Nos. 20-830, 20-831

In The
Supreme Court of the United States

THE STATE OF WASHINGTON,
Petitioner,

vs.

SAID OMER ALI,
Respondent,

THE STATE OF WASHINGTON,
Petitioner,

vs.

ENDY DOMINGO-CORNELIO,
Respondent.

On Petitions for Writs of Certiorari to the Washington State Supreme Court

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF THE PETITIONS FOR WRITS OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether *Graham* v. *Florida* and *Miller* v. *Alabama* require an individual proportionality determination before imposing any sentence on a juvenile offender convicted in adult court.

2. Whether *Miller* strips state legislatures of all authority to set minimum sentences for any under-18 defendant for any crime.

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MOTION OF *AMICUS CURIAE* FOR LEAVE TO FILE BRIEF IN SUPPORT OF THE PETITIONS FOR WRITS OF CERTIORARI

Pursuant to Supreme Court Rule 37.2(b), the Criminal Justice Legal Foundation (CJLF)[1] respectfully moves for leave to file the accompanying brief *amicus curiae* in support of the petitions in these cases. Counsel for both petitioners have consented. Counsel of record

1. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae*'s intention to file this brief.

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 other than *amicus curiae* CJLF made a monetary contribution to its preparation or submission.

for respondent Said Omer Ali has withheld consent, and counsel of record for respondent Endy Domingo-Cornelio has not responded to our request for consent.

INTEREST OF *AMICUS CURIAE*

CJLF is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

In this case, the needless expansion of Eighth Amendment precedents to overturn sentences of less than life imprisonment for vicious, violent crimes is contrary to the interests CJLF was formed to protect.

For the foregoing reasons, *amicus* requests leave to file its brief.

January, 2021

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF THE PETITIONS FOR WRITS OF CERTIORARI

SUMMARY OF FACTS AND CASE

Ali.

In 2008, 16-year-old Said Omer Ali was found guilty of five counts of robbery in the first degree, two counts of attempted robbery in the first degree, and one count of assault in the first degree stemming from his participation in a series of attacks and robberies. *In re Pers. Restraint of Ali*, 196 Wash. 2d 220, 226, 474 P. 3d 507, 511 (2020). Two of the robbery counts and the assault count carried a deadly weapon enhancement. *Ibid*. Ali

was tried as an adult and convicted by a jury on all charges. *Ibid.*

The standard adult sentence range was between 20 to 26.5 years plus 2 years for each of the three weapons enhancements. *Id.*, at 227, 474 P. 3d, at 511. With the weapons enhancements added to be run consecutively to the base term, the standard sentencing range was between 26 to 32.5 years. *Ibid.*; Wash. Rev. Code § 9.94A.533(4)(e).

The state recommended the highest possible sentence of 32.5 years, while Ali's attorney requested an exceptional sentence of 10 years. At sentencing, Ali presented mitigating testimony regarding his youth and difficult family background. *Ali*, 196 Wash. 2d, at 227-228, 474 P. 3d, at 511. The court imposed a sentence of 26 years, which encompassed the lowest possible base sentence permissible (20 years) plus the mandatory enhancements (6 years) added. *Id.*, at 228-229, 474 P. 3d, at 512. Ali's judgment and sentence became final in 2011 after an unsuccessful appeal. *Id.*, at 229, 474 P. 3d, at 512.

Domingo-Cornelio.

In 2014, Endy Domingo-Cornelio was convicted by a jury of one count of first-degree rape of a child and three counts of child molestation. *In re Pers. Restraint of Domingo-Cornelio*, 196 Wash. 2d 255, 259-260, 474 P. 3d 524, 526-527 (2020). He was charged as an adult for the crimes that took place over a two-year period when he was between the ages of 15 to 17 years old. *Ibid.*

Under Washington law, the standard adult sentence range he could receive was between 20 and 26.5 years. At sentencing, the state recommended the highest possible sentence of 26.5 years followed by 3 years of

community custody. *Id.*, at 260, 474 P. 3d, at 527. Domingo-Cornelio's attorney requested the lowest possible sentence of 20 years. His attorney did not request that the court impose an exceptional downward sentence. *Ibid.* The court imposed the lowest possible sentence of 20 years with 3 years of community custody supervision upon his release. *Id.*, at 261, 474 P. 3d, at 527. Domingo-Cornelio's judgment and sentence became final in 2016 after an unsuccessful appeal. *Id.*, at 262, 474 P. 3d, at 527.

After both Ali and Domingo-Cornelio's convictions became final, the Washington Supreme Court decided *State* v. *Houston-Sconiers*, 188 Wash. 2d 1, 391 P. 3d 409 (2017). In *Houston-Sconiers*, two juvenile defendants were tried as adults and convicted of multiple crimes, which included first-degree robbery, plus firearm enhancements. *Id.*, at 12, 391 P. 3d, at 415. Both defendants faced long adult standard range sentences as calculated under Washington's Sentencing Reform Act of 1981 ("SRA"). *Id.*, at 8, 391 P. 3d, at 414. They also faced multiple mandatory firearm sentence enhancements that were to be run consecutive to each other without the possibility of early release. *Ibid*.

The Washington Supreme Court overturned their sentences on appeal on the basis that this Court's opinions in *Roper* v. *Simmons*, 543 U. S. 551 (2005), *Graham* v. *Florida*, 560 U. S. 48 (2010), and *Miller* v. *Alabama*, 567 U. S. 460 (2012), require it to recognize that "children" are to be treated differently from adults for sentencing purposes. *Houston-Sconiers*, 188 Wash. 2d, at 18-22, 391 P. 3d, at 418-420. The Washington Supreme Court held that "sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant...." *Id.*, at 21, 391 P. 3d, at 420. The court further held that compliance with the Eighth Amend-

ment *requires* trial courts to "consider mitigating qualities of youth at sentencing and [trial courts] must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements." *Ibid*.

In 2017, both Ali and Domingo-Cornelio sought collateral review of their sentences by filing personal restraint petitions ("PRP") in the Washington Court of Appeals pursuant to Washington Rules of Appellate Procedure 16.4. Both argued that *Houston-Sconiers* constituted a significant change in substantive law relating to juvenile sentencing and that they were entitled to retroactive relief. Pet. for Cert. 11-12 ("Ali Petition"); Pet. for Cert. 10-11 ("Domingo-Cornelio Petition").

Ali's judgment and sentence became final more than a year earlier, so Ali had to satisfy a statutory exception to the time bar rule. The Washington Supreme Court found that he satisfied the exception and held his PRP to be timely. *Ali*, 196 Wash. 2d, at 242, 474 P. 3d, at 518.

In *Ali*, the Washington Court of Appeals transferred his PRP to the Washington Supreme Court as a successive petition raising new grounds for relief. *Ali*, 196 Wash. 2d, at 229, 474 P. 3d, at 512. The Washington Supreme Court then considered Ali's PRP on the merits. *Ibid.* In *Domingo-Cornelio*, the Washington Court of Appeals denied relief after concluding that *Houston-Sconiers* did not "constitute a significant change in the law" that would entitle him to relief. App. to Domingo-Cornelio Petition 61a-62a. The Washington Supreme Court granted review and considered it along with Ali's petition. *Ali*, 196 Wash. 2d, at 229, 474 P. 3d, at 512.

The Washington Supreme Court held that *Houston-Sconiers* was retroactive on collateral review. *Ibid*. The State seeks review of the merits in both cases, bypassing the retroactivity question. See *Collins* v. *Youngblood*, 497 U. S. 37, 40-41 (1990).

SUMMARY OF ARGUMENT

The general rule as established by the precedents of this Court for evaluating Eighth Amendment challenges to a term-of-years sentence is one of "narrow proportionality." *Graham* and *Miller* carved out two limited categorical exceptions to this general rule as applied to juveniles facing a sentence of life without the possibility of parole. The Washington Supreme Court impermissibly expanded *Graham* and *Miller*'s limited exceptions to encompass any sentence imposed upon a juvenile in adult court. Because *Graham* and *Miller* are limited to life-without-parole sentences, any lesser term-of-years sentence that is not adjudged to be "grossly disproportionate" is constitutionally sound and is purely a matter of legislative prerogative.

The people of Washington have a compelling interest in protecting crime victims and decided that they wanted tougher sentencing laws for those convicted of armed crimes and sex offenses. The Washington Supreme Court's invocation of the Eighth Amendment to completely strip their state legislature of the authority to set a minimum sentence for any crime committed by a juvenile is erroneous and must not be left unchecked by this Court.

ARGUMENT

I. The Washington Supreme Court's expansion of both *Graham* and *Miller* so as to encompass all sentences imposed on juveniles prosecuted in adult court goes too far.

The Washington Supreme Court's unprecedented constitutional mandate that compels trial courts to make an individualized proportionality determination before imposing *any* sentence on a juvenile that the court deems fit erroneously expands upon this Court's Eighth Amendment "narrow proportionality" jurisprudence. To hold that the Eighth Amendment requires that "sentencing courts must have absolute discretion to depart as far as they want below otherwise applicable SRA ranges ...," *Houston-Sconiers*, 188 Wash. 2d, at 9, 391 P. 3d, at 414, grossly overstates this Court's holdings as to what the Eighth Amendment actually requires. In effect, the court held that the Eighth Amendment completely strips the Washington Legislature of all authority to set mandatory minimums for *any* under-18 defendant for *any* crime. Certiorari should be granted so that this Court can apply the breaks to the runaway train upon which the Eighth Amendment's Cruel and Unusual Punishments Clause sits.

A. Narrow Proportionality Principle.

When a term-of-years sentence in a non-capital case is being challenged on Eighth Amendment grounds, the general rule as established by this Court simply requires that there be "narrow proportionality" between the sentence imposed and the crime committed. *Harmelin* v. *Michigan*, 501 U. S. 957, 997 (1991) (Kennedy, J., concurring in part and concurring in judgment); *Ewing* v. *California*, 538 U. S. 11, 20 (2003). This deferential standard is designed to provide state legislatures with

great leeway to not only define crimes but also how to best punish their criminal offenders. See *Harmelin*, *supra*, at 998, 1001.

The notion that any reduced culpability sweeps away the considerations of federalism and the separation of powers was refuted just last term in *Kahler* v. *Kansas*, 589 U. S. __, 140 S. Ct. 1021, 1037, 206 L. Ed. 2d 312, 332-333 (2020). "Across both time and place, doctors and scientists have held many competing ideas about mental illness.... Formulating an insanity defense also involves choosing among theories of moral and legal culpability, themselves the subject of recurrent controversy." *Id*., 140 S. Ct., at 1037, 206 L. Ed. 2d, at 332. Consequently, it is for legislatures, not courts, to deal with changing and competing theories, both scientific and philosophical. " '[F]ormulating a constitutional rule would reduce, if not eliminate, [the States'] fruitful experimentation, and freeze the developing productive dialogue between law and psychiatry into a rigid constitutional mold.' " *Ibid*. (quoting *Powell* v. *Texas*, 392 U. S. 514, 536-537 (1968)).

What *Kahler* said of mental illness is equally true of youth.

B. Juveniles in Adult Court.

Every state has a prescribed mechanism by which some juvenile offenders are prosecuted as adults. In Washington, the juvenile court system is a creature of statute, and juveniles possess no constitutional right to be tried in juvenile court. *State* v. *Watkins*, 191 Wash. 2d 530, 538, 423 P. 3d 830, 834 (2018). Similar to all 50 states, the Washington State Legislature made a policy determination that some individuals under age 18 who commit very serious and/or violent crimes would not benefit from the treatment programs and services that are central to the juvenile court system.

See Wash. Rev. Code § 13.04.030(1)(e)(v)(A)-(C) (automatic decline statute).

Ali's multiple counts of robbery with deadly weapon enhancements and Domingo-Cornelio's child rape charges are examples of offenses committed by juveniles that the Washington Legislature has decided are deserving of adult court jurisdiction, which includes adult court sentencing.

The Washington Legislature is no doubt cognizant of the constitutionality of certain juvenile sentencing practices as dictated by this Court. Law draws the "bright line" of adulthood at age 18 not because the "qualities that distinguish juveniles from adults" disappear on an individual's 18th birthday, but only because "a line must be drawn" that can be broadly applied. *Roper* v. *Simmons*, 543 U. S. 551, 574 (2005).[1] For individuals under age 18, this Court's precedents differentiate between homicide offenses and nonhomicide offenses and the Eighth Amendment analysis for evaluating the sentences imposed on juveniles for those differing offenses are distinct.

It is well established that a juvenile homicide offender cannot be sentenced to death. *Roper*, 543 U. S., at 574. However, as these cases demonstrate, imposing any sentence on a juvenile offender other than death has been a controversial and confusing subject. After *Roper*, this Court decided a series of cases involving the

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1. Although it is no doubt true that the "hallmark features" of youth include immaturity, irresponsibility, vulnerability to peer pressure, impulsivity, and less understanding of the consequences of their actions, see *Miller*, 567 U. S., at 477, to broadly conclude that all individuals under age 18 as a whole "cannot with reliability be classified among the worst offenders" or that "their irresponsible conduct is not as morally reprehensible as that of an adult" is ludicrous. *Roper*, 543 U. S., at 598-600 (O'Connor, J., dissenting).

constitutionality of juvenile sentencing practices other than death. These cases carved out two overarching exceptions to *Harmelin*'s narrow proportionality principle in regard to sentencing juveniles. First, if a juvenile commits homicide, then life without parole ("LWOP") is a constitutionally permissible sentence so long as it is not automatically imposed. *Miller* v. *Alabama*, 567 U. S. 460, 474, n. 6 (2012). Second, if a juvenile does not commit homicide, then LWOP is not a constitutionally permissible sentence. *Graham* v. *Florida*, 560 U. S. 48, 82 (2010).

Miller and *Graham* share a commonality that the present cases do not—the sentence of LWOP. Because only LWOP is prohibited, which has been described by this Court as "the second most severe [penalty] known to the law," any lesser term-of-years sentence that is not adjudged to be "grossly disproportionate" is constitutionally permissible and is within the province of a state legislature to determine. See *Harmelin*, 501 U. S., at 996; *id*., at 1001 (Kennedy, J., concurring in part and concurring in judgment); see also *Graham*, 560 U. S., at 75 (the Eighth Amendment does not require States to release a juvenile "during his natural life").

The Washington Supreme Court's interpretation of the Eighth Amendment in these cases is erroneous in three respects. First, it erred by expanding *Graham*'s categorical exclusion of LWOP in nonhomicide cases to also encompass all standard range adult sentences and enhancements. *Ali*, 196 Wash. 2d, at 232, 474 P. 3d, at 513.[2] Second, the Washington Supreme Court

2. "Following *Miller*, *Graham*, and *Roper*, *Houston-Sconiers* identified a *category* of sentences that are beyond courts' authority to impose: *adult standard SRA ranges and enhancements that would be disproportionate punishment for juveniles with diminished culpability*." *Ibid.* (emphasis in original).

impermissibly imported *Miller*'s individualized sentencing requirement into the nonhomicide context. See *Houston-Sconiers*, 188 Wash. 2d, at 23, 391 P. 3d, at 421. *Miller*'s individualized sentencing requirement applies strictly to juveniles who commit homicide and are facing a sentence of LWOP. *Miller*, 567 U. S., at 489. Third, the court completely stripped the legislature of *any* authority to set a minimum sentence for any crime committed by any perpetrator under 18, even by a day.

Because this Court's Eighth Amendment jurisprudence regarding the sentencing of juveniles differentiates between nonhomicide offenses (*Graham)* and homicide offenses (*Miller*), both lines of precedent must be discussed.

C. Nonhomicide vs. Homicide.

After *Roper* barred the imposition of the death penalty for all juveniles under age 18, this Court was asked in *Graham* to decide if sentencing a juvenile to LWOP for a nonhomicide crime violates the Eighth Amendment. 560 U. S., at 52-53. Terrance Graham was a month short of his 18th birthday when he committed a robbery for which he received a life sentence. *Id.*, at 55-57. When analyzing Graham's argument, this Court recognized that its proportionality cases "fall within two general classifications." *Id.*, at 59. The first involves individual challenges to term-of-years sentences. *Ibid.* The leading case identified by this Court as guiding the analysis for these types of challenges is *Harmelin* v. *Michigan*, 501 U. S. 957 (1991). See *Graham*, 560 U. S., at 59-60.

A fractured Court in *Harmelin* recognized that the Eighth Amendment's Cruel and Unusual Punishments Clause "contains a 'narrow proportionality principle,' that 'does not require strict proportionality between

crime and sentence' but rather 'forbids only extreme sentences that are "grossly disproportionate" to the crime.' " *Graham*, 560 U. S., at 59-60 (quoting *Harmelin*, 501 U. S., at 997, 1000-1001 (Kennedy, J., concurring in part and concurring in judgment)). If a rational connection exists between the crime committed and the sentence imposed for that crime, then the inquiry ends. A great majority of proportionality challenges end here. "[O]nly in the rare case in which a threshold comparison ... leads to an inference of gross disproportionality" will the court engage in a more exacting inquiry based on objective factors. *Harmelin*, 501 U. S., at 1001, 1005 (Kennedy, J., concurring in part and concurring in judgment).

The second type of Eighth Amendment proportionality challenge recognized in *Graham* involves categorical limits on certain sentencing practices. 560 U. S., at 59-60. The inquiry under this second line of precedent considers the nature of the crime committed in light of the "characteristics of the offender." See *id.*, at 60. In *Graham*, this Court was asked for the first time to analyze the case under this second line of precedent to categorically exclude a class of offenders (nonhomicide juveniles) from receiving an LWOP sentence. *Id.*, at 61-62. Up until this point, categorical exclusions from punishment under the Eighth Amendment for both adults and juveniles had been limited to death sentences. See *Kennedy* v. *Louisiana*, 554 U. S. 407, 437-438 (2008); *Roper*, 543 U. S., at 574; *Atkins* v. *Virginia*, 536 U. S. 304, 316-317 (2002).

Because the individual "sentencing practice" of LWOP in and of itself as applied to all nonhomicide juveniles was being challenged in *Graham*, and because this Court "likened [LWOP] for juveniles to the death penalty itself," this Court agreed to analyze its constitutionality pursuant to the rules applicable to categorical

challenges. 560 U. S., at 61; *Miller*, 567 U. S., at 470. This Court rejected the *Harmelin* approach *only in that context* stating *Harmelin* was best "suited for considering a gross proportionality challenge to a particular defendant's sentence ...." *Graham*, *supra*, at 61.

Because *Graham* was considering a categorical challenge, it examined culpability in light of the nature of the crimes committed. 560 U. S., at 68-69. This Court relied heavily on *Roper* and delved further into selective studies on brain science and research into developmental psychology to again lump all juveniles into one generic group of individuals with diminished culpability. *Id.*, at 67-68.[3] Despite the fact that 37 states, the District of Columbia, and the Federal Government all allowed LWOP for juvenile nonhomicide offenders, *Graham* categorically excluded all juveniles who did not commit homicide from being sentenced to LWOP. *Id.*, at 74.

Graham's holding is limited to LWOP sentences for nonhomicide juveniles. The Washington Supreme Court impermissibly expanded *Graham*'s holding outside of the LWOP context. This impermissible expansion led to the second way in which the Washington Supreme Court erred—by importing *Miller*'s individualized sentencing requirement into the nonhomicide, non-LWOP context.

In *Miller*, the two 14-year-old defendants were convicted of murder. 567 U. S., at 465. State law mandated they be automatically sentenced to LWOP

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3. "*Graham* suffers from the faulty premise that juveniles who commit heinous crimes are typical juveniles, and that they are categorically less culpable than young adult offenders." Lerner, Sentenced to Confusion: *Miller v. Alabama* and the Coming Wave of Eighth Amendment Cases, 20 Geo. Mason L. Rev. 25, 26 (2012).

upon their convictions and in neither case did a judge or jury have the discretion to impose a lesser punishment. *Ibid*. Both defendants argued that the mandatory nature of their states' LWOP sentencing schemes violated the Eighth Amendment's Cruel and Unusual Punishments Clause. *Id.*, at 467. This Court agreed and held that a mandatory LWOP sentence imposed upon a convicted murderer under the age of 18 is considered cruel and unusual. *Id.*, at 465.

Miller was concerned that the mandatory sentencing scheme provided no opportunity for a judge or jury to consider youth as a mitigating factor and impose any lesser punishment. *Id.*, at 473-474. Although a mandatory LWOP scheme imposed on an adult does not run afoul of the Eighth Amendment, see *Harmelin*, 501 U. S., at 996, *Miller* stated that the same cannot be true when applied to juveniles. *Miller* then held that sentencing schemes that automatically sentence a juvenile to LWOP without any opportunity to consider youth as a mitigating factor violates the Eighth Amendment. 567 U. S., at 470.

The *Miller* Court built upon the reasoning and analysis of both *Roper* and *Graham*, but unlike in those two cases, did not categorically bar sentencing a teenage killer to LWOP. Only mandatory sentencing schemes were held to be unconstitutional.

Miller recognized that *Graham* equated some aspects of juvenile LWOP with death in that it "alters the offender's life by forfeiture that is irrevocable." See *Graham*, 560 U. S., at 69. *Miller* picked up on this comparison and in turn implicated the line of cases "demanding individualized sentencing when imposing the death penalty." 567 U. S., at 475; see also *Johnson* v. *Texas*, 509 U. S. 350, 367 (1993); *Eddings* v. *Oklahoma*, 455 U. S. 104, 115-116 (1982).

Thus, only sentencing schemes that permit states to seek a discretionary sentence of LWOP for juveniles convicted of homicide are subject to *Miller*'s individualized proportionality rules where youth is constitutionally required to be considered as a mitigating factor. It was error for the Washington Supreme Court to import *Miller*'s strict proportionality analysis into the non-homicide and non-LWOP context.

The Washington Supreme Court disregarded this Court's Eighth Amendment precedent and imposed its own "subjective determination" to override legislatively prescribed sentencing terms. See *Hutto* v. *Davis*, 454 U. S. 370, 373 (1982) (*per curiam)*; *Rummell* v. *Estelle*, 445 U. S. 263, 275 (1980). This Court's precedent "must be followed ... no matter how misguided the judges of the [lower] courts may think it to be." *Hutto*, *supra*, at 375.

If the Washington Supreme Court's impermissible expansions of *Graham* and *Miller* are permitted to proceed unchecked, it would eviscerate *Harmelin*'s "narrow proportionality" jurisprudence as applied to all juveniles who are subject to adult range sentences of less than LWOP.

II. Victims of juvenile crimes are often pushed to the wayside.

It is axiomatic that victims must always remain at the forefront of the discussion. *Morris* v. *Slappy*, 461 U. S. 1, 14 (1983). The Washington Supreme Court cases only provide a cursory look at the crimes committed by Ali and Domingo-Cornelio. A more detailed description of their crimes helps shed light upon the violent and serious offenses that they inflicted upon their victims.

Ali.

Over a one-month period in the Spring of 2008, 16-year-old Ali was part of a group of individuals who participated in a string of armed robberies and assaults in North Seattle, Washington. *State* v. *Ali*, 2010 Wash. App. LEXIS 2080, ¶ 2 (2010) (unpublished). Ali's first victim was Stephanie Martin. As Martin was out walking during the early morning hours, five men in a car drove by her and yelled in her direction. *Id.,* ¶ 3. They stopped the car and three individuals got out and approached her, two of them from behind. *Ibid*. One of the men pointed a knife at her, took her cell phone, and shoved her into the bushes. *Ibid*. She screamed and the individuals ran away. She later identified Ali as the individual who pointed the knife at her face. *Ibid*.

Shortly after Ali and the others left Martin in the bushes, they pulled their car alongside Carl Halliburton and Jonathan Douglass, who were also walking down the sidewalk in the early morning hours. *Id.*, ¶ 4. As Halliburton and Douglass attempted to seek safety from the individuals by walking in a different direction, the offenders' car plus another car pulled into a nearby parking lot. *Ibid*. Approximately 11 individuals exited the two vehicles and they surrounded Halliburton and Douglass demanding money. *Ibid*. The two men were then viciously attacked. One of the attackers broke Halliburton's nose and stabbed him in the stomach with a knife, while another attacker pulled out a pistol and pointed it at both victims. *Id*., ¶ 5. The attackers fled when the police approached the scene. The attackers stole Halliburton's two cell phones, his coat, and his house keys. Halliburton was taken to the hospital and underwent surgery for a lacerated liver. He remained hospitalized for five days. *Id.*, ¶ 8. Ali was later described by Halliburton as the "ring leader" of the group. *Id.,* ¶ 6.

Approximately one week after the offenses against Martin, Halliburton, and Douglass occured, Joshua Longbrake and Mackenzie Rollins were walking together in the late night hours when they were approached by three individuals. *Id*., ¶ 9. One of the individuals, later identified as Ali, pointed a gun at Longbrake's head and instructed the two of them to lie down on the ground. The individuals then stole Longbrake's wallet, cell phone, and jacket. Ali then struck Longbrake in the head with the gun before fleeing the scene. *Ibid*.

Approximately one hour after the attacks on Longbrake and Rollins, two individuals approached Katherine Terpstra in the University of Washington parking lot and stole her purse. *Id*., ¶ 10. Terpstra screamed and chased her assailants' car. Several University police officers heard Terpstra yelling and stopped a nearby car with three individuals inside. *Ibid*. The front passenger was identified as Ali. Terpstra's purse was found in the car. *Ibid*.

Nearly one month after the previous attacks, Colin Walker was taking a walk in the early morning hours when he was approached by two individuals. *Id*., ¶ 13. One of the individuals, later identified as Ali, asked to borrow Walker's cell phone. Walker agreed. As Walker waited, the other individual hit Walker in the head and knocked him to the ground. *Ibid*. Both Ali and his accomplice beat Walker until he was unconscious. They then stole his backpack, computer, and cell phone. *Ibid*. Walker suffered a concussion stemming from the attack.

Domingo-Cornelio.

In late 2012, 8-year-old A.C. informed her mother that she had been repeatedly sexually abused over a two-year period by her older cousin, Domingo-Cornelio.

App. to Domingo-Cornelio Petition 18a . When A.C. was four or five years old, Domingo-Cornelio would often stay the night at her house. *Id*., at 23a-24a. Both A.C. and Domingo-Cornelio would sleep on couches in the front room of the house. This is where the abuse occurred.

A.C. testified that Domingo-Cornelio would grab her, touch her private parts, and make her touch his private parts as well. *Ibid*. "Domingo-Cornelio also licked and rubbed A.C.'s 'private spot,' which she identified as what she used to go to the bathroom." Domingo-Cornelio Petition 6. Domingo-Cornelio told A.C. not to tell anyone of the abuse. App. to Domingo-Cornelio Petition 24a. A.C. complied with Domingo-Cornelio's demands and kept the abuse a secret.

As the abuse continued, young A.C. began "acting out sexually with other children and adults." *Id.*, at 19a. A.C.'s mother became concerned and asked her on several occasions if she was being abused by anyone. *Id.*, at 24a. A.C. repeatedly told her mother that she was not being abused. *Ibid*. It was not until two years after the abuse commenced that A.C. overheard her mother talking on the telephone regarding her suspicions that A.C.'s father might be abusing her. It was at that point that A.C. told her mother she was being abused and that her abuser was not her father, but rather it was Domingo-Cornelio. *Id.*, at 22a.

"Childhood sexual abuse infringes on the basic rights of human beings.... The nature and dynamics of sexual abuse ... are often traumatic. When sexual abuse occurs in childhood it can hinder normal social growth and be a cause of many different psychosocial problems." M. Hall & J. Hall, The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications 2

(2011).[4] A.C. was only 4 or 5 years old when Domingo-Cornelio—her cousin—began to molest her and then it continued for another two years. Among the cases of child sexual abuse that are reported, 93% of the perpetrators are known to the victim. See Dept. of Justice, Bureau of Justice Statistics, H. Snyder, Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics 10 (2000). For victims under age 6, nearly half of the sexual offenders are family members. *Ibid*.

The State of Washington has a compelling interest in protecting all crime victims, regardless of age. See Wash. Const., Art. I, § 35, Wash. Rev. Code § 7.69.030; Wash. Rev. Code § 7.69A.030. The Washington State Legislature declared that childhood sexual abuse is especially problematic when it enacted legislation that extended the statute of limitations for childhood sexual abuse victims to bring civil actions against their perpetrators. See *Oostra* v. *Holstine*, 86 Wash. App. 536, 541, 937 P. 2d 195, 198 (1997) (detailing legislative intent).

The people of Washington decided that they wanted tougher sentencing laws for those who commit armed crimes and sex offenses. Ali was given a sentence of 26 years. Under Washington law, as amended after *Miller*, he will be eligible for release after serving 20 years of his sentence. Ali Petition 8. As pointed out in Washington's Petition for Certiorari, Ali can apply for release when he is 36 years old, and he will be released no later than age 42. *Ibid*. Domingo-Cornelio was given the lowest possible sentence of 20 years. Neither respondent was sentenced to anything near a lifetime in prison. But rather, both respondents will have many more years of life ahead of them when they are released

4. https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf.

at the conclusion of their sentences. Their victims lives, on the other hand, will be forever marked with the trauma they were subjected to at the hands of these two individuals.

As Petitioners accurately explain, granting certiorari in these cases is imperative because the Washington Supreme Court's "unbridled expansion of the Eighth Amendment tramples upon sovereign authority to legislate policy regarding punishment. Washington's sweeping decisions are the extreme example of this, wholly depriving the state legislature of the authority substantively decide how to punish juvenile offenders in adult court." Ali Petition 14-15.

III. This Court's intervention is particularly necessary when the federal Constitution is misused to nullify a valid state statute.

This is a case where the highest court of a State has invoked the United States Constitution to impose a rule for the benefit of convicted criminals that is contrary to the statutes enacted through the democratic process. At times, some Justices have suggested that this Court should not use its limited resources to correct such errors. See *Michigan* v. *Long*, 463 U. S. 1032, 1068 (1983) (Stevens, J., dissenting); *Kansas* v. *Carr*, 577 U. S. 108, 128-129 (2016) (Sotomayor, J., dissenting).[5] On the contrary, *Amicus* CJLF submits that such cases present particularly compelling grounds for this Court's review. Leaving such an error in place distorts the

5. Neither *Long* nor *Carr* involved declaring a state statute unconstitutional, but the theory of both dissents would extend to all state-court decisions overturning state criminal judgments on federal constitutional grounds, including those that strike down statutes.

separation of powers within the government of the State.

Within each level of government, state and federal, we have a constitution, a legislative body, and a court of last resort. The legislature and judiciary each have a role in checking the other. The judiciary's role in checking the legislature is the best known and most discussed, but the reverse is also important. Courts are not infallible, and even in constitutional matters the highest court is not always final. Cf. *Brown* v. *Allen*, 344 U. S. 443, 540 (1953) (Jackson, J., concurring).

For nonconstitutional questions, the legislature can abrogate a judicial precedent by statute. See, e.g., *Smith* v. *City of Jackson*, 544 U. S. 228, 240 (2005) (precedent on disparate impact in civil rights cases modified by statute). For constitutional questions, a constitutional amendment is needed. The United States Constitution is very difficult to amend by design, so amendments abrogating this Court's precedent are few, but there are several. The Eleventh Amendment overturned *Chisholm* v. *Georgia*, 2 U. S. 419 (1793). The Citizenship Clause of the Fourteenth Amendment overturned *Scott* v. *Sandford*, 60 U. S. (19 How.) 393 (1857). See *Sugarman* v. *Dougall*, 413 U. S. 634, 652 (1973) (Rehnquist, J., dissenting). *Pollock* v. *Farmers' Loan & Trust Co*., 158 U. S. 601, 618 (1895), was overturned by the Sixteenth Amendment. See *National Federation of Independent Business* v. *Sebelius*, 567 U. S. 519, 571 (2012).

Constitutional amendments are sometimes needed for the same purpose in the states. In California in 1982, the state supreme court's propensity to exclude evidence of crimes on creative constitutional theories was ended by abolishing the state exclusionary rule via constitutional amendment. See *California* v. *Greenwood*, 486 U. S. 35, 44 (1988).

The legislature typically cannot amend the constitution alone but requires the concurrence of some other authority. On the federal level, three fourths of the States must agree through their legislatures or ratifying conventions. See U. S. Const., Art. V. In States, the people often vote directly on amendments proposed by the legislature. See, e.g., Wash. Const., Art. XXIII, § 1.

Although amending the constitution to overturn a judicial interpretation is a drastic measure, it is sometimes necessary. Courts can be wrong and occasionally horribly wrong, as *Scott* v. *Sandford* illustrates beyond dispute. Within each level of government, this weapon of last resort serves a vital function in the system of checks and balances.

However, there is a very different dynamic when a state supreme court decides that a state statute violates the United States Constitution. There is no direct check on this power within the government of the state. A state statute or constitutional amendment would have no effect. The state's representatives in Congress could propose an amendment to the United States Constitution, but a problem affecting only one state or a handful of states will not generate the critical mass needed for that enormous effort.

In some states, removal of the judges by the people is a possibility, but even in states that have open elections or retention votes, judges often have long terms that make such action impractical. See, e.g., Cal. Const., Art. VI, § 16(a) (12 years). In states that have opted against elections in order to provide their courts with greater independence, there is no remedy by this route at all.

There is no remedy in any other federal court. An unreasonable state court decision going against a criminal defendant might be overturned by a federal

district court or court of appeals in habeas corpus, see 28 U. S. C. § 2254(d), but there is no such remedy for an equally unreasonable state court decision in the defendant's favor.

So that leaves certiorari to this Court as the only practical remedy. If this Court lets stand a state court decision wrongly striking down a valid state statute on a federal constitutional ground, a portion of the people's right to govern themselves through the democratic process has been chipped away.

Arguing that this Court should not intervene in such matters, Justice Stevens said, "the final outcome of the state processes offended no federal interest whatever. Michigan *simply* provided greater protection to *one* of its citizens than some other State might provide or, indeed, than this Court might require throughout the country." *Michigan* v. *Long*, 463 U. S., at 1068 (Stevens, J., dissenting) (emphasis added). The extreme tunnel vision of this statement is breathtaking. The case before the Court involved possession of marijuana, but the rule Justice Stevens proposed was not limited to "victimless crimes." It would apply as well to violent ones.[6] Justice Stevens saw no federal interest in a case where a murderer goes free because a state supreme court blunders in its interpretation of the federal Constitution, and where there is nothing the state's legislative and executive branches can do about it.

But there is a federal constitutional interest in the people's right of self-government. "The United States shall guarantee to every State in this Union a Republican Form of Government ...." U. S. Const., Art. IV, § 4. This section is focused on an actual overthrow of the

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6. The statement ignores the interests of victims of crime, a topic discussed in Part II, *supra*.

state government, of course, and it does not by itself raise judicial questions. See *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District*, 281 U. S. 74, 80 (1930). Even so, it recognizes that the democratic government of the states is a matter of federal interest. "[T]he distinguishing feature of that form [of government] is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves ...." *In re Duncan*, 139 U. S. 449, 461 (1891).

When a legitimate state law is wrongly declared illegitimate, a portion of a right recognized and protected by the United States Constitution has been violated. That is an important consideration in determining whether to exercise this Court's certiorari jurisdiction. It is particularly important when there is no where else to turn, when there is no other practical remedy. "[R]eview by this Court, far from *undermining* state autonomy, is the only possible way to *vindicate* it." *Kansas* v. *Carr*, 577 U. S. 108, 118 (2016) (quoting *Kansas* v. *Marsh*, 548 U. S. 163, 184 (2006) (Scalia, J., concurring)) (emphasis in original).

CONCLUSION

The petitions for writs of certiorari should be granted.

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Respectfully submitted,

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