No. 15-903

IN THE

Supreme Court of the United States

J.B., a Minor, by Thomas Benjamin and Janet Benjamin, Parents and Natural Guardians,

Petitioner,

—v.—

JAMES B. FASSNACHT, Pennsylvania State Police Officer, in his individual capacity; *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF *AMICUS CURIAE* THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

Founded in 1953, the American Academy of Child and Adolescent Psychiatry ("AACAP") is comprised of approximately 9,000 child and adolescent psychiatrists. AACAP partners with its members in advocacy efforts at the federal and state levels to improve policies and services for children and adolescents with mental illness. AACAP works to inform policymakers and administrators about issues affecting child and adolescent psychiatry and children's mental health and provides information to its members regarding pertinent legislation and regulatory activities.[1]

AACAP is committed to the advancement of science. *Amicus curiae* respectfully submits this brief to provide the Court with psychiatric and psychological research relevant to the legal issues under consideration. AACAP and its members therefore have a substantial interest in this Court's resolution of this case.

SUMMARY OF ARGUMENT

Strip searches of youths have the potential to cause lasting and severe psychological harm. Individuals who are strip searched can experience post-traumatic stress symptoms including depression, anxiety, inability to sleep and, in the most severe instances, suicidal

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[1] Pursuant to this Court's Rule 37.2(a), AACAP gave all parties at least 10-days' notice of its intention to file this brief. AACAP has submitted to the Clerk statements from all parties consenting to the filing of this brief. This brief was not authored in whole or part by counsel for any party. No counsel or party other than *amicus curiae*, its members or their counsel made a monetary contribution to fund the preparation or submission of this brief.

tendencies. These harms can be even more pronounced when youths are the subject of the search. Young individuals in the juvenile justice system are particularly vulnerable.

Because of the differences between youth and adults, uniform and routine strip searching of youths being admitted to juvenile detention centers is inappropriate. Rather, to mitigate the risk of harm, a separate standard for youth should be established rendering strip searches permissible in a more narrowly tailored context. *Amicus curiae* (1) respectfully requests that the Court consider this research and (2) urges the Court to grant Petitioner's writ so the Court may determine the proper standard for strip searches of youths being admitted to juvenile detention facilities.

ARGUMENT

I. THE COURT HAS RECOGNIZED THE VALUE OF SCIENTIFIC RESEARCH IN DECIDING CASES THAT IMPLICATE THE DISTINCT PSYCHOLOGICAL CHARACTERISTICS OF JUVENILES

This Court has consistently held, as recently as last month, that the differences between youth and adults merit consideration in adjudicating constitutional questions. *See, e.g.*, *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016); *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). This Court has recognized that a significant body of scientific research

establishes that there are considerable psychological, physiological and social differences between youth and adults, and this research has been instrumental in the Court's analysis in recent decisions finding youths subject to a standard different from adults. *See e.g.*, *Miller*, 132 S. Ct. at 2465; *Graham*, 560 U.S. at 68; *Roper v. Simmons*, 543 U.S. at 568-76. An understanding of how childhood and adolescent trauma can impact adaptive functioning, emotion regulation, cognition and memory, and neuroendocrine function throughout life is an essential step in evaluating whether the Constitution requires a different standard to be applied to youth in the context of strip searching.

The Court has previously relied on this type of research in adjudicating other constitutional questions implicating the rights of minors. For example, research regarding adolescent development was critical in informing the Court's ruling in *Roper v. Simmons*, 543 U.S. 551 (2005), which held that the imposition of the death penalty for offenders who were under the age of 18 at the time of their offense was unconstitutional. *Roper* relied on medical, psychological and sociological studies regarding human development,[2] all of which demonstrated that youths under age eighteen are less mature, more vulnerable, and their per-

[2] These studies included, *inter alia*: American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 701-706 (4th ed., rev. 2000); Jeffrey J. Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339 (1992); 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); Erik H. Erikson, *Identity: Youth and Crisis* (1968). *See Roper*, 543 U.S. at 569-73.

sonalities are still developing compared to adults. *Id.* at 568-76. This research, in part, led the Court to find juveniles categorically less culpable than adults who commit similar crimes. *Id.* at 567. So, too, in *Graham v. Florida*, 560 U.S. 48, 82 (2010), which held that the Eighth Amendment prohibits a sentence of life without parole for juvenile non-homicide offenders,[3] and in *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012), where the Court held that the Eighth Amendment precludes a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders.[4] In reaching these conclusions, *Roper*, *Graham* and *Miller* all cited to science-based *amici curiae* briefs. In fact, in *Graham*, Justice Kennedy directly referenced an *amicus curiae* brief filed by AACAP: "As petitioner's *amici* point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *See Graham*, 560 U.S. at 68 (citing Brief for American Medical Association et al. as Amici Curiae Supporting Petitioner, 543 U.S. 551 (No. 03-633); Brief for American Psychological Association et

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[3] In *Graham*, the Court cited to briefs filed by scientific and psychological organizations and noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id.* at 68.

[4] In *Miller*, the Court reaffirmed the "distinctive attributes of youth[, which] diminish the penological justifications for imposing the harshest sentences on juvenile offenders." *Id.* at 2465. The Court even noted that "[t]he evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger." *Id.* at 2464 n. 5.

al. as *Amici Curiae* Supporting Petitioner, 543 U.S. 551 (No. 03-633)). Accordingly, it is clear that the Court's "decisions [have] rested . . . on science and social science . . . ." *Miller*, 132 S. Ct. at 2464.

The Court's reliance on research concerning the differences between youth and adults has not been limited to those cases involving criminal sentencing for juvenile offenders. *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364, 375 (2009), held that the strip searching of schoolchildren was constitutionally permissible only when based on a reasonable suspicion that, *inter alia*, is "reasonably related to the objectives of the search and not excessively intrusive in light of the age . . . of the student . . . ." *Id.* at 378 (citing *N.J. v. T.L.O.*, 469 U.S. 325, 342 (1985) (internal quotations omitted)). In reaching this conclusion, the Court quoted the professional view that strip searches of youth "can 'result in serious emotional damage.'" *Id.* at 375 (quoting Irwin A. Hyman & Donna C. Perone, *The Other Side of School Violence: Educator Policies and Practices that May Contribute to Student Misbehavior*, 36 J. Sch. Psychol. 7, 13 (1998)).

For similar reasons, the Court should consider the scientific evidence suggesting that strip searching could constitute early-life trauma that may result in long-term psychological harm.

II. STRIP SEARCHES CAN CAUSE EMOTIONAL AND PSYCHOLOGICAL HARM

A strip search, in which an individual is forced to reveal the most private parts of his or her body to a complete stranger, is an intense intrusion on individual privacy. Privacy is fundamental to one's sense of

self,[5] and violating this privacy has the potential to lead to psychological damage to the target of the search. As one academic expert described, "[b]eing strip searched leaves people disgusted and annoyed, or worse, degraded, humiliated and paralyzed. Victims may feel helpless, indignant, and shocked, and may experience, for several years, psychological symptoms of trauma similar to those endured by rape survivors." Daphne Ha, *Blanket Policies for Strip Searching Pretrial Detainees: An Interdisciplinary Argument for Reasonableness*, 79 Fordham L. Rev. 2721, 2740 (2011).[6] "Psychological experts have . . . testified that [adult] victims often suffered post-search symptoms including sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions, and that some victims have been moved to attempt suicide." Steven F. Shatz et al., *The Strip Search of Children and the Fourth Amendment*,

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[5] *See* Trina J. Magi, *Fourteen Reasons Privacy Matters: A Multidisciplinary Review of Scholarly Literature*, 81 Library Q. 187, 192 (2011) ("[P]rivacy is a fundamental right that enables people to think of their existence as their own and protects the individual's interest in becoming, being, and remaining a person." (internal quotation marks omitted)); Robert C. Post, *Three Concepts of Privacy*, 89 Geo. L.J. 2087, 2092 (2001) ("[A]n invasion of privacy can constitute an intrinsic offense against individual dignity.") (internal quotation marks omitted).

[6] The potential negative effects of strip searching have been long-known. Over thirty years ago, one observer explained that "[p]ost-search symptoms include sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions." M. Margaret McKeown, *Strip Searches Are Alive and Well in America*, 12 Hum. Rts. 37, 42 (1985).

26 U.S.F. L. Rev. 1, 12 (1991) (internal quotation marks omitted).[7]

Courts nationwide have recognized that strip searching causes psychological harm. *See, e.g.*, *Lee v. Ferraro*, 284 F.3d 1188, 1192 (11th Cir. 2002) (evidence presented, and not challenged, that woman who was strip searched suffered from PTSD as diagnosed by a psychologist); *Wood v. Clemons*, 89 F.3d 922, 928 (1st Cir. 1996) ("[A] strip search . . . constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual') (internal citation omitted); *Chapman v. Nichols*, 989 F.2d 393, 395 (10th Cir. 1993) ("It is axiomatic that a strip search represents a serious intrusion upon personal rights."); *Justice v. Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992) ("The experience of disrobing and exposing one's self for visual inspection by a stranger clothed with the uniform and authority of the state . . . can only be seen as thoroughly degrading and frightening . . . . [S]uch a search upon an individual detained for a lesser offense is quite likely to take that person by surprise, thereby exacerbating the terrifying quality of the event.") (internal citation omitted); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (strip searches are "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and

[7] Public humiliation can have significant consequences. Although the nature and personal harm that any humiliated individual suffers varies with the specifics of the humiliating circumstance and the humiliated individual's personality, humiliation can prompt feelings of hopelessness and helplessness, powerless rage, and a sense of worthlessness. *See* Walter J. Torres and Raymond M. Bergner, *Humiliation: Its Nature and Consequences*, 38 J. Am. Acad. Psychiatry L. 195, 199-202 (2010).

submission"); *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir. 1982) ("[A] strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.").

Indeed, psychological experts have testified that individuals who have been strip searched may suffer post-search symptoms such as "sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions." *See* Declaration of Frank L. Rundle, M.D., at 4, and Affidavit of Shirley Feldman-Summers, Ph.D., at 2, 1 *Exkano v. King County*, No. C85-154(V)D (W.D. Wash. 1985); Declaration of Margaret A. McHugh, Ph.D., at 2, *Doe v. Clallam County*, No. C82-1028V (W.D. Wash. 1982).

III. YOUTH MAY BE PARTICULARLY SUSCEPTIBLE TO PSYCHOLOGICAL HARM CAUSED BY STRIP SEARCHES

Because of the differences between youth and adults, youth may be particularly susceptible to psychological harm caused by strip searches. Youth value privacy differently compared to adults, and the effects of early life trauma on youth can be more acute. As the Court has done in analogous contexts, the Court should consider these differences between youth and adults in determining whether a policy of uniformly strip searching all individuals at intake is appropriate in juvenile detention facilities.

A. Youth Value Privacy Differently From Adults

Privacy is paramount for youth. "[A]s children approach adolescence, privacy becomes important as a marker of independence and self-differentiation. Threats to the privacy of school-aged children may be reasonably hypothesized to . . . [function as] threats to self-esteem." Gary B. Melton, *Minors and Privacy: Are Legal and Psychological Concepts Compatible?*, 62 Neb. L. Rev. 455, 488 (1983)).

While an important concern for all youth, privacy is increasingly important during adolescence. "With the onset of puberty, most young people begin to make a thorough assessment of themselves." F. Philip Rice & Kim G. Dolgin, *The Adolescent: Development, Relationships, and Culture* at 168 (11th ed. 2005). "This critical self-appraisal is accompanied by self-conscious behavior that makes adolescents vulnerable to embarrassment." *Id.* The heightened concern for privacy among youth results increases the risk that a strip search may cause harm, as "a child may well experience a strip search as a form of sexual abuse." Shatz, *supra*, at 12; *see also id.* at 13 ("[T]he strip search—being compelled to expose one's private parts to an adult stranger who is obviously not a medical practitioner—is offensive to the child's natural instincts and training.").

B. Early-Life Trauma May Cause Psychological Harm

Although youth generally are resilient after trauma exposure, many develop potentially long-lasting mental health problems. *See* Judith A. Cohen et. al., *Practice Parameter for the Assessment and Treat-*

ment of Children and Adolescents With Posttraumatic Stress Disorder, 49 J. Am Acad. Child Adolescent Psychiatry 414, 414 (2010). When trauma occurs early in life, critical aspects of brain and personality development may be disrupted. *See* Julian D. Ford et al., *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions*, National Center for Mental Health and Juvenile Justice 1 (2007), *available at* http://www.ncmhjj.com/wp-content/uploads/2013/10/2007_Trauma-Among-Youth-in-the-Juvenile-Justice-System.pdf. "Child traumatic stress occurs when children and adolescents are exposed to traumatic events or situations and this exposure overwhelms their ability to cope with what they have experienced." *Id.*[8] Youth exposed to these traumatic events exhibit a wide range of symptoms, which can have both immediate and long-term effects, "as traumatic experiences in childhood lead to a greater risk of psychiatric, cardiac, metabolic, immunological, and gastrointestinal illness later in life." Ruth Gerson & Nancy Rappaport, *Traumatic Stress and Posttraumatic Stress Disorder in Youth: Recent Research Findings on Clinical Impact, Assessment, and Treatment*, 52 J. Adolescent Health 137, 137 (2013). For example, most youths who experience significant trauma display disturbances of mood, arousal, and behavior immediately, and while many youths recover, roughly one-third develop enduring symptoms of Post-Traumatic Stress Disorder ("PTSD"). *See id.*

[8] These traumas include "child abuse; domestic, community, or school violence; disasters, vehicular or other accidents, medical traumas, war, terrorism, refugee trauma, the traumatic death of significant others; or other shocking, unexpected or terrifying experiences." Cohen, *supra*, at 414.

PTSD refers to the "development of characteristic symptoms following exposure to a particularly severe stressor." *Practice Parameter for the Assessment and Treatment of Children And Adolescents with Posttraumatic Stress Disorder*, 37 J. Am Acad. Child Adolescent Psychiatry 1, 2 (1998). To qualify, the stressor must be "extreme"—meaning that it "must involve either experiencing or witnessing an event capable of causing death, injury, or threat to physical integrity to oneself or another person." *Id.* In addition, the "child's reaction must include intense fear, horror, helplessness, or disorganized or agitated behavior." *Id.* Youths with PTSD "present with prominent symptoms of nightmares, flashbacks, hyperarousal, avoidance of trauma reminders, and numbing" as well as "irritability, anger outbursts, and poor concentration." Gerson & Rappaport, *supra*, at 139. As set forth in Section II. *supra*, a strip search has the potential to serve as a "stressor" to trigger PTSD.

Psychiatric studies show that early life stressors are associated with pediatric PTSD. One study examined PTSD rates in children who had experienced traumatic events, such as domestic violence, accidents, or death/illness of a family member, and found that (i) 21% of those who witnessed these traumas met criteria for PTSD, (ii) 38% of those who were victims of these traumas met criteria for PTSD, and (iii) 100% of those who both witnessed and were targets met criteria for PTSD. *See* Laura A. McCloskey & Maria Walker, *Posttraumatic Stress in Children Exposed to Family Violence and Single-Event Trauma*, 39 J. Am. Acad. Child Adolescent Psychiatry 108, 112 (2000).

These findings highlight vulnerability of youth to traumatic experience.[9]

Early-life PTSD confers increased risk for a number of problems. For example, PTSD related to child abuse or domestic violence is associated with adverse brain development. *See* Michael D. De Bellis et al., *Developmental Traumatology Part II: Brain Devel-*

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[9] Further psychiatric research has demonstrated that "[t]rauma acts as a threat to an individual's well-being, thereby activating a neurobiological stress response . . . [that] can alter brain development, leading to dysregulation of neural circuitry." Victor G. Carrion & Shane S. Wong*, Can Traumatic Stress Alter the Brain? Understanding the Implications of Early Trauma on Brain Development and Learning*, 51 J. Adolesc. Health S23, S23 (2012). This is known to occur in "[c]hildren exposed to traumatic stress . . . ." *Id.* One known area of altered brain development for individuals who have experienced trauma is the hypothalamus-pituitary-adrenal ("HPA") axis. *See* Ulrike Ehlert, *Enduring Psychobiological Effects of Childhood Adversity*, 38 Psychoneuroendocrinology 1850, 1851 (2013) ("It is well known that the HPA axis reflects stress reactivity."); Michael D. De Bellis and Abigail Zisk, *The Biological Effects of Childhood Trauma*, 23(2) Child Adolesc. Psychiatry Clin. N. Am. 185 (2014) ("The LHPA [Limbic-Hypothalamic-Pituitary-Adrenal] axis plays a central role in regulating the body's response to stress and is the most studied biological stress system in animals and humans."). Whereas under healthy conditions the HPA axis regulates biological processes, including reactions to stress, aberrant functioning of the HPA axis can be toxic to the brain. *See Ehlert, supra*, at 1852 ("A dysfunction of this axis, especially for its end product cortisol, has been described in a large number of stress-associated psychiatric disorders."); *see also De Bellis, supra* (reviewing the literature finding that differences in pediatric victims' stress biology compared to those children who have not experienced trauma are likely the causes of greater rates of PTSD, depression, disruptive behaviors, suicidality, substance use disorders, and other medical problems seen in child victims).

opment, 45 Biological Psychiatry 1271, 1278-79 (1999) ("Maltreated but medically healthy children and adolescents with the diagnosis of PTSD had significantly smaller intracranial and cerebral volumes than controls matched on age, gender, handedness, Tanner Stage, race, height, and weight. PTSD subjects were found to have proportionally smaller intracranial and cerebral volumes when the means were adjusted for SES.").

Traumatic experiences, however, "can precipitate other conditions besides PTSD" such as "disruptive behavior disorders, other internalizing disorders, some personality disorders, and physical illnesses." Karen M. Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 Archives Gen. Psychiatry 403, 408 (2004). For example, youth exposed to violence or maltreatment perform less well academically compared to non-traumatized youth and are more likely to drop out of school and engage in more risk-taking behaviors, such as substance abuse, multiple sex partners, and criminal involvement, and are at a greater risk for sexual assaults and relationship violence. Gerson & Rappaport, *supra*, at 138. And, in some cases, "[a]dolescents who have faced trauma experience more severe suicide ideation, more suicide attempts, and more frequent self-injurious behaviors than their nontraumatized peers." *Id.* at 139.

The effects of traumas are fundamentally different on youth than on adults. "[I]t is clear that adverse childhood experiences have a profound, proportionate and long-lasting effect on emotional state, whether measured by depression or suicide attempts, by protective unconscious devices such as somatization and dissociation, or by self-help attempts that are mis-

guidedly addressed solely as long-term health risks . . . ." Vincent J. Felitti & Robert F. *Anda, The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders and Sexual Behavior: Implications for Healthcare* 77, 80 *in* Ruth A. Lanius et al. *The Impact of Early Life Trauma on Health and Disease* (2010). Given the potential lasting effects of adverse childhood experiences, subjecting all youths to strip searches upon entering juvenile detention centers is inappropriate. Rather than apply the standard applicable to adults whereby all individuals can be strip searched at intake without suspicion, a more narrow standard should be applied out of concern for youth's vulnerabilities to the harm strip searching could cause.

C. As It Has Done In The Past, The Court Should Consider The Differences Between Youth And Adults In Determining The Constitutional Permissibility Of Blanket Strip Searching At Intake In Juvenile Detention Facilities

This Court has recognized that "youth is . . . a time and condition of life when a person may be most susceptible to . . . psychological damage." *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). In fact, courts, including this Court, have found that youth are particularly vulnerable to psychological damage in the context of strip searches. *See, e.g.*, *Safford*, 557 U.S. at 375 ("[A]dolescent vulnerability intensifies the patent intrusiveness of the exposure."); ("Children are especially susceptible to possible traumas from strip searches" as); *Cornfield v. School Dist. No. 230*, 991 F.2d 1316, 1323 (7th Cir. 1993) (finding potential impact of a strip search on a sixteen-year-old to be "sub-

stantial" because that is a peak "age at which [youths] are extremely self-conscious about their bodies"); *Doe v. Renfrow*, 631 F.2d 91, 93 (7th Cir. 1980) (strip search of a thirteen-year-old was a "violation of any known principle of human decency").

Furthermore, the trauma associated with a strip search of a child or adolescent has the potential to be lasting and severe. Scholars have noted that a strip search may "have a long-term negative impact on the child." Shatz, *supra*, at 13. In fact, "[c]linical evaluations of the [youth] victims of strip searches indicate that [a strip search] can result in serious emotional damage, including the development of, or increase in, oppositional behavior." Hyman & Perone, *supra*, at 13. Strip searches, therefore, can have effects akin to those of psychological maltreatment, which, in turn, may produce both acute and long-term negative effects as set forth in Section III.B, *supra*.

Consequently, though not the case for every youth, strip searches can seriously traumatize juveniles, leading them to experience anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, and lasting emotional scars. *See* Scott A. Gartner, *Strip Searches of Students: What Johnny Really Learned at School and How Local School Boards Can Help Solve the Problem*, 70 S. Cal. L. Rev. 921, 929 (1997) (describing lasting and debilitating psychological effects of school's strip search of a student); *see also Lee v. Ferraro*, 284 F.3d 1188, 1192 (11th Cir. 2002) (evidence presented, and not challenged, that woman who was strip searched suffered from PTSD as diagnosed by a psychologist).

Thus, while imposing indignities on all individuals, strip searching has the potential to be particularly

damaging to youth. For this reason, and for the vast body of scientific research that establishes that youths are particularly vulnerable to early-life stress, the standard that applies to strip searches of adults being admitted to the general population of an adult jail—that jail officials may blanket strip search adults at intake without reasonable suspicion, *Florence v. Board of Freeholders of County of Burlington*, 132 S. Ct. 1510, 1515 (2012)—is not appropriate for youth admitted to juvenile detention centers.

IV. EARLY LIFE STRESS OF THE TYPE THAT IS OFTEN EXPERIENCED BY JUVENILES WHO BECOME INVOLVED IN THE JUSTICE SYSTEM CREATES INCREASED VULNERABILITY FOR MENTAL HEALTH PROBLEMS

Youths who become involved in the juvenile justice system tend to experience multiple types of trauma, called "polyvictimization," even before reaching the juvenile justice system. *See* Carly B. Dierkhising et al., *Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, European J. Psychotraumatology 1, 1 (2013). Polyvictimization is defined "as having experienced multiple victimizations of different kinds, such as sexual abuse, physical abuse, bullying, and exposure to family violence." David Finkelhor et al., *Polyvictimization: Children's Exposure to Multiple Types of Violence, Crime, and Abuse*, Office of Juvenile Justice and Delinquency Prevention, 4 (2011), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/235504.pdf.

A large-scale epidemiological study found that as many as 58.3% of *all* U.S. adolescents have experienced childhood adversity, ranging in severity from parental divorce to death of a parent to physical or sexual abuse. *See* Katie A. McLaughlin et al., *Childhood Adversities and First Onset of Psychiatric Disorders in a National Sample of US Adolescents*, 69 Archives Gen. Psychiatry 1151, 1153 (2012). Other studies reveal that the rate for juvenile justice-involved youth as compared to the general population is even greater. Remarkably, according to one study, *up to 90%* of justice-involved youth report exposure to multiple trauma types. *See* Dierkhising, *supra*, at 6. Another study found that trauma and PTSD are more prevalent among juvenile detainees than in community samples, reporting that 92.5% of youths in the sample had experienced at least one trauma, while 84.0% had experienced multiple traumas. Abram, *supra*, at 406. Based on these findings, this study recommended that the mental health system "avoid retraumatizing youth," as "symptoms of PTSD may be exacerbated by such common practices as handcuffs and *searches*." *Id.* at 410 (emphasis added).

The number of youths in the juvenile justice system with psychiatric disorders is similarly astounding: one study revealed that two thirds of males and three quarters of females detained in juvenile detention centers have one or more psychiatric disorders. *See id.* at 403; *see also* Jill D. McLeigh and Natallia Sianko, *Where Have All the Children Gone? The Effects of the Justice System on America's Children and Youth*, 80 Am. J. Orthopsychiatry 334, 339 (2010) ("The vast majority of youth who come into contact with the juvenile justice system—up to 70%—are

known to suffer from emotional disturbance, with at least 20% functioning at a significantly impaired level."). Studies have shown that the presence of a preexisting psychiatric condition is a risk factor for a child developing PTSD after trauma exposure. *See* Daniel S. Pine & Judith A. Cohen, *Trauma in Children and Adolescents: Risk and Treatment of Psychiatric Sequelae*, 51 Biological Psychiatry 519, 519-31(2002) (finding that "children who show signs of preexisting psychopathology or particularly marked acute emotional reactions to the recent traumatic events also may face a particularly high risk for trauma-related exacerbations of symptoms."). Unsurprisingly, PTSD is more common in youth in the juvenile justice system than in community samples. *See id.*; *see also* Becker et al., *Posttraumatic Stress Symptoms are Associated with the Frequency and Severity of Delinquency Among Detained Boys* at 765 ("Cross-sectional and longitudinal research attests to the fact that maltreated and traumatized youth, including youth experiencing PTSD symptoms, are at increased risk for juvenile delinquency and antisocial behavior compared to their peers.").

As such, many youths undergoing strip searches at juvenile detention centers are not only at risk for experiencing early-life trauma but are also at risk for retraumatization, compounding the severity of the psychological harm. *See* Finkelhor, *supra*, at 2 ("The research on cumulative adversity suggests that especially intense and long-lasting effects occur when problems aggregate, particularly in childhood."). In other words, if a child or adolescent already is at risk for psychological dysfunction (as many juvenile justice-involved youth are), experiencing a strip search

has the potential to trigger more severe harm. *See id.* ("Children who experience repeated victimizations and several types of victimizations may be at greater risk for suffering this complex trauma.").

Strip searches may constitute childhood adversity, and the vast majority of youth likely to be strip searched in juvenile detention centers have already experienced considerable adversities. Accordingly, for that population, the risk of retraumatization is elevated, and the harm leading to lasting psychological damage has the potential to be compounded. For these reasons, the Court should set forth a standard more narrowly tailored than the blanket, suspicionless strip searches permissible for adults.

CONCLUSION

For the reasons set forth above, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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