IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE CALIFORNIA,

Plaintiff and Respondent,

v.

JOHNNY MENDOZA,

Defendant and Appellant.

Case No. S238032

Court of Appeal No. B259259

Superior Court No. BA396381

From The Judgment Of The Superior Court For The County Of Los Angeles; The Honorable Bob S. Bowers, Judge Presiding

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APPLICATION TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF JUVENILE LAW CENTER AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT AND APPELLANT MENDOZA

JESSICA FEIERMAN
CA State Bar No. 217764
JUVENILE LAW CENTER
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (fax)
jfeierman@jlc.org

Counsel for Amicus Curiae

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE CALIFORNIA, Plaintiff and Respondent, v. JOHNNY MENDOZA, Defendant and Appellant.	Case No. S238032 Court of Appeal No. B259259 Superior Court No. BA396381

APPLICATION FOR PERMISSION TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT AND APPELLANT

Juvenile Law Center[1] respectfully moves this court, pursuant to Cal. Rules of Court, rule 8.520(f), for leave to appear as *amicus curiae* on behalf of Defendant-Appellant Johnny Mendoza. In support, Juvenile Law Center states as follows:

Founded in 1975, Juvenile Law Center 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.

[1] Pursuant to Rule 8.520(f)(4)(A), no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amicus,* their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

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, serving as co-counsel for petitioner in the U.S. Supreme Court case *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and filing amicus briefs in the U.S. Supreme Court in both *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Juvenile Law Center has also participated as either lead counsel, co-counsel or *amicus curiae* in numerous juvenile life without parole cases throughout the nation, including in the Supreme Court of California, Arkansas Supreme Court, Colorado Supreme Court, Florida Supreme Court, Maryland Court of Appeals, Michigan Supreme Court, Supreme Court of Missouri, Ohio Supreme Court, Supreme Court of Pennsylvania, and Supreme Court of Virginia. Additionally, Juvenile Law Center has been a key player in coordinating the effort to obtain and train counsel for the more than 500 juvenile lifers awaiting resentencing in Pennsylvania.

Juvenile Law Center has participated as *amicus curiae* in multiple cases before this court, including *People v. Caballero*, 55 Cal.4th 262 (2012),

People v. Gutierrez, 58 Cal.4th 1354 (2014), *In re George T.*, 33 Cal.4th 620 (2004), *In re Leif Taylor*, No. S232037, *In re R.C.*, No. S234295, *In re Joseph H.*, No. S227929, *People v. Alatriste*, No. S214652 and *People v. Bonilla*, No. S214960.

The questions of law before this Court are closely tied to important and pressing public policy concerns related to the prosecution and sentencing of youth. *Amicus* Juvenile Law Center is well positioned to offer insight to this Court regarding these concerns.

Respectfully submitted,

/s/ Jessica Feierman______
JESSICA FEIERMAN
CA State Bar No. 217764
JUVENILE LAW CENTER
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (fax)
jfeierman@jlc.org

Counsel for Amicus Curiae

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE CALIFORNIA, Plaintiff and Respondent, v. JOHNNY MENDOZA, Defendant and Appellant.	Case No. S238032 Court of Appeal No. B259259 Superior Court No. BA396381

BRIEF OF JUVENILE LAW CENTER AS *AMICUS CURIAE* ON BEHALF OF APPELLANT

JESSICA FEIERMAN
CA State Bar No. 217764
JUVENILE LAW CENTER
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (fax)
jfeierman@jlc.org

Counsel for Amicus Curiae

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Founded in 1975, Juvenile Law Center 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.

ARGUMENT

The United States Supreme Court has banned life without parole sentences for all juvenile offenders unless they are among the rare and uncommon group of youth whose "crime reflects irreparable corruption." *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012) (quotation omitted). Such a sentence passes muster under the Eighth Amendment only in "exceptional circumstances," for "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible," and not for "the vast majority of juvenile offenders." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733-36 (2016). In other words, the United States Supreme Court has

exempted nearly all juveniles from even discretionary life without parole sentences. *Id*. at 734.

To ensure the rarity of this exceptional punishment, courts must assume that any given juvenile's conduct reflects the transient immaturity that the United States Supreme Court has long held is inherent in youth, and require proof to a jury before finding differently. Further, because sentencing a juvenile to life without parole is illegal unless he is irreparably corrupt, to overcome the presumption against life without parole, the state must prove beyond a reasonable doubt that the young person is irreparably corrupt and incapable of rehabilitation.

The California Legislature, in October 2017, passed Senate Bill 394, which mandates a parole review after 25 years for individuals serving life without parole sentences. Importantly, the legislature did *not* do away with life sentences. The availability of a parole mechanism does not reduce the severity of a life sentence nor its unconstitutionality. A sentence that has the potential to result in lifetime incarceration must adhere to the principles set forth by the Supreme Court—they must be rare and uncommon and imposed only on the irreparably corrupt individual whose conduct does not reflect transient immaturity. Although the legislature created a mechanism to determine parole eligibility, it did not set forth procedures to ensure that life sentences are meted out in only the rarest circumstances. The procedural protections necessarily follow from the United States Supreme Court's

direction that sentencing juveniles to life without parole should be an uncommon punishment, reserved for the rare juvenile whose conduct is a result of irreparable corruption, not the transient immaturity inherent to all youth. *Miller*, 567 U.S. at 479-80; *Montgomery*, 136 S. Ct. at 733-36; *see also Adams v. Alabama*, 136 S. Ct. 1796, 1800 (2016) (Sotomayor, J., concurring) (mem.); *Tatum v. Arizona*, 137 S. Ct. 11, 12 (2016) (Sotomayor, J., concurring) (mem.).

I. THIS COURT IS EMPOWERED TO ESTABLISH PROCEDURAL PROTECTIONS THAT PROTECT SUBSTANTIVE RIGHTS

Article VI, Section 1 of the California Constitution grants this Court authority to devise a procedure for implementing substantive law. *See Swarthout v. Superior Court* 208 Cal.App.4th 701, 708-09 (2012). This Court previously invoked rulemaking power to create procedures following the U.S. Supreme Court decision abolishing the death penalty for intellectually disabled individuals in *Atkins v. Virginia*, 536 U.S. 304 (2002).[2] *In re Hawthorne*, 35 Cal.4th 40, 46 (2005) ("[t]he holding in *Atkins* thus left to the

[2] The Pennsylvania Supreme Court similarly invoked rulemaking power in *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011), to devise the necessary procedures for implementing *Atkins* in Pennsylvania, including who must adjudicate an *Atkins* claim (judge or jury), when the determination must be made (pre-trial or at the sentencing phase), which party must bear the burden of proof, and the level of proof required. *Sanchez*, 36 A.3d at 52-53, 62-72.

state supreme courts the responsibility of devising appropriate standards and procedures.”).

This Court has the authority to establish procedural rules to ensure that life sentences are not disproportionately imposed on individuals. Establishing a presumption against the imposition of life without parole is a procedural device that this Court is authorized to devise to implement the rules of substantive law set forth by the Supreme Court. *Swarthout*, 208 Cal.App.4th at 708-09 (“court[s] [have] inherent authority to create a new form or procedure in a particular case, where justice demands it”); *In re Amber S.* 15 Cal.App.4th 1260, 1264 (1993). *See also People v. Engram* 50 Cal.4th 1131, 1146 (2010) (“courts have and should maintain vigorously all the inherent and implied powers necessary to properly and effectively function as a separate department in the scheme of our state government.”); Cal. Const., Article VI, section 1.

This Court’s power of judicial administration includes authority to establish a presumption and set forth the burden of proof necessary to overcome the presumption. The legislative enactment of Senate Bill 394 does not divest this Court of jurisdiction because it does not address the procedures necessary to ensure that life sentences are and remain rare and uncommon.

A. Senate Bill 394 Does Not Eliminate Life Without Parole Sentences

As the *Montgomery* Court explained, neither *Miller* nor *Montgomery* mandated specific procedures "to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *See Montgomery*, 136 S. Ct. at 735 (recognizing that *Miller* left for the States to determine in the first instance how to implement the substantive holding). The Supreme Court recognized that states would need to implement procedural protections to give effect to the substantive holdings in *Montgomery* and *Miller*. *Id.* The Supreme Court's decision to leave procedural rules to the states "does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.* Senate Bill 394 provides for parole eligibility after 25 years, but neither guarantees parole nor precludes life sentences. Therefore, individuals in the state of California may still be disproportionately sentenced to life imprisonment in the absence of procedures to implement the Court's mandate in *Miller* and *Montgomery*.

In *People v. Gutierrez*, this Court held that the Legislature's previous attempt to ameliorate its life without parole sentences by allowing a resentencing after 15 to 24 years, was insufficient under the reasoning of *Graham* and *Miller*. 58 Cal.4th 1354, 1386 (2014). The Court reasoned that the Supreme Court's mandate to ensure a meaningful opportunity for parole

was not the sole consideration. Ensuring parole eligibility is a "corrective" action that does nothing to ensure that life sentences are not imposed improperly. ("*Graham* spoke of providing juvenile offenders with a 'meaningful opportunity to obtain release' as a constitutionally required alternative to—not as an after-the-fact corrective for—'*making the judgment at the outset* that those offenders never will be fit to reenter society." *Id* (quoting *Graham v. Florida,* 560 U.S. 48, 75 (2010))). The Court further reasoned that "[n]either *Miller* nor *Graham* indicated that an opportunity to recall a sentence of life without parole 15 to 24 years into the future would somehow make more reliable or justifiable the imposition of that sentence and its underlying judgment of the offender's incorrigibility 'at the outset.' *Id.* (citing *Graham*, 560 U.S. at 75). The Court concluded that

> Consistent with *Graham, Miller* repeatedly made clear that the sentencing authority must address this risk of error by considering how children are different and how those differences counsel against a sentence of life without parole "*before* imposing a particular penalty."

Id. at 1387 (quoting *Miller*, 567 U.S. at 483. Senate Bill 394 likewise fails to ensure that the penalty is not unconstitutionally imposed "at the outset."

B. Additional Procedural Protections Are Required Before A Court May Impose A Possible Juvenile Life Without Parole Sentence

Because Senate Bill 394 does nothing to protect young people "at the outset" when a life sentence can be imposed, procedural protections must be adopted to ensure that the sentences are only imposed in the most "rare" and

"uncommon" cases. *Montgomery*, 136 S. Ct. at 735. Simply considering the defendant's youth and its attendant characteristics is not enough. *Id.* at 734 ("Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'"); *see also Aiken v. Byars*, 765 S.E.2d 572, 577 (S.C. 2014) (holding that, although some pre-*Miller* juvenile life without parole sentencing hearings under review "touch[ed] on the issues of youth, none of them approach the sort of hearing envisioned by *Miller*."); *Garnett v. Wetzel*, No. 13-3439, 2016 WL 4379244, at *3 (E.D. Pa. 2016) ("[The sentencing court] can not avoid determining whether the defendant is irreparably corrupt and permanently incorrigible.").

The transient immaturity exhibited by the vast majority of juveniles, including those guilty of grave criminal conduct, dictates their exemption from a life without parole sentence. Thus, courts must presume that a juvenile life without parole sentence is disproportionate.

II. THIS COURT SHOULD RECOGNIZE A PRESUMPTION AGAINST LIFE SENTENCES

The United States Supreme Court has consistently recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments. *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). *See also Montgomery v. Alabama*, 136 S. Ct. 718 (2016).

In *Graham*, the Court found that juveniles could not be sentenced to mandatory life sentences without the possibility of parole for nonhomicide offenses. 560 U.S. at 81 (citing *Roper v. Simmons*, 543 U.S. at 572). The Court expanded on this in *Miller*, 567 U.S. 460, banning mandatory life without parole sentences for juvenile homicide offenders. *Miller* found that, "given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon." 567 U.S. at 479.

A. *Miller* Establishes A Presumption Against Imposing Life Without Parole Sentences On Juveniles

Miller establishes a presumption against imposing life without parole sentences on juveniles. *Miller*, 567 U.S. at 479-80. The "juvenile offender whose crime reflects irreparable corruption" will be "rare." *Id.* (quoting *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68). *See also Miller*, 567 U.S. at 471 (a juvenile's "actions [are] less likely to be 'evidence of irretrievabl[e] deprav[ity]' (second and third alterations in original) (quoting *Roper*, 543 U.S. at 570)); *Miller*, 567 U.S. at 472-73 ("Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgement that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'" (quoting *Graham*, 560 U.S. at 72-73)).

Four state supreme courts have held that *Miller* dictates this presumption against juvenile life without parole.[3] The Connecticut Supreme Court found:

> [I]n Miller, the court expressed its confidence that, once the sentencing authority considers the mitigating factors of the offender's youth and its attendant circumstances, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." This language suggests that the mitigating factors of youth establish, in effect, a presumption against imposing a life sentence without parole on a juvenile offender that must be overcome by evidence of unusual circumstances.

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[3] Massachusetts has gone further, banning juvenile life without parole sentences altogether. Relying on United States Supreme Court precedent, the Massachusetts Supreme Judicial Court held that even the discretionary imposition of juvenile life without parole sentences violates the state constitution. *Diatchenko v. Dist. Attorney for Suffolk Dist.,* 1 N.E.3d 270, 283-84 (Mass. 2013). The Court held:

> Given current scientific research on adolescent brain development, and the myriad significant ways that this development impacts a juvenile's personality and behavior, a conclusive showing of traits such as an "irretrievably depraved character," can never be made, with integrity, by the Commonwealth at an individualized hearing to determine whether a sentence of life without parole should be imposed on a juvenile homicide offender. Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.

Id. at 283-84 (footnote and citations omitted).

State v. Riley, 110 A.3d 1205, 1214 (Conn. 2015) (citation omitted), *cert. denied*, 136 S. Ct. 1361 (2016). Similarly, the Missouri Supreme Court held that the state bears the burden of demonstrating, beyond a reasonable doubt, that life without parole is an appropriate sentence. *See State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (en banc) ("[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances."). The Iowa Supreme Court also found that Miller established a presumption against juvenile life without parole:

> [T]he court must start with the Supreme Court's pronouncement that sentencing a juvenile to life in prison without the possibility of parole should be rare and uncommon. Thus, the presumption for any sentencing judge is that the judge should sentence juveniles to life in prison with the possibility of parole for murder unless the other factors require a different sentence.

State v. Seats, 865 N.W.2d 545, 555 (Iowa 2015) (citations omitted). Notably, since its decision in Seats, the Iowa Supreme Court has expanded its decision and held that juvenile life without parole sentences are always unconstitutional pursuant to their state constitution. The Iowa Supreme Court found:

> [T]he enterprise of identifying which juvenile offenders are irretrievable at the time of trial is simply too

> speculative and likely impossible given what we now know about the timeline of brain development and related prospects for self-regulation and rehabilitation. . . . But a district court at the time of trial cannot apply the *Miller* factors in any principled way to identify with assurance those very few adolescent offenders that might later be proven to be irretrievably depraved. In short, we are asking the sentencer to do the impossible, namely, to determine whether the offender is "irretrievably corrupt" at a time when even trained professionals with years of clinical experience would not attempt to make such a determination.
>
> No structural or procedural approach, including a provision of a death-penalty-type legal defense, will cure this fundamental problem.

State v. Sweet, 879 N.W.2d 811, 836-37 (Iowa 2016). *Miller* establishes a presumption against juvenile life without parole sentences. As a result, the appropriate imposition of such sentences will be "rare."

Most recently, the Pennsylvania Supreme Court held that "a faithful application of the holding in *Miller*, as clarified in *Montgomery*, requires the creation of a presumption against sentencing a juvenile offender to life in prison without the possibility of parole." *Batts*, 163 A.3d at 452. The Court reasoned:

> *Miller's* holding, "that life without parole is an excessive sentence for children whose crimes reflect transient immaturity," is a "substantive rule of constitutional law." *Montgomery*, 136 S.Ct. at 735. This, according to *Montgomery*, means that only "the rarest of juvenile offenders" are eligible to receive a sentence of life without the possibility of parole. *Id*. Only in "exceptional circumstances" will life without the possibility of parole be a proportionate sentence for a juvenile. *Id*. at 736. Thus, there can be no doubt that

> pursuant to established Supreme Court precedent, the ultimate fact here (that an offender is capable of rehabilitation and that the crime was the result of transient immaturity) is connected to the basic fact (that the offender is under the age of eighteen).

Id.

B. Montgomery Clarifies And Expands Miller's Presumption Against Imposing Life Without Parole Sentences On Juveniles

Montgomery explained that the Court's 2012 decision in *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734. The Court held "that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption," *id*., noting that a life without parole sentence "could [only] be a proportionate sentence for the latter kind of juvenile offender." *Id*. *Montgomery* establishes that a life without parole sentence for a youth whose crime demonstrates "transient immaturity" is unconstitutional. *Id*. Under the Eighth Amendment, juvenile offenders can only receive a life without parole sentence if their crimes reflect "permanent incorrigibility," "irreparable corruption" or "irretrievable depravity." *Id*. at 733, 734.

Since *Montgomery*, at least one state supreme court has recognized that *Montgomery* clarified *Miller*'s standard in juvenile sentencing cases. The Georgia Supreme Court noted that

> [t]he *Montgomery* majority explains . . . that by *uncommon*, *Miller* meant *exceptionally rare*, and that

> determining whether a juvenile falls into that exclusive realm turns not on the sentencing court's consideration of his age and the qualities that accompany youth along with all of the other circumstances of the given case, but rather on a specific determination that he is *irreparably corrupt*.

Veal v. State, 784 S.E.2d 403, 411 (Ga. 2016). The Georgia Supreme Court continued that "[t]he Supreme Court has now made it clear that [life without parole] sentences may be constitutionally imposed only on the worst-of-the-worst juvenile murderers, much like the Supreme Court has long directed that the death penalty may be imposed only on the worst-of-the-worst adult murderers." *Id*. at 412.

Recent remands by the United States Supreme Court in several re-sentencing cases demonstrate that the determination must weigh in favor of parole eligibility as "youth is the dispositive consideration for 'all but the rarest of children.'" *Adams v. Alabama*, 136 S. Ct. 1796, 1800 (2016) (Sotomayor, J., concurring) (quoting *Montgomery*, 136 S. Ct. at 726). When "[t]here is no indication that, when the factfinders . . . considered petitioners' youth, they even asked the question *Miller* required them not only to answer, but to answer correctly: whether petitioners' crimes reflected 'transient immaturity' or 'irreparable corruption,'" remand is required. *Id*.; *Tatum v. Arizona*, 137 S. Ct. 11 (2016) (Sotomayor, J., concurring). As the Court has recognized the vast majority of youth are not the rare and uncommon juvenile whose crime reflects irreparable corruption, the sentencer must start the

analysis with the presumption that juveniles' crimes are a reflection of their transient immaturity.

The Supreme Court reasoned in *Graham*, that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573). The American Psychological Association reinforced this in Miller in their amicus brief to the Court: "[T]here is no reliable way to determine that a juvenile's offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile—even one convicted of an extremely serious offense—should be sentenced to life in prison, without any opportunity to demonstrate change or reform." Brief for the American Psychological Association et al. as *Amici Curiae* in Support of Petitioners at 25, *Miller v. Alabama*, 567 U.S. 460 (2012), (Nos. 10-9646, 10-9647). Notably, the difficulty in making this assessment has led at least two state supreme courts to ban juvenile life without parole entirely. *See Diatchenko*, 1 N.E.3d at 283-84; *Sweet*, 879 N.W.2d at 836-37.

C. Youth Must Be Entitled To A Presumption Against Possible Life Without Parole Sentences Upon Showing Juvenile Status

The recognition in *Montgomery* that *some procedure* is required must be read in light of the fact that the Court addressed defendants who were

afforded *no procedure* before they receive life without parole sentences. 136 S. Ct. at 725-26 (addressing mandatory juvenile life without parole). The Pennsylvania Supreme Court recently held that procedural safeguards are required to ensure that life-without-parole sentences are meted out only to "the rarest of juvenile offenders" whose crimes reflect "permanent incorrigibility," "irreparable corruption" and "irretrievable depravity," as required by *Miller* and *Montgomery*. *Commonwealth v. Batts*, 163 A.3d 410, 416 (Pa. 2017).

To the extent *Montgomery* places any burden on a prisoner to prove that he is part of the protected class, it is met when he shows that he is a juvenile. The presumption that life without parole violates an offender's constitutional rights naturally flows after he has met this burden: the "attendant characteristics" of youth are the precise reason juveniles may not be sentenced to life without parole. *Miller*, 567 U.S. at 465. Youth should not have to prove their impulsivity, lack of maturity, vulnerability to family and peer pressure, and capacity for rehabilitation: Courts must conclude that youth are possessed of these traits – unless proven otherwise. *See Miller*, 567 U.S. at 471; *Graham v. Florida*, 560 U.S. 48, 68-69 (2010); *Roper*, 543 U.S. at 569. Absent evidence to the contrary, they also must conclude that any given juvenile's conduct reflects only transient immunity. *See Graham*, 560 U.S. at 68 ("[J]uvenile offenders cannot with reliability be classified among the worst offenders." (quoting *Roper*, 543 U.S. at 569)); *Miller*, 567 U.S. at

472-73 ("[I]ncorrigibility is inconsistent with youth." (quotation omitted)); *see also State v. Seats*, 865 N.W.2d 545, 555 (Iowa 2015) ("[T]he presumption for any sentencing judge is that the judge should sentence juveniles to life in prison with the possibility of parole for murder unless the other factors require a different sentence."); *Gutierrez*, 58 Cal.4th at 1379 ("A sentence of life without parole . . . would raise serious constitutional concerns if it were imposed pursuant to a statutory presumption in favor of such punishment.").

Placing the burden on a juvenile to establish anything more than his age ignores the underlying rationale in *Miller*: that children are different from adults. As the United States Supreme Court has now repeatedly recognized, the Constitution affords additional protection to juveniles in part because "the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings." *Graham*, 560 U.S. at 78 (2010); *see also Miller*, 567 U.S. at 477 (recognizing that juveniles "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth."); *J.D.B. v. North Carolina*, 564 U.S. 261, 268-69 (2011) (discussing children's responses to interrogation). They are thus less able to give meaningful assistance to counsel, impairing the quality of their representation. *Graham*, 560 U.S. at 78.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court reverse and remand Appellant's sentence.

Respectfully submitted,

/s/ Jessica Feierman______
JESSICA FEIERMAN
CA State Bar No. 217764
JUVENILE LAW CENTER
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (fax)
jfeierman@jlc.org

Counsel for Amicus Curiae

DATED: November 16, 2017

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief conforms to Rules 8.520 and 8.204, and that it contains 3,786 words in 13-point Times New Roman font, as calculated by Microsoft Word 2016.

/s/ Jessica Feierman______
JESSICA FEIERMAN

Counsel for Amicus Curiae

DATED: November 16, 2017

DECLARATION OF SERVICE

I declare that I am over eighteen (18) years of age, and not a party to the within cause; my business address is 1315 Walnut St., 4th Floor, Philadelphia, PA, 19107; that on this 16th day of November, 2017, I served a copy of the foregoing Application to File Amicus Curiae Brief and Brief of Juvenile Law Center as *Amicus Curiae* by placing a true and correct copy thereof enclosed in sealed envelopes addressed as below and deposited in the U.S. mail at Philadelphia, Pennsylvania.

I further certify that I electronically submitted a copy of this document to the California Supreme Court on its website at http://www.courts.ca.gov/24590.htm in compliance with the Court's Terms of Use; and I electronically served a copy of the same from electronic notification address tfaith@jlc.org to the electronic notification addresses listed below.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 16th, 2017 at Philadelphia, Pennsylvania.

/s/ Tiffany Faith
Tiffany Faith
Litigation Paralegal

SERVICE LIST

Noah P. Hill
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Noah.hill@doj.ca.gov

California Appellate Project
520 S. Grand Ave., 4th Fl.
Los Angeles, CA 90071
capdocs@lacap.com

Jennifer Lynne Peabody
Corona & Peabody
617 South Olive Avenue
Suite 810
Los Angeles, CA 90014
Peabody198746@gmail.com

Jeralyn B. Keller
Young & Young
790 E. Colorado Blvd., Ste. 900
Pasadena, CA 91101
jbkeller@pacbell.net

Clerk of the Superior Court
County of Los Angeles, Dept. 105
210 West Temple Street
Los Angeles, CA 90012
Attn: Hon. Bob S. Bowers, Judge

Amy Ashvanian
Office of the District Attorney
LA County District Attorney's Office
210 W. Temple St., 18th Fl.
Los Angeles, CA 90012

Pierpont Laidley
Law Office of Pierpont M. Laidley
1818 S. Western Ave., Ste. 503
Los Angeles, CA 90006

Johnny Mendoza, AX0506
Calipatria State Prison
P.O. Box 5002
Calipatria, CA 92233-5002