No. 07-8436

IN THE
Supreme Court of the United States

CHRISTOPHER PITTMAN,
Petitioner,

v.

STATE of SOUTH CAROLINA,
Respondent.

On a Petition for a Writ of Certiorari to the Supreme Court of South Carolina

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BRIEF *AMICI CURIAE* OF DANIEL LEDDY, JEANNE MEURER, AND H. TED RUBIN IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Daniel Leddy,[2] Jeanne Meurer,[3] and H. Ted Rubin[4] are one active and two former judges who have handled cases involving acts of violence committed by children and/or written about the topic of juvenile justice. They seek to bring to the Court's attention their experience and knowledge in this

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[1] The parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici curiae*'s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

[2] Daniel Leddy is a retired Family Court Judge from New York. He has written many newspaper columns raising concerns about the treatment of young juveniles as adults in the criminal justice system.

[3] Jeanne Meurer has served as District Judge for the 98th District Court in Austin, Texas, specializing in family law, child abuse, and juvenile law cases, for nearly twenty years. She chairs the Travis County Juvenile Board, and handled the case of Marcus McTear, a sixteen-year-old juvenile who was convicted of murdering his fifteen-year-old girlfriend.

[4] H. Ted Rubin is a retired Judge of the Denver Juvenile Court, Denver, Colorado, who works as a consultant to juvenile and family courts around the United States. He has authored approximately 300 research reports and articles concerned with juvenile and family justice and corrections, as well as four books: *The Courts: Fulcrum of the Justice System* (2d ed. 1984); *Juvenile Justice: Policy, Practice, and Law* (2d ed. 1985); *Behind the Black Robes: Juvenile Court Judges and the Court* (1985); and *Juvenile Justice: Policies, Practices, and Programs* (2003).

area, which counsel against the kind of mandatory criminal sentence imposed in this case for acts committed by a child at the age of twelve. In particular, they believe that an effective response to a heinous act committed by someone so young requires that the judge imposing the sentence have discretion to consider the particular circumstances of the juvenile offender, including both the option of a customized criminal sentence, the option of placement in a juvenile offender program, or some combination of the two. In the view of *amici*, these practical considerations should inform the analysis of the Eighth Amendment claim presented here.

SUMMARY OF ARGUMENT

The petition presents the question whether the Eighth Amendment prohibits a twelve-year-old child from being sentenced to a term of thirty years in prison without the possibility of parole if the sentencing judge is precluded from considering the twelve-year-old child's age, level of maturity, and potential for rehabilitation as bases for imposing a lighter sentence. Without seriously considering this Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court of South Carolina held that such a sentence did not violate the Eighth Amendment.

Immediate review is needed on this important constitutional question. Notwithstanding this Court's explanation that "juvenile offenders cannot with reliability be classified among the worst offenders" due to their lack of maturity and underdeveloped sense of responsibility; their

susceptibility to negative influences and outside pressures, including peer pressure; and their "more transitory, less fixed" character, *Simmons*, 543 U.S. at 569-70, South Carolina's system subjects a class of juvenile offenders, including the petitioner in this case, to severe criminal sentences without any meaningful consideration of the mitigating factors associated with youth that *Simmons* identified. South Carolina's failure to allow for consideration of these mitigating factors is particularly egregious given that this failure can—and in petitioner's case did—extend to cases involving children who have not reached their teenage years.

The appropriate place for the requisite individualized decisionmaking to occur is within a specialized juvenile justice system. The juvenile justice system has generally had more success in dealing with violent young offenders than has the adult criminal justice system. Juvenile courts have capably handled cases involving juveniles who have committed the most heinous crimes without endangering public safety. Moreover, any concern that there is a need to be able to impose a sentence extending beyond the offender's twenty-first birthday can be addressed through the enactment and use of blended sentencing laws, which allow for sentences that combine a juvenile and adult component.

ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW BECAUSE SOUTH CAROLINA'S SENTENCING SCHEME FAILS TO AFFORD SENTENCING JUDGES AN OPPORTUNITY TO TAKE ACCOUNT OF JUVENILE OFFENDERS' AGE, LEVEL OF MATURITY, AND POTENTIAL FOR REHABILITATION.

Before imposing a sentence of significant length on young and violent juveniles, a sentencing court must at least be given the opportunity to consider the mitigating effect of an offender's age, maturity, and potential for reform. Any scheme that fails to provide the sentencing judge with such discretion will result in fundamentally unfair and disproportionately harsh sentences for many juvenile offenders. Plainly, this point has particular force in cases involving very young offenders, such as the petitioner in this case.

As one experienced judge explained:

> In determining the degree of culpability that we can justly place on the shoulders of children who commit violent acts, we must consider far more than the nature of the offense that brings them before the court. We must examine each child's individual circumstances and social history. The nature of the offense does not tell us all we need to know about the nature of the offender. We cannot be content to merely impose what seems to be the "statutorily" appropriate

> punishment that is graduated solely according to the gravity of the crime.

Michael A. Corriero, *Judging Children as Children: A Proposal for a Juvenile Justice System* 71-72 (2006); *see also Mark F. v. Superior Court*, 234 Cal. Rptr. 388, 390 (Ct. App. 1987) ("The basic predicate of the Juvenile Court Law is that each juvenile is to be treated as an individual.") (quotation marks omitted); Judge J. Dean Lewis, *America's Juvenile and Family Courts: 100 Years of Responding to Troubled Youth and Their Families*, 50 Juv. & Fam. Ct. J. 3, 5 (1999) ("celebrat[ing] the juvenile court's response to the need for a different kind of justice for children, one that treated each child as a unique human being, a concept we call 'individualized justice'"). Accordingly, Judge Corriero concludes, "[a] system that recognizes these variations in blameworthiness would provide for appropriate judicial discretion and dispositional alternatives." Corriero, *supra*, at 170.

That insight is a logical application of the rationale of *Simmons*, 543 U.S. 551. In that decision, this Court explained that juveniles, for many reasons, cannot be considered to be among the worst offenders, and that the death penalty is accordingly a disproportionate sentence for juvenile offenders. *Id.* at 569-72 ("[I]t is evident that the penological justifications for the death penalty apply to [juveniles] with lesser force than to adults."). Of course, if there is a gap between the culpability of adults and juveniles generally, there is a chasm between the culpability of adults and twelve-year-old

children. Thus, while a thirty-year sentence is different in kind from a sentence of death, it is not at all clear that a thirty-year sentence for a twelve-year-old child is any less disproportionate than is a sentence of death for a seventeen-year-old offender; indeed, *amici* submit that the former sentence is as disproportionate as the latter sentence.

Further, the culpability of juvenile offenders—including offenders of the same age—ranges broadly. *See, e.g.*, Corriero, *supra*, at 170 (discussing "variations in blameworthiness" and the importance of flexibility in juvenile sentencing). Accordingly, even if this Court decides that a thirty-year sentence is proportionate to the culpability of a sufficient number of twelve-year-old children that it should not be regarded as unconstitutional *per se*,[5] such a sentence will be disproportionate to the culpability of a significant percentage of twelve-year-old offenders. To ensure that sentences of a duration far in excess of what is appropriate are not imposed on such young offenders, a sentencing court must have the discretion at least to consider the *possibility* that factors such as age, maturity, and likelihood of rehabilitation demonstrate that a thirty-year sentence should not be imposed.

Nonetheless, South Carolina's sentencing scheme subjects all juveniles who are transferred into adult court for first-degree murder to a severe mandatory-

[5] *But see Simmons*, 543 U.S. at 572-73 (imposing a categorical rule in part because of the concern that the brutality of a crime would consistently be found to outweigh the mitigating factors associated with youth).

minimum sentence. *See* S.C. Code Ann. § 16-3-20. Trial court judges are prohibited from considering a juvenile offender's age, diminished culpability, or capacity for rehabilitation—factors critical to the imposition of a proportionate sentence on a juvenile offender—as a basis for imposing a sentence below thirty years. And, the sentencing scheme provides no basis for a juvenile offender to establish following conviction that, in maturing into adulthood, he or she has been rehabilitated. Indeed, in reflection of this inability to account properly for the mitigating effects of youth, the trial court judge in this case felt compelled to explain at the sentencing hearing that the thirty-year sentence was a legislative mandate that had been upheld by higher courts, and that he was "obligated to follow the precedent of . . . superior courts." Pet. App. 70a.

The scheme under which Christopher Pittman was sentenced, in short, is contrary to a premise central to this Court's decision in *Simmons*, fundamental to juvenile justice, and plain from basic human experience—namely, the notion that juveniles are less culpable for their acts than are adults. *See* Franklin E. Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 Notre Dame J.L. Ethics & Pub. Pol'y 267, 279 (1991) ("It would be ludicrous to argue that the policy toward youth which so heavily influences the proper outcome in other cases should be considered totally irrelevant in those exceptional cases in which jurisdictional transfer occurs."). South Carolina's rejection of this notion in a case involving a twelve-year-old offender, where it has

particular force, is in conflict not only with the counsel of judges experienced in handling youth violence but also with the Eighth Amendment.

It is no argument, moreover, that South Carolina's transfer process allows judges to account for the mitigating factors associated with youth. As is the case with respect to the imposition of the death penalty on juveniles of any age, there is "[a]n unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where [a twelve-year-old child]'s objective immaturity, vulnerability, and lack of true depravity" demonstrate that waiver into the adult system to face a minimum thirty-year sentence is inappropriate. *See Simmons*, 543 U.S. at 573. To be sure, this point could be regarded as undermining the argument that sentencing judges must have at least some discretion to consider youth as a mitigating factor, since sentencing judges, like judges making a transfer determination, are likely to be affected by the cold-blooded nature of a crime (thus calling into question the benefits—and constitutional significance—of granting such discretion). But discretion to consider youth as a mitigating factor in sentencing decisions is different in kind from discretion concerning a transfer determination.

Whereas a sentencing judge with discretion to consider youth as a mitigating factor would sentence at some point along a continuum of options, a judge making a transfer determination in South Carolina

is generally left in homicide cases with only two options, each of which will likely appear to the judge making the transfer determination to be unsatisfactory in a significant percentage of cases: (1) retain jurisdiction, thereby ensuring that the offender will be released on or before his or her twenty-first birthday, S.C. Code Ann. § 20-7-400(B); or (2) transfer jurisdiction to the adult court, thereby ensuring a minimum thirty-year sentence following conviction. Thus, in states like South Carolina with binary regimes, the cold-blooded nature of certain murders will result in at least some (and perhaps many) sentences *far* in excess of the sentence that is appropriate in light of the offender's culpability—that is, some (and perhaps many) unconstitutionally excessive sentences—and not simply sentences that are some increment longer than is appropriate.[6] And, plainly, the restricted nature of the options available to sentencing judges in South Carolina does not insulate excessive sentences imposed under that State's system, such as petitioner's sentence, from constitutional attack; it instead speaks to South Carolina's need to afford sentencers the option of

[6] As pointed out in *State v. Ira*, 43 P.3d 359 (N.M. Ct. App. 2002), this binary option set can produce inappropriate sentences even where the judge making the transfer determination is not unduly affected by the brutal nature of a crime. *Id.* at 369 (noting the "inadequacy of our juvenile justice sentencing scheme" and that "many courts . . . will opt for a longer term of adult incarceration of a juvenile offender instead of risking a short-term, unsuccessful juvenile detention that would result in the premature release of a dangerous offender").

imposing a blended sentence, *see infra* Part II.B, or the opportunity to consider a child offender's age and the mitigating effects associated therewith in imposing a sentence.

South Carolina's undue focus on the offense and inattention to the offender are reinforced by two other aspects of its transfer system. First, transfer determinations are made prior to trial. As a result, the judge making this determination is unable to consider evidence developed during the trial process that may shed light upon a young offender's culpability. The brutality of the crime, in contrast, will generally be apparent at this early stage in the process. This case provides a concrete example: Subsequent to his initial transfer hearing, petitioner developed evidence regarding his stability and the effect of Zoloft on his mental health. At that point in time, however, petitioner would have had to establish that his transfer to adult court was "inappropriate or tantamount to an abuse of discretion"; and, after the South Carolina Court of General Sessions found that petitioner had not met this high standard, this mitigating evidence effectively became irrelevant. *See* Pet. App. 65a.

Second, the South Carolina Supreme Court has found that transfer is *required* in certain cases, based in significant part on the heinousness of the offense at issue rather than the characteristics of the offender. *See State v. Corey D.*, 529 S.E.2d 20, 26 (S.C. 2000) (holding that court abused its discretion by declining to transfer twelve-year-old offender to adult court following a murder and explaining that,

"[w]hile murder will always be considered 'serious,' the heinousness of these particular crimes is beyond dispute"). Thus, even if the transfer process in theory affords judges the type of discretion needed to take account of the mitigating factors associated with youth, the South Carolina Supreme Court has narrowed this discretion in a manner that renders it meaningless in a subset of cases—quite possibly including petitioner's case.

In short, the limited discretion South Carolina affords to judges making transfer determinations in certain cases does not provide these judges with the flexibility needed to ensure that proportionate sentences are imposed. This Court should accordingly grant review to resolve the question whether the extremely limited nature of the discretion granted to judges in South Carolina in cases involving violent and very young juvenile offenders renders South Carolina's sentencing scheme unconstitutional under the Eighth Amendment.

II. THE JUVENILE JUSTICE SYSTEM IS WELL EQUIPPED TO HANDLE CASES INVOLVING SERIOUS ACTS OF VIOLENCE COMMITTED BY YOUNG OFFENDERS.

Based on the experience of *amici*, the most appropriate way to provide individualized sentencing of juveniles, and the best means of serving the community at large, is to keep juveniles' cases within the juvenile justice system. With respect to children, such as petitioner, who have committed a serious

violent crime at a very young age, disposition in the juvenile justice system is imperative.

A. The Juvenile Justice System Has Had More Success Than the Adult System in Handling Juvenile Offenders.

Both juvenile offenders and public safety are better served when children remain in the juvenile justice system than when they are transferred to the adult court system. Juveniles who are transferred, "because of their immaturity, . . . are disadvantaged at every stage of the adult court process, a disadvantage that . . . amounts to injustice." Corriero, *supra*, at 165. Such disadvantages infect every stage of a juvenile's interaction with the criminal justice process. Moreover, studies show that juveniles transferred to adult court are more likely to reoffend than are juveniles whose cases are dealt with in juvenile court.

First, juveniles generally view juvenile court in favorable terms, whereas juveniles prosecuted in criminal court have negative views of that institution. Among other things, juveniles view criminal proceedings as more complex and involving gamesmanship, and they often fail to differentiate among public defenders, prosecutors, and judges. *See* Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 Crime & Just. 81, 135-37 (2000). Unable to distinguish between good and bad deals, juveniles in the adult court often feel dissatisfied with the sentences resulting from their guilty pleas, and, frequently believing that their sentences reflect a sentencer's personal animosity

toward them, many juveniles regard their sentences in adult criminal court as unjust. *Id.* at 137.

In addition to resulting in greater hostility toward the justice system, prosecution of juveniles in the adult system leaves juveniles—especially very young juveniles—at a significant disadvantage relative to adult defendants. As one study found, "juveniles aged 15 or younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding." Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Human Behavior 333, 356 (2003). The study therefore concludes that, "[u]nder well-accepted constitutional restrictions on the state's authority to adjudicate those charged with crimes, many young offenders—particularly those under 14—may not be appropriate participants for criminal adjudication." *Id.* at 358. Moreover, Grisso et al. find that juveniles' "psychosocial immaturity may affect the performance of youths as defendants in ways that extend beyond the elements of understanding and reasoning that are explicitly relevant to competence to stand trial." *Id.* at 357. "Adolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement," and "younger adolescents are less likely, or perhaps less able, than others to recognize the risks inherent in the various

choices they face or to consider the long-term, and not the immediate, consequences of their legal decisions." *Id.*

Juvenile court judges also plainly have more experience dealing with violent juvenile offenders than do criminal court judges. As a result, juvenile court judges are in a far better position than criminal court judges to assess the culpability of a particular offender, both in absolute terms and relative to his or her peers. Prosecution in the juvenile justice system rather than the adult criminal court system, it stands to reason, will result more commonly in the imposition of a proportionate sentence.

Importantly, juvenile offenders are not the only beneficiaries of the decision to handle cases in juvenile rather than adult court. Studies demonstrate that juveniles transferred to the adult system are more likely to reoffend, and to do so more quickly and more often, than are juveniles retained in the juvenile system. Jeffrey Fagan, *The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, 18 Law & Pol'y 77, 100 (1996) ("The comparison of closely matched states and offender cohorts in juvenile and criminal courts suggests that there may be a negative return from criminalizing adolescent crime."); *accord* Bishop, *supra*, at 149-50; Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, 56 Morbidity & Mortality Weekly Report 1, 7-8 (2007), *available at*

http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf (concluding that review of six studies "provides sufficient evidence that the transfer of youth to the adult criminal justice system typically results in greater subsequent crime, including violent crime, among transferred youth"); Benjamin Steiner & Emily Wright, *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?*, 96 J. Crim. L. & Criminology 1451, 1457-58 (2006). Indeed, research shows that "the mere fact that juveniles have been prosecuted and convicted in criminal rather than in juvenile court increases the likelihood that they will reoffend." Bishop, *supra*, at 149.

Prosecution in the juvenile justice system therefore serves not only to ensure that proportionate and fair sentences are imposed on juveniles, but also to improve public safety. This conclusion, moreover, is unaffected by consideration of the general deterrent value of juvenile transfer laws: studies of the subject do not support the contention that laws transferring juveniles into adult courts deter criminal activity among the general juvenile population. *See* Steiner & Wright, *supra*, at 1458-60 (explaining that there is little reliable evidence of a general deterrent effect); *see also* CDC, *Effects on Violence*, *supra*, at 8 (finding that the evidence from three studies reviewed for the report was "insufficient to determine whether or not laws or policies facilitating the transfer of juveniles to the adult criminal justice system are effective in preventing or reducing violence in the general juvenile population," but noting that study findings

were "typically centered on no effect"); Bishop, *supra*, at 85-86. Notably, these research findings—namely, that juveniles handled in the adult system are more likely to reoffend and that there appears to be no general deterrent effect from policies facilitating transfer—are generally consistent with the experience of juvenile court judges and others involved in the juvenile court system. *See* Joseph B. Sanborn, Jr., *Certification to Criminal Court: The Important Policy Questions of How, When, and Why*, 40 Crime & Delinq. 262, 275 (1994) (explaining that survey respondents, all of whom were involved with the juvenile justice system, did not perceive public safety as a concern warranting the prosecution of juveniles in adult court); *see also* Interview by Earl E. Appleby, Jr., Senior Editor, *Juvenile Justice*, with J. Dean Lewis, Judge of the Juvenile and Domestic Relations Court for the 15th Judicial District of the State of Virginia (Dec. 1999), *available at* http://www.ncjrs.gov/html/ojjdp/jjjournal1299/1.html ("When juvenile courts are given adequate resources, they can be effective in curtailing juvenile crime."). In short, both juvenile offenders and public safety are best served by the prosecution of juvenile offenders in juvenile court.

B. Juvenile Courts Are Capable of Handling Cases Involving Extremely Violent Young Offenders in a Manner That Protects Public Safety.

Experience demonstrates that juvenile courts are not only capable of handling cases involving violent crimes committed by young juveniles, but that they

have done so with great success. *People v. Abraham*, No. 1997-063787-FC (Oakland County, Mich., Fam. Div., Jan. 13, 2000), for example, involved a charge of first-degree murder brought against Nathaniel Abraham for using a borrowed .22-caliber rifle to shoot a stranger in the back of the head at a range of more than 200 feet. *See* Keith Bradsher, *Boy Who Killed Gets 7 Years; Judge Says Law Is Too Harsh*, N.Y. Times, Jan. 14, 2000, at A1. Abraham, an eleven-year-old boy who weighed sixty-five pounds at the time of his arrest, was apprehended in his classroom wearing a Halloween costume and face paint. *See* Bryan Robinson, *13-Year-Old—and Michigan Juvenile Law—Under Fire in Murder Trial*, Court TV Online, Sept. 19, 1999, *available at* http://www.courttv.com/archive/trials/abraham/101999_ctv.html. Pursuant to a Michigan statute applicable when certain charges, including murder, are brought against juveniles, Abraham was tried as an adult in juvenile court. *See* Mich. Comp. Laws § 712A.2d(1). Approximately two years after he was initially charged, then-thirteen-year-old Abraham was convicted of second-degree murder. *See* Desiree Cooper, *Judge Saw Boy Worth Saving*, Detroit Free Press, Jan. 19, 2007, at 1.

Under Michigan law, the judge who presided over the trial and was responsible for sentencing had three sentencing options: (1) to sentence Abraham as an adult, which under the guidelines would have meant a sentence of eight to twenty-five years; (2) to sentence Abraham as a juvenile, which could include incarceration until his twenty-first birthday; or (3) to give Abraham a blended sentence, which would

include a stayed adult sentence that could be imposed if Abraham were not rehabilitated at the end of his juvenile sentence. Mich. Comp. Laws § 712A.18(1)(m). After reading psychological reports, the recommendation of the juvenile-court caseworker, and statements from the victim's family, and analyzing the different sentencing options, the judge concluded that a juvenile sentence best met the needs of Abraham and society. While conceding that there was "no guarantee Nathaniel will be rehabilitated by age 21, when he must leave the Juvenile Justice System, it is clear that 10 years should be enough to accomplish this goal." Sentencing Opinion, *People v. Abraham*, No. 1997-063787-FC, at 9.

Although Nathaniel Abraham is still young, the sentence he received appears to have worked out well. During his time in juvenile detention, Abraham was able to take responsibility for the ways he had hurt others, received counseling, earned a GED and a high-school diploma, and spoke at community facilities. *See* Eugene Arthur Moore, *Juvenile Justice: The Nathaniel Abraham Murder Case*, 41 Mich. J.L. Reform 215, 230-33 (2007) (containing a version of Judge Moore's January 18, 2007 closing opinion, which released Nathaniel Abraham, Opinion Closing Case, *People v. Abraham*, No. 1997-063787-FC (Oakland County, Mich., Fam. Div., Jan. 18, 2007)). To be sure, Abraham made mistakes after his sentencing: he was involved in a few fights, yelled at staff, and stole cleaning supplies for his girlfriend. But "[n]one of these incidents was very serious—certainly his behavior did not warrant

any criminal charges." Moore, *supra*, at 232-33. Moreover, Abraham committed himself at his release to living a productive life. Among other things, he thanked the judge for believing in him, said that he owed a debt to everybody involved in his case, and stated that he would "make the best of it." *See* Jennifer Chambers, *State Pays Abraham's Housing, College Tabs; Young Killer Free After 8 Years, Wants Fresh Start*, Detroit News, Jan. 19, 2007, at 1A. And, to this point, Abraham has lived up to that promise; he attends Wayne State University and gives motivational talks to children. *Released Murderer to Attend Wayne State University*, Grand Rapid Press (Michigan), Mar. 22, 2007, at B6.

The *Abraham* case is not unique. In a case involving David Ruiz, Jr., a fifteen-year-old child who participated in a murder, for example, Judge Jeanne Meurer of Texas imposed a blended sentence, giving rise to the possibility that Ruiz would serve only a juvenile sentence. Later, Ruiz was forgiven in court by the parents of the victim, earned his GED, and took building-trade classes while being held at the Giddings State School for juvenile offenders. According to Judge Meurer, Ruiz, when he turned eighteen years old, was "remorseful and posed little threat to the community." *See* Janet Wilson, *The Greatest Gift*, Austin Am.-Statesman, June 15, 1997, at D1.

Indeed, the juvenile justice system throughout the country has handled cases involving violent young juveniles in a manner that ensures that the sentence being imposed is proportionate to the

offense and the offender and is protective of public safety. *See, e.g.*, Pauline Arrillaga, *Judge: Prison or 2nd Chance for Teen*, USA Today, Dec. 22, 2007, *available at* http://www.usatoday.com/news/nation/2007-12-22-1938582013_x.htm (discussing thirteen-year-old Pennsylvania boy who committed a gruesome murder, was sentenced as a juvenile, and reformed in the juvenile system, eventually leading to his appointment by the governor's office to sit on a state juvenile-justice and delinquency-prevention committee); *see also* Corriero, *supra*, at 69-71 (discussing Judge Corriero's imposition of sentences on two violent offenders, both of whom were given the opportunity to avoid significant adult sentences if they cooperated with counseling programs, and both of whom successfully completed such programs and avoided subsequent violent crimes). *See generally* John Hubner, *Last Chance in Texas: The Redemption of Criminal Youth* (2005) (discussing the success of Texas's Giddings State School in reforming the "worst of the worst" among juvenile offenders); Justice Policy Institute & Children & Family Justice Center, *Second Chances: 100 Years of the Children's Court: Giving Kids a Chance to Make a Better Choice* (1999), *available at* www.cjcj.org/pdf/secondchances.pdf (describing success stories of individuals formerly charged with juvenile offenses, including serious violent offenses).

Changes in juvenile-sentencing law, moreover, have to a significant degree mooted what is perhaps the most common and forceful objection to the handling of serious violent offenses in juvenile courts: the concern that juvenile courts, because of

constraints on the duration of their jurisdiction, are unable to impose sentences that are sufficiently severe in light of the gravity of the offense. *E.g.*, *Thompson v. Oklahoma*, 487 U.S. 815, 850 (1988) (O'Connor, J., concurring) ("The length or conditions of confinement available in the juvenile justice system, for example, might be considered inappropriate for serious crimes or for some recidivists."); Zimring, *supra*, at 269 ("[O]ne obvious reason why cases arise in which the minimum appropriate punishment exceeds the dispositional authority of juvenile courts is their limited power to punish."). In particular, the widespread enactment of blended sentencing laws has provided sentencing judges with the discretion needed to ensure that sentences imposed on juveniles are neither too harsh nor too lenient.

While the details vary from state to state, blended sentencing laws generally afford sentencing judges the opportunity to impose a juvenile sentence, an adult sentence, or some combination thereof on juvenile offenders. *See, e.g.*, Tex. Fam. Code Ann. §§ 54.04, 54.11; *see also* Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 Minn. L. Rev. 965, 1038 (1995) (explaining that Minnesota's system tries "youths in juvenile court with all adult procedural safeguards, and then imposes both a juvenile court sentence and a stayed adult court sentence"). *See generally* Patricia Torbet et al., Office of Juvenile Justice and Delinquency Prevention, *State Responses to Serious and Violent Juvenile Crime* 11-12 (1996) (discussing the different blended-sentencing models employed by

various states). As of 2002, approximately half of the states provided some type of blended sentencing. *See* Patrick Griffin, Nat'l Ctr. for Juvenile Justice, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*, Special Project Bulletin 3, 13-20 (2003). In many instances, the imposition of a blended sentence affords the sentencer the opportunity to take a "second look" at the juvenile at the age of majority to see if he or she has reformed or if the adult part of the sentence is necessary.

Torbet et al. explain that states use five different blended-sentencing models, three of which involve adjudication in the juvenile courts and two of which involve criminal-court adjudication. One model, the "juvenile-exclusive blend," involves the imposition by a juvenile court judge of a sentence in either the juvenile or the adult system. A second model, the "juvenile-inclusive blend," involves the imposition of a juvenile sentence and an adult sentence, the latter of which is suspended pending an additional violation. The third model is the "juvenile-contiguous" model, under which a juvenile court imposes a juvenile sentence that may remain in force beyond the age of that court's jurisdiction, at which time the case is transferred to the adult system. Fourth is the "criminal-exclusive blend," under which an adult court imposes either an adult or a juvenile sentence. Finally, the "criminal-inclusive blend" involves the imposition by an adult court of a juvenile and adult sentence, with the adult sentence suspended pending a new violation. *See* Torbet et al., *supra*, at 11-12.

Thus, in a case involving a violent and very young offender, certain versions of these laws allow the sentencing court to impose a juvenile sentence *and* an adult sentence that is stayed pending successful completion of the juvenile sentence and any additional conditions the judge may choose to include. *See, e.g.*, *In re Sturm*, 2006 Ohio 7101, 2006 Ohio App. LEXIS 7046, at *13-14, 39-43 (Dec. 22, 2006) (approving trial court's imposition on twelve-year-old double-murderer of a juvenile sentence and two consecutive adult sentences, stayed pending successful completion of the juvenile disposition, of fifteen years to life); Claire Osborn, *Teen Admits Guilt in Slaying of Ex-Girlfriend; McTear Gets 3 to 40 Years*, Austin Am.-Statesman, June 6, 2003, at A1 (discussing case in which Judge Meurer sentenced sixteen-year-old murderer to blended sentence under which the juvenile offender would either be released if he successfully completed a juvenile rehabilitation program or serve a forty-year adult sentence if he failed to do so); Claire Osborn, *Teen Serving Out Penalty in Prison; Ex-Reagan High Student Who Killed a Girl Isn't Showing Signs of Improvement, Judge Rules*, Austin Am.-Statesman, Jan. 27, 2006, at B1 (noting that Judge Meurer found that McTear had not improved and was being sent to adult prison to complete his forty-year adult sentence).

In light of this development in juvenile sentencing and the support it has received,[7] the

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[7] *See, e.g.*, Kathryn A. Santelmann & Kari L. Lillesand, *Extended Jurisdiction Juveniles in Minnesota: A Prosecutor's Perspective*, 25 Wm. Mitchell L. Rev. 1303, 1335 (1999) (finding

argument that states *must* transfer children to adult courts in order to ensure that a sufficiently harsh sentence is imposed is no longer viable. To be sure, South Carolina's sentencing scheme does not provide judges the opportunity to impose blended sentences; but given that South Carolina has chosen not to allow judges to impose such sentences, the State cannot credibly argue that public safety concerns necessitate the upholding of Pittman's sentence.

In sum, the juvenile justice system is at least as capable as the adult criminal justice system at handling juvenile crime generally and violent juvenile crime in particular. There is no reason to conclude that the adult criminal justice system is better able to serve juvenile offenders than is the juvenile justice system, nor is there reason to believe that the threat of adult criminal court prosecution deters crime among those prosecuted in adult court or among the juvenile population generally. As a study by the Centers for Disease Control and Prevention concluded, "transferring juveniles to the adult system is counterproductive as a strategy for preventing or reducing violence." CDC, *Effects on Violence*, at 8.

Minnesota's blended-sentencing scheme to be a "successful sentencing option," as "[i]t allows prosecutors and judges, who often desire to give a child an opportunity for rehabilitation, the ability to do so while fulfilling their obligation to protect public safety").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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