

No. \_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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CAED BRAWNER,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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**On Petition for Writ of Certiorari  
to the Florida First District Court of Appeal**

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**PETITION FOR WRIT OF CERTIORARI**

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## **A. QUESTION PRESENTED FOR REVIEW**

Whether a sentence of mandatory life imprisonment without the possibility of parole on a teenager violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution.

## **B. PARTIES INVOLVED**

The parties involved are identified in the style of the case.

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The Petitioner, CAED BRAWNER, requests the Court to issue a writ of certiorari to review the judgment of the Florida First District Court of Appeal entered in this case on November 5, 2024. (A-3).<sup>1</sup>

#### **D. CITATION TO ORDER BELOW**

*Browner v. State*, 395 So. 3d 1079 (Fla. 1st DCA 2024).<sup>2</sup>

#### **E. BASIS FOR JURISDICTION**

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal.

#### **F. CONSTITUTIONAL PROVISION INVOLVED**

The Eighth Amendment to the Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

#### **G. STATEMENT OF THE CASE**

In 2003, the Petitioner was sentenced to mandatory life imprisonment without the possibility of parole after he was convicted of murder and armed robbery. At the

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<sup>1</sup> References to the appendix to this petition will be made by the designation “A” followed by the appropriate page number.

<sup>2</sup> Because the state appellate court did not issue a written opinion, the Petitioner was not entitled to seek review in the Florida Supreme Court. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).



time of the offense, the Petitioner was a teenager – he was only *nineteen years old*.

In 2023, the Petitioner filed a Florida Rule of Criminal Procedure 3.800(a) motion arguing that a sentence of mandatory life imprisonment without the possibility of parole on a teenager violates the prohibition of cruel and unusual punishment of the Eighth Amendment of the Constitution. On January 3, 2024, the state postconviction court denied the Petitioner’s rule 3.800(a) motion. (A-5). In the order, the state postconviction court said, “Further, the Supreme Court’s categorical punishment jurisprudence, which began in death penalty cases and expanded to age-based punishments in *Graham*<sup>3</sup>, is wrongly decided and due for a correction soon.” (A-5). The Petitioner appealed the state postconviction court’s denial of his rule 3.800(a) motion and the Florida First District Court of Appeal affirmed the denial of the rule 3.800(a) motion without any explanation. (A-3).

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<sup>3</sup> *Graham v. Florida*, 560 U.S. 48 (2010).

## H. REASON FOR GRANTING THE WRIT

### **The question presented is important.**

The Petitioner was convicted of murder and armed robbery and the Petitioner was sentenced to mandatory life imprisonment without the possibility of parole. At the time of the offense, the Petitioner was only nineteen years old. The Petitioner submits that his sentence of mandatory life imprisonment without the possibility of parole on a teenager violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution.

This Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), highlighted the differences between an adult with a fully-developed brain and a person who has yet to achieve adulthood – whose brain has not fully developed. In *Graham*, the Court held that a sentence of life imprisonment without the possibility of parole for juvenile offenders who did not commit homicide is categorically barred by the Eighth Amendment. To support this holding, the Court relied on the data demonstrating differences between the adult brain and the non-adult brain:

*Roper [v. Simmons]*, 543 U.S. 551 (2005),] established that because juveniles have lessened culpability they are less deserving of the most severe punishments. 543 U.S., at 569. As compared to adults, juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.” *Id.*, at 569-570. These salient characteristics mean that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.*, at 573. Accordingly, “juvenile offenders cannot with reliability be classified among the worst offenders.” *Id.*, at

569. A juvenile is not absolved of responsibility for his actions, but his transgression “is not as morally reprehensible as that of an adult.” *Thompson v. Oklahoma*, 487 U.S. 815,] 835 [(1988)] (plurality opinion).

No recent data provide reason to reconsider the Court’s observations in *Roper* about the nature of juveniles. As petitioner’s amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. See Brief for American Medical Association *et al.* as Amici Curiae 16-24; Brief for American Psychological Association *et al.* as Amici Curiae 22-27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U.S., at 570. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Ibid.* These matters relate to the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply.

*Graham*, 560 U.S. at 68-69. Undersigned counsel acknowledges that in *Graham*, the Court was focusing on juveniles (i.e., those defendants who had not yet achieved the age of eighteen). However, in one of the amicus briefs considered by the Court in *Graham*, it was pointed out that the human brain does not fully develop until the age of *twenty-five*. Specifically, in the amicus brief submitted by the American Medical Association (No. 08–7412, 2009 WL 2247127 at \*13-31 – hereinafter “*Graham* AMA Brief”), it was explained that structural differences between adolescent and adult brains, confirmed by recently developed brain imagery technology, demonstrate that critical regions of the brain responsible for controlling thoughts, emotions, impulsivity, and actions continue to develop through age *twenty-five*.<sup>4</sup>

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<sup>4</sup> There are two ways in which the adolescent’s prefrontal cortex is physically underdeveloped, affecting brain functioning: pruning and myelination. See *Graham* AMA Brief at 18-19. Pruning refers to the process of decreasing gray matter in the

In *Miller v. Alabama*, 567 U.S. 460 (2012), the Court extended the reasoning in *Graham* and held that mandatory life imprisonment without parole for a juvenile

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brain as it matures. *Id.* at 19 (“[P]runing of excess neurons and connections which make up the gray matter leads to greater efficiency of neural processing and strengthens the brain’s ability to reason and consistently exercise good judgment. Thus, pruning establishes some pathways and extinguishes others, enhancing overall brain functions.”). MRI technology has allowed for a better understanding of the pruning process and its impact on brain maturation:

Gray matter volumes peak during the ages from 10-20 years, and the prefrontal cortex is one of the places where gray matter increases – before adolescence – and then gets pruned over time, beyond adolescence. The prefrontal cortex is also one of the last regions where pruning is complete and this region continues to thin past adolescence.

*Graham* AMA Brief at 20-21. Pruning is one measure of brain maturity. One of the last regions of the brain to reach full maturity in the pruning process in the pre-frontal cortex – “the region most closely associated with risk assessment, impulse control, emotional regulation, decision-making, and planning . . . .” *Id.* at 21. During adolescence, “white matter” in the brain increases by a process called “myelination.” “The presence of myelin makes communication between different parts of the brain faster and more reliable.” Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 144 (2001). The increase in “white matter” or myelination “continues through adolescence into adulthood.” *Graham* AMA Brief at 22, n.68. A longitudinal MRI study at the National Institute of Mental Health documented an increase in white matter continuing through the teenage years to at least age 22. *See* Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 *Nature Neurosci.* 861, 861-62 (1999). Late maturation of the frontal lobes is also consistent with electroencephalogram (EEG) research showing that the frontal executive region matures from ages 17-21 – after maturation appears to cease in other brain regions. William J. Hudspeth & Karl H. Pribram, *Psychophysiological Indices of Cerebral Maturation*, 21 *Int’l J. Psychophysiology* 19, 26-27 (1992). *See also* Mark Hanson, *What’s the Matter with Kids Today*, ABA Journal, July 2010, at 50 (discussing scientific research that suggests psychosocial development continues into early adulthood resulting in shortsighted decisions, poor impulse control, and increased vulnerability to peer pressure during adolescence); Richard Knox, *The Teen Brain: It’s Just Not grown Up Yet*, Nat’l Pub. Radio (March 1, 2010), <http://www.npr.org/templates/story/story.php?storyID=124119468> (interview of Harvard University scientists and expert on epilepsy, Frances Jensen) (“Recent studies show that neural insulation [which connects the frontal lobes to the rest of the brain] isn’t complete until the mid-20’s.”).

convicted of murder violates the Eighth Amendment's prohibition on cruel and unusual punishments.

As explained above, the offenses in the instant case occurred when the Petitioner was only nineteen years old. The human brain development research relied upon by the Court in *Graham* and *Miller* applies equally to the Petitioner's case.

In support of his argument that it is unconstitutional (both facially and as applied to the Petitioner) to impose a mandatory sentence of life imprisonment without the possibility of parole on any teenager, the Petitioner relies on the Illinois appellate court's decision in *People v. House*, 2015 WL 9428803 (Ill. App. Ct. Dec. 24, 2015). In *House*, the court held that the imposition of a mandatory natural life sentence on a nineteen-year-old defendant convicted of murder and aggravated kidnapping violated the Eighth Amendment:

While defendant was not a juvenile at the time of the offense, his young age of 19 is relevant in consideration under the circumstances of this case. As in [*People v.*] *Miller*[, 781 N.E.2d 300 (2002)], defendant's sentence involved the convergence of the accountability statute and the mandatory natural life sentence. We acknowledge that the offender in *Miller* was 15, never handled a firearm, and had less than a minute to consider the implications of his participation. In the present case, the State's evidence at trial established that defendant was not present at the scene of the murder, but merely acted as a lookout near the railroad tracks. There was no evidence that defendant helped to plan the commission, but instead took orders from higher ranking UVL members. While defendant had a greater involvement in the commission of the offenses than the defendant in *Miller*, after considering the evidence and defendant's relevant culpability, we question the propriety of mandatory natural life for a 19 year old defendant convicted under a theory of accountability. Although defendant acted as a lookout during the commission of the crime and was not the actual shooter, he received a mandatory natural life sentence, the same sentence applicable to the person who pulled the trigger.

We also observe that the Supreme Court in *Miller* [*v. Alabama*, 567

U.S. 460 (2012)], *Graham* and *Roper* considered the continuing brain development in adolescents.

“Because juveniles have diminished culpability and greater prospects for reform, we explained, ‘they are less deserving of the most severe punishments.’ *Graham*, 560 U.S. at 68. Those cases relied on three significant gaps between juveniles and adults. First, children have a “lack of maturity and an underdeveloped sense of responsibility,” ‘leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S. at 569. Second, children ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’ *Id.* at 570.

Our decisions rested not only on common sense – on what ‘any parent knows’ – but on science and social science as well. *Id.* at 569. In *Roper*, we cited studies showing that “[o]nly a relatively small proportion of adolescents” who engage in illegal activity “develop entrenched patterns of problem behavior.” *Id.* at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)). And in *Graham*, we noted that ‘developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds’ – for example, in ‘parts of the brain involved in behavior control.’ 560 U.S. at 68 . . . . We reasoned that those findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his “deficiencies will be reformed.” *Id.* at 68 (quoting *Roper*, 543 U.S. at 570).

*Miller*, 567 U.S. at 471-472.

As the *Graham* Court noted, “[e]ven if the punishment has some connection to a valid penological goal, it must be shown that the punishment is not grossly disproportionate in light of the justification

offered.” *Graham*, 560 U.S. at 72. The *Roper* Court stated, “it is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper*, 543 U.S. at 573 (citing Lawrence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014-16 (2003)).

“It is widely recognized by many legal scholars that the United States Supreme Court is moving rather quickly towards abolishing life without parole sentences for juvenile offenders entirely.” Maureen Dowling, *Note Juvenile Sentencing in Illinois: Addressing the Supreme Court Trend Away From Harsh Punishments for Juvenile Offenders*, 35 N. Ill. U. L. Rev. 611, 619 (2015).

“There are several parts of the analyses of each case that point to this inevitable shift. First, each case acknowledges that the decisions are directly contrary to our historical understanding of juvenile sentencing. The Court rejects the notion of looking at sentencing ‘through a historical prism’ in favor of the evolving moral and ethical standards of society. This opens up the Court to abolish life without parole sentences for juveniles, even though traditionally it is a widely practiced and accepted sentence. Second, each opinion makes it clear that simply because a majority of state sentencing statutes do not currently agree with the decisions, this will not affect the outcome. This argument goes hand-in-hand with the Court’s rejection of historical sentencing standards. Again, the Court has left open the possibility of abolishing the harshest sentence available to juveniles. Finally, the Court repeatedly emphasizes the differences between juveniles and adults as an explanation for why each should be sentenced differently. The continued focus on these differences further bolsters the argument for abolishing life sentences without the possibility of parole for juveniles.”

*Id.* at 619-20.

“The Supreme Court has followed a clear path away from life without parole sentences. Following the reasoning laid out by the Court in these three cases, it can easily be seen how the Court would deal with abolishing the sentence entirely.” *Id.* at 627. As this note observes, several states have responded to *Miller* by imposing “*de facto*” life sentences through lengthy term-of-years sentences. *Id.* at 620. However,

“These *de-facto* life sentences are not consistent with the language or analysis found in both *Miller* and *Graham*. A prison sentence that will last sixty or more years does not allow courts to show juvenile offenders any clemency. Furthermore, despite the lengthy discussion about the differences between adults and juveniles, *de-facto* life sentences do not give courts any opportunity to take the differences into account when determining a sentence.” *Id.* at 621. We also observe that the Iowa Supreme Court in *State v. Null*, 836 N.W.2d 41 (Iowa 2013) expanded the principles of *Miller* to hold mandatory minimum sentences for juvenile offenders to be unconstitutional. The *Null* court believed that

“while a minimum of 52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger *Miller*-type protections. Even if lesser sentences than life without parole might be less problematic, we do not regard the juvenile’s potential future release in his or her late sixties after a half century of incarceration sufficient to escape the rationales of *Graham* or *Miller*. The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society as required by *Graham*, 560 U.S. at 75.”

*Id.* at 71.

Although the Court in *Roper* delineated the division between juvenile and adult at 18, we do not believe that this demarcation has created a bright line rule. *See Roper*, 543 U.S. at 574 (“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.”).

Rather, we find the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary, especially in the case at bar. Recent research and articles have discussed the differences between young adults, like defendant, and a fully mature adult. “Research in neurobiology and developmental psychology has shown that



the brain doesn't finish developing until the mid-20s, far later than was previously thought. Young adults are more similar to adolescents than fully mature adults in important ways. They 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), available at [www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5--9ef3-fde182507eacstory.html](http://www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5--9ef3-fde182507eacstory.html).

"The young adult brain is still developing, and young adults are in transition from adolescence to adulthood. Further, the ongoing development of their brains means they have a high capacity for reform and rehabilitation. Young adults are, neurologically and developmentally, closer to adolescents than they are to adults. Prosecuting and sentencing young adults in the adult criminal justice system deprives them of their chance to become productive members of society, leads to high recidivism rates, and high jail and prison populations, and increased costs to society through subsequent incarceration and unemployment."

Kanako Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion, Juvenile Justice Initiative*, at 1 (Feb. 2015), available at [jjjustice.org/wordpress/wp-content/uploads/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf](http://jjjustice.org/wordpress/wp-content/uploads/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf).

The thesis of these articles is to illustrate the need to expand juvenile sentencing provisions for young adult offenders. Both articles noted that several European countries have already extended juvenile justice to include young adults. In Germany, all young adults ages 18 to 21 have been tried in juvenile court and the judges have an option to sentence them as a juvenile, if a consideration of the offender's personality and environment indicate that his psychological development was as a juvenile. *Id.* at 2. Sweden allows for young adults to be tried in juvenile court until their 25th birthday, and young adults 18 to 24 receive different treatment than adults. "For instance, statutory minimum sentences cannot be applied for young people age 20 or under." *Id.* at 3. The Netherlands has extended juvenile alternatives for young adults ages 18 to 21. *Id.*

We also point out that Illinois raised the age for a delinquent minor. Prior to January 1, 2014, a person who committed a felony prior to his or her 17th birthday was considered a delinquent minor. *See* 705 ILCS 405/5–105(3) (West 2012). However, Public Act 98-61 changed the definition of a delinquent minor to be, "any minor who prior to his or her

18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance.” Pub. Act. 98–61, § 5 (eff. Jan. 1, 2014) (amending 705 ILCS 405/5-105(3) (West 2012)).

As discussed in the Northern Illinois University Law Review note, the Supreme Court of Wyoming compiled a list of factors taken from *Miller* to consider in sentencing juveniles.

“During a postconviction sentencing hearing, a trial court should scrutinize the following factors before sentencing a juvenile offender: (a) the character and history of the juvenile offender and the specific circumstances of the crime; (b) the background and emotional and mental development of the juvenile offender; (c) the offender’s age and characteristics that go along with it including immaturity and ability to appreciate risks; (d) the juvenile’s family and home environment; (e) the circumstances of the crime, the extent to which the juvenile was involved, and the extent to which peer or familial pressure may have factored into the juvenile’s participation; (f) ‘the juvenile’s relative inability to deal with police and prosecutors or to assist his own attorney’; and (g) the offender’s potential for rehabilitation.”

Dowling, *supra* at 634 (citing *Bear Cloud v. State*, 2013 WY 18, ¶ 42, 294 P.3d 36, 47 (Wyo. 2013), quoting *Miller*, 567 U.S. at 475-477).

“[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered’ in assessing his culpability.” *Miller*, 567 U.S. at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982)). As the Supreme Court observed in *Graham*, “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.” *Graham*, 560 U.S. at 70.

“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.” *Miller*, 567 U.S. at 479. Under Illinois law, the harshest form of punishment is a mandatory life sentence. See 730 ILCS 5/5-8-1(a) (West 2014). The trial court is not afforded any discretion if an offender is found guilty of triggering

offenses, such as, the death of more than one person. *See* 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014). However, when the death penalty still existed in Illinois, there were several statutory guidelines that had to be met before such a sentence could be imposed. *See* 720 ILCS 5/9-1 (West 2010). The lack of discretion afforded the trial court for the imposition of a mandatory life sentence is especially relevant when the defendant is a young adult, over 18, but still not considered a fully mature adult.

These considerations are significant in the instant case and support defendant's argument that the mandatory natural life sentencing statute is unconstitutional as applied to him. Turning to the case at bar, while clearly no longer a juvenile, defendant, at age 19 years and 2 months, was barely a legal adult and still a teenager. His youthfulness is relevant when considered alongside his participation in the actual shootings. Defendant's presentence investigation report showed that his only prior offenses were possession of a controlled substance with intent to deliver. Defendant did not have a criminal history of violent crimes. The sentencing hearing also disclosed that defendant never knew his father, he was raised by his maternal grandmother, and that his mother died when he was 18. Defendant attended high school through the twelfth grade, however, he never graduated. At the time defendant was sentenced, the death penalty was still in place in Illinois. Although the trial judge found defendant eligible for the death penalty, he concluded that there were "sufficient mitigating factors to preclude the imposition of the death penalty." While some of these mitigating factors were before the trial court when it declined to impose the death penalty, they were not available to be considered before imposing a mandatory natural life sentence. The court's ability to take any factors into consideration was negated by the mandatory nature of defendant's sentence. The trial court was also precluded from considering the goal of rehabilitation in imposing the life sentence, which is especially relevant in defendant's case. Given defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, we find that defendant's mandatory sentence of natural life shocks the moral sense of the community.

Our conclusion is not meant to diminish in any way of the seriousness of the crimes, specifically two convictions for murder and two convictions for aggravated kidnapping. We recognize defendant remains culpable for his participation. However, we believe that defendant is entitled to a new sentencing hearing in which the trial court has the ability to consider the relevant mitigating factors prior to imposing a sentence of such magnitude. Accordingly, we hold that defendant's sentence violates the proportionate penalties clause of the constitution as applied to him. We vacate defendant's sentence of natural life and

remand for a new sentencing hearing.

*House*, 2015 WL 9428803 at \*22-28.

The Petitioner requests the Court to adopt the Illinois court's well-reasoned opinion in *House* and thereafter conclude that the mandatory life without parole sentence in this case is unconstitutional. As explained in *House*, excluding the Petitioner from the reasoning of the Court's opinions in *Graham* and *Miller* simply because the offenses in this case occurred after the Petitioner turned nineteen years old is arbitrary. And as explained above, recent research and studies into the human brain has now clearly established that young adults are more similar to adolescents than fully mature adults.

And like *House*, there are mitigating circumstances in this case. Specifically, the following mitigators apply to this case. At the time of the offenses, the Petitioner was in college and he had *no criminal history*. Additionally, since being incarcerated as a teenager, the Petitioner has been a model inmate. The Petitioner is now forty-four years old (i.e., he has spent the majority of his life in prison). While in prison, the Petitioner has become a certified Institutional Tutor Aid (for which he helps other inmates obtain their GEDs), he is a prison law clerk, he has completed numerous programs (including a victim impact course), and he is the assistant senior coordinator for the Peer-to-Peer program. Attached to the Petitioner's state court rule 3.800(a) motion were letters and certificates demonstrating the Petitioner's rehabilitation since he has been incarcerated. (A-32).

Recently, courts in other states have expanded the rationale behind the *Graham* and *Miller* decisions and applied them to teenagers above the age of seventeen (defendants who were “teenagers” – i.e., eighteen or nineteen years old). Most notably, in 2021, the Washington Supreme Court extended the reasoning in *Graham* to all defendants under the age of twenty-one. *See In re Personal Restraint of Monschke*, 482 P.3d 276 (Wash. 2021).<sup>5</sup> And in 2022, the Michigan Supreme Court held that the Michigan Constitution bars “automatic” life without parole sentences for eighteen-year-old defendants convicted of first-degree murder. *See People v. Parks*, 2022 WL 3008548 (Mich. Jul. 28, 2022). Based on these decisions from Illinois, Washington, and Michigan, there appears to be an emerging trend in this country to extend the *Graham* and *Miller* rationales to teenagers older than seventeen.

To further support his argument, the Petitioner relies on *United States v. Cruz*, 2021 WL 1326851 (D. Conn. Apr. 9, 2021), where a federal district judge (the Honorable Janet C. Hall) granted a motion for compassionate release under the First Step Act for a defendant who committed murder when he was eighteen years old. In the order, Judge Hall stated the following:

At Cruz’s sentencing in 1996, the Sentencing Guidelines were mandatory and called for a life sentence. The court was not permitted to

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<sup>5</sup> In *Monschke*, two petitioners who were nineteen and twenty years old each were convicted of aggravated first-degree murder and given mandatory life without parole sentences. The Washington Supreme Court held that mandatory life sentences for eighteen-, nineteen-, or twenty-year-old offenders are unconstitutional. The court remanded each case “for a new sentencing hearing at which the trial court must consider whether each defendant was subject to the mitigating qualities of youth.” *Monschke*, 482 P.3d at 288.

consider age as a basis for imposing a sentence outside of the guideline range. The Guidelines are now an advisory factor under section 3553(a), and age is a permissible characteristic for the sentencing court to consider.

It is uncontroversial that age, specifically youth, bears on an individual's blameworthiness in committing a criminal offense. "The basis for this conclusion is too obvious to require extended explanation." *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). Because of their reduced cognitive, interpersonal, and emotional capabilities, children and adolescents are less blameworthy than mature adults when they engage in criminal behavior.

The Supreme Court has discussed these distinguishing characteristics of youth on several occasions. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court identified "[t]hree general differences" that separate juveniles under 18 and adults in terms of blameworthiness. First, juveniles tend to lack both maturity and a sense of responsibility, "often result[ing] in impetuous and ill-considered actions and decisions." *Roper*, 543 U.S. at 569. Second, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Id.* Third, "the character of a juvenile is not as well formed as that of an adult." *Id.* at 570. Based upon these differences, the Court held that the death penalty is unconstitutional for offenders under the age of 18. *See id.* at 575. Subsequently, in *Miller v. Alabama*, the Court again recognized these "three significant gaps between juveniles and adults," 567 U.S. at 471, in its holding that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments," *id.* at 465 (internal quotation marks omitted).

Of course, the Court's holding in *Miller* does not apply to Cruz, who was 20 weeks past his eighteenth birthday when he committed his offenses. That holding under the Eighth Amendment is "explicitly limited" to defendants "under the age of 18."

All the same, the distinguishing characteristics of youth acknowledged in *Roper* and *Miller* "do not disappear when an individual turns 18." *Roper*, 543 U.S. at 574. The line simply "must be drawn" somewhere. *Id.* However, that the Supreme Court has drawn this line at age 18 for purposes of the Eighth Amendment does not extinguish the relevance of these characteristics in assessing, as a general matter, an 18-year-old's blameworthiness in committing a crime. Certainly, it does not require that this court ignore, in the context of the instant section 3582(c) motion for a sentence reduction, what is plain: *a person 20 weeks past his eighteenth birthday exhibits the same hallmark characteristics of*

*youth that make those under 18 less blameworthy for criminal conduct than adults.*

The record developed in Cruz's habeas action amply supports this conclusion. As to the first characteristic identified by the *Roper* Court – “lack of maturity and an underdeveloped sense of responsibility” as manifest in “impetuous and ill-considered actions and decisions” – the scientific evidence before the court clearly established that the same traits are present in 18-year-olds. *See Roper*, 543 U.S. at 569. Cruz's evidence consisted of the expert testimony of Dr. Laurence Steinberg and scientific articles offered as exhibits. *See, e.g.,* Alexandra Cohen *et al.*, *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 Temple L. Rev. 769 (2016); Laurence Steinberg *et al.*, *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, Developmental Science (2017).

In his testimony, Dr. Steinberg defined early adolescence as occurring between the ages of 10 and 13, middle adolescence between the ages of 14 and 17, and late adolescence between the ages of 18 and 21. Steinberg Tr. at 11:5-11. He distinguished between two different decision-making processes: cold cognition, which occurs when an individual is calm and emotionally neutral, and hot cognition, which occurs when an individual is emotionally aroused, such as in anger or excitement. *Id.* at 9:13-10:15. Cold cognition relies mainly on basic thinking abilities while hot cognition also requires the individual to regulate and control his emotions. *Id.* at 10:16-21. While the abilities required for cold cognition are mature by around the age of 16, the emotional regulation required for hot cognition is not fully mature until the early- or mid-20s. *See id.* at 10:18-11:4, 69:20-70:7; *see also* Cohen *et al.*, *When Does a Juvenile Become an Adult?*, at 786 (finding that, “relative to adults over twenty-one, young adults show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal”).

Dr. Steinberg also testified that late adolescents “still show problems with impulse control and self-regulation and heightened sensation-seeking, which would make them in those respects more similar to somewhat younger people than to older people.” Steinberg Tr. at 19:21-25. For example, he testified that impulse control is still developing during the late adolescent years from age 10 to the early- or mid-20s. *Id.* at 20:16-21; *see also* Cohen *et al.*, *When Does a Juvenile Become an Adult?*, at 780. Additionally, late adolescents are more likely to take risks than either adults or middle or early adolescents. *See* Steinberg Tr. at 20:1-15. *According to Dr. Steinberg, risk-seeking behavior peaks around ages 17 to 19 and then declines into adulthood.*

*Id.*; see also Steinberg *et al.*, *Around the World*, at 10 (graphing the trajectory of sensation-seeking behavior, as related to age, as an upside-down “U” with the peak at age 19). The scientific evidence therefore demonstrates that 18-year-olds display similar characteristics of immaturity and impulsivity as juveniles under the age of 18.

The same conclusion can be drawn for susceptibility of 18-year-olds to outside influences and peer pressure, the second characteristic of youth identified in *Roper*. Dr. Steinberg testified that the ability to resist peer pressure is still developing during late adolescence. Steinberg Tr. at 20:22-21:3. *Therefore, susceptibility to peer pressure is higher in late adolescence than in adulthood*, but slightly lower in late adolescence than in middle adolescence. *Id.* Dr. Steinberg testified that, according to his research, up until the age of 24, people exhibit greater risk-taking and reward-sensitive behavior when in the presence of their peers. *Id.* at 24:14-25:15. Adults after the age of 24 do not exhibit this behavior, but rather perform the same whether they are by themselves or with their peers. *Id.* Therefore, like juveniles under the age of 18, 18-year-olds also experience similar susceptibility to negative outside influences.

Finally, on the third characteristic of youth identified in *Roper* – that a juvenile’s character is not as well-formed as that of an adult – Dr. Steinberg testified that people in late adolescence are, like 17-year-olds, more capable of change than are adults. *Id.* at 21:4-12.

*In sum, Dr. Steinberg testified that he is “absolutely confident” that a person’s development along these lines is still ongoing in late adolescence, i.e., between the ages of 18 and 21. See id.* at 61:3-62:4. In 2003, Dr. Steinberg co-wrote an article, the central point of which was that adolescents were more impetuous, were more susceptible to peer pressure, and had less fully formed personalities than adults. *Id.* at 22:2-11; see also Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychol. 1009 (2003). The article focused on people younger than 18. However, given the developments in scientific knowledge about late adolescence, Dr. Steinberg testified that, if he were to rewrite the article, he would say “the same things are true about people who are younger than 21.” See Steinberg Tr. at 22:12-24; see also *id.* at 13:18-14:25.

The court finds the scientific evidence just discussed to be persuasive and well-founded and concludes that, because 18-year-olds are still developing in terms of maturity, impulse control, ability to resist peer pressure, and character, *they are less than fully blameworthy for criminal conduct.*

Against this backdrop, the length of Cruz’s sentence is striking. In



custody since he was 18 years old, Cruz, now 45, has spent roughly 60 percent of his entire life in prison. Should he reach age 72, he will have spent 75 percent of his life behind bars, having served 54 years in prison. The court views this as an unusually long sentence in light of Cruz's lessened blameworthiness due to his age at the time of his crimes. That this is an unusually long sentence is further supported by the fact that the national average length of a federal sentence for murder over the past decade is approximately 22 years, far less than half of what Cruz will serve should he live to age 72. *See* U.S. SENTENCING COMMISSION, FEDERAL SENTENCING STATISTICS: SECOND CIRCUIT tbl. 7 (2011-2020) (annual reports), available at <https://www.ussc.gov/topic/data-reports>. The effect is that Cruz, who was less than fully blameworthy for his crimes given his age when he committed them, will end up serving significantly more time than adults who, fully blameworthy for their conduct, have committed the same crimes. "This reality cannot be ignored." *Graham v. Florida*, 560 U.S. 48, 70-71 (2010) ("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.").

The court concludes that the tremendous length of Cruz's life sentence supports a reduction.

*Cruz*, 2021 WL 1326851 at \*5-7 (emphasis added) (some citations omitted). As in *Cruz*, the Petitioner has also obtained an affidavit from Dr. Laurence Steinberg, a professor of psychology who specializes in adolescent psychological development – and Dr. Steinberg's affidavit was attached to the state court rule 3.800(a) motion. (A-7).<sup>6</sup> The scientific evidence set forth in Dr. Steinberg's affidavit establishes that because nineteen-year-olds are still developing in terms of maturity, impulse control, ability to resist peer pressure, and character, *they are less than fully blameworthy for criminal conduct*. Thus, a sentence of *mandatory life imprisonment* is unconstitutional in light of the Petitioner's *lessened blameworthiness* due to his age at the time of his crimes.

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<sup>6</sup> *See also* (A-29) (letter from Dr. James Garbarino).

In 2014, the Florida Legislature responded to the Court's decisions in *Graham* and *Miller* and the Florida Legislature adopted criteria for a sentencing court to consider when sentencing a defendant with a less-than fully formed brain. See § 921.1401, Fla. Stat. Section 921.1401 states in relevant part

(2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

- (a) The nature and circumstances of the offense committed by the defendant.
- (b) The effect of the crime on the victim's family and on the community.
- (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- (d) The defendant's background, including his or her family, home, and community environment.
- (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- (f) The extent of the defendant's participation in the offense.
- (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- (h) The nature and extent of the defendant's prior criminal history.
- (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- (j) The possibility of rehabilitating the defendant.

However, *none of the factors* set forth in section 921.1401 were considered by the sentencing court in the Petitioner's case. Undersigned counsel submits that the appropriate remedy in this case is to remand with directions that the state trial court conduct a resentencing hearing so that the state trial court can properly apply the factors set forth in section 921.1401 in order to determine an appropriate sentence in

this case – a sentence that takes into consideration the Petitioner’s age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to consider the question of whether a sentence of mandatory life imprisonment without the possibility of parole on a teenager violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution. The question in this case has the potential to impact hundreds – if not thousands – of cases nationwide. The Petitioner urges the Court to exercise its discretion to hear this important question.

## **I. CONCLUSION**

The Petitioner requests the Court to grant his petition for writ of certiorari.

Respectfully Submitted,

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