In the

Supreme Court

of the

State of California

IN RE WILLIAM M. PALMER II,
on Habeas Corpus.

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

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE PROFESSOR VINCENT SCHIRALDI, COLUMBIA UNIVERSITY SCHOOL OF SOCIAL WORK, IN SUPPORT OF WILLIAM M. PALMER II

SHARIF E. JACOB (SBN 257546)
TAYLOR REEVES (SBN 319729)
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, California 94111-1809
(415) 391-5400 Telephone
(415) 397-7188 Facsimile
sjacob@keker.com
treeves@keker.com

Attorneys for Amicus Curiae,
Professor Vincent Schiraldi,
Columbia University School of Social work

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APPLICATION TO FILE BRIEF OF AMICUS CURIAE PROFESSOR VINCENT SCHIRALDI, COLUMBIA UNIVERSITY SCHOOL OF SOCIAL WORK, IN SUPPORT OF WILLIAM M. PALMER II

Pursuant to California Rule of Court 8.520(f), Professor Vincent Schiraldi respectfully applies for leave to file the accompanying amicus curiae brief in support of William M. Palmer II. Professor Schiraldi is familiar with the content of the parties' briefs.

Professor Schiraldi is a Senior Research Scientist, Adjunct Professor, and Co-Director of the Justice Lab at the Columbia University School of Social Work. Prior to joining the faculty at Columbia, he was a Senior Research Fellow at the Harvard University Kennedy School of Government Program in Criminal Justice Policy and Management. He has founded and directed multiple public policy advocacy organizations, including the Justice Policy Institute and the Center on Juvenile and Criminal Justice (CJCJ). Both organizations focus on reducing society's reliance on incarceration as a solution to social problems and advocate against the mass incarceration of juveniles and adults.

Professor Schiraldi also has extensive experience in social justice and public service, serving as Director of the District of Columbia Department of Youth Rehabilitation Services from 2005 to 2010; Commissioner of the Department of Probation for the City of New York from 2010 to 2014; and Senior Advisor to the New York City Mayor's Office of Criminal Justice from 2014 to 2015.

Professor Schiraldi believes this Brief will assist the Court in resolving this case by outlining the substantial scientific evidence and academic literature confirming that adolescents differ from adults in critical respects both biologically and behaviorally. Due to the neurological developments that occur throughout adolescence and into early adulthood, adolescents have a high tendency to engage in risky behavior when faced with emotional or stressful situations, as compared to adults. Environmental factors such as traumatic childhood experiences or a lack of adult supervision and guidance only compound these differences.

This growing body of scientific evidence, which has had a significant influence on federal and state courts' recent treatment of youth offenders, is critical to this Court's analysis of Mr.

Palmer's claim that his continued punishment of parole is grossly disproportionate to his offense and therefore violates the California Constitution under *In re Lynch*, 8 Cal. 3d 410, 425 (1972).[1] Among other considerations, *Lynch* requires courts to analyze "the nature of the offense and/or the offender" to determine whether a punishment is unconstitutionally disproportionate to the offense. *Id*. As part of this requirement, courts may consider a defendant's age, maturity, and development when the crime was committed. *See People v. Dillon*, 34 Cal. 3d 441, 479–83 (noting that "defendant was a 17-year-old high school student" at the time of the offense and the record showed his state of mind progressed from "youthful bravado . . . to panic" during the course of the crime). And courts have considered the scientific literature on juvenile development in evaluating claims of cruel and unusual punishment. *See, e.g.*, *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *Graham v. Florida*,

[1] Mr. Palmer also brings a claim under the Eighth Amendment to the United States Constitution. *See* Answer Brief on the Merits (ABM) at 41. As explained in the ABM, the factors relevant to Court's consideration of Mr. Palmer's claims under the California and United States Constitutions are essentially the same. *Compare Solem v. Helm*, 463 U.S. 277, 288, 290–92 (1983) *with Lynch*, 8 Cal. 3d at 425, 431, 436.

560 U.S. 48, 68 (2011); *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

Mr. Palmer committed the crime at issue in this case at 17 years old, when the unique developmental characteristics of his brain made him susceptible to impulsive and reckless behavior and less capable of accurately discerning risk. His difficult childhood and the environmental hardships he faced growing up increased his susceptibility to stress and likelihood of engaging in reckless behavior.

In order for the Court to conduct a thorough and complete analysis of the nature of the offender under the first *Lynch* technique, it must consider the neurological and behavioral factors unique to adolescents like Mr. Palmer when he committed this crime. This Brief will provide critical scientific context for that analysis.

No party or counsel for a party has authored the accompanying Brief in whole or in part, nor made any monetary contribution intended to fund the preparation or submission thereof. No person or entity other than the amicus curiae and his undersigned counsel have made any monetary contribution

intended to fund the preparation or submission of the accompanying Brief.

Amicus respectfully submits that consideration of the accompanying Brief will assist the Court in deciding this matter, and respectfully requests that the Court grant leave to file.

Respectfully submitted,

Dated: March 20, 2020 KEKER, VAN NEST & PETERS LLP

By: /s/ *Taylor Reeves*
SHARIF E. JACOB
TAYLOR REEVES
Attorneys for Amicus Curiae
Professor Vincent Schiraldi

BRIEF OF AMICUS CURIAE PROFESSOR VINCENT SCHIRALDI, COLUMBIA UNIVERSITY SCHOOL OF SOCIAL WORK, IN SUPPORT OF WILLIAM M. PALMER II

I. INTRODUCTION

Adolescence—the transitional period marked by the beginning of puberty and extending through the late teens and early 20s—is a period of immense change in decision-making capacities, characterized by a tendency to engage in risky activity.[2] Adolescents gravitate toward behaviors that deliver immediate rewards, and they are neurologically ill-equipped to consider the potential consequences of their decisions.[3] This heightened preference for risk and immediate reward may manifest as criminal activity in some cases. Risky behavior, including crime, rises markedly during early adolescence, peaks in mid to late adolescence, and dramatically declines through the 20s.[4]

The neurological, behavioral, and environmental factors that distinguish adolescents from adults also have an important bearing on adolescents' culpability. The biologically driven behavioral tendencies that

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[2] Kathryn Monahan, Laurence Steinberg, and Alex Piquero, *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 Crime and Justice 577, 580–81 (2015).

[3] *Id.*; Beatriz Luna and Catherine Wright, *Adolescent Brain Development: Implications for the Juvenile Criminal Justice System*, APA Handbook of Psychology and Juvenile Justice 91, 108–09 (Kirk Heilbrun, ed., 2016).

[4] Monahan et al., *supra* note 2 at 580–81.

characterize adolescence provide critical context for criminal activity among juveniles and may help courts better understand adolescent motivations.[5] Although adolescents should be held responsible for reckless behavior, excessive punishment is arbitrary and irrational given their unique stage of neurological development.

This Brief focuses on the scientific and academic research demonstrating that adolescents are biologically and behaviorally distinct from adults, and it argues that these distinctions counsel against excessive punishment of William Palmer.

Several key research findings support this conclusion, each of which are discussed in turn. *First*, the adolescent brain is structurally and functionally unique in ways that emphasize rewards while overlooking risk. *Second*, these neurological developments comport with behavioral research on the age-related distribution of reckless behavior. *Third,* adolescents are particularly sensitive to environmental influences in ways that exacerbate the characteristics associated with their unique developmental stage.

The research discussed in this Brief indicates that adolescents are more prone to reckless behavior and yet simultaneously more capable of change than their adult counterparts. As such, they are less criminally culpable and more malleable.

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[5] Luna and Wright, *supra* note 3 at 108–09.

Mr. Palmer was 17 years old when he committed the crime at issue in this case. Therefore, the growing body of scientific study illuminating the unique developmental characteristics of adolescents is particularly relevant to an analysis of his criminal culpability and the propriety of his punishment. Because of the neurological, behavioral, and environmental distinctions that render adolescents less culpable than adults, Amicus respectfully submits that the judgment of the court below should be affirmed.

II. ARGUMENT

A. Adolescents are neurologically and behaviorally less developed, and consequently less culpable, than adults.

This Section begins by discussing the changes in brain structure and function that take place during adolescence. Second, it considers the corresponding behavioral research showing an increased propensity for risk-seeking during adolescence. Third, it discusses how these biological and behavioral changes leave adolescents particularly vulnerable to adverse environmental influences, such as social exclusion, low socioeconomic status, and childhood trauma. Finally, it argues that these distinctions between adolescent and adult biology and experience indicate that adolescents are less criminally culpable than adults and should be treated differently in the justice system.

1. The unique developmental characteristics of the adolescent brain lead to impulsive behavior and an inability to fully comprehend risk.

Adolescents across cultures experience a behavioral propensity for novelty and sensation-seeking activities.[6] Recent neuroscientific research traces this heightened propensity for risk to the structural and functional reorganization that occurs in the brain throughout adolescence and into early adulthood.[7] Structural developments refer to changes in brain matter, including changes to neuronal structure, neuronal interconnectivity, and the neurochemistry that facilitates information transfer among different parts of the brain.[8] Functional developments, on the other hand, affect the roles and purposes of these different brain structures.[9]

Several ***structural developments*** occurring throughout adolescence and into early adulthood reflect immaturities that are relevant to decision-making, particularly in emotional situations.

First, a process known as synaptic pruning reduces the brain's grey matter over the course of adolescence and young adulthood.[10] Unused synaptic connections in the brain are eliminated and remaining connections

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[6] Luna and Wright, *supra* note 3 at 91.

[7] Monahan et al., *supra* note 2 at 582–85.

[8] Luna and Wright, *supra* note 3 at 97.

[9] *Id.* at 101–02.

[10] Monahan et al., *supra* note 2 at 582; Luna and Wright, *supra* note 3 at 98.

strengthened, enhancing complex neural processes that support reasoning and decision-making.[11] This process increases the brain's efficiency and promotes cognitive abilities.[12]

Second, the brain's white matter, which coordinates communication among different brain regions, is strengthened through a process called myelination.[13] Throughout adolescence and into the early 20s, a white, fatty substance called myelin coats the nerve fibers to improve signal transmission of brain circuits.[14] This process improves neural connections in the prefrontal cortex—the locus of higher-order cognitive functions—and facilitates complex operations such as planning and weighing risks.[15] The region of the brain charged with controlling impulses is one of the last parts of the brain to mature.[16] Connections between the prefrontal cortex and other regions of the brain, including the limbic system, continue

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[11] Monahan et al., *supra* note 2 at 582; Luna and Wright, *supra* note 3 at 98.

[12] Monahan et al., *supra* note 2 at 582; Luna and Wright, *supra* note 3 at 99.

[13] Monahan et al., *supra* note 2 at 582; Luna and Wright, *supra* note 3 at 99.

[14] Monahan et al., *supra* note 2 at 582.

[15] *Id.*

[16] *Id.*

developing into early adulthood to help regulate emotion and the exercise of self-control.[17]

Finally, correlating with and facilitating these structural developments are changes to the availability of the neurotransmitter dopamine, which helps regulate sensation and pleasure seeking.[18] For example, there are increases to the density and distribution of dopamine receptors in pathways that connect the limbic system, which regulates the experience of rewards and punishments, and the prefrontal cortex, which in turn controls complex decision-making.[19] Dopamine neurons respond to the anticipation, value, and salience of rewards.[20] Therefore, an increase in dopamine activity and expression during adolescence—and subsequent decrease during adulthood—appears to play an important role in teenagers' drive to seek out rewards without regard for the risk.[21]

In addition to these structural changes, several notable changes also occur in brain ***function*** throughout adolescence and into early adulthood. These changes support cognitive development and reward processing.

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[17] *Id.* at 583.

[18] *Id.* at 582; Luna and Wright, *supra* note 3 at 100.

[19] Monahan et al., *supra* note 2 at 582; Luna and Wright, *supra* note 3 at 100.

[20] Luna and Wright, *supra* note 3 at 100–01.

[21] *Id*. at 101.

First, the brain systems involving self-regulation become better connected and more efficient.[22] An adult undertaking a task requiring self-control employs a wider network of brain regions than do adolescents; this makes self-control less burdensome by distributing the work across multiple areas of the brain.[23] Conversely, adolescents are still forming connections among brain regions.[24] Second, early in puberty, hormonal developments increase the brain's sensitivity to rewards and motivate adolescents to engage in acts that have a high potential for pleasure.[25] Finally, the brain becomes more efficient at simultaneously engaging multiple regions in response to arousing stimuli, which helps regulate emotions and defend against peer pressure.[26] These developments increase executive function, the ability to voluntarily plan and guide behavior toward a preset goal.[27]

These structural and functional brain developments exist on a continuum and do not occur at the same time for every adolescent. In other words, "there is no simple answer to the question of when an adolescent

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[22] Monahan et al., *supra* note 2 at 583.

[23] *Id.*

[24] *Id.* at 583–84.

[25] *Id.* at 584

[26] *Id.*

[27] Luna and Wright, *supra* note 3 at 102–03.

brain becomes an adult brain."[28] But what is clear, universally, is that the transformation of the adolescent brain creates an imbalance among developing brain systems. While "[b]rain systems implicated in basic cognitive processes reach adult levels of maturity by mid-adolescence . . . , [c]ognitive processes important for things like impulse control do not mature . . . until late adolescence or even early adulthood."[29] Effectively, this means that adolescents "develop an accelerator a long time before they can steer and break."[30]

2. Behavioral research parallels neuroscience and shows that adolescents are susceptible to risky behavior such as criminal activity.

Findings on adolescent neurological development correspond with and bolster what researchers have learned from behavioral studies: sensation-seeking peaks during adolescence while impulse control remains low. In general, patterns of risk-taking behavior follow an inverted U-shaped curve

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[28] Monahan et al., *supra* note 2 at 585.

[29] *Id*. (citing Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEVELOPMENT 28–44 (2009)).

[30] Alison Gopnik, *What's Wrong with the Teenage Mind?*, THE WALL STREET JOURNAL (Jan. 28, 2012), https://www.wsj.com/articles/SB10001424052970203806504577181351486558984.

with age, increasing between childhood and adolescence, peaking in either mid- or late adolescence, and declining thereafter.[31]

Many behavioral studies show that, compared to adults, adolescents are more impulsive, less attentive to consequences, and more likely to engage in sensation-seeking behavior.[32] Studies also show that relative to adults, adolescents are more likely to focus on potential rewards in lieu of the potential costs of a risky situation, especially "in the heat of the moment [or] under potential threat."[33]

Adolescent criminal behavior is a subcategory of risky behavior in general, and as such, it follows the same inverted U-shape pattern as other risky behavior.[34] Indeed, "the relationship between age and crime has remained the same over time[,] is virtually identical across both violent and

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[31] *See* Laurence Steinberg, *Adolescent Brain Science and Juvenile Justice Policymaking*, 23:3 PSYCHOLOGY, PUBLIC POLICY, AND LAW 410, 414 (2017).

[32] *Id.*; *see also* Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report Evidence for a Dual Systems Model*, 44 DEVELOPMENTAL PSYCHOLOGY, 1764–1778 (2008) (studying impulsivity and sensation seeking in 935 socioeconomically and ethnically diverse individuals between the ages of 10 and 30); Steinberg et al., *Age Differences in Future Orientation and Delay Discounting,* 80 CHILD DEVELOPMENT 28–44 (2009) (studying orientation to the future and anticipated consequences of actions in 935 socioeconomically and ethnically diverse individuals between the ages of 10 and 30).

[33] Alexandra O. Cohen and B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 TRENDS IN COGNITIVE SCIENCES 63–65 (2014).

[34] *See* Steinberg, *supra* note 31 at 413.

non-violent crimes, and is seen around the world."[35] The age distribution of adolescent criminal activity is similar to that of many other types of risky behavior, including non-criminal behaviors like self-inflicted injury or accidental death.[36] This is because crimes, like other forms of adolescent risk-taking, are impulsive acts committed without full understanding of their likely consequences.[37]

3. Environmental factors also greatly influence adolescents' development and reinforce neurological and behavioral differences.

Environmental factors, which, like the neurological and behavioral trends previously discussed, are beyond adolescents' control, can have a profound influence on adolescents' development and later propensity to engage in risky or impulsive activity such as crime. Because of the adolescent brain's imbalance and plasticity, adolescents are uniquely susceptible to outside influences such as childhood trauma, low socioeconomic status, and social rejection.[38]

"The socioeconomic environment in which a child grows up has a significant effect on many aspects of development, including physical and

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[35] *Id.* at 413.

[36] *Id.*

[37] *Id.* at 414.

[38] *See* Robert Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUROPEAN ARCHIVES OF PSYCHIATRY AND CLINICAL NEUROSCIENCE 174–186 (2006).

mental health and the way in which the brain develops."[39] For example, the number of years of parental education has been associated with the surface area of brain regions involved in language, reading, social cognition, executive function, and spatial skills.[40] Socioeconomic status has also been associated with the ability to process and respond to the mental states of others.[41]

Social acceptance also plays a large role in adolescents' propensity for risky behavior and healthy neurological adjustment. Adolescents with a history of rejection by peers display different neural responses to social exclusion than their counterparts.[42] Social exclusion has been associated with subsequent risk-taking; for example, adolescents who reported that they were susceptible to peer influence were especially likely to take risks in a driving game after being socially excluded.[43]

In addition to socioeconomic status and social relationships, traumatic childhood experiences such as abuse have an independent influence on an

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[39] *See* Lucy Foulkes and Sarah-Jayne Blakemore, *Studying Individual Differences in Human Adolescent Brain Development*, 28 NATURE NEUROSCIENCE 315, 317 (2018).

[40] *Id*. at 317-18

[41] *Id*. at 318

[42] *Id*. at 320

[43] *Id.*

individual's ability to exercise self-control.[44] Studies show a correlation between delinquent behavior and childhood trauma, such as a violent home life.[45] Indeed, maltreatment during childhood has been linked to a variety of changes and impairments in brain structure and function.[46]

Disparate treatment and perception of minority youth compound the effects of these environmental stressors. Studies indicate that Black children and adolescents—particularly Black boys—are perceived and treated as less innocent than their peers.[47] For example, a 2012 study showed that participants viewed Black adolescent offenders as more deserving of adult treatment than identical white adolescent offenders.[48] This divergence in perceptions of innocence for Black and white children begins as early as 10 years old.[49] Black males are also consistently

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[44] *See* Ryan Meldrum et al., *Are Adverse Childhood Experiences Associated with Deficits in Self-Control? A Test Among Two Independent Samples of Youth*, 47 CRIMINAL JUSTICE AND BEHAVIOR 166–86 (2019).

[45] *Id.*; *see also* Karen Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth Juvenile Detention*, 61 ARCHIVES GEN. PSYCHIATRY 403-407 (2004).

[46] *See* Anda, *supra* note 38.

[47] Phillip Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 526–545 (2014). In a study asking participants to assess the age and culpability of young men aged 10 to 17, participants ranked Black males as more culpable than Latino and white males. *Id.* at 532.

[48] *Id*. at 528-29.

[49] *Id*. at 529.

misperceived as older than they are, depriving them of the "beneficial assumption of childlike innocence" that their peers enjoy.[50] These striking trends are particularly consequential during adolescence, when the protections of childhood and accompanying presumptions of innocence are already waning.

4. The neurological, behavioral, and environmental factors that affect adolescent decision-making and hamper impulse control reduce adolescents' criminal culpability.

Although they do not occur at the same pace for every individual, developmental changes in brain structure and function are universal among adolescents and last well into young adulthood.[51] The neurological and behavioral developments that occur during adolescence, along with increased susceptibility to environmental challenges, should inform judicial assessments of adolescents' criminal culpability. Adolescent crime must be understood in the context of adolescent brain development. "The key issue is that the [criminal] act may have been due, in part, to brain immaturities that enhance risk taking, and that at a later time in life, the decision would not have been made."[52] Importantly, propensities toward impulsive

[50] *Id*. at 540.

[51] Steinberg, *supra* note 31 at 413–14.

[52] Luna and Wright, *supra* note 3 at 108.

behavior are ephemeral; most adolescents who engage in criminal behavior as youths do not persist in such behavior as adults.[53]

The distinction between the adolescent brain and the adult brain renders adolescents less culpable than adults and supports the United States Supreme Court's conclusion that adolescents "cannot with reliability be classified among the worst offenders."[54]

B. The unique developmental characteristics of adolescents rendered Mr. Palmer more susceptible to irrational behavior in the face of extenuating circumstances and decreased his criminal culpability.

Mr. Palmer was 17 years old when he committed the crime at issue in this case. As such, research indicates he was neurologically predisposed to risky, impulsive behavior and unable to fully comprehend the consequences of his actions.[55] The circumstances of his crime bear out this conclusion. Mr. Palmer decided to rob someone as a desperate and ill-conceived reaction to losing his job. Answer Brief on the Merits ("ABM") at 18. After approaching Randall Compton in a parking garage with an unloaded gun and learning that Mr. Compton had no wallet or cash, Mr. Palmer impulsively decided to take him to an ATM, not realizing that the

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[53] *Id.*

[54] *Graham v. Florida*, 560 U.S. 48, 68 (2010) (quoting *Roper v. Simmons*, 543 U.S. 551, 553 (2005)).

[55] *See* Monahan et al., *supra* note 2 at 582; Luna and Wright, *supra* note 3 at 98.

interaction had now become a kidnapping. *Id*. After Mr. Compton pulled his own gun on Mr. Palmer and shot him in the leg, Mr. Palmer was taken to the emergency room where he asked if he would get six months or one year in custody for the offense. *Id*. at 18–19. Mr. Palmer's rash and undoubtedly emotionally charged decision to take Mr. Compton to an ATM, as well as his gross misunderstanding of the potential consequences of that decision, comports with misjudgments typical of an adolescent his age.

Mr. Palmer also experienced a challenging childhood that likely factored into his neurological and behavioral development, and which should be considered in an assessment of his criminal culpability at the time of his offense. Mr. Palmer was raised by a single parent in a high-crime, low-income neighborhood. ABM at 15. His father was incarcerated intermittently throughout this childhood, and his mother depended in in part on welfare. *Id.* at 15. After moving to a more affluent neighborhood where his mother ran a foster care home, he was bullied and ostracized at school. *Id*. at 15-16. Minor infractions early in his adolescence exposed Mr. Palmer to juvenile detention. *Id*. at 17. His experience as a Black juvenile male also means that he was likely misperceived as older than he was and treated as less innocent than his white counterparts from an early age. As research shows, Mr. Palmer's childhood experiences likely had significant

effects on his self-control and coping mechanisms as an adult and therefore may have contributed to a propensity to commit criminal acts.[56]

Given the significant body of research on adolescent neurological development and the influence of adverse environmental factors on juveniles, the Court should consider Mr. Palmer's age and upbringing in its evaluation of the "nature of the offender" under the first *Lynch* technique. *See In re Lynch*, 8 Cal. 3d 410, 425 (1972). Doing so leads to the conclusion that Mr. Palmer's lack of impulse control or full appreciation of the potential consequences of his actions mitigate his criminal culpability and weigh against excessive punishment.

III. CONCLUSION

Scientific and behavioral research continues to confirm that there is a biological basis for adolescents' propensity for risky behavior, which may manifest as criminal activity. These impulses will reduce as adolescents' brains develop and become more interconnected and emotionally stable. Because adolescence is a period of tremendous change and because adolescents like Mr. Palmer, who experienced a troubled home life, are particularly susceptible to act out in response to these changes, excessive punishment for crimes committed during

[56] *See* Anda, *supra* note 38 at 174–86.

adolescence is inappropriate and counterintuitive. For these reasons, Amicus respectfully submits that the judgment of the court below should be affirmed.

Respectfully submitted,

Dated: March 20, 2020 KEKER, VAN NEST & PETERS LLP

By: /s/ *Taylor Reeves*
SHARIF E. JACOB
TAYLOR REEVES
Attorneys for Amicus Curiae
Professor Vincent Schiraldi

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Dated: March 20, 2020

/s/ *Taylor Reeves*
TAYLOR L. REEVES

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Richard J. Sachs Office of the District Attorney P.O. Box 121011 San Diego, California 92101 Richard.Sachs@sdcda.org *Counsel for California District Attorneys Association (Pub/Depublication Requestor)*	Kristen R. Bell Attorney at Law 1515 Agate Street Eugene, Oregon 97403 krbell@uoregon.edu *Counsel for Amicus Curiae,* *Sentencing Project*

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