No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH HAUSCHILD, Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari

To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In the landmark decision of *Graham v. Florida*, 560 U.S. 48 (2010), this Court held that, for a juvenile offender who did not commit homicide, the Eighth Amendment forbids a sentence of life without possibility of parole, and that such individual must be provided a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 74-75. In so holding, this Court reaffirmed the observations it made in *Roper v. Simmons*, 543 U.S. 551 (2005), about the fundamental differences between juveniles and adults in terms of culpability and rehabilitative potential, and also reaffirmed the boundary between homicide and serious nonhomicide crimes, which lack the severity and "irrevocability" of murder. *Graham*, 560 U.S. at 68-69. The question presented in this case, which *Graham* left open, is whether, for a juvenile offender who committed multiple offenses during a single course of conduct, none of them homicide, the Eighth Amendment forbids an aggregate term-of-years sentence that is not "life" in name, but is so long as to deny the youthful offender a meaningful opportunity for release.

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

State Statutes and Legislation:

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The petitioner, Joseph Hauschild, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Appellate Court, Second District, affirming the summary dismissal of Hauschild's post-conviction challenge to his sentence, is unpublished and available at *People v. Hauschild*, 2022 IL App (2d) 131040-UC (filed August 23, 2022, modified upon denial of rehearing November 14, 2022). (Appendix A) The Illinois Appellate Court order denying Hauschild's petition for rehearing is not reported. (Appendix B) The Illinois Supreme Court order denying Hauschild's petition for leave to appeal is not yet reported, *People v. Hauschild*, --- N.E.3d ---- (Table), (March 29, 2023). (Appendix C) The Illinois Supreme Court order denying Hauschild's motion for leave to file a motion for reconsideration of the order denying petition for leave to appeal is not reported. (Appendix D)

JURISDICTION

On August 23, 2022, the Illinois Appellate Court, Second District, issued a decision in this case. A petition for rehearing was timely filed and then denied on November 14, 2022. Also on November 14, 2022, the Illinois Appellate Court issued a modified decision upon denial of rehearing. A petition for leave to appeal to the Illinois Supreme Court was timely filed and denied on March 29, 2023, and this petition is being filed within 90 days of that ruling, pursuant to Rule 13.1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Eighth Amendment to the United States Constitution

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment to the United States Constitution

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Joseph Hauschild stands convicted following a jury trial in Kane County, Illinois, of multiple nonhomicide offenses (home invasion, attempt murder, armed robbery, and criminal damage to property), all stemming from an invasion of the home of Thomas and Wendy Wright in St. Charles, Illinois, on August 14, 2001. (C. 706-712) The trial evidence showed that Hauschild (age 17) and Ethan Warden (age 15) had been acquainted with the Wrights' teenage son, who died by suicide the day before the events in this case, and who had previously indicated that his father kept a large amount of cash in the house. (R. 1420-1431, 1691) Hauschild and Warden reportedly envisioned using the money to move to New York and become a rapper and a DJ, respectively. (R. 1508) As summarized in the decision from Hauschild's direct appeal, the charges were based on the following events, in brief:

> On August 14, 2001, defendant and codefendant, Ethan Warden, broke into a residence occupied by Thomas Wright and his family. Defendant and Warden were each armed with a handgun. The two men entered the master bedroom, awakened Wright and his wife, and demanded a safe. Wright struggled with one of the defendants, and both defendants fired their weapons. Two shots hit Wright, causing life-threatening wounds to his chest and abdomen, as well as serious wounds to his right arm and left leg. The defendant and Warden then fled the scene carrying a lockbox.

People v. Hauschild, 226 Ill. 2d 63, 68 (2007). The lockbox was later found to contain assorted documents and a small amount of money. (R. 1165-1166, 1201, 1209-1210, 1458, 1690)

Sentencing (2003)

A presentence investigative report showed that Hauschild had an unstable childhood and a history of substance abuse and delinquency, and was on probation at

the time of the offenses in this case. (C. 502-539) The trial court determined that all offenses in this case were committed during a single course of conduct during which there was no substantial change in the nature of the criminal objective, and that Hauschild or one for whose conduct he was legally responsible inflicted severe bodily injury upon Thomas Wright during the commission of the Class X felonies. (R. 2189-2190) The court remarked that the Hauschild's potential for rehabilitation was "minimal at best" and that the case "cri[ed] out for deterrence." (R. 2194-2197)

The original sentences imposed by the court totaled 65 years, representing consecutive terms on three Class X offenses: 35 years for home invasion (including a 20-year firearm enhancement); 18 years for attempt murder; and 12 years for armed robbery; plus a concurrent term of two years for criminal damage to property. (R. 2197-2198; C. 491-500) The court noted that because great bodily harm was inflicted, Hauschild would be required to serve 85% of his 65-year sentence. (R. 2190-2191) Hauschild's codefendant, Ethan Warden, entered a negotiated plea in exchange for an aggregate 12-year sentence. (R. 1415-1417)

Direct appeal

Hauschild's direct appeal raised various issues but ultimately concluded with a remand by the Illinois Supreme Court for resentencing on attempt murder to include a mandatory 15-year firearm enhancement, and also for resentencing on armed robbery within the regular Class X range of 6-30 years. *People v. Hauschild*, 226 Ill. 2d 63 (2007). The Court noted that while the 12-year term originally imposed for armed robbery was "proper" and the sentencing range for that offense had not changed, remand on that count was necessary "to allow the trial court to reevaluate defendant's

sentence in light of his cumulative sentence." *Hauschild*, 226 Ill. 2d at 89.

Resentencing (2008)

In 2008, a new sentencing hearing was conducted with regard to the attempt murder and armed robbery counts. (R. 2282-2325) Of note, the updated presentence investigative report included a student transcript from Blackstone Career Institute, showing that Hauschild had undertaken course work in a variety of legal subjects from 2005-2007, and that his grade point average for the program was 96.93%. (C. 677) Hauschild also made a new statement in allocution at the resentencing hearing, including the following remarks, *inter alia*:

> Since I been in prison I received my paralegal diploma. At this moment I am currently taking a class to get my associate's degree in theology.
>
> And I write to juveniles, the DuPage Juvenile Center and I try to tell them about my experiences so that they can sit there and understand that this isn't the path they should be taking.
>
> I am really sorry to the Wright family. And as many times I say sorry is like it's just never going to be enough. There is nothing I can do to change what happened. I can only change my life and try to be a better person to the people that I am around and the people I write to. And that's all, your Honor.

(R. 2308) When the court pressed for details about Hauschild's involvement with juveniles in DuPage County, Hauschild explained that he had been corresponding with juvenile offenders with the permission of the warden, and that he used that correspondence to relate his experiences with theirs and to provide hope:

> ... I let them know that I been there and I know how it is being in those shoes ... I know how it is to have a single parent, to feel like it's hopeless, that there is no hope, that living in the streets, breaking the law, doing just silly things that adolescents do, even beyond being silly, especially towards criminal justice, and I try to get them to see that there is programs out there where they can reach out and get help because there is a lot of programs out there that people just don't take advantage of.

(R. 2309-2310) Before announcing Hauschild's new sentences, the court remarked that Hauschild had demonstrated he had intelligence and the ability to "conduct himself in a positive and constructive manner," and that those qualities would "serve him well in the future." (R. 2322) The court went on to recognize that Hauschild was young at the time of the offenses, had a dysfunctional childhood, and had already shown some "ability for rehabilitation." (R. 2320-2323)

The court emphasized, however, that "when you are on the other end of a gun, it does not matter whether the person pulling the trigger is 16 or 60," because the "effect on the victim is still the same." (R. 2323) The court remarked that the offenses in this case reflected a callous disregard for the Wrights' suffering and the sanctity of their home and again noted that they "[cried] out for deterrence." (R. 2319, 2323) In the end, the court imposed an aggregate sentence of 67 years, two years longer than Hauschild's original total, representing the original 35 years for home invasion, plus 24 years for attempt murder (newly taking into account the mandatory 15-year firearm enhancement), and 8 years for armed robbery, all consecutive. (R. 2324-2325; C. 706-712) The court again noted that under Illinois truth-in-sentencing rules, Hauschild would be required to serve 85% of his consecutive sentences. (R. 2318) Hauschild's concurrent two-year term for criminal damage to property remained unchanged. (C. 708) Hauschild's motion to reconsider sentence was denied on June 5, 2008. (C. 716) A second direct appeal followed but ended up being dismissed on Hauschild's own motion. (C. 719, 735)

Post-conviction petition

Hauschild's Eighth Amendment claim was properly raised in a *pro se* petition

filed in 2013 under the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1 *et seq.*, and he has exhausted all State appeals on this issue, as will be set forth below. (C. 739-753, 758-765); *People v. Hauschild*, 2022 IL App (2d) 131040-UC (filed August 23, 2022, modified upon denial of rehearing November 14, 2022); Appendix C (Illinois Supreme Court order denying leave to appeal).

On July 31, 2013, Hauschild filed a *pro se* post-conviction petition in the Circuit Court of Kane County, Illinois, raising an Eighth Amendment challenge to his sentence under both *Miller v. Alabama,* 132 S. Ct. 2455 (2012), and *Graham v. Florida*, 560 U.S. 48 (2010). (C. 739-753) The petition alleged that the mandatory combined minimum sentence of 53 years that applied to his case and the 67-year life-equivalent aggregate sentence he actually received violated the Eighth Amendment, where he was convicted of nonhomicide offenses (*Graham*), and where the sentencing court imposed his sentence without adequately considering factors relating to his youth (*Miller*). (C. 739-753) Hauschild also claimed that his sentence violated the proportionate penalties clause of the Illinois Constitution [Ill. Const. art. I, sec. 11]. (C. 741, 743, 747) The petition explained that Hauschild had been trying his best to "rehabilitate himself and keep a clean prison record," and that he obtained a high school diploma from Penn Foster Career Institute, a paralegal/legal assistant's diploma from Blackstone Career Institute, and certificates from a Thinking Errors Clinic, a Parenting and Family Values Program, and a Conflict Resolution Clinic. (C. 749, 751-753)

On September 17, 2013, a Kane County circuit court judge entered a written order summarily dismissing Hauschild's petition. (C. 758-765) The court characterized Hauschild's main contention as falling under *Miller v. Alabama*, and found that *Miller*

was not violated because Hauschild did not receive a life sentence without possibility of parole, and because the trial court considered a variety of factors in arriving at Hauschild's sentence. (C. 762-764) The order did not mention Hauschild's *Graham* claim.

Post-conviction appeal

Hauschild's opening brief in the Illinois Appellate Court, Second District, focused on his *Graham* claim. Hauschild acknowledged that whether *Graham* prohibited an aggregate term-of-years sentence that was so lengthy as to be tantamount to a life sentence for a juvenile nonhomicide offender ("*de facto*" life) was an open question, but argued that the low pleading standard for Hauschild to withstand summary dismissal of his post-conviction petition had been satisfied. The opening brief relied on *Moore v. Biter*, 725 F.3d 1184 (9th Cir. 2013), and *People v. Cabellero*, 55 Cal. 4th 262 (Cal. Sup. Ct. 2012), both of which held that *Graham* applies when a juvenile convicted of multiple nonhomicide offenses receives an aggregate term-of-years sentence that is so long as to be equivalent to a natural life sentence.

The Illinois Appellate Court affirmed the summary dismissal of Hauschild's post-conviction petition for the first time in 2015, holding that *Graham* and *Miller* only applied to actual life sentences, not *de facto* life sentences. *People v. Hauschild*, 2015 IL App (2d) 131040-U, ¶¶ 7-11 (now vacated), *citing People v. Reyes*, 2015 IL App (2d) 120471 (now vacated). The Illinois Supreme Court denied Hauschild's petition for leave to appeal, but directed the appellate court to vacate its decision and reconsider in light of its decision in *People v. Reyes*, 2016 IL 119271, to determine whether a different result was warranted. *People v. Hauschild*, No. 120530 (supervisory order entered

November 23, 2016).

Hauschild filed a supplemental brief in the Illinois Appellate Court addressing the impact of the Illinois Supreme Court's decision in *Reyes*. Hauschild argued that *Reyes* held that the Eighth Amendment holding of *Miller v. Alabama* applied to a juvenile's aggregate *de facto* life sentence of 97 years for first degree murder and other offenses, and that the same reasoning should apply to invalidate Hauschild's *de facto* life sentence for nonhomicide offenses under *Graham*. Hauschild argued that his case should be remanded for resentencing, or, at a minimum, remanded for second-stage post-conviction proceedings under Illinois law, as his claim was non-frivolous.

In 2018, the Illinois Appellate Court affirmed the summary dismissal of Hauschild's post-conviction petition a second time. *People v. Hauschild*, 2018 IL App (2d) 131040-B (now vacated). The court held that, unlike in *Reyes*, the mandatory minimum sentence of 53 years in this case was not long enough to constitute *de facto* life. *Hauschild*, 2018 IL App (2d) 131040-B, ¶ 19. The court further held that it did not need to decide whether Hauschild's discretionary 67-year sentence afforded him a meaningful opportunity to obtain release, because neither *Graham* nor *Reyes* required the court to evaluate Hauschild's multiple consecutive sentences in the aggregate. *Hauschild*, 2018 IL App (2d) 131040-B, ¶¶ 20-21. The Illinois Supreme Court denied Hauschild's petition for leave to appeal, but entered another supervisory order, this time directing the appellate court to vacate its judgment and consider the effect of its more recent decision in *People v. Buffer*, 2019 IL 122327, on the issue of whether Hauschild's sentence constituted a *de facto* life sentence, and to determine whether a different result was warranted. *People v. Hauschild*, No. 124438 (supervisory order

entered November 24, 2021).

Hauschild filed another supplemental brief in the Illinois Appellate Court, arguing that since the Illinois Supreme Court held in *Buffer* that any juvenile prison sentence over 40 years without the possibility of parole constitutes a *de facto* life sentence for purposes of an Eighth Amendment challenge, his aggregate 67-year sentence, 85% of which must be served, for multiple nonhomicide offenses committed during a single course of conduct at the age of 17 violated the Eighth Amendment under *Graham*. Hauschild further argued that because the aggregate minimum in his case exceeded the 40-year boundary established by *Buffer*, a "life" sentence was mandatory in his case, which also violated the Eighth Amendment under *Miller*.

In 2022, the Illinois Appellate Court affirmed the summary dismissal of Hauschild's post-conviction petition a third time. *People v. Hauschild*, 2022 IL App (2d) 131040-UC (August 23, 2022). The court held that Hauschild's 67-year sentence – of which he must serve 85%, or around 57 years – ***is*** a *de facto* life sentence (*id.* at ¶ 22), but that it does not violate the Eighth Amendment because: a life sentence was not mandatory in this case (*id.* at ¶¶ 19-20, 23-25, 29); the sentencing court considered Hauschild's youth and its attendant characteristics (*id.* at ¶¶ 27-29); and the *de facto* life sentence arose from multiple offenses (*id.* at ¶ 26).

Hauschild filed a timely petition for rehearing, contending that the Illinois Appellate Court had fundamentally misunderstood the holding in *Graham*, which was not limited to "mandatory" sentences, and that the Illinois Supreme Court's decision in *Reyes* required the court to treat his multiple consecutive sentences in the aggregate when evaluating claims under the Eighth Amendment, such that his aggregate *de facto*

life sentence for multiple nonhomicide offenses violated the Eighth Amendment under *Graham*. On November 14, 2022, the Illinois Appellate Court denied rehearing and issued a modified decision. While modifying its reasoning slightly, the court continued to hold that Hauschild was being made to serve a *de facto* life sentence in a nonhomicide case, but again found no Eighth Amendment violation, in part because his was an aggregate sentence deriving from consecutive terms for multiple offenses. *People v. Hauschild*, 2022 IL App (2d) 131040-UC, ¶¶ 22, 26 (as modified upon denial of rehearing, Nov. 14, 2022).

On December 16, 2022, Hauschild filed a timely petition for leave to appeal to the Illinois Supreme Court, asking it to decide whether sentencing a juvenile offender to an aggregate term of years that is tantamount to a life sentence – "*de facto*" life – violates the Eighth Amendment under *Graham*, where such sentence arises from multiple nonhomicide offenses committed during a single course of conduct. The Illinois Supreme Court denied Hauschild's petition for leave to appeal on March 29, 2023, and thereafter denied leave to file a motion to reconsider its denial of leave to appeal.

REASON FOR GRANTING CERTIORARI

This Court should grant review to answer a question left open by *Graham v. Florida* and resolve a disparity among the States as to whether a juvenile convicted of multiple nonhomicide offenses may, consistent with the Eighth Amendment, receive an aggregate term-of-years sentence that is not "life" in name, but is so long as to ensure they will spend most, if not all, of their lives in prison before having an opportunity at parole.

The concept of proportionality is central to the Eighth Amendment, which prohibits governments from imposing "cruel and unusual" punishments for criminal offenses. *See Graham v. Florida*, 560 U.S. 48, 59 (2010); U.S. Const., Amend. VIII. Some Eighth Amendment challenges to sentence length are evaluated for proportionality on a case-by-case basis. However, in the context of the death penalty, a body of categorical restrictions evolved, some based on the nature of the offense (*i.e.*, nonhomicide crimes), and others turning on the characteristics of the offender (*i.e.*, individuals under 18 or with low intellectual functioning). *See Graham*, 560 U.S. at 59-61, *citing Kennedy v. Louisiana*, 554 U.S. 407, 437-438 (2008); *Roper v. Simmons*, 543 U.S. 551 (2005); and *Atkins v. Virginia*, 536 U.S. 304 (2002).

This Court's landmark decision in *Graham v. Florida* was revolutionary in that it united two categories – nonhomicide offenses and juvenile offenders – that had already been separately recognized as less deserving of the most severe punishment, and taken together found them categorically undeserving of the ***second***-most severe punishment, life without possibility of parole. *Graham*, 560 U.S. at 74-75 ("This Court now holds that for a juvenile offender [under 18] who did not commit homicide the Eighth Amendment forbids the sentence of life without parole"). In so holding, this Court reaffirmed the observations it made in *Roper v. Simmons* about the fundamental

differences between juveniles and adults in terms of culpability and rehabilitative potential, and also reaffirmed the boundary between homicide and serious nonhomicide crimes, which lack the severity and "irrevocability" of murder. *Graham*, 560 U.S. at 68-69. This Court explained in *Graham* that some juveniles convicted of nonhomicide crimes might indeed "turn out to be irredeemable," but found that States may not make such judgment at the outset, and must instead provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75. In the end, *Graham* reversed a Florida appellate court decision that affirmed a 16-year-old defendant's discretionary life sentence for armed burglary, finding such sentence, in the absence of any opportunity for parole, violated the Eighth Amendment. *Id.* at 57-58, 74-75, 82.

Building on the holding in *Graham*, as well as a separate line of cases requiring individualized sentencing before the death penalty can constitutionally be imposed on an adult, this Court subsequently held that "the Eighth Amendment forbids a sentencing scheme that ***mandates*** life in prison without possibility of parole for juvenile offenders." *Miller v. Alabama*, 567 U.S. 460, 476-479 (2012) (emphasis added, finding mandatory penalties by their nature preclude a sentencer from taking into account an offender's age and pose too great a risk of disproportionate punishment); *see also Jones v. Mississippi*, 141 S. Ct. 1307, 1321 (2021) (reaffirming holding in *Miller* barring mandatory life-without-parole sentences for juveniles, along with the retroactivity of that rule on collateral review).

As such, for a juvenile ***nonhomicide*** offender, *Graham* still precludes a sentence of life without parole, even if such sentence results from an exercise of the

judge's discretion. *Miller*, 567 U.S. at 473 (recognizing that *Graham* instituted a "flat ban" on life without parole sentences for non-homicide crimes). On the other hand, *Miller* precludes any juvenile sentence of life without parole that is mandatory, but does not foreclose a sentencer's ability to sentence a juvenile to life without parole in homicide cases, provided that such sentence results from an exercise of discretion. *Miller*, 567 U.S. at 480; *Jones*, 141 S. Ct. at 1322 (finding resentencing in Jones' case complied with *Miller* because the life sentence he received was no longer mandatory).

As will be set forth below, a majority of states have extended this Court's holdings with regard to juvenile "life" without parole sentences to juvenile term-of-years sentences that are so lengthy as to deny the juvenile a meaningful opportunity for release based on demonstrated maturity and rehabilitation. However, the more nuanced question presented in this case, which *Graham* left open, and on which state courts are less clear, is whether a juvenile convicted of ***multiple*** nonhomicide offenses arising from a single course of conduct may, consistent with the Eighth Amendment, receive an ***aggregate*** term-of-years sentence that is so long as to deny the juvenile a meaningful opportunity for release.

A. A majority of states have extended this Court's holdings with regard to juvenile "life"-without-parole sentences to juvenile term-of-years sentences that are sometimes termed "*de facto* life" – *i.e.*, so lengthy as to deny the juvenile a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

A majority of states have extended the Eighth Amendment restrictions on sentencing a juvenile to "life" without possibility of parole announced in *Graham* and *Miller* to term-of-years sentences that are "*de facto* life" – *i.e.*, so lengthy as to deny the juvenile offender a meaningful opportunity for release based on demonstrated maturity

and rehabilitation.[1] However, the boundaries as to what has been held to constitute a life-equivalent sentence vary from state to state.[2]

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[1] Jurisdictions applying *Graham* and/or *Miller* to *de facto* life sentences, or allowing parole eligibility or sentence modification to both actual life and *de facto* life sentences, include: **Alaska** [AS §33.16.090 (eff. July 9, 2019)]; **California** [Cal. Penal Code §3051; *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012)]; **Connecticut** [Conn. Gen. Stat. 514-125a(f)(1) (eff. Oct. 1, 2015); *Casiano v. Commr. of Corr.*, 115 A.3d 1031, 1044 (Conn. 2015)]; **Delaware** [Del Code Ann. Title 11, §4204A(d)(1) (eff. June 4, 2013)]; **District of Columbia** [D.C. Code §24-403.03(a) (eff. May 10, 2019)]; **Florida** [*Henry v. State*, 175 So.3d 675, 680 (Fla. 2015)]; **Idaho** [*State v. Shanahan*, 442 P.3d 152, 158-61 (Idaho 2019)]; **Illinois** [*People v. Reyes*, 2016 IL 119271]; **Iowa** [*State v. Null*, 836 N.W.2d 41, 71-73 (Iowa 2013)]; **Kansas** [*Williams v. State*, 476 P.3d 805, 816-22 (Ct. App. Kan. 2020), *overruled on other grounds by Williams v. State*, 500 P.3d 1182 (Kan. 2021)]; **Louisiana** [*State ex rel. Morgan v. State*, 217 So.3d 266, 267 (La. 2016)]; **Maryland** [*Carter v. State*, 192 A.3d 695, 725 (Md. 2018)]; **Massachusetts** [*Commonwealth v. LaPlante*, 123 N.E.3d 759, 763 (Mass. 2019)]; **Missouri** [*State ex rel. Carr v. Wallace*, 527 S.W.3d 55, 56-57 (Mo. 2017)]; **Montana** (*Steilman v. Michael*, 407 P.3d 313, 319 (Mont. 2017)]; **Nebraska** [*State v. Smith*, 892 N.W.2d 52, 64-66 (Neb. 2017); *State v. Goynes*, 876 N.W.2d 288, 301-02 (Neb. 2016)]; **Nevada** [Nev. Rev. Stat. 213.12135 (eff. October 1, 2015)]; **New Hampshire** [*State v. Lopez*, 261 A.3d 314) (New Hamp. April 20, 2021)]; **New Jersey** [N.J.H.S. 2C:11-3(b)(1), (5) (eff. July 21, 2017); *State v. Zuber*, 152 A.3d 197, 212, 214 (N.J. 2017)]; **New Mexico** [*Ira v. Janecka*, 419 P.3d 161, 163, 166 (N.M. 2018)]; **New York** [*People v. Lora*, 140 N.Y.S. 3d 390, 393 (Sup. Ct. New York Co. 2021)]; **North Carolina** [*State v. Kelliher*, 873 S.E.2d 366 (N. Car. 2022)]; **North Dakota** [N.D. Cent. Code §12.1-32-13.1 (eff. Aug. 1, 2017)]; **Ohio** [2019 Ohio Senate Bill No. 256, Ohio One Hundred Thirty-Third General Assembly]; **Oregon** [*White v. Premo*, 443 P.3d 597 (Ore. 2019)]; **Pennsylvania** [*Commonwealth v. Foust*, 180 A.3d 416, 433-34, 436 (Pa. Super. Ct. 2018)]; **Tennessee** [*State v. Booker*, 656 S.W.3d 49 (Tenn. 2022)]; **Virginia** [VA Code ann. §53.1-165.1(E) (eff. July 1, 2020)]; **Washington** [*State v. Delbosque*, 456 P.3d 806, 812 (Wash. 2020)]; and **Wyoming** [*Bear Cloud v. State*, 334 P.3d 132, 141-42 (Wyo. 2014)].

[2] *See, e.g.*, **California** [*People v. Contreras*, 411 P.3d 445, 470 (Calif. 2018) (50-life sentence long enough to trigger *Miller* protections)]; **Connecticut** [*Casiano v. Commr. of Corr.*, 115 A.3d 1031, 1047-1048 (Conn. 2015) (50-life sentence long enough to trigger *Miller* protections, without deciding whether something less than 50 would also trigger *Miller*)]; **Illinois** [*People v. Buffer*, 2019 IL 122327, ¶ 41 (sentence of 40 years or less provides meaningful opportunity for release); **Iowa** [*State v. Null*, 836 N.W.2d 41, 71-73 (Iowa 2013) (52.5 yrs long enough to trigger

The Illinois Supreme Court is in conformity with this majority. *See People v. Reyes*, 2016 IL 119271 (holding that a "term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile defendant's life as would an actual [ ] sentence of life without parole–in either situation, the juvenile will die in prison"). And indeed, Illinois has determined that a prison sentence of 40 years or less imposed on a juvenile offender comports with *Miller v. Alabama*, in that it provides "'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *People v. Buffer*, 2019 IL 122327, ¶ 41, *quoting Graham v. Florida*, 560 U.S. 48, 75 (2010). To date, however, the Illinois Supreme Court has only had occasion to address the constitutional limits of juvenile *"de facto* life" sentences in homicide cases arising under *Miller*.

B. A disparity exists throughout the country as to whether *Graham*'s prohibition on life without the possibility of parole for a juvenile convicted of a single nonhomicide offense extends to a juvenile convicted of multiple nonhomicide offenses, and whose lengthy sentence results from the aggregation of consecutive terms of imprisonment.

Miller protections]; **Kansas** [*Williams v. State*, 476 P.3d 805, 816-22 (Ct. App. Kan. 2020) (50-life affords no meaningful opportunity for release), *overruled on other grounds by Williams v. State*, 500 P.3d 1182 (Kan. 2021)]; **Maryland** [*Carter v. State*, 192 A.3d 695, 725 (Md. 2018) (aggregate 100 years with parole at 50 triggers *Miller*; later superseded by statute)]; **New Jersey** [*State v. Zuber*, 152 A.3d 197, 212-214 (N.J. 2017) (55 years sufficient to trigger *Miller*)]; **New Mexico** [*Ira v. Janecka*, 419 P.3d 161, 171 (N.M. 2018) (earliest possible release at age 62 is at the outer limit of sentences that afford meaningful opportunity for release)]; **North Carolina** [*State v. Kelliher*, 873 S.E.2d 366, 381 (N. Car. 2022) (50 years before parole eligibility is *de facto* life under the Eighth Amendment)]; **Tennessee** [*State v. Booker*, 656 S.W.3d 49, 66 (Tenn. 2022) (mandatory 51-60-year sentence for juvenile homicide offender violates Eighth Amendment)]; **Washington** [*State v. Haag*, 495 P.3d 241 (Wash, 2021) (46-life provides no meaningful opportunity for release)]; and **Wyoming** [*Bear Cloud v. State*, 334 P.3d 132, 141-42 (Wyo. 2014) (45-life based on mandatory consecutive sentences triggered *Miller* protections)].

The Illinois Supreme Court denied leave to appeal in Hauschild's case, but has never had occasion to decide on the merits whether *Graham*'s "flat ban" applies to an aggregate life-equivalent term-of-years sentence arising from multiple nonhomicide offenses. However, other State courts of last resort and federal appeals courts have weighed in on the issue, with mixed outcomes. Of note, California, Florida, and Nevada, along with the Ninth and Tenth Circuit Federal Courts of Appeal, have all held that *Graham*'s prohibition on juvenile life-without-parole sentences for nonhomicide offenses extends to juveniles sentenced to lengthy life-equivalent term of years sentences that arise from multiple nonhomicide offenses. *See People v. Caballero*, 282 P.3d 291, 295-296 (Cal. 2012) (juvenile's aggregate 110-years-to-life sentence for multiple counts of attempt murder violates the Eighth Amendment under *Graham*); *People v. Contreras*, 411 P.3d 445, 454-462 (Cal. 2018) (juvenile's aggregate 50-years-to-life sentence for multiple nonhomicide offenses violates Eighth Amendment); *Henry v. State,* 175 So.3d 675, 679–680 (Fla. 2015) (juvenile nonhomicide offender's aggregate 90-year sentence violates Eighth Amendment under *Graham*); *State v. Boston,* 363 P.3d 453, 458–459 (Nev. 2015) (*Graham* prohibits aggregate *de facto* life sentences without parole for juvenile nonhomicide offenders; however, no *Graham* violation where recent legislation made defendant eligible for parole after 15 years); *Moore v. Biter*, 725 F.3d 1184, 1191-1194 (9th Cir. 2013) (consecutive sentences totaling 254 years for multiple nonhomicide offenses committed at the age of 16 violates *Graham*); *Budder v. Addison,* 851 F.3d 1047, 1056-1060 (10th Cir. 2017) (juvenile offender convicted of multiple nonhomicide offenses who would not be eligible for parole until he served 131.75 years was sentenced in violation of *Graham*).

On the other hand, Arizona, Colorado, Georgia, Louisiana, Missouri, and South Carolina, along with Sixth Circuit Federal Court of Appeal, have all held that *Graham* does not prohibit a court from sentencing a juvenile nonhomicide offender to a lengthy, life-equivalent term of years that results from aggregating the sentences on multiple nonhomicide offenses. *See State v. Soto-Fong*, 474 P.3d 34, 41 (Ariz. 2020); *Lucero v. People*, 394 P.3d 1128, 1133 (Colo. 2017); *Veal v. State*, 810 S.E.2d 127, 129 (Ga. 2018); *State v. Brown*, 118 So. 3d 332, 342 (La. 2013); *Willbanks v. Dep't of Corr.*, 522 S.W.3d 238, 243–45 (Mo. 2017); *State v. Slocumb*, 827 S.E.2d 148, 156 (S. Car. 2019); *Bunch v. Smith*, 685 F.3d 546, 552 (6th Cir. 2012).

As the above cases demonstrate, some individuals in Hauschild's shoes have had their aggregate *de facto* life sentences invalidated under *Graham*, while others continue to serve out most, if not all, their lives in prison for nonhomicide offenses committed when they were juveniles. This disparity is fundamentally unjust and undermines the categorical rule this Court saw fit to establish in *Graham*, illustrating great need for this Court's intervention.

C. The decision in this case presents a compelling vehicle to address this issue, where: (i) as a result of the decision, a juvenile nonhomicide offender whose aggregate sentence results from a single incident that occurred when he was 17 will be imprisoned without possibility of parole until he is at least 74; and (ii) the Illinois Appellate Courts refusal to aggregate term-of-years sentences in evaluating their constitutionality in this juvenile nonhomicide case arising under *Graham* conflicts with the Illinois Supreme Court's willingness to do so in juvenile homicide cases arising under *Miller v. Alabama*, illustrating the unprincipled distinctions State courts have embraced in attempting to resolve questions left open by this Court's Eighth Amendment juvenile jurisprudence.

The circumstances of this case appear to offend the very principles on which this Court's categorical holding in *Graham* was based. Hauschild was 17 years old at the

time of the crimes in this case. The trial court made a finding that all of Hauschild's offenses (home invasion, attempt murder, armed robbery, and criminal damage to property) were committed during a single course of conduct, during which there was no substantial change in the nature of the criminal objective. (R. 2189-2190) Hauschild was ultimately sentenced to an aggregate term of 67 years, at least 85% of which, or roughly 57 years, must be served, such that he will be at least 74 years old upon release. (R. 2324-2325; C. 706-712)

As this Court recognized in *Graham*, "Serious nonhomicide crimes 'may be devastating in their harm ... but "in terms of moral depravity and of the injury to the person and to the public," ... they cannot be compared to murder in their 'severity and irrevocability.'" *Graham v. Florida*, 560 U.S. 48, 69 (2010), *quoting Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008). Furthermore, "when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a ***twice*** diminished moral culpability. The age of the offender and the nature of the crime each bear on the analysis." *Graham*, 560 U.S. at 69 (emphasis added). Taking into account these dual factors based on the age of the offender and the nature of the crime, this Court held that a meaningful opportunity for release based on demonstrated maturity and rehabilitation must be provided, reasoning:

> The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. In *Roper*, that deprivation resulted from an execution that brought life to its end. Here, though by a different dynamic, the same concerns apply. Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation.

Graham, 560 U.S. at 79. Contrary to the foregoing principles, Hauschild, who was only

17 at the time of the ill-considered events underlying his nonhomicide convictions, and who already showed significant maturation and rehabilitation at the time of resentencing (C. 677; R. 2308-2310, 2320-2323), will have no chance at release until the age of 74. This means he will have no meaningful opportunity for fulfilment outside prison walls, no chance for reconciliation with society, no hope. *See Graham*, 560 U.S. at 79. Thus, Hauschild's case exemplifies the excessive punishment for juvenile nonhomicide offenders that this Court sought to prevent by its holding in *Graham*.

Furthermore, Hauschild's case is well-suited to address questions *Graham* left open, as it illustrates the confusion that persists in State courts in the wake of *Graham*'s categorical bar. In Hauschild's case, the Illinois Appellate Court held that a *"de facto* life" sentence is permissible in this juvenile nonhomicide case because it involved multiple felonies, *Hauschild*, 2022 IL App (2d) 131040-UC, ¶ 26, and the Illinois Supreme Court declined to grant review (Appendix C). However, such reasoning is difficult to square with the Illinois Supreme Court's holding and analysis in *People v. Reyes*, 2016 IL 119271.

The defendant in *Reyes* was a 16-year-old offender convicted of multiple offenses committed during a "single course of conduct," first degree murder among them, whose aggregate 97-year sentence represented the statutory minimum available based on the nature of the offenses, firearm enhancements, and consecutive sentencing. 2016 IL 119271, ¶¶ 1-2, 10. Analyzing the defendant's Eighth Amendment claim under *Miller v. Alabama*, 567 U.S. 460 (2012), the Illinois Supreme Court held that while *Miller* speaks in terms of mandatory "life" sentences, its rationale applies equally to a mandatory, unsurvivable term of years imposed for multiple offenses committed in a

single course of conduct. *Reyes*, 2016 IL 119271, ¶¶ 8-10. While *Reyes* did not have occasion to consider whether the Eighth Amendment categorically bars an aggregate *de facto* life term-of-years sentence for a juvenile nonhomicide offender, its reasoning would seem to extend to situation. Yet, the Illinois Appellate Court found otherwise, reading *Graham* narrowly to prevent only juvenile life sentences imposed "for a single nonhomicide offense." *Hauschild*, 2022 IL App (2d) 131040-UC, ¶ 26.

That the Illinois Appellate Court views aggregated sentences in juvenile nonhomicide cases to be less deserving of protection than aggregated sentences in juvenile homicide cases, and the Illinois Supreme Court declined review, illustrates the unprincipled distinctions State courts have embraced in attempting to resolve questions left open by this Court's Eighth Amendment juvenile jurisprudence. As such, Hauschild's case presents a compelling vehicle for this Court to further explicate the parameters of the categorical rule it established in *Graham*.

CONCLUSION

For the foregoing reasons, petitioner, Joseph Hauschild, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

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