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March 12, 2020

**Via ECF**

Patricia Dodszuweit, Clerk  
United States Court of Appeals for the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, Pennsylvania 19106-1790

**RE: *United States of America v. Corey Grant*, No. 16-3820**  
Argued *En Banc* February 20, 2018  
Response to Letter Pursuant to Fed. R. App. P. 28(j)

Dear Ms. Dodszuweit:

Appellant Corey Grant respectfully submits this response to the Government's Rule 28(j) letter pointing the Court to *United States v. Sparks*, 941 F.3d 748 (5th Cir. 2019), where the Fifth Circuit upheld a resentencing pursuant to *Graham v. Florida*, 560 U.S. 48 (2010). A comparison of the resentencing in *Sparks* with Grant's is illuminating: the *Sparks* defendant participated in a carjacking resulting in two deaths (one by burning alive); in prison, he stabbed several inmates, leaving one victim "unable to walk or urinate," and another with "brain damage and the loss of [his] right eye." The district court nonetheless "conducted a five-day sentencing hearing," wrote a 26-page opinion, and imposed a below-Guidelines term of 35 years. *Sparks*, 941 F.3d at 753. By contrast, Grant was orally resentenced to 65 years after cursory consideration of his youth and attendant circumstances, and despite a prison record that even the Government conceded "do[es] benefit him to some degree," A136 (Sentencing Tr.). *Sparks* thus highlights that the court below failed to appropriately consider and weigh Grant's youth and capacity for rehabilitation in determining his sentence.

To the extent that *Sparks* went further than necessary, stating that no term of years sentence may ever implicate *Miller v. Alabama*, 567 U.S. 460 (2012), and that

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“a term-of-years sentence cannot be characterized as a *de facto* life sentence,” *Sparks*, 941 F.3d at 754, the case is contrary to the weight of authority, and respectfully, is wrongly decided. *See* Grant’s Br. at 26-27 (citing majority of cases reaching the opposite conclusion). It is not “bizarre” to apply *Miller* to lengthy term-of-years sentences, as *Sparks* alleged, *id.*, but would be for this Court to ignore the reality that Grant’s 65-year sentence denies him any “meaningful opportunity for release based on demonstrated maturity and rehabilitation,” and any “chance for fulfillment outside prison walls.” *See Graham*, 560 U.S. at 75, 79. Instead, the Court should join the majority of jurisdictions, hold *Miller* applicable to extreme sentences like Grant’s, and reverse and remand for an appropriate resentencing after a plenary *Miller* hearing, of the sort that the *Sparks* defendant himself received.

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Appellant certifies that this letter complies with Fed. R. App. P. 28(j) because the body of this letter contains 349 words; this letter was electronically filed with the Clerk of the United States Court of Appeals for the Third Circuit using the Court’s CM/ECF system, and it was served on counsel for Appellee the United States Government, Bruce P. Keller, Assistant U.S. Attorney, through the Notice of Docketing Activity issued by this Court’s electronic filing system on February 28, 2020.

Respectfully submitted,

/s/ Lawrence S. Lustberg  
Lawrence S. Lustberg

cc: Bruce P. Keller, Esq., Assistant U.S. Attorney, w/encs. via ECF