No.

IN THE SUPREME COURT OF THE UNITED STATES

HUNTER THOMAS BOESCH, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the sentencing protections afforded in *Miller v Alabama*, 567 US 460 (2012) should be applied to defendants who are emerging adults- 18 to 20 years old- at the time they commit a crime and who are convicted of first-degree murder and sentenced to mandatory life without parole?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Hunter Thomas Boesch respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida.

OPINION BELOW

The opinion of Fourth District Court of Appeal of Florida is reported as *Boesch v. State*, 368 So. 3d 454 (Fla. 4th DCA 2023), and is reprinted in the Appendix [A 2-3].

JURISDICTION

The order of the Florida Supreme Court denying a petition for a writ of certiorari is not officially reported, but may be found at *Boesch v. State*, SC23-1167, 2023 WL 8650295 (Fla. December 14, 2023), and is reproduced in the Appendix [A 4]. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Amendment VIII to the Constitution of the United States:

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

2. Amendment XIV, Section 1, to the United States Constitution, in relevant part:

> [N]or 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

Petitioner, Hunter Thomas Boesch, is currently condemned to die in prison for an offense committed when he was 19-years-old. A jury convicted Boesch of first-degree felony murder, attempted robbery, attempted burglary of a dwelling, and conspiracy to commit robbery/burglary [A 26-28]. These charges stemmed from an attempt to rob a local drug dealer, during which a person was shot and killed. *Boesch*, 368 So. 3d at 455. Boesch was not the shooter and the jury found he did not possess a firearm during the offenses [A 26-28].

Pursuant to section 775.082(1)(a), Florida Statues (2021), the trial court was precluded from considering Boesch's age in rendering a sentence for the first-degree felony murder. Instead, the trial court was required to impose a mandatory sentence of life imprisonment without the possibility of parole. Boesch received concurrent sentences of five years' prison for the attempt counts, and fifteen years' prison on the conspiracy count [A 31-39].

Boesch appealed to the Fourth District Court of Appeal of Florida. He argued that his mandatory life sentence without parole under section 775.082 is unconstitutional as applied to a 19-year-old offender. He relied on *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 567 U.S. 460 (2012), which established that mandatory life without parole for persons under age 18 violates the Eighth Amendment's prohibition on cruel and unusual punishment [A 5-25]. Boesch argued that, "persons between the ages of 18 and 21 should be afforded the same protection against life sentences because their minds, like those of persons under eighteen, have not fully developed." *Boesch*, 368 So. 3d at 455.

The Fourth District rejected his argument because, "*Graham* and *Miller* have not extended their protection beyond the age of eighteen." *Id*. The Fourth District affirmed Boesch's life imprisonment without parole sentence holding that Boesch is, "not entitled to the protection of *Graham* and *Miller*," as he, "had crossed that age line when these crimes, including a homicide, were committed." *Id*. at 455-56.

REASONS FOR GRANTING THE PETITION

THE COURT SHOULD GRANT THIS PETITION TO CONSIDER WHETHER THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE FORBIDS THE IMPOSITION OF A MANDATORY SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE ON A NINETEEN-YEAR-OLD EMERGING ADULT - A PROCEDURE WHICH PRECLUDES THE SENTENCER FROM TAKING INTO ACCOUNT THE MITIGATING CHARACTERISTICS OF YOUTH, SPECIFICALLY LATE-ADOLESCENT BRAIN DEVELOPMENT.

This case presents an important constitutional question regarding the propriety of imposing a mandatory sentence of life imprisonment without parole on a 19-year-old emerging adult for first degree murder in light of advancements in neuroscience and developing social standards.

In the nearly 20 years since the Court determined age 18 is the legal bright line for adulthood in regards to Eighth Amendment jurisprudence, the research relating to when a brain fully matures has significantly progressed. From a scientific perspective, a person's 18th birthday is not a rational dividing line for justifying mandatory life-without-parole sentences because the brain continues to develop and change rapidly across all the relevant metrics for several more years. A 19-year-old offender has the same impulsivity and diminished capacity as a juvenile offender and there is no scientific basis for treating a 19-year-old differently than a 17-year-old in

terms of imposing mandatory life-without-parole sentences.

However, unless this Court redraws the line for defining the class of defendants that are entitled to individualized sentencing under *Miller* to include emerging adults, states are bound by precedent to conclude that a defendant's mandatory prison sentence of life without parole for first-degree felony murder committed at the age of 19 continues to pass muster under the United States Constitution.

For the reasons stated below, the legal bright line of 18-years-old being the age of adulthood should be extended to include the late adolescent youth class of 18 through 20 year-olds, known as "emerging adults."

I. Recognition of Characteristics of Youth in the Context of the Eighth Amendment.

The Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. The right, "flows from the basic 'precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.' " *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). This precept, "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). "By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons." *Roper v Simmons*, 543 U.S. 551, 560 (2005).

In 2005, the Court first recognized that children are different from adults for sentencing purposes when it abolished the death penalty for minors. *Id*. at 578-579.

The *Roper* Court reiterated the precept that, "the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions." *Id*. at 560. The Court found that, even in the most serious murder cases, three general differences between adolescents and adults, "demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders." *Id*. at 569. First, when compared to adults, teenagers have "[a] lack of maturity and an underdeveloped sense of responsibility." Second, they "are more vulnerable or susceptible to negative influences and outside pressures." And, third, their character "is not as well formed." *Id*. at 569-70. The Court found that, "Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." *Id*. at 569 (quotation marks, citation, and brackets omitted). Thus, youth have diminished decision making capacity because of psychosocial differences that are biological in origin. *Id*.

The Court recognized that juveniles have lessened culpability and are, "less deserving of the most severe punishments." *Id*. at 569. As the death penalty is reserved for only the worst offenders, this group could not include juveniles. *See id*. The Court concluded that, "[w]hen a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity." *Id*. at 573-74.

Likewise, in *Graham*, the Court held that the imposition of life without parole on defendants who were under age 18 at the time of their crimes and who were

convicted of non-homicide offenses violated the Eighth Amendment. 560 U.S. at 59, 79. The Court emphasized that, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id*. at 68. The Court highlighted that, "parts of the brain involved in behavior control continue to mature through late adolescence," giving rise to a greater possibility of rehabilitation later in life. *Id*. These characteristics make juveniles less susceptible to deterrence and less culpable for their actions, undermining the penological justifications for the most severe punishments, including an automatic sentence of life in prison for a non-homicide offense. *See id*.

In *Miller*, the Court extended the reasoning in *Roper* and *Graham* to hold that mandatory sentences of life without the possibility of parole for homicide offenses are unconstitutional for juvenile offenders because it, "precludes consideration of [the juvenile's] chronological age and its hallmark features— among them, immaturity, impetuosity, and failure to appreciate risks and consequences." 567 U.S. at 465, 476-77. The Court emphasized that it has consistently held that statutory sentencing schemes must allow courts to consider the defendant's youthfulness to ensure that any mandatory sentence is not cruel and unusual by virtue of being disproportionate to the offender's culpability. *Id*. ("Of special pertinence here, we insisted in these rulings that a sentencer have the ability to consider the mitigating qualities of youth."). The unique, natural attributes of youth, "diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id*. at 472.

The Court recognized that a life sentence for a younger person is effectively a harsher sentence than a life sentence for an older person and, "To afford dissimilarly situated defendants equal protection of the law, the age of the younger defendants must be taken into account before a mandatory-minimum sentence may be constitutionally imposed. *Id*. at 475, 480 ("Although we do not foreclose a sentencer's ability to make that judgment [to impose life without parole on a juvenile] in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.").

Miller, therefore, established a constitutional rule that requires that sentencing courts consider the unique characteristics of youth. *Id*. at 471; *Montgomery v Louisiana*, 577 US 190, 195, 208-209 (2016) ("Miller announced a substantive rule of constitutional law," and "required that sentencing courts consider a child's diminished culpability and heightened capacity for change before condemning him or her to die in prison.").

II. The Sentencing Protections Afforded Youth Under the Eighth Amendment Should Be Extended to Include Emerging Adults Aged 18 to 20 Years Old.

In determining what constitutes "youth" for purposes of Eighth Amendment jurisprudence, the Court decided to limit constitutional sentencing protections to individuals under age 18 based on its measure of society's, "evolving standards of decency." *Roper*, 543 U.S. at 563. In *Roper*, the Court explained why it drew the line at 18:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish

> juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest. [*Id.* at 574]

In *Graham*, the Court cited *Roper*'s reasoning about why it drew the line between adulthood and childhood at age 18, concluding that the same line applied to the categorical ban of life-without-parole sentences for nonhomicide offenses. 560 U.S. at 74-75. The subsequent decisions of *Miller* and *Montgomery*, did not question or reform the bright line drawn in *Roper*.

Nearly 20 years after *Roper*, the age of 18 as the age of maturity to adulthood is no longer supported by science or by how society treats people under the age of 21.

In recent years, the scientific research shows that the developmental characteristics of youth that render them less blameworthy, which this Court relied upon in *Roper*, *Graham* and *Miller*, extends to older adolescents aged 18 to 20. This class has become known as, "emerging adults."

The current bright-line between 17 and 18 is arbitrary, rendering a life without parole sentence for a 19-year old offender disproportionate to the level of culpability. Relying on an outdated arbitrary line would abdicate the judicial responsibility to interpret the Constitution. In determining whether a punishment is excessive or disproportionate, the judiciary retains the ultimate responsibility of construing the Eighth Amendment. *Graham*, 560 U.S. at 67.

Furthermore, a clear national consensus is also emerging—based on the

advancements in scientific research—that the line between childhood and adulthood falls above the age of 18.

a. The Scientific Evidence Supports That an Emerging Adult Is Nearly Identical to a Juvenile in Brain Development.

Scientific and social studies help evaluate the appropriateness of particular punishments in light of developing social standards. See *Atkins v Virginia*, 536 US 304, 317-321 (2002) (analyzing the neurological characteristics of intellectually disabled defendants in determining that they have lessened criminal culpability; therefore, the deterrent and retributive purpose of the death penalty was not achieved and execution was not a "suitable punishment" for this class of defendants).

Here, scientific and social-science research regarding the characteristics of the emerging adult's brain informs that the line of adulthood should be extended from 18 to 21 years old. Recent scientific evidence of adolescent brain development has confirmed that emerging adults, in the same respect as juveniles, are inherently different from adults because the frontal lobes of their brains are still developing making them equally less culpable and less deserving of the most serious punishments meted out for adults. *See* Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016) ("Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority." (citation omitted)).

Strong scientific evidence indicates there is no significant difference in the

brain functioning of emerging adults in late adolescence (18 to 19-years-old) and 17-year-old juveniles. Brain development does not abruptly cease at 18; rather, "researchers have found that eighteen to twenty-one-year-old adults are more like younger adolescents than older adults in their impulsivity under conditions of emotional arousal." *Id.* at 642. This impulsivity, "likely influence[s] their criminal conduct," since "development of brain systems that regulate impulse control is more protracted," than development of the brain's, "reward pathways." *Id.* at 644, 647. These neuroscientific studies show that while young adults often exhibit mature "cold cognition" (decision-making under ideal or controlled conditions), they remain immature when operating under "hot cognition" (decision making in emotional or stressful situations). *See id.* at 651.

Advances in brain imaging technology confirm that the very regions of the brain that are associated with voluntary behavior control, and regulation of emotional response, and impulsivity are structurally immature during adolescence. The frontal lobe (responsible for regulating impulse control) is still structurally immature well into late adolescence. *See, e.g.*, Nick Straley, *Miller's Promise: Re-Evaluating Extreme Criminal Sentences For Children*, 89 Wash. L. Rev. 963, 970-71 (2014) ("the prefrontal cortex modulates impulsive behavioral urges... However, the prefrontal cortex remains structurally immature until early adulthood, around the mid-twenties."); Arain, Mariam et al., *Maturation of the adolescent brain*. Neuropsychiatric Disease and Treatment Vol. 9 (2013), 449-61.

Research also shows that risky behaviors tend to peak in late adolescence and

early adulthood, then decline through the late twenties. *See* Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research & the Law*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 158, 161 (2013).

Emerging adults are now understood to be more like younger adolescents than adults, in that emerging adults are, "more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings." Vincent Schiraldi & Bruce Western, *Why 21 Year-Old Offenders Should Be Tried in Family Court*, Wash. Post (Oct. 2, 2015).

A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that, "the unique period of brain development and heightened brain plasticity. . . continues into the mid-20s," and that "most 18–25-year-olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and 'young adulthood,' developmentally speaking." This crucial period of cognitive development has significant consequences for young adults' behavior. The research indicates that late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead. *See* National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), pp 37, 51-52. The report concludes it would be, "arbitrary in developmental terms to draw a cut-off line at age 18." *Id.*

The Supreme Court of Michigan looked at the issue as it pertained to 18-year-

old offenders, the court made several important observations about emerging adults:

> Late adolescence … is a key stage of development characterized by significant brain, behavioral, and psychological change. This period of late adolescence is a pivotal developmental stage that shares key hallmarks of adolescence. This consensus arises out of a multitude of reliable studies on adolescent brain and behavioral development in the years following *Roper*, *Graham*, *Miller*, and *Montgomery*. And the inherent malleability and plasticity of late-adolescent brains are features that are similar to those that the *Miller* Court found relevant to its culpability analysis, which, in turn, formed the basis of *Miller*'s prohibition on mandatory life-without-parole sentences for adolescent defendants.

People v. Parks, 510 Mich. 225, 249-50 (2022) (holding that mandatory life without parole for 18-year-olds violates the Michigan Constitution's bar on "cruel or unusual punishment.").

In general, late-adolescent brains are far more similar to juvenile brains, as described in *Miller*, 567 U.S. at 471-479, than to the brains of fully matured adults. Scientific consensus that, in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 to 20 years old, "blurs the already thin societal line between childhood and young adulthood." *See Parks*, 510 Mich. at 252.

b. The Law and Societal Norms Have Extended the Line Demarcating Childhood and Adulthood Past Age 18 Thereby Showing That the National Consensus Has Shifted in Recent Years to Recognize That 18 to 20-Year-Olds Should Be Treated Differently Than Fully Mature Adults.

In limiting federal sentencing protections to children, the *Roper* Court recognized society's, "evolving standards of decency." 543 U.S. at 563. The Court explained that the analysis should begin with, "a review of objective indicia of

consensus, as expressed in particular by the enactments of legislatures that have addressed the question." *Id*; *Graham*, 560 U.S. at 62 ("The analysis begins with objective indicia of national consensus.").

Looking at the national consensus at the time around voting, jury service, and marriage, the Court recognized that youth could not independently partake in these rights before age 18. *Roper*, 543 U.S. at 569. This consensus moved the Court to rule that 18 was the point where society drew the line between childhood and adulthood. *Id*. at 574.

A review of current national legislation demonstrates that standards have evolved in the nearly 20 years since *Roper*, and society no longer draws the line clearly at 18 when distinguishing between childhood and adulthood. Despite obtaining access to some rights and privileges, emerging adults are still subject to state and federal restrictions and protections not applied to adults.

Both federal and state laws suggest that our society has judged emerging adults as not sufficiently mature to engage in certain risky and potentially dangerous activities; these laws recognize that emerging adults make decisions differently.

For example, emerging adults cannot not purchase, consume, or possess alcohol, 23 U.S.C. § 158 (the national minimum drinking age for alcohol is 21 years old), open a credit card without a cosigner, 15 USC 1637(c)(8), and purchase a handgun, 18 U.S.C. Section 922(b)(1), (c)(1) and 27 C.F.R. Section 478.99(b) (federal prohibition on sale of handguns and handgun ammunition to persons under age 21).

In 2015, the National Academies of Sciences concluded that raising the

national minimum tobacco purchase age from 18 to 21 would be beneficial because, "the parts of the brain most responsible for decision making, impulse control, sensation seeking, future perspective taking, and peer susceptibility and conformity continue to develop and change through young adulthood." Inst. of Med. of the Nat'l Academies, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (2015). Following these conclusions, federal legislation was passed in 2019 restricting the lawful sale of tobacco to any person younger than 21 years of age. 21 U.S.C. § 387f(d)(5).

Furthermore, additional protections afforded emerging adults demonstrates that society recognizes that emerging adults are developmentally distinct from adults and are unprepared for full adult responsibilities.

To illustrate, with the imposition of the Affordable Care Act of 2010, healthcare plans and issuers that offered dependent child coverage were required to make coverage available to dependents between the ages of 19 and 26. 45 C.F.R. § 147.120. This expansion, "highlight[ed] the ongoing dependence that now characterizes the early years of adulthood." Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55, 59 (2016). This change extended a benefit, "long associated with minor and dependent status," to emerging adults suggesting that they, "lack the independence that is one of the characteristic markers of adulthood." *Id*. at 80.

The State of Florida, in both the civil and criminal context, has acknowledged that maturation continues into the post-adolescent stage. For example, when a child is committed to the Department of Juvenile Justice the court retains jurisdiction until

the child reaches the age of 21. § 985.0301(5)(B)(2), Fla. Stat. (2023). The same is true in the case of dependent children, where the court retains jurisdiction over any child who has been found to be dependent until the child reaches the age of 21. § 39.013(2), Fla. Stat. (2023).

While there is no doubt that some lines for adulthood have been drawn at age 18, the changes discussed above reflect an emerging trend toward recognizing that individuals aged 18 to 20-years-old should be treated differently from fully mature adults.

Furthermore, there is a current trend across the nation to provide different sentencing pathways for emerging adults. These reforms apply the recent scientific understanding of adolescence and young adulthood to recognize emerging adulthood as a necessary consideration in assigning culpability.

In 2023, Vermont extended the jurisdiction of the juvenile court to individuals aged 18, as well as youth between ages 19 and 21 if certain conditions are met. Vt. Stat. Ann. tit. 33, § 5103. Vermont also defines a "child" as an individual who commits a delinquent act between the ages of 10 and 22. Vt. Stat. Ann. tit. 33, § 5102(2)(C).

The emergence of youthful offender statutes also signal that states understand that emerging adults lack maturity. Through these statutes, several jurisdictions have created specialized adult courts, implemented diversion programs or limited sanctions to recognize and accommodate emerging adults. Karen U. Lindell & Katrina L. Goodjoint, Juv. L. Ctr., *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region* (2020).

In the past couple of years, several states have revisited the boundary between defendants who are 17-years-old, and thus shielded from the most severe sentence of life without the possibility of parole, and those who are 18 to 20-years-old, and therefore exposed to it. State courts have relied on the state constitutional protections against cruel or unusual punishment as well as developmental science to extend protections to emerging adults.

In 2021, the Washington Supreme Court recognized, based in large part on the unanimous medical scholarship that, "many youthful defendants older than 18 share the same developing brains and impulsive behavioral attributes as those under 18." *In re Matter of Monschke*, 197 Wash. 2d 305, 311-313 (2021). The Washington Supreme Court found that, "no meaningful neurological bright line exists between ... age 17 on the one hand, and ages 19 and 20 on the other hand." *Id.* at 326. Therefore, the court explained that sentencing courts must have discretion to consider the mitigating qualities of youth mentioned in *Miller* prior to imposing punishment on youth aged 18 to 20 at the time of the crime. *Id.* at 326-28. The court held that a mandatory life-without-parole sentence for any individual ages 18 to 20 at the time of the crime violates its state constitution. *Id.* (Washington's constitution prohibits "cruel punishment.").

As stated in the previous section, in 2022, the Michigan Supreme Court held that mandatory life without parole for 18-year-olds violates the Michigan Constitution's bar on "cruel or unusual punishment." *Parks*, 510 Mich. at 225. The *Parks* court reviewed research in neurological and psychological development and

determined that, "there is no meaningful distinction between those who are 17 years old and those who are 18 years old." *Id*. at 252.

Most recently, in January of 2024, Massachusetts became the first state in the nation to ban life sentences without the possibility of parole for emerging adults under 21. *Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024). The Massachusetts constitution prohibits, "cruel or unusual punishments." *Id*. at 221. The Supreme Judicial Court of Massachusetts observed that, "Advancements in scientific research have confirmed what many know well through experience: the brains of emerging adults are not fully mature. Specifically, the scientific record strongly supports the contention that emerging adults have the same core neurological characteristics as juveniles have." *Id*. at 225. The court highlighted several legislative changes affording emerging adults greater protections across the nation:

> Massachusetts is not alone in recognizing that emerging adult offenders require different treatment from older adult offenders. For example, the District of Columbia now provides a chance at sentence reduction for people who were under twenty-five years old when they committed a crime. D.C. Code § 24-403.03. In 2019, Illinois enacted a law allowing parole review at ten or twenty years into a sentence for most crimes, exclusive of sentences to life without parole, if the individual was under twenty-one years old at the time of the offense. 730 Ill. Comp. Stat. 5/5-4.5-115. Effective January 1, 2024, Illinois also ended life without parole for most individuals under twenty-one years old, allowing review after they serve forty years. Ill. Pub. L. No. 102-1128, § 5 (2022). California has extended youth offender parole eligibility to individuals who committed offenses before twenty-five years of age. Cal. Penal Code § 3051. Similarly, in 2021, Colorado expanded specialized program eligibility, usually reserved for juveniles, to adults who were under twenty-one when they committed a felony. Colo. House Bill No. 21-1209 (2021) (enacted). In Wyoming, "youthful offender" programs were revised to offer reduced and alternative sentencing for those under thirty years old. Wyo. Stat. Ann. §§ 7-13-1002, 7-13-1003. [*Id*. at 231].

In addition, the Court noted the minority of states that mandate life without parole to emerging adults, "Massachusetts is one of only ten States that currently require eighteen through twenty year old individuals who are convicted of murder in the first degree to be sentenced to life without parole." *Id*. at 234 (emphasis in original).

Now, there are only nine states. That only a minority of states impose these sentences is strong evidence of a national consensus that such sentences are cruel and unusual. *See, e.g*., *Roper*, 543 U.S. at 564-65; *Atkins*, 536 U.S. at 316.

III. The Characteristics of Emerging Adult Offenders Demonstrate That the Extremely Harsh, Permanent Punishment of Mandatory Life Without Parole Is Not Appropriate.

After committing his crimes at age 19, Boesch was automatically sentenced to spend the rest of his life in prison under the first-degree murder statute. The sentencing court in this case gave no consideration to any of the attributes of youth that Boesch shared with juvenile defendants. Such an automatically harsh punishment, without allowing the trial court to consider Boesch's reduced culpability as an emerging adult offender, is disproportionate punishment in violation of the Eighth Amendment.

As to the severity of the sentence, other than the death penalty, it is the most severe sentence still available in the nation. The Court observed in *Graham*, that, "life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is

irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration." 560 U.S. at 69. The Court said a life sentence, "means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days." *Id*. at 70 (internal quotation marks and bracket omitted).

The Court recognized, "Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *Id*. at 70.

Additionally, as one commentator said, life sentences:

> communicate to offenders that they have forfeited their right to ever walk again among society. They have been forever banished. No act by the incarcerated individual can change that assessment—neither the number of degrees attained, books written, or prison programs developed nor the model behavior demonstrated can impact the inevitable outcome of death in prison. Even in the face of great internal and genuine transformation, these offenders will be left to literally molder in prison until death.

Jessica S. Henry, Death-in-Prison Sentences: Overutilized and Underscrutinized, in LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY? 76 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2012); *see also id*. at 73 ("John Stuart Mill perceived life imprisonment as 'living in a tomb, there to linger out what may be a long life … without any of its alleviation or rewards—debarred from all pleasant sights and sounds, and cut off from earthly hope.' ").

Further, in *Miller*, the Court said that life in prison reflects, "an irrevocable

judgment about an offender's value and place in society." 567 U.S. at 473-475. The Court recognized that, "By making youth (and all that accompanies it irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id*. at 479.

The unique characteristics of emerging adult brains make the condemnation to die in prison even more severe. As explained in the preceding sections, everything *Graham* and *Miller* said about transient brain development and reduced culpability applies to emerging adults. Emerging adults are equal in moral culpability neurologically to juveniles.

In addition, a mandatory life without parole sentence ignores that emerging adults, just like their juvenile counterparts, have a high capacity for reform and rehabilitation because ongoing brain development indicates amenability for change. *See Johnson v. Texas*, 509 U.S. 350, 367 (1993) (holding that jury was free to consider 19-year-old defendant's youth when determining whether there was probability that he would continue to commit violent acts in the future and stating, "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." (quotation omitted)).

As the Michigan Supreme Court observed in *Parks*, "Because of the dynamic neurological changes that late adolescents undergo as their brains develop over time and essentially rewire themselves, automatic condemnation to die in prison at 18 is beyond severity—it is cruelty." *Parks*, 510 Mich. at 258 (emphasis added). As shown in the preceding sections, the same logic applies to 19 and 20-year-olds.

The evolution in Eighth Amendment jurisprudence has been informed by neuroscience and adolescent developmental research and it is now well-established that 18 through 20-year-olds who commit crimes are less culpable than fully-developed adults, are more similar developmentally to juvenile offenders, and have a distinctive capacity for rehabilitation.

At present there is a discrepancy within the criminal system, with emerging adults being forced within the adult system to face potentially negative influences and life-long consequences, though, mentally, they are not any more blameworthy than juvenile offenders in their level of decision-making. It is inherently unfair to expect those in late adolescence to have adult levels of decision-making and impulse control as their brains are still not fully developed.

The identification of full criminal accountability at age 18 disregards the emerging adulthood phase of human development— a unique stage of life recognized within the fields of neuroscience, sociology, and psychology. Where we now know that the same characteristics that apply to individuals under 18 years of age also apply to 18 through 20-year-olds, drawing the line at 18 creates a disproportionate punishment for an entire class of individuals.

Accordingly, and for all the reasons stated above, this Court should grant certiorari and redraw the constitutional line for mandatory life without parole sentences to bar the imposition of such sentences on emerging adults aged 18 to 20-years-old.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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