

DOCKET NO. 18-217

IN THE
Supreme Court of the United States

RANDALL MATHENA, WARDEN,
Petitioner,

v.

LEE BOYD MALVO,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

AMICI CURIAE BRIEF ON BEHALF OF ISA NICHOLS,
PAUL LARUFFA, CHERYLL SHAW, RUKIYE ABDUL-
MUTAKALLIM, JEANNE BISHOP, SHARLETTA EVANS,
LYNETTE D. GRACE, DARRYL GREEN, BARBARA
HENTON, BILL PELKE, VALENCIA WARREN-GIBBS
AND LINDA WHITE IN SUPPORT OF RESPONDENT

ANGELA C. VIGIL, *Counsel of Record*
ADEOLA OLOWUDE
MICHELLE R. PHILLIPS
ALYSHA C. PRESTON
GOLI RAHIMI
SHREE SHARMA
RICHARD L. SLOWINSKI
BAKER & MCKENZIE LLP
Sabadell Financial Center
1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
(305) 789-8904
angela.vigil@bakermckenzie.com
Counsel for Amici Curiae

TABLE OF CONTENTS

INTEREST OF <i>AMICI</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. ALL VICTIMS HAVE A RIGHT TO BE HEARD.....	2
A. Victims of Lee Malvo support his right to resentencing and that of other children sentenced to life without parole.....	4
Isa Nichols.....	4
Paul LaRuffa	6
Cheryll Shaw	7
B. <i>Amici</i> victims have witnessed firsthand the ability of youthful offenders to reform, and have, in some cases, advocated on behalf of their release from prison as a way to best honor their loved ones.	10
Rukiye Abdul-Mutakallim ...	11
Jeanne Bishop	13
Sharletta Evans.....	16
Lynette D. Grace	19
Darryl Green.....	21
Barbara Henton	23
Bill Pelke.....	25
Valencia Warren-Gibbs.....	28
Linda White.....	30

II. *AMICI* EMBRACE THIS COURT'S PRECEDENT THAT CHILDREN ARE FUNDAMENTALLY REDEEMABLE AND THEREFORE SUPPORT MILLER'S APPLICATION TO ALL LIFE WITHOUT PAROLE SENTENCES IMPOSED ON CHILDREN, REGARDLESS OF THE NATURE OF THE SENTENCING SCHEME.33

III. THE LIVES OF *AMICI'S* LOST LOVED ONES WOULD BE HONORED BY THE APPLICATION OF *MILLER'S RULE* TO ALL LIFE WITHOUT PAROLE SENTENCES IMPOSED ON CHILDREN 35

CONCLUSION36

Table of Authorities

	Page(s)
Cases	
<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	1, 34, 35
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	<i>passim</i>
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016).....	7, 33, 34, 36
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	6, 7, 34
Statutes	
18 U.S.C. § 3771(a)	2

INTEREST OF *AMICI*¹

Amici are individuals who have lost loved ones, or have been victimized themselves in crimes committed by children. Some are victims of the Respondent here, who was a child at the time of the crimes relevant to this appeal. They know the perspectives of victims of crime are not monolithic. This particular group of *Amici* supports the retroactive application of *Miller v. Alabama*² to all life without parole sentences imposed on youth. They believe justice requires that those sentenced as children to life without parole be given the opportunity to demonstrate remorse and redemption, and to be resentenced with those considerations in mind.

SUMMARY OF ARGUMENT

Amici have each experienced the pain of losing a loved one to murder or of being victimized themselves. However, *Amici* agree – fully – with this Court: “[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ . . .”³ In connection therewith, and despite their devastating

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *Amici*, or their counsel, made a monetary contribution intended to fund its preparation or submission. The parties have consented to the submission of this *amicus* brief.

² 567 U.S. 460 (2012).

³ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

experiences, *Amici* collectively support the retroactive application of *Miller* to all life without parole sentences imposed on youth, whether mandatory or discretionary.

While the lives of their loved ones cannot be restored and their wounds can never be forgotten, *Amici* do not believe condemning children to die in prison is the appropriate response to the harm they caused. *Amici* do not want the spirit of revenge to define how the justice system honors their suffering or their lost loved ones; they want to offer children a legitimate chance to become productive, law-abiding citizens and contributors to society. Sentences of life without the possibility of parole ultimately deprive children of this chance.

Accordingly, retroactively applying *Miller* to all sentences of life without parole imposed on youthful offenders affords the offenders the possibility to grow into mature adults, acknowledge the severity of their actions, demonstrate remorse, and prove themselves worthy of returning to society.

ARGUMENT

I. ALL VICTIMS HAVE A RIGHT TO BE HEARD.

There is no doubt that our justice system recognizes the importance of victims' rights in criminal proceedings.⁴ However, there is often an

⁴ See, e.g., 18 U.S.C. § 3771(a) (outlining the rights crime victims are afforded in criminal proceedings).

incorrect assumption that all victims necessarily desire that convicted offenders receive the most severe punishment possible under the law.⁵ Unfortunately, this assumption fails to recognize the voices of the many victims who believe their loved ones are honored best by affording offenders the opportunity to demonstrate remorse and redemption.⁶

Amici have experienced first-hand what this Court has consistently held to be true: while adolescents are susceptible to influence and manipulation, and driven by impulsivity, they are fundamentally redeemable. These are representative voices of many victims. Many victims believe the sentencing of children must differ from the sentencing of adults because children are different and because this and many other courts have recognized that principle. *Amici* therefore exercise their right to be heard in support of the retroactive application of *Miller* to the collateral review of mandatory and discretionary sentences of life without parole given to youthful offenders. Their stories, set forth below, exemplify and explain their various views and reasoning.

⁵ See Alliance for Safety and Justice, *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice* (2016) at 5 (“By a 2 to 1 margin, victims prefer that the criminal justice system focus more on rehabilitating people who commit crimes than punishing them” (emphasis removed)).

⁶ See *id.*

A. Victims of Lee Malvo support his right to resentencing and that of other children sentenced to life without parole

These *Amici* were all directly impacted by the crimes of 17 year old Lee Boyd Malvo, and his adult co-defendant and mastermind of the crimes, John Muhammad. Still, individual *Amici* want to ensure this Court does not make its decision based on a false assumption that victim's' perspectives are monolithic and universally oppose a resentencing hearing for Malvo. Their narratives are framed by their shared understanding of justice for children, which focuses on rehabilitation, redemption, and the possibility of reintegrating with society.⁷

Isa Nichols

“It’s one thing to have a loved one killed, but it is a whole other deal when you are the one intended to receive the bullet,” Isa Nichols says, reflecting on the day her niece, Keenya Cook, was shot and killed by Lee Boyd Malvo. On February 16, 2002, while living with her Aunt Isa, Keenya noticed a small boy who looked like any other kid in the Eastside Tacoma community. When she opened the door she was shot

⁷ Counsel to *Amici* interviewed each individual victim and gathered not only their accounts but also specific quotations from many of them, which appear in several of their individual accounts throughout this brief. These interviews are the sources of such quotations.

point blank in the face by then 16-year-old Lee while her six-month-old baby girl slept upstairs. Isa's 14-year-old daughter was the first to discover Keenya. Isa was the former accountant to John Muhammad, the adult who was directing young Lee Malvo in these shootings. It was because of her former relationship with John that Isa eventually realized she was the intended target in Lee's first shooting.

Following the incident, Isa's life changed dramatically. In addition to the loss of her beloved niece, the family adapted to care for Keenya's six-month old daughter, now motherless. The strain on family relationships from the shooting caused Isa's marriage to crumble. In addition to the mourning and grief of Isa and her family members, Isa also suffered survivor's guilt. Isa stated, "You mourn the loss of a loved one, but grieving is the point when you, yourself, do not want to live anymore." She experienced both of these feelings following Keenya's murder.

Despite her heartbreak, Isa is steadfast in her belief that Lee was under the influence of a predator who trained him to kill her; "[Lee's] life was over the first day he said 'hi' to him years before," she says. "Children are a product of their environment: you learn what you live," she further explains how, as an often un-attended boy, Lee experienced loneliness and isolation in his community, which made him a prime subject for grooming by a "predator," such as John Muhammad. She has learned Lee's perception of reality was altered through John's use of threats to

convince Lee to carry out his wishes, and it took Lee's time in prison to decondition him from the lies and threats he had endured.

Despite the trauma of knowing she was the intended target of the shooting, and the tragic loss of her niece, Isa still believes Lee should be resentenced. Her hopes for Lee stem from a place of reconciliation and a hope that the correction system allows him to learn to repent for his actions.

Paul LaRuffa

On September 5, 2002, Paul LaRuffa left his restaurant as he had always done for 16 years. Before he could start the car to leave, his window was shattered by a gunshot. Four more shots followed. The shooter stole his laptop and briefcase with cash and took off, leaving Paul with physical injuries, including the loss of the full use of his arm for a year. Even more damaging were the mental injuries; Paul suffered flashbacks, nightmares and anxiety from not knowing who had shot him. It was only after John Allen Muhammad and Lee Boyd Malvo were arrested on October 24, 2002, that Paul discovered John and Lee were responsible for the attack and stalked him for at least three days before Lee shot him.

Paul testified at the trials of John and Lee. At the time, Lee was eligible for the death penalty, as *Roper v. Simmons* had not yet been decided by this court. Paul was puzzled when Lee was sentenced to life without parole, while Muhammad received the death

penalty. But he soon came to realize what this Court has realized in the line of cases starting with *Roper* – that children are fundamentally different than adults.

With scientific evidence he now has at hand, Paul understands there is a real difference in the brains, character and judgment of minors that causes them to act and react more on emotion rather than on reason. He also understands minors have a strong capacity for rehabilitation. In particular, Paul realizes Lee's age made him manipulable and malleable. He thinks John's control and Lee's lack of a good support system played a large role in his decision to commit the murders. Paul also noted Lee admitted he was a monster and he could not possibly apologize enough for his crimes.

Paul now believes a life without the possibility of parole sentence is excessive for children because, much like a death sentence, it condemns them to a life without hope. Paul feels youth should have a fighting chance for rehabilitation and reintegration into society. As a result, he believes *Miller* and *Montgomery* should apply to all life sentences without parole imposed on children.

Cheryll Shaw

No one wanted to know more about the perpetrators behind Jerry Taylor's murder than Jerry's daughter, Cheryll Shaw. Jerry was killed by a single gunshot fired on a Tucson golf course on

March 19, 2002; no one knew why or who had fired the shot. Although Cheryll was not with her father that day, upon hearing the news of her father's death and seeing subsequent reports of shootings in other states, she connected the incidents and had a strong feeling she knew who the shooters were. She worked to put the facts of her father's case together, which revealed that Lee Malvo, then age 17, and John Allen Muhammad were in Arizona on a visit to John's sister where they spoke with Jerry about his interest in golf. At the time of the shooting, however, Lee protested, claiming there were too many people around, but John forced him to proceed as planned.

Cheryll struggled with many things during and following the reports of Jerry's murder investigation, such as the uncertainty of the shooters' identities prior to their notoriety as "The D.C. Snipers," frustration with the local police department's unwillingness to follow her leads, and sadness that ensued following Lee's confession, not only for her own loss, but also for "the kid that was made to do it." Although anyone would struggle with the loss of a loved one and initially even let their grief prevent them from seeing the murder of a family member through anyone else's eyes, Cheryll was able to overcome those feelings. Her journey through the investigations, trials, and sentencing allowed her to open her mind to understanding Lee was a victim himself. Over the course of the trials, Cheryll learned Lee was taken in by John Muhammad years earlier, and suffered physical abuse, mental manipulation,

and sexual assault. As a result, she feels that, in a way, Lee was forced into killing her father. Despite knowing the morbid details surrounding her father's death, Cheryll has forgiven Lee. When asked to consider whether a resentencing may prove traumatizing for her, she states, "The resentencing would be traumatizing, but Lee was brainwashed, so it should happen anyway. Every time it's on the news, it brings me back to Lee's confession tape and I learn things I didn't know. But I still think he should be resentenced."

Cheryll learned intimate details from Lee while he served his prison sentence. Early on, Cheryll drafted a letter to Lee seeking a confession. Cheryll was looking for closure for all members of her family as her mother battled terminal lung cancer. In response to her letter, Lee contacted Cheryll, first by phone and later by letters. Cheryll recalls being startled when Lee first called her. During that call, she cried and attempted to absorb everything Lee said about how John turned him into a monster and how truly sorry he was for what he had done. He later wrote three letters to Cheryll sharing not only his confession and apology, but also his life as a young adult, including his interest in drawing, experience in solitary confinement and appreciation for Cheryll's forgiveness.

Cheryll's willingness to forgive Lee is rooted in his young age at the time of the crimes and the corresponding level of influence John Muhammad had over Lee from a young age. She resents John and

in the same way she can forgive Lee by seeing him through the eyes of her own children, she cannot forgive John for the role he played as Lee's father figure. She sympathizes with the boy, taken in at a young age and brainwashed to commit crime. When she reflects on her own role as a mother, she cannot imagine how a father figure could threaten and assault his child, as John had done.

Although Lee's trial and sentencing helped her to find closure, Cheryll believes a resentencing is just. She would also like to see him transferred out of the Red Onion State Prison in Virginia, a prison notorious for harsh conditions she feels are not appropriate for Lee. She does not believe Lee poses a future danger, and she does not believe he would ever kill again.

B. *Amici* victims have witnessed firsthand the ability of youthful offenders to reform, and have, in some cases, advocated on behalf of their release from prison as a way to best honor their loved ones.

The accounts of the *Amici* demonstrate a broad range of victims of juvenile offenders with many reasons for seeking a justice system that provides such offenders a chance at redemption. Some victims ultimately formed strong bonds with these juvenile offenders, some approve of a possibility of resentencing on theoretical or spiritual grounds, and some actively seek to change the justice system to

allow more avenues for redemption and rehabilitation, and expressions of remorse.

Rukiye Abdul-Mutakallim

At 1:30 in the morning on Monday, June 29th, 2015, Rukiye Abdul-Mutakallim awoke to a panicked phone call from her son's wife calling to say that Rukiye's 39-year-old son, Suliman, had been shot half a block from their apartment. Suliman Ahmed Abdul-Mutakallim had gone to the ATM, withdrew cash, and then went to buy take-out for them at the White Castle restaurant. He was returning from the restaurant, walking under a poorly lit overpass, when he was attacked, shot from behind, in the nape of his neck. They shot him, robbed him, and left him bleeding in the street for only \$40 dollars, a wallet, a cell phone, and take-out food.

Police were able to identify two of the three people on the video footage from the ATM and arrest them. The third person, the leader, remained free, leaving the younger boys to take the fall. The boys were tried as adults, and it took two years for their cases to wind their way through the courts. Both boys confessed to the crime and pled guilty to lesser charges. Rukiye was allowed to speak in court at the sentencings. During sentencing for the youngest boy, Javon, Rukiye saw his mother in court for only the second time since the day the boys had been arrested. Javon's mother had become older and weakened. Her son had become taller, more filled out, but he was a

child in a man's body, not knowing what to do or how to stop this path.

As the boy entered his plea of guilty, Rukiye could not hold back her tears. She heard the boy say some words of regret and the judge announced the sentence. His mother cried out in pain. As awful as it was to lay her son in his grave, Rukiye realized she would never want to face such pain as what the boy's mother had to face.

Then Rukiye was invited to address the Court, holding a photo of her son in his naval uniform, she said:

“My name is Rukiye Zathra Abdul-Mutakallim and I am the proud mother of the man in this picture. His name is Suliman Ahmed Abdul-Mutakallim. He comes from a long line of family members who have served this country honorably. He was raised with an Islamic understanding about how you live your life on this earth.”

She looked directly at the young boy, still holding up her son's picture and said:

“You and your accomplices took upon yourselves to commit a horrible crime and showed no mercy to my son. Even as a child, he was kind and helpful to others. I have many stories of him calling me and asking me to help take someone to the doctor's office for an appointment, or take someone to the voting booth, because they wanted to vote. This was the person you harmed that night. You shot

him (all three of you pulled the trigger), robbed him, and left him dying in the gutter, mercilessly. Javon, if you had just asked my son, he would have even give you the shirt off his back along with whatever money he had on him.”

Finally, Rukiye asked the boy, “may I be part of your life to help you?” With tears, Javon said, “yes please be a part of my life and help me.” Then Rukiye and her son’s killer, hugged.

Rukiye’s faith gave her the strength to forgive. She embraces the principles of Al-Islam and raised her children by them. She believes honoring her son’s memory means forgiving Javon and showing him mercy. She says, “My Faith Commands it, because you are a child who has lost your way. You must be shown that there is a better way to live your life, and be given a fair chance to choose that way.”

Rukiye’s faith drives her belief that children are better than the worst thing they ever did and they should get the chance to prove it. Rukiye embraces the notion that a child’s age should be considered in any sentencing and that life without parole robs a child of a second chance.

Jeanne Bishop

On April 7, 1990, Jeanne Bishop lost her younger sister, Nancy Bishop Langert, who was three months pregnant, and her brother-in-law Richard Langert, at the hands of 16-year old David Biro. David had

broken into the Langert home while Nancy and Richard were out, and lay in wait, holding a .357 magnum. When they returned, David handcuffed Richard, led him and Nancy down into the basement, and shot Richard in the back of the head, killing him instantly. David then turned the gun on Nancy, who was huddled in a corner. She begged for her child's life, but David shot her in the abdomen before fleeing. Nancy managed to crawl across the basement floor to a shelf, hitting it with a heavy tool in a futile attempt to make enough noise to bring help. No one came. Only ten minutes later, Nancy and her unborn child were dead.

Jeanne attended David's trial every day for two weeks. After only two hours of deliberation, the jury found David guilty of murder. At the time David was sentenced, the only punishment in Illinois for a double homicide committed by a child was mandatory life in prison without parole. Because of this, Jeanne and her family did not have a chance to give a victim impact statement and did not have the chance to tell David how he had affected their lives.

Initially, Jeanne was satisfied with the punishment. She was glad David would be locked up forever. Then *Miller* was decided, and Jeanne realized David might be re-sentenced. Jeanne did not know how to feel about this possibility. As far as she knew, David was still remorseless.

A friend asked her how she knew David felt no remorse. This question gave her pause. She did not know.

After more than 20 years, Jeanne decided to write to David, telling him she forgave him. To her surprise, Jeanne received a fifteen-page, double-sided letter in return. In his letter, for the very first time, David confessed to his crimes. He expressed deep regret and apologized. Jeanne knew this was sincere, as she knew he received nothing, and asked for nothing, in exchange for his handwritten confession.

On March 3, 2013, Jeanne met face-to-face with David for the first time in prison. This was her opportunity to give the victim impact statement she was unable to read all those years before. Jeanne told David what his actions had done to her family, and the pain his crimes had caused them. As she explained the damage he had caused, Jeanne watched David react and listen. She could see his remorse.

Jeanne and David continued to meet in prison at least a dozen more times, developing a strong, honest and respectful relationship. At each meeting, Jeanne told David about her sister and brother-in-law. Getting to know Jeanne and her family made David feel even more remorse for the harm he caused. When David told her this, Jeanne realized David had changed. Contact with Jeanne had a strong impact on his rehabilitation.

Jeanne understands that others may think David will never change and that he deserves to stay where he is. But Jeanne believes, it does not honor the lives of her sister and brother-in-law to throw away another life. To Jeanne, it is impossible to declare with certainty that a child can never be redeemed or

rehabilitated. She believes it is unreasonable and unfair to assume a child will never feel remorse.

Discretionary life sentences for children are particularly significant to Jeanne because the sentence David Biro received was not only a mandatory life without parole for killing Nancy and Richard, it was also a discretionary life sentence for intentionally killing their unborn child. Jeanne believes life sentences imposed on children “are wrong because they violate the maxim that we should never put a period where God puts a comma.” Jeanne believes “God is not done with these children yet – and neither should we be.” This is why Jeanne believes the consideration of youth required by *Miller* should apply to all life sentences imposed on children.

Sharletta Evans

Casson Xavier Evans was Sharletta Evans’ younger son. On December 21, 1995, Casson was caught in the crossfire of a drive-by shooting, ending his life at age three. Sharletta had gone to her niece’s house to pick up her niece’s child. She left Casson sleeping in the car with her six-year-old son and their older cousins. While inside her niece’s house, Sharletta heard gunshots followed by broken glass. Once she accounted for the safety of everyone in the house, Sharletta returned to her car thinking nothing was wrong. As she started to drive away however, she realized Casson was bleeding and lifeless; he had been killed by a stray bullet. Raymond Johnson, then

age 14, was charged as the shooter, Paul Littlejohn, then age 15, was charged as the accomplice, and another boy, then age 14, was charged as the driver.

Sharletta attended each day of Raymond and Paul's trials, which took place in adult court, despite their ages. Still in shock, overcome by grief and perplexed as to how children so young could get access to guns and commit such a violent crime, Sharletta let her family speak for her at the trial and during sentencing. She did not question the district attorney's plan to use the boys to "set an example" for other juveniles in gangs. At the time, she did not feel this outcome was necessarily what Raymond and Paul deserved, but rather was only an outcome that occurred. Further, the outcome of the trial simply came to pass, and she felt she had little to do with it. It was not until 11 years after Casson's murder and several letters from Raymond and Paul that Sharletta was able to begin to correspond with them. As she started to compare the incarcerated boys to her son, who, if alive, would have been the same age now as the offenders at the time of the crime, Sharletta realized she could not completely heal and overcome her own grief until her son's killers had a chance to redeem themselves. Part of this was the realization that Raymond and Paul were children in an adult prison. These were teenagers who had been led astray, and, if given another opportunity, they may have gone down a different path. As she told the district attorney, the law was followed at the time of

their conviction, but now the law had evolved and the Supreme Court's clarification must be followed.

Sharletta knew that, Raymond, who fired the bullet that killed her son, had changed. At the time of his arrest, Raymond read at less than a third-grade level. Both of his parents had abandoned him, and he, with the help of his grandparents, had raised himself. In the years since the shooting, Raymond developed a faith in God, earned a GED, and kept a clean record in prison. Most importantly, he expressed his remorse in his letters to Sharletta many times over the years since the shooting.

Sharletta has written to the Juvenile Clemency Board to request clemency for Raymond. In 2003, Sharletta founded the non-profit organization Red Cross Blue Shield Gang Prevention Inc. to bring attention to restorative justice as a healing method which connects victims of violence to their offenders to achieve forgiveness and closure. In 2006, her home state of Colorado banned life without parole for children. She also successfully gathered support for a bill that passed in 2016 which made this change in law retroactive.

Sharletta emphasizes that teenagers are so susceptible to influence and manipulation to perform activities that adults would never do. She believes this crucial difference should be taken into account at sentencing, and she supports resentencing for all children serving life sentences.

Lynette D. Grace

Lynette was visiting her friend Eddie after attending her own mother's funeral. Unfortunately, their plans to go to church that morning were disrupted when Lynette awoke to the sound of Eddie and her 16-year-old son, Johnny Bell, arguing. The argument escalated and Johnny stabbed his mother. Upon finding Eddie face down on the floor bleeding to death, Lynette turned to Johnny, who proceeded to stab Lynette herself.

The stabbing was just the beginning of Johnny and Lynette's story. As she tells it, she briefly describes the stabbing, but quickly jumps to twenty years later when she decided to write a letter to Johnny requesting a visit with him in prison. Johnny responded with a long letter, relaying how sorry he was and how much he regretted what he had done. Lynette met with Johnny a few months later and recalls seeing him expressing true remorse and honest accountability through his words and demeanor. Most importantly and surprisingly, she remembers Johnny asking for forgiveness. That was something she was not expecting, but she forgave him immediately because she found she "wasn't holding a grudge or any resentment" towards him.

Despite the horrible circumstances that gave rise to this experience, the lesson of Lynette's story is one of forgiveness. Lynette's ability to forgive Johnny, she says, was an extension of the love she had for Johnny's mother. After seeing the positive impacts of

forgiveness on Johnny, Lynette made it a part of her goal to explain the inspirational impact forgiveness can have on people searching for it. She notes, “[my] forgiveness went further than where I would have imagined or would have thought, and it helped not only Johnny, but other people who heard the story of my forgiveness.”

The complexity of Lynette’s feelings of forgiveness relate to being a victim of Johnny’s violence herself. When the nerves from her stab wounds flair up, she is reminded of that fateful day when all their lives changed through Johnny’s rash and juvenile decision-making. But over the years their relationship has developed to the point that her ability to forgive Johnny has enabled the two of them to pray together. Lynette remembers feeling survivor’s guilt following Eddie’s death, but she says, “Just because you forgive the person that did the harm, does not mean you forget about the person that was harmed or murdered. Forgiving does not mean your loved one is loved any less or forgotten.”

Lynette now champions for Johnny’s release and has been keeping in touch with him in hopes of attending his upcoming parole hearing. Lynette recalls attending some parole hearings during which the prosecutors would begin their arguments with, “on behalf of the victims . . .” and proceed to recommend a sentence with which she did not agree and about which she was not consulted. “Prosecutors cannot speak for the victims,” she notes. In her case, for example, she believes in second chances; “none of

us are who we were 20 years ago.” She believes people like Johnny Bell and Lee Malvo, who committed very serious crimes as a youth, can serve as mentors to other young people who have made similar mistakes and give them hope. Lynette believes all children sentenced to life without parole deserve an opportunity to demonstrate at resentencing the growth and change that, through her relationship with Johnny, she knows is possible.

Darryl Green

A dispute over a missing pair of shoes cost Darryl Green’s little brother his life. On January 17, 1988, then 15-year-old Kimyon Marshall fatally stabbed his friend, 17-year-old Ruben Green. It started with a fight at a bowling alley over a pair of tennis shoes. When Darryl, a college student at the time, found out his brother had been murdered, he was enraged. “I only saw red. I came home to hurt him,” Darryl says, recounting his powerful need for revenge. “I wanted his family to feel the same pain I was feeling.”

At 15, Kimyon was sentenced to life without the possibility of parole – death in prison. Because Darryl and his family did not have an opportunity to testify at the initial sentencing, Darryl had no opportunity to resolve his feelings and release the anger he felt towards Kimyon. Darryl only saw life through a lens of revenge and retaliation, and each day the weight of his anger drained Darryl as it grew heavier and heavier. After years weighed down by this heavy

burden, Darryl realized nothing was going to bring Ruben back, not even Kimyon's life sentence.

Twenty-five years later, this realization led to the most unexpected of situations: Darryl testifying at Kimyon's resentencing hearing in favor of Kimyon's release. "I asked God to take away my anger and give me something else. So He gave me forgiveness," Darryl explains. When Darryl decided to forgive Kimyon, the weight he had carried around with him for 25 years lifted. He was free.

After Kimyon's release, Darryl and Kimyon began working together to save lives. Today, the two travel the world spreading the message of forgiveness, on a mission to give Ruben's life meaning. Darryl says, "If we had locked up Kimyon and thrown away the key forever, we would not have the ability to breathe life into people."

While Darryl wishes every day he could have his brother back, he knows nothing will change that. A life sentence for a child, even one for the person who had murdered his brother, would not achieve this. He knows children are irrational; they do not think about the larger picture or the consequences of their actions. Their brains have not finished developing. When asked how he is able to spread a message of forgiveness in the wake of his brother's murder, Darryl says, "We all make mistakes. We have all done something we wish we could go back and fix. If we throw away an entire population of juveniles for their mistakes, then we are throwing away the chance at remorse, the chance to make a difference."

To Darryl, every child offender deserves a second chance. He believed this for Kimyon, who is now helping him change the world by teaching the lesson of forgiveness – one person at a time. In light of this transformative experience, Darryl supports abolishing life sentences without parole for juvenile offenders, and believes the application of *Miller* to all life sentences imposed on children will move everyone closer to achieving restorative justice.

Barbara Henton

Barbara Henton has strong memories of the day she was shot and made a paraplegic for life. In 1978, at the age of 24, Barbara was at a friend's house playing cards when three individuals burst through the door: Quincy Robinson, Norman Burton, and 16-year-old Timothy Kincaid. Another friend jumped through a window and ran down the street, only to be chased down by Quincy and killed.

Barbara's third friend, Stephanie Ellington, ran into another room. Quincy or Norman handed a gun to Timothy and instructed him to kill Stephanie. Notwithstanding any of Timothy's initial participation in the attacks, it was clear to Barbara that Timothy was not acting of his own accord. Barbara saw the terror on Timothy's face as he tried to spare Stephanie's life by telling her to stay quiet while he shot the gun into the walls of the room. It was a clear attempt to appease the orders of Quincy and Norman without actually hurting Stephanie.

Unfortunately, one of the men returned and killed Stephanie.

Although many assume Barbara found closure in Timothy's arrest and subsequent sentencing, Barbara defended Timothy from the beginning and wanted his release. In her account to the police department, she stated that Timothy was forced to participate in the shootings, and he was as much a victim in the incident as she was. Barbara said, "He was scared to death because they were pushing him around and pointing guns at him." Despite being paralyzed from the shooting, Barbara did not believe Timothy should be accountable for the murders committed by Quincy and Norman. Nevertheless, Timothy was tried and found guilty and sentenced to life in prison without parole. Barbara was upset by the sentence and felt it was wrong.

When presented with questions from Timothy's family members about the events which transpired that day, Barbara realized the impact her voice could make for Timothy and other similarly situated children. As the only living victim from the shootings, she needed to now "speak her truth" by emphasizing the involuntary nature of Timothy's actions that day. She now speaks out against life in prison without the possibility of parole for children and condemns the sentence as wasteful and unjustifiable. She reasons, "[t]eenagers are susceptible to a lot of influence and peer pressure. Why should [they] be locked up for life as a result?" Barbara believes juvenile offenders should have the opportunity to successfully

rehabilitate into society to do good for their communities.

When assessing the injustices which occurred that day, Barbara states, “I should not be in this wheelchair, my friends should not be dead and Timothy should not be in prison.” Barbara is not traumatized by the thought of resentencing juvenile offenders, and in fact, Timothy was resentenced and released on parole in 2017. Although she reflects on that day in 1978 with sadness, she is more unnerved by the thought of these children being unable to receive a second chance at life. For some, she notes, they never had a first chance. Given the positive changes she saw in Timothy and others, Barbara hopes other children can similarly have the opportunity to begin their lives again.

Bill Pelke

On May 14, 1985, Ruth Pelke, a 78-year-old grandmother fondly known as Nana, was brutally murdered when four teenage girls gained access to her home in search of money for the local arcade. Knowing Ruth gave Bible lessons in her home to children in the neighborhood, the girls arrived at her front door under the pretext of wanting a Bible lesson. As Ruth reached for information on Bible classes, one girl hit Ruth over the head with a vase. Paula Cooper, 15, then stabbed Ruth to death – inflicting 33 stab wounds. Once they killed Ruth, the girls absconded with a \$10 and the keys to Ruth’s old car.

Bill Pelke, Ruth's grandson, was a father of children of similar ages to the assailants. Shocked by this senseless murder, he found it particularly difficult to comprehend how these children could so grievously harm a defenseless older woman. When prosecutors sought the death penalty for Paula and one other girl, Bill's family did not question the recommendation. At the time, Bill thought the death sentence was appropriate because, as long the government was killing people in retribution for murder, "his grandmother deserved that her murderers should receive death."

However, just a few months after Paula was sentenced to death, Bill realized the death penalty was not the right response to the murder of a woman with a tremendous faith in God. He became convinced his grandmother would have wanted him to show more compassion, even to her murderers. In fact, Bill was so certain of this that he wrote to Paula the next day and immediately began petitioning for a sentence for Paula that he felt his grandmother would approve. After three years of campaigning and gathering the support of two million petitioners, Paula's sentence was reduced to 60 years, with an early release after 30 years for good behavior.

During her time in prison, Bill had regular contact with Paula, writing every 10 days while she was on Death Row. Although he wanted to visit Paula immediately, he was not permitted to do so until eight years after Ruth's murder. He described the meeting as "wonderful." "Wonderful to have been able to face

Paula, and not have the hate, anger, and desire for revenge that it would have been so easy to have had, but to have the kind of love and compassion that I feel God wants us to have for all of his creation. That was wonderful to me.”

Bill saw Paula mature over the years; she received a GED and a college degree and wanted to help others who have suffered a life like hers. She expressed her remorse to Bill in her many letters and in their meetings. Bill learned of Paula’s abusive childhood evidenced by the absence of both her parents in court the day she was sentenced.

Released in June 2013, Bill had no input in her parole conditions which prevented her from contacting Bill for two years after her release. While Bill was anxiously waiting to welcome her back into the world, he was heartbroken to learn Paula committed suicide in May of 2015. Paula left behind suicide notes expressing her deep remorse for the murder she committed 30 years earlier.

Bill is devastated he was not able to be there for Paula and express his forgiveness by showing her love, compassion and help during the last two years of her life. He believes he might have been able to help her with her feelings of guilt. For Bill, Paula’s story is proof of an overly punitive treatment of incarcerated individuals, even after their release. Now more than ever, Bill strongly believes children can be reformed, and accordingly, children sentenced to life should have opportunities to demonstrate this growth at resentencing.

Valencia Warren-Gibbs

“The first thing I thought when I saw him was, ‘that’s a kid!’ ”

That was Valencia Warren-Gibbs’ first reaction about Bobby Hines, one of the boys who killed her brother in a drug dispute. One of Bobby’s friends owed money to her brother, James, and was beaten up over the outstanding tab. In retaliation for the beating, three teenage boys – two 19-year-olds, and 15-year-old Bobby – confronted James. At only 21 years old the day he died, James never had the chance to meet his own son born just two weeks later.

Though Bobby did not pull the trigger or have a weapon, it was later determined he gave the command for James to be killed, and he received a sentence of life without the possibility of parole.

Valencia remembers she felt uncomfortable with Bobby’s sentence from the time it was imposed. The prosecutors had described him as a mastermind, but he did not look that way to her. Even then, she did not think it made sense to sentence a minor to a life without the possibility of parole sentence, given that he was too young to understand the consequences of his actions. She felt the sentence amounted to “throwing him away” and was an additional insult to her brother’s memory.

After his sentencing, Bobby remained on Valencia’s mind. She continued to monitor him on the Michigan prison database and considered sending him letters, but she could not yet do it. Years later,

when the prosecutors in her brother's case reached out to her about his resentencing, she was eager to weigh in. She reviewed his prison records and was heartened to see that Bobby was devastated that James was killed over a "petty" situation. She realized then that Bobby had become remorseful and that if he had been able to develop and mature with proper guidance, he may not have fallen into the circumstances led him to this trouble. She was glad to see him express responsibility and regret for his part in her brother's murder. Consequently, the victim impact statement Valencia wrote on behalf of her family supported Bobby's resentencing and release from prison.

Since Bobby's release from prison in 2017, he and Valencia built a strong and special relationship and remain in regular contact. In fact, Valencia considers Bobby as "her brother." Bobby has accepted this role and is eager to pay restitution to Valencia's family for James' funeral costs.

Valencia's experience led to her belief that life sentences without the possibility of parole are not appropriate for children. She says, "the experiences I had as a child, a teenager or even in my early twenties are nothing like what I'm like as an adult. As an adult, my decision-making process is so different. As a child, you don't have the toolbox to make decisions properly."

Because of the difference in the brains and decision-making processes of a child, Valencia is in resolute support of providing resentencing

opportunities to children sentenced to life without parole.

Linda White

Linda lost her 26-year-old daughter, Cathy, and Cathy's unborn child on November 18, 1986. Gary Brown was only 15 years old when he and Marion Berry asked Cathy O'Daniel for a ride out of town. A few hours later, the boys raped Cathy at gunpoint, shot her in the leg and then three times in the back of her head, killing her and her unborn child.

Both boys were arrested a few days later, confessed to the killing, and led police to Cathy's body. Both accepted plea deals and were sentenced to over 50 years in prison.

Because Gary and Marion were juveniles who accepted plea deals, Linda never saw them or any media photos of them. Linda never had a chance to tell Gary how much his actions had hurt her and her family. She never even had a chance to look into the eyes of the child who had killed her daughter.

After they were sentenced, Linda knew it was time to move forward and try to help her five-year-old granddaughter heal. She had originally joined a victims group, hoping to find strength amongst others who had suffered similar losses. But the peace she was searching for never came. The group did teach her a valuable lesson, "Grief is work. It's like climbing a mountain. You have to climb it because you can't go

around it.” So Linda did what she needed to do: she began climbing the mountain of grief.

Spurred by the unexpected death of her daughter, Linda went back to college to give her life more meaning in the wake of this tragedy. As she learned more, she became uncomfortable with much of the criminal justice system and its emphasis on retribution. “It felt violent to me,” she says. Searching for something non-violent, in 1994, at a faith meeting, she found it. “Restorative justice was the answer to a prayer,” she says now.

She began conducting informal research into restorative justice and non-violent criminal justice. Linda would finish her bachelor’s and master’s degree and start teaching incarcerated individuals. For the first time, she was coming face-to-face with people like Gary, people who were sentenced to spend most of the rest of their lives in prison. As she taught and spoke with these students, Linda grew convinced of the value of restorative justice and of the belief that harm can be remedied without causing more harm.

Over the course of mere months, Linda went from adamantly refusing any sort of mediation with Gary to practically begging for it. She knew even individuals who had committed the most heinous crimes could develop a sense of deep remorse and desire to make amends for past misdeeds when given the chance. She wanted to give Gary that chance.

After several years of incarceration, years later Linda found herself doing research for her doctorate on victim–offender mediation. Though she had never

been interested in engaging in the practice herself, she changed her mind over just a few months. She knew even individuals who had committed the most heinous of crimes could develop a sense of deep remorse and desire to make amends for past misdeeds when given the chance. She decided she wanted to give Gary that chance.

After 14 years of incarceration, they agreed to meet. When Linda and Gary finally met, she found he was no longer the child who had callously raped and killed her daughter. Gary was a different person – a remorseful and mature man who was seeking both forgiveness and a chance to make up for all of the hurt he had inflicted. Linda, true to her teachings, forgave Gary, and provided him with the second chance he so desperately wanted. Eight years later, the state of Texas gave Gary that second chance, with Linda’s blessing.

To Linda, remembering Cathy and how she lived is much more important to her than remembering how she died. She sees Gary is trying to live his life as a memorial to Cathy. In the nearly 10 years Gary has been out of prison, he has immersed himself in a new community, found and held a job, and stayed out of trouble.

“I want people to know that there are people out there who have done horrible things when they are young,” Linda says, “but have come back to be productive – even wonderful – people.” Linda believes the imposition of life sentences on children is particularly damaging and curtails the opportunities

provided by the restorative justice for which she passionately advocates. Having climbed over the mountain of grief by forgiving Gary and witnessing his living commitment to Cathy's memory, Linda believes *Miller's* requirements should apply to all life sentences without parole for youth.

II. AMICI EMBRACE THIS COURT'S PRECEDENT THAT CHILDREN ARE FUNDAMENTALLY REDEEMABLE AND THEREFORE SUPPORT MILLER'S APPLICATION TO ALL LIFE-WITHOUT-PAROLE SENTENCES IMPOSED ON CHILDREN, REGARDLESS OF THE NATURE OF THE SENTENCING SCHEME.

The Court in *Miller v. Alabama* reiterated a reoccurring principle in this Court's precedent: children are less culpable than adults, and such diminished culpability must be considered before sentencing a youthful offender to life without the possibility of parole.⁸

As noted in their accounts, *Amici* fundamentally agree with this Court that children – even those who commit murder – lack critical developmental maturity which makes them susceptible to acting

⁸ *Montgomery*, 136 S.Ct. 718, 732-34 (2016) ("*Miller* . . . established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'").

impulsively and destructively.⁹ However, *Amici* have also personally seen it is this same lack of development and immaturity which makes youthful offenders capable of immense growth and positive change as they mature into adulthood, a possibility this Court continually recognizes in its precedent.¹⁰

Miller did not bar life sentences without parole for all juvenile offenders; it established, as the *Montgomery* Court recognized, a standard for when life sentences without the possibility of parole are appropriate for children.¹¹ If a child's crime reflects "unfortunate yet transient immaturity," a life sentence in prison is excessive and unconstitutional.¹² Notably, this Court also recognized that only the "rarest of juvenile offenders" would warrant such a harsh and permanent punishment.¹³ By holding *Miller* was a substantive rule that applied

⁹ See, e.g., *Graham v. Florida*, 560 U.S. at 72 (2010) (noting that "juveniles' lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions." (citations omitted)).

¹⁰ See, e.g., *id.* at 72-73 ("To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable."); see also *Montgomery*, 136 S.Ct. 718; *Miller v. Alabama*, 567 U.S. 460; *Roper v. Simmons*, 543 U.S. 551 (2005).

¹¹ *Montgomery*, 136 S.Ct. at 734.

¹² *Miller*, 567 U.S. at 479 quoting *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 73.

¹³ *Montgomery*, 136 S.Ct. at 734-35 (emphasis added) ("[I]n light of 'children's diminished culpability and heightened capacity for change' . . . 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'" (*Id.*)).

retroactively, this Court sought to ensure our justice system demonstrates the truth of “*Miller’s* central intuition – that children who commit even heinous crimes are capable of change.”¹⁴

Accordingly, *Amici* agree with this Court that a life sentence without parole denies a youthful offender the opportunity for rehabilitation,¹⁵ and they therefore are in favor of all children sentenced to life without parole receiving the consideration and resentencing required by *Miller*, regardless of the nature of the sentencing scheme. In this way, every child would be afforded the chance to demonstrate remorse and rehabilitation, and ensure, as this Court has, that the distinctive attributes of adolescence are appropriately considered in the sentencing youth.

III. THE LIVES OF *AMICI’S* LOST LOVED ONES WOULD BE HONORED BY THE APPLICATION OF *MILLER’S RULE* TO ALL LIFE WITHOUT PAROLE SENTENCES IMPOSED ON CHILDREN

Amici’s vivid accounts illustrate children’s immense capacity for positive growth and change, and some demonstrate specific, documented efforts of

¹⁴ *Id.* at 736.

¹⁵ *See id.*; *see also Miller*, 567 U.S. at 473 (quoting *Graham*, 560 U.S. at 74) (“Life without parole ‘forfeits altogether the rehabilitative ideal.’”).

victims actively advocating for reducing the sentences of children who harmed them.

Amici are advocating for our justice system to pursue the goals of rehabilitation and redemption, rather than simply revenge and retribution. They pray the unique attributes of children are appropriately considered at sentencing, and for recognition that not all victims necessarily seek the harshest punishment for people who harmed them, especially when those perpetrators are children.

Many *Amici* feel a deep and meaningful forgiveness towards the child involved in their case. Not all victims will ultimately feel forgiveness, nor should the legal system require or expect that of any of them. Rather *Amici's* forgiveness is consistent with the notion that children are fundamentally different from adults and that they have increased capacity for rehabilitation and redemption, which this court recognized in *Miller*, and affirmed in *Montgomery*.

CONCLUSION

For the foregoing reasons, Amici respectfully request this Court remand Respondent's case for resentencing in accordance with *Miller v. Alabama*.

Respectfully submitted,

ANGELA C. VIGIL, *Counsel of Record*
ADEOLA OLOWUDE
MICHELLE R. PHILLIPS
ALYSHA C. PRESTON
GOLI RAHIMI
SHREE SHARMA
RICHARD L. SLOWINSKI
BAKER & MCKENZIE LLP
Sabadell Financial Center
1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
(305) 789-8904
angela.vigil@bakermckenzie.com
Counsel for Amici Curiae