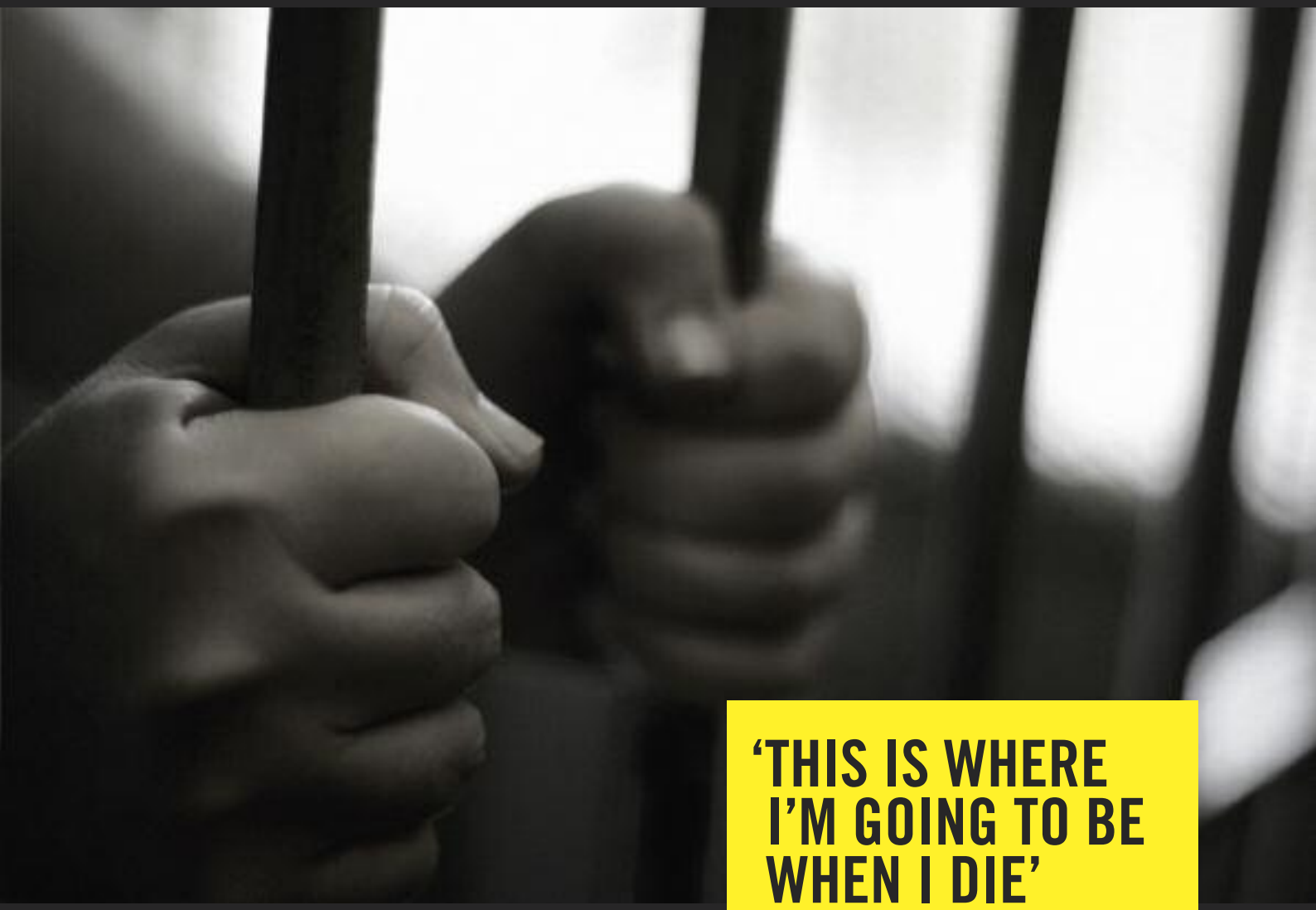

‘THIS IS WHERE I’M GOING TO BE WHEN I DIE’

CHILDREN FACING LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF RELEASE IN THE USA

AMNESTY INTERNATIONAL

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AMNESTY
INTERNATIONAL

First published in 2011 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

Index: AMR 51/081/2011 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

Title quote: David Young, North Carolina.

Cover photo: A prisoner grasps the bars of the cell.

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INTRODUCTION

"WE ALSO SUPPORT THE RECOMMENDATIONS THAT WE RATIFY THE CONVENTION ON THE RIGHTS OF THE CHILD, AS WE SUPPORT ITS GOALS"

United States administration, March 2011

In the United States of America (USA), a person who is under 18 years of age may not vote, serve as a juror, buy alcohol, lottery tickets or cigarettes, cannot hold public office or consent to most forms of medical treatment. Yet in the USA, such a person can be sentenced to die in prison for his or her actions.

In the face of a virtually universal legal and moral consensus that life imprisonment without the possibility of release should never be used against children, the USA is the only country in the world imposing this sentence.[1] More than 2,500 people are serving life imprisonment without the possibility of release in the USA for crimes committed when they were younger than 18 years old.[2] Individuals as young as 11 at the time of the crime have faced this sentence in the USA.[3]

This international prohibition does not stem from any inclination to excuse crimes committed by children or to minimize the consequences of such crimes for the victims and their families. It stems, rather, from recognition that children, who are still developing, are not yet fully mature, and hence not fully responsible for their actions. It also recognizes that young offenders have a special potential for rehabilitation and change.

It is not that young people should not be held accountable for their actions. It is that this accountability must be achieved in ways that reflect the offender's young age and his or her capacity for change. To deny the possibility of release is to deny the possibility of change and is utterly incompatible with basic principles of juvenile justice.

International standards emphasize that in all actions concerning children, a primary consideration should be the child's best interests. In the case of children who come into conflict with the criminal law, a primary objective should be maximizing the potential for the individual to be reintegrated into society and for him or her to be able to assume a constructive role in it.

Such principles are contained in, among other international instruments, the UN Convention on the Rights of the Child. This treaty, which entered into force more than two decades ago, expressly prohibits the imposition of life imprisonment without the possibility of release for

offences committed by persons below 18 years of age.[4] Today, 193 countries have ratified the Convention, all but the USA and Somalia.

The UN Committee on the Rights of the Child is the expert body established by the Convention to oversee its implementation. In an authoritative interpretation issued in 2007, the Committee reaffirmed the absolute prohibition of life imprisonment without the possibility of release for children, and observed that even a sentence of life imprisonment *with* the possibility of parole conspires against achieving the aims of juvenile justice, that is, the young offender's successful reintegration into society. It urged states to abolish all forms of life imprisonment for crimes committed by under-18-year-olds.[5] Against this backdrop, the isolation of the USA in its use of life imprisonment without parole is even starker.

"They are passing laws that send us to prison forever before we are even adults."
David Young[6]

The International Covenant on Civil and Political Rights (ICCPR), which the USA ratified in 1992, acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of procedures that take account of their age and facilitate their rehabilitation.[7] In 2006, the UN Human Rights Committee, the expert body established under the treaty, reminded the USA that sentencing children to life imprisonment without parole is incompatible with the ICCPR, in particular that it violates every child's right "to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."[8] It called on the USA to ensure that no children were subjected to this sentence.[9]

That same year, in its conclusions on the USA's compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Committee against Torture stated that imprisonment to life without parole of children "could constitute cruel, inhuman or degrading treatment or punishment."[10] Additionally, every year since 2009, the UN General Assembly has called in its 'Rights of the Child' resolution on all states to abolish "life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offence".[11]

Amnesty International considers that the prohibition of life imprisonment without parole in the case of children is today so widely respected that it reflects a principle of customary international law, and that imposing this sentence on children "contravenes society's notion of fairness and the shared legal responsibility to protect and promote child development".[12]

It is long past time for the USA to act. It signed the UN Convention on the Rights of the Child in 1995, thereby binding itself under international law to do nothing which would defeat the treaty's object and purpose unless it were to make it clear that it does not intend to ratify.[13] Clearly the USA's use of life imprisonment without parole against children defeats a core purpose of the treaty. Encouragingly, however, the current US administration earlier this year revealed to the United Nations Human Rights Council that it supports the goals of the Convention and ratification of it by the USA.[14] The administration and Congress should work to bring this about as soon as possible.[15]

Pending US ratification of the Convention – without reservations or other limiting conditions – authorities across the USA should immediately set about resolving in line with international law the cases of the many hundreds of individuals already serving life imprisonment without the possibility of parole for crimes committed when they were children. Three of these individuals are featured in this report.

"Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope... A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual."

US Supreme Court, Graham v. Florida, 2010

In May 2010, the US Supreme Court took a step towards bringing the USA into line with international law on this issue. In *Graham v. Florida*, the Court held that the imposition of life imprisonment without the possibility of parole for a non-homicidal crime committed by an under-18-year-old is "cruel and unusual" punishment in violation of the Eighth Amendment to the US Constitution. The Court was considering only the question of children convicted of non-homicide offences and sentenced to this punishment. But its reasoning could in large part be transferred to cases of crimes with lethal consequences committed by children.

While the majority opinion was grounded in an analysis of domestic law and practice, it noted that the international landscape supported its conclusion. It found that the USA "adheres to a sentencing practice rejected the world over" and that it was one of only two countries not to have ratified the UN Convention on the Rights of the Child. Echoing what the Court had said five years earlier in *Roper v. Simmons*, when it abolished the death penalty for under-18-year-olds, it stated that "the United States now stands alone in a world that has turned its face against life without parole for juvenile non-homicide offenders."[19] It could equally accurately have said that the USA stands alone on this issue, full stop, regardless of the nature of the crimes.

Prosecuted as adults

Defendants in the USA who are sentenced to life without parole for a crime committed when they were younger than 18 years of age receive this sentence as a result of being prosecuted as adults. Although children who come into conflict with the law may be treated in the juvenile justice system, every US state has one or more mechanisms that allow or require the prosecution of some child offenders in the adult criminal justice system. These mechanisms are commonly called 'transfer laws' and were dramatically expanded in the last three decades of the 20th century.[16]

'Judicial waiver' laws, which are the oldest mechanism, grant discretion to juvenile court judges to waive their jurisdiction and order a transfer to adult criminal court on a case-by-case basis. The decision is made, generally at the prosecution's request, following a transfer hearing and on the basis of articulated standards, which generally take into account both the nature of the crime and the juvenile defendant's mitigating circumstances. Nationally, judicial waiver is granted in relatively few cases.[17]

The two main transfer mechanisms dating from the 1970s are the 'prosecutorial discretion' and 'statutory exclusion' laws. The first sort of laws grant discretion to prosecutors to file charges in certain cases either in juvenile or in adult court. Only a few states provide decision-making guidance and none requires that a hearing be held prior to the decision or that an evidentiary record be created. The second type of laws excludes some categories of cases from the jurisdiction of the juvenile courts – these are mainly based on the nature of the offence or the age of the defendant – resulting in the cases starting out in adult criminal court. Murder is the offence most commonly excluded from the jurisdiction of the juvenile court.[18]

The court drew on its 2005 *Roper* opinion, in which it had found that "because juveniles have lessened culpability they are less deserving of the most severe punishments".[20] The *Roper* judgment had recognized that compared to adults, children have a lack of maturity and an underdeveloped sense of responsibility, a vulnerability to negative influences and outside pressures, and their characters are not fully formed. As a result of such characteristics, "juvenile offenders cannot with reliability be classified among the worst of offenders", for whom the most severe punishments are reserved. The *Graham* majority concluded that a "juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult".[21]

Life imprisonment without the possibility of parole, the *Graham* majority continued, "is the second most severe penalty permitted by law", and indeed shares some characteristics with the most severe, the death penalty. Life without parole, it noted, "alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency – the remote possibility of which does not mitigate the harshness of the sentence". Life without parole, it continued, is "an especially harsh punishment for a juvenile", as the young offender will serve, on average, more years and a greater percentage of his or her life in prison than an older offender: "A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only".[22]

The *Graham* ruling provides officials in the USA with plenty of arguments as to why they should work to abolish life imprisonment without parole in the case of anyone under age 18 at the time of the crime, not just those convicted of non-homicide offences.

"I pray that you consider allowing this remarkable young woman a second chance at becoming a productive member of society."
Warden Abrigale Patterson, about Christi Cheramie[23]

In the *Graham* case, the US Supreme Court examined the various goals of punishment – retribution, deterrence, incapacitation, and rehabilitation – and found that none of them justified the imposition of life imprisonment without the possibility of parole against children for non-homicide offences. Noting that "the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal", the court concluded that "retribution does not justify imposing the second most severe penalty on the less culpable juvenile non-homicide offender". With regard to deterrence, the court noted that because of their characteristics, children "are less likely to take a possible punishment into consideration when making decisions." It noted, about incapacitation: "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable". In the case of rehabilitation, the ruling noted that "the penalty forswears altogether the rehabilitative idea. By denying the defendant the right to re-enter the community, the State makes an irrevocable judgment about that person's value and place in society."[24]

International law makes no distinction between crimes with lethal and non-lethal consequences when it comes to this punishment. It is absolutely unequivocal in its ban on sentencing children to life imprisonment without parole. This is the standard the USA must

meet. Regardless of the nature of the crime, children should not be subjected to this sentence. This is not to excuse crimes such as murder or to downplay their consequences. It is to recognize that the offenders in these cases were children – a categorically less culpable group and one to which society owes a special duty of care and protection – and not to let the nature of the crime disguise this fact or undermine the principles of juvenile justice.

"I'm sorry for all the pain I've caused; Please send me home so that I may experience life; And maybe one day be someone's wife."
Jacqueline Montanez, extract from "A Poem for the Board"[25]

Not only did the US Supreme Court reiterate in the *Graham* ruling that children possess diminished culpability as a result of the attributes of youth, but also found that scientific findings reinforced this: "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds", the Court noted.[28]

Developmental psychology and social science have long shown that adolescents are socially and emotionally immature and as a result behave differently from adults. Before the Court was evidence that children "are less able to restrain their impulses and exercise self-control; less capable than adults of considering alternative courses of action and maturely weighing risks and rewards; and less oriented to the future and thus less capable of apprehending the consequences of their often-impulsive actions." Consequently, they are more likely to engage in risky behavior. Moreover, behavioral science has demonstrated that juveniles are more susceptible to stress, negative influences and outside pressures, and that an adolescent criminal behavior is more likely to be the mark of transitional characteristics than of an incorrigible depraved character.[29]

Mandatory life without parole

In the USA, life imprisonment without parole can be imposed on juvenile offenders as a mandatory punishment. The federal government and virtually every state have enacted mandatory sentencing laws which require judges and juries to impose certain sentences, including life without parole, upon conviction. These laws strip the sentencing authorities of the discretion to make individualized sentencing decisions. A mandatory sentence precludes consideration of mitigating factors such as age, history of abuse or trauma, degree of involvement in the crime, mental health status or amenability to treatment.

Central to the US Supreme Court's determination that life without parole for juvenile non-homicide offenders is unconstitutional was "the precept of justice that punishment for crime should be graduated and proportioned to [the] offense".[26] This proportionality principle requires that the nature of the offence as well as the culpability of the offender be considered by the sentencing authority. The mandatory imposition of life without parole on children contravenes this requirement from the outset.[27]

Recent neuroscience studies have shown that these psychosocial immaturities coincide with anatomical immaturities of the adolescent brain. In this regard, brain imaging techniques have made two major observations. "First, the parts of the brain that work together to support the control of behavior, including the prefrontal cortex… continue to mature even through late adolescence… Second, in making behavioral choices, adolescents rely more heavily than adults on systems and areas of the brain that promote risk-taking and sensation-seeking behavior."[30]

Such scientific research confirms common knowledge based on personal experience. Anyone asked to list characteristics associated with childhood would likely include at least one of the following: immaturity, impulsiveness, lack of self-control, poor judgment, an underdeveloped sense of responsibility, and a vulnerability to peer pressure or to the domination or example of elders.

"Their stories, and the stories of others like them, prove that no matter how broken their spirit, nor how violent their actions, juveniles can be redeemed and can make contributions to society that would be tragic to lose."
Brief of former juvenile offenders[31]

This report presents the stories of three individuals – Jacqueline Montanez, David Young and Christi Cheramie – all serving a sentence of life imprisonment without the possibility of parole in the USA for crimes which took place when they were younger than 18 years old.

Their cases do not aim to represent the more than 2,500 people who are currently serving this sentence – for example, more males than females are serving this sentence. Rather, Amnesty International is seeking to illustrate through their individual stories how the imposition of life imprisonment without parole against children is a disproportionate and inappropriate sentence.

In working to end the USA's use of the death penalty against children – an outcome finally achieved in 2005 – Amnesty International suggested that such use of capital punishment could, among other things, be seen as policy of denial, denial that wider adult society should accept even minimal responsibility in the crime of a child. The organization noted that "the profile of the typical condemned teenager in the USA is not of a youngster from a stable, supportive background, but rather of a mentally impaired or emotionally disturbed adolescent emerging from a childhood of abuse, deprivation and poverty. A glimpse at the backgrounds of the child offenders executed in the USA suggests that society had failed many of them well before it decided to kill them."[32]

The same can frequently be seen in the cases of children sentenced to life without parole in the USA. The three individuals featured in this report, for example, suffered sexual or physical abuse in their childhood and grew up in environments of instability or violence. Their stories illustrate not only broader societal failures, but also how the youth and immaturity of the individual, combined with such a background, can leave a child defendant ill-equipped to handle the many challenges that face any criminal defendant.

Children may lack the emotional and intellectual capacity to comprehend legal concepts, the role of institutional actors, including their own lawyers, the nature of judicial proceedings against them, or their rights as defendants.[33] Indeed, the US Supreme Court pointed to as much in its *Graham* ruling, citing among other things evidence of children's mistrust of adults, their limited understanding of the criminal justice system, and the likelihood that they will be less likely than adults to be able to assist effectively in their defence. It also noted that youthful impulsiveness or rebelliousness, and lack of ability to weigh long-term consequences, can lead to poor decision-making by a juvenile defendant.[34]

The three then-teenagers profiled in this report can be said to have committed errors in judgment either in police custody or during their pre-trial detention, or adult criminal trials, errors which played a role in their ultimately being sentenced to life without parole. Their sentence labeled them unfit to ever reenter society, while their youthful errors illustrated their immaturity, one of the very attributes of childhood that renders this sentence unacceptable.

Moreover, their transfer to adult criminal court was either automatic or ordered before a transfer hearing was held. Life imprisonment without parole was the sentence mandated by law or as the only alternative to the death penalty. This meant that their youth, trauma or neglect during childhood or any other mitigating circumstances were never or not appropriately taken into consideration.[35]

Like other young defendants, David Young, Christi Cheramie and Jacqueline Montanez faced an additionally challenging situation; despite their young age, they had to adjust to being in an adult prison as well as accepting the finality of their sentence. Prisoners serving life without parole sentences for crimes committed when they were younger than 18 years old have been described as "tend[ing] to go through the grief cycle twice… The first time it has to do with the simple fact of entering adult prison, so they pass through shock, anger, depression, and then acceptance. But for the lifers, they go through all four stages again – often several years later or whenever the reality of their sentence finally sinks in".[36]

Some such prisoners may resort to defiance of prison rules, withdrawal or aggressive behaviour as a defensive reaction, not least in what can be the violent and threatening environment in some prisons. This can lead to their placement in long-term isolation, used for the control of prisoners who are considered disruptive or a security threat.[37]

After many years in prison, these three young adults believe that they have changed. They have said that they have reflected on who they were at the time of the crime, and the conditions that affected their childhood, or have pondered on their involvement in the crime or have expressed remorse. They have obtained high school equivalency diplomas and attended secondary education and vocational programmes, where access to these has been possible.

Prisoners serving life without parole sentences are often denied rehabilitative services because of prison policies, lack of resources or prison security classifications.[38] The US Supreme Court had noted this fact in its *Graham* opinion, adding that the absence of rehabilitative opportunities for children in such cases – the very individuals "who are most in need of and receptive to rehabilitation" – made the disproportionate nature of life imprisonment without parole "all the more evident".[39]

The case before the Supreme Court was that of Terrance Graham, sentenced to life imprisonment without parole in Florida for a crime committed when he was 16 years old. The Court concluded:

> "Terrance Graham's sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he

> spends the next half century attempting to atone for his crimes and learn from his mistakes. The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a non-homicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit."[40]

Christi Cheramie, Jacqueline Montanez and David Young face the same prospect. International law does not permit this. The fact that they were convicted of crimes involving homicides does not alter this or render their sentences any more tolerable than those which the US Supreme Court has outlawed.

ILLINOIS: THE CASE OF JACQUELINE MONTANEZ

"I did what they said I did, I'm not who they say I am."

Jacqueline Montanez

Jacqueline Montanez is the only woman in the State of Illinois serving a sentence of life imprisonment without the possibility of parole for a crime committed as a child. She was 15 years old at the time of the crime and has spent more than half of her life in prison.

Jacqueline Montanez was convicted in 1993 of two murders committed in May 1992 shortly before her 16th birthday. In 1995, she was granted a new trial which took place in 1999 and at which she was again convicted and sentenced to life without parole. At the time of the crime, she was a teenager emerging from a childhood of abuse.

Jacqueline Montanez was born on 29 May 1976. She has never had a relationship with her biological father and her mother met her stepfather when she was one year old.[41]

When Jacqueline Montanez was eight years old, her school alerted the social services after noticing that the girl bore multiple bruises and she had told her teachers that she had been hit by her stepfather. The preliminary investigation into child abuse pointed to Jacqueline Montanez' stepfather as the perpetrator, although her mother stated that she herself was responsible for her daughter's injuries. It noted that the "family appears to be protecting [the mother's] boyfriend who appears violent... It seems clear [that the] mother tried to protect [the] victim at [the] time of [the] incident."[42] It assessed the home situation as presenting no substantial harm to the girl or her sister. The case was closed after 18 months monitoring of the family situation, during which time the social services focussed their intervention on Jacqueline Montanez' mother and noted that "no indication of abuse or neglect [had] appeared".[43]

Jacqueline Montanez at the age of six or seven © Private

From the age of nine, the girl started abusing drugs and alcohol and joined a street gang, which was rival to her stepfather's gang. This substance abuse caused her to be hospitalised for overdoses on several occasions. Jacqueline Montanez has said that she

repeatedly ran away from home to escape the abuse, which led to her being intermittently placed in the custody of social services from the age of 12.

Jacqueline Montanez recalls that "for 15 years of my life I lived being beat up or watching my parents shoot up or delivering drugs for my [step]father, or being raped... I woke up to beatings, cooking his drugs and bagging them. I thought it was normal."[44]

At the time of the crime for which she is now serving life imprisonment without the possibility of parole, Jacqueline Montanez had run away from a foster home and had not attended school since the eighth grade.

On 12 May 1992, Jacqueline Montanez drove to a park with two girls, Marilyn Mulero and Madeline Mendoza, also members of her street gang, and two men, Hector Reyes and James Cruz, members of her stepfather's gang. She entered the park's public lavatory with Hector Reyes where she shot him in the back of the head. She then exited the lavatory and gave the handgun to Marilyn Mulero, who then shot James Cruz. The three girls then fled the scene.[45]

On the following day, Jacqueline Montanez was arrested with Marilyn Mulero and was taken to the police station at 9.30pm. She was questioned four times throughout the night. The first interrogation, during which she made a confession[46], took place with neither a youth officer nor her mother present. During this interview, the detectives advised her that "she could possibly be charged as an adult in this case".[47] At about 12.30am, a youth officer held a private consultation with Jacqueline Montanez before attending the three subsequent interviews led by the prosecutor.[48]

At a pre-trial suppression hearing to determine whether Jacqueline Montanez' confession was admissible into evidence against her, her mother testified that she was notified that her daughter had been taken into police custody at approximately 10pm. However, she was told to wait until being called to go to the police station. At about 2am, having not been contacted, she drove to the station, where she made several unsuccessful attempts to see her daughter, at one point speaking with one of the detectives who had come to her home. She was not permitted to see her daughter until about 8.30am. By then, Jacqueline Montanez' confession had been formally recorded. She added that she was allowed to speak with her daughter, who appeared to be under the influence of alcohol or drugs, for approximately five minutes.

The prosecutor, the youth officer and one of the detectives who had interrogated the 15-year-old girl testified that they were never made aware of the mother's presence at the police station or that she had been denied access to her daughter. The court ruled that Jacqueline Montanez' confession was admissible, finding that the police "exercised a good faith effort after the defendant was arrested when they notified the mother of her incarceration" and that "the officers have testified that at no time did she request to see the defendant."[49]

In the morning following Jacqueline Montanez' arrest, as she and Marilyn Mulero were being escorted out of the interview rooms, they were filmed by TV news crews which had been allowed inside the police station, in violation of Illinois law which prohibits law enforcement from disclosing the identity of any "minor who has been arrested or taken into custody before

his or her 17th birthday".[50] The video footage was repeatedly broadcast on local TV channels for several weeks following the arrest.

Upon seeing the cameras, Jacqueline Montanez made a hand gesture, which was interpreted at her trials as being the symbol for her street gang, and said "KK", which was said to mean "King Killer", "King" referring to the name of the street gang to which Hector Reyes and James Cruz belonged. The video was admitted into evidence and played several times at both trials.[51]

Because she was 15 at the time of the crime and charged with first degree murder, she was automatically tried in adult criminal court.[52] This denied her the possibility of being tried in juvenile court where factors such as her young age, home environment or amenability to rehabilitation would have been considered.

She was tried in 1993; she was then 17. During jury selection, the court denied the defendant's request that jurors be asked if they could be fair to a gang member or a drug abuser.[53] At the conclusion of her trial, Jacqueline Montanez was found guilty of the two murders. She received a mandatory sentence of life imprisonment without the possibility of parole as required by Illinois law in cases involving multiple homicide.[54]

Jacqueline Montanez appealed her conviction, challenging in particular the trial court's decision to admit her confession into evidence. The state appeal court, in a 2-1 ruling, reversed her conviction and remanded her case for a new trial. The majority ruled that her confession should have been suppressed because it "was not voluntary where she was interrogated throughout the night as part of a pattern of police conduct designed to elicit confession as well as to obstruct parental counselling".[55] The dissenting judge argued that the trial judge's decision on the admissibility of the confession should be upheld and Jacqueline Montanez' conviction affirmed.

The retrial took place in 1999. Jacqueline Montanez was by then 23. Her confession was readmitted into evidence after the retrial judge granted the state's request to re-examine this matter. The judge found that the trial transcript reviewed by the appellate court was inaccurately recorded and did not reflect that during the original suppression hearing, the judge had interrupted the State's cross examination of the mother. The court accepted that that interruption had led the prosecution to believe that the judge considered the mother's testimony lacking in credibility, that he would rule in the state's favour and that, as a result of this belief, the prosecution had decided not to introduce any rebuttal evidence. The retrial judge also noted that the appellate court had relied heavily on the mother's testimony, much of which the dissenting judge on the appeal court had characterized as "incredible". The trial court judge reopened the matter and allowed the parties to present new evidence.[56] For the state, a key witness was the detective to whom Jacqueline Montanez' mother had said she had spoken at the police station. He testified that he had not seen or spoken with her until he was notified of her presence at 7am.

Jacqueline Montanez was again convicted on two counts of first degree murder and sentenced to life imprisonment without the possibility of parole. At the sentencing hearing, Jacqueline Montanez' lawyers did not present mitigating circumstances, stating that "the law

is clear that it is natural life [imprisonment]. We have no mitigation [factors] to present in light thereof".[57]

Her conviction was upheld on appeal, with the state appeal court finding that the retrial judge's decision to re-examine the admissibility of the confession was warranted by the fact that the transcript reviewed in the original appeal had been inaccurate. Again one of the judges dissented, arguing that "the question of the voluntariness of the defendant's confession was resolved fully and finally and the trial court was not at liberty to revisit the issue".[58]

Jacqueline Montanez was transferred to adult jail on her 17th birthday and to adult prison four months later. She was the youngest inmate there. She was placed in the mental health unit immediately upon her arrival and remained there for almost three years. A mental health evaluation noted that she had flashbacks of the crimes and a significant self-reported mental health history. It recommended that she be kept in the unit to ensure her protection.[59]

Jacqueline Montanez with a service dog ©2009 private

Jacqueline Montanez has said that her young age and the reality of her sentence made it difficult for her to adapt to adult prison. In particular, during the early years of her sentence she engaged in violent behaviour as a way to protect herself against violence in the prison, as well as regularly defying prison rules.

After more than 19 years of incarceration, Jacqueline Montanez believes she has grown into a very different person. She has obtained a high school equivalency diploma and completed almost all available education and vocational programmes. She has become a certified trainer of service dogs for disabled people.

At her first trial, Jacqueline Montanez pleaded not guilty and testified that she did not murder Hector Reyes. However, the now 35-year-old woman has said that during her years in prison she has reflected on her involvement in the murders and has accepted full responsibility. She has expressed remorse about the murders of Hector Reyes and James Cruz. "Not a day goes by that I don't wish it were me. They were human, they were somebody's father, they were somebody's child".

Jacqueline Montanez will submit an application for executive clemency with the Illinois Prisoner Review Board in January 2012.[60]

NORTH CAROLINA: THE CASE OF DAVID MARTIN BEASLEY YOUNG

"I was accused of a crime and found guilty because of my association with others. Since then I've grown up. I wish I knew then what I know now. Maybe then I would've had a shot at life."

David Young

David Young has been serving a sentence of life imprisonment without the possibility of parole for a murder committed during a drug deal. He was 17 years old at the time and has been incarcerated for almost 15 years.

David Young is one of two teenagers arrested and charged for the murder of Charles Junior Welch in 1997. It was Young's co-defendant who, 16 years old at the time of the crime, actually shot the victim. He pleaded guilty to second-degree murder and was sentenced to 19 to 23 years in prison. David Young was convicted of first-degree felony murder and was sentenced to life without parole.

David Young was born on 9 March 1979. He grew up in a "hostile" community environment.[61] At the time of the murder, he had dropped out of school and was "the product of a severely broken and dysfunctional family".[62]

David Young at the age of eight
© Private

David Young's parents, who both abused drugs, divorced when he was two or three years old. His mother remarried about four years later. David Young has said that his stepfather physically abused him and his mother. When his mother moved to live in another city, the 13-year-old boy decided to stay with his father, but had to take care of himself despite his young age.

At the age of 14, David Young was involved in a fight during which he fired a gun. He appeared at a juvenile court hearing unaccompanied by his parents or any other adult guardian. As a result, the court placed him in the custody of the social services. David Young recalls that this made him feel resentful. He spent approximately two years in the Swannanoa Valley Youth Development Center (formerly the JEC Training School), after

which time he was sent to an Independent Living Center. However, he returned to live with his father. He was then 17 years old.

On 8 January 1997, David Young was with Khristopher Davis and Tommy Davis, when they were approached by two occupants in a car seeking to buy drugs. David Young and Tommy Davis engaged in a transaction with the passenger, Charles Welch. According to evidence presented at David Young's trial, when Charles Welch refused to pay for the drug, Khristopher Davis pointed a gun he had in his pocket[63] at the second occupant, saying "don't worry about the driver. If he moves, I've got him".[64]

David Young reached into the car window and tried to pull a hundred-dollar bill out of Charles Welch's hands.[65] Charles Welch got out of the car and walked towards Khristopher Davis, who fired several shots, killing him. The three teenagers fled the scene. Khristopher Davis was arrested on the following day. In police custody he provided at least four different statements, at one point accusing David Young of the murder of Charles Welch.

David Young arrived at the police station for questioning accompanied by his father and uncle. After he was advised of his rights, which he invoked, he said "I was there and I want to tell you the truth about what happened".[66] Then, after privately consulting with his uncle and father, he declined to make any further statements without a lawyer present. The detectives informed him that the prosecutor had authorized a charge of accessory after the fact of first-degree murder to be brought against him, which occurred two days later. The teenager was automatically charged in adult criminal court as required by North Carolina law for any criminal offence committed by anyone aged 16 or older.[67]

David Young subsequently received several offers to accept a reduced plea from the prosecution, including one of robbery with a dangerous weapon, carrying a 38-month sentence. Relying on the advice of his uncle, David Young rejected all the plea offers. His lawyers recall him as "a teenager who was easily influenced by his family"[68] and who "understood a lot but was not mature enough to make adult decisions".[69]

In December 1997, David Young was indicted for first-degree murder under the felony murder rule[70], which was punishable by death or life imprisonment without parole.[71] At his trial, David Young's lawyers stated that "[the lead detective] was advised by the District Attorney's Office that [Accessory After the Fact] would be the most that they would charge and could charge David Young with… When David Young failed to cooperate, it turned into a murder charge… No other information was provided to change the charge to Murder from Accessory After the Fact."[72]

In July 1998, David Young was found competent to stand trial following a mental health evaluation sought by his lawyers out of concern about his behaviour and his apparent lack of understanding of the nature of the charges against him.[73] The conclusions of the psychiatric report led the court to authorize David Young's lawyers to hire a mental health practitioner to help in the preparation of his defence.

Two months later, David Young sought to have one of his lawyers disqualified from representing him on the grounds that the lawyer had discussed his case with David Young's uncle. In a letter addressed to the court, the teenager stated that "now with that much

information in the wrong hands it could really hurt me in the court room. I have a 1st degree Murder charge and I'm forced to take my case serious[ly]... I'm scared to death to go on trial with [this lawyer] on my case. I believe in this case and I really need another attorney." David Young also expressed concern about the duration of his pre-trial detention, attributing it to what he saw as his lawyers' inefficient assistance.[74] The court ordered the lawyers to continue to represent David Young, finding that he had authorized them to consult with his uncle as part of the preparation of his defence and that it was appropriate for the lawyers to have done so for this purpose.

In December 1998, David Young filed four handwritten motions without the approval of his lawyers. He sought in particular the dismissal of the charges pending against him, notably on the ground of "unnecessary and unjustifiable delay in bringing the case to trial"[75]. He withdrew the motions after a hearing at which he orally renewed his request for new legal representation and his lawyers described "some difficulties in their working relationship with the defendant".[76]

In April 1999, the then 20-year-old was tried for the felony murder of Charles Welch. His lawyers did not present any witnesses or other evidence on his behalf.[77] David Young waived the opportunity to have the judge instruct the jury on a lesser included offence of second-degree murder.[78] The jury went into deliberation having been instructed on a single offence which carried a sentence of death or life imprisonment without parole. It returned a guilty verdict of first-degree murder under the felony murder rule.

During the sentencing phase[79], David Young initially refused to present evidence or to testify on his own behalf, explaining to his lawyers that "it's in God's hands, Allah's hands, and he was satisfied that he would be protected fully by that".[80] His lawyers, who expressed concern about their client's refusal, were granted the request that he be allowed to consult with a religious leader.[81]

The judge inquired whether David Young had understood the purpose of presenting mitigating evidence to the jury given that the death penalty was a possibility. The young man explained "I wanted to present evidence before all of this took place, but I listened to my counsel and they advised me not to, so I didn't present any evidence [in the first phase of the trial]... It's too late to stop anything that's already started".[82] However, he subsequently agreed to present evidence and called Khristopher Davis to testify.[83]

The jury recommended life imprisonment without parole, which was imposed by the court.

In March 2000, David Young wrote again to the court to raise concern about the fact that his trial lawyers had been appointed as his appellate lawyers.[84] His conviction was upheld on appeal two years later. In 2006, he unsuccessfully sought post-conviction relief, arguing that "the defendant was forced into a capital murder trial with counsel that prepared no defense for him. The appointed counsel for the defendant offered no evidence nor called any witnesses in his behalf, even though an investigator was hired for the defense and key witnesses were found and willing to testify on the defendant's behalf."[85]

All David Young's attempts to seek post-conviction relief have been denied, including his attempt to challenge the constitutionality of his sentence on the basis of the US Supreme Court's *Graham v. Florida* decision in 2010. As noted in the introduction, this decision abolished the imposition of life imprisonment without the possibility of parole for non-homicide offences committed by anyone who was under 18 at the time of the crime.[86]

David Young obtained a high school equivalency diploma when he was held in a youth camp during the first few years following his conviction. He was then transferred to adult prison. Because he has continued to be assigned to "close custody"[87] in adult prison, opportunities to work there are extremely limited and he is not allowed to attend secondary education or vocational programmes. He recalls that he was told by prison authorities that he would be held in close custody for 15 years because of the sentence he was to serve.

David Young at age 30 © 2009 North Carolina Department Of Correction

Now 32 years old, David Young has said that the finality of his sentence became a reality for him when his attempt to seek post-conviction relief in 2006 was rejected. He "woke up and thought, this is where I'm going to be when I die". He has said that he felt devastated and became entirely isolated. He also engaged in conduct that led him to receive disciplinary reports and to be frequently placed in solitary confinement, where he was at one point held for two consecutive years. He has said that resorting to violence is also a means to protect himself. In 2002, he was taken to hospital after he was assaulted and stabbed by two prisoners.

During his most recent period in solitary confinement, David Young was allowed to leave his cell for three hours per week to shower or for recreation. During recreational time, he was placed alone in a narrow fenced area which he has described as looking like a "dog pen".

When he was transferred out of solitary confinement after being held for two years, David Young sought to reestablish contact with his parents, who he was unsure were still alive. He has described this effort as an uphill task because his family members had not visited him in the past decade and had not actively sought to maintain contact with him. He has also said that his relatives are aging and that each time he speaks with them over the phone, "I realize that it may be the last time and I try to say everything I need to say".

After almost 15 years of incarceration, David Young believes that "I'm nothing like I was before I came in… Now I see the world from a different perception". This, he has said, helps him cope with the severity of his situation.

LOUISIANA: THE CASE OF CHRISTI LYNN CHERAMIE

"Christi is a model inmate… [who is] worthy of a second chance in society"

Warden Abrigale Patterson, 17 February 2005

In June 1994, at the age of 16, Christi Lynn Cheramie entered the Louisiana Correctional Institute for Women to serve a sentence of life imprisonment without the possibility of parole for a crime which had occurred four months earlier. She is now 33.

On the third day of jury selection for her trial in adult court, Christi Cheramie pleaded guilty to second-degree murder in the stabbing death of her fiancé's great aunt in February 1994. A short time later, her 18-year-old fiancé pleaded guilty to second degree murder and was also sentenced to life without parole. Christi Cheramie's guilty plea – made by a 16-year-old fearing that she could be sentenced to death if the trial went ahead – means she cannot directly appeal against her conviction or sentence.

Christi Cheramie was born on 27 January 1978. Her childhood was difficult and marked by sexual abuse. Her parents divorced when she was eight years old. There is substantial evidence that from that age, she was sexually abused by her mother's boyfriend over a period of three years. Christi Cheramie stopped attending school while in the seventh grade and went to live with her grandmother to care for her grandfather who was dying of emphysema while her grandmother worked at a truck stop diner. She did not return to school before she was incarcerated.

Christi Cheramie at age 12 © Private

At the age of 13, after telling her mother that she had suffered sexual abuse, Christi Cheramie attempted to commit suicide on at least two occasions, and was hospitalized in a psychiatric clinic. A psychological evaluation conducted at that time concluded that Christi Cheramie had a learning disability, significant emotional and personality problems, and low-self-esteem. It also revealed that she was seriously traumatised by the sexual abuse she had suffered.

In May 1992, Christi Cheramie's mother notified the police of this abuse and charges were brought against her mother's boyfriend. However, because of Christi Cheramie's arrest and subsequent conviction on murder charges, he was never tried.

In 1993, Christi Cheramie's younger brother introduced her to Gene Mayeux, to whom she became engaged a few months later. She has said that, despite the fact that she loved him, she was afraid of him.[88] On 12 February 1994, Gene Mayeux and Christi Cheramie travelled to Marksville, Louisiana, to visit his great aunt, Mildred Turnage. According to the teenagers' subsequent accounts, they had robbed her twice in the past during such visits, taking money that she kept hidden in her bedroom. On each occasion, Christi Cheramie distracted Mildred Turnage while Gene Mayeux stole some of her money.

According to Christi Cheramie, on their way to the house on 12 February 1994, Gene Mayeux told her that he planned to kill his great aunt if she was on her guard and he could not steal the money as before. Christi Cheramie would later explain to a psychiatrist, who evaluated her prior to her trial, that when she had objected to her fiancé's plan, he had told her to "shut up". The psychiatrist concluded that Christi Cheramie was a "depressed, dependent, and insecure" 16-year-old who "seems to have been fearful of crossing" Gene Mayeux.[89]

When they arrived at Mildred Turnage's home at around 9pm, Gene Mayeux, who was carrying a hunting knife, asked his great aunt to make some coffee. As she was standing in front of the stove, Gene Mayeux approached her from behind and stabbed her in the back. As she pleaded with her great-nephew not to stab her again, he did so. Gene Mayeux then took Mildred Turnage's purse and the teenagers left the house. They travelled back to Christi Cheramie's aunt's home in Marrero, Louisiana, where they arrived at about 2.30am. On the way, they had discarded the knife, their blood-stained clothing and the purse in a river.[90]

In mid-February 1994, Gene Mayeux was interrogated at the Avoyelles Parish Sheriff's Office twice in less than 48 hours. Christi Cheramie, who accompanied him, was each time questioned as a witness without the presence of an adult or a lawyer. She twice provided Gene Mayeux with an alibi.

Following the second interview, which took place at around 2am on 15 February 1994, Christi Cheramie told her mother and stepfather about the murder. This so shocked her mother that she required medical care. As Christi Cheramie and her stepfather escorted her mother to the hospital and stayed with her, the police repeatedly asked for Christi Cheramie to return to the Sheriff's Office to provide further statements.

Once he was reassured about his wife's medical state, Christi Cheramie's stepfather took the 16-year-old to the Sheriff's Office. It was then around 5am. According to one of the detectives present when they arrived, "they were both quite upset and she was crying".[91] The stepfather then returned to the hospital.

Without an adult or a lawyer present to look out for her interests, and feeling sick and having not slept, Christi Cheramie subsequently proceeded to tell the detective present what had happened during the murder. She then accompanied him to the place where the money had been hidden. On their return they saw by chance Gene Mayeux, who, noticing the money, immediately accused Christi Cheramie of the murder. By then, Gene Mayeux had been questioned for some five hours and had already changed his version of events twice, at one point accusing his own mother of his great-aunt's murder. Following the encounter, Gene Mayeux provided another statement in which he accused Christi Cheramie of the crime.

The detectives waited until Christi Cheramie's stepfather returned at around 8am to advise her of her rights and secure a formal statement in his presence. She made this statement without any further private discussion with her stepfather, a lawyer, or any other adult. Approximately one hour later, Christi Cheramie was arrested and charged as a principal to first-degree murder.[92] At that time, Louisiana and US law allowed, in violation of international law, the death penalty for first-degree murder committed by an offender aged 16 or over at the time of the crime. The prosecution decided to pursue the death penalty against the 16-year-old girl.[93]

During pre-trial proceedings, Christi Cheramie's stepfather testified that he had not been made fully aware of the potential consequences that Christi Cheramie faced by providing her statement to the police. He said that, not realizing the gravity of the situation, he had declined the offer to further speak with his step-daughter prior to her making the statement. Questioned about whether he had fully advised Christi Cheramie and her stepfather of the potential consequences, the detective who took the statement testified that "I didn't tell her first degree murder; I said, [you could be] charged in connection with this murder."[94]

Three days after her arrest, Christi Cheramie was transferred to adult criminal court for trial. No hearing was held to consider evidence that might support keeping her case in juvenile court. At such a hearing, a judge would have been required to consider such factors as her young age, her history of mental health issues, and her amenability to rehabilitation before ruling on the transfer question.

Jury selection for Christi Cheramie's trial began on 20 June 1994. For a capital trial in the USA, prospective jurors have to be "death qualified", as individuals who oppose the death penalty can be excluded from sitting on the jury.[95] For two and a half days, Christi Cheramie sat in the courtroom and listened to the process of selecting jurors capable of applying the death penalty. As one of her trial lawyers recalled several years later, "she was shaking depending on the response of a respective juror".[96] On the third day, after she heard a potential juror suggest that the defendant deserved to die even if she was only present at the crime, she requested to have a break, during which she spoke with her lawyers and her parents. During this conversation, Christi Cheramie and her parents learned that the prosecution was considering charging members of Christi Cheramie's family as accessories after the fact. The discussion lasted for about an hour, during which Christi Cheramie's lead lawyer made several unsuccessful attempts to reach an agreement with the prosecution to reduce the charge to manslaughter, which carried a maximum sentence of 40 years.

Subsequently, Christi Cheramie entered a guilty plea to the reduced charge of second-degree murder. Pleading guilty meant waiving her right to a trial by a jury, as well as her right to directly appeal the conviction or the sentence. The judge accepted her plea and imposed on her the mandatory sentence for a second-degree murder conviction: life imprisonment without the possibility of parole.

In 2001, Christi Cheramie sought to have her guilty plea withdrawn on the grounds that it was involuntary because the court failed to fully advise her of the rights she was waiving by pleading guilty. At a hearing, she testified that she had had great difficulty in comprehending the situation in which she found herself. "I was scared. I didn't know… I didn't understand what was going on."[97] She explained that, at the time she pleaded guilty, she had not

understood that her trial had commenced, nor that the process she had witnessed for over two days was the selection of her trial jury. "All I know is that I was facing the death penalty for something that I did not do".[98]

She further testified that her two lawyers had failed to explain to her the situation or what pleading guilty to second-degree murder really meant. She said that she had felt pressured into pleading guilty, and that her lawyers had stressed that if she did not, the prosecution would seek the death penalty and her family would be charged as accessories after the fact. Her lead attorney at the time, who was called to testify at the same hearing, recalled that "Christi understood what was going on the best any sixteen year old girl could because we explained over and over. That's not to say she had the same understanding then [that] she would have today at whatever age she is now, but she was sixteen, she was scared."[99]

Christi Cheramie at graduation ceremony © 2009 Private

Her motion to withdraw her guilty plea was denied, as have all other Christi Cheramie's attempts to seek post-conviction relief.

After spending half of her life in prison, Christi Cheramie believes she has changed in many ways. Christi Cheramie has obtained a high school equivalency diploma as well as a degree in agricultural studies. She is currently in charge of a number of classes on this subject at the prison where she is incarcerated. Christi Cheramie has also completed nearly all available education and vocational programmes.

According to a portfolio compiled by Christi Cheramie, she has received favourable comments from several wardens and correctional officers at the various prisons where she has been incarcerated, including from Warden Abrigale Patterson of Avoyelles Simmesport Correctional Center in Louisiana who has stated that "Christi is a model inmate… [who is] worthy of a second chance in society."[100] Christi Cheramie has indicated remorse about the murder of Mildred Turnage. She has said about her involvement in the offence: "I think about how wrong it was for me to be there, knowing that… this innocent woman's money was being taken…I didn't know at that point that her life was going to be taken."[101] The closest relatives of Mildred Turnage have stated that they believe that Christi Cheramie deserves a second chance, and that "she was very very young" and that "[Mildred Turnage] would tell us to let it go."[102]

Christi Cheramie will submit an application for clemency with the Louisiana Board of Pardons in November 2011.

CONCLUSION

The three cases highlighted in this report can offer only a glimpse into the situation being faced by the more than two and a half thousand individuals that the USA has decided should die in prison for crimes committed when they were children. Amnesty International nevertheless hopes that their stories will contribute to a growing political and public awareness in the USA that imposing life imprisonment without parole on those who were under 18 years old at the time of their crimes serves no constructive purpose and contradicts basic principles of juvenile justice. It is not that children should not be held accountable for their actions; it is that the state should not give up on their futures by locking them up and throwing away the key. Such a policy represents a counsel of despair. It also violates international law.

The USA promotes itself as a champion of human rights. The US administration told the UN Human Rights Council in 2010, in preparation for the upcoming scrutiny of the country's human rights record under the Universal Periodic Review (UPR) process, that the USA was guided by "our commitment to help to build a world in which universal rights give strength and direction to the nations, partnerships, and institutions that can usher us toward a more perfect world". Recalling that the USA had been central to the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, it continued:

> "From the UDHR to the ensuing Covenants and beyond, the United States has played a central role in the internationalization of human rights law and institutions. We associate ourselves with the many countries on all continents that are sincerely committed to advancing human rights, and we hope this UPR process will help us to strengthen our own system of human rights protections and encourage others to strengthen their commitments to human rights."[103]

The USA's isolation on the issue of life without parole for children cannot be squared with such statements. Sentencing children to die in prison flouts a principle of international human rights law recognized and respected across the world, except by the USA. No other country is currently known to impose life imprisonment without the possibility of release on individuals for crimes, however serious, committed when they were children.

The USA responded positively to calls from other governments during the UPR process to ratify the UN Convention on the Rights of the Child, adding that the USA supports the goals of this human rights treaty. At the same time, however, it asserted that specific calls for the USA to prohibit life imprisonment without the possibility of parole in the case of children did "not enjoy our support".[104] These two responses are irreconcilable.

It is time for the USA to join the rest of the world by ratifying the Convention on the Rights of the Child and fully implementing its prohibition on the use of life imprisonment without the possibility of parole against children, including in relation to the cases of those already sentenced. On human rights "progress is our goal", the USA told the UN Human Rights Council in 2010. This is as good a place to start as any.

ENDNOTES

[1] See *Graham v. Florida*, In the United States Supreme Court, Brief for Amnesty International, et al, as *amici curiae* in support of petitioners. Available at http://law.scu.edu/site/david-sloss%5Cfile/PowerPoint%20Fall%2009/08-7412_PetitionerAmCuAmnestyIntl.pdf. See also 'Sentencing our children to die in prison: Global law and practice', Connie de la Vega and Michelle Leighton, 11 August 2008, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1277524 "[C]ountries reported to have had child offenders serving LWOP sentences, have now officially clarified their law to allow, or have stated publicly that they will allow, parole for juveniles in all cases… [Ten] countries besides the United States… may have laws that could permit the sentencing of child offenders to life without possibility of release, but there are no known cases where this has occurred."

[2] State distribution of youth offenders serving juvenile life without parole (JLWOP), Human Rights Watch, 2 October 2009, http://www.hrw.org/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole

[3] For example, see case of Jordan Brown in Pennsylvania (http://www.amnesty.org/en/news-and-updates/usa-lawyers-successful-moving-boy%E2%80%99s-murder-trial-juvenile-court-2011-08-26; http://www.amnesty.org/en/library/info/AMR51/062/2011/en; http://www.amnesty.org/en/library/info/AMR51/027/2011/en).

[4] United Nations Convention on the Rights of the Child, Article 37(a).

[5] General Comment No. 10 (2007), Children's rights in juvenile justice, UN Committee on the Rights of the Child, CRC/C/GC/10, 25 April 2007.

[6] David Young, now 32 years old, is serving a sentence of life without parole in North Carolina. See his profile on p.13.

[7] Article 14(4) of the ICCPR states: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation".

[8] ICCPR, Article 24(1).

[9] Concluding observations of the Human Rights Committee, United States of America, UN Human Rights Committee, CCPR/C/USA/CO/3/Rev.1, 18 December 2006.

[10] Conclusions and recommendations of the Committee against Torture, United States of America, UN Committee Against Torture, CAT/C/USA/CO/2, 25 July 2006.

[11] For example, see Resolution 63/241, Rights of the Child, adopted by the UN General Assembly, 13 March 2009.

[12] *Graham v. Florida*, In the United States Supreme Court, Brief for Amnesty International, et al, as *amici curiae* in support of petitioners.

[13] Article 18, Vienna Convention on the Law of Treaties: "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when… it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty".

[14] "We support its goals and intend to review how we could move toward its ratification". UN Doc: A/HRC/16/11/Add.1. Report of the Working Group on the Universal Periodic Review. United States of America, Addendum. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. 8 March 2011.

[15] Under the US Constitution, the President can only ratify treaties "with the advice and consent of the Senate".

[16] Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform, National Center for Juvenile Justice, 1 November 2008, http://www.ncjj.org/PDF/MFC/MFC_Transfer_2008.pdf

[17] Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, *Juvenile Offenders and Victims: National Report Series*, Office of Juvenile Justice and Delinquency Prevention, September 2011, https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf. This Bulletin was written by the National Center for Juvenile Justice. "[S]ome states make [judicial] waiver presumptive in certain classes of cases, and some even specify circumstances under which waiver is mandatory."

[18] Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, *Juvenile Offenders and Victims: National Report Series*, Office of Juvenile Justice and Delinquency Prevention, September 2011. "State transfer laws in their current form are largely the product of a period of intense legislative activity that began in the latter half of the 1980s and continued through the end of the 1990s. Prompted in part by public concern and media focus on the rise in violent youth crime that began in 1987 and peaked in 1994, legislatures in nearly every state revised or rewrote their laws to lower thresholds and broaden eligibility for transfer, shift transfer decisionmaking authority from judges to prosecutors, and replace individualized discretion with automatic and categorical mechanisms."

[19] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[20] *Roper v. Simmons*, US Supreme Court, No. 03-633, 1 March 2005.

[21] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[22] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[23] 'Letter of reference for Christi Cheramie', Warden Abrigale Patterson, 17 February 2005. Christi Cheramie, now 33 years old, is serving a sentence of life without parole in Louisiana. See her profile on p.17.

[24] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[25] 'Poem for the Board', Jacqueline Montanez. Jacqueline Montanez, now 35 years old, is serving a sentence of life without parole in Illinois. See her profile on p.9.

[26] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[27] *Graham v. Florida*, Brief of The Sentencing Project as *Amicus Curiae* in support of petitioners, 23 July 2009.

[28] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[29] *Graham v. Florida*, In the US Supreme Court, Brief for the American Psychological Association et al., July 2009. "Research has documented that the vast majority of youthful offenders will desist from criminal behavior in adulthood. And the malleability of adolescence means that there is no reliable way

to identify the minority who will not."

[30] *Graham v. Florida*, In the US Supreme Court, Brief for the American Medical Association et al., 23 July 2009. This and the brief of the American Psychological Association above clarified that the scientific conclusions they recounted and the terms "juveniles" and "adolescents" they used applied to individuals between the ages of 12 and 17.

[31] *Graham v. Florida*, In the US Supreme Court, Brief of Former Juvenile Offenders Charles S. Dutton, Former Sen. Alan K. Simpson, R. Dwayne Betts, Luis Rodriguez, Terry K. Ray, T.J. Parsell, And Ishmael Beah As *Amici Curiae* In Support Of Petitioners, 23 July 2009.

[32] USA: Indecent and internationally illegal. The death penalty against child offenders, September 2002, http://www.amnesty.org/en/library/info/AMR51/143/2002/en

[33] This may ultimately contribute "to an increased likelihood of unreliable sentencing outcomes that fail to reflect culpability and guilt." *Graham v. Florida*, In the US Supreme Court, Brief for the NAACP Legal Defense & Educational Fund, Inc., et al., 23 July 2009. See also Brief of *Amici Curiae* J. Lawrence Aber, et al. (Mental Health Experts), 23 July 2009.

[34] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[35] "Together, mandatory transfer and mandatory sentencing laws present a perfect storm for juveniles: At the outset, they require that the juvenile, if charged with a certain crime, be tried in adult court. Then, upon conviction in the adult system, they require the judge to sentence the juvenile to life without parole. At no stage of the proceedings is a judge permitted to consider the juvenile's degree of involvement in the crime, mental health status, or history of trauma – factors that would, if considered, counsel heavily in favor of a lesser sentence." *Graham v. Florida*, In the US Supreme Court, Brief of The Sentencing Project as *Amicus Curiae* in support of petitioners, 23 July 2009.

[36] The Rest of Their Lives. Life without Parole for Child Offenders in the United States. Human Rights Watch and Amnesty International, October 2005, http://www.amnesty.org/en/library/info/AMR51/162/2005/en. Human Rights Watch interview with Treatment Director at Iowa Correctional Institute for Women, Mitchellville, Iowa, 5 April 2004.

[37] "[A]n administrative officer at [Colorado State Penitentiary] offered an explanation for why youth offenders serving life without parole often end up confined in long-term isolation: One [factor] is age—when you come in at a young age with life without, there's not a whole lot of light at the end of the tunnel. Also, it's kind of a guy thing: the young ones come in with a lot of fear, anxiety, paranoia, and they want to make a name for themselves—so they have a tendency to act out." The Rest of Their Lives. Life without Parole for Child Offenders in the United States. Human Rights Watch and Amnesty International, October 2005. Human Rights Watch telephone interview with Dennis Burbank, Administrative Officer III, Colorado State Penitentiary, 1 December 2004.

[38] *Graham v. Florida*, In the US Supreme Court, Brief of The Sentencing Project as *Amicus Curiae* in support of petitioners, 23 July 2009. "In short, juvenile life without parole rejects rehabilitation in theory and in practice".

[39] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[40] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[41] Jacqueline Montanez has said amongst other things that, when she was a child, her stepfather was a

street gang leader who would send her to deliver drugs or take her with him when he collected "debts", which she said could turn into violent confrontations. She recalls that her stepfather physically abused her mother.

[42] Investigative worker's observations/recommendations, State of Illinois Department of Children and Family Services, 6 June 1984. The report also noted that "according to school, [Jacqueline Montanez] is a behavior disordered child… [The] school will monitor [the] child's condition."

[43] Closing summary, State of Illinois Department of Children and Family Services, 24 December 1985.

[44] Jacqueline Montanez recalls that as a child she engaged in self-injurious behaviour, which led to her hospitalization.

[45] Marilyn Mulero, who was 22 at the time of the offence, entered a guilty plea in September 1993 and was sentenced to death. Her sentence was vacated on appeal and she was subsequently sentenced to life without parole. Madeline Mendoza, who was 16, was sentenced to 35 years of imprisonment and was released in 2009 after completing half of her sentence.

[46] Jacqueline Montanez stated amongst other things that the killings were carried out in revenge for the death of a young man who she believed had been killed by members of the rival gang to which Hector Reyes, James Cruz and her stepfather belonged.

[47] *People v. Montanez*, Brief and Argument for Defendant-Appellant, In the Appellate Court of Illinois, Second District, 15 June 1994. The brief adds: "Telling a 15 year old she "may" be tried as an adult, is also telling her she "may" *not* be tried. On the facts of this case – 15 year old charged with murder – this option did not exist… Implicit is the misinformation given [to] defendant is an appeal to be childish, cooperate, confess and have a better chance of being treated as juvenile." Illinois law provides that anyone who at the time of the offence was at least 15 years of age and who is charged with first degree murder is automatically prosecuted in adult criminal court. See Juvenile Court Act of 1987, 705 ILCS 405/5-130(1)(a).

[48] The information on the crime, as well as on Jacqueline Montanez' arrest and her time in police custody, is based on the evidence presented by the state at her trials. According to Jacqueline Montanez now, she and Marilyn Mulero were arrested earlier in the day and, before being taken to the police station, they were first driven to the scene of the crime, then to a neighbourhood where the rival street gang was concentrated and where the police threatened to leave them. Jacqueline Montanez also alleges that during the first interrogation she was told that she could not be prosecuted as an adult.

[49] *People v. Montanez*, Appellate Court of Illinois, First District, Second Division, 30 June 1995. In reviewing Jacqueline Montanez' appeal of her conviction, which in particular challenged the admission of her confession into evidence, the state appellate court later found that "the [trial] judge correctly found that the defendant's mother arrived sometime after the arrest; the judge erroneously found, however, that the officers testified that at no time did she ask to see her daughter; rather, they claimed that they were not "aware" of her request."

[50] Juvenile Court Act of 1987, 705 ILCS 405/5-905.

[51] No physical evidence was presented by the prosecution against Jacqueline Montanez at either of her trials.

[52] Juvenile Court Act of 1987, 705 ILCS 405/5-130(1)(a), excludes a number of offences, including first degree murder, from juvenile court's jurisdiction for anyone who at the time of the crime was at least

15 years of age.

[53] One of Jacqueline Montanez' grounds for appeal was that the "defense was denied the opportunity to ascertain whether any of the prospective jurors harboured attitudes towards gangs or drugs that would prevent them from being fair and impartial jurors. Accordingly, defendant was denied her rights to due process and to a fair and impartial jury". *People v. Montanez*, Brief and Argument for Defendant-Appellant, In the Appellate Court of Illinois, Second District, 15 June 1994.

[54] Illinois Unified Code of Corrections, 730 ILCS 5/5-8-1(a)(1)(c)(ii): "the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed if the defendant... is found guilty of murdering more than one victim". At the time of Jacqueline Montanez' prosecution, in Illinois the death penalty could not be imposed on anyone who was under 18 years old at the time of the offence.

[55] *People v. Montanez*, Appellate Court of Illinois, First District, Second Division, 30 June 1995. The majority noted that "the State chose not to call the desk sergeant to testify in contradiction, not the... detective to whom [the mother] had spoken. No one who was even potentially in a position to contradict [the mother] testified for the State in this aspect of the case."

[56] *People v. Montanez*, transcript of hearing on motion to suppress statements, 31 July 1997. Following this decision, Jacqueline Montanez unsuccessfully sought to have the judge disqualified from hearing her case on the ground that the comments made by the judge about the appellate court's dissenting opinion showed that the judge had already determined that Jacqueline Montanez' mother was not a credible witness. *People v. Montanez*, Appellate Court of Illinois First Judicial District, Order, 9 August 2001.

[57] *People v. Montanez*, transcript of trial proceedings, 1 December 1999.

[58] *People v. Montanez*, Appellate Court of Illinois First Judicial District, Order, 9 August 2001.

[59] During her incarceration, Jacqueline Montanez has been intermittently diagnosed with posttraumatic stress disorder or depression and has been administered psychotropic and anti-depressant medication. In 2008, she sought therapy and intensive drug treatment.

[60] An online petition in support of her executive clemency request is available at: http://www.ipetitions.com/petition/jacquelinemontanez/

[61] David Young has said "I was raised in a hostile environment where people used drugs and alcohol to escape the harsh realities of life in the ghetto. Violence is used as a means to maintain respect and it is also the law of the jungle".

[62] *North Carolina v. Young*, transcript of trial proceedings, 3 May 1999. His lawyers added: "he was bounced around between Georgia and here and other parts of North Carolina from one family member to another. And he's the product of a background where he had no opportunity to develop roots and no opportunity to develop long-term personal relationships of significant meaning."

[63] At the trial, the prosecution contended that the handgun belonged to David Young and that he had given it to Khristopher Davis a short time before the incident. The defence disputed this.

[64] *North Carolina v. Young*, transcript of trial proceedings, 28 April 1999. When asked about David Young and Tommy Davis' reaction to Khristopher Davis drawing a gun, the driver added: "they were more worried about getting the money. That seemed to be their whole thing. They [weren't] very violent or nothing like that until one of them tried to grab the money, and that's what set [Charles Welch] off".

[65] At the trial, the defence disputed this fact. On cross examination, the lead detective in the case admitted that he did not mention in his investigation report that David Young had attempted to commit the robbery. The driver testified that he could not positively identify David Young as being at the scene and that "someone reached in and tried to rip a hundred-dollar bill out of [Charles Welch's] hand". *North Carolina v. Young*, transcript of trial proceedings, 28 April 1999.

[66] *North Carolina v. Young*, transcript of trial proceedings, 29 April 1999.

[67] North Carolina Juvenile Code, §7B-1604(a).

[68] Affidavit of William D. Auman, David Young's appellate lawyer, 11 May 2011.

[69] Affidavit of Eugene W. Ellison, David Young's trial lawyer, 10 May 2011. The lawyer further stated: "I had at least five attorneys who were experienced in Capital cases consult with David Young and advise him".

[70] The felony murder rule is a legal theory that holds that if a murder occurs during the commission of a felony, the person or persons responsible for the felony can be charged with murder. North Carolina law defines a felony murder as "a murder… committed in the perpetration or attempted perpetration of any… robbery… or other felony committed or attempted with the use of a deadly weapon." N.C. Gen. Stat. §14-17.

[71] Both punishments were unlawful under international law for someone of his age at the time of the crime.

[72] *North Carolina v. Young*, transcript of trial proceedings, 26 April 1999. Four days after David Young's indictment for first-degree murder, Khristopher Davis pleaded guilty to second-degree murder. He received a minimum sentence of 19 years with a maximum sentence of 23 years, seven months. He is scheduled to be released on 7 July 2017. Tommy Davis was never charged in connection with the murder.

[73] *North Carolina v. Young*, Motion questioning defendant's capacity to proceed, 23 June 1998. It further stated: "The defendant's behavior is irrational in front of his lawyers and has demonstrated the same during his jail stay. We therefore question his capacity to assist in a reasonable manner in preparation for his defense and his capacity to proceed".

[74] Letter to Resident Superior Court Judge Dennis J. Winner, 22 September 1998. David Young further stated "[This lawyer] has been on my case since [January 1998]. Since then, he has done nothing on my behalf... I have been in jail since Jan. 30th 1997. My charges are almost 2 years old... To me to have been in jail this long, I have no type of defense what so ever. " Following this letter, David Young's lawyers filed a motion to ascertain status of counsel.

[75] *North Carolina v. Young*, Motion to dismiss all pending charges, 28 December 1998.

[76] *North Carolina v. Young*, Order, 6 January 1999.

[77] At the conclusion of the state's evidence, David Young's lawyers unsuccessfully sought to have all the charges against him, except the first-degree murder charge, dismissed on the grounds of insufficiency of evidence to sustain conviction. They did not present rebuttal evidence.

[78] A lesser included offence is a more minor offence of which elements are included in the more serious offence being prosecuted. In criminal trials, courts are permitted to instruct the jury that it can find a defendant guilty of the most serious offence or a lesser included offence.

[79] In cases where the defendant is convicted of an offence for which a death sentence may be imposed, a separate sentencing proceeding is conducted in order to determine which punishment should be imposed.

[80] *North Carolina v. Young*, transcript of trial proceedings, 3 May 1999, David Young's words reported by his lawyers. This prompted them to unsuccessfully request the court "to order [that] a mental health professional interview Mr. Young to make sure that he fully understands the consequences of the decision that he is making and that he is able at this time to assist counsel in the preparation and conduct of his defense, and that he is aware of the consequences, potential consequences of his actions."

[81] *North Carolina v. Young*, transcript of trial proceedings, 3 May 1999. His lawyers stated that "it's hard for anybody to understand another human being that won't take advantage of an opportunity to save their own life".

[82] *North Carolina v. Young*, transcript of trial proceedings, 3 May 1999.

[83] Khristopher David testified amongst other things that he had shot Charles Welch.

[84] Letter to North Carolina Resident Superior Court Judge Dennis J. Winner, 16 March 2000. David Young added that he had not been contacted by his lawyers despite his trying for eight months. The lawyer whom he had sought to disqualify filed a motion seeking withdrawal from the case.

[85] *North Carolina v. Young*, Motion for Appropriate Relief, 25 July 2006. David Young filed this motion without the assistance of a lawyer.

[86] *Graham v. Florida*, US Supreme Court, No. 08-7412, 17 May 2010.

[87]The North Carolina Department of Corrections assigns each inmate a custodial level depending on "perceived public safety risk". Close custody is the highest security level. See http://www.doc.state.nc.us/dop/custody.htm

[88] Interview with Christi Cheramie conducted by CBS Morning News, 16 May 2010.

[89] Psychological evaluation report by Dr Stuart L. Kurtz, PhD, 27 May 1994. The report concluded that "With these basically passive personality qualities, she would not be expected to actively participate in a violent act and, while I am not saying that it is impossible that a person with such personality qualities would do such, it is certainly improbable. It seems much more likely that she was psychologically and perhaps physically to some extent, afraid to leave Gene Mayeux, Jr."

[90] The information pertaining to the crime is taken from the recorded statement provided by Christi Cheramie to the Avoyelles Parish Sheriff's Office on 15 February 1994 at approximately 8am, the Sheriff's Office's investigation report, and the psychological evaluation report written by Dr Stuart L. Kurtz, PhD, at the request of Christi Cheramie's lawyers on 27 May 1994. Christi Cheramie's arrest warrant stated that Gene Mayeux "did commit the crime of 1st degree murder" by "stabbing [Mildred Turnage] to death, twice in the back... while engaged in the preparation of an armed robbery". In pleading guilty to second-degree murder, Gene Mayeux did not admit responsibility for stabbing Mildred Turnage.

[91] *Louisiana v. Cheramie*, Motion to suppress, transcript of pre-trial proceedings, 12 April 1994.

[92] Louisiana Code Title 14 Criminal Law: "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its

commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

[93] USA: Indecent and internationally illegal. The death penalty against child offenders, September 2002, http://www.amnesty.org/en/library/info/AMR51/143/2002/en. Among other things, Amnesty International noted the possibility that prosecutors could hold the threat of one internationally unlawful sentence – a death sentence – over a teen offender, which could contribute to persuading them into pleading guilty to avoid the possibility of a death sentence and accepting one of life without the possibility of parole, a sentence which also violates international law when used against people who were under 18 at the time of the crime (see pages 44-45).

[94] *Louisiana v. Cheramie*, Motion to suppress, transcript of pre-trial proceedings, 12 April 1994.

[95] At capital jury selection in the USA, those citizens who would be "irrevocably committed" to vote against the death penalty can be excluded by the prosecution, under a 1968 US Supreme Court ruling. In 1985, the Supreme Court amended this standard to one where a prospective juror can be dismissed if his or her feelings about the death penalty would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath". *Wainwright v. Witt*, US Supreme Court, 469 U.S. 414, 21 January 1985.

[96] *Louisiana v. Cheramie*, Motion to withdraw guilty plea and/or correct illegal sentence, transcript of oral arguments, 1 August 2001.

[97] *Louisiana v. Cheramie*, Motion to withdraw guilty plea and/or correct illegal sentence, transcript of oral arguments, 1 August 2001.

[98] *Louisiana v. Cheramie*, Motion to withdraw guilty plea and/or correct illegal sentence, transcript of oral arguments, 1 August 2001.

[99] *Louisiana v. Cheramie*, Motion to withdraw guilty plea and/or correct illegal sentence, transcript of oral arguments, 1 August 2001.

[100] 'Letter of reference for Christi Cheramie', Warden Abrigale Patterson, 17 February 2005.

[101] Interview with Christi Cheramie conducted by CBS Morning News, 16 May 2010, 6:29.

[102] Interview with Christi Cheramie conducted by CBS Morning News, 16 May 2010, 8:09.

[103] UN Doc: A/HRC/WG.6/9/USA/1, 23 August 2010. National report submitted in accordance with paragraph15 (a) of the annex to Human Rights Council resolution 5/1. United States of America.

[104] UN Doc: A/HRC/16/11/Add.1. Report of the Working Group on the Universal Periodic Review. United States of America, Addendum. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. 8 March 2011.

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‘THIS IS WHERE I’M GOING TO BE WHEN I DIE’

CHILDREN FACING LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF RELEASE IN THE USA

More than 2,500 people in the USA are serving a sentence of life imprisonment without the possibility of release for crimes committed when they were younger than 18 years old, in violation of international human rights law respected around the world. The USA is believed to be the only country that continues to effectively condemn such young offenders to die in prison.

This report highlights the cases of three people – Jacqueline Montanez, David Young and Christi Cheramie – serving life without parole for crimes committed when they were children. Every case is different and their stories cannot represent the experiences of the many hundreds of people currently serving this sentence across the country. However, their cases show why Amnesty International is calling on the USA to join the rest of the world in ending a punishment that is utterly incompatible with the basic principles of juvenile justice.

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November 2011

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