SUPREME COURT, STATE OF COLORADO 2 E 14th Avenue Denver, CO 80203	DATE FILED: April 13, 2015 2:24 PM FILING ID: 3F29F8E3AA657 CASE NUMBER: 2013SC624
Certiorari to the Colorado Court of Appeals, 11 CA 2030 Denver County District Court No. 05CR4442	
GUY LUCERO, PETITIONER, v. THE PEOPLE OF THE STATE OF COLORADO, RESPONDENT.	▾COURT USE ONLY▾
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COLORADO CRIMINAL DEFENSE BAR'S AMICUS BRIEF

CERTIFICATE OF COMPLIANCE

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

The brief complies with C.A.R. 28(g) and 53(a), it contains 5951 words.

/s/ Philip Cherner
Philip A. Cherner

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INTRODUCTION

The Colorado Criminal Defense Bar submits this amicus brief in support of the juveniles who are presently contesting their life without parole sentences.

As this court well knows the U.S. Supreme has been active in the area of juvenile life without parole (JLWOP) sentences. First came *Roper v. Simmons.* 543 U.S. 551 (2005), which outlawed the death penalty for juveniles. Next came *Graham v. Florida,* 130 S. Ct. 2011 (2010) in which the court held that life without parole was impermissible under the Eighth Amendment for juveniles convicted of non-homicide offenses. Finally, in 2012 the Court held the Eighth Amendment prohibits mandatory life without parole for juveniles convicted of homicide in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). *Graham* teaches that a juvenile must be afforded a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation", 500 U.S. ____, 120 S. Ct. at 2030 and this holding was reaffirmed in *Miller*, 132 S. Ct. at 2469.

The Attorney General has argued that the appropriate resolution of these cases is a sentence of life with parole eligibility at 40 years. However, the parole scheme into which these juveniles would be poured is that of adult

offenders. That scheme woefully fails to provide the meaningful opportunity for release mandated by the U.S. Supreme Court.

SUMMARY OF THE ARGUMENT

Graham and *Miller* prohibit a life without parole sentence for most juveniles convicted of first degree murder. For these individuals the parole system must afford them a "meaningful opportunity for release based on demonstrated maturity and rehabilitation." Colorado's adult parole statutes and regulations do not afford the inmate such an opportunity.

ARGUMENT

COLORADO'S ADULT PAROLE SCHEME DOES NOT SATISFY *GRAHAM V. FLORIDA'S* REQUIREMENT OF A "MEANINGFUL OPPORTUNITY FOR RELEASE BASED ON DEMONSTRATED MATURITY AND REHABILITATION."

The "meaningful opportunity for release" standard.

At the parole release stage a juvenile sentenced to life with parole eligibility must be allowed to demonstrate maturity and rehabilitation, *Graham supra*, *Miller supra.* Colorado's adult parole release scheme fails to meet this standard.[1]

[1] While inapplicable, the constitutional due process floor for adult parole *revocation* hearings is detailed in *Morrissey v. Brewer*, 408 U.S. 471, 472, 92 S. Ct. 2593, 2596, 33 L. Ed. 2d 484 (1972)

The Court's choice of the phrase "meaningful opportunity for release" rather than simply "eligibility for parole" is not fortuitous. The choice of the term "meaningful opportunity" is telling as that phrase is common in procedural due process cases. See *Boddie v. Connecticut*, 401 U.S. 371, 377(1971) (due process requires "a meaningful opportunity to be heard"); *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004) (United States citizen denominated as an "enemy combatant" must be provided a "meaningful opportunity" to challenge the conditions of his confinement); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (due process requires that a defendant have "a meaningful opportunity to present a complete defense") (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). Thus the Court implicitly recognized that parole practices vary greatly from state to state and that "a state's existing parole system will comply with the Eighth Amendment only if it actually uses a meaningful process for considering release." Sara French Russell, *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 Ind. L.J. 373, 415 (Winter 2014).

This notion of "procedural rights [flowing] from the Eighth Amendment" is not new. Russell, *supra*. See *Lockett v. Ohio*, 438 U.S. 586 (1978); *Woodson v. North Carolina*, 428 U.S. 280 *(1976);*. As Professor

Russell noted, "Although scholars have described *Woodson* and *Lockett* as requiring "super due process" in the capital context, the cases invoke the Eighth Amendment rather than procedural due process analysis as the basis for the holdings." *Id*., at 416. See also Richard A. Bierschbach & Stephanos Bibas, *Constitutionally Tailoring Punishment*, 112 Mich. L. Rev. 398 (2013), and Richard A. Bierschbach, *Proportionality and Parole*, 160 U. Pa. L. Rev. 1745 (2012). Thus, the absence of a meaningful review process for release would violate the Eighth Amendment. Even if the Court were to view *Graham* and *Miller* as extending procedural due process protections under the Fourteenth Amendment to parole hearings for juvenile offenders, rather than the Eighth Amendment, it would still follow that *Graham* created a liberty interest in release for juveniles. See *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7-8 (1979), which states that minimal due process protections do not apply to parole hearings absent a state statute creating a liberty interest in release. While *Miller* does not go so far as to guarantee release, it does require that the state must "provide some meaningful opportunity for release based on demonstrated maturity and rehabilitation." *Miller*, at 2469, quoting *Graham*, at 2030. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct.

893, 902, 47 L. Ed. 2d 18 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965).

Judge Corbett O'Meara of the United States District Court for the Eastern District of Michigan, in *Hill v. Snyder*, Case 10-4568 (Appendix), entered an order directing the Michigan Department of Corrections to, among other things, schedule parole hearings for all prisoners sentenced to life without parole for crimes committed while juveniles who have served ten years or more; that their eligibility for parole must be "considered in a meaningful and realistic manner," all hearings must be public; the Parole Board must issue and explain its decision, there will be no veto power of the decision, and that "no prisoner sentenced to life imprisonment without parole for a crime committed as a juvenile will be deprived of any educational or training program which is otherwise available to the general prison population." What Judge O'Meara implicitly recognized in his Order is that the possibility of parole can satisfy the constitutional requirement that the juvenile offender be given a meaningful opportunity for release only if the offender be given a realistic opportunity to demonstrate maturity, growth and rehabilitation, if parole hearings are meaningful hearings, and only if the hearings occur not forty years down the road but rather within a reasonable amount of time after the juvenile reaches adulthood. Only then can a

judgment be made as to whether the child's criminal behavior was a result of the transient characteristics of youth and the offender has grown and matured and is now ready to take his or her place as a contributing member of society. United States District Court, E.D. Michigan, Southern Division, (January 30, 2013) Not Reported in F.Supp.2dt, Order Requiring Immediate Compliance with *Miller*, *Hill v. Snyder*, No. 10-14568 (E.D. Mich. Nov. 26, 2013), available at http://www.aclumich.org/sites/default/files/file/HillOrderRequiringParoleProcess.pdf.

The inadequacies of Colorado's adult parole scheme.

If the Court chooses to side with the Attorney General and prescribe a sentence of life with parole eligibility at 40 years, the juvenile defendant will be subject to the various adult parole statutes. When the juvenile is eligible for release on parole the Department of Corrections will refer their case to the Colorado Board of Parole, as they presently do for adult offenders. The Board will determine whether to grant parole and, if so, on what conditions. The statutes governing adult parole fall woefully short of providing *Graham's* "meaningful opportunity".

Existing Colorado cases indicate adult parole is a "privilege." The possibility of parole provides no more than a mere hope that the benefit will be obtained.

Defendants not convicted of a sex offense have no "constitutionally protected entitlement to, or liberty interest in, parole." *Thompson v. Riveland*, 714 P.2d 1338, 1340 (Colo. App. 1986).[2] There is no right to due process and the decision of the Board to grant or deny parole is not subject to judicial review. See *White v. People*, 866 P.2d 1371, 1373 (Colo. 1994) ("The parole decision is 'subtle and dependent on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the Parole Board members based upon their experience with the difficult and sensitive task of evaluating the advisability of parole release'"); *In re Question Concerning State Judicial Review of Parole Denial Certified by U. S. Court of Appeals for Tenth Circuit*, 199 Colo. 463, 610 P.2d 1340, 1341(1980) ("The decision of the Board to grant or deny parole is clearly discretionary since parole is 'a privilege, and no prisoner is entitled to it as a matter of right.' *Silva v. People*, 158 Colo. 326, 407 P.2d

[2] Compare *People v. Kibel*, 701 P.2d 37, 43-44 (Colo. 1985), holding that there are procedural due process protections for the limited number of inmates sentenced under the 1968 sex offender lifetime act. See also *People v. Oglethorpe,* 87 P.3d 129, 133-34 (Colo. App. 2003), *as modified on denial of reh'g* (Aug. 14, 2003) (reaching the same conclusion for individuals sentenced under the 1998 Lifetime Act).

38 (1965). Thus, the decision of the Board to grant or deny is not subject to judicial review.") The decision to release on parole belongs exclusively to the Parole Board. *In re Question, supra*; C.R.S. §17-2-201(4). Should it be utilized for juveniles sentenced to JLWOP, the Colorado adult parole process does not satisfy the requirements set forth in *Graham* and *Miller;* simply tacking on to the sentence the phrase, "with the possibility of parole after forty years," does not convert the defendant's life sentence to a constitutional one.

Consideration for early release ("parole") begins with a parole "interview," not a hearing. C.R.S. §17-2-201(4)(a). (The *Rules Governing the State Board of Parole and Parole Proceedings* (2013)), 8 CFR 1511-1, speak of an "application interview." Reg. 5:03(A)). The inmate has no right to present testimony, compel the attendance of witnesses, or cross-examine witnesses.

The application interview may be face-to-face, by phone, or by video link. The inmate, if not physically present, will be at his prison of residence and the Parole Board member at some other location. Reg. 5:03(A). The offender can have only five supporters in attendance. Reg. 3:06(A). They cannot say anything unless the presiding Board member allows them to do so, and there is no obligation that the presiding member grant the request.

Reg. 3:06(F). The inmate can submit written material, but can only do so in advance of the hearing by giving it to the DOC case manager. Reg. 3:04(A) and 5:03(J) and (K). The supporters must make prior arrangements if they plan to attend. Reg. 3:06(C) and (E).

There is no statutory right to court-appointed counsel, and the Regulations effectively prohibit the participation of counsel, whether privately retained or otherwise.[3] If a lawyer appears on behalf of the inmate he or she is not allowed to function as a "lawyer" at all. The lawyer has "no specific legal authority." Reg. 3:05(A)(4). In other words, the lawyer can only participate as one of the five supporters, and may or may not be allowed to speak. Colorado is one of only six states that does not consider attorney input. *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 80 Ind. L. J. 373 (2014), n.188. and 326.

In contrast to inmates, victims are notified of the application interview in advance. C.R.S. §§17-2-214(2)(a)(providing for 60 days advance notice), 24-4.1-303(14)(d), and Reg. 3:03. Victims have the right to attend the proceeding in person. C.R.S. §17-2-214(1). "Victims", as defined, can

[3] C.R.S. §17-2-201(13) authorizes appointment of counsel only for parole *revocation* hearings, and even then only for indigent inmates who deny the violation (as opposed to pleading mitigation), cannot adequately speak for themselves, and where the issues are complex.

submit written material directly to the Board members conducting the interview. Reg. 3:04(B). They are guaranteed a chance to speak directly to the Board. C.R.S. §§17-2-214(1); 24-4.1-302.5(1)(j); Reg. 3:04(B)(2), 3:05(C)(5)[4], and may be present in the same room as the Board member conducting the hearing. Reg. 3:05(C)(2). Victims can avail themselves of the assistance of a victim advocate, Reg. 3:05(C)(11), and can have counsel, who may fully participate. C.R.S. §17-2-214(1); Reg. 3:05(B)(13). The victim or victim's attorney may speak off the record as needed and make a closing argument. Reg. 3:05(14)(C) and (D). All this is done without the knowledge of the parolee who is walled off from the victim participation process. Even if the parolee had the tools to challenge victim information, he or she is not allowed to know what it is. It must remain "confidential". Reg. 3:04(B)(3). Victims need not give prior notice of their intention to attend the interview. Reg. 3:05(B)(12).

Two Board members must attend any "application interview" when the inmate is serving a life sentence, and must concur in their decision. C.R.S. §17-2-201(9)(a), Reg. 5:03(F) and (I). If the inmate is serving a life sentence for homicide the full Board must concur with the decision to grant

[4] Both the Parole Board regulations and the statutes sometimes refer to a "hearing" instead of using the term "interview". That is because the former term includes the latter. The regulations define "hearing" to include "application interviews". Reg. 1:00.

parole. Reg. 8:02.[5] The interviews are necessarily brief; the Board conducts 25,000 to 30,000 hearings and reviews per year. *Annual Report to the Joint Budget Committee*, January 6, 2014, p. 3[6]; *Analysis of Colorado State Board of Parole Decisions: FY 2013 Report*, p. 1[7].

Should parole be denied, there are no internal or court-conducted appellate procedures, because none are allowed. "Decisions resulting from Parole Applications are not subject to appeal." Reg. 9:03. As long as the Board has exercised its statutorily-mandated duties, such as conducting the interview when required, "the decision of the Board to grant or deny is not subject to judicial review." *In re Question, supra*, 199 Colo. at 465, 610 P.2d at 1341 (1980). If rejected, the Board can postpone another parole application for up to 5 years. Reg. 5:04(A)(2)(d).

The Parole Board's historic hostility to release.

The General Assembly requires the Parole Board to consider the results of objective scoring instruments to assist in determining the propriety of an offender's release, see C.R.S. §17-22.5-107(1). The "Parole Board

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[5] Murder is a violent offense. C.R.S. §18-1.3-406(2)(a)(II)(B).

[6] Located at https://www.colorado.gov/pacific/sites/default/files/Parole%20Board%20Annual%20Report%20to%20the%20Joint%20Budget%20Committee%202014.pdf

[7] Located at https://www.colorado.gov/pacific/sites/default/files/Parole%20Board%20FY%2013%20Decisions%20Report.pdf

Administrative Release Guideline Instrument" (PBRGI), Reg. 6:02, and the Colorado Actuarial Risk Assessment Scale (CARAS) both exist to provide objective information and criteria to the Board for its release decisions.[8] However, in practice the result is no different than a coin flip: when the PBRGI recommended release in FY2013 the Board followed the recommendation only 50% of the time. *Annual Report to the Joint Judiciary Committee*, December 11, 2013, p. 7[9]; *Analysis of Colorado State Board of Parole Decisions: FY 2013 Report*, supra, p. 3-4. The *Analysis* reveals that "Of the 50.5% of decisions to depart from the recommendation to release (and, instead, to defer the offender), 75% of these offenders were categorized as 'low' or 'very low' risk." In addition, "72% were categorized as 'medium' or 'high' readiness" for release. *Id*., p. 2.[10] Thus, the Board's

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[8] "The intent of the PBRGI is to provide guidance to the Board as it makes decisions about discretionary parole release." *Analysis of Colorado State Board of Parole Decisions: FY 2013 Report*, supra, p. 8. See *Id*, pp. 1-2 and 7-8 for more detail about these assessment instruments.

[9] Located at https://www.colorado.gov/pacific/sites/default/files/Parole%20Board%20Annual%20Report%20to%20Joing%20Judicary%20Committee%202013.pdf

[10] The failure to honor the objective data may violate the Eight Amendment. "Nothing in Florida's laws prevents its courts from sentencing a juvenile non-homicide offender to life without parole based on a subjective judgment that the defendant's crimes demonstrate an "irretrievably depraved character." *Roper, supra,* at 572, 125 S.Ct. 1183. This is inconsistent with the Eighth Amendment." *Graham, supra*, 560 U.S. 48, 76, 130 S. Ct. 2011, 2031, 176 L. Ed. 2d 825 (2010), *as modified* (July 6, 2010) And, "As these examples make clear, existing state laws, allowing the imposition of these sentences based only on a discretionary, subjective judgment by a judge or jury that the offender is irredeemably depraved, are insufficient to

own data and analysis dramatizes its bias against granting parole, even for the most worthy inmates.

The Board's hostility to granting release is historic. "[I]n Fiscal Year 2008 the Board denied 15,000, or 84 percent, of the 17,800 requests for discretionary parole." *The State Board of Parole Performance Audit*, by the State Auditor, (2008), p.2[11]. The 84% rate was the lowest denial percentage of the period 2004-08; in FY2005 the denial rate was 90%. *Id*, p. 8. This despite the fact that the audit found, "the Department's data *overstate* the number of discretionary parole releases due to a change in the Board's release policy." (Emphasis added.) *Id.*, p.17.

In this environment *Graham's* requirement of an opportunity to demonstrate maturity and rehabilitation will not be met. The best performing inmate would be unable to present any testimony at all. No funds are available to enable expert consultation (it can be safely assumed that every inmate reaching this stage of a life sentence, after being arrested as a juvenile, would be indigent). Nor would the inmate likely have funds

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prevent the possibility that the offender will receive a life without parole sentence for which he or she lacks the moral culpability." *Id* at 560 U.S. 48, 77, 130 S. Ct. 2011, 2031, 176 L. Ed. 2d 825. If the court's subjective determination is suspect, then so too must be the Parole Board's.

[11] Located at http://www.leg.state.co.us/OSA/coauditor1.nsf//95C6261FDF903AD887257519005D4D40/$file/1975+Parole+Board+Perf+Nov+2008.pdf?OpenElement

for an attorney to coordinate the recruitment of the expert and presentation of the findings. The inmate would be reduced to hoping the few, if any, supporters and family members he still has on the outside would care enough to help and know how to do so. In short, the inmate's ability to address the numerous factors the Board must consider in addressing release and the conditions of release, C.R.S. §§17-22.5-404(4)(a) and 17-2-201(5), approaches zero, even before *Graham's* requirements are addressed.

Consider also that even with appropriate resources the inmate will never know if the information provided by victims it accurate. And he has no way to challenge it if it is not.

In assessing the "meaningful opportunity" to parole, it is helpful to contrast the juvenile's skimpy rights during the release process with the rights and resources an inmate has at sentencing before a judge. These include the right to be sentenced upon accurate information, *Townsend v. Burke*, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948); *People v. Jones*, 990 P.2d 1098, 1105 (Colo. App. 1999); the right to be present, Crim. P. 43(a); and the right to counsel, *People v. Wallin*, 167 P.3d 183, 190 (Colo. App. 2007) ("Under the United States and Colorado Constitutions, the right to counsel exists at every critical stage of a criminal proceeding, including a sentencing hearing.") The right to counsel includes the right to expert

assistance for indigent defendants. *Hutchinson v. People*, 742 P.2d 875, 881 (Colo. 1987) ("[I]t cannot be denied that a defense counsel's access to expert assistance is a crucial element in assuring a defendant's right to effective legal assistance, and ultimately, a fair trial."). Of course, at sentencing the juvenile may cross-examine witnesses, and issue subpoenas.

The mandatory nature of the proposed sentence—life with the possibility of parole after 40 years—would create a sentencing hearing at which few, if any, of these rights could be meaningfully exercised, since the sentencing judge has only one option. The real decision will happen at the Parole Board, 40 years later. Unfortunately the juvenile will have none of the crucial rights he had at sentencing. We are left with a situation where there is a sentencing hearing with many rights but no sentencing discretion, followed decades later by a real chance to exercise discretion where the juvenile has few rights.

Even if the juvenile had adequate resources for the parole interview, the factors the board must consider by statute are in conflict with the mandate of *Graham*. C.R.S. §17-22.5-404(4)(a) states:

> In considering offenders for parole, the state board of parole shall consider the totality of the circumstances, which include, but need not be limited to, the following factors:

(I) The testimony or written statement from the victim of the crime, or a relative of the victim, or a designee, pursuant to section 17-2-214;

(II) The actuarial risk of reoffense;

(III) The offender's assessed criminogenic need level;

(IV) The offender's program or treatment participation and progress;

(V) The offender's institutional conduct;

(VI) The adequacy of the offender's parole plan;

(VII) Whether the offender while under sentence has threatened or harassed the victim or the victim's family or has caused the victim or the victim's family to be threatened or harassed, either verbally or in writing;

(VIII) Aggravating or mitigating factors from the criminal case;

(IX) The testimony or written statement from a prospective parole sponsor, employer, or other person who would be available to assist the offender if released on parole;

(X) Whether the offender had previously absconded or escaped or attempted to abscond or escape while on community supervision; and

(XI) Whether the offender successfully completed or worked toward completing a high school diploma, a high school equivalency examination, as defined in section 22-33-102 (8.5), C.R.S., or a college degree during his or her period of incarceration.

At least three of these factors relate to the victim (I and VII) or the offense (VIII), and not "maturity" or "rehabilitation". There is no

consideration of the juvenile's diminished culpability and capacity for change, the fulcrum for the *Graham* decision. 130 S.Ct. at 2030.

Juveniles sentenced as juveniles have more parole rights than adults.

What's more, in contrast to adults, juveniles sentenced to the Division of Youth Corrections (DYC) have substantial rights when their release is considered by the Juvenile Parole Board. The Board has the authority to issue subpoenas and take testimony under oath. C.R.S. §19-2-1002(2)(a). Unless the juvenile is in jail awaiting trial on adult charges, he will appear in person before the board. C.R.S. §19-2-1002(3)(a.5). Importantly, "the juvenile and his or her parents or guardian shall be informed that they may be represented by counsel in any hearing before the board or a hearing panel to grant, modify, or revoke parole." C.R.S. §19-2-1002(8). At the hearing the standard to be applied is "the best interests of the juvenile and the public", C.R.S. §19-2-1002(3)(a).

It can be readily seen that juveniles sentenced as juveniles for relatively short sentences have more rights before the Parole Board than juveniles (and adults, for that matter) sentenced as adults. Any definition of meaningful chance for release must consider this disparity.

The legislative response to *Graham*.

The General Assembly has not acted in the wake of *Graham*. However, recognizing the higher bar set by *Graham* and *Miller*, other state legislatures have begun to rewrite the parole status. See, for example, California's legislative reaction to Graham, SB260. *In re Alatriste*, 220 Cal. App. 4th 1232, 163 Cal. Rptr. 3d 748, 752-53 (2013) review granted and opinion superseded, 317 P.3d 1183 (Cal. 2014) and review granted and opinion superseded sub nom. *In re Bonilla*, 317 P.3d 1184 (Cal. 2014). Florida's legislative response to *Graham* provides for resentencing to parole eligibility and then a "second look" sentencing hearing. At the latter hearing counsel is appointed. F.S.A. § 921.1402.

Louisiana has gone further requiring a report from an expert in adolescent brain development and behavior as part of parole consideration. Similarly Nebraska requires consideration of the inmate's rehabilitation, maturity and age at the time of the offense. NEB. REV. STAT. § 83-1,110.04 (2013). Delaware and Florida's enactments utilize judicial sentence reviews in lieu of Parole Board actions. See *Graham's Gatekeeper and Beyond*, 80 Brook. L. Rev. 119 , *140-142, (2014).

CONCLUSION

In sum, Colorado juveniles sentence as adults will have fewer rights before the Parole Board than their victim families, than Colorado juveniles,

than similarly situated defendants in other states, and most importantly, inadequate substantive and procedural rights to satisfy the "meaningful opportunity" requirement. Left without counsel, financial resources and the ability to gather information, the juvenile's rights under *Graham* and *Miller* will be hollow.

In considering the appropriate sentence for juveniles convicted of homicide after *Miller*, the Court should recognize that the adult parole system fails to live up to the letter and spirit of *Graham* and *Miller*. This Court should hold that a mandatory sentence of life with possible parole after forty years does not satisfy the Eighth Amendment's substantive and procedural requirements and is therefore unconstitutional.

Respectfully submitted,
/s/ Philip Cherner
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CERTIFICATE OF MAILING

I hereby certify that on this 13th day of April, 2015 a true and correct copy of the foregoing **COLORADO CRIMINAL DEFENSE BAR'S AMICUS BRIEF**, was e-filed via the ICCES system and all parties in interest will be served through that system:

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