UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LaMonte Rydell Martin, Appellant, v. Jessica Symmes, Warden Oak Park Heights Correctional Facility, Minnesota, Appellee.	)	Case No. 13-3676

Brief of Juvenile Law Center, Campaign for the Fair Sentencing of Youth, Children's Law Center of Los Angeles, Council on Crime and Justice, Defender Association of Philadelphia, ISAIAH, Juvenile Justice Project of Louisiana, Juvenile Justice Initiative, Legal Rights Center, National Association of Criminal Defense Lawyers, National Center for Youth Law, National Juvenile Defender Center, National Juvenile Justice Network, National Legal Aid & Defender Association, Orleans Public Defenders, Pacific Juvenile Defender Center, Public Defender Service for the District of Columbia, Rutgers School of Law – Camden Children's Justice Clinic, San Francisco Office of the Public Defender, Youth Law Center, Stephen K. Harper, Kristin Henning, and Frank Vandervort
AS *AMICI CURIAE*
In Support of Appellant Martin Seeking Reversal and Remand for Resentencing

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I. INTEREST AND IDENTITY OF *AMICI* AND CONSENT OF THE PARTIES

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

Amici file this brief pursuant to Fed. R. App. P. 29(a). Both parties consent to the filing of this *amicus* on behalf of the organizations and individuals listed in the Appendix.

II. STATEMENT REQUIRED BY FED. R. APP. P. 29(c)(5)

No party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person – other than the *amicus curiae*, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief.

III. SUMMARY OF ARGUMENT

In *Miller v. Alabama*, 567 U.S. _____, 132 S. Ct. 2455 (2012), the United States Supreme Court held that the mandatory imposition of sentences of life without the possibility of parole on juvenile offenders convicted of murder is unconstitutional. At the time Appellant Martin was sentenced for crimes he committed as a juvenile, state law mandated a life without parole sentence for his murder-based offenses. As applied to juvenile offenders, this mandatory scheme is unconstitutional pursuant to *Miller*.

Miller applies retroactively to Appellant. First, the United States Supreme Court has already applied *Miller* retroactively by affording relief in Kuntrell Jackson's case, which was before the Court on collateral review. Moreover, *Miller* announced a substantive rule, which pursuant to Supreme Court precedent applies retroactively. Further, even assuming the rule is procedural, *Miller* is a watershed rule of criminal procedure that applies retroactively. Finally, Miller must be applied retroactively because, once the Court determines that a punishment is cruel and unusual when imposed on a child, any continuing imposition of that sentence is itself a violation of the Eighth Amendment; the date upon which a mandatory life without parole sentence is imposed cannot convert it into a constitutional sentence.

IV. ARGUMENT

A. *Miller* Reaffirms The U.S. Supreme Court's Recognition That Children Are Categorically Less Deserving Of The Harshest Forms Of Punishments

In *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2012), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the U.S. Supreme Court recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments.[1]

Relying on *Roper*, the U.S. Supreme Court in *Graham* cited three essential characteristics which distinguish youth from adults for culpability purposes:

> As compared to adults, juveniles have a "lack of maturity and an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed."

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

[1] *Roper* held that imposing the death penalty on juvenile offenders violates the Eighth Amendment, 543 U.S. at 578; *Graham* that life without parole sentences for juveniles convicted of non-homicide 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.

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.* (*quoting* Roper, 543 U.S. at 569, 573). The Court concluded that "[a] juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.'" *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for 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, the U.S. Supreme Court has relied upon an increasingly settled body of research confirming

the distinct emotional, psychological and neurological attributes of youth. The Court clarified in *Graham* that, since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *Graham*, 560 U.S. at 68. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the "status of the offender" is central to the question of whether a punishment is constitutional. *Id*. at 68-69.

The U.S. Supreme 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, the Court held that, prior to imposing such a sentence on a juvenile offender, the sentencer must take into account the juvenile's reduced blameworthiness. *Miller*, 132 S. Ct. at 2460. Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court's rationale for its holding: the mandatory imposition of sentences of life without parole "prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Id*. (quoting *Graham*, 560 U.S. at 68, 74). The Court grounded its holding "not only on

common sense . . . but on science and social science as well," *id*. at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted "that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id*. at 2464-65 (quoting *Graham*, 560 U.S. at 68-69; *Roper*, 543 U.S. at 570).

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

B. *Miller v. Alabama* Applies Retroactively

United States Supreme Court precedent requires that *Miller* be applied retroactively.

1. *Miller* Is Retroactive Because Kuntrell Jackson Received The Same Relief On Collateral Review

The United States Supreme Court has already answered the question of retroactivity by applying *Miller* on collateral review. Had *Miller* not applied retroactively to cases on collateral review, Kuntrell Jackson – whose case, *Jackson v. Hobbs*, was the companion case to *Miller* – would have been precluded from the relief he was granted.[2] Additionally, "once a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated." *Teague v. Lane*, 489 U.S. 288, 300 (1989) (plurality). Therefore, if a new rule is announced and applied to a defendant on collateral review, as occurred in *Miller*, that rule necessarily is retroactive. Given the Court's application of *Miller* retroactively to Jackson's case on collateral review, further analysis is not necessary.

[2] Notably, *Jackson* and *Miller* were joined and both Miller and Jackson received the same relief, in the same manner. This is clear from the Court's assertion that both cases were remanded "for further proceedings not inconsistent with" its opinion. *Miller*, 132 S. Ct. at 2475.

2. *Miller* Applies Retroactively Pursuant To *Teague v. Lane*

In *Teague v. Lane*, the U.S. Supreme Court held a new Supreme Court rule applies retroactively to cases on collateral review only if: (a) it is a substantive rule or (b) if it is a watershed rule of criminal procedure. 489 U.S. at 307, 311. *See also Schriro v. Summerlin*, 542 U.S. 348, 351-52 (2004). Because *Miller* announced a new substantive rule or, in the alternative, a "watershed" procedural rule, *Miller* applies retroactively.

a. *Miller* Is Retroactive Because It Announced A Substantive Rule That Categorically Prohibits The Imposition Of Mandatory Life Without Parole On All Juvenile Offenders

The U.S. Supreme Court has held that "[n]ew *substantive* rules generally apply retroactively." *Summerlin*, 542 U.S. at 351. A new rule is "substantive" if it "alters the range of conduct or the class of persons that the law punishes." *Id*. New substantive "rules apply retroactively because they 'necessarily carry a significant risk that a defendant' . . . faces a punishment that the law cannot impose upon him." *Id*. at 352 (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)). A new rule is substantive if it "'prohibit[s] a certain category of punishment for a class of defendants because of their status or offense.'" *Saffle v. Parks*, 494 U.S. 484, 494-95, 110 S. Ct. 1257, 1263, 108 L. Ed. 2d 415 (1990) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 329, 330 (2002), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002)).

The new rule announced in *Miller* is substantive and therefore retroactive, because Appellant is now serving a punishment – mandatory life without parole – that, pursuant to *Miller*, the law can no longer impose on him. *See Summerlin*, 542 U.S. at 352. Like the rules announced in *Atkins*, *Roper* and *Graham*, which have all been applied retroactively, [3] *Miller* "prohibit[s] a certain category of punishment" –

[3] Courts across the country have applied *Atkins* retroactively. *See, e.g., Morris v. Dretke*, 413 F.3d 484, 487 (5th Cir. 2005); *Black v. Bell*, 664 F.3d 81, 92 (6th Cir. 2011) *Allen v. Buss*, 558 F.3d 657, 661 (7th Cir. 2009); *Davis v. Norris*, 423 F.3d 868, 879 (8th Cir. 2005); *In re Holladay*, 331 F.3d 1169, 1173 (11th Cir. 2003). Similarly, *Roper* and *Graham*, two cases upon which *Miller* relies, have been applied retroactively. *See Loggins v. Thomas*, 654 F.3d 1204, 1206 (11th Cir. 2011) (noting *Roper* applied retroactively to case on collateral review); *Lee v. Smeal*, 447 F. App'x 357, 359 n.2 (3d Cir. 2011) (unpublished) (same); *Horn v.Quarterman*, 508 F.3d 306, 308 (5th Cir. 2007) (same); *LeCroy v. Sec'y, Florida Dept. of Corr*., F.3d 1237, 1239 (11th Cir. 2005) (same); *Sharikas v. Kelly*, 1:07CV537CMHTCB, 2008 WL 6626950 (E.D. Va. Apr. 7, 2008) (unpublished) (same); *Holly v. Mississippi*, 3:98CV53-D-A, 2006 WL 763133 (N.D. Miss. Mar. 24, 2006) (unpublished) (applying *Roper* retroactively to case on collateral review); *Little v. Dretke*, 407 F. Supp. 2d 819, 824 (W.D. Tex. 2005) (same)*; Baez Arroyo v. Dretke*, 362 F. Supp. 2d 859, 883 (W.D. Tex. 2005) (same), *aff'd sub nom Arroyo v. Quarterman*, 222 F. App'x 425 (5th Cir. 2007) (unpublished); *Sims v. Commonwealth*, 233 S.W.3d 731, 733 (Ky. Ct. App. 2007) ("*Roper* must be given retroactive application in all those cases in which a sentence of death was imposed upon a defendant who was under the age of 18 at the time he committed the crime."); *Duncan v. State*, 925 So. 2d 245, 252 (Ala. Crim. App. 2005) (applying *Roper* retroactively). *See also In re Sparks*, 657 F.3d 258, 262 (5th Cir. 2011) (holding *Graham* was made retroactive on collateral review); *Bonilla v. State*, 791 N.W.2d 697, 700-01 (Iowa 2010) (holding *Graham* applies retroactively); *In re Evans*, 449 Fed. App'x 284 (4th Cir. 2011) (per curiam) (unpublished) (noting Government "properly acknowledged" *Graham* applies retroactively on collateral review); *Kleppinger v.State*, 81 So. 3d 547, 550 (Fla. Dist. Ct. App. 2012) (applying *Graham* on collateral review); *Manuel v. State*, 48 So. 3d 94, 97 (Fla. Dist. Ct. App. 2010) (same); *State v. Dyer*, 77 So. 3d 928, 929

mandatory life imprisonment without the possibility of parole – "for a class of defendants," – juvenile homicide offenders. *Horn v. Banks*, 536 U.S. 266, 272 (2002).

Supreme Court precedent and logic establish that mandatory life without parole sentences (which carry a mandatory minimum of a lifetime in prison as well as certain death in prison) are substantively distinct and harsher than alternative sentencing schemes in which life without parole is, at most, a discretionary alternative. Most recently, in *Alleyne v. United States*, 570 U.S. ---, 133 S. Ct. 2151 (2013), the Court stated that "[m]andatory minimum sentences increase the penalty for the crime." 133 S. Ct. at 2155. The Court found that an increase in a mandatory minimum sentence "aggravates the punishment." *Id*. at 2158. The Court described a sentence with a higher mandatory minimum as "a new penalty," *id*. at 2160, finding it "impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime." *Id*. The Court explained that "[e]levating the low-end of a sentencing range heightens the loss of liberty associated with the crime." *Id*. at 2161.

Alleyne makes clear that a sentence with a mandatory minimum of life is substantively different from a *discretionary* life without parole sentence. A

(La. 2012) (same); *Rogers v. State*, 267 P.3d 802, 804 (Nev. 2011) (noting that district court properly applied *Graham* retroactively).

mandatory life without parole sentence is substantively harsher, more aggravated, and implicates a greater loss of liberty than a discretionary sentencing scheme.

Prior to *Miller*, a juvenile convicted under Minn. Stat. § 609.185(a)(1) faced only one sentencing option – life without parole. *See* Minn. Stat. § 609.106, subd. 2(1). As clarified by *Alleyne*, *Miller* did not simply require that certain factors uniquely relevant to youth be considered before a juvenile can receive life without parole, it in fact *expanded* the range of sentencing options available to juveniles by prohibiting mandatory life without parole and requiring that *additional* sentencing options be put in place – a fundamental change in sentencing for juveniles that goes well beyond a change in process. Because the U.S. Supreme Court has found this mandatory life without parole sentencing scheme unconstitutionally disproportionate as applied to juveniles, Appellant is entitled to be resentenced pursuant to a sentencing scheme that comports with *Miller*'s constitutional mandates – one that is proportionate and individualized.[4]

[4] *Miller* noted, as previously held in *Harmelin v. Michigan*, 501 U.S. 957 (1991), that in the adult context, there is no substantive right against mandatory sentencing – "a sentence which is not otherwise cruel and unusual" does not "becom[e] so simply because it is mandatory." *Miller*, 132 S. Ct. at 2470. In the juvenile context, *Miller* held the opposite, explicitly finding a mandatory life without parole sentence cruel and unusual, while leaving open the possibility that *discretionary* life without parole sentences might still be imposed. The Court wrote, "*Harmelin* had nothing to do with children and did not purport to apply its holding to the sentence of juvenile offenders." *Id*. Instead, the Court likened its holding to *Roper* and *Graham*, decisions finding that "a sentencing rule permissible for adults may

b. *Miller* Is Retroactive Because It Involves A Substantive Interpretation Of The Eighth Amendment That Reflects The Supreme Court's Evolving Understanding Of Child And Adolescent Development

The Supreme Court consistently has recognized that a child's age is far "more than a chronological fact," and has recently acknowledged that it bears directly on children's constitutional rights and status in the justice system. *See, e.g.*, *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (citations omitted). *Roper*, *Graham*, and *Miller* have enriched the Court's Eighth Amendment jurisprudence with scientific research confirming that youth merit distinctive treatment. *See Roper*, 543 U.S. at 569-70 (explaining that "[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders") (citing Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339 (1992); Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)); *Graham*, 560 U.S. at 68 (reiterating that "developments in psychology and brain science

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not be so for children." *Id*. By rejecting *Harmelin*, the Court implicitly held that mandatory life without parole is *categorically* cruel and unusual for juveniles – and thus "prohibit[ed] a certain category of punishment for a class of defendants because of their status or offense." *Penry, v. Lynaugh*, 492 U.S. 302, 330 (1989).

continue to show fundamental differences between juvenile and adult minds"); *Miller*, 132 S. Ct. at 2465 ("[t]he evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger.").

This new understanding of the Eighth Amendment that juveniles, as a class, are less culpable than adult offenders underlies the holding in *Miller*, 132 S. Ct. at 2469, and reflects a substantive change in Eighth Amendment jurisprudence. To ensure that the sentencing of juveniles is constitutionally appropriate, *Miller* requires that, prior to imposing a life without parole sentence on a juvenile offender, the sentencer must consider the factors that relate to the youth's overall culpability and capacity for rehabilitation. 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 homicide 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." 132 S. Ct. at 2468-69. *Miller* therefore requires a substantive, individualized assessment of the juvenile's culpability prior to imposing life without parole.

In requiring individualized sentencing in adult capital cases, the Supreme Court stated that "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a *constitutionally indispensable* part of the process of inflicting the penalty of death." *Woodson v. North Carolina*, 428 U.S. 280, 304, (1976) (internal citation omitted) (emphasis added). Since *Miller* acknowledges that life without parole sentences for juveniles are "akin to the death penalty" for adults, 132 S. Ct. at 2566, *Miller*'s requirement of individualized consideration of a youth's lessened culpability and potential for rehabilitation is similarly "constitutionally indispensable" and reflects a new substantive requirement in juvenile sentencing.

The language of *Miller* demonstrates that the rule announced was not considered a mere procedural checklist, but a substantive shift in juvenile sentencing. The Court found:

> But 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 will be uncommon*. . . . Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, *we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.*

Miller, 132 S. Ct. at 2469 (emphasis added). The Court's finding that appropriate

occasions for juvenile life without parole sentences will be "uncommon" and that the sentencer must consider how a child's status counsels against sentencing *any* child to life without parole underscores that the decision in *Miller* substantively altered sentencing assumptions for juveniles – moving from a pre-*Miller* constitutional tolerance for mandated juvenile life without parole sentences to a post-*Miller* scheme in which even discretionary juvenile life without parole sentences are constitutionally suspect.

Finally, the fact that *Miller* imposed new factors that a sentencer must consider before imposing juvenile life without parole necessitates a finding that *Miller* announced a substantive rule. The Court's refusal to hold *Ring v. Arizona*, 536 U.S. 584 (2002), retroactive in *Schriro v. Summerlin*, 542 U.S. 348, 354 (2004), illustrates this point. In *Ring*, the Court had held that the Sixth Amendment requires a jury, rather than a judge, to find the aggravating factors essential to imposition of the death penalty upon adults. In *Summerlin*, the Court distinguished between *procedural* rules in which the Court determines who must make certain findings before a particular sentence could be imposed with *substantive* rules in which the Court itself establishes that certain factors are required before a particular sentence could be imposed:

> This Court's holding that, *because Arizona* has made a certain fact essential to the death penalty, that fact must be found by a jury, is not the same as *this Court's* making a certain fact essential to the death penalty. The former was

a procedural holding; the latter would be substantive.

542 U.S. 348 at 354 (emphasis in original). Because *Miller* requires the sentencer "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison, *Miller*, 132 S. Ct. at 2469, the Court has made consideration of certain factors a prerequisite to imposing life without parole on juveniles, which, as directed by *Summerlin*, renders *Miller* a substantive rule.

Because *Miller* relies on a new, substantive interpretation of the Eighth Amendment that recognizes that children are categorically less culpable than adults, and because sentencers must consider how these differences mitigate against imposing life without parole on youth, the decision must be applied retroactively.

c. *Miller* Is A "Watershed Rule" Under Teague

As discussed above, *Miller* must be applied retroactively pursuant to *Teague* because it is a substantive rule. Even assuming the rule is procedural, *Miller* must be applied retroactively pursuant to *Teague*'s second exception, which applies to "watershed rules of criminal procedure" and to "those new procedures without which the likelihood of an accurate conviction is seriously diminished." *Teague*, 489 U.S. at 311. This occurs when the rule "requires the observance of 'those procedures that . . . are 'implicit in the concept of ordered liberty.'" *Id.* at 307

(internal citations omitted). To be "watershed[,]" a rule must first "be necessary to prevent an impermissibly large risk" of inaccuracy in a criminal proceeding, and second, "alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (internal citations omitted). The Supreme Court has recognized that sentencing is a critical component of the trial process, and thus directly affects the accuracy of criminal trials. *See, e.g.*, *Witherspoon v. Illinois*, 391 U.S. 510, 523 n.22 (1968) (retroactively applying a decision on a jury selection process that related to sentencing because it "necessarily undermined 'the very integrity of the . . . process' that decided the [defendant's] fate.") (internal citation omitted).

Miller satisfies both requirements. First, mandatory life without parole sentences cause an "impermissibly large risk" of *inaccurately* imposing the harshest sentence available for juveniles. *Whorton*, 549 U.S. at 418. The automatic imposition of this sentence with no opportunity for individualized determinations precludes consideration of the unique characteristics of youth – and of each individual youth – which make them "constitutionally different" from adults. *Miller*, 132 S. Ct. at 2464. *See also id.* at 2469 (explaining that imposing mandatory life without parole sentences "poses too great a risk of disproportionate punishment."). By requiring that specific factors be considered before a court can impose a life without parole sentence on a juvenile, *Miller* alters our understanding

of what bedrock procedural elements are necessary to the fairness of such a proceeding. *See id.* (requiring sentencing judges "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."). Indeed, some state appellate courts have adopted this analysis. *See, e.g.*, *People v. Williams*, 982 N.E.2d 181, 196, 197 (Ill. App. Ct. 2012) (granting petitioner the right to file a successive post-conviction petition because *Miller* is a "watershed rule," and at his pre-*Miller* trial, petitioner had been "denied a 'basic 'precept of justice'' by not receiving any consideration of his age from the circuit court in sentencing," and finding that "*Miller* not only changed procedures, but also made a substantial change in the law.").[5]

3. Once The Court Declares A Particular Sentence "Cruel And Unusual" When Imposed On A Juvenile, The Continued Imposition Of That Sentence Violates The Eighth Amendment

The boundaries of the Eighth Amendment are dynamic and constantly evolving. "The [Supreme] Court recognized . . . that the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958). The Court has thus recognized that "a penalty that was permissible at one time in our Nation's history

[5] The question of *Miller*'s retroactivity is currently pending before the Illinois Supreme Court. *See People v. Davis*, No. 115595 (Ill., argued Jan. 15, 2014).

is not necessarily permissible today." *Furman v. Georgia*, 408 U.S. 238, 329 (1972) (Marshall, J., concurring).

In recent years, Eighth Amendment jurisprudence has evolved with extraordinary speed in the context of juvenile sentencing. Prior to the Court's 2005 decision in *Roper*, juvenile offenders could be executed. Less than a decade later, not only the death penalty, but life without parole sentences for children are constitutionally disfavored. *See Miller*, 132 S. Ct. at 2469 ("[W]e think appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon."). This evolution in Eighth Amendment jurisprudence has been informed by brain science and adolescent development research that explains why children who commit crimes are less culpable than adults, and how youth have a distinctive capacity for rehabilitation. *See* Section V.A., *supra*. In light of this new knowledge, the Court has held in *Roper*, *Graham*, and *Miller* that sentences that may be permissible for adult offenders are unconstitutional for juvenile offenders. *See, e.g., Miller*, 132 S. Ct. at 2465 ("In [*Graham*], juvenile status precluded a life-without-parole sentence, even though an adult could receive it for a similar crime.").

While this understanding of adolescent development was not fully incorporated into Eighth Amendment jurisprudence when Appellant's direct appeal rights were exhausted, this does not change the fact that Appellant and all other

juveniles sentenced pre-*Miller*, just like those sentenced or on direct appeal post-*Miller*, are categorically less culpable than adults and therefore are serving constitutionally disproportionate sentences. *See Miller*, 132 S. Ct. at 2475 (finding "the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment"). Forcing individuals to serve constitutionally disproportionate sentences for crimes they committed as children based on nothing other than the serendipity of the date on which they committed their offenses runs counter to the Eighth Amendment's reliance on the evolving standards of decency and serves no societal interest. *See Mackey v. United States*, 401 U.S. 667, 692-93 (1971) (Harlan, J., concurring) ("[T]he writ [of habeas corpus] has historically been available for attacking convictions on [substantive due process] grounds. This, I believe, is because it represents the clearest instance where finality interests should yield. There is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose."). It is both common sense and a fundamental tenet of our justice system that

> the individual who violates the law should be punished to the extent that others in society deem appropriate. If, however, society changes its mind, then what was once "just deserts" has now become unjust. And, it is contrary to a system of justice that a rigid adherence to the temporal order of when a statute was adopted and when someone was convicted should trump the application of a new lesser, punishment.

S. David Mitchell, *Blanket Retroactive Amelioration: a Remedy for Disproportionate Punishments*, 40 Fordham Urb.L.J. City Square 14 (2013), *available at* http://urbanlawjournal.com/?p=1224.

Additionally, depriving the majority of juveniles sentenced to life without parole the benefit of *Miller*'s holding because they have exhausted their direct appeals violates the Eighth Amendment's requirement that severe sentences be imposed nonarbitrarily. *See Furman*, 408 U.S. at 256 ("The high service rendered by the 'cruel and unusual' punishment clause of the Eighth Amendment is to require legislatures to write penal laws that are evenhanded, nonselective, and nonarbitrary, and to require judges to see to it that general laws are not applied sparsely, selectively, and spottily to unpopular groups."). In his concurring opinion in *Furman*, the Justice Brennan found:

> In determining whether a punishment comports with human dignity, we are aided also by a second principle inherent in the Clause – that the State must not arbitrarily inflict a severe punishment. This principle derives from the notion that the State does not respect human dignity when, without reason, it inflicts upon some people a severe punishment that it does not inflict upon others. Indeed, the very words 'cruel and unusual punishments' imply condemnation of the arbitrary infliction of severe punishments.

Furman, 408 U.S. at 274 (Brennan, J., concurring). Unless *Miller* is applied retroactively, children who lacked sufficient culpability to justify the life without

parole sentences they received will remain condemned to die in prison simply because they exhausted their direct appeals. As the Illinois Appellate Court concluded in finding *Miller* retroactive for cases on collateral review, in addition to mandatory life without parole sentences constituting "cruel and unusual punishment[,]" "[i]t would also be cruel and unusual to apply that principle only to new cases." *Williams*, 982 N.E.2d at 197. *See also Hill v. Snyder*, No. 10-14568, 2013 WL 364198 at *2 (E.D. Mich., Jan. 30, 2013) (proclaiming that "if ever there was a legal rule that should – as a matter of law and morality – be given retroactive effect, it is the rule announced in *Miller*. To hold otherwise would allow the state to impose *unconstitutional* punishment on some persons but not others, an intolerable miscarriage of justice."). The constitutionality of a child's sentence cannot be determined by the arbitrary date his sentence became final. Such a conclusion defies logic, and contravenes Eighth Amendment jurisprudence.

Finally, the U.S. Supreme Court has found that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Trop v. Dulles*, 356 U.S. 86, 100 (1958). *See also Furman*, 408 U.S. at 270 (Brennan, J., concurring) ("The State, even as it punishes, must treat its members with respect for their intrinsic worth as human beings."). The Eighth Amendment's emphasis on dignity and human worth has special resonance when the offenders being punished are children. As Justice Frankfurter wrote over fifty years ago in *May v. Anderson*,

345 U.S. 528, 536 (1953), "[c]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." More recently, the Court has found that:

> [juveniles'] own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. . . . From 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.

Roper, 543 U.S. at 570.

In order to treat Appellant and the other children sentenced to mandatory life without parole sentences seeking collateral review with the dignity that the Eighth Amendment requires, *Miller* must apply retroactively. "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." *Graham*, 560 U.S. at 79. Requiring Appellant to serve his constitutionally disproportionate mandatory life without parole sentence fails to respect his intrinsic worth as a human being.

V. CONCLUSION

The Supreme Court's decision in *Miller* applies retroactively to cases on collateral review like Appellant's. While this conclusion flows naturally from the Supreme Court's application of *Miller* to its companion case, *Jackson v. Hobbs*, the Supreme Court's jurisprudence makes clear that no other reading of the *Miller* decision would be consistent with the spirit or meaning of the Eighth Amendment. Accordingly, this Court should vacate Appellant's sentence and remand the case for sentencing in accordance with *Miller*.

Respectfully submitted,

s/ Marsha L. Levick
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APPENDIX

Identity of *Amici* and Statements of Interest

ORGANIZATIONS

Juvenile Law Center, founded in 1975, is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and; that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. Juvenile Law Center has worked extensively on the issue of juvenile life without parole, filing *amicus* briefs in the U.S. Supreme Court in both *Graham v. Florida*, 130 S. Ct. 2011 (2010) and *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

The **Campaign for the Fair Sentencing of Youth** (CFSY) is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Our vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under age eighteen. The CFSY includes advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009, the CFSY uses a multi-pronged approach, which includes coalition-building, public education, strategic advocacy and collaboration with impact litigators – on both state and national levels – to accomplish our goal.

Children's Law Center of Los Angeles (CLC) is a non-profit public interest law corporation that receives appointments from the Los Angeles County and the Sacramento County dependency courts to serve as counsel for abused and neglected youth. CLC serves as counsel for the vast majority of youth under the jurisdiction of Los Angeles and Sacramento counties. It has been providing children with representation for twenty years, and serves a greater number of children than any other such organization in the country. CLC is also actively engaged in local, statewide and national legislative and other reform efforts.

Council on Crime and Justice (the "Council") is an independent non-profit organization located in Minnesota and established in 1957 to assist prisoners and their families with reintegration into the community. Since that time, the Council has endeavored to be a leader in innovative and successful improvements to Minnesota's criminal justice system, working with and on behalf of persons with criminal histories, victims and those most at risk of involvement in the criminal justice system. The Council's mission is to build community capacity to address the causes and consequences of crime and violence through research, direct service, and advocacy. The goal of this capacity building is to create safer, stronger, and more equitable communities.

One of the Council's goals is to enhance public safety and community vitality by increasing the opportunity for second chances for those who have violated the law. Over the last several decades, the Council has spearheaded and strengthened multiple efforts to this end, including developing diversionary programs, working with incarcerated men, women and youth, and working with stakeholders across the state to advocate for a more fair and just system. The Court's decision in this case will have a broad impact, which will affect the clients and communities the Council seeks to serve.

The **Defender Association of Philadelphia** is an independent, non-profit corporation created in 1934 by a group of Philadelphia lawyers dedicated to the ideal of high quality legal services for indigent criminal defendants. Today approximately two hundred and fifteen full time assistant defenders represent clients in adult and juvenile, state and federal, trial and appellate courts, and at civil and criminal mental health hearings as well as at state and county violation of probation/parole hearings. Association attorneys also serve as the Child Advocate in neglect and dependency court. More particularly, Association attorneys represent juveniles charged with homicide and facing life imprisonment without

the possibility of parole. The Defender Association attorneys have had numerous juveniles given sentences of life imprisonment without parole. The constitutionality of such sentences has been challenged at the trial level and at the appellate level by Defender Association lawyers.

ISAIAH is an organization of congregations, clergy, and people of faith acting collectively and powerfully towards racial and economic equity in the state of Minnesota. ISAIAH was founded in 2000 through the merger of three independent congregation-based community organizations: Great River Interfaith Partnership (GRIP) in the St. Cloud area; Interfaith Action in Greater Minneapolis; and St. Paul Ecumenical Alliance of Congregations (SPEAC) in Greater St. Paul. Through leadership development, collective action, and issue campaigns, ISAIAH has been a major voice for justice in the areas of housing, transportation, education, health and civic inclusion. ISAIAH leaders work with public officials at the local, regional, state and federal level to advance innovative solutions to systemic racism. In 2012, ISAIAH mobilized to defeat the proposed state constitutional amendment requiring voters to produce photo identification. In 2013, ISAIAH was instrumental in pushing for additional funding for state juvenile detention alternatives initiative. ISAIAH is affiliated with the PICO National Network.

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

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 **Legal Rights Center** is a non-profit law firm in Minneapolis, MN, founded in 1970 by a coalition of organized communities of color as an instrument of community empowerment. Our mission is to provide the highest quality criminal defense and restorative justice services to low-income people, and in particular people of color. Our focus is Hennepin County, our priority is juveniles, and our services are at no cost. The Legal Rights Center believes in fair sentencing for youth that reflects both human rights and the values of our community, both of which take account of the fundamental difference between youth and adults. Central to this commitment to fair sentencing for youth is the Legal Rights Center's belief that the Eight Amendment's prohibition against mandatory life without parole sentences for juveniles as cruel and unusual punishment must apply retroactively.

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 approximately 10,000 and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar

Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates.

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

The **National 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 through its legal journal, *Youth Law News*, and 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** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile

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

The mission of the **National Juvenile Justice Network** (NJJN) leads and supports a movement of state and local juvenile justice coalitions and organizations to secure local, state and federal laws, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises forty-one members in thirty-three states, all of which seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are fundamentally different from adults and should be treated in a developmentally appropriate manner focused on their rehabilitation. Youth should not be transferred into the punitive adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole, and are exposed to serious, hardened criminals. NJJN supports a growing body of research that indicates the most effective means for addressing youth crime are rehabilitative, community-based programs that take a holistic approach, engage youth's family members and other key supports, and provide opportunities for positive youth development.

National Legal Aid & Defender Association (NLADA), founded in 1911, is America’s oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. For 100 years, NLADA has pioneered access to justice and right to counsel at the national, state and local level through the creation of many public defender systems and development and refinement of nationally applicable standards for legal representation. NLADA serves as a collective voice for our country’s public

defense providers and civil legal aid attorneys and provides advocacy, training, and technical assistance to further its goal of securing equal justice.

The Association pays particular attention to procedures and policies that affect the constitutional rights of the accused, both adults and youth. Specifically, NLADA is committed to ensuring the effective representation of youth, the protection of constitutional safeguards that recognize the unique characteristics of adolescents, and the fair and just administration of justice.

The **Orleans Public Defenders** (OPD) provides the citizens of Orleans Parish with the highest quality client-centered legal representation in Louisiana's criminal justice system. Its vision is to create a community-oriented defender office built upon the zealous defense of the poor and indigent while acknowledging the strengths of clients, families, and communities. OPD represents a substantial number of defendants in the city of New Orleans. In 2012, OPD represented defendants in more than 27,000 cases, including children charged as adults. This case addresses an issue of great importance to OPD because there are nearly seventy prisoners serving life in prison without the possibility of parole from Orleans Parish for a homicide offense committed when they were children.

The **Pacific Juvenile Defender Center** is a regional affiliate of the National Juvenile Defender Center. Members of the Center include juvenile trial lawyers, appellate counsel, law school clinical staff, attorneys and advocates from nonprofit law centers working to protect the rights of children in juvenile delinquency proceedings in California and Hawaii. The Center engages in appellate advocacy, public policy and legislative discussions with respect to the treatment of children in the juvenile and criminal justice systems. Center members have extensive experience with cases involving serious juvenile crime, the impact of adolescent development on criminality, and the differences between the juvenile and adult criminal justice systems. These cases, involving the imposition of Life Without the Possibility of Parole on juvenile offenders, present questions that are at the core of the Pacific Juvenile Defender Center's work.

The **Public Defender Service for the District of Columbia** (PDS) is a federally funded, independent public defender organization; for 50 years, PDS has provided quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system. PDS provides legal

representation to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS also represents classes of youth, including a class consisting of children committed to the custody of the District of Columbia through the delinquency system.

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

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

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research, training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every State. The Center has long been involved in public policy discussions, legislation and court challenges involving the treatment of juveniles as adults. Center attorneys were

consultants in the John D. and Catherine T. MacArthur Foundation project on adolescent development, and have recently authored a law review article on juvenile competence to stand trial. The imposition of life without parole sentences upon juveniles is an issue that fits squarely within the Center's long-term interests.

INDIVIDUALS

Stephen K. Harper is a clinical professor at Florida International University College of Law. Prior to that he taught juvenile law as an adjunct professor at the University of Miami School of law for 13 years. From 1989 until 1995 he was the Chief Assistant Public Defender in charge of the Juvenile Division in the Miami-Dade Public Defender's Office. In 1998 he was awarded the American Bar Association's Livingston Hall Award for "positively and significantly contributing to the rights and interests" of children. Harper took a leave of absence from his job to coordinate the Juvenile Death Penalty Initiative which ended when the Supreme Court of the United States ruled in *Roper v. Simmons*, 543 U.S. 551 (2005). In 2005 he, along with Seth Waxman, received the Southern Center for Human Rights Frederick Douglass Award for his work in ending the juvenile death penalty. He has consulted in many juvenile cases in Florida, Guantanamo and the United States Supreme Court (including *Graham v. Florida*, (130 S. Ct. 2011 (2010) and *Miller v. Alabama*, 567 U.S.___ (2012)).

Kristin Henning is a Professor of Law and Co-Director of the Juvenile Justice Clinic at the Georgetown Law Center. Prior to her appointment to the Georgetown faculty, Professor Henning was the Lead Attorney for the Juvenile Unit of the Public Defender Service (PDS) for the District of Columbia, where she represented youth charged with delinquency and helped organize a specialized unit to meet the multi-disciplinary needs of children in the juvenile justice system. Professor Henning has been active in local, regional and national juvenile justice reform, serving on the Board of the Mid-Atlantic Juvenile Defender Center, the Board of Directors for the Center for Children’s Law and Policy, and the D.C. Department of Youth Rehabilitation Services Advisory Board and Oversight Committee. She has served as a consultant to organizations such as the New York City Department of Corrections and the National Prison Rape Elimination Commission, and was appointed as a reporter for the ABA Task Force on Juvenile Justice Standards. Professor Henning has published a number of law review articles on the role of child's counsel, the role of parents in delinquency cases, confidentiality, and victims' rights in juvenile courts, and therapeutic jurisprudence

in the juvenile justice system. Professor Henning also traveled to Liberia in 2006 and 2007 to aid the country in juvenile justice reform and was awarded the 2008 Shanara Gilbert Award by the Clinical Section of the Association of American Law Schools in May for her commitment to social justice on behalf of children. Professor Henning received her B.A. from Duke University, a J.D. from Yale Law School, and an LL.M. from Georgetown Law Center. Professor Henning was a Visiting Professor of Law at NYU Law School during the Spring semester of 2009 and is a currently a Visiting Clinical Professor of Law at Yale Law School.

Frank Vandervort is a clinical professor of law at the University of Michigan Law School whose primary interests include juvenile justice, child welfare, and interdisciplinary practice. He co-founded the Juvenile Justice Clinic with Prof. Kimberly Thomas in 2009. Professor Vandervort is the president-elect of the American Professional Society on the Abuse of Children and serves as a consultant to Trauma Informed Child Welfare Systems, a federally funded training and technical assistance program. He received a B.A. from Michigan State University and a J.D. from Wayne State University.

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 29 and 32 of the Federal Rules of Appellate Procedure, I certify that this brief is proportionally spaced, has a typeface of 14 points or more, and contains 5,623 words.

s/ Marsha L. Levick
MARSHA L. LEVICK

DATED: January 28, 2014

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on January 28, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Marsha L. Levick
MARSHA L. LEVICK

DATED: January 28, 2014