

**No. 24-10139**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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BRUCE HENRY,

*Plaintiff-Appellee,*

v.

ATTORNEY GENERAL OF THE STATE OF ALABAMA,  
SHERIFF OF TUSCALOOSA COUNTY, ALABAMA, AND  
DISTRICT ATTORNEY OF TUSCALOOSA COUNTY, ALABAMA,

in their official capacities,

*Defendants-Appellants.*

Appeal from the United States District Court  
for the Middle District of Alabama

No. 2:21-cv-00797-RAH-JTA

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**EN BANC BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER,  
SOUTHERN POVERTY LAW CENTER, CHILDREN'S RIGHTS, THE  
GAULT CENTER, NATIONAL CENTER FOR LGBTQ RIGHTS, AND  
YOUTH MOVE NATIONAL IN SUPPORT OF PLAINTIFF-APPELLEE  
BRUCE HENRY AND AFFIRMANCE**

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and Rules 26.1-1 and 26.1-2 of the Rules of the United States Court of Appeals for the Eleventh Circuit, *Amici Curiae* give notice of the following persons and entities that have an interest in the outcome of this appeal and were omitted from the Certificates of Interested Persons in briefs that were previously filed:

1. Children's Rights, *amicus curiae*
2. The Gault Center, *amicus curiae*
3. National Center for LGBTQ Rights, *amicus curiae*
4. Youth MOVE National, *amicus curiae*

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, *Amici Curiae* Children's Rights, The Gault Center, National Center for LGBTQ Rights, and Youth MOVE National hereby certify that they have no parent corporations, and no publicly held corporation owns 10% or more of their stock. No publicly traded company or corporation has an interest in the outcome of the case or appeal.

/s/ Marsha L. Levick  
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## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT .....	C-1
TABLE OF CONTENTS .....	i
TABLE OF CITATIONS .....	iii
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i> .....	1
STATEMENT OF THE ISSUES .....	4
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	6
I.    ALABAMA LAW LABELS CHILDREN AS “ADULT SEX OFFENDERS” .....	6
A.    Alabama Classifies Many Youth As “Adult Sex Offenders” .....	6
B.    Youth Are Particularly Likely To Be Subject To The Restrictions In Section 15-20A-11(d) .....	7
II.   THE INCLUSION OF INDIVIDUALS WHO WERE MINORS AT THE TIME OF THEIR OFFENSES DEMONSTRATES THAT SECTION 15-20A-11 IS NOT NARROWLY TAILORED TO SERVE THE STATE’S INTEREST .....	9
A.    Youth Mature Out Of Delinquent Behavior And Are Amenable To Rehabilitation .....	10
B.    Youth Are Extremely Unlikely To Sexually Recidivate .....	17
III.  SECTION 15-20A-11(D)(4) INTRUDES ON THE CONSTITUTIONALLY PROTECTED RIGHT TO FAMILY INTEGRITY .....	19

IV. PROHIBITING CHILDREN FROM LIVING WITH A REGISTERED PARENT WILL CAUSE THEM IMMENSE PSYCHOLOGICAL HARM AND TRAUMA .....	22
CONCLUSION.....	25
CERTIFICATE OF COMPLIANCE.....	26
CERTIFICATE OF SERVICE .....	27

## TABLE OF CITATIONS

## Page(s)

## Cases

<i>Ex parte Beasley</i> , 564 So. 2d 950 (Ala. 1990).....	21
<i>C.C. v. L.J.</i> , 176 So. 3d 208 (Ala. Civ. App. 2015).....	21, 22
<i>Ex parte E.R.G.</i> , 73 So. 3d 634 (Ala. 2011).....	20
<i>Gallant v. Gallant</i> , 184 So. 3d 387 (Ala. Civ. App. 2014).....	21
<i>*Graham v. Florida</i> , 560 U.S. 48 (2010).....	10, 11, 12, 14
<i>Henry v. Abernathy</i> , 711 F.Supp.3d 1300 (M.D. Ala. 2024).....	9, 19, 20, 23
<i>Henry v. Sheriff of Tuscaloosa County</i> , 135 F.4th 1271 (11th Cir. 2025).....	9, 10
<i>In re J.B.</i> , 107 A.3d 1 (Pa. 2014).....	18
<i>Ex parte J.E.</i> , 1 So. 3d 1002 (Ala. 2008).....	19
<i>Jones v. Mississippi</i> , 593 U.S. 98 (2021).....	11
<i>K.H. v. Limestone Cnty. Dep't of Hum. Res.</i> , 361 So. 3d 770 (Ala. Civ. App. 2022).....	21
<i>M.E. v. Shelby Cnty. Dep't of Hum. Res.</i> , 972 So. 2d 89 (Ala. Civ. App. 2007).....	21
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	19

<i>*Miller v. Alabama</i> , 567 U.S. 460 (2012).....	10, 11, 12, 14
<i>Ex parte Montgomery Cnty. Dep’t of Hum. Res.</i> , 294 So. 3d 811 (Ala. Civ. App. 2019).....	21
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016).....	10, 11
<i>Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984).....	20
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	10, 13
<i>*Santosky v. Kramer</i> , 455 U.S. 745 (1982).....	19
<i>Striplin v. Ware</i> , 36 Ala. 87 (Ala. 1860) .....	20, 21

## Statutes

Ala. Code § 12-15-203.....	6
Ala. Code § 12-15-204.....	6
Ala. Code § 15-20A-3.....	6
Ala. Code § 15-20A-4.....	6, 7, 8
Ala. Code § 15-20A-5.....	7
<i>*Ala. Code § 15-20A-11</i> .....	8, 9, 10
Ala. Code § 15-20A-17.....	22

## Other Authorities

Act No. 2023-555, H.B. 6, 2023 Reg. Sess. (Ala. 2023).....	20
Ala. Juv. Just. Task Force, <i>Final Report</i> 8 (2017) .....	6, 7
Allison Eck, <i>Psychological Damage Inflicted by Parent-Child Separation is Deep, Long Lasting</i> , PBS: NOVA Next (June 20, 2018).....	24, 25

Anna Claire Vollers, <i>Why Alabama Locks Up Most Teens as Adults and Why That Could Change</i> , AL.com (Nov. 1, 2017) .....	7
Ass'n for the Treatment & Prevention of Sexual Abuse, <i>Children with Sexual Behavior Problems</i> 3 (2023) .....	8
*Brief for the American Psychological Association et al. as <i>Amici Curiae</i> in Support of Petitioners, <i>Miller</i> , 567 U.S. 460 (Nos. 10-9646, 10-9647), 2012 WL 174239.....	12, 13
Brief for the American Psychological Association et al. as <i>Amici Curiae</i> Supporting Petitioners, <i>Graham</i> , 560 U.S. 48 (Nos. 08-7412, 08-7621), 2009 WL 2236778.....	11
Brief of J. Lawrence Aber et al. as <i>Amici Curiae</i> in Support of Petitioners, <i>Miller</i> , 567 U.S. 460 (Nos. 10-9646, 10-9647), 2012 WL 195300.....	12, 13, 14
Edith Chen et al., <i>Childhood Close Family Relationships and Health</i> , 72 Am. Psych. 555 (2017) .....	23
Elizabeth J. Letourneau & Charles M. Borduin, <i>The Effective Treatment of Juveniles Who Sexually Offend: An Ethical Imperative</i> , 18 Ethics & Behav. 286 (2008) .....	16
Elizabeth J. Letourneau & Kevin S. Armstrong, <i>Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders</i> , 20 Sexual Abuse 393 (2008).....	17
Elizabeth J. Letourneau & Michael H. Miner, <i>Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo</i> , 17 Sexual Abuse 293 (2005).....	14, 15
Elizabeth J. Letourneau et al., <i>Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination</i> , 24 Psychol. Pub. Pol'y & L. 105 (2018).....	18
Franklin E. Zimring et al., <i>Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort</i> , 26 Just. Q. 58 (2009).....	15, 18

Franklin E. Zimring et al., <i>Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?</i> , 6 Criminology & Pub. Pol'y 507 (2007) .....	18
Hum. Rts. Watch, <i>Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US</i> (2013) .....	22
*Jill Levenson & Richard Tewksbury, <i>Collateral Damage: Family Members of Registered Sex Offenders</i> , 34 Am. J. Crim. Just. 54 (2009) .....	23
Judith V. Becker & Scotia J. Hicks, <i>Juvenile Sexual Offenders: Characteristics, Interventions, &amp; Policy Issues</i> , 989 Ann. N.Y. Acad. Sci. 397 (2003) .....	15
*Kele M. Stewart, <i>Re-Envisioning Child Well-Being: Dismantling the Inequitable Intersections Among Child Welfare, Juvenile Justice, and Education</i> , 12 Colum. J. Race & L. 630 (2022) .....	24, 25
Lynn F. Beller, <i>When in Doubt, Take Them Out: Removal of Children from Victims of Domestic Violence Ten Years After Nicholson v. Williams</i> , 22 Duke J. Gender L. & Pol'y 205 (2015) .....	24
Mark Chaffin & Barbara Bonner, "Don't Shoot, We're Your Children": Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?, 7 Child Maltreatment 314 (1998) .....	15
*Michael F. Caldwell, <i>Quantifying the Decline in Juvenile Sexual Recidivism Rates</i> , 22 Psych., Pub. Pol'y & L. 414 (2016) .....	17
Michael F. Caldwell, <i>Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders</i> , 19 Sexual Abuse 107 (2007) .....	18
Michael F. Caldwell, <i>Study Characteristics &amp; Recidivism Base Rates in Juvenile Sex Offender Recidivism</i> , 54 Int'l J. Offender Therapy & Compar. Criminology 197 (2010) .....	16, 17
*Michael F. Caldwell, <i>What We Do Not Know About Juvenile Sexual Re-offense Risk</i> , 7 Child Maltreatment 291 (2002) .....	8, 9, 15

R. Karl Hanson et al., <i>The Principles of Effective Correctional Treatment Also Apply to Sexual Offenders: A Meta Analysis</i> , 36 Crim. Just. & Behav. 865 (2009).....	16
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**IDENTITY AND INTEREST OF *AMICI CURIAE*<sup>1</sup>**

Juvenile Law Center, Southern Poverty Law Center, Children’s Rights, The Gault Center, National Center for LGBTQ Rights, and Youth MOVE National join as *Amici* to provide this Court with essential context on how a ruling in this case will affect children. In addition to our individual organizations’ decades-long experience advocating on behalf of youth as set forth below, we also have specific expertise on the issues in consideration before this Court. Juvenile Law Center and Southern Poverty Law Center jointly represented three Alabama individuals registered as adult sex offenders for offenses committed as children in a constitutional challenge to their registration. The Middle District of Alabama recently dismissed the case. *See Pennington v. Taylor*, 776 F.Supp.3d 1118 (M.D. Ala. Mar. 31, 2025).

*Amici* offer the critical perspectives of organizations committed to equity and justice for children and families. The organizations work nationally on behalf of children and families affected by the juvenile and criminal legal system as well as the family policing or child welfare system. Given this national reach and specialized expertise, they are well-positioned to assist the Court in its consideration of this matter

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<sup>1</sup> This brief is submitted under 11th Cir. R. 40-9 and Federal Rule of Appellate Procedure 29(a)(3). 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.

by presenting the policy implications of the Court’s holding and its potential impact on children who are affected by this law.

**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 **Southern Poverty Law Center** (SPLC) is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. The work of SPLC’s Criminal Legal System Reform team around sex offender registration schemes and its interest in this case are grounded in the principle that lifelong punishment perpetuates harm without promoting safety, particularly when these schemes affect children and youth, and these lifelong punishments disproportionately impact Black communities.

**Children's Rights** is a national organization committed to improving the lives of children who are in or impacted by government child-serving systems. Through advocacy and legal action, Children's Rights investigates, exposes, and combats violations of the rights of children, and holds governments accountable for keeping kids safe, healthy, and supported. For 30 years, Children's Rights has achieved lasting, systemic change for hundreds of thousands of children across more than 20 jurisdictions throughout the United States.

**The Gault Center**, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in youth defense. The Gault Center works to ensure that the constitutional rights of young people in juvenile court are fully protected, recognizing the developmental realities of children and the system's differential treatment of youth based on race, sexual orientation, gender identity and expression, disability, and poverty. The Gault Center has developed both national standards for the performance of youth defense attorneys and national standards for youth defense and juvenile court systems to ensure that all youth have access to the full range of constitutional protections guaranteed by the U.S. Constitution. The National Youth Defense System Standards uplifts the importance of systems to recognize the harms of subjecting youth to sex offender registration requirements and calls for an alignment in practices with adolescent development principles. The Gault Center has participated as amicus curiae before the United States

Supreme Court and federal and state courts across the country.

The **National Center for LGBTQ Rights** (NCLR) is a non-profit legal organization dedicated to achieving equality for LGBTQ people and their families. NCLR has a strong interest in ensuring that the protections of family privacy apply to all youth and parents and, in particular, that LGBTQ youth who may be convicted of offenses as minors are not subject to the overly harsh and sweeping restrictions challenged in this case.

**Youth MOVE National** connects, supports, and develops youth leadership in advocacy to create positive change. We practice authentic youth engagement through youth driven decision making by elevating youth voices of lived experience. We ensure that young people are heard and valued as leaders in the agencies, communities, and systems that impact their lives.

### **STATEMENT OF THE ISSUES**

*Amici* present that the impact of Ala. Code § 15-20A-11(d)(4) on children—both those who themselves were convicted of sexual offenses against peers and are later barred from living with their own children as well as children who are separated from their registered parents—is a relevant and necessary consideration in determining whether this prohibition can be applied constitutionally to individuals labeled as adult sex offenders.

## SUMMARY OF THE ARGUMENT

The panel appropriately ruled in accordance with the district court that it is an unconstitutional infringement on the right to family integrity to prohibit individuals registered as “adult sex offenders” from residing with their children. *Henry v. Sheriff of Tuscaloosa County*, 135 F.4th 1271, 1279 (11th Cir. 2025); *Henry v. Abernathy*, 711 F.Supp.3d 1300, 1311 (M.D. Ala. 2024). Alabama has “the most comprehensive and debilitating sex-offender scheme in the nation.” *Abernathy*. at 1304 (quoting *McGuire v. Marshall*, 512 F. Supp. 3d 1189, 1198 (M.D. Ala. 2021)). The scheme labels individuals “sex offenders” pursuant to the Alabama Sex Offense Registration and Community Notification Act (ASORCNA). *See* Ala. Code §§ 15-20A-1 to -48. While ASORCNA was enacted under the guise of public safety and protection, *see* Ala. Code § 15-20A-2, the reality is that the provisions result in immense harm to registered individuals and their families, with little to no public safety benefit. Against this backdrop, this Court considers whether one of the prohibitions imposed by ASORCNA is unconstitutional. *Amici* write in support of Mr. Henry to emphasize ways that section 15-20A-11(d) of the Alabama Code (“section 15-20A-11(d)”) negatively affects children both by applying to individuals who were themselves minors at the time of their offenses and by harming constitutionally protected parent-child relationships.

## ARGUMENT

### I. ALABAMA LAW LABELS CHILDREN AS “ADULT SEX OFFENDERS”

ASORCNA defines an “adult sex offender” as any person convicted of a sex offense. Ala. Code § 15-20A-4(1). This definition includes people who were tried as adults for offenses they committed as children. *See* Ala. Code § 15-20A-4(1), (11). In Alabama, children as young as 14 years old can be subject to a criminal conviction. Alabama automatically treats children ages 16 and older who are charged with a variety of offenses as adults. Ala. Code § 12-15-204. Additionally prosecutors can file a motion to transfer a case from juvenile court to adult criminal court for children as young as 14 years old who are charged with any criminal offense. Ala. Code § 12-15-203. Once prosecuted in adult court, youth are subject to the penalties and punishments associated with adult convictions, including registration as “adult sex offenders” and the attendant consequences. *See* Ala. Code §§ 15-20A-3, -4(1).

#### A. Alabama Classifies Many Youth As “Adult Sex Offenders”

While Alabama does not provide specific data on the number of individuals designated “adult sex offenders” who were minors at the time of their offenses, available data on youth tried as adults suggests the number is large. In an Alabama Juvenile Justice Task Force report, data from 2016 show that Alabama prosecutors directly filed over 1,000 charges against youth in adult criminal court. Ala. Juv. Just. Task Force, *Final Report* 8 (2017), <https://alison.legislature.state.al.us/final-report->

december-2017. Nine out of ten youth tried as adults in Alabama are required to be in adult court by statute, meaning the charged offense requires prosecution in adult court. Anna Claire Vollers, *Why Alabama Locks Up Most Teens as Adults and Why That Could Change*, AL.com (Nov. 1, 2017), [https://www.al.com/news/2017/11/juvenile\\_justice\\_reform\\_kids\\_c.html](https://www.al.com/news/2017/11/juvenile_justice_reform_kids_c.html). Among youth who are transferred to adult court from juvenile court, approximately a third were charged with misdemeanors. *See* Ala. Juv. Just. Task Force, *supra* at 8.

A small, but not insignificant, number of youth tried as adults are convicted of sexual offenses and labeled “adult sex offenders.” *See* Vollers, *supra* (discussing the range of offenses for which youth are tried as adults) Moreover, because of stark racial disparities in transfer decisions and outcomes, Alabama disproportionately labels Black youth “adult sex offenders.” While 31% of Alabama’s youth population is Black, 61% of youth transferred to adult court and 84% of youth subject to statutory exclusion are Black. Ala. Juv. Just. Task Force, *supra*, at 5.

**B. Youth Are Particularly Likely To Be Subject To The Restrictions In Section 15-20A-11(d)**

While over 35 offenses can result in registration as a sex offender under Alabama law, *see* Ala. Code §§ 15-20A-4, -5, and youth may or must be tried as adults for all of them, youth are particularly likely to be convicted of offenses that subject them to section 15-20A-11(d). Section 15-20A-11(d) applies to four types of convictions, as relevant to youth: 1) where the youth engaged in illegal sexual behavior

with a minor sibling or stepsibling; 2) where the youth engaged in illegal sexual behavior with another minor with whom they reside; 3) where the youth engaged in illegal sexual behavior against a child under the age of 12, the provision declared unconstitutional in this case; and 4) where the youth was convicted of an offense against a minor that involved forcible compulsion. *See* Ala. Code §§ 15-20A-11(d)(2)-(5), 15-20A-4(2) (defining a child as “[a] person who has not attained the age of 12”).

Research confirms that youth are most likely to engage in problematic or harmful sexual behaviors within their age group, meaning they are most likely to engage in problematic or illegal sexual behaviors with other minors. Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Re-offense Risk*, 7 Child Maltreatment 291, 295-96 (2002) [hereinafter Caldwell (2002)].

Children and youth are most likely to engage in problematic or harmful sexual behavior with children with whom they are spending time, a group that often includes siblings. *See* Ass’n for the Treatment & Prevention of Sexual Abuse, *Children with Sexual Behavior Problems* 3 (2023), <https://members.atsa.com/ap/CloudFile/Download/pgGxjO4p>. Accordingly, youth are more likely to be convicted of an offense against a sibling or stepsibling or against someone with whom they reside. *See* Ala. Code § 15-20A-11(d)(2), (3). Data show that younger adolescents are more likely to engage in illegal sexual behaviors with children under twelve, Caldwell (2002), *supra*, at 296 fig.3, meaning the provision applying to individuals with victims under

the age of twelve is more likely to apply to youth who were themselves fourteen or fifteen at the time of the offense, *see* Ala. Code § 15-20A-11(d)(4). Finally, because the vast majority of youth engage in illegal sexual behaviors with other minors, Caldwell (2002), *supra*, at 295-96, almost all youth convicted of an offense that involved forcible compulsion will have committed that offense against another minor, *see* Ala. Code § 15-20A-11(d)(5). Therefore, while only some registrants who were adults at the time of their offenses will be affected by section 15-20A-11(d), almost every person who is tried as an adult for an offense they committed as a minor will be affected by section 15-20A-11(d). Yet, youth subject to the proscriptions and requirements of this provision are extremely unlikely to reoffend or pose an ongoing risk to children.

## **II. THE INCLUSION OF INDIVIDUALS WHO WERE MINORS AT THE TIME OF THEIR OFFENSES DEMONSTRATES THAT SECTION 15-20A-11 IS NOT NARROWLY TAILORED TO SERVE THE STATE’S INTEREST**

The Panel decision appropriately held that “Alabama has not narrowly tailored its law to achieve its goal.” *Henry v. Sheriff of Tuscaloosa County*, 135 F.4th 1271, 1279 (11th Cir. 2025). Indeed, the district court reasoned that section 15-20A-11(d)(4) fails to survive strict scrutiny in part because of its “breathhtaking” overbreadth. *Henry v. Abernathy*, 711 F.Supp.3d 1300, 1309 (M.D. Ala. 2024). Section 15-20A-11(d)(4):

applies to *any* sex offense involving a child . . . . It applies for life. No exceptions. No ability to petition or appeal. No

relief. No ability for a parent to ask for relief by showing that he bears no risk of harm to his or her child.

*Id.* Moreover, “[t]he law offers no escape hatch whatsoever. So a person who’s been convicted of a qualifying offense has no chance to avoid the law’s prohibition by proving that they wouldn’t be dangerous to their child.” *Henry v. Sheriff of Tuscaloosa County*, 135 F.4th at 1279. That section 15-20A-11(d)(4) applies to so many individuals who were themselves children at the time of their offenses, *see supra* Part I.B, is one example of this overbreadth. Further, as explained below, it flies in the face of Supreme Court precedent on youths’ amenability to rehabilitation and of research showing that both youth and adults convicted of sexual offenses are unlikely to recidivate, especially as time passes.

#### **A. Youth Mature Out Of Delinquent Behavior And Are Amenable To Rehabilitation**

The United States Supreme Court has consistently recognized that children are categorically less deserving of the harshest forms of punishments. *See Miller v. Alabama*, 567 U.S. 460, 465 (2012) (holding mandatory life without parole sentences for those under the age of eighteen unconstitutional); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding life without parole sentences unconstitutional for youth charged with non-homicide offenses); *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding the death penalty unconstitutional for youth); *see also Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016) (holding the decision in *Miller v. Alabama* applies retroactively);

*Jones v. Mississippi*, 593 U.S. 98, 118 (2021) (“The Court’s decision today carefully follows both *Miller* and *Montgomery*.”). In the sentencing context, the Court cited three essential characteristics that distinguish youth from adults: they “have a ‘lack of maturity and an underdeveloped sense of responsibility’; they ‘are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and their characters are ‘not as well formed.’” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 569-70); *see also Miller*, 567 U.S. at 471; *Montgomery*, 577 U.S. at 206-07.

In reaching these conclusions about youths’ reduced culpability, the Supreme Court relied upon a settled body of research confirming the distinct emotional, psychological, and neurological attributes of youth. *Graham*, 560 U.S. at 68. Youth struggle to “resist impulses and control emotions,” to “gauge risks and benefits as an adult would,” and to “envision the future consequences of [their] actions,” especially “in the face of environmental and peer pressures.” Brief for the American Psychological Association et al. as *Amici Curiae* Supporting Petitioners at 12-13, *Graham*, 560 U.S. 48 (Nos. 08-7412, 08-7621), 2009 WL 2236778. These attributes are critical components of social and emotional maturity and are necessary to make mature, fully considered decisions. *Id.*

Brain imaging studies support developmental research on children’s immaturity, vulnerability to negative influences, and capacity for growth and change. “[A]dolescent brains are not yet fully mature in regions and systems related to higher-

order executive functions such as impulse control, planning ahead, and risk avoidance.” *Miller*, 567 U.S. at 472 n.5 (quoting Brief for the American Psychological Association et al. as *Amici Curiae* in Support of Petitioners at 4, *Miller*, 567 U.S. 460 (Nos. 10-9646, 10-9647), 2012 WL 174239 [hereinafter Brief for the American Psychological Association et al.]); *see also Graham*, 560 U.S. at 68. The frontal lobes of the brain, and especially the pre-frontal cortex, continue to develop through adolescence and into one’s twenties. *See* Brief of J. Lawrence Aber et al. as *Amici Curiae* in Support of Petitioners at 15-16, *Miller*, 567 U.S. 460 (Nos. 10-9646, 10-9647), 2012 WL 195300 [hereinafter Brief of J. Lawrence Aber et al.]; *see also* Brief for the American Psychological Association et al., *supra*, at 25 (citing Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 *Am. Psych.* 739, 742 (2009)).

Adolescents also undergo changes “in the brain’s ‘incentive processing system’—especially the parts that process rewards and social cues.” Brief of the American Psychological Association et al., *supra*, at 5; *see also* Brief of J. Lawrence Aber et al., *supra*, at 26-27 n.62-64 (citing numerous studies). Dopamine levels peak during adolescence in a key region of the brain, “increasing propensity to engage in risky and novelty-seeking behavior.” Brief of J. Lawrence Aber et al., *supra*, at 16 (citing Dustin Wahlstrom et al., *Developmental Changes in Dopamine Neurotransmission in Adolescence*, 72 *Brain & Cognition* 146, 152 (2010)).

The “rapid, pubertal changes in the brain’s incentive and social processing systems outpac[e] the slower, steadier, and later-occurring changes in areas related to executive function and self-control.” Brief for the American Psychological Association et al., *supra*, at 29-30 (citing Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 *Brain & Cognition* 160, 161 (2010)). This disjunction makes “middle adolescence (roughly 14-17) . . . a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And in fact, many risky behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving.” *Id.* at 30 (quoting Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, *supra*, at 162). Indeed, research consistently shows an “age-crime curve,” in which criminal activity “‘peak[s] sharply’ in adolescence and ‘drop[s] precipitously in young adulthood.’” *Brief for the American Psychological Association et al.*, *supra*, at 7–8, (quoting Terrie E. Moffitt, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psychol. Rev.* 674, 675 (1993)); *see also Brief of J. Lawrence Aber et al.*, *supra*, at 30. “Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.” *Roper*, 543 U.S. at 570 (quoting Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile*

*Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003)); *see also Miller*, 567 U.S. at 472. On the other hand, the “very immaturity and plasticity” of the adolescent brain makes children open to growth and change. Brief of J. Lawrence Aber et al., *supra*, at 10-11.

The *Graham* Court acknowledged that the salient characteristics of youth—the lack of maturity, evolving character, vulnerability and susceptibility to negative influences and external pressure—make it “difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” 560 U.S. at 73 (quoting *Roper*, 543 U.S. at 573). Accordingly, the Court recognized that “juvenile offenders cannot with reliability be classified among the worst offenders.” *Id.* at 68 (quoting *Roper*, 543 U.S. at 569); *see also Miller*, 567 U.S. at 476 (noting that the distinctive attributes of youth are always mitigating).

While the Supreme Court’s holding in *Graham* rested largely on the incongruity of imposing a penalty that afforded no opportunity for release on an adolescent who had capacity to change and grow, *see* 560 U.S. at 75, the reasoning applies equally to the lifelong penalty imposed by section 15-20A-11(d). The research on adolescent brain development, which confirms that youth have lessened culpability, applies with equal force to youth who commit sexual offenses. Research contradicts the belief that youth labeled as “sex offenders are a very unique type of criminal.” *See* Elizabeth J.

Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 Sexual Abuse 293, 296-300 (2005) (quoting Florence Shapiro, Senator, Tex. State Senate, Presentation at the National Conference on Sex Offender Registries: The Big Picture of Sex Offenders and Public Policy (Apr. 1998)). Instead, research demonstrates that youth who commit sexual offenses are similar to youth who commit non-sexual offenses. *See id.* at 297 (youth who engage in problematic or illegal sexual behaviors “are similar in their characteristics to other juvenile delinquents and do not represent a distinct or unique type of offender”); Caldwell (2002), *supra*, at 294-95 (That youth adjudicated of sexual offenses “are more likely to reoffend with nonsexual delinquency than sexual delinquency lends support to those who question whether juvenile sex offenders constitute a distinct group”); Franklin E. Zimring et al., *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort*, 26 Just. Q. 58, 70 (2009) (“The best prediction of an adult sex offense was a high-frequency juvenile police contact record, whether or not any of the youthful contacts involved a sex offense.”). Nevertheless, current legislative trends assume that juvenile sexual offenders are simply smaller, younger versions of adult sexual offenders on a singular trajectory to becoming adult offenders. *See* Mark Chaffin & Barbara Bonner, “Don’t Shoot, We’re Your Children”: Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?, 7 Child Maltreatment 314 (1998), Judith V. Becker

& Scotia J. Hicks, *Juvenile Sexual Offenders: Characteristics, Interventions, & Policy Issues*, 989 Ann. N.Y. Acad. Sci. 397, 399 (2003).

As is true of youth who commit non-sexual offenses, sexual offending during adolescence is generally a reflection of developmental factors and transient immaturity, not irreparable corruption.

[The study] findings . . . underline the importance of treating adolescent sex offenders in developmentally sensitive ways. Cognitive changes related to brain development, hormonal changes related to the onset of puberty, the role of family and peer relationships, judgment, impulse control, bonds to school and other pro-social groups, and the response to social stressors such as child abuse could all play an important role in repeated adolescent sexual misconduct but may have little influence on persistent adult sexual offending.

Michael F. Caldwell, *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 Int'l J. Offender Therapy & Compar. Criminology 197, 207 (2010) [hereinafter Caldwell (2010)]; see also Elizabeth J. Letourneau & Charles M. Borduin, *The Effective Treatment of Juveniles Who Sexually Offend: An Ethical Imperative*, 18 Ethics & Behav. 286, 291 (2008) (“Another problem with the predominant approaches to treatment is the fact that many sexually offending youths desist from future offending (even in the absence of intervention).”). Further, youth who commit sexual offenses are amenable to treatment and rehabilitation. See R. Karl Hanson et al., *The Principles of Effective Correctional Treatment Also Apply to Sexual Offenders: A Meta Analysis*, 36 Crim. Just. & Behav. 865, 881 (2009) (noting results

of meta-analysis of studies on treatment effectiveness, finding that individuals with sex offense histories who went through treatment, especially high-quality treatment, had lower sexual and nonsexual recidivism rates than individuals with sex offense histories who did not go through treatment).

**B. Youth Are Extremely Unlikely To Sexually Recidivate**

Research consistently shows that youth who commit sexual offenses have an exceptionally low risk of sexual reoffense. *See* Michael F. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22 Psych., Pub. Pol’y & L. 414, 416, 419 (2016) [hereinafter Caldwell (2016)] (a metanalysis of 98 studies including 33,783 youth showed a 2.75% sexual recidivism rate from studies in the preceding fifteen years, and 4.97% weighted sexual recidivism base rate over all the studies); Elizabeth J. Letourneau & Kevin S. Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 Sexual Abuse 393, 396, 400 (2008) (finding a sexual recidivism rate of 0.9% during 4.3 years of follow-up). The very small percentage of youth who do reoffend are likely to do so in the few years following their conviction. Caldwell (2016), *supra*, at 417 (finding no significant increase in recidivism rates beyond thirty-six months); Caldwell (2010), *supra*, at 205 (finding “the risk of reoffending behavior is highest in the time frame most proximate to the last offense”).

Further, an adolescent's conviction for a sexual offense does not predict whether that adolescent will sexually offend during adulthood. *See* Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 Sexual Abuse 107, 112 (2007) ("These results are consistent with previous findings that the majority of juvenile sexual offenders do not sexually offend as adults, and are much more apt to commit non-sexual offenses. These results did not find that juvenile sex offenders tended to specialize or persist in their sexual offending." (citations omitted)); Zimring et al., *supra*, at 66 (finding that using youth sex offense records to predict adult sexual offending would be wrong 90% of the time and would miss 92.2% of adults who committed sexual offenses); Franklin E. Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 Criminology & Pub. Pol'y 507, 527 (2007) ("What percentage of the adult male police contacts for sex offenses do the juvenile offenders account for? Four percent. So investigating an adult sex offense committed by a male in the Racine data by interviewing the juvenile sex offenders would be wrong 96% of the time.").

Despite this low risk of reoffense, Alabama law presumes that individuals, including children, who have engaged in sexually harmful behavior will always be dangerous,<sup>2</sup> a presumption that itself may be unconstitutional. *See In re J.B.*, 107 A.3d

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<sup>2</sup> In fact, research shows that youth who are required to register as sex offenders are more likely to be at risk of sexual abuse, be approached for sex by adults, and attempt suicide. Elizabeth J. Letourneau et al., *Effects of Juvenile Sex Offender Registration on*

1, 14 (Pa. 2014) (holding that Pennsylvania’s youth sex offender registration scheme violated youths’ “due process rights by utilizing the irrebuttable presumption that all juvenile offenders ‘pose a high risk of committing additional sexual offenses’” (quoting 42 Pa. Stat. and Cons. Stat. Ann. § 9799.11(a)(4))).

### **III. SECTION 15-20A-11(D)(4) INTRUDES ON THE CONSTITUTIONALLY PROTECTED RIGHT TO FAMILY INTEGRITY**

Nearly every child tried as an adult for a sexual offense will lose the ability to parent pursuant to section 15-20A-11(d) long before they become parents. *See supra* Part I. The right to parent one’s child is a fundamental right. *Ex parte J.E.*, 1 So. 3d 1002, 1006 (Ala. 2008) (quoting *K.W. v. J.G.*, 856 So.2d 859, 872 (Ala. Civ. App. 2003)). This fundamental right “does not evaporate simply because they have not been model parents.” *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). Even though section 15-20A-11(d) does not formally terminate parents’ fundamental right to parent their children, it “directly and unduly burden[s] parents’ fundamental right to the ‘care, custody, and control’ of their children, which guarantees their ability to ‘establish a home and bring up children,’” *Abernathy*, 711 F.Supp.3d, at 1311 (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)). This right necessarily implicates the ability to reside or stay overnight with the child, *see Meyer*, 262 U.S. at 399, and to “cohabit[at]e]

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*Adolescent Well-Being: An Empirical Examination*, 24 Psychol. Pub. Pol’y & L. 105, 105–17 (2018) (finding that registration increases risk of sexual abuse, adult sexual approaches, and suicide attempts among youth).

with one's relatives." *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 619 (1984); *Abernathy*, 711 F.Supp.3d, at 1307. The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. *Ex parte E.R.G.*, 73 So. 3d 634, 643 (Ala. 2011) (citing *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). These precedents have been instrumental in determining the process required to terminate a parent's rights under child welfare laws. Likewise, this right has been codified by the Alabama legislature, *see* Act No. 2023-555, H.B. 6, 2023 Reg. Sess. (Ala. 2023), which protects against unwarranted government intrusion into the parent-child relationship. (Act No. 2023-555 became effective September 1, 2023, and is codified at Ala. Code § 26-1-6). Requiring children to live separately from their parents under the stringent ASORCNA guidelines intrudes upon this relationship. A parent, though retaining "parental rights" in some capacity, cannot reasonably make every decision concerning the care, custody, and control of their children if forced to live separately.

For at least 164 years, Alabama courts have emphasized the importance of the parent-child relationship. In *Striplin v. Ware*, the Alabama Supreme Court reasoned:

So great is the reluctance of the court to separate a child of tender years from those who, according to the ordinary laws of human nature, must feel the greatest affection for [him], and take the deepest interest in [his] welfare—that the parental authority will not be interfered with, except in case of gross misconduct.

36 Ala. 87, 90 (Ala. 1860). A natural parent “has a liberty interest in the custody of his child that the state cannot infringe upon without due process of law.” *Gallant v. Gallant*, 184 So. 3d 387, 398 (Ala. Civ. App. 2014) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)). But despite its significant intrusion on the parent-child relationship, section 15-20A-11(d) does not require any due process.

Preventing parents from living with their children because of a conviction is an unconstitutional infringement on the right to family integrity, and it effectively—and erroneously—creates a *de facto* termination of parental rights without any finding related to their fitness to parent under child welfare law. *See K.H. v. Limestone Cnty. Dep’t of Hum. Res.*, 361 So. 3d 770, 772 (Ala. Civ. App. 2022) (labeling the termination of parental rights an “extreme remedy that has been described, at various times, as being draconian and equivalent to a civil death penalty”); *see also Ex parte Montgomery Cnty. Dep’t of Hum. Res.*, 294 So. 3d 811, 817 (Ala. Civ. App. 2019); *M.E. v. Shelby Cnty. Dep’t of Hum. Res.*, 972 So. 2d 89, 102 (Ala. Civ. App. 2007) (plurality opinion). An Alabama court may only terminate a parent’s fundamental right to parent their children in “the most egregious of circumstances.” *Ex parte Beasley*, 564 So. 2d 950, 952 (Ala. 1990).

To terminate parental rights in Alabama, due process requires the Department of Human Resources to exhaust all viable alternatives before seeking to permanently revoke a parent’s substantial liberty interest in family integrity. *C.C. v. L.J.*, 176 So.

3d 208, 214 (Ala. Civ. App. 2015). Accordingly, termination of parental rights should occur only if the child faces actual harm and no “less drastic measures” are available. *Id.* (quoting *Roe v. Conn*, 417 F. Supp. 769, 779 (M.D. Ala. 1976)). Given the process due parents when their fundamental rights are infringed upon in the child welfare context, it is stark that ASORCNA imposes a similar infringement absent any individualized consideration and without any similar due process protection.

#### **IV. PROHIBITING CHILDREN FROM LIVING WITH A REGISTERED PARENT WILL CAUSE THEM IMMENSE PSYCHOLOGICAL HARM AND TRAUMA**

Section 15-20A-11(d)(4) interferes with the constitutional right to family integrity, which is a right not just for parents but also critical for children. A growing body of research affirms the importance of these constitutional protections, highlighting that maintaining lifelong connections to family members supports positive development and wellbeing for children. Our laws must therefore protect this right where the evidence establishes that severance of that bond would cause harm to the child.

Sex offender registration has significant effects on parent-child relationships even without the unique restrictions in section 15-20A-11(d). Registered parents face barriers to fully parenting their children created both by law and by social stigma. *See, e.g.,* Ala. Code § 15-20A-17 (regulating registrants’ ability to enter or remain on school grounds); Hum. Rts. Watch, *Raised on the Registry: The Irreparable Harm of Placing*

*Children on Sex Offender Registries in the US* 61-64 (2013), [https://www.hrw.org/sites/default/files/reports/us0513\\_ForUpload\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf) (collecting stories of the ways registration affected registrants' children). Because of the stigma flowing from their parent's status as a registered sex offender, children of registered parents often lose friendships and are treated differently by adults such as teachers and neighbors. Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am. J. Crim. Just. 54, 63-64 (2009). Further, parental registration has significant mental health impacts on children. *Id.* (children of registered parents "most often exhibit anger (80%), depression (77%), anxiety (73%), feeling left out by peers (65%), and fear (63%)" and 13% exhibit suicidal tendencies). As the district court noted, "No other state has crafted or enacted such a broad, unyielding rule in th[e] context [of sex offenders]." *Abernathy*, 711 F.Supp.3d, at 1309. In enacting section 15-20A-11(d), Alabama uniquely compounded the already significant and extremely harmful impacts that registration alone has on the parent-child relationship, a relationship vital to children's healthy development.

Research has repeatedly demonstrated the importance of family connections for a child's development and wellbeing. During childhood, maintaining close family relationships can act as a "buffer" against developmental stress, ameliorating the impact that trauma and adversity have on long-term physical health outcomes. Edith Chen et al., *Childhood Close Family Relationships and Health*, 72 Am. Psych. 555,

558 (2017). The positive effects of preserving family connections continue beyond childhood.

“The scientific evidence against separating children from families is crystal clear,” and “[w]e all know it is bad for children to be separated from caregivers.” Allison Eck, *Psychological Damage Inflicted by Parent-Child Separation is Deep, Long Lasting*, PBS: NOVA Next (June 20, 2018) (quoting Erin C. Dunn, a social and psychiatric epidemiologist at Massachusetts General Hospital’s Center for Genomic Medicine), <https://www.pbs.org/wgbh/nova/article/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting/>.

While often done under the guise of a “child’s best interest,” research consistently demonstrates that removal from family “may be ‘more damaging to the child than doing nothing at all.’” Lynn F. Beller, *When in Doubt, Take Them Out: Removal of Children from Victims of Domestic Violence Ten Years After Nicholson v. Williams*, 22 Duke J. Gender L. & Pol’y 205, 216 (2015) (quoting *Nicholson v. Williams*, 203 F. Supp. 2d 153, 204 (E.D.N.Y. 2002)). For children, disconnection from relationships and community “contributes to feelings of sadness, loss, isolation, and anxiety.” Kele M. Stewart, *Re-Envisioning Child Well-Being: Dismantling the Inequitable Intersections Among Child Welfare, Juvenile Justice, and Education*, 12 Colum. J. Race & L. 630, 640 (2022).

Ongoing family separation creates a severe risk of long-term harm for children, including toxic stress, the destruction of essential attachments, grief, loss, “anxiety, emotional distress, behavioral problems, depression, and lifelong health consequences.” *Id.* at 639 (citing Trivedi, *supra*, at 549-50). Grief can further manifest in “guilt, post-traumatic stress disorder, isolation, substance abuse, anxiety, low self-esteem, and despair.” Mitchell, *supra*, at 4-5. Children separated from their families can experience a “monsoon of stress hormones . . . flood[ing] the brain and body,” and potential increased risks of developing heart disease, diabetes, and even certain forms of cancer. Eck, *supra*.

### CONCLUSION

Registration under ASORCNA tears families apart. The restriction on where a child can live means that they may lose connections to their parent as well as siblings. The harm of forced separation under section 15-20A-11(d) cannot be minimized and must be understood as unnecessary collateral damage from imposing the consequences of ASORCNA.

For the foregoing reasons, Amici Curiae respectfully requests that the Court affirm the District Court’s ruling that section 15-20A-11(d)(4) unconstitutionally violates the right to family integrity.

Respectfully submitted,

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Date: November 7, 2025

### **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume 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 Eleventh Circuit Rule 32-4, this document contains 5,918 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) 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 14-point Times New Roman font.

Dated: November 7, 2025

/s/ Marsha L. Levick  
Marsha L. Levick

*Counsel for Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2025, I electronically filed the foregoing with the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ Marsha L. Levick  
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