No. 92454-6

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOEL RODRIGUEZ RAMOS,

Petitioner.

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, WASHINGTON DEFENDER ASSOCIATION, WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, AND COLUMBIA LEGAL SERVICES

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *Amici* are described in the Motion that accompanies this Brief.

II. INTRODUCTION

In 1993, Joel Ramos was barely 14 years old when he pled guilty to four murders during an armed robbery. He had no prior arrests and his co-defendant was also 14 at the time. Because Mr. Ramos was convicted as an adult after waiving a decline hearing, he was sentenced without any regard to his youth—or for the effects of his chaotic, traumatic life (including being the victim of sexual abuse, suffering the death of his sister, and having significant difficulties in school).[1] Mr. Ramos received an adult's standard range sentence of 80 years in prison, which was later increased to 85 years.

Over the ensuing two decades, Mr. Ramos strived to improve himself, holding down a job, getting an education, mentoring other inmates, and earning the respect of prison staff. CP 574-982. He has spent his entire adolescence and adulthood behind bars.

That the now 37 year old Mr. Ramos bears little resemblance to the 14 year old child who committed these crimes is no surprise. Since his

[1] Although this litigation does not address the waiver of the decline hearing, this Court has questioned whether the prosecution, the juvenile, or the juvenile court can "waive" a decline hearing. *State v. Saenz*, 175 Wn. 2d 167, 176, n.5, 283 P.3d 1094, 1099 (2012). A waiver by a 14 year old defendant giving up such a significant right is particularly troubling.

conviction, overwhelming scientific research has established that young brains undergo dramatic changes well into adolescence and young adulthood, making children less morally culpable for even the most horrific crimes. The United States Supreme Court has repeatedly recognized that young people's culpability "is diminished, *to a substantial degree*." *Roper v. Simmons*, 543 U.S. 551, 571, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (emphasis added); *see also State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015). More recently, the Court has said reduced sentences for young people are constitutionally mandated by their greater capacity for change and rehabilitation based on the physical differences between their brains and adult brains. *Montgomery v. Louisiana*, – U.S. –, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

Numerous courts have concluded that even for the most serious murder cases, a sentence that means the youth will die in prison with no guarantee of earlier release is presumptively unconstitutional unless the defendant is among the "rarest" of children who are so "irreparably corrupt" that the presumptive unconstitutionality is overcome. Under the Eighth Amendment and the more protective state constitution, Wash. Const. art. 1, sec. 14, those youth who not only have strong evidence of lesser moral culpability and greater capacity to rehabilitate themselves but

actually demonstrate maturity and rehabilitation, like Mr. Ramos, cannot be sentenced to die in prison.

This case presents the Court with the opportunity to align the law of this state with the state and federal constitutions, and with the weight of scientific evidence. Not only are juvenile life sentences and their equivalent unconstitutional, but exiling children permanently from civil society is particularly pernicious when viewed against a backdrop of unjustified mass incarceration policies which have been borne in particular by communities of color.

This Court should vacate Mr. Ramos's sentence and order a new hearing at which the sentence is less than a life equivalent, providing a meaningful chance at freedom, unless after consideration of facts regarding both the offense and the offender the State overcomes by clear evidence the presumption that Mr. Ramos is not irreparably corrupt.

III. ARGUMENT

A. Because Brain Science Establishes That Youth Are Less Culpable and More Capable of Rehabilitation than Adults, Courts Recognize that Life Equivalent Sentences Are Presumptively, if Not Always, Unconstitutional when Imposed on Youth.

In the decades since Mr. Ramos's conviction, science has verified what parents have always known to be true: young minds are different in

ways that make young people less culpable than adults.[2] Courts around the country have increasingly relied on this science to conclude that youth cannot constitutionally be categorically sentenced to a term of life or life equivalent. As discussed below, these cases demonstrate that Mr. Ramos's sentence must be reversed.

1. Under the Eighth Amendment, Life and Life Equivalent Sentences Are, at a Minimum, Presumptively Invalid for Crimes Committed by Youth.

In a series of decisions beginning in 2005, the U.S. Supreme Court has repeatedly held that the Eighth Amendment limits the ability to impose the harshest punishments on juveniles. The Court's decisions in *Roper*, *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery* collectively stand for the proposition that life and life equivalent sentences are presumptively invalid and if such sentences are ever valid, it is only for youth proven to be irredeemable. In *Roper*, the Court concluded that sentencing youth to capital punishment constitutes cruel and unusual punishment. 543 U.S. 551, 571 (2005). *See also id.* at 569 ("'A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and

[2] Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOL. 1009, 1011-13 (2003).

decisions.'") (citation omitted). The same "signature qualities" that make youth less culpable—"impetuousness and recklessness"—also render youth more capable of reform. *Id.* at 570. Accordingly, the death penalty was "disproportionate punishment for offenders under 18," and unconstitutional, *id.* at 575.

Five years later, in *Graham v. Florida*, the Court held that sentencing youth to life without parole for non-homicide offenses is also cruel and unusual punishment. 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). The Court relied again on the biological differences between youth and adults: "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id.* at 68. The Court noted how "parts of the brain involved in behavior control continue to mature through late adolescence." *Id.* These biological differences render youth more immature, more likely to engage in risky behavior, and more vulnerable to external influences like peer pressure. *Id.* at 91-92. The Court reiterated that because youth brains are still developing well into late adolescence, their personality traits are more "capable of change than are adults." *Id.* at 68. *Graham* concluded that an offense committed by a juvenile "is not as morally reprehensible as that of an adult." *Id.* at 68 (citation omitted).

Miller extended the Court's reasoning in *Roper* and *Graham* to invalidate mandatory life without parole sentences for youth convicted of homicide offenses. – U.S. –, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012). In evaluating the "mitigating qualities of youth," *Miller* concluded that courts must consider a youth's "mental and emotional development." *Id.* at 2467 (citations and internal quotation marks omitted). Mandatory sentencing regimes prevented such an individualized assessment because "mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* The result would be that "every juvenile will receive the same sentence as every other." *Id.*

In ordering sentencing courts to consider the "characteristics and circumstances attendant to [youth]," the *Miller* Court predicted that it would be increasingly "uncommon" for courts to sentence children to life without parole. *Id.* at 2469. Before imposing such a serious penalty, a sentencer would have to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

Confirming *Miller*'s (*v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)) warning that life sentences imposed on youth must be rare, if allowed at all, earlier this year the Court held in *Montgomery* that its

decision in *Miller* is retroactive for all defendants who were sentenced as youth. – U.S. –, 136 S. Ct. 718, 193 L.Ed.2d 599 (2016). The Court clarified that *Miller* "required that sentencing courts consider a child's 'diminished culpability and heightened capacity for change' *before* condemning him or her to die in prison." *Id.* at 726 (citation omitted) (emphasis added). And while the Court "did not foreclose" life without parole for youth offenders, *Montgomery* emphasized that "a lifetime in prison is a **disproportionate** sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" *Id.* (emphasis added) (citation omitted).

Montgomery further noted that youth are *presumptively* capable of tremendous change because their traits are "less fixed" and therefore "less likely to be 'evidence of irretrievable depravity.'" *Id.* at 733 (citations omitted). In light of the biological facts demonstrating that youth brains are different than adults, the Court explained how the four penological justifications offered for life sentences (retribution, deterrence, incapacitation, and rehabilitation) did not apply. The "case for retribution is not as strong" because youth are biologically less blameworthy; the "deterrence rationale likewise does not suffice" because youth are "less likely to consider potential punishment"; the "need for incapacitation" is insufficient because all but the "rarest" youth offender eventually

outgrows the immaturity that gave rise to his criminal acts; and finally, rehabilitation "is not a satisfactory rationale, either" because the sentence itself "'forswears altogether the rehabilitative ideal.'" *Id.* (citations omitted). Taken together, "the penological justifications for life without parole collapse in light of the distinctive attributes of youth." *Id.* (quoting *Miller*, 132 S. Ct. at 2465).

It follows from the above precedent that life and life equivalent sentences imposed on a youth presumptively violate the Eighth Amendment.

2. Life Equivalent Sentences Imposed on Youth Violate the Washington State Constitution

This Court has never considered whether, under the Washington Constitution, a juvenile offender (here, a 14 year old child) can be deemed "irretrievable" at the time of sentencing or whether—in light of the overwhelming scientific evidence—that decision must be made after the youth's brain has more fully developed. The Iowa Supreme Court recently concluded that trial court judges cannot predict future prospects for maturation and rehabilitation because even highly trained mental health professionals say such predictions are impossible. *State v. Sweet*, 879 N.W.2d 811, 836-37 (Iowa 2016). Accordingly, the *Sweet* court adopted a categorical rule that juvenile offenders may not be sentenced to life without the possibility of parole under the Iowa Constitution. *Id.* at 839.

Washington's constitutional prohibition on cruel punishments compels a similar conclusion here.

First, the *Sweet* court observed that the *Montgomery* line of cases establishes that "juveniles are constitutionally different than adults for purposes of sentencing." *Id.* at 830 (citations omitted). Second, "[b]ecause of these differences, ordinary criminal culpability is diminished when the offender is a youth, and the penological objectives behind harsh sentences are diminished." *Id.* (citations omitted). Third, "[t]he traits of youth that diminish ordinary criminal culpability are not crime specific and are present even in juveniles who commit heinous crimes." *Id.* at 831 (citations omitted). Thus, even for the "most heinous" crimes, "incorrigibility is inconsistent with youth." *Id.* (citations omitted).

The *Sweet* court then took stock of the Supreme Court's conclusion that only youth who are irreparably corrupt may be sentenced to life without parole, but that "'appropriate occasions' for sentencing juveniles to this harshest possible penalty will be 'uncommon' or 'rare.'" *Id.* (citations omitted). The court emphasized that "[e]ven trained and experienced professionals find it very difficult to predict which youthful offenders might ultimately fit into this small group of incorrigible offenders." *Id.* (citations omitted). Consequently, an "unacceptable likelihood exists that the brutality or cold-blooded nature of a particular

crime will overcome mitigating arguments based on youth when the objective immaturity, vulnerability, and lack of true depravity should require a lesser sentence." *Id.* (citations omitted).

In *Graham*, the Supreme Court reasoned that because trial judges cannot make a determination of incorrigibility with any degree of certainty, a *categorical rule* against imposing life without parole on youth offenders who did not commit homicide was necessary. 560 U.S. at 69-74. The *Sweet* court pointed out that the exact same reasoning applies to life without parole sentences—which share many features with the death penalty: "the enterprise of identifying which juvenile offenders are irretrievable at the time of trial is simply too speculative and likely impossible given what we now know about the timeline of brain development and related prospects for self-regulation and rehabilitation." 879 N.W.2d at 836-37. As a result, "a court at the time of trial cannot apply the *Miller* factors in any principled way to identify with assurance those very few adolescent offenders that might later be proven to be irretrievably depraved." *Id.* at 837.

Notably, in adopting its categorical rule, the *Sweet* court also explained that proportionality interests necessarily require less than life sentences for youth defendants, even those convicted of homicide:

> Because of the transient characteristics of youth that diminish criminal culpability, life-without-the-possibility-of-parole sentences "pose[ ] too great a risk" of disproportionate punishment. . . . Even if the state's judgment that a juvenile offender is incorrigible is later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset.

Id. at 832 (citations omitted, alteration in original).

This Court previously determined that Washington's constitutional prohibition on cruel punishments in article I, section 14, even more strongly prohibits disproportionate punishment than the Eighth Amendment. *State v. Fain*, 94 Wn.2d 387, 391-92, 617 P.2d 720 (1980). Moreover, the cases cited above, including *Roper*, *Graham*, and *Miller*, require that sentences imposed on juveniles account for youth as a mitigating factor in order to achieve proportionality in sentencing. Combining the reasoning of *Sweet* and our state's strong constitutional protection against disproportionate punishment, and the fact that he has no guarantee of ever being released, the Court should find that Mr. Ramos's life equivalent sentence violates our state constitution.[3]

[3] The issue of "irretrievable depravity" cannot simply be left to the Indeterminate Sentence Review Board. The authority cited above makes clear that determining a constitutionally valid sentence less than life or a life equivalent must occur first.

3. Brain Science Supports the Conclusion that Life Sentences Imposed on Youth are Presumptively, If Not Always, Unconstitutional.

As noted above, the case law requiring consideration of youth as a mitigating factor recognizes three categorical differences that compel lower sentences for youth: (i) lack of maturity; (ii) susceptibility to external pressures; and (iii) a lack of "irreparable corruption" or "irretrievable depravity" plus great capacity for positive change as maturity occurs. A closer examination of the brain science relied on by the courts supports the conclusion that life sentences imposed on youth are either always or presumptively unconstitutional.

Addressing lack of maturity first, deterrence does not operate the same for immature and impulsive youth as it does for adults because youth tend to overvalue rewards and "discount consequences, even when they know the law."[4] Experience demonstrates and scientific research confirms that long sentences such as that imposed on Mr. Ramos do nothing to deter youth offenders because their limited life experiences make it difficult for them to perceive long stretches of time.[5] In one study, researchers found

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[4] Jeffrey Fagan, *Why Science and Development Matter in Juvenile Justice*, THE AMERICAN PROSPECT, Aug. 14, 2005, at 2; *see also* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 16:3 ANN. REV. CLINICAL PSYCHOL. 47, 57 (2009) [hereinafter "Steinberg 2009"].

[5] "Few adolescents are likely to be able to grasp the true significance of a life sentence. One twenty-nine-year-old woman serving life without parole told a researcher for this report that when she was sentenced, at the age of sixteen: 'I didn't understand "life without" . . . [that] to have "life without," you were locked down forever. You know it

that the threat of adult sanctions had *no deterrent effect whatsoever* on youth crime.[6] Scientific studies show that young brains develop with a *structural imbalance* that effectively promotes poor decision making: the areas that motivate reckless behavior mature sooner than the areas that regulate such behavior.[7] In particular, youth brains show increased neural activity in parts of the brain linked to risky behavior,[8] but less maturation in the prefrontal cortex, which regulates decision making and continues to mature through late adolescence.[9] Prefrontal cortex maturation is especially important when gauging youth culpability because that part of the brain is associated with decision making generally,[10] including making moral judgments,[11] and evaluating future consequences.[12] Moreover, the

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really dawned on me when [after several years in prison, a journalist] came and . . . he asked me, "Do you realize that you're gonna be in prison for the rest of your life?" And I said, "Do you really think that?" You know. . . and I was like, "For the rest of my life? Do you think that God will leave me in prison for the rest of my life?"' Human Rights Watch, *The Rest of their Lives: Life Without Parole for Youth Offenders in the United States in 2008* (2008), at 4-5.

[6] Eric L. Jensen & Linda Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violence Juvenile Crime*, 40 CRIME & DELINQ. 96, 100-02 (1994).

[7] Steinberg 2009, at 54.

[8] Robert Shepherd, *The Relevance of Brain Research to Juvenile Justice*, 19 CRIM. JUST. 51, 52 (2005) ("[T]here are clear neurological explanations for the difficulties adolescents have in cognitive functioning, in exercising mature judgment, in controlling impulses, in weighing the consequences of actions, in resisting the influence of peers, and in generally becoming more responsible.").

[9] Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 Trends in Cog. Sci. 63, 63 (Feb. 2014); Casey, B. J. et al., *The Adolescent Brain*, 28 Developmental Rev. 62, 68 (2008).

[10] Samantha B. Wright et al., *Neural Correlates of Fluid Reasoning in Children and Adults*, 1:8 Frontiers Human Neurosci. 7 (2008) (prefrontal cortex controls reasoning).

[11] Jorge Moll et al., *Frontopolar and Anterior Temporal Cortex Activation in a Moral Judgment Task: Preliminary Functional MRI Results in Normal Subjects*, 59 ARQ NEURO-PSQUIATR 657 (2001).

ability to regulate one's emotions—a crucial element of behavior control[13]—does not fully develop until *post*-adolescence.[14] These aspects of youth brains demonstrate that the same life sentence that would be imposed on an adult for the same offense is not justified when imposed on youth.

The second relevant aspect of youth brains is that youth are uniquely susceptible to negative external influences and peer pressure. Youth are completely "dependent on living circumstances of their parents and families and hence are vulnerable to the impact of conditions well beyond their control."[15] Youth brains are also more sensitive to certain emotional triggers, such as fear, rejection, and the desire to "fit in," making them particularly vulnerable to peer pressures.[16] In fact, the parts of the brain associated with resistance to peer influence develop well into

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[12] Antoine Bechera et al., *Characterization of the Decision-Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 BRAIN 2189, 2189-99 (2000).
[13] Sang Hee Kim & Stephan Hamann, *Neural Correlates of Positive and Negative Emotion Regulation*, 19:5 J. COGNITIVE NEUROSCI. 776, 776 (2007).
[14] B.J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22 (2) CURRENT DIRECT. IN PSYCH. SCI. 82-87 (2013); Casey, B. J. et al., *The Adolescent Brain*, 28 DEVELOPMENTAL REV. 65 (2008).
[15] Alan E. Kazdin, *Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths, in* YOUTH ON TRIAL 33 (Grisso & Schwartz, eds., 2000).
[16] Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Pressure*, 43 DEVELOPMENTAL PSYCHOL. 1531, 1536-38 (2007).

late adolescence.[17] One study found that peer pressure *doubles* risky behavior, including criminal behavior, among youth.[18]

These two vulnerabilities—an inability to control their external environment and a susceptibility to peer pressure—combine to make youth less culpable. These pressures were particularly salient for Mr. Ramos, whose childhood was poisoned from the start: he grew up in extreme poverty without a father and an often-absent mother, had significant difficulties in school from an early age, endured sexual abuse from two older relatives, and suffered the sudden death of his sister. CP 672-76, 969-70. Mr. Ramos was trapped in an environment he was unable to shape or escape, hounded by pressures he had little capacity to control.

Third, and most significantly, brain science and the case law recognize that youth are more capable of rehabilitation and change than adults, making them less culpable even for horrific murders committed on a single day and justifying a lesser sentence. A lesser sentence is warranted for Mr. Ramos in particular in light of his lack of prior criminal history, numerous childhood traumas, and demonstrated growth and maturity since the crime. Adolescence is a time of remarkable change and transience, when youth are still struggling to form a basic identity. Youth

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[17] Steinberg 2009, at 56.

[18] Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psychol. 625, 626-34 (2005).

crime reflects this transient period and is one of the "qualities of youth" itself (*Miller*, *supra*), rather than a sign of an intractably bad character. Although violent crime *peaks* around 16 and 17 years, it "drop[s] precipitously in young adulthood."[19] Developmental psychiatrists have confirmed that the youth offender who is unable to change is exceedingly rare and the vast majority of youth offenders will stop committing crime once they are adults.[20] This capacity for change is a legally material distinction between youth and adults.

B. Because the Sentencing Court Did Not Determine That Mr. Ramos Is Irredeemable, and No Such Determination Can Be Made on this Record, Mr. Ramos's Sentence Is Unconstitutional.

As the *Sweet* Court recognized, it is virtually impossible to distinguish between those youth offenders whose crime reflects transient immaturity from those whose crimes demonstrate irreparable corruption. Researchers have found that those youth offenders who change and those who continue committing crimes exhibit *identical behavior* at the outset, making it impossible to identify incorrigible offenders at the sentencing stage.[21] There is simply no reliable way for an expert psychologist—much less a prosecutor or a sentencing judge—to determine when a youth's

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[19] Terrie Moffit, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 Psychol. Rev. 674, 675 (1993).
[20] Steinberg & Scott, *supra* note 2, at 1015.
[21] Edward Mulvey & Elizabeth Cauffman, *The Inherent Limits of Predicting School Violence*, 56 AM. PSYCHOLOGIST 797, 799 (2001).

crimes are the result of "irreparable corruption." This Court should rule accordingly that life and life equivalent sentences for youth are unconstitutional because it is impossible to prove at the time of sentencing that a youth is "irreparably corrupt."

The science underlying the Court's reasoning in *Roper*, *Graham*, *Miller*, and *Montgomery* further underscores that a determination of incorrigibility cannot be made at the time of the original sentencing because the child is still just that: a child who is undergoing dramatic and life-altering changes. As the Court acknowledged in *Roper*, youth characteristics are so malleable that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573. And because youth are undergoing so many changes, "it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of [an] irretrievably depraved character." *Id.* at 570.

In other words, even in the wake of a heinous crime, almost every child can be redeemed simply through the inevitable maturation process. The signature attribute of youth is that it is fleeting. Here, the evidence demonstrates that since the time of the offense, Mr. Ramos has matured into a responsible adult. And the courts have ruled that with maturity a

grown man can earn "the right to reenter the community." *Graham*, 560 U.S. at 74.

This Court should reverse the clear error committed by both the trial court and the Court of Appeals. The trial court in 2013 *increased* Mr. Ramos's sentence from 80 to 85 years based solely on the severity and nature of the crime and despite ample evidence of mitigating circumstances. *See State v. Ramos*, 189 Wn. App. 431, 443-45, -- P.3d -- (2015). The trial court's decision was wholly inconsistent with the applicable case law and the Court of Appeals' ruling that "[p]enological goals of retribution and deterrence can be served without demonstrating that an offender is irreparably corrupt" is clear legal error. *Id.* at 451.

The errors committed by the lower courts are particularly clear in the wake of the Supreme Court's decision in *Montgomery*. *Montgomery* recognized that sentencing Mr. Ramos to 85 years cannot be based on retribution, because as a child he was less blameworthy than an adult. *Montgomery*, 136 S. Ct. at 733. Nor can his sentence rest on deterrence because, as a child, he could not weigh the consequences of adult sanctions like life imprisonment. *Id.* Rehabilitation is no justification either because the sentence ensures that Mr. Ramos will die in prison, regardless of his maturation. *Id.* In this way, a life sentence "deprives children of both any hope for return to society and any opportunity for

rehabilitation."[22] And incapacitation cannot justify the sentence because no court has found that Mr. Ramos is irreparably corrupt such that he must be incapacitated for the rest of his life. *Id.* Only a finding of irreparable corruption could justify Mr. Ramos's life sentence, and that finding was neither made nor could it be made on this record.

Neither gubernatorial clemency nor Washington's newly-enacted parole statute, RCW 9.94A.730, changes this calculus because neither requires a finding that Mr. Ramos is (or is not) irreparably corrupt, and neither provides any assurance that Mr. Ramos will ever be released from prison. The Constitution requires more and Mr. Ramos's sentence should be reversed.

IV. CONCLUSION

Science teaches us that children are presumptively redeemable. After *Miller*, youth who enter prison, even after committing terrible crimes, can still hope to live the end of their lives—not the immediate present, but some determinate period in the future—outside a prison cell, if they earn it. Most will earn it, even if it is after spending much of their life in prison like Mr. Ramos. He, like Henry Montgomery, is entitled to the same redemptive hope that Mr. Graham and Mr. Miller now enjoy: that through "the gradual renewal of a man, . . . his gradual regeneration,

[22] Eva S. Nilsen, *Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Disclosure*, 41 U.C. Davis L. Rev. 111, 162 (2007).

. . . his passing from one world into another, . . . his initiation into a new unknown life,"[23] he, too, can be redeemed.

This Court should order resentencing so that the same opportunity is available to Mr. Ramos.

Respectfully submitted this 2nd day of September, 2016.

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[23] FYODOR DOSTOYEVSKY, CRIME AND PUNISHMENT 532 (Modern Library paperback ed. 1950).

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CERTIFICATE OF SERVICE

I, David A. Perez, attorney for Amicus Curiae American Civil Liberties Union of Washington, certify that on September 2, 2016, I personally served to each of the following persons a copy of the document on which this certification appears:

Nancy P. Collins (via email and messenger)	Counsel for Petitioner/Appellant
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Signed at Seattle, Washington, this 2nd day of September 2016.

/s/ David A. Perez
David A. Perez

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Cc: changro@seattleu.edu; Levin, Jessica (levinje@seattleu.edu); Bannai, Lorraine (bannail@seattleu.edu); suzanne@suzanneelliottlaw.com; melissa.lee@columbialegal.org; nick.straley@columbialegal.org; abenson@defensenet.org; Nancy Talner; Emily Chiang (echiang@aclu-wa.org); Boman, Marc A. (Perkins Coie); Simpson, Mica D. (Perkins Coie); ken.ramm@co.yakima.wa.us; Joseph.Brusic@co.yakima.wa.us; GVERHOEF@spokanecounty.org; nancy@washapp.org; Scpaappeals@spokanecounty.org
Subject: RE: State v. Ramos, No. 92454-6 -- Amicus Brief

Received 9/2/16.

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From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Friday, September 02, 2016 11:12 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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Subject: State v. Ramos, No. 92454-6 -- Amicus Brief

Dear Clerk,

Please accept for filing in *State v. Ramos*, No. 92454-6, the following two documents, attached to this email:

1. Motion for Leave to Participate as Amicus Curiae

2. Brief of *Amici Curiae* the American Civil Liberties Union of Washington, Washington Defender Association, Washington Association of Criminal Defense Lawyers, Fred T. Korematsu Center for Law and Equality, and Columbia Legal Services

Thank you, and please let me know if you have trouble opening either attachment and we can re-send in a different format.

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