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SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

Certiorari to the Court of Appeals, 11CA1932

District Court, City and County of Denver, 04CR3018

PETITIONER:
ALEJANDRO ESTRADA-HUERTA

RESPONDENT:
PEOPLE OF THE STATE OF COLORADO

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Case Number: 14SC127

OPENING BRIEF

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

1. The brief complies with C.A.R. 28(g). It contains 4,451 words.

2. The brief complies with C.A.R. 28(k). It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

The undersigned acknowledges that the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ Antony Noble

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STATEMENT OF THE ISSUE

Whether the court of appeals erred by extending *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S.Ct. 2455 (2012), to invalidate a consecutive term-of-years sentence imposed on a juvenile convicted of multiple offenses.

STATEMENT OF THE CASE AND FACTS

Seventeen-year-old Alejandro Estrada-Huerta was charged as an adult with kidnapping and sexual assault. (Vol. 1, pp. 1-2 and p. 14.) He was found guilty by a jury, and the trial court sentenced him to a term of twenty-four years for kidnapping and a consecutive term of sixteen years to life for sexual assault, finding that his age was "somewhat of a mitigator" but was "overshadowed by the acts." (Vol. 1, p. 137 and Vol. 9, pp. 45:22-47:1.)

The court of appeals affirmed the judgment of conviction and sentence, and Mr. Estrada-Huerta then filed a pro se petition for postconviction relief pursuant to Crim. P. 35(c) in which he alleged, in part, that his consecutive sentences are unconstitutional under *Graham v. Florida*. (Vol. 1, p. 174 and pp. 205-206.) The district court summarily denied postconviction relief, ruling that the aggregate sentence of forty years to life was not unconstitutional under *Graham* because Mr. Estrada-Huerta will be eligible for parole before he is sixty years old and his

sentence is therefore not the equivalent of life without parole. (Vol. 1, p. 220-221.)

The court of appeals affirmed the district court's summary denial of postconviction relief, ruling that the sentence of forty years to life is not unconstitutional under *Graham* because Mr. Estrada-Huerta will become parole eligible within his expected lifetime. *People v. Estrada-Huerta*, (Colo. App. No. 11CA1932, Dec. 12, 2013) (not published pursuant to C.A.R. 35(f)).

SUMMARY OF ARGUMENT

In a trilogy of cases that includes *Graham v. Florida* and *Miller v. Alabama*, the United States Supreme Court acknowledged developments in psychology and brain science and established that juveniles are constitutionally different from adults for purposes of sentencing because they have diminished culpability and greater prospects for reform. In a decisional trend of providing more constitutional protections for juvenile offenders, the Supreme Court ruled that the Eighth Amendment prohibits (1) the death penalty for juvenile offenders, (2) life without parole for juvenile nonhomicide offenders, and (3) mandatory life without parole for juvenile homicide offenders. The teaching of these cases is that juveniles cannot constitutionally be sentenced in the same manner as adults and must be provided some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

The focus of analysis is therefore on the juvenile's diminished culpability and prospects for reform and not the offense. For the same reasons that the Eighth Amendment prohibits sentences of death and life-without-parole for juveniles, it prohibits any sentence that deprives a juvenile of a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Accordingly, the court of appeals did not err in analyzing consecutive term-of-years sentences imposed on juveniles convicted of multiple offenses under *Graham v. Florida* and *Miller v. Alabama*.

Although the court of appeals was correct to analyze Mr. Estrada-Huerta's sentence under *Graham v. Florida*, it was incorrect to conclude that the forty-years-to-life sentence does not violate *Graham*. The sentence deprives Mr. Estrada-Huerta of a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, and therefore violates the Eighth Amendment. The sentence should therefore be vacated and this case should be remanded for resentencing in accordance with *Graham* and *Miller*.

ARGUMENT

The court of appeals did not err by extending *Graham v. Florida* and *Miller v. Alabama* to consecutive term-of-years sentences imposed on juveniles convicted of multiple offenses.

A. Issue raised and ruled on.

In a pro se petition for postconviction relief, Mr. Estrada-Huerta claimed that his sentence is unconstitutional under *Graham v. Florida*. (Vol. 1, pp. 205-206.) The district court summarily denied postconviction relief, ruling that the sentence of forty years to life is not the equivalent of life without parole and therefore is not unconstitutional under *Graham*. (Vol. 1, pp. 220-221.) The court of appeals affirmed the order denying postconviction relief, ruling that the sentence does not violate *Graham*. *Slip Op.* at 4.

B. Standard of review.

Review of constitutional challenges to sentencing determinations is de novo. *Lopez v. People*, 113 P.3d 713, 720 (Colo. 2005). Review of a postconviction court's conclusions of law is also de novo. *See West v. People*, 341 P.3d 520, 525 (Colo. 2015); *see also People v. Kyler*, 991 P.2d 810, 818 (Colo. 1999).

C. Discussion.

In five separate cases, this court granted certiorari to determine whether the court of appeals erred by extending *Graham v. Florida* and *Miller v. Alabama* to

invalidate consecutive term-of-years sentences imposed on juveniles convicted of multiple offenses. *See People v. Rainer*, Case No. 13SC408, *Lehmkuhl v. People*, Case No. 13SC598, *Lucero v. People*, Case No. 13SC624, *Armstrong v. People*, Case No. 13SC945, and *Estrada-Huerta v. People*, Case No. 14SC127.

Although the court of appeals analyzed the sentences imposed in all five cases under *Graham*, and also under *Miller* in some of the cases, it only invalidated the sentence in *Rainer*. *See People v. Rainer*, 2013 COA 51, ¶66. The court of appeals affirmed the sentences in Mr. Estrada-Huerta's case and the other three cases. *Slip Op.* at 3-4; *People v. Lehmkuhl*, 2013 COA 98, ¶1; *People v. Lucero*, 2013 COA 53, ¶1; *People v. Armstrong*, (Colo. App. No. 11CA2034, Oct. 17, 2013) (not published pursuant to C.A.R. 35(f)).

In Mr. Estrada-Huerta's case, the court of appeals analyzed his aggregate sentence of forty years to life under the ruling in *Graham*, but erroneously applied the ruling in concluding that his indeterminate sentence does violate the Eighth Amendment. The court of appeals' conclusion is erroneous because Mr. Estrada-Huerta's indeterminate sentence does not provide him with a meaningful opportunity for release on demonstrating maturity and rehabilitation. His sentence should therefore be vacated and the case should be remanded to the district court for resentencing in accordance with *Graham* and *Miller*.

(1) The rulings in *Graham* and *Miller* are not limited to sentences of life without the possibility of parole.

Graham and *Miller* are part of a trilogy of cases in which the United States Supreme Court acknowledged recent developments in psychology and brain science and established that juveniles are constitutionally different from adults for purposes of sentencing because they have diminished culpability and greater prospects for reform.

The first case in the trilogy is *Roper v. Simmons* in which the Supreme Court ruled that the Eighth and Fourteenth Amendments prohibit the execution of a juvenile offender who was older than fifteen but younger than eighteen when he committed a capital crime. *Roper v. Simmons*, 543 U.S. 551, 555-56 (2005). In reaching this conclusion, the Supreme Court found that the rejection of the juvenile death penalty in the majority of states, the infrequency of its use even where it remained law, and the consistency in the trend toward the abolition of the practice provided sufficient evidence that "our society views juveniles … as 'categorically less culpable than the average criminal.'" *Id.* at 567.

The Supreme Court noted that the death penalty had been reserved for the worst offenders and found that there are three general differences between juveniles and adults that demonstrate that juveniles "cannot with reliability be

classified among the worst offenders." Relying on scientific studies, the Supreme Court found:

> (1) Juveniles have a lack of maturity and an underdeveloped sense of responsibility that often results in impetuous and ill-considered actions and decisions.
>
> (2) Juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.
>
> (3) The character of a juvenile is not as well formed as that of an adult, and the personality traits of juveniles are more transitory, less fixed.

Id. at 569-70. Recognizing that juveniles have diminished culpability, the Supreme Court stated that the penological justifications for the death penalty apply to them with lesser force than to adults. *Id.* at 571.

The Supreme Court noted that two distinct social purposes served by the death penalty are retribution and deterrence, and concluded that neither provides adequate justification for imposing the death penalty on juvenile offenders. *Id*. at 572. First, "[r]etribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Id*. at 571. Second, the absence of evidence of deterrent effect was of "special concern because the same characteristics that render juveniles less culpable than adults suggest as well that

juveniles will be less susceptible to deterrence." *Id.*

In holding that the death penalty cannot be imposed upon juvenile offenders, the Supreme Court explained that when a juvenile offender commits a "heinous crime," the state can exact forfeiture of some of the most basic liberties, but the state cannot "extinguish his life and his potential to attain a mature understanding of his own humanity." *Id.* at 573-4.

The Supreme Court continued its analysis of juvenile diminished culpability and sentencing in *Graham v. Florida* in which it ruled that the Eighth and Fourteenth Amendments prohibit the imposition of a sentence of life without parole on a juvenile offender who did not commit homicide. *Graham*, 560 U.S. at 74. In *Graham*, the Supreme Court acknowledged its ruling in *Roper*—that juveniles have lessened culpability and therefore are less deserving of the most severe punishments—and also acknowledged further developments in psychology and brain science showing that there are fundamental differences between juvenile and adult minds, and that parts of the brain involved in behavior control continue to mature through late adolescence. *Id.* at 68.

The Supreme Court analyzed the penological justifications for life-without-parole sentences and concluded that they are not adequate to justify life without parole for juvenile nonhomicide offenders. *Id*. at 74.

The Supreme Court, applying the same considerations in *Roper*, ruled that retribution does not justify imposing a sentence of life without parole on a juvenile nonhomicide offender because the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the offender, and juvenile nonhomicide offenders are less culpable. *Id*. at 71-72.

The Supreme Court also ruled that deterrence does not justify a sentence of life without parole for a juvenile nonhomicide offender because juveniles have a diminished moral responsibility and are less likely to take a possible punishment into consideration when making decisions. *Id.* at 72.

Moreover, the Supreme Court ruled that incapacitation, a third legitimate reason for imprisonment, does not justify life without parole because it relies on an assumption that the juvenile offender will be a danger to society forever, and that assumption is questionable in light of the characteristics of juveniles. *Id*. at 72-73.

Finally, the Supreme Court ruled that a sentence of life without parole cannot be justified by the goal of rehabilitation because the sentence "forswears altogether the rehabilitative ideal," requires an irrevocable judgment about the juvenile's value and place in society, does not take account of a juvenile's capacity for change and limited moral culpability, and denies access to vocational training and other rehabilitative services available to other inmates. *Id*. at 73-74.

In conclusion, the Supreme Court ruled that penological theory is not adequate to justify life without parole for juvenile nonhomicide offenders. *Id*. at 74. Because of the limited culpability of juvenile nonhomicide offenders and the severity of life without parole sentences, the Supreme Court ruled that the sentencing practice is cruel and unusual and is therefore forbidden by the Eighth Amendment. *Id*.

The Supreme Court explained that a state is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide offense, but must give juveniles "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*. at 75.

The Supreme Court further explained that a categorical rule prohibiting life without parole for juvenile nonhomicide offenders provides such offenders with an opportunity to achieve maturity of judgment and self-recognition of human worth and potential, a chance for fulfillment outside prison walls and for reconciliation with society, and an incentive to become a responsible individual. *Id*.

The Supreme Court's most recent analysis of juvenile diminished culpability and sentencing is in *Miller v. Alabama* in which the Court held that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. *Miller*, 132 S.Ct. at 2460. This holding was based on the Supreme Court's analysis of two

lines of precedent: (1) precedent establishing that children are constitutionally different from adults for purposes of sentencing, and (2) precedent requiring individualized sentencing when imposing the death penalty. *Id.* at 2464-8. Based on this precedent, the Supreme Court concluded that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id*. at 2475.

It is clear from *Roper*, *Graham*, and *Miller* that the Eighth Amendment prohibits (1) the death penalty for juvenile offenders, (2) life without parole for juvenile nonhomicide offenders, and (3) mandatory life without parole for juvenile homicide offenders. There is no indication in these opinions, however, that the Eighth Amendment only prohibits sentences of death or life without parole for juveniles. Indeed, in *Graham*, the Supreme Court applied the same reasoning to invalidate life-without-parole sentences for juvenile nonhomicide offenders as it did in *Roper* to invalidate the death penalty for juvenile offenders. *Graham*, 560 U.S. at 71-76 (analyzing *Roper* and concluding that a sentence of life without parole cannot be imposed for a nonhomicide offense committed by a juvenile). Moreover, in *Miller*, the Supreme Court applied the same reasoning to invalidate mandatory life-without-parole sentences for juvenile offenders as was applied in *Roper* and *Graham*. *See*, *e.g.*, *Miller*, 132 S.Ct. 2465 ("*Roper* and *Graham*

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."); *see also id.* ("*Graham*'*s* reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses."). Indeed, the court of appeals in *Rainer* recognized that *Roper*, *Graham*, and *Miller* represent a "decisional trend of providing more constitutional protections for juvenile offenders." *Rainer*, ¶56.

Although the Supreme Court was ruling on the constitutionality of the death penalty and the life-without-parole sentences before it in *Roper*, *Graham*, and *Miller*, it used general language in its conclusions that demonstrates that its reasoning applies to other severe sentences. *See Graham*, 560 U.S. at 68 ("*Roper* established that because juveniles have lessened culpability they are less deserving of the *most severe punishments*.") (emphasis added); *see also Miller*, 132 S.Ct. at 2458 ("imposition of a State's *most severe penalties* on juvenile offenders cannot proceed as though they were not children.") (emphasis added). The court of appeals in *Rainer* acknowledged that the Supreme Court "did not employ a rigid or formalistic set of rules designed to narrow the application of its holding," but, instead, "utilized broad language condemning the sentence of life without parole in that case for qualitative reasons." *Rainer*, ¶71.

The scope of the reasoning in *Roper*, *Graham*, and *Miller* goes beyond sentences of death and life without parole. The teaching of these cases is that juveniles have less culpability than adults and have rehabilitation potential exceeding that of adults and therefore cannot constitutionally be sentenced in the same manner as adults. The ruling to be followed in these cases is not that the Eighth Amendment prohibits life and death sentences for juveniles, but, rather, that juveniles are constitutionally different from adults for sentencing purposes and therefore must be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75.

Relying on this language in *Graham*, the court of appeals in *Rainer* vacated an aggregate 112-year sentence imposed on a juvenile finding that it was functionally a life sentence without parole and therefore constituted cruel and unusual punishment under the Eighth Amendment. *Rainer*, ¶¶72-73. In reaching this conclusion, the court of appeals rejected the attorney general's argument that the constitutional proportionality analysis should be governed by this court's decision in *Close v. People*, which requires that each separate sentence imposed is considered rather than consecutive sentences imposed in the aggregate. *Rainer*, ¶68 (citing *Close v. People*, 48 P.3d 528, 540 (Colo. 2002)). The court of appeals found that *Graham* effectively overruled *Close* with respect to juvenile defendants.

Rainer, ¶68. The court found that both *Graham* and public policy in Colorado require that the sentencing court focus not on the offense, but instead on the juvenile's inherent capacity for growth, change, and rehabilitation. *Id*., ¶¶75-78. The court of appeals was correct in reaching this conclusion because, as the Supreme Court recognized, "none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." *Miller*, 132 S.Ct. at 2465.

Courts in other jurisdictions have applied *Graham* and *Miller* beyond life-without-parole sentences to invalidate lengthy term-of-years sentences imposed on juvenile offenders. For instance, the Iowa Supreme Court held that *Roper*, *Graham*, and *Miller* applied to a juvenile's "lengthy term-of-years sentence based on the aggregation of his sentences." *State v. Null*, 836 N.W.2d 41, 70 (Iowa 2013). In vacating a 52.5-year minimum prison term for a juvenile based on the aggregation of mandatory minimum sentences for second-degree murder and first-degree robbery, the court explained:

> (1) *Miller* emphasizes that nothing said in *Roper, Graham*, or *Miller* is "crime-specific."
>
> (2) A lengthy sentence imposed on a juvenile with the prospect of geriatric release does not provide a "meaning opportunity" of release required by *Graham*.

(3) The principles of *Miller* and *Graham* do not turn on determining precise mortality rates.

Id. at 70-73. The court acknowledged that some courts have narrowly construed *Miller* to apply only to mandatory sentences of life without parole and not to apply where the lengthy sentence is the result of aggregate sentences, but the court rejected such a narrow interpretation because in *Miller* one of the juveniles was convicted of multiple crimes and the Supreme Court did not indicate that the multiple convictions affected its analysis. *Id.* at 73-74.

In two other cases, the Iowa Supreme Court reiterated that the reasoning in *Graham* and *Miller* is not limited to life-without-parole sentences. In *State v. Lyle*, the court again acknowledged that the Supreme Court emphasized that nothing it has said is "crime-specific," which suggested that what it said is not "punishment-specific" either. *State v. Lyle*, 854 N.W.2d 378, 399 (Iowa 2014) (citing *Miller*, 132 S.Ct. at 2465). In *State v. Pearson*, the court stated that "limiting the teachings and protections of these recent cases to only the harshest penalties known to law is as illogical as it is unjust." *State v. Pearson*, 836 N.W.2d 88, 98 (Iowa 2013) (vacating aggregate fifty-year sentence for first-degree robbery and first-degree burglary).

Other state supreme courts have applied the reasoning in *Graham* and *Miller* to vacate lengthy aggregate sentences. *See*, *e.g.*, *People v. Caballero*, 282 P.3d

291, 293 (Cal. 2012) (vacating aggregate sentences of 110 years to life); *Bear Cloud v. State*, 334 P.3d 132, 136 (Wyo. 2014) (vacating life sentence with possibility of parole after twenty-five years and consecutive twenty to twenty-five-year sentence); *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014) (vacating aggregate 150-year sentence imposed for two counts of murder and one count of robbery); *State v. Riley*, 110 A.3d 1205 (Conn. 2015) (vacating aggregate sentence that totaled one hundred years); *Henry v. State*, --- So. 3d ---, 2015WL1239696 (Fla. March 19, 2015) (vacating aggregate sentence that totaled ninety years); *but see State v. Brown*, 118 So. 3d 332, 342 (La. 2013) (declining to extend *Graham* to juvenile's four consecutive ten-year sentences).

In all of these cases, the state supreme courts, except the Louisiana Supreme Court, identified that the holding of *Graham* was not limited to a finding that the Eighth Amendment prohibits life-without-parole sentences for juvenile nonhomicide offenders, but went further in establishing that juveniles are constitutionally different from adults for sentencing purposes and must be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75. In ruling that *Graham* applies to consecutive sentences, the Indiana Supreme Court and the Wyoming Supreme Court stated that they will "focus on the forest—the aggregate sentence—rather

than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Bear Cloud*, 334 P.3d at 142 (quoting *Brown,* 10 N.E.3d at 8).

There is no doubt that a sentence of life without parole deprives a juvenile of a meaningful opportunity for release, but, as the other state supreme courts have found, aggregate sentences that are the equivalent to life without parole and aggregate sentences with parole eligibility in later life, also do not provide juvenile offenders with a meaningful opportunity for release. *See Bear Cloud*, 334 P.3d at 144 (aggregate sentence with parole eligibility at the age of fifty-one is functional equivalent to life sentence); *see also Pearson*, 836 N.W.2d at 96 ("a minimum of thirty-five years *without the possibility of parole* for the crimes involved in this case violates the core teachings of *Miller*") (emphasis in original).

The rulings in *Graham* and *Miller* are not restricted to sentences of life without parole for juvenile nonhomicide offenders and mandatory life without parole for juvenile homicide offenders. Such a restricted application of these decisions ignores the developments in psychology and brain science that were relied on by the Supreme Court in concluding that juveniles are constitutionally different from adults for purposes of sentencing because they have diminished culpability and greater prospects for reform. The Supreme Court's rulings are not

limited to a finding that a life-without-parole sentence for a juvenile is cruel and unusual punishment, but is much broader in finding that the Eighth Amendment prohibits a court from imposing a sentence on a juvenile offender that denies him a meaningful opportunity for release. The court of appeals was therefore correct in analyzing consecutive term-of-years sentences imposed on juveniles convicted of multiple offenses under *Graham v. Florida* and *Miller v. Alabama*.

(2) The sentence of forty years to life imposed in this case is inconsistent with the rulings in *Graham* and *Miller*.

Although the court of appeals was correct to analyze Mr. Estrada-Huerta's sentence under *Graham v. Florida*, it was incorrect to conclude that the forty-years-to-life sentence does not violate *Graham*. Relying on its own precedent, the court of appeals found that if a juvenile offender will not become parole eligible within his expected lifetime, his sentence violates *Graham*, but if he is eligible for parole within his expected lifetime, his sentence does not violate *Graham*. *Slip Op.* at 3-4 (citing *Rainer*, ¶¶ 66-79; *Lehmkuhl*, ¶¶ 7-20; *Lucero*, ¶¶ 12-18). The court of appeals concluded that Mr. Estrada-Huerta's sentence does not violate *Graham* because he will be parole eligible when he is fifty-eight years old, which, according to the court of appeals, is within his life expectancy. *Slip Op*. at 4.

The restricted application of *Graham* to sentences that exceed projected life

expectancy has been criticized by at least two state supreme courts. The Iowa Supreme Court stated that it did not believe that "the determination of whether the principles of *Miller* or *Graham* apply in a given case should turn on the niceties of epidemiology, genetic analysis, or actuarial sciences in determining precise mortality dates." *See Null*, 836 N.W.2d at 71 (invalidating sentence with parole eligibility at fifty-three years old). The Wyoming Supreme Court also declined to make any projections of life expectancy in determining whether a sentence violates *Miller* or *Graham*. *See Bear Cloud*, 334 P.3d at 142 (invalidating sentence with parole eligibility at fifty-one years old).

Restricting the application of *Graham* to sentences that exceed projected life expectancy ignores the Supreme Court's analysis of the penological justifications for juvenile sentencing and the requirement that the state provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75.

Like the death penalty or a life-without-parole sentence, the penological justifications for a lengthy term-of-years sentence apply to juveniles with lesser force than to adults. Mr. Estrada-Huerta's forty-years-to-life sentence, for instance, cannot be justified by retribution because he is less culpable than an adult. *See Roper*, 543 U.S. at 571; *see also Graham*, 560 U.S. at 71-72. His

sentence cannot be justified by deterrence because another juvenile is unlikely to consider his sentence when making decisions. *Roper*, 543 U.S. at 571; *Graham*, 560 U.S. at 72. It cannot be justified by incapacitation because he has a greater capacity to change. *Id*. at 72-73. The forty-years-to-life sentence cannot be justified by rehabilitation because it does not take account of Mr. Estrada-Huerta's capacity to change and denies him access to vocational training. *Id.* at 73-74.

The developments in psychology and brain science relied on by the Supreme Court in *Roper*, *Graham*, and *Miller* establish that the human brain continues to mature into the early twenties. *See Null*, 836 N.W.2d at 55 (citing Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 34 (2008)). Assuming that Mr. Estrada-Huerta matured in his early twenties, his forty-years-to-life sentence deprives him of the opportunity to demonstrate his maturity and rehabilitation for another thirty years or longer. Those decades in prison cannot be justified by the penological goals of retribution, deterrence, or incapacitation, especially if he has demonstrated his capacity to change. Moreover, that time in prison cannot be justified by the goal of rehabilitation, because he may not have the opportunity to participate in any sex offender therapy until he is within four years of his parole eligibility date. *See* Sex Offender Management Board, Lifetime Supervision of Sex Offenders, Annual Report, 2014, p. 15.

If Mr. Estrada-Huerta is released at the age of fifty-eight, he will not have been provided a "meaningful opportunity" to demonstrate the "maturity and rehabilitation" required to obtain release and reenter society as required by *Graham*. *See Null*, 836 N.W.2d at 71. His sentence deprives him of the opportunity of "leading a more normal adult life." *See Pearson*, 836 N.W.2d at 96. It deprives him of the "potential to attain a mature understanding of his own humanity." *See Roper*, 543 U.S. at 573-4. It deprives him of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential, a chance for fulfillment outside prison walls and for reconciliation with society, and an incentive to become a responsible individual. *See Graham*, 560 U.S. at 75. For these reasons, his sentence is cruel and unusual and is therefore prohibited by the Eighth Amendment.

CONCLUSION

WHEREFORE, Petitioner Alejandro Estrada-Huerta respectfully requests that the court vacate his sentence of forty years to life and to remand this case for resentencing in compliance with *Graham v. Florida* and *Miller v. Alabama*.

Respectfully submitted,
THE NOBLE LAW FIRM, LLC

s/ Antony Noble

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May 2015, this **OPENING BRIEF** was served via ICCES on Senior Assistant Attorney General Katherine Hansen.

s/ Antony Noble