

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-865

REBECCA LEE FALCON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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**BRIEF OF JUVENILE LAW CENTER, *et al.***  
**AS *AMICI CURIAE* ON BEHALF OF PETITIONER**

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On Discretionary Review from the Decision  
of the First District Court of Appeal

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## **I. INTEREST OF *AMICI***

The organizations and individuals submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. *Amici* are advocates and researchers who have a wealth of experience and expertise in providing for the care, treatment, and rehabilitation of youth in the child welfare and justice systems. *Amici* know that youth who enter these systems need extra protection and special care. *Amici* understand from their collective experience that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* also know that a core characteristic of adolescence is the capacity to change and mature. For these reasons, *Amici* believe that youth status separates juvenile and adult offenders in categorical and distinct ways that warrant distinct treatment under the Eighth Amendment.

## **II. IDENTITY OF *AMICI***

See Appendix for a list and brief description of all *Amici*.

## **III. CONSENT OF THE PARTIES**

Both parties have consented to this filing.

#### IV. SUMMARY OF ARGUMENT

In *Miller v. Alabama*, 567 U.S. ---, 132 S. Ct. 2455 (2012), the United States Supreme Court held that the mandatory imposition of sentences of life without the possibility of parole on juvenile offenders convicted of murder is unconstitutional. At the time Petitioner was sentenced for crimes she committed as a juvenile, Florida law mandated a life without parole sentence for her murder-based offenses. As applied to juvenile offenders, this mandatory scheme is unconstitutional pursuant to *Miller*.

First, the United States Supreme Court has already answered the question of retroactivity by applying *Miller* to Kuntrell Jackson's case, which was before the court on collateral review. Moreover, *Miller* announced a substantive rule, which is consistent with the Supreme Court's interpretation of the Eighth Amendment in light of its evolving understanding and appreciation of the significance of child and adolescent development. Further, because the *Miller* Court found a violation of the Eighth Amendment, the rule announced necessarily must provide retroactive relief. If the Court determines that a punishment is cruel and unusual, it inescapably deems the same punishment, albeit imposed before the decision, similarly cruel and unusual; nothing about the nature of the punishment or its disproportionality is lessened by the date upon which it was imposed. In other words, categorically, any Eighth Amendment decision barring a particular sentence must be retroactive,

including *Miller*. For each of these reasons, *Miller* applies retroactively to Petitioner.

## V. ARGUMENT

### A. *Miller* Reaffirms The U.S. Supreme Court’s Recognition That Children Are Fundamentally Different From Adults And Categorically Less Deserving Of The Harshest Forms Of Punishments

*Miller* held that, prior to imposing a life without parole sentence on a juvenile offender, the sentencer must take into account the juvenile’s reduced blameworthiness. *Miller*, 132 S. Ct. at 2460. Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court’s rationale for its holding: the mandatory imposition of sentences of life without parole “prevents those meting out punishment from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change,’ and runs afoul of our cases’ requirement of individualized sentencing for defendants facing the most serious penalties. *Id.* (quoting *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 at 2026-27, 2029-30). The Court grounded its holding “not only on common sense . . . but on science and social science as well,” *id.* at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted “that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years

go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Id.* at 2464-65 (quoting *Graham*, 130 S. Ct., at 2027; *Roper v. Simmons*, 543 U.S. 551, 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)).

In *Graham*, which held that life without parole sentences for juveniles convicted of non-homicide offenses violate the Eighth Amendment, the U.S. Supreme Court cited three essential characteristics which distinguish youth from adults for culpability purposes:

As compared to adults, juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.” *Roper*, 543 U.S. at 569-70. These salient characteristics mean that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* at 573. Accordingly, “juvenile offenders cannot with reliability be classified among the worst offenders.” *Id.* at 569.

*Id.* at 2026. The Court concluded that “[a] juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’” *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988)).

The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no



opportunity for review was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U. S. at 570. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”

*Id.* at 2026-27. The Court’s holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow.

Both the *Miller* and the *Graham* Courts relied upon an emerging body of research confirming the distinct emotional, psychological and neurological attributes of youth. The Court clarified in *Graham* that, since *Roper*, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” *Id.* at 2026. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the “status of the offender” is central to the question of whether a punishment is constitutional. *Id.* at 2027.

Importantly, in *Miller*, the Court found that none of what *Graham* “said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific.” 132 S. Ct. at 2465. The Court instead emphasized “that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* As a result, it held in *Miller* “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders,” *id.* at 2469, because “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467.

### **B. *Miller* Applies Retroactively**

As described in Petitioner’s brief, *Miller* is retroactive pursuant to Florida’s retroactivity standard. In addition, U.S. Supreme Court precedent requires that *Miller* be applied retroactively.

#### **1. *Miller* Is Retroactive Because Jackson Received The Same Relief On Collateral Review**

The United States Supreme Court has already answered the question of retroactivity by applying *Miller* on collateral review. Had *Miller* not applied retroactively to cases on collateral review, Kuntrell Jackson – whose case, *Jackson v. Hobbs*, was the companion case to *Miller* – would have been precluded from the

relief he was granted.<sup>1</sup> Additionally, “once a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated.” *Teague v. Lane*, 489 U.S. 288, 300 (1989). Therefore, if a new rule is announced and applied to a defendant on collateral review, as occurred in *Miller*, that rule necessarily is retroactive. Given the Court’s application of *Miller* retroactively to Jackson’s case on collateral review, further analysis is not necessary.

**2. Once A Sentence Is Declared Unconstitutional Under The Eighth Amendment, The Ruling Must Apply Retroactively To Petitioners Who Have Exhausted Their Direct Appeals**

*Miller*’s holding that mandatory life without parole sentences violate the Eighth Amendment must be applied retroactively. The Supreme Court repeatedly has recognized that the Amendment’s ban on cruel and unusual punishment “flows from the basic ‘precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.’” *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). In determining what constitutes cruel and unusual punishment, the Court has considered the proportionality of the sentence imposed to the harm committed.

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<sup>1</sup> Notably, *Jackson* and *Miller* were joined and both *Miller* and *Jackson* received the same relief, in the same manner. This is clear from the Court’s assertion that both cases were remanded “for further proceedings not inconsistent with” its opinion. *Miller*, 132 S. Ct. at 2475.

The Court has emphasized the need for objective factors to determine the gravity of the offenses in comparison to the criminal sentences, in order to assess the constitutionality of those sentences based on “the evolving standards of decency that mark the progress of a maturing society.” *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 959 (1991) (Kennedy, J., concurring) (citing *Rummel v. Estelle*, 445 U.S. 263, 274-75(1980)). *See also Trop v. Dulles*, 356 U.S. 86, 101 (1958). In *Miller*, the Court observed that

[b]y requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment’s ban on cruel and unusual punishment.

132 S. Ct. at 2475. Unless *Miller* is applied retroactively, children who lacked sufficient culpability to justify the mandatory sentences they received before the case was decided will remain condemned to die in prison. *See id.* at 2460. Such a conclusion defies logic, and contravenes Eighth Amendment jurisprudence. *See, e.g., Atkins v. Virginia*, 536 U.S. 304 (2002) (banning the death penalty for “mentally retarded offenders” who the Court acknowledged were “categorically less culpable than the average criminal.”); *In re Brown*, 457 F.3d 392, 396 (5th Cir. 2006) (holding that a successive petition that raised *Atkins* after the decision came

down would be permitted in light of the Supreme Court's new rule).<sup>2</sup> It is both common sense and a fundamental tenet of our justice system that

the individual who violates the law should be punished to the extent that others in society deem appropriate. If, however, society changes its mind, then what was once "just deserts" has now become unjust. And, it is contrary to a system of justice that a rigid adherence to the temporal order of when a statute was adopted and when someone was convicted should trump the application of a new lesser, punishment.

S. David Mitchell, *Blanket Retroactive Amelioration: a Remedy for Disproportionate Punishments*, 40 Fordham Urb.L.J. City Square 14 (2013), available at <http://urbanlawjournal.com/?p=1224>.

As the Illinois Appellate Court concluded in finding *Miller* retroactive for cases on collateral review, in addition to mandatory life without parole sentences constituting "cruel and unusual punishment[,] " "[i]t would also be cruel and unusual to apply that principle only to new cases." *People v. Williams*, 2012 WL 6206407 at \*14. See also *Hill v. Snyder*, 2013 WL 364198 at \*2 (E.D. Mich., Jan. 30, 2013) (proclaiming that "if ever there was a legal rule that should – as a matter of law and morality – be given retroactive effect, it is the rule announced in *Miller*. To hold otherwise would allow the state to impose *unconstitutional* punishment on

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<sup>2</sup> Given the Court's language about culpability in *Atkins*, it would have been inconceivable for the Court to have sanctioned the further execution of mentally retarded individuals simply because they had exhausted their direct appeal rights. The same holds true for the pronouncements made in *Miller*.

some persons but not others, an intolerable miscarriage of justice.”). Any other interpretation of *Miller* would be incorrect, unjust, and immoral.

### **3. *Miller* Is Retroactive Because It Involves A Substantive Interpretation Of The Eighth Amendment That Reflects The Supreme Court’s Evolving Understanding Of Child And Adolescent Development**

In recent years, the United States Supreme Court has focused on whether a new rule is “substantive” or “procedural” to determine its retroactivity. *Schriro v. Summerlin*, 542 U.S. 348, 353, 124 S. Ct. 2519, 2523 (2004). A new rule is “substantive” if it “alters the range of conduct or the class of persons that the law punishes.” *Id.* Generally, new substantive “rules apply retroactively because they ‘necessarily carry a significant risk that a defendant stands convicted of ‘an act that the law does not make criminal’ or faces a punishment that the law cannot impose upon him.” *Schriro*, 542 U.S. at 352 (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)).

The decisions in *Atkins v. Virginia*, 536 U.S. 304 (2002), which barred the execution of mentally retarded individuals, and *Roper v. Simmons*, 543 U.S. 551 (2005), which banned the death penalty for juveniles, have been applied retroactively because they “prohibit[] a certain category of punishment for a class of defendants because of their status or offense.” *Horn v. Banks*, 536 U.S. 266, 272 (2002). Similarly, *Graham v. Florida*, 560 U.S. 48 (2010) “bar[red] the imposition of a sentence of life imprisonment without parole on a juvenile offender” – i.e.

barred a category of punishment for a class of defendants. *See In re Sparks*, 657 F.3d 258, 262 (5th Cir. 2011) (applying retroactively *Graham*'s categorical bar against life imprisonment without the possibility of parole for juvenile non-homicide offenders).

The new rule announced in *Miller* is substantive and a fundamentally significant change in law, and therefore retroactive, because "it alters . . . the class of persons that the law punishes." *Schriro*, 542 U.S. at 353. In this case, the Court's decision altered the class of persons eligible for mandatory life without parole sentences by excluding juvenile offenders from such statutes' reach.<sup>3</sup> Like the rules announced in *Atkins*, *Roper* and *Graham*, *Miller* "prohibit[s] a certain category of punishment" – mandatory life imprisonment without the possibility of parole – "for a class of defendants," – juvenile homicide offenders. *Horn*, 536 U.S. at 272.

The U.S. Supreme Court also has found that sentences with mandatory minimums are substantively different than discretionary sentencing schemes. Most recently, in *Alleyne v. United States*, 570 U.S. ---, 133 S. Ct. 2151 (2013), the

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<sup>3</sup> Additionally, it is inaccurate to characterize the mandatory aspect of a sentence as procedural: the mandatory life without parole sentences invalidated by *Miller* both: 1) applied to a class of defendants (juveniles); and 2) served as an additional punishment by virtue of their mandatory imposition. Like *Graham*, which did not impose a categorical ban on life without parole sentences (but instead banned the sentence for juveniles convicted of non-homicide crimes), *Miller* banned a particular punishment (mandatory life without parole) for a class of defendants (youth), because of those defendants' membership in that class.

Court stated that “[m]andatory minimum sentences increase the penalty for the crime.” 133 S. Ct. at 2155. The Court found that an increase in a mandatory minimum sentence “aggravates the punishment.” *Id.* at 2158. The Court described a sentence with a higher mandatory minimum as “a new penalty,” *id.* at 2160, finding it “impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime.” *Id.* The Court explained that “[e]levating the low-end of a sentencing range heightens the loss of liberty associated with the crime.” *Id.* at 2161. The Court’s language in *Alleyne* makes clear that a sentence with a mandatory minimum is substantively different than a discretionary sentence. Because mandatory juvenile life without parole sentence schemes establish a mandatory minimum of life, these sentencing schemes are substantively, not procedurally, distinct from discretionary life without parole sentences. A mandatory life without parole sentence is substantively harsher, more aggravated, and implicates a heightened loss of liberty than a discretionary sentencing scheme. Because the U.S. Supreme Court has found this mandatory sentencing scheme unconstitutionally disproportionate as applied to juveniles, *Miller expanded* the range of sentencing options available to juveniles by prohibiting mandatory life without parole and requiring that an *additional* sentencing option be put in place—a fundamental change in sentencing for juveniles that goes well beyond a change in process. Petitioner is entitled to be resentenced pursuant to a sentencing scheme



that comports with these constitutional mandates – one that is proportionate and individualized.<sup>4</sup>

Additionally, in a series of decisions announced after Ms. Falcon’s case was decided, the Supreme Court consistently has recognized that a child’s age is far “more than a chronological fact”; it bears directly on children’s constitutional rights and status in the justice system. *See, e.g., J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (citations omitted). *Roper*, *Graham*, and *Miller* have enriched the Court’s Eighth Amendment jurisprudence with scientific research confirming that youth merit distinctive treatment. *See Roper*, 543 U.S. at 569-70 (explaining that “[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders”) (citing Arnett, *Reckless Behavior in Adolescence: A*

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<sup>4</sup> *Miller* recognized, as previously held by *Harmelin v. Michigan*, 501 U.S. 957 (1991), that in the adult context, there is no substantive right against mandatory sentencing – “a sentence which is not otherwise cruel and unusual” does not “becom[e] so simply because it is mandatory.” *Miller*, 132 S. Ct. at 2470. In the juvenile context, *Miller* held the opposite, explicitly finding a mandatory life without parole sentence cruel and unusual, while leaving open the possibility that *discretionary* life without parole sentences might still be imposed. The Court wrote, “*Harmelin* had nothing to do with children and did not purport to apply its holding to the sentence of juvenile offenders.” *Id.* Instead, the Court likened its holding to *Roper* and *Graham*, decisions holding that “a sentencing rule permissible for adults may not be so for children.” *Id.* By rejecting *Harmelin*, the Court implicitly held that mandatory life without parole is *categorically* cruel and unusual for juveniles – and thus “prohibit[ed] a certain category of punishment for a class of defendants because of their status or offense.” *Penry, v. Lynaugh*, 492 U.S. 302, 330 (1989).

Developmental Perspective, 12 *Developmental Rev.* 339 (1992); Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003)); *Graham*, 560 U.S. at 2026–2027 (reiterating that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”); *Miller*, 132 S. Ct. at 2465 (“[t]he evidence presented to us in these cases indicates that the science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger.”). This new interpretation of the Eighth Amendment qualifies as a substantive change under U.S. Supreme Court precedent.

Weighing the offender’s culpability is a cornerstone of our criminal justice system and is central to ensuring the rationality of sentencing. *See Tison v. Arizona*, 481 U.S. 137, 156 (1987) (“Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished.”). As discussed above, the Supreme Court has held that juveniles as a class have reduced culpability for their criminal conduct. Therefore, *Miller* requires that, prior to imposing a life without parole sentence on a juvenile offender, the sentencer must consider the factors that relate to the youth’s overall culpability and capacity for rehabilitation. These factors include: (1) the juvenile’s “chronological age” and

related “immaturity, impetuosity, and failure to appreciate risks and consequences;” (2) the juvenile’s “family and home environment that surrounds him;” (3) “the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;” (4) the “incompetencies associated with youth” in dealing with law enforcement and a criminal justice system designed for adults; and (5) “the possibility of rehabilitation.” 132 S. Ct. at 2468-2469. These factors involve a substantive assessment of the juvenile’s culpability. Because *Miller* relies on this new, substantive interpretation of the Eighth Amendment, the decision must be applied retroactively.

**4. Absent A Determination That Petitioner Is Among The “Uncommon” Juveniles For Whom A Life Without Parole Sentence Is Justified, Her Sentence Must Provide A Meaningful Opportunity For Release**

As Petitioner has explained, at the time of Ms. Falcon’s sentencing, the judge was bound by Florida law governing murder; the sentencing scheme did not permit consideration of the attributes of youth identified in *Miller*. (R.113, 115-16.)

While the United States Supreme Court has left open the possibility that a trial court could impose a life without parole sentence on a juvenile, the Court found that “given all we have said in *Roper*, *Graham*, and [*Miller*] about children’s diminished culpability and heightened capacity for change, we think appropriate

occasions for sentencing juveniles to this harshest possible penalty will be *uncommon.*” *Miller*, 132 S. Ct. at 2469 (emphasis added). Quoting *Roper* and *Graham*, *Miller* further notes that the “juvenile offender whose crime reflects irreparable corruption” will be “rare.” 132 S. Ct. at 2469.<sup>5</sup> This reflects the fact that, in effect, a mandatory sentence is a harsher sentence than is one imposed pursuant to a discretionary scheme; it is, by definition, a more disproportionate punishment. The *Miller* majority assumes that most juveniles will not get life without parole (preserving a judge’s discretion to impose it in only the most “rare” case), and the language and foundation of the opinion rests on that assumption.

Therefore, absent a finding that Petitioner is among the rare juveniles for whom life without parole is appropriate, the trial court must impose a sentence that provides her a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham*, 130 S. Ct. at 2030. As *Graham* makes clear, the Eighth Amendment “forbid[s] States from making the judgment at the outset that [juvenile] offenders never will be fit to reenter society.” *Id.* at 2032. Juveniles who receive non-life without parole sentences “should not be deprived of the

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<sup>5</sup> The Supreme Court has repeatedly found that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *See Roper*, 543 U.S. at 573; *see also Graham*, 130 S. Ct. at 2026; *Miller*, 132 S. Ct. at 2469.

opportunity to achieve maturity of judgment and self-recognition of human worth and potential.” *Id.* at 2032.

For an opportunity for release to be “meaningful” under *Graham*, review must begin long before a juvenile reaches old age. The Supreme Court has noted that “[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.” *Roper*, 543 U.S. at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003)). Because most juveniles are likely to outgrow their antisocial and criminal behavior as they mature into adults, review of the juvenile’s maturation and rehabilitation should begin relatively early in the juvenile’s sentence, and the juvenile’s progress should be assessed regularly. *See, e.g., Research on Pathways to Desistance; December 2012 Update, Models for Change, available at: <http://www.modelsforchange.net/publications/357>* (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts. The study also found that “it is hard to determine who will continue or escalate their

antisocial acts and who will desist[,]” as “the original offense . . . has little relation to the path the youth follows over the next seven years.”).

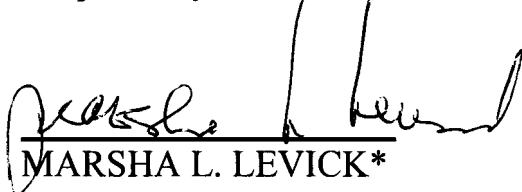
## VI. CONCLUSION

As Justice Frankfurter wrote over fifty years ago in *May v. Anderson* 345 U.S. 528, 536 (1953), “[c]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State’s duty towards children.” Adult sentencing practices that currently preclude consideration of the distinctive characteristics of individual juvenile defendants are unconstitutionally disproportionate punishments. Requiring individualized determinations in these cases does not require excusing juvenile offending. Juveniles who commit serious offenses should not escape punishment. But the U.S. Supreme Court’s recent Eighth Amendment jurisprudence striking particular sentences for juveniles does require that additional considerations and precautions be taken to ensure that the sentence reflects the unique developmental characteristics of adolescents. As the Supreme Court has acknowledged, a child’s age is far “more than a chronological fact.” *See J.D.B. v. North Carolina* 564 U.S. 1, 8 (2011).

The Supreme Court’s decision in *Miller* applies retroactively to cases on

collateral review, like Petitioner Falcon's. As detailed above, the Supreme Court rendered any contrary view on this matter baseless when it applied its decision in *Miller* to the companion case *Jackson v. Hobbs*. Further, the Supreme Court's jurisprudence makes clear that no other reading of the *Miller* decision would be consistent with the spirit or meaning of the Eighth Amendment. Accordingly, this Court should vacate Petitioner Falcon's sentence and remand the case for sentencing in accordance with *Miller*.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

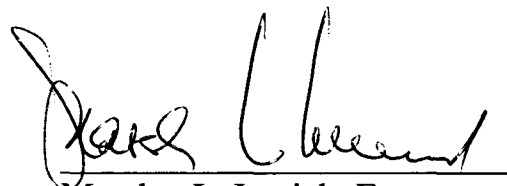
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DATED this 29<sup>th</sup> day of July, 2013.



## **APPENDIX**

### **Identity of Amici and Statements of Interest**

#### **Organizations**

Founded in 1975 to advance the rights and well-being of children in jeopardy, **Juvenile Law Center (JLC)** is the oldest multi-issue public interest law firm for children in the United States. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential placement facilities or adult prisons, and children in placement with specialized service needs. JLC works to ensure that children are treated fairly by the systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Campaign for the Fair Sentencing of Youth (CFSY)** is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Our vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under age eighteen. We are advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009, the CFSY uses a multi-pronged approach, which includes coalition-building, public education, strategic advocacy and collaboration with impact litigators--on both state and national levels--to accomplish our goal.

The **Children's Law Center, Inc.** in Covington, Kentucky has been a legal service center for children's rights since 1989 protecting the rights of youth through direct representation, research and policy development and training and education. The

Center provides services in Kentucky and Ohio, and has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education and zero tolerance issues within schools and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children.

The **Civitas ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

The **Colorado Juvenile Defender Coalition (CJDC)** is a non-profit organization dedicated to excellence in juvenile defense and advocacy, and justice for all children and youth in Colorado. A primary focus of CJDC is to reduce the prosecution of children in adult criminal court, remove children from adult jails, and reform harsh prison sentencing laws through litigation, legislative advocacy, and community engagement. CJDC works to ensure all children accused of crimes receive effective assistance of counsel by providing legal trainings and resources to attorneys. CJDC also conducts nonpartisan research and educational policy campaigns to ensure children and youth are constitutionally protected and treated in developmentally appropriate procedures and settings. Our advocacy efforts include the voices of affected families and incarcerated children.

The **Defender Association of Philadelphia** is an independent, non-profit corporation created in 1934 by a group of Philadelphia lawyers dedicated to the ideal of high quality legal services for indigent criminal defendants. Today some two hundred and fifteen full time assistant defendants represents clients in adult and juvenile, state and federal, trial and appellate courts, and at civil and criminal mental health hearings as well as at state and county violation of probation/parole hearings. Association attorneys also serve as the Child Advocate in neglect and dependency court. More particularly, Association attorneys represent juveniles charged with homicide. Life

imprisonment without the possibility of parole is the only sentence for juveniles found guilty in adult court of either an intentional killing or a felony murder. The Defender Association attorneys have had numerous juveniles given sentences of life imprisonment without parole. The constitutionality of such sentences has been challenged at the trial level and at the appellate level by Defender Association lawyers.

**Fight for Lifers, West** is a Lifers Support Group in Western Pennsylvania devoted to Prisoners in Pennsylvania who are sentenced to Life Imprisonment Without Parole. In the years since Roper, FFLW has identified 481 Juvenile Lifers in the PADOA, revealing that Pennsylvania leads the world in this category. We have sent 36 Newsletters, one every two months to these Juvenile Lifers, helping to make these prisoners aware of each other and giving important information to them. In this way they have shared information with each other, and made an impact of the outside world. FFLW has been seriously involved in the PA Senate Judiciary Committee Public Hearing on Juvenile Lifers, September 22, 2008, and in the United States House Subcommittee on Crime and Terrorism and Homeland Security hearing on H.R. 2289--Juvenile Justice Accountability and Improvement Act of 2009--on June 9, 2009. FFLW was included in an Amicus Brief filed by the Juvenile Law Center in *Graham v. Florida* in 2009.

**Juvenile Justice Project of Louisiana (JJPL)** is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and identify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

**National Association of Criminal Defense Lawyers (NACDL)** is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

NACDL was founded in 1958. It has a nationwide membership of approximately 10,000 and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice including issues involving juvenile justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in this case because the proper administration of justice requires that age and other circumstances of youth be taken into account in order to ensure compliance with constitutional requirements and to promote fair, rational and humane practices that respect the dignity of the individual.

The **National Center for Youth Law (NCYL)** is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, Youth Law News, and by providing trainings and technical assistance. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. As part of the organization's juvenile justice agenda, NCYL works to ensure that youth in trouble with the law are treated as adolescents and not

adults, in a manner that is consistent with their developmental stage and capacity to change.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **National Legal Aid and Defender Association (NLADA)** is a private, non-profit, national membership organization, founded in 1911. Its membership includes the majority of public defender offices, coordinated assigned counsel systems, and legal services agencies around the nation. Its membership is comprised of approximately 3,000 offices which provide civil and criminal legal services to poor people. NLADA's primary purpose is to assist in providing effective legal services to persons unable to retain counsel.

The **Pacific Juvenile Defender Center** is a regional affiliate of the National Juvenile Defender Center. Members of the Center include juvenile trial lawyers, appellate counsel, law school clinical staff, attorneys and advocates from nonprofit law centers working to protect the rights of children in juvenile delinquency proceedings in California and Hawaii. The Center engages in appellate advocacy, public policy and legislative discussions with respect to the treatment of children in the juvenile and criminal justice systems. Center members have extensive experience with cases involving serious juvenile crime, the impact of adolescent development on criminality, and the differences between the juvenile and adult criminal justice systems. These cases, involving the imposition of Life Without the Possibility of Parole on juvenile offenders, present questions that are at the core of the Pacific Juvenile Defender Center's work.

The **Public Defender Service for the District of Columbia** (PDS) is a federally funded, independent public defender organization; for 50 years, PDS has provided quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system. PDS provides legal representation to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS also represents classes of youth, including a class consisting of children committed to the custody of the District of Columbia through the delinquency system.

**Rutgers Criminal and Youth Justice Clinic (CYJC).** The CYJC is a clinical program of Rutgers Law School - Newark, established more than thirty years ago to assist low-income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic's Criminal and Juvenile Justice section provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. CYJC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House - New Jersey, staff of the New Jersey State Legislature, and a host of out-of-state organizations on a range of juvenile justice practice and policy issues. The CYJC is a team leader of the New Jersey Juvenile Indigent Defense Action Network, an initiative of the John D. and Catherine T. MacArthur Foundation that, among other efforts, seeks to provide post-dispositional legal representation to young people committed to the New Jersey Juvenile Justice Commission.

The mission of the **San Francisco Office of the Public Defender's** is to provide vigorous, effective, competent and ethical legal representation to persons who are accused of crime and cannot afford to hire an attorney. We provide representation to 25,000 individuals per year charged with offenses in criminal and juvenile court.

The **Southern Poverty Law Center** (SPLC) is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Among other things, SPLC staff work to break the cycle of juvenile incarceration by making juvenile justice and education systems more responsive to the needs of children, families and the communities in which they live. We seek reform through public education, community organizing, litigation, legislative advocacy, training and technical assistance. SPLC is based in

Montgomery, Alabama, and has offices in Florida, Georgia, Louisiana and Mississippi

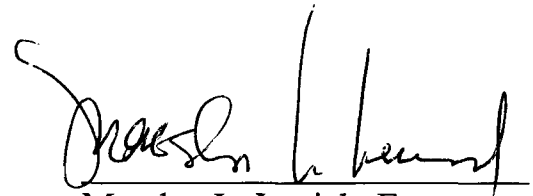
### Individuals

**Laura Cohen** is a Clinical Professor of Law at the Rutgers School of Law in Newark, New Jersey, where she directs the Criminal and Youth Justice Clinic. She is the former director of training for the New York City Legal Aid Society's Juvenile Rights Division, where she oversaw both the attorney training program and public policy initiatives relating to juvenile justice and child welfare. She also has served as a senior policy analyst for the Violence Institute of New Jersey; deputy court monitor in *Morales Feliciano v. Hernandez Colon*, a prisoners' rights class action in the U.S. District Court in San Juan, Puerto Rico; adjunct professor at New York Law School; and staff attorney for the Legal Aid Society. Professor Cohen co-directs the Northeast Regional Juvenile Defender Center, an affiliate of the National Juvenile Defender Center, which is dedicated to improving the quality of representation accorded children in juvenile court. Her scholarly interests include juvenile justice, child welfare, and the legal representation of children and adolescents. Professor Cohen teaches doctrinal and clinical courses relating to juvenile justice law and policy, is a team leader of the MacArthur Foundation funded New Jersey Juvenile Indigent Defense Action Network, and has published numerous articles on juvenile justice and child welfare.

**Stephen K. Harper** is a clinical professor at Florida International University College of Law. Prior to that he taught juvenile law as an adjunct professor at the University of Miami School of law for 13 years. From 1989 until 1995 he was the Chief Assistant Public Defender in charge of the Juvenile Division in the Miami-Dade Public Defender's Office. In 1998 he was awarded the American Bar Association's Livingston Hall Award for "positively and significantly contributing to the rights and interests" of children. Harper took a leave of absence from his job to coordinate the Juvenile Death Penalty Initiative which ended when the Supreme Court of the United States ruled in **Roper v Simmons 543 U.S. 551 (2005)**. In 2005 he, along with Seth Waxman, received the Souther Center for Human Rights Frederick Douglass Award for his work in ending the juvenile death penalty. He has consulted in many juvenile cases in Florida, Guantanamo and the United States Supreme Court (including **Graham v Florida, (130 S.Ct. 2011 (2010)** and **Miller v Alabama 567 U.S. \_\_\_ 2010**).

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with the font requirements of  
Fla. R. App. P. Rule 9.210.



Marsha L. Levick, Esq.

DATED this 29<sup>th</sup> day of July, 2013.