STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

v.

IHAB MASALMANI,

Defendant-Appellant.

Supreme Court No. 154773
Court of Appeals No. 325662
Circuit Court No. 09-5244FC

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On Appeal from the Court of Appeals
Stephen L. Borrello, PJ, Jane E. Markey, and Michael J. Riordan, JJ

BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER IN SUPPORT OF DEFENDANT-APPELLANT MASALMANI

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Amicus Curiae Juvenile Law Center answers, "Yes."

A. Is There A Presumption Against Life Without Parole Sentence Imposed On Youth?

Court of Appeals made no answer.

Amicus Curiae Juvenile Law Center answers, "Yes."

B. Must The Prosecution Bear The Burden In Establishing That The Individual Is Among Rare Irreparably Corrupt Juvenile Offenders For Whom Rehabilitation Is Impossible?

Court of Appeals made no answer.

Amicus Curiae Juvenile Law Center answers, "Yes."

INTEREST AND IDENTITY OF AMICUS CURIAE

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Since its founding, Juvenile Law Center has represented hundreds of young people and filed influential *amicus* briefs in state and federal cases across the country. *Amicus curiae* has extensive legal and practical experience in issues regarding the individualized sentencing of youth and the constitutional rights of children facing adult prosecution.

SUMMARY OF THE ARGUMENT

In *Miller v. Alabama*, 567 U.S. 460, 479 (2012) the United States Supreme Court prohibited mandatory life without parole sentences for juveniles and further instructed that the imposition of life without parole sentences should be "uncommon." In *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016), the Court ruled *Miller* retroactive and explained that *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." These cases establish "that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Miller*, 567 U.S. at 474.

A juvenile life without parole sentence can only be imposed after distinguishing the typical individual from the rare who is so irretrievably depraved that rehabilitation is impossible. To confer a permanent status of incorrigibility necessitates a forward-looking determination that cannot be true as to every individual for whom the prosecution seeks a life without parole sentence. A presumption against this practice ensures fidelity to the constitutional mandates of *Miller* and *Montgomery* and sets forth the framework by which these sentences can be sought. In order to further ensure these sentences are rare and uncommon and only imposed on youth whose crimes reflect transient immaturity, the prosecution must bear the burden of demonstrating that this permanent status of incorrigibility.

ARGUMENT

I. THIS COURT'S DECISION IN *PEOPLE V. SKINNER* MISINTERPRETS THE CONSTITUTIONAL MANDATES OF *MILLER V. ALABAMA* AND *MONTGOMERY V. LOUISIANA*

In upholding the life without parole sentences imposed on defendants Tia Marie-Mitchell Skinner and Kenya Ali Hyatt, this Court misinterpreted the mandates of the United States Supreme Court's decisions in *Miller v. Alabama* and *Montgomery v. Louisiana*. *People v. Skinner*, 917

N.W.2d 292, 317 (Mich. 2018) (holding that "neither Miller nor Montgomery imposes a presumption against life without parole.").

The *Skinner* Court reasoned that "all *Miller* requires sentencing courts to do is to consider how children are different before imposing life without parole on a juvenile." *Id.* at 313. This statement inaccurately simplifies the core holdings of *Miller* and *Montgomery*.

A. There Is A Presumption Against Life Without Parole Sentence Imposed On Youth

1. *Miller* Established A Presumption Against Imposing Life Without Parole Sentences On Juveniles Because Life Without Parole Sentences Are Constitutionally Disproportionate To Individuals Amenable To Rehabilitation

The United States Supreme Court has held "that children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at 471. Their demonstrated "lack of maturity" and "underdeveloped sense of responsibility" can lead to recklessness, impulsivity, and vulnerability to negative influences and outside pressures over which they have limited control. *Roper v. Simmons*, 543 U.S. 551, 569 (2005). This is the "starting premise" of the United States Supreme Court's juvenile sentencing jurisprudence, supporting its fundamental assertion that children have "diminished culpability and greater prospects for reform." *Montgomery*, 136 S. Ct. at 733. A defendant's youth, therefore, "diminish[es] the penological justifications for imposing [a mandatory life without parole sentence]," making it unfairly disproportionate to the crime committed and unconstitutional under the Eighth Amendment's ban on cruel and unusual punishment. *Miller*, 567 U.S. at 472-73. *Miller* and its follow-up case, *Montgomery*, together barred all mandatory sentences of life without parole for juveniles and required resentencing or release on parole for the thousands of juveniles who received this sentence before the landmark rulings. *Montgomery*, 136 S. Ct. at 736. All youth sentenced within the criminal justice system

must now be given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," *Miller*, 567 U.S. at 479 (*quoting Graham v. Florida*, 560 U.S. 48, 75 (2010)). The sentencer in a juvenile proceeding where the state's harshest penalties are possible must always weigh the "distinctive attributes of youth," and impose only a discretionary sentence of life without parole. *Id*. at 472; *Montgomery*, 136 S. Ct. at 735. The *Miller* Court enumerated the following factors for consideration by the sentencer, whether judge or jury: [(1) The defendant's] chronological age [at the time of the crime] and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences[,] . . . [(2)] the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional[,] . . . [(3)] the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him[,] . . . [(4)] that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys[,] . . . [and (5)] the possibility of rehabilitation. *Miller*, 567 U.S. at 477-78. The consideration of such attributes should rarely result in a life without parole sentence being imposed, if at all. *Id*. at 479-80; *Montgomery*, 136 S. Ct. at 734.

The Court reasoned that, "given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon." 132 S. Ct. at 2469. *Miller* establishes a presumption against imposing life without parole sentences on juveniles. *Miller*, 132 S. Ct. at 2469. The "juvenile offender whose crime reflects irreparable corruption" will be "rare." *Miller*, 132 S. Ct. at 2469 (quoting *Roper*, 543 U.S.

at 573; *Graham*, 560 U.S. at 68). See also *Miller*, 132 S. Ct. at 2458 (a juvenile's "actions are less likely to be 'evidence of irretrievabl[e] deprav[ity]' (quoting *Roper*, 543 U.S. at 570)); *id*. at 2465 ("Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgement that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'" (quoting *Graham*, 560 U.S. at 72-73)).

The Supreme Court confirmed in *Graham* that, since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id*. For example, "[t]he ability to resist impulses and control emotions, the ability to gauge risks and benefits as an adult would, and the ability to envision the future consequences of one's actions—even in the face of environmental or peer pressures—are critical components of social and emotional maturity, necessary in order to make mature, fully considered decisions." Brief for the American Psychological Ass'n, et al. as *Amici Curiae* Supporting Petitioners at 12-13, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621) *See, e.g.*, Laurence Steinberg et al., *Peers Increase Adolescent Risk Taking Even When The Probabilities of Negative Outcomes Are Known*, 50 DEVELOPMENTAL PSYCHOL. 1, 2 (2014) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4305434/.

The Supreme Court's holding in *Graham* 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 68. The Court further 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. *Graham* acknowledged that the salient characteristics of youth—the lack of maturity, evolving character, vulnerability and susceptibility to negative influences and external pressure—would make it "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." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573). Accordingly, the Court recognized that "juvenile offenders cannot with reliability be classified among the worst offenders," *id*., and that although "[a] juvenile is not absolved of responsibility for his actions, . . .his transgression 'is not as morally reprehensible as that of an adult.'" *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 835 (1988) (plurality opinion)).

2. *Montgomery* Clarifies And Expands *Miller*'s Presumption Against Imposing Life Without Parole Sentences On Juveniles

Montgomery explained that the Court's 2012 decision in *Miller* "did bar life without parole . . .for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734. The Court held "that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption," *id*., noting that a life without parole sentence "could [only] be a proportionate sentence for the latter kind of juvenile offender." *Id*. *Montgomery* establishes that a life without parole sentence for a youth whose crime demonstrates ''transient immaturity" is unconstitutional. *Id*. Under the Eighth Amendment, juvenile offenders can only receive a life without parole sentence if their crimes reflect "permanent incorrigibility," "irreparable corruption" or "irretrievable depravity." *Id*. at 733, 734.

More recently, the United States Supreme Court's remands in several resentencing cases demonstrate that the determination must weigh in favor of parole eligibility as "youth is the dispositive consideration for 'all but the rarest of children.'" *Adams v. Alabama*, 136 S. Ct. 1796,

1800 (2016) (Sotomayor, J., concurring) (quoting *Montgomery*, 136 S. Ct. at 726). When "[t]here is no indication that, when the factfinders . . . considered petitioners' youth, they even asked the question *Miller* required them not only to answer, but to answer correctly: whether petitioners' crimes reflected 'transient immaturity' or 'irreparable corruption,'" remand is required. *Id*.; *Tatum v. Arizona*, 137 S. Ct. 11 (2016) (Sotomayor, J., concurring). As the Court has recognized the vast majority of youth are not the rare and uncommon juvenile whose crime reflects irreparable corruption, the sentencer must start the analysis with the presumption that juveniles' crimes are a reflection of their transient immaturity.

The *Skinner* Court misinterpreted the Supreme Court's reasoning about the rarity with which a life without parole sentence will be imposed. The court conceded that "juveniles who are irreparably corrupt are assertedly 'rare,'" *Skinner*, 917 N.E.2d at 313, but argued that "we cannot even imagine how a trial court would go about determining whether a particular defendant is "rare" or not." *Id.* 312. This statement reinforces, rather than undermines, the need for a presumption against life without parole as the starting point in sentencing youth. The Supreme Court reasoned in *Graham*, that "[i]t 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." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573). The American Psychological Association underscored this in *Miller* in their amicus brief to the Court: "[T]here is no reliable way to determine that a juvenile's offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile—even one convicted of an extremely serious offense—should be sentenced to life in prison, without any opportunity to demonstrate change or reform." Brief for the American Psychological Association et al. as *Amici Curiae* in Support of Petitioners at 25, *Miller v. Alabama*, 132 S. Ct. 2455 (2012),

(Nos. 10-9646, 10-9647). Notably, the difficulty in making this assessment was the basis for at least two state supreme courts to ban juvenile life without parole entirely. *See Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 283-84 (Mass. 2013); *State v. Sweet*, 879 N.W.2d 811, 836-37 (Iowa 2016). If anything, the difficulty inherent in making such a finding compels a presumption to ensure the imposition of the sentence is truly rare.

3. Other State Supreme Courts Have Held That *Miller* Dictates A Presumption Against Juvenile Life Without Parole

Four state supreme courts have held that *Miller* dictates this presumption against juvenile life without parole. The Connecticut Supreme Court, citing language in *Miller,* stated that "the mitigating factors of youth establish, in effect, a presumption against imposing a life sentence without parole on a juvenile offender that must be overcome by evidence of unusual circumstances." *State v. Riley*, 110 A.3d 1205, 1214 (Conn. 2015) (citation omitted), cert. denied, 136 S. Ct. 1361 (2016). The Iowa Supreme Court also found that *Miller* established a presumption against juvenile life without parole:

> [T]he court must start with the Supreme Court's pronouncement that sentencing a juvenile to life in prison without the possibility of parole should be rare and uncommon. Thus, the presumption for any sentencing judge is that the judge should sentence juveniles to life in prison with the possibility of parole for murder unless the other factors require a different sentence.

State v. Seats, 865 N.W.2d 545, 555 (Iowa 2015) (citations omitted). Notably, since its decision in *Seats*, the Iowa Supreme Court has expanded its decision and held that juvenile life without parole sentences are always unconstitutional pursuant to their state constitution. The Iowa Supreme Court found:

> [T]he enterprise of identifying which juvenile offenders are irretrievable at the time of trial is simply too speculative and likely impossible given what we now know about the timeline of brain development and related prospects for self-regulation and

> rehabilitation. . . . But a district court at the time of trial cannot apply the *Miller* factors in any principled way to identify with assurance those very few adolescent offenders that might later be proven to be irretrievably depraved. In short, we are asking the sentencer to do the impossible, namely, to determine whether the offender is "irretrievably corrupt" at a time when even trained professionals with years of clinical experience would not attempt to make such a determination.
>
> No structural or procedural approach, including a provision of a death-penalty-type legal defense, will cure this fundamental problem.

State v. Sweet, 879 N.W.2d 811, 836-37 (Iowa 2016). *Miller* establishes a presumption against juvenile life without parole sentences. As a result, the appropriate imposition of such sentences will be "rare."

In *Commonwealth v. Batts*, the Pennsylvania Supreme Court reasoned "that as a matter of law, juveniles are categorically less culpable than adults." 163 A.3d 410, 452 (Pa. 2017). The court further explained that this "central premise" is based on the well-established conclusion that "the vast majority of adolescents change as they age and, despite their involvement in illegal activity, do not develop entrenched patterns of problem behavior." *Id.* (quoting *Miller*, 567 U.S. at 471 (internal quotation marks omitted)). Accordingly, the court adopted a presumption against the imposition of a life without parole sentence on a juvenile offender. *Id.* at 455 ("The sentencer must determine that the offender is and 'forever will be a danger to society.'").

Since *Montgomery*, at least one state supreme court has recognized that *Montgomery* clarified *Miller*'s standard in juvenile sentencing cases. The Georgia Supreme Court noted that

> [t]he *Montgomery* majority explains . . . that by *uncommon*, *Miller* meant *exceptionally rare*, and that determining whether a juvenile falls into that exclusive realm turns not on the sentencing court's consideration of his age and the qualities that accompany youth along with all of the other circumstances of the given case, but rather on a specific determination that he is *irreparably corrupt*.

Veal v. State, 784 S.E.2d 403, 411 (Ga. 2016). The Georgia Supreme Court continued that "[t]he Supreme Court has now made it clear that [life without parole] sentences may be constitutionally imposed only on the worst-of-the-worst juvenile murderers, much like the Supreme Court has long directed that the death penalty may be imposed only on the worst-of-the-worst adult murderers." *Id*. at 412.

And one state, Massachusetts, has gone further, banning juvenile life without parole sentences altogether. Relying on United States Supreme Court precedent, the Massachusetts Supreme Judicial Court held that even the discretionary imposition of juvenile life without parole sentences violates the state constitution. *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 283-84 (Mass. 2013). The Court held:

> Given current scientific research on adolescent brain development, and the myriad significant ways that this development impacts a juvenile's personality and behavior, a conclusive showing of traits such as an "irretrievably depraved character," can never be made, with integrity, by the Commonwealth at an individualized hearing to determine whether a sentence of life without parole should be imposed on a juvenile homicide offender. Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.

Id. at 283-84 (footnote and citations omitted).

In a dissenting opinion in *Skinner*, Chief Justice McCormack argued that "a faithful application of the holding in *Miller*, as clarified in *Montgomery*, requires the creation of a presumption against sentencing a juvenile offender to life in prison without the possibility of parole." *Id*. at 324 (McCormack, J. dissenting). Justice McCormack further reasoned that the *Skinner* majority's interpretation "renders meaningless the individualized sentencing required by

Miller." *Id*. at 323. Under M.C.L. 769.25(2), a prosecutor can file notice to seek life without parole and the hearing is meaningless if no aggravating or mitigating factors are found because the individual can nevertheless be sentenced to the default sentence—life without the possibility of parole.

B. The Prosecution Bears The Burden In Establishing That An Individual Is Among The Rare Irreparably Corrupt Juvenile Offenders For Whom Rehabilitation Is Impossible

When the state files a motion seeking a life without parole sentence under M.C.L. 769.25(3) and M.C.L. 769.25a(4)(b), it is alleging that this individual is one of the rare juveniles "who exhibits such irretrievable depravity that rehabilitation is impossible." *Montgomery*, 136 S. Ct. at 733-34. In carrying out its motion and seeking the lifelong imprisonment of the defendant, the prosecution must bear the burden of demonstrating that "rehabilitation is impossible and life without parole is justified." *See id*. *Miller* does not require "confidence" that rehabilitation would occur, merely the "possibility" of rehabilitation, and *Montgomery* explicitly requires a determination of irreparable corruption before juvenile life without parole can be imposed. Here the sentencing judge improperly placed the burden of proof on Mr. Masalmani to prove he could be rehabilitated when the burden must be on the State to establish he cannot.

As the U.S. Supreme Court has repeatedly recognized, when a child is being sentenced in adult criminal court, the mitigating effects of age matter on a constitutional level. *See Miller*, 567 U.S. at 471. Age and its attendant characteristics are mitigating factors when a child faces sentencing in the adult criminal justice system. Indeed, state courts around the country have agreed that such a presumption exists, and that the burden is on the state to disprove the mitigating effect of a juvenile defendant's age.

To place the burden of proof on the juvenile defendant to establish youthfulness as a mitigating circumstance contravenes this constitutional principle and treats children in adult court "simply as miniature adults." *See Miller*, 567 U.S. at 481 (quoting *J.D.B. v. North Carolina*, 564 U.S. 261, 274, 131 S. Ct. 2394 (2011)). It also poses an unacceptable risk that an unconstitutional sentence will be imposed, particularly for persons of color, who confront pervasive overt and implicit bias that heightens the risk that their age and its attendant characteristics will be improperly considered.

1. Courts Around The Country Have Interpreted *Miller* As Placing The Burden Of Proof On The Prosecution To Disprove The Mitigating Effect Of Age

Confronting similar questions regarding the procedures required to uphold the constitutional requirements of *Miller*, at least six state supreme courts have placed the burden on the state to disprove the mitigating effect of age and its attendant characteristics when sentencing juvenile defendants in adult criminal court.

In *Commonwealth v. Batts*, the Pennsylvania Supreme Court rejected the argument that a "juvenile offender bears the burden of proving that he or she is not eligible for a life-without-parole sentence." 163 A.3d 410, 451 (Pa. 2017). The court reasoned that "any suggestion of placing the burden on the juvenile offender is belied by the central premise of *Roper*, *Graham*, *Miller* and *Montgomery*—that as a matter of law, juveniles are categorically less culpable than adults." *Id.* at 452. Accordingly, as set forth above, the court adopted a presumption against the imposition of a life without parole sentence on a juvenile offender, which can be overcome only if the state proves beyond a reasonable doubt that the defendant is constitutionally eligible for that sentence, based on the factors articulated in *Miller*. *Id.* at 455.

Other state supreme courts have reached similar conclusions in the life without parole context, reasoning that *Miller* established a presumption against the imposition of that sentence that the state has the burden to overcome. In *Davis v. State*, the Wyoming Supreme Court adopted the reasoning of *Batts* in its entirety, agreeing that "the State bears the burden of overcoming" the presumption underpinning the "central premise" in *Miller*: that "juveniles are categorically less culpable than adults," and permitting the state to overcome that presumption only with evidence establishing beyond a reasonable doubt that the juvenile offender is irreparably corrupt. 415 P.3d 666, 681-82 (Wyo. 2018) (quoting *Batts*, 163 A.3d at 452). In reaching the same conclusion, the Connecticut Supreme Court State emphasized:

> *Miller* does not stand solely for the proposition that the eighth amendment demands that the sentencer have discretion to impose a lesser punishment than life without parole on a juvenile homicide offender. Rather, *Miller* logically indicates that, if a sentencing scheme permits the imposition of that punishment on a juvenile homicide offender, the trial court *must* consider the offender's "chronological age and its hallmark features" as mitigating against such a severe sentence.

State v. Riley, 110 A.3d 1205, 1216 (Conn. 2015) (quoting *Miller*, 567 U.S. at 477). State supreme courts in Missouri and Iowa have reached similar conclusions, placing the burden on the state to overcome the presumption that a juvenile defendant's age has a mitigating effect. *See State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (en banc) ("[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances."); *State v. Seats*, 865 N.W.2d 545, 555 (Iowa 2015) ("[T]he presumption for any sentencing judge is that the judge should sentence juveniles to life in prison with the possibility of parole for murder unless the other factors require a different sentence.").

Additionally, the Massachusetts Supreme Court, which has categorically banned juvenile life without parole under their state constitution, *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 283-85 (Mass. 2013), has placed the burden of proof on the state to disprove the mitigating effects of age in cases beyond just life without parole. In *Commonwealth v. Perez*, the court placed the burden on the state in a non-homicide case to "prove that the juvenile's personal characteristics make it necessary" to impose the requested sentence, which exceeded the sentence available under the state statute for juveniles convicted of homicide. 106 N.E.3d 620, 630 (Mass. 2018).

Similarly, the Missouri Supreme Court held that the state bears the burden of demonstrating, beyond a reasonable doubt, that life without parole is an appropriate sentence. *See State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (en banc) ("[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances.").

In sum, state supreme courts around the country have agreed that the precepts of *Miller* place the burden of proof on the state to disprove the mitigating effects of age. As this Court has applied *Miller* to all instances in which a child is sentenced in adult court, it logically follows that the state must bear the burden to show that the "mitigating qualities of youth" do not apply under the specific circumstances at hand. *See Miller*, 567 U.S. at 476 (quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1990)).

2. Placing The Burden On The Juvenile Defendant Creates An Unacceptable Risk That An Unconstitutional Sentence Will Be Imposed

Finally, the decision of the Court of Appeals—that the burden of proving the individual is not one of the rare and uncommon offenders for whom rehabilitation is impossible—"creates an

unacceptable risk" that an unconstitutional sentence will be imposed. *Hall v. Florida*, 572 U.S. 701, 704 (2014)).

The plain language of M.C.L. 769.25(6) provides no guidance on how a sentencing court should assess the effect of age and its attendant characteristics when sentencing a juvenile defendant. In fact, a defendant's youthfulness is not among the enumerated list of possible mitigating circumstances. Despite *Miller's* mandate that sentencing courts consider a juvenile defendant's "age and its 'hallmark features,'" *Miller*, 567 U.S. at 477, the onus is on the child both to allege that these factors are present and counsel against a judgment that the individual is beyond rehabilitation.

The combination of this lack of statutory guidance with the burden of proof placed on the child creates a high likelihood that a judge in a particular case might weigh the *Miller* factors incorrectly and impose an unconstitutional sentence. Given the absence of any statutory guidance on how age and its attendant characteristics should be assessed, placing the burden of proof on the juvenile defendant to proffer evidence of youthfulness and immaturity creates an unacceptable risk that a court may impose a sentence contrary to the precepts in *Miller*. Placing the burden of demonstrating irreparable corruption on the state, however, does not carry the same grave risk of error. If the state alleges the individual is among the rare juveniles for whom rehabilitation is impossible, it alone should carry the burden of demonstrating such. Furthermore, this unacceptable risk can lead to an increased infringement on the juvenile defendant's liberty and therefore the state must carry the burden of demonstrating the juvenile's permanent incorrigibility.

This risk is further heightened due to the racial discrimination that defendants of color face in Michigan and throughout the country. Overt and implicit racial discrimination has a profound impact on children in the justice system. For example, in one study, Black boys were found to be

"more likely to be seen as older and more responsible for their actions relative to [w]hite boys." Phillip Goff, *et al.*, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 539 (2014). The study concluded that Black boys are viewed as more culpable for their actions than their peers of other races. *Id.* at 540. This evidence of the impact of racial bias demonstrates the high risk that a sentencing judge may inaccurately assess maturity and culpability and confirms the importance of the presumption that age is a mitigating factor for all juvenile defendants.

CONCLUSION

For the foregoing reasons, *Amicus Curiae*, Juvenile Law Center respectfully requests that this Honorable Court reverse the appellate court's ruling upholding Mr. Masalmani's life without parole sentence and hold that 1) there exists a presumption against life without parole sentences for juveniles; and 2) the state has the burden to demonstrate an individual is among the rare, permanently incorrigible individuals before imposing a sentence of life without parole on him.

Respectfully Submitted,

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