No. 96894-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

M.S.,
Petitioner.

BRIEF OF FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY AND TEAMCHILD AS AMICI CURIAE IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICI CURIAE

The identity and interest of the Fred T. Korematsu Center for Law and Equality and TeamChild are set forth in their motion for leave to file, submitted contemporaneously with this brief.[1]

INTRODUCTION

This case presents this Court with an opportunity to bring greater racial justice to the juvenile court system by acknowledging the racist roots of the juvenile justice system, and by examining what must be done to bring greater racial justice to the juvenile court system. In its open letter to the citizens of Washington, this Court acknowledged the role of history, including the reality of the legal institution's impacts on Black Americans, and recognized the need to address this reality:

> We continue to see racialized policing and the overrepresentation of [B]lack Americans in every stage of our criminal and juvenile justice systems. Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed.
>
> We cannot undo this wrong—but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.

[1] Though this case has not been consolidated with *State v. D.L.*, No. 96143-3, because both present common questions regarding due process rights to notice of facts supporting a manifest injustice sentence, amici submit substantially the same brief in both matters.

Open Letter from the Wash. Sup. Ct. to Members of the Judiciary and the Legal Community (June 4, 2020).

Providing additional procedural protections, such as, in this case, notice of facts that support a manifest injustice sentence, protects against biases that can produce disparate outcomes when discretion is unbridled, and is an important step toward achieving justice for children of color and other marginalized communities.

SUMMARY OF ARGUMENT

From the time the Houses of Refuge and subsequent juvenile courts were established in the mid-1800s to early-1900s, the system, at best, subjected children of color to a separate but unequal counterpart in which they did not receive the rehabilitative benefits for which the system was created. At worst, it excluded children of color entirely and subjected them to incarceration in adult prisons for delinquency and other minor offenses. Even after the Warren Court began to establish procedural protections for juveniles against the backdrop of the Civil Rights Movement, the disparate treatment of children of color has not been resolved, indicating the need for additional protections.

Notice of facts that support a manifest injustice sentence is an essential aspect of fundamental fairness guaranteed by the Fourteenth Amendment, as applied to the juvenile courts by the cases of the due

process revolution. Recognizing this right does not require the extension of rights that do not already exist, nor does it infringe on the juvenile court's ability to meet the rehabilitative and treatment needs of the individual youth.

ARGUMENT

I. From Its Inception, the Juvenile Legal System Has Failed to Serve Children of Color and Has Resulted in Disparate Treatment Based on Race.

A. The Juvenile Rehabilitation System Was Never Intended to Benefit Children of Color.

Present-day juvenile courts have their beginnings in reform movements of the early 1800s. Robin Walker Sterling, *Fundamental Unfairness: In Re Gault and the Road not Taken*, 72 Md. L. Rev. 607, 616 (2013). In 1824, the Society for the Prevention of Pauperism, a Quaker group dedicated to addressing the suffering of the poor, gained authority to build the New York House of Refuge, the nation's first juvenile treatment facility, whose goals included diagnosing and curing the causes of juvenile delinquency. *Id*. (citing Sanford Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 Stan. L. Rev. 1187, 1187-91 (1970)).

In 1899, a group of Progressive reformers, The Child Savers, established the nation's first juvenile court in Chicago, *id.* at 617, which was envisioned to be more of a social welfare agency than a court. The

judge was concerned, not with the child's guilt or innocence, but instead with "[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." *Id*. at 619 (quoting Julian Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 119-20 (1909)).

> The child—essentially good, as they saw it—was to be made 'to feel that he is the object of (the state's) care and solicitude,' not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. . . . The idea of crime and punishment was to be abandoned. The child was to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive.
>
> These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae.

In re Gault, 387 U.S. 1, 15-16, 87 S. Ct. 1428, 18 L. Ed. 2d 40 (1967) (quoting Mack, *The Juvenile Court*, *supra*, at 120). Washington established its juvenile courts in 1905 in response to this movement, focusing "on treating and rehabilitating juveniles instead of subjecting them to the harsh procedures, penalties, and jail conditions of adult courts." *State v. Saenz*, 175 Wn.2d 167, 172-73, 283 P.3d 1094 (2012) (citing *State v. Rice,* 98 Wn.2d 384, 389, 655 P.2d 1145 (1982)).

When the Houses of Refuge were established, the target beneficiaries were poor white children, including European immigrants. Walker Sterling, *Fundamental Unfairness*, *supra*, at 616-18. Black children were not among those meant to be helped by such programs because they were not considered to be amenable to rehabilitation, *id*. at 623, and because of the concern that "'[i]t would be degrading to the white children to associate them with beings given up to public scorn.'" *Id*. at 624 (quoting Robert M. Mennel, *Thorns & Thistles: Juvenile Delinquents in the United States, 1825-1940* 17 (1973)). In some places, special sections for Black children were created, but fewer resources were allocated to these children and fewer rehabilitative and educational services were offered. Walker Sterling, *Fundamental Unfairness*, *supra*, at 623-24; *see* Barry C. Feld & Perry L. Moriearty, *Race, Rights, and the Representation of Children*, 69 Am. U. L. Rev. 743, 764 (2020). Instead of receiving an academic education, Black children were taught skills needed to perform manual and domestic labor. Walker Sterling, *Fundamental Unfairness*, *supra*, at 624; Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 764. In northern communities that did not establish separate facilities, Black children were often placed in adult prisons rather than with white children in existing juvenile facilities. Walker Sterling, *Fundamental Unfairness*, *supra*, at 624.

In the South at this time, slavery was still in practice, so Black children accused of committing crimes were not thought of as needing special care; they were dealt with within the institution of slavery, often by the violent means of "plantation discipline." *Id*. at 623-24 (quoting Mennell, *Thorns & Thistles*, *supra*, at 75). Even after the end of slavery, juvenile rehabilitation institutions were often not available to Black children in the South, who instead were subjected to the same system of convict leasing, whipping, and lynching experienced by Black adults in the post-Civil War period. *Id*. at 625. "By 1890, according to a census analysis by W.E.B. Du Bois, more than 18% of all [B]lack prisoners were juveniles." *Id*. at 626-27. Children as young as eight, six, and four-years old were sent to adult prison for minor crimes. *Id*. at 627. In the few southern communities where juvenile reform schools for Black children were established, they were only allowed schooling after spending long days working in the fields. *Id*. at 625. "[O]ne of the main reasons for opening the Baltimore House of Reformation for Colored Children was 'the need for agricultural labor through the state, as well as the great want of competent house servants.'" *Id*. (quoting Geoff K. Ward, *The Black Child-Savers: Racial Democracy and Juvenile Justice* 74 (2012)).

After the first juvenile courts were established in the early part of the Twentieth Century, children of color continued to be excluded from

the benefits and services offered there, even while they were overrepresented in court proceedings. *Id*. at 627. The courts were founded on the premise that youth were well-situated for rehabilitation, provided the appropriate access to treatment and services. *See id*. at 618; Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 762-63. But Black youth were not considered as redeemable as white youth. *See* Walker Sterling, *Fundamental Unfairness*, *supra*, at 627. Across the country, segregated juvenile justice systems continued, prioritizing the needs of white youth. *Id*. at 627-28. The effect in the North "'manifested as institutionalized neglect or subtle exploitation,'" *id*. at 628 (quoting Ward, *The Black Child-Savers*, *supra*, at 105), while in the South "the oppression of the [B]lack youth population was overt and socially endorsed." *Id*.

In the Jim Crow South, even in states that established juvenile court systems, things were much worse. Black children in most southern states were tried in the adult criminal courts and sent to adult prisons where they were subjected to chain gangs and convict leasing. Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 764. "In 1910, over 80% of Black youths charged with offenses in the South were committed to adult correctional facilities." *Id*. at 764. While in the North, services and institutions for Black children were difficult to come by, in the South they were either unavailable or had conditions that bordered on inhumane.

Walker Sterling, *Fundamental Unfairness*, *supra*, at 628. In a 1914 letter to W.E.B. Du Bois, Florence Kelly, the director of the Chicago NAACP, described a juvenile rehabilitation institution in Memphis in which white children were provided comfortable living arrangements, schooling, and vocational training, while Black children were crowded in a small cottage, with backyard sewage and no teacher. *Id*. Black children in the South also experienced violence, including corporal punishment as an official part of the system and lynching as an extrajudicial source of control.[2] *Id*. at 629 (describing lynchings of teenagers in the South in the early 1900s).[3]

B. Disproportionalities Resulting from the Structural Inequalities Created by the Juvenile Legal System Have Been Documented Since Its Inception.

Statistical evidence of institutional racism in the juvenile justice system has existed from its very beginnings and has changed little since. The development of the first juvenile courts in the first half of the Twentieth Century coincided with the beginning of the Great Migration, in

[2] The 1955 murder of 14-year-old Emmett Till, which served as one of the catalysts for the Civil Rights Movement, is the most well-known example of a child facing extrajudicial killing after being accused of a minor offense, one which arguably was not even criminal. *See generally*, Clenora Hudson-Weems, *Resurrecting Emmett Till: The Catalyst of the Modern Civil Rights Movement*, 29 J. Black Stud. 179 (1998).

[3] During this time, Black civic leaders organized to fight against "Jim Crow juvenile justice." Walker Sterling, *Fundamental Unfairness*, *supra*, at 630. Many prominent Black-led institutions took up the cause of obtaining justice for Black children involved in the system, including the National Council of Colored Women's Clubs, the United Negro Improvement Association, and the NAACP, seeing it as important issue for social change. *Id*.

which large numbers of Black families moved from the rural South to urban centers in the North and the West. Walker Sterling, *Fundamental Unfairness*, *supra*, at 631. Many Black families were seeking new opportunities in the North but continued to encounter exclusion because of their race. *Id*.

Studies going back to the early 1900s document striking disproportionalities for Black children at all stages of the court process. Though offense patterns for Blacks and whites were similar, Black children were disproportionately represented in juvenile court systems in many industrialized northern cities. *Id*. at 631-32. In 1913, a study conducted over the course of one year by the Juvenile Protective Association of Chicago documented that approximately 12.5 percent of boys and young men and 33.3 percent of girls and young women held in the county jail were Black, while only 2.5 percent of the population of Chicago was Black. *Id*. at 625. In 1920, Black teens were represented in prison in Pennsylvania at nearly ten times their proportion of the general population. *Id*. at 631-32. Similar patterns were found in other cities whose demography changed as a result of the Great Migration. *Id*. at 632. Largely white police forces in these cities had wide discretion in referring youth to juvenile court, resulting in complaints against Black children being filed more than twice as often as against white children. *Id*.

Disproportionality in the juvenile justice system was first documented on a national level in the 1940s. A study of 53 courts across the United States found that Black children were grossly overrepresented in delinquency cases and had juvenile court contact at an earlier age than their white counterparts; that cases against white boys were more likely to be dismissed than those against Black boys; and that Black children were more likely to be sent to an institution. *Id*. at 632-33. Two decades later, little had changed. In the 1960s, the President's Commission on Law Enforcement and the Administration of Justice conducted a survey contemporaneously with *Gault*, finding that "in the vast majority of juvenile courts in the country, non-white juveniles comprised 40% of the youth who came before them." Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 765. Other studies "found that Black youth brought before the juvenile court were younger, had fewer prior appearances, committed fewer and less serious crimes, but received probation less often than their white counterparts." *Id*. In the decades since these studies, children of color have continued to experience significant disparities at all points in the juvenile court process, from arrest to transfer to adult court.[4] *See id*. at 786-91 (discussing the extreme

[4] *See generally* Brief of Amici Curiae ACLU of Washington and King County Department of Public Defense, describing contemporary and ongoing disproportionate impacts of the juvenile court system on children of color.

disproportionalities experienced by youth of color at various points in the system from the 1980s to present); Walker Sterling, *Fundamental Unfairness*, *supra*, at 660-61 (discussing current overrepresentation and disparate treatment of youth of color in juvenile justice system).

II. As Juvenile Proceedings Have Shifted to Focusing More on Punishment, Courts Have Held That Juveniles Are Entitled to Due Process Protections.

Over time, the effectiveness of the juvenile courts came into question as courts began to recognize that the unlimited discretion given judges, combined with lack of procedural protections given to juveniles, resulted in injustice.[5] The history of the juvenile courts "demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." *Gault*, 387 U.S. at 18. Indeed, there were "grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent v. United States*, 383 U.S. 541, 556, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Recognizing the problems that arose in the juvenile courts, the Supreme Court began to extend due process protections to juveniles in the 1960s.

[5] Advocates and academics began to question the lack of procedural protections in juvenile court as early as the 1920s. Then-Chief Justice Earl Warren gave a speech in which he raised this very issue in 1964, two years prior to the Court's decision in *Kent*, the first case to recognize due process rights for juveniles. Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 765.

Barry C. Feld, *A Century of Juvenile Justice: A Work in Progress or a Revolution that Failed?*, 34 N. Ky. L. Rev. 189, 190 (2007).

In *Kent v. United States*, the Court agreed that juvenile courts should have wide latitude in declining jurisdiction over a child; however, it explained, that "latitude . . . assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness." 383 U.S. at 552-53. Although not requiring hearings to conform with all of the requirements of a criminal trial, the Court held that juveniles have a due process right to a hearing, to effective assistance of counsel, and to a statement of reasons prior to being transferred from juvenile court to adult criminal court. *Id.* at 557.

In 1967, the Court in *In re Gault*, stated that "it would be extraordinary if [in juvenile proceedings] our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.'" 387 U.S. at 27-28. The Court held that, under the Fourteenth Amendment Due Process clause, in a proceeding that could lead to confinement a juvenile has the right to notice of the charges, *id.* at 33; the right to assistance of counsel, *id.* at 36-37, 41; the privilege against self-incrimination, *id*. at 55; and the opportunity to confront and cross-examine witnesses, *id.* at 57.

And in 1970, in *In re Winship*, 397 U.S. 358, 368, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970), the Court held that the standard of proof of "beyond a reasonable doubt" applies in juvenile proceedings. There, the Court explained

> [In *Gault*, we made clear] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts, for "(a) proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution."

Id. at 365-66 (quoting *Gault*, 387 U.S. at 36).

However, the following year, in *McKeiver v. Pennsylvania*, 403 U.S. 528, 545, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), the Court declined to extend the right to a jury trial to juvenile proceedings out of concern that doing so would create a fully adversarial process. Although recognizing that proceedings in juvenile court had not become the "intimate, informal protective proceeding" that had been envisioned, *id.*, the Court refused to "lose what has been gained . . . and place the juvenile squarely in the routine of the criminal process," *id.* at 547. While the States remain free "to experiment further and to seek in new and different ways the elusive answers to the problems of the young [including requiring a jury trial]," the Court chose not to "imped[e] that experimentation by imposing the jury trial." *Id*. Instead of requiring that

juveniles receive the full panoply of due process rights afforded adults, the Court stated that "the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness." *Id.* at 543.

The civil rights era cases establishing due process rights for juveniles were decided against the backdrop of the country's attempt to reckon with its racist past and to address systemic discrimination. *See* Walker Sterling, *Fundamental Unfairness*, *supra*, at 634 (during the Civil Rights Movement "the 'dominant theme' of the Court's jurisprudence was racial equality"). While the Court never mentioned race in its opinion in *Gault* or any of its other juvenile justice cases of that era, considerable evidence suggests that the "decision in *In re Gault*, like the Court's other criminal procedure cases of the era, was intended to address institutional racism in the juvenile court." Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 770; *see also* Kristin Henning et al., *Toward Equal Recognition, Authority, and Protection: Legal and Extra-Legal Advocacy for Black Youth in the Juvenile Justice System*, in *Rights, Race and Reform: 50 Years of Child Advocacy in the Juvenile Justice System* 32 (Kristin Henning et al. eds., 2018) (*Gault* "arguably served as an important legal corollary to the civil rights struggle against racial discrimination as

[it] appeared to be concerned about the way [B]lack defendants were being treated in the [ ] juvenile justice system[].").

However, between the 1970s and 1990s, an ideological shift took place in which the emphasis in juvenile court changed from rehabilitation to retribution. Feld & Moriearty, *Race, Rights, and Representation, supra*, at 772. "[A]s juvenile crime rates rose the failings of a wholly rehabilitative system became apparent." *Saenz*, 175 Wn.2d at 172. As a result, Washington's Juvenile Justice Act of 1977 "departed from the old view of the juvenile courts as rehabilitators and service providers in favor of a new view that saw them, at least in part, as instruments for administering justice in light of the realities of juvenile criminality." *Id.* at 172-73; *see* Feld & Moriearty, *Race, Rights, and Representation*, *supra*, at 772 (noting that by the early 1990s, about 25% of states had redefined the purpose of the juvenile courts to emphasize punishment over rehabilitation). The purpose of the juvenile justice system in Washington is now explicitly twofold: to establish "a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders and their victims" while ensuring that juveniles will "be held accountable for their offenses." RCW 13.40.010(2); *State v. S.J.C.*, 183 Wn.2d 408, 413, 352 P.3d 749 (2015).

As the juvenile court system has come to increasingly focus on accountability and punishment, rather than on treatment and rehabilitation, the need to protect against unbridled discretion and arbitrary decisions is even more important. Just as the Court acknowledged in *Gault* that the procedural protections in the juvenile court system were necessary to address unfairness and arbitrariness, 387 U.S. at 18, procedural protections are also necessary to combat against racial bias that can result in the types of disparities seen throughout the history of the juvenile court system. While such changes are not a panacea for addressing systemic racism in juvenile courts, due process protections remain essential to creating a fair system.[6]

III. Notice of Facts Supporting a Manifest Injustice Sentence Is a Procedural Protection Due All Juveniles, and Particularly Necessary to Counteract the Inherently Discriminatory Impacts of Discretion on Children of Color.

Petitioner seeks to have this Court recognize the due process right to notice of facts that justify a manifest injustice sentence above the standard range prior to the adjudication of guilt. This right has been

[6] Scholars recognize the importance of procedural protections in juvenile court for protecting children of color in particular from bias in discretionary decisions made by judges and other court actors. However, they also argue the need to provide additional protections, such as extending fundamental rights to juveniles, including the right to jury trial, and legislative policy changes, to truly deal with the racism that infects the system as a whole. *See generally*, Feld & Moriearty, *Race, Rights, and Representation*, *supra* (arguing the need for substantive policy reforms, in addition to procedural protections, to address substantive inequalities); Walker Sterling, *Fundamental Unfairness*, *supra* (arguing for the extension of fundamental rights, in addition to fundamental fairness, for children in juvenile court).

recognized in criminal proceedings for more than twenty years. *See Blakely v. Washington*, 542 U.S. 296, 311-12, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 476, 120 S. Ct. 2348, 1147 L. Ed. 2d 435 (2000); *Jones v. United States*, 526 U.S. 227, 243, n.6, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999).

While *Apprendi* and *Blakely* are often cited for the portions of their holdings relating to the requirement that facts that increase a punishment be found by a jury, the holdings in each of these cases also rest on the importance of *notice* of those facts before entry of a plea or start of trial. *See Apprendi*, 530 U.S. at 476 ("'[U]nder the Due Process Clause of the Fifth Amendment and the *notice* and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.' The Fourteenth Amendment commands the same answer in this case involving a state statute." (emphasis added) (citation omitted) (quoting *Jones*, 526 U.S. at 243, n.6)); *see also Blakely*, 542 U.S. at 311-12 ("Any evaluation of *Apprendi's* 'fairness' to criminal defendants must compare it with the regime it replaced, in which a defendant, *with no warning* in either his indictment or plea, would routinely see his maximum potential sentence balloon …, based…on facts extracted after trial from a report compiled by

a probation officer who the judge thinks more likely got it right than got it wrong." (emphasis added)); *see also State v. Siers*, 174 Wn.2d 269, 277, 274 P.3d 358 (2012) (stating notice of facts alleged that may increase punishment required under art. I, § 22 and Sixth Amendment). The right to notice in these cases exists independent of the requirement that a jury find the facts beyond a reasonable doubt.

Courts have historically recognized the due process right to fundamental fairness in juvenile court proceedings, *see* Section II, *supra*, including the right to notice. "Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'… Due process of law requires notice … which would be deemed constitutionally adequate in a civil or criminal proceeding." *Gault*, 387 U.S. at 33. The notice requirement found in *Apprendi* and *Blakely* must also apply in juvenile proceedings for juvenile defendants to receive the full protections of fundamental due process.

Notice of facts that may increase the length of a sentence for juveniles, prior to entry of plea or trial, is essential to guard against the arbitrary exercise of discretion that can be infected by racial bias. Studies have found that court actors, including judges and probation officers, are

not immune to unconscious bias in executing their duties. *See* Chris Guthrie et al., *Inside the Judicial Mind*, 86 Cornell L. Rev. 777 (2001) (reporting on five empirical studies of judges' biases and finding that judges are affected by the same biases and cognitive illusions as lay people); George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 Am. Soc. Rev. 554, 567 (1998) (study finding that race of the defendant influences juvenile probation officer recommendations). In a study conducted to determine why Black youth in three Washington counties were receiving harsher sentencing recommendations than white youth, the study's authors found that because probation officers were more likely to attribute negative personality traits to Black youth and therefore perceive them as more dangerous, they were also more likely to recommend longer sentences for Black youth than similarly situated white youth. *Id*. at 567 ("Probation officers were much more likely to recommend sentences that exceeded the standard range specified under the state's sentencing guidelines for youths whose crimes they attributed to negative personality traits [ ] and for youths perceived as having a high risk of future crime [ ]."") If juvenile defendants do not have notice of the facts that probation officers will present in support of their recommendations, and upon which judges will rely to determine the

appropriate sentence, juvenile defendants and their counsel will not be able to adequately prepare to counter any facts that may come into the process. Affording this protection to youth in juvenile court does nothing to diminish the court's ability to continue to focus on the rehabilitation and treatment needs of the individual youth. *See Gault*, 387 U.S. at 21 ("observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process").

CONCLUSION

Amici respectfully urge the Court to grant the relief requested by Petitioner. Doing so may protect against arbitrariness and bias that can infect the process when discretion is left unchecked.

DATED this 7th day of August 2020.

Respectfully Submitted:

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on August 7th, 2020, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 7th day of August, 2020.

/s/ Melissa R. Lee
Melissa R. Lee
Attorney for Amicus Curiae
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FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

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