

Nos. 10-9646 & 10-9647

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IN THE  
**Supreme Court of the United States**

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EVAN MILLER

*Petitioner,*

v.

STATE OF ALABAMA

*Respondent.*

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KUNTRELL JACKSON

*Petitioner,*

v.

RAY HOBBS, DIRECTOR, ARKANSAS  
DEPARTMENT OF CORRECTION

*Respondent.*

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ON WRITS OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF ALABAMA AND THE SUPREME COURT OF ARKANSAS

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**BRIEF OF AMICI CURIAE OF CERTAIN FAMILY  
MEMBERS OF VICTIMS KILLED BY YOUTHS IN  
SUPPORT OF PETITIONERS**

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## INTEREST OF *AMICI*<sup>1</sup>

*Amici*, some of whom submitted testimonials as amici in *Graham v. Florida*, 560 U.S. \_\_\_ (2010) (slip opinion), are individuals who have lost family members to murder committed by youth, yet are opposed to life sentences for youth without the possibility of parole. While each account and experience is different, *amici* are united in their belief that, if given the chance, individuals incarcerated as children can change and become positive contributors to society.

## SUMMARY OF ARGUMENT

Despite their devastating losses, *amici* know from experience what science confirms: children are fundamentally redeemable. *Amici* therefore believe youthful offenders should be offered a legitimate chance through rehabilitation to lead productive, law-abiding lives. *Amici* agree – fully – with the Court: “A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity.” *Graham*, Slip Op. at 48.

“Juveniles are more capable of change than are adults,” *Graham*, Slip Op. at 39, and thus *amici* support a fair and balanced approach to sentencing youth for serious crimes such as murder. Such an approach should impose a sentence that offers the

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici*, or their counsel, made a monetary contribution intended to fund its preparation or submission. The parties have filed blanket waivers with the Court consenting to the submission of all *amicus* briefs.

opportunity for the court to review and consider, even if many years later, whether individuals convicted of crimes as juveniles continue to pose a threat to the community, or whether they have shown signs of development, healing, rehabilitation, and the potential to become productive members of society.

*Graham's* “meaningful opportunity for release based on demonstrated maturity and rehabilitation” is not a guarantee of release to youth offenders, just a review – the opportunity to demonstrate that they are capable of making responsible decisions and that they do not pose a threat to society. A life sentence without possibility of parole, for a crime committed at 14, does not provide that opportunity. Even when children commit the ultimate crime, they should have the opportunity to prove they are worthy of a second chance.

## ARGUMENT

### I. SENTENCING YOUTHS TO LIFE WITHOUT THE POSSIBILITY OF PAROLE IS UNJUST BECAUSE THEIR BRAINS AND SENSE OF JUDGMENT ARE NOT FULLY DEVELOPED, AND THEY RETAIN THE POTENTIAL FOR REFORM AS THEY GROW.

The Eighth Amendment’s prohibition of cruel and unusual punishment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality). One such measure is the respect the federal government and all 50 states have afforded victims’ voices in

sentencing defendants, including juveniles. *See, e.g.*, Victoria Schwartz, Comment, *The Victims' Rights Amendment*, 42 Harv. J. on Legis. 525, 526 & n.13 (2005) (listing victims' rights statutes); Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771 (2004). *Amici* therefore urge the Court to hear their stories of loss and redemption.

*Amici* have experienced first-hand what the Court and science agree has always been true: adolescents are less capable of controlling their behavior than adults. Recent advances in psychological, neurological and behavioral studies objectively confirm that children cannot appreciate consequences and assess risk and harm the way adults can, in part because their brains continue to develop through their teen years. *See, e.g.*, L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Biobehav. Revs. 417, 421 (2000); Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 Developmental Rev. 1, 9-11 (1992); Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 742 (2000); Elizabeth R. Sowell et al., *Development of Cortical and Subcortical Brain Structures in Childhood and Adolescence: A Structural MRI Study*, 44 Developmental Med. & Child Neurology 4 (2002). Given these truths about adolescent behavior, *amici* believe punishing children to the same extent as adults, when they cannot control their actions as well as adults, is wrong.



Thus, this group of victims writes in support of the petitioners and urges the Court to find that the sentence of life without the possibility of parole for a youth is excessive and unsupportable. “[A] penalty may be cruel and unusual because it is excessive and serves no valid legislative purpose.” *Furman v. Georgia*, 408 U.S. 238, 331 (1972) (Marshall, J., concurring). The Court’s criteria for determining what sanctions are excessive comes from not one but two different analyses. As the Court has stated many times, one factor is “objective criteria,” such as legislative enactments (*See, e.g., Solem v. Helm*, 463 U.S. 277, 292 (1983); *Harmelin v. Michigan*, 501 U.S. 957 (1991); *United States v. Bajakajian*, 524 U.S. 321 (1998)). But a second and equally valid criteria for analysis of the question is the individual judgment of the members of this Court. *See Atkins v. Virginia*, 536 U.S. 304 (2002) (holding death “excessive” for a mentally retarded defendant); *see Coker v. Georgia*, 433 U.S. 584 (1977) (death penalty “excessive” for crime of rape a 16 year old); *see also, Enmund v. Florida*, 458 U.S. 782 (1982) (death excessive for a murderer who did not intend to kill). In his dissent in *Baze*, Justice Ginsburg pointed out that in *Atkins* in particular, this Court found “objective evidence, though of great importance, did not ‘wholly determine’ the controversy, ‘for the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.’” *Baze v. Rees*, 553 U.S. 35, 83 (2008), and 80 *citing Atkins*, 536 U.S. at 312 (*quoting Coker*, 433 U.S. at 597 (plurality opinion)).

The accounts of victims below show that sentencing needs to consider more than just proportionality – it is not just an eye for an eye. A reasoned sentence for youth who commit an act that took a life should strive to incorporate principles of restorative justice for the victim, the community and the criminal justice system, which includes the defendant. In this vein, the accounts here are about reconciliation and rejuvenation, not retribution. They are about finding a way to forgiveness and a newfound sense of peace where violence once reigned. These accounts demonstrate specific, documented efforts to make sense of tragic loss and find peace between parties who were brought together as a result of violence.

**II. DESPITE EXPERIENCING THE MURDER OF A LOVED ONE AT THE HANDS OF A YOUTHFUL OFFENDER, MANY VICTIMS DO NOT BELIEVE THAT A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE IS RIGHT FOR YOUTHS.**

Not in my name – that is the message resounding from victims in this brief. Through their vivid accounts, *amici* illustrate that constitutional standards cannot be met by sentences that ignore science and fail to address the needs of victims and their communities. Science already presented to this Court in the merits brief shows that youth – even youth who murder – lack critical developmental maturity. The same lack of full development that makes them susceptible to bad acts is the basis of their ability to reform – they are not yet fully accountable adults. *Amici* believe these offenders should be permitted to rehabilitate

themselves and return to society as positive, productive citizens.

**A. Victims Know That A Youthful Offender Lacks Maturity At The Time Of Their Crime.**

***Sharletta Evans***

Casson Xavier Evans was Sharletta Evans' younger son. On December 21, 1995, Casson was caught in the crossfire of a drive-by shooting, ending his life at age three. Sharletta had gone to her niece's house to pick up her niece's child. She left her sleeping younger son in the car with her six year old son and their older cousins. While inside her niece's house Sharletta heard gun shots and then broken glass. Once she accounted for the safety of everyone in the house, Sharletta returned to her car thinking nothing was wrong. But as she started to drive away, she realized Casson was bleeding and lifeless. He had been killed by a stray bullet.

Raymond Johnson, age 14, was charged as the shooter, Paul Littlejohn, age 15, was charged as the accomplice, and another boy, aged 14, was charged as the driver.

Sharletta attended each day of the trials of Raymond and Paul, who were tried as adults. Still in shock, overcome by grief and perplexed as to how children so young could get access to guns and commit such a violent crime, Sharletta let her family speak for her at the trial and during sentencing. She did not question the District Attorney's plan to use the boys 'as an example.'

It was not until 11 years after Casson's murder and several letters from by Raymond and Paul that Sharletta was able to begin to correspond

with them. As she started to compare the incarcerated boys to her son who was now reaching the same age as the offenders at the time of the crime, Sharletta realized she could not completely heal until she let the authorities know she wished her son's killers had a chance to redeem themselves.

Sharletta knew that, in particular, Raymond, who fired the bullet that killed her son, had changed. At arrest, Raymond could read at less than a third-grade level. Both of his parents had abandoned him, and he raised himself, with the help of grandparents. Over the years since the shooting, however, Sharletta has become aware that Raymond has changed. He has developed a faith in God, earned a GED, and kept a clean record in prison. Most importantly, he has expressed his remorse in his letters to Sharletta many times over the years since the shooting.

Sharletta has written to the Juvenile Clemency Board to request clemency for Raymond. Sharletta also founded the non-profit organization Red Cross Blue Shield Gang Prevention Inc. in 2003 to bring attention to restorative justice as a healing method that connects victims of violence to their offenders to achieve forgiveness and closure. In 2006, her home state of Colorado changed its law to allow life sentences for juveniles, but with the possibility of parole after 40 years. She is working on gathering support for a bill that would make this change in law retroactive to crimes committed since 1990.

### ***Mona Schlautman***

On October 8, 1992, 15-year-old Jeremy Drake was picked up by his 17-year-old friend, Jeremy

Herman, and a 19-year-old acquaintance, Christopher Masters. Herman's car stereo speakers had been stolen, and he believed that Drake knew where they were. Herman intended to use Masters' gun to scare Drake into revealing who had stolen the speakers, and Masters asked to come along for the ride. After driving around for several hours, Herman pulled into a park where Masters led Drake up a path and shot him. Herman pled guilty to kidnapping and was sentenced to life. Masters was also sentenced to life for the offense of first degree murder.

Mona Schlautman, Drake's mother, no longer remembers what she said when she testified at Herman's trial. She does, however, remember that she told him at his sentencing that she forgave him, and felt that her son would have wanted it that way. She recalls that "I was angry and I was upset, but just because of my own personal spiritual growth, I knew right away I needed to forgive – if not for him, for my own sake."

After the sentencing, Mona tried to contact Herman but had no success. Herman did the same but was unsuccessful until, through a private investigator, they connected and began exchanging letters around 2004. Mona met with Herman in 2005, and they have continued communicating by letters and phone calls ever since, allowing Mona to observe, firsthand, Herman's growth and progress. He went from a deeply troubled dropout to someone Mona regards as a well read and intelligent man.

A chance at parole – that is what Mona believes all youthful offenders should have. Though not all should get released, Mona was a supporter of Herman's release when his original life without parole sentence was recently reduced to 40 years in

prison. With credit for time served, Herman will likely be released within a year.

Reacting to the reduced sentence, Mona said she believed “He needed a chance at life. I couldn’t discount what he had done, but he deserved a chance.” Mona remarks that while nothing can bring her son back, no good is being done by keeping Herman in prison.

Her personal feelings match the science the Court acknowledged and relied upon in *Graham* about cognitive, emotional and even physical development of children. “Teenagers are not thinking with a full brain and make rash judgments without thinking,” Mona observes. A mother of four, Mona has a heightened appreciation of the fact that children have the capacity to behave strangely as teenagers and differently from how they do later as adults.

Mona feels that everyone should be allowed a fair chance. Although she thinks it is good Herman went to prison, she is happy he is going to get out while still young enough to have a family. Criticizing the quality of rehabilitation programs in the prisons, Mona does not think prison prepares youth for successful reentry to society. She has seen them in custody “treated like animals.”

To Mona, the best thing that Herman can do to make up for what he did is to come out and turn his life around. As a prisoner he remains a burden on taxpayers. He owes it to society to become a responsible, productive adult instead. “I’m glad he went to prison, I’m glad he did time and I’m glad he’s getting out.”

*Linda White*

“I forgive you, and God will, too.” These were the last words Cathy White uttered before her teenage killers shot her three times in the back of the head. From that moment of tragedy, Cathy’s mourning mother, Linda, began a journey from anger to forgiveness, together with her daughter’s killer, to honor Cathy’s memory.

Linda never imagined that she would become an ardent critic of the practice of sentencing youth to spend their lives in prison. She simply never confronted the issue until her 26-year-old daughter, Cathy, was kidnapped, raped, and killed by two teenaged boys. It was that tragic occurrence, on November 18, 1986, that set Linda along an unlikely path that led her to discover that youths who commit even the worst crimes can grow into responsible, mature adults capable of making real, positive impact in their communities. Linda knows this because she has watched her daughter’s killer, Gary, become just such an adult.

Gary was only fifteen when he met his victim, two months pregnant at the time, at a gas station in Houston, near Cathy’s home. Cathy had been moved by Gary’s and his friend’s plea for a ride out of town to help them escape abusive parents, and she had let the boys into her car. Almost immediately, the boys brandished a gun and forced Cathy to drive them toward Alvin. Before reaching their destination, they demanded Cathy pull over to the side of the road, where they raped her. The boys were high and drunk at the time, and in their compromised state, they decided to disable Cathy, (ostensibly to prevent her from calling the police) by shooting her in the leg. After the first shot, they reconsidered their

escape and reasoned that they would need to kill Cathy to eliminate the only witness to their crime. They shot her three times in the back of her head.

Linda did not learn of her daughter's murder for an excruciatingly long five days after Cathy had inexplicably disappeared from her home, during which time Gary and his friend were arrested on unrelated suspicions, confessed to the killing, and led police to Cathy's body. Gary's guilty plea and his 54-year prison sentence did little to assuage the deep sadness that Linda and the rest of her family—including Cathy's five-year-old daughter, Ami—felt. Nor did Linda feel that the sentence imposed was advancing the goals of the criminal justice system, notwithstanding the pro-prison rhetoric that she regularly encountered when speaking with others about the fate of Cathy's killers.

It was during this dark time in her life that the seeds of Linda's opposition to overly harsh prison sentences began to take root. While studying to be a death educator and grief counselor a year after Cathy's death, Linda found herself immersed in Hugo Adam Bedot's *Death Penalty in America*. By the time Linda completed the book, she knew that she simply had to confront the realities of the American penal system. She soon began conducting research into the theory behind prison sentences. Her research would eventually bring her into contact with prison inmates, where she would have the chance for the first time to directly interact with people who, like Gary, were facing the bleak prospect of spending most of their lives behind bars. Linda was increasingly drawn to the theory of restorative justice as she came to recognize that even the most hardened prisoners developed a sense of deep



remorse and desire to make amends for past misdeeds when given the chance.

The more Linda discovered, the more she engaged. In 1997, she began teaching upper level college courses in prison, and soon thereafter, she became involved in Bridges to Life, a mediation program allowing convicts and victims of others' crimes to open a dialogue, learn, and forgive. Linda came to know many prisoners who yearned for—and, to her mind, deserved—a second chance, and she grew to increasingly believe that it is deeply unjust and excessively punitive to deny convicts who have been fundamentally changed by their time in prison that opportunity.

Ironically, the convict who had set her along this path was “not on her radar screen” for many years. After pleading guilty and receiving his sentence, Gary had served out his first several years without much apparent personal change. He continued to get into trouble in prison (much as he had before his conviction) until several years into his sentence, when he was befriended by another inmate. As a result of the relationship that Gary developed with that inmate and his family, he began exhibiting remorse for his misconduct and eventually agreed to a meeting with Linda. Linda was eager for the meeting but wondered if she would be capable of showing Gary the same compassion that she had shown to countless other convicts with whom she had no personal history.

She need not have wondered. When Linda and Gary met, Linda found that he was a different person from the child who had callously raped and killed her daughter. Gary was a remorseful grown man who was desperately seeking both forgiveness and a chance to start making up for all of the hurt

that he had inflicted. Linda, true to her nature, was more than willing to grant Gary forgiveness, and he eventually earned the second chance he so desperately wanted. As of the filing of this brief, Gary has been out of prison on parole for just over one year. In that time, he has immersed himself in a new community; found and held a job; and begun working with drug and alcohol addicts at his church in a role in which his minister says he has made an incredible difference. Gary has kept himself away from any sign of trouble. He is in regular contact with Linda, and the two are planning to try to begin giving talks at Texas juvenile facilities. Gary never stops apologizing for the pain that he caused, and he regularly tells Linda that he wants to live a good, impactful life as a “memorial” to Cathy.

To Linda, Gary is a poster child for why life sentences are so unjust, especially for juveniles. From her research and experience, Linda knows that youths are both less able to fully appreciate the consequences of their actions and more likely to change in a relatively short period of time. To her, even the most horrific of crimes—the type to which her daughter fell victim—cannot justify locking someone away without giving them a second chance. Her daughter’s murder, like so many others, resulted in large part from an extreme but forgivable failure by children to exercise the mature judgment that comes with age and experience. Cathy’s teenaged killers, while drunk and high, made an impulsive decision to kidnap, rape, and murder her. Linda strongly believes that Gary and other youthful offenders need to be locked away so that they have the chance to contemplate their actions, to grow, and to mature. And by no means does she believe that convicts should be set free if they fail to show

remorse and simply do not demonstrate a desire to make amends. But Linda also knows that it is wrong to categorically deny youths the opportunity to earn a second chance.

Had Gary been sentenced to serve life without the possibility of parole, he would never have been able to become a living memorial to Cathy. To Linda, to keep Gary and the many, many others like him locked away for their whole lives would only compound the ugliness of crime with the ugliness of a draconian, unjust prison sentence. Linda does not want that, and she knows that Cathy would not have wanted that either. “Cathy,” Linda says, “would be gratified to see Gary have a second chance.”

### ***Bill Pelke***

On May 14, 1985, Ruth Pelke, a 78-year-old grandmother fondly known as Nana, was brutally murdered when four teenage girls broke into her home in search of money for the local arcade. Armed with the knowledge that Ruth gave Bible lessons in her home to children in the neighborhood, the girls arrived at her front door under the pretext of wanting a Bible lesson. As Ruth reached for her Bible teaching materials, one girl hit Ruth over the head with a vase. Paula Cooper, aged 15, then proceeded to stab Ruth to death – inflicting 33 stab wounds. Once they had killed Ruth, the girls absconded with a mere \$10 and the keys to Ruth’s old car.

Bill Pelke, Ruth’s grandson, was a father of children of similar ages to the assailants. Shocked by this senseless murder, he found it particularly difficult to comprehend how these children could so grievously harm a defenseless older woman.

Prosecutors sought the death penalty for Paula and one other girl. In the cloud of shock and confusion, Bill's family didn't question the recommendation. At the time, Bill thought that the death sentence was appropriate because, as long as it was the law, "his grandmother deserved that her murderers should receive death." If it could not be used for the perpetrators of his grandmother's violent and unprovoked murder, he could not imagine a situation in which it would ever be appropriate.

However, one-and-a-half years after Ruth's death, and three-and-a-half months after Paula was sentenced to death, Bill realized that the death penalty was not the right response to the murder of a woman with a tremendous faith in God. He became convinced that his grandmother would have wanted him to show more compassion, even to her murderers. In fact, Bill was so certain of this that he wrote to Paula the next day and immediately began petitioning for a sentence for Paula that he felt his grandmother would approve. After three years of campaigning and gathering the support of two million petitioners, Paula's sentence was reduced to 60 years, with an early release after 30 years for good behavior.

During her time in prison, Bill has had regular contact with Paula – he wrote to her every 10 days while she was on Death Row. Although he wanted to visit Paula immediately, he was not permitted to do so until Thanksgiving of 1994 – eight years after Ruth's murder. He described the meeting as "wonderful." "Wonderful to have been able to face Paula, and not have the hate, anger and desire for revenge that it would have been so easy to have had, but to have the kind of love and

compassion that I feel God wants us to have for all of his creation.”

Bill Pelke had not given any thought to the issue of sentencing juveniles to life in prison without parole prior to the death of his grandmother. But, his experience with Paula was life-changing. He now knows that life without parole is not the answer for juvenile defendants. He has seen Paula mature over the years; she has received a GED and a college degree and wants to help others who have suffered an ordeal like hers. She has expressed her remorse to Bill in her many letters and in their meetings. Bill knows of Paula’s abusive childhood and is still saddened by the fact that neither of her parents was in court on the day that she was sentenced. Bill still remembers, however, that Paula’s grandfather was in court, struggling to keep his composure as his grandchild was sentenced to death.

Bill’s convictions led him to co-found the Journey of Hope, an organization of families of murder victims who oppose the death penalty. Bill has written and appeared in several books and magazines and speaks in a variety of forums. In large part because of his experience with Paula, Bill strongly believes that youths can be reformed, and that, accordingly, they should be eligible for a chance at parole. While the parole decision should be on a case-by-case basis, Bill believes sentencing a youth to life without parole denies these children a first chance, let alone a second chance, at life. He feels that the key to forgiveness is compassion – compassion for those people who made mistakes and have the ability to reform. Compassion for those people who made mistakes and have the ability to reform. Bill has extended an invitation to Paula to work with him at Journey of Hope upon her release

from prison. As a result of attaining her GED and college degree, Paula will be eligible for release in July 2013, after having served 28 years and two months – and Bill will be waiting to welcome her back to the world.

### ***Aqeela Sherrills***

January 10, 2012 marked the eighth anniversary of the day Aqeela Sherrills' teenaged son, Terrell, was murdered by another teenager at a party in an upscale Los Angeles neighborhood. April 28, 2012 marks the twentieth anniversary of a historical peace treaty that Aqeela brokered between two rival Los Angeles street gangs. These two anniversaries, represent sorrow and hope; they have shaped Aqeela's views against life imprisonment for youths, even for the teenager who ruthlessly murdered his son.

Home for winter break from studying theater arts at Humboldt State University, Terrell was shot in the back by a 17-year-old while speaking to one of his friends at a party. Terrell's killer was quickly identified through the street network but not arrested. Aqeela later shocked everyone when, in addressing the nation on the "America's Most Wanted" television show, he said he did not want Terrell's teenaged killer to spend the rest of his life in prison. Rather, Aqeela wanted to meet the killer and his parents to understand him and he wanted to be sure the killer received appropriate care while carrying out his sentence. Even as he pled for the killer – a 17-year-old gang member – to turn himself in, he reiterated to the police, to family and to friends that his primary concern was getting the killer the help that he needed to heal.

Aqeela had been opposed to life without parole for juveniles even before Terrell's death. Coming of age in the Watts neighborhood of south-central Los Angeles, he began working to end gang conflict as a young man. A one-time gang member himself, Aqeela knew where these violent youth came from. "My friends and I had been living under a set of unwritten rules. Most of us hadn't really understood what we were doing. We were just following them because if we didn't, there would be consequences." These "rules" about loyalty, love and revenge caused the smallest conflict to lead to the ultimate violence – violence that should have been preventable. Aqeela knew personally that "sexual, physical or psychological abuse," affects a youth's ability to cope because he had experienced all these himself. For Aqeela, the only way to confront adolescent criminal activity is to focus on healing those wounds and changing people's attitudes about adherence to those "rules."

Aqeela knows such change can be accomplished because he has done it himself. Aqeela was the driving force behind brokering a 1992 peace treaty between the Los Angeles Bloods and Crips street gangs. From this and other similar experiences, Aqeela has seen that youth can redeem themselves.

To Aqeela, a life sentence without the possibility of parole for a 17-year-old is unjust. Aqeela recognized that his son's killer, while having committed a heinous crime, is still a person who could contribute positively to his community. "The community cannot afford to lose another child. It is imperative that we give people, especially children, a second chance and the opportunity to redeem themselves."

That the killer was a minor at the time of Terrell's murder is important to Aqeela's opposing a lifetime prison sentence for him. He knows that youthful offenders have a much greater chance of turning their lives around and breaking their destructive patterns than adults do. Acknowledging science's latest findings that the brains of young people are still developing, Aqeela realizes that youths have something else on their side that adults do not: time. They have time to heal, time to address the root causes of their destructive behavior, and time to alter the patterns that caused them to commit murder.

Aqeela does not feel that he holds these beliefs alone: "Terrell speaks through me against life imprisonment for juveniles." And Terrell's voice has guided Aqeela to becoming the Regional Director of the Resources for Human Development California ("RHDC") which focuses on preventing violence by offering classes in life management skills, mentoring, victim services and community re-entry assistance for people leaving prison, and mental and holistic health services.

## **B. Victims Know Youth Can Reform.**

### ***Mary Johnson***

"Who did he think he was that he could take my child's life? I hated him, truly hated him." Mary Johnson recalls her feelings when she first learned that 16-year-old Marlon Green (now known as Oshea Israel) had murdered her only child, 20-year-old Laramiun Byrd, on February 12, 1993 in Minneapolis, Minnesota. Oshea, a member of a teenage gang, got into a fight with Laramiun at a



house party, pulled a gun on Laramiun, and shot and killed him.

Mary attended every court appearance relating to her son's murder, and wanted nothing less than for Oshea to be "caged up like the animal he was" for the rest of his life. She even recalls Oshea turning to look at her in the court room and smiling as if to say "Yes, I killed your son. What are you going to do about it?" Mary's anger was further fueled when the judge lowered Oshea's first-degree murder charge to second-degree murder.

Oshea was tried as an adult, and sentenced to twenty-five-and-a half years.

Searching for answers for how to heal, Mary founded "From Death to Life," an organization dedicated to ending violence through healing and reconciliation between families of victims and perpetrators. Through From Death to Life, Mary counsels parents whose children have been killed, as well as families of murderers. In Mary's view, the families of the murderers are also victims, because "hurt is hurt, it doesn't matter what side you are on." Mary soon realized that her failure to forgive was "like a cancer that eats you from the inside," and that if she wished to heal, she needed to meet her son's killer.

Mary reached out to Oshea who agreed to meet her. But when the day of the visit came, half way up the ramp to Stillwater Prison, Mary was suddenly overcome with doubt, and told her support team that she could not do it. Physically and emotionally, Mary had to be pushed up the ramp into Stillwater Prison and toward her son's killer. But by the end of the meeting, she and Oshea hugged. Overwhelmed by emotion, Mary began to fall and it was Oshea who caught her. He then said

to her, “Ma’am, I believe you’re gonna be the person to help me to cry.” “Yes,” Mary said, “I will be that person.” Moments later she thought, “I just hugged the man who murdered my son,” and a heavy burden lifted from her body along with all her negative emotions. For Mary, “the anger and bitterness was over. I just knew it. I had reached the point of total forgiveness.”

Oshea was released on March 7, 2009 after serving sixteen years of his sentence. It was Mary’s From Death to Life organization that hosted a homecoming celebration for Oshea and his family. And it was Mary who introduced Oshea to her landlord so he could invite Oshea to move in next door to her. Now Mary and Oshea not only share a porch, but a bond so strong that Mary considers Oshea to be her “spiritual son,” and Oshea sees Mary as his second mother.

Even before Oshea was released from prison, the authorities at Stillwater Prison were so intrigued by the relationship between Mary and Oshea that they asked Mary to speak to the inmates at the prison about her experiences and her views on forgiveness. Since his release from prison, Oshea now joins Mary at these speaking engagements at Stillwater Prison. They also regularly travel around the nation speaking at various functions to a wide range of audiences, including the 2011 Wisconsin Restorative Justice Conference.

It is significant to Mary that, like Laramiun, Oshea was intelligent but fell in with the wrong crowd and was involved in drug dealing. A child of divorced parents, Oshea was torn between the well-disciplined path of his mother and minister stepfather, and the urge to rebel to fit in with his father’s side of the family. Mary believes this inner struggle

continued even when Oshea got to prison. But once he started meeting with Mary, he started the process of accepting responsibility for his actions, and forgiving himself. And, to Mary, that is what justice should focus on – giving the offender the chance to reform. She has come to believe juvenile offenders are “...all children. What does it achieve to lock them all up for their entire lives? If they don’t have a chance to reform and heal, and to show others how to learn from their mistakes, there’s no hope for anybody.”

Today Mary is proud – proud of Oshea for his full time job at a recycling plant by day, and proud of his pursuit of a college degree by night. Mary asserts that her forgiving him does not pardon or diminish what he did, but it helps her move forward because she believes “people can change.”

### ***Melanie Washington***

Damon Dowell, age 19, and Dante Corothors, age 17, were friends. Damon had “adopted” Dante “as a little brother” even though Dante was a member of the Bloods gang. Damon was not a member of any gang but he was intrigued by what gangs stood for and wanted to help young gang members from the Bloods and the Crips. He even tried to bring them together under a truce at one point. Yet, on December 26, 1995, without warning and in an effort to prove himself to his fellow gang members, Dante shot Damon in the back two times and then shot him in the face, killing him. Dante was sentenced to life without parole.

The heartbreak of losing her son was amplified for Damon’s mother, Melanie Washington. She has already experienced more than her share of

violence. Sexually molested and raped when she was still very young, she saw gang and domestic violence tear apart her family and community. Her mother and sister were murdered at the hands of her stepfather when she was 10 years old. Melanie was a victim of her first husband's abuse for three and a half years until she found out that he had murdered his own mother. Finding the strength to leave that marriage, she remarried only for it to end in the murder of her second husband by his best friend just three years after their marriage. After all that, Damon's death was a tipping point which could have broken Melanie. Instead, she resolved to try to make a difference in the community that had caused her so much pain and loss.

Melanie founded the organization Mentoring – A Touch From Above (“MATFA”), which works with jailed youth, helping them take responsibility for their actions and then re-enter the community as responsible young men. MATFA serves boys and young men ages 10 to 25 who are incarcerated in juvenile detention centers and the Department of Juvenile Justice. It also serves youth in the school districts by providing education and support in an effort to prevent them from going into the juvenile justice system in the first place and helping them to make better choices for their futures. Among the offenders that Melanie is currently counseling is Dante. Melanie, through MATFA, works with youthful offenders to assist them in understanding that there is a way to say “I’m sorry” and move their lives forward.

Melanie has helped build up MATFA so that many young lives have been turned around. Graduates of the program are working at stable jobs and attending college. MATFA “graduates” have

become an asset rather than a threat to their communities.

Melanie knows first hand how difficult the path to reconciliation and forgiveness can be on both sides. Six months after Damon's death, Melanie wrote many letters to Dante in prison, but he refused her mail. She persevered for a few months more until Dante finally reached out to Melanie to ask why she insisted on writing him. Dante eventually agreed to an in person meeting with Melanie after seven years of written correspondence when he realized that her desire to meet and forgive was genuine. Today, Melanie and Dante are still in contact.

When Damon was first killed, Melanie had not focused on the appropriateness of a particular legal sentence, other than to know that she did not believe in the death penalty. However, through her work with MATFA and her experience with youthful offenders such as Dante, she now knows that juvenile life without parole is not the right answer for many youth who are convicted. Each case requires individual consideration and review. Those youth who show remorse and the willingness to succeed in prison deserve a second chance. Melanie has come to know personally that each case and each offender is different.

### ***Azim Khamisa***

Tariq Khamisa was a 20-year-old college student at San Diego State University with a caring family, a beautiful fiancé, a bright future, and a love for life. On the night of January 21, 1995, Tariq was delivering pizzas when he was robbed, shot and killed by 14-year-old Tony Hicks. Tony, then an 8th

grader in junior high school, killed Tariq on the orders of an older gang leader, simply because the gang was hungry and had no money.

Tony pled guilty to first degree murder, and was sentenced to 25 years to life in an adult prison.

Tariq was the only son of Azim Khamisa, a former investment banker who grew up in Kenya, was educated in England and later moved to the United States. After his son's death Azim was very angry, but his anger was not directed towards his son's 14 year old killer. In fact, Azim was able to forgive Tony for killing Tariq. Azim comments that, "from the onset, I saw victims on both ends of the gun. I will mourn Tariq's death for the rest of my life. Now, however, my grief has been transformed into a powerful commitment to change. Change is urgently needed in a society where children kill children."

Determined to honor his son, and his son's love for life, Azim established the Tariq Khamisa Foundation ("TKF Foundation"), which focuses on crime prevention, stopping youth violence and developing at risk youth into productive members of the community through education, mentorship and community service programs. Shortly after the TKF Foundation was established, Azim contacted Ples Felix, Tony's grandfather and guardian, and asked him to work with him at the TKF Foundation. Azim and Ples have served together on the board of the TKF Foundation for the past 15 years.

In addition to the many other youthful offenders that Azim has met through his work with the TKF Foundation, Azim has been in regular contact with Tony, who has since passed his GED in the 94th percentile and is working toward a degree in Child Psychology. Azim has invited Tony to come

and work with him and his grandfather at the TKF Foundation upon his release from prison, to “join in the quest to prevent other kids from going down the same path.” Azim believes that his experience with Tony is indicative of the potential in other young offenders, remarking that “all offenders, even the most hardened, have something of value within them. We can turn these kids around.”

An investment banker turned social worker, Azim devotes his time to speaking to audiences across the United States about forgiveness, restorative justice and teaching children the principles of non-violence, and, on a day-to-day basis, works on the outreach initiatives of the TKF Foundation, which include a mentoring program with school districts throughout San Diego County, and partnerships with organizations such as the City of San Diego Commission on Gang Prevention and Intervention, and Students Against Youth Violence at San Diego State University.

### *Tammi Smith*

Robert Sellon was the beloved, good humored half-brother of Tammi Smith who would often play good-natured pranks on Tammi and her twin sister. So when 17-year-old twin brothers David and Michael Samel brutally murdered 18-year-old Robert on October 26, 1981, just four days after Tammi’s 15th birthday, she was filled with hatred.

Stoned, drunk and looking to steal marijuana and cash, David and Michael set out to rob Robert. When Robert put up a fight, the two brothers strangled him with nunchucks and beat him to death with a hammer. At his trial, Michael pled guilty to second degree murder and was sentenced to 35 to 55

years in prison. Meanwhile, David's counsel believed that because Michael had pled guilty, David would likely receive a reduced sentence. Instead, this case not only proceeded to trial on first degree murder, but also resulted in a sentence of life in prison without parole for David.

Initially, Tammi was enraged by what these boys had done to Robert, and she hoped that David and Michael would be imprisoned for the rest of their lives for their crime. She had recurring nightmares about the attack, and prior to David being transferred from pre-trial detention to permanent incarceration, Tammi visited him to express her hatred of him face-to-face, and to curse him for destroying her family. But this did nothing to provide her closure.

In 2001, Tammi realized that Michael would soon be released from prison, and that there was a key unresolved question that prevented her from achieving closure: What kind of adults had David and Michael become in prison? Tammi reached out to Michael, and the three of them started to correspond. As Tammi learned more about David and Michael, she saw that they were no longer drug-addicted, naïve teenagers, but mature adult men who felt extreme remorse over the crime committed in their youth. "David has talked about how childish he was, and he will beat himself up over it," she says. David has even expressed to her "that if he could give his life to bring her half-brother back, he would."

Michael was released in 2009, after serving 27 years, but David remains in prison. Identical twins, the same victim, yet very different outcomes.

Tammi favors and will help to seek David's release. Tammi says that "he would be a better



person out than wasting his life just sitting in prison – he could give something back.” Since being in prison, David has obtained a degree in horticulture, was studying for a law degree before the program was canceled, and works in the prison hospice system.

Tammi is not only seeking David’s release but also opposes all juvenile life without parole: “It is just not right to put a teenager in prison for the rest of their lives thinking they are never going to change.” She says David is not the same person now as he was as a teenager, and that he should not continue to be punished for the mistakes of his youth. It is clear to her that David would never commit a similar crime again.

Tammi thinks her brother Robert, who got into trouble as a youth for drugs himself, would have wanted a second chance for David. Tammi feels society is better served by releasing youthful offenders who have sufficiently demonstrated remorse for their crimes and who have applied themselves during their time in prison. She is inspired by David’s commitment to using his time in prison to educate himself. She is gratified to hear David say that, should he ever be released, he wants to help youths who have been convicted of crimes. But that will wait because, almost 30 years after being convicted for killing Robert, David is still confined to prison and faces the possibility that he will continue to pay for his crime until he dies in prison.

### ***Robert Hoelscher***

When Robert Hoelscher was seven, his father was murdered by a troubled 17-year-old who lived in

his neighborhood. Robert's mother found her husband's body on the floor of the convenience store Robert's father managed. Robert's father had partially lost his hearing while serving in World War II, so he never heard his assailant coming. He was shot in the back. The teenage killer was quickly apprehended with the murder weapon and the money he stole. He was tried and sentenced to life in prison. He remains in prison today, more than fifty years later.

Robert and his five brothers and sisters were left without a father and, in many ways, the trauma that their mother experienced took her from them too. Robert's mother, though very strong for her children in the days after the murder, spent most of the rest of her life struggling with addiction to nicotine, alcohol and pain killers. She died of cancer at the age of 57. Robert's family never discussed his father's death or the feelings that event created. Not until well into his adulthood did Robert find himself retelling the story time and time again to support a cause he came to champion.

Robert has spent a decade working in the criminal justice system and with youths specifically. His work in this area began in 2001 when he joined the Innocence Project of New Orleans as a volunteer. In only one year, Robert's hard work and dedication earned him a promotion to be the organization's first executive director. He held this position from 2002 to 2005 when he returned to Austin to work at the University of Texas. Although it is no longer his full-time job, Robert has never stopped working on behalf of innocent prisoners. He remains deeply committed to efforts to reform criminal justice in this country and continues to volunteer. Now that the issue before the Court is whether offenders under

the age of eighteen convicted of homicide crimes should be offered the possibility of parole – youths like his father’s killer – Robert feels his story may finally have lasting impact.

Several years after his father’s death, on a visit to one of his sisters, Robert came across a newspaper account of his father’s murder he had not seen before. The article told the story of his mother’s call to the parents of the teenager who had killed her husband. She made the call only two days after her husband’s death. In the call, Robert’s mother expressed her forgiveness and the sadness she felt for their son as a fellow parent. She told them that hate simply would not bring back the father of her children, so she had chosen to forgive and forget. This news reflected a side of Robert’s mother that had been lost to him amidst the problems that plagued her during most of her later life.

Despite the unfortunate character of the remainder of his mother’s life, Robert was deeply moved when he read about this phone call showing her commitment to forgiveness in the immediate aftermath of unspeakable tragedy. The story reminded Robert that in these cases there is always tragedy and loss on both sides. He felt his mother’s gesture must have afforded some healing to the parents of his father’s killer. He was impressed by her and wondered how many people would do as she did. In some way, reading this story also provided Robert some sense of closure. “If there is any real life experience that can be called ‘closure,’ reading about my mother’s phone call was it for me.” It was an emotional confirmation of the logic of the path he had taken.

Given this life experience, Robert opposes life without parole sentences for juveniles even in the

case of murder. Robert describes his reasons as ruthlessly pragmatic and completely distinct from any personal feelings he has about his father's killer or others who have committed violent crimes. As to the role of punishment, Robert says very matter-of-factly: "My father's killer took a human life. He needed to be held accountable. He was." As to the public safety concern, he says: "My father's killer could have taken someone else's life. He needed to be put in a place where he was no longer a threat to anyone else. He was."

In terms of redemption, Robert is equally practical and straight-forward. "When a person makes a mistake, he deserves a chance to make up for that mistake. If a prisoner can demonstrate that he is ready to go home and play by the rules, then we should provide that opportunity." From a fiscal responsibility standpoint, Robert sees little sense in keeping someone in prison for life when the person could be contributing to society and paying tax dollars instead of spending tax dollars.

Self-described as "tough on crime," Robert's sense of logic and human empathy compel him to the belief "that juvenile life without parole offenders should have a path – hard earned to be sure – back to the community." Robert's dispassionate logic supports his belief in the basic point that youths are different from adults. He finds it unreasoned and peculiar that the criminal justice system seems to assume that a higher sentence for a youth who commits a more serious crime is appropriate because the more serious crime reflects a higher, rather than lower, level of maturity and accountability in that child. "By any reasonable measure," he believes, "that is wrongheaded logic. If anyone imprisoned for life deserves a second chance at life, it is those

individuals whose criminal acts were committed under the misguided influence of youth.”

Respectfully submitted,

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