No. 15-903

IN THE

Supreme Court of the United States

J.B., a Minor,
Petitioner,

v.

JAMES B. FASSNACHT, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR AMICI CURIAE THE CHILDREN AND FAMILY JUSTICE CENTER AND SIXTEEN OTHER ORGANIZATIONS IN SUPPORT OF PETITIONER

DAVID NEWMANN
JESSICA K. JACOBS*
JASMEET K. AHUJA*
HOGAN LOVELLS US LLP
1835 Market Street
29th Floor
Philadelphia, PA 19103
*Barred in New York; under firm supervision

JESSICA L. ELLSWORTH
Counsel of Record
MARY HELEN WIMBERLY
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

STATUTES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

No. 15-903

J.B., a Minor,
Petitioner,

v.

JAMES B. FASSNACHT, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR AMICI CURIAE THE CHILDREN AND FAMILY JUSTICE CENTER AND SIXTEEN OTHER ORGANIZATIONS IN SUPPORT OF PETITIONER

The Children and Family Justice Center, Center on Wrongful Convictions of Youth, Children's Law Center, Inc., Citizens for Juvenile Justice, DC Lawyers for Youth, International CURE, John Howard Association of Illinois, Juvenile Justice Initiative, Law Office of the Cook County Public Defender, Midwest Juvenile Defender Center, National Center for Youth Law, National Juvenile Defender Center, National Juvenile Justice Network, Pacific Juvenile Defender Center, Southern Juvenile Defender Center, Team-Child, and Youth Advocacy Division of the Committee for Public Counsel Services, respectfully submit this brief as amici curiae in support of Petitioner J.B.

STATEMENTS OF INTEREST[1]

Statements of interest for the seventeen organizations submitting this brief as amici curiae are attached as an addendum.

All amici urge the Court to grant the petition in this case. Amici understand firsthand from their decades of working with juveniles or juvenile detainees that juvenile-detention-center strip searches often cause lasting, harmful impacts for the children who are subjected to them. The decision below endorses a blanket policy of forcing juveniles to undergo a strip search without requiring any individualized suspicion before subjecting minors to this sort of procedure. Moreover, as amici well know from their long history of working with children in conflict with the law, children in the juvenile justice system have often been subjected to trauma, poverty, and abuse and may also suffer from cognitive impairments, developmental delays, or mental health issues. Strip-search policies that are not sensitive to these needs can be particularly detrimental to this vulnerable population, further re-traumatizing them, exacerbating their intellectual and developmental challenges, and enhancing their sense of isolation. For these reasons, amici support J.B.'s petition.

---

[1] Counsel of record for the parties received timely notice of amici's intent to file this brief, and they consent to its filing. No counsel for a party authored the brief in whole or in part, and no counsel for a party or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici, their members, or their counsel, made any such monetary contribution.

INTRODUCTION AND SUMMARY OF ARGUMENT

J.B.'s petition raises federal questions of exceptional importance concerning the scope of the Fourth Amendment's protection of children entering juvenile detention centers. It presents an oft-recurring problem: juvenile detainees (here, a 12 year old) being subject to strip searches upon entering detention facilities as a matter of course, absent any individualized suspicion. Courts disagree over whether this practice is constitutional, and they are split in a manner similar to that described in *Montgomery* v. *Louisiana*, this Court's most recent juvenile-sentencing decision. *Compare Montgomery* v. *Louisiana*, No. 14-280, slip op. at 1-2 (U.S. Jan. 25, 2016), *with* Pet. 6-7.

As J.B.'s petition ably demonstrates, these questions demand this Court's review. Amici fully agree. The petition challenges a blanket strip-search practice that is widespread in juvenile detention centers across the nation. In accord with their mission of promoting justice for children and adolescents, amici submit this brief to highlight the importance of the questions presented and the need for an individualized-suspicion standard to govern the administration of juvenile strip searches. The degree of probable harm caused by strip searches is far greater for children than it is for adults. As a result, only an individualized-suspicion standard will ensure that the government's need for the search justifies its intrusiveness on this impressionable group of children.

Rather than require individualized suspicion before subjecting children to strip searches, the Third Circuit concluded that strip searches of children are

governed by the standard for adults set forth in *Florence* v. *Board of Chosen Freeholders of Cty. of Burlington*, 132 S. Ct. 1510 (2012), which effectively approves blanket strip-search policies. The court of appeals' decision, if not reversed, will cause severe and lasting harm to children who can now be subjected to suspicionless strip searches.

The petition should be granted and the judgment reversed.

ARGUMENT

I. CHILDREN ARE ESPECIALLY VULNERABLE TO THE TRAUMA POSED BY STRIP SEARCHES.

As this Court acknowledged in *Eddings* v. *Oklahoma*, "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." 455 U.S. 104, 115 (1982). It is because of this susceptibility to emotional harm that strip searches are likely to have lasting effects on adolescents. Strip searches involve a grave violation of individual privacy, autonomy, and personal dignity that has the potential for devastating psychological effects, even in adults. For children subjected to a strip search, the attendant trauma is profoundly more severe.

A. Adolescence Is A Uniquely Vulnerable Stage Of A Child's Development.

Social science scholarship confirms that a child's adolescent years are the most volatile and psychologically challenging. The emotional roller coaster caused by adolescent brain development and changing hormones is in and of itself enough to distinguish this stage of life from others. But on top of that, ado-

lescence also requires children to adapt to their physical maturation. Adolescents tend to be far more self-conscious of their bodies than any other age group. *See generally* Anne C. Peterson & Brandon Taylor, *The Biological Approach to Adolescence: Biological Change and Psychological Adaptation*, Handbook of Adolescent Psychology (Joseph Adelson ed., 1980); *see also* Jessica R. Feierman & Riya S. Shah, *Protecting Personhood: Legal Strategies to Combat the Use of Strip Searches on Youth in Detention*, 60 Rutgers L. Rev 67, 92-93 (2007). This awareness is marked by adolescents, for the first time, beginning to look critically at their bodies and then comparing this perception of themselves to their peers and their ideals. F. Philip Rice & Kim Gale Dolgin, *The Adolescent: Development, Relationships, and Culture* 168 (Karen Bowers ed., 11th ed. 2005). These comparisons, in turn, make adolescents especially vulnerable to feelings of embarrassment and humiliation. *Id*.

This heightened self-consciousness is the fundamental building block for adolescents' development of a sense of personal space and privacy. Steven F. Shatz et al., *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. Rev. 1, 11 (1991). An increasing need for—and control of—personal privacy is how an adolescent begins to establish "independence and self-differentiation." Gary B. Melton, *Minors and Privacy: Are Legal and Psychological Concepts Compatible?*, 62 Neb. L. Rev. 455, 488 (1983). An adolescent begins to "assume the role of an adult in society" by virtue of this need and gradually develops a sense of autonomy. William A. Rae, *Common Adolescent-Parent Problems*, in Handbook of Clinical Child Psychology 555, 555 (C. Eugene Walker & Michael C. Roberts eds., 2d ed. 1992). In-

terruption of this process through trauma can seriously stunt a child's normal development. *Id*.; *see also* Rice & Dolgin, *supra*, at 180.

B. Children Are Especially Vulnerable To The Trauma Engendered By A Strip Search.

As every court to have examined the administration of a strip search acknowledges, a strip search is a substantially invasive measure. Even for adults, this Court has recognized that a strip search "instinctively gives [the Court] the most pause." *Bell* v. *Wolfish*, 441 U.S. 520, 558 (1979). Other courts have found strip searches to be "demeaning, dehumanizing, undignified, humiliating, terrifying," *Tinetti* v. *Wittke*, 479 F. Supp. 486, 491 (E.D. Wis. 1979), *aff'd*, 620 F.2d 160 (7th Cir. 1980), and an "offense to the dignity of the individual," *Wood* v. *Clemons*, 89 F.3d 922, 928 (1st Cir. 1996) (quoting *Cochrane* v. *Quattrocchi*, 942 F.2d 11, 13 (1st Cir. 1991)).

Psychologists explain that the harm inflicted by strip searches flows primarily from the violation of dignity caused by the search. Because individuals have a powerful need to be treated with respect, they invariably suffer shame when they are subjected to any indignities, with a strip search registering as being particularly grave. *See* 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.' " (quoting Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* 19 (1st ed. 2000))). By the same token, because privacy is integral to an individual's sense of self, a strip search—wherein an individual is

expected to reveal their most private body parts to complete strangers—violates one's autonomy.

For children, the trauma caused by a strip search is significantly more severe. Many courts have recognized this. *See, e.g.*, *Justice* v. *City of Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992) ("[C]hildren are especially susceptible to possible traumas from strip searches." (quoting *Flores* v. *Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988))); *D.H. ex rel. Dawson* v. *Clayton Cty. Sch. Dist.*, 52 F. Supp. 3d 1261, 1280 (N.D. Ga. 2014) ("Unique circumstances arise in the context of strip searching children who 'are especially susceptible to possible traumas from strip searches [and] may be most susceptible to influence and to psychological damage.' " (quoting *Justice*, 961 F.2d at 192)); *Doe* v. *Renfrow*, 631 F.2d 91, 92-93 (7th Cir. 1980) (per curiam) ("[The n]ude search of a thirteen-year-old child is * * * a violation of any known principle of human decency."); *Bellnier* v. *Lund*, 438 F. Supp. 47, 53 (N.D.N.Y. 1977) (noting "humiliation and psychological harms associated with such a search"); *People* v. *Scott D.*, 315 N.E.2d 466, 471 (N.Y. 1974) (acknowledging the "risk of psychological harm" in children subject to strip searches). This Court has as well, recognizing that a strip search can "result in serious emotional damage" in school-aged children. *Safford Unified Sch. Dist. No. 1* v. *Redding*, 557 U.S. 364, 375 (2009) (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)). Clinical evaluations of juvenile victims substantiate this fear, finding that strip searches can cause "the development of, or increase in, oppositional behavior"

(such as behavior challenging the authority of adults). Hyman & Perone, *supra*, at 13.

The resultant trauma of an adolescent strip search is a consequence of the violation of the child's budding expectation of privacy. Because adolescents are only just beginning to develop a sense of privacy, the unwelcome search of an adolescent's body—particularly of an adolescent who did not consider himself or herself dangerous—is more disruptive and damaging than a similar search performed on an adult. Some adolescent victims have exhibited post-traumatic stress following strip searches, with symptoms including "sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions." Shatz, *supra*, at 12. Others have even attempted suicide. *Id*.

Strip searches of children can therefore have effects akin to those of psychological maltreatment. Psychologists have found that long-term negative effects may include "attachment disorders, limitations in cognitive ability and problem solving, poor academic achievement, poor peer relationships, behavior problems, anxiety disorders (especially PTSD), and antisocial behavior." *Practice Guidelines: Psychosocial Evaluation of Suspected Psychological Maltreatment in Children and Adolescents*, Am. Prof'l Soc'y on the Abuse of Child., at 3 (1995). In Pennsylvania, for instance, in a highly-publicized case, seven students were strip-searched for hidden marijuana, and all seven reported showing some degree of emotional distress, with two students exhibiting symptoms of PTSD. Hyman & Perone, *supra*, at 14.

Compounding this trauma is the inherent power differential that exists when the individual being searched is a child and the individual who is doing the searching is an adult. Katherine Hunt Federle, *Children and the Law: An Interdisciplinary Approach With Cases, Materials, and Comments* 925 (1st ed. 2013); *see also Mashburn* v. *Yamhill Cty.*, 698 F. Supp. 2d 1233, 1238 (D. Or. 2010), *as amended* (May 4, 2010) ("Moreover, the power differential always present between a guard and a prisoner is greatly magnified when the 'guard' is an adult and the 'prisoner' is a child."). This is of particular concern given that sexual abuse in juvenile detention centers is all too common. A U.S. Department of Justice report found that in 2012, there were 47 allegations of sexual misconduct for every 1,000 children detained in state juvenile detention centers, and 45% of those attacks were allegedly perpetrated by staff members. Allen J. Beck & Ramona R. Rantala, U.S. Dep't of Just., *Special Report: Sexual Victimization by Juvenile Correctional Authorities, 2007-12*, at 1 (Jan. 2016), *available at* http://goo.gl/A7riIT.

Even when the search is done in the most professional manner, the power differential (and often the physical size differential) causes the child to experience the search as an attack, more so than an adult would. *Cf.* Jacqueline Hough, *Recovered Memories of Childhood Sexual Abuse: Applying the Daubert Standard in State Courts*, 69 S. Cal. L. Rev. 855, 863, 870 (1996). The fact that the search is usually conducted by a disciplinary officer and not a medical professional further harms the child, who is taught from a young age that his or her private parts are meant to stay private, except in front of a doctor. Fundamentally, the search of an adolescent will have

a greater impact—and be more damaging in the long run—than the same search of an adult. Shatz, *supra*, at 12.

C. Particularly Where Individualized Suspicion Is Lacking, The Potential Benefits Of Juvenile Strip Searches Do Not Outweigh The Severe Harms.

The vast majority of children in juvenile detention centers arrive burdened with histories of exposure to traumatic events, rendering the resulting psychological damage from strip searches even more devastating. "In one study of juvenile detainees, 93.2% of males and 84% of females reported a traumatic experience" in their past. Gordon R. Hodas, *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed Care*, Pa. Off. of Mental Health & Substance Abuse Servs. 17 (Feb. 2006). For those children who find themselves in juvenile detention centers for having run away from home, these reported traumatic experiences primarily involve physical and sexual abuse at the hands of family members. Wan-Ning Bao et al., *Abuse, Support, and Depression Among Homeless and Runaway Adolescents*, 41 J. Health & Soc. Behav. 408, 408 (Dec. 2000). A strip search only exacerbates these memories, triggering flashbacks. Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 Wm. & Mary L. Rev. 413, 415-420 (Nov. 2005).

For children with histories of abuse, trauma builds on trauma, and the effects are cumulative, ultimately leading to "more severe and chronic posttraumatic stress reactions and other developmental conse-

quences." *Understanding Child Traumatic Stress*, National Child Traumatic Stress Network, http://goo.gl/2GO3OM (last visited Feb. 10, 2016). And the impact of these traumas is lifelong for children. A well-known Adverse Childhood Experiences (ACE) Study conducted jointly by Kaiser Permanente's Department of Preventive Medicine in San Diego and the Centers for Disease Control and Prevention examined "the influence of stressful and traumatic childhood experiences on the origins of behaviors that underlie the leading causes of disability, social problems, health-related behaviors, and causes of death in the United States." Robert F. Anda, MD, MS & Vincent J. Felitti, MD, *Origins and Essence of the Study* 2, Ace Reporter (Apr. 2003), *available at* http://goo.gl/eDmOQh (hereinafter, ACE Study). "The Study determined that an unexpectedly high number of * * * adults who came to the Department of Preventive Medicine for comprehensive medical screening * * * had experienced significant abuse or household dysfunction during their childhoods." *Id.* Individuals were assigned an "ACE score as a measure of the burden of traumatic childhood exposures," and "the ACE Study team found that as the ACE score increased the chances of being a user of street drugs, tobacco or having problems with alcohol abuse increased in a stepwise fashion." *Id.* Adverse childhood experience thus "were not only unexpectedly common, but their effects were found to be cumulative." *Id.* (emphasis removed).

In the end, the trauma caused by a strip search could actually encourage the types of behavior that detention centers are intending to protect against. Children are more susceptible to irrational emotional responses, and the heightened feeling of violation

experienced by children subject to strip searches may result in overwhelming feelings of revenge that "interfere with [the child's] efforts to manage aggressive feelings in a more constructive, rule abiding way." National Child Traumatic Stress Network, *Understanding Child Traumatic Stress*, *supra*. They respond by acting out, and "these behaviors, typically considered to be *problems*, continue because they function as short-term solutions, even though they have detrimental, long-term effects." ACE Study 2. Therefore, rather than protecting and rehabilitating children—the primary objectives of juvenile detention—centers that subject children to strip searches instead traumatize children and may lead them to act in ways they would not act otherwise.

Because of adolescents' unique psychological state, strip searches are likely to cause more harm than tangible benefit. Clinical data confirms that strip searches of children "are generally not very successful" in turning up contraband and "tend to cause the greatest emotional turmoil." Hyman & Perone, *supra*, at 15. The contraband that is uncovered is often "bulky enough" that it may easily be detected without a strip search, "by requiring an emptying of pockets" or "observed when bulging from likely places such as waistbands or taped to legs." *Id*. For this reason, experts in the field of juvenile psychology have explained that a blanket policy of strip searches should not be practiced at juvenile detention centers. "[C]hildren and youths are developmentally different from adults and must be treated appropriately." *Social Work Speaks: National Association of Social Workers Policy Statements, 2009-2012*, at 210 (Sarah Lowman & Lisa M. O'Hearn eds., 8th ed. 2009). Those developmental differences necessitate a differ-

ent framework to analyze the reasonableness of Fourth Amendment searches.

II. STRIP SEARCHES IN JUVENILE DETENTION FACILITIES SHOULD BE PERMITTED ONLY FOLLOWING INDIVIDUALIZED INQUIRIES FOUNDED ON REASONABLE SUSPICION.

The Third Circuit concluded that juvenile-detainee strip searches should be viewed no differently from adult-prisoner strip searches under the Fourth Amendment, holding that both are governed by the standard this Court articulated in *Florence* v. *Board of Chosen Freeholders of Cty. of Burlington*, 132 S. Ct. 1510, 1527 (2012). That holding is inconsistent with the Fourth Amendment and this Court's precedents, which regularly recognize that there are salient differences between children and adults in issues related to detention and punishment. This Court should intervene and clarify that strip searches of juveniles, because of the uniquely intrusive nature on this population, must be supported by individualized reasonable suspicion and carried out in a manner that is reasonably proportional to that suspicion.

A. The Fourth Amendment's Reasonableness Balancing Test Applies To Children In The Care And Custody Of State Officials.

We begin with the fundamentals. Reasonableness under the Fourth Amendment is determined through a balancing test. A search is reasonable only if the government's need for the search outweighs the invasion of personal rights that the search entails. *See, e.g.*, *Bell*, 441 U.S. at 559 ("Courts must consider the scope of the particular intrusion, the manner in

which it is conducted, the justification for initiating it, and the place in which it is conducted."); *Terry* v. *Ohio*, 392 U.S. 1, 17 n.15 (1968) ("[T]he sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness."). As a general rule, absent special needs, searches are reasonable only if conducted pursuant to probable cause, or, at a minimum, with "some quantum of individualized suspicion." *Skinner* v. *Railway Labor Execs. Ass'n*, 489 U.S. 602, 624 (1989) (quoting *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 560 (1976)). Even then, a search may be unconstitutional if it is excessively intrusive in relation to the government's need for the search. *See, e.g.*, *Terry*, 392 U.S. at 17-18 ("This Court has held in the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope.").

Children, like adults, possess the Fourth Amendment right to be free from unreasonable searches. *See generally In re Gault*, 387 U.S. 1, 13 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"). "[I]n a nonschool setting," juveniles are protected from warrantless searches and searches unsupported by probable cause. *See New Jersey* v. *T.L.O.*, 469 U.S. 325, 348 (1985) (Powell, J., concurring); *see also id.* at 340-341 (majority op.) (reasoning that the school setting warrants departing from those requirements). In a school setting, children do not "shed their constitutional rights * * * at the schoolhouse gate." *Tinker* v. *Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503,

506 (1969). But the reasonableness calculus for school searches is different from those outside of schools. *See T.L.O.*, 469 U.S. at 337-343.

In *T.L.O.*, this Court made several rulings clarifying that the Fourth Amendment protects children in public schools from unreasonable searches. First, the Court held that public school officials—who are charged with the care, custody, and discipline of students while they are at school—acted as "representatives of the State" "[i]n carrying out searches and other disciplinary functions." *Id.* at 336. Second, although accepting "the difficulty of maintaining discipline in the public schools today," the Court concluded that "the situation is not so dire that students in the schools may claim no legitimate expectations of privacy." *Id.* at 338. Third, the Court acknowledged "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds," recognizing that, "in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems." *Id.* at 339. Fourth and finally, the Court held that a search of school children's personal property is justified only if (i) "at its inception," there are "reasonable grounds for suspecting that the search will turn up evidence" and (ii) "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the [child] and the nature of the infraction." *Id.* at 341-342.

In *Safford Unified School District No. 1* v. *Redding*, 557 U.S. 364 (2009), the Court applied this rule to strip searches of school children. There, a 13-year-old middle-school student was strip searched by school officials who were looking for forbidden pre-

scription and over-the-counter drugs. *Id.* at 368. The student was required "to remove her clothes down to her underwear, and then 'pull out' her bra and the elastic band on her underpants." *Id.* at 374. This Court agreed that there was a Fourth Amendment violation, explaining that the strip search was unreasonable because "there were no reasons to suspect the drugs presented a danger or were concealed in her underwear." *Id.* at 368. "[W]hen the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts, general background possibilities fall short; a reasonable search that extensive calls for suspicion that it will pay off." *Id.* at 376. *Contra* Pet. App. 18 ("The Supreme Court's rationale [in *Safford*] was not predicated on age as much as it focused on the status of the juvenile as a schoolchild.").

B. A Reasonableness Standard Tailored To Children Should Apply To Strip Searches At Juvenile Detention Facilities.

This Court has not yet decided what standard applies to strip searches of children entering juvenile detention centers. It has reached that question only for jailed adults, holding in *Florence* that jail officials may "seek to improve security by requiring some kind of strip search of everyone who is to be detained." 132 S. Ct. at 1517. Such policies are deemed "reasonably related to legitimate security interests." *Id.* And "in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations courts should ordinarily defer to their expert judgment in such matters." *Id.* (quotation marks omitted).

Florence should not apply to juvenile detainees. This Court has long held that constitutional standards must take into account the unique developmental status of children. *See* Pet. 9-12. Yet *Florence* did not involve children, and the Court did not purport to balance reasonableness with children in mind. *See* Pet. 12-13. Necessarily, then, *Florence*'s Fourth Amendment standard is not tailored for children, as this Court's precedent requires.

Indeed, this Court's recent decision in *Montgomery* v. *Louisiana*, No. 14-280 (U.S. Jan. 25, 2016), confirms that the Fourth Amendment's reasonableness standard must calibrate specially for children. The Court there concluded that the constitutional rule announced in *Miller* v. *Alabama*, 132 S. Ct. 2455 (2012)—that sentencing a juvenile to life in prison without the possibility of parole violates the Eighth Amendment except in the rarest circumstances—applies retroactively. *Montgomery*, slip op. at 20-21. In explaining the substantive nature of the *Miller* rule, the *Montgomery* Court noted that the Constitution demands special consideration for juvenile confinement, different from that required for adults. *See id.* at 14-17. It detailed the "line of precedent holding certain punishments disproportionate when applied to juveniles," *id.* at 14, and how those precedents recognize that "children are constitutionally different from adults in their level of culpability," *id.* at 22. Accordingly, this Court's decisions "require a sentencer to consider a juvenile offender's youth before imposing life without parole" because "the penological justifications for life without parole collapse in light of the distinctive attributes of youth." *Id.* at 16 (quotation marks omitted).

The cases discussed in *Montgomery* rest on "the distinctive attributes of youth" that make "children * * * constitutionally different from adults." *Id.* at 16, 22 (quotation marks omitted). These distinctive attributes exist in the context of strip searches just as much as they do in the context of sentencing. As we have explained, children possess a heightened need for privacy, and invasion of that privacy has profound effects on adolescents' development. *See supra* pp. 4-13 (Section I). Consistent with *Montgomery*, then, children are constitutionally different from adults for purposes of strip searches as well. Children's unique "development" status, *Montgomery*, slip op. at 16, justifies a Fourth Amendment reasonableness standard that takes into account their youth.

C. An Individualized Reasonable-Suspicion Standard For Juvenile Detention Center Strip Searches Is Workable And Consistent With The Fourth Amendment.

1. The Third Circuit nonetheless determined that *Florence*, rather than *Safford*, is the closest analogue to strip searches at juvenile detention centers. It reasoned that a juvenile detainee does "not possess the same reasonable expectation of privacy upon admission to" a juvenile detention facility as does as a "schoolchild" in a public school. Pet. App. 19. Yet that reasoning does not explain why a standard for *adults* must apply, unaltered, to juvenile detainees. Even accepting the rationale that youth confined in juvenile detention facilities may be "under substantially greater restraint and have a lesser expectation of privacy than do students," *Mashburn*, 698 F. Supp. 2d at 1238 (quoting *Reynolds* v. *City of An-*

chorage, 379 F.3d 358, 364 (6th Cir. 2004)), it is equally true that strip searches of adolescents are "categorically extreme," *Safford*, 557 U.S. at 376—something that this Court has never found to be the case for adults. The intrusiveness side of the Fourth Amendment reasonableness balance therefore weighs more heavily for children than for adults. *Florence*'s standard for adult strip searches does not account for that difference between children and adults.[2]

2. More to the point, the Third Circuit is simply wrong to conclude that searches conducted in juvenile detention facilities are more like searches conducted in adult jails than searches conducted in public schools.

a. The gulf between juvenile detention facilities and public schools is not as wide as the Third Circuit por-

---

[2] As an example of why courts cannot simply assume that the juvenile justice system will establish legal and appropriate policies with regard to the detention of children, a disturbing "Kids for Cash" scandal unfolded in 2008 involving judicial kickbacks at the Luzerne County Court of Common Pleas in Wilkes-Barre, Pennsylvania—just a two-hours' drive from the detention center involved here. Two state court judges responsible for adjudicating juvenile cases were convicted of accepting bribes from a private builder of for-profit youth centers for the detention of juveniles, in return for contracting with the facilities and imposing harsh punishments on juveniles brought before their courts to increase the number of residents in the centers. *See* Ian Urbina, *Despite Red Flags About Judges, a Kickback Scheme Flourished*, New York Times (Mar. 27, 2009), *available at* http://goo.gl/EIBoEi. These judges engaged in this conduct unabated for years. Such alarming reports are yet more reasons that juvenile detention centers' blanket strip-search policies depriving the Fourth Amendment rights of children warrant a closer look.

trays. *See* Pet. App. 19. Like officials at juvenile detention facilities, public school officials "must watch over a large number of students * * * inclined to test the outer boundaries of acceptable conduct." *T.L.O.*, 469 U.S. at 352 (Blackmun, J., concurring in judgment). And as relevant to both, "drug use and possession of weapons have become increasingly common among young people." *Id.* at 352-353. In both contexts, officials must overcome "the difficulty of maintaining discipline," *id.* at 338 (majority op.), in places that may face "drug use and violent crime," *id.* at 339. The safety and security concerns of many public schools and juvenile detention facilities thus bear more similarities than differences.

To be sure, this Court has observed in the Eighth Amendment context that "[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." *Ingraham* v. *Wright*, 430 U.S. 651, 669 (1977). Yet the Court in *Ingraham* was making a comparison between *adult* prisoners and schoolchildren. It was not purporting to make a comparison between juvenile detainees and children in schools. Moreover, whatever differences exist between the circumstances of public schools and the circumstances of juvenile detention facilities, they are far closer together than are adult prisons and juvenile detention facilities, as we next explain.

b. The circumstances of a juvenile detainee are far more dissimilar from the circumstances of an adult prisoner than the Third Circuit acknowledged. *See* Pet. App. 20-23. Both the status of the juvenile detainee and the nature of the detention are entirely different in the juvenile-justice system than in the adult criminal-justice system.

The premises that drive the systems from initial detention to ultimate incarceration are entirely different between adults and juveniles; the juvenile system is grounded in the notion of rehabilitation, while the adult system focuses more squarely on guilt and punishment. An adult is convicted upon a finding of guilt, but a juvenile is merely found delinquent. *See generally McKeiver* v. *Pennsylvania*, 403 U.S. 528, 540 (1971). And "the end result of a declaration of delinquency is significantly different from and less onerous than a finding of criminal guilt." *Id.* (quotation marks omitted). For adults, "[a] finding of guilt establishes that they have chosen to engage in conduct so reprehensible and injurious to others that they must be punished to deter them and others from crime." *Id.* at 551 (White, J., concurring). They are "considered blameworthy, and "they are branded and treated as such." *Id.* By contrast, a juvenile's delinquent conduct "is not deemed so blameworthy that punishment is required to deter him or others." *Id.* at 552. "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." *Id.*; *see generally* Pet. 16-17 (where an individual's detention is *not* primarily for punishment, the detainee is entitled to more considerate treatment than a prisoner).

In sum, a detained juvenile and an adult prisoner, like a schoolchild and an adult prisoner, "stand in wholly different circumstances." *Ingraham*, 430 U.S. at 669. The Third Circuit's equation of the two is unsupported.

3. For similar reasons, the panel's conclusion that "any individualized, reasonable suspicion inquiry fal-

ters in juvenile detention centers for the same reasons it does so in adult facilities," Pet. App. 20, is simply unsupportable. An individualized reasonable-suspicion standard is not "unworkable" for juvenile centers in the way it is for adult prisons. *Id.* As J.B.'s petition explains, contrary to the process in adult facilities, juvenile detention officers often conduct in-depth and lengthy interviews and investigations of juveniles upon intake, which can serve to filter out those individuals who truly cause a concern and for whom there may be a legitimate need to strip search. Pet. 17-18. *See, e.g.*, Fla. Stat. Ann. § 985.145(c) ("[d]uring the intake process, the department shall screen each child or shall cause each child to be screened in order to determine," among other things, "whether the child poses a danger to himself or herself or others in the community"); Kan. Stat. Ann. § 75-7023(c), (d) ("[u]pon a juvenile being taken into custody * * *, a juvenile intake and assessment worker shall complete the intake and assessment process," which "shall" include "[a] standardized risk assessment tool").[3] *See also* Cal. Penal Code § 4030(e) ("a minor detained prior to a detention hearing * * * shall not be subjected to a strip search * * * unless a peace officer has determined there is reasonable suspicion * * * to believe that person is concealing a weapon or contraband").

---

[3] Ga. Code Ann. § 15-11-502(a)(3); 15 Me. Rev. Stat. § 3203-A; Va. Code Ann. § 16.1-248.2; D.C. Super. Ct. Juv. R. 102(b); Ill. R. Cook Cty. Cir. Ct. Order 20; Pa. St. Juv. Ct. R. 240(A). *See also* Conn. Gen. Stat. Ann. § 46b-121i (requiring creation of a juvenile intake and assessment system); Haw. Rev. Stat. Ann. § 352D-4 (same); 10A Okla. Stat. Ann. § 2-7-501 (same); Wash. Rev. Code Ann. § 13.40.038 (same).

Thus, given the detailed, routine intake procedures in juvenile detention facilities, officers should be able to separate out juveniles reasonably suspected of carrying weapons or contraband. And given that these procedures distinguishing the children in the juvenile detention centers are already occurring, there is no need to subject the vast majority of children in these facilities to strip searches.

CONCLUSION

For the foregoing reasons, the Court should grant J.B.'s petition for a writ of certiorari and reverse the judgment below.

Respectfully submitted,

DAVID NEWMANN
JESSICA K. JACOBS*
JASMEET K. AHUJA*
HOGAN LOVELLS US LLP
1835 Market Street
29th Floor
Philadelphia, PA 19103
*Barred in New York; under firm supervision

JESSICA L. ELLSWORTH
Counsel of Record
MARY HELEN WIMBERLY
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Counsel for Amici Curiae The Children and Family Justice Center and Sixteen Other Organizations

February 2016

ADDENDUM

The statements of interest for the seventeen organizations submitting this brief as amici curiae are as follows:

The **Children and Family Justice Center (CFJC)**, part of Northwestern University Law School's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth, and families, as well as a research and policy center. Currently, clinical staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of delinquency and crime, immigration/asylum, and fair sentencing practices. In its 24-year history, the CFJC has filed numerous briefs as an amicus curiae in this Court and in state supreme courts based on its expertise in the representation of children in the legal system. *See, e.g.*, Amicus Br., *Montgomery* v. *Louisiana*, 135 S. Ct. 1546 (2015) (No. 14-280), 2015 WL 4624620; Amicus Br., *Watson* v. *Illinois*, 136 S. Ct. 399 (2015) (No. 14-9504), 2015 WL 3452842.

The **Center on Wrongful Convictions of Youth (CWCY)**, part of Northwestern University Law School's Bluhm Legal Clinic, was founded in 2008 and is the first organization in the United States dedicated to uncovering and rectifying wrongful convictions of children and adolescents. The CWCY represents individuals who were wrongfully convicted of crimes as juveniles, promotes public awareness and support for nationwide initiatives aimed at preventing future wrongful convictions in the juvenile and criminal justice systems, and participates in litigation across the country as amicus counsel regarding the developmental issues that make children unique-

ly vulnerable to police interrogation, more likely to give false confessions, and less culpable for crimes they do commit. In particular, the CWCY has signed and written amicus briefs that oppose theories of liability that automatically hold juveniles as culpable as adults (e.g., felony murder rules) and mandatory or automatic sentencing schemes that prevent judges from using youthfulness to mitigate punishment for youthful offenders.

The **Children's Law Center, Inc.** was incorporated in 1989 to protect the rights of children through high-quality individual legal advocacy as well as systemic reforms through impact litigation, policy changes, and training and education. The Center has played a significant role in many juvenile justice reforms including conditions of confinement, access to the court, right to counsel, sentencing, and de-incarceration efforts. It has been committed to reducing the number of youth tried as adults and housed in adult facilities. Its work: promotes a system of principles that recognize the differences between youth and adults, strives to create fairer and just outcomes for youth to resolve legal issues, and advocates for improved life outcomes in other areas.

Citizens for Juvenile Justice (CFJJ) is an independent, non-profit policy organization that works to improve the juvenile justice system in Massachusetts. Its advocacy is shaped by the conviction that both children in the system and public safety are best served by a fair and effective system that recognizes the ways children are different from adults and that also focuses primarily on their rehabilitation. CFJJ has an interest in promoting sentencing practices that take into account the fundamental charac-

teristics of youth, and an interest in ensuring that no young person serves a sentence that is inconsistent with the Constitution.

DC Lawyers for Youth (DCLY) was founded in 2007 by graduates of the Georgetown University Law Center's Juvenile Justice Clinic. The mission of DCLY is to improve the DC juvenile justice system by advocating for reforms that promote positive youth development, effective legal representation, and supportive relationships between the community and DC's youth. The purpose of DCLY, which is accomplished through policy advocacy and direct representation, is to make the District's juvenile justice system the smallest system it can be and the best system that is should be. The "smallest" system meaning that the juvenile system should be reserved for only those young people for whom it is absolutely necessary, and also that other systems such as schools should not have policies and practices that push youth into the juvenile justice system. The "best" means that we want District young people to touch the system only once. Therefore, we advocate for the justice system to provide the appropriate services and supports, and to enact the right policies to ensure that young people will have positive life outcomes after coming into contact with the juvenile justice system. Because the practice of mandatory strip searches is contrary to the research and to best practices, both of which have shown that practices which further traumatize young people who already have a plethora of adverse childhood experiences cannot result in true rehabilitation of young people, DC Lawyers for Youth supports the petition of J.B.

International CURE is a grassroots organization that advocates for prison reform. This includes abolishing the sentence of juveniles serving life sentences without parole.

The **John Howard Association of Illinois (JHA)** is Illinois' oldest prison reform group and the only non-profit, independent, non-partisan organization that serves as a watchdog for Illinois' juvenile and adult correctional facilities. Its mission is to achieve a fair, humane, and effective criminal justice system—by independently monitoring correctional facilities, policies, and practices—in order to advance reforms that lead to improved justice system outcomes, such as successful offender reentry and enhanced community safety. As part of its work, JHA also directs the Legal Literacy Education Project at the Cook County Juvenile Temporary Detention Center. Through this project, as well as its longstanding work monitoring juvenile and adult prisons in Illinois, JHA has worked with hundreds of youth, their families, and their attorneys, as well as correctional staff, mental-health professionals, teachers, parole officials, and community service providers who work with this population.

The **Juvenile Justice Initiative (JJI)** of Illinois is a non-profit, non-partisan, statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers, and child advocates. The JJI mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing a comprehensive continuum of community-based resources throughout the state. Our collaborations work in concert with other

organizations, advocacy groups, concerned individuals, and state and local government entities throughout Illinois to ensure that fairness and competency development are public and private priorities for all children in conflict with the law.

The **Law Office of the Cook County Public Defender** is the second largest public defender office in the nation. With a full time staff of approximately 700, of which 506 are attorneys, the Office represents approximately 89 percent of all persons charged with felonies and misdemeanors in Cook County. The Office also represents juveniles charged with delinquent conduct, and parents against whom the State files allegations of abuse, neglect, or dependency. In 2014, the Office was appointed to more than 130,000 cases. The mission of the Office is to protect the fundamental rights, liberties, and dignity of each person whose case has been entrusted to it by providing the finest legal representation.

The **Midwest Juvenile Defender Center (MJDC)**, an affiliate of the National Juvenile Defender Center, provides leadership and resources for juvenile defenders throughout an eight-state region. The MJDC maintains a listserv, holds regional trainings, provides resources for statewide trainings, participates in statewide juvenile defender assessments, provides resources and technical assistance to juvenile defenders in ongoing juvenile cases, and provides resources for Midwestern juvenile defenders to participate in policy advocacy.

The **National Center for Youth Law (NCYL)** is a private, non-profit organization that uses the law to help children in need nationwide. For more than 40 years, NCYL has worked to protect the rights of

low-income children and to ensure that they have the resources, support, and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country by providing trainings and technical assistance. Two of NCYL's priorities are to reduce the number of youth subjected to harmful and unnecessary incarceration, and to expand effective community-based supports for youth in trouble with the law. NCYL has participated in litigation that has improved juvenile justice systems in numerous states, and engaged in advocacy at the federal, state, and local levels to reduce reliance on the justice systems to address the needs of youth. Its efforts include promoting alternatives to incarceration, and improving children's access to mental health care and developmentally appropriate treatment. One of the primary goals of NCYL's juvenile justice advocacy is to ensure that youth in trouble with the law are treated as adolescents, not adults, and in a manner that is consistent with their developmental stage and capacity to change.

The **National Juvenile Defender Center** is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a permanent and enhanced capacity to address

practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. The National Juvenile Defender Center has participated as an amicus curiae before this Court, as well as federal and state courts across the country.

The **National Juvenile Justice Network (NJJN**) leads and supports a movement of state and local juvenile justice coalitions and organizations to secure local, state, and federal laws, policies, and practices that are fair, equitable, and developmentally appropriate for all children, youth, and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises fifty-four member organizations across thirty-nine states, all of which seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are still maturing and should be treated in a developmentally appropriate manner that holds them accountable in ways that give them the tools to make better choices in the future and become productive citizens. NJJN supports a growing body of research that indicates the most effective means for responding to youth crime is in the context of their families and communities with age-appropriate, rehabilitative programs that take a holistic approach, engage

youth's family members and other key supports, and provide opportunities for positive youth development. In those infrequent instances in which youth must be removed from their family and community, that removal should be for as short a time as possible, and only as a last resort. The facilities in which they are held should be humane, developmentally appropriate, culturally competent, trauma-informed, geared towards positive youth outcomes, close to their families and neighborhoods, small, and home-like in orientation.

The **Pacific Juvenile Defender Center (PJDC)** is a regional affiliate of the Washington, D.C.-based National Juvenile Defender Center. The Center works to improve access to counsel and quality of representation for youth in the justice system. It provides support to more than 500 juvenile trial lawyers, appellate counsel, law school clinical programs, and non-profit law centers to ensure quality representation for youth throughout California and around the country. Collectively, Pacific Juvenile Defender Center members represent thousands of youth in juvenile court delinquency cases. The Center also engages in policy work and involvement in appellate cases aimed at assuring fairness and appropriate treatment of young people in the justice system. In this regard, it has long been concerned about the treatment of youth in detention, including strip searches. The Pacific Juvenile Defender Center is knowledgeable about the relevant law, as well as the impact of strip searches on adolescents. The Center is interested in this case because it presents a significant opportunity for the Court to provide guidance that strikes a proper balance between safety concerns and the rights of detained youth.

The **Southern Juvenile Defender Center (SJDC)** is the regional center affiliated with the National Juvenile Defender Center serving and supporting the juvenile defender community in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. SJDC conducts extensive training in best practices in child advocacy, advancing systemic change, and understanding the nature of the maturation process and the effect of adolescent brain development on juveniles' cognition, behavior, and accountability. SJDC Advisory Council members are leaders within each state's juvenile justice community who regularly speak and publish on contemporary issues in child advocacy. SJDC embraces the peer-reviewed research proving that children are fundamentally different than adults, and promotes the ideals of justice that require fair and humane juvenile detention practices that protect the dignity of our children and of our system.

TeamChild is a nationally recognized, non-profit civil legal advocacy program for low-income children at risk of or involved with the juvenile-justice and child-welfare systems in Washington State. Since 1995, TeamChild has provided direct legal representation to thousands of low-income youth across the state of Washington. TeamChild lawyers advocate for these youth to help them access their basic legal rights to education, health care, and other social services. Children represented by TeamChild experience increased school access, engagement, and success, and less incarceration and time in secure detention and state facilities. TeamChild frequently submits amicus briefing in cases involving the legal rights and civil liberties of children both locally and nationally.

The **Youth Advocacy Division (YAD) of the Committee for Public Counsel Services** is the juvenile division of the statewide Massachusetts public defender agency, whose responsibility is "to plan, oversee, and coordinate the delivery" of legal services to certain indigent litigants, including those charged in juvenile-delinquency and youthful-offender proceedings. M.G.L. c. 211D, §§ 1, 2, 4. YAD contracts with more than four hundred private attorneys who represent juveniles in a wide variety of proceedings, including delinquency and youthful-offender proceedings and classification and revocation proceedings for children who have been committed to the custody of the Massachusetts Department of Youth Services. YAD also has nine staff offices where staff attorneys and forensic social service advocates work together as a team to represent juveniles in delinquency and youthful-offender proceedings. Because YAD provides legal counsel to thousands of juveniles each year who may be held in pretrial custody and potentially committed to the custody of the Department of Youth Services, it has strong interest in the issue of whether those children can lawfully be subjected to strip searches without individualized suspicion.