

<p><b>SUPREME COURT STATE OF COLORADO</b></p> <p>2 East 14th Avenue Denver, CO 80203</p> <p>Certiorari to the Court of Appeals, 2010CA2414 District Court, City and County of Denver, 2000CR630</p>	<p>DATE FILED: March 2, 2016 6:44 PM FILING ID: 40E4AABE81B3F CASE NUMBER: 2013SC408</p>
<p><b>THE PEOPLE OF THE STATE OF COLORADO,</b></p> <p>Petitioner,</p> <p>v.</p> <p><b>ATORRUS LEON RAINER,</b></p> <p>Respondent.</p>	
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<p align="center"><b>BRIEF OF AMICUS CURIAE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH IN SUPPORT OF RESPONDENT</b></p>	

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that

**The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).**

It contains 4,738 words (does not exceed 4,750 words).

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**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.**

/s/ Jennifer Aronoff

Signature of attorney or party

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## **INTEREST OF *AMICUS CURIAE***

The Campaign for the Fair Sentencing of Youth is a national coalition and clearinghouse that coordinates, develops, and supports efforts 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. It submits this brief in support of respondent Atorrus Rainer to share the stories of formerly incarcerated youths who have been released from prison and are now productive citizens as adults. These real-life examples demonstrate the unique rehabilitative potential of youthful offenders, who embody the United States Supreme Court's pronouncement that "children are constitutionally different from adults for purposes of sentencing" because of their "diminished culpability and greater prospects for reform." *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). This brief emphasizes the importance of providing juvenile offenders with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham v. Florida*, 560 U.S. 48, 75 (2010).

Like Atorrus Rainer and the petitioners in related cases, the people in this brief were convicted of very serious crimes while still juveniles. Sean Taylor, Xavier McElrath-Bey, and Anthony Williams recognize that they could have easily spent their entire lives in prison. Instead, they matured, bettered themselves, and are now

contributing members of society. Their stories of reform and redemption are not exceptions to the rule. Rather, there are many other inmates just like these men, including Atorrus Rainer, who were incarcerated at a young age and who are capable of rehabilitation—no matter how immature, troubled, or violent they once may have been. They deserve “a chance to demonstrate growth and maturity.” *Graham*, 560 U.S. at 73. A lengthy term-of-years sentence guaranteed to imprison a juvenile offender for all or nearly all of his life forecloses that opportunity and violates the Eighth Amendment.

## ARGUMENT

### **I. CHILDREN ARE CONSTITUTIONALLY DIFFERENT FROM ADULTS AND IN NON-HOMICIDE CASES CANNOT RECEIVE SENTENCES REQUIRING THEM TO SPEND THE REST OF THEIR LIVES IN PRISON**

*Graham* and *Miller* share an unambiguous foundational principle: “[I]mposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Miller*, 132 S. Ct. at 2458. Rather, they must be sentenced differently, taking into account “the mitigating qualities of youth”—among them a lack of maturity, greater susceptibility to negative influences, and a still-developing character—that leave children less morally culpable for their actions and “more capable of change” than their adult

counterparts.<sup>1</sup> *Id.* at 2464 (citing *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005)). The Court of Appeals recognized this in its decision below, noting that Rainer must receive a sentence that is “constitutionally proportional” and consistent with the “principles announced in both *Graham* and *Miller*.” *See* 2013 COA 51 ¶¶ 81–82.

In *Graham*, the petitioner was convicted of two nonhomicide offenses and sentenced to life in prison with no opportunity for release short of executive clemency. The Supreme Court found the sentence unconstitutional due to its effect, not its name: It violated the Eighth Amendment’s bar on cruel and unusual punishment because it allowed the state to “mak[e] the judgment at the outset that [a juvenile nonhomicide offender] never will be fit to reenter society.” *Graham*, 560 U.S. at 75. In the Court’s view, no penological justification supports such a severe punishment, particularly given “the limited culpability of juvenile nonhomicide offenders.” *Id.* at 74. The Court drew the line where it did to prevent the danger that such sentences would “be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment,” *id.*, and to “give[] *all* juvenile

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<sup>1</sup> Indeed, the Supreme Court recently reiterated these principles in *Montgomery v. Louisiana*, noting that juvenile offenders “are constitutionally different from adults in their level of culpability” and that “children who commit even heinous crimes are capable of change.” 136 S. Ct. 718, 736 (2016).

nonhomicide offenders a chance to demonstrate maturity and reform.” *Id.* at 79 (emphasis added).

*Graham* notes that “life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.” *Id.* This is true whether the sentence is characterized as “life,” like *Graham*’s, or imposed as a lengthy term of years with no realistic possibility of parole, like *Attorus Rainer*’s. For purposes of *Graham*, it is a distinction without a difference. Either sentence guarantees a life spent in prison and inures the hopelessness and lack of “incentive to become a responsible individual” the Court decried. *Id.* Either punishment denies a juvenile the chance “to later demonstrate he is fit to rejoin society.” *Id.* See also *Miller*, 132 S. Ct. at 2458 (describing *Graham*’s holding as a “categorical bar” and a “flat ban on life without parole for nonhomicide cases”).

The crux of *Graham* is not whether a juvenile nonhomicide offender has received a sentence technically labeled “life without parole,” but whether he or she has received a sentence that effectively throws away the key from the outset. A court must determine the constitutionality of a juvenile nonhomicide offender’s sentence not by counting backward from death, but by looking forward and asking whether



the juvenile will have a meaningful opportunity for release based on maturity and rehabilitation.

The Colorado Court of Appeals understood this, finding that Rainer’s “aggregate sentence does not offer him, as a juvenile nonhomicide offender, a ‘meaningful opportunity to obtain release’ . . . and, thus . . . is unconstitutional under *Graham* and its reasoning.” 2013 COA 51 ¶ 38. Nearly all state supreme courts to have considered lengthy term-of-years sentences have reached the same conclusion, relying on *Graham* and holding that in nonhomicide cases, juvenile offenders cannot be “irrevocably sentenc[ed] . . . to a lifetime in prison.” *Miller*, 132 S. Ct. at 2465.

For instance, in *Henry v. State*, 17-year-old Leighdon Henry was convicted of multiple nonhomicide offenses and received a term-of-years sentence under which he would not have been released until he was roughly 95 years old at the earliest. 175 So. 3d 675, 676 (Fla. 2015). The Florida Supreme Court held that the sentence violated *Graham* because it provided no meaningful opportunity for release. *Id.* at 679–80. The decision rested not on what Henry’s sentence was called or how it was divided, but on what it did:

[W]e believe that the *Graham* court had no intention of limiting its new categorical rule to sentences denominated under the exclusive term of “life in prison.” Instead . . . *Graham* applies to ensure that juvenile nonhomicide offenders will not be sentenced to terms of imprisonment without affording them a meaningful opportunity for early release based on a demonstration of maturity and rehabilitation.

In light of *Graham*, and other Supreme Court precedent, we conclude that the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this special class of offenders for demonstrable maturity and reform in the future because any term of imprisonment for a juvenile is qualitatively different than a comparable period of incarceration for an adult.

*Id.* at 680. *See also* *People v. Caballero*, 282 P.3d 291 (Cal. 2012) (110-year sentence unconstitutional under *Graham*); *cf.* *State v. Null*, 836 N.W.2d 41, 73 (Iowa 2013) (holding that aggregate sentence for second-degree murder and robbery allowing release at age 69 at the earliest violated *Miller* and *Graham*).

“[A] juvenile’s potential future release in his or her late sixties after half a century of incarceration” does not satisfy *Graham*, *Null*, 836 N.W.2d at 71, nor does Atorrus Rainer’s potential release in his mid-seventies. The question is not whether the sentence offers a juvenile a mathematically conceivable possibility of release, but a *meaningful* opportunity for release. Under *Graham*, Atorrus Rainer deserves that opportunity just as much as Terrance Graham did. He not only has the capacity to grow and change, but has already begun to demonstrate maturity and reform while in prison. He should have the chance to join the men described below in forging a new and better path.

## **II. THE LIFE STORIES OF FORMERLY INCARCERATED YOUTH SHOW THAT YOUTHFUL OFFENDERS ARE CAPABLE OF REHABILITATION.**

### **A. Sean Taylor**

Sean Taylor is 43 and works to help the formerly incarcerated transition back into society in the Denver area. In his job, he guides people on a path he too has navigated—a path he was not sure he would ever have the chance to travel. At age 17, Taylor was charged with first-degree murder after shooting into a rival gang member’s house, killing a fellow 17-year-old. He was subsequently tried, convicted, and sentenced to life in prison with the possibility of parole after 40 calendar years.

Taylor was born in Springfield, Massachusetts, to a mother who had him at age 18 and his brother at age 17. Taylor’s father, a heroin addict, was in and out of his life before being sent to prison when Sean was 6. Overwhelmed by the financial burden of raising two sons on her own, Taylor’s mother sent Sean and his brother to live with an aunt in Denver until she could get on her feet enough to take care of the boys again. When Sean was 10, his mother joined her sons in Denver, but soon after arriving, she developed a crack addiction. She tried her best to work and raise her sons, but the drugs distracted her. The family struggled to pay rent on income from her low-wage jobs and was regularly evicted. Sean looked to the streets for role models. “I didn’t have a lot of positive male role models in my life,” he says.

“Unfortunately, in my neighborhood, if you don’t have a lot of positive male role models, negative male role models become your role model.”

At age 15, Taylor joined the Bloods. Before, he had been a class clown. But after joining the gang, he lost interest in school and eventually stopped going. Instead, he sold crack to make money. As a Blood, he was also regularly in conflict with the local Crips, and after losing some fights he decided to get a gun to intimidate his rivals. Taylor says he never planned to shoot anyone, but three days after his 17th birthday, he was riding with three older gang members when the driver confronted a Crip outside of the car. Taylor told the driver to get back in and said he would shoot into the Crip house instead. He fired one shot toward what he thought was empty space. Later, on the 10 o’clock news, he found out that someone in the house had been killed. Taylor was in disbelief. A sense of dread descended on him. He thought of how his mother would feel if he had been the victim instead. Police soon arrived at his mother’s house and told her she should advise Sean to turn himself in. The next morning, she picked him up and took him to the police station.

Taylor was sentenced to life in prison, with 40 calendar years before he was eligible for parole. At first, he remained in the gang. But after about a year in prison, he began to question what he was doing. He realized he was continuing the same behavior that landed him in prison and resolved to change his life. He started

studying Islam and dedicated himself to his new faith. One day, he invited his former gang friends to the gym to tell them he was leaving the gang. “I said, whatever the consequence may be, let’s get it over with, but I’m ready to dedicate myself to something positive.”

In prison, Taylor earned his GED and was planning on taking college classes until the program that offered them was eliminated. So, he pursued education on his own, reading voraciously. He was invited to become an adult basic education tutor and ended up teaching both regular and English as a Second Language students, because he had learned enough Spanish to communicate with them. He also worked in a variety of other jobs: As a library technician, as a janitor, in the prison garment factory, and even for the state DMV call center, where trained prisoners answered first-level calls from people who needed replacement licenses. “I started to feel like, there’s no reason why my life had to be unfulfilled, just because I was in prison,” Taylor says. He thought about what he wanted to do and decided he wanted to help kids get out of gangs. So, he began mentoring younger prisoners. He also helped mediate conflicts between different gangs and groups in prison.

After more than 15 years in prison, and with support from his assistant warden, Taylor sought relief from Colorado’s now-abolished Juvenile Clemency Board. In early 2011, two years after filing his petition, he was called to the

sergeant's office. The sergeant spun his computer monitor around and showed Taylor the screen: The governor had commuted his sentence, and he would be eligible for parole in six months. Taylor felt like he was dreaming, then snapped back to reality when another inmate in the office at the time grabbed him and said, "Man, you're going home!"

Upon his release from prison, Taylor went to a halfway house. At first, he "felt like an alien," living among residents who had been in prison five to six years at most. When his cousin handed him an iPhone, he didn't know how to get it to work. He would stand on the porch and marvel at the trees, "[b]ecause there are no trees in the prison yard." In addition, a woman he'd known since he was 10 years old got back in touch with him after his brother posted about his release on Facebook, and they have now been married more than two years.

Taylor's first post-prison job was at a recycling facility, where he broke down and sorted old electronics for \$10 an hour. He then earned his certification as a personal trainer and began doing that independently to earn money. Now, he works as the deputy director of the Second Chance Center, a nonprofit that works to integrate previously incarcerated men and women back into the community. Taylor helps teach job and basic life skills classes, as well as restorative justice, and he also provides group and one-on-one mentoring. "I feel like I'm serving a better purpose .

. . by doing that work out here as opposed to in prison,” he says. “If I can do that gang outreach or intervention work out here, then maybe I can stop a young man who’s the same age as me when I got locked up from picking up a gun. That’s the fulfillment, to be able to say we might actually have saved some young man’s life, not only from getting shot to death, but from throwing his life away.”

Taylor is thankful for the chance to live a life defined by more than his lowest moment. And he believes others convicted as juveniles should also have the opportunity, because he knows firsthand how those who grow up in prison can mature. “The possibilities [for redemption] are endless, because we were kids,” he says. “We do some extremely stupid things as kids. Some of them, unfortunately, have a tendency to be deadly. But does that mean that that person can’t change? A kid who didn’t have any good role models and followed the bad people in life? There’s always going to be some positive thing that comes along to help you become a better person, and all you have to do is latch onto it. That’s what I did. I started to look at everything good I wanted to be, and I said, ‘What’s going to help me do that?’”

**B. Xavier McElrath-Bey**

Xavier McElrath-Bey works as a youth justice advocate for the Campaign for the Fair Sentencing of Youth, where he coordinates ICAN, a national coalition of

formerly incarcerated youth that advocates for fair sentencing. Before joining the Campaign, he worked as a clinical field interviewer at Northwestern University, gathering research data on the mental health needs and outcomes of formerly incarcerated youthful offenders. His current life would have been unimaginable to him when he was a 13-year-old facing a murder charge.

Born to an abusive, alcoholic father and a mother who struggled with mental health issues, McElrath-Bey grew up on the South Side of Chicago in a home filled with violence and short on food, clothing, and love. In response to these living conditions, McElrath-Bey began acting out at an early age. He was first arrested for stealing when he was 9. At age 11, he joined a gang and was shot in the face by his best friend while they served as lookouts at the order of an older gang member. McElrath-Bey was in and out of Chicago's Juvenile Temporary Detention Center. When he was not there, he spent more time on the street to avoid his home life and committed crimes to provide for himself. Though he now realizes he was "living under a false illusion of love and acceptance," at the time, he viewed the gang as his family: "I felt safer in the streets with my friends than in my own home. We all seemed to have similar family problems, and we forged a bond with each other," he says. "I had no idea where my life was heading, and to be honest, those thoughts never really crossed my mind."



By the time he was 12, McElrath-Bey had accumulated 19 arrests and seven convictions for charges including armed robbery, aggravated battery, and unlawful use of weapons. At 13, he participated in the killing of a 14-year-old rival gang member. Although he did not physically kill the rival gang member, he helped lure him to an abandoned building where he was beaten to death. McElrath-Bey pleaded guilty and was convicted of first-degree murder. Although one of his co-defendants received a 40-year sentence, the judge saw potential for rehabilitation in McElrath-Bey and sentenced him to 25 years. McElrath-Bey now realizes that this prison sentence likely saved his life. “Maybe I would have changed,” he says, “but the greater possibility is that I would have stayed on the wrong path.”

When first incarcerated, McElrath-Bey maintained his gang affiliation and continued to get into fights. At age 18, McElrath-Bey assaulted a corrections officer during a prison riot and was put in solitary confinement for a year. There, he had time to reflect on his life and his choices away from the influence of the gang. “I finally had to face myself,” he says. “I thought about all the people I had hurt. I thought about the 14-year-old kid who died as a result of such destructiveness. I thought about his family and my family. Eventually, I just broke down in tears. It was then, with my growing maturity, that I began to think about the deeper meaning

of life. I started to contemplate the morality of what had happened, and also how I was deceived by the illusions of gang life.”

When he got out of segregation, McElrath-Bey renounced membership in his gang and turned towards education. While in prison, he earned his associate’s degree and bachelor’s degree through a program with Roosevelt University. He maintained a 4.0 GPA and was inducted into the school’s honor society. He also worked as an academic office clerk to help other inmates obtain their GEDs. He decided to focus his future work on helping other troubled youth avoid the pitfalls he encountered. “I came to believe that I could be somebody in life once I was released,” he says.

McElrath-Bey earned his release from prison in October 2002, after serving approximately 13 years of his sentence. Soon after his release, he re-enrolled at Roosevelt University and earned his master’s degree in counseling and human services. In his current job, McElrath-Bey works with other formerly incarcerated youth and travels regularly to meet with stakeholders in the criminal justice community and discuss sentencing reform.<sup>2</sup> The position has brought him back to his old neighborhood, where he has an office in a community center. Being there, he says, reminds him what he’s fighting for: Keeping kids with “such limited resources

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<sup>2</sup> For more on McElrath-Bey and the Incarcerated Children’s Action Network, *see* [https://youtu.be/RMQfCjvl\\_Y4](https://youtu.be/RMQfCjvl_Y4).

and opportunities” from ever having to stand in front of a judge and face criminal punishment, like he did.

McElrath-Bey emphasizes that although he is a living testament of the potential for positive change, he is in no way the exception. “Many of the juveniles I was incarcerated with, those who I grew up with in prison, are now free,” he says. “They also have had a second chance at life after serving over a decade in prison, and they don’t take their freedom for granted. Like me, they also vowed to try and help other kids from making the same mistakes we made.”

### **C. Anthony Williams**

Anthony Williams was released from a Missouri prison in July 2014 after serving 20 years of a mandatory juvenile life without parole sentence—following a circuit court judge’s decision to vacate his conviction and a compromise with prosecutors through which he was resentenced to time served. Williams has always maintained his innocence, but like the other men in this brief nonetheless was convicted of a serious crime at a young age. As a free man, he is crafting a stable life and using his past experiences with the justice system to inform his new job and future career path. But a little more than two decades prior, he was an eighth-grader facing a first-degree murder charge and a certainty his young mind could not comprehend: If convicted, he would be in prison for the rest of his life.

Williams' legal odyssey began on New Year's Eve 1993, when he and a few friends decided to go to a fundraiser for a drum and bugle corps at a St. Louis dance hall. At the time, Williams was 14 and had no juvenile record, although he says he occasionally acted out in school. During the party, a fight broke out among the mostly teenage attendees. Williams ran up to watch, was accidentally hit, and ended up jumping in. After the fight broke up, the dance resumed. When it ended, the teens filtered outside to wait for rides home, and someone started shooting. Williams and most of the rest of those standing in front of the dance hall ran and ducked for cover. One of the ringleaders from the earlier fight was shot in the head and killed; he was also 14 years old.

Police later questioned Williams in the shooting, and his grandmother gave them permission to take him to participate in a lineup, to prove he did not fire the shots. Afterward, Williams was told he had been identified as the shooter, although later evidence undercut that identification. He was arrested and tried as an adult for first-degree murder, a crime carrying a mandatory sentence of life without parole. At trial, his defense attorney promised in opening statements to call witnesses to impeach the identification, but he did not do so, and Williams was convicted. By his 16th birthday, Williams was an inmate in an adult prison, mixed in with what he calls "the hardest criminals we have in Missouri."

When Williams thinks back to the moment the judge imposed his sentence, he remembers crying. “I cried harder probably than I ever cried in my life when he said it: life with no parole,” he says. Even so, he says, “[w]hen you’re that old, it’s very difficult to grasp the gravity of that situation. . . . I never, never, *never* believed, thought, comprehended, *understood* that I could be put in prison for the rest of my life at 14 years old. At 14, had they given me the opportunity to spend a year in juvenile [detention] as opposed to being certified [as an adult] and going to trial to prove my innocence, I would have elected to go to trial, because I didn’t understand that life without was life *without*. I understood nothing about the system. A month in jail was too long for me. Just by being a child, you are really handicapped by a lack of understanding . . . especially in a system that puts the onus upon the individual [to take responsibility for his case].” What he faced begin to dawn on him only after several months in prison: After being disciplined for a violation, a case worker told him, “You might as well start to learn how to get along in here, because you’re going to be here the rest of your life.”

Williams compares being sentenced as a juvenile to life without parole to being diagnosed with a terminal illness: Even though you’re still alive, you know your life is essentially over. “As a child . . . going into prison, you can only imagine the regrets I had, and my regrets multiplied as the years went on, because my mind

expanded,” he says. “Not being able to go to high school, be married, own a car, have a driver’s license, purchase liquor legally. . . . Life without [parole] that young, it’s just hard, because you live with so many regrets. You have no [life] experience to draw from.”

Even so, Williams remained hopeful he could find a way home someday. Early in his time in prison, Williams met a group of “jailhouse lawyers” who took him under their wing because he was so young. They gave him pep talks, telling him he had a lot of life in front of him and could not give up. The motivational words helped: Williams immersed himself in learning about the law, especially the law surrounding his case. He earned his GED and started working in the law library. He pursued and exhausted a series of appeals based on ineffective assistance of counsel. Following the Supreme Court’s decision in *Miller*, he again sought legal assistance, and an attorney agreed to represent him. Together, they reinvestigated his case, gathered new evidence, and filed a successful state habeas petition, prompting a deal with prosecutors that freed him after two decades in prison.

After Williams was released, his attorney found him a place to stay and hired him as a law clerk. Now, he puts his years of legal experience to work fielding her pro bono requests, reading and responding to letters, performing legal research, filing, transcribing, and handling other tasks. He plans to enroll in college soon. He

earned his driver's license and bought his first car, a 2000 Ford Explorer. He has a college-educated girlfriend. And he savors the little things about being free. For instance, he drives around in his car, even though his girlfriend has a nicer one, because he bought it himself—something he thought he might never have the opportunity to do. Williams is not only grateful for where he is today, but grateful to have been released at an age that allows him to adapt and make a life for himself. “I still have a chance,” he says. “I’m literally trying to be a success story.”

\* \* \* \* \*

The life stories of Sean Taylor, Xavier McElrath-Bey, and Anthony Williams demonstrate the importance of providing juvenile offenders with a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham*, 560 U.S. at 75. Any sentence that provides little or no realistic possibility of release extinguishes that opportunity—and with it a young offender’s incentive to turn his life around so he can one day live and work for good outside of prison walls.

As the men above attest, they did not change overnight. In some cases it took years before they outgrew their immaturity and took control of their own lives. But they are now living proof of *Roper*’s holding that a “greater possibility exists that a minor’s character deficiencies will be reformed.” 543 U.S. at 570. A mandate that a child eventually die in prison—in any form, no matter how it is labeled—destroys

both the child's and society's ability to benefit from that growth and rehabilitation.

*Graham*, 560 U.S. at 75.



## CONCLUSION

For the foregoing reasons, the Campaign for the Fair Sentencing of Youth respectfully requests that this Court affirm the judgment of the Colorado Court of Appeals and remand Mr. Rainer's case for resentencing.

Dated: March 2, 2016

Respectfully Submitted,

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