

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 2022-0106
	:	
v.	:	On Appeal from the
	:	Mahoning County Court of Appeals,
MANNY ZARLENGO,	:	Seventh Appellate District
	:	
Defendant-Appellant.	:	Case. No. 20 MA 0036

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**BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, THE GAULT CENTER,  
AND THE RUTGERS CRIMINAL AND YOUTH JUSTICE CLINIC IN  
SUPPORT OF APPELLANT MANNY ZARLENGO**

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## STATEMENT OF INTEREST

**Juvenile Law Center** fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

**The Gault Center**, formerly known as the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in the defense of youth in delinquency proceedings. The Gault Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs, and nonprofit law centers to ensure quality representation for youth in urban, suburban, rural, and tribal areas. The Gault Center has developed national standards for the performance of youth defense attorneys; conducts assessments of states' youth defense delivery systems; and developed a 42-lesson, skills-based youth defense specialization training program. The Gault Center also provides training and technical assistance to thousands of youth defense attorneys and juvenile court stakeholders each year. The Gault Center is committed to promoting racial justice, eliminating racial and ethnic disparities, and advocating for overrepresented populations in youth court. The Gault Center advocates for the use of youth-affirming language, including omitting the use of the word “juvenile” when referring to young people; this prompted the organization's decision to become The Gault Center in 2022. The Gault

Center (as the National Juvenile Defender Center) has participated as *amicus curiae* before the United States Supreme Court and federal and state courts across the country.

**The Rutgers Criminal and Youth Justice Clinic** (“CYJC”) is a clinical education program of Rutgers Law School in Newark, New Jersey. Over the last decade, the CYJC has provided legal representation to more than 700 youth involved in New Jersey's juvenile justice system, including numerous young people who have been waived to and sentenced by adult criminal courts. Through this work, clinic faculty and staff have developed extensive expertise in the policies, practices, and legal proceedings that are at issue in this matter.

The CYJC frequently appears as or on behalf of *amicus curiae* before the New Jersey Supreme Court and other state and federal courts around the country. Representative matters include *State v. Comer*, 249 N.J. 359, 266 A.3d 374 (2022) (mandatory minimum sentence of 30 years for minors convicted as adults is cruel and unusual punishment under state Constitution); *State in the Interest of A.A.*, 240 N.J. 341, 222 A.3d 681 (2020) (expanding protections for children in police interrogations); *State in the Interest of C.K.*, 233 N.J. 44, 182 A.3d 917 (2018) (mandatory lifetime of youth on sex offender registry violates due process); *State in the Interest of N.H.*, 226 N.J. 242, 141 A.3d 1178 (2016) (youth facing waiver to adult court have right to full discovery of prosecutor's file); *State in the Interest of V.A.*, 212 N.J. 1, 50 A.3d 610 (2012) (establishing a more protective standard for judicial review of prosecutorial waiver decisions); *State in the Interest of Y.C.*, 436 N.J.Super. 29, 91 A.3d 636 (2014) (youth threatened with administrative transfer from juvenile to adult prison entitled to due process); *State in the Interest of Z.S.*, 464 N.J.Super 507, 237 A.3d 344 (2020) (strengthening protections for youth at waiver proceedings).

## **STATEMENT OF FACTS**

*Amici* adopt the Statement of Facts as articulated in the brief of Appellant.

## ARGUMENT

At age 17, Manny Zarlengo was automatically bound over for criminal prosecution in adult court for alleged involvement in a series of robberies at age 16. Advised by the juvenile court that there was probable cause of his guilt, Manny faced prosecution in criminal court on eleven separate felony counts and the likelihood of a long sentence in adult prison. Like most criminal defendants, Manny agreed to plead guilty. The question before this Court is whether that guilty plea deprives Manny, and all other youth bound over to adult court, of the right to challenge the juvenile court's probable cause determination on appeal—an appeal that cannot be raised until after a conviction and sentence. Given that up to 95 percent of criminal cases result in a plea, the Court's decision here could result in almost all probable cause determinations being shielded from review. Lindsey Devers, Bureau of Just. Assistance, U.S. Dep't of Just., *Research Summary: Plea and Charge Bargaining* 1 (2011), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf> (accessed July 8, 2022).

Barring the opportunity to appeal this issue, following a plea decision made by an adolescent in one of the most stressful moments of their life, is uniquely problematic. As the U.S. Supreme Court has long recognized, based on substantial brain and developmental science, adolescents are and must be treated differently than adults. *J.D.B. v. North Carolina*, 564 U.S. 261, 272-73, 280, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011); *Graham v. Florida*, 560 U.S. 48, 68-69, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Miller v. Alabama*, 567 U.S. 460, 471-72, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Roper v. Simmons*, 543 U.S. 551, 569-70, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). This applies to how their plea decisions are treated as well. Because adolescents' brains are still developing, they show significant deficiencies in their capacity for complex decision-making. See, e.g., Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in *Human Rights and Adolescence* 59, 64-

65 (2014). As a general matter, they lack foresight, have trouble weighing risks and rewards or performing cost-benefit analyses, and show difficulty in planning for the future. *Id.* These deficiencies are exaggerated when making plea decisions because, among other reasons, adolescents' decision-making is more impaired when under high stress, they have trouble understanding their legal rights, and are far more likely to be persuaded or manipulated by authority figures like police and prosecutors. *See, e.g.,* Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & Hum. Behav. 181, 181-82 (2014). Studies show that they are more likely than adults to plead guilty even when they are not actually guilty. Rebecca K. Helm et al., *Too Young to Plead? Risk, Rationality, and Plea Bargaining's Innocence Problem in Adolescents*, 24 Psych. Pub. Pol'y & L. 180, 180, 189 (2018); Allison D. Redlich & Reveka V. Shteynberg, *To Plead or Not to Plead: A Comparison of Juvenile and Adult True and False Plea Decisions*, 40 L. & Hum. Behav. 611, 611, 616-17 (2016).

For these reasons alone this Court should not broadly construe a guilty plea by a juvenile defendant as a waiver of their right to appeal the underlying probable cause determination. Additionally, applying such a broad waiver from a guilty plea would disproportionately harm Black youth. While facially such a waiver would be a rule of general application, the overwhelming majority of adolescents bound over from juvenile court for criminal prosecution are Black. Jeree Michele Thomas & Mel Wilson, Nat'l Ass'n of Soc. Workers, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations* 1 (2017), [http://www.campaignforyouthjustice.org/images/pdf/Social\\_Justice\\_Brief\\_Youth\\_Transfers.Revised\\_copy\\_09-18-2018.pdf](http://www.campaignforyouthjustice.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf) (accessed July 7, 2022); Child.'s L. Ctr., *Ohio Bindovers FY19* 3 (2019), <https://static1.squarespace.com/static/571f750f4c2f858e510aa661/t/608c00ea2e6b175146653962/1619788010788/Bindover+Fact+Sheet+FY19.pdf> (accessed July 7, 2022). White youth



are more likely to receive lesser charges and thus more likely to be adjudicated in juvenile court than Black youth. Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea Bargaining*, 59 B. C. L. Rev. 1187, 1190-91 (2018). Given the disparities in who is most impacted by transfer to adult court, this Court should not eliminate additional opportunities to return appropriate cases to the juvenile court.

**Appellant Manny Zarlengo’s First Proposition of Law:**

**In juvenile bindover cases, guilty pleas in criminal court do not waive on direct appeal constitutional claims arising out of the underlying bindover hearings in juvenile court.**

**I. BECAUSE ADOLESCENTS ARE UNIQUELY VULNERABLE TO ENTERING PLEAS, THOSE DECISIONS MUST NOT BE USED TO FURTHER LIMIT THEIR RIGHTS ON APPEAL**

**A. The Supreme Court’s Jurisprudence Recognizes There Is A Fundamental Difference Between Adolescent And Adult Decision-Making**

The U.S. Supreme Court has repeatedly emphasized that youth are developmentally different from adults and that these differences are relevant to their constitutional rights, particularly in the justice system. *See, e.g., Roper*, 543 U.S. at 569-74, 125 S.Ct. 1183, 161 L.Ed.2d 1 (holding the death penalty is unconstitutional when applied to juveniles); *Graham*, 560 U.S. at 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (holding that it is unconstitutional to impose life without parole sentences on juveniles convicted of non-homicide offenses); *J.D.B.*, 564 U.S. at 271-72, 131 S.Ct. 2394, 180 L.Ed.2d 310 (holding that a child’s age must be taken into account for the purposes of the Miranda custody test); *Miller*, 567 U.S. at 465, 132 S.Ct. 2455, 183 L.Ed.2d 407 (holding that mandatory life without parole sentence for juveniles convicted of homicide is unconstitutional).

The Court has grounded these conclusions not only in “common sense,” but also in scientific research showing that teenagers are more impulsive, more susceptible to coercion, and less mature than adults. *See J.D.B.* at 272-73, 280; *Graham* at 68-69; *Miller* at 471-72; *Roper* at

569-70. Youth “lack the experience, perspective, and judgment to . . . avoid choices that could be detrimental to them.” *J.D.B.* at 272, quoting *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979).

The Court’s jurisprudence is consistent with neuroscience: as a group, adolescents make decisions differently than adults, in part because of developmental differences in the brain. *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *Developmental Rev.* 78, 83-92 (2008). The prefrontal cortex, which controls executive functioning, matures late in adolescence. Sarah-Jayne Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Social Cognition*, 47 *J. Child Psych. & Psychiatry* 296, 301 (2006). Developmental changes within this brain region are essential to developing higher-order cognitive functions, such as foresight, weighing risks and rewards, and making decisions that require the simultaneous consideration of multiple sources of information. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 *Ann. Rev. Clinical Psych.* 459, 466 (2009). As a result, adolescents have difficulty assessing potential long-term consequences and tend to assign less weight to consequences that they have identified. *See* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *Future Child.* 15, 20 (2008). At the same time, the parts of the brain responsible for social-emotional regulation are highly active during adolescence, leading to reward-seeking impulses and heightened emotional responses. Steinberg, 5 *Ann. Rev. Clinical Psych.* at 466; *see also* Malloy et al., 38 *L. & Hum. Behav.* at 182. Thus, adolescents experience an imbalance in developing brain systems: one highly active system involved in social-emotional processes leads to emotional volatility, while immature executive functioning hinders behavior control and decision making. Steinberg, 5 *Ann. Rev. Clinical Psych.* at 466. Because of the way the brain

develops, adolescents have difficulty tempering strong feelings, lack impulse control, have difficulty planning for the future, and lack the ability to compare costs and benefits of alternative courses of action. Steinberg, *The Science of Adolescent Brain Development* at 64-65; see also Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgement in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Scis. & L. 741, 744-45 (2000) (concluding that immature judgment that engenders impulsiveness, pursuit of immediate gratification, and difficulty perceiving long-term consequences also hampers the decision-making of minors).

This Court has likewise recognized that these unique traits of youth and their attendant characteristics “are . . . inherent to juveniles in all cases.” *State v. Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803, 172 N.E.3d 952, ¶ 27 (finding sentence of life *with* parole for a juvenile homicide offender unconstitutional because trial court failed to consider youth as a mitigating factor in the record).

These well-recognized characteristics are relevant to adolescents’ ability to carefully consider the plea options before them and understand the impact of their decisions. In this case, Manny had just been bound over to adult court for criminal prosecution after the juvenile court found “probable cause” of his guilt. His plea decision was impaired by his diminished cognitive ability to weigh the costs and benefits, evaluate the potential risks versus rewards, or to properly consider the long-term consequences of taking a plea.

**B. Scientific Research Focused On Plea Bargains Confirms That Adolescents’ Unique Thought Processes Put Them At Risk Of Making Poor Plea Decisions**

An established and growing body of scientific and developmental literature applies the principles of adolescent brain development to plea decisions and confirms that teenagers’ differing thought processes render them uniquely vulnerable during plea negotiations. In particular,

teenagers are less likely than adults to consider the consequences of the plea and are “overly influenced by short-term outcomes.” Redlich & Shteynberg, 40 L. & Hum. Behav. at 620, quoting Tarika Daftary-Kapur & Tina M. Zottoli, *A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court*, 13 Int’l J. Forensic Mental Health 323, 333 (2014). Leading researcher Thomas Grisso studied this effect in 2003, finding that when deciding whether to take a plea, youth “focused on the length of time associated with the plea (two vs. six years), whereas adults’ reasoning reflected attempts to weigh the odds (two years vs. six years vs. the possibility of zero years).”*Id.* at 612, first citing Thomas Grisso et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003), and then citing Thomas Grisso, *Adolescents’ Decision-Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 New Eng. J. Crim. & Civ. Confinement 3 (2007).

Recent research has confirmed that adolescents weigh different factors than adults when considering a plea. Teenagers are more likely than adults to plead guilty when offered a superficial sentence incentive—in the study, receiving one year of probation instead of two—regardless of guilt. Helm et al., 24 Psych. Pub. Pol’y & L. at 182, 189. Teens are more influenced by superficial details than adults, even when those details do not reflect their underlying values. *Id.* at 182. In the plea context, “even not-guilty adolescents . . . , adolescents . . . who will receive a felony for pleading guilty, and adolescents . . . for whom the chance of conviction at trial is low, are influenced [more than postcollege aged adults] by a superficial sentence length incentive.” *Id.* at 189.

Teenagers are also far more likely than adults to plead guilty to crimes they did not commit. *Id.* at 180, 189; Redlich & Shteynberg, 40 L. & Hum. Behav. at 611, 616-17 (finding adolescents

asked to assume innocence were more than twice as likely as adults to plead guilty). One study found this to be true even when pleading guilty conflicted with the youths' stated value of not wanting to plead guilty when innocent. Helm et al., 24 Psych. Pub. Pol'y & L. at 189. Researchers once again attributed this to differences in the adolescent thought process, concluding that "the mental representations that [adolescents] use to process plea decisions do not cue their values, and, hence, [adolescents] fail to retrieve and apply appropriate values during their plea decision making." *Id.*, first citing Kentaro Fujita & H. Anna Han, *Moving Beyond Deliberative Control of Impulses: The Effect of Construal Levels on Evaluative Associations in Self-Control Conflicts*, 20 Psych. Sci. 799 (2009), and then citing Valerie F. Reyna, *A New Intuitionism: Meaning, Memory, and Development in Fuzzy-Trace Theory*, 7 Judgment & Decision Making 332 (2012).

The distinctions between adolescent and adult decision-making may be even more profound because of the high-stress nature of plea deals, making them even more susceptible to perceived authority, influence and pressure. Emotional and social factors have particular influence on adolescent decision-making. Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 Nature Neurosci. 1184, 1187-88 (2012). Even adolescents in their late teens are less capable of using "their cognitive capacities as effectively as adults" in emotionally and socially charged environments. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 434 (2012). As such, "[l]imited one-time plea offers, the authority of prosecutors, and other social influence compliance-gaining tactics" in plea negotiations may increase the likelihood that a teenager will plead guilty even if innocent. Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 Rutgers L. Rev. 943, 953 (2010). Youth often react emotionally and impulsively in such circumstances without engaging in a measured decision-

making process, Cauffman & Steinberg, 7 *Victims & Offenders* at 438, and succumb to perceived pressure from adults, Malloy et al., 38 *L. & Hum. Behav.* at 181-82. Indeed, Grisso specifically concluded that “[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as . . . accepting a prosecutor’s offer of a plea agreement.” Grisso et al., 27 *L. & Hum. Behav.* at 357; *see also* Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 440 (2008) (concluding that adolescents have “a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures” than do adults).

**C. Adolescents’ Diminished Legal Capacity Weighs Against Using Their Plea Decisions To Limit Their Appellate Rights**

Adolescents’ age and diminished cognitive capabilities also undermine procedural protections in the plea-bargaining process, further weakening not only the basis for the underlying plea itself but also the justification for waiving appellate rights. First, developmental differences affect adolescents’ capacity to understand their rights, appreciate the benefits and consequences of exercising or waiving those rights, and make reasoned and independent decisions about the best course of action. Malloy et al., 38 *L. & Hum. Behav.* at 182. As a result of this reduced legal competence, youths’ “legal decisions, including those related to admissions of guilt, may reflect poor legal abilities/understanding, inappropriate reasoning (e.g., failure to consider the strength of evidence against them), and/or developmental immaturity.” *Id.*; *see also* Redlich & Shteynberg, 40 *L. & Hum. Behav.* at 620 (“Adjudicative competence, in particular, relates directly to one’s ability to understand the conditions and consequences of the plea decision, and to participate meaningfully in one’s defense.”). As one researcher noted, “[i]nsofar as the ability to differentiate between viable defenses is linked to legal knowledge, it may be that juveniles are less likely than young adults to identify potentially viable legal defenses stemming from their innocence (e.g.,

forensic evidence, witnesses, and alibis), thereby increasing the likelihood for youth to falsely plead guilty.” Redlich & Shteynberg, 40 L. & Hum. Behav. at 620. Research likewise demonstrates that minors rarely comprehend abstract rights, such as those they must relinquish when pleading guilty. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. Crim. L. & Criminology 219, 228-33 (2006); *see also* Redlich & Shteynberg, 40 L. & Hum. Behav. at 620 (“[T]here is a good chance that children will simply not understand that they are waiving their right to trial and admitting guilt,” quoting Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 293 (2007)).

In addition to not understanding on an abstract level what it means to exercise or waive their constitutional rights, teenagers also lack the context and basic vocabulary to understand the terms of plea deals. A study of court-involved youth revealed that they understood very few of the words commonly used on tender-of-plea forms and in guilty-plea colloquies. Redlich, 62 Rutgers L. Rev. at 948, citing Barbara Kaban & Judith C. Quinlan, *Rethinking a “Knowing, Intelligent, and Voluntary Waiver” in Massachusetts’ Juvenile Courts*, 5 J. Ctr. Fam. Child. & Cts. 35, 39 (2004). In this study, a section of the group had been instructed in the meaning of thirty-six such words; the other section had not. *Id.* “The results were striking,” in that both groups understood almost none of the vocabulary used. *Id.* “On average, members of the uninstructed group defined only two of thirty-six words correctly, and members of the instructed group, only five words correctly.” *Id.* The study gave “examples of incorrect answers, such as ‘presumption of innocence’ being defined as ‘[i]f your attorney feels you didn’t do it’ (age fifteen) and ‘disposition’ repeatedly defined as ‘bad position’ (age sixteen).” *Id.* (alteration in original), quoting Kaban & Quinlan, 5 J. Ctr. Fam. Child. & Cts. at 45. Adolescents involved in the criminal system are also particularly

vulnerable to coercion during plea negotiations because they, like adults in that system, have a much higher incidence of “mental impairments, which are known to impede legal comprehension.” *Id.* at 949. Youth in custody are more than three times as likely to be eligible for special education services as those in public schools generally, which is also likely to limit comprehension of plea materials. *See* N.W. Read, Nat’l Evaluation & Tech. Assistance Ctr. for the Educ. of Child. & Youth Who Are Neglected, Delinq., or At-Risk, *Fact Sheet: Youth with Special Education Needs in Justice Settings* 1 (2014), [https://neglected-delinquent.ed.gov/sites/default/files/NDTAC\\_Special\\_Ed\\_FS\\_508.pdf](https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf) (accessed July 7, 2022).

## **II. DENYING ADOLESCENTS WHO PLEAD GUILTY THE RIGHT TO CHALLENGE THE SUFFICIENCY OF THEIR PROBABLE CAUSE HEARING WILL DISPROPORTIONATELY IMPACT BLACK YOUTH**

Limiting the right to appeal an underlying probable cause determination following a guilty plea will affect all youth who enter such pleas, but the impact of such a waiver would overwhelmingly fall on Black youth. This is largely because of the disproportionate use of bindover proceedings to transfer Black youth into the adult criminal system. Nationally, 47.3 percent of youth who are transferred to adult court are Black, despite making up only 14 percent of the total youth population. Thomas & Wilson, *The Color of Youth* at 1. In Ohio the disparities are even more stark, where Black youth account for approximately 80 percent of all youth bound over (based on 2015-2019 data), Child.’s L. Ctr., *Ohio Bindovers FY19* at 3, despite comprising less than 15 percent of Ohio’s population, U. S. Census Bureau, *QuickFacts Ohio*, <https://www.census.gov/quickfacts/OH> (accessed July 7, 2022).

Just as there are striking racial disparities in who gets bound over, similar disparities have also been found in the plea-bargaining process itself. In a study of almost 50,000 cases from the Wisconsin Circuit Courts, researcher Carlos Berdejó found that white defendants were 25 percent more likely to have their most serious initial charge dropped or reduced than Black defendants,



who were more likely to be convicted of their highest initial charge. Berdejó, 59 B. C. L. Rev. at 1190-91, 1206. As a result, the study found that white defendants facing felony charges were approximately 15 percent more likely to end up convicted of a misdemeanor than Black defendants facing such charges. *Id.* at 1191. The study also found that white defendants initially charged with misdemeanors were approximately 75 percent more likely than Black defendants to be convicted for crimes carrying no possible incarceration or even end up not being convicted at all. *Id.*

The charging decisions that determine who is subject to bindover rest in the unfettered discretion of the county prosecutor. It is the County prosecutor who decides what charges to bring—which then dictate adult or juvenile prosecution. Based on the data alone, Black youth will be overwhelmingly disadvantaged by a ruling limiting their appellate rights to challenge their bind over; whether the disparate impact of these charging decisions stems from racially-biased decision making is almost immaterial here. Such a disparate impact should give this Court pause before affirming the decision below.

### CONCLUSION

For the foregoing reasons *Amici* respectfully request that this Court find in favor of the Appellant.

Respectfully submitted this 11th day of July, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of July, 2022, I caused copies of the foregoing Brief of *Amici Curiae* Juvenile Law Center, the Gault Center, and the Rutgers Criminal and Youth Justice Clinic in Support of Appellant Manny Zarlengo to be served via electronic mail on:

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