

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO

Appellee,

v.

JEFFREY D. BELEW

Appellant.

Case No. 2013-0711

On Appeal from the Court of Appeals, Sixth Appellate District

Court of Appeals Case No.: L-11-1279

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**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICI CURIAE  
OHIO SUICIDE PREVENTION FOUNDATION AND DISABILITY RIGHTS LAW  
AND POLICY CENTER, INC.**

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## I. STATEMENT OF INTEREST OF *AMICI CURIAE*

The Ohio Suicide Prevention Foundation has served Ohio as a focus and a catalyst for the prevention of suicide since 2005. Its energy and activity is targeted on promoting suicide prevention as a public health issue, supporting evidence-based practices in awareness, intervention and methodology, and working for the elimination of stigma and the increase of help-seeking behavior that surrounds the brain illnesses of depression, other mental illness and addiction.

The Ohio Department of Mental Health, as well as the Department of Health and multiple community stakeholders have encouraged, endorsed and trusted the Ohio Suicide Prevention Foundation as the statewide steward and resource partner for Ohio's suicide prevention effort. The organization is led by a dedicated and organized board whose members represent a variety of geographical interests and expertise in the suicide prevention and public health fields.

The record indicates that the Defendant-Appellant Jeffrey Belew was likely engaged in suicidal behavior by means of what is commonly referred to as "suicide by cop," a means of attempting suicide by engaging police officers in a confrontation in which the police must respond by the use of potentially deadly force. The actions of Mr. Belew should be understood in this context, a plea for help by a young man whose world had turned so bleak that he wanted to end his life.

The Ohio Disability Rights Law and Policy Center, Inc. (d.b.a. Disability Rights Ohio) is the system to protect and advocate for the rights of people with disabilities in Ohio. *See, e.g.*, R.C. 5123.60; 29 U.S.C. § 794e; 42 U.S.C. § 10801 *et seq.* Disability Rights Ohio is a 501(c)(3) not for profit corporation chartered under the laws of Ohio. The mission of Disability Rights Ohio is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. In

accordance with that mission, Disability Rights Ohio is participating in this case as *amicus curiae* to provide information about the disabilities that are involved in this case, and to advocate for individuals with disabilities not to be punished disproportionately for actions that are manifestations of their disabilities.

## II. STATEMENT OF THE CASE AND FACTS

*Amici* adopt the Statement of Case and Facts set forth in Defendant-Appellant's Memorandum in Support of Jurisdiction, with the following supplementation.

The psychological evaluation report of Dr. Wayne Graves was admitted into evidence without objection (Transcript of Proceeding, July 13, 2011) and Dr. Graves testified at the sentencing hearing (Transcript of Proceeding, Oct. 20, 2011). Dr. Graves diagnosed Mr. Belew with Post-Traumatic Stress Disorder (PTSD), major depression without psychosis, and alcohol dependence.

Mr. Belew's parents were both drug and alcohol dependent at a serious level. Mr. Belew began drinking alcohol as a teenager and continued with excessive use while in the Marines. He was heavily intoxicated at the time of the incident with the police.

While in the Marines in Iraq, Mr. Belew was told repeatedly that he was expendable. He believed that he had a 50/50 chance of dying each day. He returned after his term of duty with few connections, no meaningful relationships with friends or family, and no support system. He has never received any counseling or psychotherapy.

The events relating to his confrontation with the police are not in dispute and follow a typical "suicide by cop" pattern. Mr. Belew was so intoxicated that he has little memory of the events. He was told that he told his girlfriend, "It doesn't matter. I am going to f\_ing kill myself and shoot the cops." After the altercation with his brother, he ran toward the police saying, "I

ain't got nothing to lose." Mr. Belew's only statement to the Court at the sentencing hearing was to apologize to the police officers. Dr. Graves concluded that the behaviors Mr. Belew engaged in seemed to be those of someone intent on trying to end his life by engaging with the police, i.e., "suicide by cop."

### **III. EXPLANATION OF WHY THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST**

It should be noted from the outset that this *amicus* brief is not meant to condone or excuse Mr. Belew's actions. He must face an accounting for his actions, but the severity and method of his punishment must take into consideration his combat experiences and the fact that he suffers from Post-Traumatic Stress Disorder (PTSD) and severe mental illness. This Court should accept this case for review because it involves a felony and a question of public and great general interest. That question is whether it is an abuse of discretion for a trial court to use mitigating evidence that a veteran with PTSD attempted to commit "suicide by cop" as aggravating evidence to support maximum, consecutive sentences for felonious assault. This question is a matter of public and great general interest to the many veterans and individuals with PTSD or other similar conditions who are involved with the criminal justice system every year.

In its support of specialized dockets for veterans and individuals with mental illness, this Court has recognized the importance of accounting for the root causes of problems that lead to an individual's involvement with the criminal justice system. The trial court in this case did the opposite—using Mr. Belew's military service, PTSD, substance abuse, and attempted suicide as a justification for imposing a twenty-seven year prison sentence on Mr. Belew. The judge imposed this sentence despite Mr. Belew's lack of prior felony convictions, despite the fact that the officers involved in the incident were not injured, and despite psychologist Dr. Wayne Graves' testimony that the incident occurred because Mr. Belew was attempting to commit

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“suicide by cop” by firing at the officers’ vehicle. This sentence is directly contrary to this Court’s strong leadership on issues related to veterans and mental illness.

*Amici* urge this Court to consider the wealth of information *infra* about PTSD, veterans, and suicide, which should have informed the trial court’s decision on sentencing. PTSD is a serious, widespread condition, particularly among veterans. As in Mr. Belew’s case, PTSD often co-occurs with depression or substance abuse, and can lead to dangerous behaviors. Some individuals reach the point of attempting suicide, including “suicide by cop.” When an individual becomes involved with the criminal justice system as a result of such an attempt, the trial court should consider the mitigating weight of these circumstances instead of using them as aggravating factors to impose maximum, consecutive sentences. *Amici* respectfully request that this Court accept jurisdiction of this case to clarify the proper weight of such evidence in felony sentencing.

**A. The Trial Court Improperly Weighed Mr. Belew’s PTSD.**

At Mr. Belew’s sentencing hearing, the trial court stated: “Mr. Belew, you claim that you suffer from post-traumatic stress disorder as a result of being in the military and you provide that as an excuse for your actions. There is no excuse, Mr. Belew.” Transcript of Proceeding, Oct. 20, 2011. This statement shows that the trial court failed to appreciate what PTSD is, how it affects veterans and other individuals, the implications of substance abuse and other co-occurring conditions, and the mitigating effect that this evidence should have on sentencing.

PTSD has been recognized in the American Psychiatric Association’s Diagnostic and Statistical Manual of Medical Disorders (DSM) since 1980. In the current DSM-IV-TR,<sup>1</sup> a

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<sup>1</sup> American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental disorders* (Revised 4th ed.). Washington, DC: Author.

PTSD diagnosis requires that an individual have experienced, witnessed, or been confronted with an event that involved actual or threatened death or serious injury, or a threat to the physical integrity of oneself or others; in addition, the individual's response to the event must have involved intense fear, helplessness, or horror. After experiencing the traumatic event, the individual must have symptoms of intrusive recollection, avoidance or numbing, and hyperarousal for more than one month, and must have clinically significant distress or impairment in social, occupational, or other important areas of functioning.

In the United States, it is estimated that 6.8% of people experience PTSD in their lifetimes.<sup>2</sup> For military veterans, the prevalence is much higher. The National Vietnam Veterans Readjustment Study estimated the lifetime prevalence of PTSD among Vietnam-era veterans to be 30.9% for men and 26.9% for women.<sup>3</sup> For Gulf War veterans, the lifetime prevalence is estimated at 10.1%.<sup>4</sup> A 2008 study on PTSD among veterans of the wars in Iraq and Afghanistan found the prevalence of PTSD to be 13.8% in the 1,938 participants.<sup>5</sup>

Dr. Graves testified that Mr. Belew's PTSD, major depression, and substance abuse significantly contributed to the incident that led to his criminal charges. Unfortunately, this combination of disorders is not unusual, especially for military veterans like Mr. Belew.

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<sup>2</sup> Kessler, R.C., Berglund, P., Delmer, O., Jin, R., Merikangas, K.R., & Walters, E.E. (2005). Lifetime prevalence and age-of-onset distributions of DSM-IV disorders in the National Comorbidity Survey Replication. *Archives of General Psychiatry*, 62(6): 593-602.

<sup>3</sup> Kulka, R.A., Schlenger, W.A., Fairbanks, J.A., Hough, R.L., Jordan, B.K., Marmar, C.R.,... Cranston, A.S. (1990). *Trauma and the Vietnam War generation: Report of findings from the National Vietnam Veterans Readjustment Study*. New York: Brunner/Mazel.

<sup>4</sup> Kang, H.K., Natelson, B.H., Mahan, C.M., Lee, K.Y., & Murphy, F.M. (2003). Post-Traumatic Stress Disorder and Chronic Fatigue Syndrome-like illness among Gulf War Veterans: A population-based survey of 30,000 Veterans. *American Journal of Epidemiology*, 157(2):141-148.

<sup>5</sup> Tanielian, T. & Jaycox, L. (Eds.). (2008). *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*. Santa Monica, CA: RAND Corporation.

Depression is a common co-occurring condition with PTSD. A study of trauma survivors in a hospital emergency room found a lifetime prevalence of depression among 78.4% of individuals with PTSD. As reported in *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*,<sup>6</sup> a study of veterans of the wars in Iraq and Afghanistan, two-thirds of the veterans with PTSD also have major depression.

Studies have also established that PTSD and substance abuse are common co-occurring disorders, particularly among veterans. Men with PTSD are five times more likely to have a substance use disorder than the general population.<sup>7</sup> The National Comorbidity Study estimated that 22% of individuals with PTSD had a lifetime prevalence of substance use disorders.<sup>8</sup> Similarly, data from U.S. Department of Veterans Affairs outpatient clinics indicates that 21.7% of veterans with PTSD are dually diagnosed with a substance use disorder.<sup>9</sup> The National Vietnam Veterans Readjustment Study found that 22.2% of Vietnam-era veterans with PTSD were also diagnosed with alcohol abuse/dependence, and 6.1% with drug abuse.<sup>10</sup>

PTSD, especially when co-occurring with depression or substance abuse, has been tied to behavior that may cause an individual to become involved in the criminal justice system. Studies

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<sup>6</sup> Tanielian, T.L., & Jaycox, L.H. (Eds.). (2008). *Invisible wounds of war: Psychological and cognitive injuries, their consequences, and services to assist recovery*. Santa Monica, CA: RAND Corporation.

<sup>7</sup> Helzer, J.E., Robins, L.N. & Mcevoy, L. (1987). Post-traumatic stress disorder in the general population: Findings of the epidemiologic catchment area survey. *New England Journal of Medicine*, 317, 1630-1634.

<sup>8</sup> Kessler RC, Sonnega A, Bromet E, et al. Posttraumatic stress disorder in the National Comorbidity Survey. *Arch. Gen. Psychiatry*. 1995;52:1048-1060.

<sup>9</sup> Petrakis, I. L., Rosenheck, R., & Desai, R. (2011). Substance Use Comorbidity among Veterans with Posttraumatic Stress Disorder and Other Psychiatric Illness. *American Journal On Addictions*, 20(3), 185-189.

<sup>10</sup> Kulka, R. A., Schlenger, W. E., Fairbank, J. A., Hough, R. L., Jordan, B. K., Marmar, C. R., Weiss, D. S. (1988). *Contractual Report of Findings from the National Vietnam Veterans' Readjustment Study: Volumes 1-4*. North Carolina: Research Triangle Institute.

have found increased levels of aggression among veterans with PTSD, especially for individuals who also have dysphoric symptoms.<sup>11</sup> Indeed, the upcoming DSM-5 will add “arousal” as a criteria for diagnosis of PTSD; this category will include aggressive, reckless or self-destructive behavior as a symptom of PTSD.

All of this information flatly contradicts the trial court’s statement that Mr. Belew was using his PTSD as an “excuse” for his behaviors. Mr. Belew has a serious condition that significantly contributed to his actions on the night that he committed his crime. Instead of dismissing this evidence as an “excuse,” the trial court should have afforded it appropriate mitigating weight. This Court should accept jurisdiction to clarify the weight of such evidence in felony sentencing.

**B. The Trial Court Improperly Weighed Mr. Belew’s Attempted Suicide.**

After dismissively noting Mr. Belew’s PTSD, the trial judge stated: “These offenses are extremely serious, Mr. Belew, these officers could have been killed, because you intended to kill them.” Transcript of Proceedings, Oct. 20, 2011. This statement shows that the trial court again failed to appreciate the mitigating evidence provided through Dr. Graves’ report and testimony, which explained that Mr. Belew’s actions were consistent with “suicide by cop”—not an intent to kill the officers.

Suicide is a significant public health problem in Ohio. In 2010, 1,420 Ohioans died by suicide.<sup>12</sup> According to the Centers for Disease Control and Prevention, suicide is a leading cause of death for Ohioans 10-64 years of age and the second leading cause of death for young

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<sup>11</sup> Taft, C. T., Vogt, D. S., Marshall, A. D., Panuzio, J., & Niles, B. L. (2007). Aggression among combat veterans: Relationship with combat exposure and symptoms of posttraumatic stress disorder, dysphoria, and anxiety. *Journal of Traumatic Stress*, 20(2), 135-145.

<sup>12</sup> Falb M., Beeghly, B.C. (2013). *The Burden of Injury in Ohio 2000-2010*. Violence and Injury Prevention Program, The Ohio Department of Health: Columbus, OH.

Ohioans 15-24 years of age.<sup>13</sup> Suicides in Ohio outnumber homicides two to one, and in 2010 more Ohioans died from suicide than from motor vehicle crashes.<sup>14</sup> Between 2000 and 2010 the death rate from suicide in Ohio has increased by 27% from 9.5 per 100,000 persons in 2000 to 12.1 per 100,000 in 2010.<sup>15</sup>

Overall, males in Ohio are four times more likely to die by suicide compared to females. Between 2000 and 2010 suicide rates in Ohio for both males and females have increased. The suicide rate for males has increased by more than 18% from 16.9 to 20.0 per 100,000 persons; whereas the rate for females has increased by 45% from 3.3 to 4.8 per 100,000 persons.<sup>16</sup>

Suicide among those who serve in our Armed Forces and among our veterans has been a matter of national concern. The Centers for Disease Control and Prevention (CDC) estimates that veterans account for approximately 20% of the deaths from suicide in America.

Service personnel and veterans are at increasing risk of self-harm. Research indicates that suicide, PTSD, and Traumatic Brain Injury (TBI) rates are increasing alarmingly among veterans. The VA estimates that a veteran takes his or her own life every 80 minutes – 6,500 suicides per year. In 2012, it was estimated that Ohio had over 800,000 veterans.

Since Vietnam, a disturbing trend seen in veterans is a suicide rate that is higher than the general population. Veterans of all ages and conflicts are committing suicide at the rate of twenty-two per day.<sup>17</sup> According to the U.S. Veterans Administration's Suicide Prevention and

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<sup>13</sup> Centers for Disease Control and Prevention. (2013) *WISQAURS: Leading cause of death, Ohio 2010*.

<sup>14</sup> Ohio Department of Health, Vital Statistics.

<sup>15</sup> Ohio Department of Health, Vital Statistics

<sup>16</sup> Ohio Department of Health, Vital Statistics

<sup>17</sup> Janet Kemp, RN PhD and Robert Bossarte, PhD, *Suicide Data Report, 2012*, U.S. Department of Veterans Affairs, Mental Health Services, Suicide Prevention Project, November, 2012

Application Network, sixty percent of all veterans who commit suicide are veterans who were not receiving treatment for their PTSD or TBI.

There is a direct causal link between PTSD and TBI and suicide attempts. A number of studies have examined the role of war zone trauma and suicide attempts and suicide, particularly in Vietnam-era veterans. Some of these have shown a relationship between combat experience and suicide, with veterans suffering from PTSD at a higher risk for suicide than those who do not have PTSD.<sup>18</sup> It is significant to note that in the VA's Suicide Data Report, the second-most common method of suicide was found to be "intentional self-harm by unspecified means," which accounted for 11.5% of all events and would include "suicide by cop" events.

"Suicide by cop" (SBC) is a term used by law enforcement and others to describe an incident in which an individual engages in behavior which poses an apparent risk of serious injury or death with the intent to precipitate the use of deadly force by law enforcement personnel toward that individual.<sup>19</sup> The phenomenon has been described in news accounts since 1981 and in scientific journals since 1985.<sup>20</sup> The first scientific study of SBC examined all shooting cases handled by the Los Angeles County Sheriff's Department from 1987 to 1997.<sup>21</sup> The study determined that 13% of all fatal officer involved shootings and 11% of all officer involved shootings, fatal and nonfatal, were SBC. The researchers found that 98% of the suspects were male, 65% had drug or alcohol problems, 63% had a known psychiatric history,

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<sup>18</sup> Timothy A. Bullman and Han K. Kang, *Posttraumatic Stress Disorder and the risk of traumatic death among Vietnam Veterans*, J. Nerv. Ment. Dis. November, 1994:604

<sup>19</sup> Mohandie K, Meloy JR, Clinical and forensic indicators of suicide by cop, J. Forensic Sci 2000;45:384-9.

<sup>20</sup> Zandt, Clinton R. "Suicide by Cop." National Center for the Analysis of Violent Crime

<sup>21</sup> Hutson HR, Anglin D, Yarbrough J, Hardaway K, Russell M, Strote J, et al. Suicide by cop. Ann Emerg Med 1998;32:665-9.

and 65% had verbally communicated their suicidal intent. In addition, 48% had guns, most of which were loaded and operative. To provoke officers to shoot them, 50% pointed their firearms at officers. A separate study confirmed this same percentage of suspects who pointed their firearms at officers.<sup>22</sup>

Another study analyzed 240 full text newspaper articles from 1980 to 1985 representing 18 metropolitan areas in the United States to obtain a broad sample of accounts of police shootings in which potential cases of SBC could be found.<sup>23</sup> The authors found probable or possible suicide motivation in 16% of the 240 incidents.

In a more recent study in 2009, researchers analyzed data from more than 90 North American police departments in the United States and Canada.<sup>24</sup> 92% of the incidents in the overall sample involved the deployment of deadly force. 36% of the 707 cases in the sample were categorized as SBC. The median age of all SBC subjects was 35. 95% of the subjects were male and 62% had a confirmed or probable mental health history. SBC subjects were armed with weapons during 80% of the incidents. Of those that were armed, 60% possessed a firearm which was loaded and operational. 81% of the incidents were apparently unplanned and spontaneous. Suicidal communications by the subject at any point prior to or during the incident occurred in 87% of the cases. 95% of the subjects were non-compliant with law enforcement and 98% demonstrated a behavioral threat. 36% of the subjects were under the influence of alcohol at the time of the incident.

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<sup>22</sup> Homant RJ, Kennedy DB, Real and perceived threat in police officer assisted suicide. *J. Crim Justice* 2000; 28:43-52.

<sup>23</sup> Kennedy DB, Homant RJ, Hupp RT. Suicide by cop. *FBI Law Enforcement Bull* 1998; August 21-7.

<sup>24</sup> Kris Mohandie, Ph.D., J. Reid Meloy, Ph.D., A.B.P.P., and Peter I. Collins, M.C.A., M.D., F.R.C.P.(C), Suicide by Cop Among Officer-Involved Shooting Cases. *J. Forensic Sci*, March 2009, Vol. 54, No. 2.

All of the available research confirms that SBC is a recognized phenomenon, that it is a form of suicide that occurs when individuals want to die but do not want to kill themselves, and that the actions of Mr. Belew are consistent with the research indicators of SBC. Suicidal individuals can threaten, injure and kill others in their quest to commit suicide. Most SBC subjects are armed, many with a loaded and operational firearm, as in Mr. Belew's incident.

Feelings of hopelessness, desperation and rage usually occur in some combination in persons who commit suicide. If the person attempting suicide believes, like Mr. Belew, that taking his life exposes weakness or cowardice, SBC is a way out.<sup>25</sup> Mr. Belew put himself in a position where a police officer was forced to shoot him.

With the return of hundreds of Ohio veterans from Iraq and Afghanistan, incidents like those involving Mr. Belew may unfortunately be on the rise. Mr. Belew's actions are not to be condoned but they do need to be understood for what they are – a probable attempt by a man to end his life. The criminal justice system in Ohio would be better served by recognizing severe mental illness when sentencing the offender.

**C. This Court Should Accept The Opportunity To Clarify The Appropriate Weight Of These Issues In Felony Sentencing.**

This Court should accept jurisdiction of this case to bring sentencing of individuals like Mr. Belew in line with other recent legal developments. As a catalyst for the establishment of veterans courts and other specialized dockets, this Court has recognized that veteran status, mental illness, and substance abuse are important factors to consider when an individual is involved in the criminal justice system. This case provides an opportunity for this Court to

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<sup>25</sup> Laurence Miller, Suicide by Cop: Causes, Reactions, and Practical Intervention Strategies, *International Journal of Emergency Mental Health*, Vol. 8. No. 3, pp. 165-174.

continue that beneficial work by clarifying the mitigating weight that trial courts should give to evidence of these factors in felony sentencing.

The trial court completely disregarded the mitigating evidence presented by Mr. Belew that his PTSD and related conditions led him to attempt suicide by cop. The trial court's use of this mitigating evidence as aggravating evidence to support maximum, consecutive prison terms is contrary to the direction in which the U.S. Supreme Court, this Court, and the Ohio General Assembly are moving to acknowledge these issues. The U.S. Supreme Court has held that defense counsel's failure to uncover and present any mitigating evidence of a defendant's PTSD and military service during his death penalty sentencing constitutes ineffective assistance of counsel. *Porter v. McCollum* (2009), 558 U.S. 30, 130 S.Ct. 447. The Court noted that "Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did." *Id.* at 44. Similarly, in an attorney discipline case, this Court accepted the respondent's mitigating evidence of PTSD and a traumatic brain injury resulting from his military service to reduce his disciplinary sanction from a two-year partially stayed suspension to a one-year fully stayed suspension. *Butler Cty. Bar Assn. v. Minamyers*, 129 Ohio St.3d 433, 2011-Ohio-3642. In concurrence, Justice Lundberg Stratton emphasized the importance of recognizing the real effects that PTSD and other service-connected disabilities can have on an individual's actions. *Id.* at ¶ 71.

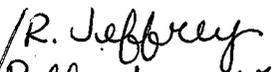
The 129th Ohio General Assembly furthered this public policy interest in enacting House Bill 197. That bill, which became effective March 22, 2013, amended R.C. 2929.12 and 2929.22 to require courts to consider the offender's military service and any "emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United State and that was a contributing factor in the offender's commission of the offense or offenses."

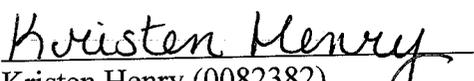
Although these amendments will benefit veterans who are sentenced after March 22, 2013, this Court should still accept jurisdiction to provide guidance to Ohio's courts about the proper weight of mitigating evidence in felony sentencing. This guidance will continue to be valuable in cases in which PTSD or a suicide attempt are not directly "traceable" to military service or when the offender is not a veteran, and in relation to the myriad other types of mitigating evidence that defendants present to trial courts.

#### IV. CONCLUSION

For these reasons, *amici* respectfully request that this Court accept jurisdiction of this case.

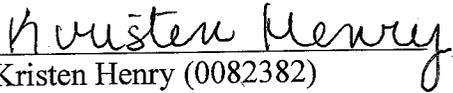
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served via Regular U.S. Mail, postage prepaid, upon the following on this the 16<sup>th</sup> day of May, 2013.

  
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