

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
JUDGE CHARLES T. LASATA

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff- Appellee,
v.
EFRÉN PAREDES, JR.,
Defendant-Appellant.

Supreme Court No. 166129
Court of Appeals No. 359130
Berrien County Circuit Court
No. 1989-001127-FC

BRIEF FOR *AMICI CURIAE* IN SUPPORT OF PETITIONER PAREDES

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STATEMENT OF INTEREST

Human Rights Watch (“HRW”) is a non-profit, non-partisan organization established in 1978 that investigates and reports on violations of fundamental human rights in over 100 countries worldwide with the goal of securing the respect of these rights for all persons. It is the largest international human rights organization based in the United States. By exposing and calling attention to human rights abuses committed by state and non-state actors, Human Rights Watch seeks to bring international public opinion to bear upon offending governments and others and thus bring pressure on them to end abusive practices. Since 2005, Human Rights Watch has documented the situation of juveniles sentenced to life without parole in the United States.¹ Human Rights Watch has filed amicus briefs before various bodies, including the U.S. Supreme Court, U.S. courts of appeal, the highest courts of numerous states, and the Inter-American Commission on Human Rights. Human Rights Watch hereby requests that this Court consider the present brief pursuant to Michigan Court Rule 7.312(H) in support of Petitioner.²

SUMMARY OF ARGUMENT

Article I, Section 16 of the Michigan Constitution prohibits “cruel or unusual punishment.” International law and practice—which the Supreme Court of the United States has established are key factors in making this assessment—show that Michigan’s continued use of life without parole sentences for juveniles is both cruel and unusual.

¹ See, e.g., *“I Just Want to Give Back”: The Reintegration of People Sentenced to Life Without Parole*, Human Rights Watch (June 28, 2023), <<https://www.hrw.org/report/2023/06/28/i-just-want-to-give-back/reintegration-of-people-sentenced-to-life-without-parole>>; Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, Human Rights Watch (New York: Human Rights Watch, 2005), <<http://www.hrw.org/reports/2005/10/11/rest-their-lives-0>>; *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States*, Human Rights Watch (January 3, 2012); *When I Die, They’ll Send Me Home: Youth Sentenced to Life without Parole in California*, Human Rights Watch (Jan. 13, 2008), <<http://www.hrw.org/reports/2008/01/13/when-i-die-they-ll-send-me-home>>.

² As required per MCR 7.312(H)(4), amicus submits that no counsel for a party to this action authored this brief in whole or in part, and no counsel for a party, no party itself, nor any other person made a monetary contribution intended to fund the preparation or submission of the brief.

Sentencing juveniles to lifelong imprisonment without parole violates multiple treaties, including treaties to which the United States has agreed to be bound, and customary norms of international law. The rationale for these widely adopted prohibitions on juvenile life without parole sentences is clear: the practice is cruel and cannot be reconciled with well-established scientific understanding of childhood development.

The laws and practices of every other country in the world show that Michigan is an outlier among outliers in its continued imposition of life without parole sentences on juveniles. In other words, Michigan's practice is unusual. No other country in the world continues to impose sentences of life without parole on children. And within the United States, Michigan imposes such sentences on juveniles far more than any other state.

HRW submits this amicus brief to provide the Court with information regarding these international laws and practices, which provide clear evidence that the practice of sentencing juveniles to life imprisonment without parole is both cruel and unusual in violation of this State's constitution.

I. INTERNATIONAL LAW AND PRACTICE ARE SIGNIFICANT IN ASSESSING WHETHER A PUNISHMENT IS CRUEL OR UNUSUAL

Under Article I, Section 16 of the Michigan Constitution, "cruel or unusual punishment shall not be inflicted."³ In *Trop v. Dulles*, the U.S. Supreme Court explained the role of the fundamental norms of dignity and civility in assessing what is a "cruel" or "unusual" punishment in the context of the similar prohibition in the Eighth Amendment of the U.S. Constitution: "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards."⁴ Recognizing that the text of the Eighth Amendment prohibition against "cruel and unusual punishments" is "not precise" and its meaning "is not static," the U.S. Supreme Court also underscored that it is both appropriate and necessary to look abroad to "evolving standards of decency" to determine which punishments are so disproportionate as to be cruel and unusual.⁵

³ Mich. Const. 1963, Art. I, § 16, eff. Jan. 1, 1964.

⁴ *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

⁵ *Id.* at 100–01.

The U.S. Supreme Court has repeated in several other instances that the laws of other countries and international practice and opinion are relevant to the determination of whether a sentence is cruel and unusual under the U.S. Constitution.⁶ In fact, in its related consideration of the question of juvenile death sentences, *Roper v. Simmons*, the U.S. Supreme Court looked to both the evolution of international law and practice in the global community as instructive for its interpretation of the Eighth Amendment’s prohibition of “cruel and unusual punishments.”⁷ In *Graham v. Florida*, the U.S. Supreme Court again recognized the value of “the judgment of the world’s nations,” citing foreign laws and international practice and opinion that prohibit life without parole for juveniles as evidence that “demonstrates that the Court’s rationale has respected reasoning to support it.”⁸ In his concurrence, Justice Stevens reaffirmed the Court’s reliance on international law for at least a century when interpreting the Eighth Amendment’s “evolving standards of decency.”⁹ These principles apply with equal force to an analysis of whether a sentence is cruel or unusual under the Michigan Constitution, in light of the similarities between the language and goals of Article I, Section 16 of the Michigan Constitution and the Eighth Amendment to the U.S. Constitution.¹⁰

International standards that bind the United States also bind Michigan directly under the Supremacy Clause of the U.S. Constitution.¹¹ The United States has ratified several treaties that prohibit or are otherwise contrary to the imposition of life without parole sentences on juveniles—in particular the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In ratifying these treaties, Congress stated that “the United States understands that this [Convention] shall be implemented

⁶ *Graham v. Florida*, 560 U.S. 48, 80 (2010); *see also Roper v. Simmons*, 543 U.S. 551, 575 (2005).

⁷ *See Roper*, 543 U.S. at 575–78.

⁸ *See Graham*, 560 U.S. at 82.

⁹ *Id.* at 85 (quoting *Weems v. United States*, 217 U.S. 349, 373–378 (1910)).

¹⁰ This Court has adopted the “evolving standards of decency” standard, as articulated in *Trop*, *Roper*, and *Graham*, as a constitutional test for the Michigan Constitution’s prohibition of “cruel or unusual punishment.” *People v. Lorentzen*, 387 Mich. 167, 178-79 (1972); *People v. Parks*, 510 Mich. 225 (July 28, 2022).

¹¹ *People v. Mackle*, 617 N.W.2d 339, 344 (Mich. Ct. App. 2000): Under U.S. Const., art. VI, cl. 2, a treaty entered into under the authority of the United States is the “the supreme Law of the Land” to which “the Judges in every State shall be bound.”

by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments.”¹² Under the Supremacy Clause, these treaty obligations apply to Michigan directly, and provide an independent basis for this Court to prohibit the sentencing of juvenile offenders to life imprisonment without the opportunity of parole.

II. INTERNATIONAL LAW DEMONSTRATES THAT LIFE WITHOUT PAROLE IS CRUEL IN VIOLATION OF THE MICHIGAN CONSTITUTION

A. International Prohibitions on Juvenile Life Without Parole Reflect a Global Consensus that the Practice Is Cruel

Numerous international instruments—including treaties to which the United States is a party—prohibit the practice of sentencing juveniles to life without parole. These prohibitions, which are summarized below in Section II.B, are premised upon a consensus that, in light of well-established understandings of child development, the practice of imposing juvenile life without parole sentences is cruel.

The reasoning behind the international consensus is set out in detail in the U.N. Global Study on Children Deprived of Liberty (“The Study”).¹³ The Study was led by an independent expert appointed by the U.N. Secretary-General and supported by a United Nations inter-agency task force, an advisory board made up of 22 experts in the field of children’s rights and the right to personal liberty, and a panel of NGOs consisting of 170 NGOs with expertise on issues related to children’s deprivation of liberty.¹⁴

The experts involved in the Study analyzed “over 7,000 scientific articles,” finding that “the particular circumstances of detention are directly harmful to the mental and physical health

¹² 138 CONG. REC. S4781 (daily ed. Apr. 2, 1992) (for the International Covenant on Civil and Political Rights) (bold in original); *see also* 140 CONG. REC. S7634-02 (1994) (same understanding regarding the Convention on the Elimination of All Forms of Racial Discrimination); 136 CONG. REC. S17486-01(daily ed. Oct. 27, 1990) (same understanding for the Convention Against Torture).

¹³ U.N. General Assembly, Global Study on Children Deprived of Liberty, U.N. Doc. A/74/136 (July 11, 2019) (report summary); Manfred Nowak, The United Nations Global Study on Children Deprived of Liberty (2019) (full report), *available at* <<https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/1>>.

¹⁴ U.N. General Assembly, Global Study on Children Deprived of Liberty, ¶¶ 9-12, U.N. Doc. A/74/136 (July 11, 2019).

of children across all situations of deprivation of liberty.”¹⁵ In particular, the Study noted that “[m]any children deprived of liberty experience posttraumatic stress disorders,” and that “[a]buse or neglect while in detention often produce or compound mental and cognitive health problems, such as anxiety, depression, developmental delays and even regression of language.”¹⁶ The Study found as much as a tenfold increase in psychiatric disorders of children during detention, “as compared with the mental health of the same children prior to detention,” as well as a “correlation between deprivation of liberty and higher rates of early death of children in that situation compared with their community peers, most often due to drug overdose, suicide, injury and violence.”¹⁷ The Study emphasized that:

[s]ince children are in their formative years, when deprivation of liberty may have highly detrimental effects on their physical and mental health, their further development and their life, States are required [under Article 40(3)(b) of the Convention on the Rights of the Child] to apply non-custodial solutions when dealing with children.¹⁸

The Study concluded by “call[ing] upon States to most rigorously apply the requirement of article 37(b) of the Convention on the Rights of the Child that deprivation of liberty shall be applied only as a measure of last resort in exceptional cases,” and to apply it, where unavoidable,

¹⁵ U.N. General Assembly, Global Study on Children Deprived of Liberty, ¶ 26, U.N. Doc. A/74/136 (July 11, 2019).

¹⁶ *Id.* at ¶ 29. Similarly, a study conducted by Human Rights Watch of youth offenders serving life without parole sentences similarly found that “youth offenders are among the inmates most susceptible to physical and sexual assault during their incarceration. Many are placed in isolated segregation to protect them or to punish them, some spending years without any but the most fleeting human contact. Because of their sentence, youth offenders serving life without parole face the additional burden of being classified in ways that deprive them of meaningful opportunities while in prison: many are denied access to educational and vocational programs available to other inmates. Finally, facing violence, stultifying conditions, and the prospect of lifelong separation from family and friends, many youth offenders experience depression and intense loneliness. Failed by prison mental health services, many contemplate and attempt suicide; some succeed.” Human Rights Watch, *Against All Odds: Youth Offenders Serving Life Without Parole Sentences in the United States* (January 3, 2012), <<https://www.hrw.org/report/2012/01/03/against-all-odds/prison-conditions-youth-offenders-serving-life-without-parole#5756>>.

¹⁷ U.N. General Assembly, Global Study on Children Deprived of Liberty, ¶ 29, U.N. Doc. A/74/136 (July 11, 2019).

¹⁸ *Id.* at ¶ 20.

“only for the shortest appropriate period of time.” Importantly, it stated that “life sentences should never be imposed on a child.”¹⁹

B. The Practice of Sentencing Juveniles to Life Imprisonment Without Parole Is Contrary to the Obligations of the United States Under International Law

Several treaties, including some to which the United States is party, and other international instruments either prohibit juvenile life without parole or otherwise make clear that the punishment is cruel.

1. Juvenile Life Without Parole Sentences Are Contrary to Multiple International Treaties to Which the United States Is a Party

Juvenile life without parole sentences are contrary to the International Covenant on Civil and Political Rights (“ICCPR”), the Declaration of the Rights and Duties of Man (“American Declaration”), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)—each of which the U.S. is bound by.

ICCPR. The ICCPR is a foundational human rights treaty,²⁰ ratified by the United States in 1992, one of a total of 173 countries that have agreed to be bound by its terms.²¹ Several articles of the ICCPR prohibit juvenile life without parole.²² As the Human Rights Committee—the body

¹⁹ *Id.* at ¶¶ 100, 102, 112.

²⁰ International Covenant on Civil and Political Rights, Oct. 5, 1997, 999 U.N.T.S. 171 (opened for signature Dec. 16, 1966) (entered into force Mar. 23, 1976) (ratified by the United States, S. Treaty Doc. No. 95-20 (April 22, 1992)).

²¹ *Id.*; see U.N. Treaty Collection Ch. IV.4,

<<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/iv-4.en.pdf>>.

²² The United States ratified the ICCPR with several reservations, including to Article 7 (prohibiting cruel, inhuman, or degrading treatment or punishment). That reservation states that “the United States considers itself bound by Article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.” S. Exec. Rep. No. 102-23, pt. 9(I)(3), at 22 (1992). The reservation’s explicit reference to the Eighth Amendment necessarily includes the need to assess whether a punishment is cruel and unusual in light of evolving standards of decency, in line with the U.S. Supreme Court’s preexisting and longstanding Eighth Amendment jurisprudence. Under that jurisprudence, the reservation does not detract from the overwhelming evidence that juvenile life without parole sentencing is cruel and unusual. See *Roper*, 543 U.S. at 567 (finding that a reservation to Article 6(5) did not undermine evidence of “a national consensus against juvenile executions”).

established under the ICCPR to monitor compliance and provide authoritative interpretation of the treaty—has explained, “sentencing children to [a] life sentence without parole is of itself not in compliance with article 24(1) of the Covenant.”²³ Article 24(1) states that every child shall have “the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” Further, the Human Rights Committee determined that a life without parole sentence also contravenes Article 7, which prohibits cruel, inhuman, or degrading treatment or punishment.²⁴ Additionally, Article 14(4) of the Covenant requires that criminal procedures for juvenile persons take into account their age and desirability of promoting their rehabilitation—which a sentence of life imprisonment without parole fails to do.

In its Concluding Observations from 2014, the Human Rights Committee commended the U.S. Supreme Court’s judgment in *Roper, Graham, and Miller*, but encouraged the United States to “ensure that state and local governments respect and implement the Covenant.”²⁵ The Human Rights Committee also expressed concern that “a court may still, at its discretion, sentence a defendant to life imprisonment without parole for a homicide committed as a juvenile,” and that “many states exclude 16 and 17 year olds from juvenile court jurisdictions so that juveniles continue to be tried in adult courts and incarcerated in adult institutions,” violating ICCPR Articles

Similarly, another reservation by the United States reserves the right, “in exceptional circumstances, to treat juveniles as adults.” S. Exec. Rep. No. 102-23, pt. 9(I)(5), at 22 (1992). As with the reservation to Article 7, this reservation does not affect the requirement that this court consider “evolving standards of decency.” In addition, the U.N. Human Rights Committee has determined that this reservation is contrary to the object and purpose of the ICCPR and therefore invalid, and has repeatedly called on the United States to withdraw it, to apply the provisions of the Covenant in good faith, to abolish juvenile life with parole sentences, and to ensure that juveniles are not transferred to adult courts. Human Rights Comm, Concluding Observations on the Fifth Periodic Report of the United States of America ¶¶ 5, 47, U.N. Doc. CCPR/C/USA/CO/5 (Dec. 7, 2023); Human Rights Comm, Concluding Observations on the Fourth Periodic Report of the United States of America ¶¶ 4(a), (e), 23, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014); Human Rights Comm., Concluding Observations of the Human Rights Committee ¶ 34, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006).

²³ Human Rights Comm., Concluding Observations of the Human Rights Committee ¶ 34, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006). Article 24 of the ICCPR generally addresses the treatment of children.

²⁴ *Id.*

²⁵ Human Rights Comm, Concluding Observations on the Fourth Periodic Report of the United States of America ¶¶ 4(a), U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

7, 9, 10, 14, 15 and 24.²⁶ In light of these continuing violations, the Human Rights Committee stated that the United States “should prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed.”²⁷

American Declaration. The rights to humane treatment, dignity and personal liberty of children codified in the corpus juris of the Organization of American States (“OAS”), including the American Declaration, mandate the prohibition of sentences of life imprisonment without parole for juvenile offenders. The American Declaration is recognized by the OAS General Assembly as a binding source of international legal obligation for OAS member states. As a state party to the Charter of the Organization of American States and an OAS member state, the United States is bound by the American Declaration.²⁸

The Inter-American human rights system, including Article VII of the Declaration on the Rights and Duties of Man, firmly establishes the right of children to special protection, as both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have confirmed.²⁹ The broad guarantees in the American Declaration, including the right of children to special protection, are not static, but must be understood “in the context of the broader international and Inter-American human rights systems, in the light of developments in the field of international human rights law since it was first composed.”³⁰ The relevant corpus juris encompasses various sources of law, including “the provisions of other international and regional human rights instruments and customary international law.”³¹

²⁶ *Id.* ¶ 23.

²⁷ *Id.*

²⁸ See *Domingues v. United States*, Case No. 12.285, Inter-Am. Comm’n H.R., Rep. No. 62/02 (2002) ¶ 30, Inter-Am. Comm’n H.R., Doc. 5 rev. 1 (2002); *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* ¶¶ 41-42, Case No. 12.866, Rep. No. 448/21, Inter-Am. Comm’n H.R. (Nov. 19, 2021).

²⁹ See, e.g., Juridical Condition and Human Rights of the Child (Arts. 8, 19, and 25 American Convention on Human Rights), Advisory Opinion OC-17/2002, Inter-Am. Ct. H.R. (ser. A) No. 17, ¶¶ 137(11), 109, 116-117 (Aug. 28, 2002); Inter-American Commission on Human Rights, *Juvenile Justice and Human Rights in the Americas* ¶ 2, OEA/Ser.L/V/II, Doc. 78 (July 13, 2011); *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* ¶¶ 41, Case No. 12.866, Rep. No. 448/21, Inter-Am. Comm’n H.R. (Nov. 19, 2021).

³⁰ *Domingues v. United States* ¶ 44, Case No. 12.285, Inter-Am. Comm’n H.R., Rep. No. 62/02 (2002).

³¹ *Id.* ¶ 45. See also *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* ¶¶ 41-42, Case No. 12.866, Rep. No. 448/21, Inter-Am. Comm’n H.R. (Nov. 19, 2021).

A child's right to special protection is also informed by several other guarantees in the American Declaration applicable to children, including Article I, which guarantees every person "the right to life, liberty and the security of his person," recognized by the Commission to include a right to humane treatment.

The right to special protection requires, among other elements, that "a specialized system of juvenile justice must be in place for youth accused of committing crimes, and the rules and regulations of such a juvenile justice system must be fully applied, without discrimination, to all persons under the age of 18 years."³² This specialized juvenile justice system should include rehabilitation and reintegration among its objectives,³³ and "the severity and duration of a sentence . . . must be determined with regard to the child's circumstances and the facts of the offense that was committed."³⁴ Life imprisonment "makes it impossible to achieve the purposes that punishment under the juvenile justice system is intended to serve."³⁵ In light of these obligations, the Inter-American Commission has called for the adoption of "measures to abolish the sentence of life imprisonment for juveniles in Michigan and other states."³⁶ The Commission reached this conclusion after examining in detail the circumstances of 32 named individuals serving juvenile life without parole sentences in the state of Michigan and made findings based on their circumstances as well as those of all juvenile offenders serving such sentences in Michigan, including Efren Paredes. The Commission concluded that Michigan's sentencing of juvenile offenders to life without parole means that "the United States has violated . . . rights to special protection of children, to due process, and to a fair trial under articles VII, XVIII, and XXVI of the American Declaration."³⁷ The Commission also found the circumstances of juvenile life

³² *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* ¶ 44, Case No. 12.866, Rep. No. 448/21, Inter-Am. Comm'n H.R. (Nov. 19, 2021). *Accord* Inter-American Commission on Human Rights, *Juvenile Justice and Human Rights in the Americas* ¶ 3, OEA/Ser.L/V/II, Doc. 78 (July 13, 2011).

³³ *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* ¶ 45, Case No. 12.866, Rep. No. 448/21, Inter-Am. Comm'n H.R. (Nov. 19, 2021).

³⁴ *Id.* ¶ 47.

³⁵ Inter-American Commission on Human Rights, *Juvenile Justice and Human Rights in the Americas* ¶ 364, OEA/Ser.L/V/II, Doc. 78 (July 13, 2011).

³⁶ *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* ¶ 78(6), Case No. 12.866, Rep. No. 448/21, Inter-Am. Comm'n H.R. (Nov. 19, 2021).

³⁷ *Id.* ¶ 61.

without parole sentencing in Michigan violated multiple other articles of the American Declaration, including, *inter alia*, the right “not to receive cruel, infamous, or unusual punishment.”³⁸

CAT. The Committee Against Torture, the body established for oversight of compliance with the CAT,³⁹ in evaluating the United States’ compliance with that treaty, found that life imprisonment of children “could constitute cruel, inhuman or degrading treatment or punishment” in violation of the treaty,⁴⁰ and has called for authorities to “abolish the sentence of life imprisonment without parole for offences committed by children under 18 years of age, irrespective of the crime committed, and enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of the sentence.”⁴¹

2. *The UN Convention on the Rights of the Child Also Prohibits Juvenile Life Without Parole Sentences*

The UN Convention on the Rights of the Child (the “Convention”) is the most widely ratified treaty in the world. The Supreme Court noted in *Roper* that the Convention, which explicitly prohibits life without parole sentences for juveniles, had then been ratified by every country in the world other than the United States and Somalia.⁴² Somalia has subsequently ratified this treaty, as has South Sudan, which became a country six years after the Court decided *Roper*.⁴³ As a result, it is powerful evidence of the international consensus that juvenile life without parole is cruel.

³⁸ *Id.* ¶ 66, ¶ 70, ¶ 77.

³⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Apr. 18, 1988, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (ratified by the United States, S. Treaty Doc No. 100-20 (Oct. 27, 1990)).

⁴⁰ Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America* ¶ 34, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006).

⁴¹ Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America ¶ 24, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014).

⁴² See *Roper*, 543 U.S. at 576.

⁴³ See U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (ratified by Somalia, U.N. Treaty Collection, ch. IV.11 (October 1, 2015)) (acceded to by South Sudan, U.N. Treaty Collection, ch. IV.11 (January 23, 2014)), <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>>.

Moreover, the United States has taken the intermediate step of signing the Convention, obligating it to refrain from acts that would defeat the Convention’s objective and purpose.⁴⁴

As highlighted in *Graham*, Article 37(a) of the Convention “prohibits the imposition of ‘life imprisonment without possibility of release . . . for offences committed by persons below eighteen years of age.’”⁴⁵ Article 37(b) of the Convention further provides that imprisonment be used only as a measure of last resort for juvenile offenders, and for the shortest appropriate time.⁴⁶ In its General Comment No. 24, the Committee on the Rights of the Child, which issues authoritative interpretations of the Convention, specifically stated that “[no] child who was below the age of 18 at the time he or she committed an offence should be sentenced to life imprisonment without the possibility of release or parole.”⁴⁷

More generally, sentences of life imprisonment are contrary to the “general principles”⁴⁸ of the Convention and “make[] it very difficult, if not impossible, to achieve the aims” of juvenile justice set forth in the Convention.⁴⁹ When such sentences are imposed without possibility of release, they certainly defeat key components of the Convention’s object and purpose.

⁴⁴ See Vienna Convention on the Law of Treaties art. 18(a), May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980). The United States is not a party to the Vienna Convention, but the U.S. Department of State has taken the position that, “[t]he United States considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties.” *Vienna Convention on the Law of Treaties*, U.S. Dep’t State, <<https://2009-2017.state.gov/s/l/treaty/faqs/70139.htm>> (last visited Dec. 22, 2023); see also, e.g., *The Paquete Habana*, 175 U.S. 677, 708 (1900) (stating that courts “are bound to take judicial notice of, and to give effect to” customary international law).

⁴⁵ See *Graham*, 560 U.S. at 81.

⁴⁶ U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁴⁷ Comm. on the Rights of the Child, General Comment No. 24 on Children’s Rights in the Justice System ¶ 81, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019).

⁴⁸ The Committee on the Rights of the Child has identified states’ obligation to “ensure to the maximum extent possible the . . . development of the child” and the principle of “the best interests of the child as a primary consideration in all actions concerning children” as among the Convention’s “general principles.” Comm. on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child ¶ 12, U.N. Doc. CRC/C/GC/2003/5 (Nov. 27, 2003).

⁴⁹ Comm. on the Rights of the Child, General Comment No. 24 on Children’s Rights in the Justice System ¶ 81, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019).

III. INTERNATIONAL PRACTICE SHOWS THAT JUVENILE LIFE WITHOUT PAROLE IS UNUSUAL IN VIOLATION OF THE MICHIGAN STATE CONSTITUTION

A. No Other Country Continues to Sentence Children to Life Without Parole

International practice reflects a consensus that life without parole sentences are inappropriate for juvenile offenders. At least 183 out of 193 UN member states have formally abolished the punishment.⁵⁰ Among the remaining 10, there are no known cases of individuals currently serving life without parole sentences for crimes committed as juveniles, except in the United States.⁵¹ The United States stands alone.

B. The Large Majority of U.S. States No Longer Sentence Juveniles to Life Without Parole

Twenty-eight states and the District of Columbia have abolished life without parole sentences for juveniles. In most states where life without parole sentences for juveniles are not formally prohibited, the practice is rare.⁵² In short, Michigan is an outlier within the United States as well as around the globe in its continued practice of imposing life without parole sentences on juveniles.

A Human Rights Watch scorecard by the Children's Rights Division graded all fifty states on their laws related to key children's rights set forth in the UN Convention on the Rights of the Child, including juvenile justice. Only 16 states received an F grade, of which Michigan was one.⁵³ Only four states have imposed juvenile life without parole sentences in the past five years: Michigan, Alabama, Georgia, and Mississippi.⁵⁴ Of these four states, Michigan has by far the

⁵⁰ See *Miller* 567 U.S. at 460; see also Brief of Amici Curiae Amnesty International et al. in Supp. of Petitioners at 18, *Miller v. Alabama*, 567 U.S. 460, (2012) (Nos. 10-9646, 10-9647) (naming 10 countries not including the United States that had not formally abolished the practice). Since *Miller*, Saint Vincent and the Grenadines has completely abolished the practice as well. See Child Justice Act, 2019 (Art. 65(1)) (St. Vincent), <https://assembly.gov.vc/assembly/images/ActsBillsPolicies/child_justice_act_2019.pdf>

⁵¹ See Connie de la Vega and Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 Univ. S.F. L. Rev. 990 (2008).

⁵² See *Roper*, 543 U.S. at 564.

⁵³ *How Do US States Measure Up on Child Rights*, Human Rights Watch (Sept. 7, 2023), <<https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights>>.

⁵⁴ Campaign for the Fair Sentencing of Youth, *Juvenile Life Without Parole: Unusual. Unequal.* (2023), <<https://cfsy.org/wp-content/uploads/Unusual-Unequal-JLWOP.pdf>> [hereinafter *Juvenile Life Without Parole: Unusual. Unequal.*].

largest population of individuals serving juvenile life without parole sentences, including ten more than the next-largest.⁵⁵ The weight of state law, practice, and consensus against life without parole sentences for juvenile offenders supports the conclusion that such a sentence is unusual.

The consensus against juvenile life without parole sentencing has strengthened further in the decade since *Miller v. Alabama*.⁵⁶ In its national survey of life without parole sentences for juveniles in the United States, the Campaign for the Fair Sentencing of Youth found 441 people still serving juvenile life without parole sentences today, an 85% drop from the 2,900 people serving juvenile life without parole sentences a decade ago.⁵⁷ Fewer than 100 people have been re-sentenced to life without parole nationwide following *Miller*, further evidence that the consensus of U.S. states is moving toward prohibiting juvenile life without parole sentences under any circumstances.⁵⁸ Just as in *Roper*, the standards of decency on juvenile life without parole sentences have evolved since the issue was considered in *Miller*.⁵⁹

Michigan's status as an outlier in its continued use of juvenile life without parole sentencing is further illustrated by the conclusions of the Inter-American Commission on Human Rights in its 2021 report, which focused specifically on 32 juveniles sentenced to life without parole in Michigan.⁶⁰

C. The Unusual Nature of Juvenile Life Without Parole Sentences Raises Additional Civil Rights Concerns

The unusual nature of juvenile life without parole also raises additional civil rights concerns, including concerns that the sentence is applied in a racially discriminatory manner. The Committee on the Elimination of Racial Discrimination, the oversight body for the CERD, has repeatedly set out these concerns, concluding that juvenile life without parole sentences are incompatible with Article 5(a) of the Convention because these sentences are applied

⁵⁵ *Id.*

⁵⁶ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁵⁷ *Juvenile Life Without Parole: Unusual. Unequal*, *supra* note 54.

⁵⁸ *Sentencing Children to Life Without Parole: National Numbers*, Campaign for the Fair Sentencing of Youth (June 2023), <<https://cfsy.org/sentencing-children-to-life-without-parole-national-numbers/>>.

⁵⁹ *See Roper*, 543 U.S. at 564.

⁶⁰ *See supra*, notes **Error! Bookmark not defined.**–38 and accompanying text.

disproportionately to youth of color, amounting to pervasive discrimination that the United States has failed to address.⁶¹

For instance, data analyzed by Human Rights Watch have shown “significant disparities in the rate at which African-American youth and white youth arrested for murder face life without parole”⁶² and that while “states across the country arrest black youth for murder at per capita rates that far exceed the murder arrest rates for white youth,” Michigan was one of three states with “much larger differences between their per capita rates of murder arrests for black and white youth than the average among the 25 states in which data were available.”⁶³ In all of the states for which data were available, “relative to the state population in the age group 14-17, black youth are serving life without parole [o]n average . . . at a rate that is 10 times that of white youth.”⁶⁴

Reviewing U.S. Federal Bureau of Investigation data, Human Rights Watch found that “once arrested for murder, black youth and white youth face strikingly different chances of receiving a sentence of life without the possibility of parole.”⁶⁵ The disparities Human Rights Watch identified “support the hypothesis that there is something other than the criminality of these two racial groups—something that happens after their arrests for murder, such as unequal treatment by prosecutors, before courts, and by sentencing judges—that causes the disparities between sentencing of black and white youth to [life without parole].”⁶⁶

Michigan, again, is an outlier in racial and ethnic disparities that persist in its population of people serving life without parole sentences. As of 2017, African Americans made up 68.4% of

⁶¹ Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States* ¶ 21, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008). *See also* Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America* ¶ 21, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014); Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Periodic Reports of the United States of America* ¶¶ 27, 28(g), U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).

⁶² Human Rights Watch, *Submission to the Committee on the Elimination of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America*, CERD 72nd Session, Volume 20, No. 2(G), Feb. 2008, <<https://www.hrw.org/report/2008/02/07/submission-committee-elimination-racial-discrimination/during-its-consideration>> (accessed Nov. 15, 2023).

⁶³ *Id.* at 19–20.

⁶⁴ *Id.* at 21.

⁶⁵ *Id.* at 23.

⁶⁶ *Id.* at 24.

the population of people serving life without parole sentences, making it the state with fourth highest percentage following Georgia (75.1%), Louisiana (73.5%), and Alabama (68.8%).⁶⁷ Additionally, according to a dataset published in 2023, the racial disparity is significantly greater for those under the age of 26, as compared to those 26 and older. 66% of people sentenced to life without parole before the age of 26 are black, as compared to 51% of people sentenced to life without parole in adulthood.⁶⁸

In the most recent concluding observations on the record of the United States under CERD, the Committee expressed concern at “the overrepresentation of racial and ethnic minorities, particularly children of African descent and indigenous children, in the juvenile justice system” as well as “the disproportionate rate at which youths from racial and ethnic minorities are prosecuted as adults and sentenced to life imprisonment without parole in some states.”⁶⁹ In an earlier report, the Committee expressed concern with “racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons and sentenced to life imprisonment without parole,” and that “despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary sentences of life imprisonment without parole are still permitted for juveniles convicted of homicide.”⁷⁰ The Committee “call[ed] upon the State party to intensify its efforts to address racial disparities in the application of disciplinary measures . . . and ensure that juveniles are not transferred to adult courts.”⁷¹ It also repeated its previous recommendation “to prohibit and

⁶⁷ The Sentencing Project, *Still Life: America’s Increasing Use of Life and Long-Term Sentences* (May 2017), <<https://www.sentencingproject.org/reports/still-life-americaos-increasing-use-of-life-and-long-term-sentences/>>.

⁶⁸ The Sentencing Project, *Left to Die in Prison: Emergency Adults 25 and Younger Sentenced to Life without Parole* (June 2023), <<https://www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/>>.

⁶⁹ Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Tenth to Twelfth Periodic Reports of the United States of America ¶¶ 27, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).

⁷⁰ Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America ¶ 21, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

⁷¹ *Id.*

abolish life imprisonment without parole for persons who were under 18 years at the time of the crime, irrespective of the nature and circumstances of the crime committed, and to commute the sentences for those currently serving such sentences.”⁷²

CONCLUSION

International law and practice supports the conclusion that Michigan’s practice of life without parole sentences for juvenile offenders is both cruel and unusual and should be held unconstitutional under the Michigan Constitution.

Dated: December 28, 2023

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⁷² *Id.*

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.305(A) and MCR 7.212(B). The document contains 6,174 words, one-inch page margins, the font is Times New Roman, and the text is 12-point type and double spaced (except block quotations and footnotes, which are single spaced).

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2023, I electronically filed the foregoing papers with the Clerk of Court using the Odyssey File and Serve system, which will send notification of such filing to all counsel of record and/or a copy will be sent via first class U.S. Mail to all counsel not listed on the Odyssey service list.

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