NO. 16-5579

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IN THE

Supreme Court of the United States

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Darien Vasquez
and
Brandon Valentin,
Petitioners,
v.
Commonwealth of Virginia,
Respondent.

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On Petition For Writ Of Certiorari To The Supreme Court of Virginia

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BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER IN SUPPORT OF PETITIONERS

MARSHA L. LEVICK*
*Counsel of Record for *Amicus Curiae*
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Telephone: (215) 625-0551
Facsimile: (215) 625-2808
Email: mlevick@jlc.org

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INTEREST OF AMICUS[1]

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and; that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

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[1] Pursuant to Rule 37.2 counsel of record received timely notice of the intent to file this brief and the consent of counsel for all parties is on file with this Court. 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.

SUMMARY OF ARGUMENT

In 2010, this Court held in *Graham v. Florida*, 560 U.S. 48 (2010) that life without parole sentences for juvenile offenders committing nonhomicide offenses violate the Eighth Amendment's ban on cruel and unusual punishments. The Court explained: "The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. . . . Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Id.* at 79. *Graham* held that a sentence that provides no "meaningful opportunity to obtain release" is unconstitutional. *Id.*

Petitioners Darien Vasquez and Brandon Valentin were convicted of nonhomicide offenses that they committed as juveniles and received consecutive sentences amounting to 283 years for Vasquez and 148 years for Valentin. Petitioner Vasquez will become eligible for parole after serving 133 years, at age 149. Petitioner Valentin will become eligible for parole after serving 68 years, at age 85. As a practical matter, Petitioners will never become eligible for parole because their sentences exceed their life expectancies. Because Petitioners' sentences deprive them of a "meaningful opportunity to obtain release," they are the functional equivalent of life without parole and are unconstitutional despite being labeled as consecutive term-of-years sentences.

The constitutional errors in Petitioners' sentences are not remedied by Virginia's geriatric release provision because virtually no prisoners are released under this provision, because life expectancy data indicates that Petitioners will not survive to the age of

eligibility, and because geriatric release is not "meaningful" under *Graham*.

This Court should grant certiorari to resolve the issues of whether consecutive term-of-years sentences constituting *de facto* life without parole are unconstitutional under *Graham* and, if so, whether Virginia's geriatric release statute can remedy this constitutional defect.

ARGUMENT

I. *Graham* And *Miller* Affirm This Court's Recognition That Children Are Categorically Less Deserving Of The Harshest Forms of Punishment

In *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), this Court recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments.[2] Relying on *Roper*, this Court in *Graham* cited three essential characteristics which distinguish youth from adults for culpability purposes: "[a]s compared to adults, juveniles have a 'lack of maturity and an underdeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well formed.'" 560 U.S. at 68 (citing *Roper*, 543 U.S. at 569-70). *Graham* found that "[t]hese salient characteristics mean that '[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' Accordingly, 'juvenile offenders cannot with reliability be classified among the worst offenders.'" *Id.*

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[2] *Roper* held that imposing the death penalty on juvenile offenders violates the Eighth Amendment, 543 U.S. at 578; *Graham* held that life without parole sentences for juveniles convicted of nonhomicide offenses violate the Eighth Amendment, 560 U.S. at 82; and *Miller* held that mandatory life without parole sentences imposed on juveniles convicted of homicide offenses violate the Eighth Amendment, 132 S. Ct. at 2469.

(quoting *Roper*, 543 U.S. at 569, 573). This Court concluded that "[a] juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.'" *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 835 (1988) (plurality opinion)). The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for release was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

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

Id. The Court's holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow.

In reaching these conclusions about a juvenile's reduced culpability, this Court has relied upon an increasingly settled body of research confirming the distinct emotional, psychological and neurological attributes of youth. This Court clarified in *Graham* that, since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of

the brain involved in behavior control continue to mature through late adolescence." *Graham*, 560 U.S. at 68. Thus, this Court underscored that because juveniles are more likely to be reformed than adults, the "status of the offenders" is central to the question of whether a punishment is constitutional. *Id.* at 68-69.

This Court in *Miller* expanded its juvenile sentencing jurisprudence, banning mandatory life without parole sentences for children convicted of homicide offenses. Reiterating that children are fundamentally different from adults, this Court held that a sentencing scheme that mandates life without parole for juvenile offenders violates the Eighth Amendment and that the sentencer must take into account the juvenile's "lessened culpability," "greater 'capacity for change,'" and individual characteristics before imposing this harshest available sentence. *Miller*, 132 S. Ct. at 2460 (quoting *Graham*, 560 U.S. at 68, 74). This Court noted "that those [scientific] findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 2464-65 (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. at 570.)

A. *Graham v. Florida* Requires That Juveniles Convicted Of Nonhomicide Offenses Receive A "Meaningful Opportunity To Obtain Release"

In *Graham v. Florida*, this Court held that the Eighth Amendment forbids States from "making the

judgment at the outset that [juvenile nonhomicide] offenders never will be fit to reenter society." 560 U.S. at 75. Instead, States must give these offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* In *Graham*, this Court explained that juveniles who commit nonhomicide offenses "should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Id.* at 79. Due to their stage of development, juveniles are more impulsive and susceptible to pressure and less mature and responsible than adults; at the same time, they possess a greater capacity for rehabilitation, change, and growth than do adults. *Id.* at 68. Emphasizing these unique developmental characteristics, the Court held that juveniles who are convicted of nonhomicide offenses require distinctive treatment under the Constitution.

Miller v. Alabama, 132 S. Ct. 2455, banning mandatory life without parole sentences for juvenile *homicide* offenders, confirms that a life without parole sentence is unconstitutional for a juvenile convicted of nonhomicide crimes, even multiple nonhomicide offenses. *Miller* found that, "given all we have said in *Roper, Graham,* and this decision about children's diminished culpability and heightened capacity for change, *we think appropriate occasions for sentencing juveniles to this harshest possible penalty* [life without parole] *will be uncommon.*" 132 S. Ct. at 2469 (emphasis added). Under *Miller* and *Graham,* a juvenile convicted of only nonhomicide crimes by definition cannot be categorized as one of the most culpable juvenile offenders for whom a life without parole sentence would be proportionate or appropriate. *See Miller*, 132 S. Ct. at 2476 (Breyer, J., concurring) ("The dissent itself

here would permit life without parole for 'juveniles who commit the worst types of murder,' but that phrase does not readily fit the culpability of one who did not himself kill or intend to kill.").[3] Importantly, in *Miller*, this Court found that none of what *Graham* "said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." 132 S. Ct. at 2465. This Court instead "emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.*

B. Even When Juveniles Commit Multiple Nonhomicide Offenses, They Are Entitled To A "Meaningful Opportunity To Obtain Release" Under *Graham*

A court cannot, "at the outset," decide that a child who has not committed homicide should be sentenced to die in prison. *Graham*, 560 U.S. at 75. Sentencing Petitioners to die in prison is no more constitutional because it involved *multiple* convictions of nonhomicide offenses—it remains a sentence contrary to U.S. Supreme Court precedent. This Court has found that people who do not kill or intend to kill are categorically less culpable than people who commit homicide offenses. *Graham*, 560 U.S. at 69. "[W]hen

[3] Although *Amici,* throughout the brief, distinguish between juveniles convicted of homicide and nonhomicide offenses, *Amici* do not intend to suggest that extreme term-of-years sentences are constitutionally appropriate for juveniles who commit homicide offenses. Appropriate sentencing for juveniles convicted of homicide offenses is not at issue in this case.

compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." *Id.* The fact that a child was convicted of *multiple* nonhomicide counts does not alter this equation. This Court has equated life without parole for juveniles with death sentences for adults. *See Miller*, 132 S. Ct. at 2466 (viewing life without parole "for juveniles as akin to the death penalty"); just as an adult who was convicted of multiple *nonhomicide* offenses could not receive the death penalty, *see, e.g.*, *Coker v Georgia*, 433 U.S. 584, 599 (1977) (plurality opinion) (banning the death penalty for an individual convicted of rape and robbery), a juvenile who is convicted of *multiple* nonhomicide offenses cannot be sentenced to die in prison, an otherwise unconstitutional sentence. This Court has been clear: "[a]s it relates to crimes against individuals, . . . the death penalty should not be expanded to instances where the victim's life was not taken." *Kennedy v. Louisiana*, 554 U.S. 407, 437, *modified on denial of reh'g*, 554 U.S. 945 (Oct. 1, 2008). Where no life has been taken, a child analogously cannot be sentenced to die in prison—even if the child is convicted of multiple offenses.

The brutality or cold-blooded nature of a nonhomicide offense provides no exception to *Graham*'s categorical ban on life without parole for nonhomicide offenders. *See Graham*, 560 U.S. at 78 (noting that, absent a categorical ban, an "unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity,

vulnerability, and lack of true depravity" should require a less severe sentence (quoting *Roper*, 543 U.S. at 573)).

II. Petitioners' Sentences Violate *Graham* Because They Are The Functional Equivalent Of A Life Without Parole Sentence

A. A Sentence That Precludes A "Meaningful Opportunity To Obtain Release" Is Unconstitutional Regardless Of Whether It Is Labeled "Life Without Parole" Or Is Comprised Of Consecutive Terms

This Court's Eighth Amendment jurisprudence has clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled. For example, this Court took this commonsense and equitable approach in *Sumner v. Shuman,* 483 U.S. 66 (1987), where it noted that "there is no basis for distinguishing, for purposes of deterrence, between an inmate serving a life sentence without possibility of parole and a person serving several sentences of a number of years, the total of which exceeds his normal life expectancy." 483 U.S. at 83.

Graham defines a life without parole sentence as one that does not give the offender "'some meaningful opportunity to obtain release based on maturity and rehabilitation.'" 560 U.S. at 75. A sentence that exceeds a juvenile offender's life expectancy clearly fails to provide a meaningful opportunity for release. As the Supreme Court of California held in *People v.*

Caballero, 282 P.3d 291, 295 (Cal. 2012), "sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment."

Labels and semantics cannot obscure what is in all other respects a life without parole sentence. As the Iowa Supreme Court noted, in vacating mandatory 60-year sentences for juvenile homicide offenders pursuant to *Miller* and *Graham*, "it is important that the spirit of the law not be lost in the application of the law." *State v. Ragland*, 836 N.W.2d 107, 121 (Iowa 2013). Courts cannot circumvent the categorical ban on mandatory life without parole for juveniles simply by choosing to impose consecutive term-of-years sentences—here 133 years and 68 years—instead of actual life without parole. Looking at Petitioners' sentences as separate terms and ignoring the fact that they run consecutively allows courts that aim to foreclose a youth's eventual release to thereby frustrate *Graham*'s constitutional requirements.

Petitioners Vasquez and Valentin would be 149 years old and 84 years old, respectively, before first becoming eligible for parole. Under any scientific or common sense measure of life expectancy, Petitioners will die in prison before becoming eligible for parole. The trial judge himself noted that the sentence he imposed was "in effect [a] *de facto* life sentence." (App. M). Because these sentences clearly provide Petitioners with no meaningful opportunity to re-enter society during their natural lives, they are the equivalent of life without parole and thus unconstitutional.

B. Virginia's Geriatric Release Scheme Does Not Offer A Meaningful Opportunity For Release

A sentence that exceeds a juvenile offender's life expectancy clearly fails to provide a meaningful opportunity for release. Virginia has argued nevertheless that its "geriatric release" provision, through which Petitioners would be eligible for release at age 61, remedies any constitutional infirmity in Petitioners' sentences. However, the geriatric release process fails to provide a meaningful and realistic opportunity for release.

1. Petitioners Do Not Have A Realistic Chance For Geriatric Release

To comport with *Graham*, geriatric release must provide a meaningful and realistic opportunity for release. Virginia grants so few applications for geriatric release from eligible candidates that it fails this measure. Data provided by the State of Virginia show that less than 4% of the eligible offenders who applied for geriatric release actually received it. *See* Virginia Dep't of Corr., FY2014 Geriatric Offenders Within the SR Population 7 (Sept. 2015), *available at* https://vadoc.virginia.gov/about/facts/research/Geriatric2015.pdf (7 of 207 applicants granted geriatric release); Virginia Dep't of Corr., Geriatric Offenders Within the SR Population 7 (July 2014), *available at* https://vadoc.virginia.gov/about/facts/research/Geriatric2014.pdf (11 of 212 applicants granted geriatric release); Virginia Dep't of Corr., Geriatric Offenders Within the SR Population 7 (August 2012), *available*

at http://vadoc.virginia.gov/about/facts/research/geriatric/fy2011-geriatric-report.pdf) (3 of 129 applicants granted geriatric release). These overwhelming odds *against* release illustrate that the parole board is not giving the weight to the "maturity and rehabilitation of offenders" that this Court mandated in *Graham*. 560 U.S. at 75. This is truly an "opportunity for release" in name only.

2. The Geriatric Release Scheme Puts Prisoners Sentenced As Juveniles At A Disadvantage

A "meaningful opportunity for release" requires that the geriatric release process focus on the characteristics of the youth, including his or her lack of maturity at the time of the crime, not merely the circumstances of the offense. The parole board must not allow the facts of the crime to overshadow the juvenile's immaturity at the time of the offense and the progress and growth he or she achieved while incarcerated. *See, e.g.*, *Roper*, 543 U.S. at 573 (cautioning against the "unacceptable likelihood" that "the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course"). Virginia's geriatric release program does not distinguish between youth and adults; if Petitioners survive to apply for geriatric release, they will be considered under the same criteria as adults.

Additionally, for the opportunity for release to be meaningful, the juvenile's young age at the time of the offense and incarceration cannot be a factor that makes release *less* likely. *Cf. Roper*, 543 U.S. at 573 (noting that "[i]n some cases a defendant's youth may

even be counted against him"). In fact, Virginia's geriatric release scheme conflicts with the mandate of *Graham* by putting a prisoner convicted as a juvenile at a disadvantage. In addition to a blank section where the applicant can include information of his choosing, the two-page geriatric release petition contains the following questions:

> Are you a military veteran with an honorable discharge?
> Do you have retirement or disability benefits available upon release?
> Do you have other disability income?
> Are you eligible for Social Security benefits?
> Do you have any other sources of income?
> Do you have family support for your residential needs?
> Do you have family support financially?
> Do you have other assets (such as property that you own)?

Virginia Parole Board, *Petition for Geriatric Conditional Release*, *available at* http://vpb.virginia.gov/files/1093/vpb-pb27-petition-for-geriatric-release.pdf (last visited September 7, 2016)

Inmates who have been incarcerated since they were juveniles will have no military history, no retirement benefits, and own no property. They are less likely to have spouses or children to provide support upon release. The emphasis on these factors makes

prisoners who were sentenced as juveniles appear to be less attractive, stable candidates for release.[4]

Instead, the parole board should consider the factors that *Miller* found relevant to a youth's diminished culpability. 132 S. Ct. at 2468-69. These factors include: (1) the juvenile's "chronological age" and related "immaturity, impetuosity, and failure to appreciate risks and consequences;" (2) the juvenile's "family and home environment that surrounds him;" (3) "the circumstances of the . . . offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;" (4) the "incompetencies associated with youth" in dealing with law enforcement and a criminal justice system designed for adults; and (5) "the possibility of rehabilitation." *Id.*; *see Hayden v. Keller,* 134 F. Supp. 3d 1000, 1011 (E.D.N.C. 2015) (holding that North Carolina's parole scheme violates *Graham* because of the lack of opportunity to present or consider evidence of "demonstrated maturity and rehabilitation").

3. Life Expectancy Data Indicate That Petitioners Will Die Before Becoming Eligible For Geriatric Release

For years, scientists have noted the deleterious impact that incarceration has on the life expectancy of inmates. *See* Jason Schnittker et al., Enduring

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[4] Parole guidelines and risk assessments that disadvantage young offenders are not unique to Virginia. *See, e.g.*, Ga. Comp. R. & Regs. 475-3-.05(8)(g) (Georgia regulations giving lower risk scores to inmates who were employed at the time of their arrest); Mich. Comp. Laws Ann. § 791.235 (3)(a) (noting that the parole board in Michigan can consider an inmate's marital history).

Stigma: The Long-Term Effects of Incarceration on Health, 48 J. of Health & Soc. Behav. 115, 115-30 (2007); Michael Massoglia, Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses, 49 J. of Health and Soc. Behav. 56, 56-71 (2008); Michael Massoglia et al., No Real Release, 8 Contexts 38, 38-42 (2009). Courts have now come to recognize this fact and incorporate it into their jurisprudence. *See, e.g.*, "[l]ife expectancy within prisons and jails is considerably shortened." *People v. J.I.A.*, 196 Cal. App. 4th 393, 127 Cal. Rptr. 3d 141, 149 (2011) (citing The Commission on Safety and Abuse in America's Prisons, Confronting Confinement, p. 11 (June 2006), *available at* http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf). The U.S. Sentencing Commission considers a sentence exceeding 39 years and two months to be a life sentence because it correlates with the life expectancy of federal prisoners. *See* U.S. SENT. COMM'N., 2015 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-170 (2015); U.S. SENT. COMM'N., *Life Sentences in the Federal* System, 10 n.52 (2015), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf.

Information is also becoming available about the effects of life without parole sentences on life expectancy. Campaign for the Fair Sentencing of Youth, *Michigan Life Expectancy Data for Youth Serving Natural Life Sentences*, *available at* http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf. Life without parole sentences tend to reduce the life expectancy of prisoners more

than shorter sentences; there is also evidence that inmates who were sentenced to life without parole as juveniles have even shorter life expectancies than adults serving the same sentence. *Id.* at 2. A Michigan study on life expectancy among the state's prisoners found that the life expectancy for youth serving life without parole was only 50.6 years, compared to 58.1 years for adults serving life without parole and 64 years for all prisoners. *Id.*

Petitioners will become eligible to apply for geriatric release when they are 61 years old. Each will have served 45 years in prison. By age 61, each Petitioner will have served more than the 39 years considered a life sentence by the U.S. Sentencing Commission. According to the Michigan data, Petitioners' life expectancy is 50.6 years. Scientific life expectancy data mark the Petitioners for death between five and ten years before they become eligible for geriatric release. Because Virginia's geriatric release statute does not grant Petitioners eligibility before the end of their "normal life expectancy," *Sumner v. Shuman,* 483 U.S. at 83, it fails to provide the "meaningful opportunity for release" mandated by *Graham*.

4. Geriatric Release Is Not "Meaningful" Under *Graham*

Mathematical calculations of life expectancy are not the sole determinant in whether Virginia's geriatric release provision will provide a "reasonable opportunity for release" under *Graham;*. the Court must also consider the core principles of *Miller* and *Graham* in addition to the numbers. For instance, in *State v. Null*, 836 N.W.2d 41 (Iowa 2013), the Iowa Supreme Court held that a sentence for a juvenile

nonhomicide offender granting parole eligibility at age 69, although not labeled "life without parole," merited the same analysis as a sentence explicitly termed "life without parole" and was unconstitutional under *Graham*. The Iowa Supreme Court was explicit that whether a sentence complied with *Graham* was not dependent on an analysis of life expectancy or actuarial tables. That court stated:

> [W]e do not believe the determination of whether the principles of *Miller* or *Graham* apply in a given case should turn on the niceties of epidemiology, genetic analysis, or actuarial sciences in determining precise mortality dates. In coming to this conclusion, we note the repeated emphasis of the Supreme Court in *Roper*, *Graham*, and *Miller* of the lessened culpability of juvenile offenders, how difficult it is to determine which juvenile offender is one of the very few that is irredeemable, and the importance of a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

Null, 836 N.W.2d at 71-72.

As the *Null* court recognized, a meaningful opportunity for release must mean more than simply release to die at home. For an opportunity for release to be "meaningful" under *Graham*, review must begin long before a juvenile reaches old age. Providing an

opportunity for release only after decades in prison denies these young offenders an opportunity to live a meaningful life in the community and meaningfully contribute to society. *See, e.g.*, *State v. Pearson*, 836 N.W.2d 88, 96 (Iowa 2013) (striking down a 35-year sentence that would render the juvenile eligible for parole at age 52 because it violated *Miller* by "effectively depriv[ing] of any chance of an earlier release and the possibility of leading a more normal adult life"). The challenge of finding employment post-retirement age, with felony convictions and no work experience outside of prison, makes it unlikely that juveniles serving extremely long sentences will be able to become a productive, tax-paying member of society upon release. These parolees are also unlikely to be able to engage in other aspects of a meaningful life, like starting a family. *See, e.g.*, *Null*, 836 N.W.2d at 71 ("The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a 'meaningful opportunity' to demonstrate the 'maturity and rehabilitation' required to obtain release and reenter society as required by *Graham*.").

III. Scientific Research On Recidivism Of Juvenile Offenders Supports Early And Regular Review Of Sentences

Allowing for the possibility of juveniles' release from prison before they become elderly is consistent with research showing that juvenile recidivism rates drop substantially long before late adulthood. This Court has noted that "[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a

relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." *Roper*, 543 U.S. at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Development Immaturity, Diminished Responsibility, and the Juveniles Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)). In a study of juvenile offenders, "even among those individuals who were high-frequency offenders at the beginning of the study, the majority had stopped these behaviors by the time they were 25." Laurence Steinberg (2014) *Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop*. Chicago, IL: MacArthur Foundation, p. 3, *available at* http://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf. Most juvenile offenders would no longer be a public safety risk once they reached their mid-twenties, let alone their thirties, forties, fifties or sixties. Because most juveniles are likely to outgrow their antisocial and criminal behavior as they mature into adults, review of the juvenile's maturation and rehabilitation should begin relatively early in the juvenile's sentence, and the juvenile's progress should be assessed regularly. *See, e.g.*, *Research on Pathways to Desistance: December 2012 Update*, Models for Change, p. 4, *available at* http://www.modelsforchange.net/publications/357 (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts. The study also found that "it is hard to determine who will continue or escalate their antisocial acts and who will desist," as "the original offense . . . has little relation to the path the youth follows over the next seven years.").

Early and regular assessments of juveniles will enable the reviewers to evaluate any changes in the juvenile's maturation, progress, and performance. Regular review also provides an opportunity to confirm that the juvenile is receiving vocational training, programming, and treatment that foster rehabilitation. *See, e.g.*, *Graham*, 560 U.S. at 74 (noting the importance of "rehabilitative opportunities or treatments" to "juvenile offenders, who are most in need of and receptive to rehabilitation").

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court grant the petition for a *writ of certiorari*.

Respectfully Submitted,

Marsha L. Levick*
**Counsel of Record*
JUVENILE LAW CENTER
1315 Walnut Street
4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

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