NO. _____

In The
Supreme Court of the United States

MANUEL ERNESTO PAIZ GUEVARA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Circuit erroneously held – in conflict with the plain language of 18 U.S.C. § 3005 and in conflict with a 45-year split between the Fourth Circuit and the other circuits – that a trial court has the discretion to deny a defendant's request for two attorneys, when the defendant stands indicted for a capital crime but the government chooses not to seek the death penalty.

2. Whether the mandatory life without parole sentencing scheme under 18 U.S.C. § 1959, as applied to an adult teenage defendant such as Guevara, violates the adult teenager's Eighth Amendment rights under the U.S. Constitution in conflict with this Court's reasoning in Miller v. Alabama, 132 S. Ct. 2455 (2012), by barring the district court from considering his youth, life history, and other important mitigating

factors – such as evidence that, unlike his co-defendants, Guevara took no part in the planning of the murder, neither directed nor supervised any of his co-defendants' criminal conduct, was not a member of the gang, and participated in the stabbing after his co-defendants, and only after being threatened and forced by them to do so.

LIST OF PARTIES

The parties named in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Manuel Ernesto Paiz Guevara respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in *United States v. Manuel Ernesto Paiz Guevara*, No. 16-4821.

DECISIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is published and is reprinted here at Pet. App. A.

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction over this federal criminal case under 18 U.S.C. § 3231. The Court of Appeals for the Fourth Circuit had jurisdiction under 28 U.S.C. § 1291. That court issued its opinion and judgment on July 2, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3005

18 U.S.C. § 1959

The Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI.

The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

STATEMENT OF THE CASE

This case presents an issue in which circuit courts have not uniformly agreed, at least for the 45 years leading up to the Fourth Circuit's decision in Guevara's case. That is, whether under 18 U.S.C. § 3005, the court before which a defendant is to be tried *must* assign two trial counsel for the defendant at his request, when that defendant is indicted for a capital crime, even when the government is not seeking the death penalty. The majority of circuit courts that have considered the issue have rejected the notion that the statute requires two attorneys in cases in which the death penalty is not being sought.[1] But despite the holdings of her sister circuits, the Fourth Circuit, for the past 45 years, has made clear that a defendant indicted for capital crimes has a right to two attorneys under the statute, even in situations where the government is not seeking a death sentence.[2]

Guevara was charged with one count of capital murder (in aid of racketeering) under 18 U.S.C. § 1959(a). (Third Superseding Indictment, JA Vol. III at 1028).[3] The case was a complex one involving multiple defendants. (See JA Vol. III at 1016). In

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[1] See United States v. Cordova, 806 F.3d 1085 (D.C. Cir. 2015); United States v. Douglas, 525 F.3d 225, 237 (2d Cir. 2008); United States v. Waggoner, 339 F.3d 915, 917-18 (9th Cir. 2003); United States v. Casseus, 282 F.3d 253, 256 (3d Cir. 2002); United States v. Grimes, 142 F.3d 1342,1347 (11th Cir. 1998); United States v. Dufur, 648 F.2d 512, 514-15 (9th Cir. 1980); United States v. Shepherd, 576 F.2d 719, 727-29 (7th Cir. 1978); United States v. Weddell, 567 F.2d 767, 770-71 (8th Cir. 1977).

[2] United States v. Boone, 245 F.3d 352 (4th Cir. 2001) (holding that defendant entitled to assistance of two attorneys under 18 U.S.C. § 3005 because he was *indicted* under a statute that carries death penalty as a maximum sentence, and statute's mandate is clearly triggered by *indictment* for a capital crime and not upon later decision by government to seek or not to seek death penalty). Boone, 245 F.3d 352, at 358, 361 (emphasis added); United States v. Watson, 496 F.2d 1125 (4th Cir. 1973) (holding that defendant still entitled to two attorneys under 18 U.S.C. § 3005, despite fact that death penalty was rendered unconstitutional under Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972)).

[3] JA is the Joint Appendix filed by the parties in the Fourth Circuit Court of Appeals.

the words of the trial judge at the conclusion of the eight-week trial – in a trial court that has no shortage of extremely complex and historic cases – "this is a very complex case, probably an epic and historic case for this Court." (JA at 6756). And in this "very complex . . . epic and historic case," Guevara was the only of the six defendants at trial without two attorneys, the only defendant at trial with an attorney who had never tried a federal case, and the only defendant at trial whose lead and primary counsel withdrew about a month before the trial commenced.

Because the case was one in which the death penalty could be sought by the government, the district court was required to appoint, and did appoint, two lawyers for Guevara under 18 U.S.C. § 3005. David Baugh was appointed as lead, Learned Counsel, and William Michael Chick, Jr. was appointed as second-chair counsel. Id. Mr. Chick was first contacted about possible appointment by then Federal Public Defender Michael S. Nachmanoff. JA Vol. IV at 1543-46. During that conversation, Mr. Chick indicated that he lacks experience in federal court and that he had reservations about being appointed as lead counsel on a case such as this. Id. Mr. Chick was assured that his appointment by the Court would be second-chair alongside a highly experienced federal trial lawyer, and that that person would likely be David Baugh. Id. Mr. Chick indicated that under those circumstances he felt comfortable accepting a second-chair appointment. Id.

With less than two months before trial, Learned Counsel for Guevara, Mr. Baugh, was diagnosed with an illness that prevented him from being able to try the case beginning on the March 21, 2016 trial date. (See Motion to Sever and Continue,

JA Vol. IV at 1413-18; Motion for Continuance, JA Vol. IV at 1425-28; Under Seal Hearing, JA Vol. XIX at 7286-99 and 7304a-f). Learned Counsel informed the trial court that he had selected a treatment option and that the doctors were highly confident that the illness and related treatment/recovery *would* allow him to participate in trial within four months (or more) of the date of Guevara's January 29, 2016 filed Motion to Sever and Continue (See, JA Vol. IV at 1413), and asked for a continuance. (Id; see also Memorandum In Support of Motion for Continuance and Severance, JA Vol. XIX at 7304a-f). The District Court was informed that both Guevara and non-learned counsel (Mr. Chick), wished for Learned Counsel (Mr. Baugh) to remain on the case. (Id; see also David Baugh Motion to Withdraw, JA IV at 1537-1541).

The Court instructed Mr. Chick to inquire about other possible Learned Counsel to replace Mr. Baugh in the case for the impending March 21, 2016 trial, and to update the Court on his efforts. JA Vol. XIX at 7286-99. Mr. Chick consulted with a number of experienced federal attorneys and informed the Court of several of those attorneys by name. (See Motion to Sever and Continue, JA Vol. IV at 1413-18). Every attorney Mr. Chick consulted indicated that the only way they could accept such an appointment is if the case were continued, and that in their professional opinions, it would be ethically and constitutionally ineffective assistance of counsel to accept such a case so close to the trial date. Id. Most of the attorneys had scheduling conflicts as well. Id.

Mr. Chick also consulted with the local Federal Public Defender's Office for assistance on the issue of new counsel, because 18 U.S.C. § 3005 mandates that "the court shall consider the recommendation of the Federal Public Defender organization" for appointments such as this.[4] (See Motion to Sever and Continue, JA Vol. IV at 1413-18). After noting its previous involvement in the staffing process for appointment of counsel in this case and the difficulties that existed during that process, the FPD began its own search and has was unable to find qualified, conflict-free counsel that could be ready to effectively represent Guevara at trial with such a short window to trial (most of whom also indicated that they had scheduling conflicts). Id.

Mr. Chick informed the court that he had never sat first or second chair in any federal trial, and Learned Counsel echoed the ethical concerns the consulted attorneys had voiced about going to trial in this complex case with new counsel in such a short time frame, regardless of new counsel's qualifications or experience level. (Under Seal Hearing, JA Vol. XIX at 7305-7332). Mr. Chick also reminded the court that his own decision to accept the appointment as second-chair counsel happened only after he was assured that there would be an experienced federal trial lawyer serving as first-chair in the matter. JA Vol. IV at 1543-46, Objection to Learned Counsel's Withdrawal.

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[4] While Mr. Chick consulted with the FPD seeking recommendations for appointment, it does *not* appear from the record that the District Court – upon deciding to allow Mr. Baugh to withdraw from the case – ever actually complied with its statutory obligation to consult the FPD regarding a recommendation of appointment of new counsel under the statute.

Because of these circumstances, which were beyond Guevara's control, he sought severance and a brief continuance of his trial, to ensure that his statutory and constitutional rights to counsel were protected. (Id; see also Memorandum In Support of Continuance and Severance, JA Vol. XIX at 7304a-f; Under Seal Hearing, JA Vol. XIX at 7305-7332). Those requests were repeatedly rejected by the district court, and ultimately – over Guevara's objection – the district court issued an order withdrawing learned counsel from the case about one month before trial was set to begin. (Order Permitting Withdrawal, JA Vol. IV at 1547; Objection to Learned Counsel's Withdrawal, JA Vol. IV at 1543-46). The Court did not appoint a second lawyer to replace learned counsel.

After objecting to learned counsel's withdrawal, Guevara was forced to go to trial with only Mr. Chick as his counsel. There was substantial evidence presented at trial by the government that – unlike the other defendants – Guevara was not a member of the gang, took no part in the planning of the murder, neither directed nor supervised any of his co-defendants' criminal conduct and participated in the stabbing after his co-defendants, and only after being threatened and forced by them to do so. He was sentenced to life in prison without the possibility of parole. The district court ruled and the Fourth Circuit affirmed that because of the mandatory nature of the sentencing scheme of 18 U.S.C. § 1959 the court was barred from considering things such as Guevara's reduced role in the crime compared to that of his co-defendants, his youth, his life history, and other important mitigating factors.

ARGUMENT

I. The Fourth Circuit Erred In Upholding The District Court's Denial Of Guevara's Right To Learned Counsel and To Two Trial Attorneys Under The Statute, And Further Erred In Holding That The District Court Has Discretion To Decide Whether To Comply With The Mandates Of The Statute.

United States Code 18 U.S.C. § 3005 is an important criminal statute. We call upon this Court to issue a writ of certiorari in order to make clear, across-the-board, how the statute is to be applied in cases such as Guevara's, where a defendant is indicted for a capital crime but the government is not seeking a death sentence.

Learned counsel's unforeseen ailment and his withdrawal one month before this trial, left Guevara in a complex eight-week federal jury trial with a lawyer who had never tried a federal case before and who, up to that point, was playing a secondary role, while the five co-defendants all had two experienced federal practitioners. Under the circumstances of this case, the district court should have granted Guevara's request for a severance and a brief continuance so that Mr. Baugh could have remained on the case as Learned Counsel. Alternatively, the court should have assigned a second counsel for the trial after the continuance was denied.

A. The Fourth Circuit Incorrectly Applied An Abuse Of Discretion Standard, Rather Than Analyzing The Court's Statutory Obligation To Appoint A Second Lawyer

United States Code 18 U.S.C. § 3005 states that:

> Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel under this section, the court shall consider the recommendation of the Federal

> Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.

While most circuits have interpreted the statute unfavorably to Guevara, the Fourth Circuit's 45-year plain-language interpretation is the one that we believe this court should adopt.[5] Fifteen years prior to Guevara's trial, the Fourth Circuit in United States v. Boone, 245 F.3d 352 (4th Cir. 2001) was presented with the exact issue that Guevara raises here. As presented in Boone, the issue was "whether Boone was entitled to the assistance of two attorneys under 18 U.S.C. § 3005 because he was indicted under a statute that carries the death penalty as a maximum sentence, even though the government did not seek the death penalty." Boone, 245 F.3d at 358. The Fourth Circuit held that:

> [b]ecause we are of opinion that 18 U.S.C. § 3005 provides an absolute statutory right to two attorneys in cases where the death penalty may be imposed, we vacate Boone's conviction and remand to the district court for retrial.

Id.

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[5] The Fourth Circuit further makes its position on the statute clear, in its order of October 1, 2002, entitled Plan for Providing Representation for Eligible Persons Under the Criminal Justice Act of 1964, as amended, specifically Section F, paragraph 3, mandated that in capital cases – including in cases in which the Attorney-General has chosen not certify for seeking a death sentence, but as to which the death penalty remains a penalty permitted by a statute of which is charged in an indictment – appointment of two counsel is governed and required by 18 U.S.C. § 3005 and by 21 U.S.C. §§ 848(Q)(4)-(10).

In upholding the district court's decision to deny Guevara's motion to sever and continue, the Fourth Circuit now frames the issue as one of a trial court's reasonable discretion on issues of continuances and withdrawal of counsel. In so framing the issue, the Fourth Circuit further reasons that 18 U.S.C. § 3005 is silent on the issue of learned counsel's need to withdraw at the eleventh hour. (4th Cir. Opinion at 20-23). The Fourth Circuit is wrong. The statute is not silent on this issue. Nor is it ambiguous. It quite clearly mandates that upon request, a defendant indicted for a capital crime be given two lawyers, and that it is the court's – as opposed to counsel's – responsibility to consult with the local Federal Defender or the Administrative Office of the Courts in doing so. This is not an issue of a trial court's broad discretion on matters of continuances, but instead an issue of statutory interpretation and the court's obligation to follow the mandates of the statute.

B. The Plain Language Of The Statute Makes Clear That The Court Must Assign Two Lawyers Because Guevara Was Indicted For A Capital Crime

A plain language reading of the statute makes clear that two lawyers are required in a case such as Guevara's. The two-lawyer obligation under the statute is triggered, *not* by whether the death penalty is actually being sought, but instead by a defendant's indictment for a capital crime. Guevara was indicted for a capital crime. There is no ambiguity here. Importantly, the statute could have, but does not, make a reference to the death penalty. The congress could have, but did not, legislate that the two-lawyer obligation is triggered only upon the Attorney General's notice of its decision to actually seek a death sentence in a capital case. Or as the Fourth Circuit

articulated it in Boone, "[w]e also acknowledge that our interpretation of § 3005 disagrees with the interpretation espoused by several of our sister circuits. . . [u]ntil**,** however, Congress rewrites § 3005 mandating that it apply only in cases where the death penalty is actually sought by the government, we will not ignore the plain language of the section with its statutory trigger that § 3005 applies upon indictment for a capital crime." Id. at 361.

The power to change the statutory terms as to what triggers and what does not trigger, the requirement for the assignment of two-attorneys, lies with the congress and not with the courts. In the four years between this Court's decision in Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972) (striking down all then-current death penalty schemes in the country) and this Court's decision in Gregg v. Georgia, 428 U.S. 153 (1976), the Congress did not rewrite the statute. A rewrite of the statute was not needed, because of its already plain language. Nor did the congress rewrite the statute after the Fourth Circuit's ruling in United States v. Watson, 496 F.2d 1125 (4th Cir. 1973) (holding that defendant still entitled to two attorneys under 18 U.S.C. § 3005, despite fact that death penalty was not being sought due to Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972)). Finally, the congress did not rewrite the statute after the Fourth Circuit's 2001 decision in Boone.

And even if this Court were to agree with the Fourth Circuit's opinion in this case – that the statute is ambiguous on the two-lawyer issue for those indicted for capital crimes where the government is not seeking a death sentence – the well-

established rule of lenity which calls upon an interpretation of ambiguities that falls in favor of a criminal defendant like Guevara. See, e.g., United States v. Bass, 404 U.S. 336, 348 (1971) (discussing rule of lenity in favor of criminal defendants). Indeed, "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." Rewis v. United States, 401 U.S. 808, 812 (1971). See also Ladner v. United States, 358 U.S. 169, 177 (1958); Bell v. United States, 349 U.S. 81 (1955); United States v. Five Gambling Devices, 346 U.S. 441 (1953). This Court's long history of jurisprudence protecting those in Guevara's position when interpreting criminal statutes, makes clear that "when choice has to be made between two readings . . . it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." United States v. Universal C. I. T. Credit Corp., 344 U.S. 218, 221 -222 (1952).

When applying 18 U.S.C. § 3005 to Guevara in this case through the lens of that rule, it must be noted that there are certain notable distinctions between this case and Boone. Guevara's trial unlike Boone's was a highly complex, historic eight-week trial, involving multiple defendants.[6] Unlike in Boone, Guevara's trial counsel played only a secondary role in the case until about a month before the complex trial started. Guevara was the only defendant at trial *without* two counsel. Guevara's trial counsel, unlike the others, had no federal trial experience. The record shows that the Guevara's predicament was far beyond his control and not fueled by dilatory motives.

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[6] Boone was the only defendant in his trial, and he was represented over his objection by a sole, but federally experienced, Assistant Federal Public Defender, William Fletcher Nettles. Guevara on the other hand, was represented at trial by Mr. Chick – who had no federal trial experience and who, until about a month before trial, played a secondary role in the case.

Unlike Boone, Guevara objected on both statutory grounds and under his constitutional right to effective assistance of counsel and a fair trial. Any ambiguities in the statute should be interpreted in favor of Guevara.

C. It Was Not Trial Counsel's Obligation, But Rather The Court's, To Either Find A Suitable Replacement Lawyer For Mr. Baugh, Or To Continue The Matter So That Mr. Baugh Could Remain On The Case

First the district court, and now the Fourth Circuit, attempt to place the burden of obtaining qualified replacement counsel upon Mr. Chick. The Fourth Circuit reasons that "neither Guevara nor Chick actually invoked § 3005." This is incorrect. The record shows that Mr. Chick made it abundantly clear to the Court more than once that "[Guevara] wishes to proceed to trial under his statutory right to two lawyers: a Learned Counsel and an associate counsel." JA Vol. IV at 1543-46. Guevara also told the judge himself in a colloquy before the trial.

The Fourth Circuit also greatly minimizes Mr. Chick's efforts to find replacement counsel to accept an appointment on this complex case at the eleventh hour. But the record makes clear that despite it being the court's responsibility under 18 U.S.C. § 3005, Mr. Chick nonetheless, at the court's direction, did in fact track down and consult with a number of candidates to serve as additional counsel. In fact, he even sought the assistance of the Federal Defender's office in his efforts to recruit someone. Importantly and contrastingly, the record is deafeningly silent concerning the district court's own actual efforts to find a replacement; rather it simply attempted to thrust its statutory responsibility of doing so onto Mr. Chick, who was

unsuccessful in finding a replacement that could ethically accept the case without a continuance.

Eighteen U.S.C. § 3005 makes clear that it is the Court's responsibility to assign counsel, not current counsel's. Indeed, after the district court's February 19, 2016 order granting the withdrawal of learned counsel – just *one month* before the trial of this "very complex . . . epic and historic case"[7] – the district court shifted the hampering burden to Guevara's inexperienced federal trial counsel to make the Hobson's choice between continuing to unsuccessfully expend his time and energy on further efforts to seek additional counsel, or to instead focus on preparing to handle, as best as possible, the unexpected and overwhelming burden of navigating the dangerous waters of this complex trial alone.

The Fourth Circuit Court of Appeals committed an error of law when it upheld the district court's denial of Guevara's right to a second attorney that ignored the plain-language obligations set forth under the statute, and its forcing the matter to trial with a single attorney, who had no federal trial experience, and who had only played a secondary role in the matter up to that point.

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7 JA at 6756.

II. The mandatory life without parole sentencing scheme under 18 U.S.C. § 1959, as applied to an adult teenage defendant such as Guevara, violates the adult teenager's Eighth Amendment rights under the U.S. Constitution

This Court should further grant a writ of certiorari because courts across the country are grappling with the issue of whether the application of Miller's reasoning extends to adult teenagers like Guevara.[8] See, e.g., People v. House, No. 1-11-0580, 2015 WL 9428803 (Ill. App. Ct. Dec. 24, 2015) (Illinois appellate court vacated mandatory LWOP sentence imposed on 19 year-old adult offender and remanded for resentencing under Miller Eighth Amendment analysis and proportionate penalties clause of the Illinois Constitution); Sharp v. State, 16 N.E.3d 470 (Ind. App. Ct. 2014) (Indiana appellate court applied Graham and Miller in reducing 55-year murder sentence imposed on 18-year-old adult offender); State v. O'Dell, 358 P. 3d 359 (Wash. 2015) (Washington Supreme Court, citing Roper, Graham, and Miller held that youth may be considered as mitigating factor at sentencing for adult offenders, and that "youthfulness may justify imposing an exceptional sentence below the standard range applicable to an adult felony defendant."); United States v. Walters, No. 16-CR-198, 2017 WL 2362644 (E.D. Wis. May 30, 2017) (Wisconsin federal district court sentenced 19-year-old adult defendant to time served (roughly 30 days), rather than guideline range of 15-21 months, based on Miller and fact that "courts and researchers have recognized that given their immaturity and undeveloped sense of responsibility, teens are prone to doing foolish and impetuous things.").

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[8] Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012) (banning the practice of sentencing juveniles to life without parole sentences).

Guevara was still a teenager (age 19) at the time of the offense for which he has been convicted. J.A. Vol. XVIII at 7127-7135). The trial record is clear that unlike the others convicted of the murder of Gerson Aguilar Martinez, he was a recruit of the MS-13 gang as opposed to a full-fledged member. See, e.g., Test. of Araeli Santiago Villanueva, J.A. Vol. XIII at 4806-4809. He took no part in the planning of the murder, and he neither directed nor supervised any of his co-defendants' criminal conduct. J.A. Vol. XVIII at 7127-7135; see also, Test. of Jose Garcia, J.A. Vol. XI at 4251-53). The trial court was not allowed under 18 U.S.C. § 1959 to consider Guevara's youth, his life history or any of the other above factors in determining Guevara's sentence. Nor was the trial court allowed to consider as mitigating the evidence that Guevara, unlike the other co-defendants, participated in the stabbing after his co-defendants, and only after being threatened and forced by them to do so.

A mandatory minimum punishment of life in prison without parole (hereinafter, "LWOP") for Guevara under these circumstances violates Guevara's rights under the Eighth Amendment of the U.S. Constitution.[9] To determine whether punishment is cruel and unusual under the Eighth Amendment, courts look to "the evolving standards of decency that mark the progress of a maturing society." Estelle v. Gamble, 429 U.S. 97, 102 (1976).

Science has confirmed, and the courts recognize, that there are undeniable biological differences between the young and old. And this Court has recognized

[9] The Eighth Amendment holds that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

that – like the death penalty – the sentence of mandatory LWOP is different from other sentencing options, and thus subject to constitutional limitations. Specifically, the Court has, in a series of decisions over recent years, consistently reaffirmed that "…children are constitutionally different from adults for the purposes of sentencing." Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012).

In 2005, the Court held in Roper v. Simmons, 543 U.S. 551, that it was a violation of the Eighth Amendment to the United States Constitution to sentence juvenile offenders to death. Soon after, in Graham v. Florida, 560 U.S. 48 (2010), the Court held that the Eighth Amendment prohibited sentencing juveniles to mandatory LWOP for non-homicide offenses. And in 2012, the Court in Miller v. Alabama, 132 S. Ct. 2455, banned the practice of sentencing juveniles to LWOP for any offense. And while Miller specifically grappled with imposing LWOP for a juvenile (i.e. someone under 18yrs of age), its reasoning should logically be extended to apply to 19 year old Guevara in this case.[10]

The mitigating factor of youth has held a special; place in this Court's recent jurisprudence. "Youth is more than a chronological fact." Miller, 132 S. Ct. 2467 (internal quotation omitted). A young man's brain is still developing: the "parts of the brain involved in behavior control continue to mature through late adolescence." Graham, 560 U.S. at 68. This lack of development exhibits itself in "transient

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[10] Just as reasoned in Miller, here "[a] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalties." (Miller at 2474), and the district court was prevented from considering the following things in sentencing Guevara: (1) his chronological age, (2) his family and home environment, (3) the circumstances of the homicide event, including the extent of the defendant's participation, and (4) the incompetence of youth. Miller at 2467.

rashness, proclivity for risk, and inability to assess consequences…" Miller, 132 S. Ct. at 2465. As a result of their burgeoning development, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment." Roper, 543 U.S. at 569 (internal citations omitted). Therefore, because juveniles are not finished developing, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." Id. at 570 (internal citations omitted).

Even trained medical professionals in non-legal contexts must handle juvenile patients differently:

> 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. See Steinberg & Scott 1014-1016. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, and which is characterized by callousness, cynicism, and contempt for the feelings, rights, and suffering of others. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 701-706 (4th ed. text rev. 2000); see also Steinberg & Scott 1015.

Roper, 543 U.S. at 573.

Importantly, "none of what is said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime specific," for every juvenile inside or outside the criminal justice system goes through the same general biological processes. Miller, 132 S. Ct. at 2465. And "[t]he qualities that

distinguish juveniles from adults do not disappear when an individual turns 18." Roper, 543 U.S. at 574. "For example, parts of the brain involved in behavior control continue to mature through late adolescence." Graham, 560 U.S. at 68. (adolescence typically lasts until age 19 or later, according to the World Health Organization).

According to an *amicus* brief from the American Psychological Association cited in the Miller case, 132 S. Ct. at 2465, studies have consistently confirmed that gains in impulse control continue into young adulthood, and "skills required for future planning continue to develop until the early 20s." Brief for Amer. Psych. Assoc., et al. as Amici Curiae Supporting Petitioner, Miller v. Alabama, 132 S. Ct. 2455 (2012), p. 9-13. "[E]xpecting the experience-based ability to resist impulses…to be fully formed prior to age eighteen or nineteen would seem on present evidence to be wishful thinking." Id. (internal quotation omitted).

The mandatory sentence here is not unlike the mandatory sentencing schemes in Graham and Miller, both of which were invalidated by this Court. Those cases recognized the dangers in mandatory sentences, such as the one Guevara faces here:

> Such mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other – the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile […] will receive the same sentence as the vast majority of adults committing similar homicide offenses – but really, as Graham noted, a *greater* sentence than those adults will serve.

Miller, 132 S. Ct. at 2467-68.

This Court should issue a writ of certiorari and answer the question of whether its holdings in Miller and Graham should extend to an adult teenager in Guevara's position, and whether Guevara's sentencing court should have been allowed to consider his youth and other factors.

CONCLUSION

For the forgoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully Submitted,

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