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March 9, 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
Letter Pursuant to Fed. R. App. P. 28(j)

Dear Ms. Dodszuweit:

Appellant Corey Grant respectfully submits this letter pursuant to Fed. R. App. P. 28(j) to cite authorities promulgated since this matter was stayed pending *Mathena v. Malvo*, No. 18-217, which the Supreme Court dismissed after Virginia passed legislation providing a parole opportunity for all juveniles after 20 years. Va. H.B. 35, Gen. Assemb. (Reg. Sess. 2020). Similarly, Oregon recently provided juveniles with a parole opportunity after 15 years. Or. S.B. 1008, 80th Leg. Assemb. (Reg. Sess. 2019). In all, 15 States and the District of Columbia now require that juveniles who, like Grant, are capable of reform, be afforded a chance for release well before Grant's 65 years. This is, as Grant has argued, "objective indicia," of the unconstitutionality of his sentence.

Other recent authorities also support Grant's position. In *U.S. v. Briones*, the Ninth Circuit reversed under *Miller* because the district court, as occurred here, failed on resentencing to "reorient the sentencing analysis to a forward-looking assessment of the defendant's capacity for change or propensity for incorrigibility, rather than a backward-focused review of the defendant's criminal history." 929 F.3d 1057, 1066 (9th Cir. 2019) (*en banc*). And in *Cunio v. Brown*, the district court invalidated an 88-year sentence because "a 'meaningful opportunity' must come

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early enough in a person's life to pursue education, employment, and reintegration into society," just as Grant has argued. 2020 WL 854180 at *6 (D. Ore. Feb. 20, 2020).

Finally, in *People v. Turner*, the Michigan Supreme Court held that "at a *Miller* resentencing, the trial court may exercise its discretion to resentence a defendant on a concurrent sentence, if it finds that the sentence was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole on the greater offense," directly supporting Grant's argument that under the sentencing package doctrine, the district court was required to resentence Grant *de novo* on all counts. 936 N.W.2d 827, 827-28 (2020).

Appellant certifies that this letter complies with Fed. R. App. P. 28(j) because the body of this letter contains 322 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