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December 23, 2014

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

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DEC 24 2014

**Re: Request for Review**  
*People v. Palafox*, Case No. S223198

**CLERK SUPREME COURT**

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 to request that the Court review the opinion in *People v. Palafox*. Juvenile Law Center requests review to ensure that the United States Supreme Court decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) is meaningfully implemented in California.

### Interest of Juvenile Law Center

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, 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* – and presented oral arguments – in two juvenile life without parole cases in this Court, *People v. Caballero*, 55 Cal. 4th 262 (2012) and *People v. Gutierrez*, 58 Cal. 4th 1354 (2014).

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### Reasons Why Review Should Be Granted

*Miller v. Alabama*, 132 S. Ct. 2455 (2012) held that mandatory life without parole sentences are cruel and unusual when imposed on juveniles. *Miller* followed in the footsteps of *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's proscription, 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." *Id.* (internal citation and quotation marks omitted). *Miller* noted that these findings about children's distinct attributes are not crime-specific. *Id.* at 2465. *See also id.* ("Those features are evident in the same way, and to the same degree," whether the crime is "a botched robbery" or "a killing.").

The U.S. Supreme Court's rulings in these three seminal cases offer clear instructions for state courts charged with sentencing children, effectively limiting courts' discretion to sentence children to life without parole. In reiterating the relevance of the developmental differences between children and adults to sentencing, the Court also declared its expectation that these sentences would be "uncommon." *Miller*, 132 S. Ct. at 2469. Quoting *Roper* and *Graham*, *Miller* further noted that the "juvenile offender whose crime reflects irreparable corruption" will be "rare." 132 S. Ct. at 2469. The strictures placed on sentencers thus arise not only from juveniles' reduced culpability as a class; these cases also establish a presumption in favor of immaturity and against the imposition of life without parole. And these presumptions are not weakened in homicide cases, a heinous crime under any circumstances but one which the Court has refused to let trump its primary obligation to ensure that sentences imposed even on juveniles who commit murder be proportionate under the Eighth Amendment.

To determine whether a juvenile life without parole sentence is constitutionally imposed, the U.S. Supreme Court's death penalty jurisprudence is particularly instructive. The U.S. Supreme Court has equated its juvenile life without parole jurisprudence with its doctrinal analysis in death penalty cases. *See Miller*, 132 S. Ct. at 2466. In order to avoid the arbitrary imposition of the death penalty, the Court has required that sentencers consider only objective factors that separate the truly brutal and wanton murder from the terrible loss that is suffered in every homicide. *See, e.g., Maynard v. Cartwright*, 486 U.S. 356, 363 (1988) (noting that the Court had "plainly rejected the submission that a particular set of facts surrounding a murder, however shocking they might be, were enough in themselves, and without some narrowing principle to apply to those facts, to warrant the imposition of the death penalty"). For juveniles convicted of homicide, the presumptions noted above in favor of immaturity and against life without parole must be afforded great weight lest the sentencer's focus on the loss of life in each case render *Miller* meaningless.

This Court should grant review in this case in order to ensure that California complies with *Miller* and adopt a presumption in favor of immaturity and against imposing life without parole upon juvenile offenders. This Court must further establish guidance for lower courts to

ensure that juvenile life without parole are not arbitrarily imposed, and "that the brutality or cold-blooded nature of any particular crime" not "overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity." *Roper*, 543 U.S. at 573.

This case also raises the important question as to what weight sentencer must attach to a juvenile offender's potential for rehabilitation. Significantly, *Miller* requires that courts consider "the *possibility* of rehabilitation" before imposing life without parole on a juvenile. 132 S. Ct. at 2468 (emphasis added). *Miller* therefore does not require confidence or certainty that rehabilitation will occur, but merely the "possibility." When a sentencer recognizes a juvenile offender's potential to rehabilitate, it must impose a sentence that provides a meaningful opportunity for release. See *Graham*, 560 U.S. at 79 ("Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual."). Because Mr. Palafox received a life without parole sentence in spite of the possibility of his rehabilitation, his sentence should be vacated and remanded.

For the foregoing reasons, Juvenile Law Center requests that the Court grant the pending petition for review.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marsha L. Levick".

Marsha L. Levick  
Deputy Director and Chief Counsel

cc: see attached Proof of Service

**DECLARATION OF SERVICE BY MAIL**

**Re: *People v. Palafox*, Case No. S223198**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Philadelphia, State of Pennsylvania. My business address is 1315 Walnut Street, 4<sup>th</sup> Floor, Philadelphia, PA 19107. On December 23, 2014 I have caused to be served a true copy of the attached **Letter Supporting Request for Review** on each of the following, by placing same in an envelope(s) addressed as follows:

Kathleen A. McKenna  
Office of The Attorney General  
2550 Mariposa Mall, Room 5090  
Fresno, CA 5090

Heather MacKay  
P.O. Box 3112  
Oakland, CA 94609

Clerk of Court  
Fifth Appellate District  
2424 Ventura Street  
Fresno, CA 93721

Clerk of Court  
Kern County Superior Court  
1415 Truxtun Ave, 1st Floor  
Bakersfield, CA 93301

Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice each envelope would be deposited with the United States Postal Service in Philadelphia, Pennsylvania, on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 23, 2014 at Philadelphia, Pennsylvania.



Declarant