IN THE
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v.

JOSE MATIAS

Defendant-Appellant.

Ind. 1832-92
AD1: 2020-03839

BRIEF OF JUVENILE LAW CENTER AND CENTER ON RACE, INEQUALITY, AND THE LAW AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT JOSE MATIAS

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of *amicus* briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has worked extensively on the issue of juvenile life without parole and *de facto* life sentences, filing *amicus* briefs in the U.S. Supreme Court in both *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), and acting as co-counsel in *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

The **Center on Race, Inequality, and the Law** at New York University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. Accordingly, the Center uses public education, research, advocacy, and litigation to highlight and dismantle structures and institutions that have been infected by racial bias and plagued by inequality. The Center supports efforts to ensure that the criminal and juvenile

justice systems operate free from the arbitrary influence of race.

No part of this brief purports to represent the views of New York University School of Law or New York University.

SUMMARY OF ARGUMENT

In 1992, 16-year-old Jose Matias was charged with murder. Two years later, he was convicted and sentenced to two consecutive 25 years to life sentences, for a total of 50 years to life. At this time New York criminal law did not view 16-year-olds as children; they were automatically tried as adults regardless of the offense, excluding them from the protections of the juvenile justice system. Moreover, across the country in the 1990s unsupported research painted youth—primarily Black and Brown youth—as violent, remorseless criminals. Scholars predicted a large surge in youth crime that created a "moral panic." Academics and politicians bought into this view of youth in large part due to the media's skewed portrayal of youth. As a result of rising crime rates and skewed predictions, the juvenile justice system moved away from its primary goal of rehabilitation for youth toward accountability; more youth were pushed into the adult criminal justice system for prosecution and punishment. The combined characterizations of 16-year-old New York children as adults, and Black and Brown youth as dangerous meant that Mr. Matias did not stand a chance at an equitable sentencing. This is clearly evidenced by his disproportionate punishment in the face of his youth, home life and other attending circumstances

that were not factored into his sentence.

As the years have passed, academics who once supported the conclusions of the 1990s and one prominent researcher who coined the term "super-predator" recanted their concerns finding the research at the time to be unsupported. But state reactions to the purported threat were swift, and the disproportionate punishments imposed on Black and Brown youth like Mr. Matias remain. In a series of challenges to extreme sentences imposed on youth in response to some of these "get tough on crime" measures, the United States Supreme Court mandated several substantive and procedural protections for youth in the adult criminal system. *See, e.g.*, *Miller v. Alabama*, 567 U.S. 460, 479-80, 489 (2012) (requiring courts to consider mitigating factors, such as youth, before imposing severe sentences, and prohibiting mandatory life without parole sentences for youth under the age of 18); *Montgomery v. Louisiana*, 577 U.S. 190, 200, 212 (2016) (holding that *Miller* announced a new substantive constitutional rule that is retroactive on state collateral review). New York has also taken measures to return to treating youth as children through its "raise the age" legislation that now presumes youth under age 18 should be tried in juvenile court.

Juvenile Law Center urges this Court to recognize the history of New York's automatic transfer of 16-year-old youth to the adult system and the public perception of youth crime in the 1990s and consider how this view influenced sentencing and

charging decisions. By ordering a re-sentencing hearing consistent with *Miller v. Alabama,* this Court can correct the false narratives that may have influenced Mr. Matias's initial sentence. A *Miller* hearing will also ensure that the sentencing court fully considers his youth and environmental circumstances at the time of the crime to render a more appropriate, proportionate and rehabilitative sentence.

ARGUMENT

I. IN THE 1980S AND 1990S, THE TREATMENT OF YOUTH UNDER CRIMINAL LAWS SHIFTED AWAY FROM REHABILITATION GOALS TOWARD PUNISHMENT

A. At Its Outset, Rehabilitation Was The Goal Of The Juvenile Court System

At its formation, a juvenile justice system separate from the adult criminal system mandated treatment versus punishment. "The adult system was viewed as an inadequate and inappropriate forum to adjudicate the criminal behavior of juveniles." Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. CIV. RTS. & ECON. DEV. 765, 768 (2015). In recognition of the lack of maturity and fully formed personalities of youth, courts implemented strategies to consider the best interests of youth. *Id.* Lawmakers were "disturbed" by children being subjected to "adult penalties, lengthy prison terms, and commingling with 'hardened criminals.'" *Id*. at 767. As such, the original juvenile courts were charged with being concerned with the child rather than the offense that brought them before the court. AMNESTY INTERNATIONAL, BETRAYING THE YOUNG: HUMAN RIGHTS

VIOLATIONS AGAINST CHILDREN IN THE US JUSTICE SYSTEM 9 (1998), https://www.amnesty.org/download/Documents/152000/amr510571998en.pdf.

In the early nineteenth century, youth between the age of 7 and 14 were presumed to lack criminal capacity. Merril Sobie, *The Juvenile Offender Act: Effectiveness and Impact on the New York Juvenile Justice System*, 26 N.Y. L. SCH. L. REV. 677, 677 (1981) [hereinafter *Juvenile Offender Act*] (citing Prevezer, *A Historical Summary of the English Juvenile Court System and an Assessment of Its Features in the Light of American Practice*, 4 WAYNE L. REV. 1, 3 (1957)), https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1365&context=lawfaculty. Even earlier, in the 1800s, a New York Commission recognized the harm in treating children as adults and argued against housing youth with adult prisoners. *Id.* at 678 ("[I]f anything can destroy the ingenuousness and rectitude of youth and open a road to ruin, it is the polluting society of those veterans in guilt and wickedness who hold their rein in our prisons of punishment." (alteration in original) (quoting PAUL TAPPAN, JUVENILE DELINQUENCY 391 (1949)).

As a result, the legislature passed the first New York juvenile delinquency statute, which was focused on the rehabilitation of youth and required that youth below age 16 be placed in separate facilities from adults. *Id.* at 678-79.

In the early twentieth century, reforms decriminalized delinquency. *Id.* at 681 (citing 1909 N.Y. Laws, ch. 478, § 2186) (crimes that were not capital or punishable

by life imprisonment, but which if committed by an adult would be a felony, would render a child guilty of a misdemeanor only). The legislature also endorsed placement with a person or suitable institution in lieu of imprisonment. *Id.* (citing N.Y. PENAL LAW § 2194 (McKinney 1909)). This converted the "discretionary power of the court into a requirement of individualized and separate treatments based on the needs of the child." *Id.* at 681-82. This historical preference for rehabilitation over punishment served as the foundation for the New York juvenile justice system.

B. In New York, Youth Ages 16 And 17 Were Already Treated As Adults

Despite New York's initial reliance on rehabilitation in the juvenile justice system, dating back to 1904, New York law set the age of juvenile jurisdiction at youth age 15 and under. Merril Sobie, Practice Commentary, McKinney's Cons Laws of NY, 2017 Electronic Update, N.Y. FAM. CT. ACT § 301.2. This automatically subjected youth age 16 and 17 to the adult court system and its harsher punishments. *See generally* John P. Woods, *New York's Juvenile Offender Law: An Overview and Analysis*, 9 FORDHAM URB. L.J. 1 (1980), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1616&context=ulj (examining the historical development of New York's treatment of youth in the juvenile and criminal justice systems). New York was a forerunner in gradually expanding the number of youth subject to harsher punishments. Despite a growing consensus in the 1950s and 1960s in favor of strengthening the juvenile court system

to offer services to violent offenders, New York headed toward more criminal responsibility for youth. *See id*. In 1960, the New York family court was permitted to commit 15-year-old youth to the Elmira Prison (a correctional facility for youth under 21) if convicted of certain serious offenses. *Juvenile Offender Act*, *supra*, at 685 (citing 1960 N.Y. Laws, ch. 882). In enacting the law, then Governor Rockefeller stated that the new statute would "result in separating hardened delinquents from the less serious juvenile offenders without removing the protections for youth afforded by a proceeding . . . in the children's court . . . ." *Id.*

New York continued dismantling protections for youth in 1978 in response to a widely publicized juvenile crime. Carroll Bogert & Lynnell Hancock, *Super-Predator: The Media Myth That Demonized a Generation of Black Youth*, MARSHALL PROJECT (Nov. 20, 2020), https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth. At the age of 15, Willie Bosket was charged with killing two people on a New York subway. *Id.* Under New York law at the time, Bosket, who had been in and out of the system since age 9, was charged and convicted in juvenile court and sentenced to five years at a juvenile facility, the maximum penalty at the time. Eli Hager, *The Willie Bosket Case: How Children Became Adults in the Eyes of the Law*, MARSHALL PROJECT (Dec. 29, 2014), https://www.themarshallproject.org/2014/12/29/the-willie-bosket-case. In response,

then Governor Hugh Carey reversed his long-standing opposition to trying youth as adults, declaring that Bosket would "never walk the streets again." *Id.* Carey called an emergency legislative session and passed the Juvenile Offender Act of 1978. *Id.* As mentioned above, New York law already automatically required 16- and 17-year-old youth to be prosecuted in the adult system. *See* N.Y. FAM. CT. ACT § 301.2 (Editors' Notes: Merril Sobie, Practice Commentaries, Juvenile Delinquent) (McKinney 2019); N.Y. PENAL LAW § 30.00 (Editors' Notes: Willaim C. Donnino, Practice Commentary) (McKinney 2019). The Juvenile Offender Act lowered the age of criminal responsibility and extended automatic waivers to adult court for youth ages 13 to15 for specifically delineated offenses, subjecting an even broader group of youth to prosecution in the adult system. John Eligon, *Two Decades in Solitary*, N.Y. TIMES (Sept. 22, 2008), https://www.nytimes.com/2008/09/23/nyregion/23inmate.html; *see also* N.Y. PENAL LAW § 10.00(18) (McKinney). Bosket later became subject to this law on a subsequent offense. Eligon, *supra*.

At the time of the passage of the Juvenile Offender Act, New York was the only jurisdiction that charged youth under the age of 16 as adults without an initial determination by the juvenile court. *Juvenile Offender Act*, *supra*, at 688. New York was the only jurisdiction at the time that applied adult criminal procedures to the early stages of system involvement from arrest through bail procedures. *Id.* One

commentator appropriately described New York as having the "toughest juvenile sentencing policy of any state in the union." *Id.* at 693 (quoting CHARLES E. SILBERMAN, CRIMINAL VIOLENCE, CRIMINAL JUSTICE 354 (1978)). This resulted in the jailing of a large number of 16- and 17-year-olds, which is "testimony to the freer use of punishment by the adult system." *Id.*

Other states followed New York in shifting away from the rehabilitative norms toward punishment, requiring juvenile accountability. Elizabeth R. Jackson-Cruz, *Social Constructionism and Cultivation Theory in Development of the Juvenile "Super-Predator,"* 12-13 (2019) (M.A. theses, University of South Florida) (ScholarCommons, https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=9011&context=etd). Juvenile violent crime and homicide rates rose sharply between 1986 and 1994. Southerland, *supra,* at 769 n.27 (citing Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J.L. FAM. STUD. 11, 29 (2007)). Legislatures reacted by reducing juvenile court protections and increasing punitive attitudes. Jackson-Cruz, *supra*, at 12. In nearly one-third of states, laws were enacted "to redefine the purpose of [the] juvenile courts to 'emphasize public safety, certain sanctions, and/or the accountability of offenders.'" Southerland, *supra,* at 780 (quoting Sara Sun Beale, *You've Come a Long Way, Baby: Two Waves of Juvenile Justice Reforms as Seen from Jena, Louisiana*, 44

HARV. C.R.-C.L. L. REV. 511, 521 (2009)). Between 1992 and 1997 almost all states made it easier to transfer youth to adult court, subjecting them to harsher penalties, including life without parole sentences, while 47 states plus the District of Columbia broadened juvenile jurisdiction and increased sentences. *Id.*

President Bill Clinton called for tough anti-gang legislation to act as a "full-scale assault on juvenile crime." *Id.* at 779. Additionally, United States Senator Carol Moseley-Braun of Illinois supported punitive measures for youth

> noting that such tactics were necessary because of "a new category of offender" she described as children "who[ ] have no respect for human life [and] are arming themselves with guns and roaming the streets."

Id. (alterations in original) (quoting Sen. Carol Moseley-Braun, *Should 13 Year-olds Who Commit Crimes With Firearms Be Tried As Adults? Yes: Send a Message to Young Criminals*, 80 A.B.A. J. 46 (Mar. 1994)). State legislatures similarly enacted laws implementing this new attitude toward youth: former California Governor Pete Wilson supported legislation to try 14-year-old offenders in adult court. *Id.* Proposed legislation in Florida, the Florida Violent Youth Predator Act of 1996, mandated adult federal prosecution for 13- and 14-year-old youth who committed violent crimes or major drug trafficking crimes. *Id.*

The aftermath of this punitive shift was extremely detrimental for the youth ensnared in these legislative "reforms." Youth subject to automatic transfers were deprived of juvenile court hearings to consider factors such as family history,

trauma, mental illness, and other mitigating circumstances. Hager, *supra.* It deprived youth of funding for education and rehabilitative services while incarcerated. *Id.* It also subjected youth to the possibility of life in prison. *Id.* In the end, the new message was punishment and not rehabilitation for youth involved in the criminal justice system.

II. THE PUBLIC'S VIEW OF THE "VIOLENT" JUVENILE CRIMINAL WAS SHAPED BY THE MEDIA AND RACIST CHARACTERIZATIONS OF YOUTH

This dramatic legislative shift was buoyed by the media. In the 1980s and 1990s headlines emerged depicting inner-city youth as "hedonistic . . . youngsters from badland neighborhoods who murder, assault, rape, rob, burglarize, deal [. . .] drugs, join [. . .] gangs and create [. . .] disorder." Jackson-Cruz, *supra,* at 6 (internal quotations omitted) (second, third, and fourth alterations in original) (quoting William J. Bennett, John J. DiIulio, Jr. & John P. Walters, Body Count: Moral Poverty—And How to Win America's War Against Crime and Drugs 27 (Simon & Schuster) (1996)). Violent crime dominated the media's coverage of youth. LORI DORFMAN & VINCENT SCHIRALDI, BERKELEY MEDIA STUD. GRP OFF BALANCE: YOUTH RACE & CRIME IN THE NEWS, 17-24 (2001), http://www.bmsg.org/sites/default/files/bmsg_other_publication_off_balance.pdf. This gave the impression that the world was more dangerous than it actually was:

> [W]hen youth crime receives a far larger share of all crime coverage than youths actually commit, and when youth crime coverage

> dramatically increases while actual youth crime is decreasing, the public that relies on media coverage as its primary source of information about youth crime is misinformed.

Id. at 20. The headlines that emerged in the 1980s and 1990s did just this. These stories created a "moral panic"[1] of a looming threat of increased violent juvenile crime and contributed to regressive changes in the law. *See* Jackson-Cruz, *supra*, at 12-13, 25-27.

The media's characterization of violent young criminals was also replete with racist undertones. Southerland*, supra,* at 771. Youth who engaged in criminal conduct were cast as "violent, morally deficient, and of color." *Id.* at 770-71. This resulted in an overrepresentation and mis-casting of Black and Brown youth as perpetrators of violent crimes:

> A 2001 survey revealed that in the preceding decade, the media "misrepresent[ed] crime, who suffer[ed] from crime, and the real level of involvement of young people in crime," such that whites were

[1] The definition of "moral panic" was developed by Stanley Cohen in his first publication of "Folk Devils and Moral Panics: The Creation of the Mods and Rockers" in 1972. Michael Welch, Eric A. Price & Nana Yankey, *Moral Panic Over Youth Violence: Wilding and the Manufacture of Menace in the Media*, 34 YOUTH AND SOC'Y 3, 3-4 (2002), https://troublesofyouth.pbworks.com/f/welch+at+al+-+moral+panic+over+youth+violence.pdf). "Moral panic" was defined as:

> a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by ediors, bishops, politicians and other right-thinking people.

Id. at 4 (quoting STANLEY COHEN, FOLK DEVILS AND MORAL PANICS: THE CREATION OF THE MODS AND ROCKERS 9 (1972)). It has been shown that "moral panic" has lingering effects that "reinforce[] racial biases prevalent in criminal stereotypes, particularly the popular perception that young Black (and Latino) males constitute a dangerous class." *Id.*.

> underrepresented and African-Americans and Latinos were overrepresented in depictions of perpetrators of violent crime. These faulty portrayals "reinforce[d] the erroneous notion that crime is rising, that it is primarily violent, that most criminals are nonwhite, and that most victims are White."

Id. at 771-72 (alterations in original) (quoting DORFMAN & SCHIRALDI, *supra*, at 26). This perceived link between race and teen crime led the public to believe that Black and Brown youth posed a higher threat of violent crime. *Id.* at 769-70. This "threat" was attributed to "deficient personal traits—immorality, inherent proclivity for violence, and remorselessness—rather than external factors like substance abuse, family dysfunction, or criminal associations." *Id.* at 770.

The infamous "Central Park Jogger" case, which garnered widespread media attention, cemented the link between race and teen crime. In this case, five Black and Latino teenage boys ranging in age from 14 to 16 were falsely accused of the rape, assault, and attempted murder of a white female jogger in Central Park in 1989. Southerland*, supra,* at 772. The prosecution referred to the youths' behavior as "wilding," a term introduced during the case. Stephen J. Mexal, *The Roots of "Wilding": Black Literary Naturalism, the Language of Wilderness, and Hip Hop in the Central Park Jogger Rape*, 46 AFR. AM. REV. 101, 101-02 (2013). The term would come to be known in the news and media to describe the "pack" of teens who allegedly committed the crime. *See* Bogert & Hancock, *supra*. While the "Central

Park Five," as they would come to be known, were exonerated in 2002,[2] the term "wilding," and the fear of violent crimes attributed to Black and Brown youth had a lasting effect, in particular as the term continued to be used to "describe the criminal behavior of African-Americans and Latinos." Southerland*, supra*, at 772-73. The news and media ran with the term, without a true understanding of its meaning. *See generally* Mexal, *supra*, at 101-15. The case became a "spectacle due to the word wilding and the connotations of savagery it carried." *Id.* at 112. The term "wilding" appeared 156 times in articles in New York Newspapers for 8 years following the Central Park case. Southerland*, supra*, at 772. In every article, the perpetrator was a Black or Latino Male, while the victim was a white female in all except a single incident. *Id.* Such depictions of youth not only connected crime to color, but also disassociated youth of color from their most influential attribute—their youth. *Id.* at 773. One scholar believed that further research could have established "that the cultural panic engendered by wilding measurably contributed to the verdicts" of the Central Park Five. Mexal, *supra*, at 112.

Academics also contributed to the narrative that conflated race and violent crime. In 1995, Professor John DiIulio, Jr. coined the term "Super-Predator." *See*

[2] After 13 years, the Central Park Five were exonerated, and are now known as the "Exonerated Five." Yusef Salaam, Kevin Richardson, &Raymon Santana, Opinion, *We are the Exonerated 5. What Happened to Us Isn't Past, It's Present*, N.Y.TIMES (Jan. 4, 2021), https://www.nytimes.com/2021/01/04/opinion/exonerated-five-false-confessions.html.

John DiIulio, *The Coming of the Super-Predators*, WKLY. STANDARD (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators. DiIulio predicted an impending rash of youth crime and violence. *Id.* He reported that there would be a surge of violent crime among Black inner-city males. *Id.* He stated,

> the demographic bulge of the next 10 years will unleash an army of young male predatory street criminals who will make even the leaders of the Bloods and Crips . . . look tame by comparison.

Id. The super-predator narrative characterized youth as "merciless criminals," "predators" who will prowl on businesses, schools, and neighborhoods leaving "maimed bodies, human carnage and desecrated communities." Southerland*, supra,* at 778-79 (first quoting *Dole Seeks to Get Tough on Young Criminals*, L.A. TIMES, July 7, 1996 A16, then quoting *The Violent and Hard-Core Juvenile Offender Reform Act*: *Hearing before the Subcomm. on Youth Violence* (May 9, 1996) (statement of John Ashcroft, Att'y Gen. of the United States)). America was warned of

> boys whose voices have yet to change. . . . elementary school youngsters who pack guns instead of lunches. . . . kids who have absolutely no respect for human life and no sense of the future.

DiIulio, *supra.* A wave of "morally impoverished juvenile super-predators" was coming to commit "the most heinous acts of physical violence for the most trivial reasons." *Id.* To fix this impending wave of crime, DiIulio called for religion and the

public funding of religious institutions in order to increase service provisions to at-risk youth as well as the pursuit of "genuine get-tough law-enforcement strategies against the super-predators." *Id.* As illustrated by the legislative changes outlined above, legislatures heeded DiIulio's warning and made good on his "get-tough" suggestions.

III. YOUTH VIOLENCE RATES DROPPED, BUT THE LEGISLATIVE CHANGES HAD LASTING EFFECTS

Despite the "moral panic" that unfolded in the late 1980s, and the increase in juvenile crime rates between 1986 and 1994, the predicted upward trend never materialized. Youth arrest rates for violent crimes dropped by almost half between 1994 and 2009. OJJDP, *Juvenile Arrest Rate Trends: Violent Crimes, Statistical Briefing Book* (Nov. 16, 2020), https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05218&selOffenses=35. Youth arrested for murder and nonnegligent manslaughter dropped from 12.3 per 100,000 youth in 1994 to 3.5 per 100,000 youth in 2009. OJJDP, *Juvenile Arrest Rate Trends, Statistical Briefing Book* (Nov. 16, 2020), http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201&selOffenses=2. This overlapped with the time period that DiIulio predicted America would see "an army of young male predatory street criminals." DiIulio*, supra*. In fact, at the time the term "super-predator" was introduced, youth violent crimes were already on the decline. *See* Bogert & Hancock, *supra*. Moreover, the arrest rates have

steadily declined since. Charles Puzzanchera, *Juvenile Justice Statistics, National Report Series Bulletin: Juvenile Arrests, 2018*, OJJDP (June 2020), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/254499.pdf.

The juvenile arrest rate for murder fell dramatically despite increases in the youth population. Puzzanchera, *supra*, at 5. Increased rates of assault and robbery by juvenile offenders at the time are more appropriately attributed to changes in police arrest discretion and reclassification. Jackson-Cruz, *supr*a, at 10. Similarly, the increased rates of gun-related crimes are appropriately attributed to the prevalence and increased access to firearms and crack-cocaine. *See id.* at 10-11. Former Surgeon General, David Satcher reported that

> [t]here is no evidence that young people involved in violence during the peak years of the early 1990s were more frequent or more vicious offenders than youths in earlier years. The increased lethality resulted from gun use, which has since decreased dramatically. There is no scientific evidence to document the claim of increased seriousness or callousness.

OFF. SURGEON GENERAL, YOUTH VIOLENCE, A REPORT OF THE SURGEON GENERAL, ch. 1 (Rockville, M.D. 2001), https://www.ncbi.nlm.nih.gov/books/NBK44297/.

Academics also conceded that their predictions were wrong. Southerland, *supra*, at 777-78. Those who once called for harsher sentencing later advocated for more reasonable approaches to youth crime. *Id*. The "super-predator" concept was discredited as "utter madness." Elizabeth Becker, *As Ex-Theorist on Young 'Super-predators,' Bush Aide has Regrets*, N.Y. TIMES (Feb. 9, 2001),

https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html. In fact, John DiIulio apologized for how the term took off and its lasting effects. *See* Bogert & Hancock, *supra*. In 2001, DiIulio stated that he "wished he had never become the 1990's intellectual pillar for putting violent juveniles in prison and condemning them as 'superpredators.'" Becker, *supra.* DiIulio later joined juvenile justice stakeholders in an *amicus* brief supporting limiting juvenile life without parole sentences in *Miller v. Alabama*. Bogert & Hancock, *supra*; Brief of Jeffrey Fagan et al. as *Amici Curiae* in Support of Petitioners at 1-3, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646 & 10-9647), 2012 WL 174240, *1-3.

Yet, despite falling crime rates and predictions of youth criminality that never came to pass, the perception of youth violence had lasting effects. Youth were transferred to the adult system at an alarming rate. Although, in the late 1960s, the U.S. Supreme Court granted youth procedural protections such as "the essentials of due process" at the time of transfer and basic constitutional rights in deprivation of liberty hearings, *see Kent v. United S*tates, 383 U.S. 541, 562 (1966); Inter-Am. Comm'n. Hum. Rts., *The Situation of Children in the Adult Criminal Justice System in the United States*, ¶ 19, OEA/Ser.L/V/II.167, Doc.34/18 (approved Mar. 1, 2018), http://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf, many youth continued to be subjected to harsh sentencing schemes in the adult system that failed to

recognize their youthfulness as mitigation. Not until nearly four decades later, in 2005, did the United States Supreme Court conclude that the fundamental developmental differences between children and adults must be recognized and must inform how the law treats youth. *Roper v. Simmons*, 543 U.S. 551, 569-70, 572-73 (2005). The Court acknowledged that what separates children from adults is their

> lack of maturity and an underdeveloped sense of responsibility[,] . . . impetuous and ill-considered actions and decisions[,]
>
> . . . that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure[,]
>
> . . . [and] the character of a juvenile is not as well formed as that of an adult.

Id. at 569-70 (internal quotations and citations omitted). Given these characteristics of youth, "any proceeding that involves them, as well as the sanction imposed on children found guilty of crime, should respect these differences." Inter-Am. Comm'n. Hum. Rts., *supra*, at ¶ 153. Yet, youth sentenced during the "get tough on crime" era and beyond continue to receive lengthy adult sentences instead of age-appropriate sentences and treatment geared toward their rehabilitation. *See id.* at ¶ 154.

The lasting effects of the get tough on crime era were especially enduring in New York, until 2018 when New York lawmakers finally returned to rehabilitative measures for youth. The 2018 "Raise the Age" legislation raised the age of criminal responsibility to 18 (to be phased in over two years). Governor's Press Office,

Governor Cuomo Signs Legislation Raising the Age of Criminal Responsibility to 18-Years-Old in New York, NY.GOV (Apr. 10, 2017), https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-raising-age-criminal-responsibility-18-years-old-new-york. The state legislature finally recognized that the automatic transfer and incarceration of 16- and 17-year-olds disproportionately fell on youth of color with "Black and Hispanic youth [making] up 33 percent of 16- and 17-year-old youth statewide, but 72 percent of all arrests." *Id.* Research also showed that detaining youth in adult facilities "exposes young people to higher risks of assault and fewer opportunities for age-appropriate services." NEW YORK STATE RAISE THE AGE IMPLEMENTATION TASK FORCE, FINAL REPORT 3 (2020), https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Report-Raise%20the%20Age%20Task%20Force%2012-22-20.pdf. As the majority of crimes committed by teenagers have been non-violent, the law allows youth who commit these offenses to "receive the intervention and evidence-based treatment they need." Governor's Press Office, *supra.* The law that recognizes the youth of 16- and 17-year-olds ensures "age-appropriate facilities and rehabilitation," to "restore hope and promise" and to help youth turn their lives around to build a better future for themselves and their families. *Id.*

IV. MATIAS WAS PREY TO THE MORAL PANIC AND "GET TOUGH ON CRIME" NARRATIVES THAT INFORMED THE SUPER-PREDATOR ERA; A *MILLER* HEARING IS REQUIRED TO REMEDY THIS WRONG

Jose Matias, a Latino male, was charged in 1992 at the age of 16 and convicted in 1994. His case illustrates how decision-makers fell into the stereotypes that created the "moral panic" that punished youth in the media. Due to his age, Mr. Matias was automatically excluded from the New York juvenile court system. Also, due to the perception of the higher culpability and violence attached to Black and Brown youth, Mr. Matias was bound to suffer a harsher fate in the adult system. Once convicted of murder, and in the absence of a *Miller* hearing at which his age and youthful characteristics must be considered mitigating factors at sentencing, Mr. Matias was inappropriately sentenced to two consecutive 25 year to life sentences resulting in a *de facto* life without parole sentence of 50 years to life.

In *Miller v. Alabama*, the United States Supreme Court banned mandatory life without parole sentences for youth under the age of 18 because such sentences failed to account for the special considerations of youth. *Miller v. Alabama*, 567 U.S. 460, 489 (2012). *Miller* profoundly changed the role that youth and its attendant circumstances play in sentencing children. First, *Miller* reaffirmed the understanding that children have diminished culpability for offenses they commit—no matter how serious the offense—and have greater prospects for reform. *Id.* at 471-72. A child's lesser culpability stems from characteristics unique to adolescents: "a lack of

maturity," a transient proclivity for "recklessness [and] impulsivity," a vulnerability to peer pressure, and an undeveloped personality or character. *Id*. Based on these characteristics, youth are "less deserving of the most severe punishments." *Id.* at 471 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)). The *Miller* decision echoed previous Supreme Court cases that emphasized the principle that youth are developmentally different from adults and that these differences are relevant to their constitutional rights. *See*, *e.g.*, *Roper*, 543 U.S. at 578 (holding that imposing the death penalty on individuals convicted as juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment); *Graham*, 560 U.S. at 82 (holding that it is unconstitutional to impose life without parole sentences on juveniles convicted of non-homicide offenses); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011) (holding that a child's age must be taken into account for the purposes of the *Miranda* custody test).

Second, *Miller* provided new guidance to sentencing courts on how to assess the differences between children and adults and "how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller,* 567 U.S. at 480. The Court specifically delineated six characteristics that should be considered in light of the differences between children and adults: (1) the youth's chronological age related to "immaturity, impetuosity, and failure to appreciate risks and consequences," (2) the juvenile's "family and home environment that surrounds

him," (3) the circumstances of the offense, including extent of participation in the criminal conduct, (4) the impact of familial and peer pressures, (5) the effect of the offender's youth on his ability to navigate the criminal justice process, and (6) the possibility of rehabilitation. *Id.* at 477-78. Only through this analysis can sentencing courts ensure that harsh punishments such as life without parole are only imposed on the rare youth whose crime does not reflect transient immaturity. *See id*.; *see also Montgomery v. Louisiana*, 577 U.S. 190, 208-09 (2016); *Jones v. Mississippi*, 141 S. Ct. 1307, 1315 n.2 (2021) (Supreme Court again reinforced the need for an individualized determination that accounts for youth and reiterated that, while no specific fact-finding is required, this "does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment."). The *Jones* court also did not "preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder." *Jones*, 141 S. Ct. at 1323. Notably, states across the country have ruled that *Miller* applies to life with parole sentences and sentences that are the functional equivalent or *de facto* life sentences. *See, e.g.*, *Carter v. State*, 192 A.3d 695, 736 (Md. 2018); *Pedroza v. State*, 291 So. 3d 541, 548 (Fla. 2020); *State v. Ramos*, 387 P.3d 650, 658 (Wash. 2017).

Ultimately *Miller* has provided a way for courts to undo the "tough on crime"

legislation that was fueled by false, racially-charged narratives of youth violence that took hold in the 1990s.

> *Miller* takes a step toward restoring the criminal and juvenile justice systems to improved versions of their former selves—before stereotypes about race and crime pressed youth into adult court to face harsh punishments like life without parole.

Southerland*, supra,* at 785. By providing youth sentenced before *Miller* with the now constitutionally required sentencing hearing, courts can consider "the mitigating value of youth." *Id*. *Jones* went a step further in reminding us that transient maturity should have been and still must continue to be considered to avoid disproportionate punishments in violation of the Eight Amendment. *See Jones*, 141 S. Ct. at 1315 n.2.

Mr. Matias's journey through New York's criminal legal system has been defined by its consistent denial of any consideration of his youth or its mitigating value. He was first precluded from the benefits of a juvenile court system that values the differences between youth and adults. Although Mr. Matias was 16 at the time of his offense, New York law required that he be tried and convicted in the adult system. Accordingly, his youth was also ignored at sentencing. Compounding these harms, Matias was denied a *Miller* resentencing hearing, at which his youth must have been considered. (*See* Exhibits to Mot. for Leave to Appeal, Ex. A: Affirmation Supp. Def.'s Mot.Vacate Sentence Pursuant C.P.L. § 440.20(1), at ¶¶ 2, 27, Apr. 10, 2019.) The evidence that the court below failed to consider, and which was never

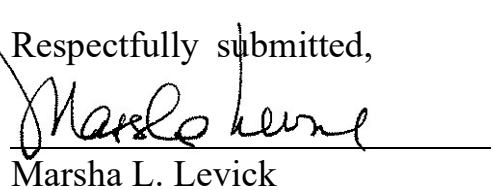
presented to the trial court, includes Mr. Matias's home environment that drove his two older brothers to prison before Mr. Matias became entangled with the criminal system himself (*Id.* at ¶¶ 9-10); the fact that the offense occurred at a party, where Mr. Matias was subject to peer pressure (*Id.* at ¶¶ 13-14); and Mr. Matias's drug and alcohol use at the time of the offense, further affecting the state of his young brain. (*Id.* at ¶¶ 8, 13-14.) Instead of looking at these mitigating factors, the court focused on the crime and the effect on the victims' families and called for punishment. (*Id.* at ¶¶ 28-29.) This is evident in the court's decision to impose consecutive rather than concurrent sentences of 25 years to life, which would have been more appropriate given Mr. Matias's youth and circumstances.

Moreover, Mr. Matias was convicted and sentenced on the heels of several high-profile cases that changed the landscape of the juvenile justice system, as well as how young Black and Brown youth were viewed, both in New York and across the country. Mr. Matias and these young people were not considered children but were instead viewed as violent adult criminals. This Court can undo this wrong, by requiring the application of *Miller*, and the proper consideration of all of the mitigating circumstances that were overlooked during Mr. Matias's original sentencing. Given the strong likelihood that Mr. Matias's conviction and sentence were infected by the false conflation of youth, race, and criminality at the time, consideration of all mitigating circumstances is required.

CONCLUSION

For the foregoing reasons, Juvenile Law Center and Center on Race, Inequality, and the Law join in asking this Court to vacate Jose Matias's sentence pursuant to C.P.L. 440.20(1), and to grant a *Miller* resentencing hearing to adequately consider mitigating factors attributable to his youth.

Respectfully submitted,



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