No. ________

In The

Supreme Court of the United States

TORONTO MARKKEY PATTERSON,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

In Re TORONTO MARKEY PATTERSON

On Petition For Writ Of Certiorari To The Texas Court Of Criminal Appeals And On Original Petition For Writ Of Habeas Corpus

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BRIEF OF AMICUS CURIAE TEXAS IMPACT IN SUPPORT OF TORONTO MARKKEY PATTERSON

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BRIEF OF AMICUS CURIAE

INTEREST OF AMICUS CURIAE

Texas Impact hereby requests that this Court consider the present brief pursuant to Rule 37.2(a) in support of Petitioner's Writ of Certiorari and Original Petition for Writ of Habeas Corpus. Consent of Petitioner's Counsel of Record and the State Attorney General's Office has been obtained.[1]

Texas Impact is a Texas religious organization which is composed of judicatories and organizations of the Christian (Protestant and Catholic) and Jewish faiths. Texas Impact believes that whatever one may think of the imposition of capital punishment generally – Texas Impact opposes it – the notion of executing juvenile offenders shocks the conscience. 17-year-olds are children. Our Texas civil and criminal[2] statutes provide special protection and deference to 17-year-olds, because they are children. However, our laws are inadequate to meet the international standard or good conscience when assigning the highest degree of criminal responsibility to children. Our State commits a most egregious error by assessing the death penalty to juvenile offenders like Toronto Patterson.

[1] Letters from all counsel consenting to the filing of this brief are being sent with this brief to the Clerk of this Court. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of the brief.

[2] When *protection of children* is at issue, the Texas Penal Code and Code of Criminal Procedure treat someone younger than 18 years of age as a "child." TEX. PENAL CODE §§ 71.02, 46.06, 43.26, 43.25, 43.251, 25.08, 25.06, 25.05, 25.04, 25.03, 25.031, 9.61(a); TEX. CODE CRIM. PROC. art. 63.001; art. 56.32; art. 24.011; art. 19.25.

Texas Impact was established in 1973 by the Bishops of a number of Texas Christian denominations to be a voice for social justice in the Texas Legislature. It is an interfaith non-partisan statewide social justice advocacy group whose members are the regional governing bodies (judicatories) of mainline Christian denominations, as well as regional Jewish social action groups and local interfaith organizations. The board consists of representatives from the various judicatories and other organizations, as well as representatives from colleague organizations – the Texas Baptist Christian Life Commission, the Texas Conference of Catholic Bishops,[3] Austin Presbyterian Theological Seminary, Episcopal Theological Seminary of the Southwest, and the Texas Conference of Churches.[4] The organizational members include the following: American Jewish Committee, American Jewish Congress, Arlington Ministerial Association, Austin Metropolitan Ministries, Christian

[3] As early as January 1992, the Texas Catholic Bishops issued a statement rejecting the death penalty for a Texas juvenile offender, Johnny Frank Garrett. The Bishops objected to Garrett's execution in part because "Garrett [would] be the third individual suffering the death penalty in Texas for a crime committed while a juvenile." Now there have been *12 executions of juvenile offenders* in Texas since the reinstatement of the death penalty in 1973. In 1997, the Catholic Bishops of Texas issued a statement endorsing the Pope's views and rejecting the death penalty as an impediment to the common good, the dignity of the human person, and rehabilitation and redemption of the offender. Statement by Catholic Bishops of Texas on Capital Punishment, Oct. 20, 1997. The Texas Catholic Conference supported House Bill 2048 in the 2001 Texas legislative session, which would have raised the eligibility age for the death sentence in Texas to 18.

[4] The General Assembly of the Texas Conference of Churches unanimously adopted a resolution opposing the death penalty in 1998, recognizing prior resolutions in 1973 and 1977. The Texas Conference of Churches supported House Bill 2048.

Church (Disciples of Christ) in the Southwest Region, Church Women United in Texas, Episcopal Church Dioceses in Texas (Diocese of Rio Grande, Diocese of West Texas), Greater Dallas Community of Churches, Greek Orthodox Church, Interfaith Ministries of Greater Houston, Port Arthur Board of Missions, Presbyterian Church (U.S.A.) Presbyteries in Texas, San Antonio Community of Churches, South Central Yearly Meeting of Friends (Quakers),[5] United Church of Christ in Texas,[6] and United Methodist Church Conferences in Texas.[7] Texas Impact's

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[5] The South Central Yearly Meeting of Friends (Quakers) adopted minutes on April 14, 2001, reaffirming opposition to the death penalty and "affirm[ing] its support of all legislation that would end the execution of death row inmates who were convicted for crimes committed before the age of 18 or who suffer from diminished mental capacity." The Friends Meeting of Austin has declared sanctuary on behalf of juvenile death row inmates in Texas, and supported House Bill 2048.

[6] The United Church of Christ (UCC), adopted a resolution in 1999 calling for the abolition of the death penalty, with an immediate focus on ending the execution of juvenile offenders. Again in 2001, the UCC General Synod adopted a Resolution on Juvenile Justice dedicated to support for legislation barring the juvenile death penalty, recognizing that the United Nations Subcommission on the Promotion and Protection of Human Rights found in August 2000 that the execution of persons under 18 at the time of the offense is contrary to customary international law. Minutes of General Synod XXIII, Resolution on Juvenile Justice; *see http://www.ucc.org/synod/resolutions/res10.htm*.

[7] The General Conference of the United Methodist Church issued a statement in opposition to capital punishment in 2000 that appears in the Book of Resolutions of the church, wherein one ground is that "[t]he United States is the world leader in sentencing children to death. Since 1990, only Iran, Pakistan, Yemen, Saudi Arabia, Nigeria and the U.S. are known to have executed persons for crimes they committed as children. Of these, the U.S. has executed more juvenile offenders than any other nation. This practice has been condemned in nearly every major human rights treaty." *http://umns.umc.org/backgrounders/capitalpunishment.html*.

positions on social policy issues, including policies related to capital punishment, reflect consensus positions of mainline Christian and Jewish organizations and are established by a unanimous vote of the Texas Impact board.[8] Texas Impact has opposed the death penalty and the execution of juvenile offenders since its inception.

SUMMARY OF THE ARGUMENT

Minors "have a very special place in life," *May v. Anderson*, 345 U.S. 520, 536 (1953), which the law reflects and respects. "Legislatures recognize the relative immaturity of adolescents and . . . define age-based classes that take account of this qualitative difference between juveniles and adults." *Thompson v. Oklahoma*, 487 U.S. 815, 853-54 (1988) (O'Connor, J., concurring). Accordingly, Texas law makers and enforcers appropriately have set the age of majority in Texas at 18 for most purposes. TEX. CIV. PRAC. & REM. CODE § 129.001 ("The age of majority in this state is 18 years."); Tex. Att'y Gen. Op. 1975, No. H-546 (describing a person under 18 as a "legal infant"); Tex. Att'y Gen. Op. 1973, No. H-85 (finding that after the effective date of § 129.001 persons at least 18 years old would not be "legal infants"); Tex. Att'y Gen. Op. 1973, No. H-82 (finding that § 129.001 emancipated all persons aged 18 or more from "disabilities of infancy").

[8] On August 22, 2002, the Texas Impact board unanimously approved the filing of this amicus brief. Texas Impact also supported House Bill 2048.

In 1988, this Court summarized the historically recognized empirical grounds for this special treatment under the law as follows:

> Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.

Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) (plurality opinion). Nevertheless, in 1988 (*Thompson*) and 1989 (*Stanford v. Kentucky*, 492 U.S. 361 (1989)), this Court declined to find that sixteen- or seventeen-year-old offenders, as a class, should find protection from the death penalty in the Cruel and Unusual Punishment Clause of the Eighth Amendment. Over the course of more than a decade, significant changes have occurred that should warrant re-visitation of the issue by this Court:

> (1) Most significantly, this Court recently held in *Atkins v. Virginia*, 122 S. Ct. 2247, 2249 n.21 (2002), that the opinion of the world community is relevant to the question whether our society finds a punishment against contemporary standards of decency. This overrules *Stanford*, which rejected "the sentencing practices of other countries" as irrelevant. *Stanford*, 492 U.S. at 369 n.1 (lead plurality), 382 (O'Connor, J., concurring). Following *Atkins*, the existence of a norm of *jus cogens* prohibiting the death penalty for offenses committed by persons under the age of 18 should be *dispositive* of the issue.

(2) In *Atkins*, this Court also breathed new life into traditional Eighth Amendment proportionality analysis (examining the acceptability of a punishment in light of the punishment goals of retribution and deterrence) and into the use of polling data and the opinions of professional organizations and diverse religious communities. *Atkins*, 122 S. Ct. at 2249 n.21. The *Stanford* lead plurality opinion heretofore cast doubt on the relevance of these matters to Eighth Amendment jurisprudence. *Stanford*, 492 U.S. at 374-80. Texas Impact now responds to this Court's clear recognition of the relevance of its opinion as a representative of American religious bodies.

(3) A norm of *jus cogens* has emerged over the last decade that prohibits the death penalty for offenses committed by persons under the age of 18. The norm has evolved over fifty years of very deliberate inclusion and development of the bar on the execution of juvenile offenders within the international multilateral human rights treaty formation and ratification processes. It is now a fully mature *legal* norm, verified through the practice of even those nations most recalcitrant in the protection of fundamental human rights principles. Texas Impact considers itself bound to inform this Court that it believes the State of Texas is violating a most binding and fundamental human right.

(4) Within the last decade, modern science has verified what had been empirically observed in juveniles as the basis for their special treatment under the law. The juvenile justice system in this country had its origin in the efforts of religious leaders who recognized that juveniles had less capacity to be responsible for their decisions and

were more capable of rehabilitation than adults. Brain scan techniques now have conclusively proven that the parts of the human brain which govern characteristics that make individuals morally responsible for their actions do not cease to grow and mature until the early 20s. In any given case, the State cannot prove beyond a reasonable doubt that the defendant, 17 years old at the time of the offense, possessed a fully developed brain when the crime was committed and, therefore, should be held to the highest level of accountability and subject to the most severe punishment. The evidence also confirms that there is a *physiological* basis for the notably greater potential for rehabilitation of juvenile offenders. This potential goes to the heart of the relationship of turning and forgiveness between God and humankind perceived and inculcated in the faith traditions within Texas Impact.

(5) As the number of juvenile offenders on Texas' death row has grown since 1989, the racial distribution of death sentences for those offenders has suggested the possibility of bias unacceptable under the Eighth and Fourteenth Amendments. In particular, *fifty percent* of those juvenile offenders executed by Texas since the reinstatement of the death penalty have been African American. If Toronto Patterson is executed, he will be the *seventh* African American executed by Texas out of *thirteen* juvenile offenders in all. *He would be the sixth African American juvenile offender in a row executed by Texas.* Texas Impact considers this particularly discouraging, given its members' current very active pursuit of racial reconciliation. *E.g.*, United Methodist Church, General Board of Global Ministries, *Nine Denominations Move Forward to Combat Racism*,

Global News, Jan. 22, 2002; *http://gbgm-umc.org/global_news/full_article.cfm?articleid=763*.

Texas Impact and its constituent members support a society that seeks rehabilitation of its children and respects fundamental norms of human rights.

ARGUMENT

I. Rehabilitation of Children and the Common Good

Our religious traditions, Jewish and Christian, historically have pressed for the rehabilitation of the offender. In the Hebrew Scriptures, the prophet Ezekiel conveys the principles of mercy, forgiveness, and unconditional love that characterize the best of our practice: "As I live, says the Lord God, I swear that I take no pleasure in the death of the wicked one, but rather in the wicked one's conversion, that he may live. Turn, turn from your evil way!" Ezek. 33:11. Morality and spirituality in the Jewish and Christian faiths center on turning, repentance and truthfulness, as an ongoing discipline on personal and social levels. Amici now place an extra premium on rehabilitation and restorative justice over retributive values. Restorative justice views "crime [as] a violation of people and relationships. It creates obligations to make things right. Justice involves the victims, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance." Howard Zehr, Changing Lenses 181 (1990); *see* Lorenn Walker, *Conferencing – A New Approach for Juvenile Justice in Honolulu*, 66 Federal Probation 38 (June 2002).

The history of the juvenile justice system is a manifestation of restorative justice. The special treatment for juveniles within that system was prompted, and has been sustained, by the efforts of religious leaders who recognized that juveniles were more likely to be rehabilitated than adults. The movement began in the Quaker House of Refuge projects that "offer[ed] food, shelter, and education to the homeless and destitute youth of New York, and . . . remov[ed] juvenile offenders from the prison company of adult convicts." *Juvenile Justice Reform: An Historical Perspective*, 22 Stan. L. Rev. 1107, 1188-89 (1970). The courts took hold of this religiously inspired movement and gave birth to the juvenile court system. *Kent v. United States*, 303 U.S. 541, 554-55 (1966). Juveniles have fewer rights but greater protection than adults because the religious community, and then the legal community, recognized and protected that all-defining characteristic of the young – their ability to reform, mature, be rehabilitated: in short, their "capacity for growth." *Thompson*, 487 U.S. at 834. The same communities recognized juveniles' unique vulnerability.

Modern science, over the last decade since *Thompson v. Oklahoma,* 487 U.S. 815 (1988), and *Stanford v. Kentucky,* 492 U.S. 361 (1989), were issued, has verified what had been empirically observed in juveniles as the basis for their special treatment under the law. Amici endorse the summary and findings of Dr. Ruben Gur in his affidavit attached to Patterson's certiorari and original petitions:

> The brain scan techniques have demonstrated conclusively that the phenomena observed by mental health professionals in persons under 18 that would render them less morally blameworthy for offenses have a scientific ground in neural

> substrates. The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable. Therefore, a presumption arises that someone under 20 should be considered to have an underdeveloped brain. Additionally, since brain development in the relevant areas goes in phases that vary in rate and is usually not complete before the early to mid-20s, there is no way to state with any scientific reliability that an individual 17-year-old has a fully matured brain (and should be eligible for the most severe punishment), no matter how many otherwise accurate tests and measures might be applied to him at the time of his trial for capital murder.

Retribution as social vengeance not only is incompatible with rehabilitation, but fails as a punishment goal for persons whose brain development cannot be proven to be complete at the time of the offense. At best, the State can try to justify capital punishment for juvenile offenders as an attempt to deter youthful violent criminals through the terror of the death sentence. The State hopes to scare some youths out of joining gangs and becoming involved in violent crime by making an example of others and killing them. Many of Texas Impact's members are opposed to the death penalty because it must be sustained by this sort of policy analysis on a broad scale, and such policy runs exactly counter to their own religious traditions and moral thought and experience. Quite apart from the dubious factual basis upon which the policy lies – that the death penalty would deter a population that *physiologically* lives in the present without sufficient appreciation of consequences

and does not perceive, as adults do, the finality of death – the policy of killing some to save others is morally unacceptable for religious traditions (Jewish and Christian) whose greatest commandment is to love one's neighbor as oneself.

Also unacceptable is the fact that, in the war on crime, the death penalty has been meted out to juvenile offenders in a racially disproportionate manner. The United Church of Christ reports that on the national level, "incarceration rates for juveniles are disproportionate by race, with the rate for non-Hispanic blacks five times that for non-Hispanic whites and, for Hispanics, two and one half times that for non-Hispanic whites." United Church of Christ, Justice and Witness Ministries, 2002 Briefing Book, at 72; *http://www.ucc.org/justice/book02.htm*. "Although minority youth are one third of the youth population nationwide, they represent two thirds of all youth in detention and correctional facilities." Briefing Book at 72. Disturbingly, these kinds of skewed figures translate to Texas' death row. In 2001, Amnesty International reported that, although the Texas general population was 71 percent white and 11.5 percent African American, Texas' death row was 34.4 percent white and 41.6 percent African American. Fifty percent of 17-year-old males in Texas' general population were white and 13 percent black, whereas only 23 percent of juvenile offenders on death row were white and 36 percent were black. Amnesty International, *United States of America: Too Young to Vote, Old Enough to Be Executed, Texas Set to Kill Another Child Offender*, AMR 51/105/2001, July 31, 2001. Amnesty International further stated:

> Some 249 people had been executed in Texas by 11 July 2001. In 202 cases (81 per cent), the

> crimes involved white victims. In 57 cases (23 per cent) the defendant was a black convicted of killing a white. None of the 249 people executed have been whites convicted of killing blacks. . . . Of the nine juvenile offenders executed in Texas since 1977, seven (78 per cent) were for crimes involving white victims and two for Latino victims. Three of the nine (33 per cent) were black defendants convicted of killing white victims.

Id. The executions of Napoleon Beazley (May 28, 2002) and T.J. Jones (August 8, 2002) now have increased the bottom figures to reflect that, of all Texas executions of juvenile offenders since 1977, 6 out of 12 (*50 percent*) have been black defendants convicted of killing white victims. [9] The last 5 juvenile offenders executed have all been African Americans (since 1998). 77 percent of the 31 juvenile offenders on Texas' death row in July 2001 were of minority background. *Id.* Texas Impact is concerned that the numbers suggest systemic discrimination in the imposition of the death penalty on juvenile offenders in Texas.

Texas Impact's members carry out ministries that have entered into the harsh world of unemployment, failed educational institutions, inadequate law enforcement, broken families, failed social services, inadequate legal assistance, widespread drug use, hopelessness, and racial prejudice within which a large number of our children live. We cannot accept the juvenile death penalty as a means to

[9] These are Curtis Harris, Glen McGinnis, Gary Graham, Gerald Mitchell, Napoleon Beazley, and T.J. Jones (Black on White offenses). The others executed are: Charles Rumbaugh, Jay Pinkerton, Johnny Garrett, Ruben Cantu, Joseph Cannon, and Robert Carter.

protect children from these things. Neither do we see it as an appropriate means to protect others in society. Many of our religious and lay persons are involved in ministries to crime victims and we are aware that the greatest needs of crime victims are for safety, and then for accountability of the offender (an apology), *understanding* of the crime, and restitution, a setting aright of the moral order as best and as soon as possible. These needs are not met by strap-down confessions from juvenile offenders who, due to their disabilities as children (and often as abused children), were unable to fully understand *why* they committed an offense. The needs are better met by a justice system that promotes dialogue, that punishes always with an eye toward restoration of all persons involved and provides an opportunity for some transformation of the harm caused by the crime. Such a system also would not inflict, as the current policy allows, unjustifiable suffering on bystanders of the drama who are innocent of any relevant criminal offense: the parents, siblings, spouses, and children of the juvenile offenders.

The death penalty inflicts deep suffering on the families of juvenile death row inmates. A Huntsville news reporter, who has witnessed more than 50 executions, has observed, "You'll never hear another sound like a mother wailing when she's watching her son being executed. There's no other sound like it. It is just this horrendous wail. You can't get away from it. That wail surrounds the room. It's definitely something you won't ever forget." Amnesty International, United States of America: State Cruelty Against Families, AMR 51/132/2001, Sept. 4, 2001. In a report suggesting that the death penalty is a violation by the State of its legal duty to protect families, Amnesty International compared the experience of offenders' families

to those who have suffered "disappearances." *Id.* (noting that "[i]n 1988, parents of those on South Africa's death row wrote in a petition to the country's president: 'To be a mother or father and watch your child going through this living hell is a torment more painful than anyone can imagine' ").

The execution of a juvenile offender constitutes cruel punishment of the parents for their serious lapses in child rearing. An offender who commits an offense when he is not yet fully formed should be deemed within the parents' care and sphere of responsibility. When society punishes the juvenile offender, it derivatively punishes the parents and others who have borne a parental relationship toward the juvenile. Society at times must incarcerate the children of negligent parents for its own protection. Also, in the best interests of children, sometimes society has to remove children from poorly performing parents. It is quite another matter for society to send a message to a mother that her poor job as a parent is irredeemable by simply killing her offspring.

II. Respect for the Worldwide Prohibition

All citizens bear a duty to seek to secure an end to serious violations of human rights. It is all the more incumbent upon religious organizations that historically have provided sanctuary to persons fleeing disproportionate punishment – whether they were fleeing the sentence of legally constituted authority (as when the church opened its doors to the pursued in medieval times) or the aberration of slavery (in the Underground Railroad) – to

protest when, in their opinion, government may have crossed the bounds of lawful punishment. *See* Jim Corbett, The Sanctuary Church, Pendle Hill Pamphlet No. 270 (1986), at 5-6, 17 (referring to the Nuremburg Tribunals and the defense of human rights as a responsibility "entrust[ed] to but never forfeit[ed] to the State"); *see* Ignatius Bau, This Ground is Holy: Church Sanctuary and Central American Refugees 125 (Paulist Press 1985). On behalf of its member organizations, Texas Impact protests that the death penalty for offenses committed by persons under the age of 18 is a human rights violation that cannot be sanctioned by our Constitution.

Since 1989, respect for the disabilities and rights of children has undergone a vast territorial expansion, as indicated by almost universal ratification of the United Nations Convention on the Rights of the Child, which came into force that year and bars the death penalty for offenses committed by persons under age 18.[10] The *jus cogens* character of the norm[11] represented in Article 37(a)

[10] Convention on the Rights of the Child, art. 37, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (1989). Only two countries have not ratified the Convention, the United States and Somalia, although Somalia recently signed the Convention expressing its intent to quickly ratify the instrument. *See http://www.unicef.org/crc/crc.htm.* In Article 37(a), the Convention conveys what now has become a fundamental human rights norm from which there should be no dissent:

> No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

[11] A *jus cogens* peremptory norm is a "norm accepted and recognized by the international community of States as a whole as a norm

(Continued on following page)

of the Convention is reflected in (1) the deliberative history wherein the norm has developed as a *legal* rather than merely *moral* or *political* obligation; and (2) the reforming actions taken over the last decade by the nations formerly offending the norm.

Unlike the norm recognized by this Court in *Atkins* as prohibiting the death penalty for persons with mental retardation, the norm barring the death penalty for juvenile offenders has developed through lengthy multinational deliberations over which fundamental rights should be afforded a place in the major human rights treaties. Joan F. Hartman, *"Unusual" Punishment: The Domestic Effects of International Norms Restricting the Application of the Death Penalty*, 52 U. Cin. L. Rev. 655, 671 n.64, 680-81 (1983). This process began with the adoption of 18 as the eligibility age for the death sentence in the Geneva Conventions of 1949. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 68, Aug. 12, 1949, 75 U.N.T.S. 286. This standard subsequently was extended to civilians in times of peace after considerable discussion during the treaty formation process for the International Covenant on Civil and Political Rights, which went into effect in 1966. International Covenant on Civil and Political Rights, art. 6(5), Dec. 19, 1966, 999 U.N.T.S. 171. Similarly, the standard was incorporated in the American Convention on Human Rights, which went into effect in 1969. American Convention on

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from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, 352, *reprinted in* 8 I.L.M. 679.

Human Rights, ch. 2, art. 4, sec. 5, O.A.S. Official Records, OEA/Ser. K/XVI/1.1, doc. 65, rev. 1, corr. 2 (1969). By 1980, the United States joined a General Assembly resolution declaring Article 6 of the Covenant to represent the "minimum standard" of legal protection acceptable in relation to the death penalty within the world community. G.A. RES. 35/172, U.N. GAOR Supp. (No. 48) at 195, U.N. Doc. A/35/48 (1980). Finally, the standard of 18 was incorporated in the Convention on the Rights of the Child, *supra*, which went into effect in 1989. The speed whereby the Convention was ratified by essentially the entire world community illustrates the unquestionable present character and depth of the norm.

Recognition of the binding *legal* character of the standard of 18 appears to have caused most of the remaining offending nations to reform their legal codes and practice. *See* Amnesty International, *Too Young to Vote*, *supra* (reporting domestic legislation in Yemen and Pakistan barring the death penalty for offenses committed by persons under 18); Human Rights Watch, *Easy Targets: Violence Against Children Worldwide* (Ch. IV: Capital Punishment) (reporting Congo commutation of death sentences of four juvenile soldiers upon being reminded of its responsibilities under the Child Convention by Human Rights Watch) (*http://www.hrw.org/reports/2001/children/4.htm,http://www.hrw.org/press/2001/05/congo0502.htm*); Summary Record of the 6th Meeting of the Sub-Commission on the Promotion and Protection of Human Rights, 52nd Sess., August 4, 2000, E/CN.4/Sub.2/2000/SR.6 ¶ 39 (2000) (report by Nigeria that all juvenile offenders' death sentences are commuted and denying that alleged juvenile executed in 1997 had been under 18 at the time of the offense); Summary Record of the 53rd Meeting

of the Commission on Human Rights, 56th Sess., April 17, 2000, E.CN.4/2000/SR.53. ¶¶ 88 and 92 (2000) (adamant Saudi insistence that report of juvenile execution in 1992 was untrue); U.N. Press Release, Commission on Human Rights Starts Debate on Specific Groups and Individuals, April 11, 2001 (Right of Reply by Republic of Iran) (reporting Irani denial that it has the death penalty for juvenile offenders).

The seriousness of the norm, compelling protection by nations of the *right to life*, and the almost total lack of dissent, world wide, convincingly demonstrate that the norm has attained the status of *jus cogens*, and must be respected by Texas. Dramatic steps in conformity with the norm were taken over the last several weeks by the governments of Pakistan and the Philippines. Pakistan amended its domestic law to conform with the norm and on July 25, 2002, the Pakistan News Service reported that, in accord with the Juvenile Justice System Ordinance of 2002, the government had commuted the death sentences of 74 juvenile offenders. *74 Get Relief Against Death Sentence*, Pakistan News Service, *http://paknews.org/flash.php?id–5&date1–2002=07=25.* In the Philippines, intervention by the Development Officer of the Philippine Jesuit Prison Service led to an order on July 30, 2002, by the Philippines Supreme Court commuting the sentences of 12 juvenile offenders. Regarding the twelve, the Court reasoned as follows:

> Apparently they were all below 18 years old at the time they supposedly committed their respective offenses. Nevertheless, after trial, the different trial courts hearing their respective cases found all of them guilty of capital offenses and sentenced them to the supreme penalty of death.

> Under Article 68, The Revised Penal Code, in relation to P.D. 603, as amended, minority is a privileged mitigating circumstance which prevents the imposition of the death penalty.

Resolution of the Court En Banc, Luzviminda Puno, Clerk, Supreme Court of the Philippines, O.C. No. 01-20, *Re: Letter of Ma. Victoria S. Diaz, Program Development Officer, Jesuit Prison Service*, dated July 30, 2002, filed Aug. 1, 2002, at 1.

CONCLUSION

Based upon basic respect for the sanctity of life, Texas Impact believes that the burden should be on those who would take life to justify their actions. Why does the State of Texas consider the juvenile death penalty a preferable policy over obedience to a peremptory norm of international law or simple respect for the valued opinions of humankind?

Amicus Curiae, Texas Impact, respectfully requests that this Court stay Toronto Patterson's execution date, set for August 28, 2002, and grant his petition for writ of

certiorari and/or his original application for writ of habeas corpus.

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