

No. _____

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

JORGE FRATICELLI,

PETITIONER,

VS.

COMMONWEALTH OF PENNSYLVANIA,

RESPONDENTS.

* * * * *

**ON PETITION FOR WRIT OF CERTIORARI TO
THE PENNSYLVANIA SUPERIOR COURT**

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PETITION FOR WRIT OF CERTIORARI

* * * * *

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QUESTION PRESENTED

Petitioner claims the State Court erred in not expanding the ruling in *Miller* to apply to “minors” or “adolescents” as the evolving standards of decency clearly calls for the application of *Miller* to apply to “minors” and “adolescents,” as this Court clearly created a class protecting these individuals from “cruel” and “unusual punishments” in *Miller*.

Petitioner further claims the State Court mistakenly classified Petitioner as an adult, where in Pennsylvania a “minor” is defined as “[a]n individual under the age of 21 years.” 1 Pa. C.S. §1991. Pennsylvania does not have a comprehensive act to determine the age of minority, and when a statute is silent on the matter, the age of minority is determined under the Statutory Construction Act, 1 Pa.C.S. §1501. Under 1 Pa.C.S. §1501, a minor is defined as an individual under the age of 21 years.

Contrary to the State Court’s findings, Petitioner is a “minor,” under Pennsylvania law and, thus, entitled to relief under *Miller*.

Finally, Petitioner claims that the Fourteenth Amendment equal protection laws demands the application of *Miller* to all classified as “minors” or “adolescents” pursuant to 1 Pa.C.S. §§1501-1991 and those who were clearly defined as a class or category of individuals included in the evaluation within the context of developing adolescence in *Miller*. This case thus presents the following question:

- I. **Whether The United States Supreme Court’s Decision Announced In *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) Should Be Expanded, Under The Evolving Standards Of Decency Standard, Where If A Bright Line Must Exist To Protect Adolescents From Mandatory Life Imprisonment, That Bright Line Should Be Drawn At Age 21, Not 18?**

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The Petitioner, Jorge Fraticelli, respectfully prays that a Writ of Certiorari issue to review the memorandum and opinion of the Superior Court of Pennsylvania, rendered in these proceedings on May 23, 2017.

OPINION BELOW

The Pennsylvania Superior Court for the Eastern District Memorandum and Opinion affirming the Delaware County Court of Common Pleas Order denying Petitioner's request for relief under Pennsylvania's Post Conviction Collateral Relief Act, docketed at *Case No. 1997 EDA 2016*. The Opinion of Pennsylvania Superior Court appears at Appendix "A" to the petition and is reported at *Commonwealth v. Fraticelli, 1997 EDA 2016*.

The Delaware County Court of Common Pleas Order denying Petitioner's request for relief under Pennsylvania's Post Conviction Collateral Relief Act, docketed at *Case No. CP-23-CR-0004827-1994*. The Order of the Delaware County Court of Common Pleas appears as Appendix "B" to the petition and is reported at *Commonwealth v. Fraticelli, CP-23-CR-0004827-1994*.

JURISDICTION

The Memorandum Opinion of the Pennsylvania Superior Court for the Eastern District was entered on May 23, 2017. A timely request for Allocatur was denied by the Pennsylvania Supreme Court on November 1, 2017 at *Case No. 441 MAL 2017*.

The jurisdiction of this Court is invoked under **28 U.S.C. § 1257(a)**

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VIII.

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

U.S. CONST., AMEND. XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction, thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United states, or any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of Emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 Pa.C.S. §9543 Eligibility for relief

(a) General rule.—To be eligible for relief under this subchapter, the petitioner must plead and prove by preponderance of the evidence all of the following:

(1) That the Petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) awaiting execution of a sentence of death for the crime; or

(iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the constitution of this Commonwealth or the Constitution or laws of the United States which, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v). Deleted.

(vi). The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

Subsec. (a)(4) is permanently suspended insofar as it references "unitary review" by Pennsylvania Supreme Court Order of Aug. 11, 1997, imd. Effective.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic decision by counsel.

(b) Exception.—Even if the petition has met the requirements of subsection (a), the petition shall be dismissed if it appears at any time that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the

petition or in its ability to re-try the petition. A petition may be dismissed due to delay in filing by the petitioner only after a hearing upon a motion to dismiss. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have discovered by the exercise of due diligence before the delay became prejudicial to the Commonwealth.

(c) Extradition.—If the Petitioner’s conviction and sentence resulted from a trial conducted in his absence and if the petitioner has fled to a foreign country that refuses to extradite him because a trial in absentia was employed, the petitioner shall be entitled to the grant of a new trial if the refusing country agrees by virtue of this provision to return him and if the petitioner upon such return to this jurisdiction so requests. This subsection shall apply, notwithstanding any other law or judgment to the contrary.

42 Pa.C.S. § 9545(a)(b) Jurisdiction and proceedings

(a) Original jurisdiction.—Original jurisdiction over a proceeding under this subchapter shall be in the court of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter.

(b) Time for filing petition.—

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and petitioner proves that:

(i) The failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the constitution or laws of this Commonwealth or the constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by the court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of Pennsylvania, or at the expiration of the time for seeking the review.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

STATEMENT OF THE CASE

The Petitioner and his two co-defendants, Claudio Manzanet and Amy Sortino, were charged with murder, robbery, conspiracy and weapon offenses stemming from the death of Matthew DiMaggio on December 12, 1994. Jeffrey Burger was the only witness to identify Petitioner as a participant in the charged offenses. In summary, Burger testified that DiMaggio had received a shipment of marijuana and was staying in a room Burger had rented at the Sentinal Motel. Burger testified that he had discussed stealing the marijuana with Petitioner and Manzanet at Manzanet and Sortino's apartment (7/12/95 Trial N.T. at 42-45).

Burger testified that the foursome took vehicles to the Sentinal Motel. Burger drove one vehicle and Sortino drove Petitioner and Manzanet in another vehicle registered to Petitioner's Mother. Burger went on to testify that the foursome stopped at Wawa to purchase disguises before going to the Sentinal Motel (7/12/95 Trial N.T. at 44-46, 47-52).

Once at the Sentinal Motel, Burger went inside of DiMaggio's room. Shortly thereafter, Burger saw Manzanet and Petitioner try to force the motel door open. They were initially unsuccessful. Burger then looked outside of the motel room and saw Manzanet in possession of a gun that Burger had previously purchased from an individual named Joe Lynch. According to Burger, Petitioner had been in possession of the same gun at the apartment of Manzanet and Sortino when the robbery plot was discussed (7/12/95 Trial N.T. at 43-45, 56-58).

Burger testified that he later heard the door being forced a second time. A shot was fired through the door that struck DiMaggio in the eye and ultimately killed him. Manzanet

entered the room and took some marijuana. Burger eventually left the room with Paul Wayland, the individual who had brought the marijuana to DiMaggio. **Id.**

Two days after the robbery, Burger retained counsel and turned himself to the police. Burger ultimately entered into a cooperation agreement with the District Attorney's Office. In exchange for Burger's testimony, the Commonwealth agreed to allow Burger to enter into an open guilty plea to Murder in the third degree, robbery, conspiracy to commit robbery and conspiracy to distribute marijuana. As a result of the plea agreement, Burger faced a maximum sentence of 27 ½ to 55 years incarceration but was only sentenced to serve a 2 ½ to 5 year sentence.

The Petitioner and Manzanet were convicted of murder in the second degree and related offenses in a trial presided over by the Honorable Charles C. Keeler. Sortino was acquitted of all the charges. In September of 1995, Petitioner was formally sentenced to a mandatory life term of incarceration on the charge of second degree murder. Burger was sentenced by the Court on November 13, 1995. At the time that this crime occurred, both Burger and Manzanet were adults, significantly older than Petitioner, who at the time was a "minor/adolescent" pursuant to Pennsylvania law..

On January 25, 2016¹, the United States Supreme Court issued its decision in *Montgomery v. Louisiana*, 577 U.S.____ (2016), holding that the Court's previous precedent set forth in *Miller*, finding that a mandatory life without parole sentence for juvenile homicide offenders violates the Eighth amendment's prohibition on "'cruel and unusual punishment,'" applies retroactively.

¹ Petitioner has an extensive procedural history that is unrelated to the matter before this Court. For purposes of this Petition, Petitioner references the procedure history relevant to the instant claim.

As a result of the Supreme Court's most recent decision set forth in *Montgomery*, Petitioner filed the instant PCRA petition on February 23, 2016, arguing, *inter alia*, whether the Court's imposition of an illegal mandatory life without parole sentence, for a homicide offense committed while Petitioner was a juvenile, violates the Eighth Amendment's prohibition on "cruel and unusual punishments." [See: Petitioner's Petition For Post Conviction Collateral Relief Act under **42 Pa.C.S. §§9541-9546** at 13].

On March 9, 2016, this Honorable Court issued a "Twenty Day Notice Of Intent To Dismiss PCRA Petition Without A Hearing." In the Court's proposed Notice of Intent To Dismiss Petitioner's PCRA Petition, the Court alleged that Petitioner had "attempted to avoid the time bar by requesting relief under the recent Supreme Court decision in *Miller v. Alabama*."²

The Court below found that because the record indicated that Petitioner was an adult at the time of his alleged participation in the crime, *Miller* is inapplicable to his case and as a result, thereof, Petitioner's PCRA petition was untimely filed. [See: The PCRA Court's Opinion dated August 22, 2016 at 2-3].

On March 22, 2016, Petitioner filed with the PCRA Court his Objection's to the Court's Proposed Dismissal Of Petitioner's Petition for Post Conviction Collateral Relief Pursuant to **Pa.R.Crim.P. 907**.

² In *Miller v. Alabama*, 567 U.S. ____ (2012), the United States Supreme Court held that a juvenile convicted of a homicide offense could not be sentenced to a life in prison without parole absent consideration of juvenile's special circumstances in light of the principles and purposes of juvenile sentencing. In wake of *Miller*, the question has arisen whether its holding is retroactive to juvenile offenders whose convictions and sentences were final when *Miller* was decided. *Id.* 567 U.S. ____ (2012)(slip opinion at 1).

On May 24, 2016, the Honorable Judge Mary Alice Brennan dismissed Petitioner's PCRA petition without a hearing. On June 20, 2016, Petitioner filed a timely Notice of Appeal.

On May 23, 2017, the Pennsylvania Superior Court affirmed the dismissal of Petitioner's PCRA Petition, finding the instant petition predicated *Miller* was untimely filed at *1997 EDA 2016*.

A timely Petition for an Allowance of Appeal was filed with the Pennsylvania Supreme Court of Pennsylvania. On November 1, 2017, the Pennsylvania Supreme Court denied Petitioner's request for Allocatur at *441 MAL 2017*. This Petition for Writ of Certiorari now follows.

REASONS FOR GRANTING THE PETITION

I. Whether Under The Evolving Standards Of Decency Standard, The United States Supreme Court's Decision In *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) Should Be Expanded, Where If A Bright Line Must Exist To Protect Adolescents From Mandatory Life Imprisonment, That Bright Line Should Be At Age 21, Not 18?

In protecting adolescents from the mandatory life imprisonment, Petitioner claims that a bright line drawn anywhere fails to recognize the unclear margins of adolescence, but drawing the line at an offender's 18th birthday is demonstrably under inclusive. It will not protect all adolescents, because the stage of human development continues all the way through the teenage years and through the mid-twenties, with full maturity finally blossoming at age 25.³

The Federal Juvenile Delinquency Act itself (18 U.S.C. §5031)—the very statute designed to shield juvenile from the force of adult prosecutions—protects those “who ha[ve] not attained [their] twenty-first birthday” “for the purpose of proceedings and disposition under this chapter for an alleged act of delinquency.” Therefore, for reasons

³ The various sources cited throughout this Petition on the point that the human brain does not fully mature until the mid-twenties or age 25, collected here for referential convenience, are:

- Emily Buss, *What The Law (And Should Not) Learn From Child Development Research*, 38 *Hofstra L. Review* 13, 29 (2009);
- *United States v. C.R.*, 792 F.Supp.2d 343, 409-11 (E.D.N.Y. 2011);
- MIT's Young Adult Development Project, available at: <http://hrweb.mit.edu/worklife/youngadult/brain.html>;
- Giedd, J.N. (2004). “Structural magnetic resonance imaging of the adolescent brain.” *Adolescent Brain Development: Vulnerabilities and Opportunities*: 77-85;
- Sandra Aamodt, Ph.d & Sam Wang, P.h.D., *Welcome to Your Child's Brain: How the Mind Grows from Conception to College*, 73 (First Ed.2011);
- *Gall v. United States*, 128 S.Ct. 586, 601, 552 U.S. 38 (2007);
- Hertz's rental car policies, available at: http://www.enterprise.com/car_rental/resSummary.do?selectLink=changeAge ;
- *People v. House*, ___ N.E.3d ___ (2015), 2015 IL App (1st) 110580; and
- *Commonwealth v. Bredhold*, Fayette Circuit Court Seventh Division, Case No. 14-CR-161 (Deceased August 1, 2017).

that are myriad, if any bright line should exist—it should not—we nevertheless claim 21 as the most intuitive.

It is a legal fiction that adulthood dawns and the personality is set on everybody's 18th birthday. The research reveals that adolescence wanes as adulthood waxes during the late teens and early twenties. See Giedd, J.N. (2004). "Structural magnetic resonance imaging of the adolescent brain." *Adolescent Brain Development: Vulnerabilities and Opportunities*: 77-85.

Miller cannot be properly interpreted without a definition of its fundamental word, adolescence. Adolescence "begins with the onset of puberty, usually between ages eleven and thirteen, and continues until twenty and sometimes beyond." Sandra Aamodt, Ph.d & Sam Wang, P.hD., Welcome to Your Child's Brain: How the Mind Grows from Conception to College, 73 (First Ed.2011). Many authorities place the end of the human brain maturation process at age 25. See generally the website of Massachusetts Institute of Technology's Young Adult Development Project, <http://hrweb.mit.edu/worklife/youngadult/brain.html>.

Justice Kagan's ultimate concern, in penning *Miller*, was proportionality:

"The mandatory penalty schemes at issue here....prevent the sentencer from considering youth and from assessing whether the law's harshest term of imprisonment proportionately punishes the juvenile offender. This contravenes *Graham's* (and also *Roper's*) foundational principle: the imposition of a state's most severe penalties on juvenile offenders cannot proceed as though they were not children."

Miller, 132 S.Ct. at 2458

Justice Kagan's reference to *Graham* and *Roper* invokes the supreme Court's decades-long and accelerating momentum to a wiser dispensation of our harshes sentences. She reiterates *Graham's* concern that "the lengthiest possible incarceration. . . .when imposed on a teenager, as compared to an older person, is. . . . 'the same in name only.' *Miller* at 2466, citing *Graham*, 130 S.Ct. at 2028.

Scientific research has shown with increasing clarity that the traditional purpose of sentencing—enshrined in federal law by 18 U.S.C. § 3553(a)⁴—are inapplicable to two closely-related classes of people: the intellectually disabled and the juvenile.

Does society really expect an eighteen year old adolescent boy influenced by his twenty-eight year old cousin, who already had an extensive criminal record, to have maturity and fortitude to not be influenced by his cousin eight and a half months into his eighteenth birthday? This is precisely what *Miller* and this Court's entire framework seeks to avoid.

(A). Evolving Standards Of Decency Calls For Application Of *Miller* To Adolescents:

The Eighth Amendment to the United States Constitution states, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S.C.A. Const. Amend. VIII. This provision is applicable to the States by the Fourteenth Amendment. The protection flows from the basic "precept of justice that

⁴ 18 U.S.C. § 3553 Imposition of a sentence

(a) Factors to be considered in imposing a sentence—the court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—(1) the nature and circumstance of the offense and the history of the characteristics of the defendant; (2) the need for the sentenced imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provided just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]

punishment for crime should be graduated and proportioned to [the] offense.” *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)(quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). Eighth Amendment jurisprudence has seen the consistent reference to “the evolving standards of decency that mark the progress of a maturing society” to determine which punishments are so disproportionate as to be “cruel and unusual.” *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958). The two prongs of “evolving standards of decency” test are: (1) objective indicia of national consensus; and (2) the Court’s own determination in the exercise of independent judgment. *Stanford v. Kentucky*, 492 U.S. 361 (1989); *Atkins*, 356 U.S. 304; *Roper v. Simmons*, 543 U.S. 551 (2005).

I. Objective Indicia Of National Consensus Against The Imposition Of The Harshest Punishments To “Minors” or “Adolescents” Who Are Categorically Different From Adults

The evolving standards of decency clearly calls for the application of *Miller* to adolescents, as adolescents were clearly a created class in *Miller*. Here is some momentum of the growing wisdom from this Court’s case law.

- **1988: No death penalty for juvenile offenders under the age of 16.**

In *Thompson v. Oklahoma*, 487 U.S. 815, 830, 108 S.Ct. 2687 (1988), Justice Stevens wrote:

“The conclusion that it would offend civilized standards of decency to execute a person who was less than **16 years old** at the time of his or her offense is consistent with the views that have been expressed by respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European community. Thus, the American Bar Association and the American Law Institute have formally expressed their opposition to the death penalty for *juveniles*. Although the death penalty has not been entirely abolished in the United Kingdom or New Zealand (it has been abolished in Australia, except in the State of new of South

Whales, where it is available for treason and piracy), in neither of those countries may a juvenile be executed. The death penalty has been abolished in West Germany, France, Portugal, the Netherlands, and all of the Scandinavian countries, and is available only for exceptional crimes such as treason in Canada, Italy, Spain, and Switzerland. Juvenile executions are also prohibited in the Soviet Union.”

Thompson, 487 U.S. at 830 (emphasis added).

- **2002: No death penalty for intellectually disabled offenders.⁵**

In *Atkins v. Virginia*, 536 U.S. 304, 318, 122 S.Ct. 2242 (2002), Justice Stevens wrote:

“Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to process information, to communicate, to abstract from the mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.”

Atkins, 536 U.S. at 318.

- **2005: No death penalty for juvenile offenders under the age of 18.**

In *Roper v. Simmons*, 543 U.S. 551, 573-74, 125 S.Ct. 1183 (2005), Justice Kennedy wrote:

“If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic experience, from assessing any *juvenile under 18* as having antisocial

⁵ The Court uses the term “mentally retarded” in its opinion, but that term has been replaced. As the Court observed in its subsequent decision in *Hall v. Florida*, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014): “previous opinions of this Court have employed the term ‘mental retardation.’ This opinion uses the term ‘intellectual disability’ to describe the identical phenomenon.” *Hall*, 134 S.Ct. at 1986.

personality disorder, we conclude that States should refrain from asking jurors to issue graver condemnation—that a juvenile offender merits the death penalty. When a juvenile offender commits a heinous crime, the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.”

Roper, 543 U.S. at 573-574.

In *Graham v. Florida*, 560 U.S. 48, 59, 130 S.Ct. 2011 (2010), Justice Kennedy wrote:

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 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 action of adults. *Roper*, 543 U.S. at 570, 125 S.Ct. 1183. 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.”

Graham, 560 U.S. at 50.

- **2012: No mandatory for life imprisonment for any juvenile offender**

Miller v. Alabama, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), writing for the majority, Justice Kagan observed:

“By making youth (and all that accompanies it) irrelevant to the imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.

Miller, 132 S.Ct. at 4269.

- **2013: The European Court of Human Rights bans life imprisonment for all people.**

The European Court of Human Rights—which has jurisdiction over the western world on the other side of the Atlantic—held in the case *Vinter and Others v. United Kingdom*, [GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 that a “whole life” sentence violates anybody’s human rights on the belief that every person has the potential to atone.

- **2014: No bright line IQ of 70 for death penalty of the intellectually disabled.**

In *Hall v. Florida*, 134 S.Ct. 1986, 188 L.Ed.2d 1007, 1017 (2014), Justice Kennedy wrote:

“The question this case presents is how intellectual disability must be defined in order to implement [three principle rationales of sentencing: rehabilitation, deterrence, and retribution] and the holding of *Atkins*, it is proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores to determine how the scores relate to the holding of *Atkins*.

* * * *

This Court agrees with the medical experts that when a defendant’s IQ test score falls within the test’s acknowledged margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits.”

Hall, 188 L.Ed.2d at 1017,1026.

Thus, from 1998 to the present, while Europe banned life imprisonment for all people, this Court has also undertaken a careful and steady expansion of the 8th Amendment rights of juveniles and the intellectually disabled. In its most recent decision, this Court rejected a bright-line approach to defining who is intellectually disabled. Its reasons for leniency against the young and mentally challenged are parallel. For the same reason that a bright line approach to I.Q. is invalid, a bright line approach to who is “a juvenile” is equally invalid. In *Hall*, this Court struck down Florida’s brittle definition of cognitive

disability which enabled the state to execute a man because he scored a 71 instead of 70 on an I.Q. test.

II. Life Without The Possibility Of Parole Sentence For “Minors” Or “Adolescents,” Is A Disproportionate Punishment For Offenders Younger Than 21

In this case, the Commonwealth of Pennsylvania seeks a brittle definition of adolescence, which enables a sentence of mandatory life imprisonment upon a person one day past his 18th birthday but not one day before. Such discordant categorical thinking ought to be abandoned now: The homicide in this case occurred approximately 39 weeks past Petitioner’s 18th birthday.

There are three main reasons why juveniles cannot be subject to mandatory life imprisonment . They are: First, children have a lack of maturity and an undeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressure, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime producing settings. Third, a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions are less likely to be evidence of irretrievable depravity. *See Miller*, 132 S.Ct. at 2464.

Justice Kagan illustrated this understanding with the facts of Evan Miller and Kuntrell Jackson:

“[I]f ever a pathological background might have contributed to a 14-year-old’s commission of a crime, it is here. Miller’s stepfather physically abused him; his alcoholic and drug-addicted mother neglected him; he had been in and out of foster care as a result; and he had tried to kill himself four times; the first when he should have been in kindergarten”

Miller, 132 S.Ct. at 2469.

As for Jackson: “both his mother and his grandmother had previously shot other individuals. . . .At least, a sentencer should look for such facts before depriving a 14-year-old of a prospect of release from prison.” *Miller*, 132 S.Ct. at 2468-2469.

None of the three bases for forbidding mandatory life sentences previously mentioned for juveniles suddenly vanishes at an individuals 18th birthday. In upholding a federal prohibition of certain sales of handguns to 18-to-20 year old “minors,” the Fifth Circuit Court of Appeals, citing to the science supporting *Miller*, reasoned:

“[M]odern scientific research supports the commonsense notion that 18-to-20-year-olds tend to be more impulsive than young adults aged 21 and over. *See, e.g., Brief for the Am. Med. Ass’n et al. as Amici Curiae in Support of Neither Party, Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d (2012). . . at 19-20 (“The brain’s frontal lobes are still structurally immature well into late adolescence, and the prefrontal cortex is ‘one of the last brain regions to mature.’ This, in turn, means that ‘responsive inhibition, emotional regulation, planning an organization. . . .continue to develop between adolescence and young adulthood.’”(citation omitted)); Lawrence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, 40-41 (2009)(“[C]hanges in impulse control and planning are mediated by a ‘cognitive control’ network. . . which matures more gradually and over a longer period of time, into early adulthood.”

National Rifle Ass’n v. Bureau of Alcohol, Tobacco, Firearms and Explosives, 700 F.3d 185, 210n.21 (5th Cir.2012)(emphasis added).

A plethora of reasons are offered in *National Rifle Ass’n* why 18 to 20 year olds should be restricted in handgun ownership, among them that “the line between childhood and adulthood was historically 21, not 18,” *Id.* at 204; the founders were in support of banning or limiting gun ownership by minors under the age of 21 because they were “inadequately virtuous to keep and bear arms,” *Id.* at 203; and Congress was concerned

“that handguns had been widely sold. . . .to emotionally immature, or thrill-bent individuals and minors prone to criminal behavior.” **Id.** at 203. The government itself put forth evidence reflecting Congress’ concern on the issue of immaturity of 18 to 21 year olds. **Id.** at 207.

In *People v. House*, ___ N.E.3d ___ (2015), 2015 IL App (1st) 110580, the court found that the designation after age 18 an individual is a mature adult appears somewhat arbitrary. The *House* Court reasoned that research and articles have discussed the differences between young adults and fully mature adult. **Id.** ___ N.E.3d ___ (2015), 2015 IL App (1st) 110580 ¶ 95.

In *House*, the Court ultimately held that “the 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 the intent to deliver. Defendant did not have a criminal history of violent offenses.” *House*, ___ N.E.3d ___ (2015), 2015 IL App (1st) 110580 at ¶101.

The same is warranted here, where Petitioner, as the defendant in *House*, was barely a legal adult at age 18 and still a teenager. Petitioner’s youthfulness is relevant when considered alongside his participation in the actual shooting and the fact that the Petitioner, as in *House*, had an adult co-defendants who influenced him.

As stated *infra*, Petitioner in this instant matter is a “child” under Pennsylvania law. Indeed, the definition of “child” in the chapter on Juvenile Matters of the Judiciary and Judicial Procedure title of the Pennsylvania Code, more commonly referred to as the “Juvenile Act,” include individuals who are: (1) under the age of 18 years; (2) under the

age of 21 years and who committed an act of delinquency prior to reaching the age of 18; and (3) under the age of 21 years and who were adjudicated dependent prior to reaching the age of 18. See **42 Pa.C.S. §6302**.

Clearly the Commonwealth has enacted legislation that recognizes that children who are delinquent or dependent prior to the age 18 possess characteristics justifying their continued recognition as children under the consistent holding of *Roper*

, *Graham* and *Miller*. Moreover, the social and neuroscience that these decisions are rooted in the recognition that children, including 18 year olds, are categorically distinct from adults in their decision making abilities, degree of maturation, and their capacity to extricate themselves from negative peer influences and dysfunctional or abusive homes.

The Petitioner concedes that the “Juvenile Act” does not include more serious offenses such as murder in its definition of a “delinquent act” and thereby removes individuals charged with those offenses from the definition of a “child.” However, that does not change the fact that the “Juvenile Act” represents a clear policy pronouncement that 18 year olds may possess the attributes of youth and attendant developmental deficits that render them appropriately categorized as “children.” The fact that the statute precludes an individual convicted from a more serious offense from being recognized as a “child” at age 18 is in conflict with *Miller’s* recognition that the “distinctive (and transitory) mental traits and environmental vulnerabilities” of children are not “crime specific,” but apply with equal force to homicide and non-offenses. *Miller*, 132 S.Ct. at 2465

In Illinois, the *House* application of *Miller* is instructive in the case *sub judice*. The Illinois court found support for its interpretation of *Miller’s* constitutional command not only to science, but in other aspects of Illinois law that, like Pennsylvania, already

recognized older teenagers as “minors.” Significantly, the *House* majority noted that it was relevant that Illinois had recently raised the age for a delinquent minor to “any minor who prior to his 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, state, county or municipal law or ordinance.” See *House*, N.E. 3d ___, 2015 WL9428803 ¶ 97 (quoting Pub. Act 98-61 §5).

Clearly, the Illinois statute quoted in *House* is not only analogous to Pennsylvania’s “Juvenile Act,” it mirrors the Act. Thus, *House*, and moreover its outcome is instructive and should be considered in the instant matter. Further, the *House* court noted that *Miller* recognized that in addition to considering how “the chronological age of a minor itself is a relevant mitigating factor of great weight, so must the background and the mental and emotional development of a youthful defendant be duly considered in assessing his culpability.” *House*, N.E. 3d ___, 2015 WL WL9428803 ¶ 99 quoting *Miller*, 132 S.Ct. 2467.

The Petitioner in this case at bar will present copious facts and circumstances that bear on his mental and emotional development as a child that must be considered by this court if the sentence imposed is to pass constitutional muster. These facts were, prior to *Miller*, not capable of consideration under Pennsylvania law for the purposes of sentencing the Petitioner for his limited involvement in a homicide. “The lack of discretion afforded the trial court for imposition of a mandatory life sentence is especially relevant when the defendant is a young adult, over 18, but not considered a fully mature adult.” *House*, N.E. 3d ___, 2015 WL WL9428803 ¶ 100.

The *House* appellate court applied *Miller*, and common sense to the facts of the defendant’s case and determined that though he was 19 years and two months old, he “was

barely legal and still a teenager.” *Id.* **House**, N.E. 3d ___, 2015 WL 9428803 ¶ 101. Assessing a range of mitigating evidence, including “*his actions as a look out as opposed to being the actual shooter, his lack of any record from violent crimes prior to the homicide, his family and educational background, and his potential for rehabilitation, the court found “that defendant’s sentence of natural life shocks the moral sense of the community.”*” (emphasis added).

Clearly, the similar result should occur in the instant matter as the Petitioner was younger than **House**; just 18, having demonstrated decisions consistent with the transit youth. Also, the Petitioner had no history of violent crimes and has been a model of positive adjustment and rehabilitation during his 23 plus years of incarceration. Critically important to note is the fact that the Petitioner neither took a life, attempted to take a life, nor intended to take a life. Indeed, the Petitioner only played a peripheral role in the homicide and was not present when the homicide occurred. It is difficult to hypothesize a more concrete example of “twice diminished culpability.”

While the majority in **House** had only Illinois’ version of the “Juvenile Act” to rely on, the Petitioner submits that there is a plethora of case precedent and statutes in Pennsylvania that support the fact that he is a “child,” “minor,” or “juvenile” under Pennsylvania law. Clearly, Petitioner was a “minor” when the crime occurred.

In **Commonwealth v. Bredhold**, Fayette Circuit Court Seventh Division, Case No. 14-CR-161 (Decided August 1, 2017), the Court held the defendant who was eighteen (18) and five (5) months old at the time of the alleged crime was psychologically immature in the same way that individuals under the age of eighteen (18) were deemed immature,

and therefore ineligible for the death penalty under *Roper*. See, *Bredhold*, Fayette Circuit Court Seventh Division, Case No. 14-CR-161 Order/Opinion at Page 1.

In making its ruling, the *Bredhold* Court relied upon the recent findings From Dr. Laurence Steinberg. Dr. Steinberg testified to the maturational differences between adolescents (individuals ten (10) to twenty-one (21) and over). The most significant of these differences being that adolescents are more impulsive, more likely to misperceive risk, less able to regulate behavior, more easily emotionally aroused, and , importantly, more capable of change.

Additionally, Dr. Steinberg explained how these differences are exacerbated in the presence of peers and under emotionally stressful situations, whereas there is no such effect with adults. Dr. Steinberg related these differences to an individual's culpability and capacity for rehabilitation and concluded that, "if a a different version of *Roper* were heard today, knowing what we know now, one could've made the same arguments about eighteen (18), nineteen (19), and twenty (20) year olds that were made about sixteen (16) and seventeen (17) year olds in *Roper*."

Notably, the studies relied upon *Roper*, were the same studied relied upon by this Court when arriving to its conclusion in *Miller*.

Taking a step back, the critical issue here is: When does a person cross the threshold from childhood to adulthood? Whether it's the word "infant" or "minor" or "juvenile" or "youth" or "adolescent" or "child," the word is merely a description of the truth rather than the truth itself; it is a reference to a developmental stage of which there is no precise border.

We share common developmental expectations in this Country, with a turning point generally recognized at age 21. It is common knowledge that at age 16 you can get a

driver's license; at age 18 you can buy tobacco and lottery tickets and vote and get drafted; at age 21 you can buy alcohol and handguns. Car rental companies traditionally did not rent to anybody under the age of 25, but now do so at different rate depending upon whether the renter is age 18-20, 21-24 or 25 years and up.⁶ You cant run for president until you are 35.⁷

“Youth is more than a chronological fact. . . .it is a moment and condition of life.” *Miller*, 132 S.Ct. at 2467. in our personal lives we all know a certain child who is more mature than a certain adult. The Federal Government should, and does, protect children--even (especially) precocious children--; it should, and does punish adults, especially those who exploit children. *See* U.S.S.G §§ 2D1.1, 2D1.2, 2G2.1-2G.3, 3B1.4 and while it is obvious that for all intents and purposes a 10—year old is a child and a 30 year-old is an adult, there is a profound grey area in the late teen and early twenties. The government as an institution prefers bright lines. Bright lines are convenient. United States Attorney's create bright lines for sentencing judges every time they charge a statutory minimum. But no one has yet discovered the universal bright line of adulthood. Bright lines are drawn *all over the place* within the United States Code for its various definitions of what we can call “childhood.” The following are a few examples:

- The term “child” means an unmarried person under twenty-one years of age.⁸
- Indian and Alaskan Native youths. . . .are between the ages of 10 and 19.⁹

⁶ See, for example Hertz's policies at:
http://www.enterprise.com/car_rental/resSummary.do?selectLink=changeAge

⁷ Article II, section 1 of the United States Constitution.

⁸ 8 U.S.C. § 1101(b)(1) and (c)(1)

⁹ 25 U.S.C. § 1667e(b)(2)(D)(i)

- The term “youth” shall have the meaning given it in any Tribal Action Plan. . . . except that, for purposes of statistical reporting under this chapter, it should mean a person who is 19 years or younger or who is in attendance at a secondary school.¹⁰
- The term “youth” means persons under the age of 21.¹¹
- The term “youth” means individuals who are between 10 to 24 years of age.¹²
- The term “youth” means individual who has attained the age of 10 but has not attained the age of 20.¹³
- [T]he term “independent foster care adolescent” means an individual. . . . who is under 21 years of age.¹⁴
- The term “youth” means a person who is 11 to 24 years old.¹⁵

Though the government may argue that each of these definitions is tailed to the precise purpose of respective statute—and that may be true—nonetheless, everyone of them applies to Petitioner. When it comes to doing life imprisonment versus drinking lite beer, if the more liberal definition applies to the latter it should apply to the former as well.

Consider this analogy:

“If the culpability of the average murder is insufficient to justify the most extreme sanction available to the state, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution.”

Hall, 188 L.Ed.2d at 1017, citing *Atkins*, 536 U.S. at 319

¹⁰ 25 U.S.C. §2403(2)

¹¹ 42 U.S.C. §290bb-25b(a)(3)

¹² 42 U.S.C. § 290bb-36(1)(4)

¹³ 42 U.S.C. § 713(e)(4)

¹⁴ 42 U.S.C. § 1396d(w)(1)(A)

¹⁵ 42 U.S.C. § 13925(a)(45)

Just as the *Hall* decision found erroneous a rigid I.Q. score of 70 for death eligibility based on science, so scientific research supporting *Miller's* reasoning by no means requires a hard and fast line of 18 years old. Indeed enacting the various age watermarks in Title 42, Congress necessarily relied on the learning and experience of professionals. The scholarly article cited both in *Miller* and *Roper* makes this variegated gradation of measurable maturity clear:

“[R]esearch findings are unlikely to ever be sufficiently precise to draw a chronological age boundary between those who have adult decision-making capacity and those who do not.”

See, Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 AM. Psychologist 1009, 1016 (2003).

This article recommends what might be called a grace period: “[C]oherent boundaries can delineate a minimum age for adult adjudication, as well as a period of years beyond this when a strong presumption of reduced culpability operates.” *Id.*

The grace period is not a novel concept. In *Gall v. United States*, 128 S.Ct. 586, 601, 552 U.S. 38, this Court upheld the District Court’s interpretation at sentencing of the defendant’s offenses at age 21 as the “impetuous and ill-considered actions” of youth. In doing so this Court quoted the District Court’s decision holding:

“Immaturity at the time of the offense conduct is not an inconsequential consideration. Recent studies on the development of the *human brain conclude that human brain development may not become complete until the age of twenty-five*. . . . [T]he recent [National Institute of Health] report confirms that where there is no bold line demarcating at what age a person reaches full maturity. While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant.”

Gall, 128 S.Ct. at 601, quoting from the District Court’s decision (emphasis added).

Petitioner is now 41 years old. He has been imprisoned over half of his life, twenty-three years. He has matured during his tenure in the Pennsylvania Department of Corrections. He has grown profoundly in intellect and maturity in that most harsh of environments, as can be proved by reviewing Petitioner’s prison record and accomplishments. Petitioner respectfully requests that this Court apply its wisdom to him—grant him a chance to merely demonstrate that he was not only capable of change, but that *Miller’s* wisdom can be verified in that he *has* actually changed.

How many adolescent offenders have stood before judges, appearing to be fully developed human criminals, and have received full grown sentences? “to superficial appearances, the brain appears to be nearly finished as children enter adolescence. By late childhood, the brain has reached 95 percent of its adult volume. Individual components are within 10 percent of adult size (some larger, some smaller.) Behind this apparent maturity, though, some large changes are stirring.” *Welcome to Your Child’s Brain*, *supra*, 74.

If Petitioner would have participated in this same peripheral role in this homicide just 39 weeks past Petitioner’s 18th birthday, this entire proceeding would have been unnecessary. What difference does 39 weeks make?

(B). Petitioner Is A “Minor/Adolescent” Under Pennsylvania Law

In Pennsylvania, a “minor” is defined as “[a]n individual under the age of 21 years.” 1 Pa.C.S. §1991. Pennsylvania does not have a comprehensive act to determine the age of minority, and when a statute is silent on the matter, the age of minority is determined under the Statutory Construction Act, 1 Pa.C.S. §1501, a minor is defined as an individual under the age of 21 years. *Fink v. Department of Public Welfare* 44 Pa.Commw. 210, 403 A.2d

214 (Pa.1979); *Commonwealth v. Smerechenski*, 468 A.2d 1129 (Pa.Super.1983); *Sutliff v. Sutliff*, 515 Pa. 393, 528 A.2d 1318 (1987); and *Marino By Marino v. Marino*, 601 A.2d 1240 (Pa.Super.1992).

In *Fink*, the Commonwealth Court addressed the issue of whether the age of minority for purpose of receiving public assistance is eighteen or twenty-one years.

In resolving the issue, the Commonwealth was guided by 1 Pa.C.S. §§1501-1991 of the Statutory Construction Act of 1972 for the applicable definition of a “minor.”

Following the words and phrases used in any statute finally enacted on or before September 1, 1937, [which both The Support Law and the Public Welfare Code were] the *Fink* Court determined that a “minor” is an individual under the age of 21 years. *Id.* 403 A.2d at 216.

In *Smerechenski*, the Court was faced with the question of whether a nineteen year old decedent was a “minor” child under Pennsylvania law for purposes of the criminal spousal testimony statute under 42 Pa.C.S. § 5913.

In finding that a nineteen year old decedent is a “minor” making appellee’s wife competent to testify against him, the *Smerechenski*, Court reasoned:

“[T]he Commonwealth has not passed a comprehensive Act defining the age of minority. Instead, it has enacted piecemeal legislation specifically providing non-minority status for eighteen year olds for specified purposes. At the same time it has left intact the definition of minority (an individual under twenty one years) in the Statutory Construction Act of 1972, 1 Pa.C.S. § 1501 et seq. Although on policy grounds we see no reason why the legislature has not redefined minority to the younger age, we nevertheless, are bound by the legislature’s action. Since the criminal spousal testimony does not itself define “minor children,” we must look to the Statutory Construction Act of 1972 for

guidance. The Act defines “minor” as “[a]n individual under the age of 21 years.”

Id. 468 A.2d 1130.

In *Sutliff*, the Pennsylvania Supreme Court disagreed with the Superior Court’s age of “majority” when the Superior Court distinguished in a support case between children above eighteen and those below eighteen. The *Sutliff* Court stated:

“Superior Court relying on Pa.R.C.P. 76, incorrectly defined the age of majority as eighteen. The age of majority for substantive purposes in civil matters remains twenty-one. 1 Pa.C.S. § 1991; In re Pincus Estate, 378 Pa. 102, 105 A.2d 82 (1954). However, 23 Pa.C.S. § 4321, enacted in October, 1985, distinguishes between children eighteen years of age and younger and children older than eighteen for purposes of support. We do not believe that 23 Pa.C. . § 4321 is a departure from the established law of the Commonwealth discussed *infra*.”

Id. 528 A.2d at 1322.

Again in *Marino*, the Court defined the age of “majority” for substantive purposes as being twenty-one. Relying upon the Pennsylvania Supreme Court’s precedent set forth in *Sutliff*, the *Marino* Court inferred that the age of majority for substantive purposes is twenty-one. Id. 601 A.2d at 1249.

It is clear from these line of cases and 1 Pa.C.S. §§1501-1991 of the Statutory Construction Act of 1972, the age of “majority” in the Commonwealth of Pennsylvania is twenty-one years of age.

Pursuant to 1 Pa.C.S. §§1501-1991 of the Statutory Construction Act of 1972, Petitioner was a “minor” or “adolescent” at the time of his alleged involvement in the robbery homicide, which ultimately resulted in his conviction and mandatory life without

parole sentence. As stated *infra*, the term “**minor**” is defined in the Black’s Law Dictionary as:

1. **Someone who has not reached full legal age, a child or juvenile.—Also termed infant.**

Black’s Law Dictionary 10th Edition

Moreover, Sections §§1501-1991 of the Statutory Construction Act of 1972, ascribes the following meaning to the term “**minor**” – **an individual under the age of 21.**

In light of Pennsylvania’s classification of Petitioner as a “minor” or “adolescent,” Petitioner is, therefore, a “minor” and entitled to relief under *Miller*.

In addition, Pennsylvania treats persons 18 and younger as juveniles under Pennsylvania’s Mental Health and Mental Retardation Act of 1966, which effectively defined a minor as a person 18 years of age or younger. Also see, *Kremens v. Bartley*, 431 U.S. 119 (1977); and *Secretary of Public Welfare v. Institutionalized Juveniles*, 442 U.S. 640 (1979).

Pennsylvania’s Mental Health and Mental Retardation Act of 1966 becomes relevant in assessing Petitioner’s “minor” or “adolescent” status, in light of the neuroscience and study of the human brain relied upon by the *Miller* Court.

Due to the recent findings in brain science and social science, it had been determined that the brain reaches its full adult weight by the age of 21.

As stated *infra*, a study conducted by the National Institute of Health found that the region of the brain that inhibits risky behavior does not fully develop until the age of 25. This is the final stage of brain development. Thus, those 18-25 years of age are undergoing the same neuro-biological experiences as those who are under the age of 18.

Hence the findings and reliance upon this scientific data that the *Miller* Court relied upon in reaching its conclusion, places Petitioner under the Pennsylvania Mental Health and Mental Retardation Act, as Petitioner suffered from a lessened culpability at 18 years of age and was no different than a 17 year old offender.

The *Miller* Court reasoned, “Our decision rested not only on common sense---on what “any parent knows”---but on science and social science as well.” *Id.* 567 U.S. ____ (2012)(slip opinion at 8).

Dr. Laurence Steinberg who was the lead scientist for the American Association in association in assisting the association’s counsel in preparing the amicus briefs in *Roper v. Simmons*, *Graham v. Florida* and *Miller v. Alabama*, summarized his scientific studies in *United States of America v. C.R.*, 792 F.Supp.2d 343 (2nd Cir.2011).

In *C.R.*, Dr. Steinberg testified, *inter alia*, that the bright line cut-off of age eighteen does not accurately reflect the realities of adolescent brain development and the differences of chronological age verses developmental age *Id.* 792 F.Supp.2d at 502-503.

Dr. Steinberg also testified about the import of the continued adolescent brain development on “executive functions” such as decision-making, impulse control, balancing risk and reward in young adulthood. Dr. Steinberg determined that these “executive functions” are still developing from the age of 17 to 21 and are not fully developed until the age of 25. *Id.* 792 F.Supp.2d at 503-504.

Dr. Steinberg explained the scientific evidence regarding anatomical brain development that supported his conclusions regarding executive functions. His testimony fully corroborated the research and studies relied by the Supreme Court in *Roper v. Simmons* and *Graham v. Florida*. *Id.* 792 F.Supp.2d at 504-506.

The Supreme Court in *Miller* relied heavily on Steinberg & Scott's, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003) studies, National Institute of Health's studies and social studies, which focused primarily on the study of the human brain. In emphasizing the reliance of these studies the *Miller* Court noted:

"The evidence presented to us in these cases indicates that the science and social science supporting Roper's and Graham's conclusions have become even stronger. See, e.g., Brief for American Psychological Association et al. Amici Curiae 3 ("[A]n ever growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusion"); *id.*, at 4 ("It is increasingly clear that adolescent brains are not yet fully mature in regions such as impulse control, planning ahead, and risk avoidance"); Brief for J. Lawrence Aber et al. as Amici Curiae 12-28 (discussing post-Graham studies); *id.*, at 26-27 ("Numerous studies post-Graham indicate that exposure to deviate peers leads to increased deviant behavior and is consistent predictor of adolescent delinquency" (footnote omitted))."

Id. 567 U.S. ____ (2012)(slip opinion at 9 n.5)

In citing *Eddings v. Oklahoma*, 455 U.S. 104, 15 (1982), the *Miller* Court further stated, "We held: [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. *Id.*, at 116." *Id.* 567 U.S. ____ (2012)(slip opinion at 13-14).

As a result of the advancements in neuroscience and study of the human brain, Petitioner's undeveloped brain at the time of the incident back in December of 1994, falls under the outlined conditions set forth in Pennsylvania's Mental Health and Mental Retardation Act of 1966. As Petitioner's mental deficiencies lessened his capacity to use

self-control, judgment and discretion in the conduct of his affairs at the age of 18, Petitioner is classified as a juvenile under this Act. This Act defines “**mental disability**” to be:

Any mental illness, mental impairment, mental retardation, OR *mental deficiency, which so lessens the capacity of a person to use HIS customary self-control, judgment and discretion in the conduct of his affairs and social relations* as to make it necessarily advisable for him to be under care as provided in this act. It shall include conditions and terms heretofore defined as “insanity,” “unsoundness of mind,” “lunacy,” “mental disease,” “mental disorder,” “feeble-minded,” “moron,” “idiot,” and “imbecile.” This term shall not include senility, unless mental illness or mental retardation is superimposed.

Pennsylvania Mental Health and Mental Retardation Act of 1966, Article I § 102.

Petitioner asserts that the neuroscience and study of the human brain used in *Miller*, places Petitioner under this Act, as Petitioner’s mental deficiencies lessened his capacity to use his self-control, judgment and discretion in the conduct of his affairs.

The *Miller* Court addressed the condition of juveniles whose condition was extreme, such as one with severe mental disability, which were beyond the expected teenage vulnerability and immaturity. The *Miller* Court recognized that the line of demarcation as set out in *Roper v. Simmons*, 543 U.S. 551, 574 (2005), is a fuzzy, not bright one. The *Miller* Court reasoned that the “qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”

(B). Equal Protection Demands *Miller*’s Application.

Finally, Petitioner claims that the Fourteenth Amendment equal protections laws demand the application of *Miller* to all classified as “minors/adolescents” under Pennsylvania law pursuant to 1 Pa.C.S. §§1501-1991 and those who were clearly defined

as a class or category of individuals included in the evaluation within the context of developing adolescence in *Miller*.

Under the Due Process Clause of the Fourteenth Amendment, no State shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.” The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *Duncan v. Louisiana*, 391 U.S. 145, 147-149 (1968).

The identification and protections of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. That responsibility, however, “has not been reduced to any formula.” *Poe v. Ullman*, 367 U.S. 497, 542 (1961) (Harlan, J. dissenting). Rather, it requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them respect. *Obergefell v. Hodges*, 575 U.S. ____ (2015)(slip opinion at 10).

Although those eighteen years of age were not considered before the United States Supreme Court in *Miller*, eighteen year olds are clearly a defined class or category of individuals that were included within the context of developing adolescence.

The *Miller* Court recognized that the line of demarcation as set out in *Roper v. Simmons*, 543 U.S. 551, 574 (2005), is a fuzzy, not bright one. The *Miller* Court reasoned that the “qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” Thus, the state should not deny Petitioner the equal protection of the laws announced in *Miller*.

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did

not presume to know the extreme of freedom in all of its dimensions, and so they entrust to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed. *Obergefell v. Hodges*, 575 U.S. ____ (2015)(slip opinion at 11).

The *Miller* decision presents one of those rare injustices that the framers may have not have seen as a result of the lack of neuroscience, social science and study of the human brain at the time.

The *Miller* Court weighed-in on the transitory phase of the developing adolescent experience. It reasoned that those findings of transit rashness, promiscuity for risky behavior and the inability to assess consequences lessen a child's "moral culpability" and enhanced the prospect that, as years go by, and neurological development occurs, his deficiencies will be reformed. *Id.* 567 U.S. ____ (2012)(slip opinion at 8-9 n.5; 13-14). Thus, the Court recognized the developing adolescent's diminished responsibility, and his/her potential for growth and change.

Petitioner respectfully submits that the adolescent process does not end at the age of 17 but at 25. This group labeled as "emerging adulthood," struggles with the same problems as those who are under the age of 18, that include: the inability to perform complex cognitive tasks, reasoning's, impulse control, planning ahead and risk avoidance due to myelination, synaptic pruning and lack of brain wiring/connectivity.

Petitioner asserts that he was 18 years old at the time his crime occurred. If the findings validated in *Miller* held that an adolescent has a diminished culpability and is

amendable to change when their brain fully develops, the same is true with those that were 18 years old at the time of their crime/conviction.

Petitioner contends the *Miller* rationale, that mitigating factors like neuroscience and social science has to be considered when sentencing youths to life without parole, must be extended to individuals who were eighteen years old and classified as juveniles under Pennsylvania law.

The Constitution contemplates that democracy is the appropriate process for change, so long as that process does not abridge fundamental rights. *Schuetz v. BAMN*, 572 U.S. ____ (2014).

In finding that the Constitution contemplates that democracy is the appropriate process for change, so long as that process does not abridge fundamental rights, the *Schuetz* Court stated:

“[t]he freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power.”

Id. 572 U.S. ____ (2014)(slip opinion at 15)

Thus, when the rights of persons are violated, “the Constitution requires redress by the courts,” notwithstanding the more general values of democratic decision making.” *Id.* 572 U.S. ____ (2014)(slip opinion at 17).

This holds true even when protecting individual rights that affects issues of the utmost importance and sensitivity, such as the issue presented here, *i.e.*, the application of *Miller* for those defined as a class or category of individuals that were included within the context of developing adolescence.

The dynamic of our constitutional system is the individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943). *See also, Obergefell v. Hodges*, 575 U.S. ____ (2015) (slip opinion at 24).

This case presents one of those rare cases where the Court need not await legislative action before acting. The application of the *Miller* rationale to those labeled as "emerging adulthood," who struggle with the same problems as those under the age of 18, gives this Court the opportunity to "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."

It is evident that those classified as juveniles under Pennsylvania law and those labeled as "emerging adulthood," who struggle with the same problems as those under the age of 18 will continue to suffer harm, unless the Court moves to equally apply the *Miller* rationale to all "classes of individuals" mentioned in *Miller*.

To deny Petitioner the same, violates equal protection laws. Petitioner contends that the "equal protection of the law means that no person or class of persons, shall be denied the same protection of the laws which are enjoyed by other persons in the like

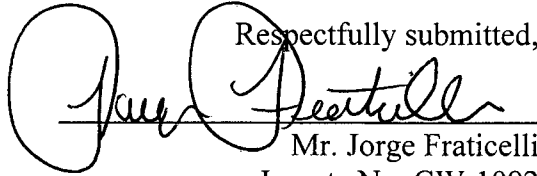
circumstances in their life, liberty, property and in their pursuit of happiness. This equal protection of law is afforded to all persons subject to the jurisdiction of the United States.

Based on the scientific facts presented in *Miller* and those defined as a class or category of individuals that were included within the context of developing adolescence in *Miller*, Petitioner respectfully requests that this Honorable Court re-sentence Petitioner in accordance with the *Miller* Court's ruling.

Contrary to the State Court's findings, Petitioner's instant PCRA petition predicated upon the United States Supreme Court's announced in *Miller* entitles Petitioner to relief as: (1) the *Miller* decision is binding upon all states; (2) Petitioner is a juvenile under Pennsylvania Law; and (3) the equal protection clause of the Fourteenth Amendment demands *Miller's* application in this instant case. Thus, certiorari should be granted in this matter.

CONCLUSION

WHEREFORE, for these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Superior Court of Pennsylvania.

Respectfully submitted,


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Date: 1/15/18