No. 17-912

IN THE
Supreme Court of the United States

BOBBY BOSTIC, PETITIONER,

v.

RONDA PASH, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSOURI

BRIEF OF *AMICI* FORMER JUDGES, PROSECUTORS, AND LAW ENFORCEMENT OFFICERS IN SUPPORT OF PETITIONER

Submitted by:

Joseph C. Welling
Phillips Black Project
Saint Louis University
School of Law
100 N. Tucker Blvd.
St. Louis, MO 63101

John R. Mills
Phillips Black Project
836 Harrison Street
San Francisco, CA 94107

Jennifer Merrigan*
Jenny Osborne
Phillips Black Project
1901 S. 9th St.
Suite 510
Philadelphia, PA 19148
(888) 532-0897
j.merrigan@phillipsblack.org

*Counsel of Record

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

BRIEF OF *AMICI CURIAE*[1]

Amici curiae respectfully submit this brief in support of petitioner Bobby Bostic, and urge that the petition for certiorari be granted.

INTEREST OF THE *AMICI*

Amici are former federal and state judges, prosecutors, and law enforcement officers.[2] They are leaders in the community and deeply familiar with the criminal justice system. They include stakeholders—former trial and appellate judges, United States Solicitors General, state Attorneys General, United States attorneys, assistant United States attorneys, and elected prosecutors and their deputies—from every stage of the criminal justice process. Notwithstanding their diverse backgrounds, *amici* share a strong interest in maintaining the fairness and public legitimacy of the criminal justice system. Their collective centuries of criminal justice experience reflect the "common sense" conclusion that juveniles are different from adults and should be treated accordingly, including in sentencing proceedings. *Amici*'s shared interests and experiences are particularly salient in the context of sentencing young offenders to terms that exceed their life expectancy.

---

[1] *Amici* certify that no party or party's counsel authored this brief in whole or in part and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received notice of *Amici*'s intent to file this brief and all parties consented to the filing of this brief.

[2] A complete list of the *amici* appears as an addendum.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Bobby Bostic's judge sentenced him to die in prison for nonhomicide offenses he committed at age 16. He will not become eligible for parole until he is 112 years old. Mr. Bostic's sentence violates *Graham v. Florida*, 560 U.S. 48 (2010), because he will spend his life in prison without a meaningful opportunity to obtain release.

Graham held that sentences of life without possibility of parole for juvenile nonhomicide offenders violate the Eighth Amendment. It recognized that for such juveniles, their capacity for change and limited moral culpability prohibits irrevocably condemning them to die in prison. For that reason, states must provide them a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75. The overwhelming weight of authority favors applying *Graham* to juveniles sentenced to aggregate term-of-years sentences exceeding their lifespan. Missouri has joined the small number of jurisdictions limiting *Graham* to juvenile nonhomcide offenders who have received a formal sentence of life without possibility of parole for a single offense.

Amici's core argument—that juveniles are different from adults and should be treated accordingly even when sentenced to aggregate terms-of-years under multiple-count indictments—is supported by their collective centuries of experience. As former judges and prosecutors, *amici* have

personally considered the total sentence in deciding what charges to file and whether to run sentences consecutively or concurrently. These decisions are made in light of the substance of the sentence imposed, not whether it is formally labeled life without parole. Although the Court has approved of that practice for adults, where a life without parole sentence is constitutional, the practice of crafting sentences that guarantee a juvenile nonhomicide offender will die in prison violates at least the spirit of *Graham*.

Mr. Bostic's case epitomizes the rationale underlying the Court's decision in *Graham*. After decades in prison following the "impetuous and ill-considered actions and decisions" he made at age 16, Mr. Bostic has grown and matured. But Missouri law does not afford him the opportunity to ever "demonstrate that he is fit to rejoin society." The Court should grant certiorari and reverse the decision of the Missouri Supreme Court.

ARGUMENT

I. *Graham* Requires A Meaningful Opportunity For Release For Nonhomicide Juvenile Offenders.

For the first time outside the context of the death penalty, *Graham v. Florida* established a categorical exclusion from a certain punishment based on the characteristics of the offender and the offense. Where the offender is a juvenile and where the offense is not a homicide, the penological justifications for punishment—retribution, deterrence, incapacitation, and rehabilitation—are insufficient to warrant imposing a prison sentence

that does not provide a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 60-61, 74-75.

A. *Graham*'s holding is premised on the acknowledgement that the characteristics of juvenile nonhomicide offenders cannot justify an irrevocable sentence to die in prison.

Three characteristics of juvenile offenders establish their "lessened culpability": "[1] a lack of maturity and an underdeveloped sense of responsibility; [2] they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and [3] their characters are not as well formed." *Id.* at 68 (quotations omitted). All three characteristics undermine culpability and, therefore, lessen the penological justifications for imposing the harshest penalties on juvenile offenders. *Id.* at 71-72 (quoting *Roper v. Simmons*, 543 U.S. 551, 571 (2005) ("[T]he case for retribution is not as strong with a minor as with an adult.")).

The first characteristic "often result[s] in impetuous and ill-considered actions and decisions," and this fact, along with the second characteristic—susceptibility to outside pressures—undermine both retribution and deterrence. *Id.* at 72 (quotation omitted). The third characteristic reflects the understanding that juveniles are more capable of change than adults, making it difficult at sentencing to distinguish between juveniles whose crimes are the result of "unfortunate yet transient immaturity" and the "rare" irreparably corrupt or incorrigible juvenile offender. *Id.* at 72-73. Therefore the goal of

incapacitation does not require a sentence guaranteeing the juvenile offender will die in prison. *Id.* Finally, the third factor also underscores a juvenile's "capacity for change"—and rehabilitation, making an irrevocable sentence to die in prison inconsistent with the rehabilitative ideal. *Id.* at 74. A defendant's status as a juvenile alters the balance for assessing culpability.

Juveniles who "do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers." *Id.* at 69. There exists a fundamental difference "between homicide and other serious violent offenses against the individual." *Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008).[3]

Nonhomicide offenses committed by juveniles are categorically different than homicides and crimes committed by adults. Simply put, sentencing a juvenile to die in prison for a crime other than homicide "cannot be justified." *Graham,* 560 U.S. at 74.

B. The rationale applies, regardless of whether the sentence is designated LWOP or is the aggregate effect of multiple sentences imposed consecutively.

[3] This distinction—nonhomicide offenders, as opposed to those convicted of murder—distinguishes *Graham* and *Miller*. The former are per se less culpable than the latter and therefore categorically ineligible for a sentence of life without the possibility of parole.

It is the substance of juvenile sentences, not their form, that render them unjustifiable. "[C]hildren are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (citing *Roper*, 543 U.S. at 569-570, and *Graham*, 560 U.S. at 68). Neither the characteristics of the offender nor the nature of the offense changes depending on whether the offense is denominated "LWOP," a term of years, or something else. The Court has made this clear: "[A] categorical rule gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform." *Graham*, 560 U.S. at 79.

The Court's concern regarding the lessened culpability of juvenile offenders would have been the same whether Mr. Graham had received an aggregate term-of-years sentence with parole eligibility at age 112 (like Mr. Bostic), or a life sentence.[4] In either case, the sentence "gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Graham*, 560 U.S. at 79. Such sentences lead juvenile offenders to believe that "good behavior and character improvement are immaterial," and "that whatever the future might hold in store for [his] mind and spirit . . . , he will remain in prison for the rest of his days." *Id.* at 70 (quoting *Naovarath v. State*, 779 P.2d 944, 944 (Nev. 1989)).

Such a distinction—where LWOP is barred, but lifetime term-of-years sentences are permitted—

[4] In fact, *Graham* also involved a *de facto* sentence of life without parole. Mr. Graham's actual sentence was life imprisonment, but because Florida had "abolished its parole system, the life sentence left Graham no possibility of release except executive clemency." *Graham*, 560 U.S. at 48.

would, in the extreme, elevate form over substance. Such a state of affairs disregards this Court's long-standing instruction that, "in passing upon constitutional questions the court has regard to substance not to mere matters of form . . . ." *Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 708 (1931); *see also Willbanks*, 522 S.W.3d at 249 (Stith, J. dissenting) ("It is a fiction to suggest [that imposition of aggregate consecutive sentences] is just a collateral result of sentencing the juvenile for multiple crimes. Judges impose consecutive sentences cognizant of the overall effect."). A sentence to die in prison for a juvenile nonhomicide offense is constitutionally unjustifiable.

II. A Small Minority Of Jurisdictions Sanction Aggregate Term-Of-Year Sentences That Provide Juveniles With No Meaningful Opportunity For Release.

Most jurisdictions recognize that *Graham* and *Miller* prohibit the sentence that Bobby Bostic received—a sentence that does not carry the label "life without parole," but that is in effect a life without parole sentence. Eleven state supreme courts have held that *Graham* and *Miller* apply to aggregate term-of-year sentences that guarantee a juvenile offender will die in prison.[5] *See People v.*

[5] The question whether such an aggregate term-of-years sentence amounts to a de facto sentence of life without parole arises both in the context of nonhomicide juvenile offenses and homicide juvenile offenses. For the former, the question is whether *Graham* prohibits such a sentence. For the latter, the question is whether *Miller*'s prohibition on mandatory sentences of life without parole adheres. In either scenario, the question of what constitutes a de facto life sentence is the same.

Caballero, 282 P.3d 291 (Cal. 2012); *State v. Riley*, 110 A.3d 1205 (Conn. 2015), *cert. denied*, 136 S. Ct. 1361 (2016); *Henry v. State*, 175 So. 3d 675 (Fla. 2015), *cert. denied*, 136 S. Ct. 1455 (2016); *People v. Reyes*, 63 N.E.3d 884 (Ill. 2016); *State v. Pearson,* 836 N.W.2d 88 (Iowa 2013); *Com. v. Brown*, 1 N.E.3d 259 (Mass. 2013); *State v. Boston*, 363 P.3d 453 (Nev. 2015); *State v. Zuber*, 152 A.3d 197 (N.J. 2017), *cert. denied*, 138 S. Ct. 152 (2017); *State v. Moore*, 76 N.E.3d 1127 (Ohio 2016), *cert. denied*, 138 S. Ct. 62 (2017); *State v. Ramos*, 387 P.3d 650 (Wash. 2017), *cert. denied*, No. 16-9363, 2017 WL 2342671 (U.S. Nov. 27, 2017); *Bear Cloud v. State*, 334 P.3d 132 (Wyo. 2014).

In addition, three federal courts of appeals have held that this position constitutes clearly established federal law. *See McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016); *Moore v. Biter*, 725 F.3d 1184 (9th Cir. 2013); *Budder v. Addison*, 851 F.3d 1047 (10th Cir. 2017).[6]

On the other side of the conflict, a handful of jurisdictions have held that the principles of *Graham* and *Miller* apply only to sentences that are formally labeled life without parole, and not to aggregate term-of-year sentences that are the functional equivalent of life without parole. *See Lucero v. People*, 394 P.3d 1128, 1132 (Colo. 2017); *State v. Brown*, 118 So. 3d 332 (La. 2013); *State v. Ali*, 895 N.W.2d 237 (Minn. 2017); *Vasquez v. Com.*,

[6] One federal court of appeals—the Sixth Circuit—disagrees that this view is clearly established federal law. *Bunch v. Smith*, 685 F.3d 546, 547 (6th Cir. 2012), *cert. denied*, 133 S. Ct 1996 (2013) (holding undermined by *State v. Moore*, 76 N.E.3d 1127 (Ohio 2016)).

781 S.E.2d 920 (Va. 2016), *cert. denied*, 137 S. Ct. 568 (2016). The Supreme Court of Missouri has joined this group. *See Willbanks v. Dep't of Corr.*, 522 S.W.3d 238, 239 (Mo.), *cert. denied*, 138 S. Ct. 304 (2017).

The high courts in these states have placed undue importance upon the fact that the life sentence in *Graham* was imposed for a single nonhomicide offense. In Missouri, the supreme court reasoned that *Graham* did not apply to sentences like Mr. Bostic's because "*Graham* held that the Eighth Amendment barred sentencing a juvenile to a **single** sentence of life without parole for a nonhomicide offense," and "did not address juveniles who were convicted of **multiple** nonhomicide offenses and received multiple fixed-term sentences." *Willbanks*, 522 S.W.3d at 239-240 (emphasis in original).

The high courts in Colorado, Louisiana, and Virginia have applied the same faulty reasoning. *See Lucero*, 394 P.3d at 1132 ("*Graham* and *Miller* apply only where a juvenile is sentenced to the specific sentence of life without the possibility of parole for one offense."); *id.* at 1133 ("Life without parole is a specific sentence, imposed as punishment for a single crime, which remains distinct from aggregate term-of-years sentences resulting from multiple convictions."); *Brown*, 118 So. 3d at 341 ("In our view, *Graham* does not prohibit consecutive term-of-year sentences for multiple offenses committed while a defendant was under the age of 18, even if they might exceed a defendant's

lifetime.");[7] *Vasquez*, 781 S.E.2d at 925 ("Nowhere did *Graham* address multiple term-of-years sentences imposed on multiple crimes that, by virtue of the accumulation, exceeded the criminal defendant's life expectancy.").

In addition, Minnesota has applied this line of reasoning in upholding a mandatory aggregate life sentence in a homicide case. *State v. Ali*, 895 N.W.2d 237, 239 (Minn. 2017) (declining to apply *Miller* to three consecutive mandatory sentences of life without parole for 30 years because "*Miller* and *Montgomery* involved the imposition of a single sentence of life imprisonment without the possibility of parole and the United States Supreme Court has not squarely addressed the issue of whether consecutive sentences should be viewed separately when conducting a proportionality analysis under the Eighth Amendment.").

In this minority of jurisdictions, juveniles can be locked away forever so long as courts avoid imposing a literal life without parole sentence for a single offense. But in *Graham* the Court did not draw distinctions between types of nonhomicide offenses, or the number of nonhomicide offenses charged in an indictment, or suggest that anything other than homicide could ever justify a sentence that denies a juvenile offender an opportunity "to later demonstrate that he is fit to rejoin society."

---

[7] In a subsequent case in Louisiana, the Louisiana Supreme Court held that a single sentence of 99 years imposed for a single offense violated *Graham*. *State ex rel. Morgan v. State*, 217 So.3d 266 (La. 2016). The court distinguished *Brown*, stating that "[t]his Court found it dispositive that Brown was sentenced for multiple convictions." *Id.* at 271.

Graham, 560 U.S. at 79. In fact, the Court specifically referred to juveniles who had been convicted of multiple crimes as belonging in the "juvenile nonhomicide offender" category to which its decision applied. *Id.* at 64; *see also id.* at 76 (noting offender's "past encounters with the law").

Moreover, Mr. Graham himself was sentenced on multiple convictions, and the trial court referenced other uncharged felonies (as parole violations) as the reason for imposing a sentence greater than that which the State recommended. *Id.* at 56-57. As the Tenth Circuit recognized in *Budder v. Addison*, "[w]hen the [*Graham*] Court compared the severity of the crime with the severity of the punishment, in light of the characteristics of the offender, it did not look to the state's definitions or the exact charges brought. It looked to whether the offender was a juvenile, whether the offender killed or intended to kill the victim, and whether the sentence would deny the offender any realistic opportunity to obtain release." 851 F.3d 1047, 1058 (10th Cir. 2017).

By focusing on form over substance, states elevate charging decisions and sentence structure over *Graham*'s protections. Prosecutors have virtually unlimited discretion in deciding what charges to bring and whether to parse a single criminal act into multiple charges. *Ball v. United States*, 470 U.S. 856, 859-860 (1985); *Albernaz v. United States*, 450 U.S. 333, 344 (1981). And sentencing courts likewise have discretion to require that the sentences for each charge be served consecutively or concurrently. *See Oregon v. Ice*, 555 U.S. 160 (2009).

Mr. Bostic, who was involved in two incidents in the same night, was charged with, and ultimately convicted of, 18 criminal counts: eight counts of armed criminal action, three counts of robbery, three counts of attempted robbery, two counts of assault, one count of kidnapping, and one count of possession of marijuana. However serious these nonhomicide crimes may be, "it does not follow that he would be a risk to society for the rest of his life." *Graham*, 560 U.S. at 73.

Despite the prosecutor's decision to charge Mr. Bostic with 18 counts and the court's decision to run the sentences on each count consecutively, Mr. Bostic was still a "nonhomicide juvenile offender" subject to *Graham*'s "categorical rule" requiring that his sentence provide him "a chance to demonstrate maturity and reform." 560 U.S. at 79. Instead, as his sentencing judge pointed out, "nobody in this room is going to be alive" when Mr. Bostic becomes eligible for parole at age 112.

III. Mr. Bostic's Case Exemplifies The Bases For *Graham*'s Mandate To Provide A Meaningful Opportunity For Release

A. Mr. Bostic has a "twice diminished moral culpability."

"[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. As former judges, prosecutors, and members of law enforcement, we agree. Nonhomcide crimes reflecting the characteristics underlying

Graham's requirements do not warrant a sentence to die in prison.

Mr. Bostic's role in the crimes exemplifies and reinforces the rationale in *Graham*. Like the defendant in *Graham*, Mr. Bostic acted with an adult accomplice, and not alone. Moreover, the State relied on a theory of accomplice liability for all 17 felony charges against Mr. Bostic, holding the 16-year-old accomplice liable as an adult for the acts of the adult principal. *See* Instructions 5-38. In some of these charges, the State alleged Mr. Bostic committed some of the essential elements, but in every one of them, at least one element was alleged to have been committed solely by Donald Hutson, the adult principal. *E.g.*, Instruction 5.[8]

The crimes themselves were impulsive and unplanned. Tr. at 321. One victim testified that Hutson was the one demanding money and valuables, saying Mr. Bostic "didn't demand anything. He was just doing all the driving." Tr. at 210. Hutson was in charge. Tr. at 211. Another victim testified that Mr. Bostic "just stood there looking stupid" while Hutson was confronting the men. Tr. at 256. Mr. Bostic demanded money from one woman, but then simply gave up when she told him she didn't have any. Tr. at 258. He then demanded another woman give him her leather coat, but she was taller and bigger than Mr. Bostic, and she said, "'No, I'm not gonna give you my coat,'

[8] Instruction 5 alleges four elements committed by Mr. Bostic, which if found means "the offense of robbery in the first degree has occurred," but the fifth necessary element is that, for the purpose of committing the crime of first-degree robbery, Mr. Bostic acted with or aided Hutson in committing the offense.

only in a nasty tone of voice." Tr. at 242-43, 254. Mr. Bostic then backed away without getting the coat or anything else from her. Tr. at 243.

No one was seriously injured in either incident, and Mr. Bostic actually prevented injury: one victim testified that Mr. Bostic prevented Hutson from raping her by arguing with him and eventually forcing him back into the car. Tr. at 210.

When Mr. Hutson and Mr. Bostic were arrested, Hutson was uncooperative, while Mr. Bostic was immediately cooperative, even leading police to the location of the purse of the victim in the second incident. Tr. at 317, 320-21. Thus, the arrest and booking are illustrative of the difference between an older, more sophisticated offender who knows to keep quiet with police, and a juvenile offender, who can be easily coerced into confessing during custodial questioning. *See Miller*, 567 U.S. at 477-78 (noting that a juvenile offender "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth," including the "inability to deal with police officers.") (citing *Graham*, 560 U.S. at 78).

The acts that gave rise to the charge, as well as Mr. Bostic's behavior immediately following his arrest, were indicative of Mr. Bostic's diminished culpability.

B. Mr. Bostic was "at a significant disadvantage in [his] criminal proceedings."

Graham noted that the characteristics of youth impair a juvenile offender's ability to navigate

the criminal justice system. These "special difficulties," arise from the same "features that distinguish juveniles from adults" for purposes of sentencing. *Graham*, 560 U.S. at 78. These difficulties and differences, including a "mistrust of adults" and a "limited understanding of the criminal justice system and the roles of the institutional actors within it," place juveniles at a "significant disadvantage in criminal proceedings." *Id.*

Here, Mr. Bostic dealt with the criminal justice system in a prototypical juvenile manner. But instead of according leniency or additional protection on that basis, the sentencing judge punished him for it.

Specifically, she imposed a harsher sentence because he refused to accept a plea offer in response to peer pressure. First, the judge acknowledged that she had seen Mr. Bostic's "family everyday of the trial. I saw them beg with you, plead with you, try to convince you into entering a plea of guilty . . . . And you dismissed them because your friends in the workhouse knew far more than the people who love and care about you." Tr. at 340. She then remarked that she had seen his "lawyer and people from his office trying to talk to you, and you dismissed them because you knew more than these trained legal minds because of your brilliant friends in the workhouse who wouldn't be there if they were so smart." *Id.* Acknowledging his limited maturity and insight, she told Mr. Bostic: "You're a bright young man, but you're certainly not as bright as you think you are, because your problem is you think you're smarter than everyone else in the world." *Id.*

With that the court imposed its sentence as follows:

> You made your choice. You're gonna have to live with your choice, and you're gonna die with your choice because Bobby Bostic, you will die in the Department of Corrections. Do you understand that? Your mandatory date to go in front of the parole board will be the year 2201. Nobody in this room is going to be alive in the year 2201.

Tr. at 340.

Prior to Mr. Bostic's allocution, the judge again turned one of the reasons to provide juveniles with protection into a reason to punish him: "Before I go through this, I hope this will be a message to the other young men and women out there. Listen to your families or your lawyers, otherwise you will face the consequences of your actions." Tr. at 348-49. In the end, the judge punished Mr. Bostic for being "susceptible to negative influences and outside pressures, including peer pressure." *Graham*, 560 U.S. at 68. Moreover, in sentencing him to die in prison, the court forever deprived him of the opportunity to prove that he has grown beyond the mutable characteristics of his youth.

C. Mr. Bostic has "demonstrated maturity and rehabilitation."

A juvenile offender's "capacity for change and limited moral culpability" require that he be given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

Graham, 560 U.S. at 74-75. In purposefully sentencing Bobby Bostic to consecutive terms that would make him parole eligible only after he dies, the judge violated *Graham* by "making the judgment at the outset that [he] never will be fit to reenter society." *Id.* at 75.

Mr. Bostic exemplifies this aspect of *Graham*. In over two decades he has spent in prison, Mr. Bostic has shown tremendous personal growth and rehabilitation. He has spent that time atoning for his crimes and learning to appreciate the consequences of his actions. As his prison record reflects, he has completed numerous institutional programs focused on rehabilitation and restorative justice.

He has made long-term efforts to better himself and become a positive and productive member of society. Mr. Bostic has sought out numerous educational opportunities. In 1998, he passed his high school equivalency test; in 2010, he was awarded a paralegal diploma at Blackstone Career Institute; he has earned college credits, including an above-average grade in a sociology course on victim advocacy. He has earned multiple certificates in victim advocacy at Adams State College and basic business studies at Missouri State University, as well as multiple certificates in faith-based programming. Along the way, Mr. Bostic has impressed his professors, showing a desire to learn and retain concepts and use the learning experience to become a productive member of society.

Mr. Bostic is also a prolific writer of essays, poetry and letters. Among other works, he has written an autobiography, a tribute to the life of his mother, and a book of poetry.

Despite this substantial and significant growth, maturity and rehabilitation, under Missouri law, Mr. Bostic will forever be denied the opportunity to demonstrate that "the bad acts he committed as a teenager are not representative of his true character." *Graham*, 560 U.S. at 79. States should not be permitted to circumvent *Graham*'s mandate in this fashion.

CONCLUSION

The Court should grant the petition for certiorari and reverse the decision of the Missouri Supreme Court.

Respectfully submitted,

Joseph C. Welling
Phillips Black Project
Saint Louis University
School of Law
100 N. Tucker Blvd.
St. Louis, MO 63101

John R. Mills
Phillips Black Project
836 Harrison Street
San Francisco, CA 94107

Jennifer Merrigan*
Jenny Osborne
Phillips Black Project
1901 S. 9th St.
Suite 510
Philadelphia, PA 19148
(888) 532-0897
j.merrigan@phillipsblack.org

*Counsel of Record

January 25, 2018

APPENDIX: FULL LIST OF *AMICI CURIAE*

Rebecca A. Albrecht, Judge, Maricopa County Superior Court (1985-2005; Associate Presiding Judge, 1993-1995).

Chiraag Bains, Senior Counsel to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (2014-2017); Trial Attorney, Civil Rights Division, Criminal Section, U.S. Department of Justice (2010-2014).

William G. Bassler, Judge, United States District Court for the District of New Jersey (1991-2006).

Colin F. Campbell, Judge, Maricopa County Superior Court (1990-2017; Presiding Judge, 2000-2005).

U.W. Clemon, Judge, United States District Court for the Northern District of Alabama (1980-2006; Chief Judge, 1999- 2006).

Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice (1993-1996); Acting Solicitor General, U.S. Department of Justice (1996-1997).

Noel Fidel, Judge, Arizona Court of Appeals, Division One (1987-2002; Chief Judge. 1991-1993);

Judge, Maricopa County Superior Court (1982-1987; Presiding Civil Judge, 1985-1987).

Rudolph J. Gerber, Judge, Maricopa County Superior Court (1979-1985; Associate Presiding Judge, 1985-1988); Judge, Arizona Court of Appeals, Division One (1988-2001).

Terry Goddard, Arizona Attorney General (2003-2011).

Jamie Gorelick, Deputy Attorney General, U.S. Department of Justice (1994-1997); General Counsel, U.S. Department of Defense (1993-1994).

Robert Gottsfield, Judge, Maricopa County Superior Court (1980-2015).

Nathaniel R. Jones, Judge, United States Court of Appeals for the Sixth Circuit (1979-2002); Assistant U.S. Attorney for the Northern District of Ohio (1962-1968).

Gerald Kogan, Chief Justice, Supreme Court of Florida (1996-1998; Associate Justice,1987-1996); Judge, Eleventh Judicial Circuit of Florida (1980-1987); Assistant State Attorney, Dade County (1960-1967).

Timothy K. Lewis, Judge, United States Court of Appeals for Third Circuit (1992-1999); Judge,

United States District Court for the Western District of Pennsylvania (1991-1992).

J. Alex Little, Assistant United States Attorney for the Middle District of Tennessee and the District of Columbia (2007-2013).

Bill Nettles, United States Attorney for the District of South Carolina (2010-2016).

Wendy Olson, United States Attorney for the District of Idaho (2010-2017).

Stephen M. Orlofsky, Judge, United States District Court for the District of New Jersey (1996-2003; Magistrate Judge, 1976-1980).

Barry Schneider, Judge, Maricopa County Superior Court (1986-2007).

Kevin H. Sharp, Chief Judge, United States District Court for the Middle District of Tennessee (2014-2017); Judge (2011-2014).

Marsha Ternus, Chief Justice, Iowa Supreme Court (2006-2010; Associate Justice, 1993-2006).

Seth P. Waxman, Solicitor General, U.S. Department of Justice (1997-2001).

Beth A. Wilkinson, Assistant United States Attorney for the Eastern District of New York (1991-1995); Special Attorney to the U.S. Attorney General (1995-1997).

Michael Wolff, Chief Justice, Missouri Supreme Court (2005-2007; Associate Justice, 1998-2004, 2008-2011).

Alfred Wolin, Judge, United States District Court for the District of New Jersey (1988-2004).

Grant Woods, Arizona Attorney General (1991-1999).