IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-578

LEIGHDON HENRY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC12-1223

SHIMEEK DAQUIEL GRIDINE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF OF JUVENILE LAW CENTER AS *AMICUS CURIAE* ON BEHALF OF PETITIONERS

On Discretionary Review from Decisions
of the Fifth and First District Courts of Appeal

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I. SUMMARY OF ARGUMENT

This case raises a question of exceptional importance regarding the application of *Graham v. Florida* in determining what constitutes an illegal sentence under the United States Supreme Court's Eighth Amendment jurisprudence as it relates to children. In *Graham v. Florida,* 130 S. Ct. 2011 (2010), the Supreme Court held that sentencing a juvenile to life without parole for a non-homicide offense violated the Eight Amendment's prohibition on cruel and unusual punishment because of the unique characteristics of youth that make children less culpable, in addition to the developmental differences between children and adults that make it more likely that a child can reform. The heart of the Court's holding was that, as a result of these qualities, any sentence for a non-homicide offense that provides no "meaningful opportunity to obtain release" before the end of the child's life is unconstitutional. *Id.* at 2033. Just last year, the Court reiterated the importance of scientific and social science research that demonstrates fundamental differences between juveniles and adults and lessens a child's "'moral culpability.'" *Miller v. Alabama*, 132 S. Ct. 2455, 2464-65 (2012) (quoting *Graham*, 130 S. Ct. at 2027). Petitioners Gridine and Henry were sentenced to 70 and 90 years in prison, respectively, for non-homicide offenses they committed as children. Pursuant to *Graham*, sentences of 70 and 90 years without the possibility of parole are not constitutional sentencing options for

children—a group of offenders who are fundamentally different from adults and categorically less deserving of the harshest forms of punishments. The sentences imposed provide Petitioners no opportunity for release within their normal life expectancies. Under *Graham*, youth convicted of non-homicide offenses must be guaranteed a "meaningful opportunity to obtain release"—even if that opportunity does not actually result in release. 130 S. Ct. at 2030. Petitioners were denied that opportunity when they were sentenced to terms of years that are functionally equivalent to life sentences. Because these sentences deny each Petitioner *any* opportunity for release within their life expectancies, this Court should find their sentences unconstitutional under *Graham.*

II. ARGUMENT

A. The Sentences Imposed On Petitioners Are The Functional Equivalent of Life Without Parole for Non-Homicide Offenses And Violate The U.S. Supreme Court's Decisions In *Graham* And *Miller.*

In *Graham v. Florida,* the United States Supreme Court held that "the Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." 130 S. Ct. at 2011. The Court's reasoning was grounded in developmental and scientific research that demonstrates that juveniles possess a greater capacity for rehabilitation, change and growth than do adults. Emphasizing these unique developmental characteristics, the Court held that juveniles who are convicted of non-homicide offenses require distinctive

treatment under the Constitution. The Court found that a sentence for non-homicide offenses that provides the individual no meaningful opportunity to reenter society during his natural life is unconstitutional. Because their 70 year and 90 year sentences[1] exceed their life expectancies,[2] they virtually ensure that

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[1] Shimeek Gridine was convicted of multiple non-homicide offenses all related to a single event. *Gridine v. State*, 89 So.3d 909, 910 (Fla. 1st DCA, 2011). He received a sentence of 70 years for attempted first degree murder, and a concurrent 25 year sentence for attempted armed robbery, including a 25 year mandatory minimum for using a firearm in the commission of these offenses. *Id.* He was fourteen years old at the time of the crimes. *Id.* He will not be eligible for release until, at the youngest, the age of approximately 77.

Leighdon Henry also was convicted of multiple non-homicide offenses related to a single event. *Henry v. State*, 82 So.3d 1084, 1085 (Fla. 5th DCA, 2012). He received an aggregate sentence of 90 years for three counts of sexual battery with a deadly weapon or physical force, one count of kidnapping with intent to commit a felony (with a firearm), two counts of robbery, one count of carjacking, one count of burglary of a dwelling, and one count of possession of twenty grams or less of cannabis. *Id.* at 1085-86. He was 17 years old at the time of the crimes. *Id.* at 1085. He will not be eligible for release until approximately age 94. *See id.* at 1086 (observing that "[a]lthough the time that Henry is to serve can be shortened through incentive and meritorious gain-time, under Florida law, he must serve eighty-five percent; therefore, Henry should serve at least 76.5 years.").

[2] Actuarial data shows that a 14 year old African American male (the age of Petitioner Gridine at the time of his offense) can expect to live an additional 57.8 years, to approximately age 72, and a 17 year old African American male (the age of Petitioner Henry at the time of his offense) can expect to live an additional 54.9 years, to approximately age 72. Elizabeth Arias, "United States Life Tables, 2008," National Vital Statistics Reports, Vol. 61, No. 3, September 24, 2012, Centers for Disease Control and Prevention, http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf. *See also* Henry Petitioner's Initial Brief on the Merits at 5, 6 (citing 3 .800 R. 1:33; PSR. at 25 and explaining that Henry's life expectancy is 64.3 years). Petitioners will not be eligible for release until they are at least 77 and 94 years of age, ages which exceed their natural life expectancies, regardless of which life expectancy figure one uses. Moreover, the United States Sentencing

Petitioners:

> will die in prison. . . no matter what [they] might do to demonstrate that the bad acts [they] committed as [] teenager[s] are not representative of [their] true character[s], even if [they] spend[] the next half century attempting to atone for [their] crimes and learn from [their] mistakes.

Id. at 2033. Therefore, these sentences are unconstitutional and must be vacated.

1. Sentences That Are The Functional Equivalent Of Life Without Parole For Juveniles Convicted Of A Non-Homicide Offense Are Contrary to *Graham* And Violate The Constitution.

The Court's prohibition in *Graham* is clear: the Eighth Amendment forbids States from "making the judgment at the outset that [juvenile non-homicide] offenders never will be fit to reenter society." *Graham* at 2030. Instead, States must give these offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* The 70 and 90 year sentences at issue here for non-homicide offenses are wholly at odds with *Graham*, as they foreclose any meaningful opportunity to for Gridine or Henry to obtain release

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Commission defines a "life sentence" as 470 months (or just over 39 years), based on average life expectancy of those serving federal prison sentences. *See, e.g., United States v. Nelson*, 491 F.3d 344, 349-50 (7th Cir. Ill. 2007); U.S. Sentencing Commission Preliminary Quarterly Data Report (through Sept. 30, 2012) at A-8, http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2012_4th_Quarter_Report.pdf.

before the end of their natural life expectancies.[3] To hold that such a sentence does not violate *Graham* because it was not formally labeled "life without parole,"[4] defies commonsense and runs afoul of the Supreme Court's Eighth Amendment jurisprudence.

The Supreme Court's Eighth Amendment jurisprudence has clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled. For example, in *Rummel v. Estelle*, 445 U.S. 263 (1980), the Court examined a challenge to a "mandatory life

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[3] The possibility that Petitioners may outlive their normal life expectancies does not alter the analysis. The opportunity to obtain release after one's life expectancy cannot be considered "meaningful."

[4] The District Court of Appeal for the Fifth District determined that, without specific guidance from the Supreme Court, it could only invalidate a sentence that was expressly labeled "life without parole." *Henry v. State*, 82 So.3d 1084, 1089 (Fla. 5th DCA, 2012). The court observed that "[t]here is language in the *Graham* majority opinion that suggests that no matter the number of offenses or victims or type of crime, a juvenile may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it would make no logical difference whether the sentence is "life" or 107 years." *Id.* Despite this recognition of the clear dictates of the *Graham* decision, the Fifth District concluded that it could "only apply *Graham* as it is written" and thus that the 90 year sentence "is not invalid under the Eighth Amendment." *Id.* As explained in greater detail above, the fact that Petitioner Henry's sentence exceeds his life expectancy by definition makes it a "life sentence." This renders the Fifth District's analysis both illogical and unconstitutional.

Similarly, in Gridine's case, the First District Court of Appeal held that *Graham* was inapplicable because the 70 year sentence was insufficient to constitute a life sentence, despite its acknowledgement that "at some point, a term-of-years sentence may become the functional equivalent of a life sentence." *Gridine v. State*, 89 So.3d at 911.

sentence." The Court upheld the sentence based upon its view that

> a proper assessment of Texas' treatment of Rummel could hardly ignore the possibility that *he will not actually be imprisoned for the rest of his life.* If nothing else, the possibility of parole, however slim, serves to distinguish Rummel from a person sentenced under a recidivist statute . . . which provides for a sentence of life without parole.

Id. at 280-81 (emphasis added). Unlike Rummel, Petitioners are only eligible for release if they outlive their normal life expectancies, a fact that this Court cannot ignore. The U.S. Supreme Court took this commonsense and equitable approach in *Sumner v. Shuman,* where it noted that "there is no basis for distinguishing, for purposes of deterrence, between an inmate serving a life sentence without possibility of parole and a person serving several sentences of a number of years, *the total of which exceeds his normal life expectancy.*" 483 U.S. 66, 83 (1987) (emphasis added). Therefore, Petitioners' sentences cannot be distinguished from life without parole sentences.

The categorical rule articulated in *Graham* concerns impact and outcomes—not labels. The outcome the Supreme Court sought to prohibit in *Graham*—a determination at the outset that a juvenile convicted of a non-homicide offense will have no meaningful opportunity for release—is exactly the outcome that will result in this case if Petitioners' current sentences stand. Upholding these sentences would allow any trial court to circumvent the categorical ban declared in *Graham*

simply by choosing a term of years sentence—"70 years," "90 years," or "110 years"[5] without parole—instead of "life without parole." Even in the case of brutal or cold-blooded offenses, a sentencing court should not be able to circumvent the Constitution's categorical prohibition on juvenile life without parole sentences for non-homicide crimes by re-labeling the sentence as a specific term of years, however long. *See Graham*, 130 S. Ct. at 2032 (citing *Roper*, 543 U.S. at 573) (noting that, absent a categorical ban, "'[a]n 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, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity" should require a less severe sentence) (quoting *Roper*, 543 U.S. at 573).

The California Supreme Court—the only other state Supreme Court to squarely address this question—has recognized that *Graham* must be applied without regard to labels if its mandate is to be followed faithfully. *See, People v. Caballero*, 282 P.3d 291, 294 (Cal. 2012) (invalidating a sentence of 110 years to life, as "*Miller*...made it clear that *Graham*'s 'flat ban' on life without parole sentences applies to all nonhomicide cases involving juvenile offenders, including

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[5] *See, e.g., People v. Caballero*, 282 P.3d 291, 294 (Cal. 2012) (holding that a nonhomicide child offender's total sentence of 110 years to life constituted cruel and unusual punishment).

the term-of-years sentence that amounts to the functional equivalent of a life without parole sentence."). In *Caballero*, the California Supreme Court emphasized that the term of years meted out to the defendant ensured that "he would have no opportunity to 'demonstrate growth and maturity' to try to secure his release, in contravention of *Graham's* dictate." *Id.* at 295 (citing *Graham*, 130 S. Ct. at 2029). The court further explained that "*Graham's* analysis does not focus on the precise sentence meted out" and instead focuses on the fact that "a state must provide a juvenile offender 'with some realistic opportunity to obtain release' from prison during his or her expected lifetime." *Id.* (citing *Graham*, 130 S. Ct. at 2034). The same principle governs the sentences handed down to Petitioners Henry and Gridine. Because Petitioners were convicted of non-homicide crimes as juveniles, they clearly deserve the benefit of *Graham*'s categorical rule and their sentences that exceed their life expectancies therefore must be invalidated.

2. Sentences Of 70 And 90 Years For Non-Homicide Offenses Are Unconstitutional As They Provide No Meaningful Opportunity For Release.

Graham requires that States give juvenile defendants convicted of non-homicide offenses "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 130 S. Ct. at 2030. The Eighth Amendment "forbid[s] States from making the judgment at the outset that those offenders never will be fit to reenter society." *Id.* "Life in prison without the

possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Id.* at 2032. Petitioners' 70 and 90 year sentences violate *Graham* because these sentences "forswear[] altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability." *Graham*, 130 S. Ct. at 2030. Petitioners' sentences render meaningless their capacity for change and rehabilitation as they will never have the opportunity to reenter society and become contributing members of their communities.

For an opportunity for release to be "meaningful," as required by *Graham*, review must begin long before a juvenile reaches his geriatric years. The Supreme Court has noted, "'[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.'" *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)). *See also Miller*, 132 S. Ct. at 2464 (explaining that "[i]n *Roper*, we cited

studies showing that "[o]nly a relatively small proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior.'"). Because most juveniles are likely to outgrow their antisocial and criminal behavior as they mature into adults, review of the juvenile's maturation and rehabilitation should begin relatively early in the juvenile's sentence, and the juvenile's progress should be reviewed regularly. Early and regular review enables the reviewers to assess any changes in the juvenile's maturation, progress and performance. Regular review also provides an opportunity to confirm that the juvenile is receiving vocational training, programming and treatment that foster rehabilitation. *See, e.g., Graham*, 130 S. Ct. at 2030 (noting the importance of "rehabilitative opportunities or treatment" to "juvenile offenders, who are most in need of and receptive to rehabilitation").

A "meaningful opportunity for release" also requires that the reviewing body focus on the characteristics of the youth, including his or her lack of maturity at the time of the offense, not merely the circumstances of the offense. *Roper* cautioned against the "unacceptable likelihood" 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. *See also Graham*, 130 S. Ct. at 2032. Similarly, in parole review, the reviewers must not allow the underlying facts of the crime to overshadow the juvenile's immaturity at the time of the offense and progress and

growth achieved while incarcerated. Finally, for the opportunity for release to be meaningful, the juvenile's young age at the time of the offense and incarceration cannot be a factor that makes release *less* likely. *Cf. Roper*, 543 U.S. at 573 (noting that "[i]n some cases a defendant's youth may even be counted against him"); Ga. Comp. R. & Regs. r. 475-3-.05(8)(e) (automatically assigning a higher risk score to inmates admitted to prison at age 20 or younger for the purposes of assessing parole eligibility in Georgia).

3. Sentences Of 70 And 90 Years For Non-Homicide Offenses Are Unconstitutional As They Serve No Penological Purpose.

According to *Graham*, a sentence "lacking any legitimate penological justification is by its nature disproportionate to the offense" and therefore unconstitutional. 130 S. Ct. at 2028. The Court concluded that no penological justification warrants a sentence of life without parole as applied to juveniles convicted of non-homicide offenses. *Id.* As in *Graham*, the 70 and 90 year sentences meted out to Petitioners, which exceed their life expectancies, do not serve any of the traditional penological goals—deterrence, retribution, incapacitation, or rehabilitation.

Relying on the analysis set forth in *Roper,* the *Graham* Court concluded that the goal of deterrence did not justify the imposition of life without parole sentences on juveniles: "*Roper* noted that 'the same characteristics that render juveniles less

culpable than adults suggest. . . that juveniles will be less susceptible to deterrence.' [T]hey are less likely to take a possible punishment into consideration when making decisions." *Id.* at 2028-29 (internal citations omitted). Because youth would not likely be deterred by the fear of a sentence that exceeds their life expectancies, this penological goal did not justify the sentence. *Graham* similarly echoed *Roper*'s assessment that "the case for retribution is not as strong with a minor as with an adult" given juvenile immaturity and capacity to change. *Id.* at 2028 (citing *Roper*, 543 U.S. at 571). *Graham* recognized that these same considerations applied to "imposing the second most severe penalty on the less culpable juvenile." *Id.*

The *Graham* Court also held that incapacitation could not justify the sentence of juvenile life without parole for a non-homicide offense. To justify incapacitation for life "requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Id.* at 2029. Because adolescents' natures are transient, they must be given "a chance to demonstrate growth and maturity." *Id.* A child sent to prison therefore should have the opportunity to rehabilitate and qualify for release after some term of years. This opportunity for release can provide a crucial check to ensure that the purposes of punishment are satisfied without unnecessarily incapacitating fully rehabilitated individuals.

Finally, *Graham* concluded that a life without parole sentence "cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal." *Graham,* 130 S Ct. at 2030. The Court also underscored that the denial of rehabilitation was not just theoretical: the reality of prison conditions prevented juveniles from growth and development they could otherwise achieve, making the "disproportionality of the sentence all the more evident." *Id.* During a lengthy adult sentence, youth lack an incentive to try to improve their skills or character. Indeed, many juveniles sentenced to spend the rest of their lives in prison commit suicide, or attempt to commit suicide. *See* Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole on Juveniles*, 33 Wake Forest L. Rev. 681, 712, nn.141-47 (1998). Because these 70 and 90 year sentences, which are equivalent to life without parole, serve no legitimate penological purpose, they are unconstitutional.

B. Sentences That Are The Functional Equivalent Of Life Without Parole For Non-Homicide Offenses Are Unconstitutionally Disproportionate For Juveniles.

1. The Eighth Amendment Requires That Sentences Be Proportionate.

Proportionality is central to the Eighth Amendment. The Court has interpreted the Eighth Amendment's ban on cruel and unusual punishment to include punishments that are "grossly disproportionate" to the crime. *See, e.g.*, *Graham v. Florida,* 130 S. Ct. 2011, 2021 (2010) (citing *Harmelin v. Michigan*

501 U.S. 957, 997 (1991). In *Graham,* the Court instructed that "to determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society.'" *Id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)). Courts apply a proportionality review to determine if a sentence meets that standard. *Id.* *Graham* and *Miller* established that the developmental characteristics of children and adolescents are relevant to the Eighth Amendment proportionality analysis, even in noncapital cases.

2. The Supreme Court Has Articulated A Separate Eighth Amendment Analysis For Children And Adolescents.

Juveniles represent a special category of offenders for Eighth Amendment purposes. Recent Supreme Court precedent has applied a proportionality test to youthful offenders that distinguishes children from adults, and that has concluded that children are categorically less culpable. Most recently, acknowledging the unique status of juveniles and reaffirming its recent holdings in *Roper* and *Graham*, the Court in *Miller* held that "children are constitutionally different from adults for purposes of sentencing," 132 S. Ct. at 2464, and therefore that the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Id.* at 2466. This view of the Eighth Amendment is grounded in a recognition of the unique characteristics of youth (a

propensity for hasty decision-making and reckless behavior, susceptibility to peer pressure, and lack of control over one's own environment, *Graham*, 130 S. Ct. at 2027) and the "more transitory" and "less fixed" nature of these characteristics as compared to adults. *Roper*, 543 U.S. at 570.

The heightened proportionality review that began with *Roper* and has continued through *Miller* marks a shift in the Court's jurisprudence away from the previous line of cases that reserved the most rigorous level of scrutiny for death sentences and recognizing that "death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). *See also Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J., concurring) (explaining that "[t]he penalty of death differs from all other forms of criminal punishment, not in degree but in kind.").

The Court has not invalidated a non-capital sentence for adults in recent years, instead reserving that rigorous proportionality analysis exclusively for cases involving children sentenced as adults. *See, e.g.*, *Solem v. Helm*, 463 U.S. 277, 299 (1983) (representing the last time the Court overturned a mandatory life sentence for a non-violent felony committed by an adult). *See also Graham,* 130 S. Ct. at 2022 (representing the first time that the Court has used the Eighth Amendment to ban categorically ban a sentence other than the death penalty for a category of offenders, and the first time the Court dealt with the sentencing of youth outside the death penalty context); *Miller*, 132 S. Ct. at 2469 (representing the first time

the Court applied a protection typically reserved for death penalty cases to a non-death sentence, by ruling that life without parole sentences cannot be mandatory for juveniles, and instead must involve an opportunity to introduce mitigation evidence). As Justice Kagan herself observed, this case law reveals that now, just as "'death [was] different,' children are different too." *Miller*, 132 S. Ct. at 2470 (quoting *Harmelin v. Michigan*, 501 U.S. at 994).

Graham and *Miller* reflect the Court's most recent recognition of youth as a distinct category of offenders for sentencing purposes under the Eighth Amendment. In *Miller*, the Court unabashedly diverged from its previous holding that expressly limited the prohibition of mandatory sentencing to the death penalty. *See Miller*, 132 S. Ct. at 2470 (distinguishing its analysis from that in *Harmelin*, 501 U.S. at 1006). The Court specifically explained that it was deviating from its prior jurisprudence because the earlier case demarcating "the qualitative difference between death and all other penalties. . . had nothing to do with children" and thus does not "apply. . . to the sentencing of juvenile offenders." *Id.* (citing *Harmelin*, 501 U.S. at 1006). The Court further reiterated that it had "held on multiple occasions that sentencing practices that are permissible for adults may not be so for children." *Id.* (citing *Roper*, 543 U.S. 551, and *Graham*, 130 S. Ct. 2011).

Indeed, the recent line of juvenile cases arguably extends the Court's Eighth Amendment doctrine into new territory, requiring more stringent safeguards

against excessive punishment for juvenile offenders than it has ever applied to adult offenders outside of the death penalty. When it comes to children, the Court now evaluates sentencing schemes by taking into account the developmental differences that characterize youth to achieve a more thoughtful and nuanced assessment of their appropriateness.

a. Children's Developmental Differences Are Salient To The Eighth Amendment Analysis Whenever Children Receive A Sentence Designed For Adults

Justice Kagan, writing for the majority in *Miller,* was explicit in articulating the Court's rationale for its holding: the mandatory imposition of sentences of life without parole "prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' and runs afoul of [the Supreme Court's] cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Miller*, 132 S. Ct. at 2460 (quoting *Graham,* 130 S. Ct. at 2026-27, 2029-30). The Court grounded its holding "not only on common sense . . . but on science and social science as well," *id.* at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted "that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 2464-65 (quoting

Graham, 130 S. Ct. at 2027, *Roper,* 543 U.S. at 570)). The Court emphasized "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 2465.

b. Courts Must Consider Mitigating Circumstances Whenever A Child Receives a Harsh Adult Sentence

Under *Graham*, life without parole sentences—or their functional equivalent—are unconstitutional for any juvenile convicted of a nonhomicide offense, and under *Miller* individualized sentencing is required before a sentencer can impose a juvenile life without parole sentence, even in a homicide case. Together, these decisions caution that before any severe adult penalty is imposed on a juvenile, the sentencer must consider the juvenile's age and the key characteristics associated with the juvenile's youth. Accordingly, the trial courts' failure to appropriately consider any mitigating evidence associated with Petitioners' young age further undermines the constitutionality of their sentences.

To the extent juvenile life without parole sentences are ever constitutional, *Miller* necessitates that they be imposed only in the most extreme circumstances. 132 S. Ct. at 2469 (noting that "appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon.") Even in homicide offenses, *Miller* suggests that, prior to imposing a life without parole sentence on a juvenile, the sentencer must consider factors such as the juvenile's

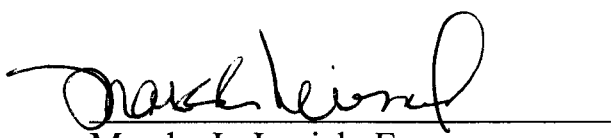
"chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; the juvenile's "family and home environment"; the circumstances of the offense, "including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"; the juvenile's incompetency in dealing with the adult criminal justice system; and " the possibility of rehabilitation." *Miller*, 132 S. Ct. at 2468. These factors are relevant whenever a sentencer is considering imposing a severe adult sentence on a juvenile.

Instead of considering youth as a mitigator, the trial courts imposed sentences equivalent to life without parole on two juveniles convicted of nonhomicide offenses. In doing so, the sentencers made the decision at the outset that Petitioners will forever be irredeemable, precisely the sort of determination prohibited by *Graham*. 130 S. Ct. at 2026-27. The 70 and 90 year sentences that Gridine and Henry received plainly ignore the essential aspects of *Graham* and *Miller*. It makes no sense to conclude that after *Graham*, courts can do indirectly what they can no longer do directly—impose sentences that exceed the youth's life expectancies. Yet, that is precisely what the lower courts have done. Accordingly, Gridine's and Henry's sentences are unconstitutional, and must be overturned.

III. CONCLUSION

The Supreme Court has acknowledged that a child's age is far "more than a chronological fact." *See J.D.B. v. North Carolina* 564 U. S. 1, 8 (2011). The Court has also mandated an individualized analysis for children accused of serious crimes that reflects both our society's evolving standards of decency and our greater understanding of adolescent development. Accordingly, *Amicus* respectfully request that this Court invalids these unconstitutional sentences to ensure that Florida is appropriately applying the United States Supreme Court's decisions on juvenile sentencing and that the prohibition on life without parole sentences for non-homicide offenses is not being subverted by semantics.

Respectfully Submitted,



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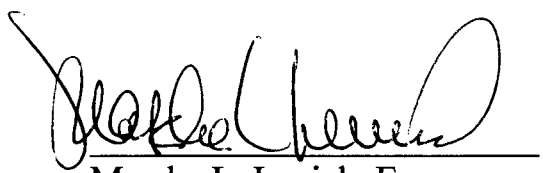

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DATED this 8th day of March, 2013.

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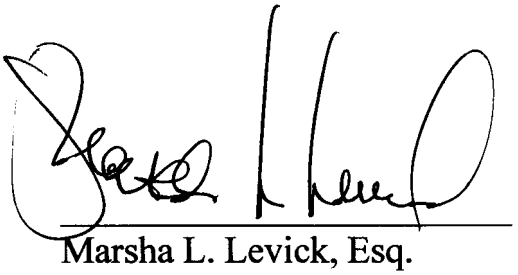

Marsha L. Levick, Esq.

DATED this 11th day of March, 2013.

Juvenile Law Center
advancing the rights and well-being of children in jeopardy

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1315 Walnut Street, Suite 400
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Recipient of the 2008 MacArthur Award for Creative and Effective Institutions

March 8, 2013

Clerk of the Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

Re: SHIMEEK DAQUIEL GRIDINE v. STATE OF FLORIDA, SC12-1223
LEIGHDON HENRY v. STATE OF FLORIDA, SC12-578.

To Clerk of the Florida Supreme Court:

Enclosed please find the original and seven (7) copies of Juvenile Law Center's Motion For Leave To Appear As *Amicus Curiae* on behalf of Appellants Henry and Gridine in the above captioned cases. Also please find enclosed the original Motion for Leave to File *Amicus Curiae* Brief in Support of Petitioners, and the Verified Motion of Marsha L. Levick, Esq. to Appear *Pro Hac Vice* Pursuant to Florida Rule of Judicial Administration 2.510. Please be in receipt, as well, of Juvenile Law Center's check for $250, which accompanies the Motion for Leave to File *Amicus Curiae* Brief in Support of Petitioners.

In you have any questions or require additional information please call us at (215) 625-0551.

Sincerely,

Emily C. Keller
Staff Attorney

ENCLOSURES