Before the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Henry Hill, et al.

vs.

The United States of America

Case No. 12.866

PETITIONERS' OBSERVATIONS & RESPONSES CONCERNING THE MARCH 25, 2014 HEARING BEFORE THE COMMISSION

June 13, 2014

Presented on Behalf of Petitioners by:

Steven Macpherson Watt
Human Rights Program
American Civil Liberties Union

JoAnn Kamuf Ward
Human Rights Clinic,
Columbia Law School

Deborah LaBelle
Kary Moss
American Civil Liberties Union of Michigan

Counsel for Petitioners

Submitted June 13, 2014

I. INTRODUCTION

Petitioners submit these Post-Hearing Observations and Responses to address questions posed by the Commissioners during the March 25, 2014 Merits Hearing, and to respond to the Government of the United States' written response to the Inter-American Commission on Human Rights, submitted on May 6, 2014 ("U.S. Response"). Where appropriate, Petitioners direct Commissioners to relevant portions of their prior submissions and amicus briefs filed in support of Petitioners that more fully address these issues. We refer to several assertions raised in the U.S. Response despite the fact that they have been decided by virtue of the Commission's Admissibility Decision in this case, only to underscore that they continue to lack merit.

II. FACTUAL BACKGROUND

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. Today, approximately 2,500 individuals across the United States are serving life-without-parole sentences for crimes committed before their 18th birthdays, 364 of them in Michigan alone.[1] Statistics conclusively demonstrate that these sentences have a disproportionate impact on minorities: an alarming 73% of individuals serving juvenile life-without-parole sentences (JLWOP) in Michigan are black. While recent U.S. Supreme Court decisions have imposed some important restrictions on the use

[1] *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."); Human Rights Watch, *State Distribution of Youth Offenders Serving Juvenile Life Without Parole* (2009), *available at* http://www.hrw.org/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole; John Barnes, *Judgment Day for Michigan's juvenile lifers: The U.S. Supreme Court considers banning life without parole for minors*, Mlive.com (Mar. 12, 2012), http://www.mlive.com/news/index.ssf/2012/03/judgment_day_for_michigans_juv.html. In Michigan 399 children have been imprisoned for life without the possibility of release on parole. 364 of them are still alive.

of JLWOP sentences, the Court's rulings do not prohibit the imposition of these sentences in all circumstances, and in fact, state courts continue to impose it. Although named Petitioners are youth sentenced to JLWOP in Michigan, it is important to note that individuals continue to serve JLWOP sentences in many other states, as well as within the federal corrections system.[2]

Petitioners were charged under Michigan law as adults and tried and sentenced to mandatory terms of life imprisonment for crimes they committed when they were below eighteen years of age. As a consequence of their convictions, a separate statute, M.C.L. § 791.234(6), operates to deprive the Michigan Parole Board from considering them for release on parole. Petitioners have been condemned to die in prison without any consideration of their child status, reduced culpability, or unique capacity for change, growth, and rehabilitation.

The affront to dignity and other human rights violations extend well beyond sentencing. As a result of their JLWOP sentences, Petitioners and others like them have been placed in adult prisons where they have been sexually abused, subjected to solitary confinement for protective and punitive reasons, and other forms of cruel, inhuman or degrading treatment and punishment at the hands of prison staff and adult prisoners. In passing the Prison Rape Elimination Act (PREA) in 2003, Congress found that "at least 13 percent of the inmates in the United States have been sexually assaulted in prison" with "juveniles in adult prisons being more than five times as likely as adults to be sexually assaulted."[3] Youth in adult facilities are over eight times as likely as adults to have a substantiated incident of sexual violence and twice as likely to be

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[2] *See e.g.*, *Federal Stats*, Campaign for the Fair Sentencing of Youth (June 2011), http://fairsentencingofyouth.org/the-issue/federal-stats/#_ftn1. The United States does not deny holding over two dozen individuals serving mandatory life without parole for offenses they committed before the age of eighteen.

[3] 42 USC § 15601(2)(4), *available at* http://uscode.house.gov/view.xhtml?req=(title:42%20section:15601%20edition:prelim).

harmed by prison staff.[4] In 2012, federal standards were promulgated to address the high risk of sexual abuse of youth under eighteen in adult prisons.[5] Petitioners are also denied educational and other rehabilitative opportunities for the duration of their incarceration – their natural lives. (Petitioners' Final Observations on the Merits, *Hill, et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R. 4-6 (2014) ("Final Observations."))

Petitioners' JLWOP sentences violate multiple provisions of the American Declaration on the Rights and Duties of Man ("American Declaration").[6] Petitioners further suffer violations of human rights norms recognized the world over – though not by the United States. While the U.S Response asserts that "the United States affords children many special protections" (Response of the Government of the United States, *Hill, et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R. 1I (2014) ("U.S. Response")), the prohibition of JLWOP sentencing,

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[4] Allen J. Beck, Paige M. Harrison, & Devon B. Adams, U.S. Dep't of Just., Bureau of Just. Stat, *Sexual Violence Reported by Correctional Authorities, 2006* (2007), *available at* http://www.bjs.gov/content/pub/pdf/svrca06.pdf; *Prison Rape Elimination Commission Report* (2009), *available at* http://cybercemetery.unt.edu/archive/nprec/20090820154841/http://nprec.us/publication/report/; 28 C.F.R. § 115 (2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf.

[5] 28 C.F.R. § 115 (2012).

[6] 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) ("American Declaration"). Specifically, these sentences violate Petitioners' 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. For further information, see Petition, *Henry Hill et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R. 24-40 (2006) ("Petition"); Petitioners' Final Observations Regarding the Merits of the Case, *Henry Hill et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R. 60-95 (2012) ("Final Observations").

the right to be free from cruel, inhuman or degrading treatment and punishment, and the right to an adequate education and rehabilitation remain unavailable to Petitioners.

III. ARGUMENT

A. The Government's interpretation of the rights protected by the American Declaration is erroneous.

The U.S. Response demonstrates a complete lack of understanding of, or respect for, the rights protected by the American Declaration. It further ignores both the long-recognized interpretative mandate of the Commission and determinations previously made by the Commission in this matter and other proceedings. The Government asserts that "neither the American Declaration nor applicable international law prohibits the United States from using life sentences without the possibility of parole for juveniles" in certain cases. (U.S. Response at 6.) As explained in detail in Petitioners' Final Observations, and consistent with both treaty-based and customary international human rights law, the American Declaration does in fact prohibit this extreme form of sentencing for children.[7] As also explained by Petitioners and their amici, JLWOP sentencing is so universally condemned that the prohibition has attained *jus cogens* status. (Br. of Amicus Curiae Human Rights Advocates, et al., *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R. 3-18 ("Human Rights Advocates Brief.")) Consistent with the Commission's long-established procedure and practice, the American Declaration, like all international human rights instruments, should be interpreted in light of this body of international

[7] *See, e.g.,* Petition, *supra* note 6, at 24-40; Final Observations, *supra* note 6, at 60-95; Br. of Amicus Curiae Human Rights Watch, *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R. 43-73 (2014) ("HRW Brief"); Br. Of Amicus Curiae Amnesty Int'l & Georgetown Law Human Rights Inst., *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R. 5-28 (2014); Br. Of Amicus Curiae Human Rights Advocates, et al., *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R. 1-22 (2014) ("Human Rights Advocates Brief").

law and state practice.[8] For the U.S. government to claim that the American Declaration does not explicitly or implicitly prohibit JLWOP sentences, and that it has the authority to impose JLWOP sentences in certain circumstances, is simply wrong as a matter of international law. Indeed, treaties to which the U.S. is a party have been interpreted to prohibit JLWOP.[9] Moreover, in finding the petition admissible, the Commission already made determinations on these issues – finding for the Petitioners. (Decision on Admissibility, *Hill, et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R., Report No. 18/12, 17-18 (2012) ("Admissibility Decision."))

B. The Commission has jurisdiction over Petitioners' claims.

In its response, the U.S. Government raises another issue already addressed by the Commission in its Decision on Admissibility: that Petitioners have failed to exhaust domestic

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[8] *See* Final Observations, *supra* note 6, at 21; *Villareal v. United States*, Case 11.753, Inter-Am. Comm'n H.R., Report No. 52/02, doc. 5 rev. 1 ¶ 60 (2002) (citing *Garza v. United States*, Case No. 12.243, Annual Report of the Inter-Am. Comm'n H.R. 2000, ¶¶ 88-89); *see also Maya Indigenous Community of the Toledo District 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 ¶¶ 86-88 (2004); *Dann v. United States*, Case 11.140, Inter-Am. Comm'n H.R., Report No. 75/02, doc. 5 rev. 1 ¶¶ 96-97 (2002); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, 1970 I.C.J. 53 (June 21) ("an international instrument must be interpreted and applied within the overall framework of the juridical system in force at the time of the interpretation.").

[9] *See* Human Rights Comm., Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, ¶ 34, 87th Sess., July 10-28, 2006, 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"); 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); 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").

remedies because recent U.S. Supreme Court rulings have narrowed the circumstances in which juveniles can receive life-without-parole sentences. (U.S. Response at 4-8.) These assertions remain meritless. Petitioners have properly exhausted remedies that were available to them under state and federal law, and the U.S. Supreme Court cases of *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 132 S. Ct. 2455 (2012) do not provide Petitioners with remedies for the continuing violations of their rights protected by the American Declaration.

1. Petitioners have exhausted all effective domestic remedies.

The U.S. Government contends that the Commission is not the appropriate forum for Petitioners' claims as "there are viable and practical remedies [Petitioners] could seek in the U.S. court system," such as direct review and *habeas* petitions. (U.S. Response at 5, 19.) The Government also asserts that Petitioners have access to a remedy because they may be entitled to resentencing hearings under state law. (U.S. Response at 19.) However, over two years ago, the Commission put to rest any claims that exhaustion of these potential remedies is required by finding the petition admissible. (Admissibility Decision at 17-18.) As the Commission determined then, Petitioners need not exhaust *all* remedies, only *effective* remedies.[10] It is well-established that the exhaustion rule does not require that a petitioner exhaust every remedy that may be technically available to them—extraordinary or discretionary remedies, such as review by the Supreme Court in the United States, need not be exhausted:

> [T]he requirement of the exhaustion of domestic remedies does not mean that the alleged victims must exhaust all remedies available to them…[E]xtraordinary remedies do not need to be exhausted because they have a discretionary character, and their procedural

[10] ("[I]n accordance with the jurisprudence of the Commission and with that of other international human rights organs, ineffective remedies do not need to be exhausted…for the purposes of the petition's admissibility, remedies are ineffective when it is shown that none of the means to vindicate a remedy before the domestic legal system appears to have prospects of success.") Admissibility Decision at 11.

availability is restricted and does not fully satisfy the right of the accused to challenge the judgment.

(Admissibility Decision at 11-12.)

As the Commission correctly observed in its Admissibility Decision, Petitioners "question the framework of legal provisions applied to the alleged victims and the consequences of that application, not the individual circumstances of each conviction," thus, "for the purpose of admissibility, it is unnecessary to require each alleged victim to lodge the same claim through a special and discretional remedy." (Admissibility Decision at 15.) The Commission should reaffirm its prior findings on the exhaustion of domestic remedies and ignore the U.S. Government's attempts to reopen these issues.

2. Recent Supreme Court decisions do not provide adequate remedies for violations of Petitioners' rights guaranteed by the American Declaration.

The Government claims that the recent Supreme Court decisions in *Graham v. Florida* (prohibiting life-without-parole sentences for juveniles convicted of non-homicide offenses)[11] and *Miller v. Alabama* (barring the *mandatory* imposition of juvenile-life-without-parole sentences for homicide offenses)[12] narrow the circumstances in which juveniles can be sentenced to die in prison and thereby satisfy international law requirements regarding the treatment of juveniles. (U.S. Response at 4-5, 11-15.) This position misinterprets Petitioners' substantive rights and their claims here.

Petitioners come before this Commission to seek remedies for the violations of their rights as children not to be subjected to life imprisonment without the possibility of release within their lifetimes, rights clearly established under international law. All were subjected to

[11] *Graham v. Florida*, 560 U.S. 48 (2010).

[12] *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

such sentences by the State of Michigan and continue to suffer the harmful effects of the punishment. International law and, more specifically, the American Declaration, prohibit the sentence under all circumstances. U.S. domestic law does not. Despite *Graham* and *Miller*, in Michigan and elsewhere, children may still be sentenced to life imprisonment without the possibility of release. (Final Observations at 5-6.)

In fact, within months of *Miller*, in August 2012, nineteen-year-old Juwan Wickware was sentenced to life imprisonment for felony murder committed when he was only sixteen years old.[13] Because of his conviction and Michigan's enforcement of its no-parole statute, M.C.L. § 791.234(6), Juwan will never be given an opportunity to be considered for release on parole. He has been condemned to die in prison. Juwan had a gun but was not the shooter. It was his first offense. Under *Miller*, the judge was required to conduct hearings exploring Juwan's mental status, criminal history, and upbringing. Although these hearings turned up evidence documenting a learning disability, troubled home environment, and a psychologist's conclusion that Juwan could be rehabilitated, the judge still sentenced Juwan to life imprisonment without the possibility of parole.[14]

Moreover, currently Michigan law does not recognize the retroactive effect of the decision in *Miller*. Thus all youth, including Petitioners, who have been subjected to a mandatory sentence of life imprisonment continue to serve their sentences in circumstances that contravene international law. Those serving JLWOP face one of two scenarios: either continuing

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[13] Gary Ridley, *Flint teen gets life in prison without parole in first-of-its-kind juvenile sentencing hearing*, Mlive (Aug. 20, 2013, 6:50 PM), *available at* http://www.mlive.com/news/flint/index.ssf/2013/08/flint_teen_gets_life_in_prison.html. Since, and despite *Miller*, five youth in Michigan have been sentenced to life without possibility of parole.

[14] *Id.*

to serve *without* the possibility of release on parole or continuing to serve *with the opportunity* to be resentenced and given - at the discretion of the judge involved in re-sentencing - a life-with-possibility of parole sentence.[15] Moreover, even if Petitioners should be granted an opportunity to be resentenced under the new post-*Miller* resentencing statute, contrary to international human rights law, that statutory scheme only gives a judge limited options: imposition of a life-without-possibility of parole sentence or a minimum sentence of twenty-five to sixty years imprisonment.[16]

In short, the fact that U.S. law leaves open the possibility of a LWOP sentence or an extremely lengthy term of imprisonment for offenses committed by anyone below eighteen years of age means that the United States is violating the American Declaration, and Petitioners are therefore entitled to remedies both for imposing the sentence and for the harmful consequences of the punishment.

C. JLWOP sentences are imposed in a racially discriminatory manner.

As Petitioners, supported by amici NAACP Legal Defense Fund (LDF) and Human Rights Watch (HRW), have demonstrated, African-Americans are disproportionately represented among youth serving life-without-parole sentences in Michigan.[17] This disparity did not arise by

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[15] *See People v. Carp*, 828 N.W.2d 685 (Mich. Ct. App. 2012); *see also* Order denying Petitioner Henry Hill resentencing after *Miller*, Exhibit 1.

[16] *See* M.C.L. § 769.25; § 769.25a; Stacie Colling & Adele Cummings, *There is No Meaningful Opportunity in Meaningless Data: Why it is Unconstitutional to Use Life Expectancy Tables in Post-Graham Sentences*, J. Juv. L. & Pol'y (forthcoming), *available at* http://cjdc.org/wp/wp-content/uploads/2014/02/Life-Expectancy-Article-with-Watermark.pdf; *see also Mendoza v. Argentina*, Preliminary Objections, Merits, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 260, ¶¶ 162, 165 (May 14, 2013).

[17] *See, e.g.*, Petition, *supra* note 6, at 9; Final Observations, *supra* note 6, at 83-86; HRW Brief, *supra* note 7; Br. of Amicus Curiae NAACP Legal Def. & Educ. Fund, *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R (2014) ("LDF Brief").

accident. Rather it is the logical end-result of sentencing laws that were enacted out of racially-charged fears of rising youth violence.

As emphasized in Petitioners' Final Observations and HRW's submission, race matters at all phases and aspects of the criminal process, including the quality of representation, the charging phase, and the availability of plea agreements, each of which impact whether juveniles face a potential JLWOP sentence. (Final Observations at 84-5; Br. of Amicus Curiae Human Rights Watch, *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R. 9 (2014) ("HRW Brief.")) Both the impetus for and the impact of these sentences violate Petitioners' rights to be free of such racially discriminatory treatment.

1. Racially-fueled fears of impending youth violence propelled the passage of harsh sentencing laws in Michigan and across the United States.

As Petitioners and their amici explain in detail, the late 1980s to early-to-mid 1990s saw a rise in violent crimes committed by juveniles. This crime wave prompted "broad fears over an impending storm of youth violence." (Br. of Amicus Curiae NAACP Legal Def. & Educ. Fund, *Hill, et al. v. United States*, Case No. 12.866, Inter-Am. Comm'n H.R 11 (2014) ("LDF Brief.")) Images of those responsible for this spike were "rooted in pernicious stereotypes that equated children of color—and particularly African-American children—with criminality." (LDF Brief at 11.) The connections between race, youth, and criminality were unmistakable, ultimately conveying the message that "[t]he most violent, the most adult-like, and the most amoral of adolescents were young black males."[18]

i. Biases underlying overly harsh criminal sentencing

[18] LDF Brief, *supra* note 17, at 13 (citing Perry L. Moriearty & William Carson, *Cognitive Warfare and Young Black Males in America*, 15 J. Gender Race & Just. 281, 281 (2012)).

Black youth were portrayed as "violence-prone, criminal and savage" "super-predators" in state legislatures, by academics, and in the media. (LDF Brief at 11.) For example, Professor DiIulio, who coined the term "super predator," targeted "black inner-city neighborhoods" as the source of the coming wave of violence, stating, "The surge in violent youth crime has been most acute among black inner-city males...Moreover, the violent crimes experienced by young black males tend to be more serious than those experienced by young white males."[19] Blaming "moral failings" of inner-city black communities, DiIulio predicted that "the trouble will be greatest in black-inner city neighborhoods" where "the demographic bulge of the next 10 years will unleash an army of young male predatory street criminals."[20] Dean James Alan Fox of Northeastern University's College of Criminal Justice similarly predicted that the population increase in fourteen- to seventeen-year-old African-American males would be responsible for the "future wave of youth violence."[21] Even public health officials bought into the "super predator" myth: while explaining his decision to call for a study on violence in inner-city communities, the Director of the Alcohol, Drug Abuse, and Mental Health Administration suggested that "violence had a genetic component," and stated that it perhaps "isn't just careless use of the word when people call areas of certain cities jungles." He also referred to male monkeys who were hyper-

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[19] *Id.*

[20] *Id.* at 14 (citing John J. DiIulio Jr., *My Black Crime Problem, and Ours: Why Are So Many Blacks in Prison? Is the Criminal Justice System Racist? The Answer is Disquieting*, City Journal, Spring 1996, at 1).

[21] *Id.* at 15 (citing James Allen Fox, U.S. Dep't of Just., Bureau of Just. Stat., *Trends in Juvenile Violence: A Report to the United States Attorney General on Current and Future Rates of Juvenile Offending*, Exec. Summary, Mar. 1996, at 3).

aggressive and hypersexual.[22] The impact of this racist furor was compounded by the advent of the 24-hour news cycle, causing the American public in the 1990s to be "literally saturated...with images of juveniles of color taking the ubiquitous 'perp walk.'"[23]

ii. Lasting legislative impact of racial bias

These racially-fueled fears of increased youth violence prompted states across the nation, including Michigan, to pass strict sentencing laws that shifted the juvenile justice system from one based on rehabilitation to one that facilitated adult prosecution and adult punishment for juvenile offenders. (LDF Brief at 5-8.) Michigan, as a direct result of these racially-biased stereotypes, passed some of the harshest such laws, allowing children as young as fourteen to be automatically subject to adult sentences, including life sentences that did not allow for the possibility of release on parole, for certain serious violent offenses. In supporting a provision automatically waiving children into the adult criminal justice system, one senator referred to the youth targeted by the waiver as "thugs;"[24] another described some fourteen-year-old children as "violent animals."[25]

iii. False assumptions were revealed but legislative impacts remain

The violent youth crime wave never materialized. Despite the media-fueled frenzy over juvenile violence, a 2001 study found that the depictions of crime in the 1990s were "not reflective of either the rate of crime generally, the proportion of crime which is violent, the

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[22] *Id.* at 15 (citing Jane Rutherford, *Juvenile Justice Caught Between the Exorcist and a Clockwork Orange*, 51 DePaul L. Rev. 715, 723 (2002)).

[23] *Id.* at 16 (citing Moriearty & Carson, *supra* note 18, at 296-97).

[24] *Id.* at 20 (citing *Bill in Michigan Seeks Adult Trials for Some Youths*, Toledo Blade, May 23, 1985, at 3).

[25] *Id.* at 22 (citing John Flesher, *Years of Family Trauma End with Killing, Relatives Say*, The Argus Press, Aug. 3, 1997, at A7).

proportion of crime committed by people of color, or the proportion of crime committed by youth."[26] Youth crime rates actually began to fall precipitously: Indeed, by 2009 the juvenile crime rate fell by more than half, prompting DiIulio, the sociologist who coined the term "super-predator," to concede that he wished he had never become the impetus for subjecting youth to harsh sentences.[27] Yet the laws driven by these biases remain in place.

2. As a result of racially-biased legislation, black youth are disproportionately represented among those serving life-without-parole sentences.

In Michigan and throughout the United States, the result has been that the vast majority of children who have borne the brunt of these racially-tinged legislative reforms are African-American. (LDF Brief at 20.) Nationally, black youth are serving life without parole at a rate that is ten times higher than that of white youth. (Petition at 9.) While 23.3% of juveniles arrested on suspicion of killing a white person are African-American, African-American youth constitute 42.4% of those receiving JLWOP sentences for this crime. White youth, in stark contrast, comprise 6.4% of those arrested on suspicion of killing an African-American, but only 3.6% of those serving JLWOP sentences for such killings.[28]

This outcome is the result of racial biases that affect who is arrested, who is detained, and who receives the harshest punishments. A 1990 statistical evaluation of police intake decisions in five Michigan counties revealed that, even when controlling for other statistically significant

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[26] *Id.* at 16 (citing Lori Dorfman & Vincent Schiraldi, *Off Balance: Youth & Crime in the News*, 2001, at 7).

[27] *Id.* at 18 (citing Franklin E. Zimring, *The Youth Violence Epidemic: Myth orReality*, 33 Wake Forest L. Rev. 727, 728 (1998) (In retrospect, "there was never a general pattern of increasing adolescent violence in the 1980's and 1990's.").

[28] Ashley Nellis, The Sentencing Project, *The Lives of Juvenile Lifers: Findings from a National Survey* 15 (2012).

factors such as drug charges, weapons possession, or prior convictions, "race continued to exert an independent and significant influence on detention…[while] youth of color were more likely to be charged with more serious offenses, they were also more likely to be detained independent of offense seriousness."[29] The study's authors concluded that "being African American was related to being charged with more serious offenses. Hence it may be that African American and Latino youth were perceived to be more dangerous [which] may lead police and court decision makers to base their actions on stereotypes and not on the specifics of each case."[30]

The overrepresentation of African-American youth in Michigan's criminal justice system is seen most acutely when it comes to the most severe punishment available in the state, life imprisonment without the possibility of parole. In Wayne County, Michigan in 2004, African-American youth comprised only 49% of the youth population, but made up 58.1% of juvenile arrests and 77.3% of criminal court filings.[31] Of the 364 individuals currently serving life-without-parole sentences in Michigan, 262 (72%) are minorities, and 249 (68%) are African-American—though African-Americans account for only 15% of Michigan's youth population (Summary of Argument for Merits Hearing, *Henry Hill et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R. 3 (2012)). Youth of color comprise only 29% of Michigan's youth population, but represent 73% of those serving JLWOP.[32] Michigan's racially-biased sentencing

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[29] LDF Brief, *supra* note 17, at 26 (citing Madeline Wordes et al., *Locking Up Youth: The Impact of Race on Detention Decisions*, 31 J. Research in Clime & Delinq. 149, 156 (1994)).

[30] *Id.*

[31] *Id.* at 25 (citing Jolanta Juszkiewicz, *To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution*, 16 tbl. 4 (2007)).

[32] *Id.* at 27 (citing Deborah LaBelle & Anlyn Addis, ACLU of Mich., *Basic Decency: Protecting the Human Rights of Children* 15 (2012)).

scheme contravenes the American Declaration and the fundamental human rights principle that the administration of justice be free of racial discrimination.

IV. CONCLUSION

Based on the above, and Petitioners' prior pleadings and briefs in this matter, Petitioners request that this Commission declare the State of Michigan and the United States responsible for violations of the rights guaranteed by the American Declaration—specifically, Articles I, II, VII, XII, XVII, XVIII, XXV, and XXVI. Petitioners' requests for relief are more fully articulated in their February 21, 2006 Petition and September 4, 2012 Final Observations.

Dated: June 13, 2014

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

EXHIBIT 1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

V

HENRY HILL, JR.,

Defendant.

File No. 80-00750-FY-2
Hon. Darnell Jackson

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John A. McColgan, Jr. (P37168)
Saginaw County Prosecuting Attorney
111 S. Michigan Avenue
Saginaw, MI 48602

Michael L. Pitt (P24429)
Peggy Goldberg Pitt (P31407)
Attorneys for Defendant
Pitt McGehee Palmer Rivers Golden, P.C.
117 W. Fourth Street, Suite 200
Royal Oak, MI 48067

OPINION AND ORDER OF THE COURT

At a session of said Court held in the Courthouse located in the City and County of Saginaw, State of Michigan, on this 9th day of July, 2013.

PRESENT: THE HONORABLE DARNELL JACKSON, CIRCUIT JUDGE.

This cause is presently before the Court on "Defendant's Second Motion for Relief from Judgment under MCR 6.500" filed on June 13, 2013. For the reasons stated herein, Defendant's Motion is denied without prejudice at this time.

On April 22, 1982, Defendant was convicted, by a jury, of first-degree premeditated murder and possession of a firearm during the commission of a felony. Thereafter, on June 3, 1982, Defendant was sentenced to serve two years in prison on the felony firearm charge to be followed by a mandatory prison term of life without the possibility of parole for the first-degree murder conviction. Defendant was a juvenile of sixteen years old at the time he committed these offenses.

Following his sentencing, Defendant requested, and was appointed, appellate counsel to assist him in pursuing his postconviction remedies. Thereafter, appellate counsel filed an appeal of right on Defendant's behalf which resulted in the Court of Appeals affirming his convictions

in an opinion dated March 23, 1984. After exhausting his appellate remedies, Defendant filed a plethora of post-conviction motions in this Court, including an earlier motion for relief from judgment (filed on October 23, 2000) which was denied by this Court's predecessor, the Honorable Leopold P. Borrello, on November 21, 2001. Defendant's instant Motion for Relief from Judgment is brought pursuant to MCR 6.502(G)(2) which allows for the filing of "second or subsequent motion for relief from judgment based on a retroactive change in the law that occurred after the first motion for relief from judgment."

In his current Motion, Defendant seeks relief in the form of resentencing pursuant to *Miller v Alabama*, ___US___, 132 S Ct 2455, 2460 (2012) wherein the United States Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Notably, the majority, in *Miller*, rejected a categorical bar to sentencing juveniles to life in prison without the possibility of parole, stating, "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*, p 2469. Thus, under *Miller*, trial courts are now required to consider the factors of youth and its attendant characteristics as well as the serious nature of the offense before sentencing a juvenile convicted of a homicide offense to life without the possibility of parole. The Court, in *Miller*, suggested that the following list of non-exclusive factors should be considered when sentencing a juvenile for a homicide offense:

> (a) the character and record of the individual offender together with the circumstances of the offense; (b) the chronological age of the minor; (c) the background and emotional development of the defendant; (d) the defendant's family and home environment; (e) the circumstances of the offense, including the extent of the defendant's participation and whether the defendant was affected by familial or peer pressure; (f) whether the defendant "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys" and (g) the potential for rehabilitation.

Id., pp 2467-2468.

In *Miller*, the United States Supreme Court did not reach the issue of whether its holding would apply retroactively to cases on collateral review; that is, once the appeal of right is over. The Michigan Court of Appeals, however, addressed the retroactivity of *Miller* on collateral review in *People v Carp*, 298 Mich App 472 (2012). In *Carp, supra*, pp 508-520, the Court of Appeals held that, under the framework set forth in *Teague v Lane*, 489 US 288 (1989), *Miller* does not apply retroactively under federal law. The *Carp* Court further held that *Miller* is not subject to retroactive application to cases on collateral review under Michigan law. *Carp, supra*, pp 520-522.

Here, Defendant exhausted his state court appellate remedies long ago, and thus his current Motion for Relief from Judgment is a request for collateral review. *Carp, supra*, 504-505. Pursuant to the Court of Appeals' ruling, in *Carp*, *Miller* is inapplicable to cases on collateral

review such as Defendant's. The Court of Appeals' decision, in *Carp*, is binding on this Court under the rule of stare decisis. MCR 7.215(C)(2). Moreover, "the filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." MCR 7.215(C)(2). Pursuant to *Carp*, therefore, the Court must deny Defendant's Motion for Relief from Judgment at this time.

The Court, however, acknowledges that there is a disagreement among the jurisdictions as to whether *Miller* applies retroactively to cases on collateral review. *See Hill v Snyder*, No. 10-14568, 2013 WL 364198 (ED Mich, January 30, 2013). Furthermore, the defendant, in *Carp*, has filed an application for leave to appeal from the Court of Appeals' ruling in that case which is presently pending in the Michigan Supreme Court. Therefore, the Court will deny Defendant's instant Motion for Relief from Judgment without prejudice, so as not to prevent Defendant from renewing his Motion if the *Carp* Court's ruling regarding retroactivity is reversed in the future.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment (filed June 13, 2013) is denied without prejudice at this time.

Darnell Jackson
P34737

DARNELL JACKSON
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was served upon all parties of record pursuant to MCR 8.105(C) and MCR 2.107(D).

07/09/13
Date

Deputy Clerk