No. SJC-11693 & No. SJC-09265

Commonwealth of Massachusetts

Supreme Judicial Court

COMMONWEALTH

vs.

SHELDON MATTIS

COMMONWEALTH

vs.

JASON ROBINSON

ON APPEAL FROM THE SUFFOLK SUPERIOR COURT

CORRECTED BRIEF FOR THE COMMITTEE FOR PUBLIC COUNSEL SERVICES AS AMICUS CURIAE IN SUPPORT OF MESSRS. MATTIS AND ROBINSON

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Introduction

Having taken testimony from four eminent experts regarding "the latest advances in scientific research on adolescent brain development and its impact on behavior . . . after the age of seventeen," *Commonwealth v. Watt*, 484 Mass. 742, 756 (2020), the Superior Court (Ullmann, J.) ruled that mandatory death-in-prison sentences for first degree murder are disproportionate under art. 26 of the Declaration of Rights when imposed on adolescents who were between eighteen and twenty years of age at the time of the crime, because such sentences are based on a "mismatch[] between the culpability of a class of offenders and the severity of a penalty." Add. 59, quoting *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 659 (2013) (*Diatchenko I*).

This ruling rests on a number of "Preliminary Findings" made on the basis of Judge Ullmann's evaluation of the "expertise and credibility of the [expert] witnesses" whose testimony he heard and received,[1] and of the "reliability" of various peer-reviewed studies

[1] Judge Ullmann heard the testimony of Dr. Steinberg (who testified before him in Mr. Robinson's case) and received the transcripts of the testimony of Drs. Galván, Kinscherff, and Morse (who testified before Judge Roach in Mr. Mattis's case). After the cases were consolidated by this Court, Judge Ullmann, "on [his] own initiative" brought Dr. Galván back for the purpose of confirming that no new studies had been published which contradicted her testimony before Judge Roach that the science had established that late adolescents were more prone to sensation seeking than both individuals under eighteen and individuals over twenty-one, and were more susceptible to peer influence than older individuals. Add. 36 (referring to the "limited additional testimony" that Dr. Galván provided before Judge Ullmann on April 8, 2022).

presented to him that supported his findings regarding age and brain development. Add. 37. The ruling rests as well on nine "Core Findings of Fact," Add. 43-46, in which Judge Ullmann finds in essence that, in all of the ways that mattered to this Court's constitutional analysis in *Diatchenko I*, adolescents between eighteen and twenty are the same as seventeen-year-olds.[2]

No claim has been made that any of the factual findings made below are clearly erroneous. In the absence of such error—and in the context of postconviction fact-finding regarding a claim that a prison sentence imposed on a juvenile offender is constitutionally disproportionate under art. 26—this Court "accept[s] the judge's subsidiary findings of fact . . . and leave[s] to the judge the responsibility of determining the weight and credibility to be given . . . testimony presented at the motion hearing." *Commonwealth v. Perez*, 480 Mass. 562, 567 (2018) (*Perez II*) (citation omitted). Here, Judge Ullmann's findings—which were made in accord with this Court's specific remand orders following its decision in *Watt*—bespeak a thorough understanding of the relevant science, come to this Court unchallenged,

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[2] The core facts found below are that, as a group, adolescents between eighteen and twenty: (a) have less ability than older individuals to "control their impulses in emotionally arousing situations" and are more similar to sixteen- and seventeen-year-olds in this regard than they are to twenty-one and twenty-two year-olds; (b) are more prone to "sensation seeking," including risk-taking in pursuit of rewards, than both individuals under eighteen and individuals over twenty-one; (c) are more susceptible to peer influence and more likely to engage in risky behavior in the presence of peers than older individuals; and (d) have a greater capacity to change than older individuals "because of the plasticity of the brain during these years." Add. 43-46.

and should "be left undisturbed." *Custody of Eleanor*, 414 Mass. 795, 799 (1993).

This Court "review[s] independently the application of constitutional principles to the facts found." *Perez II*, 480 Mass. at 568 (citation omitted). Judge Ullmann applied art. 26's principles of proportionality, as explained by this Court in *Diatchenko I,* see 466 Mass. at 669,[3] to the facts found to conclude that, by the age of twenty-one, the brain of a late adolescent is not sufficiently developed, either structurally or functionally, such that it can reliably be said, "at that point time," *id*. at 670, that a particular offender is beyond redemption. This conclusion is compelled by the science and follows ineluctably from the logic of *Diatchenko I*. The Court should therefore affirm the ruling below and should also extend the prohibition against life without the possibility of parole under art. 26 to late adolescents who had not reached the age of twenty-one at the time of the offense. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (the command of equal justice under law "is essentially a direction that all persons similarly situated should be treated alike").

Interest of Amicus Curiae

The Committee for Public Counsel Services (CPCS) is a statewide agency mandated to plan, oversee, and coordinate the delivery of legal services to certain indigent litigants, including criminal

[3] "In the present circumstances, the imposition of a sentence of life in prison without the possibility of parole for the commission of murder in the first degree by a juvenile under the age of eighteen is disproportionate not with respect to the offense itself, but with regard to the particular offender." *Diatchenko I*, 466 Mass. at 669.

defendants charged with first degree murder. G.L. c. 211D, §§ 1, 5, 8. There are approximately 200 people in addition to Sheldon Mattis and Jason Robinson in the custody of the Department of Correction serving mandatory life-without-parole sentences for first degree murder convictions and who were between eighteen and twenty years of age at the time of the offense. See Brief for Amici Curiae, Boston University Center for Antiracist Research, *et al.* at 15, *Commonwealth v. Mattis*, No. SJC-11693. CPCS has an interest in this case because the Court's decision will affect the substantial interests of these individuals, most of whom are currently or were formerly represented by CPCS-assigned counsel, and many of whom have been serving their life-without-parole sentences for decades. See *Diatchenko I,* 466 Mass. at 666 (decision foreclosing life without parole for specific class of persons must be applied to those members of class whose convictions are final in order to ensure that such persons "do not face a punishment that our criminal law cannot constitutionally impose on them").

Summary of the Argument

1. Since 2014, the Massachusetts Parole Board has held about seventy parole hearings for the juvenile homicide offenders who were serving mandatory life-without-parole sentences for first degree murder convictions when *Diatchenko I* was decided, and who became eligible for parole consideration as a result of that decision. An analysis of the outcomes of those hearings makes clear that the remedy fashioned by this Court for the *Diatchenko* cohort can protect public safety and provide members of a class of homicide offenders originally sentenced to serve unconstitutional life-without-parole sentences with a

meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Infra* at 10-17.

2. Dirceau Semedo, Alfred Therrien, and William Florentino are late adolescent homicide offenders. Each was charged with a homicide that occurred when they were between eighteen and twenty years of age, each was convicted of first degree murder, and each is serving life without the possibility of parole, as mandated by G.L. c. 265, § 2 and G.L. c. 127, § 133A. Collectively, they have been behind bars for 131 years. Their criminal conduct and the trajectory of their lives before and after prison embody the validity of the "central intuition" on which *Diatchenko I* is based—that young people "who commit even heinous crimes are capable of change." *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). *Infra* at 18-27.

Argument

I. Experience indicates that the remedy adopted by this Court for the original *Diatchenko* cohort—declaring the members of the affected class eligible for parole consideration after serving fifteen years of their life sentences—can be applied to protect public safety and provide late adolescents serving constitutionally disproportionate life-without-parole sentences with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Nine years ago, when this Court held that "all sentences of life without the possibility of parole for juvenile offenders violate art. 26 of the Massachusetts Declaration of Rights," *Diatchenko I*, 466 Mass. at 675 (Lenk, J., concurring), it declared that Gregory Diatchenko and the other sixty-five juvenile homicide offenders then serving such sentences in Massachusetts would be eligible for parole when they

had served fifteen years of their life sentences. *Id*. at 674.[4] At that time, the Court stated, it would become "the purview of the Massachusetts parole board to evaluate the circumstances surrounding the commission of the crime, including the age of the offender, together with all relevant information pertaining to the offender's character and actions during the intervening years since conviction." *Id*. By this process, members of the *Diatchenko* cohort would be afforded their rights under both art. 26 and the Eighth Amendment to a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*., quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010). See *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016) ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. . . . Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have

[4] The Court in *Diatchenko I* noted the parties' understanding that there were then "approximately" sixty-two individuals who were in the custody of the Department of Correction serving mandatory life-without-parole for first degree murder convictions predating *Miller* and who were under eighteen at the time of the offense. *Diatchenko I*, 466 Mass. at 658 n.7. Shortly after *Diatchenko I* was released, the Parole Board assembled a list identifying sixty-five individuals who fell into this class, along with their new parole eligibility dates. Add. 61 ("Juvenile First Degree Murder List") (Feb. 3, 2014). The parole eligibility dates for a few of the listed individuals have since been corrected. One person not on the list was recognized to be a member of the cohort in 2019 following a correction of the record as to his date of birth. See n.15, *infra* at 19.

since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment").[5]

The remedy that this Court fashioned for the *Diatchenko* cohort has worked well overall.[6] Forty-four members of the cohort had already served at least fifteen years by December 24, 2013, when *Diatchenko I* was issued. Those individuals became "eligible to be

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[5] Justice Spina's opinions for the Court in *Diatchenko I* and *Commonwealth v. Brown*, 466 Mass. 676 (2013), which were decided on the same day, devised this elegant remedy by invoking the "principle of severability," see *Opinion of the Justices*, 330 Mass. 713, 726 (1953), to invalidate, as applied to persons who were under eighteen at the time of the offense, so much of G.L. c. 265, § 2 and G.L. c. 127, § 133A as then provided that "no person" serving a life sentence for first degree murder was eligible for parole. *Diatchenko I*, 466 Mass. at 667, 672-673 & n.17; *Brown*, 466 Mass. at 680-689. Juvenile homicide offenders serving sentences that were now unconstitutional by dint of those provisions of the Legislature's sentencing scheme for murder would be subject instead to "the next most severe penalty [then] provided" in that scheme, *viz.*, life with the possibility of parole after fifteen years. *Id.* at 682. The Legislature subsequently amended the statutory provisions in issue to align with the new landscape. See *Diatchenko v. District Attorney for the Suffolk Dist.*, 471 Mass. 12, 15 n.8 (2015) (*Diatchenko II*), citing G.L. c. 265, § 2, as amended through St. 2014, c. 189, § 5; G.L. c. 127, § 133A, as amended through St. 2014, c. 189, § 3.

[6] The following analysis of how the *Diatchenko* cohort has fared before the Parole Board is based on (1) information from the Board, current as of October 28, 2022, in response to a public records request regarding the outcomes of all "*Diatchenko* hearings" since 2014, Add. 63; (2) the "Juvenile First Degree Murder List" referred to in n.4, *supra* at 11, Add. 61; and (3) a review of the records of decision issued by the Board following hearings for members of the cohort. Such records "indicat[e] the reasons for the decision" of the Board to grant or deny parole. G.L. c. 127, § 130. They are public records, see *id.*, and most of those pertaining to members of the *Diatchenko* cohort are available on the Board's website.

considered for parole immediately." *Diatchenko I*, 466 Mass. at 673. Since December 24, 2013, twelve more individuals—for a total of fifty-six—have reached the fifteen-year mark. Fifty of these fifty-six individuals (89 percent) have been provided with at least an initial parole hearing. Thirty-seven of those who have had hearings (74 percent) have been granted parole.[7] Sixteen of those granted parole (43 percent) were found suitable for release after their initial hearing.[8] The other twenty-one individuals (57 percent) were denied parole after their initial hearing, given a setback ranging from two to five years, and paroled after a review hearing or hearings.[9] Thirteen of the fifty

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[7] By way of comparison, the overall parole rates for all lifers in Massachusetts from 2016 through 2020 have ranged from 24 percent to 49 percent. Massachusetts Parole Board, 2021 Annual Statistical Report 21.

[8] It should be noted that most of those members of the cohort paroled after their initial hearing had already been imprisoned for well over fifteen years—some for over thirty years—when they became parole eligible as a result of *Diatchenko I*. The most extreme example is Frederick Clay, who had been behind bars for thirty-five years—since the age of sixteen—when a majority of the Parole Board voted to parole him following his initial hearing in 2015. See *Clay v. Massachusetts Parole Board*, 475 Mass. 133, 133-134 (2016).

[9] In response to the previously-noted public records request, see n.6, *supra* at 12, the Parole Board assembled two lists of "*Diatchenko* Related Parole Hearings," the first pertaining to all cases in which parole was granted and the second pertaining to all cases in which parole was denied. Add. 63-65. The names of eighteen individuals appear on both lists. In the letter accompanying its response, the Parole Board states that individuals' names appear on both lists "if they were rescinded or revoked the first time and reappear for another hearing." Add. 65. This is not accurate. With a couple of exceptions, the individuals whose names appear on both lists were denied parole after their

juvenile lifers who have had hearings (26 percent) have not been granted parole after one or more hearings. The Parole Board states that three [of the thirty-seven] individuals who were granted parole after a *Diatchenko* parole hearing were subsequently subject to parole violation or parole forfeiture proceedings." Add. 65.[10]

At least until *Miller* was decided in 2012, a juvenile homicide offender seeking to come to terms with the meaning of "life without the possibility of parole" had to face the fact that, no matter how he might behave or what he might accomplish behind bars, he was destined to die before ever being "allowed to go upon parole outside prison walls and inclosure." *Dinkins v. Massachusetts Parole Board*, 486 Mass. 605, 611 (2021), quoting G.L. c. 127, § 130. See *Graham v. Florida*, 560 U.S. 48, 70 (2010) (suggesting that life without parole may be cruel in the constitutional sense because it "means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days") (citation omitted).[11]

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initial hearing and later granted parole after a review hearing, and therefore fall into both categories of cases for which the Board provided lists.

[10] The Board's response does not list these individuals or provide information about the nature of the violations, e.g., whether they were "technical" in nature, for a "non-arrest," or for a "new arrest." See Massachusetts Parole Board, 2021 Annual Statistical Report at 21. That said, over 80 percent of Massachusetts parolees whose parole was revoked in 2021 were violated on either "technical" grounds or for a "non-arrest." *Id*.

[11] This "denial of hope," *Graham*, 560 U.S. at 70, underlies the Court's discussion in *Diatchenko I* as to how and why "imprisonment until

Diatchenko I changed that. Most notably for purposes of these cases, lifers who may have resigned themselves to their fate and seen no purpose in seeking to improve themselves now had a concrete reason to engage in the rehabilitative programming and personal development necessary to demonstrate a probability that they would be able to successfully make the difficult transition back into society if paroled.

Since 2014, the Board has held approximately seventy hearings to consider whether a juvenile homicide offender originally sentenced to life without the possibility of parole deserved to be granted a parole permit. These hearings, like all lifer hearings, have been open to the public and held before the Board's "full membership." G.L. c. 127, § 133A. A reading of the records of decision pertaining to these hearings suggests that, for members of the *Diatchenko* cohort, getting a positive parole vote has been neither easy nor impossible. Particularly with respect to those juvenile lifers who received a positive vote after having initially been denied, the Board's decisions support the propositions that the fact of parole eligibility and the process of periodic evaluations of suitability for supervised release can themselves be rehabilitative. See Lyons, Parole: Evidence of Rehabilitation and Means to Rehabilitate, 58 Boston B. J. 21, 22 (Fall 2014) (decisions to parole juvenile homicide offenders who became parole-eligible by virtue of *Diatchenko I* "can . . . be accurately described as both evidence

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death" is "strikingly similar, in many respects, to the death penalty." *Diatchenko I*, 466 Mass. at 670 & n.15.

of rehabilitation and a means of effecting the sentencing goal of rehabilitation").

For example, in 2003, when he was sixteen years old, Kentel Weaver shot and killed a fifteen-year old boy in his neighborhood whom he suspected of having stolen a friend's bicycle. He was convicted of first degree murder and sentenced to life without parole, but became parole-eligible in 2019 pursuant to *Diatchenko I*. At his initial parole hearing, held on June 18, 2019, Mr. Weaver was asked about an incident seven years previously, when he stabbed another prisoner. "Mr. Weaver said that he felt hopeless while serving life without the opportunity for parole. After the *Diatchenko* decision, Mr. Weaver described a turning point, where he began to incur fewer disciplinary reports." Massachusetts Parole Board, In the Matter of Kentel Weaver (June 1, 2020). Parole was denied and Mr. Weaver was given a three-year setback. *Id*.

Mr. Weaver had his review hearing on June 9, 2022. On October 2022, the Board granted Mr. Weaver a parole permit to a long-term residential treatment program. In its record of decision, the Board stated that Mr. Weaver had "invested fully in his rehabilitation, completing Violence Reduction, Restorative Justice reading group, and GPMP," and also had "obtained his GED and associates degree and completed vocational training." Massachusetts Parole Board, In the Matter of Kentel Weaver (Oct. 19, 2022). "The Board also notes that

[Mr. Weaver] has benefited from the programming to fully address his need areas." *Id*.[12]

If this Court holds that life without the possibility of parole violates art. 26 as applied to late adolescents convicted of a first degree murder that was committed before the offender turned twenty-one, there is no reason to think that those who become eligible for parole as a result will fare, as a group, either substantially better or substantially worse than the *Diatchenko* cohort. Rather, it can reasonably be assumed that many will be paroled while others will not, and that the Parole Board will in any event continue to strictly construe its mandate of granting a parole permit to a prisoner "only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with

[12] See also Massachusetts Parole Board, In the Matter of John Jones (May 16, 2016) (initial parole hearing resulting in denial of parole and three-year setback: "From 1995 to 2013, . . . Mr. Jones did not engage in any programming. When asked about this period of his incarceration, Mr. Jones told the Board that he had become resigned to his fate. He said that he believed he had committed a terrible crime and, therefore, deserved to remain incarcerated for the remainder of his life. After learning he was eligible for parole, Mr. Jones reengaged in programming in 2013 and has been active since that time);Massachusetts Parole Board, In the Matter of John Jones (Apr. 29, 2019) (Jones's review hearing resulting in granting of parole: "When the Board noted that [Mr. Jones's] initial institutional adjustment was poor, Mr. Jones acknowledged his poor behavior, but attributed it to his youth, ongoing substance issues, and the reality that he would likely die in prison"); Massachusetts Parole Board, In the Matter of Malik Abdul-Aziz (June 15, 2022) (review hearing resulting in granting of parole following initial denial and five-year setback: "[Mr. Abdul-Aziz's] adjustment has significantly improved since he became eligible for parole pursuant to *Diatchenko*").

appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." G.L. c. 127, § 130. See also 120 Code Mass. Regs. § 300.04.

II. Judge Ullmann's findings pertaining to the capacity of late adolescents to change are supported by the stories of prisoners currently in the custody of the Department of Correction who have spent decades behind bars following convictions for first degree murders committed when they were between eighteen and twenty years old.

The three lifers whose criminal conduct and lives before and after their convictions are summarized below were each between eighteen and twenty years of age when they offended. Each has already spent a "lifetime" behind bars, in the sense that they have been imprisoned longer than they had been free. Their stories illustrate the capacity of late adolescents to change for the better as they mature, even without a rational basis for believing that their self-improvement could make a difference to a parole board.

Dirceau Semedo was eighteen years old on April 22, 1992, when he and between ten and twelve others, mostly males in their teens and early twenties, gathered in front of a restaurant in Dorchester at around midnight. Without provocation, one of the young men in the group, James Villaroel, threw a bottle against the front of the restaurant and shouted, "Let's shut him down." Mr. Villaroel, who was twenty-three years old, led the group into the restaurant. Without saying a word, Mr. Villaroel struck Charleston Sarjeant—a customer waiting for his order—in the head with a large radio. Within seconds, the group surrounded the victim and began hitting him. Witnesses

placed Mr. Semedo at the scene and testified that he held the victim by the hood of his jacket and kicked, punched, and stomped him. A minute or two into the attack, Mr. Villaroel began stabbing the victim while others in the group continued to hit and kick him. The victim died of multiple stabs wounds with blunt head trauma. It was a senseless and brutal murder.

Mr. Semedo was prosecuted on a joint venture theory, convicted of first degree murder, and sentenced to life without the possibility of parole.[13] James Villaroel and other coventurers—including Aristides Duarte and Adriano Barros—were tried separately and also convicted of first degree murder.[14] Mr. Duarte and Mr. Barros were both seventeen at the time of the crime and both have been paroled.[15] A few

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[13] See *Commonwealth v. Semedo*, 422 Mass. 716 (1996).

[14] See *Commonwealth v. Barros*, 425 Mass. 572 (1997); *Commonwealth v. Johnson*, 425 Mass. 609 (1997).

[15] *Duarte*: In 2013, about six months before *Diatchenko I* was decided, the trial judge (Mulligan, J.) reduced Mr. Duarte's conviction to second degree murder, making him immediately eligible for parole. In reducing the conviction, Judge Mulligan "relied on a variety of factors, including Duarte's lack of a prior criminal record; his young age at the time of the murder; that Villaroel, rather than Duarte, was the instigator and principal aggressor; and that Duarte's participation in the assault was fairly attributable to his association with influential peers." Massachusetts Parole Board, In the Matter of Aristides Duarte (Nov. 21, 2014). Mr. Duarte was paroled following his initial hearing on April 14, 2014, having been in prison for twenty-two years. *Id.*

Barros: Adriano Barros's true name is Joao Miranda. He was seventeen on the date of the murder. When arrested, he gave a false name and a false date of birth, which identified him as eighteen years old. It was not until 2019 that the record was corrected to reflect his actual date

months older than these codefendants, Mr. Semedo has begun his fourth decade behind bars.

Mr. Semedo's life following his conviction reveals the transformation of an impressionable and impulsive teenager who succumbed to peer-group pressure and poor judgment into a middle-aged man who has dedicated himself for years to improving the lives of his fellow prisoners. He is a devout Roman Catholic and serves as the clerk to the chaplain at Old Colony Correctional Center (OCCC). He distributes the Eucharist during services when no ordained priest is available and sets up worship services and spaces for all religious denominations at OCCC.

For many years, Mr. Semedo has participated in Project Youth, a program that brings high school students to OCCC to hear from prisoners about the consequences of criminal behavior. Talking to young people about the paths he took as a youth has helped Mr. Semedo gain an understanding of the harm he caused and the importance of educating young people about ways to avoid the impulsive actions and bad decisions characteristic of young adults. He has also been trained in OCCC's "Companion Program," in which he works with a fellow prisoner who is mentally disabled to help him with daily activities and advocate appropriately for his needs. Prisoners such as Mr.

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of birth and he became eligible for parole under *Diatchenko I*. He appeared before the Board for his initial hearing in 2020. He was denied parole and given a two-year setback. He was granted parole in 2022 after a review hearing. He was forty-nine years old and had been in prison for thirty years. Massachusetts Parole Board, In the Matter of Joao Miranda (Apr. 28, 2021); Massachusetts Parole Board, In the Matter of Joao Miranda (Dec. 1, 2022).

Semedo who participate in this program are chosen based upon a history of good behavior and a demonstrated ability to work productively and sensitively with vulnerable peers.

Dirceau Semedo is more than thirty years away from the horrific crime which resulted in the death of a blameless man. In many ways, he bears little resemblance to the teenager who jointly participated in that crime. Yet, he remains keenly aware of the irreversible harm that he caused, and of the importance of continuing his work for positive change from within the prison as a manifestation of his own transformational change and rehabilitation.

Alfred Therrien was twenty years old on June 3, 1967, when he held up Natoli's Farm Market in Framingham and shot two people in the process, killing one of them. He was charged with first degree murder—punishable at the time by death—as well as attempted murder, assault with a dangerous weapon, armed robbery, and theft of a motor vehicle. In order to avoid the death penalty, Mr. Therrien pleaded guilty to all charges except first degree murder, to which he offered a plea to second degree murder. On March 13, 1968, the judge accepted that plea over the Commonwealth's objection, stating that he "doubt[ed] whether a jury would impose the death penalty on these people because of their ages." (Mr. Therrien's codefendant was sixteen.)

Two months later, Mr. Therrien moved to withdraw his guilty plea to second degree murder. At the hearing on that motion, held on March 14, 1969, the judge asked Mr. Therrien "several times" if he understood that, by withdrawing his plea, he would be subjecting himself to trial on a first degree murder charge (for which the mandatory

punishment, if the jury did not recommend death, was life without the possibility of parole). Mr. Therrien "answered in the affirmative," adding by way of explanation, "I now think I can be found not guilty." The judge allowed the motion, commenting that "[t]he law cannot protect fools from themselves. . . . [F]ar be it from me to deny you your right to be tried for first degree murder." Accordingly, Mr. Therrien was tried for and convicted of murder in the first degree. "[T]he jury recommended that the death penalty be not imposed." Albert Therrien has been serving life without the possibility of parole ever since.[16]

Albert Therrien is now seventy-six years old. If, at the age of twenty-two, he had not decided to ask the judge to vacate his guilty plea to second degree murder, he might have been paroled forty years ago. An older defendant with better-developed reasoning skills probably would not have made such a foolish decision. See *Miller v. Alabama*, 567 U.S. 460, 477-478 (2012) (sentencing a young defendant as if he were an adult ignores the possibility "that he 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").

During the first decades of his fifty-five years behind bars, Mr. Therrien was housed in MCI-Walpole's "Ten Block," one of the most dangerous prisons in the country. Drugs, gangs, and violence were routine. As a young man with no direction, and in his mind, with nothing to lose, Mr. Therrien succumbed to drugs, alcohol, and

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[16] *Commonwealth v. Therrien*, 359 Mass. 500, 502-503 (1971).

violence. He was abused and beaten as a child, ran away from home, and ended up in "reform schools," including the notorious Lyman School for Boys and the Shirley Industrial School for Boys. Mr. Therrien does not offer his own difficult childhood as a justification for his crimes. Instead, he fully accepts responsibility for them and tries to focus his efforts on things he can now control, including his own behavior and his interactions with others. Over time, and with the help of counseling and programming, Mr. Therrien resolved to change his life. He had dropped out high school. Over the course of his life behind bars, Mr. Therrien studied for and was awarded a GED, an associate's degree through Bunker Hill Community College, and a bachelor's degree, *magna cum laude*, through Boston University Metropolitan College. With other prisoners at MCI-Norfolk, he established a curriculum for a juvenile counseling program called Project Revamp. As the inmate-director of the program, he has provided counseling to hundreds of young people who came into the prison with school groups. Project Revamp was designed to encourage young people to take seriously their choices and to choose a goal of making something positive out of their lives. In Project Revamp, young people are warned about the dangers of criminal behavior. Mr. Therrien also counseled youth while he was in minimum security at the Concord Farm and NCCI-Gardner. His goal was to help young people avoid the fate he brought upon himself. He has been successful in these programs because he understands first hand the mindset of troubled youth and also knows that young people have a great capacity to mature and change with counseling and the passage of time.

Mr. Therrien has proved himself to be reliable and trustworthy. Before Willie Horton, he was granted twenty-four successful forty-eight hour furloughs. He did not abuse the trust given him and followed the rules while he was out and returned to prison each time. Although prisoners serving life without parole can no longer be classified to the lowest security settings, Mr. Therrien's raw score on the DOC's classification instrument indicates that he continues to be an appropriate candidate for a minimum security setting.

Over the course of fifty-five years, Mr. Therrien has seen the ebb and flow of Massachusetts' correctional system. He has taken advantage of opportunities for self-improvement and to prove that he has been rehabilitated. When he was granted furloughs and when he was housed in minimum security facilities, he was able to demonstrate that he was not a threat to the public. He has learned to steer clear of trouble even in places where trouble and confrontation are common. He has gone for decades without a disciplinary infraction, and, although he is a lifer, he has earned well over a thousand days of good time for program participation and prison industry employment.

For decades, Mr. Therrien sought purpose in his prison life and overcame many obstacles. However, as he now approaches the ninth decade of his life, he has begun to question whether he should forgo future medical treatment. This case has given him hope that he may have an opportunity to demonstrate how far removed he is from the deeply troubled late adolescent whose criminal conduct caused such pain and destruction. Remorse and sorrow remain deep parts of who he is—a quiet and thoughtful senior citizen who does what he can to

be of service to others within his prison community. He evolved in this way with no rational reason to expect that he would ever be released. Alfred Therrien stands as proof that a person who makes serious mistakes in his youth is not by definition irredeemable. To the contrary, through education, programming, and long personal introspection, he has turned his life around.

William Florentino was twenty years old on December 16, 1977, when he entered a liquor store in Everett with William Smallwood. Smallwood announced, "This is a holdup," and shortly thereafter shot and killed a customer who failed to respond to Smallwood's command to move to the rear of the store. The Commonwealth proceeded against Mr. Florentino on a theory of joint venture and felony murder. He was convicted of first degree murder and armed robbery and sentenced to life without the possibility of parole.[17]

Although he did not pull the trigger, Mr. Florentino fully accepts responsibility for the murder. He had been drinking and doing drugs before he went into the liquor store with Smallwood. His actions were impulsive and dangerous. Their tragic consequences were a culmination of a troubled childhood. Mr. Florentino was raised in a family struggling with substance use. He was physically abused by his family members. His upbringing was chaotic and violent, and his behavior as a child was often the result of impulsivity and a failure to consider consequences.

While in prison, Mr. Florentino has participated in events that transformed his thinking about himself, the world, and the people

[17] *Commonwealth v. Florentino*, 381 Mass. 193, 194 (1980).

around him. He joined twelve-step groups, vowed to swear off drugs and alcohol, and embraced his Catholic faith and its teachings. Now sixty-five years old, Mr. Florentino has a long record of positive achievements. He earned a bachelor of arts degree from Boston University. He has participated in scores of programs that focus on rehabilitation and nonviolence, including restorative justice and peer counseling, and he has worked for decades in the institutional religious community as a chaplain's clerk, acolyte, and eucharistic minister. In this community, Mr. Florentino has organized and participated in dozens of events supporting the prison faith community. He has been allowed to work in prison industries that involve a high level of trust, including taking care of children in the Children's Playhouse program and working as a carpenter in places within the prison that are not open to general population. He has consistently held jobs and participated in programming that have resulted in hundreds of days of earned good time, even though, as a lifer, good time cannot affect his sentence. Mr. Florentino had a difficult start in life, but committed himself decades ago to taking responsibility for his actions and to spend his time seeking positive results for himself and those around him. He has not had a disciplinary ticket in over ten years and, based on his DOC classifications, his risk of recidivism and violence are both low.

* * *

Dirceau Semedo, Alfred Therrien, and William Florentino are three of many examples of the transformation and rehabilitation of people who, during their late adolescence, committed crimes with tragic consequences. Each was found guilty by a jury of their peers.

Their convictions were affirmed by this Court. Their criminal conduct is not excused. But there is now a scientific lens through which that conduct can be better understood. The arc of these men's lives illustrate the validity of the scientific research as to how brain development impacts behavior. They should be given an opportunity to demonstrate that they will live and remain at liberty without violating the law and that their release on parole is not incompatible with the welfare of society.

Conclusion

For the foregoing reasons, the Court should extend the rule and remedy of *Diatchenko I* to persons convicted of first degree murder and sentenced to life without the possibility of parole for offenses that occurred before such persons had reached the age of twenty-one.

Respectfully submitted,

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Dated: January 24, 2022

ADDENDUM

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 0084CR10975
SJC-09265
No. 1184CR11291
SJC-11693

COMMONWEALTH
vs.
JASON ROBINSON

COMMONWEALTH
vs.
SHELDON MATTIS

FINDINGS OF FACT ON BRAIN DEVELOPMENT AND SOCIAL BEHAVIOR AND RULING OF LAW ON WHETHER MANDATORY LIFE-WITHOUT-PAROLE SENTENCES FOR DEFENDANTS AGE 18 THROUGH 20 AT THE TIME OF THEIR CRIMES VIOLATES THE MASSACHUSETTS DECLARATION OF RIGHTS

I. INTRODUCTION

Pursuant to G.L. c. 265, § 2(a), the Massachusetts statute that governs the penalties for murder, the defendant in Suffolk Co. Case No. 0084CR10975, Jason Robinson ("Robinson"), and the defendant in Suffolk Co. Case No. 1184CR11291, Sheldon Mattis ("Mattis"), are serving mandatory sentences of life in prison without the possibility of parole based on their convictions for first-degree murder in separate crimes committed when they were respectively 19 and 18 years old.

As of December 2021, both cases were pending before the Supreme Judicial Court ("SJC") following evidentiary hearings in the Superior Court before two different judges on

issues related to the brain development and social behavior of 18 through 20-year-olds, in some instances including 21-year-olds.

On December 24, 2021, the SJC issued an order remanding both cases to the Superior Court and assigning the cases to this Court (the undersigned judge) for factual findings and to "consider and address whether the imposition of a mandatory sentence of life without the possibility of parole for . . . those convicted of murder in the first degree who were eighteen to twenty-one at the time of the crime violates article 26 of the Massachusetts Declaration of Rights."

Article 26 of the Massachusetts Declaration of Rights ("article 26") includes the Commonwealth's constitutional ban on "cruel or unusual punishments." After limited additional proceedings described below, the Court now issues Findings of Fact and a Ruling of Law on the article 26 issue.

With regard to the constitutional question that the SJC asked this Court to address, the Court holds that mandatory sentences of life in prison without the possibility of parole ("mandatory life without parole") for defendants who were 18 through 20 years old at the time of their crimes -- *i.e.*, sentences that preclude a judge from granting parole eligibility -- violate article 26 of the Massachusetts Declaration of Rights. Robinson and Mattis are therefore entitled to a new sentencing hearing.

II. PROCEDURAL HISTORY

A. Commonwealth v. Jason Robinson

Robinson is pursuing a direct appeal of his 2002 convictions on charges of first-degree murder and related offenses based on a robbery and fatal shooting committed on March 27, 2000. When the crimes were committed, Robinson was 19 years old. The evidence at trial

established that Robinson and his co-defendant Tanzerius Anderson ("Anderson") agreed to rob the victim, who was known to carry a significant amount of cash, and that during the robbery, Anderson fatally shot the victim.[1] Anderson's conviction was affirmed by the SJC in 2005. See *Commonwealth* v. *Anderson*, 445 Mass. 195, 196 (2005). Robinson filed a timely notice of appeal, but the appeal was stayed in 2007 so that Robinson could move for a new trial.

Eight years later, in 2015, Robinson filed his new trial motion, seeking a new trial on six grounds, including that closure of the courtroom violated his right to a fair trial and that his mandatory life-without-parole sentence constituted cruel or unusual punishment based on his age at the time of the crime. (Paper # 37.2)

A Superior Court judge allowed Robinson's new trial motion after finding that the public was unlawfully barred from the courtroom throughout jury selection. The SJC reversed, holding that Robinson procedurally waived his claim that the courtroom closure constituted structural error by not objecting to the closure at the time it happened. *Commonwealth* v. *Robinson*, 480 Mass. 146, 147 (2018). In addition to reversing the grant of Robinson's motion for a new trial, the SJC remanded the case "for the motion judge to determine whether the improper courtroom closure created a substantial risk of a miscarriage of justice." *Id.* at 155. On remand, in September 2018, the Superior Court found that Robinson had not met his burden of showing that he had suffered any substantial prejudice as a result of courtroom closure. In October 2018, the case was re-assigned to this Court for resolution of the other issues raised by Robinson in his new trial motion.

In a Memorandum of Decision and Order dated November 7, 2018 (Paper # 67), this Court denied the remainder of Robinson's motion for a new trial, except that the Court deferred

[1] Anderson was convicted of first-degree murder on theories of felony murder and extreme atrocity or cruelty. Robinson was convicted of first-degree murder only on a theory of felony murder. See 445 Mass. at 196 and n.1.

to the SJC the issue of whether the evidence was sufficient to convict Robinson of felony murder. The Court deferred this issue primarily because the law of felony murder had changed since the time of Robinson's offense in 2000, and it was unclear to this Court which if any of those changes should be applied to Robinson's case.[2]

On November 19, 2018, Robinson filed a motion to reconsider this Court's November 7, 2018, decision so that he could create a factual record through expert testimony to support his claim that *Miller* v. *Alabama,* 567 U.S. 460, 470 (2012), and *Diatchenko* v. *District Attorney for the Suffolk Dist. ("Diatchenko I"),* 466 Mass. 655, 667-671 (2013), should be applied to defendants who were 19 years old at the time of their crimes, as was Robinson (Paper # 68). *Miller* 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.' " 567 U.S. at 465. *Diatchenko I* held that "mandatory imposition of a sentence of life in prison without the possibility of parole on individuals who were under the age of eighteen when they committed the crime of murder in the first degree violates the prohibition against 'cruel or unusual punishments' in art. 26 of the Massachusetts Declaration of Rights, and that the discretionary imposition of such a sentence on juvenile homicide offenders also violates art. 26 because it is an unconstitutionally disproportionate punishment when viewed in the context of the unique characteristics of juvenile offenders." 466 Mass. at 658–659 (footnote omitted).

[2] This Court notes that the SJC has declined to apply *Commonwealth* v. *Brown,* 477 Mass. 805, cert. denied, 139 S. Ct. 54 (2018), retroactively, see *Commonwealth* v. *Sun,* 490 Mass. 196, No. SJC-12870, 2022 WL 2517173, at *16 (Mass. July 7, 2022) (slip op. at 50), and the SJC did not ask this Court to address that issue in its December 24, 2021 remand order.

Additional delay resulted from several factors, including consideration of creating a factual record without the need for an evidentiary hearing, which prudently was abandoned, followed by the creation of a factual record through hearings and the COVID-19 pandemic.[3]

On October 30, 2020, this Court held an evidentiary hearing via Zoom, at which Professor Laurence Steinberg ("Dr. Steinberg"), a developmental psychologist, testified on behalf of Robinson, and a binder of articles on adolescent brain development authored or co-authored by Dr. Steinberg (Exhibit 1) was admitted in evidence.[4] The Court set a schedule for the submission of post-hearing briefs.

On April 12, 2021, Robinson filed his post-hearing brief, arguing that the holding in *Diatchenko I* should be extended to defendants who, like him, were 19 years old at the time of their crimes, and that the evidence at trial was insufficient to convict him of felony murder. (Paper # 109) On April 14, 2021, the Commonwealth filed its response. (Paper # 110) In it, the Commonwealth changed the position on the constitutional question that it had held throughout Robinson's appeal and agreed with Robinson's position to the extent that, absent an individualized sentencing hearing, a sentence of life without parole for a defendant who was 19 years old at the time of his crime was unconstitutional. In effect, the Suffolk County District Attorney took the position that *Miller,* but not *Diatchenko I,* should be extended to defendants who were 18 through 20 years old at the time of their crimes.

On May 7, 2021, this Court ordered the record to be transmitted to the Clerk for the Commonwealth. (Paper # 111) The Court's primary reason for transmitting the case was its opinion that the issue of mandatory life-without-parole sentences for individuals who were 19

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[3] See *Committee for Pub. Counsel Servs.* v. *Chief Justice of the Trial Court*, 484 Mass. 431, 433-434 (2020) (explaining generally disruption of pandemic).

[4] Dr. Steinberg's credentials are set forth below.

years old at the time of their crimes should be decided on a broader factual record than the testimony of Dr. Steinberg and articles authored by him.

The subsequent procedural history of this case and the *Mattis* case is set forth in Section C below.

B. Commonwealth v. Sheldon Mattis

Mattis is seeking a reduction in his sentence for his 2013 convictions on charges of first-degree murder and related offenses based on a fatal shooting committed in September 2011. Mattis and his co-defendant Nyasani Watt ("Watt") were tried together and convicted in November 2013 of first-degree murder and related offenses. When the crimes were committed, Mattis was 18 years old. The Commonwealth's theory of the case was that Watt followed the two young pedestrian victims on a bicycle and shot them in the back as they ran away from him. Mattis was tried as Watt's joint venturer.[5]

In 2014, in conjunction with an appeal of his conviction, Mattis filed an omnibus motion in the SJC ("First Motion"). Upon consideration of the First Motion, the SJC stayed the case and remanded the First Motion to the Superior Court for disposition. In a portion of the First Motion, Mattis sought a hearing pursuant to *Commonwealth* v. *Fidler*, 377 Mass. 192 (1977), as to alleged extraneous influence on a deliberating juror. A Superior Court judge (Roach, J.) denied the First Motion in a Memorandum and Order dated March 27, 2015. (Paper # 118)

Following the SJC's ruling in *Commonwealth* v. *Moore*, 474 Mass. 541 (2016), which addressed issues of post-verdict contact with jurors, Mattis and Watt renewed their request for juror contact to pursue their *Fidler* motion. Judge Roach conducted individual voir dire of two

[5] Because Mattis turned 18 years old eight months before the murder, he is serving a life sentence without the possibility of parole. Watt turned 18 years old ten days after the murder, and therefore is now eligible for parole no sooner than fifteen years from sentencing, pursuant to the SJC's ruling in *Diatchenko I*. See *Commonwealth* v. *Watt*, 484 Mass. 742, 753-754 (2020), citing *Diatchenko I*, 466 Mass. at 672-673.

jurors and issued Preliminary Findings of Fact Following Juror Inquiry in March 2017. (Paper # 139)

Mattis subsequently sought further inquiry of all jurors on the questions of "racial animus in the jury room and black gangs," and a court order. (Paper # 141) Mattis also filed Defendant's Memorandum in Support of Motion for New Trial, Reduction in Verdict, and/or Resentencing (Paper # 147), and the Commonwealth filed an opposition. (Paper # 148) Mattis' co-defendant, Watt, sought relief, as well. On October 31, 2017, Judge Roach issued Memorandum of Decision and Order on Defendants' Renewed Motion for New Trial in both cases, denying the new trial motions and declining to grant other relief. (Paper # 150)

Both defendants then appealed their convictions and the denial of their motions for a new trial. In June 2020, the SJC affirmed the defendants' convictions and declined to grant either defendant extraordinary relief pursuant to G.L. c. 278, § 33E. However, the Court stated:

> it likely is time for us to revisit the boundary between defendants who are seventeen years old and thus shielded from the most severe sentence of life without the possibility of parole, and those who are eighteen years old and therefore exposed to it. We can only do so, however, on an updated record reflecting the latest advances in scientific research on adolescent brain development and its impact on behavior. See *Diatchenko I*, 466 Mass. at 669-670.

Commonwealth v. *Watt*, 484 Mass. 742, 755-756 (2020). The SJC remanded Mattis' case to the Superior Court "for development of the record with regard to research on brain development after the age of seventeen." *Id.* at 756.

Between January 14, 2021 and March 1, 2021, Judge Roach conducted an evidentiary hearing via Zoom, at which two volumes of exhibits were admitted and Professor Adriana Galvan ("Dr. Galvan"), a developmental cognitive neuroscientist, and Professor Robert Kinscherff ("Dr. Kinscherff"), an attorney and forensic psychologist, testified for Mattis, and Professor Stephen Morse ("Dr. Morse"), an attorney and forensic psychologist, testified for the

Commonwealth.[6] Thereafter, Judge Roach ordered the record to be transmitted to the Clerk of the Commonwealth (Paper # 187), as this Court had done in the *Robinson* case.

C. Procedural History of Cases Following December 2021 Remand Order

On December 24, 2021, the SJC issued an order remanding the *Robinson* case and the *Mattis* case to the Superior Court and assigning the cases to the undersigned for factual findings on brain development after the age of 17, and to "consider and address whether the imposition of a mandatory sentence of life without the possibility of parole for . . . those convicted of murder in the first degree who were eighteen to twenty-one at the time of the crime violates article 26 of the Massachusetts Declaration of Rights." See 12/24/21 Order in SJC-09265 and SJC-11693 ("December 2021 Remand Order").

This Court gave the parties in both cases an opportunity to supplement the record, which the parties declined. On April 8, 2022, the Court, on its own initiative, heard limited additional testimony, and the defendants offered one additional exhibit in evidence, after which the Court heard oral argument.

III. POSITION OF THE PARTIES

The Commonwealth takes the position, consistent with *Miller*, that *mandatory* life-without-parole sentences for defendants who were under age 21 at the time of their crimes, *i.e.*, sentences that preclude a judge from granting parole eligibility, violate article 26 of the Massachusetts Declaration of Rights. Put another way, in the Commonwealth's view, life-without-parole sentences for defendants convicted of first-degree murder who were 18 through

[6] The credentials of Dr. Galvan, Dr. Kinscherff, and Dr. Morse are set forth below.

20 years old at the time of their crimes comply with article 26, "as long as there is an individualized sentencing hearing." (Paper # 194 at 9)[7]

At the April 8, 2022 hearing, Robinson and Mattis took the position that *any* sentence of life without parole for a defendant who was under age 21 at the time of the crime violates article 26 of the Massachusetts Declaration of Rights.

Because the SJC has asked this Court only to address the constitutionality of *mandatory* life-without-parole sentences for defendants who were under age 21 at the time of their crimes, this Court does not decide the issue of whether *any* sentence of life without parole for a defendant convicted of first-degree murder who was under age 21 at the time of the crime violates articles 26. However, the Court briefly addresses this issue near the end of Part V of this decision.

IV. FINDINGS OF FACT

1. The Court has made two types of findings of fact in this opinion. First, the Court has made Preliminary Findings on the expertise and credibility of the witnesses and the reliability of other evidence that provide support for the Court's findings about age and brain development. Second, the Court has made Core Findings about age and brain development.

Preliminary Analysis and Findings

2. At its core, the issue in this case is whether the science of brain development in 18 through 20-year-olds has progressed to the point that it provides a reliable basis to answer the SJC's question, and if it has, how the Court should rule on the question. The Court begins by looking at the principles that govern admissibility of expert testimony.

[7] The Suffolk District Attorney's Office speaks on behalf of the Commonwealth in these cases. The Court recognizes that the positions of other offices representing the Commonwealth, including the other District Attorney's Offices and the Attorney General's Office, may not necessarily be in accordance with the view of the Suffolk District Attorney.

3. To be admissible, expert witness testimony must satisfy five foundational requirements. See *Commonwealth* v. *Barbosa*, 457 Mass. 773, 783 (2010), *cert. denied*, 563 U.S. 990 (2011); Mass. Guide Evid. § 702 (2022). First, the expert witness testimony must assist the trier of fact. Second, the expert witness must be qualified as an expert in the relevant area of inquiry. Third, the facts or data in the record must be sufficient to enable the expert witness to give an opinion that is not merely speculation. Fourth, the expert opinion must be based on a body of knowledge, a principle, or a method that is reliable. Fifth, the expert's opinion must reflect a reliable application of the body of knowledge, the principle, or the method to the particular facts of the case. The overarching issues are the expertise of the witness and the scientific validity of the principles that underlie the proffered evidence. See *Daubert* v. *Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592-595 (1993); *Commonwealth* v. *Lanigan*, 419 Mass. 15, 24-25 (1994). As discussed below, the requirements for admission of the expert evidence relied upon by the Court have been met.

4. The four experts who testified in *Robinson* and *Mattis* can provide the opinions that support the findings below to a reasonable degree of scientific certainty based on their qualifications and experience, extensive study results and clinical observations supported by peer-reviewed publications, and evolving but recognized principles that have been subjected to rigorous testing.

5. The core findings of fact in this decision about age and brain development are based on (1) the October 30, 2020 testimony and Supplemental Affidavit (Paper # 79) of Dr. Steinberg in *Robinson* (see *infra* ¶ 6); (2) the January 14, 2021 testimony in *Mattis* and brief April 8, 2022 testimony in both cases of Dr. Galvan (see *infra* ¶ 7); (3) the February 19, 2021 testimony in *Mattis* of Dr. Kinscherff (see *infra* ¶ 8); (4) the March 1, 2021 testimony in *Mattis* of Dr. Morse

(see *infra* ¶ 9); and (5) seven scholarly journal articles, the first six of which were co-authored by Dr. Steinberg and/or Dr. Galvan.[8]

6. Dr. Steinberg, a PhD in human development and family studies and tenured professor at Temple University, is a renowned leader in the field of developmental psychology and adolescence. For over 40 years, he has been the sole author, lead author, or co-author of scores of studies published in peer-reviewed journals, including top journals in his field. See 10/30/20 Hearing, Ex. 1. Dr. Steinberg is the lead author of "Around the World," a peer-reviewed article that addressed a far-reaching international study on youth and brain maturation. (10/30/20 Hearing, Ex. 1, Tab U) He has received numerous honors and awards. Steinberg at 15-16.[9] He has been qualified as an expert in the field of developmental psychology approximately 30 times. *Id.* at 16. His research was cited in two of the leading Supreme Court cases on the Eighth Amendment ban on cruel and unusual punishment as applied to juveniles, including *Miller*. See

[8] The seven articles are: (a) Steinberg, et al., "Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation," *Developmental Science* (March 2018) (*Robinson* Exhibit No. 1, Tab U), cited herein as Steinberg, et al., "Around the World"; (b) Icenogle, Steinberg, et al., "Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample," *Law and Human Behavior*, Vol 43, No. 1 at 69-85 (2019) (*Mattis* Exhibits, Vol. 1, Ex. 2; Bates 000036-000070), cited herein as Icenogle, et al., "Adolescents' Cognitive Capacity"; (c) Rudolph, et al. (including Steinberg and Galvan), "At risk of being risky: The relationship between 'brain age' under emotional states and risk preference," *Developmental Cognitive Neuroscience*, Vol 24 (April 2017) at 93-106 (*Mattis* Exhibits, Vol. 1, Ex. 7; Bates 000192-000208), cited herein as Rudolph, et al., "At risk of being risky"; (d) Cohen, et al., "When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts," 27 *Psych. Sci.* 549 (2016) (*Robinson* Exhibit 1, tab O), cited herein as Cohen, et al., "When Is an Adolescent an Adult?"; (e) Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-taking," *Devel. Rev.* Vol 28(1): 78-106 (*Mattis* Exhibits, Vol. 2, Ex. 19; Bates 000854-000880), cited herein as Steinberg, "A Social Neuroscience Perspective"; (f) Galvan, "Adolescent Brain Development and Contextual Influences: A Decade in Review," Journal of Research on Adolescence, Vol. 31(4): 843-869 (2021), Exhibit 3 to Commonwealth's Supplemental Response to Defendants' Motion for New Trial ("Comm. Supp. Resp.") (Paper # 120 in *Robinson;* Paper # 184 in *Mattis*), cited herein as Galvan, "Adolescent Brain Development: Decade in Review"; and (g) Casey, et al., "Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders," *Annual Rev. of Criminol.* (2022) 5:321-343, Exhibit 1 to Comm. Supp. Resp., cited herein as Casey, et al., "Making the Sentencing Case."

[9] Cites to transcripts of the expert testimony in this case refer to the expert's name and the pages in the transcript, *e.g.*, Steinberg at 15-16.

Roper v. *Simmons*, 543 U.S. 551, 572-575, 578 (2005) (death penalty for those under 18 at time of crime violates Eighth Amendment); *Miller*, 567 U.S. at 489.

7. Dr. Galvan, a PhD in neuroscience, is a tenured Professor of Psychology and Director of the Developmental Neuroscience Lab at U.C.L.A. Dr. Galvan is a recognized leader in the field of developmental cognitive neuroscience, and a co-author of over 100 book chapters and studies published in peer-reviewed journals, including top journals in her field. Galvan at 25-26. She has received numerous honors and awards, including the Presidential Early Career Award for Scientists and Engineers, bestowed by the White House, and the Troland Award from the National Academy of Sciences. *Id.* at 26-27.

8. Dr. Kinscherff is a law school graduate and PhD in clinical psychology. Kinscherff at 10, 16. He is a professor in the doctoral psychology program at William James College. *Id.* at 6-7. Dr. Kinscherff has testified as an expert in the field of psychology dozens of times. *Id.* at 12. He is a former Assistant Commissioner for Forensic Mental Health of the Massachusetts Department of Mental Health. *Id.* at 15.

9. Dr. Morse is an attorney and PhD in psychology and social relations. Morse at 8-9, 16. He is a tenured professor of law and professor of psychology and law at the University of Pennsylvania. *Id.* at 13. He has testified as an expert in at least 20 cases since 1977. *Id.* at 15. He is a licensed attorney in Pennsylvania and Massachusetts and is a board-certified forensic psychologist. *Id.* at 16. His special appointments have included Legal Director of the MacArthur Foundation Law and Neuroscience Project in the mid to late 2000s. *Id.* at 24-25. He has written scores of articles including many in leading journals on neuroscience and the law. *Id.* at 26-27.

10. Today, neuroscientists and behavioral psychologists know significantly more about the structure and function of the brains of 18 through 20-year-olds[10] than they did 20 years ago, for three primary reasons. First, although structural magnetic resonance imaging (sMRI) of the brain's anatomy has existed for almost 50 years, functional magnetic resonance imaging (fMRI), which measures physiological changes in the brain, has been widely available in university labs for only the last 15 to 20 years. See Morse at 30-31. Second, until the late 2000s, far more studies focused on the brains of juveniles, *i.e.*, those under age 18, than on the brains of 18 through 20-year-olds or 18 through 21-year-olds. See Steinberg at 104-105. Third, the number, scope and sophistication of developmental cognitive neuroscience studies and developmental psychology studies has continually increased. In March 2018, Dr. Steinberg (as lead author) and others published "Around the World" in *Developmental Science*. See 10/30/20 Hearing, Ex. 1, Tab U. The study, by far the largest study of its kind, used a combination of behavioral tests and self-reporting regarding 5,404 individuals between the ages of 10 and 30 from 11 countries on five continents. *Id.* at 1-2, 4.[11] Both Dr. Galvan, a defense expert in *Mattis*, and Dr. Morse, the Commonwealth's expert in *Mattis*, praised the study and found it authoritative and statistically sound. See Galvan at 94-95; Morse at 89. The study showed similar results across countries with

[10] The Court's age-based findings are made as to 18, 19, and 20-year-olds, referred to herein as "18 through 20-year-olds." Many of Dr. Galvan's studies included 21-year-olds in the group of "late adolescents" who were studied, whereas many of Dr. Steinberg's studies did not. Because the Court puts great weight on the similarity in results of studies conducted in two different disciplines, *i.e.*, developmental cognitive neuroscience and developmental psychology, using the different methods of behavioral study and brain imaging, the Court's findings include only that age range that was included in both experts' studies. Put another way, for purposes of assessing the constitutionality of mandatory life-without-parole sentences, the brain science relied upon by the Court lends some support for treating 18 through 21-year-olds differently than older persons, but much stronger support for treating 18 through 20-year-olds differently than older persons.

[11] The study was conducted in China, Colombia, Cypress, India, Italy, Jordan, Kenya, the Philippines, Sweden, Thailand, and the United States. *Id.* at 4.

different cultural views about accepted and encouraged behavior in teenagers and discipline of children and teenagers. "Around the World" at 3-4, 13.

11. The Court finds that the four experts who testified in *Robinson* and *Mattis* can provide and have provided expert opinions grounded on reliable theories that support the findings in paragraphs 13-20 below to a reasonable degree of scientific certainty based on their qualifications and experience, and the extensive study results and real-world observations that support their opinions, as noted herein. Consistencies in the results of many behavioral studies, consistencies in the results of many brain imaging studies, and consistencies between the results of these two types of studies, all conducted in different labs in different parts of the country and increasingly in other countries[12], give Dr. Steinberg and Dr. Galvan a high degree of confidence in the validity of their theories, study results, and opinions. See Steinberg at 49-50; Galvan at 191-193. See also brief testimony of Galvan at April 8, 2022 hearing. The increasing scientific rigor of many studies has further increased the confidence of Dr. Steinberg and Dr. Galvan in the validity of their theories, study results, and opinions. See Steinberg at 148-149, 175; Galvan at 54-59, 118, 137-138. The real-world behaviors of 18 to 20-year-olds, as reflected in F.B.I. crime statistics and Centers for Disease Control statistics on addiction and accidents, among other measures of harmful conduct, provide confirmatory support for the brain science findings. See Kinscherff at 104-106; Galvan at 99.

12. While there are limitations to the study results supporting the Core Findings in paragraphs 13-20 below, set forth in paragraph 22, they are inherent in behavioral science research, rapidly evolving scientific research, and/or all scientific research, see Steinberg at 87;

[12] Some studies have included both behavioral and brain imaging components. Steinberg at 91-92.

Morse at 30-35, and do not undermine the reliability of the expert opinions on which the Court relies or the Core Findings of Fact it reaches.

Core Findings of Fact

13. As a group, 18 through 20-year-olds in the United States and other countries have less "self-regulation," *i.e.*, they are less able to control their impulses in emotionally arousing situations, than individuals age 21-22 and older; their reactions in these situations are more similar to those of 16 and 17-year-olds than they are to those age 21-22 and older. See Galvan at 73-74, 78-84, 85-89, 100-101, 104-105, 214-216, 221-222; Steinberg at 30, 41, 49; Steinberg Supp. Aff. ¶ 21; Steinberg, et al., "Around the World" at 1-4, 15-17 (finding these results in 9 of 11 countries studied); Cohen, et al., "When Is an Adolescent an Adult?" at 549; Icenogle, et al., "Adolescents' Cognitive Capacity" at 70 (Bates 000037); Rudolph, et al., "At risk of being risky," §§ 2.11, 3.4, 4.1.

14. As a group, 18 through 20-year-olds in the United States and other countries are more prone to "sensation seeking," which includes risk-taking in pursuit of rewards, than are individuals under age 18 and over age 21. Because risk-taking in pursuit of rewards peaks during the late teens, rising steadily before this age range and falling steadily thereafter, developmental psychologists and developmental cognitive neuroscientists frequently refer to this phenomenon as the "upside-down U" or "inverted U," due to its shape on a graph where age is plotted on the x-axis and level of sensation-seeking is plotted on the y-axis. Galvan at 68-70, 73-74, 91-93; Steinberg at 62, 66; see, generally, Galvan, "Adolescent Brain Development: Decade in Review." See also Steinberg Supp. Aff. ¶ 20; Steinberg, et al., "Around the World" at 1-4, 11-13 (finding these results in 9 of 11 countries studied).

15. As a group, 18 through 20-year-olds are more susceptible to peer influence than are individuals age 21-22 and older, and the presence of peers makes 18 to 20-year-olds more likely to engage in risky behavior. See Steinberg at 43-44, 160-161; Steinberg Supp. Aff. ¶ 24; Galvan at 106, 245-246; Morse at 82; Steinberg, "A social neuroscience perspective" at 91-92, 98; Galvan, "Adolescent Brain Development: Decade in Review" at 852-853.

16. As a group, 18 through 20-year-olds have greater capacity to change than older individuals because of the plasticity of the brain during these years. Galvan at 42-44, 60, 62-63, 67-73, 109-110, 113-114; Casey, et al., "Making the Sentencing Case" at 329.

17. Consistent and reliable results have been obtained in many behavioral studies, sMRI studies, and/or fMRI studies (based on blood flow) that support the findings set forth in paragraphs 13 to 16. Galvan at 60-61, 63-64, 66-69, 76-80, 91-92, 98-101; Steinberg, et al., "Around the World" at 1-4, 7-8, 11-19; Steinberg Supp. Aff. ¶ 20; Steinberg at 65-66. See also additional articles cited *supra* at ¶¶ 13-15.

18. The primary anatomical (brain structure) and physiological (brain function) explanations for the findings set forth in paragraphs 13 to 16 are (1) the influence on the brain of the sharp increase during puberty of certain hormones; (2) the lack of a fully developed prefrontal cortex, the part of the brain that most clearly regulates impulses; and (3) the lack of fully developed connections (or connectivity) between the prefrontal cortex and other parts of the brain, including the ventral striatum, the part of the brain that most clearly responds to rewards and reward-related decision making. Galvan at 42-44, 63-65, 214-216; Steinberg at 22-25, 29-30; Steinberg, "A social neuroscience perspective" at 83-91.

19. The combination of heightened sensation seeking, less than fully developed self-regulation in emotionally arousing situations, and susceptibility to peer pressure, all of which are

associated with a less than fully developed prefrontal cortex and less than fully developed brain connectivity, makes 18 through 20-year-olds as a group particularly vulnerable to risk-taking that can lead to poor outcomes. The real-world behaviors of 18 through 20-year-olds, as reflected in measures of harmful conduct such as F.B.I. crime statistics and Centers for Disease Control statistics on addiction and accidents, support the brain science findings in this regard. Kinscherff at 28-32, 38; Steinberg, "A social neuroscience perspective"; Steinberg Supp. Aff. ¶¶ 25-26.

20. In contrast to how 18 through 20-year-olds respond in emotionally arousing situations, decision making in the absence of emotionally arousing situations, *i.e.*, "cold cognition," reaches adult levels around age 16. See Icenogle, et al., "Adolescents' Cognitive Capacity" at 82; Steinberg Supp. Aff. ¶¶ 22-23; Steinberg, "Why we should lower the voting age to 16," *New York Times* (March 2, 2018) (*Robinson* Hearing Ex. 1, Tab W).

21. Consistent with the above scientific findings, and cognizant of forensic research showing that most individuals who commit crimes in their late teens do not continue to commit crimes after their mid-20's, forensic psychologists have reduced their preparation of and reliance on long-term risk assessments of criminal defendants who commit violent crimes in their late teens and early 20s because of the reduced utility of such studies. See Kinscherff at 48, 51-52; Casey, et al., "Making the Sentencing Case" at 331-332, 335-336. See also 4/8/22 Hearing Exhibit 1 (age-crime curve).

22. Caveats this Court notes to the study results supporting the Core Findings in paragraphs 13-21 include the following. First, there are significant differences between the subjects in the studies discussed below as a whole and individuals who commit murder as a whole, including but not limited to the fact that potential subjects with serious mental illness are excluded from most studies. See Galvan at 193-195. Second, the subjects who participate in

behavioral and brain scan studies are not a fully randomized pool of the general population. See generally Galvan at 169-174; Morse at 33-34; Steinberg at 92, 177-178, 187-188, 199, 201-202, 208-209. Third, behavioral and brain scan study results look at the individuals in any age bracket as a group; there are significant differences in brain development among the individuals of any particular age or age bracket. See Steinberg at 136-175; Morse at 48-50, 60-61; Galvan at 213-218. Fourth, the conditions of brain science studies, *e.g.*, viewing images on a computer screen and/or being scanned in a lab, differ markedly from the real-world situations in which adolescents commit crimes, Galvan at 142, 219.[13] Fifth, the brain scan study results in the record establish *correlations* between the anatomy and function of certain parts of the brain and certain behaviors, which is different than establishing actual *causation* of those behaviors. Sixth, historically there were machine and human error problems with some early fMRI studies, but these problems were largely resolved by around 2013. See Steinberg at 52-54; Morse at 73-74. Lastly, while the results of many behavioral and brain scan studies discussed herein reinforce each other, each study is somewhat different and therefore the results do not constitute "replication" strictly speaking, as scientists often use the term. Morse at 44-45, 59-60. These caveats, individually and collectively, do not undermine the Core Findings of Fact.

V. RULING OF LAW AND LEGAL DISCUSSION

Proportionality is the touchstone for analyzing cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and the Commonwealth's counterpart to the Eighth Amendment, article 26 of the Massachusetts Declaration of Rights. See *Diatchenko I,* 466 Mass. at 669. See also *Commonwealth v. Concepcion*, 487 Mass. 77, 86 (2021). Moreover, "a

[13] That said, three of the experts testified that the studies on which they relied accurately predicted real-world behaviors. Galvan at 120; Steinberg at 99; Morse at 36.

sentencer [must] have the ability to consider the mitigating qualities of youth." *Diatchenko I*, 466 Mass. at 661, quoting *Miller,* 567 U.S. at 476 (internal quotation and additional citation omitted).

In *Miller*, the Supreme Court banned mandatory sentences of life in prison without the possibility of parole for defendants who were under age 18 at the time of their crimes, as cruel and unusual punishment in violation of the Eighth Amendment. 567 U.S. at 489. The Supreme Court held that judges could impose life-without-parole sentences for juveniles in the exercise of their discretion, but not mandatorily based solely on the provisions of a state or federal statute. *Id.*

In *Diatchenko I*, the SJC took the holding in *Miller* one significant step further, holding that *all* life-without-parole sentences for defendants who were under age 18 at the time of their crimes were "cruel or unusual punishment"[14] in violation of article 26 of the Massachusetts Declaration of Rights. 466 Mass. at 671. "The point of [the SJC's] departure from the Eighth Amendment jurisprudence was [its] determination that, under art. 26, the 'unique characteristics of juvenile offenders' should weigh more heavily in the proportionality calculus than the United States Supreme Court required under the Eighth Amendment." *Commonwealth* v. *Perez*, 477 Mass. 677, 683 (2017), citing *Diatchenko I*, 466 Mass. at 671.

The SJC has asked this Court to decide, in effect, whether the Supreme Court's holding in *Miller* should be extended in Massachusetts to all defendants who were age 18 through 20 at the time of their crimes. The Court concludes that it should. Both the Supreme Court and the SJC have established "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Diatchenko I*, 466 Mass. at 659.

[14] The SJC has not found any legal significance in the language difference between the Eighth Amendment, which bans "cruel *and* unusual punishment," and art. 26, which bans "cruel *or* unusual punishment." See, *e.g.*, *Michaud* v. *Sheriff of Essex Cnty.*, 390 Mass. 523, 533-534 (1983), and cases cited.

In the nine years since *Diatchenko I* was decided, extensive research in the fields of developmental cognitive neuroscience and developmental psychology has established that, as a class or group, the brains of 18 through 20-year-olds are not as fully developed as the brains of older individuals in terms of their capacity to avoid conduct that is seriously harmful to themselves and others. These scientific findings clearly bear on the "culpability of [this] class of offenders… ." *Id.* As applied to juveniles, the SJC considers life-without-parole sentences to be "strikingly similar, in many respects, to the death penalty… ." *Id.* at 670. Applying the Findings of Fact in this case to this SJC precedent, this Court holds that the non-discretionary (*i.e.*, mandatory) imposition of life-without-parole sentences for defendants who were age 18 through 20 at the time of their crimes is a "sentencing practice[ ] based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Id.* at 659. Without minimizing the violence that is almost always involved in the crimes committed by 18 through 20-year-olds that result in first-degree murder convictions, including the crimes at issue in these two cases, the Court concludes that there is a mismatch between the culpability of 18 through 20-year-old offenders as a class and mandatory life-without-parole sentences, *i.e.*, sentences that preclude a judge from granting parole eligibility. Therefore, as applied to 18 through 20-year-olds, the statute that mandates such sentences, G.L. c. 265, § 2, violates article 26 of the Massachusetts Declaration of Rights. This does not mean that, under a given set of facts, a life-without-parole sentence cannot be imposed on such a defendant. The SJC has not asked this Court to decide whether *any* life-without-parole sentence for a defendant who was under age 21 at the time of the crime violates article 26, and therefore the Court does not decide this issue. This ruling means that requiring imposition of a mandatory life sentence in every case, without an individual, case-by-case factual assessment, is unconstitutional.

As noted above, this Court bases its constitutional ruling primarily on 15 years of extensive scientific research establishing that, as a class or group, 18 through 20-year-olds have brains that are not as developed as those of older individuals, and this lack of full brain development makes them more susceptible to behavior harmful to themselves and others. Eighteen through 20-year-olds have less "self-regulation," *i.e.*, they are less able to control their impulses in emotionally arousing situations, than individuals age 21-22 and older. Their reactions in these situations are more similar to those of 16 and 17-year-olds than they are to those age 21-22 and older. As a group or class, 18 through 20-year-olds are also more prone to "sensation seeking," *i.e.*, risk-taking in pursuit of rewards, than are individuals under age 18 and over age 21. And 18 through 20-year-olds are more susceptible to peer influence than are individuals age 21-22 and older; the presence of peers makes them more likely to engage in risky behavior than they otherwise would be. Consistent results have been obtained in many behavioral studies, sMRI studies, and fMRI studies. See *supra* at 15-17.

The primary anatomical (brain structure) and physiological (brain function) explanations for these phenomena are the influence on the brain of the sharp increase during puberty of certain hormones, the lack of a fully developed prefrontal cortex, the part of the brain that most clearly regulates impulses, and the lack of fully developed connections (connectivity) between the prefrontal cortex and other parts of the brain including the ventral striatum, the part of the brain that most clearly responds to rewards and reward-related decision making. See *supra* at 16-17.

The combination of heightened sensation seeking, less than fully developed self-regulation in emotionally arousing situations, and susceptibility to peer pressure, all of which are associated with a less than fully developed prefrontal cortex and less than fully developed brain connectivity, makes 18 to 20-year-olds as a group particularly vulnerable to risk-taking that can

lead to poor outcomes. The real-world behaviors of 18 through 20-year-olds, as reflected in F.B.I. crime statistics, Centers for Disease Control statistics on addiction and accidents, and many other measures of harmful conduct, support the brain science findings in this regard. See *supra* at 16-17.

The brain science and forensic science study results described in this opinion lend direct support to the conclusion that mandatory life-without-parole sentences for defendants who were age 18 through 20 at the time of their crimes constitute cruel or unusual punishment under article 26. Perhaps equally important, these study results also comport with the three reasons why the Supreme Court and the SJC drew the line at age 18 for purposes of applying the most severe penalties in our federal and state legal systems, the death penalty (federal) or mandatory life without parole (Massachusetts).

When the Supreme Court ruled in *Roper v. Simmons*, 543 U.S. 551 (2005), that applying the death penalty to defendants who were under age 18 at the time of their crimes constituted cruel and unusual punishment under the Eighth Amendment, the Court cited three general differences between juveniles (*i.e.*, persons under age 18) and adults. The first difference noted between juveniles and adults was that "lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young." *Roper*, 543 U.S. at 569. The second difference was that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Id.*, citing Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 *Am. Psychologist* 1009, 1014 (2003). "The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Roper*, 543

U.S. at 570. The SJC adopted all three of these differences as reasons for its ruling in *Diatchenko I*. See *Diatchenko I,* 466 Mass. at 660.

The scientific study results in the record in this case call into question why, for purposes of applying these three factors, the line between juveniles and adults should be drawn between age 17 and age 18. A range of study results shows that 18 through 20-year-olds are more subject to peer pressure than older individuals, and brain imaging shows that 18 through 20-year-olds have greater capacity to change than older individuals because of the plasticity of the brain during these years. These study results also provide a reason for why "lack of maturity and an underdeveloped sense of responsibility" are "found in [this age group] more often than in adults and are more understandable... ." *Roper*, 543 U.S. at 569.

That the Supreme Court has expressly limited the protections of *Roper* and *Miller* to defendants under age 18, see *Jones* v. *Mississippi*, 141 S. Ct. 1307, 1314 (2021); *Roper*, 543 U.S. at 574, is not dispositive, for two reasons. First, the Court does not assume those decisions are fixed in stone, and their conclusions may change as the science changes. See *Watt*, 484 Mass. at 755-756. Second, and leaving future developments aside, the SJC has noted that it "often afford[s] criminal defendants greater protections under the Massachusetts Declaration of Rights than are available under corresponding provisions of the Federal Constitution." See *Diatchenko I*, 466 Mass. at 668-669, and cases cited therein.[15]

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[15] See, *e.g.*, *District Attorney for the Suffolk Dist.* v. *Watson*, 381 Mass. 648 , 650, 665 (1980) (concluding that death penalty contravened prohibition against cruel or unusual punishment in art. 26, notwithstanding constitutionality under Eighth Amendment); *Commonwealth* v. *Mavredakis*, 430 Mass. 848, 855-860 (2000) (defendant's right under art. 12 of Massachusetts Declaration of Rights to be informed of attorney's efforts to render assistance broader than rights under Fifth and Sixth Amendments to United States Constitution); *Commonwealth* v. *Gonsalves*, 429 Mass. 658, 660-668 (1999) (privacy rights afforded drivers and occupants of motor vehicles during routine traffic stops broader under art. 14 of Massachusetts Declaration of Rights than under Fourth Amendment to United States Constitution); *Commonwealth* v. *Amirault*, 424 Mass. 618, 628-632 (1997) (confrontation rights greater under art. 12 than under Sixth Amendment to United States Constitution). See also Scott L. Kafker, *State Constitutional Law Declares Its Independence: Double Protecting Rights During a Time of Federal Constitutional Upheaval*, 49 Hastings Const. L.Q. 115, 119 (2022) ("state supreme courts have significant, if not unlimited

In ruling on defendants' motions, the Court has considered but has not strictly applied the three-pronged analysis adopted by the SJC in *Commonwealth v. Jackson*, 369 Mass. 904, 910 (1976), for deciding when a sentence is so disproportionate to the crime that it constitutes cruel or unusual punishment. This analysis "requires (1) an inquiry into the nature of the offense and the offender in light of the degree of harm to society, (2) a comparison between the sentence imposed here and punishments prescribed for the commission of more serious crimes in the Commonwealth, and (3) a comparison of the challenged penalty with the penalties prescribed for the same offense in other jurisdictions." *Commonwealth* v. *Sharma*, 488 Mass. 85, 89 (2021) (internal quotations and citations omitted). This approach does not apply neatly here; it appears that the SJC has used this three-part analysis solely to determine whether a *particular* sentence violates article 26, not to determine whether a sentencing *practice* violates art. 26. Compare *Cepulonis* v. *Commonwealth*, 384 Mass. 495, 497-499 (1981) (three-part analysis used to determine that 40-50 year sentence for possession of machine gun did not violate art. 26 or Eighth Amendment); *Perez*, 477 Mass. at 683-686 (three-part analysis used to determine that sentence in non-murder case with parole eligibility after 27 ½ years presumptively disproportionate); *Concepcion*, 487 Mass. at 86-89 (three-part analysis used to determine that life sentence with parole eligibility after 20 years for defendant convicted of first-degree murder committed at age 15 did not violate art. 26 or Eighth Amendment); and *Sharma*, 488 Mass. at 89-92 (sentences imposed on defendant age 17 at time of crimes of life in prison with parole eligibility after 15 years, followed by 7-10 year sentences -- concurrent with each other -- for armed assault with intent to murder remanded for individual determination using three-part test),

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freedom of action to provide greater protection under state constitutions") *id.* at 120 & n.20 (giving examples of *Diatchenko I* and *Monschke*).

with *Diatchenko I,* 466 Mass. at 667-671 (not applying three-part test while holding that *all* life-without-parole sentences for defendants under age 18 at the time of their crimes violates art. 26); *id.* at 672 (describing *Cepulonis* as addressing "punishment for particular offense"). The limitation of the three-pronged test in this case, as in *Diatchenko I,* is that first-degree murder is the most serious offense in the Commonwealth, and mandatory life in prison without parole is the most serious punishment in the Commonwealth, so these first two prongs do not lend themselves to a proportionality analysis. See *Commonwealth* v. *LaPlante*, 482 Mass. 399, 404 n.4 (2019) (deliberate murder case warranting "most severe punishment ... defies direct application of" this test). This leaves this third part of the test, *i.e.*, what has been done in other jurisdictions. Depending on one's perspective, application of this third prong can either support extending *Miller* to 18 through 20-year-olds or discourage it.

Only one state high court has held that mandatory life-without-parole sentences for defendants who were 18 through 20 years old at the time of their crimes violates the state analog to the Eighth Amendment, a constitutional ban on "cruel punishments." See *Matter of Monschke*, 197 Wash. 2d 305, 325 (2021), discussed *infra*. However, there are states in which some or all defendants of *any* age who are convicted of the most serious murder charge may receive parole eligibility as part of a life sentence, or a sentence of less than life in prison.[16] In seven states, there is no death penalty and a sentence of life in prison with parole eligibility is always a possible sentence for an adult defendant convicted of the most serious murder charge.[17] In New Jersey and New York, two other states that have no death penalty, life in prison with

[16] This Court endeavored to identify the statutes governing the most serious murder charge in all 50 states and the penalties for each such charge. However, court decisions have modified the law in some states, and this Court lacks the resources to monitor recent developments in the law of 50 different jurisdictions.

[17] Maine, Maryland, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

parole eligibility is a possible sentence for a defendant convicted of the most serious murder charge unless the judge or jury finds specified aggravating factors. In two of the nine above-referenced states, Maine and New Jersey, a defendant convicted of the most serious murder charge may also be sentenced to a determinate term of years that, based on the defendant's age and the length of the sentence, is often not a *de facto* life sentence. And in Illinois, which does not have the death penalty, a defendant convicted of the most serious murder charge may receive a determinate term of years but may *not* receive a sentence of life with the possibility of parole.[18]

Massachusetts is one of only 11 states in which life in prison without parole is the only possible sentence after an adult conviction on the most serious murder charge.[19] Death is the only alternative to a life-without-parole sentence after an adult conviction on the most serious murder charge in sixteen states.[20, 21] In Alaska, conviction of aggravated first-degree murder carries a mandatory 99-year sentence, which is a *de facto* life without parole sentence.

In 11 of the states that have the death penalty, some defendants convicted of the most serious murder charge may be sentenced to life in prison with parole eligibility.[22] However, a sentencing regime that includes the death penalty differs so significantly from a sentencing

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[18] See 730 ILCS 5/5-4.5-20(a); 730 ILCS 5/3-3-3(c).

[19] Colorado, Connecticut, Delaware, Hawaii, Iowa, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, and Virginia. There were 12 states, but the high court of one of those 12 states, Washington, ruled that mandatory sentences of life without parole for defendants who were age 18 through 20 at the time of their crime violate the state constitutional ban on "cruel punishments." See *Matter of Monschke*, *infra* at 27.

[20] Alabama, Arizona, Arkansas, California, Florida, Indiana, Kansas, Louisiana, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Dakota, Texas, and Wyoming.

[21] California and Pennsylvania currently have moratoriums on the death penalty. As a result, at this time, life without parole is the only possible sentence upon conviction of the most serious murder offense.

[22] Georgia, Idaho, Kentucky, Montana, Nevada, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, and Utah.

regime without the death penalty that this Court does not consider the sentencing laws in those states as support for its holding in this case.

As noted above, in *Matter of Monschke*, 197 Wash. 2d 305 (2021), the Supreme Court of Washington ruled (by a 5-4 vote) that the state's aggravated murder statute was unconstitutional as applied to 18 through 20-year-olds because it denied trial judges discretion to consider the mitigating qualities of youth. *Id.* at 306-307, 326. The court noted that constitutional protections for youthful criminal defendants have grown more protective over the years, *id.* at 313-317, and that the Washington courts would not necessarily defer to legislative line drawing when determining what constitutes cruel punishment, *id.* at 317-319. The court also discussed how what it called the "age of majority"[23] is inherently and necessarily flexible. *Id.* at 319-321. Finding no meaningful developmental difference between the brain of a 17-year-old and the brain of an 18-year-old, the court held that drawing an arbitrary line between these ages for sentencing purposes did not pass constitutional muster. See *id.* at 313, 329. [24]

In sum, the law in other jurisdictions on mandatory life-without-parole sentences can be used to support or to question the holding reached by this Court.

A principal argument against extending the protections of juvenile sentencing to 18 through 20-year-olds has been that the law recognizes these individuals as adults, and therefore criminal courts should treat them as adults. See, *e.g.*, *Matter of Monschke*, 197 Wash. 2d at 330 (Owens, J., dissenting) ("at this same moment [that individuals obtain the privileges of adulthood], they also obtain the full responsibilities and consequences of adulthood, and the

[23] The term "age of majority" is ambiguous. See *infra*.

[24] The dissent noted, among other things, that the majority's ruling does not eliminate line-drawing, it merely changes where the line is drawn, and emphasized the inherent difficulty in deciding which 18 through 20-year-old offenders should receive life-without-parole sentences. *Id.* at 330-331, 333 (Owens, J., dissenting).

court will no longer intervene on their behalf on the basis of age."). The SJC adopted this reasoning in declining to extend the constitutional ban on life-without-parole sentences for juveniles to this age group:

> The age of eighteen ..."is the point where society draws the line for many purposes between childhood and adulthood." *Roper* [], 543 U.S. [at] 574 []. That such line-drawing may be subject "to the objections always raised against categorical rules," *id.*, does not itself make [an 18-year-old's life-without-parole] sentence unconstitutional.

Commonwealth v. *Chukwuezi*, 475 Mass. 597, 610 (2016). See *Watt*, 484 Mass. at 756 n.17.

However, while society draws the adulthood line at age 18 for "many purposes," *Chukwuezi*, 475 Mass. at 610, there are significant exceptions to this rule. Through legislation, "the Commonwealth has recognized that merely attaining the age of eighteen years does not by itself endow young people with the ability to be self-sufficient in the adult world." *Eccleston* v. *Bankosky*, 438 Mass. 428, 436 (2003). In a variety of contexts, Massachusetts law treats individuals age 18 and slightly older the same as it treats juveniles. See, *e.g.*, *id.* (child support); *Commonwealth* v. *Cole C.*, 92 Mass. App. Ct. 653, 659 n.8 (2018) (juvenile court jurisdiction); *id.* at n.9 (state custody of delinquent child); G.L. c. 119, § 23(f) (state responsibility for former foster child); G.L. c. 138, § 34A (drinking age). See also *Eccelston*, 438 Mass. at 435 n.13 ("An individual may be considered emancipated for some purposes but not for others" and giving the example of the right to vote versus the end of parental support).

Moreover, the age of legal adulthood has changed between 21 and 18 in various contexts for reasons "unrelated to capacity." See *Matter of Monschke*, 197 Wash. 2d at 314-315. The ages for military conscription, voting and drinking alcohol provide important examples. For most of the nation's history, the "age of majority" was 21, not 18. See Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55, 64 (2016). "In 1942 wartime needs prompted Congress to lower the age of conscription from twenty-one to eighteen, a change

that would eventually lead to the lowering of the age of majority generally." *Id.* See also *Eccleston*, 438 Mass. at 435 n.14 (voting age lowered from 21 to 18 because age of conscription for service in Vietnam War was 18). Similarly, the drinking age has fluctuated, decreasing from 21 to 18 before reverting back to 21. See *Barboza* v. *Decas*, 311 Mass. 10, 12 (1942) (citing 1937 legislation which punished persons giving alcohol to individuals under 21); *McGuiggan* v. *New England Tel. & Tel. Co.*, 398 Mass. 152, 159 n.7 (1986) (noting "[t]he legal drinking age [had been] eighteen" but had been raised to 21 pursuant to a 1984 amendment). The 1984 increase in the drinking age was unmistakably due not to any new understanding about brain maturation but rather the incentive of federal funding. See 23 U.S.C. § 158; St.1984, c. 312, amending G.L. c. 138, §§ 12, 14, 30E, 34, 34A, 34B, 34C, and 64. See also *S. Dakota* v. *Dole*, 483 U.S. 203, 205 (1987) (states' federal highway funds partially contingent on state legislation compliance with congressional goal of national minimum drinking age).

As the foregoing show, the "age of majority" is a malleable concept that is not consistently based on science, as the decision in the cases at issue here must be. It thus should not mechanically govern highly consequential decisions about application of the criminal law. Further, the decision about what constitutes "cruel or unusual punishment" is a matter for the state courts, not the Legislature. See *Watson*, 381 Mass. at 666-667. See also *id.* at 686-687 (Quirico, J., dissenting); *Matter of Monschke*, 197 Wash. 2d at 325 (limit of judicial deference is violation of constitution under Washington state law); *Goodridge* v. *Dep't of Pub. Health*, 440 Mass. 309, 338-339 (2003) ("To label the court's role as usurping that of the Legislature ... is to misunderstand the nature and purpose of judicial review. We owe great deference to the Legislature to decide social and policy issues, but it is the traditional and settled role of courts to decide constitutional issues.").

This Court recognizes that incomplete brain development is far from determinative of violent behavior. The great majority of 18 through 20-year-olds do not commit violent crimes. Moreover, dramatically different crime rates in different geographic areas indicate that many factors other than brain age contribute to violent crime. Based on the record in this case, these aggravating factors include access to drugs, access to guns, high childhood stress levels, negative peer influence including affiliating with others involved in criminal activity, mental illness, unstable housing, lack of emotional attachment, and absence of lawful means of earning income, as well as the absence of positive factors such as stable relationships, education, and access to youth and adult programs. See Kinscherff at 91-96, 118-120.[25] Having the brain of an average 18 through 20-year-old is neither a satisfactory explanation nor an excuse for the intentional killing of another human being. However, the reality that many factors other than brain development contribute to violent crime does not change the Court's constitutional analysis, for two reasons.

First, the Court's holding does not in any way excuse acts of violence by 18 through 20-year-olds. The consequence of the Court's ruling is that all individuals convicted of first-degree murder in Massachusetts who were 18 through 20 years old at the time of their crime will continue to receive sentences of life in prison and serve at least 15 years in prison, but some of them may become eligible for parole after serving 15 or more years of their sentences. Others, depending on the facts, may be sentenced to life without the possibility of parole, but only if that sentence is warranted.

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[25] Sociologists observe that "as people move into the roles of adulthood – as they become full-time employees, as they become spouses, as they become parents – there are all kinds of factors that make it less attractive to live a criminal lifestyle." Steinberg at 68. Adults have more "latitude to engage in emotionally meaningful relationships . . . [and] at some point most people decide that the costs and consequences of continued serious criminal misconduct is not preferable to living a more productive life." Kinscherff at 40.

Second, the presence of aggravating factors that increase the likelihood of committing a violent crime is largely beyond the control of any 18 through 20-year-old. The economic circumstances of one's parents or guardians, racial and other discrimination, and other individual and systemic inequalities ensure that some late teens are far more likely than others to live with these aggravating factors, and therefore more likely to perpetrate - and to be victimized by - violent crime. In deciding what constitutes cruel or unusual punishment, a court should consider the systemic impact of its ruling, particularly where the ruling involves a class of persons who, based on their age, have greater capacity than older persons to change.

As noted above, the SJC has not asked this Court to decide whether *any* life-without-parole sentence for a defendant who was under age 21 at the time of the crime violates article 26, and therefore the Court does not decide this issue. There are three separate theories under which intentional killings can be prosecuted as first-degree-murder, *i.e.*, premeditated murder, murder committed with extreme atrocity or cruelty, and felony murder.[26] The neuroscience and behavioral science supporting the Court's ruling do not apply with equal force to killings under all three theories. Nor do they apply with equal force to the wide range of individual conduct that can be prosecuted under each of the theories of first-degree murder.

VI. CONCLUSION AND ORDER

Article 26 of the Massachusetts Declaration of Rights establishes "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Diatchenko I*, 466 Mass. at 659. Moreover, as applied to juveniles, the SJC considers life-without-parole sentences to be "strikingly similar, in many respects, to the death penalty... ." *Id.* at 670. On the record of brain science and social science in this case, the

[26] The Legislature has enacted different lengths of time before parole eligibility for convictions under each of these three theories. See G.L. c. 127, § 133A; G.L. c. 279 § 24.

imposition of non-discretionary (*i.e.* mandatory) life-without-parole sentences for defendants who were age 18 through 20 at the time of their crimes constitutes a "sentencing practice[ ] based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Id.* at 659 . Therefore, this sentencing practice constitutes "cruel or unusual punishment" in violation of article 26 of the Massachusetts Declaration of Rights.

Because Jason Robinson and Sheldon Mattis were respectively 19 years old and 18 years old at the time of their crimes, they are each entitled to a new sentencing hearing.

Dated: July 20, 2022

Robert L. Ullmann
Justice of the Superior Court

Commit #	Last Name	First Name	Parole Eligibility Date	County
W35525	GOLSTON	SEIGFRIED	14-Dec-1990	Suffolk
W36952	BROWN	ALFRED	26-Jan-1993	Essex
W38444	CLAY	FREDERICK	21-Dec-1994	Suffolk
W38027	LICCIARDI	LAWRENCE	13-Jan-1996	Suffolk
W39496	MACNEIL	GEORGE	19-Oct-1996	Essex
W38579	DIATCHENKO	GREGORY	03-Nov-1996	Suffolk
W39245	PALMARIELLO	EDWARD	11-Nov-1996	Suffolk
W40028	JONES	JOHN	13-Oct-1997	Essex
W40860	MAYFIELD	VAL	21-Oct-1998	Suffolk
W42119	TEVENAL	JOSE	03-Feb-2000	Essex
W44026	ABDUL-AZIZ	MALIK	28-Jun-2000	Suffolk
W43885	ROBERIO	JEFFREY	29-Jul-2001	Plymouth
W44500	BOUSQUET	CHRISTOPHER	23-Dec-2001	Bristol
W51267	BERRY	CHRISTOPHER	27-Dec-2002	Essex
W48627	WARD	STEVEN	17-Sep-2003	Middlesex
W47550	HALBERT	JOSHUA	28-Sep-2003	Essex
W47457	NICHYPOR	JOHN	04-Dec-2003	Essex
W49164	NERETTE	PATRICK	23-Mar-2005	Suffolk
W49323	DINKINS	WILLIAM	25-Mar-2005	Suffolk
W53395	FULLER	JAMIE	26-Aug-2006	Essex
W53919	HAMILTON	HOWARD	12-Mar-2007	Suffolk
W52680	MUHAMMAD	AZUZALLAH	03-Jun-2007	Suffolk
W55540	MACK	KEYMA	08-Oct-2007	Suffolk
W55313	DONOVAN	JOSEPH	20-Oct-2007	Middlesex
W56833	FERNANDES	ERNEST	31-Oct-2007	Plymouth
W56202	BALDWIN	RICHARD	16-Nov-2007	Essex
W58874	PUCILLO	CHRISTOPHER	07-Jun-2008	Norfolk
W59468	ASAR	KULUWN	31-Oct-2008	Plymouth
W58406	JAMES	STEVEN	22-Feb-2009	Plymouth
W64758	CHRISTIAN	FREDERICK	28-May-2009	Plymouth
W57153	HARDY	DENNIS	15-Sep-2009	Hampden
W60418	ANDREWS	KIM	23-Jan-2010	Suffolk
W62772	MCAFEE	MICHAEL	12-Jul-2010	Suffolk
W64524	MOSES	PRINCE	10-Feb-2011	Suffolk
W62684	ROLAN	ANTHONY	05-Jun-2011	Bristol
W65360	CAILLOT	HERBY	19-Nov-2011	Plymouth
W66096	JORDAN	KEN YATTI	14-May-2012	Suffolk
W63353	O'BRIEN	EDWARD	30-Sep-2012	Middlesex
W63405	ROBINSON	ANTHONY	09-Oct-2012	Suffolk
W65665	CHALEUMPHONG	VIENGSAYMAY	25-Nov-2012	Middlesex
W65663	BOUPHAVONGSA	DONNIE	25-Nov-2012	Middlesex
W39491	COSTELLO	JAMES	31-Jan-2013	Suffolk

Commit #	Last Name	First Name	Parole Eligibility Date	County
W40852	SHIPPS	WILLIAM	23-Oct-2013	Norfolk
W68773	SOK	NOEUN	07-Jan-2014	Middlesex
W80055	SPRINKLE	KEYON	22-Nov-2014	Suffolk
W87306	JACKSON	MICHAEL	24-Jan-2017	Suffolk
W82745	FERNANDEZ	ANTONIO	01-Dec-2017	Norfolk
F81084	CHOY	FRANCES	11-Oct-2018	Plymouth
W89083	PENN	LUIS	22-Apr-2019	Essex
W87567	WEAVER	KENTEL	28-Jul-2019	Suffolk
W44737	COSTA	LOUIS	05-Jan-2020	Suffolk
W90197	RAY	CHARON	19-Sep-2020	Suffolk
W69601	STOKES	CORIE	23-Nov-2020	Bristol
W93447	SHEA	SHAWN	16-May-2022	Hampden
W92980	JACOBS	ROBERT	10-Nov-2022	Plymouth
W95487	KEO	KEVIN	02-Dec-2022	Essex
W98473	NEVES	ADILSON	24-Mar-2023	Plymouth
W35183	DRAYTON	JOSEPH	05-May-2023	Suffolk
W96397	ODGREN	JOHN	29-Apr-2025	Middlesex
W100958	FERNANDES	JOSHUA	29-May-2025	Suffolk
W103008	ARIAS	RICARDO	01-Sep-2026	Suffolk
W103656	WATT	NYASANI	03-Nov-2026	Suffolk
W102841	MILLER	LAQUAN	04-Jul-2029	Suffolk
W45448	LAPLANTE	DANIEL	24-Oct-2033	Middlesex
W96050	LAPORTE	SWINKELS	30-May-2037	Hampden

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November 3, 2022

John J. Barter
83 Atlantic Avenue, Third Floor
Boston, MA 02110-3711

Re: Public Records Request for *Diatchenko* Related Parole Hearings and Subsequent Violations

Dear Mr. Barter,

This letter responds to your records request to the Massachusetts Parole Board (the Parole Board) dated October 10, 2022, received by this office on October 4, 2022.

In your correspondence, you requested:

"1. A list of all cases decided by the Massachusetts Parole Board, from 2013 to the present date, where Parole was granted for so-called juvenile lifers, meaning, individuals who were considered for parole after the Supreme Judicial Court decision in Diatchenko.

2. A List of all cases decided by the Massachusetts parole Board from 2013 to the present date where parole was denied for so-called juvenile lifers, meaning individuals who were considered for parole after the Supreme Judicial Court decision in Diatchenko.

3. A list of all cases where an individual who was granted parole after a Diatchenko parole hearing and was subsequently subject to parole violation, or parole forfeiture proceedings."

In response to your first request, please see the below list, sorted by Hearing Date.

Row	Client Name	Commitment	Hearing Date	Disposition Date
1	Frederick Christian	W64758	5/29/2014	6/5/2014
2	Joseph Donovan	W55313	5/29/2014	8/7/2014
3	Anthony Rolan	W62684	7/22/2014	8/6/2014
4	Keyma Mack	W55540	8/26/2014	11/20/2014

5	Gregory Diatchenko	W38579	9/30/2014	9/30/2014
6	Steven Ward	W48627	9/30/2014	12/4/2014
7	Prince Moses	W64524	10/30/2014	1/22/2015
8	Jose Tevenal	W42119	2/26/2015	5/5/2015
9	James Costello	W39491	2/26/2015	4/7/2015
10	Ernest Fernandes	W56833	4/30/2015	8/26/2015
11	NOEUN SOK	W68773	6/25/2015	8/19/2015
12	Michael McAfee	W62772	8/2/2016	12/7/2016
13	VIENGSAYMAY CHALEUMPHONG	W65665	8/29/2017	7/25/2018
14	EDWARD PALMARIELLO	W39245	10/17/2017	8/8/2018
15	Christopher Pucillo	W58874	11/7/2017	10/1/2018
16	Louis Costa	W44737	2/6/2018	7/26/2018
17	Herby Caillot	W65360	3/6/2018	10/23/2018
18	JOHN NICHYPOR	W47457	3/20/2018	3/20/2018
19	JOHN JONES	W40028	12/18/2018	4/29/2019
20	Joseph Drayton	W35183	4/23/2019	2/19/2020
21	Kenyatti Jordan	W66096	10/8/2019	3/26/2020
22	Jeffrey Roberio	W43885	6/23/2020	9/22/2020
23	Donnie Bouphavongsa	W65663	8/6/2020	2/3/2021
24	Charon Ray	W90197	8/25/2020	1/5/2021
25	Christopher Bousquet	W44500	12/1/2020	6/23/2021
26	EDWARD PALMARIELLO	W39245	2/25/2021	7/19/2021
27	Antonio Fernandez	W82745	4/27/2021	10/26/2021
28	Luis Penn	W89083	4/29/2021	10/18/2021
29	Corie Stokes	W69601	6/3/2021	11/3/2021
30	Malik Abdul-Aziz	W44026	8/5/2021	6/15/2022
31	George MacNeil	W39496	1/6/2022	6/15/2022
32	KIM ANDREWS	W60418	3/22/2022	7/5/2022
33	Howard Hamilton	W53919	3/31/2022	7/5/2022
34	Kentel Weaver	W87567	6/9/2022	10/19/2022
35	Azuzallah Muhammad	W52680	6/28/2022	10/24/2022
36	Swinkels LaPorte	W96050	6/30/2022	6/30/2022

In response to your second request, please see the below list, sorted by Hearing Date.

Row	Client Name	Commitment	Hearing Date	Disposition Date
1	Howard Hamilton	W53919	7/22/2014	12/23/2014
2	Michael McAfee	W62772	8/26/2014	1/13/2015
3	EDWARD PALMARIELLO	W39245	10/30/2014	4/2/2015
4	Christopher Pucillo	W58874	11/20/2014	2/26/2015
5	Joshua Halbert	W47550	11/20/2014	3/12/2015
6	Christopher Bousquet	W44500	12/18/2014	2/18/2015
7	Seigfried Golston	W35525	1/29/2015	5/1/2015

8	Malik Abdul-Aziz	W44026	1/29/2015	5/12/2015
9	JOHN NICHYPOR	W47457	3/26/2015	6/17/2015
10	Frederick Clay	W38444	5/21/2015	8/26/2015
11	Jeffrey Roberio	W43885	6/25/2015	11/4/2015
12	Patrick Nerette	W49164	7/30/2015	11/4/2015
13	Donnie Bouphavongsa	W65663	8/20/2015	12/10/2015
14	VIENGSAYMAY CHALEUMPHONG	W65665	8/20/2015	12/10/2015
15	KIM ANDREWS	W60418	9/17/2015	1/13/2016
16	Kenyatti Jordan	W66096	10/29/2015	1/28/2016
17	Christopher Berry	W51267	11/19/2015	2/11/2016
18	Keyon Sprinkle	W80055	11/19/2015	2/11/2016
19	Val Mateen	W40860	12/17/2015	5/16/2016
20	JOHN JONES	W40028	12/17/2015	5/16/2016
21	Louis Costa	W44737	2/25/2016	7/28/2016
22	Herby Caillot	W65360	3/24/2016	8/11/2016
23	Joseph Drayton	W35183	4/28/2016	10/4/2016
24	Christopher Pucillo	W58874	11/15/2016	5/17/2017
25	Christopher Bousquet	W44500	12/14/2017	10/16/2018
26	ALFRED BROWN	W36952	4/26/2018	3/27/2019
27	Donnie Bouphavongsa	W65663	8/7/2018	4/8/2019
28	Joshua Halbert	W47550	11/6/2018	10/1/2018
29	Howard Hamilton	W53919	3/26/2019	1/21/2020
30	Luis Penn	W89083	4/25/2019	2/19/2020
31	Lawrence Licciardi	W38027	5/21/2019	2/20/2020
32	Kuluwn Asar	W59468	5/30/2019	3/10/2020
33	Corie Stokes	W69601	6/13/2019	5/6/2020
34	Steven James	W58406	6/18/2019	3/24/2020
35	Kentel Weaver	W87567	6/18/2019	6/1/2020
36	Gregory Diatchenko	W38579	7/23/2019	5/12/2020
37	KIM ANDREWS	W60418	9/26/2019	5/19/2020
38	WILLIAM SHIPPS	W40852	5/27/2021	1/18/2022
39	Joshua Halbert	W47550	11/30/2021	7/13/2022
40	Michael Jackson	W87306	12/16/2021	8/24/2022
41	Shawn Shea	W93447	5/5/2022	9/15/2022

In response to your third request, three individuals who were granted parole after a *Diatchenko* parole hearing were subsequently subject to parole violation or parole forfeiture proceedings.

All data provided in response to this request are based on data obtained from the Parole Board's database as of October 28, 2022. Note, individuals may repeat in the list/s if they were rescinded or revoked the first time and reappear for another hearing.

No fees are being charged for this request at this time. If you wish to challenge any aspect of this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 C.M.R. 32.08, a copy of which is available at http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/. You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Sincerely,

Kaitlin Fallon

Kaitlin Fallon
Program Coordinator II of Research and Planning
Massachusetts Parole Board

Certificate of Compliance

I hereby certify that this brief complies with rules 17 and 20 of the Massachusetts Rules of Appellate Procedure. The brief is set in 14-point Athelas font and contains 6,293 non-excluded words, as determined through use of the "Word Count" feature in Microsoft Word for Office 365.

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Certificate of Service

I certify that in the matter of Commonwealth *vs.* Sheldon Mattis, No. SJC-11693 and Commonwealth *vs*. Jason Robinson, No. SJC-09265 I have today served the Brief of the Committee for Public Counsel Services as *amicus curiae* on counsel of record by directing copies thereof through the electronic filing service provider to:

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