

IN THE
SUPREME COURT OF IOWA

No. 18-0477

Julio Bonilla,
Petitioner-Appellant

v.

Iowa Board of Pardon and Parole,
Defendant-Appellee.

BRIEF OF JUVENILE LAW CENTER AS *AMICI CURIAE* IN SUPPORT
OF APPELLANT BONILLA

Appeal from the Iowa District Court for Polk County
No. CVCV052692

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IDENTITY AND INTEREST OF AMICUS CURIAE

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.

ARGUMENT

Amicus writes in support of Mr. Bonilla's argument that the lower court erred in finding no constitutionally mandated right to appointed counsel in a juvenile offender's¹ parole hearing.

¹ In this brief, "juvenile offender" refers to those individuals who were sentenced for crimes committed under the age of 18. Though an individual may be over the age of 18 at the time of consideration for parole, he or she remains categorized as a juvenile offender. Here, Mr. Bonilla fits the definition of "juvenile offender."

The U.S. Supreme Court and this Court have long recognized that children differ from their adult counterparts—they are less culpable and more amenable to rehabilitation based on their growth and maturity. As such, additional constitutional protections are required to guarantee juveniles due process. Individuals sentenced to life in prison for crimes committed when they were children have a constitutional right to a “meaningful opportunity for release.” This constitutional entitlement carries with it a “protectable expectation of parole.” Thus, unlike adult offenders for whom there is no right to parole, juvenile offenders have an identifiable liberty interest in parole hearings. When an identifiable liberty interest is at stake, due process requires certain minimum procedural protections, including the right to appointed counsel. Appointed counsel also safeguards the other procedural protections in a juvenile offenders’ parole hearing, such as the fundamental right to be heard, that are necessary to ensure the hearing provides a meaningful opportunity for release.

The detrimental psychological and developmental effects of incarcerating juveniles further necessitate appointed counsel during parole hearings. Research shows that incarceration during adolescence can impede the development of psychosocial skills, which are necessary to competently communicate and socialize as an adult and are critical to effective self-

representation in parole hearings. Refusing juvenile offenders the right to appointed counsel at such a critical juncture in their interaction with the criminal justice system denies them the “meaningful opportunity for release” required by this Court and the U.S. Supreme Court. It is for these reasons that other states, whose practices can inform this Court’s consideration of the issue, afford juvenile offenders appointed counsel in parole hearings.

I. THE SUPREME COURT’S MANDATE THAT JUVENILES SENTENCED TO LIFE IN PRISON HAVE A MEANINGFUL OPPORTUNITY FOR RELEASE REQUIRES THE APPOINTMENT OF COUNSEL IN PAROLE HEARINGS.

Given their diminished culpability and amenability to rehabilitation, the U.S. Supreme Court and this Court have held that juveniles sentenced to a mandatory term of life in prison have a constitutional entitlement to a “meaningful opportunity to obtain release.” *Graham v. Florida*, 560 U.S. 48, 74 (2010) (“What the State must do, however, is give defendants . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”); *State v. Null*, 836 N.W.2d 41, 71-72 (Iowa 2013) (“[W]e note the repeated emphasis of the Supreme Court in *Roper*, *Graham*, and *Miller* of the lessened culpability of juvenile offenders, how difficult it is to determine which juvenile offender is one of the very few that is irredeemable, and the importance of a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’”); *State v.*

Louisell, 865 N.W.2d 590, 602 (Iowa 2015) (“[U]nder both the United States Constitution and the Iowa Constitution, juveniles convicted of crimes must be afforded a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’”). To effectuate this right, individuals must be afforded due process protections during parole hearings, including the right to appointed counsel. Furthermore, for juveniles like Mr. Bonilla who were sentenced pursuant to mandatory minimum sentencing guidelines, the parole hearing is the only opportunity for an individualized sentencing assessment, a right that both the U.S. Supreme Court and Iowa law require.

A. Due process requires certain minimum procedural protections, including the right to counsel, when an identifiable liberty interest is at stake.

The U.S. and Iowa Constitutions guarantee that no person shall be deprived of liberty without due process of law. U.S. CONST. amend. V, XIV, § 1; Iowa Const. Art. I § 9. Although due process rights are often perceived as rights specific to accused individuals *at trial* due process attaches any time an identifiable liberty interest is threatened by state action. *See Lassiter v. Dep’t of Soc. Servs. of Durham Cty., N.C.*, 452 U.S. 18, 25 (1981) (“[I]t is the defendant’s interest in personal freedom, and not simply the special Sixth and Fourteenth Amendments right to counsel in criminal

cases, which triggers the right to appointed counsel.”). Accordingly, Iowa courts and the U.S. Supreme Court recognize that due process guarantees the right to counsel when a significant liberty interest is at stake, even if the proceeding is not part of a criminal trial. *See In re Gault*, 387 U.S. 1, 41 (1967) (holding that the Due Process Clause of the Fourteenth Amendment requires appointment of counsel in certain delinquency proceedings even though the proceedings are not technically “criminal” in nature); *In re B.E.*, 875 N.W.2d 181, 186 (Iowa Ct. App. 2015) (holding that a natural parent has due process rights relating to a child in need of assistance action).

As this Court stated in *State ex rel Hamilton v. Snodgrass*, “[t]he right to counsel has more to do with a person’s stake in the proceeding and the practical effect of the outcome” than the context of the proceeding. 325 N.W.2d 740, 742 (Iowa 1982). This Court explained that “the requirement varies according to the interests at stake” because courts must examine whether the principle of “fundamental fairness” would require appointment of counsel. *Id.* When examining whether fundamental fairness compels the right to counsel, courts presume that an indigent person’s right to counsel arises when he “may be deprived of his physical liberty” if he is not the prevailing party in a proceeding. *Lassiter*, 452 U.S. at 24.

Furthermore, Article I, §10 of the Iowa Constitution provides that “[i]n all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right . . . to have the assistance of counsel.” Iowa Const. Art. I § 10. This two-pronged right provides more protection than the Sixth Amendment of the U.S. Constitution because it contemplates a right to counsel outside the context of criminal prosecutions. Although limited, the clause expands the right to counsel to those who have a meaningful liberty interest at stake but who do not fit squarely under the “criminal prosecution” prong. *See State v. Young*, 863 N.W.2d 249, 278 (Iowa 2015) (“the liberty language of the ‘cases’ clause is directed toward a limited category of cases involving a person’s interest in physical liberty.”). This Court has concluded that the “founders of the Iowa Constitution intended a Bill of Rights in which article I, section 10 is a part to be read in a generous fashion, not in a cramped, stingy, or fearful fashion.” *Id.* Under such a reading of the State Constitution, when an individual can establish that a cognizable liberty interest is at stake, he or she has a constitutional right to appointed counsel equivalent to that of a defendant in a criminal trial—regardless of the form or manner that proceeding takes.

B. Juvenile offenders have a protectable expectation of parole and, therefore, have a liberty interest at stake in parole hearings.

The *possibility* of parole does not create a reasonable entitlement to due process for adult offenders. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 10 (1979). The Court in *Greenholtz* reached its conclusion based on the assumption that for adult offenders, the possibility of parole “provides no more than a mere hope that the benefit will be obtained . . . no more substantial than the inmate’s hope that he will not be transferred to another prison.” *Id.* at 11. The Court in *Greenholtz* recognized, however, that a liberty interest in parole requiring some minimum due process may derive from specific language in a state’s parole statute that creates a “legitimate expectation of parole.” *Id.* at 11-12.

Since *Greenholtz*, the Court has mandated in a series of decisions that constitutional rights must be calibrated to juvenile status. The Court has acknowledged “[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 v. Alabama*, 567 U.S. 460, 472 (2012) (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. 551, 570 (2005). Sentencers must take into account

a juvenile's "lessened culpability," "greater 'capacity for change,'" and individual characteristics before imposing this harshest available sentence. *Miller*, 567 U.S. at 465 (quoting *Graham*, 560 U.S. at 68, 74). Even after reaching adulthood, therefore, individuals convicted of crimes committed as juveniles enjoy special protections under the law. *See, e.g., Miller*, 567 U.S. at 489; *Graham*, 560 U.S. at 75; *Roper*, 543 U.S. at 578-579.

In *Graham*, the Court held that although states need not "*guarantee* eventual freedom," they must give defendants "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* Thus, it is constitutionally mandated that a juvenile offender have a meaningful chance to "later demonstrate that he is fit to rejoin society." *Id.* at 79. *Graham* does not grant juvenile offenders a *guarantee* of release, but creates an expectation that an individual who is not irreparably corrupt² and who objectively demonstrates "maturity and reform" will be released. *Id.*

A juvenile offender's conditional liberty interest in parole is analogous to the conditional liberty interest of a probationer during a

² *See Miller*, 567 U.S. at 479-80 (noting the importance of distinguishing "between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" (citing *Roper*, 543 U.S. at 573; *Graham*, 560 U.S., at 68).

revocation hearing. In *Morrissey v. Brewer*, the U.S. Supreme Court held that revocation of parole is not part of a criminal prosecution and “deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observation of special parole restrictions.” 408 U.S. 471, 480 (1972). In *Gagnon v. Scarpelli*, the Court held that the same conditional liberty interests accompanied a probationer at a probation revocation hearing. 411 U.S. 778, 782 (1973). This conditional liberty interest is sufficient to create a right to appointed counsel in some circumstances. As the Court held in *Gagnon*, there is a presumption that counsel should be provided in any case where the probationer makes such a request, and either 1) the probationer denies that he has violated the conditions of his probation, or 2) asserts that there are substantial reasons, which, nonetheless, make revocation inappropriate. *Id.* at 790. The Court further instructed that the responsible agency should always consider whether the probationer “appears to be capable of speaking effectively for himself.” *Id.* at 791.

Juvenile offenders sentenced to life with the possibility of parole have a conditional liberty interest similar to that of a revocation hearing. Like probationers at revocation hearings, juvenile offenders at parole hearings are taking part in a process related to but outside the confines of a criminal

prosecution—if certain conditions are met, they will be permitted to live an adult life outside the confines of prison. In other words, if juvenile offenders demonstrate maturity and rehabilitation over the course of time, they have a legitimate expectation under *Graham* that they will be released from prison. Accordingly, they should be entitled to due process protections, including the right to counsel, just as probationers claiming that they have abided by the conditions of their release at a revocation hearing are entitled to such protections.

C. Parole hearings afford juveniles previously sentenced to mandatory terms of imprisonment the right to an individualized determination of their growth and maturity and it is therefore required that juvenile offenders be afforded the right to appointed counsel.

Since the Supreme Court’s decision in *Graham*, courts have further expanded protections for juvenile offenders to require consideration of certain individualized, developmental attributes and characteristics at sentencing. After *Graham*, the Supreme Court held that even in homicide cases, mandatory life without parole sentences violate the Eighth Amendment because they do not consider individual mitigating circumstances such as the offender’s age and maturity. *Miller*, 567 U.S. at 489. This Court has since held that sentences that impose lengthy terms of years without the opportunity for release, even if release is eventually

guaranteed, violate the constitutional rights of juvenile offenders. *See Null*, 836 N.W.2d at 72-77 (holding that the protections afforded by *Miller* should also apply to a “lengthy term-of-years sentence” because the same “distinctive qualities of youth” should be considered); *State v. Pearson*, 836 N.W.2d 88, 96-97 (Iowa 2013) (holding that *Miller* protections should apply “equally to [a juvenile’s] sentence of thirty-five years without the possibility of parole” as a “a juvenile’s culpability is lessened because the juvenile is cognitively underdeveloped relative to a fully-developed adult”); *State v. Lyle*, 854 N.W.2d 378, 399 (Iowa 2014) (“Simply put, attempting to mete out a given punishment to a juvenile for retributive purposes irrespective of an individualized analysis of the juvenile’s categorically diminished culpability is an irrational exercise.”).

This line of cases demonstrates that juveniles are entitled to an individualized assessment in sentencing. However, for juveniles who were sentenced to a minimum term of years, including those sentenced to life with parole, the only opportunity for any individualized assessment is the parole hearing. For these individuals, the factors that must be weighed to determine the appropriateness of release, including maturity and rehabilitation, were not meaningfully assessed at the time of initial sentencing. *Greiman v. Hodges*, 79 F. Supp. 3d 933, 943 (S.D. Iowa 2015)

(noting it is “axiomatic that a juvenile offender could only prove increased maturity and rehabilitation warranting release from custody at some time well after a sentence is imposed”).

As the court acknowledged in *Greiman*, in circumstances such as Mr. Bonilla’s where the sentencing judge “had no discretion whatsoever in the sentence to be imposed,” a meaningful opportunity for release, as required under *Graham*, “could only reasonably exist during parole review.” *Id.* Therefore, where the State imposes a sentence of juvenile life with parole, “the ultimate length of the Plaintiff’s prison sentence will be determined by the [Iowa Board of Parole].” *Id.* Because of the unique circumstances at play when courts sentence juvenile offenders, the parole hearing becomes the forum for determining the ultimate sentence, which will hinge on whether an individual has demonstrated growth and maturity. *See State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016) (holding that the sentencing court should not be empowered to make final decisions on eligibility for release when there is “plenty of time to make such determinations later”).

If mandatory minimum sentences of imprisonment are unconstitutional under the Iowa Constitution, *Lyle*, 854 N.W.2d at 400, then the parole hearing must act as a *de facto* extension of the sentencing process for juvenile defendants sentenced to a mandatory term of life with parole;

otherwise, sentences such as that imposed on Mr. Bonilla would be constitutionally infirm. This Court has recognized that, “[w]ithout . . . particularized assessment, youth sentenced to long prison terms, *even with the possibility of parole*, will continue to be denied the meaningful opportunity to obtain release promised by *Graham* and *Miller*.” *Louisell*, 865 N.W.2d at 602-603 (quoting Laura Cohen, *Freedom’s Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida*, 35 CARDOZO L. REV. 1031, 1055–56 (2014)). Therefore, to ensure that juvenile offenders’ constitutional rights are upheld at parole hearings, heightened procedural protections must be guaranteed. At minimum, the right to counsel should attach at a juvenile’s parole hearing.

Without the assistance of counsel, there is an unacceptable risk that the Iowa Board of Parole (the “Board”) will make its decision without the information most relevant to a juvenile offender’s parole claim, such as the juvenile’s potential for rehabilitation. In *Sweet*, this Court pronounced that mandatory life sentences, even for juvenile offenders found guilty of homicide, are unconstitutional because the risk of a sentencing judge making an incorrect assessment of a juvenile’s potential for rehabilitation is “unacceptably high,” even when procedures such as “an intensive, highly

structured inquiry similar to that required by the ABA guidelines for the defense of death-penalty cases” are in place. 879 N.W.2d at 837.

Although a juvenile offender may mature throughout his time in prison, if there is no opportunity to consult with counsel, he is without the necessary tools to convey that change to the Board. The same unacceptably high risk of missing relevant information found in *Sweet* is present as well when a prisoner who may have truly reformed during his incarceration is unable to convey his maturity and rehabilitation to the decision makers in an effective manner. Just as a sentencing judge is without the necessary information to predict whether a juvenile offender has the capacity to reform, there is an inherent risk that the Board cannot make a decision based on all information available if an inmate is deprived of the opportunity to most effectively present his case for release.

D. Appointed counsel safeguards other procedural protections and is essential to ensuring that juvenile offenders’ parole hearings comport with the requirements of due process.

The right to counsel for juvenile offenders at parole hearings also serves as the mechanism for ensuring all other due process rights. Of all the due process rights, “the right to be represented by counsel is by far the most pervasive, for it affects [the offender’s] ability to assert any other rights he may have.” Walter V. Schaefer, *Federalism and State Criminal Procedure*,

70 HARV. L. REV. 1, 8 (1956). The Supreme Court, on numerous occasions, has recognized the elevated importance of the right to counsel for ensuring fair procedure and the preservation of the all other due process protections.

In *Powell v. Alabama*, the Court found that “[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.” 287 U.S. 45, 68-69 (1932). The Court recognized that the complexities of legal proceedings are such that “[e]ven the intelligent and educated layman” unrepresented by counsel is without the skill to fairly or adequately assert and defend his rights.” *Id.* This sentiment has been echoed in a multitude of opinions following *Powell*. See *Maine v. Moulton*, 474 U.S. 159, 169 (1985) (“[T]he right to counsel safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding.”); *Argersinger v. Hamlin*, 407 U.S. 25, 31 (1972) (“The assistance of counsel is often a requisite to the very existence of a fair trial”).

The reasoning applied by the Court in the *Powell* line of cases applies with greater force for juveniles seeking parole. The parole process is riddled with complexities and procedural rules, particularly for juveniles who must also demonstrate their maturity and rehabilitation under the requirements of *Graham*. Furthermore, juvenile offenders are typically at a stark disadvantage to the average adult offender in terms of education level and

communication skills. In order to ensure the protection of any and all of a juvenile offender's due process rights, counsel must be appointed in juvenile parole proceedings.

II. THE DETRIMENTAL PSYCHOLOGICAL AND DEVELOPMENTAL EFFECTS OF INCARCERATION PLACE JUVENILE OFFENDERS IN A FACTUALLY UNIQUE SITUATION THAT ENTITLES THEM TO APPOINTED COUNSEL DURING PAROLE HEARINGS.

Unlike adult offenders who have largely matured by the time they are incarcerated, juvenile offenders enter prison during childhood and do not have the same opportunities for normal growth and maturation. Research shows that incarceration during adolescence impedes an individual's ability to develop critical psychosocial skills that are necessary to represent themselves in front of a parole board—including the ability to set goals, to behave responsibly without supervision, and to connect with other adults.

See Steinberg et. al., Reentry Of Young Offenders From The Justice System: A Developmental Perspective, 2 YOUTH VIOLENCE JUV. JUST. 21, 24, 28-29 (2004). Furthermore, juvenile offenders *enter* the criminal justice system with high rates of mental illness and cognitive disabilities. *See Amy E. Lansing et al., Cognitive and Academic Functioning of Juvenile Detainees*, 20 J. CORRECTIONAL HEALTH CARE 18, 25 (2014); Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths*

Processed in Juvenile Court and Adult Criminal Court, 59 PSYCHIATRIC SERVS., 965, 965 (2008). The impacts of incarceration during one's developmental years can compromise juvenile offenders' ability to self-advocate for their parole eligibility. Appointed counsel can ensure that juvenile offenders can effectively navigate the parole process and that they are afforded their constitutionally mandated "meaningful opportunity for release." Fundamentally, counsel can ensure that juvenile offenders have access to the information and resources necessary for a fair hearing.

A. Iowa's parole process is complex and requires counsel to ensure that juvenile offenders can effectively advocate for their right to a meaningful opportunity for release.

Iowa's parole review process requires the Board to "consider all pertinent information regarding the person" to determine whether to grant parole. Iowa Code Sec. 906.5 (3). These factors include "the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work and attitude in prison, and the reports of physical and mental examination that have been made." *Id.* As the Board highlighted in their briefing below, there is no guarantee that the inmate will be given an in-person hearing in front of the Board. Brief of Respondent at 4, *Bonilla v. Iowa Board of Parole*, No. CVCV052692 (Dec. 28, 2017) ("Resp. Br.")

(citing Iowa Code Sec. 906.5(1); 205 Iowa Admin Code Sec 8.6(2)). The Board can make its parole decision solely on an offender's file, and people wishing to submit pertinent information or arguments must put those statements in writing. Iowa Code Sec. 906.7. If the Board denies parole, an inmate's avenue to challenge the decision is through an administrative appeals process. Resp. Br. 5-6 (citing 205 Iowa Admin. Code Ch. 15).

Sifting through case files and submitting written comments that support one's release are not simple tasks. Here, Mr. Bonilla was presented with a case file that contained several legal documents including a docket summary, his prison disciplinary ruling, behavior observations, his psychological and psychiatric evaluations, and parole release plans. Resp. Br. 7. The Board redacted some of the information in these documents before giving Mr. Bonilla his file. *Id.* at 7-8. Additionally, Mr. Bonilla moved for several other procedural protections in his parole hearing, including a motion for an independent psychological evaluation, a motion to exclude unverified information in his parole file, and a motion to review and rebut relevant evidence. Brief of Petitioner-Appellant at 22-23, *Bonilla v. Iowa Board of Parole*, No. 18-0477 (July 2, 2018) ("App. Br.").

To review a case file and make reasoned arguments (possibly only written arguments) requires a basic ability to navigate legal terminology and

psychosocial skills, including the ability to set goals and follow through, and to cooperate and communicate with other adults (*i.e.*, the Board). It further requires the ability to make effective and well-reasoned appeals for release. In Mr. Bonilla’s case, it also required the ability to make legal arguments to support his motions that sought to ensure his parole hearing provided him with a meaningful opportunity for release. Even if a juvenile offender has demonstrated maturity and reformation, a person who has not acquired certain skills through adolescence and young adulthood has a diminished chance of being able to effectively convey and communicate that change without assistance.

B. Juvenile offenders are incarcerated at a time when they should be developing the skills that are critical to successful adult behaviors.

The brain develops social skills and abilities through adolescence and well into early adulthood. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOLOGY 459, 480 (2009).

These social and vocational skills are critical in shaping how an individual will function as an adult. *Reentry Of Young Offenders From The Justice System: A Developmental Perspective* at 24. Researchers label this achievement as “psychosocial maturity,” which requires development across three important domains: “mastery and competence, interpersonal

relationships and social functioning, and self-definition and self-governance.” *Id.* Through the development of mastery and competence, juveniles learn the basic tenets of adult life relating to “production, culture and leisure.” *Id.* By developing interpersonal relationship skills, juveniles learn how to cooperate and coexist with others in society. *Id.* at 24-25. Finally, by developing self-definition and self-governance, juveniles make progress in behaving responsibly and morally without supervision. *Id.* at 25. At the end of early adulthood, youth are expected to achieve a level of development that gives them an ability to function independently and to set and achieve meaningful goals. *Id.*

Whether a young person can develop these skills and reach psychosocial maturity depends on the youth’s environment during late adolescence and early adulthood. *Id.* Interaction with supportive families, prosocial peers, educational systems, and community programs during adolescence can help usher individuals into psychosocial maturity and positive outcomes in their adult life. *Id.* at 25-26. For incarcerated youth, the prison setting adversely impacts the development of these skills and abilities. *Id.* at 28. Incarceration does not expose children to the positive environmental factors that facilitate psychosocial maturity. Rather, incarceration isolates young people from their families and other prosocial

peers in the community. *Id.* at 28-29. In prison, an adolescent's main opportunity for socialization is with other prisoners and when adolescents, such as Mr. Bonilla, enter the adult criminal justice system (as opposed to the juvenile justice system), their socialization is exclusively with incarcerated adults. As a result, juvenile offenders are likely to be exposed to physical violence and sexual assault. *Id.* at 31. Further, youth housed in an adult complex experience higher rates of PTSD and feelings of fear regarding their personal safety. Fagan et al., *Juvenile Incarceration and the Pains of Imprisonment*, 3 DUKE F. L. & SOC. CHANGE 29, 57-58 (2011). Following incarceration, many juvenile offenders leave the justice system "and move into adulthood psychosocially ill-equipped to manage adult roles and responsibilities." Steinberg, *Reentry Of Young Offenders From The Justice System: A Developmental Perspective* at 28. Ultimately, imprisonment, whether in a juvenile or adult facility, will impede adolescent development and "expose [] them to disfiguring psychological trauma." *Fagan* at 59.

Although prisons might offer some educational or vocational training, the prison's programs are highly monitored and restrictive. Steinberg, *Reentry Of Young Offenders From The Justice System: A Developmental Perspective* at 28-29. These settings limit the ability of young people to

“exercise autonomy” and stunt their ability to mature and develop key skills like “self-direction, social perspective and responsibility.” *Id.* at 29.

Further, simply providing youths with skills and education—such as automotive repair or math tutoring—does not translate into providing them with the social skills needed to function in adult society (or in a parole hearing), such as the ability to show up to appointments on time and to communicate effectively. *See Id.* at 32.³

In addition to impeding successful adult skill development, incarceration during adolescence can lead to poor mental and physical health outcomes. Researchers analyzed data from the National Longitudinal Study of Adolescent to Adult Health, which is a nationally representative sample of youth in the United States surveyed from 1994 to 2008. Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS 1 (2017). Of the 14,344 adult

³ Relatedly, although Mr. Bonilla was able to take advantage of some programming during his time in Iowa correctional facilities, the Department of Corrections withheld certain critical programing. App. Br. 84. Mr. Bonilla was allowed to participate in programming such as the “thinking for change” program, the Alternatives to Violence Training Workshop, and the Health Relationships for Family and Home program. *Id.* However, the Department of Corrections continues to prohibit Mr. Bonilla from completing the Sex Offender Treatment Program, which is a critical training program for his release. *Id.* In his 2016 parole hearing, the Board indicated that it wanted Mr. Bonilla to complete this program before seriously considering him for parole. *Id.*

respondents, 14% reported that they were incarcerated between the 7th grade and the age of 34. *Id.* The study examined four health outcomes: general health, functional limitations, depressive symptoms, and suicidal thoughts. *Id.* at 3. The researchers also surveyed participants about the length of their incarceration. The researchers found that “an incarceration duration of >1 month is associated with worse adult general health, and a duration of >1 year is associated with worse adult mental health and adult functional limitations.” *Id.* at 7. They conclude that their research suggests “incarceration during adolescence and early adulthood is independently associated with worse physical and mental health outcomes during adulthood.” *Id.*

Moreover, many youth enter the criminal justice system with preexisting cognitive disabilities and mental health issues. These factors may further decrease the ability of individuals incarcerated as young people to represent themselves effectively in a parole hearing.

For example, incarcerated youth are more likely to have below average cognitive skills. *Lansing* at 25. A team of researchers from the Northwestern University Feinberg School of Medicine tested the cognitive skills of a group of incarcerated youths, using a random sample of 1,829 newly detained youths between the ages of 10 and 18 years old in Cook

County, Illinois. *Id.* at 19. The participants scored below average on several measures of cognitive functioning, including tests of vocabulary and oral reading skills. *Id.* at 22-25. The authors concluded that some youth will have “difficulty engaging in legal proceedings,” and “their cognitive abilities may impair their ability to participate fully in their legal defense.” *Id.* at 26. Other research supports a similar finding that “most young offenders perform well below their age range academically regardless of their abilities.” Steinberg, *Reentry Of Young Offenders From The Justice System: A Developmental Perspective* at 30. Compounding the issue, once incarcerated, an adolescent’s access to education is also fragmented and of a lower quality than the education that non-incarcerated youths in the community receive. Ian Lambie & Isabel Randell, *The Impact of Incarceration on Juvenile Offenders*, 33 CLINICAL PSYCHOLOGY REV. 448, 454 (2013). Mr. Bonilla’s case exemplifies the fragmented educational opportunities available to inmates at Newton correctional facility, which impede their ability to develop psychosocial skills. Mr. Bonilla applied and was accepted into the Grinnell College “Liberal Arts in Prison Program,” but he is not allowed to participate because a rule prevents college attendance for inmates serving a life sentence. App. Br. 85.

Furthermore, a high proportion of juvenile offenders have mental health problems prior to incarceration. *Lambie* at 453. One study found that the majority of youths processed through adult criminal court have a psychiatric disorder. *Washburn*, at 965 (reporting that 68% of youths entering the adult criminal system had at least one psychiatric disorder and 43% had two or more types of disorders). This is in contrast to the less than 35% of incarcerated adult males who experience psychiatric disorders (excluding antisocial personality disorder). *Id.* at 969-70. Once incarcerated, adolescents' mental health issues may only become more pronounced. This decline is due, in part, to the reality that mental health conditions among incarcerated youth often go undiagnosed and, that even when diagnosed, treatment is often unavailable. Thalia Gonzales, *Youth Incarceration, Health and Length of Stay*, 45 FORDHAM URB. L.J. 45, 62-63 (2017).

Crossing the threshold from adolescent to adult does not erase these developmental impediments. Individuals who spend their formative years incarcerated should not be held to the same standards as those entering prison as adults; these individuals require the assistance of counsel at parole hearings to make up for this deficit. Without counsel, Iowa denies these

juvenile offenders the meaningful opportunity for release required by this Court and the U.S. Supreme Court.

III. OTHER STATES AFFORD JUVENILE OFFENDERS APPOINTED COUNSEL IN PAROLE HEARINGS.

Several states recognize that juvenile offenders are entitled to appointed counsel in parole hearings.⁴ This Court has looked to other states to determine whether a particular sentence is appropriate. *See, e.g., State v. Roby*, 897 N.W.2d 127, 138-140 (Iowa 2017) (discussing other states’ recent legislative and judicial developments in juvenile sentencing jurisprudence as relevant to its inquiry into evidence of a national consensus). Other states’

⁴ Several states routinely provide appointed counsel at parole hearings, regardless of the offenders’ age. Ten parole boards appoint an attorney to represent an indigent inmate in the parole release process. Sarah F. Russell, *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 IND. L.J. 373, 403 (2014). New Jersey parole boards appoint counsel if the prisoner was “‘incompetent to understand the nature of the parole hearing.’” *Id.* Tennessee parole boards appoint counsel when the offender suffers from mental challenges and physical incapacity. *Id.* Additionally, in Ohio, public defenders represent inmates at full board open hearings. Thirty-nine state parole boards consider input from an inmate’s attorneys when they make a decision about whether to grant an inmate’s application for parole. *Id.* Moreover, in a legislative and regulatory context, some states have codified a requirement for appointed counsel at parole hearings. *See, e.g.,* Conn. Gen. State § 54-125a(f)(1)(B); Haw. Admin. Rules § 23-700-32(b). Finally, in Ohio, legislation that allows counsel to appear at juvenile parole hearings is currently moving through the legislative process. House Bill 394, Ohio Legislature, <https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-394> (last visited July 5, 2018).

parole hearing practices can likewise inform this Court’s decision-making on this issue.

In a few states courts have explicitly required the appointment of counsel to ensure juveniles have a meaningful opportunity for release. *See, e.g., Diatchenko v. Dist. Attorney for Suffolk Dist.*, 27 N.E.3d 349, 361 (Mass. 2015) (recognizing that the “unique characteristics of juvenile offenders” challenged the parole board’s task in determining the likelihood of recidivism)⁵; *L.H. v. Schwarzenegger*, No. CIV-S-06-2042 LKK/GGH, 2008 WL 268983, at *7-8 (E.D. Cal. Jan. 29, 2008). In *L.H.*, the U.S. District Court for the Eastern District of California held that “juvenile parolees are a special class of parolees for whom appointment of counsel is always appropriate.” *L.H.*, 2008 WL 268983, at *7. Relying on the U.S. Supreme Court’s ruling in *Gagnon*, 411 U.S. at 790, the court explained that the difficulties that parolees experience in presenting their case to parole boards inherently apply to juveniles. *Id.* It recognized that because of their age, juvenile offenders lack the skills and education to present facts to a parole board. *Id.* at *8. Additionally, some juvenile offenders suffer from learning disabilities, substance abuse, and language barriers. *Id.* Therefore,

⁵ The *Diatchenko* Court also acknowledge that counsel played an important role in juvenile offenders’ parole hearings when victims’ families and public officials challenged an offender’s application for parole. *Id.*

the court held that juveniles were entitled to the assistance of counsel at every parole revocation hearing. *Id.* at *9 (granting a preliminary injunction so the parole-eligible juvenile offenders who pursued the case would be represented by counsel at every parole revocation hearing). California later codified this ruling, requiring the appointment of counsel for certain juvenile offenders eligible for parole. Ann. Cal. Penal Code § 3041.7 (entitling juvenile offenders to representation by counsel at hearings for “setting, postponing, or rescinding a parole release date of an inmate under a life sentence”).⁶

This Court should follow the other jurisdictions that have recognized that ensuring the right to a “meaningful opportunity to obtain release” requires that juvenile offenders be appointed counsel at parole hearings.

CONCLUSION

Youth sentenced to life with the possibility of parole are entitled to a meaningful opportunity for release that is more than a mere hope; it is an entitlement to release if certain requirements are met. *Miller* and *Graham* plainly recognize that juvenile offenders stand apart from their adult counterparts with respect to a protected expectation of release if they can

⁶ Section 3041.7 applies to juvenile offenders who are serving a life sentence. *Id.*

demonstrate growth and maturity—attributes that they presumptively lack when first incarcerated but that they will likely acquire over time. This expected trajectory toward maturation follows from their developmental immaturity when convicted as juveniles and is distinguishable in the case of adults who are considered more blameworthy for their criminal conduct.

Unfortunately, juvenile offenders’ ability to advocate for this constitutionally mandated right is limited by the disadvantages inherent in having spent one’s formative years in prison. Without counsel, these individuals must represent their own interests for release without having the opportunity to develop the social and mental capabilities that allow for effective self-representation. The appointment of counsel can bridge this gap.⁷ Attorney representation does not guarantee an individual incarcerated as a youth receives parole, but it does ensure that a juvenile offender is not continuously disadvantaged in parole hearings because they were imprisoned early in life. Attorney representation ensures that this

⁷ Beyond Mr. Bonilla’s case, the effect of attorney representation is obvious. To date, the Board granted parole to six juvenile offenders (excluding two individuals released to hospice care) who were resentenced following the U.S. Supreme Court cases banning mandatory life without parole sentences. Of those six, four were represented by an attorney in their parole process. Telephone Interview with Gordon Allen (July 7, 2018).

meaningful opportunity for release is not simply a cursory review of a paper file.

For the foregoing reasons, *Amicus Curiae*, Juvenile Law Center, respectfully requests that this Court reverse and remand this matter to the Board and require the Board to provide Mr. Bonilla with appointed counsel.

Sincerely,

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2018, I electronically filed this document with the Supreme Court Clerk using the EDMS system, which will serve it on the appropriate parties electronically.

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