UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No: 19-2910/19-3019

NORMAN BROWN et al.,
Plaintiffs/Appellees/Cross-Appellants

v.

ANNE PRECYTHE et al.,
Respondents/Appellants/Cross-Appellees

On Appeal from U.S. District Court for the Western District of Missouri
No. 2:17cv-04082-NKL

BRIEF OF AMICI CURIAE, CURRENT AND FORMER STATE PROSECUTORS, STATE ATTORNEYS GENERAL, DOJ OFFICIALS, U.S. ATTORNEYS, AND FORMER CORRECTIONS DIRECTORS— IN SUPPORT OF PLAINTIFFS

Joseph C. Welling
Phillips Black, Inc.
Saint Louis University
School of Law
100 N. Tucker Blvd.
Suite 750
St. Louis, MO 63101
j.welling@phillipsblack.org

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

John R. Mills
Phillips Black, Inc.
1721 Broadway, Suite 201
Oakland, CA 94612
j.mills@phillipsblack.org

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IDENTITY AND INTERESTS OF AMICI

Amici are 59 current and former state prosecutors, state attorneys general, and Department of Justice officials, United States Attorneys, and former directors of departments of corrections. They are leaders in the community and deeply familiar with the criminal justice system. Notwithstanding their diverse backgrounds, amici share a strong interest in maintaining the fairness and public legitimacy of the criminal justice system. Their collective centuries of criminal justice experience reflect the "common sense" conclusion that children are different from adults and should be treated accordingly, including through a meaningful opportunity for release.

"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."[1] This interest includes overseeing the integrity and constitutional execution of sentences imposed in the past. Prosecutors have not only a vested interest but also a proactive obligation to ensure that those in the criminal justice system, including youth subject to the harshest penalties under law, are treated with fairness and in accordance with the due process of law. This obligation does not end after the sentencing court renders its judgment.

[1] Comment 1 to Mo. Rules of Professional Conduct, Rule 4-38, Special Responsibilities of a Prosecutor. *See also*, ABA Model Rules of Professional Conduct, Rule 3.8.

Amici share a recognition that promoting public safety relies heavily on the community's trust that the criminal justice system is fair and legitimate. Assuring that justice is done and that practices comport with constitutional requirements is essential for amici's interest in maintaining public trust in the legitimacy of the criminal justice system and promoting safer and healthier communities. Without basic due process protections in the parole process, parole determinations are inevitably arbitrary. With arbitrary determinations comes an unacceptable risk not only that individuals deserving release are being excessively incarcerated and punished, but also that those who present a danger to public safety may be released. Ensuring the legitimacy and reliability of the process promotes the overall safety and health of the community.

SOURCE OF AUTHORITY TO FILE AMICUS BRIEF

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, the parties have consented to the filing of this brief.

AUTHORSHIP AND FUNDING OF AMICUS BRIEF

No party's counsel authored this brief in whole or in part. With the exception of amici's counsel, no one, including any party or party's counsel, contributed money that was intended to fund preparing or submitting this brief.

BACKGROUND

After the United States Supreme Court held that the categorical prohibition of mandatory sentences of life without parole for juveniles (JLWOP) was retroactive, Missouri chose to deem those subject to such a sentence as parole eligible after serving twenty-five years of the JLWOP sentence.[2] *See Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

Plaintiffs sued the Director of the Missouri Department of Corrections and members of the Missouri Board of Probation and Parole, alleging that Missouri's then-existing parole policies and practices failed to comport with the requirements of *Miller* and *Montgomery*. In particular, Plaintiffs argued the parole board put in place processes that inhibit their opportunity to seek any meaningful review of their sentences, including disallowing JLWOP petitioners from having more than one delegate present at hearings, barring petitioners from viewing their parole file in advance of hearings, and refusing to hear legal arguments under *Miller*. Additionally, the parole board failed to consider factors pertaining to the growth in maturity or rehabilitation of petitioners in making release decisions, relying instead

[2] The remedy was first applied by the Missouri Supreme Court in orders issued on March 15, 2016 in each of the approximately 90 state habeas cases. However, that court expressed reservations about providing such a remedy when the only statutory sentences available for first-degree murder remained death or LWOP. The court vacated its orders when the legislature enacted SB 590 amending section 565.020(2). SB 590 also obviated the problem prospectively by prohibiting JLWOP sentences in all cases. *See* RSMo. § 565.020.1(2).

on irrelevant factors such as the seriousness of the underlying offense, in direct contravention of *Miller*. The district court granted the motion in part, finding it a violation of *Miller* that "a number of Defendants' policies, practices, and customs combine to deprive those serving JLWOP sentences who receive parole hearings of a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Doc. 158, Order, Oct. 13, 2018 at 20. Ultimately, the district court directed Defendants "to promptly implement" an enumerated list of twenty-three procedural safeguards relating to the proper procedures and information parole boards should consider to make release determinations in accordance with Supreme Court precedent. Doc. 183, Declaratory and Injunctive Relief Order, Public Version, filed Aug. 8, 2019 at 13–23. The parties appealed.

Before this Court, Appellants have argued that because the plaintiffs "have no protected liberty interest in conditional release on parole from prison, they have no constitutional right to any particular procedures during parole release consideration." Appellant's Br. at 28. Underlying their arguments is the belief that due process is "special treatment" that will lead to "even more extensive and favorable parole consideration than that given to other inmates who committed less serious offenses." *Id.* at 32, 35. For the reasons below, amici respectfully disagree.

SUMMARY OF ARGUMENT

Missouri gave effect to *Miller* by offering parole eligibility to youth sentenced to life without parole who have served twenty-five years. The key question for the parole board—whether the person before it has matured and been rehabilitated—is both required by *Miller* and aligns with amici's interest in ensuring public trust and safety and fostering healthy communities. A mature and rehabilitated youth does not pose a substantial public safety risk, while arbitrarily denying such a youth his constitutional rights and the opportunity to reenter the community erodes public trust in the judicial system. And providing class members with fundamental due process guarantees will ensure that the parole board has before it a sound basis for assessing risk.

Class members have a vested liberty interest in the possibility of release upon a showing of maturity and rehabilitation. This is because their sentences are unconstitutional unless parole processes provide a meaningful opportunity to obtain release upon such a showing. That is, under Missouri's procedures, the only opportunity for an individualized assessment of whether class members are eligible for parole and not left to die in prison will be before a parole board. For that reason, the parole board must assess whether the person before it has matured and been rehabilitated. In reaching its decision, the parole board must afford these individuals fundamental aspects of due process of law.

Amici recognize that it is incumbent on prosecutors to correct the injustices the Court recognized in *Miller* and to do everything within their power to protect the integrity of the justice system. The mandate of the criminal justice system is not finality for its own sake, but the pursuit of justice. Here, where an individual is serving an illegal sentence, the failure to provide basic due process protections is inherently unjust and erodes public trust in our justice system.

ARGUMENT

I. The Parole Board Must Consider a Class Member's Rehabilitation and Maturation.

Over the past decades, the Court has recognized that children are different. That recognition rests, in part, on two fundamental aspects of youth: immaturity and capacity for change. Consideration of those characteristics is critical in making a determination of whether a young person can be sentenced to die in prison, regardless of how a state chooses to implement *Miller*'s mandate. Because, for the class members here, the parole process is the only opportunity to determine whether they can constitutionally be sentenced to life in prison, that process must be meaningful, including by providing fundamental due process protections.

A. In *Miller* and *Montgomery* the Supreme Court recognized that children are fundamentally different from adults, constitutionally and developmentally, and that justice requires that they receive an individualized determination of their capacity for rehabilitation.

In *Roper v. Simmons*, the Court held that children are categorically ineligible for the death penalty. 543 U.S. 551, 572–73 (2005). The opinion noted that children have a reduced sense of responsibility, increased vulnerability to negative influences, and have character and personality traits that are "more transitory, less fixed" than adults. *Id.* at 569–70. The Court expanded on this logic in *Graham v. Florida* to bar sentences of life imprisonment without the possibility of parole for non-homicide offenses committed by juveniles, noting that like a capital sentence, a sentence of life without parole "alters the offender's life by a forfeiture that is irrevocable." 560 U.S. 48, 69 (2010).

Finally, in *Miller v. Alabama* and *Montgomery v. Louisiana* the Supreme Court reiterated that children are fundamentally different from adults, constitutionally and developmentally, and that justice requires that they not be subject to automatic sentences of life without parole. *See Montgomery*, 136 S. Ct. at 735 (2016); *Miller*, 567 U.S. at 477–80. Specifically, the Court held that "life without parole is an excessive sentence for children whose crimes reflect transient immaturity" and therefore violates the Eighth Amendment. *Montgomery*, 136 S. Ct. at 735. The Court also explained that to comply with the Eighth

Amendment, before sentencing any child, including those who committed homicides, to life without parole, the sentencing authority must "take into account how children are different [from adults], and how those differences counsel against irrevocably sentencing [that child] to a lifetime in prison." *Miller*, 567 U.S. at 480.

The Court also returned to the three critical differences between children and adults that warrant such consideration. First, children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more vulnerable . . . to negative influences and outside pressures," 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. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievable depravity." *Id.* at 471 (quoting *Roper*, 543 U.S. at 569–70) (brackets and citations omitted).

In light of this reduced culpability and greater capacity for change than adults, the Court concluded that any sentence imposed on children convicted of non-homicide offenses must provide a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75 (quoted in *Miller*, 567 U.S. at 479).

Thus, when rectifying *Miller*-implicated sentences, the resentencing body must examine changes in the defendant rather than immutable characteristics of the crime. The applicable constitutional principal is that only the "rare irreparably corrupt" child can be imprisoned with no hope for release. *Miller*, 567 U.S. at 479. This is recognition that the characteristics of youth make children less culpable and much more able to change than adults.

B. The parole board must consider the rehabilitation and maturity of those subject to potentially unconstitutional sentences of JLWOP.

Categorical Eighth Amendment exclusions from punishment also require determinations of eligibility for the punishment be consistent with fundamental due process:

> [W]hen the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 317 . . . (2002) (requiring a procedure to determine whether a particular individual with an intellectual disability "fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus" that execution is impermissible).

Montgomery, 136 S. Ct. at 735; *see also*, *e.g.*, *Ford v. Wainwright*, 477 U.S. 399, 414 (1986); *Ward v. Hutchinson*, 558 S.W.3d 856, 865 (Ark. 2018); *Brumfield v. Cain*, 135 S. Ct. 2269, 2281 (2015) (holding state post-conviction petitioner was

entitled to an evidentiary hearing to determine whether he fell within the categorical rule announced by *Atkins*).

The Supreme Court has held that such procedural requirements are even more important when considering the most severe punishments because the Eighth Amendment requires heightened scrutiny in administering those punishments. *See Gregg v. Georgia*, 428 U.S. 153, 187 (1976) ("When a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed.") (Stewart, J., concurring). The Court has established a wide array of procedural protections to ensure that the Eighth Amendment's requirement of heightened reliability is met in capital cases. *See, e.g., Brumfield*, 135 S. Ct. at 2273; *Mills v. Maryland*, 486 U.S. 367, 373–75 (1988) (defendant entitled to have each juror individually consider mitigating value of evidence presented at capital sentencing proceeding). *Graham* and its progeny extended the Eighth Amendment's categorical protections beyond capital cases into the realm of JLWOP cases. *See Miller*, 567 U.S. at 481 ("So if . . . 'death is different' children are different too."); *Graham*, 560 U.S. at 102 (Thomas, J. dissenting) ("For the first time in its history, the Court declares an entire class of offenders immune from a noncapital sentencing using the categorical approach it previously reserved for death penalty cases alone."). Robust due process is constitutionally required and necessary to safeguard justice, public confidence, and public safety. In the context

of *Miller* cases, the circumstances or seriousness of the offense are only proxies for factors relevant to discerning the capability to rehabilitate:

> But given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."

Id. at 479–80 (quoting *Roper*, 543 U.S. at 573); *see Graham*, 560 U.S. at 68. The sentencing court must rely on this information because it is trying to predict at the outset whether the individual fits in with the category of youth characterized by an ability to mature and rehabilitate or is one of the rare outliers that we can know in advance will never be able to rehabilitate.

Like the sentencing court, the parole board must determine whether individuals sentenced to JLWOP fit into the rare case that is incapable of rehabilitation or whether they are in the much more common category of those who characteristically have an ability to mature and rehabilitate. However, unlike the sentencing court, which grapples with this decision *at the outset*, the parole board has available twenty-five years of evidence that may demonstrate the youth's maturity and rehabilitation. In assessing the constitutional determination under

Miller, the parole board can and must consider, and rely on, available evidence demonstrating maturity and rehabilitation.

Thus, in the present context – consideration of release on parole as a remedy for an illegal JLWOP sentence imposed twenty-five years ago – the circumstances of the crime, including the seriousness of the offense, have limited relevance. The circumstances of the crime are relevant only to the extent that they are tied to the characteristics of youth such as impetuosity, susceptibility to external influences and controls, and the ability to grow and mature. The Supreme Court has made clear that other facts related to the crime, including its seriousness, have no bearing on whether the person deserves continued incarceration because such facts are "not specific to *Miller*-impacted individuals." Doc. 183 at 11. The Court has already determined, for example, that the "seriousness of the offense" is not itself a barrier to release for individuals sentenced for crimes committed as children. *Miller*, 567 U.S. at 478 (noting that the crime committed by Miller and his accomplice was a "vicious murder" but not relying on that fact to affirm the sentence).

II. States Have Routinely Afforded Fundamental Due Process Protections when Establishing *Miller* Remedies.

To pass constitutional muster under *Miller*, a sentencing scheme must ensure that the sentencing authority reliably differentiates between those individuals whose offenses were the product of their youth—and are therefore ineligible for a sentence to die in prison—from the rare children who are "irreparably corrupt." A

scheme directing life without parole in all instances obviously does not make this differentiation.

As the Supreme Court explained in *Montgomery*, the function of the sentencing hearing required in *Miller* is to effectuate "*Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." 136 S. Ct. at 735. The sentencing authority is "required" to consider and give appropriate weight to age and age-related factors in order "to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* A hearing is necessary, therefore, to determine whether a particular child lacks the "diminished culpability and heightened capacity for change" that typically make life without parole unconstitutional for most children. *Miller*, 567 U.S. at 471, 479.

Considering the factors related to youth promulgated in *Miller,* many state legislatures and courts have recognized the need to differentiate the parole or resentencing process for people sentenced as children from that for those sentenced as adults. *See, e.g., Hayden v. Keller,* 134 F.Supp.3d 1000, 1009 (E.D.N.C 2015) (holding the North Carolina parole system unconstitutional for failing to distinguish parole reviews of juvenile offenders from adults offenders); W. Va. Code § 62-12-13b(b) (enumerating eleven "special" parole considerations unique to juvenile offenders); Fla. Stat. Ann. § 921.1402(6) (requiring courts reviewing

JLWOP sentences to consider distinct youth-related factors). In a parole context, it is clear that the unique status of youth as recognized in *Graham* and *Miller* requires deviation from the standard parole process.

Implicit in the widespread adoption of robust procedural protections by states is the notion that greater procedural protections will lead to a more reliable result. Indeed, this is the very premise of our adversarial system of adjudication. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981) ("[Our legal] system assumes that adversarial testing will ultimately advance the public interest in truth and fairness.").

Recognizing the importance of the constitutional protections announced in *Graham* and *Miller*, state legislatures and courts have also consistently provided for robust procedural protections for juveniles facing the harshest punishments during parole or resentencing proceedings. *See, e.g.*, Cal. Penal Code § 3041.7 (providing counsel in parole hearings for juvenile offenders serving life sentences); Conn. Gen. Stat. § 54-125a(f)(3) (entitling juveniles facing lengthy sentences to counsel in parole hearings, and appointing counsel twelve months prior to prepare for the hearing); Fla. Stat. Ann. § 921.1402(5) (entitling parole eligible juvenile offenders to counsel, with appointment of a public defender for indigent offenders); Del. Code Ann. tit. 11, § 4204A(d) (providing for judicial review and potential sentence modification every five years for all juvenile sentences greater

than thirty years in length); Neb. Rev. Stat. § 28-105.02 (requiring review of a "comprehensive mental health evaluation" for LWOP eligible juveniles); La. Stat. Ann. § 574.4(G)(2) (requiring consideration of a written evaluation by a person with expertise in adolescent brain development and behavior); Neb. Rev. Stat. § 83-1,110.04 (annual review of release after initial decision denying parole); *Diatchenko v. District Attorney for the Suffolk Dist*., 27 N.E.3d 349, 367 (Mass. 2015) (holding that a "meaningful opportunity to obtain release" includes provision of counsel and expert services to indigent youth).

Moreover, state legislatures have repeatedly required parole boards for individuals sentenced as children to thoroughly explain and provide reasoning consistent with *Miller*'s mandate for each parole decision. *See, e.g*., Conn. Gen. Stat. §54-125(a)(5) (requiring board to articulate its decision and the reasons for its decision); La. Stat. Ann. § 574.4(G)(3) (providing parole panel render specific findings of fact in support of its decision); Fla. Stat. Ann. § 921.1402 (resentencing courts must issue written order stating the reasons against sentence modification). Other states adopt this protocol for *all* parole decisions. *See, e.g*., Mich. Comp. Laws Ann. 791.235(20) (directing parole board to explain its decision); Ala. Code § 15-22-26(c) (mandating the board clearly articulate its reasons for decision and provide those to the prisoner).

Additional procedural safeguards at Missouri JLWOP parole hearings is consistent with current practices in various jurisdictions and aligns with Supreme Court jurisprudence.

III. Fair Processes for Those Serving JLWOP Sentences Promote Justice, Public Trust in the Criminal Justice System, and Healthy Communities.

Providing robust procedural protections for youth subjected to LWOP sentences promotes, rather than diminishes, the public's interest in a fair and just criminal justice system. Provision of basic due process protections enhances rather than diminishes public trust in the system, including in its ability to promote justice and healthy communities.

A. Justice requires due process for individuals sentenced for offenses committed as a child.

As current and former prosecutors, amici are particularly attuned to the need to do justice. American Bar Association, *Criminal Justice Standards for the Prosecution Function* 3-12.1(b) ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict."). We recognize that the legality and wisdom of a conviction or sentence, while apparently appropriate at the time of imposition, may be undermined by later developments or even when "new wisdom" leads us to discard "old ignorance." *Ring v. Arizona*, 536 U.S. 584, 611 (2002) (Scalia, J., concurring).

In the twenty-first century, both developments in brain science and "new wisdom" has led the United States Supreme Court to bring about enormous change to the administration of the harshest sentences on children, including children who have committed grievous offenses. Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age-Appropriate Sentencing*, 47 Harv. C.R.-C.L. L. Rev. 457, 487 (2012) (describing modern history of juvenile justice and noting marked shift starting with *Graham*). A willingness to revisit the propriety and legality of their prior sentences accords with evolving standards of decency and basic fairness. *Mackey v. United States*, 401 U.S. 667, 692–93 (1971) (Harlan, J., concurring in part and dissenting in part) (describing rationale for retroactive review of categorical exemptions from punishment).

Being able to revisit these sentences necessarily requires a meaningful review process. Otherwise the constitutional mandates of *Miller* risk becoming empty formalities. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 708 (1931) ("in passing upon constitutional questions the court has regard to substance and not to mere matters of form"). Providing basic due process protections to the members of the class is part and parcel of ensuring that justice is done.

B. Public trust requires due process for those serving JLWOP sentences.

Ensuring those facing death in prison are constitutionally eligible for such a fate is a solemn undertaking, and robust due process protections ensures that there

will be public confidence in that decision-making process. As the Court established in *Miller,* "the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Montgomery*, 136 S. Ct. at 734 (quoting *Miller*, 567 U.S. at 472). Accordingly, *Miller* held that life without parole is an unconstitutional penalty for "a class of defendants"— namely, "juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery*, 136 S. Ct. at 734 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)). Almost all children, by virtue of their youth, have "diminished culpability and heightened capacity for change" and so are members of the class and cannot constitutionally be sentenced to life without parole. *Miller*, 567 U.S. at 479.

Public confidence in this process will be ensured only if the process involves a meaningful effort to enforce the substantive protections *Miller* established. Class members here have been incarcerated since they were teenagers, and have grown up in prison. Some also suffer from cognitive impairments or other mental problems—often exacerbated by imprisonment—making it even more difficult for them to navigate the parole determination process. They have relatively little autonomy and resources and no access to many of the materials they are often required to produce to demonstrate their maturity and rehabilitation. The relevant analysis, which they must develop and present under relatively new constitutional jurisprudence, can be daunting, and involves "complex and multifaceted issues that

require the potential marshalling, presentation, and rebuttal of information derived from many sources." *Diatchenko*, 27 N.E.3d at 360. Given these inherent deficiencies, Missouri's current parole processes severely hamper an individual's ability to adequately present a case that they should be released due to maturation and rehabilitation. Moving forward, strong procedural protections are needed to ensure public faith in the fairness of the proceedings and their results.

Amici know all too well how critical public trust is to the administration of the justice system and the safety and health of our communities. For example, prosecutor amici rely on the cooperation of crime victims and witnesses in solving crimes and bringing responsible parties to justice. This cooperation depends on building trust between law enforcement and the community it seeks to protect, which in turn requires that people view the legal system as legitimate and fair.[3] A system in which processes do not comport with common sense or constitutional requirements—such as one that fails to provide adequate due process protections for individuals serving illegal LWOP sentences for crimes committed as children—damages the relationship between law enforcement and community members and, in turn, threatens public safety.

[3] In fact, research shows that people are more likely to obey the law when they see authority as legitimate. *See, e.g.*, Tom R. Tyler, *Why People Obey the Law* 31, 64–68 (1990) ("These studies suggest that those who view authority as legitimate are more likely to comply with legal authority . . . .").

Fundamental due process protections serve, rather than diminish, decisionmakers' ability to reliably assess whether the person before them is eligible to die in prison. *Miller* requires assessing as much, and as current and former prosecutors, we believe they are necessary to consequential decision.

CONCLUSION

The applicable constitutional principle is that only the "rare irreparably corrupt" child can be imprisoned with no hope for release. *Miller*, 567 U.S. at 479. This fundamental principle rests on the recognition that the characteristics of youth make them less culpable and much more able to change than adults. A sentencing court or parole board's ability to accurately distinguish "unfortunate but transient immaturity" from "irreparable corruption" requires the safeguards of due process. Without such protections, the process is simply arbitrary, and public trust in the system and its results is eroded. Amici respectfully request that this Court affirm the judgment below granting Plaintiff's motion for summary judgment and order implementation of Plaintiff's proposed policies and procedures to provide a meaningful opportunity to obtain release as a remedy to *Miller* violations in Missouri.

Respectfully submitted,

/s/ Jennifer Merrigan

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

Joseph C. Welling
Phillips Black, Inc.
Saint Louis University School of Law
100 N. Tucker Blvd.
Suite 750
St. Louis, MO 63101
j.welling@phillipsblack.org

John R. Mills
Phillips Black, Inc.
1721 Broadway, Suite 201
Oakland, CA 94612
j.mills@phillipsblack.org

APPENDIX: LIST OF AMICI

Chiraag Bains, Former Trial Attorney, Criminal Section, Civil Rights Division, U.S. Department of Justice; Former Senior Counsel to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice

Hector Balderas, Attorney General, State of New Mexico

Diana Becton, District Attorney, Contra Costa County, California

Wesley Bell, Prosecuting Attorney, St. Louis County, Missouri

Buta Biberaj, Commonwealth's Attorney, Loudoun County, Virginia

Shay Bilchik, Former Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

Sherry Boston, District Attorney, DeKalb County, Georgia

Chesa Boudin, District Attorney, City and County of San Francisco, California

Aisha Braveboy, State's Attorney, Prince George's County, Maryland

Susan Burke, Former Director, Utah Division of Juvenile Justice Services

Joyce Burrell, Former Deputy Commissioner, New York State Office of Children and Family Services

A. Bates Butler, Former U.S. Attorney, District of Arizona

Gladys Carrión, Former Commissioner, New York City Administration for Children's Services

John Choi, County Attorney, Ramsey County, Minnesota

David Clegg, District Attorney, Ulster County, New York

Scott Colom, District Attorney, Sixteenth Judicial District, Mississippi

John Creuzot, District Attorney, Dallas County, Texas

Satana Deberry, District Attorney, Durham County, North Carolina

Parisa Dehghani-Tafti, Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

Thomas J. Donovan Jr., Attorney General, State of Vermont

Peter Edelman, Carmack Waterhouse Professor of Law and Public Policy, Georgetown University Law Center; Former Director, New York State Division for Youth

Keith Ellison, Attorney General, State of Minnesota

Kim Foxx, State's Attorney, Cook County, Illinois

Gil Garcetti, Former District Attorney, Los Angeles County, California

Kimberly Gardner, Circuit Attorney, City of St. Louis, Missouri

Stanley Garnett, Former District Attorney, Twentieth Judicial District, Colorado

Sarah F. George, State's Attorney, Chittenden County, Vermont

Eric Gonzalez, District Attorney, Kings County, New York

Barry Grissom, Former U.S. Attorney, District of Kansas

Andrea Harrington, District Attorney, Berkshire County, Massachusetts

Peter Holmes, City Attorney, Seattle, Washington

Kathy Jennings, Attorney General, State of Delaware

Candice Jones, President and CEO, Public Welfare Foundation; Former Director, Illinois Department of Juvenile Justice

Justin F. Kollar, Prosecuting Attorney, County of Kaua'i, Hawai'i

Lawrence S. Krasner, District Attorney, Philadelphia, Pennsylvania

Miriam Aroni Krinsky, Former Criminal Appellate Chief and Chief, General Crimes, United States Attorney's Office for the Central District of California; Former Chair, Solicitor General's Criminal Appellate Advisory Group

Robert Listenbee, First Assistant District Attorney, Philadelphia District Attorney's Office; Former Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

George Lombardi, Former Director, Missouri Department of Corrections

Mark Masterson, Former Director, Sedgwick County, Kansas Department of Corrections

Beth McCann, District Attorney, Second Judicial Circuit, Colorado

Patrick McCarthy, Former Director, Division of Youth Rehabilitative Services, Delaware Department of Services for Children, Youth and their Families

J. Tom Morgan, Former District Attorney, DeKalb County, Georgia

Marilyn Mosby, State's Attorney, Baltimore City, Maryland

David Muhammad, Executive Director, National Institute for Criminal Justice Reform; Former Chief Probation Officer, Alameda County, California; Former Deputy Commissioner, New York City Department of Probation

Channing Phillips, Former U.S. Attorney, District of Columbia

Karl Racine, Attorney General, District of Columbia

Rachael Rollins, District Attorney, Suffolk County, Massachusetts

Stephen Rosenthal, Former Attorney General, State of Virginia

Marc Schindler, Executive Director, Justice Policy Institute; Former Interim Director and Chief of Staff, District of Columbia Department of Youth Rehabilitation Services

Vincent Schiraldi, Co-Director, Columbia University Justice Lab; Former Director, District of Columbia Department of Youth Rehabilitation Services; Former Commissioner, New York City Department of Probation

Dr. Dora B. Schriro, Former Director, Missouri Department of Corrections; Former Director, Arizona Department of Corrections

Harry L. Shorstein, Former State Attorney, Fourth Judicial Circuit, Florida

Carol Siemon, Prosecuting Attorney, Ingham County, Michigan

Mark D. Steward, Founder and Director, Missouri Youth Services Institute; Former Director, Missouri Division of Youth Services

Carter Stewart, Former U.S. Attorney, Southern District of Ohio

David Sullivan, District Attorney, Northwestern District, Massachusetts

Thomas P. Sullivan, Former U.S. Attorney, Northern District of Illinois

Jane E. Tewksbury, Former Commissioner, Massachusetts Department of Youth Services

Michael A. Wolff, Former Senior Advisor to Wesley Bell, St. Louis County Prosecuting Attorney; Former Dean, St. Louis University School of Law; Former Chief Justice and Associate Justice, Missouri Supreme Court

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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/s/ Jennifer Merrigan
Jennifer Merrigan
Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jennifer Merrigan
Jennifer Merrigan
Counsel for Amici