

Before the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Henry Hill, et al.

vs.

The United States of America

Case No. 12.866

**FINAL OBSERVATIONS REGARDING
THE MERITS OF THE CASE**

September 4, 2012

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I.	INTRODUCTION	4
II.	FACTUAL BACKGROUND AND DOMESTIC LEGAL CONTEXT OF LIFE WITHOUT PAROLE SENTENCES FOR CHILDREN	7
A.	PETITIONERS’ LEGAL PROCEEDINGS AND CURRENT STATUS.....	7
B.	PATTERN AND PRACTICE OF LIFE WITHOUT PAROLE SENTENCING FOR CHILDREN IN THE UNITED STATES	42
1.	National Context of Life Without Parole Sentences for Children.....	43
2.	Michigan’s Criminal Law and Practices	47
III.	APPLICABLE LEGAL STANDARDS	51
A.	THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN.....	51
1.	Application to the U.S.	51
2.	The Commission’s Interpretative Mandate	52
B.	INTERNATIONAL LAW AND PRACTICE RELEVANT TO LIFE WITHOUT PAROLE SENTENCES FOR CHILDREN	55
1.	Treaties and Other International Instruments Prohibit the Imposition of Life Sentences Without the Possibility of Release on Children	55
2.	State Practice Prohibits the Imposition of Life Sentences Without the Possibility of Release on Children	59
IV.	VIOLATIONS OF THE AMERICAN DECLARATION AND LEGAL ANALYSIS	60
A.	THE TREATMENT OF PETITIONERS WITHIN THE MICHIGAN CRIMINAL JUSTICE SYSTEM VIOLATES U.S. OBLIGATIONS UNDER THE AMERICAN DECLARATION	61
1.	The Imposition of Petitioners’ Life Sentences Without Possibility of Parole Violate Their Right to Special Measures of Protection Guaranteed Under Article VII.....	61
2.	The Imposition of Petitioners’ Sentences of Life Imprisonment Without the Possibility of Parole Constitutes Cruel, Infamous, or Unusual Punishment (Article XXVI) and Violates their Right to Humane Treatment Guaranteed Under Articles I and XXV.....	66

3. The Michigan Criminal Justice System Violates Petitioners’ Rights to Due Process of Law Under Articles XVIII, XXV, and XXVI.....	72
4. Life Without Parole Sentences Imposed Under Michigan Law Have Violated Petitioners’ Right to be Free From Discrimination Guaranteed Under Article II.....	83
B. THE TREATMENT OF PETITIONERS WHILE INCARCERATED VIOLATES U.S. OBLIGATIONS UNDER THE AMERICAN DECLARATION	86
1. Denying Petitioners Access to Rehabilitative Programs Violates their Right to Rehabilitation Guaranteed Under Articles I and XVII	86
2. Denying Petitioners Access to Educational Programs Violates their Right to Education Guaranteed Under Article XII.....	91
V. CONCLUSION AND PETITION	93

I. INTRODUCTION

In the United States each year, children as young as thirteen are sentenced to spend the rest of their lives in prison without any opportunity for release. Despite a global consensus that children are less culpable than adults for the crimes they may commit and recognition that children who come into conflict with the law are entitled to special measures of protection, the United States legal system allows children to be treated and punished as adults. Increasingly, domestic criminal laws exclude children from the protections provided under the juvenile justice system and allow youth to be charged, tried and sentenced as adults based solely on the nature of the offense. This approach removes any measures to ensure children understand the legal system under which they are prosecuted, and eliminates considerations of age, maturity, or lessened culpability. As a result, the criminal justice system ignores children's unique status and capacity for rehabilitation and eventual reintegration back into society. Such a system flouts foundational principles of juvenile justice recognized by the American Declaration on the Rights and Duties of Man¹ and international law and practice on the rights of children.

Since the 1990's, developments in U.S. criminal laws have resulted in the increased mandatory treatment of children as adults based solely on the nature of the alleged crime.² This has led to an explosion in the number of children sentenced to life without the possibility of parole. In the United States, approximately 2,500 individuals are presently serving this sentence

¹ Organization of American States, American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82, doc. 6 rev. 1 at 17 (1992) [hereinafter American Declaration], available at <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm>.

² Nat'l Ctr. for Juvenile Justice, *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform* 1 (2008), available at http://www.ncjj.org/PDF/MFC/MFC_Transfer_2008.pdf.

for crimes they committed when they were below eighteen years of age.³ These life sentences mean that children who commit crimes will languish in prison until they die, irrespective of whether they pose a threat to society or have been rehabilitated. Michigan accounts for 362 of these child prisoners, the second highest number among United States jurisdictions.⁴ In stark contrast to U.S. law and practice, no other country in the world imposes a sentence of life imprisonment without the possibility of release on children.⁵

In recent years, legal challenges to life without parole sentences in the United States have met with a measure of success and imposed some important restrictions on the use of these sentences for persons below eighteen years of age, but judicial rulings have fallen short of prohibiting such sentences. In *Graham v. Florida*, the United States Supreme Court struck down as “cruel and unusual” punishment U.S. laws that allowed offenders below the age of eighteen convicted of a non-homicide offense to be sentenced to life imprisonment without affording them a meaningful opportunity for release based on their demonstrated maturity and rehabilitation.⁶ *Graham*, however, did not address other laws that allowed states and the federal government to impose such sentences on children charged and convicted of homicide and the ruling has been applied inconsistently by lower courts. In *Miller v. Alabama*, the Supreme Court struck down laws authorizing *mandatory* life without parole sentences for children convicted of homicide offenses, but did not extend *Graham’s* categorical ban for non-homicide offenses to

³ See, e.g., *Miller v. Alabama*, 132 S. Ct. 2455, 2477 (2012) (Roberts, C.J., dissenting) (“The parties agree that nearly 2,500 prisoners are presently serving life sentences without the possibility of parole for murders they committed before the age of eighteen.”); State Distribution of Youth Offenders Serving Juvenile Life Without Parole (JLWOP), Human Rights Watch (Oct. 2, 2009), <http://www.hrw.org/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole> (“Total Youth Offenders Serving Life Without Parole for Any Crime 2,589”).

⁴ John Barnes, *Judgment Day for Michigan’s juvenile lifers: The U.S. Supreme Court considers banning life without parole for minors*, MLive (March 12, 2012), http://www.mlive.com/news/index.ssf/2012/03/judgment_day_for_michigans_juv.html.

⁵ See Connie de la Vega, Amanda Solter, Soo-Ryun Kwon, & Dana Marie Isaac, Univ. of San Francisco School of Law, *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, 61 (2012) [Hereinafter *Cruel and Unusual*], available at <http://www.usfca.edu/law/clgj/criminalsentencing>.

⁶ See *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010).

homicide offenses. As a result of the limited scope of these decisions, children convicted of homicide crimes continue to face the possibility of being subjected to life without parole sentences.

This petition is brought against the United States of America, which is obligated to ensure that every state in the Union, including the State of Michigan, abides by the provisions of the American Declaration. In Michigan, since the abolition of the death penalty in 1846 for all criminal offenses save treason, a life without parole sentence is the harshest sentence available for any offender, adult or child.⁷ Under state law, the sentence results in imprisonment until death with no review by the Michigan Parole Board or other meaningful opportunity for release.

Under Michigan laws in force at the time, Kevin Boyd, Barbara Hernandez, Henry Hill, Patrick McLemore, Damion Todd, and the twenty-seven other named Petitioners were all charged *as adults* and tried and sentenced to mandatory life imprisonment without the possibility of parole for crimes they committed when they were below eighteen years of age. All Petitioners are serving their sentences in facilities in the State of Michigan where, as a consequence of their life sentences, they have been denied educational and other rehabilitative opportunities.

Pursuant to the Supreme Court's ruling in *Miller v. Alabama*, Petitioners' sentences may now be reviewed, and consideration given to their child status when they committed their offenses. The State of Michigan argues, however, that many of the Petitioners do not benefit from *Miller* because the decision is not retroactive in effect. This issue is presently pending before the Michigan state courts. Moreover, even if *Miller* is held to be retroactive, Petitioners' life without parole sentences may be affirmed.

The laws and practices by which Petitioners were charged and tried and the imposition of their life without parole sentences violate provisions of the American Declaration including their

⁷ See Mich. Const. art. IV, § 46 Convention Comment (West, Westlaw through Nov. 2010 amendments).

rights to special protection (Article VII) and to be free from cruel, infamous, or unusual punishment and to humane treatment (Articles I and XXV), as well as their guarantees to due process (Articles XVIII, XXV, and XXVI) and equality before the law (Article II). Petitioners' rights to education (Article XII) and their implicit rights to rehabilitation guaranteed under Articles I and XII have also been violated.

Petitioners present, herein, their final allegations on the merits of the case, including all facts and legal arguments necessary for the Inter-American Commission on Human Rights ("Inter-American Commission," or "Commission") to find the United States in violation of Articles I, II, VII, XII, XVIII, XXV, and XXVI of the American Declaration.⁸

II. FACTUAL BACKGROUND AND DOMESTIC LEGAL CONTEXT OF LIFE WITHOUT PAROLE SENTENCES FOR CHILDREN

A. PETITIONERS' LEGAL PROCEEDINGS AND CURRENT STATUS

Michigan's criminal laws and procedures for the trial and punishment of children who commit homicide offenses have been amended on two occasions since 1980, resulting in three distinct categories of youthful offenders depending on their sentencing date. These categories (Pre-1988; 1998-1996 and Post-1996) are described in greater detail in Part B.2 below.

Irrespective of which of these three schemes governed, all of the Petitioners were sentenced to life imprisonment without the possibility of parole without any meaningful consideration being given to his or her child status, including reduced culpability and unique capacity for rehabilitation. The first five Petitioners, whose cases are detailed below, illustrate the treatment afforded each of the other twenty-seven Petitioners under the three different Michigan sentencing

⁸ Petitioners incorporate, by reference, the factual assertions presented in the initial Petition, dated Feb. 21, 2006, and Supplemental Observations presented on Jan. 30, 2007, May 9, 2007, July 19, 2007, Aug. 22, 2007, Dec. 12, 2008, May 19, 2009, June 16, 2010, Nov. 1, 2010, Dec. 20, 2010, June 24, 2011, Sept. 28, 2011, and Mar. 8, 2012.

schemes.

1. Henry Hill – Sentenced Under the Pre-1988 Michigan Sentencing Scheme
(Allowing Seventeen-Year-Olds to be Treated as Adults Without Consideration of Youthful Status and Providing Judicial Waiver Hearings for Fifteen And Sixteen-Year-Olds)



(a) Background

On the evening of July 16, 1980, Henry Hill, along with Larnell Johnson, Dennis Lee Johnson and Squeeky Saunders, encountered Anthony Thomas and Louis Thomas, Jr., in Wickes Park, Saginaw, Michigan. Henry and Dennis were both sixteen. Larnell was eighteen. Henry and his friends had a history of disputes with the Thomas brothers. All of the boys had weapons: Anthony Thomas had been drinking and had a shotgun and ammunition in his pocket; Larnell had a carbine; and Dennis and Henry each had handguns.

When Henry, Larnell and Dennis saw Anthony Thomas, they chased him and started shooting. Henry fired into the air and never hit Anthony. Only Larnell shot directly at Anthony. Anthony fell to the ground, and Dennis and Henry fled. Larnell got nearer, continuing to shoot Anthony. By the time that Larnell administered the fatal shot, Dennis and Henry were no longer in the park.

Anthony died from a bullet wound to the head. The autopsy determined that the bullets found in Anthony's body were all from Larnell's carbine. Larnell, Dennis, and Henry were tried for the murder of Anthony Thomas.

(b) Legal Proceedings

On July 22, 1980, a petition was filed in Juvenile Court, charging Henry and Dennis with Open Murder and the Use of a Firearm during the Commission of a Felony. Henry was declared an indigent person, and a public defender was appointed to represent him. Following a preliminary hearing on July 24, 1980, the prosecutor filed a petition requesting that Dennis and Henry be waived to Circuit Court and tried as adults.⁹

Under the law that existed in 1980, after determining that there was probable cause, the court was required to hold a hearing to determine if waiver was in the best interests of the child and the public. At the hearing, the court was required to consider five factors: (1) the juvenile's prior record and character, including physical and mental maturity; (2) the seriousness of the offense; (3) whether the offense was part of a repeat pattern of offenses; (4) the suitability of programs in the juvenile and criminal systems; and (5) whether waiver was in the best interests of public welfare and the protection of public security.¹⁰

Henry's attorney requested a psychological evaluation of his client, which revealed that Henry placed in the "mental deficient range" of the intelligence quotient (I.Q.) scale, with academic ability at the third grade level.¹¹ The evaluation established that Henry was significantly impaired in all areas, and had the mental maturation of a nine-year-old. The report recommended that Henry be treated as a juvenile in the Michigan justice system. The report further opined that Henry's I.Q. could improve with appropriate stimulation and environment and recommended psychological counseling for at least five years.

⁹ In 1988, Michigan law was amended to allow prosecutors to directly file a complaint against juveniles 15 or older in adult criminal court for certain offenses, including First Degree Murder. In 1996, the minimum age was lowered to 14.

¹⁰ Mich. Comp. Laws Ann. § 712A.4 Historical and Statutory Notes concerning the statute prior to 1988 amendment (West 2012).

¹¹ Henry's verbal I.Q. was 69, performance I.Q. 58 and full scale I.Q. 61, placing Henry in the lowest one percentile of the results, meaning that if he were compared with another one hundred young people of his age, his I.Q. would be the lowest.

Despite the evaluation, on September 22, 1980, the juvenile (probate) court judge waived Henry to an adult court.¹² Henry was tried with Dennis, and they were both convicted of aiding and abetting first-degree murder and possession of a firearm in the commission of a felony.

In Michigan, defendants who are convicted of aiding and abetting an offense are sentenced as if they committed the offense themselves.¹³ The sentence for first-degree murder is mandatory life and individuals so sentenced are never granted an opportunity for parole.¹⁴ Henry was sentenced to life imprisonment on the first-degree murder charge on June 3, 1982, and Michigan law thus prohibited the Michigan Parole Board from considering him for parole following his conviction and sentence.¹⁵ Henry's pre-sentence investigation report of May 21, 1982 recommended that he be given an opportunity to continue his education while he was in prison.

(c) Henry's Life in Prison

Henry spent his first year in prison in a juvenile detention center and was transferred to an adult state prison when he turned seventeen. The adult prison was named Michigan Reformatory, but inmates called it "the gladiator school" because of the level of violence. Henry spent a year in a cell in isolation, permitted to go outside for an hour only one or two times per week. He feared for his safety because physical and sexual abuse of young inmates in the prison was common. He remained at the Michigan Reformatory for a number of years before being transferred to various adult prisons where he has been subject to similar conditions.

Despite the psychologist's recommendations in Henry's evaluation, Henry has not

¹² An appeal of the waiver of jurisdiction to the criminal court was filed on behalf of Henry on October 13, 1980, and it was denied on April 9, 1981.

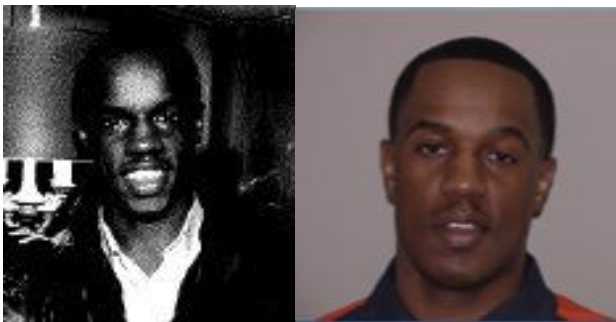
¹³ Mich. Comp. Laws. § 767.39 (2012).

¹⁴ Mich. Comp. Laws § 750.316(1) (2012) (imposing mandatory sentence of life imprisonment on anyone convicted of first-degree murder); Mich. Comp. Laws. § 791.234(6) (prohibiting the Michigan Parole Board from considering the case of any individual who has been convicted and sentenced of first-degree murder).

¹⁵ *Id.*

received psychological services since his transfer to adult prison. Requests for services have either gone unanswered, or have been denied because he is serving a natural life sentence. Henry has taken and completed all educational courses available to him. He is classified as a low security risk and has remained misconduct free. He obtained a High School Certificate on September 29, 1986, and completed skill courses in fire extinguisher training, furniture sanding, legal research, food service, and hospitality management. Henry currently works as a Lead Cook in his correctional facility. He continues to try to educate himself despite his learning disabilities, and enjoys church related activities, particularly his bible study class. Despite his efforts, Henry's facilities have denied him group counseling and psychological treatment because of his "lifer" status. He is currently in prison at Thumb Correctional Facility, located at 3225 John Conley Drive, Lapeer, Michigan 48446.

2. Damion Todd – Sentenced Under the Pre-1988 Michigan Sentencing Scheme
(Allowing Seventeen-Year-Olds to be Treated as Adults Without Consideration of Youthful Status and Providing Judicial Waiver Hearings for Fifteen And Sixteen-Year-Olds)



(a) Background

In the summer of 1986, Damion Todd was a seventeen-year-old former high school football team captain who was preparing to enter his senior year of high school. Damion had never fired a gun and had no record of adult or juvenile criminal offenses. He was active in his community and was a member of his church youth choir and junior deacon board. Damion had

received offers from various universities and planned to go to college after graduating high school.

On Sunday afternoon, August 17, 1986, Damion was in a car with Vernard Carter, Derrick McClure, and DeWayne Smiley leaving a school party in Detroit, Michigan. As they were driving, a group of teenagers in another car drove past them and started shooting at the car Damion was in. Damion's friend DeWayne, who was driving the car, sped off and proceeded to DeWayne's house, where DeWayne retrieved his family's shotgun and got back in the car.

Damion had never handled a gun before, but because he was sitting in the front seat, one of his friends gave him the gun as they arrived back at the party. Once there, they were shot at again, and Damion's friends told him to shoot back. He stuck the gun out the window, pointing it toward the sky, and fired three times. Two girls were struck by shot pellets; one of them later died. Damion and his friends were arrested the next day, and Damion has been imprisoned ever since.

(b) Legal Proceedings

Damion, Vernard, and Derrick were tried for murder in the first degree, assault with intent to murder, and felony firearms charges. DeWayne, the friend who had retrieved the shotgun, had an uncle who was the leading police officer on the case. He was given immunity in exchange for testifying for the State. A clinical psychologist stated that the crime was a product of Damion's youth and that he could have been dealt with effectively through probation in the community. However, under Michigan law, seventeen-year-olds are not considered juvenile offenders and are automatically tried in the adult court system.¹⁶

Damion's family retained counsel for him. However Damion's attorney, Cornelius Pitts, did not meet with Damion until the day before trial.

¹⁶ See Mich. Comp. Laws § 722.822(e) (2012) (“‘Minor’ means an individual less than 17 years of age.”).

During the trial, an anonymous letter, allegedly written by eyewitnesses to the events, was sent to the editor of the Detroit Free Press, who then sent it to the judge. The letter stated that two known drug dealers were in a fight with each other at the party, and the shot that hit the girls came from one of their guns, not Damion's. The letter stated that people in the neighborhood were too scared of the dealers to publicly testify to this fact, and that the police had decided to lay the blame on Damion.

The judge did not convey this information to Damion's attorney and it was not presented to the jury during the trial, even though it could have exculpated him. Nor did the judge allow the jury to consider any lesser charge than first-degree murder, conviction for which carries a mandatory life without parole sentence.

The judge also told a newspaper that "Todd is from a poor neighborhood and he is fatherless." The media, in covering the story, were surprised to learn that Damion's neighborhood was in fact full of middle-class professionals, causing one of the reporters to remark to Damion's mother, "Ms. Todd, your home looks nothing like the judge described it in the newspaper, I wished I lived here."

On December 6, 1986, Damion was convicted and sentenced to mandatory life on the first-degree murder charge, 100-200 years for the assault with intent to murder charge, and two years for the firearms charge. Because of Damion's conviction and life sentence on the first-degree murder charge, Michigan law prohibits the Michigan Parole Board from considering him for parole.¹⁷ The court of appeals later vacated the assault sentence as excessive. A local newspaper called "the sentence virtually unprecedented for a 17 year old" and stated that "Mr. Todd had the monumental misfortune to be the example Judge Talbot wished to set in an effort

¹⁷ Mich. Comp. Laws § 750.316(1), § 791.234(6), *supra* note 14.

to help Detroit gain control over the youth crime epidemic,” quoting the Judge’s statement that “you’ve got to start to win the war (against youth violence and murder) someplace.”

(c) Damion’s Life in Prison

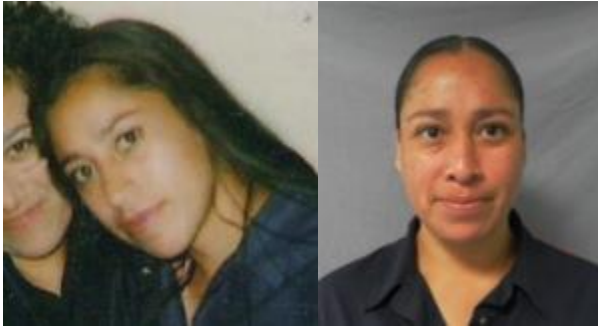
Damion has been a model prisoner throughout his incarceration. In the over twenty-five years that he has spent in prison, he has been cited for misconduct on only four occasions. He finished high school and has taken classes by correspondence through the Montcalm Community College, where he has a 3.5 GPA. He has earned certificates in food technology and custodial maintenance and officiating certificates for basketball, volleyball, baseball, and Jaycees (a worldwide humanitarian organization that provides community services, including collecting toy donations for children). He is a member of the Prisoners of Christ Church and serves as a mentor to young prisoners. He has maintained close contact with his family, serving as surrogate father to his niece. He has also married and fathered a child. He has asked his mother to send money anonymously to the family of the girl who was killed and has stated numerous times his regret for his actions. He is considered by prison officials to be a respectful, thoughtful adult who excels at his job and has no management problems. His wish, should he ever be released from prison, is to dedicate his life to ensuring future teenagers do not make mistakes that will put them in a situation similar to his.

In 2010, Damion was one of nine plaintiffs who brought a civil rights action against the governor of Michigan challenging the state statute which excludes them from the Parole Board’s jurisdiction. Damion and seven other plaintiffs, however, were dismissed from the case because the statute of limitations barred their claims.

Damion is currently at the Carson City Correctional Facility, in the State of Michigan. The prison is located at 10522 Boyer Road, P.O. Box 5000, Carson City, Michigan 48811-5000.

3. Barbara Hernandez – Sentenced Under the 1988-1996 Michigan Sentencing Scheme

(Institutionalizing Automatic Waivers: Prosecutorial Authority to Determine Venues for the Prosecution of Fifteen and Sixteen-Year-Olds, and Limited Judicial Discretion Regarding Sentences)



(a) Background

Sexual abuse, domestic violence, and neglect marked Barbara Hernandez's adolescent home life. Her alcoholic father abused her mother and two older siblings. Her parents divorced when Barbara was eight years old, and the man who became her stepfather molested her. By the age of thirteen, Barbara had entered into an abusive relationship with James Hyde, who was four years her senior. She dropped out of school at fifteen and moved in with Mr. Hyde, who introduced her to drugs and alcohol and coerced her to work as a prostitute. Barbara's relationship with Mr. Hyde was filled with violence. Barbara learned not to question Mr. Hyde because he often responded by beating her.

In the spring of 1990, Barbara and Mr. Hyde discussed leaving Michigan and traveling to New Mexico. On May 12, 1990, Mr. Hyde instructed Barbara to steal a car. When she returned without a car, Mr. Hyde became angry and violent and told her to buy a knife. Barbara complied without questioning. After returning with the knife, he instructed her to act as a prostitute and lure someone into the house. Barbara believed Mr. Hyde would use the knife to intimidate the victim. Instead, Mr. Hyde stabbed him to death. Barbara remained in another room while the assault occurred.

(b) Legal Proceedings

Acting under Michigan's "automatic waiver" provision, which was passed in 1988 and permitted prosecutors to bypass juvenile court and directly file charges against juveniles accused of certain violations in adult court,¹⁸ the State prosecuted Barbara as an adult.¹⁹ As an indigent person, she was represented by appointed counsel during her jury trial, from April 2 to April 19, 1991.

At trial, a psychiatrist testified that because of Barbara's abusive home environment, she suffered from several mental disabilities, including personality defects and thought disorders, which impaired her judgment and ability to cope with life. He specifically testified that, due to her personality disorders, "it would be very difficult for her to . . . make a decision such as contemplating destroying someone else, because she is not capable of making that kind of decision. She never has, nor will she." The judge also admitted a signed statement Barbara had given to the FBI in the absence of counsel, and which she later testified she had signed only so that she could go home.²⁰

Despite the psychiatrist's testimony and the judge's questionable admission of the FBI statement, the jury convicted Barbara of first-degree premeditated murder, two counts of first-degree felony murder (larceny and robbery), and armed robbery on April 19, 1991

On August 6 and 20, 1991, the court held a hearing to determine whether Barbara should be sentenced as a juvenile or as an adult. In 1991, Michigan law required a judge sentencing a juvenile who had been waived into adult court to conduct a hearing to determine whether the best interests of the juvenile and the public would be served by sentencing the child as a juvenile or as

¹⁸ Mich. Comp. Laws § 764.1f Historical and Statutory Notes concerning statute prior to 1988 amendment (West 2012).

¹⁹ *Id.* In 1996, the age was lowered to 14.

²⁰ According to the FBI statement, Barbara and Mr. Hyde planned that she would lure the victim into the house so Mr. Hyde could kill him and steal his car.

an adult.²¹ In making that determination, the judge was required to consider (1) the juvenile's prior record, character, maturity and pattern of living, (2) the seriousness of the offense, (3) whether the offense was part of a pattern, (4) whether the nature of the juvenile's behavior renders him or her dangerous to the public if released at 21, (5) whether the juvenile is more likely to be rehabilitated by services and facilities in adult or juvenile facilities and (6) the best interests of the public welfare and protection of public security.²²

A probation officer and a delinquency services worker recommended that Barbara be sentenced as an adult because of the "gravity of the offense, the serious nature of the offense and the long-term protection of society," and because she showed no remorse for the victim's death. The probation officer expressed a concern that sentencing Barbara as a juvenile would mandate her release at age twenty-one and this could be negative because "apparently she is very susceptible to the influence of strong characters, particularly male characters . . . She has very poor impulse control . . . not much stability in her life otherwise." Although testimony established that the juvenile system is better equipped for rehabilitation, other testimony asserted that the type of rehabilitation available in the juvenile system would not help Barbara.

The judge had two options under Michigan law: he could sentence Barbara to a juvenile facility, where she would remain until she turned twenty-one, or he could sentence her to mandatory life without parole in an adult prison. The judge sentenced Barbara as an adult, noting the probation officer's conclusion that Barbara had no remorse about the victim's death and the seriousness of the offense. He also stated that the juvenile detention facility did not offer the type of medical attention and therapy he thought Barbara needed, whereas the new adult

²¹ Mich. Comp. Laws Ann. §769.1(3) Historical and Statutory Notes concerning statute prior to 1996 amendment (West 2012). The statute was amended in 1996 to require that juveniles tried as adults be sentenced as adults for certain crimes, including first degree murder, which has a mandatory life sentence.

²² *Id.*

women's facility (Scott Correctional Facility) was supposed to offer the needed services. Barbara received a mandatory sentence of life imprisonment for her three homicide convictions and an additional life sentence for the armed robbery conviction based on her role in the death that occurred in May 1990. Two of her murder convictions were subsequently dismissed on double jeopardy grounds. Because of her conviction and sentence on the first-degree murder charges, under Michigan law, the Michigan Parole Board is prohibited from considering Barbara for parole.²³

(c) Barbara's Life in Prison

At age sixteen, Barbara was placed in the women's adult prison system. There, she was subject to sexual advances from an inmate ten years her senior, who eventually assaulted Barbara when she tried to rebuff these advances. To this day, Barbara has a scar on her head, which was slammed against a bed pole during the assault. Additionally, Barbara has been sexually assaulted by male prison guards who have groped and kissed her on numerous occasions. She has been subjected to daily body pat downs by male staff that included touching her breasts and genitals and routine sexually degrading comments. Because of her youth and her status as an inmate, Barbara felt unable to refuse or report these acts.

In March 2010, Barbara was waived to the lowest security level, Level I. She has completed the Assaultive Offender Program and has also completed the Residential Substance Abuse Treatment (RSAT) program and the Beyond Violence Program. She is currently employed as a mentor in the RSAT program. Barbara has been misconduct free for the last five years.

Barbara is thirty-eight years old, and she has spent twenty years—more than half of her life—in prison. She has struggled against the hopelessness and despair that prisoners without the

²³ Mich. Comp. Laws § 750.316(1), § 791.234(6), *supra* note 14.

prospect of release must face. Denied access to prison educational opportunities, she has obtained her General Educational Development Test (GED) through self-study. Barbara is currently serving her sentence at the Women’s Huron Valley Correctional Facility, 3201 Bemis Road, Ypsilanti, Michigan 48197-0911.

4. Kevin Boyd –Sentenced Under the 1988-1996 Michigan Sentencing Scheme
(Institutionalizing Automatic Waivers: Prosecutorial Authority to Determine Venues for the Prosecution of Fifteen and Sixteen-Year-Olds, and Limited Judicial Discretion Regarding Sentences)



(a) Background

Kevin Boyd grew up in a tumultuous home. Kevin’s mother, Lynn Louise Boyd, was a recovering alcoholic, mentally unstable and often heavily medicated. Kevin’s father struggled with alcoholism and had an explosive temper. In 1989, when Kevin was twelve years old, Kevin’s mother asked for a divorce and left his father.

From 1989–94, Kevin primarily lived with his mother but stayed with his father for short periods of time. During this period, Kevin was shuttled between his mother and father and attended ten different middle schools. Kevin’s mother continued to abuse drugs and fight frequently with Kevin. She began a relationship with another woman who was mentally and physically abusive. Kevin clashed often with his mother’s lover. Kevin was also teased and picked on by other children because of his mother’s relationship and got into frequent fights as a result.

Kevin's relationship with his father also became estranged. They regularly had heated arguments that ended with violence. Even after their divorce, Kevin's parents continued their angry, antagonistic relationship. Kevin's mother was particularly damaging to Kevin's relationship with his father and tried to separate the two, telling Mr. Boyd that Kevin hated him.

Kevin's youth was marked by emotional and behavior troubles. He was placed in psychiatric facilities on a number of occasions between 1989 and 1992. In 1992, Kevin attempted suicide. A formal psychological evaluation that same year concluded that he was immature for his age and equipped with few coping mechanisms. On the night of August 6, 1994, Mr. Boyd was killed in his apartment. His autopsy revealed twenty-one stab wounds, two cuts and four blunt force injuries. The police concluded that he was killed by two assailants. On December 18, 1994, Ms. Boyd confessed to murdering her ex-husband with her lover Julia Grain.

Following the confession, the police arrested and interrogated Kevin. The only recording of the interrogation is a tape of proceedings from 8:30 p.m. to 9:20 p.m. and 1:00 a.m. to 1:40 a.m. the next morning. At 8:30 p.m., Kevin denied any involvement in the murder. The tape of this first interview ended at 9:20 p.m. At 1:00 a.m., after several hours of interrogation that were not recorded, and without counsel or any family present, the interview tape was turned back on, and Kevin stated that he and his mother had killed Mr. Boyd, and that he had been armed with a knife and she was armed with a baseball bat. On the tape, Kevin stated that his father had hit him five days before the murder, and he had told his mother he was tired of the beatings. His confession ended at 1:40 a.m.

Kevin has subsequently stated that his confession was false and that while he gave the keys and information about his father's apartment to his mother and Ms. Grain, he was not

present when his father was murdered.

(b) Legal Proceedings

Kevin, at age sixteen, was prosecuted as an adult under Michigan’s “automatic waiver” provision.²⁴ He was charged with conspiracy to commit murder and premeditated first-degree murder.

Prior to trial, the court held a hearing to determine the admissibility of Kevin’s taped confession. Kevin’s defense attorney argued, among other things, that the officers interrogating Kevin had been informed that he had an attorney, but that they did not give Kevin the opportunity to call his lawyer. Although Kevin’s mother’s consent had been obtained for all prior interrogations, neither she nor any responsible adult consented to the interrogation that resulted in Kevin’s confession. The defense also argued that Kevin was subjected to psychological intimidation and coercion during the almost four hours that were missing from the tape. Finally, the defense argued that Kevin was not given a full and proper *Miranda* warning before the interrogation began.²⁵ The interrogating officers testified that Kevin looked noticeably tired when he gave his confession. Despite these circumstances, the trial court ruled that Kevin’s confession was voluntary and admitted his statements as evidence at trial.

On May 28th, 1996, after a jury trial, Kevin was convicted of first-degree murder and conspiracy to commit murder. In August 1996, the court conducted a hearing to determine whether Kevin should be sentenced as a juvenile or adult.²⁶ Kevin’s pre-sentence report acknowledged that his home life was “chaotic with numerous assaults on his self-esteem.” The report suggested that family dynamics played a large role in Kevin’s behavior, stating, “[a]

²⁴ Mich. Comp. Laws Ann. § 764.1f, *supra* note 18.

²⁵ A *Miranda* warning is a reading of rights that police in the United States are required to give to criminal suspects in police custody in order for any statements made by suspects to be admissible evidence in court.

²⁶ Mich. Comp. Laws Ann. §769.1(3), *supra* note 21.

youngster who is only looking for acceptance and love is met with rejection after rejection from both parents cannot help but be damaged psychologically.” It also asserted that while Kevin was acting under his own accord when the crime was committed “it was under [his mother’s] maternal influence, and [that] he wanted her approval.” The report’s author testified that Kevin suffered significant emotional abuse from his parents and was easily influenced by his mother.

At the hearing, Kevin’s lawyer submitted substantial evidence indicating Kevin’s potential for rehabilitation. Although Kevin had been failing school prior to his arrest, while incarcerated in a juvenile facility after his arrest, he earned all A’s and B’s. In addition, Kevin’s offense was not part of a pattern of criminal behavior, he was amenable to treatment, and he was unlikely to disrupt the rehabilitation of other juveniles. The pre-sentence report and testimony of several witnesses revealed that Kevin was a model juvenile prisoner both prior to and during the trial. Despite his potential for rehabilitation, the pre-sentence report recommended adult sentencing because of the violent nature of the offense and the short time available to treat him (because he was almost nineteen at sentencing and juvenile sentences require release at age twenty-one). The author of the report testified that if Kevin were younger, she would have recommended juvenile sentencing.

Relying on the pre-sentence report, the judge found that a sentence of two years, which is as long as Kevin could have been kept in a juvenile facility, would have been insufficient to rehabilitate him. The judge stated that he felt genuinely sorry for Kevin but could not risk public safety by sentencing him as a juvenile, with mandatory release at age twenty-one. Instead, he determined that Kevin should be sentenced as an adult, which required the imposition of a mandatory sentence of life imprisonment. Following his conviction and sentence on the two first-degree murder charges, the Michigan Parole Board is prohibited from considering Kevin for

parole.²⁷

(c) Kevin's Life in Prison

While in prison, Kevin has earned a GED and attended a vocational training class, and is currently working as a school Porter. However, due to his life without parole sentence, he is not eligible for any other vocational programs, nor is he permitted to attend group-counseling sessions. Kevin spends his free time in prison jogging, playing guitar, and writing music. One of the most rewarding experiences for Kevin has been working with younger inmates as part of a mentorship program within the prison. He provides guidance and tutors the youth to help them obtain their GEDs and stay on track while in prison. Kevin is now thirty-four years old, and he is currently imprisoned at the Thumb Correctional Facility, located at 3225 John Conley Drive, Lapeer, Michigan 48446.

5. Patrick McLemore – Sentenced Under the Post-1996 Michigan Sentencing Scheme

(Extending Prosecutorial Discretion to Include Fourteen-Year-Olds and Instituting Mandatory Adult Sentencing for Children who Commit Certain Crimes)



(a) Background

Patrick James McLemore was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) as a boy and had a history of truancy and academic problems starting in elementary

²⁷ Mich. Comp. Laws § 750.316(1), § 791.234(6), *supra* note 14.

school. In 1995, his brother committed suicide. Patrick dropped out of school after the eighth grade and used alcohol and marijuana on a frequent basis. He also experimented with cocaine and LSD. Despite his obvious problems with substance abuse and ADHD, he did not receive the counseling or support he needed.

On June 14, 1999, sixteen-year-old Patrick and nineteen-year-old Nathan Reid spent the afternoon and evening hanging out with friends and drinking beer and whiskey. While wandering around Nathan's neighborhood that night, they noticed that the garage door of Oscar Manning's house was open. Nathan, who was carrying a wrench he had found lying in the grass, entered the house through the garage while Patrick waited outside. A few minutes later, Nathan motioned to Patrick to follow him inside the house. According to Patrick, when he entered the bedroom, he saw blood on the mattress and walls and Mr. Manning's body on the floor between the bed and wall. He immediately ran out of the house.

(b) Legal Proceedings

On the morning of the trial, Nathan entered a no contest plea to second-degree murder, armed robbery, carjacking, and first-degree home invasion. Patrick was not offered a plea and was automatically charged as an adult. At trial, Patrick testified that he did not think the victim was in the house that he and Nathan entered and that Nathan beat and killed the victim before Patrick entered the house. Patrick was convicted of first-degree felony murder, armed robbery, first-degree home invasion, and carjacking. The court subsequently vacated the armed robbery and home invasion convictions on double jeopardy grounds. Because of his conviction and sentence on the first-degree murder charge, the Michigan Parole Board is prohibited from considering Patrick for parole.²⁸

(c) Patrick's Life in Prison

²⁸ Mich. Comp. Laws § 750.316(1), § 791.234(6), *supra* note 14.

Patrick has been in prison for twelve years. During this time, he has completed a GED and a legal research course. He has also completed 60 hours of group counseling and 120 hours of substance abuse counseling. Despite a history of poor grades, when Patrick was in juvenile facilities awaiting sentencing, the supervised setting and required school attendance greatly improved his academic performance. He received grades in the A and B range. When Patrick had access to such educational programs, he responded positively. As a consequence of his life sentence, however, Patrick presently has no access to these programs.

Patrick has a loving, supportive family that is regularly in touch with him and both eager and able to help him should he ever be paroled. Patrick McLemore is currently in prison at the Lakeland Correctional Facility, located at 141 First St., Coldwater, Michigan 49036.

6. Matthew Bentley – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



Matthew Bentley was fourteen years old when, in 1998, a prosecutor charged him as an adult with first-degree felony murder. Matthew was automatically waived into the adult criminal justice system without any consideration of his status as a minor. The circuit judge expressed serious reservations about sentencing Matthew to a mandatory term of life in prison, but was bound by Michigan law to do so, despite Matthew's potential for rehabilitation. Because of the nature of the charge for which Matthew was convicted and sentenced, the Michigan Parole

Board is prohibited from considering him for parole.²⁹ In prison, Matthew self-studied and obtained a GED but has been denied access to additional educational and rehabilitative programs because of his life without parole sentence. Matthew is currently imprisoned at Richard A. Handlon Correctional Facility, located at 1728 Bluewater Highway, Ionia, Michigan 48846.

7. Maurice Black - (Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)



Maurice Black was sixteen when he was charged and tried as an adult for felony murder. He was convicted in 2000, and sentenced to life in prison the following year. Maurice is entering his eleventh year of imprisonment and because of his conviction and sentence can never be considered for release by the Michigan Parole Board. Maurice has obtained his GED through self-study, but has been denied access to further educational and rehabilitative opportunities because of his life without parole sentence. He is currently incarcerated at Kinross Correctional Facility, located at 16770 S. Watertower Drive, Kincheloe, Michigan 49788.

8. Larketa Collier - (Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)



²⁹ Mich. Comp. Laws § 750.316(1), § 791.234(6), *supra* note 14.

Larketa Collier was sixteen years old when she was tried and sentenced as an adult for first-degree murder. In 2004, Larketa received the mandatory sentence of life in prison. Because of her conviction and sentence on the first-degree murder charge she can never be considered for release by the Michigan Parole Board. Larketa was immediately placed in the general population in an adult prison, where she will remain for the rest of her natural life. She has been denied rehabilitative services due to the nature of her sentence. Larketa is currently serving her sentence at Women's Huron Valley Correctional Facility, located at 3201 Bemis Road, Ypsilanti, Michigan 48197-0911.

9. Cornelius Copeland – (*Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme*)



Cornelius Copeland was convicted of first-degree felony murder in 2000 for crimes that he committed as a sixteen-year-old. Cornelius had no prior juvenile record, but he was nonetheless given a mandatory life sentence. Because of his conviction and life sentence, Cornelius can never be considered for release by the Michigan Parole Board. Cornelius maintains his innocence to this day, but can never be considered for release. Because of this, Cornelius has been denied rehabilitation programs since his incarceration. He is currently imprisoned at Richard A. Handlon Correctional Facility, located at 1728 Bluewater Highway, Ionia, Michigan 48846.

10. John Espie – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



John Espie was sixteen when he was charged with first-degree murder. At the time of the murder, John was taking anti-depressant medication, and he had been diagnosed with “Frontal Lobe Syndrome,” a condition that results in lowered impulse control. He had also been diagnosed with depression, anxiety, and Attention Deficit Disorder. John was tried and convicted as an adult, without consideration of his age, mental health, or assertion of self-defense. On September 10, 1999, John received a mandatory sentence of life in prison and because of his conviction and sentence can never be considered for release by the Michigan Parole Board. He is currently imprisoned at Macomb Correctional Facility, located at 34625 26 Mile Rd., New Haven, Michigan 48048.

11. Maurice Ferrell – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Maurice Ferrell was sixteen years old when he was convicted of felony murder in connection with a robbery. On June 4, 2002, Maurice was tried and sentenced as an adult to

mandatory life in prison. Because of his conviction and sentence, Maurice can never be considered for parole by the Michigan Parole Board. Maurice has spent the past ten years in an adult prison. He has obtained his GED through self-study, but has been denied access to other educational and rehabilitative programs due to his sentence. He is currently incarcerated at Chippewa Correctional Facility, located at 4269 W. M-80, Kincheloe, Michigan 49784.

12. Mark Gonzalez – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Mark Gonzalez was tried and sentenced on a first-degree murder charge as an adult for his involvement in a homicide that took place when he was fifteen years old. On July 19, 2000, he received a mandatory sentence of life in prison. Because of his conviction and sentence, Mark can never be considered for parole by the Michigan Parole Board. He has earned his GED through self-study, but has been denied further educational opportunities due to his sentence. He has also been denied access to rehabilitative programs. Mark has served twelve years of his sentence and is currently in adult prison at Carson City Correctional Facility, located at 10274 Boyer Road, Carson City, Michigan 48811-9746.

13. Chavez Hall – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Chavez Hall was fifteen years old and in the eighth grade when he was charged with first-degree felony murder for his involvement in homicides committed by two adult co-defendants. He was tried and sentenced as an adult on October 8, 1999 and received a mandatory sentence of life in prison. Because of his conviction and sentence, Chavez can never be considered for parole by the Michigan Parole Board. Chavez's sentence was also the maximum sentence that his two adult co-defendants could receive. Chavez is now twenty-nine years old and has spent almost half his life in prison. He is currently serving his sentence at St. Louis Correctional Facility, located at 8585 N. Croswell Road, St. Louis, Michigan 48880.

14. Lamar Haywood – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



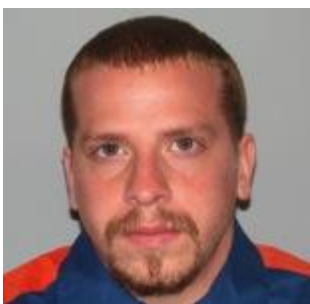
Lamar Haywood was fifteen years old when he was automatically charged and tried as an adult for premeditated first-degree murder. On August 10, 1999, he received a mandatory life sentence. Because of his conviction and sentence, Lamar can never be considered for parole by the Michigan Parole Board. He has spent the last thirteen years in prison, and he is currently incarcerated at Saginaw Correctional Facility, located at Pierce Rd., Freeland, Michigan 48623.

15. Lonnell Haywood – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



Lonnell Haywood was automatically transferred into the adult criminal justice system when he was fifteen years old and tried for the crime of premeditated murder. Following his conviction on August 10, 1999, he received a mandatory sentence of life in prison. Because of his conviction and sentence, Lonnell can never be considered for parole by the Michigan Parole Board. Lonnell has spent the last thirteen years of his life behind bars and has obtained his GED through self-study. He is currently serving his sentence at Lakeland Correctional Facility, located at 141 First St., Coldwater, Michigan 49036.

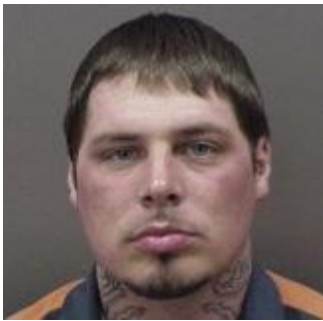
16. Christopher Hynes – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



Christopher Hynes had just turned sixteen when he was charged with first-degree murder. He was tried and sentenced as an adult, and on September 13, 1999, he received the mandatory sentence of life in prison. Because of his conviction and sentence, Christopher can never be considered for parole by the Michigan Parole Board. To date, Christopher has spent almost

thirteen years in prison. He is currently incarcerated at G. Robert Cotton Correctional Facility, located at 3500 N. Elm Road, Jackson, Michigan 49201.

17. Ryan Kendrick – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Ryan Kendrick was sixteen years old when he was tried as an adult, convicted and sentenced to mandatory life in prison on July 19, 2000, for his participation in a homicide. Because of his conviction and sentence, Ryan can never be considered for parole by the Michigan Parole Board. Ryan has been in prison for the last twelve years, and he is currently being held at Thumb Correctional Facility, located at 3225 John Conley Drive, Lapeer, Michigan 48446.

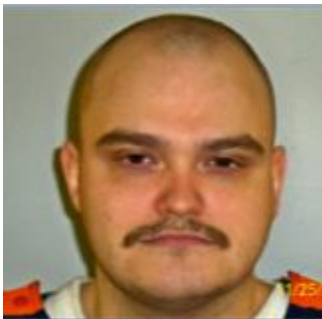
18. Cedric King – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Cedric King was fourteen years old when he was charged as an adult with conspiracy to commit murder. Cedric has a learning disability and can neither read nor write. At the time that

Cedric was tried, convicted, and sentenced to life in prison, in 1998, he had only completed a sixth grade education. Although his record indicates that he is serving a sentence of life in prison without the possibility of parole, the judge who sentenced him has twice written the Department of Corrections to inform them that he had sentenced Cedric to a parole-eligible life sentence. Because of his life without possibility of parole sentence, Cedric has been denied access to GED programs and rehabilitative services. He has spent almost fourteen years in prison, and is currently incarcerated at Baraga Maximum Facility, located at 13924 Wadaga Road, Baraga, Michigan 49908.

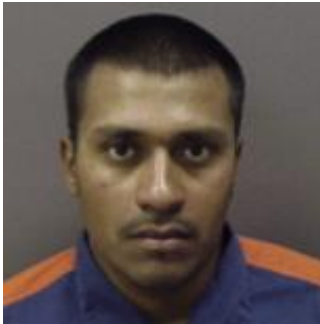
19. Eric Latimer – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



On July 24, 2000, sixteen-year-old Eric Latimer killed his adoptive father. Months before the murder he had been hospitalized for emotional problems related to issues he had with his father, but was discharged less than a day later because he lacked funds to pay for necessary treatment. Despite his age, emotional problems, developmental disabilities and I.Q. scores suggesting mental retardation, Eric was sentenced to mandatory life in prison. Because of Eric's conviction and sentence on a first-degree murder charge, he can never be considered for parole by the Michigan Parole Board. Eric has spent most of his time in prison in a mental health unit and on suicide watch. He has been denied access to GED programs due to his sentence. He has

been imprisoned for ten years and is currently at the Baraga Maximum Facility, 301 Wadaga Road, Baraga, Michigan 49908.

20. Juan Nunez – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



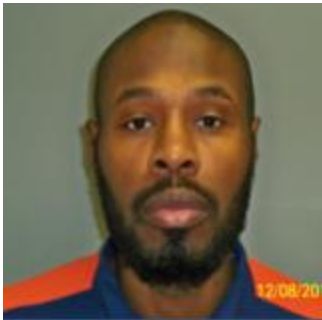
On September 17, 1997, sixteen-year-old Juan Nunez and three other teenagers committed an armed robbery that resulted in a homicide. Juan was tried as an adult, convicted of first-degree felony murder, and sentenced to mandatory life in prison on April 20, 1998. Because of his conviction and sentence, Juan can never be considered for parole by the Michigan Parole Board. Juan has been denied access to counseling and rehabilitative services because his facility restricts those programs to individuals scheduled for release within two years. Juan has served fourteen years in prison and is at the Alger Maximum Correctional Facility, Industrial Park Drive, P.O. Box 600, Munising, Michigan 49862.

21. Sharon Patterson - *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Sharon Patterson was sixteen and had no prior juvenile or adult criminal record when she was tried as an adult and convicted of first-degree murder. She was given the mandatory sentence of life in prison on April 13, 2004. Because of her conviction and sentence Sharon can never be considered for release by the Michigan Parole Board. Sharon has spent eight years in prison, where she has received her GED and completed Alcoholics Anonymous and Narcotics Anonymous courses. Sharon is currently at the Women's Huron Valley Correctional Facility, 3201 Bemis Road, Ypsilanti, Michigan 48197.

22. Gregory Petty - (*Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme*)



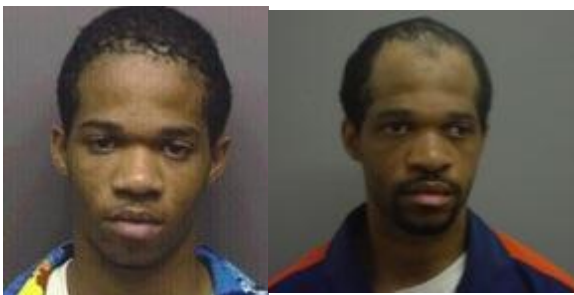
On July 19, 1998, fifteen-year-old Gregory Petty and his twelve-year-old friend tried to rob a man on their bicycles. His friend shot the man, and Gregory was tried as an adult for first-degree felony murder. On March 12, 1999, Gregory was given a mandatory sentence of life in prison. Because of his conviction and sentence Gregory can never be considered for release by the Michigan Parole Board. Gregory has now spent thirteen years in prison at the Baraga Maximum Correctional Facility, 301 Wadaga Road, Baraga, Michigan 49908.

23. Tyrone Reyes – (*Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme*)



Tyrone Reyes was sixteen years old and under the influence of both alcohol and marijuana when he, his older brother, and four friends attacked another group of teenagers and killed one of them. Tyrone was on suicide watch until his trial. He was charged and tried as an adult on a first-degree murder charge and on May 14, 1998, he was sentenced to mandatory life in prison. Because of his conviction and sentence Tyrone can never be considered for release by the Michigan Parole Board. During his fourteen years in prison, Tyrone has received his GED and completed Alcoholics Anonymous and Narcotics Anonymous courses, but has been denied access to rehabilitative services due to his sentence. Tyrone is imprisoned at the Alger Maximum Correctional Facility, Industrial Park Drive, P.O. Box 600, Munising, Michigan 49862.

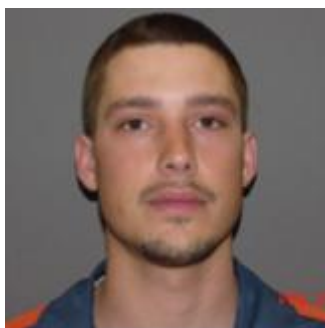
24. Kevin Robinson – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



Kevin Robinson’s I.Q. indicates educable mental impairment, but despite this he never received any psychological, mental health, or special education counseling while growing up. On August 30, 2000, when Kevin was fifteen years old, he and four friends committed a robbery.

One of Kevin's friends shot and killed a man during the robbery. Kevin, who never even touched the gun or shot anyone, received the same mandatory sentence of life in prison as the shooter, while their three accomplices pled guilty to second-degree murder and received sentences with minimums ranging from twenty-one to thirty years. Because of his conviction and sentence on the first-degree felony murder charge, Kevin can never be considered for release by the Michigan Parole Board. Kevin's mental problems have continued since his incarceration. He has spent much of his time in prison on suicide watch and has been denied rehabilitative services due to his sentence. Kevin has spent eleven years in prison and is at the Gus Harrison Correctional Facility, 2727 East Beecher St., Adrian, Michigan 49221.

25. T.J. Tremble – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



T.J. Tremble was fourteen years old when he was arrested for and charged with first-degree murder. After being questioned for five hours beginning at 3:00 a.m., he confessed, without counsel or parents present, to the murder charge. He was tried as an adult, convicted, and received a mandatory sentence of life in prison on December 5, 1997. State appellate courts rejected T.J.'s challenge that his confession was involuntary, stating that T.J. did not ask for an attorney. The court also rejected his challenge to the constitutionality of his having been automatically tried and sentenced as an adult. In September 2010, a federal court overturned his conviction based on the circumstances surrounding his confession. He remains incarcerated

pending an appeal by the Michigan Attorney General. Pending the outcome of his appeal, however, because of his conviction and sentence, T.J. can never be considered for release by the Michigan Parole Board. During his time in prison, T.J. has earned his GED through self-study. T.J. has served fourteen years in prison and is currently held at the Bellamy Creek Correctional Facility, 1727 W. Bluewater Highway, Ionia, Michigan 48846.

26. Marlon Walker – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



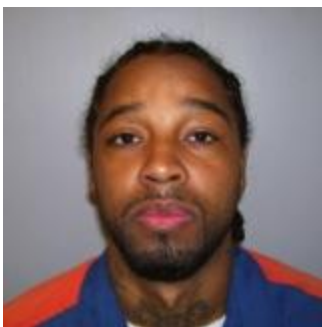
Marlon Walker was sixteen years old when he committed robbery and homicide. Despite learning disabilities, a dysfunctional family history, drug use since the age of eleven, and mental immaturity, Marlon was tried and sentenced as an adult, and received a mandatory sentence of life in prison on August 15, 2001. Because of his conviction and sentence Marlon can never be considered for release by the Michigan Parole Board. During his incarceration, Marlon has maintained his relationship with his two daughters and has earned his GED through self-study. His life without parole sentence makes him ineligible for further educational and rehabilitative opportunities. Marlon has spent eleven years in prison and is currently held at the Lakeland Correctional Facility, located at 141 First St., Coldwater, Michigan 49036.

27. Oliver Webb – *(Charged, Tried, Convicted and Sentenced under Michigan’s Post-1996 Sentencing Scheme)*



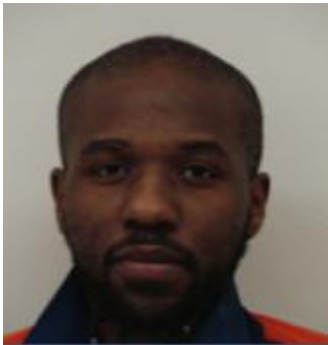
Oliver Webb was sixteen years old when he shot and killed another teenager during a fight over Oliver's girlfriend. Oliver was in the ninth grade, attended special education classes and had been diagnosed as emotionally impaired. Oliver had a troubled childhood after being kidnapped by his father and then by his mother and being sexually assaulted by a neighbor at the age of eight. At age fourteen, Oliver attempted suicide. None of this was considered when he was tried and sentenced as an adult on a first-degree murder charge. On May 6, 1999, he was given a mandatory sentence of life in prison. Because of his conviction and sentence Oliver can never be considered for release by the Michigan Parole Board. In prison, Oliver has been denied access to educational and rehabilitative services because of his sentence. Oliver has served thirteen years in prison and is held at the Chippewa Correctional Facility, 269 W. M-80, Kincheloe, Michigan 49784.

28. Elliot Whittington – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



On November 10, 1998, Elliot Whittington was convicted of a double homicide and received a mandatory sentence of life in prison. Because of his conviction and sentence Elliot can never be considered for release by the Michigan Parole Board. The eighteen-year-old charged as his accomplice was also sentenced to life, but will be parole-eligible after serving twenty years. Elliot has served thirteen years in prison to-date and has been denied rehabilitative programs because of his sentence. He is currently held at the Richard A. Handlon Correctional Facility, 1728 Bluewater Highway, Ionia, Michigan 48846.

29. Shytour Williams – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



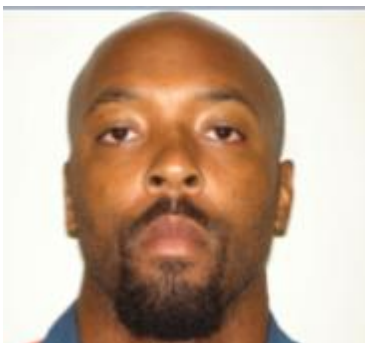
Shytour Williams was fifteen years old when he was charged and tried as an adult for his involvement in a carjacking and murder with his older cousin. On November 5, 1997, he received the mandatory sentence of life in prison on this first-degree murder charge, the same sentence as his adult cousin, who was the main perpetrator of the crimes and who committed the murder. Because of his conviction and sentence Shytour can never be considered for release by the Michigan Parole Board. Shytour has currently served fourteen years in prison and is held at the Kinross Correctional Facility, 16770 S. Watertower Drive, Kincheloe, Michigan 49788.

30. Ahmad Williams – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



Ahmad Williams was fifteen years old when he killed another teenager during a fight. Although the trial judge refused to sentence Ahmad to a mandatory sentence of life in prison for the first-degree murder charge the judge's decision was overturned on appeal. On July 28, 2002, the appellate court sentenced Ahmad to the mandatory sentence of life in prison. Because of his conviction and sentence Ahmad can never be considered for release by the Michigan Parole Board. In prison, although Ahmed was not required to attend Alcoholics Anonymous or Narcotics Anonymous courses, he enrolled nonetheless simply to give him something to do and to keep his mind active. His life sentence without the possibility of parole makes him ineligible for other educational and rehabilitative programs. Ahmad has currently served ten years in prison and is held at the Chippewa Correctional Facility, 269 W. M-80, Kincheloe, Michigan 49784.

31. Leon Williams – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



On November 16, 2000, sixteen-year-old Leon Williams was convicted as an adult for armed robbery and murder. Leon received the mandatory sentence for these crimes, life in prison. Because of his conviction and sentence Leon can never be considered for release by the Michigan Parole Board. Leon's challenges to his automatic treatment as an adult were rejected by the appellate courts. During his ten years in prison, Leon has been denied rehabilitative services because of his sentence. Leon is held at the Marquette Branch Prison, 1960 U.S. Hwy. 41 South, Marquette, Michigan 49855.

32. Johnny Williams – *(Charged, Tried, Convicted and Sentenced under Michigan's Post-1996 Sentencing Scheme)*



Johnny Williams was sixteen years old when he was convicted of shooting and killing a man in a drug house. Johnny was charged, tried, and convicted as an adult and thereafter sentenced on April 4, 2005, to mandatory life in prison on his first-degree murder charge. Because of his conviction and sentence Johnny can never be considered for release by the Michigan Parole Board. Johnny has served seven years in prison to-date, without access to rehabilitative programs. He is at the Alger Maximum Correctional Facility, Industrial Park Drive, P.O. Box 600, Munising, Michigan 49862.

B. PATTERN AND PRACTICE OF LIFE WITHOUT PAROLE SENTENCING FOR CHILDREN IN THE UNITED STATES

The United States is the only nation in the world that imposes the sentence of life

imprisonment without the possibility of release on children.³⁰ This section describes national trends and developments in sentencing children to life without parole in the United States, details the evolution of the statutory framework for life without parole sentences for children in the State of Michigan, and concludes by describing the impact of a recent decision of the U.S. Supreme Court, *Miller v. Alabama*, on that framework.

1. National Context of Life Without Parole Sentences for Children

In the United States, there are currently approximately 2,500 individuals serving life sentences for crimes committed when they were below eighteen years of age.³¹ Forty-five states have laws on their books that allow for children to be prosecuted in adult courts and subjected to adult sentences.³² The procedures differ from state to state, but they all stand in stark contrast to the special measures of protection states provide to children in the civil law arena. For example, children cannot legally consume alcohol, serve on juries, vote, sign a contract, or be drafted into the military, because they are presumed not to have the capacity to handle adult responsibilities. Nor can they live away from their parents, drive, or leave school, prior to the age of sixteen.

The sharp contrast between recognizing and respecting children's need for special protection in the civil arena and ignoring these considerations in the criminal context emerged relatively recently in the United States. Before the 1980s, children accused of crimes were tried,

³⁰ See *Cruel and Unusual*, *supra* note 5; see also Brief for Amnesty International, et al. as Amici Curiae Supporting Petitioners at 16 - 20, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647). For purposes of this Petition a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." See United Nations Convention on the Rights of the Child, art. 1, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sep. 2, 1990).

³¹ See, e.g., *Miller v. Alabama*, *supra* note 3 ("The parties agree that nearly 2,500 prisoners are presently serving life sentences without the possibility of parole for murders they committed before the age of 18."); *State Distribution of Youth Offenders Serving Juvenile Life Without Parole*, *supra* note 3; Human Rights Watch & Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 25, available at <http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> (at least 2,225 as of 2004).

³² *Cruel and Unusual*, *supra* note 5, at 53.

almost exclusively, in juvenile courts.³³ A child could be transferred to an adult court only if a judge held a judicial waiver hearing and determined that transfer served the best interests of the child and the public.³⁴ In the 1990s, however, fueled by reports of increasing rates of violent crime committed by children and political and media portrayals of these young criminals as “superpredators”—a phenomenon recently rejected by the criminologist who first developed the theory³⁵—many states began to adopt new laws restricting the availability of juvenile courts to children, and thus increasing the likelihood of their being tried and sentenced as if they were adults.³⁶ New laws also imposed longer and harsher punishments for crimes committed by children.³⁷

Across the U.S., states adopted three types of legislation that resulted in harsher penalties for children: (1) laws requiring juveniles to be tried in adult courts based on age and nature of the offense; (2) laws granting discretion to prosecutors to file charges involving specified crimes committed by children directly in adult courts without judicial waiver proceedings; and (3) laws lowering the age at which child offenders are subject to adult prosecution. The result of this framework was a steady increase in the proportion of children receiving the adult sentence of life without the possibility of parole, despite the decrease in the number of children being convicted

³³ David Tannenhaus & Steven Drizin, “Owing to the Extreme Youth of the Accused”: *The Changing Legal Response to Juvenile Homicide*, 92 J. Crim L. & Criminology 641 (Spring 2002).

³⁴ *Kent v. United States*, 383 U.S. 541 (1966).

³⁵ See, Brief for Fagan et al. as Amici Curiae Supporting Petitioners, *Miller v. Alabama*, 132 S. Ct. 2455, 2477 (2012) (Nos. 10-9647 and 10-9646) (noting that “Amici [including the scholar who originated the term, “superpredator”] have been unable to identify any scholarly research published in the last decade that provides support for the notion of the juvenile superpredator, and the scholar credited with originating that term has acknowledged that his characterizations and predictions were wrong ...”).

³⁶ Gerard Rainville & Steven Smith, U.S. Dep’t of Justice, *Juvenile Felony Defendants in Criminal Courts* (May 2003), Nat’l Crim. Justice Reference Service, NCJ 197961, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jfdcc98.pdf>; Bureau of Justice Statistics, Nat’l Corr. Reporting Program (2003), available at <http://www.ojp.usdoj.gov/bjs/abstract/jfdcc98.htm>.

³⁷ Patrick Griffin, Patricia Torbet & Linda Szymanski, Nat’l Ctr. for Juvenile Justice & Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice, *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions* (Dec. 1998), Nat’l Crim. Justice Reference Service, NCJ 172836, available at <https://www.ncjrs.gov/pdffiles/172836.pdf>.

of homicide.³⁸

Laws giving effect to these three laws and policies varied from state to state, resulting in a complete lack of uniformity in application and enforcement around the country. The particular law in effect in the state in which a child is tried thus determines whether he or she may face a life without parole sentence.³⁹ Different state laws also determine if a hearing is held to consider whether a child should be subject to adult court jurisdiction; whether a prosecutor can unilaterally decide that a child will be tried as if he or she were an adult; whether the law protects children under a certain age from prosecution as if they were adults; or whether children of any age can be subject to adult prosecution without any consideration of their child status.

While many states have withdrawn the special protections the juvenile justice system previously afforded children accused of certain crimes through a patchwork of legislation, the U.S. Supreme Court has recently moved toward recognizing children's lessened culpability as compared to adults, their uniquely vulnerable status, and their broad potential for rehabilitation. Still, the Court has fallen short of recognizing the international prohibition on life without parole sentences for children.

The first in the recent trio of cases recognizing the special status of children in the context of criminal sentencing was the 2005 case *Roper v. Simmons*. In that case, the Supreme Court recognized that because of the diminished culpability of children and the malleable nature of their character traits, it was inappropriate to sentence them to a punishment as severe as the death

³⁸ *The Rest of Their Lives*, *supra* note 31, § I (Introduction) (The percent of youth sentenced to life without parole rose from 2.9% to 9.1%, while youth murder convictions decreased from 2,234 in 1990 to 1,006 in 2000).

³⁹ Some states do not have life without parole sentences and some do not allow juveniles to be sentenced to life without parole, while others permit the sentence to be imposed on juveniles of any age or have a minimum age that can range between eight and 16 years old. See Univ. of S.F. Sch. of Law, Project to End Juvenile Life Without Parole, *State-By-State Legal Resource Guide*, http://www.usfca.edu/law/jlwop/resource_guide (last updated July 5, 2012); see also ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons 3* (2004) [hereinafter *Second Chances*], available at <http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf>.

penalty.⁴⁰ In 2010, in *Graham v. Florida*, the U.S. Supreme Court applied the same reasoning to declare unconstitutional the imposition of life without parole sentences on children who commit non-homicide offenses.⁴¹ And, this year, in *Miller v. Alabama*, the Court struck down as “cruel and unusual” punishment the imposition of *mandatory* life without parole sentences on children for any crime. Prior to *Miller*, twenty-eight states, including Michigan, authorized the trial of children as adults and the imposition of mandatory life without parole sentences upon conviction for certain enumerated crimes.⁴²

Notably, *Miller* did not adopt a categorical ban on life without parole sentences for children. Thus, while many of the individuals who were sentenced to life without the possibility of parole for crimes that occurred before they turned eighteen may have the opportunity to be resentenced in light of *Miller*, U.S. courts are still free to impose the same life sentence on rehearing.⁴³ As the Supreme Court has noted, the decision in *Miller* “mandates only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.”⁴⁴ Thus, despite *Miller*, states remain free to continue the use of sentencing schemes that impose life without parole sentences on children in violation of the international prohibition of such sentences.

⁴⁰ *Roper v. Simmons*, 543 U.S. 551, 568-69 (2005).

⁴¹ *Graham v. Florida*, *supra* note 6.

⁴² *Miller v. Alabama*, *supra* note 3.

⁴³ *Id.* at 2469,

We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. *Cf. Graham*, 560 U.S., at —, 130 S. Ct., at 2030 (‘A State is not required to guarantee eventual freedom,’ but must provide ‘some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation’). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson’s and Miller’s alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. 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.”).

⁴⁴ *Id.* at 2471.

2. Michigan's Criminal Law and Practices

Presently, in the State of Michigan, 362 individuals are serving life sentences without the possibility of parole for crimes they committed as children, the second-largest number in the United States. Michigan's laws governing the trial and sentencing of child offenders as if they were adults have evolved in line with national trends, and can be broadly categorized under three distinct sentencing schemes that reflect the categories discussed in the previous section:

(a) Pre-1988 Michigan Sentencing Scheme: *Seventeen-Year-Olds Treated as Adults Without Consideration of Youth Status and Judicial Waiver Hearings for Fifteen and Sixteen-Year-Olds*

Prior to 1988, when a child under the age of seventeen was accused of a homicide offense, charges were filed in juvenile court. If the child was fifteen or sixteen years old, a prosecutor could request that the juvenile court waive its jurisdiction and transfer the case to the circuit court where the child would be tried and sentenced as an adult. No child under fifteen years of age could be subject to this judicial waiver procedure.⁴⁵ The judicial waiver process applicable to fifteen and sixteen-year-olds required the court to conduct a hearing to determine whether waiver would serve the best interests of the child and the public.⁴⁶ If a child was transferred to adult court following a waiver hearing and convicted of a homicide offense,⁴⁷ including felony murder or aiding and abetting murder, the judge was required to sentence the child to imprisonment for life in an adult prison. Once convicted and sentenced on a first-degree murder charge, under Michigan law, an individual is not eligible for parole consideration.⁴⁸ Under this regime, the prevalence of non-parole eligible life sentences, which could be imposed only if a child was waived by a judge into adult court, was relatively low.

⁴⁵ Mich. Comp. Laws 712A.4 (1972).

⁴⁶ Mich. Comp. Laws Ann. § 712A.4, *supra* note 10.

⁴⁷ Mich. Comp. Laws 750.316.

⁴⁸ Mich. Comp. Laws. § 791.234(6) (prohibiting the Michigan Parole Board from considering the case of any individual who has been convicted and sentenced of first-degree murder)

(b) 1998-1996 Michigan Sentencing Scheme: *Automatic Waivers Adopted, Prosecutors Given Authority to Determine Venues for the Prosecution of Fifteen and Sixteen-Year-Olds, and Limited Judicial Discretion Regarding Sentencing*

In 1988, the juvenile statutes were amended, eliminating the requirement of judicial waiver hearings prior to charging child offenders in adult criminal courts. This amendment permitted a prosecutor, at his/her own discretion, to bypass the juvenile court system entirely for certain specified crimes, and to file charges in adult court against children who were fifteen or sixteen years old.⁴⁹ Juvenile court judges no longer had authority to evaluate each child's capacity to stand trial as an adult, and no waiver hearings were required before a prosecutor could charge and try a child as if he or she was an adult. After conviction, however, child offenders were entitled to a hearing to determine whether juvenile or adult sentencing would best serve the interests of the child and the public.⁵⁰

After 1988, children aged fifteen-seventeen who were automatically charged, tried, and convicted as adults for homicide related offenses faced two limited and starkly divergent punishment options: the court could either sentence the child as an adult with a mandatory punishment of incarceration for life, or sentence the child as a juvenile, which meant release at age twenty-one. As under the Pre-1998 Michigan Sentencing Scheme, once convicted and sentenced on a first-degree murder charge, under Michigan law, an individual is not eligible for parole consideration.⁵¹ The number of life sentences imposed on children who committed crimes between 1988 and 1996 rose to eighteen percent of juvenile homicide cases committed during

⁴⁹ Mich. Comp. Laws Ann. § 750.316 (requiring life without parole for willful, deliberated and premeditated killing, murder committed in the perpetration or attempted perpetration of certain felonies and the murder of a peace or corrections officer); 767.39 (requiring that every person who “procures, counsels, aids, or abets in [the commission of a crime] shall be punished as if he had directly committed such offense”).

⁵⁰ Mich. Comp. Laws Ann. § 764.1f, *supra* note 18.

⁵¹ Mich. Comp. Laws § 750.316(1), 791.234(6), *supra* note 14.

that period (up from 7.5 percent between 1975 and 1987).⁵²

(c) Post-1996 Sentencing Scheme: *Extending Prosecutorial Discretion to Include Fourteen-Year-Olds and Instituting Mandatory Adult Sentencing for Children who Commit Certain Crimes*

In 1996, the juvenile statutes were again amended to expand the waiver of children to adult court to include fourteen-year-olds. From 1996 to 2012, all children between the ages of fourteen and eighteen who were accused of homicide offenses, at the prosecutor's sole discretion, could be charged and tried as if they were adults.⁵³ The 1996 amendments took away the limited discretion judges had to sentence children tried as adults to juvenile punishments, making an adult sentence mandatory for all children charged and tried as adults for certain crimes, including homicide offenses.⁵⁴ Under this legislative scheme, a child as young as fourteen could be charged, tried, sentenced, and incarcerated in an adult prison for life without any evaluation or assessment of how age or individual circumstances may have affected culpability, rehabilitative capacity, cognitive ability, or public safety concerns. As under the two prior statutory schemes, under the Post-1996 Michigan Sentencing Scheme, conviction and sentence on a first-degree murder charge makes an individual ineligible for parole consideration.⁵⁵ From 1997 to 2001, 23.5 percent of juvenile homicide cases resulted in life without parole sentences.⁵⁶

Legislative efforts in Michigan to amend this sentencing scheme and prohibit life without parole sentences for children have stalled. In the most recent effort, a 2008 bill prohibiting life without parole sentences for children was approved in one chamber of the Michigan legislature,

⁵² *Second Chances*, *supra* note 39, at 10.

⁵³ Mich. Comp. Laws 764.1(f)(1).

⁵⁴ Mich. Comp. Laws 769.1(i).

⁵⁵ Mich. Comp. Laws § 750.316(1), 791.234(6), *supra* note 14.

⁵⁶ *Second Chances*, *supra* note 39, at 10.

but was never put to a vote in the other.⁵⁷

(d) The Impact of the U.S. Supreme Court Decision in *Miller v. Alabama* on Michigan Law

Because Michigan's Post-1996 Sentencing Scheme does not allow for judicial consideration of "youth (and all that accompanies it)" when condemning children to spend the rest of their natural lives in prison, Michigan's mandatory life without parole sentencing scheme was struck down by the U.S. Supreme Court in *Miller*, at least for children who may be sentenced in the future.⁵⁸ The impact the decision will have on the thirty-two Petitioners is unclear.

Presently, no substantive consensus exists on whether *Miller* has a retroactive effect; nor is there any national agreement on whether the issue is one that should be resolved by U.S. courts or by state legislatures. The question has gone before the Michigan legislature, where the state's Attorney General has taken the position that *Miller* should not be applied retroactively.⁵⁹

The question of retroactivity aside, the *Miller* decision leaves unchanged Michigan's policy of depriving children of the protections of the juvenile justice system by waiving them into adult criminal courts at the sole discretion of prosecutors.⁶⁰ The unfettered discretion vested in Michigan prosecutors is particularly troubling given the racial disparities that have emerged. As of March 2012, there were 362 juvenile offenders serving life without parole sentences. The majority of children (261) serving life without parole sentences are minorities, and 248, or 69

⁵⁷ Second Chances 4 Youth & ACLU of Michigan, *Basic Decency* 1 (2012) [hereinafter *Basic Decency*], available at <http://www.scribd.com/doc/93527377/Basic-Decency>.

⁵⁸ See, e.g., *Miller v. Alabama*, *supra* note 3.

⁵⁹ Michigan State Appellate Defender's Office, *Retroactive? State Unites Debate Juvenile Lifers Decision* (July 18, 2012), available at www.sado.org/content/pub/10058_MIRS-7-18-2012.pdf. See also Randy Wood, *Schuetz, Worthy Ask Michigan Supreme Court to Respect Crime Victims with Review of U.S. Supreme Court Ruling Addressing Life Sentences for Teenage Murderers*, Michigan.gov: Safety and Security (July 31, 2012), available at <http://www.michigan.gov/som/0,4669,7-192-29941-283509--,00.html>.

⁶⁰ See *Miller v. Alabama*, *supra* note 3 (noting that some states give prosecutors discretion to decide whether to charge a child in juvenile court or in adult court).

percent of them, are African-American.⁶¹ Yet, African-Americans account for only 15 percent of Michigan's youth population.⁶²

Nor does the *Miller* decision prohibit, or even limit, Michigan's policy and practice of sentencing children to imprisonment in adult prisons. In Michigan, children sentenced as adults are routinely sent to adult prisons at the age of fourteen. Once incarcerated there, children face a much greater risk of physical violence and sexual abuse, are deprived of access to special services designed to educate and rehabilitate youth, and are denied age-specific medical and mental health treatment.⁶³

III. APPLICABLE LEGAL STANDARDS

A. THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN

1. Application to the United States of America

The Charter of the Organization of American States ("OAS Charter") and the American Declaration establish the human rights standards applicable in this case. Signatories to the OAS Charter, including the United States, are bound by its provisions,⁶⁴ and the OAS General Assembly has repeatedly recognized the American Declaration as a source of international legal

⁶¹ Barnes, *Judgment Day for Michigan's Juvenile Lifers*, *supra* note 4.

⁶² *Second Chances*, *supra* note 39, at 6.

⁶³ Forst, Fagan and Vivona, *Youth in Prisons and State Training Schools*, 39 *Juvenile and Family Court Journal* 1-14 (1989); *No Escape: Male Rape in U.S. Prisons*, Human Rights Watch (Apr. 2001), available at <http://www.hrw.org/reports/2001/prison/report.html>.

⁶⁴ Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951) (ratified by the United States June 15, 1951); amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A (entered into force Feb. 27, 1970); amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527 (entered into force Nov. 16, 1988); amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005 (entered into force Sept. 25, 1997); amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009 (entered into force Jan. 29, 1996). See also *Roach v. United States*, Case 9647, Inter-Am. Comm'n H.R., Res. No. 3/87, OEA/Ser.L/V/II.71, doc. 9 rev.1, ¶ 46 (1987) (finding that because the United States is not a party to the American Convention the OAS Charter and American Declaration are a source of international obligation).

obligation for OAS Member States.⁶⁵ This principle has been affirmed by the Inter-American Court of Human Rights (“Inter-American Court”), which has found that the “Declaration contains and defines the fundamental human rights referred to in the Charter,”⁶⁶ and by the Inter-American Commission, which has recognized the American Declaration as a “source of international obligations” for OAS Member States.⁶⁷ The Commission has consistently asserted its general authority to “supervis[e] member states’ observance of human rights in the Hemisphere,” including those rights prescribed under the American Declaration, and specifically as against the United States.⁶⁸ Moreover, the Commission’s Statute and Rules of Procedure establish that the Commission is the body empowered to supervise OAS Member States’ compliance with the human rights norms contained in the OAS Charter and the American Declaration.⁶⁹

2. The Commission’s Interpretative Mandate

The Inter-American Court and the Commission have stated repeatedly that international

⁶⁵ See, e.g., OAS General Assembly Res. 314 (VII-0/77) (June 22, 1977) (charging the Inter-American Commission with the preparation of a study to “set forth their obligation to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man”).

⁶⁶ Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, ¶¶ 43, 45 (July 14, 1989) [hereinafter OC-10/89].

⁶⁷ See, e.g., *Hector Geronimo Lopez Aurelli* (Argentina), Case 9850, Inter-Am. Comm’n H.R., Report No. 74/90, OEA/Ser.L/V/II.79, doc 12, rev.1, ¶ III.6 (1991) (quoting OC-10/89, *supra* note 66, ¶ 45); see also Statute of the Inter-American Commission on Human Rights, art. 20; *Dann v. United States*, Case 11.140, Inter-Am. Comm’n H.R., Report No. 75/02, OEA/Serv.L./V/II.117, doc. 1 rev. 1, ¶ 163 (2002).

⁶⁸ Request for Precautionary Measures Concerning the Detainees at Guantanamo Bay, Cuba, Inter-Am. Comm’n H.R. decision of Mar. 12, 2002, 41 ILM 532, at 2 (2002). See also *Roach v. United States*, *supra* note 64, ¶¶ 46-49 (affirming that, pursuant to the Commission’s statute, the Commission “is the organ of the OAS entrusted with the competence to promote the observance of and respect for human rights”).

⁶⁹ See Statute of the Inter-American Commission on Human Rights, arts. 18, 20, Res No. 447 (1979) (directing the Commission to receive, examine, and make recommendations concerning alleged human rights violations committed by any OAS member state, and “to pay particular attention” to the observance of certain key provisions of the American Declaration by states that are not party to the American Convention); Rules of Procedure of the Inter-American Commission on Human Rights, art. 23 (“[a]ny person . . . legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission . . . concerning alleged violations of a human right recognized in . . . the American Declaration of the Rights and Duties of Man,”) and arts. 49 and 50 (confirming that such petitions may contain denunciations of alleged human rights violations by OAS member states that are not parties to the American Convention on Human Rights).

human rights instruments must be interpreted in light of the evolving norms of human rights law expressed in the domestic, regional, and international contexts.⁷⁰ In considering the relationship between the American Declaration and the American Convention on Human Rights (“American Convention”), the Inter-American Court held that:

to determine the legal status of the American Declaration it is appropriate to look to the Inter-American system of today in light of the evolution it has undergone since the adoption of the Declaration, rather than to examine the normative value and significance which that instrument was believed to have had in 1948.⁷¹

In 1999, the Court reasserted the importance of maintaining an “evolutive interpretation” of international human rights instruments under the general rules of treaty interpretation established in the 1969 Vienna Convention.⁷² The Commission, too, has embraced this general interpretative principle, and specifically in relation to the American Declaration. For example, in the *John Doe v. Canada* case, the Commission affirmed that:

[a]ccording to the jurisprudence of the inter-American human rights system, the provisions of its governing instruments—including the American Declaration—should be interpreted and applied in the context of developments in the field of international human rights law since those instruments were first composed, and with due regard to other relevant rules of international law applicable to Member States against which complaints of human rights violations are properly lodged.⁷³

Adopting this interpretative approach, the Commission has looked to numerous international and regional treaties as well as decisions of international bodies and customary international law to

⁷⁰ See, e.g., Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 16, 53 (June 21) (“an international instrument must be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.”).

⁷¹ OC-10/89, *supra* note 66, ¶ 37.

⁷² The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A) No. 16, ¶¶ 114-15 (Oct. 1, 1999) (citing, inter alia, the decisions of the European Court of Human Rights in *Tryer v. United Kingdom* (1978), *Marckx v. Belgium* (1979), and *Louizidou v. Turkey* (1995)); see also Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 120 (Sept. 17, 2003) [hereinafter OC-18/03] (citing Advisory Opinion OC-16/99).

⁷³ *Doe v. Canada*, Case 12.586, Inter-Am. Comm’n H.R., Report No. 78/11, ¶ 70 (2011).

interpret rights under the American Declaration.⁷⁴

Significantly for this case, the Court has determined that the U.N. Convention on the Rights of the Child (“CRC”), having been ratified by every OAS Member State except the United States, should be taken into consideration in interpreting provisions of the American Convention:⁷⁵

Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention.⁷⁶

Thus, the Commission should resort to specific provisions of the CRC to interpret the more general provisions of the Declaration in matters, such as this petition, concerning children’s rights.⁷⁷ The Court has also referenced other treaties and international instruments, including the International Covenant on Civil and Political Rights (“ICCPR”), and U.N. rules in interpreting provisions of the Convention and Declaration in cases regarding the proper treatment of children.⁷⁸ These same international laws and standards as well as state practice and customary

⁷⁴ See, e.g., *Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, ¶ 124 (2011) (looking to “General Assembly resolutions adopted by consensus, broadly-approved declarations and platforms, treaties, views from treaty bodies, custom, jurisprudence from the universal and regional systems, and other sources of international law” to define due diligence required by Articles I, II, and VII of the Declaration); Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.106, doc. 40 rev., ¶¶ 28, 159, 165 (Feb. 28, 2000) (referencing the U.N. Convention on the Rights of the Child to interpret Canada’s responsibilities to asylum seekers under the American Declaration and the OAS Charter); *Maya Indigenous Community v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1, ¶¶ 112-120, 163, 174 (2004) (referencing the American Convention, jurisprudence of the Inter-American Court, and the United Nations Convention on the Elimination of Racial Discrimination (CERD) to interpret the rights to property, equality before the law, and judicial protection for indigenous peoples contained in the American Declaration); *Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev., ¶54 (2001) (referring to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará) in determining Brazil’s obligations under the American Declaration to effectively prosecute domestic violence-related crimes); *Domingues v. United States*, Case 12.285, Inter-Am. Comm’n H.R., Report No. 62/02, ¶ 45 (2002).

⁷⁵ *Jailton v. Brazil*, Case 11.634, Inter-Am. Comm’n H.R., Report No. 33/04, ¶ 81 (2004).

⁷⁶ *Villagran-Morales v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶194 (Nov. 19, 1999) [hereinafter “Street Children Case”].

⁷⁷ Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17, ¶¶ 29-30 (Aug. 28, 2002) [hereinafter OC-17/02].

⁷⁸ *Case of the “Juvenile Re-education Institute” v. Paraguay*, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, 111 n.194 (Sept. 2, 2004).

international human rights law should also inform the Commission’s analysis in this case.

B. INTERNATIONAL LAW AND PRACTICE RELEVANT TO LIFE WITHOUT PAROLE SENTENCES FOR CHILDREN

A finding that the American Declaration should be interpreted to prohibit life without parole sentences for children is supported by international law and practice, as reflected in human rights treaties, numerous U.N resolutions, state practice and customary international law, all of which contain either explicit or implicit prohibitions against the practice.

1. Treaties and Other International Instruments Prohibit the Imposition of Life Sentences Without the Possibility of Release on Children

The international community has reflected its condemnation of sentences of life imprisonment without the possibility of release for persons who commit crimes below the age of eighteen in numerous treaties and other international instruments. The CRC explicitly prohibits imposing life sentences without the possibility of release for offenses committed by persons below eighteen years of age.⁷⁹ The CRC also requires that a State’s decision to incarcerate a child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”⁸⁰ A child who has committed a crime is to be treated in a manner that takes into account “the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”⁸¹ The CRC directs Member States to use a variety of measures to address the situation of children in conflict with the law, including “care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs; and other alternatives to institutional care.”⁸² The CRC also anticipates the need for

⁷⁹ CRC, *supra* note 30, at art. 37(a).

⁸⁰ CRC, *supra* note 30, at 37(b).

⁸¹ CRC, *supra* note 30, at 40.1.

⁸² CRC, *supra* note 30, at art. 40.4.

regular and accessible procedures in which a child can “challenge the legality of the deprivation of his or her liberty.”⁸³

The CRC has been accepted nearly universally, with 193 states having signed the treaty. None of the State parties has registered a reservation to the CRC’s prohibition on life imprisonment without release for children.⁸⁴ The United States, Somalia, and the new nation of South Sudan⁸⁵ are the only countries in the world that have not ratified the CRC, although the United States and Somalia have signed it.⁸⁶ As a signatory, the United States may not take actions that would defeat the object and purpose of the treaty.⁸⁷

The widespread ratification of the CRC demonstrates an international consensus against life without parole sentences for children. The imposition of such sentences is contrary to

⁸³ CRC, *supra* note 30, at art. 37(d).

⁸⁴ U.N.T.S., Convention on the Rights of the Child, Status of Ratification, Reservations and declarations, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Aug. 17, 2012). Malaysia registered a reservation to art. 37(a) as follows: “The Government of Malaysia. . . declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.” *Id.* The government of Myanmar made a broad objection to art. 37, which it later withdrew after other states protested. *Id.* The government of Singapore has maintained a declaration regarding art. 37. However, the declaration does not address the prohibition on life imprisonment without parole. Singapore’s declaration reads: “The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit – (a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedom of others; or (c) the judicious application of corporal punishment in the best interest of the child.” *Id.* A number of states (Germany: Sept. 4, 1996; Belgium: Sept. 26, 1996; Italy: Oct. 4, 1996; The Netherlands: Nov. 6, 1996; Norway: Nov. 29, 1996; Finland: Nov. 26, 1996; Portugal: Dec. 3, 1996; Sweden: Aug. 13, 1997) have interpreted the declaration as a reservation and objected to it as contrary to the object and purpose of the Convention. *Id.* In the *Roper* decision, the U.S. Supreme Court took special note of the fact that no State party to the CRC made a reservation to the prohibition against the juvenile death penalty contained in art. 37. *Roper v. Simmons*, *supra* note 40, at 1199.

⁸⁵ According to the U.N. agency for children, UNICEF, Somalia is currently unable to ratify the CRC because it lacks a recognized government. See UNICEF, *Frequently Asked Questions*, Convention on the Rights of the Child, http://www.unicef.org/crc/index_30229.html (last visited Aug. 14, 2012).

⁸⁶ The United States signed the CRC on Feb. 16, 1995, and Somalia signed on May 2, 2002.

⁸⁷ See Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980). Although the United States has signed but not ratified the Vienna Convention on the Law of Treaties, it regards this convention as “the authoritative guide to current treaty law and practice.” S. Exec. Doc. No. 92-L, at 1 (1971); Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 Am. J. Int’l L. 283, 283 (1985). The U.S. government has also accepted that it is bound by customary international law not to defeat a treaty’s object and purpose. See, e.g., Bill Gertz, *Albright Says U.S. Bound by Nuke Pact; Sends Letters to Nations Despite Senate Vote*, Washington Times, Nov. 2, 1999, at A1 (describing the Clinton administration’s acceptance of obligations under the Comprehensive Test Ban Treaty despite the Senate’s failure to ratify).

international law requiring criminal justice systems to consider both the offender's age and a child offender's unique capacity for change.

Although other international treaties do not contain an explicit prohibition against imposing life without parole sentences on children, they have been interpreted to condemn the practice. The Human Rights Committee has stated that the prohibition is incorporated in article 24(1) of the ICCPR, a treaty that the United States has signed and ratified.⁸⁸ The Committee Against Torture has found that the practice of sentencing children to life without parole may implicate article 16 (prohibition of cruel, inhuman or degrading treatment or punishment) of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), another treaty that the United States has signed and ratified.⁸⁹

Finally, the Committee on the Elimination of Racial Discrimination, in its review of U.S. compliance with the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), indicated that the imposition of life without parole sentences on children may implicate article 5(a) of the Convention and its guarantee of the "right to equal treatment before the tribunals and all other organs administering justice."⁹⁰ In particular, the Committee noted the "disproportionate imposition of life imprisonment without parole on young offenders – including

⁸⁸ International Covenant on Civil and Political Rights, art. 7, 10, 14 & 24, *opened for signature* Dec. 16, 1966, S, Treaty Doc. 95- 20 1992, 999 U.N.T.S. 171 (entered into force March 23, 1976) [hereinafter ICCPR]. *See* Human Rights Comm., Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, ¶ 34, U.N. Doc. CCPR/C/SR.2395, (July 27, 2006) (noting that "sentencing children to a life sentence without parole is of itself not in compliance with article 24(1) of the Covenant.") .

⁸⁹ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) [Hereinafter CAT]. *See* Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, ¶ 34, 36th Sess., May 1-19, 2006, U.N. Doc. CAT/USA/CO/2 (July 25, 2006) (finding that the practice of life without parole sentencing of children "could constitute cruel, inhuman or degrading treatment or punishment," in violation of the treaty) .

⁹⁰ United Nations Convention on the Elimination of all Forms of Racial Discrimination *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [Hereinafter CERD]. *See* Comm. on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 21, 72nd Sess., Feb. 18-Mar. 7, 2008, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008) (recommending that the United States "discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.") .

children – belonging to racial, ethnic and national minorities”⁹¹

Numerous U.N. Resolutions passed since 2006 also confirm that life without parole sentences for children are prohibited under international law. Both the U.N. General Assembly and Human Rights Council (as well as the former Human Rights Commission) have called on Member States to abolish sentences of life imprisonment without the possibility of release for offenses committed by children. Each year since 2006, the U.N. General Assembly has passed a resolution on the *Rights of the Child*, calling on Member States to abolish “life imprisonment without possibility of release for those under the age of eighteen years at the time of the commission of the offence.”⁹² The Human Rights Council has followed suit, calling for the abolishment of life without parole for children in two resolutions on *Human rights in the administration of justice, in particular juvenile justice*.⁹³ While the United States had dissented from a number of these resolutions, in 2009 and 2010 it joined the consensus.⁹⁴

At the regional level, similar calls for the abolition of life without parole sentences for children have been made. In his 2011 report on *Juvenile Justice and Human Rights in the Americas*, the Inter-American Commission’s Rapporteur on the Rights of the Child identified a trend among countries prohibiting not only life imprisonment without the possibility of release, as explicitly mandated by the CRC,⁹⁵ but all sentences of life imprisonment for children.⁹⁶ The

⁹¹ Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, *supra* note 90, ¶ 21.

⁹² See G.A. Res. 66/141, ¶ 19, U.N. Doc. A/RES/66/141 (April 4, 2012); G.A. Res. 65/197, ¶ 17, U.N. Doc. A/RES/65/197 (March 30, 2011); G.A. Res. 64/146, ¶ 15, U.N. Doc. A/RES/64/146 (March 3, 2010); G.A. Res. 63/241, ¶ 43(a), U.N. Doc. A/RES/63/241 (March 13, 2009); G.A. Res. 62/141, ¶ 36(a), U.N. Doc. A/RES/62/141 (Feb. 22, 2008); G.A. Res. 61/146, ¶ 31(a), U.N. Doc. A/Res/61/146 (Jan. 23, 2007). Human Rights Council Res. 18/12, Human rights in the administration of justice, in particular juvenile justice U.N. Doc. A/HRC/18/L.9, ¶ 13 (Sept. 29, 2011); Human Rights Council Res. 10/2, Human rights in the administration of justice, in particular juvenile justice, U.N. Doc. A/HRC/RES/10/2, ¶ 11 (Mar. 25, 2009).

⁹⁴ Brief for Amnesty International et al. as Amici Curiae Supporting Petitioners (No. 10-9646 and 10-9647), *supra* note 30, at 25.

⁹⁵ CRC, *supra* note 30, at art. 37(a) (“Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”).

Rapporteur found that “a sentence of life imprisonment for children under the age of eighteen makes it impossible to achieve the purposes that punishment under the juvenile justice system is intended to serve, such as the child’s rehabilitation and his or her reintegration into society.”⁹⁷

Accordingly, the Rapporteur “recommended to the States parties that they eliminate all forms of life imprisonment in the case of offenders under the age of 18.”⁹⁸

2. State Practice Prohibits the Imposition of Life Sentences Without the Possibility of Release on Children

A 2008 worldwide study of sentencing laws and practices found that few countries had ever sentenced any offender below the age of eighteen to life imprisonment without the possibility of release, that most countries had prohibited this sentence through domestic legislation and international treaty commitments, and that no country other than the United States was currently holding anyone who committed an offense below eighteen years of age for life without the possibility of release.⁹⁹ Recent updates indicate that laws in eight countries could conceivably permit the sentencing of children to life without release sentences,¹⁰⁰ and while four additional countries have domestic laws that might be construed to permit this sentence, none of these laws have been used by the countries that have them on the books.¹⁰¹ This near universal

⁹⁶ Inter-Am. Comm’n H.R., Rapporteurship on the Rights of the Child, *Juvenile Justice and Human Rights in the Americas*, ¶ 363, OEA/Ser.L/V/II Doc. 78 (July 13, 2011), available at <http://www.cidh.org/pdf%20files/JuvenileJusticecover.pdf>.

⁹⁷ *Id.* ¶ 364.

⁹⁸ *Id.* See also Inter-Am. Comm’n H.R., Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008), available at <http://www.cidh.org/basicos/english/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm> (Principle III recognizing that restrictions on the personal liberty of juveniles shall be imposed only after careful consideration and for the shortest time possible).

⁹⁹ See *Cruel and Unusual*, *supra* note 5.

¹⁰⁰ *Id.* at 61 n.427-28 (listing Antigua and Barbuda, Argentina, Australia, Cuba, Dominica, St Vincent and the Grenadines, the Solomon Islands and Sri Lanka).

¹⁰¹ *Id.* at 61 n.429 (listing Zambia, Sierra Leone, Tonga and the Bahamas). The study identified one prisoner in Argentina who may be serving a life without parole sentence for an offense that he committed as a child Brief for Amnesty International et al. as Amici Curiae Supporting Petitioners (No. 10-9646 and 10-9647), *supra* note 30, at 18 n.7 (No. 10-9646 and 10-9647). That individual is now a petitioner in a case that the Commission has recently

State practice against imposing the sentence, together with the international legal consensus condemning the practice, strongly supports a finding that the prohibition against imposing life imprisonment without the possibility of release sentences on persons who commit crimes below the age of eighteen constitutes not only customary international law but also a *jus cogens* norm.¹⁰²

Consistent with its interpretative mandate, the Commission can look to these sources of international law, standards and state practice to define the protections afforded to Petitioners by the provisions of the American Declaration cited in this case.

IV. VIOLATIONS OF THE AMERICAN DECLARATION AND LEGAL ANALYSIS

Petitioners were all under eighteen years old when they were charged, tried and sentenced as adults under Michigan criminal law and procedures. Each of them was sentenced to life imprisonment without the possibility of parole and is currently serving that sentence in adult prisons in the State of Michigan. Michigan's treatment of Petitioners implicates and violates numerous provisions of the American Declaration. Although no provision of the Declaration expressly prohibits imposing a life without possibility of parole sentence on a child, when read in conjunction with other articles of the Declaration in a manner consistent with the Commission's interpretative mandate, Article VII (which obligates Member States to afford special measures of protection to children who come into conflict with the law) prohibits the practice. Article VII

referred to the Inter-American Court. The Commission submitted the case, *Mendoza v. Argentina* (Perpetual imprisonment and confinement of adolescents), Case 12.651, to the Court on June 17, 2011.

¹⁰² See Brief for Amnesty International et al. as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010) (Nos. 08-7412 and 08-7621). See also *Domingues*, *supra* note 74, ¶ 45 (2002) (finding that that the prohibition against the juvenile death penalty had risen to the level of a *jus cogens* norm. In *Domingues*, the Commission considered the near-universal ratification of the CRC, without reservation to article 37(a), as "compelling evidence of a broad consensus on the part of the international community" against the juvenile death penalty. *Id.* The Commission concluded that the prohibition was a *jus cogens* norm where eight countries still permitted the practice, and only five currently used it. The prohibition of the imposition of life without parole sentences for children reaches this same level of universal application and thus also rises to the level of a *jus cogens* norm.).

prohibits the treatment of children as adults in the criminal justice system and, reflective of their status and lessened culpability for the crimes they commit as compared to adults, prevents courts from imposing adult sentences on them, including life sentences without the possibility of parole. This interpretation of Article VII is consistent with long recognized international law and practice. Indeed, as noted, *supra*, Part III.B.2, the prohibition is now so universally recognized that it forms part of customary international law, and one of a handful of *jus cogens* norms. Not only are such sentences prohibited by the Declaration, they are also condemned as a form of cruel, infamous, unusual or inhumane treatment under Articles I, XXV, and XXVI of the Declaration.

The manner in which children in Michigan are treated within the state’s criminal justice system and ultimately sentenced to life imprisonment without the possibility of parole also violates the due process guarantees of Articles XVIII, XXV, and XXVI. Finally, the imposition of life without parole sentences on children and the way these sentences have been — and continue to be — administered by the State of Michigan violate Article II (right to equality/freedom from discrimination) and Article XII (right to education) as well as the right to rehabilitation implicitly protected under Articles I and XVII of the American Declaration.

A. THE TREATMENT OF PETITIONERS WITHIN THE MICHIGAN CRIMINAL JUSTICE SYSTEM VIOLATES U.S. OBLIGATIONS UNDER THE AMERICAN DECLARATION

1. The Imposition of Petitioners’ Life Sentences Without Possibility of Parole Violate Their Right to Special Measures of Protection Guaranteed Under Article VII

Article VII of the American Declaration establishes that “all children have the right to special protection, care and aid.” The Inter-American system has long recognized that the right to special protection applies to children who come into conflict with the law. The Commission

has held that the obligation to provide special protection for children “includes ensuring the well-being of juvenile offenders and endeavor[ing] their rehabilitation.”¹⁰³ Thus, looking to the Inter-American Court’s jurisprudence and analysis of article 19 of the American Convention for guidance, the Commission has found that article VII of the American Declaration requires that “when the State apparatus has to intervene in offenses committed by minors, it should make substantial efforts to guarantee their rehabilitation in order to ‘allow them to play a constructive and productive role in society.’”¹⁰⁴

Article 19 of the American Convention establishes that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” According to the Inter-American Court, the special protection of children derives “from the specific situation of children, taking into account their weakness, immaturity or inexperience.”¹⁰⁵ The Court has explicitly extended this protection to child offenders, citing to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”).¹⁰⁶

The child’s right to special measures of protection when he or she comes into conflict with the law is well recognized under international law. For example, article 24 of the ICCPR

¹⁰³ *Domingues*, *supra* note 74, ¶ 83.

¹⁰⁴ *Id.* (citing *Street Children Case*, *supra* note 76, ¶197).

¹⁰⁵ OC-17/02, *supra* note 65, ¶ 60.

¹⁰⁶ *Street Children Case*, *supra* note 76, ¶ 197. *See also* Organization of American States, American Convention on Human Rights art 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1444 U.N.T.S. 123. (“American Convention”)(holding that “[p]unishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners”); United Nations Standard Minimum Rules for the Administration of Juvenile Justice Rule 26.1, G.A. Res. 40/33, U.N. Doc A/RES/40/33 (Nov. 29, 1985) [Hereinafter *The Beijing Rules*] (stating that the objectives of institutional treatment must be to “provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.”); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (hereafter “*Havana Rules*”), G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49. Rule 2 (1990), available at http://www2.ohchr.org/english/law/res45_113.htm (“Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.”).

provides that “[e]very child shall have . . . the right to such measures of special protection as are required by his status as a minor.” And, article 3 of the CRC provides that “[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration.”

Article 37(c) of the CRC specifically addresses the issue of special legal protections for children in conflict with the law, requiring that “[e]very child deprived of liberty shall be treated . . . in a manner which takes into account the needs of persons his or her age.” International standards also require that criminal justice systems promote and protect the well-being of children who commit crimes. These standards, while recognizing society’s interest in seeking justice, require that courts also give consideration to the particular needs and backgrounds of youthful offenders when handing down judgments.¹⁰⁷ Regard for the unique needs of children in conflict with the law is also reflected in numerous international laws and standards requiring that children be housed in separate facilities from adults and subjected to criminal procedure laws and practices that ensure considerations for their vulnerability, status and development.¹⁰⁸

Two of the most fundamental rights ascribed to children in the criminal justice system are (a) their right to be incarcerated for the shortest possible duration; and (b) their right to rehabilitation and reintegration into society. Both rights are violated by Michigan’s laws for

¹⁰⁷ The Beijing Rules, *supra* note 106, at Rule 5.1 (“The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence”); Rule 14.2 (requiring that court and other proceedings concerning a juvenile offender “be conducive to the best interests of the juvenile”); Rule 17.1 (providing that any disposition by a competent authority shall be guided by the principle of proportion, with consideration of “the needs of the juvenile as well as [] the needs of society” and that “the well-being of the juvenile shall be the guiding factor in the consideration of her or his case.”). *See also* OC-17/02, *supra* note 77, ¶ 61 (“it is necessary to weigh not only the requirement of special measures, but also the specific characteristics of the situation of the child.”).

¹⁰⁸ ICCPR, *supra* note 88, at art. 10(2)(b) (“[a]ccused juvenile persons shall be separated from adults”); art. 10(3) (“Juvenile offenders shall be segregated from adults and accorded treatment appropriate to their age and legal status.”); art. 14(4) (juvenile criminal procedure shall “take account of their age”); CRC, *supra* note 30, at art. 37(c) (“[e]very child deprived of liberty shall be treated . . . in a manner which takes into account the needs of persons of his or her age.”); art. 40(3) (requiring States Parties to establish “laws, procedures, authorities and institutions specifically applicable to children” accused or recognized as violating the penal law); American Convention, *supra* note 106, at art. 5(5) (requiring that minors be separated from adults and “brought before specialized tribunals . . . so that they may be treated in accordance with their status as minors.”).

sentencing persons below the age of eighteen years to life imprisonment without the possibility of parole.

(a) Children Who Commit Crimes Should Only be Incarcerated for the Shortest Possible Duration and Their Sentences, Once Imposed, Should be Subject to Periodic Review

The right to special protection requires that children should only be incarcerated for the shortest possible duration. Article 37 of the CRC, for instance, prohibits the imposition of “life imprisonment without possibility of release ... for offenses committed by persons below eighteen years of age” and establishes that imprisonment of persons under eighteen years old must be for the shortest appropriate period of time.¹⁰⁹ In 2012, the U.N. Human Rights Council re-affirmed these long-recognized principles.¹¹⁰ Similarly, Rule 17 of the Beijing Rules provides that “[r]estrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.”¹¹¹ The commentary to Rule 17 states that the rule “implies that strictly punitive approaches are not appropriate.” Rule 28 emphasizes the need to grant conditional release “to the greatest possible extent” and “at the earliest possible time” to juveniles that are imprisoned.¹¹² The United Nations Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines”)¹¹³ also emphasize consideration of

¹⁰⁹ CRC, *supra* note 30, at art. 37(b) (“The arrest, detention or imprisonment of a child . . . shall be used only as a measure of last resort and for the shortest appropriate period of time); *see* Rights of the Child, Comm’n on Human Rights Res. 2000/85, E/CN.4/RES/2000/85, ¶ 36(b) (Apr. 26, 2000) (calling upon States “[t]o take appropriate steps to ensure compliance with the principle that depriving children of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time. . .”).

¹¹⁰ *See* Human Rights Council Res. 19/37, 19th Sess., Feb. 27 – March 23, 2012, U.N. Doc. A/HRC/RES/19/37, ¶ 51 (2012) (calling on Member States to “abolish by law and in practice, as soon as possible, the death penalty and life imprisonment without possibility of release for those under 18 years of age at the time of the commission of the offence”).

¹¹¹ Beijing Rules, *supra* note 106, at Rule 17.1(b).

¹¹² Beijing Rules, *supra* note 106, at Rule 28 (“Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.” The commentary explains that “Circumstances permitting, conditional release shall be preferred to serving a full sentence.”).

¹¹³ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), G.A. Res. 45/112, U.N. Doc. A/RES/45/112 (Dec. 14, 1990) [hereinafter Riyadh Guidelines].

alternatives to incarceration for child offenders.¹¹⁴ The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”) likewise indicate that youth sentences should be only “for the minimum necessary period” and they should not “preclud[e] the possibility of . . . early release.”¹¹⁵

To ensure that a child’s sentence is imposed for the shortest possible duration, article 25 of the CRC also requires periodic reviews of such sentences, and the U.N. Committee on the Rights of the Child has explained that these reviews should be “realistic and regularly considered.”¹¹⁶

(b) Children Who Commit Crimes Have a Right to be Rehabilitated and Detention Should be Aimed at Their Reintegration Back into Society

The right to special protection also incorporates the obligation to “ensur[e] the well-being of juvenile offenders and endeavor their rehabilitation.”¹¹⁷ For instance, article 10 of the ICCPR establishes that children who are incarcerated must receive special treatment aimed at their reintegration into society.¹¹⁸ Article 14(4) of the ICCPR requires that procedures “take account

¹¹⁴ *Id.*, at Rule 58 (suggesting that law enforcement and other relevant personnel should be familiar with and use “to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.”); *see also* Havana Rules, *supra* note 106.

¹¹⁵ Havana Rules, *supra* note 106, at Rule 2 (also stating that juvenile detention “should be a disposition of last resort and limited to exceptional cases”).

¹¹⁶ Comm. on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, ¶ 77, 44th Sess., Jan. 15-Feb. 2, 2007, U.N. Doc CRC/C/GC/10 (“For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of the CRC providing the right to periodic review for all children placed for the care, protection or treatment.”).

¹¹⁷ *Domingues*, *supra* note 74, ¶ 83.

¹¹⁸ ICCPR, *supra* note 88, at art. 10 (“1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person . . . 2(b). Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”); *See also* Human Rights Comm., General Comment No. 21, Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 44th Sess., Apr. 10, 1992, U.N. Doc. HRI/GEN/1/Rev.1 (stating that juveniles should be separated and treated differently from adults “with the aim of furthering their reformation and rehabilitation.”).

of [juveniles'] age and the desirability of promoting their rehabilitation.”¹¹⁹

Both the CRC and the Havana Rules contain similar provisions that require States to take measures to ensure that children who are incarcerated are rehabilitated, and, at the end of their sentences, reintegrated back into society.¹²⁰ State practice, including that of the United States, has long recognized these international requirements, recognizing that children have a unique capacity for rehabilitation and that life without parole sentences for children, “forfeits altogether the rehabilitative ideal.”¹²¹

By sentencing Petitioners to life imprisonment without the possibility of parole, Michigan has violated their right to incarceration for the shortest possible duration and to a sentence that should be subject to periodic review and that incorporates a rehabilitative objective. These sentences thus violate Petitioners’ right to special protection guaranteed under Article VII of the American Declaration.

2. The Imposition of Petitioners’ Sentences of Life Imprisonment Without the Possibility of Parole Constitutes Cruel, Infamous, or Unusual Punishment (Article XXVI) and Violates their Right to Humane Treatment Guaranteed Under Articles I and XXV

Article of XXVI of the American Declaration provides that no one accused of a criminal offense should be subjected to “cruel, infamous, or unusual punishment” (“CIUP”).¹²² Articles I and XXV further provide that anyone held in the custody of the State should be treated

¹¹⁹ Although the U.S. issued a reservation to Article 10 and 14(4), the reservation is limited, stating that the U.S. only “reserves the right in exceptional circumstances to treat juveniles as adults.” See discussion on the reservation *infra* note 144 and accompanying text.

¹²⁰ See CRC, *supra* note 30, at art. 40 (children convicted of crimes must “be treated in a manner . . . which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”); Havana Rules, *supra* note 106, at Rule 12 (“Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.”); *Id.* at Rule 79 (“All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.”).

¹²¹ *Miller v. Alabama*, *supra* note 3, at 2460; see also *Graham v. Florida*, *supra* note 6, at 2030.

¹²² American Declaration, *supra* note 1, at 17.

humanely.¹²³ Given the greater vulnerability, lesser maturity and consequent lesser culpability of persons below eighteen years of age as compared to adults, the imposition of a life sentence without the possibility of parole constitutes cruel, infamous and unusual punishment and also violates a child's right to be free from inhumane treatment.

(a) The Age of the Victim, His or Her Mental Status and Personal Circumstances are Relevant in Assessing Whether Conduct Rises to the Level of CIUP or Inhumane Treatment.

In interpreting the right to humane treatment, both the Commission and the Inter-American Court have found that proscribed conduct is not limited to physical abuse and may include conduct such as abusive forms of detention that cause psychological or moral suffering.¹²⁴ The Commission has also recognized that in assessing whether particular treatment amounts to torture or CIUP, the sex, age, and physical and mental health of the victim of prohibited treatment is relevant, and that such factors may aggravate the effect of certain treatment on the victim. In *Jailton Neri Da Fonseca*,¹²⁵ the Commission found that the circumstances and conditions under which a child is detained can themselves rise to the level of CIUP or even torture. The Commission reasoned that,

... although this article leaves some room for interpretation in defining whether a specific act constitutes torture, *in the case of children the highest standard must be applied* in determining the degree of suffering, taking into account factors such as age, sex, the effect of the tension and fear experienced, the status of the

¹²³ Although this right is not explicitly recognized under Article I, the Commission has interpreted this Article to include similar protections to those rights protected under Article 5 of the American Convention. See Report on Terrorism and Human Rights, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr., ¶ 155 & n.388 (2002) (noting that while the American Declaration lacks a general provision on the right to humane treatment, the Commission has interpreted Article I as containing a prohibition similar to that of Article 5 of the American Convention); see also, e.g., *Juan Antonio Aguirre Ballesteros v. Chile*, Case 9437, Inter-Am. Comm'n H.R., Resol. No. 5/85, OAS/ser. L/V/II.66, doc. 10 rev. 1 (1985).

¹²⁴ See *Lizardo Cabrera*, Case 10.832, *supra* note 122, ¶ 50 (citing *The Greek Case*, 1969 Y.B. Eur. Conv. on H.R. 12 (Eur. Comm'n H.R.); *Loayza-Tamayo v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 57 (Sept. 17, 1997); *Castillo Paez v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 35, ¶¶ 63, 66 (Nov. 3, 1997). See also *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) at 44-45 (1989) (holding that "the very long time spent on death row [in extreme conditions], with the ever present and mounting anguish of awaiting execution" considered in light of defendant's age and mental state violated Article 3 of the European Convention).

¹²⁵ See *Jailton*, *supra* note 75.

victim's health, and his maturity, for instance.¹²⁶

Jailton concerned the abduction and summary execution of a fourteen-year-old child by the Brazilian police. The Commission observed that the boy “experienced extreme fear and terror in finding himself in the hands of the military police, not knowing where they were taking him,” and that his detention and custody at the hands of the police rose to the level of torture in violation of article 5 of the American Convention.¹²⁷ In reaching this conclusion, the Commission used the definition of torture set forth in article 2 of the Inter-American Convention to Prevent and Punish Torture, which includes “the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”¹²⁸ International law and practice also recognize the right of all persons to be treated humanely, or, more specifically, to be free from cruel, inhuman or degrading treatment or punishment. The ICCPR establishes that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” and that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.¹²⁹ Article 16 of CAT likewise requires that States parties take steps to prevent “acts of cruel, inhuman or degrading treatment or punishment.” Regional human rights standards incorporate broadly similar protections, which apply equally to all persons at all times. Article 3 of the European Convention on Human Rights and Fundamental Freedoms (“European Convention”), for example, prohibits torture and all other forms of “inhuman or degrading treatment or punishment.”¹³⁰

¹²⁶ *Id.* ¶ 64 (emphasis added). See also Human Rights Comm., *Vuolanne v. Finland*, Comm. No. 265/1987, ¶ 9.2, U.N. Doc. CCPR/C/35/D/265/1987 (Apr. 7, 1989).

¹²⁷ *Jailton*, *supra* note 75, ¶ 65.

¹²⁸ *Id.*

¹²⁹ ICCPR, *supra* note 88, at arts. 7, 10(1).

¹³⁰ European Convention for the Protection of Human Rights and Fundamental Freedoms art. 7(1), *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953), available at

The U.N. Human Rights Committee has repeatedly found that certain forms of detention that cause mental anguish can constitute cruel, inhuman or degrading treatment.¹³¹ Most significantly, the U.N. Committee Against Torture has stated that sentencing a child to life imprisonment without the possibility of release may in itself amount to cruel, inhuman or degrading treatment. In its 2006 review of U.S. compliance with CAT, the Committee expressed its concern with the number of individuals serving life imprisonment (with or without the possibility of parole) in the United States for crimes committed when they were below eighteen years of age. The Committee stated that “sentences of life imprisonment of children . . . could constitute cruel, inhuman or degrading treatment or punishment.”¹³² The European Court of Human Rights has likewise expressed concern that life sentences for children fail to comport with article 3 of the European Convention (prohibition of torture or inhuman or degrading treatment or punishment).¹³³

(b) Petitioners’ Right to Humane Treatment and to be Free from Cruel, Infamous and Unusual Punishment Were Violated

In assessing whether Petitioners’ life without parole sentences constitute CIUP “the highest standard must be applied [by the Commission] in determining the degree of suffering.”¹³⁴ The Commission, therefore, must give consideration to such factors as Petitioners’ ages, mental and physical health, and their status as children when they were sentenced, including their

<http://www.hri.org/docs/ECHR50.html> (last visited Aug. 15, 2012); *See also* African [Banjul] Charter on Human and Peoples’ Rights art. 5, June 27, 1981, 1520 U.N.T.S. 217 (entered into force Oct. 21, 1986) (prohibiting “... torture, cruel, inhuman or degrading punishment and treatment ...”).

¹³¹ *See, e.g.*, Human Rights Comm., *Tshishimbi v. Zaire*, Comm. No. 542/1993, U.N. Doc. CCPR/C/53/D/542/1993 (Mar. 25, 1996) (concluding that abducting Petitioner and detaining him incommunicado constitutes cruel and inhuman treatment).

¹³² Conclusions and recommendations of the Committee against Torture, United States of America, *supra* note 77, ¶ 34.

¹³³ *See Hussain v. U.K.*, 22 Eur. Ct. H.R. ¶ 53 (1996) (noting that “A failure to have regard to the changes that inevitably occur with maturation would mean that young persons detained under [relevant penal code section] would be treated as having forfeited their liberty for the rest of their lives, a situation which...might give rise to questions under Article 3 [of the European] Convention.”).

¹³⁴ Jailton, *supra* note 75, ¶ 64.

particular states of mind at the time of their sentencing.

Children serving any sentence should receive special measures of protection to ensure their rehabilitation, recognizing that incarceration itself can be harmful. Children subjected to life without parole sentences endure suffering that is heightened by two factors: their placement in adult facilities, which is likely to result in mental and physical suffering, and the severe psychological impacts that life without parole sentences have on children in particular. Reports document that children held in adult prisons and jails - where children serve their life without parole sentences - are at a much greater risk of harm than their peers in juvenile facilities. Because of their youth and relatively small stature, children housed in adult facilities are often the prey for sexual predators and are over-represented as victims of custodial sexual misconduct.¹³⁵ Children are five times more likely to be sexually assaulted by other inmates when they are held in adult facilities and twice as likely to be beaten by prison staff.¹³⁶ These reports are substantiated by Petitioners' testimony. Petitioners Kevin Boyd, Henry Hill and Barbara Hernandez, for example, recount instances of attempted sexual assaults as well as the physical violence that was prevalent throughout their incarceration in adult prisons as juveniles.¹³⁷

Children sentenced to serve their life without parole sentences in adult facilities also face mental anguish as reflected in a suicide rate for children in adult prisons *eight times* that of children serving sentences in juvenile detention facilities.¹³⁸ In his affidavit, Kevin Boyd testifies that he attempted suicide on more than one occasion. As Kevin states:

¹³⁵ *Second Chances*, *supra* note 39, at 18 (citing Forst, *Youth in Prisons and State Training Schools*, *supra* note 63); Human Rights Watch, *No Escape: Male Rape in US Prisons*, *supra* note 63).

¹³⁶ *Second Chances*, *supra* note 39, at 18 (citing Forst, *Youth in Prisons and State Training Schools*, *supra* note 63).

¹³⁷ Petition Alleging Violations of the Human Rights of Juveniles Sentenced to Life Without Parole in the United States of America, Annexes B-D, Juveniles Sentenced to Life Without Parole in the United States of America, Case 12.866, Inter-Am. Comm'n H.R. (2006) [hereinafter Admissibility Petition].

¹³⁸ See *Second Chances*, *supra* note 39, at 18 (citing James Austin, Kelly Johnson & Maria Gregoriou, U.S. Dep't of Justice, Bureau of Justice Assistance, *Juveniles in Adult Prisons and Jails: A National Assessment* (Oct. 2000)).

the best part of your day is when you are sleeping; [] your life is nothing more than a daily routine that turns to a monthly or even yearly routine; [] you prayed for death to find you so you didn't have to look into your own face watch it age with nothing to be proud of or show for those frown lines; [] you know that society looks at you as a piece of garbage and you start to believe it

Kevin's experience is not unique. A child prisoner interviewed by Human Rights Watch who was sentenced to life without the possibility of parole at age sixteen recounted that:

[w]hen I went to prison, I was around ... all the violence. I was like, 'man I gotta get out of this—how am I gonna get out of this prison?' I can't do no life sentence here at that age. And so I thought of that [killing himself]. Gotta end it, gotta end it. . . . I've got so many cuts on me.¹³⁹

Research has found that the negative psychological impacts of imprisonment increase the longer one is imprisoned, but that these feelings tend to decrease as a prisoner's time of release nears.¹⁴⁰ Prisoners serving life without possibility of parole sentences, knowing that they will never be released, never experience this cycle; the negative emotional impact experienced as a consequence of their initial incarceration remains with them for the entire duration of their sentence. The treatment director at Mitchellville prison in Iowa observed that prisoners serving life without parole sentences:

tend to go through the grief cycle twice. The first time it has to do with the simple fact of entering adult prison, so they pass through shock, anger, depression, and then acceptance. But for the lifers, they go through all four stages again—often several years later or whenever the reality of their sentence finally sinks in.¹⁴¹

Although children sentenced to a lifetime in prison do not face death or corporal punishment on a

¹³⁹ Interview by Human Rights Watch with Richard I., E. Ark. Reg'l Unit, Brickeys, Ark. (June 21, 2004) (pseudonym), in *The Rest of Their Lives*, *supra* note 31, at 64.

¹⁴⁰ *The Rest of Their Lives*, *supra* note 31, at 58 (citing Stanton Wheeler, *Socialization in Correctional Communities*, 26 *American Sociological Review*, 697, 697 (1961); Peter Garabedian, *Social Role and Processes of Socialization in the Prison Community*, 11 *Social Problems*, 140, 140 (1963) (examples of documentation of increased effects); J. Gibbs, *The First Cut is the Deepest: Psychological Breakdown and Survival in the Detention Setting*, in *The Pains of Imprisonment* (Robert Johnson & Hans Toch eds., SAGE Publications, 1982); Craig Haney, *Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law*, 3 *Psychology, Public Policy and Law*, 499, 499 (Dec. 1997) (examples of documentation of decreased effects)).

¹⁴¹ Interview by Human Rights Watch with Treatment Director at Iowa Correctional Institute for Women, Mitchellville, Iowa (Apr. 5, 2004), in *The Rest of Their Lives*, *supra* note 31, at 58.

certain date, they are faced with a prison term that will end only with their death. Psychological studies of long-term prisoners show “protracted depression, apathy, and the development of a profound state of hopelessness.”¹⁴² Children, naturally more dependent on their family relationships for support, are especially vulnerable to depression when they are cut off from family contact in prison. Their anguish is caused not by the imminence of death, but by the fear of physical harm as well as the prospect of incarceration for life. Thus, the mental suffering experienced by any individual serving a life sentence is exacerbated by the characteristics inherent in youth. As petitioner Barbara Hernandez states in her affidavit, “Death sentence is what the judge gave me; a long slow death. I would have rather been taken out and shot. I did not understand why I could not go to a place for kids my age.”¹⁴³ Additionally, conditions of isolation, like those experienced by petitioner Henry Hill and others, contribute to the cruel and inhumane nature of life sentences without the possibility of parole for children.

Applying “the highest standard” in assessing whether Petitioners’ sentences constitute CIUP and inhumane treatment, the Commission should find that the imposition of their sentences of life imprisonment without the possibility of parole caused Petitioners severe mental anguish and was a sufficiently severe form of treatment to rise to the level of CIUP and inhumane treatment in violation of Articles I and XXVI of the American Declaration.

3. The Michigan Criminal Justice System Violates Petitioners’ Rights to Due Process of Law Under Articles XVIII, XXV, and XXVI.

The due process protections incorporated by Articles XVIII, XXV and XXVI of the American Declaration guarantee everyone the right to a fair trial. Read in conjunction with Article VII, a fair trial for a child accused of a crime requires the provision of specific safeguards

¹⁴² *The Rest of their Lives*, *supra* note 31, at 61 (citing Haney, *supra* note 140, at 499).

¹⁴³ Admissibility Petition, *supra* note 137, Annex C.

to protect the child’s special needs and interests. At a minimum level, these safeguards must include specialized courts and procedures to try children and to allow judges and juries an opportunity to take into consideration such factors as a child’s age, physical and mental health at the time he or she committed the offense, his or her lessened culpability for his or her acts and his or her unique capacity for rehabilitation.¹⁴⁴ As discussed in greater detail, *supra* Part II, Michigan’s criminal justice system does not provide sufficient safeguards to protect the rights of children accused of certain crimes. Juvenile courts in the state do not have jurisdiction over seventeen-year-olds; they are automatically tried as adults; and children aged sixteen and under, accused of certain crimes, can be directly prosecuted as adults, without any individual judicial determination of the propriety of treating them as adults (this system is known as “direct file” or “automatic waiver” since the status of the offender is never raised or considered by a judge; instead the decisions are all made at the discretion of the prosecutor).

¹⁴⁴ In ratifying the ICCPR, the United States expressed its general support for special criminal procedures for children. Article 14(4) of the ICCPR requires, “in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of their rehabilitation.” When the United States ratified the ICCPR, it attached a limiting reservation providing that:

The policy and practice of the United States are generally in compliance with and supportive of the Covenant’s provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in *exceptional circumstances*, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.

See U.N.T.S., International Covenant on Civil and Political Rights, Ratification, Reservations and declarations: United States of America, ¶ 5 (emphasis added), *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec (last visited Aug. 20, 2012); 138 Cong. Rec. 54781-01 (daily ed. Apr. 2, 1992) (emphasis added). The drafting history of this reservation indicates that it should be interpreted narrowly. *See* S. Comm. on Foreign Relations, Rep. on the International Covenant on Civil and Political Rights, S. Exec. Rep. No. 102-23 (1992), *reprinted in* 31 I.L.M., 645, 651 (1992) (“Although current domestic practice is generally in compliance with these provisions, there are instances in which juveniles are not separated from adults, for example because of the juvenile’s criminal history or the nature of the offense. In addition, the military justice system in the United States does not guarantee special treatment for those under 18.”). Thus, the reservation was never intended to address the length or severity of sentences for children and it cannot be read to condone the automatic sentencing of children involved in serious crimes as if they are adults.

In failing to give adequate or any consideration to the child status of Petitioners at the time they were charged, tried and sentenced to life imprisonment without the possibility of parole, the United States and the laws and practices in Michigan violated Petitioners' rights to due process guaranteed under Articles XVIII, XXV, and XXVI of the American Declaration. These due process violations are ongoing.

(a) Article XXVI Requires the Adoption of Specialized Criminal Laws, Procedures and Practices For Children who Come into Conflict with the Law

Article XXVI of the American Declaration guarantees that “[e]very person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws.”¹⁴⁵ To comply with this requirement in relation to children who commit crimes, at a minimum, the Michigan criminal justice system is required to consider the offender’s child status, other special characteristics of children who commit crimes such as their lessened culpability as compared to adults, their personal histories and backgrounds and their unique potential for rehabilitation as compared to adult offenders. Indeed, the American Convention not only specifically requires consideration of a child’s status, but also mandates special tribunals and procedures for children who are accused of crimes. Article 5 of the Convention, for example, provides that “[m]inors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.” The Inter-American Court has interpreted this article as requiring States to establish special courts

¹⁴⁵ American Declaration, *supra* note 1, at art. XXVI. *See also id.* at art. XVIII (providing the right to “resort to the courts to ensure and respect [] legal rights” and requiring a procedure for court protection “from acts of authority that [] violated any fundamental constitutional right”); *id.* at art. XXIV (providing “the right to submit respectful petitions to any competent authority . . . and the right to obtain a prompt decision thereon”); *id.* at art. XXV (providing “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by preexisting law” and “[e]very person [deprived of liberty] has the right to have the legality of the detention ascertained without delay . . . the right to be to be tried without undue delay... [and] the right to humane treatment during his time in custody.”).

and criminal procedures to accommodate the particular needs of children who come into conflict with the law.¹⁴⁶

International law and practice also recognize the need to provide special measures of protection to children in conflict with the law. Rule 6 of The Beijing Rules, for example, provides:

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions. 6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion. 6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

According to the commentary to Rule 6, these provisions

combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion.

Consideration of an offender's age in the criminal justice system is consistent with universal recognition that children have lesser culpability for their criminal acts than adults. As the Inter-American Court has stated, "[i]t is generally accepted that children under a certain age lack [the legal] capacity [of adults]. This is a generic legal assessment, one that does not examine the specific conditions of the minors on a case by case basis, but rather excludes them completely from the sphere of criminal justice."¹⁴⁷ The Commission, too, has recognized the

¹⁴⁶ OC-17/02, *supra* note 77, ¶ 137(11) (holding that states must establish special courts for child offenders and that the "characteristics of State intervention in the case of minors who are offenders must be reflected in the composition and functioning of these courts, as well as in the nature of the measures they can adopt.").

¹⁴⁷ *Id.* ¶ 105.

fundamental difference between the culpability of children and adults.¹⁴⁸

U.S. courts also recognize that children are less culpable than adults. Indeed, three recent U.S. Supreme Court decisions considered this factor when striking down the death penalty, life without parole sentences for non-homicide offenses and mandatory life without parole sentences for persons who committed their crime under the age of eighteen.¹⁴⁹ In the first of these decisions, *Roper v. Simmons*, the U.S. Supreme Court concluded that the juvenile death penalty constituted “cruel and unusual” punishment, holding that:

Juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows, and as the scientific and sociological studies . . . tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults. . . . The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . . The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult.¹⁵⁰

In all three cases, the Supreme Court also acknowledged the persuasiveness of recent adolescent brain research that scientifically affirms that children’s brains are physiologically different from adult brains.¹⁵¹ These research studies document that children react to stress more in their impulse area, while adults react more in their cognitive area.¹⁵²

In addition to raising questions about relative culpability, differences between children and adults raise serious questions about the ability of children to understand and participate in adult criminal proceedings.

¹⁴⁸ See *Domingues*, *supra* note 74, ¶ 67 (noting prohibitions on the execution of children are “based on the idea that a person who has not reached the age of eighteen years is not fully capable of sound judgment, does not always realize the significance of his actions and often acts under the influence of others, if not under constraint” (citing International Comm. of the Red Cross, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, at 346-347, J.S. Pictet ed. (1958)).

¹⁴⁹ *Roper v. Simmons*, *supra* note 40; *Graham v. Florida*, *supra* note 6; *Miller v. Alabama*, *supra* note 3.

¹⁵⁰ *Roper v. Simmons*, *supra* note 40, at 1195.

¹⁵¹ See *Id.*; *Graham v. Florida*, *supra* note 6, at 2026; *Miller v. Alabama*, *supra* note 3, at 2465 n.5.

¹⁵² *Id.*

(b) The Sentencing Laws and Practices Under Which Petitioners Received Mandatory Sentences of Life Imprisonment Without the Possibility of Parole Violated Petitioner’s Due Process Rights

(i) Petitioners Were Unable to Fully Participate in Their Criminal Justice Proceedings, Which Lacked the Special Protections Appropriate for Children

The affidavits of the individual petitioners illustrate that they did not understand what was happening during their trials, nor were they competent to make key trial decisions.¹⁵³

Noting that adults familiar with the criminal justice system often received far lighter sentences for more serious crimes, Damion Todd states “[o]ur ignorance or lack of experience in these matters are used against us from the time of our arrest – on to our lack of communication skills with our attorneys. We are railroaded by an adult system that isn’t equipped to properly handle juveniles.”¹⁵⁴

The individual Petitioners’ inability to understand and participate often was compounded by poor representation. Henry Hill states,

My attorney never explained to me the seriousness of the charge and when bond was denied I sat in the courtroom in tears, not understanding why I couldn’t go home. I didn’t understand the significance of a waiver hearing, my attorney never explained to me if the court decided to waive me over I would be charged as an adult and if I was convicted I would receive a mandatory life in prison sentence. I was never ‘offered’ a ‘plea agreement.’ During my trial, I had no knowledge nor understanding of what a plea agreement meant, my attorney never said anything to me nor my mother or uncle about a plea agreement.¹⁵⁵

(ii) Michigan’s Mandatory Sentencing Schemes Imposing Life Without Parole Sentences Violate Due Process

¹⁵³ Barbara Hernandez states, “I did not understand any of the court stuff. It was mostly a blur – I was in my own world. I was sixteen years old.” Admissibility Petition, *supra* note 137, at Annex C. Henry Hill, who could neither read nor write and was evaluated to have the maturity of a nine year old, states, “I truly did not understand what was happening.” *Id.* at Annex B. Damion Todd states, “[M]y way of thinking at that age was a mixture of fantasy and reality.” *Id.* at Annex E. Patrick McLemore states, “During my whole arrest and trial it seems like I was in a different time zone or shock.” *Id.* at Annex D. Kevin Boyd states “I didn’t know what was going on . . . Through the trial I just kind of sat there, I didn’t pay attention, it was too hard to relive all of it, so I would try to focus on a table or a thought.” *Id.* at Annex F.

¹⁵⁴ *Id.* at Annex E.

¹⁵⁵ *Id.* at Annex B; *see also Basic Decency, supra* note 57, at 12-14 (describing obstacles to successful plea bargains in juvenile context).

Petitioners were sentenced prior to the U.S. Supreme Court decision in *Miller v. Alabama*, when Michigan law allowed children tried and convicted of first-degree murder to be sentenced as adults to a mandatory sentence of life without the possibility of parole. Petitioners' rights to due process were violated at the time they were sentenced without being afforded an opportunity to make submissions or present evidence that the sentence was inappropriate given their age, lessened culpability and the particular circumstances of their cases.

In the death penalty context, the Commission has determined that such mandatory sentencing schemes violate the American Declaration because they deny the individual a right to due process of law. For example, in the *Michael Edwards* case the Commission held that mandatory death sentences for murder crimes in the Bahamas violated due process.¹⁵⁶ Specifically, it found that, given the wide range of mitigating and aggravating circumstances and varying degrees of culpability that may exist when a murder is committed, the automatic sentence resulted in the arbitrary imposition of the death penalty.¹⁵⁷ The Commission noted that in death penalty cases, due process requires "an effective mechanism by which a defendant may present representations and evidence to the sentencing court as to whether the death penalty is permissible or an appropriate form of punishment in the circumstances of their case."¹⁵⁸ The Commission also expressed concern that the mandatory nature of the sentence prevented

¹⁵⁶ See *Edwards v. Bahamas*, Case 12.067; *Hall v. Bahamas*, Case 12.068; *Schroeter & Bowleg v. Bahamas*, Case 12.086, Inter-Am. Comm'n H.R., Report No. 48/01, OEA/Ser.L/V/II.111, doc. 20 rev. (2001) [hereinafter *Edwards*]. See also *Lallion v. Grenada*, Case 11.765, Inter-Am. Comm'n H.R., Report No. 55/02, OEA/Ser.L/V/II.118, doc. 5 rev. 1 (2002); *Jacob v. Grenada*, Case 12.158, Inter-Am. Comm'n H.R., Report No. 56/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002); *Lamey v. Jamaica*, Case 11.826; *Mykoo v. Jamaica*, Case 11.843; *Montique v. Jamaica*, Case 11.846; *Daley v. Jamaica*, Case 11.847, Inter-Am. Comm'n H.R., Report No. 49/01, OEA/Ser.L/V/II.111, doc. 20 rev. (2001); *McKenzie v. Jamaica*, Case 12.023; *Downer & Tracey v. Jamaica*, Case 12.044; *Baker, v. Jamaica*, Case 12.107; *Fletcher v. Jamaica*, Case 12.126; *Rose v. Jamaica*, Case 12.146, Inter-Am. Comm'n H.R., Report No. 41/00, OEA/Ser.L/V/II.106, Doc. 6, rev. (1999); *Knights v. Grenada*, Case 12.028, Inter-Am. Comm'n H.R., Report No. 47/01, OEA/Ser.L/V/II.111, doc. 20 rev. (2001); *Baptiste v. Grenada*, Case 11.743, Inter-Am. Comm'n H.R., Report No. 38/00, OEA/Ser.L/V/II.106, Doc. 6 rev. (1999).

¹⁵⁷ *Edwards*, *supra* note 156, ¶¶ 136, 138, 145.

¹⁵⁸ *Id.* ¶ 151.

effective review or appeal of the sentence.¹⁵⁹ The Commission stated further that the finality of the death penalty required that the State exercise a higher standard in reviewing a death penalty case for due process and CIUP violations.

The severe nature of a life without parole sentence coupled with the right of children in conflict with the law to receive special measures of protection requires a similar level of scrutiny for such sentences. In *Edwards*, the Commission found the broad definition of murder in the Bahamas and the wide-ranging circumstances that triggered the automatic sentence clashed with due process rights. Michigan law under which Petitioners were sentenced similarly called for mandatory life sentences in a wide range of circumstances. Once it had been determined that a child would be sentenced as an adult, Michigan law required an automatic life without parole sentence for all first-degree murder crimes, including premeditated murder, felony murder and murder of a peace or corrections officer, and no distinction was made between the actual perpetrator and someone who “aided or abetted” the crime. Michigan’s mandatory sentencing laws, like the laws at issue in *Edwards*, allow for the arbitrary application of a harsh and extreme punishment and fail to provide an appropriate level of protection for juveniles.

Petitioners were tried and sentenced as if they were adults under one of the three Michigan sentencing schemes described *supra*, Part II.B.2. Regardless of which scheme applied, at the time of sentencing, Petitioners were deprived of the ability to demonstrate personal circumstances that might support a lesser sentence, and instead were subjected to mandatory sentences of life in prison for which they are not eligible to be considered for parole or release based solely on the general category of the crime they committed.¹⁶⁰ As described in Section

¹⁵⁹ *Id.* ¶¶ 137, 150.

¹⁶⁰ Although under the law from 1988-1996, Barbara and Kevin were given post-conviction hearings to determine whether they should be sentenced as adults or juveniles, once the judge determined that an adult sentence was

(iv), below, while in *Miller* the U.S. Supreme Court has struck down such mandatory sentencing schemes as unconstitutional, that decision will have only a limited impact on the thirty-two Petitioners in this case.

(iii) Each of the Sentencing Schemes Under Which Petitioners Were Tried and Sentenced Violated Petitioners' Due Process Rights

Read in conjunction with Article VII of the American Declaration, the three Michigan sentencing schemes under which each of the thirty-two Petitioners were charged, tried and sentenced fall far short of the due process requirements of Articles XVIII, XXV, and XXVI of the American Declaration.

First, under each scheme, all seventeen-year-olds must be tried as adults. Thus Petitioners such as Damion Todd, who were aged seventeen at the time they were charged with first-degree murder, never had their individual circumstances --- including their ages, lessened culpability, past histories or potential for rehabilitation --- considered by a judge or jury during their trial or before they were handed down a mandatory sentence which made them ineligible for parole.

Second, under each scheme, because they were convicted and sentenced on first-degree murder charges, all Petitioners were given a mandatory life sentence, which under Michigan law renders them ineligible to be considered for parole by the Michigan Parole Board. This parole eligibility provision violates the due process guarantees of the American Declaration because it fails to allow a judge or jury to take into consideration the characteristics of childhood, particularly a child's reduced culpability and capacity for change and rehabilitation.

Third, under the 1988-1996 Michigan Sentencing Scheme, Petitioners who were aged fourteen to sixteen when accused of crimes, such as felony murder and aiding and abetting

appropriate, the judge had to sentence them to life without parole and had no discretion to impose a lesser adult sentence.

murder, were waived into adult court. These waiver decisions were made by Michigan prosecutors with no consideration of how their ages may have affected their culpability.

While this particular sentencing scheme did allow for hearings to determine whether Petitioners --- children at the time --- could nonetheless be sentenced as adults, the procedures in place lacked the special measures of protection that the American Declaration guarantees to children who come into conflict with law. Based solely on the decision of prosecutors, Petitioners prosecuted and sentenced under this scheme, including Barbara Hernandez and Kevin Boyd, were compelled to participate in adult criminal trials without any consideration of their lessened culpability for the offenses for which they were charged and regardless of whether they were capable of understanding and participating in their trials.¹⁶¹

Under this 1988-1996 Sentencing Scheme, judges had limited discretion to intervene in the process, and could only do so at the conclusion of trial, during the conviction phase. Upon conviction, judges could sentence Petitioners as juveniles. The binary sentencing options available at that point --- either juvenile disposition or the imposition of a mandatory sentence of life imprisonment with no opportunity for parole --- were insufficient to satisfy both the State's interest in addressing serious crime and Petitioners' need for a sentence reflective of their unique capacity for rehabilitation. Indeed, a number of the sentencing judges, at the time they sentenced the Petitioners, publicly complained about the lack of sentencing and rehabilitation options available to them. For instance, Judge Hon. William F. Ager stated, "I wish I had some type of options because of the sentence that's mandatory . . . I truly wish that it was a sentence of, for instance . . . any number of years up to life. But I don't have that option . . . there's no option

¹⁶¹ Petitioners Barbara Hernandez and Kevin Boyd were sentenced under the 1988-1996 Michigan Sentencing Scheme.

with the Court.”¹⁶² Similarly, Judge Mark Janer commented, “It would be best to individualize the cases and allow judges to determine if they get a shot at parole.”¹⁶³

Finally, while the 1988-1996 scheme provided Petitioners a right to a judicial waiver hearing to determine whether they should be tried and sentenced within the juvenile justice system or as adults, such a procedure violates the due process guarantees of the American Declaration because every child, irrespective of the offense he or she is alleged to have committed, is entitled to be charged, tried and sentenced in a criminal justice system separate from adults.

The Post-1996 Michigan Sentencing Scheme, under which Petitioner Patrick McLemore and twenty-seven other petitioners were sentenced, increased prosecutorial discretion to treat fourteen to eighteen-year-olds as if they were adults when alleged to have committed certain designated homicide offenses. Once charged, Petitioners sentenced under this scheme were tried and sentenced as if they were adults and the trial judges were divested of any discretion they had possessed under the 1988-1996 scheme to sentence them as if they were children. Thus the Post-1996 Sentencing Scheme, like the two prior schemes, fails to incorporate the special measures of due process that the American Declaration guarantees to children who come into conflict with law, and in particular the need to treat persons below eighteen years of age accused of an offense in a manner reflective of their ages, reduced culpability and unique capacity for rehabilitation.

(iv) The Supreme Court’s Decision in *Miller* Does Not Alleviate the Possibility that Petitioners Will Continue to Serve Life Sentences Without the Possibility of Parole, Nor Address Past Due Process Harms.

In *Miller v. Alabama*, the U.S. Supreme Court declared the mandatory imposition of sentences of life imprisonment without the possibility of parole for persons under the age of

¹⁶² *Basic Decency*, *supra* note 57, at 33; *See also supra* Part III.B.2 and III.B.3.

¹⁶³ *Basic Decency*, *supra* note 57, at 12.

eighteen unconstitutional. While *Miller* has the effect of striking down these sentences if imposed without consideration of a child’s status, and *may* result in an opportunity for Petitioners to be resentenced or even to have their sentences commuted, Petitioners may not benefit from the ruling for four reasons. First, the State of Michigan has already advanced arguments that *Miller* does not have a retroactive effect. If accepted, this position would nullify any impact on Petitioners. Second, even if Petitioners receive new hearings, *Miller* leaves open the possibility that Petitioners will have their original life without parole sentences affirmed on resentencing. Third, there is no indication that new hearings, if granted, would comport with the due process guarantees of the American Declaration. Finally, *Miller* will do nothing to provide Petitioners with redress for past violations of their due process rights.

4. Life Without Parole Sentences Imposed Under Michigan Law Have Violated Petitioners’ Right to be Free From Discrimination Guaranteed Under Article II

Article II of the American Declaration provides that everyone is equal before the law. In interpreting this provision, the Inter-American Court has said that it is “impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.”¹⁶⁴ This standard requires not only that laws should make no arbitrary distinctions between various groups, but also that the “application of the law should be equal for all without discrimination.”¹⁶⁵ The Court has also found that the “right to equal protection under international human rights law has been interpreted as prohibiting not only intentional

¹⁶⁴ OC-17/02, *supra* note 77, ¶ 45.

¹⁶⁵ *Andrews v. United States*, Case 11.139, Inter-Am. Comm’n H.R., Report No. 57/96, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 173 (1997).

discrimination, but also any distinction, exclusion, restriction or preference which has a discriminatory effect.”¹⁶⁶

The Court and the Commission have defined the contours of the non-discrimination protections in the Inter-American system by looking to analogous protections afforded by other international instruments, most importantly CERD.¹⁶⁷ To evaluate whether acts violate CERD, the U.N. Committee on the Elimination of All Forms of Racial Discrimination (“CERD Committee”), like the Commission, has adopted an “effects-based” approach and “look[s] to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”¹⁶⁸

(a) Life Without Parole Sentences Imposed Under Michigan Law Have a Disparate Impact on Children of Color

Of the 362 Michigan inmates currently serving life without possibility of parole sentences, 261 (73 percent) are minorities, and 248 (69 percent) are African-American.¹⁶⁹ These figures differ greatly from the proportion of minorities and African Americans in the general population. Minorities account for twenty-nine percent of the Michigan youth population, while African-Americans account for only fifteen percent.¹⁷⁰ The CERD Committee has noted with concern that these disparities likewise exist at the national level, citing “the disproportionate imposition of life imprisonment without parole on young offenders – including children –

¹⁶⁶ *Mossville Environmental Action Now v. United States*, Petition 242-05, Decision on Admissibility, Inter-Am. Comm’n H.R., Report No. 43/10, ¶ 42, (2010).

¹⁶⁷ *See, e.g.*, OC-18/03, *supra* note 72, ¶ 59; *Margarita Cecilia Barbería Miranda v. Chile*, Case 12.469, Inter-Am. Comm’n H.R., Report No. 56/10, OEA/Ser.L/V/II.122 Doc. 5 rev. 1, ¶ 31 (2004).

¹⁶⁸ Comm. on the Elimination of Racial Discrimination, General Recommendation XIV: Definition of discrimination (Art. 1, par.1), ¶ 2, U.N. Doc. A/48/18 (Mar. 22, 1993).

¹⁶⁹ *Barnes, Judgment Day for Michigan’s Juvenile Lifers*, *supra* note 4.

¹⁷⁰ *Basic Decency*, *supra* note 57, at 15.

belonging to racial, ethnic and national minorities,” and calling on the United States to discontinue the imposition of life without parole sentences on children.¹⁷¹

A range of factors contribute to the disparate imposition of juvenile life without parole sentences on communities of color, including prosecutorial discretion at numerous stages of the criminal justice system with little accountability or oversight. One example is authority to waive juveniles into adult court: while black youth represent twenty-eight percent of children arrested nationwide, they account for thirty-five percent of defendants waived into adult court.¹⁷²

The use of plea bargaining and prosecutorial waivers impact the way these parole ineligible life sentences are imposed. Research conducted on a national basis highlights that the race of the youth being charged with a crime and the race of the victim have a major impact on whether such sentences are imposed:

The proportion of African Americans serving JLWOP sentences for the killing of a white person (43.4%) is nearly twice the rate at which African American juveniles are arrested for taking a white person’s life (23.2%); Conversely, white juvenile offenders with black victims are only about half as likely (3.6%) to receive a JLWOP sentence as their proportion of arrests for killing blacks (6.4%).¹⁷³

Studies of plea bargaining rates across Michigan have shown that the likelihood of receiving a plea deal can differ significantly based on the race of the victim, with juvenile defendants accused of murdering a white victim twenty-two percent less likely to receive an offer than those accused of murdering a minority victim.¹⁷⁴ Juvenile advocates have suggested that this may be linked to the races of Michigan prosecutors, noting that “96% of the publicly elected prosecutors in Michigan are white. Prior to 2004, only one of the 83 prosecutors in

¹⁷¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, *supra* note 90, ¶ 21.

¹⁷² *Basic Decency*, *supra* note 57, at 15.

¹⁷³ See, *The Lives of Juvenile Lifers: Findings from a National Survey available at* http://sentencingproject.org/doc/publications/publications/jj_The_Lives_of_Juvenile_Lifers.pdf

¹⁷⁴ *Basic Decency*, *supra* note 57, at 15.

Michigan was a person of color and all but three were male. Currently there are two prosecutors of color and 13 who are women.”¹⁷⁵

Michigan’s sentences are meted out in a racially disproportionate manner as the result of a number of systemic factors, underscoring the potentially arbitrary nature in which these sentences are applied and the due process concerns addressed *supra*, Part IV.A.3.

B. THE TREATMENT OF PETITIONERS *WHILE INCARCERATED* VIOLATES U.S. OBLIGATIONS UNDER THE AMERICAN DECLARATION

1. Denying Petitioners Access to Rehabilitative Programs Violates their Right to Rehabilitation Guaranteed Under Articles I and XVII

Articles I and XVII of the American Declaration, interpreted in the light of Article VII and the overarching right of everyone to be treated with dignity recognized by the American Declaration,¹⁷⁶ guarantee Petitioners a right to rehabilitation. This right has long been recognized by international law and practice and, as discussed *supra*, Part IV.A.1, has particular significance for children who are incarcerated. Michigan’s policies governing life without possibility of parole sentences, however, deprive juveniles of their liberty for the remainder of their lives and further eviscerate opportunities for mental and social development. As a result of these policies, Petitioners are excluded from, or have restricted access to, programs that would support their reform and re-adaption and thus violate Petitioners’ right to rehabilitation.

(a) The American Declaration Requires that Incarceration Serve a Rehabilitative Function

The Commission has repeatedly emphasized the rehabilitative function of a prison sentence and the importance of rehabilitation to the individual’s harmonious reintegration back

¹⁷⁵ *Id.*

¹⁷⁶ *See e.g.*, American Declaration, *supra* note 1, at preamble (recognizing that “The American peoples have acknowledged the dignity of the individual...”).

into society.¹⁷⁷ For example, the Commission has noted that “[t]he prison system is intended to serve several principal objectives... [t]he “ultimate objective” being “the rehabilitation of the offender and his or her reincorporation into society.” It has further noted that, “[t]he exercise of custodial authority carries with it special responsibility for ensuring that the deprivation of liberty serves its intended purpose, and does not result in the infringement of other basic rights.”¹⁷⁸

The Commission has found that an individual’s right to rehabilitation forms an integral component of the rights protected under article 5 of the American Convention, which, in subsection (6) specifically requires re-adaptation to be a goal of prison: “Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.”

According to the Commission, article 5 establishes the right of every person to have his or her “physical, mental, and moral integrity respected”¹⁷⁹ and guarantees that everyone deprived of liberty “shall be treated with respect for the inherent dignity of the human person.”¹⁸⁰ Included within the bundle of rights protected by article 5, the Commission has highlighted the individual’s right, following completion of sentence, to “social re-adaptation” and reintegration back into society.¹⁸¹

The right to rehabilitation recognized under article 5 is similarly protected under Articles I and XVII of the American Declaration. Although article I does not explicitly recognize a right

¹⁷⁷ Report on the Situation of Human Rights in the Dominican Republic, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.104, doc. 49 rev. 1, Ch. VIII(I) (1999) (citing Standard Minimum Rules for the Treatment of Prisoners, Rule 65, U.N. Doc. E/3048 (1957), amended E.S.C. res 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977) [Hereinafter SMR] to support this contention).

¹⁷⁸ Report on the Situation of Human Rights in Guatemala, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.111, doc. 21 rev., Ch. VIII (2001).

¹⁷⁹ *Id.*, Ch. VI, § A(2).

¹⁸⁰ *Id.*

¹⁸¹ Report on the Situation of Human Rights in Brazil, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.97, doc. 29 rev.1 Ch. IV(27) (1997).

to rehabilitation, both the Commission and Inter-American Court’s broad interpretation of the substance of the right to life protected under Article I indicate that such a right may be implied. The Commission has repeatedly interpreted Article I to include similar protections to those rights protected under Article 5.¹⁸² Thus, an individual’s right to reform and adaptation following incarceration, specifically protected by article 5(6), should be read into article I. The jurisprudence of the Inter-American Court supports such an interpretation. In the *Castillo Paez Case*, for instance, the Court noted that the protections encompassed by article 5 — and hence article I — are much broader in scope than mere protection from physical mistreatment. Rather, they extend to any act that is “clearly contrary to respect for the inherent dignity of the human person.”¹⁸³ The Court reiterated that position in the *Street Children Case*, noting that the right to life “includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.”¹⁸⁴ This broad definition of the right to life should be read to include an inmate’s right to rehabilitation, which is necessary for a dignified existence, particularly for children who were placed in prison at a critical stage of their development.

Article XVII of the American Declaration, which specifically guarantees humane treatment for persons while detained, likewise may be interpreted to include a right of prisoners to rehabilitation. This right tracks closely the guarantee in the American Convention that persons deprived of liberty “shall be treated with respect for the inherent dignity of the human person,” which, in turn, and as noted above, is closely linked to the right under article 5(6) of the Convention to “re-adaptation.”

¹⁸²See *supra* note 122 for a discussion of the Commission’s interpretation of Article I.

¹⁸³ *Castillo Paez*, *supra* note 124, ¶ 66.

¹⁸⁴ *Street Children Case*, *supra* note 76, ¶ 144.

This interpretation of articles I and XVII is consistent with international law and practice which have long recognized that prisoners, and child prisoners in particular, have a right to rehabilitation. The ICCPR incorporates an explicit provision guaranteeing an individual's right to "social rehabilitation" following a term of incarceration, and recognizing that such treatment arises out of the need to respect individual "dignity." Specifically, article 10(3) provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.¹⁸⁵

The U.N. Basic Rules for the Treatment of Prisoners (Basic Rules)¹⁸⁶ and the U.N. Standard Minimum Rules for the Treatment of Prisoners (SMR)¹⁸⁷ also underscore the rehabilitative function of incarceration. The Basic Rules require that states provide "favorable conditions [] for the reintegration of the ex-prisoner into society under the best possible conditions."¹⁸⁸ Four separate rules of the SMR focus on prisoner rehabilitation and reintegration. SMR 57 states that imprisonment should not hinder reintegration into society after prison, and should not inflict punishment beyond the deprivation of liberty. SMR 60 requires the minimization of those differences between prison life and life outside prison that fail to respect prisoners' dignity as human beings, and SMR 61 elaborates:

The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it . . . steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Finally, SMR 65 provides:

¹⁸⁵ ICCPR, *supra* note 88, at art. 10(3).

¹⁸⁶ Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49 (Dec. 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r111.htm>.

¹⁸⁷ SMR, *supra* note 176, at 11.

¹⁸⁸ Basic Principles, *supra* note 185, at Princ. 5.

The treatment of persons sentenced to imprisonment ...shall have as its purpose ...to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

As detailed, *supra* Part A.1.(b), States have a heightened obligation to facilitate the rehabilitation and reintegration of children serving prison time. This is reflected in article 40 of the CRC, which imposes an obligation on States to ensure that children who come into conflict with the law are treated with dignity and that measures are employed that promote the “child’s reintegration and the child’s assuming a constructive role in society.”¹⁸⁹ Article 10 of the ICCPR establishes similar protections, obliging States to afford special treatment to children who are incarcerated aimed at their reintegration in society and article 14(4) mandates procedures that “take account of [juveniles’] age and the desirability of promoting their rehabilitation.”¹⁹⁰ The Human Rights Committee’s General Comments state that juvenile sentences should advance these goals.¹⁹¹ And the Havana Rules further detail the need for children deprived of their liberty to participate in programs that foster their development.¹⁹²

(b) Petitioners Have Been Denied Access to Rehabilitative Programs in Violation of their Right to Rehabilitation

As Barbara Hernandez explains in her affidavit,¹⁹³ as a matter of policy many rehabilitative programs are unavailable to Petitioners because they are serving life sentences

¹⁸⁹ CRC, *supra* note 30, at art. 40.

¹⁹⁰ See *supra* note 144 and accompanying text (Noting that although the U.S. issued a reservation to Article 10 and 14(4), the reservation is limited, stating that the U.S. only “reserves the right in exceptional circumstances to treat juveniles as adults.”).

¹⁹¹ Human Rights Comm., General Comment No. 21, *supra* note 118, ¶ 13 (juveniles should be separated and treated differently from adults “with the aim of furthering their reformation and rehabilitation.”); General Comment 17, ¶ 2 (“convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status.”).

¹⁹² Havana Rules, *supra* note 106, at Rule 12 (“Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.”); *Id.* at Rule 79 (“All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.”).

¹⁹³ See Annex C, affidavit of Barbara Hernandez.

without the possibility of parole, meaning they will never re-enter their communities. Furthermore, Petitioners are routinely placed at the bottom of the relevant waiting lists for those programs in which they are permitted to enroll, again because of the nature of their sentences.¹⁹⁴ In addition to Barbara Hernandez, Petitioners Matthew Bentley, Maurice Black, Kevin Boyd, Larketa Collier, Cornelius Copeland, Maurice Ferrell, Mark Gonzalez, Lamar Haywood, Cedric King, Patrick McLemore, Tyrone Reyes, Kevin Robinson, Damion Todd, Marlon Walker, Oliver Webb, Elliott Whittington, Ahmad Williams, Leon Williams, and Johnny Williams have been denied access to rehabilitative programs since their incarceration began solely on account of their having been sentenced to life without the possibility of parole.¹⁹⁵ Michigan laws, policies and practices that exclude persons serving life without the possibility of parole sentences from appropriate programs available to other children or adults in the same facility violate articles I and XVI of the Declaration in so far as they fail to promote Petitioners' rehabilitation.

2. Denying Petitioners Access to Educational Programs Violates their Right to Education Guaranteed Under Article XII

Article XII of the American Declaration guarantees everyone the right to a quality education.¹⁹⁶ A State is obligated to guarantee this right, even while an individual is incarcerated. Indeed, for incarcerated persons the State “must undertake a number of special responsibilities and initiatives to ensure that [they] have the conditions necessary to live with

¹⁹⁴ See Observations on the Response of the United States Regarding Juveniles Sentenced to Life Imprisonment Without Parole and Supplemental Submission in Support of Petition Alleging Violations of the Human Rights of Juveniles Sentenced to Life Without Parole in the United States of America at 20-21, Dec. 11, 2008 [hereinafter Supplemental Submission].

¹⁹⁵ *Id.* at 20.

¹⁹⁶ American Declaration, *supra* note 1, at art. XII:

Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity. Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

dignity and to enable them to enjoy those rights”¹⁹⁷ In relation to children who are detained, the Inter-American Court has identified the right to education as especially important, noting it is necessary “so as to ensure to them that their detention will not destroy their life plans.”¹⁹⁸ The Court has also held that the need for educational programs for incarcerated youth that come from already marginalized segments of society is heightened and that such programs are needed to improve their ability to rejoin society.¹⁹⁹ Educational programs are likewise necessary to ensure that sentences for children are aimed at their rehabilitation and reintegration rather than simply their punishment.

As inmates serving life without the possibility of parole, Petitioners, as a matter of policy and practice, have been and continue to be denied many educational programming opportunities available to other inmates who are not serving such sentences. Due to their age at the time of their arrests, the majority of Petitioners had completed only an eighth grade education when they were sentenced.²⁰⁰ Many of them also had learning disabilities.²⁰¹ Although Petitioners would benefit from additional education (and, in some instances, special education), their requests for educational services have either been ignored or explicitly rejected because they are “lifers.”

Petitioners Cedric King and Eric Latimer have been denied access to GED classes due to their life sentences. They have also been placed at the bottom of the waitlist for other classes for which they might qualify, behind other applicants who are serving term-of-years sentences.

¹⁹⁷ “*Juvenile Re-education Institute*” v. *Paraguay*, *supra* note 78, ¶ 152-153 (Sept. 2, 2004); *see also* *Minors in Detention*, Case 11.491, Inter-Am. Comm’n H.R., Report No. 41/99, OEA/SER.L/V/II.102, doc. 6. Rev. ¶ 135 (1999) (“The State, by depriving a person of his liberty, places itself in the unique position of guarantor of his right to life and to humane treatment.”).

¹⁹⁸ *Juvenile Re-education Institute*” v. *Paraguay*, *supra* note 78, ¶ 161.

¹⁹⁹ *Id.*, ¶ 174.

²⁰⁰ More than half of the petitioners were arrested prior to completing the ninth grade. Lamarr Haywood, Cedric King, Patrick McLemore, Juan Nunez and Ahmad Williams had not finished eighth grade before they were arrested and sentenced to a life of imprisonment without the possibility of parole.

²⁰¹ Matthew Bentley, Kevin Boyd, Cornelius Copeland, John Espie, Lonnell Haywood, Cedric King, Eric Latimer, Patrick McLemore, Tyrone Reyes, Kevin Robinson, Marlon Walker, Oliver Webb and Johnny Williams were either diagnosed with learning disabilities or enrolled in Special Education classes prior to their arrest and subsequent to incarceration.

Petitioners Matthew Bentley, Maurice Black, Kevin Boyd, Maurice Ferrell, Mark Gonzalez, Lonnell Haywood, Barbara Hernandez, Christopher Hynes, Juan Nunez, Sharon Patterson, Damion Todd, TJ Tremble, Marlon Walker, Oliver Webb, and Ahmad Williams have been able to obtain their GEDs by self-study, but have been denied all further educational opportunities.²⁰²

Not only is a formal educational qualification important for Petitioners' cognitive development, in the Michigan prison system, a GED is a prerequisite for inmates who seek employment or other vocational programming. The denial of access to GED educational programs impacts Petitioners' ability to advance their education and also prevents Petitioners from securing employment or gaining skills through vocational programming.

In restricting Petitioners' access to educational programs because of their life without possibility of parole sentences, the United States has violated Petitioners' right to quality education guaranteed by Article XII.

V. CONCLUSION AND PETITION

Kevin Boyd, Barbara Hernandez, Henry Hill, Damion Todd, Patrick McLemore, and the twenty-seven additional Petitioners, in light of the aforementioned violations of their rights guaranteed under the American Declaration, respectfully request the Inter-American Commission on Human Rights for the following:

1. Declare the United States and the State of Michigan responsible for violations of individual Petitioners' rights under the American Declaration of Human Rights, and specifically Article I (right to life and to be free from inhumane treatment), Article II (right to equality/freedom from discrimination), Article VII (right to protection for

²⁰² See Supplemental Submission, *supra* note 193.


children), Article XII (right to education), Article XVIII (right to a fair trial and to an effective remedy), Article XXV (right to humane treatment in custody), Article XXVI (right to freedom from cruel, infamous, or unusual punishment), and Articles I and XVII (right to rehabilitation); and

2. Declare that individual Petitioners' continued incarceration for life, without a meaningful opportunity for parole or release, constitutes an ongoing violation of the their rights under the American Declaration including Article II (right to equality/freedom from discrimination), Article VII (right to protection for children), Article XII (right to education), Article XVIII (right to a fair trial and to an effective remedy), Article XXV (right to humane treatment in custody), Article XXVI (right to freedom from cruel, infamous, or unusual punishment), and Articles I and XVII (right to rehabilitation); and
3. Declare that any future application of life without parole sentences for children in Michigan constitutes a violation of Article I, Article VII, Article XVIII, Article XXV, Article XXVI, and Article XVII, and that all children should receive sentences that provide realistic and regularly considered opportunities for release; and
4. Issue a report in accordance with Article 43.2 of the Commission's Rules of Procedure in the most expedited manner possible, incorporate into that report the findings in point (1)–(3) of this section, and recommend that the United States and the State of Michigan provide proper remedies for the violations of human rights committed in this case, including, but not limited to the following:
 - a. Individual relief, including monetary compensation and a full and prompt opportunity for review and consideration of parole for the individual petitioners, and

- b. Legal and programmatic reform to comport with the American Declaration on juvenile justice, special protections of children, and due process, recommending in particular that the United States should:
 - i. Ratify, without reservation, the American Convention on Human Rights and the Convention on the Rights of the Child, and take steps to implement them and raise awareness of their provisions at the federal, state and local levels; and
 - ii. Adopt measures designed to reform laws in the State of Michigan and throughout the United States that allow persons below eighteen years of age to be tried as adults, including through judicial waiver, the withdrawal of juvenile jurisdiction and the lowering of the age at which juveniles are subject to adult prosecution; and
 - iii. Adopt measures designed to reform laws in the State of Michigan and throughout the United States that allow children to be sentenced to life without parole; and
 - iv. Adopt measures designed to reform laws, policies and practices in the State of Michigan and throughout the United States that restrict the access of inmates serving life sentences to educational and rehabilitative programming; and
 - v. Investigate the causes behind racial disparities in juvenile justice outcomes and implement reforms to address underlying problems, including changes to laws, policies and practices that lead to these disparities.

Dated: September 4, 2012

Respectfully submitted by the undersigned, as counsel for Petitioners under the provisions of
Article 23 of the Commission's Rules of Procedure:

A handwritten signature in black ink, appearing to read "Steven M. White". The signature is written in a cursive style and is positioned above a horizontal line that spans the width of the signature.

Annexes B-F

PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF JUVENILES SENTENCED TO LIFE WITHOUT PAROLE IN THE UNITED STATES OF AMERICA FINAL OBSERVATIONS REGARDING THE MERITS OF THE CASE

Annex B: Affidavit of Henry Hill

Annex C: Affidavit of Barbara Hernandez

Annex D: Affidavit of Patrick McLemore

Annex E: Affidavit of Damion Todd

Annex F: Affidavit of Kevin Boyd

AFFIDAVIT OF HENRY HILL, JR.

I Henry Hill, Jr., do affirm and declare as follows:

I would first like to state that I have been extremely sympathetic to Anthony Thomas' family and friends from the moment they lost their loved one to an act of senseless violence committed by immature teenage boys. When Anthony Thomas was killed in 1980 I was 16 years old, a young scared boy trying to belong someplace simply to feel loved. I often felt that no one in this world could understand my pain or anger. When myself and two of my cousins got into an argument with Anthony at "Wick Park" all of us had guns in our possession, including Anthony. I think about this tragedy daily and can find no justification for Anthony's death. I even recall a time when Anthony Thomas and I were friends and never thought, for one moment, about hurting one another. Dennis Johnson (co-defendant) and myself had already left the park before Larnell Johnson (co-defendant) shot and killed Anthony.

When I was arrested in connection with Anthony's death I had no knowledge nor understanding of the significance of an education. I could neither read nor write and an evaluation by a court-appointed psychologist determined that I was functioning at an academic level of that equal to a third grader and had the maturity of a nine year old child who didn't truly understand "right from wrong". Of course, this is in no way justification for Anthony's death, but I truly did not understand what was happening. I hadn't shot anyone and didn't understand the trial.

My mother and my uncle, Charles McClaine, drove me and my co-defendants to

Saginaw Police Station where I and my co-defendants turned ourselves in. I was read my Miranda Rights, which I didn't know nor understand what this meant, however, my uncle has always been more than a father to me than an uncle, he informed me that I shouldn't say anything until I was appointed an attorney, to remain silent. It was my belief that I would be allowed to go home being that I didn't shoot nor kill Anthony Thomas, however, I was appointed a counselor and a bond hearing was scheduled. My attorney never explained to me the seriousness of the charge and when bond was denied I sat in the courtroom in tears, not understanding why I couldn't go home.

I didn't understand the significance of a waiver hearing, my attorney never explained to me if the court decided to waive me over I would be charged as an adult and if I was convicted I would receive a mandatory life sentence in prison. I was never "offered" a "plea agreement." During my trial, I had no knowledge nor understanding what a plea agreement meant, my attorney never said anything to me nor my mother or uncle about a plea agreement. It has always been my understanding that I didn't shoot nor kill Anthony, therefore, I would only be held accountable for my own actions in having a gun I wasn't suppose to have. I totally depended on my attorney during my trial, he would always say to me, "Henry, everything is going great you will be going home soon don't worry I've your best interests at heart."

When the jury found me guilty of first degree murder, I still didn't understand the seriousness of this charge nor did I understand the ramifications of my behavior. I recall

saying to my attorney, “How can the jury find me guilty for a crime I didn’t commit, I didn’t shoot nor kill Anthony, how can it be said that I’m guilty of this?” At my sentencing hearing the judge advised me that being that I was found guilty of first degree murder and by law he had no choice but to sentence me to a mandatory sentence of life without the possibility of parole, however by law he must ask me do I wish to say anything before being sentenced? I stood there lost and speechless and in tears I stated to the judge I don’t understand how twelve jurors in their right mind could find me guilty, I didn’t kill anyone. My attorney did advise me that I would be sentenced to a mandatory life sentence. I asked my mother and uncle not to attend the sentencing hearing. I didn’t want my family to hear me being sentenced to life imprisonment.

After sentencing, I was sent to Riverside Correctional Facility for two weeks and transferred to Michigan Reformatory in Ionia, Michigan. My first day there I witnessed an inmate stab another inmate in the ear while eating at food service. I started asking other inmates questions, “why did this happen?” and I was told to mind my own business and I won’t have anything to worry about. This incident had me terrified, simply because I was placed in an environment around older inmates that I really didn’t know and I was trying to adjust to being in prison. However, a month after my arrival I was placed in GED school. I remember like it was yesterday, when I first arrived at Michigan Reformatory and the officer closed my cell door, I sat on the bed lost and asking myself, “How am I going to spend the rest of my life in this small cell?” The thought kept

entering my mind, "I've been sentenced to life for a crime I did not commit." In fact, after being in prison for 15 years, I finally started to realize that if I don't obtain some education and learn the law I would die of old age in prison. With this in mind, I started taking law classes and working hard to better my education.

I can't begin to say or express the struggles I've endured being in prison at such a young age, not knowing how to read nor write, I felt that the system had failed me and thrown me in prison for life, and thrown away the key. I've always knew that I would receive some type of punishment for my involvement in connection with Anthony's death but I never understood how I could be sentenced to life and I didn't kill anyone.

When I was arrested I didn't understand that simply because I had taken part in an argument I would also ultimately be considered responsible for Anthony's death. Neither did I understand what aiding and abetting meant. I simply believed that I would be accountable for my own actions in connection with Anthony's death. Which as I have stated was merely being involved in an argument with him. I am now 42 years old and through all the accomplishments I have made I still struggle to understand how I could have been sentenced to "life without parole" when I never killed anyone. More importantly, how could an individual that was determined, by a court psychologist, to have the mental capacity of a nine year old be held to the same criminal standard as an adult?

Since being incarcerated I have taken advantage of all the programs available to

me through the Michigan Department of Corrections and I have been working as a third shift lead cook in the kitchen here at the Saginaw Correctional Facility and this is simply one job of many that I have been able to maintain throughout my incarceration.

I struggle each and every day to be a better person than I was the day before. I never again want to be that young, scared, child that was sentenced to life in prison so many years ago. I know that nothing I can do will replace the loss of Anthony but through the changes I have made I can ensure that I will never be responsible, directly or indirectly, for such a senseless act ever again. I was convicted of aiding and abetting first-degree murder and was sentenced to a term of mandatory life imprisonment. This was the identical sentence that Larnell Johnson received for committing this meaningless murder.

How can sentencing a 16 year old child, who has the understanding of a nine year old child, to life without parole be considered justice in any aspect? Because I did not shoot and kill Anthony I believe that I deserve a second chance at life outside of prison. I am not the same child that was condemned to die in prison so many years ago and my biggest fear is to never have the chance again to be that productive member of society that I know I can be. I have no desire to minimize the severity of Anthony's death to minimize my involvement in the initial argument with Anthony, however, I do not believe that involvement requires me spending the rest of my life in prison. I have struggled for 25 years to be someone other than that young boy and I have succeeded.

Respectfully submitted,

A handwritten signature in cursive script that reads "Henry Hill, Jr.".

Henry Hill, Jr.

DATED: February 2, 2006

AFFIDAVIT OF BARBARA HERNANDEZ

I Barbara Hernandez, do affirm and declare as follows:

It is very disturbing for me to think about what it was like for me at trial. So confusing – so scared, so shocked. I felt so very small. I felt so betrayed by those FBI men and the police – they tricked me into signing that statement. I was afraid of the prosecutor lady – I could tell that she hated me. I could tell that she judged me and didn't even know me. I felt so hated and ugly. I was also sad because I felt that it was my fault all my life any time something bad happened. I was sick inside and lost . . . I wanted to die. During my trial, I would sometimes think – if only he could have overpowered James Hyde. . . I would have been free of him too. I did not understand any of the court stuff. It was mostly a blur – I was in my own world. . . I was sixteen years old.

When I was being sentenced and the judge told me that I was going to be in prison for the rest of my natural life – in my mind I could hear James Hyde laughing, he got exactly what he wanted: me locked up with him forever. He had told me if he was going to be in prison, there was no way I was going to be free without him. Today, I consider myself still somewhat his prisoner. Death sentence is what the judge gave me. A long slow death. A living death. I would have rather been taken out and shot. I did not understand why I could not go to a place for kids my age. They said that there were more programs to rehabilitate me in the adult prison and not enough in juvenile facilities and then sentenced me to life without any chance of parole. I was being sent to prison!! FOREVER!! TO DIE!! That's what it meant.

Natural life now means to me that kids don't matter. It's ok to abuse, torment, exploit and then dispose of children at whim. They are not people, hearts, souls; worthy of defending. They truly are not the hope of the future. The future will take care of itself. Natural life for a juvenile (even after they've/I've become adults) is the same as capital punishment. . . my mind/thought process doesn't differentiate the two.

When I first came to prison in 1991 I was put in with adults – I was immediately of interest to two groups of people: the sexual predators and the women that wanted to play mommy (I guess they felt bad for being away from their own children). I was groped and cornered a couple of times not long after arrival on grounds. I witnessed a lot of inmate sexual contact between male guards and women prisoners in the first months I was in population – like two women going into a staff closet/room with a male guard who left the officer's station unattended; an officer (male) going into another inmates cell and closing the door was common also. Again leaving the officer's station unattended. Taking a shower was always stressful because the bathroom was always a hang-out spot for lovers and predators “peeping toms” – what could you do? Tell? Yeah, right. If you rock the boat, so to speak – you are the one to get punished.

There is/was no, across the board, professionalism. Most officers swear and yell as common practice. Intimidation comes first, than maybe reason. Backwards, if at all necessary. Rogue guards rampant. Sexual innuendo.

When I first came to prison – I was not afforded any programming that benefitted a

juvenile offender. No housing or counseling was available for a juvenile offender when I came to prison. I have never received juvenile services as long as I have been incarcerated.

Being a juvenile in prison is very hard – there are no positive rehabilitative role models: other inmates prey upon the juveniles, the staff is morally corrupt. There is not adequate programming – the environment negates any chance for morality to thrive – gambling, stealing, fighting, sexual promiscuity, rape, officer relations, favoritism from officers, influence from other inmates (peer pressure) drugs and assaults.

I have been cursed at, by officers told how ugly I am and how I will be in prison until I die – all by officers. Surely this is not an officer's duty. Neither is asking to see intimate parts of my body or being told to wear my hair a certain way.

I have had my head split open by another inmate and was afraid to report it because she had favoritism with staff and I believed I would have been the one to suffer further consequences.

I have been in prison almost fifteen years and have completed a vocational class in culinary arts. I took college courses when they were available and I also attend a poetry workshop once a week. I maintain regular employment. I am currently a recreation aide.

I believe myself to be very talented and teachable. I like to complete things that I start. My passion is for helping others. By being of service to others, I learn more about myself. I understand children very much – sometimes all they need is to know someone

cares. I would like to be that person. But, I know not to turn a blind eye to a wrong. I do not wish for the children of tomorrow to come to a place like this. I would love to be part of a deterrence, an end to children coming to this point.

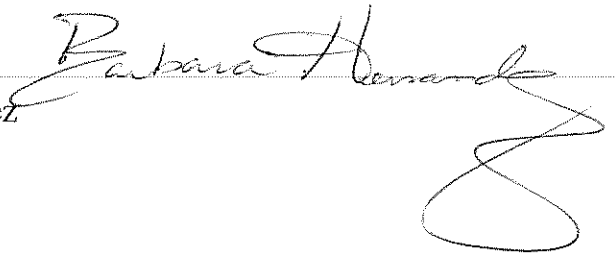
Who am I? I am remorse and pain for what needlessly happened to Mr. James Cotaling. Everyday I wish I could bring him back. Sometimes, even that I could trade my life to bring him back. Beyond remorse, I cry for his family and friends. Truly, I am sorry for my part in the crime. Today, I am not someone that can be told to do something so terribly wrong – even in the face of my own fear of harm. Today, I am a woman, not perfect – but having learned some things very valuable. I have a good heart, supportive people, worthy goals and aspirations. I have an affinity for seemingly forgotten people: abused children, troubled kids, the handicapped/physically-emotionally impaired, elderly...

I don't simply want to be a productive member of society, I know I have a purpose! . . . Responsibilities that I am ready to take on, and fulfill.

I've taken as my motto: Life isn't only about self – we're not here for ourselves.

Respectfully submitted,

Barbara Hernandez

A handwritten signature in cursive script that reads "Barbara Hernandez". The signature is written in black ink and is positioned above the printed name "Barbara Hernandez".

DATED: February 9, 2006

AFFIDAVIT OF PATRICK McLEMORE

I Patrick McLemore, do affirm and declare as follows:

I greet you all in the state of peace, good spirits, and well defined harmony, for I am addressing you today concerning juveniles serving sentence(s) of life without the possibility of parole. I am one of them, also, I am currently twenty-three (23) years of age, born September 28, 1982, and I have been incarcerated since I was sixteen (16) years old. I was convicted of Felony Murder and as a result of such conviction, I received a natural life sentence. My co-defendant who was an adult, pled guilty to the crime and received a deal. He will be able to go home. Right now, I won't.

In the State of Michigan, you can be present during the commission of a crime and be charged with felony murder and automatically receive a natural life sentence. That within itself is completely harsh, but for a child, you can't even begin to imagine the affliction. In my case there was never a juvenile hearing for consideration of my age, maturity level, nor any conducted test of my mental status. Besides myself, I know of several people who are now adults but were juveniles when convicted of their offense. In most cases their adult co-defendants committed the actual crime, but somehow eventually received less sentences than the juvenile just like me. Under the current Michigan law there is absolutely no chance for me to ever get out of prison. Maybe they understood the system and what was happening better than we did. During my whole arrest and trial it seems like I was in a different time zone or shock. It's hard to remember what happened. I do remember my lawyer saying something about pleading guilty to

committing a murder and I might get 40 to 50 years. But I wasn't going to say I did something I didn't. I didn't trust the lawyer and my mother and father weren't allowed in the court room as they were potential witnesses. I don't think I understood what the sentence would be. I thought I could be sentenced as a juvenile. Then I was given mandatory life, with no consideration of my age or involvement in the crime.

Furthermore, an overwhelming amount of juveniles have not yet developed decision making abilities as most adults are well equipped with doing. This variation would be the obvious reason as to why I was not allowed to do certain things (i.e. vote, pay taxes, be on a jury, drink, smoke, hold a job or own a car). In applying such analysis of the decision making process, whatever may be obvious to a mature adult, is still a learning experience for juvenile children. In time there comes a point in most everyone's life, a turning point in which they mature. But for me, it is actually too late. I was given a natural life sentence before I even got the opportunity to mature and make adult decisions. In speaking for the youth of the world, it is not our doing to be less responsible or have immature decision making abilities, it is clearly an act of nature to be at such a stage in life.

I am not saying that juveniles or myself should get off with a slap on the wrist, but we should have the chance to successfully demonstrate maturity, responsibility, and the credentials to show that we can be productive members of society, a second chance should be afforded. To be perfectly honest, the time I've been incarcerated, in many ways

has helped me grow up and learn many things about people, myself, life and what it suppose to consist of. I now value and look at things totally different from when I did as a kid. In the regards of such growth, I know personally that I am not the only one who views it that way.

I am currently classified to the lowest allowable security custody level for my crime and conviction. I have successfully received my G.E.D., all court recommended programs such as AA, NA, I received over one-hundred and twenty (120) hours of group counseling. I have completed legal research courses to better understand the system, I have been on board and an active member of the National Lifer's Association. I have been awarded with time in honor units. I am going to study psychology so that I can learn more about people to better understand them, and why we act and do certain things. Hopefully, I would be able to help troubled youth, before it is too late. I would really love that opportunity to do that, I owe that much, for I am one who can relate and identify with those in such a position.

Even though I am incarcerated, still, I am grateful for a lot of things, one such thing to be grateful for would be life within itself, my loving family who I have hurt. As for the victim and the victim's family, I am terribly sorry for the pain I've caused, words cannot express my deepest sympathy for the victim and the victim's family. If I could turn back the hands of time, I would erase their pain and restore their loss. For I know the feeling to lose a close family member due to senseless crimes, so for that matter, I co-

exist with their hurt. This is why I hope to someday help people and save lives within the process of doing such. I pray for that day to come into existence, to make a positive impact upon society, I console that one chance and opportunity to make such a difference, and I hope that I actually get that chance.

I thank you all for listening to these sincere words that I speak from within the corridors of my heart.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patrick McLemore". The signature is written in black ink and is positioned above the printed name.

Patrick McLemore

DATED January 26, 2006

AFFIDAVIT OF DAMION TODD

I Damion Todd, do affirm and declare as follows:

It gives me a great deal of honor to have this opportunity to express myself to you regarding this cruel, unjust, inhumane, demeaning treatment that I (and many other juveniles) have had to suffer for the past 20 years of my life – to be convicted and sentenced to a life without parole sentence as juveniles.

Prior to the incident for which I was convicted, I had no juvenile nor “so called” adult record. That is I was never in trouble with the law. While my friends and high school classmates were getting ready for our senior class trip and graduation from high school, I was representing myself in a court of law. I was seventeen. I was a senior at Detroit Henry Ford High School in the City of Detroit, State of Michigan, United States of America, and one of the captains of our high school football team. I was also an active member of the Mt. Zion Baptist Church where I was a member of the youth choir pastored by Rev. Sterling L. Jones. I also participated in summer youth jobs through my church in which we used to assist elderly senior citizens to the store, malls, walks, etc. I played a number of sports during my childhood years (baseball, ice hockey, football and basketball). I had a good reputation throughout my neighborhood as being a very respectful and easy going person.

What happened to me in 1986 was a shock to me and to everyone that has known me throughout my life. I was in a car driving away from a school party, when a car with another group of teenagers sped up behind us flashing their bright lights at our vehicle

and started shooting with guns at the car I was in. We then sped away and made a childish/impulsive decision to get a gun to defend ourselves. At no time did anyone in our vehicle discuss killing anyone. Truthfully speaking we were upset but more scared than anything else. I went in the car with everyone to one of the guy's houses a few blocks away where his father kept a shotgun. A few minutes later we were back at the school party and as we turned down the street the guys who had just shot at us yelled from a crowd of people, "There they go". Then a gun shot came from the crowd at us again. I was sitting next to the window and one of my friends pushed the gun to me and said "shoot back". I had never shot a gun before but I did that night. I shot into the air toward where we had been shot at from. I didn't aim at anyone or intend to hurt anyone. The next day we found out an innocent female bystander had been shot and later died.

I cannot tell you how many times I have wished that things had turned out differently that night. I have always wanted to express my sincerest remorse and apology to everyone involved for my whole role and actions that night. I am just about 37 years old now and have grown as a man over these 20 years, cherishing the value of life and good judgment.

The scariest moments in my life up to that time was when I stepped into the court room after my arrest. I was placed in front of a judge who's demeanor and unfair representations were openly expressed in front of my jury everyday of my trial. My trial attorney neglected his duty and I did not know or understand enough to make things stop.

In no way do I sit here today and try to minimize my crime, but at the age of 17, I was involuntarily ignorant about most life decisions in general. It seems my way of thinking at that age was a mixture of fantasy and reality. Only years after I was incarcerated was I able to properly identify with the different emotions that I was experiencing.

I witness the judicial system give “second chances” to adults who have committed far worse crimes than many juveniles have, but because they are seasoned adults who knew how to manipulate the judicial system they are given far less time than we are. Our ignorance or lack of experience in these matters are used against us from the time of our arrest – on to our lack of communication skills with our attorneys. We are railroaded by an adult system that isn’t equipped to properly handle juveniles, this current system only cares about getting a conviction at any cost! Although they said at 17 I was an adult and would be treated the same as an adult, the judge kept talking about stopping a crime epidemic by inner city youth. The judge gave me a sentence of life without parole in solitary confinement with hard labor and also said, plus a 100 year sentence.

The setting and circumstances in which I have been incarcerated no longer exist for a man of my age and maturity level. At this point in my life (as well as many other juveniles that have spent most of their lives incarcerated) prison is now beyond

punishment. I wasn’t raised to hate, cheat, lie, misuse, bully, and mistreat people like this abnormal environment encourages daily from most staff members right down to the prisoners. It works to break you down mentally, to make you become institutionalized

(which is most definitely abnormal). It tries to destroy your self esteem, it tries to make you bitter at the world, and pessimistic about everyone who strives to live a honest and clean life. I live my life resisting all of these stereotypes, and I am so very fortunate to have family and friends who love and support me in every way possible. I yearn/live to be free so that I can give back to my community and those who have shown their love and dedication for me during this period of my life, but more importantly I just want a better life for me than being incarcerated for the rest of my life. A clinical psychologist, Robert Beseda, Ph.D., on January 27, 1987 wrote an assessment of me and said that my crime was more a product of my youth and I, "could have been dealt with just as efficiently and less expensively through probation in the community." He said "it is reasonable to expect that by the time Mr. Todd reaches his early 30's, he would have matured out of a youthful exuberance and indiscretions which resulted in the needless and tragic death of an innocent female bystander," and he believe there was "no intent to kill" anyone. I have but there is no mechanism to give me an opportunity to show that. My sentence is mandatory and permanent.

I have letters of support from lawyers, consultants, school teachers, football coach, policemen, family and friends. I have completed all of the requirements that have been recommended for me since I have been incarcerated and through self examination and self correction I can clearly see today as a grown man the mistakes I made as a youth. But I will never have a chance to show this or be released and be a productive citizen because I have been given a sentence of natural life with no possibility of parole for something

stupid and foolish that turned out awful and tragic one night when I was a teenager. I believe that I should be punished but, forever? I had no other choice but to grow up and become a man while behind bars in prison, and I try to mentally deal with this life without parole sentence. I have served over 20 years in prison – more than I have lived in the free world. This is surely a life time of punishment already that I will carry with me for the rest of my entire life.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Todd". The signature is stylized with a large, sweeping initial "D" and a cursive "Todd".

Damion Todd

DATED: January 27, 2006

AFFIDAVIT OF KEVIN M. BOYD

I Kevin M. Boyd, do affirm and declare as follows:

I was sixteen when this whole thing started. This life that has become a night mare in many ways, and it seems never-ending. To share the more embarrassing moments of my time of the past eleven years is not only hard, but even to think of some of the hardships that has fallen on me, is a battle of mind and spirit. I will share this with you, with the hopes that you will come to understand the simple truth of my life, which is one word: hopeless.

My first step through the doors of Oakland County Jail was frightful to say the least. I wasn't sure what to expect. All of the tales of rape and abuse scored through me as I was stripped of all my clothes and placed in an observation cell. I was given a paper gown to wear. When I was taken past the 20 man cell in that, well I had a new found respect for women who got calls crossing the street. You can't understand the fear that you would have to go into one of those cells with men, I was still a kid. Luckily, I didn't have to go in there, I was placed in a single man cell before the court decided that it was best if I was placed in a juvenile detention center, which was only the start of this long trail.

After I was placed in a place called Children's Village, I tried to hang myself, the only thing that stopped me was a man named Shawn Warner. He saved my life, for what it is worth. I was then watched every night for almost a year, this time I was provided a cloth gown, also known as a Bam Bam suit. Every day I was forced to take my clothes

off and put this thing on, and every night I had to endure the heckles of my “fellow inmates” there. I was forced onto drugs that the doctor put me on, the names are kind of a blur, but Maloril was one. I remember the name because I remember wanting more and more after I felt the effects of the addiction they said would never come. After my dosage was upped I don’t remember too much of that year, I just remember that there was a point where I gained 50 pounds and told them to take me off of them. They did and I resurfaced into the real world. I think a lot of times I was still in that stupor of sleepy conscience even after the drugs wore off. I still sometimes wonder if that wouldn’t be a better life than what I have now, but that only lasts through whatever trying time I am having at the moment.

Through the actual judicial process, I didn’t know what was going on, nor did I know my impending doom. The more time went by the more I had it set in my mind that I wasn’t going to be sentenced as a juvenile. Through trial I just kind of sat there, I didn’t pay attention, it was too hard to relive all of it, so I would try to focus on a table or a thought. It was a scary experience to go into that court room.

After a long trial, and a four day wait for the jury, I was convicted of murder. The prosecutor moved to send me to the jail, the judge agreed. I set foot in a cage with bars for the first time. I sat on my bunk and I just remember not understanding, I had changed, why didn’t anyone see that? It was too late.

I remember when I was convicted, and placed back into the jail, into another

juvenile holding spot. When the officer came by my cell, I was hurt that I had been convicted, he just offered me a chuckle of mockery when I asked to make a phone call. The bars were on that cell, for the first time, I was in a real cage, like an animal, and there was nowhere to run to, no where to seek help or someone to talk to, just the swarm of other lost souls begging for food. They had the same drugs I had gotten off of and they would steal from you if they could to eat. The meals at the jail were horrible. But you have to eat, or starve, and nothing hits the spot when you are hungry then a lump of butter and stale bread served in hot dog flavored water. But they would steal your tray if you didn't get it fast enough or you were on walk when they passed it out. I had to learn the hard way on my first day to get your food fast, or go hungry. I mean you could always tell the guard, but then you had to go to the recreation area with the same person you had just ratted on, so you were better off going hungry for the day.

A few months after I was convicted, I was sentenced to life without parole. I tried not to cry as a child would, I stood and held my head up, I took my punishment and nodded understanding eyes to my judge after I apologized to everyone. What more could I do? What more can I do now? There is no words that can express what I felt, or still feel, there is no condolences or reprieves for what I was involved in. I walked out of the court room and tried to look everyone in the eyes as I left, as a man would.

Prison was even more cold hearted when I first entered Riverside Reception Center, nice name huh? Looks good on paper. That's what I thought too, I was told that

prison was so much better than jail. But the porter in the jail had meant for an adult. I was still a teenager. I remember my first bad encounter with a guard, I tried to ask him for something simple, like toilet paper, he mocked being afraid and threw the paper at me and begged that I didn't kill him. That was pain. I had so many of those "looks" in the court room, that said I was nothing more than a piece of trash, now I had to continue to put up with it. What other option did I have? There isn't a home to go to, a place to get away, you have to deal with these people everyday. So your best bet is to get along.

At Riverside you had what is called a gang shower.. There are no curtains and you just "get wet, get dry and say good-bye". There was a lot of fights and chaos there. It was out of control, the officers didn't care, they just want to do their 8 hours and get home. A gang beating here, a cigarette caper there, they didn't care. I was used to Children's Village, new rules to live by, or die by. I was slowly being able to see that this wasn't going to be a juvenile experience anymore, this was an adult world of all the deadly sins wrapped into one.

I used to go to church in Children's Village, where Ms. Ward would do bible study, or my friend Gerry Post would do motivational speaking and some were there just to bullshit, but for the most part all of us went to try and find something, that same thing all of us look for I think. Redemption. In prison, church is a preying field for sexual predators. I stopped going after my third service.

Then I arrived at my first real prison maximum security. I walked in totally afraid,

I saw men in there, I thought I would go to a prison with people my age, but that wasn't the case. I was thrown to the wolves. I entered the compound, when I saw grown men, out and about doing their job details or just walking the yard. Razor wire reminded me at every single turn exactly where I was at. That was when things started to get hard for me.

My first cell mate was probably the best I could have gotten. He only worked me out of my money. I was, at first step through the door, a target. My young age, blonde hair and I guess half way decent looks was like throwing a pig in with wolves. After five minutes I had three offers for cigarettes, two offers for food and drugs and if I would have held out I think I could have gotten a marriage proposal from Bubba. I had a few of the guys kind of take me in and keep me away from trouble, but mind you, you can't have some one here fight for you, you have to fight for yourself and they will be sure you don't get jumped. Anything else is frowned upon and made you a bigger target, you had to fight. My first encounter was two hard built men that had already raped another guy in the shower. I almost went to the officers and let them know, but they didn't care, and that's the truth of it. These were men doing life, they had a reputation of stabbing and raping. Just like in the wild, they found the old and sick to rob, the young and weaker to rape. Fight. And a fight I gave them. I was lucky to win. Lucky to not have to deal with them anymore, I still know that one of my friends told them they would get hurt if they pursued me. I think they wanted to see if I would fight for myself or would I be holding on to a belt loop the next day of one of the men who tried to attack me.

Among many other experiences , I would have to say that the most difficult were never the fights. It is the officers. I have been beat up, stolen from, picked on by inmates, gangs and officers. I have been a reasonably decent inmate I suppose, I have never had a lot of trouble, just being caught in cells getting a tattoo or two. I stole some food from the chow hall for a new year cook up my bunkie and I were going to try and have. I went and got a basketball that was going too close to the fence, I wasn't even paying attention. I disobeyed a direct order to enter a cell that had a 280 pound homosexual predator in it. I guess you could say I haven't been that bad. But in all of that, it still isn't the hard part of prison.

When the best part of your day is when you are sleeping; when you life is nothing more than a daily routine that turns to a monthly or even yearly routine; when you prayed for death to find you so you didn't have to look into your own face watch it age with nothing to be proud of or show for those frown lines; when you know that society looks at you as a piece of garbage and you start to believe it when you see your eyes in that same mirror. That is the bad part of prison.

The most humiliating thing I have to go through is telling the world my hardships to try and save my life. To try and show you all that I am a man. I am judged for my actions when I was sixteen, and when I say that I am cast out as heartless. I am the one person who has grieved and beat myself up over this more than anyone, and still do, I am responsible for my father's death, you can't understand what it is to have to endure that,

but I want to live. I want so much to live, I have shared things that any one person would have held. Every person is entitled to have their thoughts, hopes and personal ghost, every person does, mine are put on display to show that there is validity to the studies done by these people I don't really know. It isn't easy to tell how I was treated as a child, how I was hit, molested by my mother's friends and I was afraid to use the bathroom in my own home! I have it all out there to be ridiculed and analyzed by people whom I've never met. The bottom line is that people make mistakes, and some are of the gravest nature, I am putting my soul out in the open to show the world, that people are people. The young man forced to put a bullet in the enemy on the battle field at eighteen years old, has his ghost to face. I am responsible for my father's life. I ran away from home, I tried to ask for help in school, I begged my grandparents to let me live with them, I ran away again, I tried to get away, I tried so hard you don't even understand the half of it. I have had a gun to my head by my own hand, because I never understood why the people I loved treated me the way they did. The courts would have you believe that it is all just a great life to have money and nothing like that happens when you have money, it is all just a scam by some rich greedy 16 criminal mastermind. When you have two abusive parents, it changes the whole equation of things. Am I sorry? Am I remorseful? You could never understand how remorseful I am, but I have managed after 11 years, to find a sense of peace. I can't change the past, what is, simply is; if I could change it all, I would. The truth will always be that I was a troubled and hurting young man, with a lot

of issues. At 28 years old, I look back on that kid, and I know that it isn't me, not anymore. I fought to educate myself, I fought and clawed to try and find some redeeming quality in my eyes, and I did. It took a long time, a lot of soul searching, but I can stand in front of anyone today and look them clean in the eyes and know that I have overcome all that I have had to. I am not that scared kid that was always nervous around my parents, I am not the kid who finally lost it and just didn't care anymore, I am not even the kid that had to fight to take a shower. I am Kevin Boyd, a man who has had a lot to make up for in life, a guy that in many senses still feels he has a lot to prove, but my time in prison has come to a stand still. There is nothing more I can do from this place, except continue to put up with the new ones coming in, trying to make a name for themselves, I am still the guy that just kind of ducks in the cell to get away from it, I read my books and watch my animal shows. I work hard just like anyone else does, eight hours a day for 32 cents an hour. I provide for myself and ask nothing from anyone, I take pride in the little hobby projects I do. And the final humiliation is that I still get the looks of disgust from officers and staff, as if they had a clue of what I have been through. Maybe I deserved it? Maybe I deserved to go through what I did, I don't know. But this is my life folks, this is my hard aches for everyone to look down upon, at least now I can look back up at you all and smile and say, "I did my best with what life has given me, I have made a lot of poor choices, some that can't be changed but as sure as I am sorry for what I have done, I am

proud to be who I am now.” I am still putting my life out there, I am still fighting to be free, as I think anyone should, in many ways it is about me forgiving myself, I fight, because I have forgiven myself, so no matter what the law decides to do, I have gained more from this than you can understand, cause I can walk with my head high, realizing that I went through a lot, and even after I fell as far as I could fall, after the lonely nights with no one to cry to or place to call home, after a million tears I can still stand on my own two feet, provide for myself and see my flaws turned around into a much better light than I ever would have had.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kevin M. Boyd". The signature is written in black ink and is positioned above the printed name.

Kevin M. Boyd

DATED: January 27, 2006