

No. 23-30634

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOLLY SMITH, individually and on behalf of all others similarly situated, real party in interest ALEX A.; KENIONE ROGERS, individually and on behalf of all others similarly situated, real party in interest BRIAN B., real party in interest, CHARLES C.,

Plaintiffs-Appellees,

v.

GOVERNOR JOHN BEL EDWARDS, in his official capacity as Governor of Louisiana; WILLIAM SOMMERS, in his official capacity as Deputy Secretary of the Office of Juvenile Justice; JAMES M. LEBLANC, in his official capacity as Secretary of the Louisiana Department of Public Safety & Corrections,

Defendants-Appellants.

On Appeal from the United States District
Court for the Middle District of Louisiana
Case No. 3:22-cv-573-SDD-RLB

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER,
CENTER FOR CHILDREN'S LAW AND POLICY, AND
50 NATIONAL, REGIONAL, AND LOUISIANA-BASED
YOUTH ADVOCACY ORGANIZATIONS AND ACADEMICS
IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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Defendants-Appellants.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that, in addition to those persons and entities listed in the briefs previously filed by the parties to this appeal, the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amici Curiae

Organizations

Juvenile Law Center

Abolitionist Law Center

Center for Children's Law and Policy

Advancement Project

Advancing Real Change, Inc.	National Federation of Families
African American Juvenile Justice Project	National Health Law Program
Barton Child Law and Policy Center	National Institute for Criminal Justice Reform
The Center for Constitutional Rights	National Juvenile Justice Network
Center for Law and Education	National Legal Aid & Defender Association
CHILD USA	National Police Accountability Project
Children's Defense Fund	Pacific Juvenile Defender Center
Children's Rights	Phillips Black, Inc.
Evident Change	Prison Law Office
Fair and Just Prosecution, a project of the Tides Center	Private Defender Program, San Mateo County
Families and Friends of Louisiana's Incarcerated Children (FFLIC)	Rights4Girls
The Gault Center	Sayra and Neil Meyerhoof Center for Families, Children and the Courts
Human Rights for Kids	The Sentencing Project
Justice Lab, Columbia University	Southern Legal Counsel, Inc.
Justice Policy Institute	W. Haywood Burns Institute
Lawyers For Children	Youth Advocate Programs, Inc.
Louisiana Center for Children's Rights	Youth Correctional Leaders for Justice
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Dated: December 1, 2023

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INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Juvenile Law Center, Center for Children’s Law and Policy, and 50 national, regional, and Louisiana-based advocacy organizations and academics (collectively “*Amici*”)² share a dedication to ensuring that laws, policies, and practices affecting youth are consistent with children’s unique developmental characteristics and promote the health, welfare, and rehabilitation of youth in State care as mandated by federal law. *Amici* have extensive experience advocating for children nationwide and in Louisiana, including by filing *amicus* briefs in state and federal courts across the country. *Amici* work on behalf of youth in a variety of settings, including youth involved in the juvenile justice system, and share a commitment to keeping children out of adult jails and prison.

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,

¹ This brief is submitted under [Federal Rule of Appellate Procedure 29\(a\)](#) with an accompanying Motion for Leave. Undersigned counsel for *amici curiae* certifies that this brief was not authored in whole or part by counsel for any of the parties; no party or party’s counsel contributed money for the brief; and no one other than *amici* and their counsel have contributed money for this brief.

² A complete list of *amici curiae* is provided in the above Certificate of Interested Persons. *See supra* Certificate of Interested Persons.

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 Center for Children's Law and Policy (CCLP) is a national public interest organization based in Washington, D.C., focused on protecting the rights of vulnerable children while reforming youth legal and other systems that negatively impact children, especially children of color. Since 2006, CCLP has worked on youth justice reform in over 30 states and the District of Columbia to create more equitable systems based on supporting youth to achieve their full potential rather than using incarceration and punishment. In addition to playing a leading role in the largest youth justice reform initiatives in the United States, CCLP is also widely recognized for its expertise on issues related to conditions of confinement of youth. The CCLP team works with states and counties to remedy dangerous conditions of confinement in youth jails and prisons.

ARGUMENT

The State of Louisiana Office of Juvenile Justice (OJJ) is tasked with the responsibility to maintain the health, welfare, and rehabilitation of all youth in its care. *Federal Law: Constitutional Rights*, State of La. Off. of Juv. Just., <https://ojj.la.gov/page/federal-law> (last visited Nov. 27, 2023). As OJJ itself notes, this responsibility includes but is not limited to: maintaining a safe environment for youth, providing decent living conditions, ensuring that all children have access to treatment and adequate educational programming, and that youth are free from abusive and arbitrary discipline. *Id.* Federal law explicitly requires OJJ to meet these goals, in part, by housing young people in juvenile justice settings, not adult prisons. *See infra* Section I.B. Federal constitutional protections recognizing the unique developmental differences of children further support the importance of keeping youth in the juvenile justice system and out of adult facilities. *See infra* Section I.C.

As decades of research also make clear, children do not belong in adult jails or prisons. OJJ's decision to place Louisiana children in a former death row wing of Angola Prison subjected them to shocking conditions likely to cause severe, lasting harm. *See infra* Section II.B. Because youth are still developing, they are especially affected by the traumas they endure in Angola or other adult facilities. *See infra* Section II.A. And this devastating deprivation of rights is not imposed equally—

Black youth are far more likely to be incarcerated under these traumatic conditions.

See infra Section III.

I. THE LAW REQUIRES THAT YOUTH IN LOUISIANA’S JUVENILE JUSTICE SYSTEM BE PROVIDED WITH REHABILITATIVE SERVICES AND PROTECTED FROM HARM

The juvenile justice system was designed to separate young people from the harshness of the adult criminal system and to provide young people treatment, not punishment. These values are reflected in both Louisiana law and federal law.

A. Incarcerating Children In Adult Prisons And Exposing Them To Harsh Conditions Contravenes The Rehabilitative Purpose Of The Louisiana Juvenile Justice System

From the juvenile court’s inception, “the adult system was viewed as an inadequate and inappropriate forum to adjudicate the criminal behavior of juveniles,” a principle that continues to be widely accepted across the country today. Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. C.R. & Econ. Dev. 765, 768 (2015). In recognition of the developmental immaturity of youth, juvenile courts are thus charged with focusing on the rehabilitation and treatment needs of youth, rather than the offense that brought them before the court. *Id.*; Charles Puzzanchera et al., Nat’l Ctr. for Juv. Just., *Youth and the Juvenile Justice System: 2022 National Report* 78 (2022), <https://ojjdp.ojp.gov/publications/2022-national-report-ch4.pdf>.

Louisiana law reflects these principles. The Louisiana Constitution establishes that “the determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be pursuant to special juvenile procedures which shall be provided by law.” La. Const. art. V, § 19. The Louisiana Children’s Code makes clear that each child must receive the “care, guidance, and control that will be conducive to his welfare,” and when a child is removed from home, “the court shall secure for him care as nearly as possible equivalent to that which the parents should have given him.” La. Child. Code Ann. Art. 102.

The Louisiana Supreme Court has further emphasized this “unique nature of the juvenile system,” including “its focus on rehabilitation and individual treatment rather than retribution,” and the state’s role as “*parens patriae* in managing the welfare of the juvenile in state custody.” *In re C.B.*, 708 So. 2d 391, 396-97 (La. 1998). Indeed, “[i]t is the public policy of the state of Louisiana that commitment of a juvenile to the care of OJJ ‘is not punitive nor is it in any way to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile’” *J.H. by & through N.H. v. Edwards*, No. CV 20-293-JWD-EWD, 2020 WL 3448087, at *8 (M.D. La. June 24, 2020) (quoting La. Stat. Ann. § 15:906(B)). The “unique” nature of the juvenile justice system requires consideration of the “individual treatment and wellbeing of children.” *State in Int. of G.S.*, 287 So. 3d

752, 756 (La. Ct. App. 2019), *cert. denied*, 301 So. 3d 34 (La. 2020). As further discussed below, placement in any adult facility—and particularly in Angola Prison in a wing previously designated as Death Row for adult prisoners—flagrantly violates these principles.

B. Incarcerating Children Committed To Louisiana’s Juvenile Justice System In Adult Facilities Violates Federal Law

Federal statutes also prohibit placing youth in adult facilities. Since 1980, the federal government has required that states remove children from adult jails and lock-ups as one of the core protections in the federal Juvenile Justice and Delinquency Prevention Act (JJDP). *The Juvenile Justice and Delinquency Prevention Act of 1974: Prior Federal Juvenile Delinquency Activity*, Off. of Juv. Just & Delinq. Prevention, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/jjdpchronology.pdf> (last visited Nov. 28, 2023); *see also* Marcy Mistrett & Mariana Espinoza, The Sent’g Project, *Youth in Adult Courts, Jails, and Prisons* 3 (2021), <https://www.sentencingproject.org/app/uploads/2022/09/Youth-in-Adult-Courts-Jails-and-Prisons.pdf>. This provision has long applied to youth, like those in the present case, under juvenile justice supervision; in light of the severe harm of housing youth with adults, it now applies even to youth charged in the adult system. Mistrett & Espinoza, *supra*, at 3. In the 2018 reauthorization of the JJDP, recognizing that children are particularly “vulnerable to the dangers and shortcomings of adult jails, a system not designed for youth, nor their safety,”

Congress required the removal of *all* youth from adult jails by December 21, 2021. Campaign for Youth Just., *Core Protections: Jail Removal/Sight and Sound Separation 1* (2019), https://www.act4jj.org/sites/default/files/resource-files/Jail%20Removal%20and%20Sight%20and%20Sound%20Separation%20Fact%20Sheet_0.pdf.³

C. The U.S. Constitution’s Heightened Protections For Youth Further Support Keeping Youth Out Of Adult Prisons

The United States Supreme Court has been clear that children deserve unique and protective treatment. “[O]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.” *J.D.B. v. North Carolina*, [564 U.S. 261, 274](#) (2011) (quoting *Eddings v. Oklahoma*, [455 U.S. 104, 115-116](#) (1982)). As the Supreme Court has repeatedly recognized, children differ from adults in critical areas of development—both psycho-socially and neurologically—that make them less blameworthy, more susceptible to negative peer pressures, and more likely to change and rehabilitate given the transient nature of childhood and adolescence. *Miller v. Alabama*, [567 U.S. 460, 471-472](#) (2012). Such decisions rest “not only on common sense . . . but on science and social science as well.” *Id.* at 471. *See also Graham v. Florida*, [560 U.S. 48, 68](#) (2011) (“[D]evelopments in psychology and brain science continue to show fundamental

³ Federal law also requires total sight and sound separation of youth and adults if they are ever held at the same facility. Prison Rape Elimination Act National Standards, [28 C.F.R. § 115.14\(a\)](#).

differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.”).

The Supreme Court has repeatedly recognized that these “distinctive attributes of youth” impact the applicable constitutional standard. *See Miller*, [567 U.S. at 472-74](#). In *J.D.B. v. North Carolina*, the Supreme Court underscored that children’s unique qualities obligate state actors to provide protections beyond those required for adults. [564 U.S. at 271-75](#) (adopting a “reasonable child” standard for *Miranda* warnings). One year later, in *Miller*, the Court extended this notion to find youth categorically “less deserving of the most severe punishments.” *Miller*, [567 U.S. at 471](#) (quoting *Graham*, [560 U.S. at 68](#)) (holding mandatory juvenile life without parole sentences unconstitutional). Grounding its decisions in common sense—i.e., “what ‘any parent knows,’” *id.* at 471 (quoting *Roper v. Simmons*, [543 U.S. 551, 569](#) (2005))—and on scientific research, the Court explained that children differ from adults in their developmental maturity, susceptibility to outside influences, and capacity for change, *id.* at 471-73. For these reasons, courts have held that exposing youth to solitary confinement and other harsh conditions in adult facilities violates the Constitution. *See, e.g., V.W. by and through Williams v. Conway*, [236 F.Supp.3d 554, 581-86](#) (N.D.N.Y. 2017).

The State cannot simply treat youth accused of committing crimes “as though they were not children,” *Miller*, [567 U.S. at 474](#), by incarcerating them in adult

facilities and exposing them to a heightened risk of violence, solitary confinement, and other harmful or dangerous conditions.

II. INCARCERATING YOUTH IN ADULT FACILITIES CAUSES IRREPERABLE HARM

As described further by the *amicus* brief of Non-Profit Medical and Mental Health Advocacy Organizations, adult prisons and jails cause trauma and harm for youth. “Complaints are eerily similar across . . . facilities, reflecting the inherent difficulty of keeping youth safe in adult jails.” Neelum Arya, Jail Removal Project at UCLA Sch. of L., *Getting to Zero: A 50-State Study of Strategies to Remove Youth from Adult Jails* 33 (2018), https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo_k3xpk_DTmItV/view. And “the development of youth is compromised even in facilities where . . . risks [of widespread violence] are not pervasive.” *Id.* The intent to punish rather than rehabilitate was even more evident in Angola, where youth were housed in a cell block formerly reserved for death row prisoners, in a prison long known for human rights abuses, unconstitutional conditions, and punitive methods. See Delvin Davis, S. Poverty L. Ctr., *Only Young Once: The Urgent Need for Reform of Louisiana’s Youth Justice System* 6 (2023), <https://www.splcenter.org/louisiana-juvenile-justice-system-reform>.

A. Young People Are Uniquely Susceptible To Harm In Adult Facilities

The Supreme Court has repeatedly reminded us that youth is a “transient” “moment and ‘condition of life when a person may be most susceptible to influence and to psychological damage.’” *Miller*, 567 U.S. at 476 (quoting *Eddings*, 455 U.S. at 115); *see also J.D.B.*, 564 U.S. at 272-73. Young people are more likely than adults to be permanently traumatized by harsh adult prison conditions because of this unique developmental stage. *See, e.g.*, Ian Silver et al., *Incarceration of Youth in Adult Correctional Facility and Risk of Premature Death*, 6 JAMA Network Open 1, 2 (2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2806838#zoi230646r12> (“Incarceration among adults is likely to have damaging iatrogenic effects for youths as a result of more harmful exposures in prison and disruption to key social, psychological, and developmental processes.”).

Teenagers’ brains are particularly vulnerable to negative experiences such as resource deprivation or harsh and coercive relationships. Nat’l Acads. of Scis., Eng’g & Med., *The Promise of Adolescence: Realizing Opportunity for All Youth* 58 (Richard J. Bonnie & Emily P. Backes eds., 2019), <https://doi.org/10.17226/25388>. Exposure to trauma during childhood can increase rates of psychological disorders, substance abuse and dependence, and increase the likelihood of high-risk behaviors and reoffending as coping mechanisms. Nat’l Inst. of Just., U.S. Dep’t of Just., *Youth Victimization: Prevalence and Implications* 1 (2003), <https://www.ojp.gov/pdffiles1>

/nij/194972.pdf; Isaiah B. Pickens et al., Nat'l Child Traumatic Stress Network, *Victimization and Juvenile Offending* 4-6 (2016). “[E]xposure to multiple types of trauma can [also] impede children’s healthy brain development, harm their ability to self-regulate, and heighten the risks of delinquent behavior.” Richard Mendel, The Sent’g Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence* 5 (2022), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>.

Capitalizing on the unique “window of opportunity” for healing and growth that adolescence presents is especially important for youth who have experienced trauma, bias, discrimination, or other hardship earlier in childhood. Nat’l Acads. of Sci., Eng’g, & Med., *supra*, at 37-38, 75. But rather than promoting healing and resilience, the harsh conditions in adult facilities like Angola expose young people to further harm. Young people housed in adult correctional facilities report being more afraid for their safety and report “substantially greater rates of posttraumatic stress disorder and depression compared with those in juvenile facilities.” Silver et al., *supra*, at 2; *see also* Irene Y.H. Ng et al., *Incarcerating Juveniles in Adult Prisons as a Factor in Depression*, 21 *Crim. Behav. & Mental Health* 21, 27 (2011).

B. Youth In Adult Facilities Like Angola Face Brutal Conditions That Cause Lasting Harm

1. Youth in adult facilities face lasting harm from physical and sexual abuse

Research shows that adult facilities struggle to keep young people safe from violence. *See Arya, supra*, at 33 (looking specifically at adult jails). Youth in adult facilities generally, as compared to those in juvenile facilities, are more likely to witness and suffer extreme violence and abuse. Brittany L. Briggs, *Children Are Our Future: Resurrecting Juvenile Rehabilitation Through “Raise the Age” Legislation in Missouri*, 85 Mo. L. Rev. 191, 207 (2020), <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=4419&context=mlr> (examining impact of children in adult prisons). Youth in adult prisons are also five times more likely to be sexually assaulted, and twice as likely to be attacked with a weapon by another inmate. *Id.*; Richard E. Redding, Off. Juv. Just. & Delinq. Prevention, U.S. Dept. Just., *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 7 (2010), ojp.gov/pdffiles1/ojjdp/220595.pdf.

Children’s adverse experiences in adult facilities cannot be overstated: children are in fact 36 times more likely to die by suicide in an adult jail than in a juvenile detention facility. *Arya, supra*, at 22-23. While incarceration generally is associated with a greater risk of early death among children, research suggests

incarceration of youth in an adult correctional facility poses an even greater risk of premature death. Silver et al., *supra*, at 6-7.

Moreover, these harms fall disproportionately on Black youth, who are overrepresented in Louisiana’s juvenile justice system. *See infra* Section III. “Black children sent to adult jails and prisons are more likely to die by suicide, suffer from mental illness, and recidivate once they return to their communities than their peers in the juvenile justice system.” *Report: Black Youth Continue to be Sent to Adult Courts and Jails at Alarming High Rates*, Nat’l Ass’n of Soc. Workers (Sept. 24, 2018), <https://www.socialworkers.org/News/News-Releases/ID/1679/Report-Black-youth-continue-to-be-sent-to-adult-courts-and-jails-at-alarming-high-rates#>; Jeree Michele Thomas & Mel Wilson, Nat’l Ass’n of Soc. Workers, *The Color of Juvenile Transfer: Policy and Practice Recommendations* 4 (2018), <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3d&portalid=0>.

2. Youth in adult facilities face increased risk of OC spray and restraints

In contrast to the juvenile justice system, where the “the prevailing professional view and practice is to employ positive behavioral management” rather than to rely on pepper spray or mechanical restraints, youth in adult facilities are at high risk of harm due to those practices. Declaration of Vincent N. Schiraldi, M.S.W. at ¶ 3, *J.J. v. Litscher*, No. 17-CV-047-JDP (W.D. Wis. Apr. 19, 2017), ECF No. 19; *see also* Ian M. Kysel, ACLU of S. Cal., *Toxic Treatment, The Abuse of Tear Gas*

Weapons in California Juvenile Detention 41 (2019), <https://www.aclusocal.org/en/publications/toxic-treatment-abuse-tear-gas-weapons-california-juvenile-detention>; Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, Prison Pol’y Initiative (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html>; Council of Juv. Corr. Adm’rs, *Issue Brief: Pepper Spray in Juvenile Facilities* 1 (2011), <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Pepper%20Spray%20in%20Juvenile%20Facilities.pdf> (“While OC spray is widely accepted and used by law enforcement and adult corrections agencies across the country, its use has been shunned by juvenile correctional agencies.”).

Staff at Angola, like many adult facilities, routinely used oleoresin capsicum or “OC spray,” handcuffs, and other methods of force and restraint against youth. Youth reported being handcuffed during recreation and while eating, playing cards with guards, and journaling. *See Alex A. by and through Smith v. Edwards*, No. 22-573-SDD-RLB, [2023 WL 5984280](https://www.courts.mt.gov/opinion/2023-05-14-Alex-A.-by-and-through-Smith-v.-Edwards), at *3 (M.D. La. Sept. 14, 2023). Consistent with these reports, the District Court “observed [during its site visit] that the few youth who were not in their cells were handcuffed.” *Id.* Even when in their cells, youth at Angola experienced use of force by corrections officers. In one documented instance, a guard used OC spray on a youth locked in a cell after the youth threw what was alleged to be toilet water on a staff member. *Id.* The staff members then

fled the cell and left the young person and two other nearby youth in their cells for six to seven minutes before rendering any aid. *Id.* There is “no evidence of any corrective training or reprimand of the guard.” *Id.*

Young people are particularly vulnerable to the harms inherent in any use of chemical agents and handcuffs. Research suggests that “children are more vulnerable to severe injuries” from exposure to chemical agents like mace, the effects of which can include injuries to multiple body systems, permanent disability (such as blindness and the loss of limb function), and persistent psychological symptoms. Rohini J. Haar & Vincent Iacopino, Physicians for Hum. Rts. & Int’l Network of C.L. Orgs., *Lethal in Disguise: The Health Impacts of Crowd Control Weapons* 44 (2016), https://s3.amazonaws.com/PHR_Reports/lethal-in-disguise.pdf. In fact, systemic reviews of medical literature further suggest that there is not a “single research study that determines the use of tear gas weapons on youth is safe or without grave risks to health and well-being.” Kysel, *supra*, at 14. Similarly, research shows that handcuffs and other mechanical restraints put youth at risk of injury. See Kim Godfrey Lovett, Performance-Based Standards Learning Inst., *Responding to the Pandemic* 1 (2021), https://pbstandards.org/media/1494/reduced-useofrestraints_august2021.pdf (“Restraints are an indicator that a facility’s behavior management system is not working and puts youths and staff at risk for injury.”).

3. Youth in adult facilities face a heightened risk of harm from solitary confinement

Youth in adult facilities also face harmful, and often extended, solitary confinement. Hum. Rts. Watch & ACLU, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* 2, 20 (2012), <https://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>. This was the case at Angola as well. In just June and July, multiple youth reported spending more than a week at a time in solitary confinement, and one young person was documented as having spent 28 out of 54 days in solitary confinement. *Alex A.*, [2023 WL 5984280](#) at *2. Another young person was placed in solitary confinement for “4 consecutive days after expressing suicidal thoughts” to staff. *Id.*

A robust body of empirical research demonstrates that solitary confinement is associated with a host of profoundly harmful mental health consequences. Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Just.* 365, 367 (2018). Solitary confinement and family isolation hold unique harm for children, whose “normative maturation process takes place in the context of family, peers and community.” Hum. Rts. For Kids, *Crimes Against Humanity: The Mass Incarceration of Children in the United States* 23 (2023), <https://humanrightsforkids.org/wp-content/uploads/Human-Rights-For-Kids-Crimes-Against-Humanity-The-Mass-Incarceration-of-Children-in-the-US.pdf>. Removing connections further denies children pathways to build “resiliency and address the

trauma at the root of their behavior” and “inhibits development of important familial connections, hindering development and negatively impacting children’s mental health.” *Id.*

Solitary confinement increases the risk of certain mental health issues, including paranoia, impulse control issues, depression, anxiety, post-traumatic stress disorder, and psychosis. Kayla James & Elena Vanko, Vera Inst. of Just., *The Impacts of Solitary Confinement 2* (2021), <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>; *see also* Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol’y 325, 327-338 (2006); Sharon Shalev, Mannheim Ctr. for Criminology, London Sch. of Econ. & Pol. Sci., *A Sourcebook on Solitary Confinement* 15-17 (2008), <https://perma.cc/2FHE-BKMX>.

It is also associated with a heightened risk of suicide and self-harm. *See, e.g.*, Off. of Juv. Just. & Delinq. Prevention, U.S. Dep’t of Just., *Juvenile Suicide in Confinement: A National Survey* 27 (2009) (Data indicates “a strong relationship between juvenile suicide and room confinement—62 percent of victims [of suicide while incarcerated] had a history of room confinement before their death and 50 percent of victims were on room confinement status at the time of their death”); Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442, 445 (2014) (Individuals punished by solitary

confinement were nearly seven times more likely to commit acts of self-harm than their counterparts who did not experience solitary confinement); Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, 45 *J. Am. Acad. Psychiatry & L.* 350, 352 (2017).

Research suggests that the psychological effects of solitary confinement on young people get worse with time, persist after a person leaves solitary and even after release, and are particularly harmful to youth with preexisting mental illnesses. Colby L. Valentine et al., *Prolonged Isolation as a Predictor of Mental Health for Waived Juveniles*, 58 *J. Offender Rehab.* 352, 354-55, 361 (2019) (finding a positive association between amount of time spent in solitary confinement and number of mental health diagnoses among youth waived into adult legal system); Brian O. Hagan et al., *History of Solitary Confinement is Associated with Post-Traumatic Stress Disorder Symptoms Among Individuals Recently Released from Prison*, 95 *J. Urb. Health* 141, 146 (2018) (finding that people who spent time in solitary confinement had three times greater odds of reporting PTSD symptoms after release than those who had not spent time in solitary confinement).

Solitary confinement is also associated with serious physical health consequences. For example, “[p]eople in solitary can experience heart palpitations, insomnia, shaking, weakness, deterioration of eyesight, sensory hypersensitivity, and aggravation of preexisting medical problems,” and have been shown to suffer

from rates of hypertension “almost three times higher than for those held in maximum-security general population units.” James & Vanko, *supra*, at 3 (first citing Brie A. Williams et al, *The Cardiovascular Health Burdens of Solitary Confinement*, 34 J. Gen. Internal Med. 1977, 1978 (2019)); then citing Shalev, *supra*, at 15; and then citing Sharon Shalev, *Solitary Confinement as a Prison Health Issue*, in *WHO Guide to Prisons and Health* 27, 28 (Stefan Enggist et al. eds., 2014)). One recent study indicates that, compared with individuals who were incarcerated and not placed in restrictive housing, individuals who spent *any time* in restrictive housing were 24% more likely to die in the first year after release, especially from suicide (78% more likely) and homicide (54% more likely); they were also 127% more likely to die of an opioid overdose in the first 2 weeks after release. Lauren Brinkley-Rubinstein et al., *Association of Restrictive Housing During Incarceration with Mortality After Release*, 2 JAMA Network Open 1, 1 (2019).

For this reason, dozens of professional organizations, experts, and practitioners have publicly denounced or adopted formal position statements against solitary for children, including the American Academy of Child and Adolescent Psychiatry,⁴ American Academy of Pediatrics,⁵ American Public Health

⁴*Solitary Confinement of Juvenile Offenders*, Am. Acad. of Child and Adolescent Psychiatry (Apr. 2012), https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

⁵Alyson Sulaski Wyckoff, *Reduce or Eliminate Restrictive Housing for Youth: AAP Endorsement*, Am. Acad. of Pediatrics (Oct. 25, 2021), <https://publications.aap.org/aapnews/news/17444/Reduce-or-eliminate-restrictive-housing-for-youths>.

Association,⁶ American Psychiatric Association,⁷ National Partnership for Juvenile Services,⁸ Council of Juvenile Justice Administrators,⁹ National Commission on Correctional Health Care,¹⁰ and the National Council of Juvenile and Family Court Judges.¹¹ Similarly, model Juvenile Detention Facility standards permit isolation only as a brief emergency intervention when youth behavior threatens immediate physical harm; when the youth cease to pose such a risk, staff must release them from isolation immediately. Juv. Det. Alts. Initiative, *Juvenile Detention Facility Assessment: 2014 Update* 177 (2014), <https://assets.aecf.org/m/resourcedoc/aecf-juvenile-detention-facility-assessment-2014.pdf>.

4. Adult prisons deprive youth of needed education and programming

Adult prisons rarely provide vital, legally required programming and education. Youth in adult facilities often experience harmful developmental disruption because prisons lack the academic, vocational, and social skill building

⁶ *Solitary Confinement as a Public Health Issue*, Am. Pub. Health Ass'n (Nov. 5, 2013), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>.

⁷ *News Release: Incarcerated Juveniles Belong in Juvenile Facilities*, Am. Psychiatric Ass'n (Feb. 27, 2009), https://www.njjn.org/uploads/digital-library/resource_1050.pdf.

⁸ *Position Statement: Use of Isolation*, Nat'l Partnership for Juv. Servs. (Oct. 20, 2014), <https://irp.cdn-website.com/45a58767/files/uploaded/2014%20-%20Use%20of%20Isolation.pdf>.

⁹ Council of Juv. Corr. Adm'rs, *Toolkit: Reducing the Use of Isolation* 5-6 (2015), <https://cjjn.net/wp-content/uploads/2022/04/CJCA-Toolkit-Reducing-the-Use-of-Isolation-1.pdf>.

¹⁰ *Position Statement: Solitary Confinement (Isolation)*, Nat'l Comm'n on Corr. Health Care (Apr. 2016), <https://www.ncchc.org/position-statements/solitary-confinement-isolation-2016/>.

¹¹ *NCJFCJ Resolves to Reduce the Use of Solitary Confinement for Youth*, Nat'l Council of Juv. & Fam. Ct. Judges (Sept. 20, 2016), <https://www.ncjfcj.org/news/ncjfcj-resolves-to-reduce-the-use-of-solitary-confinement-for-youth/>.

education and environment that adolescents need. *See generally* Equal Just. Initiative, *All Children are Children: Challenging Abusive Punishment of Juveniles* 10 (2017), <https://eji.org/wp-content/uploads/2019/10/AllChildrenAreChildren-2017-sm2.pdf>; James C. Howell et al., *Bulletin 5: Young Offenders and An Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know* 11 (2013), <https://www.ojp.gov/pdffiles1/nij/grants/242935.pdf>. For example, adult prisons typically do not provide credit-bearing courses that can help youth on their path to a high school diploma. Hum. Rts. for Kids, *supra*, at 23. Adult prisons generally lack the individualized programs or accommodations required for students with special needs. *Id.* Moreover, solitary confinement or other disciplinary measures often halt what little educational programming is provided. *Id.*

Youth at Angola, too, faced severe educational deprivation. Youth spent only three hours per day in the classroom, special education teachers failed to adhere to Individual Education Plans, and youth were wholly deprived of education during the many instances in which they were confined to their cells. *Alex A.*, [2023 WL 5984280](#) at *4.

Adult facilities also struggle to provide appropriate medical and physical health care to youth, despite the critical importance of these services. *Arya*, *supra*, at 33 (examining youth in adult jails). Moreover, incarceration in adult facilities has

been shown to increase the risk of disease for youth. Briggs, *supra*, at 208. Youth at Angola also failed to receive adequate needed healthcare. OJJ promised on-site counselors during working hours and on-call counselors during nights and weekends. *Alex A.*, [2023 WL 5984280](#) at *5. Instead, they provided appointments by telemedicine only. Moreover, not a single “licensed social worker or professional counselor” is employed at the facility. *Id.*

The lack of education and therapeutic services is particularly problematic because many young people who end up in the criminal legal system have histories of trauma, abuse, or other adverse childhood experiences. Phelan Wyrick & Kadee Atkinson, *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System*, 283 Nat’l Inst. Just. J. 1, 2-5 (2021), <https://www.ojp.gov/pdf/files1/nij/255645.pdf>; Mendel, *supra*, at 21. But, “[u]nlike adults with mental illness, children have very limited experience managing their disabilities, anxieties, fear, and trauma. They often act impulsively, recklessly, and irresponsibly. In an adult jail or prison, this behavior results in more aggressive punishment—which can worsen a child’s mental health problems.” *Children in Adult Prisons*, Equal Just. Initiative (citing Campaign for Youth Just., *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007)), <https://ej.org/issues/children-in-prison/> (last visited Nov. 29, 2023). And, indeed, a significant portion of the youth transferred to Angola had serious mental health needs. *Alex A.*, [2023 WL 5984280](#)

at *5. A lack of contact with family members could heighten these problems; at Angola, visitation and communication were severely restricted for youth, and staff regularly withheld family contact as punishment. *Id.* at *3. One young person reports that staff expressly cited behavioral issues as the reason for denying family contact for three consecutive weeks. *Id.*

III. INCARCERATING YOUTH UNDER JUVENILE JUSTICE SUPERVISION IN ADULT FACILITIES, INCLUDING ANGOLA, HAS A RACIALLY DISCRIMINATORY IMPACT

Across the country, including in Louisiana, juvenile justice took a sharp, punitive turn in response to the quickly-debunked “super-predator” myth that took hold of the country in the mid-1990’s. The myth relied on a racist trope that characterized Black youth as especially depraved, immoral, relentless, and dangerous. *See, e.g.*, Peter Annin, ‘*Superpredators*’ Arrive, *Newsweek* (Jan. 22, 1996), <https://www.newsweek.com/superpredators-arrive-176848>; Richard Zoglin, *Now for the Bad News: A Teenage Time Bomb*, *Time* (Jan. 15, 1996), <http://content.time.com/time/subscriber/article/0,33009,983959,00.html>.

This discredited theory not only shifted the legal landscape, but also “amplified the American public’s predisposition to associate adolescents of color, and in particular young black males, with violence and moral depravity.” Perry L. Moriearty & William Carson, *Cognitive Warfare and Young Black Males in America*, 15 *J. Gender Race & Just.* 281, 283 (2012), <https://scholarship.law.umn>.

edu/cgi/viewcontent.cgi?article=1388&context=faculty_articles. While the myth dissipated, its impact persists today. Studies show that implicit biases against Black children remain widely held; research shows that people are likely to perceive Black boys, in particular, as older, less innocent, and more culpable than their white counterparts. See Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psych. 526, 540 (2014). Other research shows sentencing and culpability biases toward Black youth as compared to white youth. See Aneeta Rattan et al., *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLoS one 1, 2 (2012). These biases contribute to a false idea that youth of color, particularly Black youth, are incapable of reform and therefore should not be given the rehabilitative opportunities offered by the juvenile court.

In Louisiana, Black youth are six times more likely to be held in placement as white youth. Joshua Rovner, The Sent’g Project, *Black Disparities in Youth Incarceration* (2021), <https://www.sentencingproject.org/app/uploads/2022/08/Black-Disparities-in-Youth-Incarceration.pdf>. Data further shows that “Black youth are disproportionately represented in every custody and supervision status statewide.” Davis, *supra*, at 11. Despite comprising 38 percent of the Louisiana youth population, Black children comprise nearly 80 percent of incarcerated youth. *Id.* at 12; La. Off. of Juv. Just., *Act 1225—Transforming Louisiana’s Juvenile Justice*

System 20 Years Later, <https://drive.google.com/file/d/1Yh3TXEkLC6uTDSM8FS6WxY20iH3eRBzd/view> (last visited Nov. 29, 2023). Exposing Black children to the harshest treatment reinforces problematic disparities rather than providing the rehabilitative treatment to which all youth are entitled.

IV. HARSH TREATMENT OF INCARCERATED YOUTH IS NOT NECESSARY OR PRODUCTIVE

OJJ claims that the district court’s decision “robs OJJ of its autonomy to operate Louisiana’s secure care system according to evolving needs of youth in custody,” and interferes with the public’s interest in “safety and security.” Br. of Defendants-Appellants 49, 51, ECF No. 128. The order below does nothing of the sort—in fact, providing rehabilitation and services rather than cruel and excessive punishment responds directly to the needs of youth and the safety of the community.¹²

Youth who spend time in adult facilities recidivate more often and more quickly and commit more total offenses than those who do not experience such incarceration. Megan Kurlycheck et al., *The Long-Term Consequences of Imprisoning Our Youth: The Lasting Impact of Time Spent in Adult Jails and Prisons*, Soc. Probs. 1, 1 (2022). Moreover, solitary confinement, pepper spray, and shackling not only jeopardize the health and safety of young people and staff, but

¹² Moreover, while “safety and security” are legitimate concerns, they cannot be maintained in ways that violate the Constitution.

they are also unnecessary for maintaining safety. See Lisa Pilnik & Marcy Mistrett, Campaign for Youth Just., *If Not the Adult System, Then Where? Alternatives to Adult Incarceration for Youth Certified as Adults* 8 (2019), https://www.campaignforyouthjustice.org/images/ALT_INCARCERATION_FINAL.pdf; see also, e.g., Youngki Woo et al., *Disciplinary Segregation's Effects on Inmate Behavior: Institutional and Community Outcomes*, 31 *Crim. Just. Pol'y Rev.* 1036, 1049-50 (2020) (finding that providing social support reduces the incidence of subsequent violent infractions within facilities, but imposing solitary confinement as punishment has no such effect); Alison Shames et al., Vera Inst. of Just., *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* 19-20 (2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf. In fact, some research demonstrates that the use of solitary confinement may result in an “increased incidence of violence.” Jessica Sandoval, *How Solitary Confinement Contributes to the Mental Health Crisis*, Nat'l All. on Mental Illness (Mar. 17, 2023), <https://www.nami.org/Blogs/NAMI-Blog/March-2023/How-Solitary-Confinement-Contributes-to-the-Mental-Health-Crisis>. Research also suggests that solitary confinement jeopardizes public safety by “*increas[ing]* people’s likelihood of post-release offending, especially violent re-offending.” James & Vanko, *supra*, at 5 (citing Kristen M. Zgoba et al.,

Assessing the Impact of Restrictive Housing on Inmate Post-Release Criminal Behavior, 45 Am. J. Crim. Just. 102, 118 (2020)).

Rather than bending the will of young people into submission through force or isolation, safer facilities—including those managing youth exhibiting aggressive behavior—work with young people to build positive relationships and help youth better process their emotions and behaviors. Literature on adolescent behavior and positive youth development supports using incentives and earned rewards to encourage positive behavior as a developmentally appropriate way to manage teen and young adult behavior, and that using incentives over sanctions is most likely to achieve behavior change. *See, e.g.*, Hum. Rts. Watch & ACLU, *supra*, at 87-88, 134-35; Howard S. Muscott et al., *Positive Behavioral Interventions and Supports in New Hampshire: Effects of Large-Scale Implementation of Schoolwide Positive Behavior Support on Student Discipline and Academic Achievement*, 10 J. Positive Behav. Interventions 190, 190 (2008). Facilities should focus on providing support from mental health professionals, as well as education, recreation, and other programming to keep youth busy, promote skill-building, and create opportunities for positive interactions between young people and staff.

Jurisdictions around the country employ other approaches to reduce violence without employing the most punitive carceral practices. *See* Jennifer Lutz et al., Ctr. for Children's L. & Pol'y & Just. Pol'y Inst., *Not in Isolation: How to Reduce Room*

Confinement While Increasing Safety in Youth Facilities. Center for Children's Law and Policy 17-101 (2019), <http://www.stopsolitaryforkids.org/wp-content/uploads/2019/06/Not-In-Isolation-Final.pdf>. The Oregon Youth Authority, for example, analyzes data to identify root causes of youth behavior in facilities, and offers positive opportunities like employment certifications rather than isolating youth who misbehave. *Id.* at 92-93, 96. Massachusetts developed a comprehensive set of responses including clinical interventions, therapeutic supports from staff, and staff training in effective de-escalation techniques, to allow them to safely reduce reliance on solitary; they found that staff turnover and incidents of youth self-harm also decreased as a result. *Id.* at 34-53. OJJ should support youth through positive programming and access to mental health professionals rather than resorting to ineffective practices that cause severe psychological and physical harm and serve no penological purpose.

CONCLUSION

Incarcerating young people at an adult maximum-security prison, especially one rife with deplorable conditions and abuse, is a “severe punishment” that contravenes well-established legal principles and best practices. The horrendous treatment young people were forced to endure at Angola violated their constitutional rights and cannot be remedied by simply moving young people to another adult facility. There is no legitimate government interest in unconstitutional practices that

cause irreparable harm to children and make communities less safe. For the foregoing reasons, *Amici Curiae* respectfully request that the Court affirm the district court's order granting a preliminary injunction.

Respectfully submitted,

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Dated: December 1, 2023

CERTIFICATE OF SERVICE

I certify that on December 1, 2023, a copy of the foregoing Brief of *Amici Curiae* Juvenile Law Center, Center for Children’s Law and Policy, and 50 National, Regional, and Louisiana-Based Youth Advocacy Organizations and Academics in Support of Plaintiffs-Appellees and Affirmance was transmitted to the Clerk of the Court via CM/ECF and served on all registered counsel.

I further certify that any required privacy redactions have been made, pursuant [5th Cir. R. 25.2.13](#), that the electronic submission is an exact copy of the paper document, pursuant to [5th Cir. R. 25.2.1](#), and that the document has been scanned for viruses with the most recent version of Microsoft Defender and is free of viruses.

/s/ Marsha L. Levick
Marsha L. Levick

DATED: December 1, 2023

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limit of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2, this document contains 6,113 words.

I further certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

/s/ Marsha L. Levick
Marsha L. Levick

DATED: December 1, 2023