

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 27432

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STATE OF SOUTH DAKOTA,

Plaintiff/Appellant

vs.

MARICELA NICOLASA DIAZ,

Defendant/Appellee

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APPEAL FROM THE CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT, HANSON COUNTY, SOUTH DAKOTA

THE HONORABLE TIMOTHY W. BJORKMAN  
CIRCUIT COURT JUDGE

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**BRIEF OF *AMICI CURIAE***  
**CENTER ON WRONGFUL CONVICTIONS OF YOUTH**  
**AND JUVENILE LAW CENTER**

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## **Center on Wrongful Convictions of Youth**

The Center on Wrongful Convictions of Youth (“CWCY”) operates under the auspices of the Bluhm Legal Clinic at Northwestern University School of Law. A joint project of the Clinic’s Center on Wrongful Convictions and Children and Family Justice Center, the CWCY was founded in 2009 with a unique mission: to uncover and remedy wrongful convictions of youth and promote public awareness and support for nationwide initiatives aimed at preventing wrongful convictions in the juvenile justice system. Since its founding, the CWCY has filed amicus briefs in jurisdictions across the country, ranging from state trial courts to the U.S. Supreme Court.

## **Juvenile Law Center**

Founded in 1975, Juvenile Law Center is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare, criminal, and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Juvenile Law Center works to ensure that children’s rights to due process 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. Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

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## I. SUMMARY OF THE ARGUMENT

At the age of fifteen, Maricela Diaz participated in the murder of Jasmine Guevara with her then twenty-one-year-old boyfriend Alexander Salgado. Maricela was transferred to criminal court, tried as an adult, convicted, and sentenced to eighty years in prison on the murder and fifty years on the kidnaping charge. She will not be eligible for parole for at least forty years.

Maricela deserves a new trial and sentencing hearing because the trial court failed to meaningfully consider and adequately account for Maricela's youth in several critical decisions during proceedings. First, the trial court transferred Maricela to adult court based on its erroneous finding that her conduct was willful. Second, the trial court denied a defense-proffered jury instruction that would have required the jury to consider Maricela's youth when determining whether her fear of imminent harm was reasonable and thus supported her duress defense. Third, the trial court treated her youth as an aggravating, rather than mitigating factor, at sentencing and ultimately sentenced her to an unconstitutional de facto life sentence.

Although the trial court acknowledged Maricela's age and even noted that Maricela's "mental maturity was much less than one would expect from a 15-year-old in society," the judge blamed Maricela for "seeking out" the dangerous Salgado at the age of twelve or thirteen, for being drawn to him by "adolescent desire" and for "looking for a reason to have contact with him." S. Tr. 97. These "impetuous and ill-considered" actions are the hallmark traits of youth that the United States Supreme Court has held render juveniles less culpable than adults. *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

The consequences of Maricela's youth were exacerbated by the traumatic abuse she endured at the hands of Salgado. *See* Appellant's Brief for details for the abuse. Similar to its treatment of Maricela's youth, the trial court appeared to blame Maricela for her physical and



sexual abuse, suggesting she was at fault for staying with Salgado even though numerous adults had tried to keep them apart. S. Tr. 97. But again, the dynamics of Maricela’s abusive relationship with Salgado also reflect hallmark characteristics of youth, including vulnerability to pressure, underdeveloped decision-making skills, and an inability to escape a criminogenic environment. *Miller v. Alabama*, 132 S. Ct. 2455, 2458, 2464 (2012).

In short, the trial court’s multiple errors stem from the same failure – he did not recognize that the very same facts he, and through him the jury, relied upon to punish Maricela were readily explainable through the lens of her status as a teenager trapped in a cycle of physical and sexual abuse.<sup>1</sup> In light of the U.S. Supreme Court’s recent proclamation that youth are “constitutionally different” in ways that our criminal justice must account for, there is no excuse for lower courts to ignore the impact of these differences on juveniles’ behavior and decision-making. It was an abuse of discretion to do so and a new trial and sentence is warranted.

**II. THE U.S. SUPREME COURT HAS RECOGNIZED THAT KIDS ARE CONSTITUTIONALLY DIFFERENT IN FUNDAMENTAL WAYS THAT ARE LEGALLY RELEVANT TO THE ADJUDICATION OF THEIR GUILT AND DETERMINATION OF THEIR SENTENCE**

“Children are different,” announced the U.S. Supreme Court in *Miller v. Alabama* in 2012, the latest in a series of decisions acknowledging that fundamental characteristics of youth render them less culpable and more capable of rehabilitation than adults. 132 S. Ct. at 2470. The Court has relied upon an increasingly settled body of neuroscience and social science supporting these categorical differences between youth and adults. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (“developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”); *see also Miller*, 132 S. Ct. at 2464 n. 5 (“[T]he science and social science supporting *Roper* and *Graham*’s conclusions have become even

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<sup>1</sup> *Amici* adopts the facts as described in Appellant’s Brief and recites them here only where necessary.

stronger”). This research establishes three primary differences between youth and adults relevant to culpability. *See Miller*, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

“First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 132 S. Ct. at 2464 (internal citations omitted). Leading psychological researchers have concluded that, “even when adolescent cognitive abilities approximate those of adults, youthful decision making may still differ due to immature judgment.”<sup>2</sup> Neuroscientific research has similarly confirmed that adolescents have limited ability to coordinate the different brain regions needed for reasoning and problem solving.<sup>3</sup> In particular, the human brain’s prefrontal cortex—which controls risk assessment, the ability to evaluate future consequences, and impulse control—does not fully develop until a person reaches his or her early 20s.<sup>4</sup> Adolescents, thus, frequently “underestimate the risks in front of them and focus on short-term gains rather than long-term consequences.”<sup>5</sup>

“Second,” the *Miller* Court stated, “children are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller*, 132 S. Ct. at 2464; *Accord Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. That adolescents are developmentally less capable than adults of making sound decisions

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<sup>2</sup> *See, e.g.*, Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 813 (2003).

<sup>3</sup> K. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 Wis. L. Rev. 431, 461 (2006).

<sup>4</sup> Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 Annals N.Y. Acad. Sci 77, 77 (2006).

<sup>5</sup> Barry Feld, *The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 Ohio St. J. Crim. 107, 116-17 (2013).

when peer pressure is strong is widely accepted.<sup>6</sup> Researchers have also noted that environmental factors can also pressure children to break the law: “[A]s legal minors, [adolescents] lack the freedom that adults have to extricate themselves from a criminogenic setting.”<sup>7</sup>

“And third,” the *Miller* Court found, “a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.” *Miller*, 132 S. Ct. at 2464; *see also Roper*, 543 U.S. at 569-70; *Graham*, 560 U.S. at 68. The elasticity of human development, particularly during the years of maturation from childhood into adulthood, is again well-supported by research. “As juveniles . . . transition into early adulthood, there is a strengthening of self-regulation in the brain that is coupled with a change . . . in the way the brain responds to rewards. . . consistent with the aggregate peak and eventual precipitous decline in delinquency and crime observed in very early adulthood.”<sup>8</sup>

### **III. THE TRIAL COURT FAILED TO ADEQUATELY ACCOUNT FOR MARICELA’S YOUTH AT SEVERAL CRITICAL STAGES OF PROCEEDINGS AS REQUIRED BY THE U.S. SUPREME COURT**

Courts must give more than just lip service to a defendant’s youth when it is a relevant factor to the analysis. Here, Maricela’s youth was relevant and significant to the court’s analysis of willfulness at the transfer hearing, the determination of jury instructions, and sentencing. But the record reveals that the court’s consideration of her youth was perfunctory at best, and potentially punitive. In other words, the judge appeared to punish Maricela for her youth rather than weigh it as a mitigating factor at these four critical points in the proceedings. *See also*

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<sup>6</sup> *See, e.g., Jay D. Aronson, Brain Imaging, Culpability and the Juvenile Death Penalty*, 13 *Psychol. Pub. Pol’y & L.* 115, 119 (2007).

<sup>7</sup> Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003).

<sup>8</sup> *See, e.g., Alex R. Piquero, Youth Matters: The Meaning of Miller for Theory, Research, and Policy Regarding Developmental/Life-Course Criminology*, 39 *New Eng. J. on Crim. & Civ. Confinement* 347, 349 (2013).

*Roper*, 543 U.S. at 572 (evinced concern that a “defendant’s youth might be counted against him” by a jury in a case involving a particularly brutal crime and criticizing the prosecutor for “overreaching” in arguing to jury that Simmons’ youth be counted as aggravation, rather than mitigation, in urging jury to impose death sentence).

**A. The Trial Court Abused Its Discretion in Concluding that the Offense was Committed in a Willful Manner**

The trial court abused its discretion in concluding that the offense was committed in a willful manner. *People In Interest of Y.C.*, 1998 S.D. 76, ¶ 7, 581 N.W.2d 483, 485 (citing *State v. Jones*, 521 N.W.2d 662, 673 (S.D.1994) (citation omitted)). The evidence was uncontroverted at the transfer hearing that Maricela was a child, smaller than and physically overpowered by adult Salgado, and that Salgado physically isolated and repeatedly abused Maricela. Salgado could have been convicted of both statutory rape and abuse or cruelty to a minor for his treatment of Maricela. Under these circumstances, the court abused its discretion in concluding that Maricela’s involvement was “willful, not coerced.”

As explained in section II, the Supreme Court has repeatedly recognized that teenagers are uniquely susceptible to pressure, particularly pressure from adults, and that their ability to resist coercive influences is less than adults. *See, e.g., Roper*, 543 U.S. at 569 (“[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”); *accord Graham*, 560 U.S. at 68. *See also Miller*, 132 S. Ct. at 2458. (Teenagers ‘are more vulnerable ... to negative influences and outside pressures”).<sup>9</sup> The Court’s conclusions are

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<sup>9</sup> Reid Griffith Fontaine, *Social Information Processing, Subtypes of Violence, and a Progressive Construction of Culpability and Punishment in Juvenile Justice*, 31 Int’l J. L. & Psychiatry 136, 137 (2008) (“the ability of adolescents to resist coercive influences is lesser than that of adults.”).

amply supported by social science<sup>10</sup> and neuroscientific research on brain development that explain this deficit in youth.<sup>11</sup>

Moreover, youths are less able to extricate themselves from coercive situations and are often uniquely captive to their environment. *Miller*, 132 S. Ct. at 2458 (youth have “limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.”). This was the case for Maricela, particularly after Salgado took her from her home and family and moved her to South Dakota, where she knew no one. She was not old enough to buy a bus ticket to return home or to hold a full-time job to support herself.

Salgado testified to repeatedly physically abusing Maricela.<sup>12</sup> His treatment of Maricela was criminal, in violation of laws specifically designed to protect children in recognition of their inherent vulnerabilities. S.D. Codified Laws § 26-10-1 (felony statute re: cruelty to a minor); S.D. Codified Laws § 22-22-1(5) (statutory rape statute). As one legislator explained, “our children, the most innocent among us, deserve to have extended protection on child abuse....”<sup>13</sup> Similarly, this Court has made clear that the age of consent for statutory rape “has been established by our legislature as a matter of public policy for the obvious protection of young and immature females.” *State v. Fulks*, 83 S.D. 433, 436, 160 N.W.2d 418, 420 (1968) *overruled on other grounds by State v. Ree*, 331 N.W.2d 557 (S.D. 1983). This Court has emphasized that a

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<sup>10</sup> See, e.g., Nina Chernoff & Marsha Levick, *Beyond the Death Penalty: Implications of Adolescent Development Research for the Prosecution, Defense and Sanctioning of Youthful Offenders*, Clearinghouse Rev. J. of Poverty L. & Pol’y 209, 210 (2005); Franklin Zimring, *American Juvenile Justice* 60 (Oxford University Press, 2005); Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 *Victims & Offenders* 428, 434-37 (2012).

<sup>11</sup> Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *Developmental Review* 78, 83-84 (2008).

<sup>12</sup> See, e.g., 2/2/14 Tr. at 526-539; 2/1/14 Tr. at 294, 330.

<sup>13</sup> Debate on H.B. 1238 Before the H.R., 2008 Leg., 91<sup>st</sup> Sess. (SD 2008) (Statement of Rep. Margaret Gillespie, Member, H.R.), available at <http://sdpb.sd.gov/SDPBPodcast/2008/hou18.rm> beginning at 1:41:35 (in hearings on a proposal, which passed into law, to extend the statute of limitations for S.D. Codified Laws § 26-10-1).

young girl is not capable of consenting to sexual relations with an adult man: “The fact that a fourteen-year-old gives “consent” to sexual intercourse is of no relevant consideration. The very premise underlying statutory rape is that children are incapable of consenting’ to voluntary sexual relations.” *State v. Bonner*, 1998 S.D. 30, ¶¶ 27-28, 577 N.W.2d 575, 582-83. And the very purpose of these laws is to prevent older men from preying upon adolescents and coercing them into sexual activity before they are capable of consent. The trial court’s finding that Maricela “willfully” engaged in sexual relations with Salgado subverts these very purposes of the statutory rape laws.

Given the significant evidence in the record detailing Salgado’s repeated rape, beating, and terrorizing of Maricela and the above precedent from the U.S. Supreme Court and this Court highlighting the vulnerability of a 15-year-old in such a situation, the trial court abused its discretion in failing to recognize the inherent coerciveness of their relationship.

**B. The Trial Court Abused its Discretion in Denying Defense Counsel’s Requested Jury Instruction Directing the Jury to Consider Maricela’s Youth When Determining Whether Her Fear of Imminent Harm Was Reasonable**

The trial court erred when it precluded the jury from accounting for Maricela’s youth when evaluating the reasonableness of her fear of imminent harm, a critical element of the defense theory. Tr. 1341-42. At trial, Maricela’s counsel presented an affirmative defense of duress, or justification.<sup>14</sup> To prove duress, a defendant must show that she engaged in criminal conduct “because of the use or threatened use of force a reasonable person in that situation would have been lawfully unable to resist.” SDCL § 22-5-1. The essential element of this defense “is a *reasonable fear* of death or bodily harm imminent or emergent.” *State v. Boettcher*, 443 N.W. 2d 1, 2 (S.D. 1989) (emphasis added).

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<sup>14</sup> Though the South Dakota criminal code references this defense as one of “justification,” *amici*, consistent with counsel and the court, use the term “duress” in reference to the justification defense.

The duress analysis begins with an examination of “the circumstances surrounding the crime.” *State v. Miller*, 313 N.W.2d 460, 462 (S.D. 1981). As explained below, the circumstance of Maricela’s youth was highly relevant to the reasonableness of her belief that she faced imminent death or bodily harm. But the trial court denied defense counsel’s request for jury instructions that would have permitted the jury to evaluate the reasonableness of her fear from the perspective of a youth. Supp. Req. Insts. 99, 100.<sup>15</sup> A new trial is required where a defendant was unfairly prejudiced by the trial court’s refusal to give a requested instruction. *State v. Walton*, 600 N.W.2d 524, 528. Here, it is likely that the jury would have concluded that Maricela acted under duress had they been permitted to consider her youth.

### **1. Duress Should Be Evaluated from the Perspective of a Reasonable Juvenile**

U.S. Supreme Court precedent supports the instruction requested by Maricela’s counsel at trial. To establish a duress defense, a defendant need not prove actual imminent harm; the only question is whether the defendant’s belief that she was in imminent danger was *reasonable*. Because the defense requires an individual to weigh the costs and benefits of a certain act, it rests entirely on her judgment and decision-making capabilities. In *J.D.B. v. North Carolina*, the Court created a “reasonable child” standard based on case law, commonsense observations, and scientific data showing that juveniles are categorically ill-equipped to make decisions in the same manner as adults. 131 S. Ct. 2394 (2011). In reaching its decision, the Court recognized

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<sup>15</sup> Defense-proffered instruction Supp. Req. Inst. 99 provided “. . . If you decide that the defendant was battered or abused by Alexander Salgado, *you may consider that in determining the reasonableness of the defendant’s perception of the immediacy of the harm* in light of the defendant’s experience of abuse.” (emphasis added). Supp. Req. Inst. 100 provided that “[t]he imminent danger element *may be satisfied when a child believes she is in imminent danger of death or serious bodily harm* even though her abuser is not physically abusing her at the time.” Supp. Req. Instr. 100 (emphasis added). Together, these defense-proffered instructions would have enabled the jury to evaluate the reasonableness of Maricela’s fear of imminent harm and to do so from the perspective of child.

that there are tangible differences between the cognitive and emotional capacities of juveniles and adults, which amount to differences in what is viewed as “reasonable.” *See Roper*, 543 U.S. at 569-70; *Graham*, 560 U.S. at 68-69.<sup>16</sup> Similarly here, because Marciela’s defense rested on the juvenile’s “reasonable belief” about the necessity of her actions to prevent imminent harm to herself, *J.D.B.* compels the adoption of a reasonable child standard to evaluate her belief.

In *J.D.B.*, the Supreme Court held that courts must apply a reasonable juvenile standard when determining whether a juvenile suspect would “have felt he or she was at liberty to terminate the interrogation and leave” for purposes of *Miranda v. Arizona*. 131 S. Ct. 2394, 2404 (2011). “*J.D.B.* was groundbreaking, distinguishing for the first time in the criminal context the oft-cited ‘reasonable person’ from the reasonable juvenile.”<sup>17</sup> The broad applicability of the holding, however, is supported by the Court’s reliance on common law and state practice, as well as previous Supreme Court law distinguishing youth from adults. “The qualities that characterize the reasonable juvenile throughout the common law—attention, prudence, knowledge, intelligence, and judgment—are precisely those that society fails to ascribe to minors.”<sup>18</sup> The ruling in *J.D.B.* makes this explicit by requiring a “reasonable child” standard in the context of *Miranda* analysis: to ignore the defendant’s age would not only be unconstitutional, but also frequently “nonsensical.” *J.D.B.*, 131 S. Ct. at 2405.

The same is true with the duress defense, which involves exactly the type of decision-making most challenging to adolescents; it applies when the accused reasonably believed her conduct was necessary to avoid imminent bodily harm or death. *Boettcher*, 443 N.W. 2d at 2.

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<sup>16</sup> Marsha Levick and Elizabeth Tierney, *The United States Supreme Court Adopts a Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody Analysis: Can a More Reasoned System for Juveniles be Far Behind?*, 47 Harvard Civil Rights-Civil Liberties Law Review, No. 2 (2012) at 519.

<sup>17</sup> *Id.* at 517.

<sup>18</sup> *Id.* at 506.



While an adult might identify additional options in such a stressful situation, a young person, acting in the moment, particularly when under stress, may not have the capacity to do so. In this case, Maricela – a battered and traumatized 15 year old – could have reasonably believed that her only option to keep herself safe was to help Salgado commit this crime.

## **2. Youth is a Highly Relevant Factor to Consider When Evaluating a Duress Defense**

Indeed, as discussed in sections II and III.a., although adults may perceive multiple options in a coercive situation, adolescents may perceive only one, further limiting their understanding of how to escape.<sup>19</sup> Moreover, “because adolescents are less likely than adults to think through the future consequences of their actions, *the same level of duress may have a more disruptive impact on juveniles’ decision making* than on that of adults.”<sup>20</sup> Also, as discussed above, as a youth, Maricela was particularly susceptible to pressure and more suggestible. She also had “limited control over their own environment,” and was less able to “to extricate [herself] from [this] horrific, crime-producing setting[.]” *Miller*, 132 S. Ct. at 2458. These developmentally-based impairments in decision-making are exacerbated when adolescents are under stress. For adolescents, “[f]actors such as emotion and physiological arousal may lead to hasty decision-making or the bypassing of important decision-making domains altogether.”<sup>21</sup> It is

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<sup>19</sup> Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 27 (2000); Marty Beyer, *Recognizing the Child in the Delinquent*, 7 *Ky. Child Rts. J.* 16, 17-18 (1999).

<sup>20</sup> Steinberg and Scott, 58 *Am. Psychol.* at 6 (emphasis added). See also Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *Future of Children* 15, 23-24 (2008).

<sup>21</sup> Fontaine, 31 *Int’l J. L. & Psychiatry* at 145. See also Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court in Youth on Trial: A Developmental Perspective on Juvenile Justice* 9, 26 (Thomas Grisso & Robert G. Schwartz eds., 2000) (explaining that even when older adolescents have intellectual abilities comparable to adults, their relative lack of experience may impede their decision-making capacity).

thus unsurprising that youth “who do not know how to deal with such pressure lack effective control of the situations that place them most at risk of crime in their teens.”<sup>22</sup>

For all of these reasons, it was critical that the jury be allowed to consider Maricela’s youth when evaluating the reasonableness of her fear of imminent harm, her behavior, and ultimately of her culpability and guilt. Consideration of youth was particularly appropriate here where a fifteen-year-old abused and traumatized girl committed a crime with her much older boyfriend. By virtue of her age and development alone, and particularly when exacerbated by the enduring stress of ongoing abuse and trauma, Maricela was less able to reject the coercive control of her abusive boyfriend, less able to assess her alternative options, less able to foresee the consequences of her actions, and less able to extricate herself from the horrific situation once it became clear that she was expected to participate in a murder. Here, if the jury had been instructed to account for her youth, it is likely that they would have concluded that she acted under duress and the verdict would have been different.

### **C. The Court Violated the Eighth Amendment in Sentencing 15-Year-Old Maricela Diaz to an 80-Year Sentence**

Maricela’s eighty-year sentence, which requires her to serve forty years before becoming parole eligible, is unconstitutional. The sentence is the functional equivalent of life without parole as it fails to provide a meaningful opportunity for release. *See Graham*, 560 U.S. at 75 (holding that States must provide juvenile nonhomicide offenders “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”). *Miller* establishes a presumption against imposing life without parole sentences (or their functional equivalent) on juveniles, finding that “appropriate occasions for sentencing juveniles to this harshest possible

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<sup>22</sup> Zimring, *American Juvenile Justice* at 61.

penalty will be uncommon.” *Miller*, 132 S. Ct. at 2469.<sup>23</sup> See also *Montgomery v. Louisiana*, No. 14-280, 2016 WL 280758, at \*13 (U.S. Jan. 25, 2016). *Miller* requires the sentencer “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*

### 1. The Trial Court Improperly Weighted The Facts of The Homicide

U.S. Supreme Court precedent requires sentencers to separate the nature of the crime from the culpability of the offender. In *Roper*, the Court found that “[a]n unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender’s objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.” 543 U.S. at 573. The same “unacceptable likelihood” exists whenever a juvenile convicted of homicide is sentenced; if the violent nature of the crime outweighs evidence of mitigation based on youth, the extreme sentences disfavored by *Miller* will be common. Therefore, even when a homicide is especially brutal, the sentencer must consider how the youth’s age and developmental immaturity counsel against a sentence that deprives a juvenile offender a meaningful opportunity to obtain release. See *Miller*, 132 S. Ct. at 2469.

Here, the trial court improperly allowed the facts of the crime itself to outweigh the youth-related mitigation. He noted that “this crime in particular, in ways that few others have in my own memory, crossed the bounds of all decency and simply shredded the dignity of human life that this community holds dear, and it treated it with a disrespect borne of depravity.” S. Tr.

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<sup>23</sup> Several state supreme courts have found that *Miller* creates a presumption against juvenile life without parole. See *State v. Riley*, 110 A.3d 1205, 1214 (Conn. 2015); *State v. Seats*, 865 N.W.2d 545, 555 (Iowa 2015); *State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (en banc). This Court found that life sentences for juvenile homicide offenders “would be the exception, not the rule.” *State v. Springer*, 856 N.W.2d 460, 465 n.5 (2014).

94-95. After discussing mitigating evidence, he stated, “the public needs to know that a horrendous crime needs to be met with a very serious punishment, a very serious sanction.” *Id.* at 99. Because the trial court assigned too much weight to the crime itself and too little weight to the mitigating attributes of youth, Maricela’s sentence should be vacated.

## **2. The Trial Court Failed To Give Sufficient Weight To Maricela’s Age And The Hallmark Features Of Youth**

*Miller* requires a sentencer to consider the offender’s “chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences.” 132 S. Ct. at 2468. An expert concluded that Maricela’s “mental maturity was much less than one would expect from a 15-year-old in our society.” S. Tr. 96. This finding alone suggests that a sentence that deprives Maricela a meaningful opportunity to obtain release is inappropriate because her culpability is vastly diminished compared to an adult offender. *See Miller*, 132 S. Ct. at 2464.

Because, for all the reasons set forth in sections II and III.a. and b., Maricela lacked the skills and maturity necessary to appropriately weigh risks and assess future consequences, she was less culpable than an adult making a similar decision. *See Roper*, 543 U.S. at 570 (“The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’”) (quoting *Thompson*, 87 U.S. at 835). Yet the trial court did not state how, if at all, he factored Maricela’s age and immaturity into the sentence imposed.

## **3. The Trial Court Improperly Disregarded Mitigating Evidence of Maricela’s Vulnerability to Pressure, Particularly as a Victim of Physical and Sexual Abuse**

*Miller* requires that the sentencer consider “the circumstances of the homicide offense, including . . . the way familial and peer pressures may have affected him.” 132 S. Ct. at 2455.

The trial court wrongly concluded that peer pressure was not a factor because Maricela “sought out” a relationship with Alexander Salgado, knowing “he was a dangerous person.” S. Tr. 97. *See also* S. Tr. 97 (“[I]t’s interesting to me that you sought out the relationship at that age of 12 or 13, that you looked to have contact with him.”). The implication that Maricela made a mature, considered decision to seek out and remain in this violent “relationship” does not comport with research on abuse or adolescent development, as described in Section II and III.a. and b. Her diminished culpability is compounded by the facts that she was raped at age thirteen, impregnated at age fourteen, and was repeatedly physically and sexually abused. Maricela’s relationship with Mr. Salgado was abusive and coercive. Even absent abuse and explicit coercion, a teenager’s decision-making is highly influenced by her peers.<sup>24</sup> This developmental attribute must not be confused with actively seeking out and welcoming negative peer pressure.

The trial court, however, found no connection between this coercive and abusive relationship and Maricela’s culpability. The judge stated that “[t]his crime . . . is not explained by [Mr. Salgado’s] violence upon you,” noting that “abuse victims don’t respond by harming other people. So in the end, that abuse in no way explains the depravity of the crime.” S. Tr. 97-98. This misses the point. The U.S. Supreme Court has found that a history of abuse is a strong mitigating factor for juvenile defendants. *See, e.g., Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982); *Miller*, 132 S. Ct. at 2469 (noting history of physical abuse to be a mitigating factor). The trial court’s failure to consider Maricela’s particular vulnerability in light of her young age and history of abuse was improper.

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<sup>24</sup> Brief for American Psychological Association et al. as *Amici Curiae* Supporting Petitioners at 18, *Miller v. Alabama*, 132 S. Ct. 2455 (2012), (Nos. 10-9646, 10-9647) (internal quotation and citation omitted).

#### 4. Maricela's Sentence Provides No Meaningful Opportunity for Release

Whether a sentence provides a meaningful opportunity for release should not depend on anticipated dates of death. *See, e.g., State v. Null*, 836 N.W.2d 41, 71-72 (Iowa 2013). First, incarceration generally increases the risk of poor health outcomes, and juveniles sometimes have shorter life expectancies than adults serving the same sentence.<sup>25</sup> Second, a meaningful opportunity for release must mean more than release on a gurney. Providing parole eligibility after four decades in prison denies Maricela an opportunity to live a meaningful life in the community and contribute to society. *See, e.g., State v. Pearson*, 836 N.W.2d 88, 96 (Iowa 2013).

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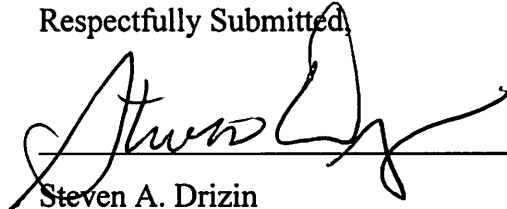
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<sup>25</sup> Jason Schnittker et al., *Incarceration and the Health of the African American Community*, 8 DU BOIS REV. 133, 138 (2011); *See* ACLU of Michigan, *Juvenile Life without Parole Initiative, Michigan Life Expectancy Data for Youth Serving Natural Life Sentences*.

#### IV. CONCLUSION

Throughout pretrial proceedings, trial, and sentencing, the trial court exhibited a lack of understanding of and appreciation for the relevance and significance of Maricela's youth and its impact on her culpability. The court abused its discretion at several critical junctures when it failed to meaningfully account of her youth in its decision-making. In fact, it appears that the Court – perhaps blinded by the horrific nature of the crime – counted Maricela's youth against her in deciding to transfer her to criminal court, denying her requested duress instruction and in meting out her sentence. For the foregoing reasons, *Amici* ask the Court to grant the relief requested by Appellant.

Respectfully Submitted,

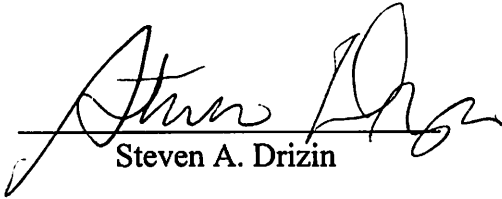


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**CERTIFICATE OF COMPLIANCE**

Pursuant to SDCL 15-26A-66(b), counsel for Amici Curiae does hereby submit the following:

The foregoing brief is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 4,996 and 27,078 characters in the body of the brief.

  
Steven A. Drizin



## CERTIFICATE OF MAILING AND PROOF OF SERVICE

Doug Dailey states that he is an attorney for Appellant, Maricela Nicolasa Diaz, and that on the 8<sup>th</sup> day of February, 2016, he caused to be sent a true and correct copy of the Brief of Amicus Curiae Center on Wrongful Conviction of Youth and Juvenile Law Center and this Certificate of Mailing and Proof of Service in the above-entitled matter by electronic service, to:

Marty Jackley  
SD Attorney General  
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and that he mailed the original and two copies of the Brief of Appellant and this Certificate of Mailing and Proof of Service to the Clerk of the Supreme Court of South Dakota, 500 East Capitol, Pierre, SD 57501-5070, by depositing the original and two copies of the same in the United State's Mail, postage prepaid first class mail, on the 8<sup>th</sup> day of February, 2016.



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Doug Dailey