

No. 18-217

IN THE
Supreme Court of the United States

----- ◆ -----
RANDALL MATHENA, WARDEN,
Petitioner,

v.
LEE BOYD MALVO,
Respondent.

----- ◆ -----
On Writ Of Certiorari
To The United States Court of Appeals for the
Fourth Circuit

----- ◆ -----
**BRIEF OF AMICI CURIAE JUVENILE LAW
CENTER, CAMPAIGN FOR FAIR SENTENCING
OF YOUTH, ET AL. IN SUPPORT OF
RESPONDENT LEE BOYD MALVO**

Marsha L. Levick*

*Counsel of Record for *Amici*

Riya Saha Shah

JUVENILE LAW CENTER

1315 Walnut Street, 4th Floor

Philadelphia, PA 19107

Telephone: (215) 625-0551

Email: mlevick@jlc.org

Heather Renwick

Rebecca Turner

CAMPAIGN FOR FAIR SENTENCING OF YOUTH

1319 F St. NW, Suite 303

Washington, DC 20004

Telephone: (202) 289-4677

Email: hrenwick@fairsentencing.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

INTEREST OF AMICI.....1

SUMMARY OF ARGUMENT.....1

ARGUMENT3

 I. A LIFE WITHOUT PAROLE SENTENCE IMPOSED WITHOUT CONSIDERATION OF YOUTH AND ITS ATTENDANT CHARACTERISTICS IS UNCONSTITUTIONAL3

 II. COURT DECISIONS AND LEGISLATION SINCE *MILLER* AND *MONTGOMERY* DEMONSTRATE WIDESPREAD RELIANCE ON *MILLER'S* REQUIREMENT THAT THE SENTENCER TAKE YOUTH AND ITS ATTENDANT CHARACTERISTICS INTO ACCOUNT.....8

 A. State Legislatures Have Enacted Legislation Relying On *Miller's* Holding That Any Life Without Parole Sentence Imposed Without Consideration Of Youth Is Unconstitutional10

B. State Courts Have Interpreted <i>Miller</i> To Require Consideration Of The Characteristics Of Youth Before Any Life Without Parole Sentence Can Be Imposed	13
CONCLUSION	17
APPENDIX: STATEMENTS OF INTEREST OF AMICI CURIAE	1A

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adams v. Alabama</i> , 136 S. Ct. 1796 (2016).....	5
<i>Aiken v. Byars</i> , 765 S.E.2d 572 (S.C. 2014)	15
<i>Diatchenko v. Dist. Att’y for Suffolk Dist.</i> , 1 N.E.3d 270 (Mass. 2013).....	11
<i>Dickerson v. United States</i> , 530 U.S. 428 (2000).....	9
<i>Hall v. Florida</i> , 572 U.S. 701 (2014).....	9, 17
<i>Ex parte Henderson</i> , 144 So. 3d 1262 (Ala. 2013)	14
<i>Landrum v. State</i> , 192 So. 3d 459 (Fla. 2016)	15
<i>Luna v. State</i> , 387 P.3d 956 (Okla. Crim. App. 2016)	14
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	<i>passim</i>
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016).....	<i>passim</i>
<i>People v. Gutierrez</i> , 324 P.3d 245 (Cal. 2014).....	16

<i>Schriro v. Summerlin</i> , 542 U.S. 348 (2004)	6
<i>Seminole Tribe of Florida. v. Florida</i> , 517 U.S. 44 (1996)	8
<i>State v. Bassett</i> , 428 P.3d 343 (Wash. 2018)	11
<i>State v. Long</i> , 8 N.E.3d 890 (Ohio 2014).....	15
<i>State v. Ramos</i> , 387 P.3d 650 (Wash. 2017)	17
<i>State v. Riley</i> , 110 A.3d 1205 (Conn. 2015).....	16
<i>State v. Sweet</i> , 879 N.W. 2d 811 (Iowa 2016).....	11
<i>State v. Williams</i> , 820 S.E.2d 521 (N.C. Ct. App. 2018)	15
<i>Tatum v. Arizona</i> , 137 S. Ct. 11 (2016).....	5
<i>Veal v. State</i> , 784 S.E.2d 403 (Ga. 2016)	16
<i>White v. Premo</i> , 443 P.3d 597 (Or. 2019)	17
<i>Whiteside v. State</i> , 426 S.W.3d 917 (Ark. 2013).....	14

<i>Windom v. State</i> , 398 P.3d 150 (Idaho 2017)	15, 16
---	--------

Statutes

18 PA. CONS. STAT. ANN. § 1102.1 (2012)	12
730 ILL. COMP. STAT. ANN. 5/5-4.5-105 (2015)	13
ALASKA STAT. § 12.55.015 (1997)	11
ARK. CODE ANN. § 5-4-108 (2017)	11
CAL. PENAL CODE § 3051	11
COLO. REV. STAT. § 17-22.5-104 (2006)	11
COLO. REV. STAT. § 18-1.3-401 (2006)	11
CONN. GEN. STAT. § 54-125a (2015)	11
D.C. CODE § 22-2104 (2001)	11
DEL. CODE ANN. tit. 11, § 4204A (2013)	11
DEL. CODE ANN. tit. 11, § 4209A (2013)	11
FLA. STAT. ANN. § 921.1401 (2014)	12
HAW. REV. STAT. § 706-656 (2014)	11
IOWA CODE § 902.1 (2015)	13
KAN. STAT. ANN. § 21-6618 (2010)	11
KY. REV. STAT. ANN. § 640.040 (1986)	11

MICH. COMP. LAWS § 769.25 (2014).....	12, 13
MO. REV. STAT. §565.033 (2016).....	12
MONT. CODE ANN. §46-18-222 (2007).....	11
N.D. CENT. CODE §12.1-32-13.1 (2017)	11
N.J. REV. STAT. § 12C:11-3.....	11
NCGS § 15A-1340.19A, <i>et seq.</i>	12
NCGS § 15A-1340.19B.....	12
NEB. REV. STAT. ANN. § 28-105.02 (2013)	12
NEV. REV. STAT. § 176.025 (2015)	11
S.D. CODIFIED LAWS § 22-6-1 (2016)	11
TEX. PENAL CODE ANN. § 12.31 (2013).....	11
UTAH CODE ANN. § 76-3-209 (2016)	11
VT. STAT. ANN. tit. 13, § 7045 (2015)	11
W.VA. CODE § 61-11-23 (2014)	11
WASH. REV. CODE ANN. § 10.95.030 (2014).....	13
WYO. STAT. ANN. § 6-2-101 (2013).....	11
Other Authorities	
S.B. 1008, 2019 Reg. Sess. (Or. 2019).....	11
S.B. 635, 2011 Reg. Sess. (NC. 2012)	12

INTEREST OF AMICI¹

The organizations submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. *Amici* are advocates and researchers who believe that youth status separates juvenile and adult offenders in categorical and distinct ways that warrant distinct treatment under the Eighth Amendment. *Amici* have a shared commitment to a developmentally appropriate system that imposes criminal responsibility on youth.

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

SUMMARY OF ARGUMENT

In *Miller v. Alabama*, this Court held that the mandatory imposition of life without parole sentences on juvenile offenders convicted of murder is cruel and unusual punishment. *Miller v. Alabama*, 567 U.S. 460, 489, (2012). *Miller* held that a category of punishment (life without parole sentences) cannot be imposed on a category of defendants (juvenile offenders) absent a consideration of

chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate

¹ Pursuant to Rule 37.3, counsel of record for the parties have consented in writing to the filing of this brief. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel, made a monetary contribution for the preparation or submission of this brief.

risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth.

Miller, 567 U.S. at 477. Any life without parole sentence imposed without such consideration flouts this Court's ruling. Courts and legislatures across the country have relied on this Court's decision in *Miller* and found life without parole sentences for youth—whether imposed under a mandatory or discretionary sentencing scheme—invalid when imposed without consideration of the factors set forth in *Miller*.

ARGUMENT**I. A LIFE WITHOUT PAROLE SENTENCE
IMPOSED WITHOUT CONSIDERATION OF
YOUTH AND ITS ATTENDANT
CHARACTERISTICS IS
UNCONSTITUTIONAL**

“Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant’s sentence.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 732-33 (2016) (citing *Graham v. Florida*, 560 U.S. 48, 59 (2010) (“The concept of proportionality is central to the Eighth Amendment.”)). In *Miller v. Alabama*, the “manner” in which the unconstitutional sentence was imposed was through a mandatory sentencing scheme, but the risk of unconstitutional disproportionality—inherent in mandatory sentencing statutes—is present anytime a sentencer fails to properly account for youth.

The Warden argues that *Miller* may only be applied retroactively to individuals whose sentences were imposed under a mandatory sentencing scheme. But this pinched reading of *Miller* ignores the core rationale of the decision: life without parole sentences will be disproportionate for most juveniles due to their “diminished culpability and heightened capacity for change” *Miller v. Alabama*, 567 U.S. 460, 479 (2012), *unless* the sentencer makes a threshold determination that the defendant is “permanent[ly] incorrigib[le]” or “irreparab[ly] corrupt[]” after consideration of their youth and the special characteristics attendant to youth. *Montgomery*, 136 S. Ct. at 734 (“*Miller* did bar

life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”).

To be sure, this Court was unambiguous in declaring that *Miller* did not categorically ban all life without parole sentences for youth; however, it was also unambiguous in barring life without parole sentences imposed without this Court’s constitutionally required consideration of specific qualities of youth. “[*Miller*] mandates only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Miller*, 567 U.S. at 483. As the Court further explained, “*Graham* established one rule (a flat ban) for nonhomicide offenses, while we set out a different one (individualized sentencing) for homicide offenses.” *Id.* at 474 n.6.

While Evan Miller and Kuntrell Jackson each received mandatory life without parole sentences, the sentences were unconstitutional not solely because they were mandatory; the sentencers’ inability to properly consider youth created the risk of unconstitutionally disproportionate sentences. *Miller* concluded that the “characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate,” *Miller*, 567 U.S. at 473. Such a sentence “poses too great a risk of disproportionate punishment” by precluding a sentencer from considering an offender’s age and characteristics of youth prior to imposing the harshest punishments. *Id.* at 479.

In her concurrence in *Tatum v. Arizona*, Justice Sotomayor explained *Miller*’s rule:

It is clear after *Montgomery* that the Eighth Amendment requires more than mere consideration of a juvenile offender's age before the imposition of a sentence of life without parole. It requires that a sentencer decide whether the juvenile offender before it is a child "whose crimes reflect transient immaturity" or is one of "those rare children whose crimes reflect irreparable corruption" for whom a life without parole sentence may be appropriate.

Tatum v. Arizona, 137 S. Ct. 11, 13 (2016) (Sotomayor, J., concurring) (mem.) (quoting *Montgomery*, 136 S. Ct. at 734). When "[t]here is no indication that, when the factfinders . . . considered petitioners' youth, they even asked the question *Miller* required them not only to answer, but to answer correctly: whether petitioners' crimes reflected 'transient immaturity' or 'irreparable corruption'" remand is required. *Adams v. Alabama*, 136 S. Ct. 1796, 1800 (2016) (Sotomayor, J., concurring) (mem.) (quoting *Montgomery*, 136 S. Ct. at 734) (vacating and remanding a case where a juvenile was sentenced to death).

Miller "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Montgomery*, 136 S. Ct. at 734 (quoting *Miller*, 567 U.S. at 472).

Because *Miller* determined that sentencing a child to life without parole

is excessive for all but “the rare juvenile offender whose crime reflects irreparable corruption,” it rendered life without parole an unconstitutional penalty for “a class of defendants because of their status”—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.

Montgomery, 136 S. Ct. at 734 (citations omitted).

The above-quoted passage spells out the contours of *Miller*’s rule. This Court held in *Montgomery* that *Miller* articulated a new substantive rule of constitutional law that must be applied retroactively: life without parole sentences imposed without proper consideration of youth are unconstitutional and void. The Court explained that “*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.” *Montgomery*, 136 S. Ct. at 734. A life without parole sentence “could [only] be a proportionate sentence for the latter kind of juvenile offender.” *Id.* New substantive rules of criminal procedure are applied retroactively because they “necessarily carry a significant risk that a defendant’ . . . faces a punishment that the law cannot impose upon him.” *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004) (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)). Under *Miller*, a sentence of life without parole imposed without a determination that the individual’s crime reflects irreparable corruption is unconstitutional.

This Court repeatedly stressed its concern for constitutionally required individualized sentencing over formalistic sentencing labels. *Montgomery*, 136

S. Ct. at 734-36. The Court’s refusal to prescribe an exact process to enforce *Miller*’s new substantive rule reflected only its reluctance to “intrud[e] more than necessary upon the States’ sovereign administration of their criminal justice systems.” *Id.* at 735 (citing *Ford v. Wainwright*, 477 U. S. 399, 416-417 (1986) (“[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.”)). The Court continued,

Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment.

Montgomery, 136 S. Ct. at 735. This requirement was set forth by this Court to ensure that only the “rare” and “uncommon” juvenile would face a sentence of life without parole. *Id.* at 733-34 (quoting *Miller*, 567 U.S. at 479-80). This principle is meaningless if even past discretionary sentencing schemes which condemn youth whose crimes reflect transient immaturity to die in prison are not also void under *Miller*.

**II. COURT DECISIONS AND LEGISLATION
SINCE *MILLER* AND *MONTGOMERY*
DEMONSTRATE WIDESPREAD
RELIANCE ON *MILLER*'S REQUIREMENT
THAT THE SENTENCER TAKE YOUTH
AND ITS ATTENDANT
CHARACTERISTICS INTO ACCOUNT**

The Warden argues that Petitioner is not entitled to a new sentencing hearing because the Fourth Circuit misconstrued the rule announced in *Miller* as banning *any* life without parole sentence that fails to properly account for the distinctive characteristics and attributes of youth. Yet the Fourth Circuit has merely echoed other courts and legislatures across the country that have likewise applied *Miller* to all cases where youth and its relevant characteristics were not considered, regardless of whether the sentencing scheme was “mandatory” or “discretionary.”

This application of *Miller* is consistent with this Court’s requirements regarding adherence to its precedents. In *Seminole Tribe of Florida v. Florida*, this Court reasoned that when reviewing a case, it is important to adhere “not to mere *obiter dicta*, but rather to the well-established rationale upon which the Court based the results of its earlier decisions. When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound.” *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 66-67 (1996). This Court’s rationale for striking mandatory life without parole sentences in *Miller* was to strike sentences that were imposed without consideration of specific qualities of youth. Revisiting prior precedent—as the Warden proposes—is a drastic step, one that is

particularly inappropriate here, where States have relied on this Court's precedent in reforming their sentencing procedures.

This Court has previously considered reliance on its decisions by examining state legislation and practice. For example, in *Dickerson v. United States*, the Court considered the constitutionality of a federal statute which, if upheld, would have overruled this Court's 1966 decision in *Miranda v. Arizona*. The Court held that because *Miranda* has become "embedded in routine police practice to the point where the warnings have become part of our national culture," it should not be effectively overruled by statute. *Dickerson v. United States*, 530 U.S. 428, 443-44 (2000).

In the Eighth Amendment context, the states' understanding of this Court's jurisprudence informs the Court's interpretation. This Court recently made this clear in *Hall v. Florida*, where it struck a Florida statute defining intellectual disability for purposes of eligibility for the death penalty as an IQ score of 70 or below. 572 U.S. 701, 718-21 (2014). Because states had relied on the broad holding in *Atkins v. Virginia* that a fixed IQ score was inconsistent with *Atkins*' rationale, Florida's statute was ruled unconstitutional. The Court found it "proper to consider . . . how the legislative policies of various States, and the holdings of state courts, implement the *Atkins* rule." *Id.* at 709-10. The Court reasoned that the majority of states' laws were not as restrictive as Florida's and that the consistent trend away from Florida's interpretation of *Atkins* was "strong evidence" that the rule was unconstitutional. *Id.* at 718.

After *Miller*, states also moved quickly to amend their sentencing schemes to comply with *Miller's* mandate. These remedial measures largely track the Fourth Circuit's interpretation. Any narrowing of *Miller*, as the Warden urges, would run counter to the broad and emerging consensus which these remedial measures reflect: The Court's declaration that sentences of life without parole, without consideration of "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison," violates the Eighth Amendment for a child whether imposed under a mandatory scheme or not. *Miller*, 567 U.S. at 480. (quoting *Roper*, 543 U.S. at 573).

In challenging the Fourth Circuit's holding, the Warden, though not explicitly asking this Court to overrule its decision in *Montgomery*, is effectively asking this Court to reconsider its retroactivity ruling, which upends the precedent following *Miller*.

A. State Legislatures Have Enacted Legislation Relying On *Miller's* Holding That Any Life Without Parole Sentence Imposed Without Consideration Of Youth Is Unconstitutional

Since *Miller*, a majority of states have transformed their sentencing regimes for youth convicted of homicide, regardless of whether they provided for mandatory or discretionary life without parole. Construing *Miller* to preclude only mandatory sentences would undermine the states' reliance interests and lead to inequitable and arbitrary results for many individuals awaiting resentencing across the country.

When *Miller* was decided in 2012, only five states had banned juvenile life without parole sentences.² Today, twenty-two states and the District of Columbia ban life without parole sentences for children.³ All but three states that have banned life without parole as a sentencing option for children since *Miller* have done so legislatively.⁴ Several of the state legislatures that eliminated life without parole after *Miller* previously employed discretionary life without parole sentencing schemes.⁵

² ALASKA STAT. § 12.55.015(g) (1997); COLO. REV. STAT. § 17-22.5-104(2)(d)(IV) (2006); KAN. STAT. ANN. § 21-6618 (2010); KY. REV. STAT. ANN. § 640.040 (2010); MONT. CODE ANN. §46-18-222 (2007).

³ See ALASKA STAT. § 12.55.015(g) (1997); ARK. CODE ANN. § 5-4-108 (2017); CAL. PENAL CODE § 3051(b)(4); COLO. REV. STAT. §§ 17-22.5-104(2)(d)(IV), 18-1.3-401(1)(IV)(4)(b)(1) (2006); CONN. GEN. STAT. § 54-125a(f) (2015); DEL. CODE ANN. tit. 11, §§ 4209A, 4204A(d) (2013) (banning mandatory life without parole but retaining the possibility of life for first-degree murder); D.C. CODE § 22-2104(a) (2001); HAW. REV. STAT. § 706-656 (2014); *State v. Sweet*, 879 N.W. 2d 811 (Iowa 2016); KAN. STAT. ANN. § 21-6618 (2010); KY. REV. STAT. ANN. § 640.040(1) (1986); *Diatchenko v. Dist. Att’y for Suffolk Dist.*, 1 N.E.3d 270 (Mass. 2013); NEV. REV. STAT. § 176.025 (2015); N.J. REV. STAT. § 12C:11-3(b)(5); N.D. CENT. CODE §12.1-32-13.1 (2017); S.B. 1008, 2019 Reg. Sess. (Or. 2019); S.D. CODIFIED LAWS § 22-6-1 (2016); TEX. PENAL CODE ANN. § 12.31 (2013); UTAH CODE ANN. § 76-3-209 (2016); VT. STAT. ANN. tit. 13, § 7045 (2015); *State v. Bassett*, 428 P.3d 343 (Wash. 2018); W.VA. CODE § 61-11-23 (2014); WYO. STAT. ANN. § 6-2-101(b) (2013).

⁴ The state supreme courts of Massachusetts, Iowa, and Washington held that the imposition of life without parole on children constitutes cruel and unusual punishment under their state constitutions. *Diatchenko*, 1 N.E.3d at 286-87; *Sweet*, 879 N.W. 2d 811; *Bassett*, 428 P.3d 343.

⁵ Arkansas, California, Nevada, North Dakota, Oregon, South Dakota, Utah, West Virginia.

At least nine state legislatures have codified the individualized sentencing considerations mandated by this Court in *Miller*. These statutory schemes apply the principles established in *Miller* to discretionary sentencing hearings, heeding *Miller*'s directive that a sentencer must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 479-80. These legislative changes reflect a common understanding that simply converting a mandatory sentencing scheme to a discretionary one is also not enough—at a minimum, discretionary schemes must take into account the factors outlined by the majority in *Miller*. *Id.* at 477.

For example, just 17 days after this Court decided *Miller*, the North Carolina General Assembly passed NCGS § 15A-1340.19A, *et seq.*⁶ Under the statute, sentencing courts are tasked with reviewing the mitigating factors of youth outlined in *Miller* before deciding between a sentence of life without parole and life with parole for juvenile defendants convicted of first-degree murder. NCGS § 15A-1340.19B. Pennsylvania followed suit in 2012, *see* 18 PA. CONS. STAT. ANN. § 1102.1(d), requiring the consideration of the *Miller* factors in the state's newly enacted discretionary sentencing scheme. Nebraska codified the *Miller* factors in its discretionary sentencing scheme in 2013, *see* NEB. REV. STAT. ANN. § 28-105.02(2); Florida in 2014, *see* FLA. STAT. ANN. § 921.1401(2); Michigan in 2014, *see* MICH. COMP. LAWS § 769.25; Missouri in 2016, *see* MO. REV. STAT.

⁶ The bill was titled "An Act to Amend the State Sentencing Laws to Comply with the United States Supreme Court Decision in *Miller v. Alabama*". S.B. 635, 2011 Reg. Sess. (NC. 2012).

§565.033(2); and Illinois in 2015, *see* 730 ILL. COMP. STAT. ANN. 5/5-4.5-105.⁷

These state legislatures relied on *Miller*'s conclusion that any sentencing scheme failing to require meaningful consideration of an “offender’s age and the wealth of characteristics attendant to it,” *Miller*, 567 U.S. at 476, before sentencing a child to life without parole runs afoul of the Eighth Amendment. These legislative changes demonstrate a broad understanding that *Miller* required more than a procedural fix to mandatory sentencing schemes—it prohibited the imposition of a life without parole sentence absent a specific consideration of youth and its attendant characteristics.

B. State Courts Have Interpreted *Miller* To Require Consideration Of The Characteristics Of Youth Before Any Life Without Parole Sentence Can Be Imposed

Miller requires sentencers to take account of juveniles’ “diminished culpability and heightened capacity for change” to avoid the “great . . . risk of disproportionate punishment” that would otherwise result. *Miller*, 567 U.S. at 479. This Court wrote that “[t]he ‘foundation stone’ for *Miller*’s analysis was this Court’s line of precedent holding certain punishments disproportionate when applied to juveniles.” *Montgomery*, 136 S. Ct. at 732 (quoting *Miller*, 567 U.S. at 470 n.4). States that had not abolished life

⁷ *See also* WASH. REV. CODE ANN. § 10.95.030 (2014); IOWA CODE § 902.1 (2015); MICH. COMP. LAWS § 769.25. The Iowa and Washington supreme courts later banned the imposition of LWOP on children under their state constitutions.

without parole sentences for youth have since relied on this foundational principle to shape their juvenile sentencing schemes, barring life without parole sentences for any individual whose youth and its attendant characteristics were not properly considered at the time of a discretionary sentencing hearing.

For example, in *Ex parte Henderson*, the Alabama Supreme Court established a fourteen-factor test to guide sentencing of juveniles going forward. 144 So. 3d 1262 (Ala. 2013). Other state supreme courts have similarly made clear that individualized sentencing specifically focused on the juvenile's youth is required. *See, e.g., Whiteside v. State*, 426 S.W.3d 917, 921 (Ark. 2013) (requiring lower courts to consider the factors articulated in *Miller* in sentencing juveniles to life without parole).

The Oklahoma Court of Criminal Appeals held that *Miller* "rendered a life without parole sentence constitutionally impermissible, notwithstanding the sentencer's discretion to impose a lesser term, unless the sentencer 'take[s] into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Luna v. State*, 387 P.3d 956, 961 (Okla. Crim. App. 2016) (quoting *Montgomery*, 136 S. Ct. at 733). In *Luna*, the court held that a juvenile serving life without parole was entitled to be resentenced given that there was no "evidence pertinent to deciding whether [defendant's] crime reflected only transient immaturity or whether his crime reflected permanent incorrigibility and irreparable corruption" and "no evidence of important youth-related considerations"). *Luna*, 387 P.3d at 962.

The Ohio Supreme Court also held that a pre-*Miller* discretionary life without parole sentence imposed on a juvenile homicide offender violated *Miller* because there was no evidence that the trial court considered the defendant's youth as set forth in *Miller*. *State v. Long*, 8 N.E.3d 890, 898-99 (Ohio 2014). The South Carolina Supreme Court likewise found that "*Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Aiken v. Byars*, 765 S.E.2d 572, 576-77 (S.C. 2014).

These rulings are echoed across the country. *See, e.g., Landrum v. State*, 192 So. 3d 459, 460 (Fla. 2016) (holding that "*Miller* applies to juvenile offenders whose sentences of [LWOP] were imposed pursuant to a discretionary sentencing scheme" and that courts must consider youth and how the special characteristics of youth counsel against irrevocably sentencing juveniles to life in prison); *State v. Williams*, 820 S.E.2d 521, 526 (N.C. Ct. App. 2018) ("[W]hen a trial court does make a finding about a juvenile offender's possibility of rehabilitation that is inconsistent with the limited class of offenders defined by the United States Supreme Court, a sentence of life in prison without the possibility of parole is unconstitutional as applied to that offender."), *appeal docketed*, 828 S.E.2d 23 (N.C. June 11, 2019).

In *Windom v. State*, the Idaho Supreme Court reviewed a fixed life sentence that was imposed under a discretionary sentencing statute. 398 P.3d 150, 151-52 (Idaho 2017). The court held that even for life sentences that are not mandatory, the *Miller* factors must be considered. *Id.* at 158. The *Windom* court

specifically reasoned that “*Montgomery* declared that *Miller* was retroactive not only for those juveniles sentenced to a mandatory of life without parole, but also for those for whom the sentencing court imposed a fixed-life sentence without considering the distinctive attributes of youth.” *Id.* at 156. Likewise, the California Supreme Court struck juvenile life without parole sentences under a discretionary sentencing scheme in which life without parole was the presumptive sentence. *People v. Gutierrez*, 324 P.3d 245, 270 (Cal. 2014). The court held that “the trial court must consider all relevant evidence bearing on the ‘distinctive attributes of youth’ discussed in *Miller* and how those attributes ‘diminish the penological justifications for imposing the harshest sentences on juvenile offenders.” *Id.* at 269 (citing *Miller*, 567 U.S. at 472). *See also Veal v. State*, 784 S.E.2d 403, 412 (Ga. 2016) (holding that the sentencer must determine that the defendant was irreparably corrupt or permanently incorrigible before imposing a life without parole sentence).

Even in cases where a sentence is not labeled as life without parole, but its fixed duration plainly condemns the child to die in prison, courts have concluded that the protections set forth in *Miller* must be applied. The Connecticut Supreme Court held that “the dictates set forth in *Miller* may be violated even when the sentencing authority has discretion to impose a lesser sentence than life without parole if it fails to give due weight to evidence that *Miller* deemed constitutionally significant before determining that such a severe punishment is appropriate.” *State v. Riley*, 110 A.3d 1205, 1213, 1216 (Conn. 2015) (“[T]he trial court must consider the offender’s ‘chronological age and its hallmark features’ as mitigating against

such a severe sentence.” (quoting *Miller*, 567 U.S. at 477)); *State v. Ramos*, 387 P.3d 650, 660 (Wash. 2017) (“*Miller’s* reasoning clearly shows that it applies to any juvenile homicide offender who might be sentenced to die in prison without a meaningful opportunity to gain early release based on demonstrated rehabilitation.”); *White v. Premo*, 443 P.3d 597, 606 (Or. 2019) (“*Miller* did more than require that a trial court engage in individualized sentencing; it prohibited a trial court from irrevocably sentencing a juvenile to life in prison without determining that the juvenile is one of the ‘rare’ offenders ‘whose crimes reflect irreparable corruption.’” (quoting *Montgomery*, 136 S. Ct. at 734)).

As this Court reasoned in *Hall*, it is “proper to consider . . . how the legislative policies of various states, and the holdings of state courts, implement the . . . rule.” *Hall*, 572 U.S. at 709-10. Here, that consideration makes abundantly clear that the Warden’s focus on the mandatory or discretionary nature of the scheme is ill-founded. The vast majority of states, through legislation or court decisions, have understood the Court’s plain instruction that juveniles may not be sentenced to life without parole absent proper individualized sentencing. Accepting the Warden’s argument would narrow *Miller’s* holding, making Virginia an outlier in its imposition of life without parole sentences.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court affirm the 4th Circuit Court’s opinion.

Respectfully Submitted,

Marsha L. Levick*

**Counsel of Record*

Riya Saha Shah

JUVENILE LAW CENTER

1315 Walnut St., 4th Floor

Philadelphia, PA 19107

(215) 625-0551

mlevick@jlc.org

Heather Renwick

Rebecca Turner

CAMPAIGN FOR FAIR

SENTENCING OF YOUTH

1319 F St NW Suite 303

Washington, DC 20004

(202) 289-4677

hrenwick@fairsentencing.org

August 27, 2019

**APPENDIX: STATEMENTS OF INTEREST
OF AMICI CURIAE**

TABLE OF CONTENTS

ORGANIZATIONS: 5A

Juvenile Law Center. 5A

Campaign for the Fair Sentencing of Youth. 5A

Advocates for Children of New Jersey..... 6A

Atlantic Center for Capital Representation..... 7A

Barton Child Law & Policy Center..... 7A

Campaign for Youth Justice 8A

Center for Children & Youth Justice. 9A

Center for Children’s Law and Policy. 9A

Center on Wrongful Convictions of Youth 10A

Child Advocacy Program..... 11A

Children and Family Justice Center. 11A

Children’s Law Center 12A

Children’s Rights..... 12A

Civitas ChildLaw Center 12A

Colorado Criminal Defense Bar..... 13A

Council of Juvenile Correctional Administrators . 13A

Florida Institutional Legal Services Project 14A

Florida Juvenile Resentencing & Review Project. 14A

Florida Public Defenders Association, Inc. 14A

GLBTQ Legal Advocates & Defenders 15A

Indiana Public Defender Council..... 15A

International Citizens United for
Rehabilitation of Errants 16A

James B. Moran Center for Youth Advocacy. 16A

Justice Policy Institute 16A

Juvenile Defenders Association of Pennsylvania . 17A

Juvenile Justice Initiative 17A

Juvenile Sentencing Project..... 18A

Kansas Appleseed Center for Law & Justice 18A

Law Office of the Cook County Public Defender... 18A

Lawyers For Children 19A

Juvenile Rights Practice 19A

Legal Counsel for Youth & Children 20A

Lone Star Justice Alliance 21A

Louisiana Center for Children’s Rights..... 21A

Midwest Juvenile Defender Center 22A

National Association of Criminal Defense
Lawyers 22A

National Center for Youth Law 23A

National Juvenile Defender Center..... 24A

National Juvenile Justice Network 24A

Northeast Juvenile Defender Center 25A

Office of Defense Services 25A

Office of the Ohio Public Defender. 26A

Pennsylvania Association of Criminal
Defense Lawyers 26A

Pennsylvania Prison Society..... 27A

Roderick & Solange MacArthur Justice Center.... 28A

Stephen & Sandra Sheller Center for
Social Justice 28A

Southern Poverty Law Center 28A

TeamChild	29A
Washington Association of Criminal Defense Lawyers	29A
INDIVIDUALS:	30A
Kristin Henning	30A
Vincent Schiraldi.....	31A

ORGANIZATIONS:

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The Campaign for the Fair Sentencing of Youth (CFSY) envisions the United States becoming a society that respects all children's human rights and nurtures their capacity to thrive, responding to harm they cause in ways that are rooted in their dignity and unique potential for change. The CFSY believes children should be held accountable in age-appropriate ways that are conscientious of childhood traumas, restorative and empowering to all parties, and equitable, especially with regard to race and ethnicity. Founded in February 2009, the CFSY utilizes a multipronged approach to reform that includes coalition-building; public education; advocacy; and litigation; and builds strategic partnerships to increase access to resources and opportunities for returning individuals and their families to prosper. The CFSY has gathered and

analyzed comprehensive data regarding juvenile life-without-parole sentences and resentencings from across the country.

Advocates for Children of New Jersey (ACNJ) (formerly Association for Children of New Jersey), is a statewide non-profit child research and advocacy organization, dedicated to improving programs and policies for New Jersey's children and families.

Administered by a thirty-member Board of Trustees, ACNJ gives a voice to the needs of children by educating and engaging state leaders and educating the public through research, policy and legal analysis and strategic communications. Its Board of Trustees, membership and professional staff represent a broad cross-section of individuals and organizations strongly committed to ensuring that all children have the opportunity to be safe, healthy and educated. ACNJ's issue areas include child welfare, juvenile justice, early learning, health and a complete count for the 2020 Census.

Through bill drafting, analysis, and advocacy, ACNJ has been involved in the enactment of all major legislation impacting children and youth in New Jersey for the last 40 years. In the juvenile justice arena, ACNJ was asked assist the Assembly Law and Public Safety Committee in drafting a separate Juvenile Code for New Jersey in 1983, which was signed into law in 1984. ACNJ helped to develop the legislative reforms to the juvenile justice system in 1995 resulting in the formation of a new Juvenile Justice Commission (JJC) and legislation enacted in 2015, which impacted juvenile code provisions concerning waiver and the use of solitary confinement in JJC facilities.

ACNJ has participated as amicus curiae before the NJ Supreme Court in cases related to education, juvenile justice and child welfare. ACNJ is currently a member of the New Jersey Council on Juvenile Justice Systems Improvement and its School/Justice Partnership Subcommittee and a member of the Youth Justice New Jersey Coalition.

The **Atlantic Center for Capital Representation (ACCR)** is a non-profit death penalty and juvenile life without parole (JLWOP) resource center based in Philadelphia and serving the national community. ACCR works to ensure that indigent defendants facing the most severe punishments in the criminal justice system are provided a constitutionally sound defense. ACCR works to achieve this goal of a level playing field by providing case specific consultation and trainings to defense teams handling death penalty and JLWOP resentencings. Additionally, ACCR engages in advocacy, systemic litigation, policy reform, and strategic communications around issues of equal justice and fairness in the administration of the death penalty and juvenile life without parole.

The **Barton Child Law and Policy Center (Barton Center)** is a multidisciplinary clinical education program of Emory Law School dedicated to promoting and protecting the legal rights and interests of children involved with Georgia's courts, child welfare, and juvenile justice systems. The Center's work is guided by the belief that justice for children is achieved when systems intervene in families only when absolutely necessary, treat children and families fairly, provide the services and protections they are charged to provide, and hold

themselves accountable to the public and the children they serve.

The Barton Center was founded in March 2000. Its work is directed by Emory Law faculty and performed by law and other graduate students who advocate for children through a variety of means. Under the supervision of experienced faculty members, students represent children in juvenile delinquency, special education, and school discipline cases and seek post-conviction relief for youthful offenders in criminal matters. Students also engage in legislative and policy advocacy on issues impacting vulnerable children. The Barton Center has represented more than 350 youth and trained nearly 1000 students who now serve in leadership positions in nonprofit organizations, state and local government agencies, and private firms.

Legal services provided by the Barton Center are provided at no cost to our clients. The work of the Barton Center is funded by Emory Law School, philanthropic gifts and donations, and government contracts.

As Amici, the Barton Center hopes to provide a voice for the child and those who are similarly situated, who are not parties but who will be directly and profoundly affected by this Court's decision.

The **Campaign for Youth Justice** is a national initiative dedicated to ending the prosecution, sentencing, and incarceration of youth under eighteen in the adult criminal justice system. We believe and research supports that courts should consider the social, psychological, and neurological development of adolescents when determining the appropriate jurisdictional venue, treatment, and sentencing of youth. Without this consideration, youth

are more likely to end up in placements and with sentences that put them at a higher risk of abuse, suicide, and recidivism rather than rehabilitation.

The **Center for Children & Youth Justice (CCYJ)** is a 501(c)(3) non-profit with a mission to improve – through systems reform – the outcomes of children and youth who enter the juvenile justice, child welfare, and related systems. CCYJ works to ensure that such systems are integrated, unbiased, fueled with innovative ideas, and backed by rules and programs proven to achieve the best outcomes for children, youth, and young adults. One of CCYJ's programs provides free limited legal advice to and/or secures pro bono counsel for youth and young adults on a variety of civil legal issues, often related to the collateral consequences of criminal records. CCYJ has previously sought and received leave to file amicus briefing on issues related to the treatment of youth and young adults.

The **Center for Children's Law and Policy (CCLP)** is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. The Center's work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. CCLP works locally in DC, Maryland and Virginia and also across the country to reduce racial and ethnic disparities in juvenile justice systems, reduce the use of locked detention for youth and advocate safe and humane conditions of confinement for children. CCLP helps counties and states develop collaboratives that engage in data-

driven strategies to identify and reduce racial and ethnic disparities in their juvenile justice systems and reduce reliance on unnecessary incarceration. CCLP staff also work with jurisdictions to identify and remediate conditions in locked facilities that are dangerous or fail to rehabilitate youth.

The **Center on Wrongful Convictions of Youth (CWCY)**, part of Northwestern University Pritzker School of Law's Bluhm Legal Clinic, was founded in 2008 as the first organization in the United States dedicated to uncovering and rectifying wrongful convictions of children and adolescents. Today, it continues its mission under the auspices of Northwestern Law's Center on Wrongful Convictions, one of the oldest and most successful innocence-based legal clinics in the country. The CWCY represents individuals who were wrongfully convicted of crimes as juveniles, promotes public awareness and support for nationwide initiatives aimed at preventing wrongful convictions in the juvenile and criminal justice systems, and participates in litigation across the country as amicus counsel regarding the developmental issues that make children more likely to give false and/or coerced confessions and less culpable for those crimes that they do commit. In particular, the CWCY has signed and written amicus briefs that oppose theories of liability that automatically hold juveniles as culpable as adults (e.g. felony-murder rules) and mandatory or automatic sentencing schemes that prevent judges from using youthfulness to mitigate punishment for youthful offenders. In 2011, this Court cited a CWCY amicus brief in *J.D.B. v. North Carolina* to explain that the risk of false confession is "all the more troubling" and "all the more acute" when the person

being interrogated is a youth under age 18. 131 S. Ct. 2394, 2401 (2011) (citing Brief for Center on Wrongful Convictions of Youth et al. as Amici Curiae at 21–22).

The Harvard Law School's **Child Advocacy Program (CAP)** is a premier academic program focused on children's rights, primarily in the areas child welfare (abuse and neglect, foster care, and adoption), education, and juvenile justice. CAP trains students to contribute in their future careers to a better understanding of the rights of children, and to law and policy reform promoting children's rights in the United States and around the world. CAP's Faculty director is Elizabeth Bartholet, the Morris Wasserstein Public Interest Professor of Law. She is a leading national authority on child protection, foster care, and adoption law.

The **Children and Family Justice Center (CFJC)**, part of Northwestern Pritzker School of Law's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth, and families, as well as a research and policy center. Currently, clinical staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of delinquency and crime, immigration/asylum, and fair sentencing practices. In its more than 25-year history, the CFJC has filed numerous briefs as an amicus curiae in this Court and in state supreme courts based on its expertise in the representation of children in the legal system. See, e.g., *Amicus Br., Montgomery v. Louisiana*, 135 S. Ct. 1546 (2015) (No. 14-280), 2015 WL 4624620; *Amicus Br., Watson v. Illinois*, 136 S. Ct. 399 (2015) (No. 14-9504), 2015 WL 3452842.

Children's Law Center has worked on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. The Children's Law Center, Inc. (CLC) is a non-profit organization committed to the protection and enhancement of the legal rights of children. CLC strives to accomplish this mission through various means, including providing legal representation for youth and advocating for systemic and societal change. For 30 years, CLC has worked in many settings, including the fields of special education, custody, and juvenile justice, to ensure that youth are treated humanely, can access services, and are represented by counsel. CLC advocates on behalf of youth prosecuted in juvenile and adult court, including ensuring that youth receive constitutionally required protections and due process in delinquency and criminal court proceedings.

Children's Rights is a national advocacy organization dedicated to improving the lives of vulnerable children in government systems. Children's Rights has a 20-year track record of using civil rights litigation, policy expertise, and public education to protect the constitutional and statutory rights of children. Children's Rights has long advocated for the recognition that youth continue to develop cognitively, socially, and emotionally through early adulthood and can be rehabilitated through treatment.

The **Civitas ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and child-serving professionals to advocate for the well-being of youth in their professional careers, with an ultimate goal of promoting justice for children, adolescents and young

adults. For a decade, The ChildLaw Center served as the lead entity for juvenile justice reform in Illinois as part of the MacArthur Foundation's Models for Change initiative. That initiative worked to promote a more effective, fair and developmentally sound juvenile justice system.

The **Colorado Criminal Defense Bar (CCDB)** is dedicated to protecting the rights of the accused and the wellbeing of those who defend them. The organization is unalterably opposed to the death penalty. The CCDB is committed to providing training and support to the criminal defense community in an effort to promote zealous advocacy for our clients at every stage of representation.

The **Council of Juvenile Correctional Administrators (CJCA)** founders envisioned was establishing an organization of juvenile justice leaders dedicated to building and managing systems that balance the demands of public safety and offender accountability with best practices and rehabilitative services for youths and establish a national voice for juvenile corrections in law and policymaking. CJCA educates, trains and supports agency directors to promote implementation of effective programs and services recognizing the unique strengths and needs of juveniles to enable them to successfully return to the community and lead pro-social, positive lives.

CJCA is a national non-profit that was formed in 1994 to improve youth correctional services and practices and provide leadership for the field of juvenile corrections. CJCA initiates and facilitates the exchange of ideas and philosophies among administrators from all jurisdictions at annual meetings, through regular communications and its

website, as well as through collaboration with other national organizations. Our membership encompasses the top juvenile agency head in each jurisdiction of each state and several large counties. CJCA is often sought to consult, create best practice content that relates to organizational, partner with on juvenile justice related projects, and to offer best practices in the field of juvenile justice.

The **Florida Institutional Legal Services Project of Florida Legal Services (FLS)** is a non-profit that uses impact litigation, community lawyering, and policy advocacy to defend and advance the civil rights of children and adults who are incarcerated in prisons, jails, juvenile justice facilities, civil commitment, and immigration detention statewide in Florida. FLS also engages with youth, parents, advocates, and communities to build power and support reforms of the juvenile and criminal justice systems to end the prosecution of children as adults.

The **Florida Juvenile Resentencing and Review Project** at the Florida International University College of Law was founded in 2015 following the legislative enactment of Chapter 2014-220, Law of Florida, and the release of this Court's opinions in *Falcon v. State*, 162 So. 3d 954 (Fla. 2015) and *Horsley v. State*, 160 So. 3d 393 (Fla. 2015). The Resentencing and Review Project was created with the goal of ensuring that each juvenile in the State of Florida who is either already serving or subject to adult sanctions as well as those entitled to judicial review receive a robust and comprehensive defense.

The **Florida Public Defenders Association, Inc. (FPDA)** is a community of Public Defenders united to achieve a vision of guaranteed equal justice

for all, with a mission to secure an equitable justice system and ensure high quality representation for people facing loss of liberty.

GLBTQ Legal Advocates & Defenders (GLAD) is a legal rights organization that seeks equal justice for all persons under the law regardless of their sexual orientation, gender identity, or HIV status. Since 1978, GLAD has worked in New England and nationally through strategic litigation, public policy advocacy, and education. GLAD has a particular interest in the rights of lesbian, gay, bisexual, transgender and queer youth who are disproportionately represented in the juvenile justice system.

Indiana Public Defender Council (IPDC) is a judicial branch state agency mandated by the Indiana Legislature to “maintain liaison contact with . . . all branches of local, state, and federal government that will benefit criminal defense as a part of the fair administration of justice in Indiana.” Ind. Code § 33-40-4-5. Its membership consists of all public defenders, contractual pauper counsel, and attorneys regularly appointed to represent indigent defendants pursuant to a uniform system of periodic appointments or who are on the list of attorneys maintained by the Indiana Public Defender Commission who are qualified and willing to be appointed in death penalty cases. IPDC provides training and expertise on criminal law and juvenile delinquency issues to lawmakers, state agencies, lawyers, and the public, and is instructed by statute to assist in the preparation of trial briefs, and conduct research for the benefit of attorneys representing indigent persons.

International Citizens United for Rehabilitation of Errants (International CURE) is an international grassroots criminal justice reform organization. We work to reduce the number of people who are incarcerated and to ensure that those who are incarcerated are provided with the resources they need to turn their lives around. Ensuring due process and adequate representation is critical if we are to ensure that people are not incarcerated unnecessarily. We are convinced that juveniles need special protections because of their limited understanding of the criminal justice system and because their developmental status often leads to poor judgment.

The **James B. Moran Center for Youth Advocacy (Moran Center)** is a nonprofit organization dedicated to providing integrated legal and social work services to low-income youth and their families to improve their quality of life at home, at school, and within the community. Because of the Moran Center's critical position at the nexus of providing both direct legal and mental health services for children and young adults, we are uniquely positioned to advocate for the distinct psycho-social needs presented by youth.

Formed in 1997, the **Justice Policy Institute (JPI)** is a policy development and research body which promotes effective and sensible approaches to America's justice system. JPI has consistently promoted a rational criminal justice agenda through policy formulation, research, media events, education and public speaking. Through vigorous public education efforts, JPI has been featured in the national media. The Institute includes a national panel of advisors to formulate and promote public policy in the area of juvenile and criminal justice. JPI

conducts research, proffers model legislation, and takes an active role in promoting a rational criminal justice discourse in the electronic and print media.

The **Juvenile Defenders Association of Pennsylvania (JDAP)** was founded in 2005 by a small group of passionate juvenile justice defenders. The JDAP continues to strive for improved outcomes for delinquent and disadvantaged youth across Pennsylvania by promoting quality and ethical representation for all juveniles charged with delinquent acts. The JDAP's mission is to provide training and technical assistance to juvenile defenders in all 67 of Pennsylvania's counties.

Juvenile Justice Initiative (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firms. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing a comprehensive continuum of community-based resources throughout the state. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure that fairness and competency development are public and private priorities for youth in the justice system.

The **Juvenile Sentencing Project** at Quinnipiac University School of Law focuses on issues relating to long prison sentences imposed on children. In particular, it researches and analyzes responses by courts and legislatures nationwide to the U.S. Supreme Court's decisions in *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Alabama*, 136 S. Ct. 718 (2016), and produces reports and memoranda for use by policymakers, courts, scholars, and advocates. The Juvenile Sentencing Project also represents individuals serving lengthy sentences for crimes committed as children who are seeking parole.

Kansas Appleseed Center for Law and Justice, Inc. is a nonprofit, nonpartisan advocacy organization dedicated to vulnerable and excluded Kansans, including those within the juvenile justice system. We investigate social, economic, and political injustice in Kansas and work toward systemic solutions through advocacy, community organization, and litigation.

The **Law Office of the Cook County Public Defender** is the second largest public defender office in the nation. With a full time staff of approximately 700, of which 506 are attorneys, the Office represents approximately 89 percent of all persons charged with felonies and misdemeanors in Cook County. The Office also represents juveniles charged with delinquent conduct, and parents against whom the State files allegations of abuse, neglect, or dependency. In 2014, the Office was appointed to more than 130,000 cases. The mission of the Office is to protect the fundamental rights, liberties and dignity of each person whose case has been entrusted to us by providing the finest legal representation.

Lawyers For Children (LFC) is a not-for-profit legal corporation dedicated to protecting the rights of individual children in foster care in New York City and compelling system-wide child welfare reform. Since 1984, LFC has provided free legal and social work services to children in more than 30,000 court proceedings involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody and visitation. LFC's "cross-over youth" project represents young people who are both the subject of a child welfare matter and the defendant/respondent in a criminal/delinquency matter. This year, our attorney-social worker teams will represent children and youth in more than 3,000 court cases in New York City Family Courts, many of whom have also been accused of committing crimes. LFC was active in New York's recently successful movement to raise the age of criminal responsibility based on many of the same factors that lie at the heart of the issues in this case.

The **Juvenile Rights Practice** of The Legal Aid Society: The Legal Aid Society is the oldest and largest not-for-profit legal services organization in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. The Juvenile Rights Practice (JRP) is the primary institutional provider of legal services for children in New York, and it represents 90 percent of the children—34,000 children annually—who appear before the Family Court in New York City on child protective, termination of parental rights, PINS (person in need of supervision), and juvenile delinquency petitions. The JRP was established concurrently with New York State's Family Court in 1962 (five years before the U.S. Supreme Court ruled

that children have a constitutional right to counsel at government expense), and it was one of the first organizations in this country to represent children in a juvenile court. Since then, the JRP has grown into one of the nation's leading organizations in the field of child advocacy.

Legal Counsel for Youth and Children (LCYC) is a nonprofit civil legal aid organization that improves the well-being of young people by advancing their legal rights. We accomplish our mission through direct representation services, strong community partnerships, and systemic advocacy. LCYC has a team of eleven legal advocates serving over 500 youth annually in King County, Washington through four main programs: juvenile justice, child welfare, youth and family immigration, and youth homelessness. The majority of youth LCYC serves are youth of color.

LCYC provides specialized, holistic legal advocacy services to young people, from toddlers to 24 years old. All of the young people we serve have experienced childhood trauma to varying degrees. Some have traveled across countries alone, some were kicked out of their home for being LGBTQ+, most were abused, neglected, abandoned or otherwise without a parent to keep them safe and well-cared for. LCYC attorneys ensure youth have access to education, services, healthy relationships, and safe homes.

LCYC attorneys meet young people where they are: geographically, emotionally, developmentally, and culturally. We visit young people in schools, juvenile court or detention, homes, youth shelters, and other community settings in both urban and rural parts of King County. LCYC's low caseloads and strong community partnerships have been

instrumental in achieving positive outcomes for youth.

Given LCYC's years of representing vulnerable children and youth who are often involved in one or more public systems of care, we have concluded that young people deserve individualized determinations regarding criminal culpability and sentencing.

Lone Star Justice Alliance (LSJA) is a Texas nonprofit organization committed to reforming the juvenile justice system in accordance with the recognized science of adolescent development. Through research, alternatives-to-incarceration pilot programs, litigation, advocacy, and community engagement, LSJA seeks to replace the current, punitive approach to juvenile behavior with one guided by public health principles. It is LSJA's overriding goal to realize a juvenile justice system in Texas that accounts for the distinctive attributes of youth and children's unique capacity for reform, thereby insuring both public safety and just outcomes for all children.

Louisiana Center for Children's Rights (LCCR) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Its advocacy over the years has focused on the way the state handles court involved youth, and pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, LCCR works to both improve conditions of confinement and identify sensible alternatives to incarceration. LCCR also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest

through disposition, post-disposition and appeal, and that the juvenile and adult criminal justice systems take into account the unique developmental differences between youth and adults in enforcing these rights. LCCR continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

The **Midwest Juvenile Defender Center (MJDC)**, an affiliate of the National Juvenile Defender Center, provides leadership and resources for juvenile defenders throughout an eight state region. The MJDC maintains a listserv, holds regional trainings, provides resources for statewide trainings, participates in statewide juvenile defender assessments, provides resources and technical assistance to juvenile defenders in ongoing juvenile cases, and provides resources for Midwestern juvenile defenders to participate in policy advocacy.

The **National Association of Criminal Defense Lawyers (NACDL)** is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous

amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The **National Center for Youth Law (NCYL)** is a private, non-profit organization that uses the law to help children in need nationwide. For more than 40 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support, and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country by providing trainings and technical assistance. One of NCYL's priorities is to reduce the number of youth subjected to harmful and unnecessary incarceration and expand effective community based supports for youth in trouble with the law. NCYL has participated in litigation that has improved juvenile justice systems in numerous states, and engaged in advocacy at the federal, state, and local levels to reduce reliance on the justice systems to address the needs of youth, including promoting alternatives to incarceration, and improving children's access to mental health care and developmentally appropriate treatment. One of the primary goals of NCYL's juvenile justice advocacy is to ensure that youth in trouble with the law are treated as adolescents, and not as adults, and in a manner that is consistent with their developmental

stage and capacity to change within the juvenile justice system.

The **National Juvenile Defender Center (NJDC)** was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs, and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. NJDC has participated as Amicus Curiae before the United States Supreme Court, as well as federal and state courts across the country.

The **National Juvenile Justice Network** leads a membership community of 54 state-based organizations and numerous individuals across 44 states and DC. We all seek to shrink our youth justice systems and transform the remainder into systems that treat youth and families with dignity and humanity. Our work is premised on the fundamental understanding that our youth justice systems are inextricably bound with the systemic and structural racism that define our society, and as such we seek to

change policy and practice while simultaneously building power with those who are most negatively affected by our justice systems, including young people, their families and all people of color. NJJN recognizes that youth are still developing, are fundamentally different from adults and should be held accountable in a developmentally appropriate manner that gives them the tools to make better choices in the future and become productive citizens.

The **Northeast Juvenile Defender Center (NRJDC)** is dedicated to increasing access to justice for and the quality of representation afforded to children caught up in the juvenile and criminal justice systems. Housed jointly at the Delaware Office of Defense Services and the New Jersey Office of the Public Defender, the NRJDC provides training, support, and technical assistance to juvenile defenders in Pennsylvania, New Jersey, New York, and Delaware. The NRJDC also works to promote effective and rational public policy in the areas of juvenile detention and incarceration reform, racial and ethnic disparities in confinement of minority children, juvenile competency and mental health, and the special needs of girls and LGBTQ youth in the juvenile justice system. The NRJDC also encourages zealous advocacy to protect the rights of youth and avoid separation of families due to over reliance on out of home placement and incarceration, requiring courts and system stakeholders recognize the aspects of youth and avoid youth transfer to the adult criminal system.

The **Office of Defense Services (ODS)** provides defense counsel for indigent adults and all children accused of crimes in Delaware. The guiding principle of ODS is that financial means, or a lack

thereof, is not a barrier to obtaining zealous advocacy and quality legal representation. Our mission is to make sure our clients' Sixth Amendment rights to an effective lawyer and to a fair trial are respected and realized. This commitment to improving the justice system extends beyond the courtroom. ODS frequently engages in community outreach events and robust public advocacy.

The **Office of the Ohio Public Defender** is a state agency, designed to represent criminal defendants, adults, and juveniles, and to coordinate defense efforts throughout Ohio. The Ohio Public Defender, through its Juvenile Department, provides children who have been committed to the Ohio Department of Youth Services their constitutional right to access to the courts. See John L. Adams, 969 F.2d 228, 1992 U.S. App. LEXIS 16208 (6th Cir. 1992). And, the Juvenile Department provides representation to children who have been bound over and prosecuted as adults in criminal court. Currently, the Ohio Public Defender's Juvenile Department represents the majority of the youth who are serving life without parole in Ohio prisons. As such, the Ohio Public Defender is interested in the effect of the law that this case will have on parties who are, or may someday be in similar litigation. Accordingly, the Ohio Public Defender has an enduring interest in protecting the integrity of the justice system and ensuring equal treatment under the law. To this end, the Ohio Public Defender supports the fair, just, and equitable application of this Court's decisions in Miller and Montgomery and their progeny.

The **Pennsylvania Association of Criminal Defense Lawyers (PACDL)** is a professional association of attorneys who are actively engaged in

providing criminal defense representation. Founded in 1988, PACDL is the recognized Pennsylvania affiliate of the National Association of Criminal Defense Lawyers. PACDL presents the perspective of experienced criminal defense attorneys who seek to protect and ensure by rule of law those individual rights guaranteed by, among others, the United States Constitution, and who work to achieve justice for all defendants, including juveniles. PACDL membership currently includes more than 950 private criminal defense practitioners and public defenders throughout the Commonwealth of Pennsylvania.

PACDL has an interest in the fairness and workings of the criminal justice system and has filed amicus briefs in other cases before this Court (as well as in Pennsylvania Courts). PACDL's mission is to ensure the fair administration of justice and to advocate for the rights of all persons charged with, convicted of, and sentence for, crimes. PACDL's members have a direct interest in the outcome of this appeal because of their concerns for ensuring that the recognition of the unique developmental characteristics of juveniles in sentencing not be compromised, and that all individuals, including juveniles, be sentenced in accordance with constitutional constraints.

For 225 years the **Pennsylvania Prison Society** has advocated for a restorative and constructive correctional system—one that is rooted in fairness and premised on society's needs to hold offenders accountable for their offenses and to aim to make them less likely to commit additional crimes once they are released. Sentences of life without parole strip away all hope of transformation and are, therefore, fundamentally inhumane as well as

excessively cruel. Imposing such a terminal sentence on a child is additionally unfair in failing to take into account the diminished mental and emotional capacities of youthful offenders.

The **Roderick and Solange MacArthur Justice Center (RSMJC)** is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have led civil rights battles in areas that include police misconduct, the rights of the indigent in the criminal justice system, compensation for the wrongfully convicted, and the treatment of incarcerated men and women.

The **Stephen and Sandra Sheller Center for Social Justice** at Temple University Beasley School of Law engages in systemic advocacy on behalf of disadvantaged and marginalized groups. The Center has a strong commitment to the welfare of children and families and has conducted extensive advocacy on their behalf, including a successful effort to end Philadelphia's practice of charging parents for the cost of their child's incarceration. By participating as amicus, the Center seeks to assist the Court as it again considers the imposition of life-without-parole sentences upon juveniles.

The **Southern Poverty Law Center (SPLC)** is a nonprofit civil rights organization, with offices in Alabama, Florida, Georgia, Louisiana and Mississippi, dedicated to protecting society's most vulnerable members through litigation, education and advocacy. SPLC has a long history of advocating on

behalf of children tried as adults. The Center's work in juvenile justice and its interest in this case are grounded in the principle that young people, even those convicted of serious offenses, are capable of change and should be treated differently than older people at sentencing.

TeamChild is a nationally-recognized, nonprofit legal advocacy organization in Washington State. TeamChild's mission is to uphold the rights of youth involved or at risk of involvement in the juvenile justice system to help them secure the education, healthcare, housing, and other support they need to achieve positive outcomes in their lives. TeamChild draws on multiple strategies to advance this mission with an emphasis on direct civil legal representation and advocacy. TeamChild has represented many youth who have been impacted by sentencing laws in juvenile and adult court. TeamChild has also participated as amicus in cases to advocate for access to justice for youth and children in Washington State and nationally, including advocacy for the elimination of laws and policies that fail to address the inherent youthfulness and diminished culpability of youth who commit criminal offenses.

The **Washington Association of Criminal Defense Lawyers (WACDL)** was formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has around 800 members, made up of private criminal defense lawyers, public defenders, and related professionals. It was formed to promote the fair and just administration of criminal justice and to ensure due process and defend the rights secured by law for all persons accused of crime. It regularly files amicus

briefs in cases addressing important questions for criminal defendants and the criminal justice system.

INDIVIDUALS:

Kristin Henning, Professor of Law, Director Georgetown Law Juvenile Justice Clinic & Initiative: The Georgetown Juvenile Justice Clinic was founded in 1973 to represent children accused of misdemeanor and felony offenses in the District of Columbia. Clinic faculty, fellows, and students provide highly effective holistic representation to their clients by protecting the rights and interests of youth in the juvenile justice system, advocating on behalf of youth in related proceedings such as special education and school disciplinary hearings, and lobbying for mental health services, drug treatment, and other interventions that are appropriately matched with the child's age, mental capacity, and developmental stage. Clinic faculty and alumni engage in local, regional, and national juvenile justice reform by training defenders throughout the country, developing local and national juvenile justice standards for lawyers and other stakeholders, writing and updating practice manuals, conducting research and publishing law review articles and books that analyze the need for reform and consulting with local and state officials to advance reform efforts. With an emphasis on racial justice reform in its recently launched Juvenile Justice Initiative, faculty and staff also write scholarship, convene symposia and trainings, and develop resources to help juvenile justice stakeholders identify and correct racial bias and injustices throughout the system.

Vincent Schiraldi is Co-director of Columbia University Justice Lab and Senior Research Scientist at Columbia School of Social Work. He is also former Commissioner of New York City Probation and former Director of Washington, DC's Department of Youth Rehabilitation Services.