Nos. 10-9646 & 10-9647

IN THE

Supreme Court of the United States

EVAN MILLER,
Petitioner,
v.
ALABAMA,
Respondent.

KUNTRELL JACKSON,
Petitioner,
v.
RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTION,
Respondent.

On Writs of Certiorari to the Alabama Court of Criminal Appeals and the Arkansas Supreme Court

BRIEF OF FORMER JUVENILE COURT JUDGES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

This brief is submitted on behalf of a group of former juvenile court judges as *amici curiae* in support of petitioners in both *Miller v. Alabama*, No. 10-9646, and *Jackson v. Hobbs*, No. 10-9647.[1] Because of their experiences as juvenile court judges, *amici* are familiar with the impressionability and immaturity that generally characterize juvenile offenders, as well as their ability to grow and change over time.

Amici believe that sentencing juveniles, even those who commit homicide offenses, to life without parole ignores the substantial differences between juvenile and adult offenders and meaningfully hampers the ability of these young people, who are uniquely capable of maturation, growth, and change, to rehabilitate and reform.

Having spent decades overseeing the cases of juvenile offenders and thus having witnessed firsthand their remarkable resilience, *amici* strongly believe that the criminal justice system cannot predict what kind of person a fifteen-year-old juvenile offender will be when he is 35, or 55, or 75. Rather, there should be some meaningful opportunity for the system to reassess whether incarceration remains necessary for these offenders after they have had the opportunity to grow, mature, and change.

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief, and letters reflecting their consent have been filed with the Clerk.

Individual *amici* are as follows:

- Judge Susan E. Block (ret.) served as Administrative Judge of the Family Court of St. Louis County in Missouri from 2000-2004, after three years as the Juvenile Judge. After her retirement in 2004, she joined Paule Camazine & Blumenthal as a principal where she specializes in complex family law matters.

- Judge Michael A. Corriero (ret.) served as a judge in the criminal courts of New York State for twenty-eight years. In the last fifteen years of his tenure, he presided over Manhattan's Youth Part, a special court established within the adult criminal court system where he was responsible for resolving the cases of thirteen-, fourteen-, and fifteen-year-olds who were charged with serious offenses and who were tried as adults pursuant to New York's Juvenile Offender Law. Judge Corriero is the Founder and Executive Director of the New York Center for Juvenile Justice.

- Judge Margaret S. Fearey (ret.) served as an Associate Justice in the Juvenile Court Department of the Trial Court of the Commonwealth of Massachusetts from 1996 until January 2012. In that capacity, she heard and decided numerous felony cases involving juveniles, including those involving adult sentencing options.

- Judge Gail Garinger (ret.) served as an Associate Justice in the Juvenile Court Department of the Massachusetts Trial Court from 1995-2001 and as the First Justice of the Middlesex County Division of the Juvenile Court Department from 2001-2008. From 2008 to the present, she has served as The Child Advocate for the Commonwealth of Massachu-

setts.

- Judge Martha P. Grace (ret.) served as Chief Justice of the Massachusetts Juvenile Court from 1998-2009 and as a Massachusetts Juvenile Court Judge for Worcester County from 1990-1998.

- Judge Julian Houston (ret.) served as Presiding Justice of the Juvenile Session of the Roxbury (Massachusetts) District Court from 1979-1990 before being appointed to the Massachusetts Superior Court.

- Judge Gordon Martin (ret.) served as a judge of the Massachusetts Trial Court from 1983-2004 where he heard both juvenile and adult cases. He was previously a Trial Attorney in the Civil Rights Division of the U.S. Department of Justice and First Assistant U.S. Attorney for the District of Massachusetts.

- Judge Chuck McGee (ret.) served for over thirty years as a Nevada judge whose duties always included a juvenile law calendar. He was twice made Chief Judge and was President of the District Judges Association. He has a Masters Degree in Juvenile Law from the Judicial College at the University of Nevada, Reno; his thesis was on a balanced approach to Juvenile Justice.

- Judge Lillian Miranda (ret.) served as First Justice of the Franklin-Hampshire Juvenile Court in Massachusetts from 1994-2011. Previously, she was Staff Counsel/Executive Director of Hampshire County Bar Advocates, where she was responsible for overseeing the assignment, training, and monitoring of private counsel who provided legal assistance to indigent adult and juvenile offenders

charged with crimes carrying a potential jail sentence or commitment to juvenile detention.

- Judge H. Ted Rubin (ret.) served as a judge on the Denver Juvenile Court for six years and then spent twenty-two years as Director for Juvenile Justice for the Institute for Court Management, National Center for State Courts. He has also served as a private consultant for juvenile courts and is the author of six books on juvenile justice, including *Juvenile Justice: Policies, Practices, and Programs*.

- Judge Irene Sullivan (ret.) retired last year after nine years as a juvenile judge, handling abuse, neglect, and delinquency cases in Pinellas County, Florida. She teaches juvenile law at Stetson University College of Law, is the author of *Raised by the Courts: One Judge's Insight into Juvenile Justice*, and speaks around the country on juvenile justice issues.

- Judge Darlene A. Whitten (ret.) served twenty years as a Judge on the Court at Law #1, Designated Juvenile Court for Denton County, Texas. Prior to going to law school, Judge Whitten taught junior high school.

SUMMARY OF ARGUMENT

The decisions of the courts below in both *Miller* and *Jackson* are wrong. They fail to sufficiently appreciate the dramatic differences between juvenile offenders, including those who commit homicide, and adult offenders, and they fail to recognize that the unique characteristics of juveniles make it impossible to predict at the time of initial sentencing whether a juvenile might one day be ready to leave prison. These distinguishing features of juveniles make the

sentence of life without parole categorically inappropriate for juvenile homicide offenders, just as this Court has already recognized for all other juvenile offenders.

Amici emphasize four points. First, juveniles who commit homicide offenses are just like juveniles who commit other serious offenses. They are less mature than adult offenders; they are more vulnerable to negative influences; and their characters and reasoning capacities are less fully formed. They also have less control over and experience with their environment. For these and other reasons, juvenile homicide offenders, just like other juvenile offenders, are less culpable for their actions and more susceptible to change.

Second, as petitioners' cases illustrate, many of the characteristics that distinguish juveniles from adults—for example, their greater immaturity and susceptibility to negative influences and their lack of control over their environment—often contribute to their criminal conduct, even in cases of homicide.

Third, juvenile homicide offenders, like other juvenile offenders, are capable of rehabilitation. Indeed, *amici* have been repeatedly impressed by the ability of young people, even those who commit very serious offenses, to mature and grow as they become adults. *Amici* recognize, of course, that not *every* juvenile offender will reform, but *amici*'s experiences as juvenile court judges convince them that it is impossible to accurately predict at the time of initial sentencing which juveniles are capable of change and which are not. The sentence of life without parole deprives the criminal justice system of the ability to make that assessment at a more appropriate

time, *viz.*, after the juvenile has had time to mature and reform. It also deprives the community of the skills and participation of the reformed offender.

Fourth, sentencing juveniles to life without parole unnecessarily hinders their otherwise unique capacities for rehabilitation. As an initial matter, it denies these youths any incentive to try to improve themselves and sends them a clear message that society has decided that they are beyond redemption. Moreover, even for those youths who want to try to better themselves, a sentence of life without parole will often make it more difficult for them to take advantage of whatever educational, vocational, and other rehabilitative programs are available.

ARGUMENT

I. JUVENILE HOMICIDE OFFENDERS, LIKE OTHER SERIOUS JUVENILE OFFENDERS, ARE CATEGORICALLY DIFFERENT FROM ADULT OFFENDERS

As former juvenile court judges, *amici* have collectively spent decades presiding over cases involving thousands of serious (often violent) juvenile offenders. Based on their experiences, *amici* strongly believe that juvenile offenders, including those who commit homicide offenses, are categorically different from adult offenders.

As this Court has repeatedly recognized and *amici* have repeatedly witnessed, the characters of juveniles are not "as well formed" as those of adults. *Roper v. Simmons*, 543 U.S. 551, 570 (2005). Juveniles also suffer from a "lack of maturity" and an "underdeveloped sense of responsibility," and they are "more vulnerable or susceptible to negative in-

fluences." *Id.* at 569; *see Johnson v. Texas*, 509 U.S. 350, 367 (1993); *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). Moreover, "[b]ecause juveniles' 'lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions,' they are less likely to take a possible punishment into consideration when making decisions." *Graham v. Florida*, 130 S. Ct. 2011, 2028-29 (2010) (quoting *Johnson*, 509 U.S. at 367).

Because these distinguishing features find their roots in the physiology of the adolescent brain, *see Graham*, 130 S. Ct. at 2026 (noting "fundamental differences between juvenile and adult minds"); *id.* ("parts of the brain involved in behavior control continue to mature through late adolescence"); *Roper*, 543 U.S. at 570; *see generally* Brief for the American Medical Association et al. as *Amici Curiae* in *Graham*, they exist regardless of the particular offense committed by the juvenile, *see Graham*, 130 S. Ct. at 2027 ("[t]hese matters relate to the *status* of the *offenders* in question" (emphasis added)).

Juveniles are also categorically different from adults because they "have less control, or less experience with control, over their own environment." *Roper*, 543 U.S. at 569 (citing Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003) ("as legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting")). This, too, is true of all juveniles, regardless of the offense they may have committed.

In other words, the seriousness of the offense

simply does not change the fundamental characteristics of the offender. This Court has repeatedly suggested as much, emphasizing the broad differences between juveniles and adults even in cases involving juvenile homicide offenders. *See Roper*, 543 U.S. at 569-70; *Johnson*, 509 U.S. at 367; *Eddings*, 455 U.S. at 115-16. Thus, *all* juvenile offenders are categorically different from adults for reasons that are almost entirely out of their control—the developmental state of their brains and their surrounding environments. This is as true for juvenile homicide offenders as it is for other serious juvenile offenders.

As a result of these distinguishing characteristics, juvenile homicide offenders, like other juvenile offenders, are both less morally culpable for their actions and "more capable of change" than their adult counterparts. *Graham*, 130 S. Ct. at 2026. As this Court has explained, because "[t]he personality traits of juveniles are more transitory [and] less fixed" than those of adults, *Roper*, 543 U.S. at 570 (2005); *see Johnson*, 509 U.S. at 368 (1993), "their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Graham*, 130 S. Ct. at 2026 (quoting *Roper*, 543 U.S. at 570); *see Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). Thus, "[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." *Roper*, 543 U.S. at 570.

Amici strongly believe that these essential, distinguishing characteristics of youth must be taken into account when sentencing *all* juvenile offenders, including those convicted of homicide.

II. THESE CASES ILLUSTRATE THE EXTENT TO WHICH THE DISTINGUISHING CHARACTERISTICS OF YOUTH CAN CONTRIBUTE TO JUVENILE CRIMINALITY, INCLUDING HOMICIDE

Both petitioners in these cases—Evan Miller and Kuntrell Jackson—illustrate the extent to which juvenile offenders, even juvenile homicide offenders, often become involved in criminal conduct as a result of their impetuousness, their lack of maturity, their susceptibility to negative influences, and their lack of control over their environment. *Amici* do not mean to excuse or minimize petitioners' involvement in their crimes. To the contrary, *amici* recognize that both Miller and Jackson committed very serious crimes, and that substantial punishment may be appropriate as a result. But *amici* think that it is important to recognize that these juvenile offenders, like all other juvenile offenders, are less culpable for their actions than would be a similarly situated adult due to their greater immaturity, their greater susceptibility to negative influences, and their lack of control over their environment.

Both Miller and Jackson, for instance, grew up in extremely troubled homes in crime-ridden environments, and the adults in their lives, rather than trying to protect them from the negative influences surrounding them, instead often guided them *toward* those influences. Miller was emotionally and physically abused by his stepfather and repeatedly exposed to serious substance abuse. Miller Record on Appeal ("Miller R.") 83.[2] Both his mother and step-

[2] This abuse may well have limited Miller's development in ways that made him even less mature and less capable of im-

father were alcoholics, and his mother was addicted to illicit drugs. *Id.* at 83-84. As a very young child, Miller emulated their behavior, drinking alcohol as early as age seven and using marijuana as early as age eight. *Id.* By the time he was thirteen, Miller was already abusing cocaine, prescription medications, and methamphetamines. *Id.*; *cf. Graham*, 130 S. Ct. at 2018 ("Graham's parents were addicted to crack cocaine, and their drug use persisted in his early years. . . . He began drinking alcohol and using tobacco at age 9 and smoked marijuana at age 13.").

It is impossible not to see the role that drugs, alcohol, and the negative influences of family and friends played in Miller's participation in the underlying homicide. During the summer after he completed seventh grade, Miller became friendly with Colby Smith, a sixteen-year-old with a teardrop tat-

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pulse control than a typical fourteen-year-old. *See, e.g.*, Allan N. Schore, *Early Relational Trauma, Disorganized Attachment, and the Development of a Predisposition to Violence*, *in* Healing Trauma: attachment, mind, body, and brain 107, 110 (Marion F. Solomon & Daniel J. Siegel, eds. 2003) ("[V]iolence in children may be a product of 'negative experiences such as early maternal rejection and unstable family environment' and . . . 'child abuse, particularly that involving physical injury, may be especially damaging.'" (quoting Christopher Filley, et. al, *Toward an Understanding of Violence: Neurobehavioral Aspects of Unwarranted Physical Aggression: Aspen Neurobehavioral Conference Consensus Statement*, 14 Neuropsychiatry, Neuropsychology, & Behavioral Neurology 1 (2001))); Martin H. Teicher, *Wounds that Time Won't Heal: The Neurobiology of Child Abuse*, 2 Cerebrum 50, 60 (2000) ("[W]e now know that childhood abuse is linked with excess neuronal irritability, EEG abnormalities, and symptoms suggestive of temporal lobe epilepsy.").

too on his face, a mark that often signifies that the bearer has murdered someone. Miller Trial Tr. 979, 1001. One afternoon, Smith and Miller smoked crystal methamphetamines, and then watched as Miller's mother engaged in a drug deal with their neighbor in Miller's home. *Id.* at 1004, 1007. With the neighbor preoccupied at Miller's house, the boys decided to break into his home to look for drugs. *Id.* at 1006. Although they did not find any drugs, they stole some baseball cards before returning to Miller's home. *Id.* at 981-82.

Later that evening, the boys accompanied the neighbor to his home with the intention of robbing him; instead, the neighbor gave them money to purchase marijuana. *Id.* at 982, 1008, 1012. When the boys returned with the marijuana, they smoked it with the neighbor and played a drinking game with whiskey. *Id.* at 982-83, 1008, 1012, 1014-15. The neighbor became so intoxicated that he fell down and eventually passed out on the couch. *Id.* at 983-84. The boys decided to steal the money in the neighbor's wallet, so Miller removed it from his back pocket, and the boys divided the $300 inside. *Id.* at 984. When Miller returned the wallet to the neighbor's pocket, the neighbor woke up and grabbed Miller by the throat. *Id.* Smith picked up a baseball bat and hit the neighbor with it to free Miller. *Id.* at 985. The boys continued to beat the neighbor, and Miller, presumably still under the influence of the marijuana and whiskey, placed a sheet over his head, said he was God, and stated that he was going to kill the neighbor. *Id.* at 985-86. After returning to Miller's residence, the boys decided to go back to the neighbor's home to clean up the blood and, while there, started the fires that ultimately killed him. *Id.* at

987-88.

Jackson, too, grew up in a troubled environment: his neighborhood was infested with gang violence and drug activity, Jackson Record on Appeal ("Jackson R.") 81, and the adults in his life failed to protect him from the negative influences around him. Instead, they regularly exposed him to violence. His mother and her boyfriend fought repeatedly. *Id.* at 80. His grandmother shot her own son—Jackson's uncle. *Id.* at 81. Jackson's mother shot their neighbor after a fight broke out between Jackson's older brother and the neighbor's daughter and, as a result, went to jail when Jackson was just five or six. *Id.* at 80. Jackson's older brother also owned guns and was incarcerated for a robbery involving a shooting at the time when Jackson participated in the felony underlying the sentence at issue in this case. *Id.* at 82.

Jackson's offense demonstrates how easily juveniles in certain family and social environments can become involved in criminal conduct—even very serious criminal conduct—as a result of peer pressure and negative external influences. Seventeen days after his fourteenth birthday, Jackson accompanied some friends to a video store that they planned to rob. Jackson R. 52. Although one of his friends carried a firearm, Jackson did not. And when they arrived at the store, Jackson told his friends that he did not want to go into the store, deciding to wait outside instead. *Id.* When he later entered the store, he was shocked to see that his friends had pulled out the firearm and screamed "'I thought you all was playin'." *Id.* at 54. Jackson did not touch the firearm, much less actually shoot anyone. *Id.* at 56-

57, 68.

The death that occurred in the course of the robbery was tragic and inexcusable, but it is impossible not to see the role that immaturity, susceptibility to negative peer influences, and lack of control over his environment—factors that undeniably affect juveniles like Jackson categorically differently from how they affect adults—played in Jackson's involvement in the crime.

III. JUVENILE HOMICIDE OFFENDERS, LIKE OTHER SERIOUS JUVENILE OFFENDERS, ARE CAPABLE OF REHABILITATION

Amici have been repeatedly impressed and surprised by the ability of juvenile offenders—including very serious offenders—to change and reform as they grow older and come to better appreciate the consequences of their actions.

As this Court has recognized, juvenile offenders, including those who commit homicide, are uniquely capable of reform and rehabilitation because their personalities are not yet fully formed when they commit their offenses. *See Graham*, 130 S. Ct. at 2030 (noting that juvenile offenders are "most in need of and receptive to rehabilitation"); *Roper*, 543 U.S. at 570 ("The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character."); *see also, e.g.,* Dorothy Otnow Lewis et al., *Toward a Theory of the Genesis of Violence: A Follow-up Study of Delinquents*, 28 J. Am. Acad. Child & Adolescent Psychiatry 431, 431 (1989) ("many violent juveniles do not become violent adults").

Amici recognize, of course, that not all juvenile offenders who commit homicide crimes will ultimately be reformed and rehabilitated; the same is true of juvenile offenders more broadly. But *amici* firmly believe that it is impossible to tell at the time of sentencing *which* juveniles will prove capable of reform. Thus, juvenile homicide offenders, like all other juveniles, should be afforded a meaningful opportunity to demonstrate growth and maturity.

A. Juvenile Homicide Offenders Are Capable of Rehabilitation If Provided the Right Opportunities

As this Court has observed, the fact that a person committed a crime as a juvenile, even a heinous crime, does not tell us who that person will be as an adult. *See supra* at 6-8. In fact, many juveniles serving life without parole sentences, including juvenile homicide offenders, come to recognize that what they did as a juvenile was deeply wrong. Many of these individuals show signs of genuine growth while in prison, taking advantage of what limited opportunities for education and personal development are available, even though they know they will be unable to make use of their new skills in the outside world. *See, e.g.*, Human Rights Watch, Amnesty Int'l, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 83-84 (2005), at http://pendulumfoundation.com/TheRestofTheirLives.pdf [hereinafter "The Rest of Their Lives"]; *see also infra* at 22-24 (describing the limited range of programs available to juvenile prisoners sentenced to life without parole).

The most compelling proof that juvenile homicide offenders are capable of rehabilitation comes from

those offenders who have been released from prison and become law-abiding, productive citizens as adults. Raphael Johnson, for example, committed murder at the age of 17. After being thrown to the ground during an altercation at a party, he went to a friend's car, got a gun, and fired three shots, killing a man who had not even been involved in the fight. *See Juvenile Justice Accountability and Improvement Act of 2007*: *Hearing on H.R. 4300 Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 110th Cong. 54-58, at 55 (2008) (statement of Raphael B. Johnson). Johnson was tried as an adult, convicted of murder, and sentenced to 10 to 25 years in prison. *Id.* In his first years behind bars, Johnson admits that he was not a model inmate; he violated prison rules and was placed in solitary confinement. *Id.* at 55-56. But over time his outlook began to change. *Id.* at 56. He took advantage of the educational programs available to him, explored his religious beliefs, and maintained strong bonds with his family and friends. *Id.*

After serving twelve years in prison, Johnson was released. *Id.* at 57. In the four years following his release, he earned his college degree, graduating with high honors, and went on to earn a master's degree as well. *Id.* He married his childhood sweetheart and had two children. *Id.* Johnson worked as a community reintegration coordinator, helping other ex-offenders re-enter society, and even started his own company, through which he works as a motivational speaker. *Id.* Johnson has expressed remorse for his crime and explained how additional life experience has afforded him perspective on the pain he caused, a fact that he was unable to fully appreciate

as a teenager. *Id.* at 58.

Oshea Israel is another example of a juvenile homicide offender who proved capable of reform as he grew into an adult. *See* NPR, *Forgiving Her Son's Killer: "Not An Easy Thing"* (May 20, 2011), http://www.npr.org/2011/05/20/136463363/forgiving-her-sons-killer-not-an-easy-thing. At the age of sixteen, Israel killed a twenty-year-old after getting into a fight with him at a party. *Id.* While in prison, Israel met his victim's mother and started changing his approach to life. *Id.* Recently released from prison, he is now pursuing his college degree and has developed a close relationship with the mother of his victim. *Id.* He has explained that he hopes to "prove himself" to her. MailOnline, *Woman shows incredible mercy as her son's killer moves in next door* (June 8, 2011), http://www.dailymail.co.uk/news/article-2000704/Woman-shows-incredible-mercy-sons-killer-moves-door.html#ixzz1hw0jIdyb.

Studies of juvenile homicide offenders mirror the lessons of Johnson's and Israel's stories, making clear that many youths who have committed homicide offenses are capable of rehabilitation and growth. *See, e.g.*, Michael P. Hagan, *An Analysis of Adolescent Perpetrators of Homicide Upon Return to the Community*, 41 Int'l J. of Offender Therapy & Comparative Criminology 250, 254 (1997) (forty percent of youths convicted of homicide or attempted homicide and committed to juvenile correctional facility in Wisconsin in the 1970s and 1980s had not been convicted of any additional crimes five or more years after their release from the facility); John Hubner, Last Chance in Texas: The Redemption of Criminal Youths 20, 251 (2005) (relating, among

other stories of serious juvenile offenders, one juvenile's involvement in a drive-by shooting that killed a 20-year-old man and the offender's subsequent release after completing an intensive rehabilitation program at the Giddings State School).

These stories and studies merely confirm what *amici* already know from their own experiences: many juvenile offenders, even the most serious among them, are capable of reform and rehabilitation.

B. It Is Impossible To Predict at Sentencing How a Juvenile Will Change Over Time

Amici recognize, of course, that a desire to change is not always enough to ensure change. And recitation of regret for one's crimes does not absolve a juvenile offender of responsibility for his actions or guarantee that he will not commit further crimes if released.

But *amici* strongly believe that juvenile offenders, including those convicted of homicide offenses, deserve the opportunity to turn their lives around, and that the best time to evaluate whether they have successfully done so is after they have had time to mature, not when they are initially sentenced. Based on decades of experience sentencing juvenile offenders, *amici* simply do not believe it is possible to tell which youths will change and which will not at the time of their initial sentencing.[3]

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[3] Notwithstanding this unpredictability, *amici* do believe that individualized consideration is essential at the initial sentencing stage. *See, e.g.*, *Pepper v. United States*, 131 S. Ct. 1229, 1239-40 (2011) ("It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider

In fact, throughout their many years as juvenile court judges, *amici* were repeatedly surprised and encouraged by the ability of youths, including those who commit the most serious crimes, to grow and change. *Amici* were also struck by the difficulty of predicting which youths would successfully reform and which would not. *See Roper*, 543 U.S. at 573 ("It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."); *Naovarath v. State*, 105 Nev. 525, 530 (1989) ("We may possibly have in the child before us the beginning of an irremediably dangerous adult human being, but we certainly cannot know that fact with any degree of certainty *now*.").

Amici are hopeful that Miller and Jackson may too one day mature into responsible, law-abiding

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every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996))); *Graham*, 130 S. Ct. at 2042 (Roberts, C.J., concurring in the judgment) ("Our system depends upon sentencing judges applying their reasoned judgment to each case that comes before them."); *cf.* Michael A. Corriero, Judging Children as Children: A Proposal for a Juvenile Justice System 71 (2006) ("We must examine each child's individual circumstances and social history."). Thus, although *amici* believe that *no* juvenile should be sentenced to life without parole, *amici* are even more troubled by the fact that the petitioners in these cases were subject to *mandatory* life without parole sentences and thus were denied any individualized consideration even at their initial sentencing. *See Graham*, 130 S. Ct. at 2031 ("An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed.").

adults. Before he was sentenced, Jackson apologized to the family of the victim. Jackson R. 62. And Miller has learned to accept responsibility for his actions: his pretrial psychological evaluation notes that "he previously would have given more anti-social responses," but that "he 'got saved at 15,'" and now "recognizes that he should do 'the right thing.'" Miller R. 85. *Amici* believe that these children should not be condemned to die in prison without being given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 130 S. Ct. at 2030.

Imposing a sentence of a term of years (even a long one)—as opposed to a sentence of life without parole—recognizes that although these children "deserve[] to be separated from society for some time," "it does not follow that [they will] be a risk to society for the rest of [their] li[ves]." *Graham*, 130 S. Ct. at 2029; *see Naovarath*, 105 Nev. at 531 ("It does not seem to us, from the record, that the trial judge had enough information to make the predictive judgment that this particular thirteen-year-old boy should never again see the light of freedom. A strong argument exists for the proposition that the parole board is best suited to make this kind of judgment at some future time."); *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. Ct. App. 1968) ("We believe that incorrigibility is inconsistent with youth; that it is impossible to make a judgment that a fourteen-year-old youth, no matter how bad, will remain incorrigible for the rest of his life."); *cf. Graham*, 130 S. Ct. at 2030 ("Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not fore-

close [that]. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.").

Leaving open the possibility of parole allows society to assess down the road—after the juvenile has had the time necessary to grow, mature, and change—whether it is necessary for a 25, 35, or 45-year-old to remain in prison for a crime he committed early in his formative years. Life without parole sentences, however, eliminate the possibility of such meaningful consideration of a juvenile offender's demonstrated rehabilitation.

IV. A LIFE WITHOUT PAROLE SENTENCE SIGNIFICANTLY LIMITS A JUVENILE'S ABILITY TO REFORM AND CHANGE

Amici believe that sentencing juvenile offenders to life without parole is wrong because it meaningfully hinders a juvenile's otherwise unique prospects for reform and rehabilitation. Juvenile homicide offenders, like all other juvenile offenders, should be given the chance to better themselves in prison and afforded a meaningful opportunity to obtain release based on a showing that they have done so.

A. Sentencing Juveniles to Life Without Parole Denies Them Hope and the Incentives To Try To Reform

Life without parole is, under any circumstance, a severe sentence—the most severe possible after capital punishment. But as this Court recognized in *Graham*, it is "an especially harsh punishment for a juvenile." *Graham*, 130 S. Ct. at 2028. This is, in part, because it reflects "an irrevocable judgment about that person's value and place in society."

Graham, 130 S. Ct. at 2030; *see Naovarath*, 105 Nev. at 529 (life without parole reflects a judgment that the child "can never be reformed"). It sends a clear message to the juvenile that society has given up on him or "written [him] off." Ill. Coalition for the Fair Sentencing of Children, *Categorically Less Culpable: Children Sentenced to Life Without Possibility of Parole in Illinois* 20 (2008), http://webcast-law.uchicago.edu/pdfs/00544_Juvenile_Justice_Book_3_10.pdf [hereinafter, "Categorically Less Culpable"]. This is a particularly cruel message to send to juvenile offenders, many of whom may feel as though they have already been abandoned by their parents and other family members. *See, e.g.*, Rolf Loeber & Magda Stouthamer-Loeber, *Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency*, 7 Crime & Just. 29, 29 (1986) ("Analyses of longitudinal data show that socialization variables, such as lack of parental supervision, parental rejection, and parent-child involvement, are among the most powerful predictors of juvenile conduct problems and delinquency."); Hattie Ruttenberg, *The Limited Promise of Public Health Methodologies To Prevent Youth Violence*, 103 Yale L.J. 1885, 1900 (1994) ("[j]uvenile delinquency has been found to correlate with a history of childhood abuse and neglect"); *see also* Irene Sullivan, Raised by the Courts: One Judge's Insight into Juvenile Justice 97 (2010) ("The link between child abuse and juvenile delinquency is well established; indeed, irrefutable."); H. Ted Rubin, Juvenile Justice: Policies, Practices, and Programs P4-1 (2003) ("Court juveniles' problems include . . . drug addicted parents, serious neglect by parents, violent victimization.").

Life without parole amounts to the "denial of hope," *Graham*, 130 S. Ct. at 2027, such that juveniles receiving the sentence often see little reason to try to educate or otherwise improve themselves. Life without parole means that "good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." *Id.* (quoting *Naovarath*, 105 Nev. at 526). As one juvenile offender explained: "'It makes you feel that life is not worth living because nothing you do, good or bad, matters to anyone. You have nothing to gain, nothing to lose, you are given absolutely no incentive to improve yourself as a person. It's hopeless.'" Human Rights Watch, *"When I Die, They'll Send Me Home," Youth Sentenced to Life without Parole in California* 60 (Jan. 2008), www.hrw.org/reports/2008/us0108/ us0108web.pdf [hereinafter, "Youth Sentenced to LWOP in California"]; *see also id.* (juvenile offender sentenced to life without parole reporting that "[t]here's no words to describe this experience. I'd rather be dead"); The Rest of Their Lives, at 63 (another juvenile offender sentenced to life without parole asking "'what am I supposed to hope for except for dying tomorrow maybe?'").

B. Sentencing Juveniles to Life Without Parole Denies Them Opportunities To Participate In Educational and Rehabilitation Programs

Even juvenile offenders sentenced to life without parole who want to change will often find that their sentence makes it more difficult for them to do so. Although the adult prisons where these juveniles

will be serving most (if not all) of their sentences generally provide educational, vocational, and other self-help programs, access to these opportunities is often foreclosed to prisoners sentenced to life without parole. *See, e.g.*, Human Rights Watch, *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States* 27 (2012), http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf [hereinafter "Against All Odds"] (noting that in at least 22 states "educational and vocational programs ordinarily available to most inmates are frequently denied to those serving life without parole, including those sentenced as juveniles"); Categorically Less Culpable, at 21 (explaining that juvenile offenders sentenced to life without parole had "little or no access to educational programs" because those "programs often were, and are, expressly denied to those serving life without parole sentences").[4]

Funding and resource constraints, for example, often limit access to such programs to offenders who may be eligible for release. *See, e.g.*, The Rest of Their Lives, at 69 ("Most child offenders who have been sentenced to life without parole are denied access to further education or vocational programs for a very simple reason: the state and the federal government do not expect them ever to leave prison and

[4] Juvenile offenders' inability to participate in educational and vocational programs may reinforce for these youths the impression that society has given up on them. As one offender explained with respect to his inability to enroll in his prison's GED program, "'[t]he officials say there are more important people that need to take these classes that actually have a chance to get out someday.'" Categorically Less Culpable, at 21.

so reserve the already underfunded programs for those who will."); Youth Sentenced to LWOP in California, at 56 ("[P]rison practice and regulations give persons sentenced to life without parole the lowest priority for accessing programs. Interviewees told Human Rights Watch that their sentence puts them on the lowest rung of waiting lists for GED classes and substance abuse rehabilitation groups like Alcoholics Anonymous . . . ."); The Rest of Their Lives, at 70 ("Correctional authorities in a number of states told a researcher for this report on the record that inmates serving life without parole sentences were at the 'bottom of the list' for getting access to vocational training. Officials cited their state's need 'to put our resources where the inmates who are going home can access them first.'").

And in some states, "[s]ecurity classifications" can "limit participation in existing programs." Against All Odds, at 29. Although "[m]ost prisoners can reduce their security level over time through good behavior," it is exceedingly difficult for those serving life without parole to do so. Youth Sentenced to LWOP in California, at 57; *see id.* at 57-58 (explaining that "for those serving life without parole, a change in security classification . . . requires a decision by the Deputy Director after review by a classification committee"); *cf.* Against All Odds, at 28-29 (explaining how juveniles and those serving life without parole generally receive more restrictive security classifications). Thus, even if juvenile offenders exhibit exemplary behavior over the course of many years in prison, they may continue to be denied opportunities to better themselves at the ages of 35 and 55 based on a single act they committed at the age of 15.

The denial of access to these programs is particularly troubling because participation in educational and vocational programs can be "an important step on the path toward rehabilitation," Categorically Less Culpable, at 22; *see, e.g.*, Michael A. Corriero, Judging Children as Children: A Proposal for a Juvenile Justice System 59-60 (2006) (discussing the importance of education to rehabilitation), especially for juvenile offenders who will spend their formative teenage years behind bars, *see* Against All Odds, at 32 ("young offenders are incarcerated during the period of their lives when education and skill development are most crucial").

Amici have personally observed the potential transformative power of prison educational and rehabilitative programs. For example, one of *amici* sentenced a sixteen-year-old who had killed a taxi driver to serve 15 to 20 years, the sentence mandated by his jurisdiction at the time for first degree murder committed by a juvenile. The juvenile matured while in prison and was deemed fully rehabilitated by the time he had served the 15 year minimum. Another of *amici* sentenced a homicide offender roughly the same age as Miller and Jackson to serve nine years to life in prison. That young man has educated himself significantly while in prison and, over time, has come to recognize the wrong that he committed and has expressed remorse for his actions. Both of these examples reflect *amici*'s belief that access to rehabilitative programs while in prison, combined with the added maturity that comes with age, can effect substantial, meaningful changes in a young offender.

CONCLUSION

For the foregoing reasons and those stated in petitioners' briefs, this Court should reverse the judgments below.

Respectfully submitted,

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