NO. 17-165

IN THE

Supreme Court of the United States

Timothy S. Willbanks,
Petitioner,
v.
Missouri Department of Corrections,
Respondent.

Ledale Nathan
Petitioner,
v.
State of Missouri,
Respondent.

On Petition For Writ Of Certiorari
To The Missouri Supreme Court

BRIEF OF JUVENILE LAW CENTER AND THE PHILLIPS BLACK PROJECT AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI[1]

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.

The Phillips Black Project is a nonprofit, public-interest law office dedicated to providing the highest quality of legal representation to prisoners in the United States sentenced to the severest penalties under law, in particular, capitally-sentenced defendants and juveniles serving life without parole sentences and their equivalents. Phillips Black has also been at the forefront of collecting and analyzing data to chart the transformation of juvenile life without parole sentencing (JLWOP) resulting from the seminal Eighth Amendment decisions of *Graham*

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[1] Pursuant to Rule 37.2 counsel of record received timely notice of the intent to file this brief and the consent of counsel for all parties is on file with this Court. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici,* their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

v. Florida, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012) and in producing legal scholarship examining the rapid changes brought about nationwide as a result of these decisions.

SUMMARY OF ARGUMENT

This Court held in *Graham v. Florida*, 560 U.S. 48 (2010) that sentencing juvenile offenders who commit non-homicide offenses to life without parole violates the Eighth Amendment's ban on cruel and unusual punishments. The Court explained: "The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. . . . 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*. at 79. *See also Miller v. Alabama,* 567 U.S. 460, 479 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 736-37 (2016). Thus, a sentence that provides no "meaningful opportunity to obtain release" is unconstitutional. *Graham*, 560 U.S. at 75.

Petitioner, Mr. Timothy Willbanks, was convicted of seven offenses arising from a single incident where he stole a car and shot the car's owner when he was 17 years old. (App. A to Pet. Cert. 2a-3a.) Mr. Willbanks was given a discretionary sentence of life plus 355 years in prison—life for the assault, 100 years for each count of armed criminal action, 20 years for each count of robbery, and 15 years for kidnapping, all to run consecutively. (*Id.* at 3a.) Mr. Willbanks' sentence amounts to life without parole, as he will not be eligible for parole until he has served nearly seventy years of his sentence, and will be in his late eighties. (*Id.* at 6a n.4.) Mr. Willbanks was convicted

of a non-homicide crime and, as sentenced, has unquestionably been deprived of a "meaningful opportunity to obtain release." This Court should make clear that *Graham*'s mandate extends to prohibiting not just formal life without parole sentences, but the functional equivalent thereof.[2]

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THAT *GRAHAM* PROHIBITS NOT ONLY FORMAL LIFE WITHOUT PAROLE SENTENCES BUT ALSO TERM-OF-YEARS SENTENCES THAT ARE THE FUNCTIONAL EQUIVALENT OF LIFE WITHOUT PAROLE

A. A Sentence That Precludes A "Meaningful Opportunity To Obtain Release" Is Unconstitutional Regardless Of Whether It Is Labeled "Life Without Parole" Or Is Comprised Of Consecutive Terms

Evolving Eighth Amendment jurisprudence has clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled. This Court took this commonsense and equitable approach in

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[2] Although this is a consolidated case, *Amici* write to underscore Petitioners' arguments on the unconstitutionality of aggregate sentences imposed on individuals convicted of non-homicide offenses.

Sumner v. Shuman: "there is no basis for distinguishing, for purposes of deterrence, between an inmate serving a life sentence without possibility of parole and a person serving several sentences of a number of years, the total of which exceeds his normal life expectancy." 483 U.S. 66, 83 (1987). A sentence to die in prison is life without the possibility of parole, regardless of the label.

The average life expectancy for a male in the United States is seventy-six years. United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Vital Statistics Reports, Vol. 66, No. 4 (August 14, 2017), available at https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_04.pdf (last visited Aug 30, 2017). With consideration of the average life expectancy of those serving prison sentences, the United States Sentencing Commission defines a life sentence as 470 months (or just over 39 years). *See, e.g.*, *United States v. Nelson*, 491 F.3d 344, 349-50 (7th Cir. 2007); U.S. Sentencing Commission Quarterly Data Report (through March 31, 2017) at A-7, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC_Quarter_Report_2nd_FY17.pdf (last visited August 30, 2017).

The first time Mr. Willbanks will be eligible to go before a parole board is when he is eighty-five years old, meaning that Mr. Willbanks would have to outlive the average male *who has not been incarcerated* by nine years before he could even be considered for parole. (App. A to Pet. Cert. 6a n.4.) Labels and semantics cannot obscure the fact that such a

sentence amounts to a *de facto* life without parole sentence.[3] Courts cannot circumvent the categorical ban on mandatory life without parole for juveniles simply by choosing to impose consecutive term-of-years sentences that only avoid the label of "life without parole," yet ensure individuals will die in prison.

The sentencing court viewed Petitioner's sentences as separate terms and ignored the fact that they run consecutively, foreclosing his eventual release and frustrating *Graham's* constitutional requirements. This Court should grant review to establish that lengthy term-of-years sentences are constitutionally equivalent to life without parole sentences under *Graham*.

B. Whether A Sentence Provides A Meaningful Opportunity For Release Should Not Be Contingent Solely On Whether The Sentence Exceeds A Juvenile's Life Expectancy

Available data about the average life expectancy of men in the United States—incarcerated or not—leads inexorably to the conclusion that Mr. Willbanks will almost certainly die in prison. However, while a sentence that exceeds a juvenile offender's life expectancy *clearly* fails to provide a meaningful opportunity for release, whether an opportunity for release is *meaningful* should not solely depend on

[3] "The exaltation of form over substance is to be avoided. . . .[I]t is the substance of the action that is controlling, and not the label given that action." *United States v. DiFrancesco*, 449 U.S. 117, 142 (1980).

anticipated dates of death. In *State v. Null*, the Iowa Supreme Court explained that the determination of whether *Graham* or *Miller* applied should not turn on an analysis of life expectancy or actuarial tables, but the effect of the sentence. 836 N.W.2d 41, 71-72 (Iowa 2013) (quoting *Graham*, 560 U.S. at 75).

Although the Eighth Amendment does not bar the possibility that individuals convicted of nonhomicide crimes committed before adulthood will remain behind bars for life, "[i]t does prohibit States from making the judgment at the *outset* that [juvenile nonhomicide] offenders never will be fit to reenter society." *Graham*, 560 U.S. at 75 (emphasis added). The sentencing court effectively made that judgment when it ordered Mr. Willbanks to serve his entire life plus 355 years in prison. The court allowed the penological goal of incapacitation to override all other considerations and foreclosed Mr. Willbanks' opportunity to demonstrate, through growth and maturity, that he was fit to rejoin society. *See id*. at 73 ("A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations, lest the Eighth Amendment's rule against disproportionate sentences be a nullity."). Like Mr. Graham, Mr. Willbanks' lengthy sentence of incarceration is wholly disproportionate to his offenses; there was no evidence presented to suggest that he would be a risk to society for the rest of his life. *See id*. Thus, the lower court failed to ensure that the punishment fit both the offense and the offender, and as such, Mr. Willbanks' sentence is unconstitutional and should be vacated.

C. The Missouri Supreme Court Is In Conflict With State Supreme Courts And Federal Circuit Courts That Have Held That Lengthy Term-of-Years Sentences That Do Not Afford Juvenile Offenders A Meaningful Opportunity To Obtain Release Are Unconstitutional

Mr. Willbanks will not be eligible for parole until he is 85 years old. (App. to Pet. Cer. 6a n.4); *see also* 14 Mo. CSR 80-2.010. While this Court has not squarely addressed whether lengthy term-of-years or aggregate sentences should be considered equivalent to life without parole sentences, several state supreme courts and federal circuit courts agree that when imposed on juveniles, such sentences are in fact the equivalent of life without parole, even if they are run consecutively for multiple offenses. (*See* Pet. Cert. 9-17.) As such, these courts have found that both *Graham*'s and *Miller*'s analysis extend to those serving such sentences.

In Wyoming, the state supreme court recently held that a consecutive term-of-years sentence of life plus up to 30 additional years, which would result in parole eligibility when the defendant was 70 years old was a life sentence and therefore violated of *Miller*. *Sam v. Wyoming*, No. S-16-0168, 2017 WL 3634525, at *22 (Wyo. Aug. 24, 2017). The court, relied on its previous decision in *Bear Cloud v. State*, , holding that "'[t]he prospect of geriatric release . . . does not provide a 'meaningful opportunity' to demonstrate the 'maturity and rehabilitation' required to obtain release and reenter society as required by *Graham*." 334 P.3d 132, 142 (Wyo. 2014) (quoting *Null*, 836

N.W.2d at 71. The court reasoned that because the defendant was not "one of the juvenile offenders whose crime reflects irreparable corruption," an aggregated sentence that does not permit parole eligibility for 52 years is unconstitutional under *Miller*. *Sam*, 2017 WL 3634525, at *22.

Additionally, the Ohio Supreme Court recently struck down a young man's sentence of 112 years as a functional life without parole sentence:

> It is consistent with *Graham* to conclude that a term-of-years prison sentence extending beyond a juvenile defendant's life expectancy does not provide a realistic opportunity to obtain release before the end of the term. *Graham* decried the fact that the defendant in that case would have no opportunity to obtain release 'even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.' Certainly, the court envisioned that any non-homicide juvenile offender would gain an opportunity to obtain release sooner than after three quarters of a century in prison. *Graham* is less concerned about how many years an offender serves in the long term than it is about the offender having an opportunity to seek release while it is still meaningful.
>
> We determine that pursuant to *Graham*, a sentence that results in a juvenile defendant serving 77 years

> before a court could for the first time consider based on demonstrated maturity and rehabilitation whether that defendant could obtain release does not provide the defendant a meaningful opportunity to reenter society and is therefore unconstitutional under the Eighth Amendment.

State v. Moore, 76 N.E.3d 1127, 1140-1141 (Ohio 2016) (citation omitted). The state supreme courts of California, Connecticut, Florida, Illinois, Nevada, New Jersey, Washington, and Wyoming have all similarly found that lengthy term-of-years sentences are de facto life without parole sentences. *See People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012) (three attempted murder counts constituting a 110-years-to life sentence are *de facto* life without parole); *State v. Riley*, 110 A.3d 1205, 1213-14 (Conn. 2015) (aggregate 100 year sentence for a total of four offenses, including murder, is a *de facto* life sentence); *Henry v. State*, 175 So. 3d 675, 676 (Fla. 2015) (a consecutive 90 year sentence imposed on a juvenile for eight separate felony offenses constituted a *de facto* life without parole sentence); *see also Gridine v. State*, 175 So. 3d 672, 674-75 (Fla. 2015) (a 70 year sentence for a non-homicide crime is unconstitutional because it fails to provide a meaningful opportunity for early release based on the demonstration of maturity and rehabilitation); *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016) (mandatory aggregate sentences for multiple homicide and nonhomicide crimes under which the juvenile defendant would not be eligible for parole until he had served 89 years created a *de facto* life sentence in violation of *Miller* because "[a]

mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole—in either situation, the juvenile will die in prison."); *State v. Boston*, 363 P.3d 453, 458 (Nev. 2015) (*Graham* applies to juvenile non-homicide offenders with aggregate sentences that are the functional equivalent of life without parole, and 14 parole-eligible life sentences plus a consecutive 92 years in prison, which created a minimum of 100 years, was unconstitutional under *Graham*); *State v. Zuber*, 152 A.3d 197, 201, 212-213 (N.J. 2017) (though the term-of-years sentences in the appeals were not officially "life without parole," the juvenile defendants' potential release after five or six decades of incarceration when they would be in their seventies and eighties implicated the principles of *Graham* and *Miller*, as the "proper focus belongs on the amount of real time a juvenile will spend in jail and not on the formal label attached to his sentence."); *State v. Ramos*, 387 P.3d 650, 659-660 (Wash. 2017) (*Miller* applies to juvenile homicide offenders facing de facto life without parole sentences, whether the sentence was invoked for a single crime or is an aggregate sentence resulting from the commission of multiple crimes), *petition for cert. docketed*, No. 16-9363 (May 26, 2017); *Bear Cloud*, 334 P.3d at 141-42 (*Roper*, *Graham*, and *Miller* "require sentencing courts to provide an individualized sentencing hearing . . . when [] the aggregate sentences result in the functional equivalent of life without parole," and "[t]o do otherwise would ignore the reality that lengthy aggregate sentences have the effect of mandating that a juvenile 'die in prison even if a judge or jury would

have thought that his youth and its attendant characteristics, along with the nature of the crime, made a lesser sentence . . . more appropriate.'" (quoting *Miller v. Alabama*, 567 U.S. 460, 465 (2012)))

The Iowa Supreme Court held that even sentences significantly shorter than those addressed by other state courts could be considered equivalent to life without parole: in *State v. Null*, the court held that

> while a minimum of 52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger *Miller*-type protections. Even if lesser sentences than life without parole might be less problematic, we do not regard the juvenile's potential future release in his or her late sixties after a half century of incarceration sufficient to escape the rationales of *Graham* or *Miller*. The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a "meaningful opportunity" to demonstrate the "maturity and rehabilitation" required to obtain release and reenter society as required by *Graham*.

836 N.W.2d at 71 (quoting *Graham*, 560 U.S. at 75). The court recognized that though the evidence did not clearly establish that Null's prison term is beyond his life expectancy, they did "not believe the determination of whether the principles of *Miller* or *Graham* apply in a given case should turn on the

niceties of epidemiology, genetic analysis, or actuarial sciences in determining precise mortality dates." *Id.* at 71-72.

Here, where Mr. Willbanks will not be eligible for parole until he has served nearly seventy years in prison, it is clear that such a lengthy term-of-years does not provide a "meaningful opportunity" to obtain release "based on demonstrated maturity and rehabilitation" as required by *Graham*. *See Graham*, 560 U.S. at 75. This Court should grant certiorari to resolve the split of authority in favor of the overwhelming majority view: sentences such as Mr. Willbanks' do not provide a meaningful opportunity to obtain release and violate the Eighth Amendment.

II. THIS COURT SHOULD GRANT CERTIORARI TO ESTABLISH THAT EVEN DISCRETIONARY SENTENCES THAT AMOUNT TO LIFE WITHOUT PAROLE VIOLATE CHILDREN'S RIGHTS UNDER THE EIGHTH AMENDMENT

A. Research In Adolescent Development And Neuroscience Confirms That Children Must Not Be Sentenced To Life Without Parole Or Its Functional Equivalent

This Court has repeatedly held that children are fundamentally different from adults, and that as such, "children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *see also Roper v. Simmons*, 543 U.S. 551, 569-570 (2005); *Graham*, 560 U.S. at 68-69. As explained in *Miller*, "[b]ecause juveniles have

diminished culpability and greater prospects for reform . . . 'they are [categorically] less deserving of the most severe punishments.'" 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68.)

Roper and *Graham* noted three significant differences that distinguish youth from adults for culpability purposes:

> First, children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more vulnerable . . . to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]."

Miller, 567 U.S. at 471 (alterations in original) (citations omitted). In reaching these conclusions about a juvenile's reduced culpability, this Court has relied upon an increasingly settled body of research confirming the distinct emotional, psychological, and neurological attributes of youth. *Graham*, 560 U.S. at 68 (confirming that since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds").

For example, as this Court has observed, adolescents "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *J.D.B.*, 564 U.S. 261, 272 (2011) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979). *See also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices."). Although adolescents have the capacity to reason logically, they "are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults in processing information." Scott & Steinberg, *supra*, at 20. Because adolescents are less likely to perceive potential risks, they are less risk-averse than adults. *Id.* at 21. *See also* Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implications for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64-65 (Jacqueline Bhabha ed., 2014) ("[A]dolescents' reward centers are activated more than children's or adult's when they expect something pleasurable to happen. Heightened sensitivity to anticipated rewards motivates adolescents to engage in acts, even risky acts, when the potential for pleasure is high . . . ." (internal citations omitted)).

This diminished ability to perceive potential risks and make appropriate decisions is exacerbated by adolescents' difficulty in thinking realistically about events that may occur in the future. *See* Brief

for the American Psychological Association *et al.* as *Amici Curiae* Supporting Petitioners at 11-12, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621). This lack of future orientation means that adolescents are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they *have* identified, especially when faced with the prospect of short-term rewards. Scott & Steinberg, *supra*, at 20; *Graham,* 560 U.S. at 78. Because adolescents attach different values to rewards than adults do, they often exhibit sensation-seeking characteristics that reflect their need to seek "varied, novel, [and] complex . . . experiences [as well as a] willingness to take physical, social, legal and financial risks for the sake of such experience." MARVIN ZUCKERMAN, BEHAVIORAL EXPRESSIONS AND BIOSOCIAL BASES OF SENSATION SEEKING 27 (1994). The need for this type of stimulation frequently leads adolescents to engage in risky behaviors, and as they are less able to suppress action toward emotional stimulus, adolescents often have difficulty exhibiting self-control. Scott & Steinberg, *supra*, at 21-22. All of these attributes cause adolescents to make different calculations than adults when they participate in criminal conduct.

B. De Facto Life Without Parole Sentences Are Constitutionally Disproportionate When Applied To Juveniles Who Are Capable of Change

Graham bars the imposition of life without parole sentences on juveniles "who do not kill, intend to kill, or foresee that life will be taken" because they "are categorically less deserving of the most serious

forms of punishment than are murderers." 560 U.S. at 69. This Court's holding rested largely on the incongruity of imposing a final and irrevocable penalty that afforded no opportunity for release on an adolescent who had capacity to change and grow. *See Graham*, 560 U.S. at 75. This Court explained that:

> Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S. at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Id. at 68 (alteration in original). *Graham* recognized that due to the salient characteristics of youth—the lack of maturity, evolving character, vulnerability and susceptibility to negative influences and external pressure—"juvenile offenders cannot with reliability be classified among the worst offenders." *Id.* (quoting *Roper*, 543 U.S. at 569.) As such, *Graham* requires that juveniles who commit nonhomicide crimes be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75.

This Court later amplified its *Graham* rationale in *Montgomery*, recognizing that "*Miller* drew a line between children whose crimes reflect transient immaturity and *those rare children whose crimes reflect irreparable corruption*," *Montgomery v.*

Alabama, 136 S. Ct. 718, 734 (2016) (emphasis added), and that a life without parole sentence "could [only] be a proportionate sentence for the latter kind of juvenile offender." *Id.* Thus, life without parole is barred "for all but the rarest of juvenile offenders, *those whose crimes reflect permanent incorrigibility*." *Id.* (emphasis added). Any life sentence that fails to consider whether the sentenced individual demonstrates "irreparable corruption," "permanent incorrigibility," or "irretrievable depravity," and does not afford a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" is unconstitutional. *See id*; See also *Graham*, 560 U.S. at 75.

C. Scientific Research On Recidivism Of Juvenile Offenders Supports Early And Regular Review Of Sentences

For an opportunity for release to be "meaningful" under *Graham,* review must begin long before a juvenile reaches old age. *See, e.g.*, *State v. Pearson*, 836 N.W.2d 88, 96 (Iowa 2013) (striking down a 35-year sentence that would render the juvenile eligible for parole at age 52 because in violation of *Miller, it* "effectively deprived [him] of any chance of an earlier release and the possibility of leading a more normal adult life"). The Florida Supreme Court recently noted that their jurisprudence made it

> clear that we intended for juvenile offenders, who are otherwise treated like adults for purposes of sentencing, to retain their status as juveniles in some sense. In other words, we have

> determined . . . that juveniles who are serving lengthy sentences are entitled to periodic judicial review to determine whether they can demonstrate maturation and rehabilitation.

Kelsey v. State, 206 So. 3d 5, 10 (Fla. 2016). The court discussed its earlier decision in *Henry v. State*, where it held that "*Graham* was not limited to certain sentences but rather was intended 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.'" *Id*. at 9 (quoting *Henry v. State*, 175 So. 3d 675, 680 (Fla. 2015).

As noted *supra* § I.A, this Court has recognized that "[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." *Roper*, 543 U.S. at 570 (second alteration in original) (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Development Immaturity, Diminished Responsibility, and the Juveniles Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)). In a study of over thirteen hundred juvenile offenders, "even among those individuals who were high-frequency offenders at the beginning of the study, the majority had stopped these behaviors by the time they were 25." Laurence Steinberg, *Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop*. (2014) Chicago, IL: MacArthur Foundation, p. 3, *available at*

http://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf. Most juvenile offenders would no longer be a public safety risk once they reached their mid-twenties, let alone their thirties, forties, fifties, or sixties. As most juveniles are likely to outgrow their antisocial and criminal behavior as they mature into adults, review of the juvenile's maturation and rehabilitation should begin relatively early in the juvenile's sentence, and the juvenile's progress should be assessed regularly. *See, e.g.*, *Research on Pathways to Desistance: December 2012 Update*, Models for Change, p. 4, *available at* http://www.modelsforchange.net/publications/357 (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts. The study also found that "it is hard to determine who will continue or escalate their antisocial acts and who will desist," as "the original offense . . . has little relation to the path the youth follows over the next seven years").

Early and regular assessments of juveniles would enable timely evaluation of the juvenile's maturation, progress, and performance, as well as provide an opportunity to confirm that the juvenile is receiving vocational training, programming, and treatment opportunities that foster rehabilitation. *See, e.g.*, *Graham*, 560 U.S. at 74 (noting the importance of "rehabilitative opportunities or treatment" to "juvenile offenders, who are most in need of and receptive to rehabilitation"). A meaningful opportunity for release must mean more than simply geriatric release to die outside the prison walls: it should provide opportunity to live a meaningful life in

the community and meaningfully contribute to society.

CONCLUSION

For the foregoing reasons, *Amici Curiae*, Juvenile Law Center and Phillips Black, respectfully request that this Court grant the petition for *writ of certiorari*.

Respectfully submitted,

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