No. __________

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT CAMERON HOUSTON,
Petitioner,

v.

STATE OF UTAH,
Respondent.

On Petition for a Writ of Certiorari to the Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1. Does imposing a life without parole sentence on a juvenile convicted of homicide violate the Eighth and Fourteenth Amendments?

2. Does the Court's holding in *Miller* requiring sentencers to consider an offender's youth and attendant characteristics before finding a juvenile offender to be "irreparably corrupt" implicate the Sixth Amendment right to a jury trial and this Court's decision in *Apprendi*?

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PETITION FOR WRIT OF CERTIORARI

Robert Cameron Houston respectfully petitions for a writ of certiorari to review the judgment of the Utah Supreme Court.

OPINIONS BELOW

The opinion of the Utah Supreme Court, Pet. App. 1, is reported at *State v. Houston*, 2015 UT 40, 353 P.3d 55.

JURISDICTION

The judgment of the Utah Supreme Court was entered on February 24, 2015. Petitioner filed a motion for rehearing, which the Utah Supreme Court denied on June 30, 2015. An extension of time to file the petition for a writ of certiorari was granted to and including November 27, 2015, on August 28, 2015, in Application No. 15A246. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT STATUTORY PROVISIONS

The Appendix to this Petition reproduces the State of Utah's relevant sentencing statute, Utah Code Ann. § 76-3-207.

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public

trial, by an impartial jury of the State and district wherein the crime shall have been committed…."

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law…."

STATEMENT OF THE CASE

The State of Utah believes that Robert "Cameron" Houston was not mature enough in 2006 to decide whether to get a tattoo, Utah Code Ann. § 76-10-2201, but insists that a decision he made that year should cost him his freedom forever. In other words, because of a homicide he committed at the age of seventeen, Cameron Houston will never have even the opportunity to demonstrate to a parole board that he has changed.

This last point deserves special emphasis. The one and only difference between a sentence of life with parole and life without the possibility of parole rests on *when* the State determines that a juvenile offender is or is not redeemable. For this Court to uphold juvenile life without parole, it must be comfortable with the State making this decision at the outset—when the juvenile offender's brain remains undeveloped, with the crime fresh in the sentencers' minds, and with the offender least capable of understanding the consequences of his actions or able to assist his defense.

Moreover, for the Court to uphold juvenile life without parole, it must accept the balancing of two very unequal risks. Specifically, when a sentencer imposes life with the possibility of parole, the parole board stands between an "irreparably corrupt" juvenile offender's release, reducing to zero the chance that such a juvenile will gain freedom. On the other hand, if the sentencer imposes life without parole, given what we know about juvenile brain development, there exists a significant risk that a redeemable juvenile offender will be deprived redemption. The Court's recent juvenile sentencing jurisprudence counsels strongly against accepting this risk.

In *Graham v. Florida*, 560 U.S. 48, 82 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012), this Court held, respectively, that the Eighth and Fourteenth Amendments prohibit sentencing juveniles to life without parole for non-homicide offenses or for homicide offenses under mandatory sentencing schemes. In neither case did the Court address whether the Constitution allows discretionary life without parole for juveniles convicted of homicide offenses. That question will need to be resolved by this Court, as many states continue to sentence juveniles convicted of homicide offenses to life without parole. Applying the logic of the Court's holding in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham*, and *Miller* would mean that a state may never impose life without parole on a juvenile.

If the Court decides against granting the writ to decide the constitutionality of life without parole for juvenile homicide offenders, or upholds those sentences, the Court will need to address *Miller*'s implications. Lower courts remain uncertain of the holding's Sixth Amendment significance. The Court in *Miller* stated that it was mandating a

process in which the sentencer must consider an "offender's youth and attendant characteristics," 132 S. Ct. at 2471, and how the differences between juveniles and adults "counsel against irrevocably sentencing [juveniles] to a lifetime in prison." *Id.* at 2469. The language and logic establishes a default maximum sentence for juvenile homicide offenders of life with the possibility of parole, implicating *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Thus, a juvenile offender may only be sentenced to life without parole after an express finding of "irreparable corruption" by a jury and beyond a reasonable doubt.

A. Cameron Houston's Background, Offense, and Sentencing

Cameron Houston faced hardships and difficulties from birth. Pet. App. 146. Born with a deformed ear that left him partially deaf, he struggled to learn to talk and communicate. Pet. App. 146–147. His parents' disinterest in helping him contributed to further delayed motor skill development. Pet. App. 154. Other children ridiculed him for his deformity as well as for his obesity. Pet. App. 2. Cameron's father physically and verbally abused him, his parents fought constantly, Cameron once witnessed his father hold a knife to his mother's throat, and they divorced when he was six. Pet. App. 150–155. At eight, Cameron attempted suicide by holding a knife to his neck. Pet. App. 163–164. No evidence exists that Cameron's family sought help for Cameron to deal with his emotional problems.

After his parents' divorce, Cameron's mother cohabitated with an alcoholic, abusive boyfriend. Pet. App. 157–158. Cameron became further isolated in this new household, as the boyfriend's children moved in and ganged up on him for his weight and

deformity. Cameron's older brother also physically assaulted Cameron and his mother. Pet. App. 159–166. Cameron's mother, in turn, abused Cameron, often hitting, kicking, and beating him with a belt. Pet. App. 165. His brother's friend sexually abused Cameron and Cameron later engaged in sexual acts with a male cousin. Pet. App. 171. His mother refused to seek therapy for Cameron, believing "it was just typical teenage boy behavior." Pet. App. 172.

At age fourteen, Cameron received probation following an incident involving his stepsister. Pet. App. 2. The next year, Cameron was charged with attempting to rape his aunt. Pet. App. 2. He pleaded guilty to some other offense and was placed in Youth Health Associates (YHA), a residential treatment facility for juvenile sex offenders. Pet. App. 2. While at YHA, Cameron committed the crime that gives rise to the underlying case and this Petition. In February 2006, Cameron, at the age of seventeen, raped and stabbed a YHA counselor who later died from her wounds. Pet. App. 2. He was captured after attempting to kill himself and confessed to the crime. Pet. App. 2. He pleaded guilty to aggravated murder. Pet. App. 2.

Under the applicable statute, either a life with parole or life without parole sentence could be imposed, with the latter allowed merely if the jury considered it "appropriate." Utah Code Ann. § 76-3-207(5)(c). At the sentencing trial, Cameron's counsel failed to put on any expert testimony about juvenile brain development, juvenile decision-making processes, or the characteristics attendant to youth. Instead, in addressing Cameron's young age, his attorney relied almost exclusively on platitudes:

> How many of us at 17 are the same person we are when we're 37 or 57? We're not. You change. Life experience for those that have it—no, we know that as we grow up we change. Usually at 17 you're not the same person you are at 22 because you've matured, you see life differently. I know for me I thought my parents—by the time I got to 21 or 22 I realized how smart my parents really were, but at 17 I didn't see that.

Pet. App. 110–111.

Perhaps worse, Cameron's counsel attempted to explain the crime in terms of a teenage boy's sexual drive and hormones, telling the jury: "He's got all these hormones. He's becoming a sexual being, you know. We have sex drives. They're put into us for a reason." Pet. App. 114. Equating this crime of violence to a teenage boy's sex drive is not only absurd, but also likely made the jury suspicious of any effort to explain how Cameron's youth reduced his culpability.

To the extent defense counsel raised the issue of juvenile brain development to the jury, Cameron's attorney actually undermined its importance by discounting today's understanding of brain maturation processes:

> Who knows what Cameron's going to become?...We don't know what advances, you know, that are going—you know, that are going to be made in the field of psychology. We don't know that. And, you know, 20, 30, 40 years from now—I probably won't even be here, but I think the people up there are going to know more than we know at this point.

Pet. App. 119.

But we do know a lot, as this Court's decisions in *Roper*, *Graham*, and *Miller* make clear, and Cameron's counsel presented none of that to the jury.

The court instructed the jury on April 13, 2007. As part of the instructions, the court told the jury that, "The State bears the burden of persuading you that a sentence of life in prison without parole is appropriate and should be imposed upon the defendant." Pet. App. 82. The court did not provide any instruction more clearly articulating the burden of proof or defining what "appropriate" means. Moreover, the jury heard no instruction specific to Cameron's youth or juvenile brain development. The jury was only told that mitigating circumstances include the "youth of the defendant at the time of the crime." Pet. App. 91.

The non-unanimous jury voted 11-1 to sentence Cameron to life without parole. Pet. App. 75. Under Utah law, had two more jurors voted against life without parole, Cameron would have received the possibility of parole. Utah Code Ann. § 76-3-207(5)(c).

B. Procedural History and State Court Ruling on Review

Cameron appealed his sentence to the Utah Supreme Court. He argued, among other things, that sentencing a juvenile to life without parole violates the Eighth and Fourteenth Amendments and that this Court's holding in *Miller* established a maximum sentence of life with parole, above which a juvenile offender cannot be sentenced absent specific factual findings made by a jury and beyond a reasonable doubt. Pet. App. 8. The Utah Supreme Court rejected Cameron's claims on the merits. Pet. App. 1–2.

Though Cameron does not raise the issue here, before the Utah Supreme Court, he also claimed ineffective assistance of counsel based, in part, on his attorney's failure to offer evidence relating to juvenile brain development. The Utah Supreme Court's

response to this claim illustrates the misunderstanding of *Miller*'s significance and the critically important role that brain science can play for a jury deciding how to assess a juvenile's culpability and the mitigating youth factor. To Cameron's ineffective assistance claim, the Utah Supreme Court stated, "[C]ounsel could have reasonably concluded that the jurors would understand from life experience that a seventeen-year-old's decision-making is not as reasoned as that of an adult." Pet. App. 20. In truth, relying on a jury's common-sense, life-confirming understanding of juvenile brain development poses enormous risks that this Court considered intolerable in *Roper* and *Graham*.

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT REVIEW TO DECIDE THE QUESTION LEFT UNRESOLVED BY *GRAHAM* AND *MILLER*, WHETHER SENTENCING A JUVENILE HOMICIDE OFFENDER TO LIFE WITHOUT PAROLE VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS

In *Roper*, the Court charted a new course for the nation's understanding of the constitutional limits to juvenile sentencing. In that case, citing scientific studies showing that adolescent brain structures and functioning leave teenagers inherently "less culpable," 543 U.S. at 571, and "less deserving of the most severe punishments" than adults, *Graham*, 560 U.S. at 68, the Court invalidated the death penalty for people convicted of crimes committed as juveniles.

The Court followed that same logic in *Graham*, holding that, for juvenile offenders who committed non-homicide offenses, imposing life imprisonment with no possibility of release constituted categorically cruel and unusual punishment. 560 U.S. at

82. Furthermore, in *Graham*, the Court correctly linked the punishment of life without parole to a death sentence, recognizing that life without parole "alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration . . . ." *Id.* at 69–70.

Most recently, the Court held in *Miller* that statutory schemes mandating life imprisonment without parole for juveniles violates the Eighth and Fourteenth Amendments. 132 S. Ct. at 2475. Because the states in *Miller* sentenced the defendants under mandatory life imprisonment schemes, the Court did not face the question whether the Constitution forbids all juvenile life without parole sentences. *Id.* at 2469. Thus, a significant gap exists in the Court's juvenile sentencing jurisprudence—a gap that Cameron Houston respectfully requests this Court address.

A. The Court's Reasoning in Roper, Graham, and Miller Requires the Conclusion that Sentencing Juveniles to Life Without Parole Violates the Eighth and Fourteenth Amendments

1. *The Concerns Animating the Court's Decision to Adopt Categorical Rules, with Regard to Sentencing Juveniles, Apply With Even More Force in Homicide Cases*

Striking, and constitutionally significant, differences between adolescents and adults explain why "juvenile offenders cannot with reliability be classified among the worst offenders." *Roper*, 543 U.S. at 569. In its recent juvenile sentencing jurisprudence, the Court relied on scientific studies showing that juveniles are undeveloped personalities, who are labile and situation-dependent, more vulnerable to negative influences and outside pressures, and largely lacking in impulse controls that almost all of them will gain later in life. *Id.* at 569–570.

The Court first recognized and incorporated these principles into its constitutional analysis in the death penalty context in *Roper*. *Id.* Later, in *Graham*, the Court extended the logic to life imprisonment without parole because of the similarity between these two punishments. 560 U.S. at 82. The Court concluded, "Life without parole is the second most severe penalty permitted by law," *id.* at 69 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (opinion of Kennedy, J.), and, indeed, "shares some characteristics with death sentences that are shared by no other sentences." *Id.* Furthermore, the Court looked to the practical consequences of life without parole, labeling it an "especially harsh punishment for a juvenile" as that offender will serve "more years and a greater percentage of his life in prison than an adult offender." *Id.* at 70. For this reason, the Court adopted a categorical approach to assessing juvenile life without parole and concluded that, at least with regards to non-homicide offenses, such a severe punishment violated the Eighth and Fourteenth Amendments.

The Court based its reasoning in both *Roper* and *Graham* on the punishment involved, not the crime committed. Indeed, the Court explicitly stated as much in *Miller*, noting, "None of what [the Court] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." 132 S. Ct. at 2465. As such, "*Graham*'s reasoning implicates any life-without-parole sentence imposed on a juvenile." *Id.*

The Court's decision to reject a case-by-case method to sentencing and instead adopt a categorical approach to assessing the death penalty and life without parole further supports concluding that Cameron's sentence violates the Constitution. The Court

doubted that "taking a case-by-case proportionality approach could with sufficient accuracy distinguish the few incorrigible juvenile offenders from the many that have the capacity for change." *Graham*, 560 U.S. at 77. In fact, the Court in *Roper* directly rejected the argument that juries need only consider a juvenile's age as a mitigating factor in sentencing, concluding that an "unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course." 543 U.S. at 573.

The Court applied the same rationale in *Graham*, even though the case involved a robbery, not a brutal or cold-blooded crime. Of course, the risks recognized in *Roper* are even more pronounced in juvenile homicide cases like Cameron's than they were in *Graham*, and the reasoning therefore applies with at least equal force.

In addition, the Court rejected a case-by-case approach in *Roper* and *Graham* because of the "special difficulties encountered by counsel in juvenile representation," *Graham*, 560 U.S. at 78, precisely because of the characteristics that differentiate juveniles from adults. Juveniles work less effectively with adults, have difficulty weighing long-term consequences, and mistrust defense counsel. *Id.* These facts "impair the quality of a juvenile defendant's representation," *id.*, increasing the risk that a jury would mistakenly conclude that a particular juvenile defendant is as culpable as an adult. A categorical rule prevents that risk from taking root.

Finally, the Court recognizes that juveniles should be given the "opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Id.* at 79. In *Roper*, the states deprived juveniles of that possibility through execution. But in

Graham, the Court expressed the same concern. "Life in prison without possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Id.* Life without parole sentences disincentive this growth, maturing, and redemption—often with the prison system complicit in the lack of personal development. *Id.* Thus, as the Court implicitly acknowledged in *Graham*, it does not solve the problems addressed in *Roper* to simply allow states to sentence those same juvenile defendants to life without parole. All juveniles should be given the opportunity discussed in *Roper* and *Graham* to achieve the maturity that "can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation." *Id.*

In sum, the logic underpinning the Court's most recent juvenile sentencing cases requires the conclusion that all juvenile life without parole sentences violate the Constitution. Put simply, for the same reasons the Constitution barred Utah from sentencing Cameron Houston to death, the Fourteenth Amendment prevents Utah from sentencing him to life without parole.

Indeed, Cameron's sentencing demonstrates the reality of the fears the Court expressed with allowing juvenile matters to proceed through a case-by-case sentencing approach. The crime was horrific and rocked the small, close-knit community in which Cameron's sentencing trial took place. His defense attorney barely touched on Cameron's youth during the five-day hearing and offered no experts in the field of juvenile brain development. Based on his youth and troubling life experiences with adults, Cameron was hardly in a position to assist his counsel in any meaningful way, and because this was not a capital case, his court-appointed counsel had fewer resources.

And even then, had only two more jurors voted against life without parole, Cameron would have been granted the opportunity—just the opportunity—to prove to a parole board far in the future that the person he was at seventeen was not who he was destined to forever be. Based on the logic of *Roper* and *Graham*, the State of Utah cannot justify depriving a seventeen-year-old of the chance to ever redeem himself.

2. *No Punishment Theory Justifies Sentencing Juveniles to Life Without Parole*

In *Graham*, the Court also concluded that none of the recognized legitimate penological goals of sentencing adequately justify life without parole for juvenile non-homicide offenders. 560 U.S. at 71–74. The same is true here.

As in *Roper*, the Court in *Graham* recognized that deterrence "does not suffice to justify [juvenile life without parole.]" *Id.* at 72. Juveniles lack maturity and possess an "underdeveloped sense of responsibility," *id.*, meaning that they rarely take into account a possible punishment before acting. Thus, life without parole likely deters few, if any, juveniles.

The incapacitation goal—also rejected by the Court in *Graham*—addresses the desire to prevent recidivism. *Id.* A basic flaw exists in trying to rely on this goal to justify juvenile life without parole. As Justice Durham stated in her dissent in this case, the rationale "is only valid if the confined individual would commit additional crimes but for his or her incarceration." Pet. App. 62. However, "[t]o justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible." *Graham*, 560 U.S. at 72.

Given the characteristics of youth, such a judgment is "questionable" *Id.* at 73. A state cannot justify making such a decision at the outset, rather than by allowing a parole board to consider that issue many years after the crime.

Rehabilitation, another generally legitimate goal, forms the basis of the parole system. A sentence of life without parole "forswears altogether the rehabilitative ideal" and, in fact, inhibits it. *Id.* at 74.

Thus, the state is left with only the retribution goal to justify imposing life without parole on a juvenile. While the state may undoubtedly seek to punish a juvenile for his crime, "[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Id.* at 71 (quoting *Tison v. Arizona*, 481 U.S. 137, 149 (1987)). For all the reasons discussed above about the characteristics of youth, "the case for retribution is not as strong with a minor as with an adult," *Miller*, 132 S. Ct. at 2465 (quoting *Graham v. Florida*, 560 U.S. 48, 70 (2010)), even in the context of homicide. In short, juvenile offenders are not as culpable as adults. Life without parole to a juvenile is the near equivalent of a death sentence and is a harsher penalty for juveniles than it is for adults. Because of their lessened culpability, retribution cannot justify sentencing juveniles to life imprisonment without parole.

B. Evolving Standards of Decency Show that Juvenile Life Without Parole Constitutes Cruel and Unusual Punishment

In addition to the considerations discussed above, to assess whether a sentence constitutes "cruel and unusual" punishment under the Eighth Amendment, the Court turns to "evolving standards of decency that mark the progress of a maturing society." *Estelle*

v. Gamble, 429 U.S. 97, 102 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)). When deciding whether to create a categorical rule against a particular practice, the Court considers "objective indicia of society's standards, as expressed in legislative enactments and state practice." *Roper*, 543 U.S. at 563. Evolving standards of decency—as demarked through legislative enactments, state practices, and international rules and norms—show that juvenile life without parole for any crime violates the Eighth Amendment's notion of cruel and unusual punishment.

At the time the Court decided *Graham*, six jurisdictions banned juvenile life without parole sentences in all circumstances and seven states permitted the punishment, but only for homicide crimes. *Graham*, 560 U.S. at 62. Now, fourteen states ban juvenile life without parole.[1]

The movement is more pronounced than even those numbers suggest. In just the three years since the Court decided *Miller*, nine states abolished juvenile life without parole.[2] The histories in many of those states show that the legislatures acted, at least in part, because they believed that the punishment violated the Eighth and Fourteenth

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[1] Alaska Stat. Ann. § 12.55.125 (West 2015); Colo. Rev. Stat. Ann. §17-22.5-104(IV) (West 2015); Del. Code Ann. tit. 11, §4209 (West 2013); D.C. Code § 22-2104 (2013); Haw. Rev. Stat. § 706-656 (West 2015); Kan. Stat. Ann. §21-6618 (West 2015); *Workman v. Commonwealth*, 429 S.W.2d 374 (Ky. 1968); Mass. Gen. Laws ch. 265 § 2 (West 2014); Mont. Code Ann. § 46-18-222 (West 2015); 2015 Nev.A.B. 267 (2015); N.M. Stat. Ann. §§ 32A-2-20, 31-21-10 (West 2009); Or. Rev. Stat. Ann. § 161.620 (West 2015); Tex. Fam. Code Ann. § 54.04 (West 2013); W. Va. Code Ann. § 61-11-23 (West 2014); Wyo. Stat. Ann. § 6-10-301 (West 2015).

[2] The nine states that abolished the sentence for juveniles since *Miller* are Connecticut, Delaware, Hawaii, Massachusetts, Montana, Nevada, Oregon, Texas, and Wyoming.

Amendments.[3] The Court should consider those numbers to show not only society's evolving standards, but also a divide among the states over whether juvenile life without parole violates the Constitution.

The Court relied on a similar legislative trajectory in *Atkins v. Virginia*, 536 U.S. 304 (2002), to invalidate the death penalty for those with mental disabilities. Moreover, in *Roper* and *Graham*, even less legislative movement existed to show an evolving standard with regards to the punishments at issue there. Nevertheless, the Court held that evolving standards worked against the juvenile death penalty and life without parole for non-homicide offenses.

To assess community standards, the Court looks beyond legislative enactments and to actual state practices. Despite Utah's allowing the sentence for decades, Cameron was the first juvenile in Utah to ever be sentenced to life without parole, and he remains one of only two such prisoners. Pet. App. 64.

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[3] Conn. Judiciary Committee, Joint Favorable Report (Conn. 2015) (stating the purpose of the bill is to "ensure Connecticut's juvenile sentencing structure is constitutional"); H.B. 2116, 27th Leg., Reg. Sess. (Haw. 2014) (citing to *Roper v. Simmons*, 125 S. Ct. 1183 (2005), and *Graham v. Florida*, 130 S. Ct. 2011 (2010) to show juveniles do not meet the penological goals of the harshest punishments); *Diatchenko v. District Attorney for Suffolk Dist.*, 1 N.E.3d 270, 284–85 (Mass. 2013) (holding "the unconstitutionality of this punishment arises not from the imposition of a sentence of life in prison, but from the absolute denial of any possibility of parole"); Tex. House Research Org., Bill Analysis, S. 81, Reg. Sess., at 3 (2009) (finding "juveniles cannot reliably be classified as among the worst offenders" and "[t]he criminal justice system is designed to treat juveniles differently than adults"); Testimony in Support of H. 62 Before the Vt. H. Judiciary Comm., 2014 Leg. 1, 3 (Vt. 2014) (testimony of James L. Dold, Advocacy Director for The Campaign for the Fair Sentencing of Youth) (arguing children are "constitutionally different from adults [and] should not be subject to our nation's harshest punishments").

Finally, the Court has long considered the judgments of other nations, and the international community generally, in assessing the constitutionality of punishments. *See, e.g.*, *Graham*, 560 U.S. at 80; *Atkins*, 536 U.S. at 316–317 n.21; *Thompson v. Oklahoma,* 487 U.S. 815, 830 (1988) (plurality opinion); *Enmund v. Florida*, 458 U.S. 782, 796–797 n.22 (1982); *Coker v. Georgia*, 433 U.S. 584, 596 n.10 (1977) (plurality opinion); *Trop*, 356 U.S. at 102–03 (plurality opinion). Such a review serves not to replace the Court's own view, but to confirm the Court's "independent conclusion that a particular punishment is cruel and unusual." *Graham*, 560 U.S. at 80. As discussed in *Graham*, the international community speaks with one voice here. *Id.* at 80–81. Every nation besides the United States and Somalia has ratified Article 37(a) of the United Nations Convention on the Rights of the Child, which prohibits imposing "life imprisonment without possibility of release . . . for offenses committed by persons below eighteen years of age." *Id.* at 81.

Furthermore, only ten other countries have laws allowing juveniles to be sentenced to life without parole, but even that number is misleading. de la Vega & Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. Rev. 983, 989 (2008). Researchers have not been able to identify any person in those countries actually serving a juvenile life without parole sentence. *Id.* at 990, 1004–07.

Thus, the United States stands alone—isolated in its willingness to condemn child offenders to die in prison.

II. IF JUVENILE LIFE WITHOUT PAROLE REMAINS A VALID SENTENCE, THE COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER THE SIXTH AMENDMENT REQUIRES THAT A JURY FIND, BEYOND A REASONABLE DOUBT, THAT A JUVENILE OFFENDER IS IRREPARABLY CORRUPT BEFORE IMPOSING THE SENTENCE

The Court in *Miller* made clear that if juvenile life without parole remains constitutional, it is to be an "uncommon" sentence, imposed only after determining that the juvenile was irreparably corrupt, 132 S. Ct. at 2469. Thus, *Miller* did more than prohibit mandatory life without parole sentences for juveniles. It "require[d] [sentencers] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* In practical effect, *Miller* created a default—a presumption—against life without parole for juveniles convicted of homicide crimes.

Of course, *Miller* does not stand alone. It relied on, and buttresses, the Court's earlier holdings in *Roper* and *Graham*, in which the Court discussed directly the "great difficulty" in distinguishing between "juvenile offender[s] whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* (quoting *Roper*, 543 U.S. at 573). To address that difficulty, the Court created a punishment ceiling for juveniles. A juvenile, no matter the crime, may never be sentenced to death. *Roper*, 543 U.S. at 578. A juvenile convicted of a non-homicide offense may be never be sentenced to life without parole. *Graham*, 560 U.S. at 82. And a juvenile convicted of a homicide crime may only receive life without parole, if at all, after the sentencer has considered the youth factor and determined that, despite the

presumption against life without parole, the juvenile is "irreparably corrupt." *Miller*, 132 S. Ct. at 2469.

A. The Irreparably Corrupt Standard Implicates Sixth Amendment Rights Requiring Factual Findings Beyond a Reasonable Doubt

In *Apprendi*, the Court applied its Sixth Amendment jurisprudence to criminal sentencing and declared that, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the presumed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490.

In multiple cases since, the Court has applied *Apprendi* to more than just statutory maximums. In *Blakely v. Washington*, 542 U.S. 296, 303–304 (2004), the Court flatly rejected the State's contention that as long as a statute provides the possibility of a sentence, a judge may impose that sentence without implicating *Apprendi*. Rather, the Court stated:

> [T]he "statutory maximum" for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by the defendant. In other words, the relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings.

Id. at 303 (internal citations and emphasis omitted).

The Court followed this logic in *United States v. Booker*, 543 U.S. 220, 235 (2005), holding that the federal sentencing guidelines unconstitutionally allowed judicial fact-finding using a preponderance of the evidence standard to serve as the basis for enhanced sentencing. "Any fact . . . necessary to support a sentence exceeding the

maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt." *Id.* at 244.

Similarly, in *Cunningham v. California*, 549 U.S. 270 (2007), the Court struck down California's determinate sentencing statute, which established three possible sentences and allowed a judge to impose the upper term only after finding an aggravating factor that was not an element of the charged offense. The statute listed specific aggravating factors, but also defined the term as "any additional criteria reasonably related to the decision being made." *Id.* at 278–279 (quoting *People v. Black*, 113 P.3d 534, 538 (Cal. 2005). The Court held that California's approach ran afoul of the Sixth Amendment because it allowed a judge to make critical findings of fact, and imposed a preponderance of the evidence standard. *Id.* at 293.

Taken together, these cases establish several propositions. First, sentencing falls under the Sixth Amendment's domain and, therefore, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490. Second, the "statutory maximum" for Sixth Amendment purposes may be lower than the penalty prescribed in the actual statute for the offense as a result of sentencing guidelines or a range of options. Moreover, the maximum may be determined not only by statutes, but also by other sources, like sentencing guidelines. Thus, that the maximum penalty at issue here is constitutionally set does not alter the analysis. The critical inquiry is over whether a particular fact is essential to the punishment.

Graham and *Miller* established that the Eighth Amendment creates a maximum punishment for juveniles that the sentencer may not exceed absent specific factual findings. In the words of one scholar:

> [I]f a state adopted a statute that allowed life without parole only if the sentencer found that a juvenile intended to kill and was irreparably corrupt, then such findings would need to be made by a jury beyond a reasonable doubt. In the absence of a state statute, these findings are still required by the Eighth Amendment. Jury involvement—and the beyond-a-reasonable-doubt standard—cannot be avoided simply because the state legislature has not codified the Eighth Amendment holding.

Russell, *Jury Sentencing and Juveniles: Eighth Amendment Limits and Sixth Amendment Rights*, 56 B.C. L. Rev. 553, 580 (2015).

A juvenile offender cannot be sentenced to life without parole for a homicide crime unless a jury finds beyond a reasonable doubt that the juvenile is "irreparably corrupt."

B. Courts Require Guidance as to How to Apply *Miller*

Beyond the retroactive question the Court will address in *Montgomery v. Louisiana*, No. 14-280, lower courts need immediate guidance in implementing *Miller*. If, as Cameron Houston contends, *Miller* requires a jury-based factual finding beyond a reasonable doubt that an offender is one of the very few irreparably corrupt juveniles, many state sentencing schemes will prove invalid. Russell, *supra*, at 585–594 (discussing state statutes giving judges the authority to sentence juveniles to life without parole).

Several state supreme court decisions support Cameron's reading of *Miller*. The California Supreme Court stated that, after *Miller*, "[t]he question is whether each [defendant] can be deemed, at the time of sentencing, to be irreparably corrupt, beyond redemption, and thus unfit ever to reenter society . . . ." *People v. Gutierrez*, 324 P.3d 245, 270 (Cal. 2014). Both the Connecticut, *State v. Riley*, 110 A.3d 1205 (Conn. 2015), *petition for cert. filed*, (U.S. June 8, 2015) (No. 14-1472), and Nebraska, *State v. Mantich*, 842 N.W.2d 716, 730 (Neb. 2014), Supreme Courts also view *Miller* as creating a presumption against imposing a juvenile life without parole sentence—a default that the Connecticut Supreme Court said can only be overcome "by evidence of unusual circumstances." *Riley*, 110 A.3d at 1214.

Moreover, at least one state supreme court, interpreting *Miller*, reached the exact opposite conclusion as the Utah Supreme Court did in this case. The Missouri Supreme Court held that "a juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer *beyond a reasonable doubt* that this sentence is just and appropriate under all circumstances." *State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (en banc) (emphasis added). While the *Hart* case shows the existing, and likely growing, divide over interpreting *Miller*, perhaps its greatest value rests in how directly the Missouri Supreme Court articulated the critical questions left unresolved by *Miller*:

> [N]o consensus has emerged in the wake of *Miller* regarding: (a) whether the state or the defendant should bear the risk of non-persuasion on the determination that *Miller* requires the sentencer to make, and (b) the burden of proof applicable to that determination. In other words, does Hart have to

> persuade the sentencer that life without parole is unjust and inappropriate, or must the state persuade the sentencer that such a sentence is just and appropriate? And, is it sufficient that the sentencer is satisfied the proposition is more likely than not, or must the sentencer be convinced of the proposition beyond a reasonable doubt?

Id.

The Missouri Supreme Court was speaking just a year after *Miller*, but the questions have only grown in importance. And if the Court holds that *Miller* applies retroactively, then resolving the issues posed in this Petition will only become more pressing.

C. *Miller*'s Holding Can Only Be Given Effect By Applying *Apprendi* and Requiring that Before Sentencing a Juvenile to Life Without Parole a Jury Find Beyond a Reasonable Doubt That the Juvenile is "Irreparably Corrupt"

As the Court acknowledged in *Roper* and *Graham*, the surest way to guard against the significant risk of sentencing a redeemable juvenile to death or a life in prison is to establish categorical limits on the punishments imposed. But absent that approach, to ensure that the Court's admonition that juvenile life without parole be "uncommon," and imposed only after considering how children are different and that the juvenile offender is "irreparably corrupt," requires the basic protections afforded through the Court's Sixth Amendment *Apprendi* jurisprudence.

Mandating that a finding of "irreparable corruption" be made by a jury beyond a reasonable doubt will reduce the risk that a juvenile is inappropriately sentenced to life without parole because it demands a conclusion by more than just one judge and also commands a higher level of proof before imposing the sentence. Furthermore, in *Miller*,

the Court criticized mandatory life without parole because such laws, "by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." 132 S. Ct. at 2467. The reason not to preclude such evidence is precisely because that evidence is necessary to avoid the risk of imposing the lengthiest of sentences on a redeemable child. That is why the Court spoke of "follow[ing] a certain process—considering an offender's youth and attendant characteristics—before imposing [life without parole]." *Id.* at 2471.

Here, the court instructed Cameron's jury that it needed only to find that life without parole "is appropriate." The instructions counseled the jury to consider various aggravating and mitigating factors, fourth on the list of five such factors being the defendant's youth. The jury did not hear a single thing about the science behind juvenile brain development and maturity. This is hardly the process the Court spoke about in *Miller*. If sentencing hearings continue to be conducted in the same manner as that at issue here, can the Court be confident that sentencers are taking proper account of the differences between juveniles and adults, thereby reserving this harshest of penalties for only the most irredeemable offenders? Attaching Sixth Amendment protections to such sentencing decisions stands as the best—and perhaps only—way to ensure the efficacy of this Court's holding in *Miller*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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