Juvenile Law Center
advancing the rights and well-being of children in jeopardy

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March 9, 2016

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CLERK SUPREME COURT

The Honorable Tani Cantil-Sakauye, Chief Justice
Associate Justices, California Supreme Court
350 McAllister St.
San Francisco, CA 94102

Re: *Amicus Curiae* Letter in Support of Petition for Writ of Habeas Corpus per Rule 8.500(g)
In re Leif Taylor, Case No. S232037

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rule of Court 8.500(g), I am writing on behalf of Juvenile Law Center and the Center on Wrongful Convictions of Youth to request that the Court grant an original writ of habeas corpus in *In re Leif Taylor*. Juvenile Law Center and the Center on Wrongful Convictions of Youth request this relief to ensure that the California Supreme Court decision in *People v. Gutierrez*, 58 Cal.4th 1354 (2014) and United States Supreme Court decisions in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) are meaningfully implemented in California.

Interest of Juvenile Law Center and the Center on Wrongful Convictions of Youth

Juvenile Law Center, founded in 1975, 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 and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, 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 has worked extensively on the issue of juvenile life without parole, serving as co-counsel for petitioner in the U.S. Supreme Court case *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and filing *amicus* briefs in the U.S. Supreme Court in both *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Juvenile Law Center has also participated as an *amicus* in several juvenile life without

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parole cases in this Court, including presenting oral arguments in *People v. Caballero*, 55 Cal. 4th 262 (2012) and *People v. Gutierrez*, 58 Cal. 4th 1354 (2014).

The **Center on Wrongful Convictions of Youth** ("CWCY") operates under the auspices of the Bluhm Legal Clinic at Northwestern Pritzker University School of Law. A joint project of the Clinic's Center on Wrongful Convictions and Children and Family Justice Center ("CFJC"), 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 of youth in the juvenile and criminal justice systems. 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 and with the CFJC served as the lead amicus counsel for juvenile justice and child advocacy groups in *Montgomery v. Louisiana*.

Reasons Why Review Should Be Granted

Leif Taylor was convicted in 2006 of special-circumstance murder and sentenced to life without parole under California Penal Code § 190.5(b), *limited on constitutional grounds by People v. Gutierrez*, 58 Cal. 4th 1354 (2014). At that time, courts in California were still following the Court of Appeal's interpretation of § 190.5(b), set forth in *People v. Guinn*, 28 Cal. App. 4th 1130, 1141 (1994) (that "16 or 17-year-olds who commit special circumstance murder *must* be sentenced to LWOP, *unless* the court, in its discretion, finds good reason to choose the less severe sentence of 25 years to life"), *disapproved of by Gutierrez*, 58 Cal. 4th 1354. *Guinn* made life without parole the "presumptive punishment" for 16- and 17-year-olds convicted of special-circumstance murder. *Id.* at 1142. This presumption in favor of life without parole was applied at Leif Taylor's sentencing, *see* Mem. of P. & A. in Supp. P. 20-23, as well as those of hundreds of other youth. *See Gutierrez*, 58 Cal. 4th at 1369 ("For two decades, the Courts of Appeal have uniformly interpreted section 190.5(b) as establishing a presumption in favor of life without parole . . . .").

U.S. Supreme Court Precedent Establishes A Presumption Against Juvenile Life Without Parole

In 2012, the United States Supreme Court held in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), that mandatory life without parole sentences are cruel and unusual when imposed on juveniles. The Court in *Miller* extended their reasoning in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), two earlier juvenile sentencing cases which recognized that children are different for the purposes of the Eighth Amendment and that their distinctive developmental attributes make them categorically less blameworthy for their criminal conduct than adults. *Miller* emphasized that "children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." 132 S. Ct. at 2464

(quoting *Roper*, 543 U.S. at 569), and that these findings about children's distinct attributes are not crime-specific. *Id.* at 2465 *Miller* mandated that before sentencing a juvenile to life without parole, the court must, at a minimum, consider the following factors relevant to the youth's diminished culpability and heightened capacity for rehabilitation: (1) the juvenile's "chronological age" and related "immaturity, impetuosity, and failure to appreciate risks and consequences;" (2) the juvenile's "family and home environment that surrounds him;" (3) "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;" (4) the "incompetencies associated with youth" in dealing with law enforcement and a criminal justice system designed for adults; and (5) "the possibility of rehabilitation." *Id.* at 2468-69. A life without parole sentence imposed without consideration of these factors would violate the Eighth Amendment.

The *Miller* majority also explicitly declared their expectation that life without parole sentences for juveniles would be "rare." *Miller*, 132 S. Ct. at 2469. "The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of 'children's diminished culpability and heightened capacity for change,' *Miller* made clear that 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'" *Montgomery v. Louisiana*, 136 S. Ct. 718, 733-34 (2016) (citing *Miller*, 132 S. Ct. at 2469). *Montgomery* emphasized that "*Miller* [barred] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* at 734.

Mr. Taylor is Entitled To A Resentencing Hearing Because A Presumption in Favor of Juvenile Life Without Parole Violates Miller

When Mr. Taylor was sentenced, *Guinn* directed that life without parole was the presumptive sentence under California Penal Code § 190.5(b). In 2014, this Court overruled *Guinn*'s interpretation of the sentencing statute and held that California Penal Code § 190.5(b) does not create a presumption in favor of life without parole. *Gutierrez*, 58 Cal. 4th 1354. The Court found that "to say that *all* 16 or 17 year olds subject to section 190.5(b) presumptively deserve a sentence of life without parole is in serious tension with *Miller* 's categorical reasoning about the differences between juveniles and adults." *Id.* at 1380. This Court further noted, "Treating [life without parole] as the default sentence takes the premise in *Miller* that such sentences should be rarities and turns that premise on its head, instead placing the burden on a youthful defendant to affirmatively demonstrate that he or she deserves an opportunity for parole." *Id.* at 1379. Therefore, this Court found that minors on direct review who were sentenced under *Guinn* were entitled to vacatur of their life without parole sentences and remand for new sentencing hearings unless the record "'clearly indicate[s]' that the trial court would have reached the same conclusion" under the corrected understanding of California Penal Code § 190.5(b). *Id.* at 1391.

The fact that Mr. Taylor's direct appeals were exhausted prior to the U.S. Supreme Court's holding in *Miller* and this Court's holding in *Gutierrez* should not bar him from seeking relief through a habeas petition. Under California law, *Gutierrez* should be applied retroactively, as detailed in the Mem. P. & A. Supp. of Pet. 13-23. Further, *Gutierrez* must be applied retroactively because of the United States Supreme Court's holding in *Montgomery v. Louisiana* that *Miller*'s ban on mandatory life sentences for juveniles convicted of homicide crimes applies retroactively. *Montgomery*, 136 S. Ct. 718. To ensure that no juvenile in California was sentenced to life without parole under an unconstitutional presumption established by *Guinn*, the life without parole sentences of all youth sentenced subject to *Guinn* must be vacated and remanded for re-sentencing.

Therefore, Mr. Taylor, like Mr. Gutierrez, is entitled to a new sentencing hearing in which there is not a presumption that life without parole is the appropriate sentence. Instead, as this Court held in *Gutierrez*, Mr. Taylor is entitled to an individualized sentencing hearing in which "the trial court must consider all relevant evidence bearing on the 'distinctive attributes of youth' discussed in *Miller* and how those attributes 'diminish the penological justifications for imposing the harshest sentences on juvenile offenders.'" *Gutierrez*, 58 Cal. 4th at 1390 (quoting *Miller,* 132 S. Ct. at 2465).

This Court Should Clarify the Process and Standards for Habeas Petitions Filed Pursuant to Gutierrez

Mr. Taylor is not the only person in California serving life without parole who is entitled to relief. Over 250 juveniles were sentenced to life without parole between the Court of Appeal's decision in *Guinn* and this Court's decision in *Gutierrez*. Pet. for Writ of Habeas Corpus 2. In order to obtain relief from these unconstitutional sentences, these individuals must file habeas petitions. However, the vast majority of these inmates have not been able to obtain counsel to assist them with habeas petitions, *see* Mem. P. & A. in Supp. of Pet. 2, and many superior courts have required that petitioners supply complex legal information in their habeas petitions, such as evidence as to whether the court applied the *Guinn* presumption or considered age and other mitigating factors, in addition to providing the original sentencing record.

By definition, all of the youth sentenced under *Guinn* have been incarcerated since their teenage years, and thus may be particularly ill-equipped to properly present and litigate these issues without the assistance of counsel. Many have been subject to educational barriers that are a consequence of being sentenced to a life in prison. *See, e.g.*, California Rehabilitation Oversight Board, Amended Biannual Report (March 15, 2011) *available at* http://www.oig.ca.gov/media/crob/reports/C-ROB%20Biannual%20Report%20March%2015%202011%20Amended.pdf (identifying problems with prison education programming, including enormous class sizes and reduced instructional time). Only one quarter of California inmates can read at a high school level. Elizabeth G. Hill, *From Cellblocks to Classrooms: Reforming Inmate*

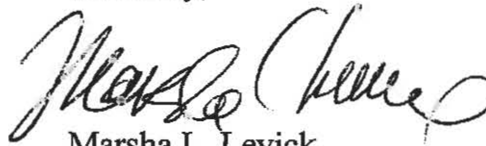
Education to Improve Public Safety, Legislative Analyst's Office, Feb. 2008, at 4. Moreover, inmates serving life without parole have *less* access to educational programs compared to those serving shorter sentences. *When I Die They'll Send Me Home: Youth Sentenced to Life Without Parole in California*, 20 Human Rights Watch, Feb. 2008, 1 at 56 [hereinafter "Human Rights Watch"].

In addition, many inmates experience serious mental health issues: 45% of California state prison inmates were treated for severe mental health problems in 2014. Stanford Law School Three Strikes Project, *When did prisons become acceptable mental healthcare facilities?*, Feb 19, 2015, at 1. Studies have found that "[t]he majority of [ ] children [serving life without parole in California] suffer from learning disabilities, have been physically and psychologically abused, and have at least one diagnosable mental illness." Human Rights Watch at 40. Inmates facing these educational and mental health challenges face enormous barriers to filing habeas petitions that require a presentation and discussion of complex legal and factual issues.

Therefore, it is necessary for this Court to issue an order clarifying the standards for filing and analyzing habeas petitions brought under *Gutierrez* and *Miller*. "Absent evidence to the contrary, we presume that the trial court knew and applied the governing law [establishing a presumption of life without parole]." *Gutierrez*, 58 Cal. 4th at 1390. Therefore, superior courts should accept habeas petitions which state *prima facie* that the defendant was sentenced to life without parole under California Penal Code § 190.5(b) between *Guinn* and *Gutierrez* and appoint counsel. This *prima facie* statement is sufficient to establish that "as an initial and tentative" matter, the petitioner "may be entitled to relief." Rule of Court 4.551(c)(1), (3); *In re Large*, 41 Cal. 4th 538, 549 (2007). Clarifying the standards for filing and addressing habeas petitions based on *Gutierrez* and *Miller* will serve the interests of justice by helping ensure that juvenile defendants who were sentenced under an illegal presumption of life without parole have access to the habeas process, access to counsel, and are granted the constitutionally-required opportunity for resentencing or parole.

For the foregoing reasons, Juvenile Law Center and the Center on Wrongful Convictions of Youth request that the Court grant the pending petition for review.

Sincerely,



Marsha L. Levick
Deputy Director and Chief Counsel

cc: see attached Proof of Service