IN THE
COURT OF APPEALS OF MARYLAND

DANIEL CARTER, Petitioner,

v. September Term, 2017

STATE OF MARYLAND, Respondent. No. 54

JAMES E. BOWIE, Petitioner,

v. September Term, 2017

STATE OF MARYLAND, Respondent. No. 55

MATTHEW TIMOTHY MCCULLOUGH, Petitioner,

v. September Term, 2017

STATE OF MARYLAND, Respondent. No. 56

STATE OF MARYLAND, Petitioner,

v. September Term, 2017

PHILLIP CLEMENTS, Respondent. No. 57

BRIEF OF JUVENILE LAW CENTER; JUVENILE SENTENCING PROJECT, LEGAL CLINIC, QUINNIPIAC UNIVERSITY SCHOOL OF LAW; AND THE SENTENCING PROJECT AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS CARTER, BOWIE AND MCCULLOUGH AND RESPONDENT CLEMENTS

Booth Ripke
#9812170082
NATHANS & BIDDLE LLP
120 E. Baltimore St., Ste. 1800
Baltimore, MD 21202
T: (410) 783-0272
bripke@nathanslaw.com

Marsha L. Levick*
**Pro Hac Vice Pending*
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
T: (215) 625-0551
mlevick@jlc.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Other Authorities

STATEMENT OF THE CASE

Amici[1] incorporate by reference Petitioners, Carter, Bowie, and McCullough's and Respondent Clements' Statements of the Case.

STATEMENT OF THE QUESTIONS PRESENTED

Amici incorporate by reference Petitioners, Carter, Bowie, and McCullough's and Respondent Clements' Statements of the Questions Presented.

STATEMENT OF THE APPLICABLE STANDARD OF REVIEW

Amici incorporate by reference Petitioners, Carter, Bowie, and McCullough's and Respondent Clements' Statements of the Applicable Standard of Review.

STATEMENT OF THE FACTS

Amici incorporate by reference Petitioners, Carter, Bowie, and McCullough's and Respondent Clements' Statements of Facts.

SUMMARY OF THE ARGUMENT

The United States Supreme Court has repeatedly admonished against the imposition of juvenile life sentences without consideration of the hallmark characteristics of youth. "The juvenile should not be deprived of the opportunity to achieve maturity of judgment

[1] Pursuant to Md. R. 8-511(a)(1), *Amici* have obtained written consent of all parties to file this brief in the Court of Appeals of Maryland. Consent is attached hereto.

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 v. Florida*, 560 U.S. 48, 79 (2010). *See also Miller v. Alabama,* 132 S. Ct. 2455, 2469 (2012). A sentence imposed on a child in a nonhomicide case, whether formally labeled life without parole or not, is unconstitutional if it fails to provide a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75. This meaningful opportunity for release must also be provided to juvenile homicide offenders—except in the very rare cases where the sentencer has determined, after giving mitigating effect to the circumstances and characteristics of youth, that the child is irreparably corrupt and his conduct is not a reflection of transient immaturity. *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016).

Carter, Bowie, McCullough, and Clements are currently serving life or the functional equivalent of life sentences for crimes they committed as children. While they may indeed one day become eligible for parole, no individual in Maryland sentenced to life with parole as a juvenile has been approved for release in over twenty years. American Civil Liberties Union Foundation, *False Hope: How Parole Systems Fail Youth Serving Extreme Sentences*, 46 (2016) [hereinafter *False Hope*]. The Sentencing Project, *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences* (2017). Maryland's parole process functions as a system of ad hoc executive clemency. The sentences Appellants and Appellee are serving clearly do not provide them with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75.

ARGUMENT

I. APPELLANTS' AND APPELLEE'S UNCONSTITUTIONAL SENTENCES PRECLUDE A "MEANINGFUL OPPORTUNITY TO OBTAIN RELEASE"

It is well established that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). However, the U.S. Supreme Court has held, that "[a] State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." *Graham v. Florida*, 560 U.S. 48, 82 (2010). *Graham* further clarified that this "meaningful opportunity to obtain release" should be based on "demonstrated maturity and rehabilitation." *Id.* at 75. The Court expanded this holding in *Montgomery*, finding that all juveniles, regardless of the crime for which they were convicted, must have this meaningful opportunity for release. The only exception would be in the "rare and uncommon" circumstance where the sentencer makes a determination—after giving mitigating effect to the characteristics and circumstances of youth—that the particular child is "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016).

A. The Maryland Parole System Is An Unconstitutional Ad Hoc Executive Clemency System

In Maryland, the parole decision is vested solely in the Governor's unfettered discretion. *See Maryland Restorative Justice Initiative v. Hogan*, No. ELH-16-1021, 2017 WL 467731, at *6 (D. Md. Feb. 3, 2017) ("[T]here are currently no statutory or regulatory

provisions that govern the Governor's exercise of his discretion."). Individuals sentenced to life imprisonment are not eligible for parole consideration until they have served 15 years (or the equivalent of 15 years, taking diminution credits into account). Md. Code Ann., Corr. Servs. Art. ("CS") § 7-301(d)(1) (West 2013). Eligible inmates have a parole hearing, CS §§ 7-306, 7-307; *see also* COMAR 12.08.01.18(B)(4) (Oct. 2016), where the Parole Commission must consider several factors, such as the circumstances surrounding the crime and progress the inmate has made during confinement, to determine whether an inmate is suitable for parole. *See* CS § 7-305; *See also* COMAR 12.08.01.18(A)(1)-(2). To determine whether a prisoner who committed a crime as a juvenile is suitable for release on parole, the Commission must also consider youth-related factors referenced in *Miller*, such as age at the time of the crime, maturity level and sense of responsibility, among other factors.[2] COMAR 12.08.01.18(A)(3). To make the final determination about whether to release a prisoner on parole, the Commission examines factors related to the inmate's current circumstances in prison. COMAR 12.08.01.18(A)(4).

Importantly, for individuals serving parole-eligible life sentences, the Commission's recommendation does not suffice; the approval of the Governor is needed. CS § 7-206(3)(i); *see also* § 7-301(d)(4)-(5). Thus, this system functions as ad hoc

[2] The Commission also considers: "(c) Whether influence or pressure from other individuals contributed to the commission of the crime; (d) Whether the prisoner's character developed since the time of the crime in a manner that indicates the prisoner will comply with the conditions of release; (e) The home environment and family relationships at the time the crime was committed; (f) The individual's educational background and achievement at the time the crime was committed; and (g) Other factors or circumstances unique to prisoners who committed crimes at the time the individual was a juvenile that the Commissioner determines to be relevant." COMAR 12.08.01.18(A)(3).

executive clemency. American Civil Liberties Union Foundation, *False Hope: How Parole Systems Fail Youth Serving Extreme Sentences*, 8 (2016) [hereinafter *False Hope*]. The *Graham* Court contemplated a system such as this and concluded that such a release mechanism fails to satisfy the Eighth Amendment. *Graham*, 560 U.S. at 69-70 (concluding that the severity of a life without parole sentence stems from the irrevocable forfeiture of an offender's life and freedom "without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence.") (citing *Solem v. Helm*, 463 U.S. 277, 300-301 (1983)).

Although many individuals serving life sentences in Maryland for crimes committed as juveniles are parole-eligible, none have been released in over two decades. *False Hope* at 46. While in office from 1995 to 2003, former Governor Parris Glendening rejected every parole request made. Although his successor commuted five prisoner sentences from 2003-2007, none were juvenile lifers. *Id.* When Martin O'Malley took the Governor's office in 2007, he did not act on the Parole Commission's recommendations for the release of fifty prisoners serving life sentences. *Id.* Maryland granted parole to zero persons serving a purportedly parole-eligible life sentence between 1996 and 2014. The Sentencing Project, *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences,* 8 (2017). In response, "the Maryland General Assembly voted to require the governor to act upon a parole commission's recommendation within 180 days. Former Governor O'Malley subsequently denied dozens of pending parole recommendations, commuting only three prisoners." *False Hope* at 83. To date, current Governor Larry Hogan has paroled one person serving a life sentence, but the individual was not convicted as a juvenile. Compl.

for Decl. Relief, Inj. Relief, and Att'y's Fees at 38, No. 1:2016cv01021 (D. Md. April 6, 2016).

Recently, a U.S. District Court ruled that the ACLU of Maryland's lawsuit on behalf of individuals serving life sentences for offenses committed as youth must be permitted to move forward, rejecting in part the State's motion to dismiss the case. *Maryland Restorative Justice Initiative*, 2017 WL 467731, at *27. The lawsuit argues that plaintiffs "have been and continue to be denied a meaningful opportunity for release," because of the requirement that the Governor approve release of any individual deemed eligible for release. *Id.* at *1. The court held that "[a] parole procedure does 'little in the way of actually making parole a possibility' when 'the decision of whether to commute a sentence is entirely up to [the governor's] discretion and the political tides of the day.' And, a system of executive clemency, which lacks governing standards, does not constitute a meaningful opportunity to obtain release for Juvenile Offenders." *Id.* at *26 (second alteration in original) (quoting Funchess v. Prince, CV 14-2105, 2016 WL 756530, at *5 (E.D. La. Feb. 25, 2016)).

Despite a low rate of recidivism among parolees, the common belief is that if a person commits a violent crime while on parole, the releasing governor's political career could suffer irreparable damage. *False Hope* at 83. There is no reason to believe, absent judicial intervention, that Maryland's current or future governors, regardless of party, will take a different course of action.[3] The "political tides of the day" have all too often proven

[3] In 1995, former Governor Glendening "announced that he would not approve parole for any inmates sentenced to life imprisonment unless they were very old or terminally ill. The

a formidable obstacle to reform-driven action by the executive branch of government. Absent a meaningful parole process, life sentences handed down to individuals convicted as juveniles are functionally equivalent to life without parole sentences because those individuals will never be granted the opportunity to obtain release based on demonstrated maturity and rehabilitation.

B. Individuals Sentenced To Life Imprisonment As Juveniles Must Be Provided A "Meaningful Opportunity To Obtain Release"

Although Maryland state courts have not addressed whether the state's parole system satisfies the Supreme Court's requirement to provide a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," other courts have concluded that life or life-equivalent sentences *with* parole may violate the Eighth Amendment if a state's parole practices and criteria do not provide juvenile offenders with a realistic and meaningful opportunity for release that is based on maturity and rehabilitation.

A sentence fails to provide a realistic and meaningful opportunity for release if the possibility of release is, as in Maryland, remote or uncertain in light of a decision maker's

---

Governor's announcement went on to state that he had 'directed the Parole [Commission] not to even recommend-to not even send to [his] desk-a request for parole for murderers and rapists.'" *Lomax v. Warden, Maryland Corr. Training Ctr.*, 356 Md. 569, 573 (1999) (alterations in original). Notably, in 2011, in response to a Baltimore Sun columnist, Glendening expressed regret over his then firm stance that individuals who committed serious crimes would not be paroled. "'The problem is, I made it absolute,' leaving no possibility for any lifer to be released unless terminally ill. He said his edict made the parole process 'much more political than it should be' and that he would 'not have a problem' with a change in state law to remove the governor from that process." Dan Rodricks, *Glendening, 'Life means life absolutism was wrong,'* BALTIMORE SUN (Feb 20, 2011).

unguided discretion. *See, e.g.*, *State v. Young*, 794 S.E.2d 274, 279 (N.C. 2016) (concluding that statutory opportunity for periodic review of sentence by superior court judge is not a meaningful opportunity for release because "the statute provides minimal guidance as to what types of circumstances would support alteration or commutation of the sentence" and "the possibility of alteration or commutation . . . is deeply uncertain and is rooted in essentially unguided discretion"); *Funchess v. Prince*, CV 142105, 2016 WL 756530, at *5 (E.D. La. Feb. 25, 2016) (holding that Louisiana's "two-step parole procedure"—where an inmate is required to obtain a sentence commutation from the Governor before becoming eligible for parole—fails to provide a meaningful opportunity for release under the Eighth Amendment).

Criteria guiding the early release decision must focus on a juvenile's rehabilitation and account for youth-related mitigating factors. *See, e.g.*, *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015), *appeal dismissed sub nom. Hayden v. Butler*, 667 Fed. Appx. 416 (4th Cir. Aug. 1, 2016) (per curiam) (mem.) (holding that North Carolina's parole system does not provide a meaningful opportunity for release for juveniles because, *inter alia*, the board fails "to consider 'children's diminished culpability and heightened capacity for change' in their parole reviews"); *Hawkins v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 30 N.Y.S.3d 397, 398, 400-01 (N.Y. App. Div. 2016) (holding that "petitioner was denied his constitutional right to a meaningful opportunity for release when the Board failed to consider the significance of petitioner's youth and its attendant circumstances at the time of the commission of the crime").

Moreover, to ensure that the opportunity for release is based on maturity and rehabilitation as required, parole must not be denied based on the seriousness of the underlying offense. *See, e.g.*, *Atwell v. State*, 197 So. 3d 1040, 1049-50 (Fla. 2016) (holding that Florida's parole system fails to provide a meaningful opportunity for release because, *inter alia*, the parole board is not required to consider *Miller* factors and must "give primary weight to the seriousness of the offender's present criminal offense and the offender's past criminal record"); *Greiman v. Hodges*, 79 F. Supp. 3d 933, 944 (S.D. Iowa 2015) (denying defendants' motion to dismiss based in part on plaintiff's allegation that the parole board denied parole based solely on the seriousness of the offense, thus depriving him of a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation); *LeBlanc v. Mathena*, 841 F.3d 256, 266 (4th Cir. 2016) (reasoning that "to obtain release based on demonstrated maturity and rehabilitation," "the juvenile offender must have a 'chance to later demonstrate that he is fit to rejoin society' and that 'the bad acts he committed as a teenager are not representative of his true character'" and thus "a parole or early release system does not comply with *Graham* if the system allows for the lifetime incarceration of a juvenile nonhomicide offender based solely on the heinousness or depravity of the offender's crime" (quoting *Graham*, 560 U.S. at 75)), *rev'd on procedural grounds sub nom. Virginia v. LeBlanc*, 137 S. Ct. 1726, *reh'g denied*, 138 S. Ct. 35 (2017). [4]

[4] Though the Supreme Court reversed this decision, it did so on procedural grounds, holding that the Fourth Circuit erred by failing to accord the state court's decision the deference owed under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Virginia v. LeBlanc*, 137 S. Ct. at 1729-30. As the Court explained, "[t]hese

Maryland's recent history of denying parole to juvenile offenders is contrary to the Supreme Court's mandate to ensure a meaningful opportunity for release. Maryland is one of seven states where the Parole Commission is statutorily required to conduct an inquiry into the nature or severity of the offense. CS § 7-305; *False Hope* at 66 (Stating that the inquiry into the nature or severity of the offense is mandatory in Indiana, Maryland, Michigan, New Hampshire, New York, Pennsylvania and Texas.). As most juveniles sentenced to life were convicted of serious crimes, very few are recommended for parole. *See False Hope* at 83. This scheme, which allows "a decision-maker to grant or deny early release 'for any reason without reference to any standards,' offer[s] inmates nothing more than a 'bare possibility' of release and therefore do[es] not constitute 'parole' for purposes of the Eighth Amendment." *LeBlanc*, 841 F.3d at 271 (quoting *Solem*, 463 U.S. at 301); *see also Graham*, 560 U.S. at 69-70.

C. A Sentence That Precludes A "Meaningful Opportunity To Obtain Release" Is Unconstitutional Regardless Of Whether It Is Labeled "Life Without Parole" Or Is The Functional Equivalent Of A Life Without Parole Sentence

State courts have recognized that the principles set forth by the Supreme Court in *Miller* and *Graham* apply to sentences that function as the equivalent of life without parole—lengthy term-of-years sentences, aggregate sentences, or life with parole sentences—even where they may not be explicitly labeled as "life without parole." *See*

---

arguments cannot be resolved on federal habeas review. Because this case arises 'only in th[at] narrow context,' the Court 'express[es] no view on the merits of the underlying" Eighth Amendment claim. Nor does the Court 'suggest or imply that the underlying issue, if presented on direct review, would be insubstantial.'" *Id*. at 1729 (citations omitted).

State v. Moore, 76 N.E.3d 1127, 1140–41 (Ohio 2016), *cert. denied*, 138 S. Ct. 62 (2017) ("*Graham* decried the fact that the defendant in that case would have no opportunity to obtain release 'even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.' Certainly, the court envisioned that any nonhomicide juvenile offender would gain an opportunity to obtain release sooner than after three-quarters of a century in prison. *Graham* is less concerned about how many years an offender serves in the long term than it is about the offender having an opportunity to seek release while it is still meaningful." (citation omitted) (quoting *Graham*, 560 U.S. at 79)); *Atwell*, 197 So. 3d at 1050 ("[T]he earliest date Atwell may be released from prison as determined by objective parole guidelines is the year 2130, or one hundred and forty years after Atwell's crime. Atwell, then, has no 'hope for some years of life outside prison walls.'" (quoting *Montgomery,* 136 S. Ct. at 737)); *Casiano v. Comm'r of Corr.,* 115 A.3d 1031, 1047 (Conn. 2015) ("[A] fifty year term and its grim prospects for any future outside of prison effectively provide a juvenile offender with 'no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.'" (quoting *Graham*, 560 U.S. at 79)).

Additionally, courts have held that "*Miller*-type protections, i.e., individualized sentencing evaluations, are constitutionally required in cases where a juvenile is sentenced to either a de facto life sentence, or to a term-of-years that would deprive him of a meaningful opportunity for release during his lifetime." *Hayden*, 134 F. Supp. 3d at 1008; *State v. Null,* 836 N.W.2d 41, 72–76 (Iowa 2013) ("holding that *Miller's* protections are fully applicable to 'a lengthy term-of-years sentence' and require judges sentencing juveniles to recognize: (1) that children are constitutionally different than adults and cannot

be held to the same standard of culpability in sentencing; (2) that children are more capable of change than adults; and (3) that lengthy prison sentences without the possibility of parole for juveniles are appropriate, 'if at all, only in rare or uncommon cases'"). *See also State v. Ramos*, 387 P.3d 650 (Wash. 2017) (applying *Miller* to defendant's aggregate 85-year sentence, concluding that the case "clearly" applies to "any juvenile homicide offender who might be sentenced to die in prison without a meaningful opportunity to gain early release based on demonstrated rehabilitation"); *State v. Zuber*, 152 A.3d 197 (N.J. 2017), (applying *Miller* and *Graham* to defendants' 110-year and 75-year sentences); *People v. Reyes*, 63 N.E.3d 884 (Ill. 2016) (concluding that a mandatory aggregate sentence of 97 years' imprisonment violates *Miller*); *State v. Boston*, 363 P.3d 453 (Nev. 2015) (concluding that aggregate sentence requiring 100 years in prison before parole violates *Graham*); *People v. Caballero*, 282 P.3d 291 (Cal. 2012) (holding that total effective term of 110 years-to-life for nonhomicide offense is prohibited under *Graham*), *superseded by statute*, CAL. PENAL CODE § 3051 (West 2016) (which provides parole eligibility for any prisoner that was under 23 years of age at the time of the offense after 15, 20 or 25 years, depending on the length of their sentence).

The Supreme Court clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled. The Court 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 [term-of-year] sentences . . ., the total of which exceeds his normal life expectancy." *Sumner v. Shuman,* 483 U.S. 66, 83 (1987). The Iowa Supreme Court used this logic in

vacating mandatory 60-year sentences for juvenile homicide offenders pursuant to *Miller* and *Graham*, reasoning that "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).

Labels and semantics cannot obscure the fact that life sentences handed down to those who committed crimes as juveniles in Maryland are functionally equivalent to life sentences *without* the possibility of parole. Courts cannot be allowed to foreclose a youth's eventual release and frustrate the constitutional requirements by "making the judgment at the outset that [juvenile] offenders never will be fit to reenter society." *See Graham*, 560 U.S. at 75. The *Graham* Court warned that "[i]ncapacitation cannot override all other considerations, lest the Eighth Amendment's rule against disproportionate sentences be a nullity." *Id.* at 73. "[J]ustify[ing] life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible[,]" and such judgment would be "questionable" due to the characteristics of youth, and the capacity for juveniles to change. *Id.* at 72-73.

D. Scientific Research On Recidivism Supports Providing Juvenile Offenders With A Truly Meaningful Opportunity To Obtain Early Release

The Supreme Court has recognized 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 v. Simmons*, 543 U.S. 551, 570 (2005) (quoting Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental 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, *Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop*. 3 (Chicago, IL: MacArthur Foundation 2014), *available at* http://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf.

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.*, Models for Change, *Research on Pathways to Desistance: December 2012 Update* 3-4 (MacArthur Foundation 2014) *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.").

Consistent with this research, the Florida Supreme Court recently noted that their jurisprudence made it

> clear that we intended for juvenile offenders, who are otherwise treated like adults for purposes of sentencing, to retain their status as juveniles in some sense. In other words, we have determined . . . that juveniles who are serving lengthy sentences are entitled to periodic

> judicial review to determine whether they can demonstrate maturation and rehabilitation.

Kelsey v. State, 206 So. 3d 5, 10 (Fla. 2016). The court noted that its earlier decision held that "*Graham* was not limited to certain sentences but rather was intended to insure [sic] that 'juvenile nonhomicide offenders will not be sentenced to terms of imprisonment without affording them a meaningful opportunity for early release based on a demonstration of maturity and rehabilitation.'" *Kelsey*, 206 So. 3d at 9 (quoting *Henry v. State*, 175 So. 3d 675, 680 (Fla. 2015).

If an opportunity for release is to be "meaningful" juveniles sentenced to life imprisonment must have the opportunity to demonstrate their maturity and rehabilitation. Conducting early and regular assessments of individuals sentenced as juveniles would enable the reviewers to evaluate any changes in maturation, progress, and performance, as well as provide an opportunity to confirm that the individual 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 treatment" for "juvenile offenders, who are most in need of and receptive to rehabilitation"). The parole process must then consider the mitigating circumstances of youth and the factors properly identified in COMAR 12.08.01.18(A)(3). The focus must be on rehabilitation—not the severity of the offense. Finally, for the opportunity to be "meaningful," when the Parole Commission recommends a prisoner for release, there should be a realistic likelihood that the individual will be freed. *See LeBlanc*, 841 F.3d at 266; *see also Graham*, 560 U.S. at 79-81.

CONCLUSION

Wherefore, *Amici* respectfully request that for the foregoing reasons this Honorable Court vacate Petitioners' and Respondent's life sentences and resentence them in accordance with the Supreme Court decisions in *Graham*, *Miller*, and *Montgomery*.

Respectfully Submitted,

Booth Ripke
#9812170082
NATHANS & BIDDLE LLP

Marsha L. Levick
(*Pro hac vice pending*)
JUVENILE LAW CENTER

Counsel for Amici Curiae

Dated: December 20, 2017

Font: Times New Roman 13

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 4,266 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

Booth Ripke

CERTIFICATION REGARDING RESTRICTED INFORMATION

I HEREBY CERTIFY that this document does not contain any restricted information.

Booth Ripke

CERTIFICATION OF COMPLIANCE WITH MARYLAND RULES

As to the attached document, I hereby certify that the attached filing complies with the Maryland Rules, as follows:

No Restricted Information – No certificate of redactions needed

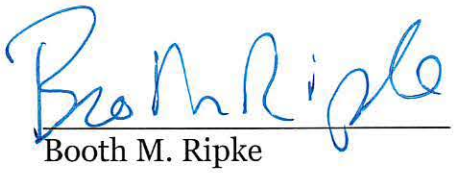
1. Pursuant to Rule 20-201, this document does not contain any restricted information as defined in the Maryland Rules. Therefore, no redacted or un-redacted copies are necessary under Rule 20-201;

Certificate of Service

2. There is a written and signed certificate of service attached to this Request pursuant to Rule 20-205(d); and

Signature

3. Pursuant to Rule 20-107, all documents requiring a signature are signed.



Booth M. Ripke

APPENDIX

INTEREST AND IDENTITY OF AMICI CURIAE

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.

Established in 2012, the **Juvenile Sentencing Project** is a project of the Legal Clinic at Quinnipiac University School of Law. The Juvenile Sentencing Project focuses on issues relating to long prison sentences imposed on children. The Juvenile Sentencing Project researches and analyzes responses by courts and legislatures nationwide to the U.S. Supreme Court's decisions in Graham v. Florida, Miller v. Alabama, and Montgomery v. Alabama, and produces reports and memoranda for use by policymakers, courts, scholars, and advocates. Recognizing that children have a great capacity to mature and change, the Juvenile Sentencing Project advocates for sentences for children that provide a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

The Sentencing Project, founded in 1986, is a national nonprofit organization engaged in research and advocacy on criminal justice and juvenile justice reform. The organization is recognized for its policy research documenting trends and racial disparities

within the justice system, and for developing recommendations for policy and practice to ameliorate those problems. The Sentencing Project has produced policy analyses that document the increasing use of sentences of life without parole for both juveniles and adults, and has assessed the impact of such policies on public safety, fiscal priorities, and prospects for rehabilitation. Staff of the organization are frequently called upon to testify in Congress and before a broad range of policymaking bodies and practitioner audiences.

IN THE
COURT OF APPEALS OF MARYLAND

DANIEL CARTER, Petitioner,

v. September Term, 2017

STATE OF MARYLAND, Respondent. No. 54

JAMES E. BOWIE, Petitioner,

v. September Term, 2017

STATE OF MARYLAND, Respondent. No. 55

MATTHEW TIMOTHY MCCULLOUGH, Petitioner,

v. September Term, 2017

STATE OF MARYLAND, Respondent. No. 56

STATE OF MARYLAND, Petitioner,

v. September Term, 2017

PHILLIP CLEMENTS, Respondent. No. 57

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day December, 2017, an electronic copy of the foregoing was served via MDEC, and two paper copies of the foregoing were served via United States First Class mail on each of the following:

Robert Taylor, Jr.
Assistant Attorney General
Criminal Appeals Division
Office of the Attorney General
200 Saint Paul Place, 17th Floor
Baltimore, MD 21202-2021
rtaylor@oag.state.md.us

Brian M. Saccenti
Assistant Public Defender
Office of the Public Defender
Appellate Division
6 Saint Paul St., Ste. 1302
Baltimore, MD 21202
bsaccenti@opd.state.md.us

Russell Butler, Esq.
MCVRC
1001 Prince George's Blvd, Ste. 750
Upper Marlboro, MD 20904

Booth Ripke

IN THE COURT OF APPEALS OF MARYLAND

DANIEL CARTER	*	
v.	*	**September Term, 2017**
STATE OF MARYLAND	*	**No. 54**
* * * * * * * * * * *		
JAMES E. BOWIE	*	
v.	*	**September Term, 2017**
STATE OF MARYLAND	*	**No. 55**
* * * * * * * * * * *		
MATTHEW TIMOTHY McCULLOUGH	*	
v.	*	**September Term, 2017**
STATE OF MARYLAND	*	**No. 56**
* * * * * * * * * * *		
STATE OF MARYLAND	*	
v.	*	**September Term, 2017**
PHILLIP JAMES CLEMENTS	*	**No. 57**
* * * * * * * * * * *		

CONSENT TO THE FILING OF *AMICUS CURIAE* BRIEFS

Counsel for the parties in the above-references cases hereby consent to the filing of *amicus curiae* briefs by (1) the Juvenile Law Center; (2) the University of Baltimore School of Law's Juvenile Justice Project; (3) the University of Maryland

Carey School of Law Clinic Program on behalf of approximately five individuals who are presently or recently were serving life sentences for crimes committed when they were juveniles; (4) the Criminal Justice Clinic at the American University Washington College of Law; and (5) the American Civil Liberties Union of Maryland.

Respectfully submitted,

Brian Saccenti
Assistant Public Defender
Appellate Division
Office of the Public Defender
6 St. Paul St., Ste. 1302
Baltimore, MD 21202
(410) 767-8556
bsaccenti@opd.state.md.us

Counsel for Daniel Carter, James E. Bowie, Matthew Timothy McCullough and Phillip James Clements

Robert Taylor, Jr.
Assistant Attorney General
Criminal Appeals Division
Office of the Attorney General
200 St. Paul Pl., 17th Fl.
Baltimore, MD 21202
(410) 576-6419
rtaylor@oag.state.md.us

Counsel for the State of Maryland