

No. S256149

**IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA**

—
IN RE WILLIAM M. PALMER, ON HABEAS CORPUS
—

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION TWO
APPEAL NO. A154269

**APPLICATION TO FILE
AMICUS CURIAE BRIEF OF THE SENTENCING PROJECT
IN SUPPORT OF WILLIAM M. PALMER**

And

**PROPOSED AMICUS BRIEF
OF THE SENTENCING PROJECT
IN SUPPORT OF WILLIAM M. PALMER**

KRISTEN BELL
(SBN 302311)
1515 Agate Street
Eugene, OR 97403
Phone: 541-346-0206
Facsimile: 541-346-1564
Email: krbell@uoregon.edu
Attorney for Amicus Curiae

Application to File an Amicus Curiae Brief in Support of Petitioner and Statement of Interest of Amicus Curiae

An Application to File was included in the motion for extension of time filed by amicus curiae on March 12. Another Application to File is included here because the Proposed Brief is now attached with this Application to File.¹

The Sentencing Project respectfully applies for leave to file an amicus curiae brief in support of William M. Palmer, pursuant to rule 8.520(f) of the California Rules of Court.

The Sentencing Project, founded in 1986, is a national nonprofit organization engaged in research and advocacy in the fields of criminal justice and juvenile justice. The organization is nationally recognized for its policy research documenting trends and racial disparities within the justice system, and for developing recommendations for policy and practice to ameliorate inequities. The Sentencing Project has produced policy analyses that document the increasing use of life imprisonment for both juveniles

¹ *Amici* wish to acknowledge University of Oregon School of Law students Megan Breen, Scott Cumming, Nicole Curtis, Jacob Gates, Anna Johnson, Kate Lemley, Madeline Lorang, Sean McKean, Micah Murphy, Allie Rude, and Natalie Smith for their work on the proposed brief and its appendices.

and adults, and it has assessed the impact of such policies on public safety, fiscal priorities, and prospects for rehabilitation. The staff of the organization is frequently called upon to testify to legislatures and before a broad range of policymaking bodies and practitioner audiences.

The Sentencing Project has done extensive national research that is directly relevant to the questions presented by this case. The Sentencing Project has authored several recent reports on juvenile sentencing, life without parole sentencing, and life with the possibility of parole sentencing. Further, The Sentencing Project can provide data on the number of individuals serving life sentences for kidnapping across the country. Such data is directly relevant to the inquiry of whether Mr. Palmer's sentence violates the California Constitution, as well as the U.S. Constitution. Given its experience in sentencing law more generally, The Sentencing Project can aid the court in answering questions about the country's evolving standards of decency with respect to life sentencing of juveniles.

No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part. No one other than the *amici* have made any monetary contribution intended to fund the preparation or submission of the proposed brief.

Dated: April 27, 2020

Respectfully submitted,

By:  _____

KRISTEN BELL (SBN 302311)

INTRODUCTION	13
SUMMARY OF ARGUMENT.....	15
ARGUMENT.....	18
I. A MANDATORY SENTENCE OF LIFE WITH THE POSSIBILITY OF PAROLE FOR A KIDNAPPING CONVICTION VIOLATES THE EIGHTH AMENDMENT AS APPLIED TO JUVENILES.....	18
A. “Objective indicia” show a national consensus against punishing youth convicted of kidnapping with a mandatory sentence of life with the possibility of parole.	19
i. The societal consensus against mandatory life sentences for juveniles convicted of kidnapping is stronger here than it was in Miller or Graham.....	20
ii. Evidence of actual sentencing practice confirms that our nation’s evolving standard of decency rejects a life sentence for kidnapping for a juvenile.....	24
iii. Consistency in the direction of legislative change is further evidence of a national consensus against a mandatory life sentence with the possibility of parole for juveniles.	28
B. The severity of a mandatory sentence of life imprisonment with the possibility of parole is disproportionate to the culpability of juveniles convicted of kidnapping.	29
i. Juveniles are less culpable than adults	30
ii. Those convicted of kidnapping may have dramatically diminished culpability.....	32
iii. Sentencing a juvenile to mandatory life imprisonment with the possibility of parole is a brutal punishment.....	35
C. A mandatory life sentence for kidnapping is not justified under any of the penological justifications for punishment.	39

i. Retribution cannot justify a mandatory life sentence for a juvenile convicted of kidnapping.	39
ii. Deterrence cannot justify a mandatory life sentence for a juvenile convicted of kidnapping.	40
iii. Incapacitation cannot justify imposing a mandatory life sentence for a juvenile convicted of kidnapping.	42
iv. Rehabilitation cannot justify a mandatory life sentence for a juvenile convicted of kidnapping.	45
D. The issue of whether a mandatory life sentence for a juvenile convicted of kidnapping violates the Eighth Amendment is properly before this Court.	48
II. AN INDETERMINATE LIFE SENTENCE FOR A JUVENILE CONVICTED OF KIDNAPPING FOR THE PURPOSE OF ROBBERY VIOLATES THE CALIFORNIA CONSTITUTION.	50
III. THE INDETERMINATE LIFE SENTENCE IMPOSED ON MR. PALMER IS GROSSLY DISPROPORTIONATE TO THE FACTS OF HIS CASE.	54
A. Appendix C explains the sentences that an individual similarly situated to Mr. Palmer would face in 52 jurisdictions.	54
B. Only 3 jurisdictions mandate that a life sentence be imposed on a juvenile for a crime similar to Mr. Palmer's.	61
C. California is virtually alone in mandating a one-size-fits-all sentence for juveniles and adults alike.	63
CONCLUSION	66

Cases

<i>Atkins v. Virginia</i> (2002) 536 U.S. 304	18
<i>Ewing v. California</i> (2003) 538 U.S. 11	41
<i>Graham v. Florida</i> (2010) 560 U.S. 48	14, 18, 22, 24
<i>Greenholtz v. Inmates of Nebraska Penal and Correctional Complex</i> (1979) 442 U.S. 1, 35.....	34
<i>Gregg v. Georgia</i> , 428 U.S. 153.....	39
<i>In re Clark</i> (1993) 5 Cal.4th 750	48
<i>In re Earley</i> (1975) 14 Cal.3d 122.....	32
<i>In re Lynch</i> (1972) 8 Cal.3d 410.....	15, 49, 50, 51
<i>In re Stanford</i> (2002) 537 U.S. 968	31
<i>Lockyer v. Andrade</i> (2003) 538 U.S. 63	52
<i>Montgomery v. Louisiana</i> (2016) 136 S.Ct. 718	49
Penal Code section 1732.6.....	59
<i>People v. Anderson</i> (1972) 6 Cal.3d 628.....	52
<i>People v. Caddick</i> , 160 Cal. App. 3d 46.....	44, 45
<i>People v. Haller</i> (2009) 174 Cal.App.4th 1080.....	52
<i>People v. Nguyen</i> (2000) 22 Cal.4th 872.....	32
<i>People v. Smithey</i> (1999) 20 Cal.4th 936	52
section 209(b)	passim
<i>Stanford v. Kentucky</i> (1989) 492 U.S. 361	49
<i>Tapia v. U.S.</i> (2011) 564 U.S. 319.....	44

<i>Tison v. Arizona</i> (1987) 481 U.S. 137	38
---	----

Statutes

2013 Cal. Legis. Service, ch. 312, § 1 (S.B. 260).....	43
29 C.F.R. 570.53; 29 C.F.R. 570.60	30
720 Ill. Comp. Stat. Ann. 5/10-2	56
730 Ill. Comp. Stat. Ann. 5/5-4.5-105	59
Alaska Stat. § 12.55.125(b)	59
Ariz. Rev. Stat. Ann. §§ 13-701	59
Bus. & Prof. Code, § 22963.....	30
Bus. & Prof. Code, § 25658(b)	30
Cal. Pen. Code, § 12022	58
California Penal Code section 4801	64
Colo. Rev. Stat. Ann. § 18-3-301	54
D.C. Code Ann. § 22-2001	55
Fam. Code, § 6701.....	30
Fam. Code, § 6710.....	30
Ga. Code Ann. § 16-5-40.....	55
Health & Saf. Code, § 11362.1	30
Idaho Code Ann. § 20-508(10).....	59
La. Stat. Ann. § 14:44.....	64
La. Stat. Ann. 15:574.4 (D)	64

Lab. Code, § 1294.1(b).....	30
Mass. Ann. Laws ch. 119, § 58.....	21, 58
Mass. Ann. Laws ch. 119, § 74.....	21, 58
Mass. Ann. Laws ch. 269, § 10.....	21, 58
Mont. Code Ann. § 46-18-22.....	59
N.H. Rev. Stat. § 633:1.....	55
N.H. Rev. Stat. § 651:2.....	55
N.Y. Penal Law § 135.20.....	60
N.Y. Penal Law § 70.00.....	60
N.Y. Penal Law § 70.05.....	60
Or. Rev. Stat. Ann. § 137.712.....	59
Penal Code section 209(b).....	passim
R.I. Gen. Laws § 11-47-2	58
R.I. Gen. Laws § 11-47-3.2	58
<i>Rummel v. Estelle</i> (1980) 445 U.S. 263.....	34
Tenn. Code Ann. § 39-13-305	57
Veh. Code, § 12515	30
Wash. Rev. Code Ann. § 9.94A.535.....	59

Other Authorities

Ashley Nellis, The Sentencing Project, The Lives of Juvenile Lifers: Findings from a National Survey (2012)	47
--	----

Bell, <i>A Stone of Hope: Legal and Empirical Analysis of Juvenile Lifer Parole Decisions</i> (2019) 54 Harv. C.R.-C.L. L.Rev. 455, 516.....	51
Bureau of Justice Statistics, National Corrections Reporting Program: Time served in state prison, by offense, release type, sex, and race (2009).....	27
Chad Flanders, <i>The Supreme Court and the Rehabilitative Ideal</i> (2015) 49 Ga. L. Rev. 383	44
Charlie Sarosy, <i>Parole Denial Habeas Corpus Petitions: Why the California Supreme Court Needs to Provide More Clarity on the Scope of Judicial Review</i> (2014) 61 UCLA L.Rev. 1134.....	35
Elizabeth Calvin, Human Rights Watch, “When I Die, They’ll Send Me Home” (2008)	36
Jarod K. Hofacket, <i>Justice or Vengeance: How Young Is Too Young for a Child to Be Tried and Punished as an Adult?</i> (2002) 34 Tex. Tech L.Rev. 159.....	36
John L. Diamond, <i>Kidnapping: A Modern Definition</i> (1985) 13 Am. J. Crim. L. 1	31
Josh Rovner, The Sentencing Project, <i>Juvenile Life Without Parole: An Overview</i> (February, 2020).....	28
K. Davis, <i>Discretionary Justice: A Preliminary Inquiry</i> 132 (1969)	34
Laurence Steinberg, <i>The Influence of Neuroscience on U.S. Supreme Court Decisions about Adolescents’ Criminal Culpability</i> (2013) 14 Neuroscience 513	43

Megan C. Kurlycheck et al., <i>Long-Term Crime Desistance and Recidivism Patterns – Evidence from the Essex County Felony Study</i> , 50 Criminology 71	43
Paul H. Robinson & John M. Darley, <i>The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best</i> (2003) 91 Geo L.J. 949	40
Penal Code section 1170.....	45
Robert Smith & G. Ben Cohen, <i>Redemption Song: Graham v. Florida and the Evolving Eighth Amendment Jurisprudence</i> (2010) 108 Mich. L. Rev. First Impressions 86	48
Sarah French Russell and Tracy L. Denholtz, <i>Procedures for Proportionate Sentences: The Next Wave of Eighth Amendment Noncapital Litigation</i> (2016) 48 Conn. L.Rev. 1121	27
Sarah French Russell, <i>Review for Release</i> , 89 Ind. L.J. at 408	35
Terrie E. Moffitt, <i>Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy</i> , 100 Psych. R. 674..	43
<i>Woodson v. North Carolina</i> (1976) 428 U.S. 280	13
Young et al., <i>Predicting Parole Grants, supra</i> , 28 Fed. Sent’g Rep.....	35
Treatises	
22 Cal. Jur. 3d Criminal Law: Posttrial Proceedings § 213.....	49
LaFave, 3 Subst. Crim. L., § 18.1(a) (3d ed.).....	54

Constitutional Provisions

Article 1, Section 17 of the California Constitution 13, 15, 16, 52

Eighth Amendment to the United States Constitutionpassim

INTRODUCTION

Lifetime imprisonment with the possibility of release on parole is the most severe sentence that California law permits for a person under the age of 18 (henceforth a juvenile). (*See* Pen. Code § 3051(4).) Lifetime imprisonment with the possibility of release on parole is also the most severe sentence that the United States Constitution permits for a juvenile convicted of a non-homicide offense. (*See Graham v. Florida* (2010) 560 U.S. 48, 82.) Penal Code section 209(b) is unconstitutional because it makes this most-severe sentence the *mandatory* sentence for a juvenile convicted of kidnapping for the purpose of robbery, even if it is a first-offense with no intended, attempted, or actual bodily injury or sexual assault to the victim.

California's indiscriminate approach to sentencing juveniles convicted under Penal Code section 209(b) is extremely rare across the country. To provide this Court with detail about how juveniles are sentenced for kidnapping across the nation, *amici* have prepared a 52-jurisdiction survey of state sentencing laws and practices. (*See* Appendices A, B, and C.) Only three jurisdictions – California, Louisiana, and Utah – impose a mandatory sentence of life with the possibility of parole for a juvenile convicted of a crime similar to Mr. Palmer's: kidnapping for the purpose of robbery with a firearm and without bodily injury to the victim. (*See* Appendix C.) Eight individuals are currently serving a life sentence

for a kidnapping conviction as a juvenile in Louisiana and Utah.² (See Appendix A.) By contrast, when the Supreme Court held that mandatory sentences of life without parole were unconstitutional as applied to juveniles in *Miller v. Alabama* (2012) 567 U.S. 460, there were 29 jurisdictions that imposed such sentences on juveniles and over 2,000 individuals serving that sentence. (See *id.* at 482, 493).

The consensus around the country, along with the foundational principle underlying both *Graham* and *Miller*, reject exactly what section 209(b) requires: “imposition of a State’s most severe penalties on juvenile[s] . . . as though they were not children.” (See *id.* at 475.) In its draconian approach that is nearly unmatched across the nation, Section 209(b) treats those like Mr. Palmer “not as uniquely individual human beings, but as members of a faceless, undifferentiated mass.” (*Woodson v. North Carolina* (1976) 428 U.S. 280, 304). As applied to juveniles, the statute shocks the conscience and is incompatible with the fundamental notions of human dignity enshrined in the “cruel or unusual punishment” clause of Article 1, Section 17 of the California Constitution and the “cruel and unusual punishment” clause of the Eighth Amendment to the United States Constitution.

² California has not responded to *amici*’s public record act requests.

SUMMARY OF ARGUMENT

Amici argue in Part I of this brief that imposing a mandatory sentence of life with the possibility of parole on juveniles convicted of kidnapping violates the Eighth Amendment. In determining whether a punishment is cruel or unusual as applied to a category of people convicted of a type of crime, the Eighth Amendment calls for a two-step analysis. See *Graham v. Florida* (2010) 560 U.S. 48, 61, as modified (July 6, 2010). First, the court looks to evidence of a national consensus against the punishment in question by reviewing the numbers of people serving it and applicable statutes nationwide. Second, the court applies its independent judgment in analyzing whether the punishment is justified by any of the traditional rationales for punishment - retribution, deterrence, incapacitation, or rehabilitation. In both steps of the analysis, the Court distinguishes punishment that is imposed on a mandatory basis from punishment that is imposed on a discretionary basis. (See *Miller v. Alabama* (2012) 567 U.S. 460, 477, 483.)

To assist the Court in this analysis, Appendix B lists jurisdictions where a life sentence is mandatory, discretionary, or not available for the *most severe* type of kidnapping as defined by each jurisdiction. Appendix A lists the numbers of people serving a life sentence for the controlling offense of kidnapping as a juvenile. These appendices provide evidence of a national consensus against mandatory life sentences for juveniles

convicted of kidnapping that is stronger than the evidence of consensus that the Supreme Court relied on in *Miller* and *Graham*. (See *infra* at 20.) Further, *amici* show that a mandatory life sentence with the possibility of parole for juveniles convicted of kidnapping is not justified by any of the traditional rationales for punishment.

In Part II of this brief, *amici* argue that section 209(b) is unconstitutional as applied to juveniles under Article I, section 17 of the California Constitution. The analysis is guided by *In re Lynch* (1972) 8 Cal.3d 410, in which this Court held that Penal Code section 314 violated the California Constitution's prohibition against cruel or unusual punishment because it imposed a sentence of one year to life for the conviction of second-offense indecent exposure. (See *id.* at 413.) The *Lynch* court applies a settled rule of California constitutional law which *amici* argue should apply to Mr. Palmer's case as well. The California rule is that, when determining whether a statute is unconstitutional, courts consider whether the *maximum* period of incarceration authorized by statute is proportionate to the offense. (See *id.* at 415-416.) The question under Article 1 thus should be framed as follows: is the maximum period of incarceration authorized by section 209(b) – an *entire lifetime* of imprisonment – disproportionate to the offense of kidnapping for the purpose of robbery committed by a juvenile? The answer is yes: an entire lifetime behind bars, beginning at age 17, is grossly disproportionate to an

offense that need not include any actual, attempted, or intended bodily injury to a victim.

In Part III of this brief, *amici* turn to the alternative argument that – even if section 209(b) is constitutional – the statute’s particular application to Mr. Palmer’s case violates Article 1, section 17 as well as the Eighth Amendment. The analysis here involves three steps: first, looking to the characteristics of the individual and the offense, second to punishments for more serious crimes within the state, and third to punishments for similar crimes in other jurisdictions. (See *id.*) *Amici* focus only on the third part, the interstate comparison. Appendix C details the range of sentences that a person similarly situated to Mr. Palmer would have received in 52 jurisdictions under statutes current as of March, 2020. Unlike Appendix B, which considers sentencing for the most severe type of kidnapping available in a given jurisdiction, Appendix C is tailored to the facts of Mr. Palmer’s case: a kidnapping committed by a juvenile for the purpose of robbery, with a firearm, and without bodily injury or other aggravating factors.

A mandatory sentence of life with the possibility of parole is extremely rare for such an offense. It is available in only two other jurisdictions – Louisiana and Utah – and there are only 8 individuals serving a life sentence for kidnapping as juveniles in those jurisdictions. (See Appendices A and C.) In stark contrast to the one-size-fits-all

approach taken by California, other jurisdictions provide a range of sentencing options for juveniles convicted of a crime similar to Mr. Palmer's. In 47 jurisdictions, there is a difference of at least 10 years between the minimum sentence a juvenile can receive and the maximum sentence an adult can receive for a crime similar to Mr. Palmer's. (See *infra* at 63.)

For these reasons, Mr. Palmer's punishment of an indeterminate life sentence under section 209(b) at age 17 "shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch* (1972) 8 Cal.3d 410, 424.)

ARGUMENT

I. A MANDATORY SENTENCE OF LIFE WITH THE POSSIBILITY OF PAROLE FOR A KIDNAPPING CONVICTION VIOLATES THE EIGHTH AMENDMENT AS APPLIED TO JUVENILES.

A mandatory sentence of life with the possibility of parole violates the Eighth Amendment when it is imposed on a juvenile solely on the basis of a kidnapping conviction. That is true when the conviction is based on kidnapping in its most aggravated form, as defined by statute; it is also true here, in relation to the particular kind of kidnapping at issue in Mr. Palmer's case.

To determine whether a punishment is categorically cruel and unusual under the Eighth Amendment, a court first considers whether

“objective indicia of society’s standards” demonstrate a “national consensus against the sentencing practice at issue.” (*Graham, supra* 560 U.S. at 61 (citing *Roper v. Simmons* (2005) 543 U.S. 551, 572).) Next, the court exercises its judgment to determine whether a particular punishment serves a valid penological purpose. (*Id.* at 67) If the court’s assessment shows that the punishment violates society’s evolving standards of decency and fails to serve a valid penological purpose, then the court strikes the sentence as unconstitutional. (See *Roper, supra* 543 U.S. at 572.)

A. “Objective indicia” show a national consensus against punishing youth convicted of kidnapping with a mandatory sentence of life with the possibility of parole.

In assessing whether a national consensus has formed against a particular punishment, “the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.” (*Atkins v. Virginia* (2002) 536 U.S. 304, 312.) As primary evidence of this consensus, courts consider both “legislative enactments and [actual] state practice” to determine how many jurisdictions prohibit or permit the punishment at issue. For example, in *Roper*, the Supreme Court found a consensus against the death penalty for all juveniles when 20 states allowed the death penalty for juveniles and 30 states prohibited it. (See *Roper*, 543 U.S. at 564.) Additionally, courts look to the “consistency of the direction of change” among the jurisdictions and actual sentencing

practices. (*Id.* at 566.) Here, the number of jurisdictions—as well as actual sentencing practices and the consistent direction of change—demonstrate a stark national consensus against punishing juveniles convicted of kidnapping with a mandatory sentence of life with the possibility of parole.

i. The societal consensus against mandatory life sentences for juveniles convicted of kidnapping is stronger here than it was in *Miller* or *Graham*.

California is an extreme outlier in mandating that youth convicted of kidnapping must serve the harshest possible sentence that can be imposed on a juvenile for a non-homicide offense: life with the possibility of parole. Appendix B shows whether a life sentence³ is mandatory, discretionary, or available for juveniles and adults convicted of any degree of kidnapping, including the most aggravated forms of kidnapping in a jurisdiction.⁴

³ For juveniles, “life sentence” here refers to terms of 50 years or longer or a sentence of life with the possibility of parole. For adults, “life sentence” refers to terms of 50 years or longer, life with the possibility of parole, and life without the possibility of parole.

⁴ In determining the sentence reported in Appendix B, *amici* assumed to be true any and all aggravating factors that were set forth in statutes that define the nature, grade, or sentence of the kidnapping offense. In many

Statutes providing that a specific punishment “shall” be imposed were classified as imposing mandatory sentences, and statutes providing that a punishment “may” be imposed were classified as discretionary sentences.⁵

Appendix B shows that only five jurisdictions make a life sentence mandatory for juveniles and adults convicted of even the most aggravated types of kidnapping: California, Colorado, Georgia, Louisiana, and Utah.

jurisdictions, Mr. Palmer would not have been eligible to receive the sentence reported in Appendix B because he would not have satisfied the required aggravating factors. Examples of aggravating factors include causing bodily harm to the victim, the victim being a child, the defendant kidnapping with the intent to commit sexual assault, and the defendant having the intent to extract a ransom. (See *infra* at 60.) Appendix B does not, however, account for sentencing enhancements, such as habitual offender enhancements, that apply broadly across a range of different felonies.

⁵ For Appendices A and B, where a statute stated that punishment “shall” be “up to” or a “maximum of” a certain period of time, *amici* assumed that a sentencer could not exceed that period of time. And in such cases, unless there was a contrary indication in the statute or surrounding statutes, *amici* assumed that there was no mandatory minimum punishment.

Seven jurisdictions make a life sentence mandatory for adults, but not for juveniles. (See Appendix B.)⁶ Twenty-two jurisdictions make a life sentence discretionary for both juveniles and adults.⁷ (See *id.*) Twenty

⁶ Idaho, Iowa, Nebraska, South Dakota, West Virginia, and the Federal government. (See Appendix B.) New York mandates a life sentence for adults convicted of kidnapping, but does not allow it for juveniles. (See N.Y. Penal Law § 135.25 (first degree kidnapping); N.Y. Penal Law § 70.00 (sentence); N.Y. Penal Law § 70.05 (different sentencing for juveniles).)

⁷ Alabama, Alaska, Arkansas, Florida, Illinois, Kentucky, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming. (See Appendix B.) Massachusetts is listed among this group of states in Appendix B, but juveniles in Massachusetts can be transferred to adult court only in murder cases. (See Mass. Ann. Laws ch. 119, § 74 (juveniles can be transferred to adult court only for the offense of murder); Mass. Ann. Laws ch. 119, §§ 58, 52; ch. 269, § 10.) A juvenile therefore could not receive a sentence of life with the possibility of parole for kidnapping in Massachusetts.

jurisdictions do not provide a life sentence as an option for juveniles convicted of the most aggravated type of kidnapping.⁸ (See *id.*)

The evidence of societal consensus against punishing a juvenile with a mandatory sentence of life with the possibility of parole for kidnapping is stronger than the evidence against life without parole sentences in *Miller* and *Graham*. Here, only **5** jurisdictions impose a mandatory sentence of life with the possibility of parole for juveniles convicted of kidnapping. In contrast, **29** jurisdictions imposed a mandatory life-without-parole sentence on juveniles when the Supreme Court held that punishment to be cruel and unusual in *Miller*. (See *Miller, supra*, 567 U.S. at 482.) Thus, the national consensus based on state statutes here is over **5 times** as strong as it was in *Miller*.

In *Graham*, 39 jurisdictions allowed juveniles convicted of non-homicide offenses to be punished with life-without-parole sentences when the Supreme Court held that sentence violated the Eighth Amendment. (See *Graham, supra*, 560 U.S. at 82 (appendix listing jurisdictions).) Here, 32

⁸ Arizona, Connecticut, Delaware, District of Columbia, Hawaii, Indiana, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, and South Carolina.

jurisdictions allow juveniles convicted of kidnapping to be punished with life with the possibility of parole sentences for kidnapping.⁹

ii. Evidence of actual sentencing practice confirms that our nation’s evolving standard of decency rejects a life sentence for kidnapping for a juvenile.

“Actual sentencing practices are an important part of the Court’s inquiry into consensus.” (*Graham*, 560 U.S. at 62. .)

Appendix A shows that the use of life sentences with the possibility of parole for juveniles convicted of kidnapping is extraordinarily rare. Appendix A shows the numbers of people who are serving a life sentence that was imposed for a conviction as a juvenile, and for whom kidnapping is the controlling offense, in jurisdictions with statutes that make such a sentence available.¹⁰ Included are those serving sentences of life with the

⁹ Alabama, Alaska, Arkansas, California, Colorado, the Federal government, Florida, Georgia, Idaho, Iowa, Nebraska, South Dakota, West Virginia, Illinois, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

¹⁰ Controlling offense is defined here as it is in California Penal Code section 3051; as the offense that carries the longest period of incarceration.

possibility of parole, life without the possibility of parole,¹¹ or terms longer than 50 years (which may or may not include the possibility of parole). Terms longer than 50 years are included here on the assumption that, in practice, such a term is functionally as harsh as a life sentence.¹²

Appendix A identifies 116 individuals serving a life sentence with kidnapping as the controlling offense.¹³ (See Appendix A.) The number of

¹¹ Presumably, juveniles serving sentences of life without the possibility of parole for kidnapping were sentenced prior to *Graham v. Florida* (2010) 560 U.S. 48.

¹² The data reported in Appendix A were collected by Ashley Nellis, Ph.D., of The Sentencing Project, in response to public records requests to State and Federal departments of corrections, as detailed in the organization's declaration, attached as Exhibit A. The data are current as of year-end 2019. Twenty-four of the 32 jurisdictions listed in Appendix A responded to these public record requests as of April, 2020.

¹³ The numbers presented in Appendix A are likely an overestimate for two reasons. First, a person counted in Appendix A may not be serving a life sentence for kidnapping *on its own*; while kidnapping is the controlling offense for all individuals in Appendix A, the sentence for kidnapping may be for less-than life but then run consecutively with other sentences and/or

individuals incarcerated in these jurisdictions is not evenly distributed; 112 of the 116 individuals (97%) are in 11 jurisdictions alone. (See *id.* (listing individuals in Louisiana, Utah, Georgia, Colorado, Florida, Texas, Iowa, Alabama, Nevada, Arkansas, and Michigan.)) There are 10 jurisdictions that allow a life sentence for juveniles convicted of kidnapping, but have zero individuals in custody with that sentence. (See *id.* (listing zero individuals in Alaska, Idaho, Illinois, Kentucky, Nebraska, New Jersey, South Dakota, Vermont, West Virginia, and Wisconsin).)

When the Court found a consensus against life without parole for juveniles convicted of nonhomicide offenses in *Graham*, it identified “124 juvenile nonhomicide offenders serving life without parole sentences.” (See *Graham, supra*, at 64.) These 124 individuals were incarcerated in 11 jurisdictions. (See *id.*) Direct comparison to this data is not possible here

enhanced by a habitual offender statute. Second, several jurisdictions have changed their sentencing statutes from mandatory to discretionary in recent years. For example, there are 9 individuals serving a life sentence for kidnapping in Iowa; a life sentence was mandatory until 2014, but is now discretionary. (See *State v. Lyle* (Iowa 2014) 854 N.W.2d 378, 404.) It is unclear whether these individuals would receive a life sentence under the current discretionary sentencing scheme.

because *amici* did not receive data from all jurisdictions that allow an indeterminate life sentence to be imposed on a juvenile for a kidnapping conviction. Notably, however, the litigants in *Graham* did not provide data for all jurisdictions in their briefing, and the Court sought out that data. (See *id.* at 63–64.)

When the Court in *Miller* found that there was a national consensus against mandatory life without parole for juveniles, there were 2,500 individuals serving life without parole for murder convictions as juveniles. (See *Miller, supra* 567 U.S. at 493–494 (Roberts, J., dissenting)). For over 2,000 of those individuals, the sentence was mandatory life without parole. (*Id.*)

In addition to the data in Appendix A, the average sentence actually imposed on either juveniles or adults convicted of kidnapping is also relevant in considering sentencing practices. Across 50 states, among people sentenced to a term-of-years for kidnapping, the average *maximum* sentence imposed for kidnapping was 6 years and 9 months for a white man (81 months) and 7 years for an African American man (84 months). (See Bureau of Justice Statistics, National Corrections Reporting Program: Time

served in state prison, by offense, release type, sex, and race (2009).)¹⁴ The average time served under these sentences ranges from 4 years and 8 months (56 months) to 5 years and 2 months (62 months). (See *id.*)

Imposing a mandatory life sentence on a child convicted of kidnapping when the average time served for adults convicted of this crime is less than 10 years must surely shock the conscience.

iii. Consistency in the direction of legislative change is further evidence of a national consensus against a mandatory life sentence with the possibility of parole for juveniles.

State legislatures across the country have recognized that “children are constitutionally different from adults for [the] purposes of sentencing.” (*Miller, supra*, 567 U.S. at 471.) Since 2012, at least 26 jurisdictions have enacted legislation that has reduced the severity of punishment for individual convicted juveniles and/or increased judicial discretion in sentencing individuals convicted as juveniles. (See Sarah French Russell and Tracy L. Denholtz, *Procedures for Proportionate Sentences: The Next Wave of Eighth Amendment Noncapital Litigation* (2016) 48 Conn. L.Rev. 1121, 1130, fn. 47 (listing 26 legislative bills).) In 24 jurisdictions,

¹⁴ Available at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=2045> (last visited Feb. 29, 2020). Data from 2009 is cited here because it is the most recent dataset *amici* could locate.

including California, a term-of-years or life with the possibility of parole is the most severe sentence that a juvenile can receive, even in the most egregious murder cases. (See Josh Rovner, The Sentencing Project, Juvenile Life Without Parole: An Overview (February, 2020).)¹⁵

Amici could not identify any state statutes in recent years that have increased punishments for juveniles who are transferred to adult court.

B. The severity of a mandatory sentence of life imprisonment with the possibility of parole is disproportionate to the culpability of juveniles convicted of kidnapping.

In addition to considering the national consensus, courts must exercise their own judgment to determine whether a given punishment violates the Eighth Amendment as applied to a category of defendants. (See *Graham, supra*, 560 U.S at 68.) “The judicial exercise of independent judgement requires consideration of the culpability of the offender[] at issue in light of their crimes and characteristics, along with the severity of the punishment in question” and “whether the challenged sentencing practice serves legitimate penological goals.” (*Id.* at 67.)

¹⁵ Available at <https://www.sentencingproject.org/publications/juvenile-life-without-parole/> (accessed March 28, 2020).

i. Juveniles are less culpable than adults

Juveniles are categorically less culpable and less deserving of severe punishment than adults. (See *Miller, supra*, 567 U.S. at 471; *Graham*, 560 U.S. at 68.) The United States Supreme Court has recognized three significant gaps between juveniles and adults. First, juveniles have a “ ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” (*Miller*, 567 U.S. at 471, citing *Roper, supra*, 543 U.S. at 569.) Second, juveniles are more vulnerable to peer pressure, have limited control over their environment, and cannot remove themselves from “horrific, crime producing settings.” (*Miller*, 567 U.S. at 471.) Third, a juvenile’s character is less fixed than an adult’s and the juvenile’s actions are less likely to be “evidence of irretrievable depravity.” (*Id.* (brackets omitted).) Because these three general differences render juveniles less capable of conforming their conduct to the law, while also evidencing that juvenile offensive conduct does not necessarily signal a depraved character, the Supreme Court holds juvenile offenders “categorically less culpable than the average criminal.” (*Roper, supra*, 543 U.S. at 567.)

The features that have led the Court to recognize the diminished culpability of youth are well supported by an established and growing body of science. Studies from both the natural and social sciences demonstrate significant differences between the areas of the adult and juvenile brain that

relate to behavior control. (See *Miller*, 567 U.S. at 471–72; *Graham*, 560 U.S. at 68; Laurence Steinberg, *Adolescent Brain Science and Juvenile Justice Policymaking*, 23 *Psychol. Pub. Pol'y & L.* 410, 413 (2017); Brief of Amicus Curiae Professor Vincent Schiraldi, In Support of William M. Palmer II.)

Statutes across a wide range of California law reflect the broader social understanding that juveniles should not be treated as if they are adults because they lack an adult’s capacity for reasoned decision-making. For example, juveniles under 21 years of age in California cannot legally purchase or consume alcohol (see *Bus. & Prof. Code*, § 25658(b)), marijuana (see *Health & Saf. Code*, § 11362.1), or tobacco (see *Bus. & Prof. Code*, § 22963). Statutes bar juveniles from being employed as the driver of a motor vehicle on the highways or streets (see *Lab. Code*, § 1294.1(b); *Veh. Code*, § 12515), a miner of coal or other minerals (see 29 C.F.R. 570.53; 29 C.F.R. 570.60), or the operator of any form of dangerous machinery (see, e.g., 29 C.F.R. 570.54; 29 C.F.R. 570.55; 29 C.F.R. 570.58; 29 C.F.R. 570.65). In addition, minors’ contract rights are more restricted compared to adults. (See, e.g., *Fam. Code*, § 6701, *Fam. Code*, § 6710)

ii. Those convicted of kidnapping may have dramatically diminished culpability.

The Supreme Court has recognized that the culpability of a juvenile who has committed a non-homicide crime is “twice diminished.” (*Graham*, 460 U.S. at 69.) Their culpability is reduced both by their youth and by the fact that “defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving” of harsh punishment than are those who commit murder. (*Id.*)

A juvenile’s culpability is reduced further when their crime results in no physical injury to any victim. (See *In re Stanford* (2002) 537 U.S. 968 (gravity of offense for purposes of proportionality analysis includes “the injury caused”).) Where a juvenile commits a crime not only without the intent to kill but also without intent to, attempt to, or actual causation of *any* physical injury, their culpability is diminished three times.

Importantly, the offense of kidnapping for the purpose of robbery defined in section 209(b) can be complete without any intended, attempted, or actual bodily harm to the victim, without any intended, attempted, or actual sexual assault, and without any substantial risk of serious bodily injury or death. (See Pen. Code § 209(b); see also John L. Diamond, *Kidnapping: A Modern Definition* (1985) 13 Am. J. Crim. L. 1, 12 (explaining history of California statutes and caselaw on kidnapping).)

The elements of section 209(b) are satisfied when an individual (i) uses force or fear to take and move someone, (ii) with the intent to steal property that is on their person, when (iii) the distance moved is more than incidental to a stationary robbery and increases the risk of harm above what is incidental to a stationary robbery. The risk of harm need not be risk of physical harm, it can be risk psychological distress. (See *People v. Nguyen* (2000) 22 Cal.4th 872, 886.) The risk of harm can be established without a deadly weapon. (See *In re Earley* (1975) 14 Cal.3d 122, 131). The distance moved can be satisfied by driving 10 blocks. (See *id.* at 132).

These elements are satisfied if, for example, a teenager shoves a person into a car with intent to steal the purse off their shoulder and proceeds to drive 10 blocks with the person in the car. The teenager does not even need to steal the purse – she could get scared, stop a few blocks down the street, and tell the victim to get out of the car. Under section 209(b), this conduct and mental state would meet the elements of kidnapping for the purpose of robbery and the sentence would be life with the possibility of parole.¹⁶

¹⁶ While this fact pattern is a hypothetical to demonstrate the broad reach of section 209(b), there is evidence that teenagers in California have been sentenced to life with the possibility of parole under similar factual

The elements constituting the offense of kidnapping for the purpose of robbery are simply not severe enough to indiscriminately authorize a lifetime of imprisonment for juveniles who, as a class, have diminished culpability. Authorization of a lifetime of imprisonment could arguably be proportionate for juveniles where other aggravating factors are present, such as bodily injury, sexual assault, or risk of serious bodily injury or death. Thus a statute that makes life with the possibility of parole a *discretionary* sentence for a juvenile convicted of kidnapping would not necessarily violate the constitution. But the bare elements of kidnapping for the purpose of robbery under section 209(b) are insufficient to warrant a mandatory life sentence with the possibility of parole for a juvenile.

As the Court stated in *Miller*, “*Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult. (See *Miller*, *supra* at 477.)

scenarios. (See Bell, *Stone of Hope*, *supra*, 54 Harv. C.R.-C.L. L.Rev. at 535 (describing parole hearing where the commitment offense involved a 16-year-old who forced a woman into a car, made her drive down the street to a supermarket to cash a check, and ran away when the woman went into the supermarket).)

iii. Sentencing a juvenile to mandatory life imprisonment with the possibility of parole is a brutal punishment.

A sentence of life imprisonment with the possibility of parole is the most severe sentence that the Constitution permits for a juvenile convicted of a non-homicide offense, and the most severe sentence California law permits for any offense committed by a juvenile. (See *Graham, supra*, 560 U.S. at 68; Pen. Code § 3051(4).) The sentence amounts to death in prison unless the parole board makes a decision to grant parole, a decision that has been characterized as an act of executive grace (see, e.g., *Rummel v. Estelle* (1980) 445 U.S. 263, 294 (Powell, J., dissenting)).

As Justice Marshall has stated: ““One can imagine nothing more cruel, inhuman, and frustrating than serving a prison term without knowledge of what will be measured and the rules determining whether one is ready for release.”” (*Greenholtz v. Inmates of Nebraska Penal and Correctional Complex* (1979) 442 U.S. 1, 35 (Marshall, J., dissenting), quoting K. Davis, *Discretionary Justice: A Preliminary Inquiry* 132 (1969).)

The cruelty of having the rest of one’s entire adult life dependent on the wide discretion of a parole board is illustrated by Mr. Palmer’s experience of being denied parole 11 times. (See Answering Brief on the Merits at 20.) When Mr. Palmer first became eligible for parole in 1995, the Board was granting parole in less than 3 percent of hearings. (See *id.*, at

19–20; Kathryn M. Young et al., *Predicting Parole Grants: An Analysis of Suitability Hearings for California’s Lifer Inmates* (2016) 28 Fed. Sent’g Rep. 268, 271.) For the nearly two-decade period between 1991 and 2010, those sentenced to indeterminate life sentences in California “never had greater than a 7 percent estimated likelihood of release.” (See Charlie Sarosy, *Parole Denial Habeas Corpus Petitions: Why the California Supreme Court Needs to Provide More Clarity on the Scope of Judicial Review* (2014) 61 UCLA L.Rev. 1134.) Although the rate at which parole is granted has increased in recent years, deep uncertainty remains about the underlying factors that drive these decisions. (See Bell, *A Stone of Hope*, *supra*, 54 Harv. C.R.-C.L. L.Rev. at 460, 485); Young et al., *Predicting Parole Grants*, *supra*, 28 Fed. Sent’g Rep. at 276 (““doing everything right’ does not guarantee release”).

A sentence which places the remainder of a person’s life at the mercy of the parole board is especially severe for juveniles as compared to adults. Each decision to deny parole brings a juvenile lifer closer to a point where he or she will end up “incarcerated past the typical childbearing age, past the timeframe in which one could start a meaningful career, and past the age in which one could expect parents or other former caregivers to still be alive.” (See Sarah French Russell, *Review for Release*, 89 Ind. L.J. at 408.) The time served in prison also tends to be more brutalizing for juveniles compared to adults. Violent conditions in adult prisons lead to

perpetual feelings of fear, depression, and anxiety for people who were incarcerated as juveniles. (See, e.g., Jarod K. Hofacket, *Justice or Vengeance: How Young Is Too Young for a Child to Be Tried and Punished as an Adult?* (2002) 34 Tex. Tech L.Rev. 159). Those sentenced as juveniles enter prison when they are smaller in size and less developed, making them more likely to be targets of physical and sexual assault. (See Elizabeth Calvin, Human Rights Watch, “When I Die, They’ll Send Me Home” (2008) at 55 (estimating that 59 percent of people sentenced to life without parole as juveniles in California have been physically or sexually assaulted in prison). An estimated 95 percent of people sentenced to life with the possibility of parole as juveniles in California have served part of their sentence in solitary confinement. (See Bell, *Stone of Hope*, *supra* 54 Harv. C.R.-C.L. L.Rev. at 482, note 138.)

Amici note that the argument advanced here – that the uncertainty inherent in parole-release decisions makes indeterminate life sentences especially harsh for those convicted as juveniles – depends in part on this Court’s response to the amicus brief filed by Law Professors in *In re Palmer I.* (See Amicus Curiae Brief of Law Professors in Criminal, Administrative, and Constitutional Law in support of William M. Palmer in Case No. S252145.) If this Court recognizes that a fundamental and vested right is at stake in youth offender parole hearings, and that the independent judgment standard of judicial review therefore applies to youth offender

parole hearings, then such a holding would markedly reduce the uncertainty of a life with the possibility of parole sentence. Accordingly, the sentence considered here would be less harsh.

But, for the sake of argument, *amici* consider the implications if this Court were to accept the Board's position that nothing analagous to a fundamental right is at stake (see Answer to Amicus Curiae Briefs in Case No. S252145, at page 10, note 5), apply the "some evidence" standard or review, and thereby uphold the Board's wide discretion to deny parole under. If the possibility for release were to be left so vulnerable to executive discretion, then it would be cruel irony to hold here that that very same possibility mitigates the harshness of a grossly disproportionate sentence (life without the possibility of parole) and makes it a proportionate sentence.

In the words of Justice Powell, dissenting:

"A holding that the possibility of parole discounts [the harshness of] a prisoner's sentence for the purposes of the Eighth Amendment would be cruelly ironic. The combined effect of our holdings under the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment would allow a State to defend an Eighth Amendment claim by contending that parole is probable even though the prisoner cannot enforce that expectation." (*Rummel v. Estelle* (1980) 445 U.S. 263, 294 (Powell, J., dissenting.))

Because judicial review of parole decisions was not an issue presented in *Rummel*, the Supreme Court did not directly confront the “cruel irony” described by Justice Powell. The unique posture of *Palmer I* and *Palmer II* allows this Court to do so.

C. A mandatory life sentence for kidnapping is not justified under any of the penological justifications for punishment.

In *Roper*, *Graham*, and *Miller*, the Supreme Court held that each of the four accepted rationales for criminal penalties—retribution, deterrence, incapacitation, and rehabilitation—are insufficient to justify the most severe punishments in the case of juveniles. These rationales also cannot justify imposing a mandatory sentence of life with the possibility of parole for the crime of kidnapping.

i. Retribution cannot justify a mandatory life sentence for a juvenile convicted of kidnapping.

“The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” (See *Tison v. Arizona* (1987) 481 U.S. 137, 149). The diminished culpability of juveniles means that “the case for retribution is not as strong with a minor as with an adult.” (*Graham, supra*, 560 U.S. at 71 (citation omitted).) The infliction of the most serious penalties upon juveniles requires “extreme culpability.” (*Roper, supra*, 543 U.S. at 568.)

Given the holding in *Graham*, a 17-year-old who beats and rapes an 8-year-old girl then buries her alive without killing her can, at most, be sentenced to life with a meaningful opportunity to obtain release. (See *Graham, supra*, 560 U.S. at 93–94 (Roberts, C.J., concurring).) A 17-year-old who participates in gang-raping a woman and then forces her to perform oral sex on her 12-year-old son can, at most, be sentenced to life with a meaningful opportunity to obtain release. (See *id.* at 94.) Penal Code section 209(b) has taken the *maximum* punishment that the Constitution permits for juveniles who commit non-homicide offenses and made it the *mandatory* punishment for juveniles convicted of an offense that may involve no intended, attempted, or actual physical injury, no substantial risk of serious bodily injury or death, and no sexual contact. (See *supra* at 32.) Kidnapping with intent to commit robbery (without more) is not “so grievous an affront to humanity that the only adequate response may be” life imprisonment with the possibility of parole. *Cf. Gregg v. Georgia*, 428 U.S. 153, 184 (1976).

ii. Deterrence cannot justify a mandatory life sentence for a juvenile convicted of kidnapping.

“[T]he same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence.” (*Roper, supra*, 543 U.S. at 571.) “Because juveniles’ ‘lack of maturity and . . . underdeveloped sense of responsibility . . . often result in impetuous

and ill-considered actions and decisions,’ they are less likely to take a possible punishment into consideration when making decisions.” (*Graham, supra*, 560 U.S. at 71–72 (citation omitted).) Even if a juvenile did take a possible punishment into consideration when making decisions about whether to commit crime, they have markedly diminished capacity to appreciate the consequences of a life sentence being imposed. In order to successfully deter a person from offending, “[t]he potential offender must know of the rule; he must perceive the cost of violation as greater than the perceived benefit; and he must be able and willing to bring such knowledge to bear on his conduct decision at the time of the offense.” (Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best* (2003) 91 Geo L.J. 949, 953.) While juveniles know that kidnapping and robbery are wrong, they almost never engage in the kind of cost-benefit analysis required to achieve a significant deterrent effect. The fact that 17-year-old Mr. Palmer asked whether he would get 6 months or a year for his offense clearly illustrates this point. (See Answer Brief at 19.)

Even if there were a rare juvenile engaging in a cost-benefit analysis about whether the risk of engaging in kidnapping is worth the possibility of being apprehended and punished with a life sentence, deterrence would still be an inadequate justification. As the court explained in *In re Nunez*: “True, the state conceivably may obtain an increased deterrent effect from

grossly disproportionate punishment. But in exceeding any measured relation to culpability, such deterrence is achieved by utilizing the person solely as an object, inconsistent with his or her human dignity.” *In re Nunez, supra*, 173 Cal.App.4th at 731.

iii. Incapacitation cannot justify imposing a mandatory life sentence for a juvenile convicted of kidnapping.

The rationale of incapacitation is that a punishment is justified insofar as it is necessary to prevent a dangerous person from continuing to commit crime in the community. Lawmakers use this rationale to justify enhanced punishment for those who recidivate despite prior convictions and attempts to correct behavior. (See, e.g., *Ewing v. California* (2003) 538 U.S. 11, 26 (incapacitation as rationale for habitual offender statutes).) Incapacitation may also be a rationale for life-without-parole sentences where there has been a finding that a person is irreparably corrupt. (C.f. *Miller*, 567 U.S. at 472–73.) However, incapacitation cannot justify a mandatory sentence of life with the possibility of parole for juveniles who are not repeat offenders and who have not been found irreparably corrupt.

In *Ewing v. California*, the Court upheld a sentence of life with the possibility of parole for a habitual offender convicted under Penal Code section 667. The Court reasoned that the sentence was justified by the “‘legitimate goal’ of deterring and incapacitating *repeat offenders*.” (See *Ewing, supra*, 538 U.S. at 20 (emphasis added).) The Court deferred to the

California legislature’s policy choice, reasoning that “individuals who have *repeatedly* engaged in serious or violent criminal behavior, and whose conduct has not been deterred by more conventional approaches to punishment, must be isolated from society in order to protect the public safety.” (*Id.* at 25, emphasis added.) The Court said specifically of Ewing’s sentence that “it reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and *who continue* to commit felonies must be incapacitated.” (*Id.* at 30, emphasis added.)

Incapacitation does not justify a mandatory sentence of life with the possibility of parole for juveniles because here, unlike in *Ewing*, there is no evidence to suggest that juveniles need to be isolated from society to stop them from committing offenses. The mandatory life sentence in Penal Code section 209(b) is imposed regardless of whether it is for a first-offense or a repeat offense.

Research demonstrates that the overwhelming majority of those who offend as juveniles, including those convicted of serious felonies, will not engage in continuing criminal conduct once they have reached their mid 20s. Well-established science, of exactly the sort upon which the U.S. Supreme Court has relied in its Eighth Amendment jurisprudence, shows that involvement in violent and nonviolent crime “follow[s] an inverted U-

shaped curve with age, increasing between childhood and adolescence, peaking in either mid- or late adolescence . . . and declining thereafter.” (Laurence Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions about Adolescents’ Criminal Culpability* (2013) 14 *Neuroscience* 513, 515 (citations omitted).) (See also Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psych. R.* 674, 675 (1993) (“When official rates of crime are plotted against age, the rates for both prevalence and incidence of offending appear highest during adolescence; they peak sharply at about age 17 and drop precipitously in young adulthood.”).)

The body of evidence supporting the age-crime curve reflects that a sizeable portion of all people who commit crimes, including juveniles, are “immediate desisters,” i.e., individuals whose first offense is also their last. (See Megan C. Kurlycheck et al., *Long-Term Crime Desistance and Recidivism Patterns – Evidence from the Essex County Felony Study*, 50 *Criminology* 71, 98 (2012) (citing longitudinal studies showing that between approximately one quarter to one half of people who commit offenses desist after their first offense).) Accord 2013 Cal. Legis. Service, ch. 312, § 1 (S.B. 260) (“The Legislature finds and declares that. . . ‘only a relatively small proportion of adolescents’ who engage in illegal activity ‘develop entrenched patterns of problem behavior.’”) (internal citation omitted).

Given that juveniles generally desist from crime and are not likely to become repeat offenders – and that section 209(b) imposes a life sentence on juveniles regardless of whether they are habitual offenders – incapacitation does not justify a mandatory life sentence with the possibility of parole for juveniles convicted of kidnapping.

iv. Rehabilitation cannot justify a mandatory life sentence for a juvenile convicted of kidnapping.

Rehabilitation has been widely discredited as an affirmative, stand-alone reason to punish a person. (See, e.g. *Tapia v. U.S.* (2011) 564 U.S. 319, 324; *People v. Caddick*, 160 Cal. App. 3d 46, 52-53 (Cal. Ct. App. 1984); Chad Flanders, *The Supreme Court and the Rehabilitative Ideal* (2015) 49 Ga. L. Rev. 383, 398.) The currently accepted idea of rehabilitation is that when there are other reasons that are sufficient to justify imprisonment—such as retribution or deterrence—then the time spent in prison should be used toward rehabilitation. (See Flanders, *The Supreme Court and the Rehabilitative Ideal*, *supra* at 405 (“consideration of rehabilitation [is allowed] once a punishment of imprisonment had been determined on other grounds, but not in . . . whether imprisonment was appropriate.”)) As applied to life sentencing, rehabilitation does not justify imposing a life sentence; but once that sentence has been imposed for other reasons, rehabilitation justifies offering programs in prison and allowing release on parole prior to the end of that sentence.

The history of sentencing law in California shows this pivot in thinking about rehabilitation. When California largely abandoned its indeterminate sentencing scheme in 1977, the legislature determined that rehabilitation was no longer accepted as a sound justification for punishment. (See *People v. Caddick*, 160 Cal. App. 3d 46, 52-53 (Cal. Ct. App. 1984).) When Mr. Palmer was sentenced, Penal Code section 1170 stated that “the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense. . .”¹⁷

The history of federal sentencing law is likewise illustrative. Prior to the 1980s, the federal government also employed a system of indeterminate sentencing based on the idea of rehabilitation. (See *Mistretta*, 488 U.S. at

¹⁷ As amended by ballot initiative in Fall, 2016, the section now provides “the purpose of *sentencing* is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes *incarceration*, this purpose is best served by terms that are proportionate to the seriousness of the offense . . .” Although rehabilitation is now listed as a purpose of sentencing (which includes probation, parole, and other community sanctions), it remains true that the primary purpose of prison time is proportional punishment.

363.) With the Sentencing Reform Act of 1984 and the creation of the United States Sentencing Commission, the federal government pivoted away from rehabilitation as a justification for punishment and established a system of determinate sentencing. (See *id.* at 361.) In *Tapia v. United States* 564 U.S. 319 (2011), the Court held that “the Sentencing Reform Act precludes federal courts from imposing or lengthening a prison term in order to promote a criminal defendant’s rehabilitation.” (*Id.* at 321.)

Even if rehabilitation were itself a sound theoretical reason to imprison a person (which it is not), it could not authorize a potential lifetime of imprisonment for a juvenile given the practical realities of prison conditions in the United States, and California in particular. A study of 426 transcripts from youth offender parole hearings in 2014-2015 showed that rehabilitation programs were often unavailable to people serving life with the possibility of parole sentences for convictions as juveniles. (See Bell, *A Stone of Hope*, 54 Harv. C.R.-C.L. L.Rev. at 536.) “Many programs discussed in transcripts were run via correspondence or by prisoners themselves; only 20% of candidates in this sample had participated in a program with a professional therapist, despite the fact that most candidates had experienced trauma as children.” (*Id.*) A national survey of 1,579 individuals sentenced as juveniles to life without parole showed that 62 percent of respondents were not participating in rehabilitation at the time of the survey. (See Ashley Nellis, *The Sentencing*

Project, *The Lives of Juvenile Lifers: Findings from a National Survey* (2012) at 23).¹⁸ Of those, 82 percent were interested in participating in programs, but could not do so because of unavailability, wait lists, custody restrictions, or ineligibility based on their sentence. (See *id.* at 24.)

D. The issue of whether a mandatory life sentence for a juvenile convicted of kidnapping violates the Eighth Amendment is properly before this Court.

The argument that an indeterminate life sentence is unconstitutional as applied to juveniles convicted of kidnapping is properly before this Court because it merely restates, under alternative legal principles, Mr. Palmer’s claim that his particular sentence is unconstitutional. (See *People v. Yeoman* (2003) 31 Cal.4th 93, 117 (considering claim raised for the time on appeal because it “merely restates, under alternative legal principles,” a preserved claim that required the lower court to consider the same facts and apply a similar legal standard).)

The Eighth Amendment encompasses alternative legal principles for excessiveness; a sentence may be excessive as applied to a particular individual, or to a category of individuals. (See, e.g., *Graham v. Florida* (2010) 560 U.S. 48, 59–61). The same underlying facts are applied when

¹⁸ Available at <https://sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf>

determining whether a sentence is disproportionate as applied to a particular individual (Mr. Palmer) and when it is disproportionate to a category of individuals (juveniles convicted of kidnapping). Despite a different way of labeling the claim, “[t]he practical difference is marginal.” (Robert Smith & G. Ben Cohen, *Redemption Song: Graham v. Florida and the Evolving Eighth Amendment Jurisprudence* (2010) 108 Mich. L. Rev. First Impressions 86, 91.)

Cases cited repeatedly in both parties’ briefs raise proportionality challenges to sentences that apply to whole categories of defendants, not just one particular defendant. See, e.g., Opening Br. at 22, 29, 30, 31, 38 footnote 8 (citing *Nunez, supra*, 173 Cal.App.4th 709); Answer Br. at 27, 35, 40 footnote 17, 43, 45 (citing *Miller v. Alabama* (2012) 567 U.S. 460); *id.* at 22, 24 footnote 6, 28, 42, 43, 44, 45 (citing *Graham, supra*, 560 U.S. 48); *id.* at 43, 45 (citing *Roper v. Simmons* (2005) 543 U.S. 551); *id.* at 45 (citing *Weems v. United States* (1910) 217 U.S. 349); *id.* at 23, 25, 33 (citing *Nunez, supra*, 173 Cal.App.4th 709); Reply Br. at 13, 14, 26 (citing *Miller, supra*, 567 U.S. 460); *id.* at 12, 13, 17, 26 (citing *Graham, supra*, 560 U.S. 48); *id.* at 12, 13, 26 (citing *Roper, supra*, 543 U.S. 551); *id.* at 12, 21, 26 (citing *Nunez, supra*, 173 Cal.App.4th 709).

The argument developed here is also timely. (See *In re Clark* (1993) 5 Cal.4th 750, 765, fn. 5 (1993).) The argument was not ripe when Mr. Palmer was sentenced in 1988, a year before the U.S. Supreme Court

upheld the constitutionality of the death penalty for juveniles. (See *Stanford v. Kentucky* (1989) 492 U.S. 361.) The argument became ripe as states amended their sentencing schemes for juveniles in the wake of *Miller v. Alabama* and *Montgomery v. Louisiana* (2016) 136 S.Ct. 718, and thereby created the objective indicia of a national consensus discussed *supra* at 20.

**II. AN INDETERMINATE LIFE SENTENCE FOR A JUVENILE
CONVICTED OF KIDNAPPING FOR THE PURPOSE OF ROBBERY
VIOLATES THE CALIFORNIA CONSTITUTION.**

In considering whether an indeterminate sentence is cruel or unusual punishment under the California Constitution, “the test is whether the maximum term of imprisonment permitted by the statute punishing [the] offense exceeds the constitutional limit,” regardless of whether parole may be granted before the expiration of that maximum term. (*In re Lynch* (1972) 8 Cal.3d 410, 419.) (See 22 Cal. Jur. 3d Criminal Law: Posttrial Proceedings § 213.)

This Court has explained three reasons why the constitutionality of the maximum punishment authorized by statute is assessed without regard to the possibility of earlier release on parole. (See *Lynch, supra*, 8 Cal.3d at 416–420.) First, California statutes make the possibility of release on parole highly uncertain; the decision is a discretionary executive action with no vested right to release. (See *id.* at 417, citing *In re Cowen* (1946) 27 Cal.2d 637, 641.) Thus, the *Lynch* court reasoned that “[v]iewed realistically, a

defendant's liability is to serve the maximum term, and he is therefore entitled to know that the maximum in his case is lawful." (*Lynch, supra*, 8 Cal.3d at 417.)

Second, the *Lynch* court explained that the principle of separation of powers requires that the constitutionality of a sentence be assessed by the maximum term authorized by statute. (See *id.*) Prior to *Lynch*, the sentencing scheme had been subject to challenge on the ground that, insofar as an executive agency (the Adult Authority, now the Board) has the power to determine the length of time people are serving in prison, it impinges on the legislature's and judiciary's core powers to set and impose sentences. (See *id.*, citing *In re Lee* (1918) 177 Cal. 690, 693.) The answer to this challenge has been that—so long as the “sentence” is deemed to be the full term that is authorized by statute—then the executive agency does not have power over the length of the “sentence.” (See *Lynch, supra*, 8 Cal.3d at 417). In this way, the legislature is setting the “sentence,” the judiciary is imposing the “sentence,” and the executive agency is granting the privilege of early release from the “sentence.” (See *id.* at fn. 6 (citing cases affirming this reasoning).) Accordingly, if the full term authorized by a statute is grossly disproportionate to the offense for which it is imposed, then the statute imposes an unconstitutional sentence. (See *Lynch, supra*, 8 Cal.3d at 417–418).

The third reason why the court assesses the constitutionality of the

full term authorized by statute is that doing so ensures that indeterminate sentences do not violate the due process clause. As the *Lynch* court explained, without this rule, an indeterminate “sentence” could violate the due process clause on the ground that it is “fatally uncertain.” (See *id.* at 418.) The repeated denials of parole in Mr. Palmer’s case, as well as research on the parole process more broadly, show deep uncertainty in how much time a person will serve before (or if) parole is granted. A study of over 400 juvenile lifer parole hearings in 2014-2015 showed that among people serving life sentences with the possibility of parole for non-homicide, non-sexual offenses as juveniles, the shortest period of time-served until release was 11 years and the longest period was 35 years. (See Bell, *A Stone of Hope: Legal and Empirical Analysis of Juvenile Lifer Parole Decisions* (2019) 54 Harv. C.R.-C.L. L.Rev. 455, 507). The study also provided evidence of a high degree of variability and inconsistency in how parole-release decisions were made. (See *id.* at 502, 516.) The vulnerability to a due process challenge on vagueness grounds is avoided, however, by following the well-established rule that a “sentence” is deemed to be the maximum period authorized by statute.

To be clear, the approach of analyzing whether the *maximum* punishment authorized by statute is disproportionate to the offense is based on California law and the California Constitution. The approach has not been explicitly adopted in caselaw interpreting the Eighth Amendment. C.f.

Lockyer v. Andrade (2003) 538 U.S. 63, 74 (noting possibility of parole as a factor considered in proportionality analysis); Richard A. Bierschbach, *Proportionality and Parole* (2012) 160 U. Pa. L. Rev. 1745, 1761-65 (critiquing idea that the possibility of parole can make a sentence less severe for purposes of Eighth Amendment proportionality analysis). But the approach under the Eighth Amendment does not dictate analysis under Article 1, section 17 of the California Constitution. The California cruel or unusual clause is more robust than the Eighth Amendment in both its text and this Court's precedents. (See *People v. Haller* (2009) 174 Cal.App.4th 1080, 1092 ("Whereas the federal Constitution prohibits cruel 'and' unusual punishment, California affords greater protection to criminal defendants by prohibiting cruel 'or' unusual punishment"); *People v. Anderson* (1972) 6 Cal.3d 628, 636-637; *People v. Smithey* (1999) 20 Cal.4th 936, 1019 fn.1 (conc. opn. of Mosk, J.).)

For these reasons, *amici* urge this court to consider whether the maximum term authorized by section 209(b) – lifetime incarceration – is grossly disproportionate as applied to juveniles convicted of kidnapping for the purpose of robbery. *Amici* note that if this Court were to agree with the argument of *amici* Law Professors in *In re Palmer I*—that youth offenders do have a vested right to release on parole upon demonstrating rehabilitation—then this rationale would need to be re-considered. (See Amicus Curiae Brief of Law Professors in Criminal, Administrative, and

Constitutional Law in support of William M. Palmer in Case No. S252145.)

III. THE INDETERMINATE LIFE SENTENCE IMPOSED ON MR. PALMER IS GROSSLY DISPROPORTIONATE TO THE FACTS OF HIS CASE.

This brief thus far has focused on the argument that it is unconstitutional to impose a mandatory sentence of life with the possibility of parole on juveniles convicted of kidnapping broadly construed, or of kidnapping for the purpose of robbery as defined in section 209(b). Here, *amici* argue that a mandatory life with the possibility of parole sentence is unconstitutional as applied to the particular facts of Mr. Palmer's offense. To avoid repetition with Mr. Palmer's brief, *amici* focus on only the third step of the as-applied analysis: the interstate comparison.

A. Appendix C explains the sentences that an individual similarly situated to Mr. Palmer would face in 52 jurisdictions.

Appendix C details how the kidnapping, firearm, and sentencing statutes would apply to an individual if he or she were to commit the same crime as Mr. Palmer in each of 52 jurisdictions. A basic overview of Appendix C is provided here; interjurisdictional differences in kidnapping, firearm, and juvenile sentencing statutes are explained *infra*.

Columns 1 and 2 in Appendix C state the maximum and minimum punishments for the type of kidnapping conviction that *an adult* in Mr. Palmer's situation could have received, assuming there was no use of a firearm. For some jurisdictions, the sentence reported here differs from

what is reported in Appendices A and B because those appendices report the sentence for the *most aggravated type* of kidnapping in a given jurisdiction.

Column 3 then describes how the sentence in Columns 1 and 2 would be affected by the use of a firearm during the crime. Columns 4 and 5 then state the minimum and maximum punishment for the type of kidnapping conviction that an adult in Mr. Palmer's situation could have received, assuming the kidnapping was done with a firearm.

Next, column 6 describes how the punishment in Columns 4 and 5 would be affected by the fact that Mr. Palmer was 17 years old at the time. Ultimately, Columns 6 and 7 report the maximum and minimum sentence that Mr. Palmer would have been facing given his crime, his use of a firearm, and his status as a juvenile at the time of the offense.

Complexities in kidnapping and sentencing statutes. Although kidnapping statutes are structured in a variety of ways, they share many substantive similarities.¹⁹ See LaFave, 3 Subst. Crim. L., § 18.1(a) (3d ed.).

¹⁹ Some jurisdictions' statutory schemes include only one degree of kidnapping, whereas others include multiple degrees of kidnapping. Compare, e.g., S.C. Code Ann. § 16-3-910 (kidnapping) with Colo. Rev. Stat. Ann. §§ 18-3-301, 302 (first-degree and second-degree kidnapping).

The elements tend to include unlawfully transporting or confining another person for a period of time for a specific purpose such as obtaining ransom or facilitating a felony. *Id.* Many state statutes include some or all of the following factors in either defining kidnapping, the degree of kidnapping, or the sentencing range for kidnapping:

- Whether the purpose was to extract a ransom from a third party;
- Whether the victim suffered bodily injury;
- Whether the victim was voluntarily released;

Some jurisdictions provide only one sentencing range for kidnapping, whereas other jurisdictions provide multiple sentencing options based on specified factual elements. Compare, e.g., D.C. Code Ann. § 22-2001 (sentence for kidnapping is maximum of 30 years) with Ga. Code Ann. § 16-5-40 (sentence for kidnapping is 10 to 20 years if victim was 14 years of age or older; life if victim is under 14 years of age; life or death if kidnapping was for ransom or if victim received bodily injury). In some jurisdictions, the kidnapping statute itself specifies the sentence for the crime of kidnapping. See, e.g., D.C. Code Ann. § 22-2001; Ga. Code Ann. § 16-5-40. In other jurisdictions, kidnapping is classified as a felony of a certain grade, and a different statute then provides the sentence for felonies of that grade. See, e.g., N.H. Rev. Stat. § 633:1; N.H. Rev. Stat. § 651:2.

- Whether the victim was a child;
- Whether a sexual assault or attempted sexual assault occurred;
- Whether there was intent to take money or something else of value from the victim; and
- Whether the offense was committed in furtherance of a felony.

The sentences reported in Appendix A assume that the offense was committed in furtherance of a felony, with intent to take money from the victim, and with a firearm. The remaining above-mentioned factors are assumed to have been absent.²⁰

In some jurisdictions, the relevant sentencing statute requires application of a grid or matrix which incorporates an individual's offense as well as prior criminal history. *Amici* calculated the sentence based on an assumption of no prior criminal history. Mr. Palmer had prior adjudications

²⁰ In one jurisdiction, Illinois, one of the aggravating factors listed in the aggravated kidnapping statute was whether the defendant wore a mask or otherwise concealed his or her identity. (See 720 Ill. Comp. Stat. Ann. 5/10-2 (a)(4).) The facts show that Mr. Palmer was wearing a ski mask at the time of the offense, so this aggravating factor was assumed for the purpose of the Illinois statute. (See Attorney General Brief on the Merits at 25.)

in juvenile court, but no prior criminal convictions as an adult. (See Answering Brief on the Merits at 30 (prior history included juvenile adjudications after admitting to watching 12 year-olds masturbate when he was 14, driving without a license, and violating probation by skipping class).)

Complexities in aggravation based on a firearm. Almost all jurisdictions have statutory provisions regarding the possession, use, and/or discharge of a firearm or other deadly weapon in the course of any felony or a violent felony in particular. In most jurisdictions, the facts of this case—brandishing an unloaded firearm during a kidnapping—would qualify as use of a firearm during a violent felony.²¹ The use of the firearm during a violent felony changes sentencing options in several different ways, as explained in column 3 of Appendix C.

In some jurisdictions, the use of a firearm (or deadly weapon) is included as an element in either the definition of a particular degree of kidnapping, or as an element that triggers application of a heightened sentencing range. See, e.g., Tenn. Code Ann. § 39-13-305 (defining

²¹ In states that do not have provisions for “use” of a firearm during a felony, the facts of this case would fall under provisions regulating “possession” of a firearm during a felony.

“especially aggravated kidnapping” as false imprisonment if done with deadly weapon or object that leads victim to reasonably believe it is a deadly weapon). Other jurisdictions have statutes that trigger an enhanced sentence if an individual uses a firearm during any felony (or any violent felony). See, e.g., Cal. Pen. Code, § 12022. And in still other jurisdictions, the use of a firearm in the course of any felony (or any violent felony) is a separate criminal offense. See, e.g., R.I. Gen. Laws § 11-47-3.2; 11-47-2.

Complexities in mitigation for juveniles. Most jurisdictions have one or more statutory mechanisms that allow for different sentences to be imposed on people who are juveniles at the time of the offense. These mechanisms operate in a variety of ways; the particulars for each jurisdiction are detailed in column 6 of Appendix C, and general trends are summarized here.

In all jurisdictions other than Massachusetts, a juvenile can be transferred to adult court if charged with kidnapping. (See Mass. Ann. Laws ch. 119, § 74 (juveniles can be transferred to adult court only for the offense of murder); Mass. Ann. Laws ch. 119, §§ 58, 52; ch. 269, § 10.)

Once transferred to adult court, there are several mechanisms by which a juvenile convicted of a crime similar to Mr. Palmer’s can receive a different sentence than an adult convicted of the same crime. First, some states provide a sentencing range that allows a judge to select an appropriate sentence within that range. For example, the sentencing range

for kidnapping in Alaska is 5 to 99 years; the court has discretion to select an appropriate period of time in that range, thereby authorizing the court to give a juvenile a less harsh sentence than an otherwise similarly situated adult. (See Alaska Stat. § 12.55.125(b)). In some of these states, judges are given explicit guidance to consider youth as a mitigating factor in selecting a sentence within the range. (See e.g., 730 Ill. Comp. Stat. Ann. 5/5-4.5-105). Other states provide a presumptive sentencing range and allow judges to depart from that presumptive sentencing range after considering mitigating factors that explicitly include youth or that can otherwise encompass youth. (See, e.g., Ariz. Rev. Stat. Ann. §§ 13-701, 13-702 (age of defendant listed as mitigating circumstance that can warrant departure from presumptive sentence); Wash. Rev. Code Ann. § 9.94A.535 (providing an illustrative, non-exhaustive list of mitigating factors that can warrant departure from standard sentencing range).)

Another approach is for states to set mandatory minimum sentences but allow youth to receive sentences below that minimum. (See e.g., Or. Rev. Stat. Ann. § 137.712; Mont. Code Ann. § 46-18-22.) Also, some jurisdictions have statutes which provide that, after a juvenile is convicted under the jurisdiction of adult court, the court has discretion to impose a sentence that is in accord with the juvenile code rather than an adult sentence. (See, e.g., Idaho Code Ann. § 20-508(10).) California Penal Code section 1732.6 allows some minors who are convicted in adult court to be

committed to Youth Authority rather than receive adult sentences, but individuals like Mr. Palmer are excluded. (Cal. Pen. Code §§ 1732.6, 667.5(c); see also *People v. Thomas* (2005) 35 Cal.4th 635, 644 (explaining that Proposition 21 created clear statutory exclusion).)

In some jurisdictions, juveniles face a lower maximum punishment for kidnapping than adults. In New York, for example, the maximum punishment a juvenile could face for kidnapping would be 10 years, whereas an adult could face a maximum of 25 years. (See, e.g., N.Y. Penal Law § 135.20 (kidnapping class B felony); N.Y. Penal Law § 70.00 (sentence for Class B felony is indeterminate with maximum of 25 years); N.Y. Penal Law § 70.05 (sentence for juvenile convicted of Class B felony is indeterminate with maximum of 10 years).)

B. Only 3 jurisdictions mandate that a life sentence be imposed on a juvenile for a crime similar to Mr. Palmer's.

Forty-nine of 52 jurisdictions do not allow a mandatory sentence of life with the possibility of parole to be imposed on a juvenile convicted of a crime like Mr. Palmer's. Only California, Louisiana,²² and Utah mandate

²² Mr. Palmer's brief did not list Louisiana or Utah as states that would mandate a life sentence for a kidnapping conviction for a juvenile similarly situated to Mr. Palmer. (See Answer Brief at 40). Both of these

that such juveniles be sentenced to life with the possibility of parole.²³

jurisdictions have a statute which defines a type of non-aggravated kidnapping and this offense carries a sentence less than life imprisonment. (See La. Stat. Ann. § 14:45 (defining “simple kidnapping” and imposing a fine and/or imprisonment for not more than 5 years); Utah Code Ann. § 76-5-301 (defining “kidnapping” as second-degree felony); Utah Code Ann. § 76-3-203 (sentence for second-degree felony is indeterminate term between 1 and 15 years).) However, the facts of Mr. Palmer’s case would meet the criteria for “aggravated kidnapping” in both jurisdictions, and this crime carries a mandatory life sentence in both jurisdictions. (See La. Stat. Ann. § 44.44; Utah Code Ann. § 76-5-302.)

²³ Mr. Palmer’s brief stated that a kidnapping conviction for a juvenile similarly situated to Mr. Palmer would be mandated in West Virginia. (See Answer Brief at 40). The kidnapping statute in West Virginia provides that life without the possibility of parole would be the only sentencing option for the relevant type of kidnapping. (See W. Va. Code Ann. § 61-2-14.) However, further research shows that the West Virginia legislature enacted a statute which states that juveniles cannot receive life without the possibility of parole and directs the court to consider youth as a mitigating factor in imposing an appropriate sentence. (See W. Va. Code Ann. § 61-

In stark contrast to mandating a life sentence for juveniles convicted of a crime similar to Mr. Palmer's, 29 jurisdictions (more than a majority) impose either no mandatory sentence or a mandatory minimum of 5 years or less under these circumstances. (See Appendix A.)²⁴

C. California is virtually alone in mandating a one-size-fits-all sentence for juveniles and adults alike.

In 47 jurisdictions there is a difference of at least a decade between the minimum sentence a juvenile can receive and the maximum sentence²⁵ 11-23.) This statute does not state what, if any, mandatory sentence would be required for a kidnapping conviction. (See *id.*)

²⁴ Alaska, Arizona, Colorado, Delaware, District of Columbia, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Washington, West Virginia, and Wisconsin.

²⁵ For the purpose of this calculation, *amici* assumed that a life with the possibility of parole sentence was equivalent to 50 years, and life without the possibility of parole was equivalent to 100 years. *Amici* also assumed a minimum sentence of at least 1 year if there was no statutory minimum sentence for juveniles.

an adult can receive for a crime similar to Mr. Palmer's. (Compare Column 5 and Column 7.)²⁶ Many of these jurisdictions provide courts with explicit instructions to consider mitigating circumstances including the youth of the defendant before imposing a sentence.

Unlike these jurisdictions, California's statutory framework provides only one option for sentencing those convicted of kidnapping for the purpose of robbery: life imprisonment with possibility of parole after 7 years. That single sentencing option applies indiscriminately to juveniles and adults.²⁷ Louisiana and Utah have at least some possibility for differentiating juveniles and adults at sentencing. In Louisiana, juveniles

²⁶ The only exceptions are California, Louisiana, Utah, Kansas, and North Carolina. Kansas provides for a differential of 0.9 years and North Carolina provides for a differential of 4 years. (See Appendix C.)

²⁷ Although the statute makes reference to the possibility of probation in subsection (c), that possibility is akin to "an act of grace or clemency" rather than a viable sentencing alternative. (See Cal. Pen. Code section 209(c); *People v. Axtell* (1981) 118 Cal.App.3d 246.) Further, as this Court explained in *People v. Thomas* (2005) 35 Cal.4th 635, 644, because section 1732.6 prohibits certain minors from being committed to Youth Authority, it also bars those minors from receiving less restrictive dispositions.

are sentenced to life with the possibility of parole whereas adults are sentenced to life without the possibility of parole. (See La. Stat. Ann. § 14:44 (life without parole is sentence for aggravated kidnapping); La. Stat. Ann. 15:574.4 (D) (providing parole eligibility to juveniles sentenced to life without parole).) In Utah, a judge has discretion to impose 15-to-life, 10-to-life, or six-to-life. (See Utah Code Ann. § 76-5-302 subsections 4(a) and 5(b).)

To be sure, California has a parole statute that is designed to treat youth offenders differently. (See Cal. Pen. Code, §§ 3051; 4801.) And for *some* youth offenders, this statute makes eligibility for release on parole come earlier than it would for non-youth offenders. (See Cal. Pen. Code, § 3051.) For example, a youth offender sentenced to a determinate term of any length, including, for example, 200 years, is eligible for parole after no more than 15 years of incarceration. But where, as here, a youth offender is serving a sentence of life with the possibility of parole after seven years, eligibility for release on parole comes at the same time for youth offenders as it would for non-youth offenders. Therefore, once a juvenile has been convicted of violating California Penal Code section 209, the statutory scheme does not allow for any differential in the *sentence* between juveniles and adults.

In applying its one-size-fits-all approach, California stands virtually alone in the nation in doing exactly what *Miller* prohibits: imposing “a

State’s most severe penalties on juvenile offenders . . . as though they were not children.” *Miller v. Alabama, supra*, 567 U.S. at 474.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask this Court to hold that a mandatory sentence of life with the possibility of parole sentence is unconstitutional where, as here, it is imposed on a juvenile for the conviction of kidnapping.

Dated: April 27, 2020

Respectfully submitted,



Kristen Bell

CERTIFICATE OF WORD COUNT

Counsel for *Amici* hereby certifies that this amicus brief consists of **11,949** words in 13-point Times New Roman fonts, according to the word count of the computer word-processing program. (Cal. Rules of Court, rule 8.384(a)(2), 8.204(c).)



Kristen Bell

**Appendix A: Numbers of People in Custody Serving LWOP, LWPP, or 50+ years,
with Kidnapping as a Juvenile as the Controlling Offense**

Jurisdictions that mandate LWPP or 50+ years for juvenile convicted of kidnapping under circumstances similar to Mr. Palmer's	
Louisiana	6
Utah	2
California	No Response to Public Record Request
Jurisdictions that mandate LWPP or 50+ years for juvenile convicted of the most aggravated type of kidnapping defined by statute, but <i>not</i> under circumstances similar to Mr. Palmer's	
Georgia	53
Colorado	3
Jurisdictions that allow, but do not mandate , LWPP or 50+ years for juvenile convicted of most aggravated type of kidnapping defined by statute	
Florida	15
Texas	10
Iowa*	9
Alabama	4
Nevada	4
Arkansas	3
Michigan	3
Missouri	2
Mississippi	1
Washington	1
Alaska	0
Idaho	0
Illinois	0
Kentucky	0
Nebraska	0
New Jersey	0
South Dakota	0
Vermont	0
West Virginia	0
Wisconsin	0
Federal, Montana, Oklahoma, Rhode Island, Tennessee, Virginia, and Wyoming	No Response to 2019 Public Record Request
Total across all jurisdictions that mandate or allow LWPP or 50+ years for juvenile convicted of kidnapping	116

* LWPP was mandatory until *State v. Lyle* (Iowa 2014) 854 N.W.2d 378, 404.

Appendix B: Sentencing Statutes for the Most Aggravated Form of Kidnapping	
Life Sentence or 50+ years is Mandatory for Adults and Juveniles	
California	Cal. Pen. Code, § 209 (kidnapping and sentence)
Colorado	Colo. Rev. Stat. Ann. § 18-3-301 (first degree kidnapping); Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(V)(A) (sentencing)
Georgia	Ga. Code Ann. § 16-5-40 (kidnapping and sentence)
Louisiana	La. Rev. Stat. § 14:44 (aggravated kidnapping and sentence)
Utah	Utah Code Ann. § 76-5-302 (aggravated kidnapping and sentence)
Life Sentence or 50+ years is Mandatory for Adults and Discretionary for Juveniles	
Federal ¹	18 U.S.C. § 1201 (kidnapping and sentence)
Idaho	Idaho Code Ann. § 18-4502 (first degree kidnapping); Idaho Code Ann. § 18-4504 (sentence); Idaho Code Ann. § 20-508(10) (discretion for juveniles)
Iowa	Iowa Code Ann. § 710.2 (first degree kidnapping); Iowa Code Ann. § 902.1 (sentence); State v. Lyle (Iowa 2014) 854 N.W.2d 378, 400 (discretion for juveniles)
Nebraska	Neb. Rev. Stat. § 28-313 (kidnapping); Neb. Rev. Stat. § 28-105 (sentencing); Neb. Rev. Stat. § 28-105.02(1) (discretion for juveniles)
New York*	<i>*Life sentence in New York is mandatory for adults, but not available for juveniles.</i> N.Y. Penal Law § 135.25 (first degree kidnapping); N.Y. Penal Law § 70.00 (sentence); N.Y. Penal Law § 70.05 (different sentencing for juveniles)
South Dakota	S.D. Codified Laws § 22-19-1 (aggravated kidnapping); S.D. Codified Laws § 22-6-1 (sentence); S.D. Codified Laws § 22-6-1.3 (no life sentence for juveniles; juveniles sentenced to “any term of years”)
West Virginia	W. Va. Code Ann. § 61-2-14a (kidnapping and sentence); W. Va. Code Ann. § 61-11-23 (sentencing for juveniles)

¹ Federal statute mandates life without the possibility of parole for kidnapping if death results. Because this sentence is unconstitutional for juveniles, it is not clear how juveniles should be sentenced in the federal system.

Life Sentence or 50+ years is Discretionary for Adults and Juveniles	
Alabama	Ala. Code § 13A-6-43 (first degree kidnapping); Ala. Code § 13A-5-6(a)(1) (sentencing).
Alaska	Alaska Stat. § 11.41.300 (kidnapping); Alaska Stat. § 12.55.125(b) (sentencing)
Arkansas	Ark. Code Ann. § 5-11-102 (kidnapping); Ark. Code Ann. § 5-4-401 (sentence)
Florida	Fla. Stat. Ann. § 787.01 (kidnapping and sentence); Fla. Stat. Ann. § 775.082(3)(a) (sentence for "life felony")
Illinois	720 Ill. Comp. Stat. Ann. 5/10-2 (aggravated kidnapping); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25 (sentence)
Kentucky	Ky. Stat. Ann. § 509.040 (kidnapping); Ky. Rev. Stat. Ann. § 532.030 (sentence)
Massachusetts**	** <i>Life sentence in Massachusetts is discretionary for adults, but not available for juveniles.</i> Mass. Gen. Laws, ch. 265, § 26 (kidnapping and sentence); Mass. Gen. Laws Ann. ch. 119, § 74 (juveniles)
Michigan	Mich. Comp. Laws § 750.349 (kidnapping and sentence)
Mississippi	Miss. Code. Ann. § 97-3-53 (kidnapping and sentence)
Missouri	Mo. Rev. Stat. Ann. § 565.110 (kidnapping); Mo. Rev. Stat. Ann. § 558.011 (sentence)
Montana	Mont. Code Ann. § 45-5-303 (aggravated kidnapping and sentence)
Nevada	Nev. Rev. Stat. § 200.310 (first degree kidnapping); Nev. Rev. Stat. § 200.320 (sentence)
New Jersey	N.J. Stat. Ann. § 2C:13-1 (kidnapping and sentence)
Oklahoma	Okla. Stat. tit. 21, § 745 (kidnapping for purpose of extortion, sentence)
Rhode Island	R.I. Gen. Laws 11-26-2 (kidnapping and sentence)
Tennessee	Tenn. Code Ann. § 39-13-305 (especially aggravated kidnapping); Tenn. Code Ann. § 40-35-111 (sentence)
Texas	Tex. Penal Code § 20.04 (aggravated kidnapping); Tex. Penal Code § 12.32 (sentence)
Vermont	Vt. Stat. Ann. tit. 13 § 2405 (kidnapping and sentence)
Virginia	Va. Code Ann. § 18.2-48 (abduction with the intent to extort money or for immoral purposes; if sentence is less than life, then a suspended sentence of 40 years must be added); Va. Code Ann. § 18.2-10 (sentence)
Washington	Wash. Rev. Code Ann. § 9A.40.020 (kidnapping); Wash. Rev. Code Ann. § 9A.20.021 (maximum sentence is life)
Wisconsin	Wis. Stat. Ann. § 940.31 (kidnapping); Wis. Stat. Ann. § 939.50 (sentence)
Wyoming	Wyo. Stat. Ann. §6-2-201 (kidnapping and sentence)

Life Sentence or 50+ Years is Not Available	
Arizona	Ariz. Rev. Stat. Ann. § 13-1304 (kidnapping); Ariz. Rev. Stat. Ann. § 13-702 (sentence)
Connecticut	Conn. Gen. Stat. Ann. § 53a-92a (first degree kidnapping); Conn. Gen. Stat. Ann. § 53a-35a (sentence)
Delaware	Del. Code. Ann. Tit. 11, § 783A(3) (first degree kidnapping); Del. Code. Ann. Tit. 11, § 4205 (sentence)
District of Columbia	D.C. Code Ann. § 22-2001 (kidnapping and sentencing)
Hawaii	Hawaii Rev. Stat. § 707-720 (kidnapping); Hawaii Rev. Stat. § 706-659 (sentence)
Indiana	Ind. Code Ann. § 35-42-3-2 (kidnapping); Ind. Code Ann. § 35-50-2-4.5 (sentence)
Kansas	Kan. Stat. Ann. § 21-5408 (aggravated kidnapping); Kan. Stat. Ann. § 21-6804 (sentence, Box DI)
Maine	Me. Stat. tit. 17-A, § 301 (kidnapping); Me. Stat. tit. 17-A, § 1604(1)(A) (sentence)
Maryland	Md. Code Ann., Crim. Law § 3-502 (kidnapping and sentence)
Minnesota	Minn. Stat. Ann. § 609.25 Sub. 1 (kidnapping and sentence)
New Hampshire	N.H. Rev. Stat. § 633:1 (kidnapping); N.H. Rev. Stat. § 651:2 (sentence)
New Mexico	N.M. Stat. Ann. § 30-4-1 (kidnapping); N.M. Stat. Ann. §§ 31-18-15, 15.1 (sentence)
North Carolina	N.C. Gen. Stat. Ann. § 14-39 (kidnapping); N.C. Gen. Stat. Ann. § 15A-1340.17 (sentence); N.C. Gen. Stat. Ann. § 15A-1340.16(d) (aggravating factors)
North Dakota	N.D. Cent. Code Ann. § 12.1-18-01 (kidnapping); N.D. Cent. Code Ann. § 12.1-32-01 (sentence)
Ohio ²	Ohio Rev. Code Ann. § 2905.01 (kidnapping); Ohio Rev. Code Ann. § 2929.14 (sentence); Ohio Rev. Code Ann. § 2971.03 (sentence)
Oregon	Or. Rev. Stat. Ann. § 163.235 (first degree kidnapping); Or. Rev. Stat. Ann. § 161.605 (sentence)
Pennsylvania	18 Pa. Cons. Stat. Ann. § 2901 (kidnapping); 18 Pa. Cons. Stat. Ann. § 1103 (sentence)
South Carolina	S.C. Code Ann. § 16-3-910 (kidnapping and sentence)

² A life sentence is mandatory if the victim is under 13 years old and “if the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment.” Ohio Rev. Code Ann. § 2905.01 Because an additional conviction is required to impose a life sentence, and this chart considers the sentences available for kidnapping on its own, the chart reports that life is not an option for kidnapping.

Jurisdiction	1	2	3	4	5	6	7	8	Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
	MIN	MAX		MIN	MAX		MIN	MAX	
Alabama	10	99 or LWPP	Increases mandatory minimum to 20 yrs	20	99 or LWOP	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	20	99 or LWPP	Ala. Code § 13A-6-43(a)(3) (kidnapping); Ala. Code § 13A-5-6(a)(1) (sentencing and firearm)
Alaska	5	99	No change; firearm enhancements apply to classified felonies, but kidnapping is an unclassified felony.	5	99	Range of sentencing options for kidnapping	5	99	Alaska Stat. § 11.41.300(a)(1)(E) (kidnapping); Alaska Stat. § 12.55.125(b) (sentencing)
Arizona	4	10	Use of firearm triggers different sentencing range for "dangerous offenders"	7	21	Higher sentencing range for firearm does not apply to juveniles; also, age of the defendant is a mitigating factor and if two mitigating factors are found, then the minimum sentence decreases to 3 yrs	3	12.5	Ariz. Rev. Stat. Ann. § 13-1304(A)(4) (kidnapping); Ariz. Rev. Stat. Ann. §§ 13-701, 702 (sentence); Ariz. Rev. Stat. Ann. §§ 13-704 (firearm); State ex rel. Montgomery v. Brain (Ariz. Ct. App. 2018) (firearm); Ariz. Rev. Stat. Ann. § 13-701(E)(1) (age of defendant mitigating factor)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
Arkansas	10	40 or LWOP	Additional 15 yrs, discretionary	10	55 or LWOP	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	10	55 or LWPP	Ark. Code Ann. § 5-11-102(a)(3) (kidnapping); Ark. Code Ann. § 5-4-401(a)(1) (sentence); Ark. Code Ann. § 16-90-120(a) (firearm); Ark. Code Ann. § 16-93-613 (no parole eligibility for adults); Ark. Code Ann. § 16-93-621 (juvenile parole)
California	LWPP	LWPP	Additional 3, 4, or 10 yrs, discretionary	LWPP	LWPP plus 10	N/A	LWPP	LWPP plus 10	Cal. Pen. Code, § 209(b)(1) (kidnapping and sentence); Cal. Pen. Code § 12022.5 (firearm).
Colorado	8	24	Add the amount of time that is at least half the midpoint in the presumptive range, but not more than twice the maximum term authorized in the presumptive range	16	48	For juveniles convicted of this class of felony (not class 1 and not a sexual offense), no mandatory minimum applies, and judge has option to suspend the adult sentence and sentence to the youthful offender system for 2-7 yrs	Juvenile Penalty	48	Colo. Rev. Stat. Ann. § 18-3-301 (kidnapping, second-degree); Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(V)(A) (sentencing); Colo. Rev. Stat. Ann. § 18-1.3-406 (firearm); Colo. Rev. Stat. Ann. § 19-2-517 (juvenile)
Connecticut	10	25	Additional 5 yrs; mandatory	15	30	Range of sentencing options for kidnapping	10	25	Conn. Gen. Stat. Ann. § 53a-92a(B)(2) (kidnapping); Conn. Gen. Stat. Ann. § 53a-35a(4) (sentence); Conn. Gen. Stat. Ann. § 53-202k (firearm)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm	
Delaware	2	25	Separate felony, mandatory 3 yrs up to additional 25 yrs	5	50	Range of sentencing options for kidnapping*	5	50	Del. Code. Ann. Tit. 11, § 783A(3) (kidnapping); Del. Code. Ann. Tit. 11, § 4205 (sentence); Del. Code Ann. tit. 11, § 1447A (firearm); *Sentencing guidelines state that presumptive sentence for kidnapping is 2-5 yrs and that being under 18 at the time of the crime and other youth factors should be considered as mitigating factors in determining the sentence. Delaware Sentencing Accountability Commission Benchbook 2018, pg. 23, 142, available at https://cjc.delaware.gov/wp-content/uploads/sites/61/2018/
District of Columbia	N/A	30	Additional 5 yrs mandatory, up to additional 30 yrs	>5	60	No mandatory minimums for juveniles; range of sentencing options for kidnapping	N/A	60	D.C. Code Ann. § 22-2001 (kidnapping and sentencing); D.C. Code Ann. § 22-4502(a)(1) (firearm); D.C. Code Ann § 24-403.01(c)(2) (juveniles)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm	
Florida	N/A	Term of yrs not more than life	Reclassifies from a first degree felony to a "life felony" (which is punishable by LWOP or term of yrs not exceeding life), and imposes 10 yr mandatory minimum	10	LWOP	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	10	Term of yrs not more than life	Fla. Stat. Ann. § 787.01(1)(a)(1) (kidnapping); Fla. Stat. Ann. § 787.01(2) (sentence); Fla. Stat. Ann. § 775.087 (firearm); Fla. Stat. Ann. § 775.082(3) (sentence with firearm)
Georgia	10	20	Additional 5 yrs, mandatory	15	25	Range of sentencing options for kidnapping	15	25	Ga. Code Ann. § 16-5-40(a) (kidnapping); Ga. Code Ann. § 16-5-40(d)(1) (sentence); Ga. Code Ann. § 16-11-106 (firearm)
Hawaii	N/A	20	Additional time mandatory, amount of time discretionary up to 10 yrs	N/A	30	Judge has discretion to impose a special term for young adult defendants (under age 22); for Class A felony, sentence is a maximum of 8 yrs	Special term for young adults	30	Hawaii Rev. Stat. § 707-720 (kidnapping); Hawaii Rev. Stat. § 706-659 (sentence); Hawaii Rev. Stat. § 706-660.1(1)(b) (firearm); Hawaii Rev. Stat. § 706-667 (young adult defendants)
Idaho	1	25	Increases maximum sentence by 15 yrs, discretionary	1	40	Judge has discretion to impose a juvenile sentence if, after transfer to adult court and conviction in adult court, judge finds that adult sentencing would be inappropriate	Juvenile penalty	40	Idaho Code Ann. § 18-4503 (kidnapping); Idaho Code Ann. § 18-4504(2) (sentence); Idaho Code Ann. § 19-2520 (firearm); Idaho Code Ann. § 20-508(10) (juvenile)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm			Adult convicted of kidnapping given facts in Palmer's case, including firearm			Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm	
Illinois	6	30	Additional 15 yrs, mandatory	21	45	Directed to consider youth factors in selecting sentence within authorized range, also enhancement for firearm is discretionary rather than mandatory	6	45	720 Ill. Comp. Stat. Ann. 5/10-2 (kidnapping); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25 (sentence); 720 Ill. Comp. Stat. Ann. § 5/10-2(a)(6) (firearm); 730 Ill. Comp. Stat. Ann. 5/5-4.5-105 (juvenile)
Indiana	1	6	Included as aggravating factor in kidnapping statute; also discretionary enhancement of 5-20 yrs	3	36	After conviction in adult court, judge can suspend sentence for juvenile, and provide that successful completion of term in a juvenile facility is condition of suspended sentence	Juvenile placement and suspend sentence	36	Ind. Code Ann. § 35-42-3-2 (kidnapping); Ind. Code Ann. § 35-50-2-4.5, 35-50-2-5 (sentence); Ind. Code Ann. § 35-50-1-2 (max sentence); Ind. Code Ann. § 35-50-2-11 (firearm); Ind. Code Ann. § 31-30-4-2 (juvenile)
Iowa	N/A	25	Included as aggravating factor in kidnapping statute	17.5	25	No mandatory minimums for juveniles; range of sentencing options for kidnapping	N/A	25	Iowa Code Ann. § 710.3 (kidnapping); Iowa Code Ann. § 902.12 and Iowa Code Ann. § 902.9 (sentence); Iowa Code Ann. § 902.7 (firearm); State v. Lyle, 854 N.W.2.d. 378, 400 (2014) (no mandatory minimums for juveniles)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm	
Kansas	7.4	8.3	When firearm used, imprisonment is presumptive	7.4	8.3	Range of sentencing options for kidnapping	7.4	8.3	Kan. Stat. Ann. § 21-5408(b) (kidnapping); Kan. Stat. Ann. § 21-6804 (sentence, Box DIII, and firearm)
Kentucky	10	20	Felonies penalized one class more severely than provided in the penalty provision pertaining to that offense	20	50 or LWPP	Range of sentencing options for kidnapping	20	50 or LWPP	Ky. Stat. Ann. § 509.040 (kidnapping); Ky. Stat. Ann. § 532.060 (sentence); Ky. Rev. Stat. Ann. § 218A.992 (firearm)
Louisiana	LWOP	LWOP	Additional 5 yrs, mandatory	LWOP	LWOP plus 5	Adults eligible for LWOP, juveniles are not	LWPP	LWPP plus 5	La. Rev. Stat. § 14:44 (kidnapping and sentence); La. Code Crim. Proc. Art. 893.3 (firearm)
Maine	N/A	30	Additional 4 yrs, mandatory	>4	34	Range of sentencing options for kidnapping	>4	34	Me. Stat. tit. 17-A, § 301(kidnapping); Me. Stat. tit. 17-A, § 1604(1)(A) (sentence); Me. Stat. tit. 17-A, § 1604(3)(A) (firearm)
Maryland	N/A	30	Separate misdemeanor, additional 5 yrs mandatory, up to additional 20 yrs	>5	50	Range of sentencing options for kidnapping	>5	50	Md. Code Ann., Crim. Law § 3-502(a) (kidnapping); Md. Code Ann., Crim. Law § 3-502(b) (sentencing); Md. Code Ann., Crim. Law §4-204 (firearm)
Massachusetts	N/A	Term of yrs or LWPP	Imposes mandatory minimum of 20 yrs	>20	Term of yrs or LWPP	Juveniles cannot be transferred to adult court under a kidnapping charge	N/A	Juvenile penalty	Mass. Gen. Laws, ch. 265, § 26 (kidnapping, sentence, and firearm); Mass. Gen. Laws Ann. ch. 119, § 74 (juveniles)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Explanation of potential change to sentence due to status as juvenile		Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
Michigan	N/A	Term of yrs or LWPP	Separate felony, mandatory 2 yrs	>2	Term of yrs or LWPP plus 2	Range of sentencing options for kidnapping	N/A	Any term of yrs or LWPP plus 5	Mich. Comp. Laws § 750.349 (kidnapping); Mich. Comp. Laws § 750.349 (sentence); Mich. Comp. Laws § 750.227b (firearm)
Minnesota	N/A	40	Additional 3 yrs, mandatory minimum, does not add to maximum	>3	40	Range of sentencing options for kidnapping	>3	40	Minn. Stat. Ann. § 609.25 Sub. 1 (kidnapping); Minn. Stat. Ann. § 609.25 Sub. 2(2) (sentence); Minn. Stat. Ann. § 609.11 (9) (firearm)
Mississippi	1	30 or LWOP	Additional 5 yrs, mandatory	6	35 or LWOP	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	6	35 or LWPP	Miss. Code. Ann. § 97-37-37 (kidnapping and sentence); Miss. Code. Ann. § 97-37-37 (firearm); Miss. Code. Ann. § 47-7-3 (individuals sentenced for kidnapping not eligible for parole)
Missouri	10	30 or LWPP	Separate felony, mandatory 3 yrs	13	33 or LWPP	Range of sentencing options for kidnapping	10	33 or LWPP	Mo. Ann. Stat. § 565.110 (kidnapping); Mo. Ann. Stat. § 558.011 (sentence); Mo. Ann. Stat. § 571.015 (firearm)
Montana	2	100 or LWPP	Additional 2 yrs mandatory, up to additional 10 yrs	4	110 or LWPP	No mandatory minimums for juveniles; range of sentencing options for kidnapping	N/A	110 or LWPP	Mont. Code Ann. § 45-5-303 (kidnapping and sentence); Mont. Code Ann. § 46-18-221 (firearm); Mont. Code Ann. § 46-18-22 (juveniles)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Adult convicted of kidnapping given facts in Palmer's case, including firearm	Explanation of potential change to sentence due to status as juvenile	
Nebraska	LWPP	LWPP	Separate felony, additional 5 yrs mandatory, up to an additional 50 yrs	LWPP plus 5	LWPP plus 50	Maximum sentence for a juvenile convicted of a Class IA felony cannot exceed LWPP and minimum sentence cannot be less than 40 yrs; court has discretion to impose "make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code." Neb. Rev. Stat. Ann § 29-2204(5)	Juvenile penalty	40 or LWPP plus 50	Neb. Rev. Stat. § 28-313 (kidnapping); Neb. Rev. Stat. § 28-105 (sentencing); Neb Rev. Stat. § 28-1205(1)(c) (firearm); Neb. Rev. Stat. § 28-105.02(1) (juveniles); Neb. Rev. Stat. Ann § 29-2204(5) (juveniles)
Nevada	15	LWPP	Additional 1 yr mandatory, up to additional 20 yrs	16	35 or LWPP	Judge can reduce mandatory minimum sentence by up to 35% for juveniles; range of sentencing options for kidnapping	10.4	35 or LWPP	Nev. Rev. Stat. § 200.310 (kidnapping); Nev. Rev. Stat. § 200.320 (sentence); Nev. Rev. Stat. § 193.165 (firearm); Nev. Rev. Stat. § 176.017(2) (juveniles)
New Hampshire	N/A	15	Separate felony, additional 7 yrs discretionary	N/A	22	Range of sentencing options for kidnapping	N/A	22	N.H. Rev. Stat. § 633:1 (kidnapping); N.H. Rev. Stat. § 651:2(II-b) (sentence); N.H. Rev. Stat. § 650-A:1 (firearm)

Jurisdiction	1	2	3	4	5	6	7	8	Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
New Jersey	15*	30	Separate felony, adds one half the base term for the crime or three yrs, whichever is more	22.5*	45	Range of sentencing options for kidnapping	8	45	N.J. Stat. Ann. § 2C:13-1 (kidnapping and sentence); N.J. Stat. Ann. § 2C:39-4 (firearm); N.J. Stat. Ann. § 2C:44-1 (discretion to sentence under minimum) * Sentencing range for kidnapping may be reduced to 5 to 10 yrs if "court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands." N.J. Stat. Ann. § 2C:44-1.
New Mexico	12	24	Additional 1 yr, mandatory	13	25	For a person between 14 and 18 facing kidnapping charge, court can sentence less than the basic term provided for adults, may not impose more than the basic term provided for adults, and the firearm enhancement is discretionary rather than mandatory.	N/A	19	N.M. Stat. Ann. § 30-4-1(B) (kidnapping); N.M. Stat. Ann. § 31-18-15(A)(3) (basic sentence is 18 yrs); 31-18-15.1 (aggravating or mitigating factors can increase or decrease the basic sentence by one-third); N.M. Stat. Ann. § 31-18-16 (firearm); N.M. Stat. Ann. § 32A-2-3 (juveniles); N.M. Stat. Ann. § 32A-2-20 (juvnils).

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Explanation of potential change to sentence due to status as juvenile		Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
New York	1	25	Additional 5 yrs, discretionary	1	30	Indeterminate sentence where the maximum period for a juvenile convicted of a class B felony is 3-10 yrs, and minimum is 1/3 of the maximum imposed	1	15	N.Y. Penal Law § 135.20 (kidnapping); N.Y. Penal Law § 70.00 (sentence); N.Y. Penal Law § 265.09 (firearm); N.Y. Penal Law § 70.05 (juveniles)
North Carolina	4.8	6	Firearm is aggravating factor that impacts sentencing range	4.8	7.67	Youth as mitigating factor that impacts sentencing range	3.67	7.67	N.C. Gen. Stat. Ann. § 14-39 (kidnapping); N.C. Gen. Stat. Ann. § 15A-1340.17 (sentence); N.C. Gen. Stat. Ann. § 15A-1340.16 (firearm and youth listed as aggravating and mitigating factors, respectively)
North Dakota	N/A	20	Additional 4 yrs, mandatory	>4	24	Range of sentencing options for kidnapping	>4	24	N.D. Cent. Code Ann. § 12.1-18-01 (kidnapping); N.D. Cent. Code Ann. § 12.1-32-01 (sentence); N.D. Cent. Code Ann. § 12.1-32-02.1(2)(a) (firearm)
Ohio	3	16.5	Additional 3 yrs, mandatory	6	19.5	Range of sentencing options for kidnapping	6	19.5	Ohio Rev. Code Ann. § 2905.01 (kidnapping); Ohio Rev. Code Ann. § 2929.14(2)(a) (sentence); Ohio Rev. Code Ann. § 2929.14(B)(1)(a)(ii) (firearm)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Explanation of potential change to sentence due to firearm		Adult convicted of kidnapping given facts in Palmer's case, including firearm	Explanation of potential change to sentence due to status as juvenile		Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
Oklahoma	10	LWOP	Separate felony, 2 yrs mandatory, up to 10 yrs	12	LWOP plus 10	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	12	Any term of yrs	Okla. Stat. tit. 21, § 745 (kidnapping and sentence); Okla. Stat. Ann. tit. 21, § 1287 (firearm)
Oregon	5.8	10	Additional time mandatory, amount of time either 5 yrs or a lesser amount determined by sentencing-guidelines.	>5.8	15	No mandatory minimums for juveniles; Firearm enhancement is discretionary for juveniles; range of sentencing options for kidnapping	N/A	15	Or. Rev. Stat. Ann. § 163.225 (kidnapping); Or. Rev. Stat. Ann. § 137.707 (sentence, minimum); Or. Rev. Stat. Ann. § 161.605 (sentence, maximum); Or. Rev. Stat. Ann. § 161.610 (firearm); Or. Rev. Stat. Ann. § 137.712 (no mandatory minimum for juveniles); Or. Rev. Stat. Ann. § 161.610(6) (firearm enhancement discretionary for juveniles)
Pennsylvania	N/A	20	Additional number of yrs based on matrix, mandatory. Assuming offense is kidnapping for the purpose of a felony and no prior record, the enhancement is 1 yrs 7 months up to 4 yrs 9 months.	>1.6 yrs	24.75	Range of sentencing options for kidnapping	1.6	24.75	18 Pa. Cons. Stat. Ann. § 2901 (kidnapping); 18 Pa. Cons. Stat. Ann. § 1103 (sentence); 204 Pa. Code § 303.17(a) (firearm)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm			Adult convicted of kidnapping given facts in Palmer's case, including firearm			Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm	
Rhode Island	5	LWPP	Separate felony, additional 10 yrs, mandatory	15	LWPP plus 10	Range of sentencing options for kidnapping	15	Any term of yrs or LWPP	R.I. Gen. Laws 11-26-2 (kidnapping and sentence); R.I. Gen.Laws § 11-47-3.2 (firearm); 11-47-2 (firearm)
South Carolina	N/A	30	Additional 5 yrs, mandatory (discretion to not apply concurrently if another mandatory minimum in place)	5	35	Range of sentencing options for kidnapping	5	35	S.C. Code Ann. § 16-3-910 (kidnapping and sentence); S.C. Code Ann. § 16-23-490 (firearm)
South Dakota	N/A	LWOP	Separate felony, additional 5 yrs, mandatory	>5	LWOP plus 5	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	>5	Any term of yrs	S.D. Codified Laws § 22-19-1 (kidnapping); S.D. Codified Laws § 22-6-1(3) (sentence); S.D. Codified Laws § 24-15-4 (life sentence does not include eligibility for release on parole); S.D. Codified Laws § 22-14-12 (firearm); S.D. Codified Laws § 22-6-1.3 (juveniles)
Tennessee	8	30	Included as aggravating factor in kidnapping statute	15	60	Range of sentencing options for kidnapping	15	60	Tenn. Code Ann. § 39-13-305 (kidnapping and firearm); Tenn. Code Ann. § 40-35-111(b)(1)(sentence)
Texas	5	99 or LWPP	Included as aggravating factor in kidnapping statute	5	99 or LWPP	Range of sentencing options for kidnapping	5	99 or LWPP	Tex. Penal Code § 20.04 (kidnapping); Tex. Penal Code § 12.32 (sentence); TX GOVT § 508.145 (eligibility for parole)

Jurisdiction	1 Adult convicted of kidnapping given facts in Palmer's case, but without firearm	2 Term of yrs or LWOP	3 Explanation of potential change to sentence due to firearm	4 >7	5 LWOP	6 Explanation of potential change to sentence due to status as juvenile	7 >7	8 LWPP plus 7	Relevant Statutes
Federal	N/A	Term of yrs or LWOP	Additional 7 yrs for brandishing firearm	>7	LWOP	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	>7	LWPP plus 7	18 U.S.C. § 1201 (kidnapping and sentence); 18 U.S.C. § 924(c)(1)(a) (firearm); U.S.S.G. 2A4.1 (sentencing guideline offense level for kidnapping with use of deadly weapon). Sentences reported here are those provided in the kidnapping statute and firearm statute. The advisory sentencing guideline range would be 12.6 yrs to 15.6 yrs, given offense level 32 for kidnapping with use of gun

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm	
Utah	LWPP	LWPP	Included as aggravating factor in kidnapping; additional enhancement of 1 yr as mandatory addition to minimum	LWPP plus 1	LWPP plus 1	N/A	LWPP plus 1	LWPP plus 1	Utah Code Ann. § 76-5-302 (kidnapping and sentence); Utah Code Ann. § 76-3-203.8 (firearm)
Vermont	N/A	LWPP	Additional time mandatory, amount of time is discretionary, up to 5 yrs	>1	LWPP plus 5	Range of sentencing options for kidnapping	>1	LWPP plus 5	Vt. Stat. Ann. tit. 13 § 2405(a)(1)(E) (kidnapping); Vt. Stat. Ann. tit. 13 § 2405(b) (sentence); Vt. Stat. Ann. tit. 13 § 4005 (firearm)
Virginia	20	LWPP	Separate felony, additional 3 yrs, mandatory	23	LWPP plus 3	Range of sentencing options for kidnapping	23	Any term of yrs or LWPP	Va. Code Ann. § 18.2-48 (kidnapping); Va. Code Ann. § 18.2-10 (sentence); Va. Code Ann. § 18.2-53.1 (firearm); Va. HB 35 (2020) (juveniles)
Washington	N/A	5.67	Additional 5 yrs, mandatory	>5	10.67	No mandatory minimums for juveniles; judicial discretion to sentence below range based on mitigating factors including youth	N/A	10.67	Wash. Rev. Code Ann. § 9A.40.020 (kidnapping); Wash. Rev. Code Ann. § 9.94A.510 (standard sentencing range); Wash. Rev. Code Ann. § 9.94A.535 (departures from standard range); Wash. Rev. Code Ann. § 9.94A.533(3)(A) (firearm); State v. Houston-Sconiers (2017) 188 Wash.2d 1, 21 (no mandatory minimums for juveniles)

Jurisdiction	1 2		3	4 5		6	7 8		Relevant Statutes
	Adult convicted of kidnapping given facts in Palmer's case, but without firearm		Explanation of potential change to sentence due to firearm	Adult convicted of kidnapping given facts in Palmer's case, including firearm		Explanation of potential change to sentence due to status as juvenile	Juvenile convicted of kidnapping given facts in Palmer's case, including firearm		
West Virginia	LWOP	LWOP	Separate felony, additional 10 yrs discretionary	LWOP	LWOP plus 10	Adults eligible for LWOP, juveniles are not; court is directed to consider youth factors as mitigating in imposing sentence	[N/A]*	LWPP plus 10	W. Va. Code Ann. § 61-2-14 (kidnapping and sentence); W. Va. Code Ann. § 61-7-15a (firearm); W. Va. Code Ann. § 61-11-23 (juveniles) *W. Va. Code Ann. § 61-2-14 provides that LWOP is the only sentencing option for kidnapping, but W. Va. Code Ann. § 61-11-23 states that juveniles cannot receive LWOP. W. Va. Code Ann. § 61-11-23 directs the court to consider youth as a mitigating factor in imposing a sentence, but does not make clear what (if any) mandatory minimum is required.
Wisconsin	N/A	40	Additional 5 yrs, discretionary	N/A	45	Range of sentencing options for kidnapping	N/A	45	Wis. Stat. Ann. § 940.31(1) (kidnapping); Wis. Stat. Ann. § 939.50(3)(c)(sentence); Wis. Stat. Ann. § 939.63(1)(b) (firearm)
Wyoming	20	LWOP	Additional time mandatory, amount of time is discretionary, up to 10 yrs	>20	LWOP plus 10	Adults eligible for LWOP, juveniles are not; range of sentencing options for kidnapping	>20	LWPP	Wyo. Stat. Ann. §6-2-201(a)(ii) (kidnapping); Wyo. Stat. Ann. §6-2-201(d) (sentence); Wyo. Stat. Ann. § 6-8-101(a) (firearm); Wyo. Stat. Ann. § 6-10-301(c) (juveniles)

Exhibit A

DECLARATION OF ASHLEY NELLIS

I, Ashley Nellis, Ph.D. declare as follows:

1. I am Senior Research Analyst at The Sentencing Project in Washington, D.C.
2. The numbers provided in Appendix A come directly from responses to requests for data that The Sentencing Project sent to departments of corrections in each jurisdiction.
3. The Sentencing Project contacted research divisions within the state and federal departments of corrections in January 2020 requesting the total number of people in prison as well as those serving life with parole, life without parole, and sentences of 50 years or more before release on the most recent date available. The most common date provided was the date of the query.
4. Within each of these three groups of prisoners (LWPP, LWOP, and virtual life/50 Years or more), The Sentencing Project also requested that data be provided in various categories, including the crime of conviction, and whether people were under 18 years-old at the time of the crime.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 27, 2020 in Washington, D.C,




Ashley Nellis, Ph.D.

PROOF OF SERVICE

I, Kristen Bell, am over the age of eighteen and not a party to this action. My business address is University of Oregon School of Law, 1515 Agate Street, Eugene, OR 97403. On April 27, 2020, I served the foregoing document, **APPLICATION TO FILE BRIEF OF AMICUS CURIAE AND PROPOSED AMICUS BRIEF OF THE SENTENCING PROJECT IN SUPPORT OF WILLIAM M. PALMER** on the parties to this action by electronically filing via TRUEFILING:

Xavier Becerra Attorney General of California Gerald Engler Chief Assistant Attorney General Philip Lindsay Senior Assistant Attorney General Sara J. Romano Supervising Deputy Attorney General Michael J. Mongan Deputy Solicitor General Geoffrey H. Wright Associate Deputy Solicitor General 455 Golden Gate Ave, Ste. 11000 San Francisco, CA 94102-7004	Superior Court of California County of Riverside 4050 Main Street Riverside, CA 92501
California First Appellate Court Division Two 355 McAllister Street San Francisco, CA 94102 Case No. A14177	Megan Havstad O'Melveny & Myers LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111
District Attorney Riverside County District Attorney's Office 3060 Orange Street, #100 Riverside, CA 92501	First District Appellate Project 475 Fourteenth Street, No. 650 Oakland, CA 94612

I declare that the foregoing is true and correct and that this declaration was executed on April 27, 2020.


Kristen Bell (SBN 302311)

STATE OF CALIFORNIA
 Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
 Supreme Court of California

Case Name: **PALMER (WILLIAM M.) ON
 H.C.**

Case Number: **S256149**

Lower Court Case Number: **A154269**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **krbell@uoregon.edu**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Amicus Brief of The Sentencing Project
APPLICATION TO FILE OVER-LENGTH BRIEF	Motion for expanded brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Kristen Bell Attorney at Law 302311	krbell@uoregon.edu	e-Serve	4/27/2020 9:14:31 PM
Miriam Gohara Jerome N. Frank Legal Services Organization 437966	miriam.gohara@yale.edu	e-Serve	4/27/2020 9:14:31 PM
Amanda Murray California Dept of Justice, Office of the Attorney General 223829	amanda.murray@doj.ca.gov	e-Serve	4/27/2020 9:14:31 PM
Megan Havstad O'Melveny Myers, LLP 287938	mhavstad@omm.com	e-Serve	4/27/2020 9:14:31 PM
Marisol Orihuela Jerome N. Frank Legal Services Organization	marisol.orihuela@ylsclinics.org	e-Serve	4/27/2020 9:14:31 PM
Olivia DelaCruz Department of Justice, Office of the Attorney General-San Diego	Olivia.DelaCruz@doj.ca.gov	e-Serve	4/27/2020 9:14:31 PM
Sara McDermott Munger, Tolles & Olson LLP 307564	sara.mcdermott@mto.com	e-Serve	4/27/2020 9:14:31 PM
Taylor Reeves Keker, Van Nest & Peters LLP 319729	treeves@keker.com	e-Serve	4/27/2020 9:14:31 PM
Miriam Gohara Jerome N. Frank Legal Services Organization 437966	miriam.gohara@ylsclinics.org	e-Serve	4/27/2020 9:14:31 PM
Mark Zahner California District Attorneys Assn	mzahner@cdaa.org	e-Serve	4/27/2020 9:14:31 PM

137732

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/27/2020

Date

/s/Kristen Bell

Signature

Bell, Kristen (302311)

Last Name, First Name (PNum)

University of Oregon School of Law

Law Firm