. Guinn*, 33 Cal. Rptr. 2d 791, 797 (Cal. Ct. App. 1994) ("We

believe Penal Code section 190.5 means, contrary to the apparent presumption of defendant's argument, that 16- or 17-year-olds who commit special circumstances murder *must* be sentenced to LWOP, *unless* the court, in its discretion, finds good reason to choose the less severe sentence of 25 years to life") (emphasis in original); *People v. Murray*, 136 Cal. Rptr. 3d 820, 825 (Cal. Ct. App. 2012) ("Under [190.5(b)], the no-parole life sentence is the presumptive choice."); *People v. Ybarra*, 83 Cal. Rptr. 3d 340, 358 (Cal. Ct. App. 2008) (quoting *Guinn*, 33 Cal. Rptr. 2d at 799, in observing that "[t]he statute 'does not involve two equal penalty choices, neither of which is preferred. The enactment by the People evidences a preference for the LWOP penalty.'").

The appellate court improperly concluded that section 190.5 differs significantly from the mandatory punishments prohibited by *Miller*. Although the sentencing judge did profess to be "concerned throughout the trial about the defendant's age and the age" at which the incident occurred, the judge did not analyze how the defendant's age and development may have influenced his actions and involvement in the offense, nor did he focus on other related characteristics, such as Appellant's potential for rehabilitation, as required by *Miller*. See, e.g., *People v. Gutierrez*, 147 Cal. Rptr. 3d 249 (Cal. Ct. App. 2012), *Miller*, 132 S. Ct. at 2468. See also *People v. Ramirez*, G044703, at 35 (Cal. Ct. App. Sept. 12, 2013) (invalidating two sentences because they were imposed "without exercising

any discretion which took into account [the defendants'] youth – with its attendant immaturity and inability to appreciate risk, as well as its greater capacity for redemption.”)

As the *Ramirez* court explained, unless sentences take “into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison’ ...they qualify as cruel and unusual punishment” under *Miller*. *Id.* In other words, a sentence cannot pass constitutional muster if it is derived only from the nature of a crime, and “does not reflect any consideration of [the defendant’s] youth, and does not explain why anyone should assume [the defendant was] less amenable to rehabilitation than other juvenile offenders might have been expected to be.” *Id.* at 33-34 (quoting *Miller*, 132 S.Ct. at 2469). Rather than analyze Mr. Gutierrez’s individual culpability and characteristics and then fashion a just sentence accordingly, the trial court instead had to consider whether to “deviate from the *statutory requirement* of life without the possibility of parole.” *Moffett*, 148 Cal. Rptr. 3d at 52 (emphasis added) (internal quotation omitted).

Sentencing schemes that, absent exceptional circumstances, require courts to impose life without parole contravene *Miller*’s requirement for individualized sentencing, especially where the statute neither defines exceptional circumstances nor dictates that youth be among them. Prior to imposing a life without parole sentence on a juvenile offender, the U.S.

Supreme Court “*require[s]* [the sentencer] to take into account how children are different, and *how those differences counsel against irrevocably sentencing them to a lifetime in prison.*” *Miller*, 132 S. Ct. at 2469 (emphasis added). Where, as here, California’s sentencing statute presumes that life in prison without parole is the appropriate sentence for juvenile offenders, it directly conflicts with *Miller*. See, e.g., *Ramirez*, G044703 at 36 (Cal. Ct. App. Sept. 12, 2013) (explaining that “in light of the [Supreme C]ourt’s observation that even expert psychologists would have difficulty making reliable judgments about whether a particular juvenile offender is irreparably corrupted, we would have great difficulty presuming that even the most qualified trial judge could be expected to do so in the context of [a] sentencing hearing which takes place while the defendant is still very young.”)

According to *Miller*, the factors that a court must consider prior to imposing a life without parole sentence on a juvenile include the juvenile’s age¹ and developmental attributes, including immaturity, impetuosity, and failure to appreciate risks and consequences; his family and home environment; the circumstances of the offense, including the extent of his participation; the impact of familial or peer pressure; his lack of

¹ The current statute only takes age into account to the extent that it exempts juveniles from the death penalty. See Cal. Pen. Code § 190.5(a) (“the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime.”).

sophistication with the criminal justice system; and his potential for rehabilitation. 132 S. Ct. at 2468. *See also People v. Caballero*, 55 Cal.4th 262, 268 (2012) (explaining, with regard to juveniles convicted of non-homicide offenses, that “the sentencing court must consider all mitigating circumstances attendant in the juvenile’s crime and life, including but not limited to his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development”). As discussed in Section 2, *infra*, unless each of these factors dictates a finding that the juvenile is among the rare young offenders for whom life without parole is appropriate, a life without parole sentence cannot constitutionally be imposed. Because §190.5 of the California Penal Code flips this principle on its head, the statute is unconstitutional pursuant to *Miller*.

2. California’s Presumptive Juvenile Life Without Parole Statute Contravenes *Miller*’s Requirement That Juvenile Life Without Parole Sentences Be Uncommon

While the *Miller* Court banned only mandatory juvenile without parole sentences, the Court found that “given all we have said in *Roper*, *Graham*, and [*Miller*] about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be *uncommon*.” *Miller*, 132 S. Ct. at 2469 (emphasis added). Quoting *Roper* and *Graham*,

Miller further noted that the “juvenile offender whose crime reflects irreparable corruption” will be “rare.” 132 S. Ct. at 2469.²

California Penal Code § 190.5(b) assumes the opposite. Instead of imposing life without parole sentences on the “rare” juvenile offender, it is the non-life without parole sentence that is the rarity under the statute. *See, e.g., Guinn*, 33 Cal. Rptr. 2d 791, 797 (Cal. Ct. App. 1994) (“The fact that a court might grant leniency in some cases, in recognition that some youthful special-circumstance murderers might warrant more lenient treatment, does not detract from the generally mandatory imposition of [life without parole] as the punishment for a youthful special-circumstance murderer.”).

In other words, rather than requiring trial courts to make findings justifying the extraordinary sentence of juvenile life without parole, the California Penal Code provision applied here assumes in all cases that life without parole is the appropriate sentence absent a finding of some special circumstance that justifies a less severe sentence. This directly contravenes both the letter and the spirit of *Miller*, as well as the seminal cases upon which *Miller* relied. *See, e.g., Roper*, 543 U.S. at 573 (“An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular

² The Supreme Court has repeatedly found that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *See Roper*, 543 U.S. at 573; *see also Graham*, 130 S. Ct. at 2026; *Miller*, 132 S. Ct. at 2469.

crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death"). California Penal Code § 190.5 requires a trial court to disregard the settled research that irreparably corrupt juveniles are rare and instead to presume, without any justification or explanation, that children are beyond redemption. A presumptive penalty, by definition, cannot be "rare." *Miller*, 132 S. Ct. at 2469.

Applying *Miller*, this Court should direct that life without parole is only appropriate for children convicted of homicide when the trial court concludes, on the record, that *none* of the *Miller* factors support a less harsh, finite sentence. Sentencing courts must look beyond the circumstances of the offense and closely examine the characteristics of each individual juvenile offender to determine whether the harshest sentence available is appropriate. *See Roper*, 543 U.S. at 573 (noting that, in the context of the juvenile death penalty, "[a]n unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death").

C. Absent A Determination That Appellant Is Among The “Uncommon” Juveniles For Whom A Life Without Parole Sentence Is Justified, His Sentence Must Provide A Meaningful Opportunity For Release

In converting Appellant’s life without parole sentence into a term of years sentence, the trial court must also ensure that the sentence provides Appellant a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham*, 130 S. Ct. at 2030. As *Graham* makes clear, the Eighth Amendment “forbid[s] States from making the judgment at the outset that [juvenile] offenders never will be fit to reenter society.” *Id.* at 2032. Juveniles who receive non-life without parole sentences “should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential.” *Id.* at 2032. Therefore, absent a finding that the juvenile is among the most culpable juvenile offenders, a sentencer cannot replace a “life without parole” sentence with a sentence that is the functional equivalent of life without parole and where the opportunity for release within the juvenile’s lifetime is not “meaningful.” *See, e.g., People v. Ramirez*, G044703, at 33 (Cal. Ct. App. Sept. 12, 2013) (explaining that a “sentence that amounts to LWOP, does not satisfy *Miller*”). *See also Caballero*, 55 Cal.4th at 268-69.

For an opportunity for release to be “meaningful” under *Graham*, review must begin long before a juvenile is approaching the end of his or her life. The U.S. Supreme Court has noted that “[f]or most teens, [risky or

antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.” *Roper*, 543 U.S. at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)). Because most juveniles are likely to outgrow their antisocial and criminal behavior as they mature, review of the juvenile’s growth and rehabilitation should begin relatively early in the juvenile’s sentence, and the juvenile’s progress should be assessed regularly. See, e.g., *Research on Pathways to Desistance; December 2012 Update, Models for Change*, available at: <http://www.modelsforchange.net/publications/357> (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts. The study also found that “it is hard to determine who will continue or escalate their antisocial acts and who will desist[,]” as “the original offense . . . has little relation to the path the youth follows over the next seven years.”). Early and regular assessments enable the reviewers to evaluate any changes in the juvenile’s maturation, progress and performance. Regular review also provides an opportunity to confirm that the juvenile is receiving appropriate vocational training, programming and treatment that will foster

rehabilitation. *See, e.g., Graham*, 130 S. Ct. at 2030 (noting the importance of “rehabilitative opportunities or treatment” to “juvenile offenders, who are most in need of and receptive to rehabilitation”).

IV. CONCLUSION

As Justice Frankfurter wrote over fifty years ago in *May v. Anderson* 345 U.S. 528, 536 (1953), “[c]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State’s duty towards children.” Even today, adult sentencing practices that preclude taking into account the characteristics of individual juvenile defendants are unconstitutionally disproportionate punishments. Requiring individualized determinations will not impede punishment of juveniles who commit serious offenses. It merely requires that additional considerations and precautions be taken to ensure that the punishment accounts for the unique developmental characteristics of adolescents; as the Supreme Court has acknowledged, a child’s age is far “more than a chronological fact.” *See J.D.B. v. North Carolina*, 564 U.S. 1, 8 (2011). This approach builds upon other recent Supreme Court jurisprudence that recognizes that juveniles who commit crimes—even serious or violent crimes—can outgrow this behavior and become responsible adults.

For the foregoing reasons, *Amici Curiae* Juvenile Law Center et al. respectfully requests that this Court vacate Appellant Gutierrez's sentence and remand the case for sentencing in accordance with *Miller* and *Graham*.

Respectfully submitted,



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APPENDIX
IDENTITY OF *AMICI* AND STATEMENTS OF INTEREST
ORGANIZATIONS

Founded in 1975, **Juvenile Law Center (JLC)** is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. Juvenile Law Center urges this Court to vacate Appellant's life without parole sentence and remand for a re-sentencing consistent with the U.S. Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

The **Central Juvenile Defender Center**, a training, technical assistance and resource development project, is housed at the Children's Law Center, Inc. In this context, it provides assistance on indigent juvenile defense issues in Ohio, Kentucky, Tennessee, Indiana, Arkansas, Missouri, and Kansas.

Based in one of our nation's poorest cities, the Rutgers School of Law - Camden **Children's Justice Clinic** is a holistic lawyering program using multiple strategies and interdisciplinary approaches to resolve problems for indigent facing juvenile delinquency charges primarily providing legal representation in juvenile court hearings, primarily providing legal representation in juvenile court hearings. While receiving representation in juvenile court and administrative hearings, clients are exposed to new conflict resolution strategies and be educated about their rights and the implications of their involvement in the juvenile justice system. This exposure assists young clients in extricating themselves from destructive behavior patterns, widen their horizons and build more hopeful futures for themselves, their families and their communities. Additionally, the Clinic works with both local and state leaders on improving the representation and treatment of at-risk children in Camden and throughout the state.

The **Children's Law Center, Inc.** in Covington, Kentucky has been a legal service center for children's rights since 1989 protecting the rights of youth through direct representation, research and policy development and training and education. The Center provides services in Kentucky and Ohio, and has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education

and zero tolerance issues within schools and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children.

Fight for Lifers, West is a Lifers Support Group in Western Pennsylvania devoted to Prisoners in Pennsylvania who are sentenced to Life Imprisonment Without Parole. In the years since Roper, FFLW has identified 481 Juvenile Lifers in the PADOA, revealing that Pennsylvania leads the world in this category. We have sent 36 Newsletters, one every two months to these Juvenile Lifers, helping to make these prisoners aware of each other and giving important information to them. In this way they have shared information with each other, and made an impact of the outside world. FFLW has been seriously involved in the PA Senate Judiciary Committee Public Hearing on Juvenile Lifers, September 22, 2008, and in the United States House Subcommittee on Crime and Terrorism and Homeland Security hearing on H.R. 2289--Juvenile Justice Accountability and Improvement Act of 2009--on June 9, 2009. FFLW was included in an Amicus Brief filed by the Juvenile Law Center in *Graham v. Florida* in 2009.

Juvenile Justice Project of Louisiana (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice

system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and identify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

Amicus Curiae **National Association of Criminal Defense**

Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

NACDL was founded in 1958. It has a nationwide membership of approximately 10,000 and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense

counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice including issues involving juvenile justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in this case because the proper administration of justice requires that age and other circumstances of youth be taken into account in order to ensure compliance with constitutional requirements and to promote fair, rational and humane practices that respect the dignity of the individual.

The National Juvenile Defender Center (NJDC) was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile

defense attorneys a more permanent capacity to address important practice and policy issues, Improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The National Juvenile Justice Network (NJJN) leads and supports a movement of state and local juvenile justice coalitions and organizations to secure local, state and federal laws, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises forty-three members in thirty-three states, all of which seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are fundamentally different from adults and should be treated in a developmentally appropriate manner that holds them accountable in ways that give them the tools to make better choices in the

future and become productive citizens. Youth should not be transferred into the adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole, and placed in adult prisons where they are exceptionally vulnerable to rape and sexual assault and have much higher rates of suicide. NJJN supports a growing body of research that indicates the most effective means for addressing youth crime are age-appropriate, rehabilitative, community-based programs that take a holistic approach, engage youth's family members and other key supports, and provide opportunities for positive youth development.

The Northeast Juvenile Defender Center is one of the nine Regional Centers affiliated with the National Juvenile Defender Center. The Center provides support to juvenile trial lawyers, appellate counsel, law school clinical programs and nonprofit law centers to ensure quality representation for children throughout Delaware, New Jersey, New York, and Pennsylvania by helping to compile and analyze juvenile indigent defense data, offering targeted, state-based training and technical assistance and providing case support specifically designed for complex or high profile cases. The Center is dedicated to ensuring excellence in juvenile defense by building the juvenile defense bar's capacity to provide high quality representation to children throughout the region and promoting

justice for all children through advocacy, education, and prevention.

The **National Legal Aid & Defender Association (NLADA)**, founded in 1911, is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. For 100 years, NLADA has pioneered access to justice at the national, state and local level through the creation of our public defender system, development of nationally applicable standards for legal representation, groundbreaking legal legislation and the creation of important institutions such as the Legal Services Corporation. NLADA serves as a collective voice for our country's civil legal aid and public defender services and provides advocacy, training, and technical assistance to further its goal of securing equal justice.

The **Pacific Juvenile Defender Center** is a regional affiliate of the National Juvenile Defender Center. Members of the Center include juvenile trial lawyers, appellate counsel, law school clinical staff, attorneys and advocates from nonprofit law centers working to protect the rights of children in juvenile delinquency proceedings in California and Hawaii. The Center engages in appellate advocacy, public policy and legislative discussions with respect to the treatment of children in the juvenile and

criminal justice systems. Center members have extensive experience with cases involving serious juvenile crime, the impact of adolescent development on criminality, and the differences between the juvenile and adult criminal justice systems. These cases, involving the imposition of Life Without the Possibility of Parole on juvenile offenders, present questions that are at the core of the Pacific Juvenile Defender Center's work.

The mission of the **San Francisco Office of the Public Defender** is to provide vigorous, effective, competent and ethical legal representation to persons who are accused of crime and cannot afford to hire an attorney. We provide representation to 25,000 individuals per year charged with offenses in criminal and juvenile court.

The **Southern Poverty Law Center (SPLC)** is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Among other things, SPLC staff work to break the cycle of juvenile incarceration by making juvenile justice and education systems more responsive to the needs of children, families and the communities in which they live. We seek reform through public education, community organizing, litigation, legislative advocacy, training and technical assistance. SPLC is based in Montgomery,

Alabama, and has offices in Florida, Georgia, Louisiana and Mississippi.

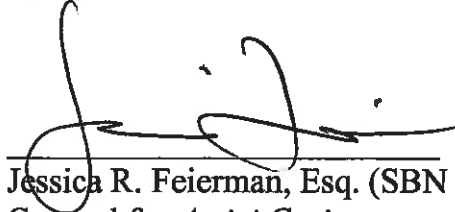
INDIVIDUALS

Laura Cohen is a Clinical Professor of Law at the Rutgers School of Law in Newark, New Jersey, where she directs the Criminal and Youth Justice Clinic. She is the former director of training for the New York City Legal Aid Society's Juvenile Rights Division, where she oversaw both the attorney training program and public policy initiatives relating to juvenile justice and child welfare. She also has served as a senior policy analyst for the Violence Institute of New Jersey; deputy court monitor in *Morales Feliciano v. Hernandez Colon*, a prisoners' rights class action in the U.S. District Court in San Juan, Puerto Rico; adjunct professor at New York Law School; and staff attorney for the Legal Aid Society. Professor Cohen co-directs the Northeast Regional Juvenile Defender Center, an affiliate of the National Juvenile Defender Center, which is dedicated to improving the quality of representation accorded children in juvenile court. Her scholarly interests include juvenile justice, child welfare, and the legal representation of children and adolescents. Professor Cohen teaches doctrinal and clinical courses relating to juvenile justice law and policy, is a team leader of the MacArthur Foundation funded New Jersey Juvenile Indigent Defense Action Network, and has published numerous articles on juvenile justice and child welfare.

Stephen K. Harper is a clinical professor at Florida International University College of Law. Prior to that he taught juvenile law as an adjunct professor at the University of Miami School of law for 13 years. From 1989 until 1995 he was the Chief Assistant Public Defender in charge of the Juvenile Division in the Miami-Dade Public Defender's Office. In 1998 he was awarded the American Bar Association's Livingston Hall Award for "positively and significantly contributing to the rights and interests" of children. Harper took a leave of absence from his job to coordinate the Juvenile Death Penalty Initiative which ended when the Supreme Court of the United States ruled in *Roper v Simmons* 543 U.S. 551 (2005). In 2005 he, along with Seth Waxman, received the Southern Center for Human Rights Frederick Douglass Award for his work in ending the juvenile death penalty. He has consulted in many juvenile cases in Florida, Guantanamo and the United States Supreme Court (including *Graham v Florida*, (130 S.Ct. 2011 (2010) and *Miller v Alabama* 567 U.S. ___ 2010).

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief conforms to Rules 8.200 and 8.204,
and that it contains 3,535 words in 13-point Times New Roman font, as
calculated by Microsoft Word 2010.



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CERTIFICATE OF SERVICE

I certify that, this 18th day of September, 2013, a true and correct copy of the foregoing brief of *Amici Curiae* Juvenile Law Center et al. has been sent by regular U.S. mail to the following:

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