

26-0950-cv

United States Court of Appeals *for the* Second Circuit

SHAKIRA LESLIE, on behalf of themselves and all others similarly situated,
Plaintiff-Appellant,
SHAMILL BURGOS, on behalf of themselves and all others similarly situated,
Plaintiff,
(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK (NEW YORK CITY)

BRIEF FOR *AMICI CURIAE* JUVENILE LAW CENTER AND THE GAULT CENTER IN SUPPORT OF APPELLANT AND REVERSAL

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Defendants-Appellees.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), counsel for amici curiae certify that *Amici* are not owned by a parent corporation, and no publicly held corporation owns more than ten percent of stock in *Amici*.

Dated: July 30, 2026

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INTEREST AND IDENTITY OF AMICI¹

Juvenile Law Center advocates for rights, dignity, equity, and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of *amicus* briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

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

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici* certifies that no counsel for any party in this case authored this brief in whole or in part. No person or entity aside from *Amici*, its members, or its respective counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *Amici* has authority to file this brief because all parties have consented to the filing.

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 Gault Center also conducts assessments of states' youth defense delivery systems and works with local leaders to strengthen infrastructures that allow for children to meaningfully access qualified and specialized lawyers. The Gault Center has participated as amicus curiae before the United States Supreme Court and federal and state courts across the country.

SUMMARY OF THE ARGUMENT

Amici write in support of Appellant to address the particularly harmful impact that Appellees' DNA collection and storage practices have on children, especially Black and Latine youth. Modern research confirms what the law has long recognized: adolescents differ from adults in both brain development and behavior, and they are entitled to heightened protections under the law. The U.S. Supreme Court has held that developmental differences between children and adults matter when assessing children's culpability and treatment by law enforcement. *See, e.g., J.D.B. v. North Carolina*, 564 U.S. 261, 265 (2011) (holding "that a child's age properly informs the *Miranda* custody analysis"); *id.* at 268-77. Federal courts and New York law also recognize the unique protections owed to children entangled with the legal system to protect them from ongoing harm and stigma. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 551-53 (1971) (White, J., concurring) ("[T]he state legislative judgment [is] not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others."). Appellees' practice of collection and storage of children's DNA samples runs counter to these requirements, exposing children to unnecessary and prolonged surveillance by law enforcement, contradicting the confidentiality protections of the juvenile legal system, and putting young people at risk of long-term harm.

The harm of these policies disparately impacts Black and Latine youth due to their overrepresentation at every stage of the criminalization process. Because Black and Latine youth are disproportionately subjected to police contact, permitting DNA collection from these encounters effectively creates a permanent racialized genetic surveillance system built on existing discriminatory policing patterns. Compounding this harm, the NYPD relies on abandonment sampling—a technique in which DNA is collected from discarded items without a person’s knowledge or consent. The NYPD itself has found abandonment sampling to be the most error-prone method of DNA collection. This heightens the risk of wrongful prosecution for Black and Latine youth, whose DNA is disproportionately likely to be in the database in the first place.

ARGUMENT

- I. The New York Police Department’s (NYPD) collection and storage of children’s DNA disregards developmental differences between children and adults and is inconsistent with the law.**
 - A. As the Supreme Court has repeatedly recognized, children are entitled to unique legal protections because of their distinct developmental phase.**

The U.S. Supreme Court has repeatedly recognized that the law must provide heightened protections for youth because adolescents are more susceptible to pressure, more impulsive, and more capable of change than adults. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 570 (2005) (Adolescents’ “vulnerability and comparative

lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”); *Graham v. Fla.*, 560 U.S. 48, 68 (2010) (“It remains true that from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”) (internal quotations omitted); *J.D.B.*, 564 U.S. at 274 (Our “history [is] ‘replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.”).

The Court has rooted these conclusions in developmental and neuroscientific research that has scientifically confirmed what is commonly understood: children are fundamentally different from adults. They “lack the mature capacity for self-regulation” present in adults. *See* RICHARD J. BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH, 91-97 (2013). This research also affirms that children have reduced decision-making capacity, are less able to resist coercive influence, and are still in the process of character development. *See* Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1011-15 (2003).

Executive functioning, which encompasses abilities such as planning and impulse control, does not fully develop until the mid- to late twenties. *See* Arthur

MacNeill Horton Jr & Cecil R. Reynolds, *Trajectory of the Development of Executive Functioning: Implications for Death as a Penalty as Applied to the Late Adolescent Class*, 7 J. PED. NEUROPSYCH. 66, 71 (2021). Although executive functioning improves throughout adolescence, adolescent decision-making is still limited by psychosocial immaturity. *See* Steinberg & Scott at 1011-13; *see also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 FUTURE OF CHILDREN 15, 20 (2008).

While adolescents are more prone to risky and impulsive behavior, they are also likely to discontinue such behavior in their mid to late twenties as their capacity to emotionally regulate and control impulses improves. *See* Amicus Br. for Am. Psych. Ass'n et al., at 19-25, *Miller v. Alabama*, 567 U.S. 460 (2012) (citing, among others, Alan Waterman, *Identity Development from Adolescence to Adulthood*, 18 DEVELOPMENTAL PSYCH. 341, 355 (1982); Brent Roberts et al., *Patterns of Mean-Level Change in Personality Traits Across the Life Course*, 132 PSYCH. BULL. 1, 14-15 (2006)). Neuroplasticity is a core feature of adolescence, meaning adolescents' brains are adaptive and amenable to change. *See* NAT'L ACADEMIES OF SCIENCES, ENG'G, AND MED., *THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH*, 32 (2019); *see generally* Michael S.C. Thomas & Mark H. Johnson, *New Advances in Understanding Sensitive Periods in Brain Development*, 17 CURRENT DIRECTIONS IN PSYCH. SCI. 1 (2008). Thus, most

individuals who violate laws as adolescents cease this behavior upon reaching adulthood. See Rolf Loeber et al., *Bulletin 1: From Juvenile Delinquency to Young Adult Offending* 3 (2013), available at <https://www.ojp.gov/pdffiles1/nij/grants/242931.pdf> (noting that “[t]he prevalence of [] offending . . . tends to increase from late childhood, peaks in the teenage years (around ages 15-19), and then declines in the early 20s.”); Lila Kazemian, *Pathways to Desistance from Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice*, 3 (2021), available at <https://www.ojp.gov/pdffiles1/nij/301503.pdf>.

These findings carry significant implications for NYPD’s DNA collection practices. If adolescent behavior is often transient and driven by developmental immaturity rather than fixed character traits, then collecting children’s DNA imposes a disproportionate consequence for conduct which is likely to cease in adulthood. Moreover, the DNA collection may occur irrespective of a child’s conduct or culpability, as the NYPD’s collection and storage of DNA extends to those never arrested or convicted of a crime.

B. The NYPD’s DNA collection and storage system disregards the unique protections for children under judicial precedent and New York law.

Juvenile courts, from their inception, have deliberately protected children’s development and confidentiality. The early architects of the juvenile courts designed

them around the principle that children are different from adults—they are “less culpable for their conduct and more amenable to rehabilitation[.]” Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 525 (2004). They also recognized that confidentiality would protect the rehabilitative goal, so early juvenile courts aimed to shield children from the stigma of criminal proceedings to avoid restricting children’s future potential and to ensure their healthy adjustment into society. *Id.* at 526-27.

The U.S. Supreme Court has repeatedly recognized the rehabilitative purpose of juvenile courts and the need for strong confidentiality protections for children.

“[T]he juvenile justice system rests on . . . deterministic assumptions. Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures. . . or of other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others. Coercive measures, where employed, are considered neither retribution nor punishment. Supervision or confinement is aimed at rehabilitation, not at convincing the juvenile of his error simply by imposing pains and penalties.”

McKeiver, 403 U.S. at 551–52. This “hallmark” of confidentiality is born out of a concern for the welfare of children, ensuring that they can “hide [their] youthful errors and ‘bury them in the graveyard of the forgotten past.’” *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) (citations omitted);

see also Application of Gault, 387 U.S. 1, 23-26 (1967) (recognizing that states may “provide and [] improve provision for the confidentiality of records of police contacts and court action relating to juveniles” consistent with due process, and acknowledging the “commendable principles” of the rehabilitative juvenile court system).

New York law also explicitly insulates children in the juvenile system from the harsh consequences of criminalization, with a focus on recognizing children’s capacity to change and protecting them from long-term consequences for childhood mistakes. The overriding intent of New York’s juvenile delinquency law is to empower Family Court to intervene and improve the lives of troubled young people while protecting the public. *In re Robert J.*, 2 N.Y.3d 339, 346 (N.Y. 2004); *see also Matter of Quinton A.*, 49 N.Y.2d 328, 334-35 (1980) (“[I]t is well to remember that the primary thrust of article 7 of the Family Court Act is treatment and rehabilitation, rather than deterrence or retribution concerns traditionally associated with criminal law.”) Accordingly, juvenile delinquency proceedings by nature are considered civil matters in New York which cannot result in a criminal conviction, thus protecting the child from the stigma of a criminal record. “Indeed, a hallmark of the juvenile justice system is that a delinquency adjudication cannot constitute a criminal conviction and a juvenile delinquent cannot be denominated a criminal.” *Green v. Montgomery*, 95 N.Y.2d 693, 698 (2001). Rather, a Family Court

adjudication is a civil proceeding, and its purpose is to supervise and guide troubled youth. *Id.*

New York law also unambiguously protects the confidentiality of juvenile court records, maintaining youth arrest and disposition records separate and apart from those of adults and withholding them from public inspection. *See* N.Y. Fam. Ct. Law § 381.3(1). New York law requires the immediate destruction of a young person's fingerprints, palm prints, and photographs if they are not adjudicated a juvenile delinquent for a felony (*id.* § 354.1(2)) and prohibits the use of any confession or admission made in juvenile court to be used against them in any other court (*id.* § 381.2(1)). And children with criminal records are able to distance themselves from the criminal legal system through New York's automatic expungement and clean slate laws. *See* N.Y. Fam. Ct. Law § 783(e); N.Y. Crim. Proc. Law § 160.57. By contrast, no protections or special considerations are extended to youths through the NYPD's practice of DNA collection and storage.

As described in Section I, the U.S. Supreme Court has also held that children deserve unique protections in a variety of legal contexts. Particularly pertinent to the NYPD's practice of collecting children's DNA, children must be granted heightened protection during police interrogations. *See J.D.B.*, 564 U.S. at 261, 265 (holding the age of a child subjected to police questioning is relevant to the *Miranda* custody analysis); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (holding children

are particularly vulnerable to police questioning and courts must consider youth when analyzing whether a confession is voluntary); *Gallegos v. Colorado*, 370 U.S. 49, 50, 55 (1962) (holding the confession of a 14-year-old was involuntary when he was held for five days without seeing a parent or lawyer).

As a result of Appellees' practice, children – including those who were never even charged or convicted of a crime – are subjected to the same DNA collection as adults, their DNA kept in a suspect database sometimes indefinitely. This practice is contrary to federal precedent and New York law.

II. The NYPD's DNA collection and storage practices disproportionately impact Black and Latine youth.

Black and Latine youth in New York bear the brunt of the NYPD's DNA collection policy because they experience disproportionate contact with the police. *See* N.Y. State Div. of Crim. Just. Servs., *Addressing Racial and Ethnic Disparities in New York*, 18 (2025), available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/Federal%20Fiscal%20Year%202024%20%20Threeyear%20New%20York%20State%20Plan%20to%20Address%20Racial%20and%20Ethnic%20Dispariti.pdf>. Black and Latine youth account for about 91% of juvenile arrests in New York City despite making up only 68% of the juvenile population. *Id.* at 19-20; *see also* Madina Touré, *Report: Black, Latino youths still getting arrested at disproportionate rates in NYC*, POLITICO (July 13, 2020), available at [11](https://www.politico.com/states/new-york/city-</p>
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hall/story/2020/07/13/report-black-latino-youths-still-getting-arrested-at-disproportionate-rates-in-nyc-1300084.

And the NYPD does not limit collection of DNA to youth they have arrested. Leslie Statement of Material Facts ¶ 36, *Leslie v. City of New York*, No. 22-cv-2305 (NRB), ECF No. 142 (S.D.N.Y. Aug. 8, 2025). Nor does the NYPD limit its collection of abandonment samples to controlled environments, like a police precinct interview room. Indeed, an NYPD DNA Collection Guide provides guidance on how to collect such samples in non-controlled environments, like a public place. *Id.* at ¶ 12.

The fact that the NYPD collects DNA samples from individuals who are not under arrest and in public spaces further compounds the potential impact on communities of color, given the well-documented racial disparities in police encounters. A 2020 review of NYPD's stops revealed that New Yorkers of color made up 91 percent of those stopped—with Black New Yorkers accounting for 56 percent of those stopped despite making up just 24 percent of the city's population. Alice Speri, *The NYPD is Still Stopping and Frisking Black People at Disproportionate Rates*, *The Intercept* (June 10, 2021), available at <https://theintercept.com/2021/06/10/stop-and-frisk-new-york-police-racial-disparity>. While Black and Latine individuals were more likely to be stopped, the NYPD was less likely to find contraband on Black and Latine individuals—

suggesting that these stops are motivated by factors other than reasonable suspicion of criminal activity. *NYC stop-and-frisk data: Whites more likely to carry weapons and drugs*, RT (May 23, 2013), available at <https://www.rt.com/usa/stop-frisk-whites-drugs-667>.

This is not speculation. The NYPD has already engaged in what critics have termed “genetic stop-and-frisk”—conducting door-to-door DNA dragnets that pressure hundreds of New Yorkers to submit to DNA collection when the department runs out of leads in certain cases. In 2016, for example, the NYPD collected saliva swabs from 500 males, including at least 360 Black males, in a large area surrounding the site of a murder. Nina Loshkajian *et al.*, *Genetic Surveillance: The NYPD’s Rogue DNA Database*, 5 (Jun. 27, 2024). The dragnet did not turn up the perpetrator, but the males’ DNA was entered into the NYPD’s database nonetheless. *Id.*

These practices intensify pre-existing disparities. Researchers have attributed inequities in the juvenile legal system to implicit racial bias in policing and historical structures of racism that have segregated Black individuals into neighborhoods that are under-resourced, underfunded, and over-surveilled. *See* Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483, 485 (2004); Lauren Krivo & Ruth Peterson, *Extremely Disadvantaged Neighborhoods and Urban Crime*, 75 SOC. FORCES 619, 639-40

(1996). While the juvenile legal system is premised on the understanding that adolescents are different from adults, research suggests that this shared cultural belief is often superseded by more pernicious stereotypes when it comes to Black youth—who are perceived as violent, aggressive, dangerous, and possessing adult-like criminal intent. Graham & Lowery, *supra*, at 485; *see generally* Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERS. & SOC. PSYCHOL. 526 (2014). Moreover, the structure of racial residential segregation in U.S. cities means that disadvantaged Black neighborhoods are often situated in close proximity to one another, forming larger clusters of extreme disadvantage. Krivo & Peterson, *supra*, at 639. This spatial clustering contributes to what researchers describe as “ecological contamination,” whereby police view certain areas as involving more crime and therefore watch, arrest, and take official actions more frequently in those neighborhoods. *Id.* at 639-40.²

² The “tough on crime” era of the 1980s and 1990s contributed significantly to police disproportionately targeting Black and Latine youth. Following a few isolated, high-profile incidents involving youth crime, a moral panic and a racist media frenzy led to the passage of multiple “tough on crime” measures resulting in the dehumanization, criminalization, and over-surveillance Black and Latine youth. Headlines with obvious racist overtones predicted a surge in crime led by violent, remorseless, and brutal children. Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. CIV. RTS. & ECON. DEV. 765, 770-71 (2015). Even though youth crime rates were already declining by the mid-1990s, nearly every single state, including New York, passed punitive laws that fueled the mass incarceration of Black and Latine youth. Carroll Bogert & Lynnell Hancock,

The NYPD’s DNA database exacerbates this disparate treatment of people of color.³ See Murphy & Tong, *supra*, at 1851, 1887. In fact, as compared to other states’ databases, the New York DNA database has one of the highest disparity rates between people of color and white individuals. *Id.* at 1887. Although these studies document database disparities among adults generally, it follows that Black and Latine youth—who are disproportionately subjected to police contact in the first place (*N.Y. State Div. of Crim. Just. Servs.*, *supra*, at 18-20)—face the same disparate treatment compared to their white counterparts. As a result, New York’s Black and Latine youth are likely to be the basis for investigative targeting more often than their white counterparts. A biometric profile is checked against crime scene samples roughly one hundred thousand times a day. Erin Murphy, *Paradigms of Restraint*,

The Media Myth that Demonized Generation of Black Youth, The Marshall Project (Nov. 20, 2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth> (revealing that New York started the trend of dismantling the protections of juvenile courts in 1978, with virtually every single state following suit by the 1990s).

³ This is not unique to New York. DNA databases generally reflect the disparate treatment of minority communities. See Erin Murphy & Jun H. Tong, *The Racial Composition of Forensic DNA Databases*, 108 CALIF. L. REV. 1847, 1851, 1883 (2020) (“The data show [sic] that the DNA of BIPOC persons is collected 1.37 times more often than the DNA of White persons Within the BIPOC group, it is clear that Black persons bear the brunt of the disparity: we estimate that 2.26% of the Black population have their DNA collected in a year.”) Indeed, researchers found that “states have stockpiled genetic material from a large and demographically disproportionate share of the Black population.” *Id.* at 1898; see also *id.* at 1851 (finding the DNA of Black individuals is collected and stored “at two to three times the rate of Black persons in the population”).

57 DUKE L.J. 1321, 1377-78 (2008). Because DNA databases are racially disproportionate, certain communities regularly fall under “genetic suspicion” while others go unbothered. Murphy & Tong, *supra*, at 1898.

Disparate policing practices result in DNA databases that are overrepresented by Black and Latine youth. While this overrepresentation is bad in and of itself, when error arises in the NYPD’s collection of DNA—the collection through abandonment samples being the most error-prone—Black and Latine youth are the ones most likely to be harmed. Indeed, the NYPD found that 76 percent of all DNA collection errors involve “abandonment suspect samples,” caused by “human error, policy procedural inadequacies, and the need for more formal training.” *Leslie* Statement of Material Facts, ECF No. 142 at ¶ 50. The NYPD itself admits that such errors can result in someone being “wrongfully prosecuted and potentially convicted.” *Id.* ¶ 49. Compounding this harm, the NYPD has acknowledged that the profiles of some individuals who have “committed no crime may remain in [the Local DNA Index System] in perpetuity.” *Id.* ¶ 118. Black and Latine youth, whose DNA is more likely to be in the database than their counterparts in the first place, thus face a heightened risk of being incorrectly accused of a crime and permanently ensnared in the criminal system.

This Court should find that Appellees' practice of collecting and storing children's DNA undermines the unique protections owed to young people under both federal law and New York's juvenile legal system. The practice disregards the well-established developmental differences between children and adults, exposes children to long-term consequences that contradict and undermine the rehabilitative purpose of the juvenile courts, and circumvents the confidentiality protections designed to shield youth from lasting stigma.

Moreover, these harms fall disproportionately on Black and Latine youth. Because of disparate policing practices, Black and Latine youth are more likely to encounter police. They are more likely to have their DNA collected through error-prone abandonment sampling. Finally, they are more likely to face the risk of wrongful prosecution, and more likely to have their profiles retained in the database permanently, even if they are never charged with or convicted of a crime.

CONCLUSION

For the foregoing reasons, *Amici* respectfully submit that the Court should reverse the district court's order dismissing this case.

Respectfully submitted,

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Dated: July 30, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this Brief of Amicus Curiae in Support of Plaintiff–Appellant and Reversal complies with the type-volume limitation, typeface requirements, and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6), and 29(5) because it contains 3,778 words, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f), and has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system Microsoft Word.

Dated: July 30, 2026

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Law Center And The Gault Center*

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2026, I electronically filed the foregoing document with the Clerk of the Court using the ACMS system, which will send notification of such filing to all counsel of record.

Dated: July 30, 2026

FENWICK & WEST LLP

s/ Catherine McCord

Catherine McCord

*Counsel for Amici Curiae Juvenile
Law Center And The Gault Center*