

RESPONSE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING JUVENILES SENTENCED TO LIFE WITHOUT PAROLE

The Government of the United States provides the following response to the Inter-American Commission on Human Rights (“Commission”) in its consideration of Case 12.866 filed by Petitioners, who assert violations of their human rights by the United States of America. In the Commission’s decision on admissibility of May 3, 2012, it found that Petitioners’ allegations, if proven, could constitute violations of rights recognized in Articles I, II, VII, XII, XVII, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (“American Declaration”). Petitioners allege that the following rights have been violated: (1) the right to life, liberty, and personal security (Article I); (2) the right to equality before the law (Article II); (3) the right to protection for children (Article VII); (4) the right to education (Article XII); (5) the right to a fair trial (Article XVIII); (6) the right to humane treatment while in custody (Article XXV); and (7) the right to due process of law and prohibition on cruel, infamous or unusual punishment (Article XXVI).

Petitioners’ claims are based on the following allegations in their petition.

I. Factual Background

On behalf of itself and the named Petitioners, the American Civil Liberties Union (ACLU), ACLU of Michigan, and the Human Rights Institute at Columbia Law School filed this petition on February 21, 2006, and submitted their Final Observations Regarding the Merits of the Case on September 4, 2012. The essence of Petitioners' claim is that the sentencing of juveniles without the opportunity for parole violates rights recognized in the American Declaration, the International Covenant on Civil and Political Rights ("ICCPR"), various other international legal instruments, and customary international law.

Petitioners Henry Hill, Barbara Hernandez, Kevin Boyd, Damion Todd, and Patrick McLemore as well as Petitioners Matthew Bentley, Maurice Black, Larketa Collier, Cornelius Copeland, John Espie, Maurice Ferrell, Mark Gonzalez, Chavez Hall, Lamar Haywood, Lonnell Haywood, Christopher Hynes, Ryan Kendrick, Cedric King, Eric Latimer, Juan Nunez, Sharon Patterson, Gregory Petty, Tyrone Reyes, Kevin Robinson, T.J. Tremble, Marlon Walker, Oliver Webb, Elliott Whittington, Ahmad Williams, Johnny Williams, Leon Williams, and Shytour Williams have brought this petition against the United States. Each Petitioner was convicted of a serious crime involving a homicide offense committed before the Petitioner reached 18 years of age, and has been sentenced to life imprisonment

without the opportunity for parole for his or her crimes. All Petitioners are citizens of the United States currently incarcerated throughout the state of Michigan in the United States.

- Petitioner Hill was convicted in 1982 of aiding and abetting a murder and possessing a firearm in the commission of a felony. Petition at 12; Petition for Writ of Habeas Corpus at 4, Hill v. Lafler, Case 2:04-cv-71278-JCO-SDP (E.D. Mich., 2004).

- Petitioner Hernandez was convicted in 1991 of multiple murder counts and armed robbery. Petition at 14-15; Petition for Writ of Habeas Corpus at 2, Hernandez v. Stovall, Case 2:06-cv-13604-VAR-MKM (E.D. Mich., 2006).

- Petitioner Boyd was convicted in 1996 of first-degree murder and conspiracy to commit first-degree murder. Petition at 16; Petition for Writ of Habeas Corpus at 1, Boyd v. Jones, Case 2:04-cv-74462-AC-WC (E.D. Mich., 2004).

- Petitioner Todd was convicted in 1986 of first-degree murder, assault with intent to murder, and possession of firearm during commission of felony. Petition at 19; People v. Todd, 465 N.W.2d 380 (1990).

- Petitioner McLemore was convicted in 2000 of first-degree felony murder, armed robbery, first-degree home invasion, and carjacking. Petition at 20.

- Petitioners Bentley, Black, Collier, Copeland, Espie, Ferrell, Gonzalez, Hall, Lamar Haywood, Lonnell Haywood, Hynes, Kendrick, King, Latimer,

Nunez, Patterson, Petty, Reyes, Robinson, Tremble, Walker, Webb, Whittington, A. Williams, J. Williams, L. Williams, and S. Williams were convicted and sentenced for crimes committed after 1996. All were subject to mandatory life sentences without parole for homicide-related offenses.

Since the Petition was filed in 2006, the United States Supreme Court has issued two opinions of relevance, narrowing the circumstances in which juveniles can receive a life sentence without the possibility of parole. First, in 2010 in Graham v. Florida, the Supreme Court held that juveniles could not be subject to such a sentence for non-homicide crimes.¹ Then, in 2012 in Miller v. Alabama, the Court held that *mandatory* life sentences without the possibility of parole for juveniles convicted of homicide offenses were unconstitutional.² The question of whether Miller applies retroactively in Michigan (which would impact Petitioners) is still being litigated.³ Another case is pending in Michigan on whether it is

¹ Graham v. Florida, 560 U.S. 48, 82 (2010).

² Miller v. Alabama, 132 S. Ct. 2455, 2475, 183 L. Ed. 2d 407 (2012).

³ People v. Carp, 298 Mich. App. 472, 511, 537, 828 N.W.2d 685, 708, 723 (2012) (stating that Miller applied to all cases still pending on direct review, but finding that Miller "(1) is not to be applied retroactively to cases on collateral review ... because the decision is procedural and not substantive in nature, and (2) does not comprise a watershed ruling"); but see People v. Eliason, 495 Mich. 891, 839 N.W.2d 193 (2013) (granting appeal for the Michigan Supreme Court to examine in an upcoming hearing "(1) whether the Court of Appeals correctly applied Miller ... to Michigan's sentencing scheme for first-degree murder; (2) whether that sentencing scheme amounts to cruel or unusual punishment under Const. 1963, art. 1, § 16 as applied to defendants under the age of 18; and (3) what remedy is required for defendants whose sentences have been found invalid under Miller or Const. 1963, art. 1, § 16"). The State of Michigan has asserted, in preliminary cases, that the application of Miller is not retroactive. However, on March 6, 2014, the Michigan Supreme Court heard oral arguments in three cases to decide whether Miller applies retroactively under state and/or federal law "to cases that have become final after the expiration of the period for direct review" in Carp, Eliason, and People v. Davis. Carp, 838 N.W.2d 873 (Mich. 2013), <http://courts.mi.gov/courts/michigansupremecourt/oral-arguments/pages/default.aspx>, see also, Julia Dahl, "Michigan Court Considers Life without Parole for

constitutional to sentence a juvenile to life in prison without the possibility of parole when the defendant did not commit the murder but participated in it. This pending case would also affect many of the Petitioners who were convicted of felony murder but did not actually commit the homicide.

As an initial matter, it is unclear if all Petitioners have attempted to take advantage of the ruling in Miller to have their sentences reviewed by courts in the United States. Some of the Petitioners do not appear to have exhausted their opportunity for direct review, while others may also have pending *habeas* proceedings. Certain Petitioners whose federal *habeas* claims were denied have a right to appeal their *habeas* denials to the U.S. Court of Appeals for the Sixth Circuit. Further, as Michigan courts are still divided on whether Miller will apply retroactively to all juveniles sentenced to life without parole, the Petitioners could be entitled to resentencing hearings under state law.

In light of the recent U.S. Supreme Court holdings and Michigan's attempt to comply with Miller, the Commission should give deference to the U.S. court

Juveniles," Mar. 6, 2014, available online at <http://www.cbsnews.com/news/michigan-court-considers-life-without-parole-for-juveniles/>. The United States notes that some of the Petitioners' cases may be pending on direct review and thus would be entitled to a rehearing on their sentence under Michigan's current application of Miller. Michigan courts have emphasized that a sentencing court "must evaluate and review the characteristics of youth and the circumstances of the offense delineated in Miller and Carp in determining whether, following the imposition of a life sentence, a juvenile is to be deemed eligible or not eligible for parole, and that the parole board must respect the sentencing court's decision by providing a meaningful determination and review when parole eligibility arises." People v. Woolfolk, 2014 WL 783564 (Mich. App. Feb. 27, 2014).

system to review the Petitioners' claims. After such a review, the Commission would be the proper venue to address any remaining alleged violations of the American Declaration.

II. The Rights Recognized In the American Declaration Do Not Prohibit a Sentence of Life Imprisonment Without Parole for Juveniles

Contrary to Petitioners' claims, neither the American Declaration nor applicable international law prohibits the United States from using life sentences without the possibility of parole for juveniles in cases that warrant such a sentence under law. The rights set forth in the American Declaration do not explicitly provide for such a restriction, and Petitioners do not point to anything in the text or history of that instrument in support of such a conclusion.

The Statute of the Inter-American Commission on Human Rights, approved by the General Assembly of the Organization of American States, clearly sets out the Commission's mandate in Article 1: "to promote the observance and defense of human rights." Importantly, that same article then defines human rights for states that are not parties to the American Convention as "the rights set forth in the American Declaration of the Rights and Duties of Man." Similarly, the IACHR's Rules of Procedure clearly state, in the rule regarding presentation of petitions, that

persons, groups or nongovernmental entities “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,” as well as any other Inter-American instrument to which a state may belong. Art. 23. Notably, there is no mention of any of the other treaties and instruments also raised in the Petition. Although other human rights treaties and instruments may be relevant for comparison purposes, the Petitioners impermissibly push the boundaries of the Commission’s interpretative mandate in requesting the Commission to consider whether the United States has violated or acted in a manner contrary to international instruments outside of its purview. Petitioners’ Final Observations 2012 at 51-55.

Thus, while the United States is a party to the ICCPR, evaluation of the United States’ obligations under that treaty is outside the scope of the Commission’s interpretive mandate. We note, moreover, that the ICCPR does not prohibit the sentencing of juveniles to life in prison without the possibility of parole. In addition, the Petitioners cite to treaties to which the United States is not party, including the American Convention on Human Rights (“American Convention”), the European Convention on Human Rights and Fundamental Freedoms (“ECHR”), and the Convention on the Rights of the Child (“CRC”), to support their argument. The United States is not a party to these treaties and, as

such, no obligations arise under these treaties concerning the United States' conduct. Therefore, any prohibition against sentencing juveniles to life imprisonment without the opportunity for parole in the CRC is not binding or applicable to the United States (and even if the other conventions mentioned contained such a prohibition, they also would not be applicable to the United States). Sovereign states cannot and should not be held to assume obligations of treaties to which they are not party.

The Petitioners also claim that the United States has violated customary international law by sentencing juveniles to life without parole. Customary international law is evidenced by state practice that is "extensive and virtually uniform" and where States act under a sense of legal obligation (*opinio juris*), which is accepted as law. North Sea Continental Shelf (F.R.G. v. Den; F.R.G. v. Neth), 1969 I.C.J. at ¶ 74 (Merits - Judgment of Feb. 20). A State that *persistently objects* to a rule of customary international law cannot be bound by it. See, e.g., Ian Brownlie, Principles of Public International Law at 10 (1998). The Commission has emphasized this point, stating that "a norm of customary international law binds all states with the exception of only those states that have persistently rejected the practice prior to its becoming law." See, e.g., Domingues, Case 12.285, Oct. 22, 2002 (IACHR) at para. 48.

Even assuming *arguendo* that there is state practice and *opinio juris* on this issue, which has not been shown, the United States has explicitly and persistently objected to any prohibition of this practice and any suggestion of its status as a rule of customary international law. See, e.g., U.S. Explanation of Position on the UN HRC Resolution on Human Rights in the Administration of Justice;⁴ List of Issues To Be Taken Up in Connection With the Consideration of the Second and Third Periodic Reports of the United States of America.⁵ The United States would therefore not be bound even if there were a customary international rule prohibiting life sentences without parole for juveniles, due to the persistent and recognized objections of the United States to this prohibition.

In sum, there is no prohibition of the sentence in question pursuant to the rights set forth in the American Declaration or under any obligation of the United States, whether arising from a treaty or customary international law.

III. Petitioners' Rights as Set Forth in the American Declaration Have

Not Been Violated

- 1. The United States' sentencing standards for life imprisonment without parole for juveniles do not violate the rights recognized in Article VII of the American Declaration.**

⁴ Available online at <https://geneva.usmission.gov/2013/09/26/28174/>.

⁵ Available online at <http://www.state.gov/g/drl/rls/70385.htm>.

The Petitioners incorrectly opine that their rights have been violated because the rights set forth in Article VII provide “special protection” for juveniles. Under Article VII of the American Declaration, “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” The Petitioners cite to the Domingues case as stating that the obligation for special protection includes “ensuring the well-being of juvenile offenders and endeavor[ing] their rehabilitation.” 2012 Petition at IV.A.1. The Commission has never interpreted this provision to mean that juveniles may not be subject to life imprisonment without the possibility of parole. The Commission has stated that this provision denotes that children should be viewed as human beings who “deserve assistance and care due to their status as minors.” See The Rights of the Child in the Inter-American Human Rights System, para. 20. While minors may need special care and assistance, Article VII of the American Declaration does not mean those minors who commit homicide-related offenses cannot be subject to life sentences without the possibility of parole.

The Petitioners purport to identify two rights for children in the criminal justice system pursuant to the “special protection” afforded to them under Article VII of the American Declaration, namely (1) a right to be incarcerated for the shortest possible duration and (2) a right to rehabilitation and reintegration into society. Petition at 25-27. Petitioners then assert a violation of these “fundamental

rights”; this assertion is erroneous on many levels. These purported “fundamental rights” are not established rights under the American Declaration. It is clear that the plain text of the American Declaration does not provide these rights. The Petitioners provide no basis in the text, history, or structure of Article VII of the American Declaration to support their assertion that such rights should be read into the text. Instead, the Petitioners draw on other international instruments, including the CRC and ICCPR, to support their assertion. We reiterate that the Commission has no mandate to examine the actions of the United States vis-à-vis instruments other than the American Declaration. Moreover, the United States is not even a party to the CRC. Furthermore, both the ICCPR and the CRC were negotiated after the American Declaration was adopted, which undermines any argument that the American Declaration must include the rights set forth in those instruments. For these reasons, the Petitioners’ assertions that these “fundamental” rights derive from Article VII of the American Declaration must fail.

Nonetheless, the United States affords children many special protections and has endeavored to ensure greater supervision and assistance to children under U.S. law. The U.S. Supreme Court has recognized that juveniles “have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking,” and “are more vulnerable ... to negative influences and outside pressures.” Miller, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d

407, 415 (2012) (quoting Roper v. Simmons, 543 U.S. 551, 569-570 (2005)). In this vein, the Supreme Court's decision in Miller now requires courts to consider a juvenile offender's age and characteristics when deciding whether to sentence the offender to life in prison and prohibits a *mandatory* life sentence for juveniles without the possibility of parole. Miller, 132 S. Ct. at 2475.

In Miller, the Supreme Court held that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles," namely, "their age and age-related characteristics and the nature of their crimes." Miller, 132 S. Ct. at 2475. Further, as noted earlier, in Graham, the Court held that a sentence of life without parole for juvenile offenders who commit non-homicide-related crimes categorically violates the Eighth Amendment. Graham, 560 U.S. at 74. The categorical ban on sentences of life without parole for juvenile non-homicide offenders in Graham, and the rejection of mandatory life sentences and corresponding procedural requirements in Miller, allow greater protections for children by taking into account their juvenile status when deciding on their culpability, sentence, and prospects of rehabilitation.

2. The United States' sentencing of juveniles to life without parole does not constitute cruel, infamous, or unusual punishment or inhumane treatment under Articles XXVI and XXV of the American Declaration.

Petitioners attempt to characterize sentences of life imprisonment without parole for those under 18 years of age as cruel, infamous or unusual punishment and a violation of their liberty under Articles XXVI and XXV.

The United States does not allow any punishment that would constitute cruel, infamous, or unusual punishment, as it would undermine the rule of law and violate the U.S. Constitution. The United States respects the right to life, liberty, and security, but these rights do not prohibit the discretionary sentencing of juveniles to life imprisonment without parole for homicide offenses. Article XXV of the American Declaration in pertinent part provides that “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.” Every person has the right “not to receive cruel, infamous or unusual punishment,” pursuant to Article XXVI.

The Petitioners have improperly characterized the U.S. sentencing of juveniles to life without parole. As explained, this sentence has been upheld by the U.S. Supreme Court as a valid sentencing standard for a certain class of crimes, namely homicides, but under Miller the sentence cannot be mandatory for juvenile offenders, and there must be an opportunity for the court to consider mitigating circumstances applicable to juvenile offenders, such as age, age-related characteristics and the nature of the crimes before such a sentence may be imposed. A sentence of life without parole for a juvenile non-homicide offender is

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forbidden under Graham. The United States is entitled to exercise its law enforcement discretion to impose fair and just sentencing that meets the legal standards required for sentencing, satisfying the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishments.

In Graham and Miller, the Supreme Court reexamined this issue of cruel and inhumane treatment of life sentences in relation to juveniles. The Court has emphasized that “children are constitutionally different from adults for purposes of sentencing.” Miller, 132 S. Ct. at 2467. In Miller, as stated earlier, the Court held that mandatory life imprisonment without parole for homicide offenders under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishments. In Graham, the Court found that juvenile non-homicide offenders cannot be sentenced to life without the possibility of parole. Graham, 560 U.S. at 62..

Under these decisions, juveniles may only be sentenced to a life term without parole if they have committed the crime of homicide and only after judges have examined mitigating circumstances, specifically looking at the offender’s youth status and attendant characteristics, and considered imposing a lower sentence. Miller, 132 S. Ct. at 2475. As the Supreme Court stated in Miller,

[W]e think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the

great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” 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. (internal citations omitted).

Miller, 132 S. Ct at 2469.

Given that judges now have discretion and must take into account youth and all mitigating factors in sentencing juveniles to life imprisonment for homicide offenses, allowing judges in rare instances to subject juveniles to this sentence where appropriate is not cruel, infamous or degrading punishment.⁶

In light of the above analysis, the sentencing of juveniles to life without parole in the United States has been recognized as constitutional in only narrow circumstances; for the same reasons, such sentencing does not constitute cruel, infamous, or unusual punishment in violation of Articles XXVI and XXV of the American Declaration.

⁶ Under Miller, courts must now consider factors such as: “(a) the character and record of the individual offender [and] the circumstances of the offense,’ (b) ‘the chronological age of the minor,’ (c) ‘the background and mental and emotional development of a youthful defendant,’ (d) ‘the family and home environment,’ (e) ‘the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected [the juvenile],’ (f) whether the juvenile ‘might have been charged and convicted of a lesser offense if not for incompetencies associated with youth,’ and (g) the potential for rehabilitation.” People v. Carp, 298 Mich. App. 472, 532, 828 N.W.2d 685, 720 (2012) (quoting Miller, 132 S. Ct. at 2467-2468) appeal granted, 838 N.W.2d 873 (Mich. 2013).

3. The United States has not violated the due process provisions of the American Declaration set forth in Articles XVIII, XXV and XXVI.

The Petitioners claim that Michigan law violates Article XVIII (right to fair trial), Article XXV (right to liberty and humane treatment), and Article XXVI (right to an impartial and public hearing). In this case, the Petitioners' due process rights have been recognized by the courts, and they have had ample opportunities to exercise those legal rights through appeals through all court levels. This is evidenced by Petitioners' trials, appeals, and subsequent *habeas* proceedings.

Article XVIII of the American Declaration provides in pertinent part that “[e]very person may resort to the court to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.” Article XXV states that “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by re-existing law.” Article XXVI further provides that “[e]very accused person is presumed to be innocent until proved guilty. Every 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, and not to receive cruel, infamous or unusual punishment.”

The U.S. criminal justice system gives full effect to the fair trial protections and procedural guarantees set forth in the Declaration and have done so in Petitioners' cases. The U.S. Constitution, which applies to both federal and state criminal proceedings, establishes a wide range of rights for individuals charged with criminal offenses, as do other federal and state laws and regulations that all mirror the concepts in the American Declaration. These protections are applicable to all, regardless of race, gender, ethnicity, national origin, or status as a foreign national.

The Petitioners present no evidence showing that they were unlawfully prevented from bringing suit in U.S. courts or that they did not receive fair trials. The Petitioners opine that they were entitled to specific safeguards as juveniles to ensure that they received fair trials. The American Declaration contains no reference or statement about specific procedural safeguards for juveniles. The interpretation of the American Declaration put forth by Petitioners relies on Article 14(4) of the ICCPR, which states that “[i]n the case of juvenile persons, the procedures shall be such as will take account of their age and the desirability of promoting their rehabilitation.” While evaluating compliance with the ICCPR is not relevant here, the United States also notes that it has a reservation to the ICCPR that clarifies that the United States “reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding ... paragraph 4 of

article 14.” ICCPR, United States of America: Reservations, para. 5. Because of this reservation, the United States intended to permit in certain exceptional circumstances the trial of juveniles as adults and the incarceration of juveniles and adults in the same facility.

The Petitioners also incorrectly allege that Michigan’s previous sentencing scheme violated their due process rights. The Petitioners, at the time of their conviction, were afforded due process protections regarding prosecution, conviction, and sentencing as provided by U.S. law and in accordance with the rights recognized in Article XXVI of the American Declaration.

The United States, including the State of Michigan, has integrated greater procedural safeguards in trying juveniles, with Miller requiring the decision-maker to take into account the offender’s juvenile status and attributes for sentencing and rehabilitation purposes. Miller, 132 S. Ct. at 2475. Indeed, recent case law from Michigan courts establishes that Michigan is bound by the U.S. Supreme Court decision in Miller to consider the characteristics of a juvenile, including “the details of his offense before sentencing him....”; specifically, “youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.” People v. Carp, 298 Mich. App. 472, 524, 828 N.W.2d 685, 716 (2012) appeal granted, 838 N.W.2d 873 (Mich. 2013) (quoting Miller, 132 S. Ct. at 2463-2466. Therefore, the Petitioners’ assertion that United States law,

specifically Michigan law, violates Articles XVIII, XXVI, and XXV of the American Declaration by not taking into account juvenile status and integrating procedural safeguards is without merit.

Further, as explained above, it is unclear if all Petitioners have attempted to take advantage of the ruling in Miller to have their sentences reviewed by courts in the United States. In addition, some of the Petitioners do not appear to have exhausted their opportunity for direct review, while others may also have pending *habeas* proceedings. Certain Petitioners whose federal *habeas* claims were denied have a right to appeal their *habeas* denials to the U.S. Court of Appeals for the Sixth Circuit. Further, as stated earlier, Michigan courts are still divided on whether Miller will apply retroactively to all juveniles sentenced to life without parole, and the Petitioners could be entitled to resentencing hearings under state law. Petitioners cannot deliberately reject existing and available judicial processes and then later claim a violation of their due process rights when there are viable and practical remedies they could seek in the U.S. court system.

For the abovementioned reasons, the United States is not in violation of the rights recognized in the American Declaration providing for due process.

4. The United States has not violated Petitioners' Right to be Free From Discrimination Set Forth in Article II.

The Petitioners allege that Michigan's sentencing of juveniles to life in prison without parole constitutes racial discrimination and, thus, violates the right to equality before the law recognized in Article II of the American Declaration. To establish a violation of this right, the Petitioners must show a *prima facie* case of racial discrimination in order to meet their burden of proof. William Andrews v. United States, Case 11.139, Dec. 6, 1996, Report No. 57/96, Inter-Am.C.H.R., Annual Report 1998, OEA/Ser.L/V/II.98 doc. 6 rev. (1998), para. 180. To review the evidence, the Commission looks at "the totality of the facts in an objective and reasonable manner" to see if the evidence shows racial discrimination. Id. at 165. The Petitioners in this case have not met their *prima facie* burden showing that the United States unequally applied state laws to the Petitioners that are African-Americans or Latinos, or that the U.S. laws in this case are racially discriminatory.

First, the Petitioners do not allege intentional discrimination in any of their individual cases. Instead, the Petitioners base their argument of discrimination solely by presenting statistics of the number of overall inmates in Michigan serving life sentences without possibility of parole that are African-Americans or belong to other minority groups, compared to the statistics of the overall percentage of Michigan youth who are African-American or belong to other minority groups. It should be underscored that they do not provide statistics specifically on African-American or other minority children serving such sentences. However, even

assuming *arguendo* that the general statistical trend is the same with respect to children, the Petitioners cannot establish, solely by pointing to such a statistical disparity, that the imposition of these sentences is done in a racially discriminatory manner and therefore violates Article II. The Petitioners cite a statistic of the number of inmates serving life sentences without possibility of parole who are African-Americans in Michigan.

The Commission has previously considered that mere statistics regarding disproportionate impact in the imposition of criminal penalties are insufficient to establish discrimination in violation of Article II of the American Declaration.⁷ In Celestine v. United States, an African-American man sentenced to death for murder in the United States alleged a violation of Article II based on statistics revealing that in capital sentencing, African-American defendants are more likely than white defendants to be sentenced to death. In assessing whether the United States violated Article II in that case, the Commission considered whether there was discriminatory intent. It found that the use of statistics revealing a systemic disparate impact in sentencing was insufficient to establish a violation of Article II.⁸ Rather, it conducted a context-specific analysis of whether intent existed, ultimately deferring to the judgment of the Louisiana State Court. The

⁷ Celestine v. U.S., Inter-Am. Commission H.R., No. 10.031 (1989) ¶ 41.

⁸ Id.

Commission has repeatedly looked for intent in determining whether a state has violated Article II.

Even to the extent the Commission also applies an “effects” test, it is clearly insufficient to show merely the existence of unequal outcomes; Petitioners would also need to establish that such outcomes are “unjustifiable” or not “objective and reasonable.” See I/A Court H.R., Advisory Opinion OC-18/03 of September 18, 2003, Ser. A No 18, para 84 (“[T]he term ‘discrimination’ will be used to refer to any exclusion, restriction or privilege that is not objective and reasonable, and which adversely affects human rights.”) (emphasis added). Moreover, for comparison purposes, we note that the Committee on the Elimination of Racial Discrimination, in its General Recommendation XIV, noted that “a differentiation of treatment will not constitute discrimination if the criteria for such differentiation ... are legitimate” and further that in “determin[ing] whether an action has an effect contrary to the Convention, [the Committee] will look to see whether that action has an “unjustifiable disparate impact.”⁹ (emphasis added).

Providing additional statistics on the use of prosecutorial waivers and plea bargaining and making inferences based on the racial makeup of Michigan’s

⁹ 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).

prosecutors are not sufficient to show that alleged statistical disparities are based on illegitimate factors, rather than a myriad of objectively reasonable factors.

In short, Petitioners' argument amounts to a generalized grievance that is not supported by their factual evidence or applicable legal standards.

5. The United States has not violated Petitioners' Right to Rehabilitation Set Forth in Articles I and XVII.

The Petitioners allege that Articles I and XVII, interpreted in light of Article VII, provide the Petitioners a right to rehabilitation. This is a broad interpretation of those rights that has no basis in the text, history, or structure of Article VI of the American Declaration. Moreover, as stated above, the United States does not recognize a right to rehabilitation in prison.

The Petitioners rely on the ICCPR to assert that there is a right to "social rehabilitation" in the Covenant. While evaluating compliance with the ICCPR is not relevant here, the United States notes that there is no such right in the ICCPR. Further, the United States expressed the following reservation to the ICCPR: "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.” ICCPR, United States of America: Reservations, para. 5. The Petitioners also rely on the CRC to argue that there is a right to rehabilitation. There is no such right in the CRC, but in any event the United States has not ratified the CRC.

As part of Petitioners’ argument that the United States is in violation of Articles I and XVII of the American Declaration, Petitioners argue that the United States needs to have specialized laws that address when juveniles come into conflict with the law. The United States does have such specialized laws, some of which are codified at 18 U.S.C. § 5001 *et seq.* For example, the Prison Rape Elimination Act, 42 U.S.C. § 15601 *et seq.*, specifically takes into account juveniles. Petitioners also argue that Michigan should take into account the individual’s status as a child; in fact, Michigan has codified the requirement that a child’s status is taken into account when a juvenile is to be tried as an adult. MICH. COMP. LAWS § 712A.2d. Furthermore, Michigan law outlines a series of factors to be taken into consideration when determining whether the child should be tried as an adult.

6. The United States has not violated Petitioners’ Right to Education Set Forth in Article XII.

The Petitioners allege that the United States is in violation of Article XII. However, Article XII specifically states that “[t]he right to an education includes the right to equality of opportunity in every case, in accordance with ... the desire to utilize the resources that the state or the community is in a position to provide.” Therefore, for incarcerated juveniles, the state or community may not be in a position to provide education and priority will necessarily be given to primary and secondary education.

According to the Michigan Department of Corrections, “[i]f the prisoner does not have a high school diploma or GED certificate, the prisoner must enroll in Prisoner Education as soon as possible after arrival.” Mission, Michigan Department of Corrections.¹⁰ As Petitioners have stated in their final observations, fifteen of the Petitioners have obtained their GED, and no Petitioner has alleged that he or she has been denied access to that opportunity. Therefore, the United States has taken steps to provide appropriate education. The United States further notes that Michigan’s policy is for each warden to ensure that each prisoner is evaluated by education staff upon arrival at his or her institution using the Educational Program Plan. Michigan Department of Corrections Policy Directive, 05.02.112. The Educational Program Plan identifies education programs and services offered to the prisoner and sets forth the goals for completion. *Id.* The

¹⁰ Available at http://www.michigan.gov/corrections/0,4551,7-119-9741_9747---,00.html.

Policy Directive also instructs that the Educational Program Plan be reviewed at least quarterly by education staff and updated as necessary. Id. Michigan Department of Corrections also stipulates that special education programs are available to any prisoner ages twenty-one and under. Michigan Department of Corrections Policy Directive, 05.02.114.

In sum, the United States has respected the Petitioners' right to education under the American Declaration.

IV. Conclusion

For all of the reasons set forth above, the Commission should find that the United States' conduct has not resulted in the violations alleged by Petitioners, and Petitioners' requests for relief should be denied.