No. 17-1511

IN THE
Supreme Court of the United States

LARRY NEWTON, Jr.,
Petitioner,
v.
STATE OF INDIANA,
Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Indiana, Fifth District

BRIEF OF AMICI CURIAE JUVENILE LAW CENTER, THE PROMISE OF JUSTICE INITIATIVE, AND CHILDREN AND FAMILY JUSTICE CENTER IN SUPPORT OF PETITIONER

MARSHA L. LEVICK*
*Counsel of Record for *Amici*
Riya Saha Shah
Katherine E. Burdick
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Telephone: (215) 625-0551
Email: mlevick@jlc.org

G. Ben Cohen
THE PROMISE OF JUSTICE INITIATIVE
636 Baronne Street, N.O., LA. 70113
Telephone: (504) 529-5955
bcohen@thejusticecenter.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF AMICI[1]

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country. Juvenile Law Center has worked extensively on the issue of juvenile life without parole and *de facto* life sentences, filing amicus briefs in the U.S. Supreme Court in both *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012) and serving as co-counsel in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

The Promise of Justice Initiative (PJI) is a non-profit law office dedicated to upholding the promise of justice in the administration of criminal law. PJI addresses issues concerning fairness, and the

---

[1] Pursuant to Rule 37.2 counsel of record received timely notice of the intent to file this brief. Written consent of all parties has been provided. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici,* their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

excessiveness of punishment. PJI has filed amicus briefs in this Court, and a number of state supreme courts, addressing the excessiveness of harsh punishments, the importance of considering circumstances such as youth, and addressing the role of the courts in addressing the evolving standards of decency.

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

Amici support the petition of Mr. Newton and write separately to underscore the coercive nature of the guilty plea underlying the life without parole sentence in this case.

SUMMARY OF ARGUMENT

Mr. Newton was seventeen years old when he was presented with a Sophie's choice: plead guilty to life without the possibility of parole, or face the real possibility of being sentenced to death. The principal use of capital punishment in the modern era has been to extract guilty pleas to other forms of harsh sentences. In Mr. Newton's case, this prosecutorial practice was especially untenable due to his status as an adolescent, and the fact that this Court later declared unconstitutional the punishment that motivated Mr. Newton's plea decision. *See Roper v. Simmons*, 543 U.S. 551 (2005). Mr. Newton's sentence represents an unconstitutional vestige of the pre-*Roper* era, which this Court has not yet squarely considered.

Extensive jurisprudence from this Court, confirmed by neuro- and social science, makes clear that youth are uniquely vulnerable during plea negotiations. Plea decisions weighing a death sentence against a sentence to die in prison are of the highest stakes, confounding a teenager's ability to make a well-reasoned judgment. This Court has observed that our legal history is "'replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults." *J.D.B. v. North Carolina*, 564 U.S. 261, 273-74 (2011) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). This touchstone of the Court's jurisprudence must apply to *all* aspects of criminal procedure that expose youth to harsh consequences—including the coercive guilty plea underlying the life without parole sentence here.

This Court's understanding of the standards of decency has evolved since Mr. Newton was forced to make this impossible choice. *See Stanford* v. Kentucky, 492 U.S. 361 (1989), *abrogated by Roper v. Simmons*, 543 U.S. 551 (2005). It would be unconstitutional to impose this choice today. *See Roper,* 543 U.S. 551. Mr. Newton should not be forever trapped by the sentence imposed under these extraordinary circumstances. The Court should therefore grant certiorari to clarify that juvenile life without parole sentences, even those imposed by plea agreements, must be afforded the protections this Court laid out in *Miller v. Alabama*, 567 U.S. 460 (2012).[2]

ARGUMENT

Like Mr. Newton, the vast majority of defendants accept a plea rather than proceeding to trial. *See, e.g.*, *Missouri v. Frye*, 566 U.S. 134, 143 (2012). As this Court has noted, "ours is for the most part a system of pleas, not a system of trials." *Id.* (quoting *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (internal quotation omitted)). As such, "[i]n today's criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." *Id.* at 144.

This Court should grant certiorari because evidence, rooted in law and science, demonstrates that young people should not be sentenced to life

[2] *Amici* do not suggest that this Court should vitiate Mr. Newton's entire plea and require the state to re-try the case; rather, we submit that Mr. Newton is entitled to a resentencing hearing conforming to the requirements this Court set forth in *Miller v. Alabama*, 567 U.S. 460 (2012).

without the possibility of parole based on a plea entered into as a teenager—particularly when the plea was only accepted to avoid the death penalty, a sentence this Court later held unconstitutional.

I. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE THREAT OF THE DEATH PENALTY—A PUNISHMENT THIS COURT HAS SINCE RECOGNIZED AS UNCONSTITUTIONAL—RENDERED THE PLEA NEGOTIATIONS COERCIVE

A. The Primary Purpose Of The Death Penalty Today Is To Secure Life Pleas

Capital punishment is a vestigial appendage no longer vital to the functioning of the justice system. This Court once maintained that the death penalty served a critical deterrence function. *Kennedy v. Louisiana*, 554 U.S. 407, 441-42 (2008) (holding capital punishment excessive if it does not "fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." (citing *Gregg v. Georgia*, 428 U.S. 153, 173, 183, 187 (1976))); *but see Gregg*, 428 U.S. at 185 (noting that evidence of deterrence was in fact ambiguous). Today, the clarifying purpose of capital punishment appears to be not to deter offenses, but rather to deter trials. One of the death penalty's only remaining roles in the administration of justice is to drive pleas to other forms of severe sentencing. *See, e.g.*, Sherod Thaxton, *Leveraging Death*, 103 J. CRIM. L. & CRIMINOLOGY 475, 540 n.267 (2013) (citing Susan Ehrhard, *Plea Bargaining and the Death Penalty: An Exploratory Study*, 29 Just. Sys. J. 313, 319 (2008) (describing interviews with prosecutors who admitted that the

death penalty is often used as a bargaining chip to secure life pleas)); CAROL S. STEIKER & JORDAN M. STEIKER, COURTING DEATH, THE SUPREME COURT AND CAPITAL PUNISHMENT, 296-97 (2016) (noting steep decline in death sentences somewhat attributable to expansion of LWOP statutes, and that massive expansion of use of LWOP was directly "fueled by the existence of capital punishment"). It is beyond debate that the death penalty now has a "substantial causal effect on the likelihood that a defendant accepts a plea agreement." Thaxton, *supra*, at 549. *See also* Ashley Nellis, *Tinkering with Life: A Look at the Inappropriateness of Life Without Parole as an Alternative to the Death Penalty*, 67 U. MIAMI L. REV. 439, 450 (2013) ("[T]he death penalty is frequently used to leverage a guilty plea in exchange for a reduced sentence of LWOP.") (citing Susan Ehrhard-Dietzel, *The Use of Life and Death as Tools in Plea Bargaining*, 37 CRIM. JUST. REV. 89, 90-91 (2012)).

Prosecutors have even pointed to the important function of the death penalty in extracting life pleas in their efforts to protest proposed legislation to ban capital punishment. For example, in Louisiana, state district attorneys took a "hardline stance" against eliminating the death penalty, arguing that "hanging the possibility of the death penalty over defendants' heads" is a "vital tool in obtaining plea bargains." Sam Karlin, Manship School News Service, *Lawmakers to Introduce Bills to Abolish Death Penalty in the State,* GAMBIT WEEKLY (Apr. 24, 2017), https://www.bestofneworleans.com/thelatest/archives/2017/04/24/lawmakers-to-introduce-bills-to-abolish-death-penalty-in-the-state (Louisiana District Attorney Association Board President Reed Walters is quoted stating, "I have a tool of negotiating to say,

'If you don't plead, you subject yourself to the death penalty.'"). Louisiana is not unique in this regard. *See* Gene Johnson, *Strategy Changing on Death Penalty*, THE NEWS TRIB. (July 30, 2007), http://www.thenewstribune.com/news/special-reports/article25853473.html (quoting prosecutor explaining threat of the death penalty is sometimes the only leverage available).

As Professor Douglass observed in Virginia: the reduction in death sentences is not due to a drop in eligible capital murders, but rather "[t]he decline in capital trials results mostly from prosecutors' increasing willingness to trade capital charges for guilty pleas." John G. Douglass, *Death As A Bargaining Chip: Plea Bargaining And The Future Of Virginia's Death Penalty*, 49 U. RICH. L. REV. 873, 886, 873-74 (2015) ("Virginia's death penalty functions primarily as a bargaining chip in a plea negotiation process that resolves most capital litigation with sentences less than death. Virginia prosecutors have not abandoned the death penalty. Instead, increasingly, they bargain with it."). Similarly, Professor Doug Berman has asserted that in Ohio, capital punishment "remains a relatively rarely used sanction" that simply serves as a mechanism for the average prosecutor "to enter plea negotiations in a stronger position." *Death Penalty Often a Plea Bargaining* Tool, Death Penalty Information Center, https://deathpenaltyinfo.org/node/1110 (citing an Associated Press analysis of the 334 capital indictments filed in Franklin County, Ohio, in which 16 (5%) of the cases ended with a death sentence. "Of those sentences, two have been reduced to life in prison without parole, one man died on the row, and

two men were executed this year."[3]) The Virginia and Ohio experiences are mirrored across the country.[4]

Using the death penalty merely to extract life pleas creates an undeniably intimidating and stressful situation for defendants. A number of jurisdictions recognize this and have enacted "defense-must-ask" policies that prevent the use of the death penalty to "coerce" pleas, but incentivize the defense to issue a plea offer. For example, Department of Justice policy provides: "The death penalty may not be sought, and no attorney for the Government may threaten to seek it, solely for the purpose of obtaining a more desirable negotiating position." Department of Justice, United States Attorneys' Manual, 9-10.120. As discussed in section II, *infra*, the high stakes tension of these negotiations is amplified for adolescents.

B. The Plea To Life Without Parole Violates The Core Tenets Of *Roper*

The underlying plea in this case is also tainted by the fact that Mr. Newton at age seventeen accepted the

---

[3] Data on the remaining cases in Franklin County provides a telling picture of the high use of pleas and low use of death penalty, even when it was available: "**183 cases (55%) ended in plea agreements,** and in 111 cases (33%) juries or three-judge panels convicted the offenders but did not sentence them to death. In 45 of those 111 cases, offenders were convicted of lesser charges, and in the remaining 44 cases that went to trial, the juries convicted the offenders of crimes that carried the death penalty but chose prison terms instead. Death Penalty Information Center, *supra*.

[4] Data concerning Pennsylvania, North Carolina, Louisiana, and Arizona has been compiled by contacting counsel in the states, and is available upon request.

life without parole sentence only to avoid the death penalty—a sentence this Court has since deemed unconstitutional for juveniles. *Roper v. Simmons*, 543 U.S. 551 (2005). Central to this Court's determination about juvenile culpability was its understanding that adolescents are less mature, have an underdeveloped sense of responsibility, are more susceptible to negative influences and pressures, and that their personalities are more transitory. *Id.* at 569-70. This Court's holding rested in part on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow: "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.* at 570. In striking down the death penalty for juveniles as cruel and unusual punishment, this Court reasoned that because juveniles have reduced culpability, they cannot be subjected to the harshest penalty reserved for the most depraved offenders; punishment for juveniles must be moderated to some degree to reflect their lesser blameworthiness. "Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults." *Id.* at 571.

Specifically, this Court concluded that "neither retribution nor deterrence provides adequate justification for imposing the death penalty on juvenile offenders." 543 U.S. at 572. "Retribution is not proportional" due to the diminished culpability of youth as a class and their innate capacity for change. *Id.* at 571. Additionally, youth are "less susceptible to deterrence" than adults. *Id.* "[T]he likelihood that the

teenager offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." *Id.* at 572 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 837 (1988) (plurality opinion)).

The Court later extended this line of reasoning in the context of life without parole. *Graham v. Florida* and *Miller v. Alabama* both recognized that although youth does not absolve juveniles of responsibility for their actions, it does lessen their culpability. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (a juvenile's "transgression 'is not as morally reprehensible as that of an adult.'" (quoting *Thompson*, 487 U.S. at 835)); *Miller v. Alabama*, 567 U.S. 460 (2012). The "[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.'" *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 68-69); *See also Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). Punishments that do not reflect these scientific findings are infirm.

Mr. Newton was advised to choose between two unconstitutional penalties: a death sentence for a juvenile or a life sentence without the possibility of parole without any consideration of the vulnerabilities of his youth or his prospects for rehabilitation.

Thus, the impossible choice presented to Mr. Newton—life in prison or the looming possibility of death—was a false one, and one that could not be offered today. It is specious to think Mr. Newton could have rationally conducted a cost-benefit analysis of the two severe sentencing options before him when he

was considering the plea. In fact, had Mr. Newton taken his chances and ultimately received a death sentence at trial, post-*Roper*, his sentence would have been converted to life without parole and subject to the resentencing hearing described in *Miller*. *See generally*, *Roper*, 543 U.S. 551; *Miller*, 567 U.S. 460; *Montgomery*, 136 S. Ct. 718; *see also Adams v. Alabama*, 136 S. Ct. 1796, 1801 (2016) ("That petitioners were once given a death sentence we now know to be constitutionally unacceptable tells us nothing about whether their current life-without-parole sentences are constitutionally acceptable." (Sotomayor, J., concurring) (mem.)). It defies logic that Mr. Newton would not receive the benefit of this Court's sentencing decisions recognizing the unique attributes of youth. On the contrary, Mr. Newton's plea was contaminated because it was made in the shadow of an unconstitutional alternative punishment, rendering the resulting life without parole sentence inescapably tainted.

II. THIS COURT SHOULD GRANT CERTIORARI BECAUSE ADOLESCENTS ARE UNIQUELY VULNERABLE DURING PLEA NEGOTIATIONS

Over fifty years of research has demonstrated that the "commonsense conclusions" of this Court, *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011), have a strong basis in medical, psychological, and scientific fact: adolescents like Mr. Newton, by their age alone, are prone to plead guilty without making a knowing and intelligent decision to waive their constitutional rights.

A. This Court's Jurisprudence Recognizes The Fundamental Difference Between Adolescent And Adult Decision-making

This Court's decisions have repeatedly emphasized the principle that youth are developmentally different from adults and that these differences are relevant to their constitutional rights, particularly in the justice system. *See, e.g.*, *Roper*, 543 U.S. at 569-74; *Graham*, 560 U.S. at 82 (holding that it is unconstitutional to impose life without parole sentences on juveniles convicted of non-homicide offenses); *J.D.B.*, 564 U.S. at 271-72 (holding that a child's age must be taken into account for the purposes of the *Miranda* custody test); *Miller*, 567 U.S. at 465 (2012) (holding that mandatory life without parole sentence for juveniles convicted of homicide is unconstitutional).

It is now beyond debate that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham*, 560 U.S. at 76; *see also Miller*, 567 U.S. at 473-74; *Roper*, 543 U.S. at 569. This Court has grounded its conclusions that youth merit distinctive treatment under the law not only in "common sense," but also in scientific research showing that teenagers are more impulsive, more susceptible to coercion, less mature, and more capable of change than adults. *See J.D.B.*, 564 U.S. at 272-73, 280; *Graham*, 560 U.S. at 68-69; *Miller*, 567 U.S. at 471-72; *Roper*, 543 U.S. at 569-70. Youth "lack the experience, perspective, and judgment to . . . avoid choices that could be detrimental to them." *J.D.B.*, 564 U.S. at 272.

This Court's extensive jurisprudence recognizes what neuroscience confirms: that as a group,

adolescents make decisions differently than adults, in part because of developmental differences in a variety of brain regions. *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 83-92 (2008). The prefrontal cortex, which controls executive functioning, matures late in adolescence. Sarah-Jayne Blakemore & Suparna Choudhury, *Development of The Adolescent Brain: Implications For Executive Function And Social Cognition*, 47 J. CHILD PSYCHOL & PSYCHIATRY 296, 301 (2006). Developmental changes within this brain region are essential to developing higher-order cognitive functions, such as foresight, weighing risks and rewards, and making decisions that require the simultaneous consideration of multiple sources of information. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. OF CLINICAL PSYCHOL. 459, 466 (2009). As a result, adolescents have difficulty assessing potential long-term consequences and tend to assign less weight to consequences that they have identified. *See* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008). At the same time, the parts of the brain responsible for social-emotional regulation are highly active during adolescence, leading to reward-seeking impulses and heightened emotional responses. Steinberg, *Adolescent Development and Juvenile Justice*, *supra*, at 466; *see also* Lindsay C. Malloy et al., *Interrogations, Confessions, And Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & HUM. BEHAV. 2, 182 (2014). Thus, adolescents experience an imbalance in developing brain systems: one highly active system

involved in social-emotional processes leads to emotional volatility, while immature executive functioning hinders behavior control and decision making. Steinberg, *Adolescent Development and Juvenile Justice*, *supra*, at 466; *see also* Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. U.S. 8174, 8174 (2004). Because of the way the brain develops, adolescents have difficulty tempering strong feelings, lack impulse control, have difficulty planning for the future, and lack the ability to compare costs and benefits of alternative courses of action. Laurence Steinberg, T*he Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64-65 (Jacqueline Bhabha ed., 2014). *See also* Elizabeth Cauffman & Laurence Steinberg, 18 BEHAV. SCI. & L., 741, 744-45 (2000) (concluding that immature judgment that engenders impulsiveness, pursuit of immediate gratification, and difficulty perceiving long-term consequences also hampers the decision-making of minors).

These factors are all relevant to the ability of Mr. Newton and other teenagers to carefully consider the plea options before them. In this case, Mr. Newton was faced with an actual life or death decision—an untenable choice to present to a child. As a teenager, his decision was impaired by his diminished cognitive ability to weigh the costs and benefits, risk versus reward, of taking the plea—for example, how likely it would be that he would prevail at trial or what it would really be like to spend the rest of his life in prison—or to properly consider its long-term consequences.

B. Scientific Research Focused On Plea Bargains Confirms That Adolescents' Unique Thought Processes Puts Them At Risk Of Making Poor Plea Decisions

An established and growing body of scientific literature applies the principles of adolescent brain development in the plea context and confirms that teenagers' differing thought processes render them uniquely vulnerable during plea negotiations. In particular, teenagers are less likely than adults to consider the consequences of the plea, and are "overly influenced by short-term outcomes." Allison D. Redlich & Reveka V. Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions*, 40 L. & HUM. BEHAV. 611, 620 (2016) (quoting Tarika Daftary-Kapur & Tina M. Zottoli, *A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court*, 13 Int'l J. Forensic Mental Health 323, 333 (2014)). Leading researcher Thomas Grisso studied this effect in 2003, finding that when deciding whether or not to take a plea, youth "focused on the length of time associated with the plea (two vs. six years), whereas adults' reasoning reflected attempts to weigh the odds (two years vs. six years vs. the possibility of zero years)." Redlich & Shteynberg, *supra*, at 612 (describing findings of Thomas Grisso, et al., in *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333 (2003) and *Adolescents' Decision-making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENGLAND J. CRIM. & CIV. CONFINEMENT 3 (2007)) .

Recent research has confirmed that adolescents weigh different factors than adults when considering a plea. Teenagers are more likely than adults to plead guilty when offered a superficial sentence incentive—specifically, in the study at hand, receiving one year of probation instead of two—regardless of guilt. Rebecca K. Helm et al., *Too Young to Plead? Risk, Rationality, and Plea Bargaining's Innocence Problem in Adolescents*, 24 PSYCHOL. PUB. POL'Y & L. 180, 182 (2018). Teens are more influenced by superficial details than adults, even when those details do not reflect their underlying values. *Id.* In the plea context, "even not guilty adolescents, . . . adolescents . . . who will receive a felony for pleading guilty, and adolescents . . . for whom the chance of conviction at trial is low, are influenced [more than postcollege aged adults] by a superficial sentence length incentive." *Id.* at 189.[5]

Teenagers are also far more likely than adults to plead guilty to crimes they did not commit. Helm, *supra*, at 180, 189; Redlich & Shteynberg, *supra*, at 611 (finding adolescents asked to assume innocence were more than twice as likely as adults to plead guilty). One study found this to be true even when pleading guilty cut against the youths' stated value of not wanting to plead guilty when innocent. Helm, *supra*, at 189. Researchers once again attributed this

[5] There is varying evidence on whether guilty adolescents plead guilty more than adults as a general rule. *Compare* Redlich & Shteynberg, *supra*, at 616 (no difference in guilty plea rates for teenagers and young adults asked to assume guilt) *with* Grisso et al., *supra*, at 337-38, 357 (willingness to accept a guilty plea, when guilty, decreased with age). The fact that superficial sentence incentives influence juveniles is likely to be one of many ways in which the features of adolescent development affect teenagers' plea decisions.

to differences in the adolescent thought process, concluding that "the mental representations that [adolescents] use to process plea decisions do not cue their values, and, hence, [adolescents] failed to retrieve and apply appropriate values during their plea decision making." *Id.* at 189 (citing Kentaro Fujita & H. Anna Han, *Moving Beyond Deliberative Control of Impulses: The Effect of Construal Levels on Evaluative Associations in Self-control* Conflicts, 20 PSYCHOL. SCI. 799 (2009); Valerie F. Reyna, *A New Intuitionism: Meaning, Memory, and Development in Fuzzy-Trace Theory*, 7 JUDGMENT & DECISION MAKING 332 (2012)).

The distinctions between adolescent and adult decision-making may be even more profound because of the high-stress nature of plea deals. Emotional and social factors have particular influence on adolescent decision-making. Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making In The Adolescent Brain*, 15 NAT. NEUROSCI. 1184, 1184-88 (2012). Even adolescents in their late teens are less capable of using "their cognitive capacities as effectively as adults" in emotionally and socially charged environments. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 434 (2012). As such, "[l]imited one-time plea offers, the authority of prosecutors, and other social influence compliance-gaining tactics" in plea negotiations may increase the likelihood that a teenager will plead guilty even if innocent. Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 953 (2010). Youth often react emotionally and impulsively in such circumstances without engaging in a

measured decision-making process, Cauffman & Steinberg, *supra*, at 438, and succumb to perceived pressure from adults. Malloy et al., *supra*, at 181-82. Indeed, Grisso specifically concluded that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as . . . accepting a prosecutor's offer of a plea agreement." Grisso et al., *supra*, at 357. *See also* Elizabeth Scott & Laurence Steinberg, RETHINKING JUVENILE JUSTICE, at 440 (Harvard University Press, 2008) (concluding that adolescents have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures" than do adults). These factors are only multiplied in Mr. Newton's case, in which the alternative to taking a plea was the chilling possibility of execution.

C. Adolescents' Diminished Legal Competence Also Compromises Procedural Protections During Plea Negotiations

Adolescents' young age may also undermine procedural protections in the plea bargaining process, further weakening the basis for the underlying plea. First, developmental differences affect adolescents' capacity to understand their rights, appreciate the benefits and consequences of exercising or waiving those rights, and make reasoned and independent decisions about the best course of action. Malloy et al., *supra*, at 182. As a result of this reduced legal competence, "juveniles' legal decisions, including those related to admissions of guilt, may reflect poor legal abilities/understanding, inappropriate reasoning (e.g., failure to consider the strength of

evidence against them), and/or developmental immaturity." *Id*. *See also* Redlich & Shteynberg, *supra*, at 620 ("Adjudicative competence, in particular, relates directly to one's ability to understand the conditions and consequences of the plea decision, and to participate meaningfully in one's defense."). As one researcher recently noted, "Insofar as the ability to differentiate between viable defenses is linked to legal knowledge, it may be that juveniles are less likely than young adults to identify potentially viable legal defenses stemming from their innocence (e.g., forensic evidence, witnesses, and alibis), thereby increasing the likelihood for youth to falsely plead guilty." *Id.* Research likewise demonstrates that minors rarely comprehend abstract rights, such as those they must relinquish when pleading guilty. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 228-33 (2006). *See also* Redlich & Shteynberg, *supra*, at 620 ("there is a good chance that children will simply not understand that they are waiving their right to trial and admitting guilt" (quoting Drizin and Luloff 293 (2007)).

In addition to not understanding on an abstract level what it means to exercise or waive their constitutional rights, teenagers also lack the context and basic vocabulary to understand the terms of plea deals. A study of court-involved youth revealed that they understood very few of the words commonly used on tender-of-plea forms and in guilty-plea colloquies. In this study, half the group had been instructed in the meaning of thirty-six such words; the other half had not. "The results were striking," in that both groups understood almost none of the vocabulary used. Redlich, *The Susceptibility Of Juveniles To False*

Confessions, *supra*, at 948. "On average, members of the uninstructed group defined only two of thirty-six words correctly, and members of the instructed group, only five words correctly." Id. The study gave "examples of incorrect answers, such as 'presumption of innocence' being defined as '[i]f your attorney feels you didn't do it' (age fifteen) and 'disposition' repeatedly defined as 'bad position' (age sixteen)." *Id.* (alteration in original). Adolescents involved in the criminal justice system are also particularly vulnerable to coercion during plea negotiations because they, like justice-involved adults, have a much higher incidence of "mental impairments, which are known to impede legal comprehension." Redlich, *The Susceptibility Of Juveniles To False* Confessions, *supra*, at 949. Juveniles in custody are three times as likely to be eligible for special education services as those in public schools generally, which is also likely to limit comprehension of plea materials. *See* THE NATIONAL EDUCATION AND TECHNICAL ASSISTANCE CENTER FOR THE EDUCATION OF CHILDREN AND YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT RISK, FACT SHEET: YOUTH WITH SPECIAL EDUCATION NEEDS IN JUSTICE SETTINGS 1 (2014), https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf.

While advice from effective counsel could theoretically temper these effects, research shows that adolescence itself undercuts attorney-client relationships. In one study examining how juvenile and adult detainees approached their attorneys, researchers found that "juveniles were more likely than adults to suggest not talking to their attorney and to recommend denying involvement in the crime, and less likely to recommend honest communication

with one's attorney." Redlich, *The Susceptibility Of Juveniles To False Confessions*, *supra*, at 951. The researchers cautioned, "even with the assistance of effective counsel, it is questionable whether juveniles truly understand and participate in their cases, and follow the advice of or listen to counsel." *Id.*, at 950.

Mr. Newton's plea decision was of the utmost gravity; yet, his youth diminished his ability to understand the terms of the deal and to make a rational, well thought-out decision that appropriately weighed his odds and the consequences of his decision. This Court should not allow so serious a sentence to rest on so shaky a foundation.

CONCLUSION

For the foregoing reasons and those in the petition, this Court should grant the petition for a writ of certiorari.

Respectfully Submitted,

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

G. Ben Cohen
THE PROMISE OF JUSTICE INITIATIVE
636 Baronne Street, N.O., LA. 70113
Telephone: (504) 529-5955
bcohen@thejusticecenter.org

May 21, 2018