No. 121932

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DARIEN HARRIS, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of of Illinois, First District, No. 1-14-1744 There on Appeal from the Circuit C ourt of Cook County, Illinois No. 11 CR 11184 Honorable Nicholas R. Ford, Judge Presiding.

BRIEF AND ARGUMENT OF *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE

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POINT AND AUTHORITIES

IDENTITY AND INTEREST OF AMICI CURIAE

Amici Curiae, Children and Family Justice Center, *et al.*, work on behalf of children and youthful offenders involved in the child welfare, juvenile, and criminal justice systems.[1] *Amici* are advocates, researchers, and advisors who have a wealth of experience and expertise in litigating issues related to the application of the law to youth in the juvenile and criminal justice systems. *Amici* understand that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* know that a core characteristic of adolescence is the capacity to change and mature and believe that the developmental differences between youth and adults warrant distinct treatment. *Amici* recognize – as does the United States Supreme Court – that youthful offenders, because of their particular biological and developmental characteristics, are categorically different from adults and accordingly require categorically different treatment, including, among other things, sentencing practices that account for their capacity to grow, change, and become rehabilitated. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. __, 136 S. Ct. 718 (2016). *Amici* believe that those categorical differences do not disappear upon turning 18-years old.

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[1] A full list of amici and statements of interest are attached as Appendix A.

In the thirteen years since *Roper* was decided, sentencing practices, legislative enactments, and empirical research have continued to evolve, compelling a conclusion that the line between childhood and adulthood should be moved to those under the age of 21—in order to more fully account for the distinctive attributes of youth that have bearing on culpability and punishment and which continue to evolve until the mid-20s. *Amici* urge this Court to seize this opportunity to recognize that Eighth Amendment and Illinois proportionate penalty jurisprudence should align with the science on which this sea change in criminal justice reform is based. Darien Harris, and those similarly situated, are entitled to sentencing under a system that allows for youth-centered, individualized consideration and, where appropriate, the ability to depart from mandatory sentencing enhancements or consecutive sentencing requirements. Age-appropriate sentencing and punishment is necessary to ensure that the Illinois Constitution's call for restoration to useful citizenship—most significantly, for a young person more susceptible to rehabilitation—is heeded.

ARGUMENT

Individualized Consideration of the Hallmark Attributes of All Youthful Offenders, Including Darien Harris, Ensures a Fair and Age-Appropriate System of Accountability.

In 2005, the United States Supreme Court recognized that all youth share certain key developmental attributes and characteristics which make them categorically less culpable than their adult counterparts. In the years since, the Court has relied upon these unique attributes to strike certain extreme punishments for youth under the Eighth Amendment. The Court has refined its Eighth Amendment jurisprudence to reflect that young people are different for the purposes of applying the Constitution's ban on cruel and unusual punishments. The Court grounded its rationale in neuroscience and behavioral research on adolescent development that demonstrates that young adults are less culpable than their adult counterparts. This research—while applied in those cases to youth under 18—actually counsels against such an arbitrary cut-off. Those under the age of 21 should be held accountable for their criminal conduct, but like younger juveniles, they are not as culpable or blameworthy as adults. Under both Article I, § 11 of the Illinois Constitution and the Eighth Amendment, young adults must be accorded the same sentencing protections as youth under 18. Accordingly, any sentence imposed on an individual under the age of 21, without the opportunity for individualized consideration of that person's youth and attendant characteristics, is unconstitutional. For appropriate youth, a court must be

able to depart from mandatory sentencing enhancements or consecutive requirements which result in death-in-prison sentences.

A. The Supreme Court's Eighth Amendment jurisprudence instructs courts to consider youth-specific factors when sentencing.

As *Roper* and its progeny reveal, in determining what constitutes cruel and unusual punishment under the Eighth Amendment, the Supreme Court considers, "evolving standards of decency that mark the progress of a maturing society." *Roper v. Simmons*, 543 U.S. 551, 561 (2005).[2] In *Roper*, the Court held that a juvenile death sentence violated the Eight Amendment. 543 U.S. at 578–79. Five years later, in *Graham v. Florida*, 560 U.S. 48, 82 (2010), the Court expanded its understanding of unconstitutional juvenile sentences. It held categorically that life without parole for a person under 18 for a non-homicide offense violated the Eighth Amendment. *Id.* States were required to give "some meaningful opportunity [for juveniles] to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 50. Beyond confirming that age is relevant to a wider swath of Eighth Amendment jurisprudence, the Court held that "criminal procedure laws that

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[2] For proof of that evolving standard, one need look no further than the Court's previous consideration of the age at which a young person could receive a death sentence. Until 1988, only offenders under the age of seven were exempt from the death penalty. *See In re Gault*, 387 U.S. 1, 16 (1967). In 1988, the Supreme Court expanded that protection to include anyone under 16. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988); *cf. Stanford v. Kentucky*, 492 U.S. 361, 380 (1989) (capital punishment acceptable for 16 and 17-year-olds).

fail to take defendants' youthfulness into account at all would also be flawed." *Id.* at 76.

In 2011, the Court reinforced the importance of age again, acknowledging in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), that the Constitutional requirement of taking youth into account is not limited to sentencing. In *J.D.B.*, the Court held that "a child's age properly informs the *Miranda* custody analysis." *Id.* at 265. Justice Sotomayor noted that a child's age is "far more than a chronological fact," a conclusion that was commonsense. *Id.* at 272. Justice Sotomayor also reinforced that children "generally are less mature and responsible than adults." *Id.* (citing *Eddings v Oklahoma*, 455 U.S. 104, 115–16 (1982)).

In 2012, the Court held that mandatory sentences of life without parole for any offense—homicide included—were unconstitutional. *Miller v. Alabama*, 567 U.S. 460, 479 (2012). In *Miller*, the Court relied again on the scientific reasoning undergirding *Roper*: juveniles lack maturity, which leads to recklessness, impulsivity, and risk-taking. *Id.* at 471–72. The Court acknowledged that, "[t]he science and social science supporting *Roper*'s and *Graham*'s conclusions *have become even stronger*." *Id.* at 472 n.5 (emphasis added).

The Court reinforced its holding in *Miller* in *Montgomery v. Louisiana*, 577 U.S.___, 136 S. Ct. 718, 732 (2016) (holding that *Miller* was a substantive change in law and therefore retroactive), underscoring that, even if a court

considers age before sentencing an individual to die in prison, that sentence still violates the Eighth Amendment for a youth "whose crime reflects unfortunate yet transient immaturity." *Id.* at 734 (citing *Roper*, 543 U.S. at 573) (internal quotation marks omitted). The Court recognized that disproportionate punishments do not serve any of the penological justifications of retribution, deterrence, or incapacitation because a young offender is less culpable and less likely to be a danger forever to society. *Id.* at 733.

1. Evolving science requires consideration of youth in sentencing individuals under the age of 21.

The scientific community's contemporary understanding of juvenile brain development reveals that its research is not limited to persons under 18 years of age. The traits demonstrating developmental immaturity exist in young adults as well, whose brains continue to develop into their 20s. Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. Adolescent Health 216 (2009). Therefore, a young adult who is still developing and has a "lack of maturity" and an "underdeveloped sense of responsibility" is entitled to the Eighth Amendment sentencing protections afforded to persons under 18. Under *Miller*, and our evolving standards of decency, a court sentencing such a young adult is constitutionally required to take youth into account. 567 U.S. at 489.

Relying on the scientific research, the Court in *Roper* set out three

fundamental differences between children and adults. First, juveniles have a lack of maturity and proclivity for risky behavior; second, juveniles are especially susceptible to outside influences, particularly negative peer influence; and third, a juvenile's character is not as "well-formed" or "fixed" and therefore, they should not be punished permanently for the mistakes they made in their youth. 543 U.S. at 569–70. Developments in science continue to show that all three of these differences between juveniles and adults persist through the mid-20s and support applying *Miller*'s reasoning to young adults like Mr. Harris.

a. Young adults are still maturing and continue to make reckless decisions.

The *Miller* Court reiterated that juveniles' "lack [ ] maturity and [have] an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." 567 U.S. at 471 (citing *Roper*, 543 U.S. at 569) (internal quotation marks omitted). From a social science perspective, studies have shown that individuals younger than 25 years old are still at greater risk of making a number of immature decisions, including "to binge drink, smoke cigarettes, have casual sex partners, engage in violent and other criminal behavior, and have fatal or serious automobile accidents, the majority of which are caused by risky driving or driving under the influence of alcohol." Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Dev. Rev. 78, 80 (2008).

Ongoing brain development in young adults can explain why

individuals continue to make these dangerous choices well into their mid-20s. Indeed, pointing to changing science about cognitive brain development, the California Legislature last year voted to amend its penal code to change the age of youth offenders for parole purposes from 23 to 25. Assemb. B. 1308, State Leg. 2017 (Cal. 2017), Off. of S. Floor Analyses 4–5. Specifically, California's new rule requires the State Board of Parole Hearings to hold youth offender parole hearings for all offenders who were 25 years old or younger when they committed a crime, and to provide a meaningful opportunity for their release. *Id.* In proposing its new law, California cited neuroscience research published in the last decade. *Id.* This research suggests that the prefrontal cortex, which is important for planning, impulse control, and goal-directed behavior, continues developing "until the early 20s or later" and connections that result in emotional maturity "develop well into adulthood." Johnson, *supra*, at 217–18. *See also* Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatr. Dis. Treat. 449, 459 (2013) ("The development and maturation of the prefrontal cortex occurs primarily during adolescence and is fully accomplished at the age of 25 years"). More conservative recent research has concluded that the prefrontal cortex continues to develop at least until age 21. Kathryn Monahan et al., *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 Crime and Justice: A Review of Research 577, 582 (2015).

Young adult brains are continuing to develop in other significant ways,

as well. The volume of grey matter, which is crucial in parts of the brain involving emotions and decision-making, also continues to develop and "does not begin to resemble that of an adult until the early 20s." National Institute of Mental Health, *The Teen Brain: Still Under Construction* (2011). Additionally, delays in the maturation of the prefrontal cortex to the mid-20s lead to greater activity in the amygdala than researchers would expect to see in a fully-formed adult brain, which is a part of the brain that controls emotional responses, and has been associated with fear, arousal, and survivalist instincts. *See* Neir Eshel et al., *Neural Substrates of Choice Selection in Adults and Adolescents: Development of the Ventrolateral Prefrontal and Anterior Cingulate Cortices*, 45 Neuropsychologia 1270, 1270–71 (2007). These underdeveloped parts of the brain lead juveniles to make risky and misguided choices into young adulthood.

b. Young adults remain vulnerable to negative outside influences.

The most recent research shows that, up to at least age 21, but even as old as 25, "[y]oung adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings." Vincent Schiraldi & Bruce Western, *Why 21 Year-Old Offenders Should be Tried in Family Court*, Wash. Post, Oct. 2, 2015. Scientific researchers have determined that the brain's socio-emotional system, which controls reward-seeking behavior like succumbing to peer pressure, develops abruptly at

puberty, while the cognitive-control system, which is vital for self-regulation, slowly develops up to the mid-20s. Steinberg, *supra*, at 92. Consequently, the time preceding the mid-20s is "a time of heightened vulnerability to risky and reckless behavior." *Id. See also*, Alexander Weingard et al., *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 Dev. Sci. 71, 72 (2013) (showing that the cognitive control system's development in early adulthood continues to lead to risky behaviors).

Social science studies have also shown that this discrepancy in development of different brain areas leads to a driving motivation during youth to establish relationships with peers. In late adolescence, crimes tend to be much more driven by the search for peer approval. *See* Elizabeth P. Shulman & Elizabeth Cauffman, *Reward-Biased Risk Appraisal and Its Relation to Juvenile Versus Adult Crime*, 37 L. & Hum. Behav. 412, 414 (2013). Researchers have found that adolescents, including individuals up to age 24, show a significant bias towards the rewards in criminal activity, such as impressing peers, and often fail to see the costs of taking part in that behavior. *See generally id.* Several studies have shown that this reward bias peaks in late adolescence and then begins to decline rapidly in early adulthood. *Id.* at 413.

c. Young adults are highly capable of change and reform, as their identity is not yet fixed.

In *Miller*, the Court emphasized the point initially made in *Roper*, that

adolescents' characters are not yet fixed, and therefore, their "actions are less likely to be evidence of irretrievable depravity." *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 570) (internal quotation marks and alterations omitted). Research has long shown that adolescent identity continues forming into early adulthood. *See, e.g.*, Alan S. Waterman, *Identity Development from Adolescence to Adulthood: An Extension of Theory and a Review of Research*, 18 Dev. Psychol. 341, 355 (1982) ("The most extensive advances in identity formation occur during the time spent in college"). Researchers today continue to recognize that identity formation occurs in the latest stages of youth. Jeffrey Jensen Arnett, whose work was cited in the pivotal *Roper* decision, 543 U.S. at 569, has recently written that identity development occurs primarily between 18 and 25. Jeffrey Jensen Arnett, *Identity Development from Adolescence to Emerging Adulthood: What We Know and (Especially) Don't Know*, *in* THE OXFORD HANDBOOK OF IDENTITY DEVELOPMENT 14 (Kate C. McLean & Moin Syed eds., 2015). Mr. Harris, just 18 at the time of his offense, was at the beginning stages of identity development. Mr. Harris and other young adults like him are especially amenable to rehabilitation.

2. State laws increasingly recognize that 18 is no longer the appropriate age at which to draw the line between childhood and adulthood.

In *Roper*, the Court considered state trends as part of its analysis of the evolving standards of decency. 543 U.S. at 566. The Court also looked to

states in *Graham* to determine whether there was a "national consensus against the sentencing practice at issue." 560 U.S. at 61. At both junctures, the Court was convinced that, either by outright prohibition or in practice, *a state consensus* against the juvenile death penalty (*Roper*) or juvenile life without parole for non-homicide offenses (*Graham*) was an essential factor in its ultimate decision as to whether the penalty violated the Eighth Amendment. As the consensus stands today, state laws increasingly reject drawing the line between childhood and adulthood at 18.

a. Trends in state juvenile justice systems and sentencing schemes support extending the line beyond 18 for full adult culpability.

Recognizing a need to treat young adults differently from their older counterparts, states have created special courts and programs that target offenders who are between 18 and 21 years old. Connie Hayek, National Institute of Justice, *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults* 1 (2016). According to the National Institute of Justice Report, "[m]ost persons interviewed [about young adult courts or programs] mentioned an *increased understanding of the science regarding the development of the brain into young adulthood* as playing a role in pursuing enhanced programming." *Id.* at 20 (emphasis added). Thirty-six states—including Illinois—permit juvenile courts to retain some jurisdiction over youth until age 21. Alex A Stamm, *Young Adults are Different, too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 Tex. L. Rev. See Also 72, 89 (2017).

Six states set the limit between age 22 and 25. *Id.* In eleven states, there exists some type of court or diversion program for young adults over the age of 18. *Id.* For example, the Denver Juvenile and District Drug Court trains case managers in strategies that are "rooted in the belief that *young adults cognitively function like adolescents.*" *Id.* (emphasis added). California, Indiana, and Nebraska all have special Young Adult Courts that serve offenders up to 25, 24, and 22, respectively. *Id.*

Connecticut's governor is pushing the legislature there to raise the age at which offenders are transferred to an adult court to 21. Matt Smith, *'Raise the Age' Gets a New Look in Connecticut*, Juv. Just. Info. Exchange, Jan. 19, 2017, http://jjie.org/2017/01/19/raise-the-age-gets-new-look-in-connecticut/. Although this particular piece of legislation does not include the most serious offenses, like murder, assault with a firearm, and rape, Connecticut would be the first state to raise the automatic transfer age past 18. *Id.* Massachusetts, Vermont, and Illinois all currently have similar legislation pending. *Id.* In May of 2017, the Illinois Senate passed House Bill 531, which would expand parole opportunities for offenders who commit crimes before turning 21.[3] The legislation would permit a person who committed a crime before age 21, other than first degree murder, to be eligible for parole review after serving 10

[3] The House of Representatives did not vote on the Bill prior to the end of the 2017 legislative session. Bill Status of HB0531, 100th Gen. Assemb. (Ill. 2017), http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=531&GAID=14&SessionID=91&LegID=100727 (last visited Jan. 9, 2018).

years of his or her sentence. H.B. 0531. A person who committed first degree murder before turning 21 would be eligible for parole review after serving 20 years of a sentence. *Id.* The Bill requires the Prisoner Review Board during parole review to consider the "diminished culpability of youth offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration." *Id.* This Bill recognizes that the "hallmark features of youth," which include diminished capacity, are present beyond age 18.

Several states have legislation that considers and effectuates the mitigating circumstances of youthful offenders. North Carolina and Alabama enacted specific legislation addressing mitigating factors for offenders at 18 to 21. N.C. Gen. Stat. § 15A-1340.16 (2005); Ala. Code § 15-19-1 (2012). This type of legislation gives both courts and prosecutors the flexibility to consider the age and maturity level of the offender before imposing a sentence. Hayek, *supra*, at 18. Virginia allows for an indeterminate sentence up to age 21, with ongoing parole board evaluations for possible release of young adults age 18 to 21. *Id.*

b. Additional state and federal trends support drawing the line between childhood and adulthood beyond 18.

In *Roper*, the Court drew the line at 18 for a prohibition on the death penalty because "that is the point where society draws the line for many purposes between childhood and adulthood." 543 U.S. at 554. While 18 is the age at which a young person becomes eligible to vote, marry, and serve on a

jury, state laws increasingly recognize that certain decisions are "emotionally arousing" and are riskier for those who lack maturity, are vulnerable, or who have an underdeveloped character—even if those individuals are over 18. Elizabeth S. Scott et al., *Young Adult as a Transitional Legacy Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 651–52 (2016). When laws invoke decisions that require maturity or a developed character, state lawmakers set the age of majority, at minimum, at 21.

Individuals mature intellectually before they mature emotionally or socially. *Id.* at 648. Therefore, age differences in psychological functioning vary depending on the context. *Id.* An 18 to 21-year-old may very well be capable of invoking his intellectual and logic skills to cast a vote or decide the outcome of a case as a juror because these activities are not highly susceptible to risky or impulsive behavior. Emotionally arousing conditions, however, make young adults "more susceptible to impetuous and shortsighted decision making" in addition to being "more vulnerable to the effects of emotional and social arousal on intellectual functioning." *Id.* at 651.

States seem equally concerned about entrusting decisions—ones that are susceptible to risky or impulsive behavior—to 18-year-olds. All 50 states set the drinking age at 21. 23 U.S.C. § 158 (1984). Congress chose this age out of concern for the "youthful recklessness" and "immaturity" of those under 21. 98 Cong. Rec. S8246 (daily ed. Jun. 26, 1984) (statement of Sen. Byrd); *Hearing Before the Subcomm. on Surface Transp. on Oversight of the*

Nat'l Highway Traffic Safety Admin., 98th Cong. 98–43 (1983) (statement of Arthur Yeager, D.D.C., V.P. Physicians for Automotive Safety).

Every state that has legalized marijuana has done so only for persons over 21 years of age. *See* Alaska Stat. § 17.38.070 (2014); Colo. Rev. Stat. § 12-43.4-402 (2013); D.C. Code Ann. § 48-904.01 (West 2015); Me. Stat. tit. 7, § 2452 (2017); Mass. Gen. Laws ch. 94G § 7 (2016); Nev. Rev. Stat. § 453D.110 (2017); Or. Rev. Stat. § 475B.270 (2015); Wash. Rev. Code § 69.50.560 (2015). State legislatures are making these decisions based upon the same factors in *Roper*. For example, in Maine, the legislature found that limiting possession of marijuana to those 21 and older was "necessary to protect *those who have not yet reached adulthood* from the potential negative effects of irresponsible use of a controlled substance." 2017 ME H.P. 176 (NS) (emphasis added). In legalizing marijuana for persons over 21, Vermont found it necessary to include a provision in its law providing for an "education and prevention program focused on use of marijuana by *youths under 25 years of age*." 2017 VT H.B. 490 (NS) (emphasis added).

Recent state tobacco laws also reflect an understanding that legislatures need to raise the age for tobacco purchases. California, New Jersey, Oregon, Hawaii, and Maine have raised the tobacco age to 21, along with at least 285 localities, including New York City, Chicago, Boston Cleveland, and Kansas City. Campaign for Tobacco-Free Kids, https://www.tobaccofreekids.org/assets/factsheets/0376.pdf,http://www.tobacc

ofreekids.org/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited Jan. 9, 2018). Additionally, 22 states have pending legislation that will change the age for purchasing tobacco to 21. *See e.g.*, Cal. Penal Code § 308 (2016) and N.Y.C. Admin. Code § 17-706 (2014). New York Majority Leader, Catherine Borgia, recently cited brain development as a motivating factor in the New York legislation, "[i]ntroducing nicotine at a young age has disastrous effects on a child's brain, *which is not yet fully developed before age 21.*" Joseph Specter, *Bill Advances to Raise NY Smoking Age to 21*, Democrat & Chron., Apr. 21. 2017, http://www.democratandchronicle.com/story/news/politics/albany/2017/04/27/ny-eyes-raising-smoking-age-21/100978842/ (last visited Jan. 9, 2018).

New York Majority Leader Borgia is not alone in connecting brain development to the necessity of raising the age to purchase tobacco. These pieces of legislation are premised on the same underpinnings as *Roper*: the lack of impulse control, susceptibility, vulnerability, and peer pressure of young adults. An Institute of Medicine report found that, "*[t]he parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood,* and adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction." Institute of Medicine, Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products 2 (2015),

http://www.nationalacademies.org/hmd/~/media/Files/Report%20Files/2015/TobaccoMinAge/tobacco_minimum_age_report_brief.pdf.

When public safety is at stake, our nation also recognizes that 18 years of age is an inappropriate cut-off for adulthood. A federal statue makes it illegal for any licensed dealer to sell a gun or ammunition, other than a long gun (shotgun or rifle) to anyone under 21 years of age.[4] 18 U.S.C. § 922(b)(1) (1988). Additionally, youth is regularly defined in federal statutes as extending to persons 21 and older. *See e.g.*, 8 U.S.C. § 1101(b)(1), (c)(1) (2014) (defining "youth" for purposes of immigration and naturalization as under 21); 42 U.S.C. § 290bb-25b(a)(3) (2016) (defining "youth" at 21 for underage drinking programs); 42 U.S.C. § 290bb-36(1)(4) (defining "youth" at 10 to 24 for youth suicide intervention and prevention strategies); 42 U.S.C. § 13925(a)(45) (2013) (defining "youth" at 11 to 24 for purposes of the Violence Against Women Act).

c. States continue to support young adults beyond age 18 as dependent youths.

Family circumstances sometimes require states to serve young adults

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[4] Raising the age at which the United States permits access to firearms or alcohol is evidence of a maturing society that incorporates its increasing understanding of risks and impulsive behavior of young adults into its laws. For contrast, in a 1785 letter to his 15-year-old nephew, Thomas Jefferson wrote about exercise: ". . . I advise the gun. While this gives a moderate exercise to the body, it gives boldness, enterprize [sic], and independance [sic] to the mind. Games played with the ball and others of that nature, are too violent for the body and stamp no character on the mind. Let your gun therefore be the constant companion of your walks." Julian P. Boyd et al., eds., *The Papers of Thomas Jefferson,* Jefferson to Peter Carr, Aug. 19, 1785 (1950).

in a custodial capacity. State legislation, when the state acts as *parens patriae*, reflects an understanding that young adults require supports and are not fully prepared for independent living at 18. Most states set the age at which a young adult will age out of foster care at 21. Ramesh Kasarabada, *Fostering the Human Rights of Youth in Foster Care: Defining Reasonable Efforts to Improve Consequences of Aging Out*, 17 CUNY L. Rev. 145, 151 (2013). Illinois is such a state that extends foster care services to its youth up to age 21. 20 ILCS 505/5 (West 2017).

In support of the Fostering Connections to Success and Increasing Adoptions Act of 2008, which affords young people the benefit of staying in foster care until age 21, Representative George Miller of California noted significant differences in outcomes when young adults were permitted to receive services until age 21. 154 Cong. Rec. 22865 (daily ed. Sept. 25, 2008). He summarized a study that found, "extending foster care services can support youth in developing into healthy, educated, productive, and independent citizens. . . [This legislation] allow[s] States to continue vital support for their disconnected adolescent foster youth during a crucial life transition, increasing the likelihood that these youth will experience better ultimate outcomes." *Id.* at 22866. At age 18, youth have not yet developed into "healthy, educated, productive, and independent citizens." *Id.*

3. The international community, including most European nations, recognizes that justice systems need to consider the youthful characteristics of young adults like Mr. Harris.

In addition to examining the laws and practices in the U.S., the

Supreme Court has frequently looked to "laws of other countries and international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments.'" *Roper*, 543 U.S. at 575; *see also Graham*, 560 U.S. at 80 (acknowledging and considering international opinion regarding mandatory life without parole for persons under 18); *Thompson v. Oklahoma*, 487 U.S. 815, 830–31 (1988) ("we have previously recognized the relevance of the views of the international community in determining whether a punishment is cruel and unusual"). The current world community, through international treatises and conventions, is urging nations to treat young adults over age 18 as juveniles.

The United Nations adopted the Standard Minimum Rules on the Administration of Juvenile Justice, known as the "Beijing Rules," in 1985. U.N. Standard Minimum Rules for the Admin. of Juv. Just. (1985). The rules dealt with procedural rights for juveniles and young adults, with an aim to respect the developmental needs of juveniles with specialized juvenile systems and to "emphasize the well-being and ensure reaction to offense is in proportion to circumstances of offender and offense." *Id.* at 5.1. The Rules recommend that young adults be granted the same rights and treatments as written in the Rules for juveniles: "[e]fforts shall also be made to extend the principles embodied in the Rules to young adult offenders." *Id.* at 3.3.

Forty-seven nations have committed to the European Convention on Human Rights. In 2003, this Council of Europe recognized, "*reflecting the*

extended transition to adulthood, it should be possible for young adults *under the age of 21* to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that *they are not as mature and responsible for their actions as full adults.*" Kanako Ishida, Juv. Just. Initiative, *Young Adults in Conflict with the Law: Opportunities for Diversion* 2 n.4 (2015) (emphasis added) (hereinafter *Young Adults*). In keeping with this recommendation, there are only seven European countries that do *not* have some special young adult prosecution or sentencing structure in place. *Id.* at 2.

Many nations have already taken young adult developmental research and international recommendations into account. *Id.* Since 1952, all young adults age 18-21 in Germany have been tried in juvenile court. *Id.* If a juvenile judge finds that the offender's "personality . . . [and] social environment indicates that at the time of committing the crime the adult in his moral and psychological development was like a juvenile," then that 18 to 21-year-old may be sentenced as a juvenile. *Id.* The German Supreme Court also ruled that if a young adult's personality is still developing, then he has the maturity of a juvenile. *Id.* The goal of the German system is to prevent future crimes rather than punishing for past crimes. The restorative justice approach is working: Germany's sentencing scheme stops 70% of those sentenced as juveniles from re-offending. *In Germany: Focusing on Preventing Not Punishing Youth for Crime*, Deutsche Welle, Jun. 6, 2007,

http://www.dw.com/en/in-germany-focus-on-preventing-not-punishing-youth-crime/a-2810444 (last visited Jan. 9, 2018).

In Sweden, young adults can be tried in juvenile court until they turn 25, and mandatory minimum sentences are set aside for anyone under 21. Tracy Velasquez, *Young Adult Justice: A New Frontier Worth Exploring* (2013), https://chronicleofsocialchange.org/wp-content/uploads/2013/05/Young-Adult-Justice-FINAL-revised.pdf. Since 2011, in the Netherlands, young adults ages 18 to 21 are eligible to be sentenced under juvenile law if it is appropriate or if there are special circumstances. Netherlands Crim. Code, Wetboek van Strafrecht, *Sr*, Article 77c. The Netherland's underlying rationale is that any punishment must be aimed at reform.[5] Annemieke Wolthuis, *Restorative Aspects in the Dutch Juvenile Justice System* (2000), https://www.iirp.edu/eforum-archive/4241-restorative-aspects-in-the-dutch-juvenile-justice-system. As a result of the Netherland's approach, overall recidivism rates of young adult offenders have decreased. *Young Adults* at 3.

England has employed a non-profit juvenile advocacy group, Transition to Adulthood Alliance ("T2A"), to conduct young adult pilot programs in certain cities. *Id.* T2A acknowledges that young people require special

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[5] The underlying rationale for the Netherland's juvenile criminal law mirrors one purpose of criminal penalties outlined in the Illinois Constitution: "[a]ll penalties shall be determined both according to the seriousness of the offense and *with the objective of restoring the offender to useful citizenship*." ILL. CONST. art I, § 11 (emphasis added).

support during their transition to adulthood and "not an arbitrary cut-off from services at the time of greatest need." *Id.* With respect to sentencing, T2A recommends for young adults—between the ages of 18 and 24—that "new methods are introduced to ensure that distinctive characteristics of *young adults* are taken into account when they are sentenced by the courts." Transition to Adulthood, *A New Start: Young Adults in the Criminal Justice System* (2009), https://www.barrowcadbury.org.uk/wp-content/uploads/2011/01/T2A-A-New-Start-Exec-Summary-Final-2009.pdf.

In Japan, anyone under 20 is considered a juvenile. Children age 14 to 19 are tried as juveniles, and even those under age 20 who are sentenced as adults do not go to adult prison. *Young Adults* at 4. Japanese Juvenile Law, based on "the aim of the healthy growth and development of juveniles," favors rehabilitation over criminal penalties, even for offenders who are older than 20. *Juvenile Crime and Punishment*, The Japan Times, May 28, 2015, https://www.japantimes.co.jp/opinion/2015/05/28/editorials/juvenile-crime-and-punishment/ (last visited Jan. 9, 2018).

B. Illinois courts have a special responsibility to consider youthful characteristics of young adults like Mr. Harris in sentencing.

Illinois has long been a leader in the realm of juvenile justice and in emphasizing the importance of rehabilitation. As Justice Theis wisely summarized, "[o]ur state, home of the country's first juvenile court and once a leader in juvenile justice reform, should not be a place where we boast of

locking up juveniles and throwing away the key. Illinois should be a place where youth matters, and we work to tailor punishment to fit the offense and the offender, as required by our federal and state constitutions." *People v. Patterson*, 2014 IL 115102, ¶ 177 (J. Theis, dissenting). This Court should take the opportunity to recognize that in our progressive society, 18 is no longer an appropriate line to draw in sentencing youth to life without parole.

Article 1, section 11 of the Illinois Constitution provides that penalties must be determined "according to the seriousness of the offense" and "with the objective of restoring the offender to useful citizenship." Ill. Const. of 1970, art. I, § 11. As this Court concluded in *People v. Clemons*, this provides protections even greater than the Eighth Amendment. 2012 IL 107821, ¶¶ 35–39. Any evaluation of a particular punishment under this clause necessarily requires courts to consider the individual circumstances of the defendant such that, "in addition to looking to the act that the person committed, we also should look at the person who committed the act and determine to what extent he can be restored to useful citizenship." *Clemons*, 2012 IL 107821, ¶ 39 (citing 3 Record of Proceedings, Sixth Illinois Constitutional Convention 1380–81 (statements of Delegate Foster)). In *People v. Gipson*, an Illinois Appellate Court confirmed that the Illinois Constitution "demands consideration of the defendant's character by sentencing a defendant with the objective of restoring the defendant to useful citizenship, an objective that is much broader than defendant's past conduct

in committing the offense." 2015 IL App (1st) 122451, ¶ 72 (leave to appeal allowed, No. 119594). That court determined that under the proportionate penalties clause, the fact that the "as a juvenile with mental illness, defendant was prone to impulsive behavior" was a mitigating factor, which required greater consideration at the sentencing stage than the trial court had given it. *Id.* at ¶ 73.

Youthful offenders present an especially compelling case for an enhanced focus on rehabilitation required under the Illinois Constitution. State legislatures and the U.S. Supreme Court have continued to acknowledge that the youthful age of the defendant makes the defendant less culpable, and that youthful offenders are especially amenable to rehabilitation. Those features of youth do not disappear at the age of 18, but, as discussed in Part A, extend well into a person's mid-20s. Because he had only just turned 18 at the time of his offense, Mr. Harris is especially capable of being reformed and becoming a useful citizen in the future, as envisioned by the drafters of the proportionate penalties clause. The Illinois Constitution therefore requires that courts recognize the mitigating factors of Mr. Harris's young age and susceptibility to impulsive behavior, as well as his high likelihood of being rehabilitated, in determining his sentence.

Illinois is the home state of the juvenile court movement, which first began in the 1890s. David S. Tanenhaus & Steven A. Drizin, *"Owing to the Extreme Youth of the Accused": The Changing Legal Response to Juvenile*

Homicide, 92 J. Crim. L. & Criminology 641, 646 (2002). The state established the country's first juvenile court system in 1899, declaring that children should not be treated as criminals. *Id.* Article V of the 1987 Juvenile Court Act set out a goal to rehabilitate and promote the "development of educational, vocational, and social, emotional and basic life skills which enable a minor to mature into a productive member of society." 705 ILCS 405/5-101(1)(c) (West 1991). This Act explicitly specifies that "minor" includes all individuals below the age of 21. 705 ILCS 405/1-3(10) (West 2017). For that reason, youth correctional facilities in Illinois today routinely house young adults Mr. Harris' age, up to age 21.

In 2006, the Illinois General Assembly created the Illinois Department of Juvenile Justice (IDJJ), acknowledging again the differences between youth (up to age 21) and adult offenders, and the fact that youth deserved more individualized strategies in punishment. Candice Jones & The Honorable Bruce Rauner, Improving Youth Outcomes: Illinois Department of Juvenile Justice 2015 Operating Plan Summary 2 (2015). The creation of IDJJ came just one year after the Supreme Court's holding that capital punishment for juveniles is unconstitutional, *Roper*, 543 U.S. at 578–79, and six years *before* the Court held that mandatory life without parole sentences for a juvenile offender "precludes consideration of his chronological age and its hallmark features," *Miller*, 567 U.S. at 477. These initiatives demonstrate that our state has been one of the nation's leaders in juvenile justice, in tune

with the growing national consensus recognizing the need to treat adult and juvenile offenders differently.

In the past decade, Illinois has continued to evolve in its understanding of youth in the criminal justice system. In 2009, the state legislature expanded the age of juveniles, granting juvenile courts jurisdiction over 17 year olds facing misdemeanor charges. S.B. 2275, Gen. Assemb. (Ill. 2009). Five years later, the legislature acted again, to extend juvenile court jurisdiction to include 17 year olds charged with felonies. H.B. 2404, Gen. Assemb. (Ill. 2014). In 2015, the state also ended automatic transfer of most youth defendants into adult criminal court, H.B. 3718, Gen. Assemb. (Ill. 2016). Most recently, in 2016, Illinois passed several pieces of legislation targeted at reforming the way in which courts treat and punish young people, including reducing the probation period for youth who have committed certain felonies and limited juvenile commitment to IDJJ for certain controlled substance violations. Bruce Rauner & Heidi Mueller, Illinois Department of Juvenile Justice: Annual Report 2016 15 (2016). Significantly, Illinois in 2016 also decided to make the special youth-oriented IDJJ correctional facilities available to youth up to the age of 21. S.B. 1560, Gen. Assemb. (Ill. 2016). This state has consistently been quick to respond to changes in our knowledge and understanding of youth, and should continue to stand at the forefront of this area of law.

As the Supreme Court stated in *Graham*, "[s]ociety changes.

Knowledge accumulates. We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time." 560 U.S. at 82. Because of Illinois' demonstrated commitment to juvenile justice, the state has a particular opportunity and responsibility to keep its law and decision-making up to date with the most recent knowledge. As discussed *supra* Part A, science has progressed to the point that we now understand children's brains and behavior continue to develop even past the age of 18, continuing through the mid-20s. The Illinois legislature has continued to reform juvenile justice in line with up to date research, and this Court should also acknowledge what we know now, but did not before, in the area of juvenile development and require individualized consideration of youth-centered mitigation and enhanced sentencing discretion for youthful offenders like Mr. Harris.

C. Conclusion.

State supreme court decisions play a critical role not just in exercising their vast supervisory authority and as the final arbiters of (here, Illinois) law, but in shaping the jurisprudence of Eighth Amendment analysis for the nation. The U.S. Supreme Court looks to sentencing decisions of state courts in analyzing the society's progress in the area of punishment. The Court has also gone further, and given considerable weight to forward-thinking opinions

of state judges.[6] Eighth Amendment jurisprudence is far from static. As an important voice for a state that has been at the forefront of youth justice for over a century, the Illinois Supreme Court has the potential to play an even greater part in advancing the constitutional rights of America's youth by extending those rights beyond the age of 18. *Amici* respectfully request that this Court lead by affirming the decision below and concluding that a mandatory *de facto* life sentence imposed on an 18 year old violates the U.S. and Illinois Constitutions.

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[6] For example, in 1989, the Court held that the Eighth Amendment did not forbid execution of individuals suffering from mental retardation. *Penry v.* Lynaugh, 492 U.S. 302, 340 (1989). Relying on the clear precedent set by *Penry*, the Supreme Court of Virginia in 2000 refused to commute a sentence of death imposed on an individual with a mental retardation. *Atkins v. Com.*, 260 Va. 375, 390, 534 S.E.2d 312, 321 (2000). But several Virginia judges dissented, saying "it is indefensible to conclude that individuals who are mentally retarded are not to some degree less culpable for their criminal acts." *Id.* at 397, 534 S.E.2d, at 325 (Koontz, J., dissenting). The dissenting voices in that state court opinion, who refused to follow U.S. Supreme Court precedent, nevertheless had a serious impact on the Supreme Court; in *Atkins v. Virginia*, only 13 years after *Penry*, the Court reversed its holding, writing "[b]ecause of the gravity of the concerns expressed by dissenters, and in light of the dramatic shift in the state legislative landscape that has occurred in the past 13 years, we granted certiorari to revisit the issue that we first addressed in the *Penry* case." 536 U.S. at 310.

CONCLUSION

As outlined above, *Amici Curiae* support Defendant-Appellee and respectfully request that this Court find that Mr. Harris' mandatory 76-year sentence violates the Eighth Amendment of the U.S. Constitution and Article I, §11 of the Illinois Constitution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 30 pages.

SCOTT F. MAIN
Amicus Counsel

APPENDIX TO THE BRIEF

IDENTITY OF *AMICI* AND STATEMENTS OF INTEREST

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 juvenile delinquency, criminal justice, special education, school suspension and expulsion, and immigration and political asylum. In its 21-year history, the CFJC has served as *amici* in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

Chicago Lawyers' Committee for Civil Rights is a public interest law organization founded in 1969 and works to secure racial equity and economic opportunity for all. The Chicago Lawyers' Committee for Civil Rights provides legal representation through partnerships with the private bar, and collaborates with grass roots organizations and other advocacy groups to implement community-based solutions that advance civil rights, including in areas of police accountability and criminal justice reform. Through litigation, policy advocacy and coalition work, Chicago Lawyers' Committee for Civil Rights works to ensure that systems operate with fairness and justice to produce equitable outcomes.

The **Civitas ChildLaw Clinic** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

The **Criminal and Juvenile Justice Project Clinic** of the University of Chicago Law School's Mandel Legal Aid Clinic was created in 1991 to provide law and social work students the supervised opportunity to provide quality legal representation to children and young adults. The Clinic is a national leader in expanding the concept of legal representation to include the social, psychological and educational needs of clients and their families. Students and faculty also participate in policy reform and advocacy related to sentencing, mass incarceration, race and justice, policing, and the collateral consequences of criminal justice involvement.

Juvenile Justice Initiative (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firm. JJI as a coalition establishes or joins broad-based collaborations developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our 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 youth in the justice system.

Founded in 1975 to advance the rights and well-being of children in jeopardy, **Juvenile Law Center** (JLC) is the oldest multi-issue public interest law firm for children in the United States. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential placement facilities or adult prisons, and children in placement with specialized service needs. JLC works to ensure that children are treated fairly by the systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Law Office of the Cook County Public Defender** is the second largest public defender office in the nation. With a full time budgeted staff of approximately 680, of which 490 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 2016, the Office was appointed to more than 174,000 cases. The mission of the Office is to protect the fundamental rights, liberties and dignity of each person whose case has been entrusted to us by providing the finest legal representation.

The **James B. Moran Center for Youth Advocacy** ("Moran Center") is a nonprofit organization dedicated to providing integrated legal and social work services to low-income Evanston youth and their families to improve their quality of life at home, at school, and within the community. Founded in 1981 as the Evanston Community Defender, the Moran Center has worked to protect the rights of youth in the

criminal justice and special education systems for decades. Because of the Moran Center's critical position at the nexus of both direct legal and mental health services, we are uniquely positioned to advocate for the distinct psycho-social needs presented by youth. Accordingly, many of our clients are directly impacted by current SORA requirements.

No. 121932

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, First District, No. 1-14-1744
Plaintiff-Appellant,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois No. 11 CR 11184
DARIEN HARRIS,	)	Honorable Nicholas R. Ford,
Defendant-Appellee.	)	Judge Presiding.

PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned certifies that we sent via FedEx the original and thirteen (13) copies of the Brief for *Amicus Curiae* in the above-entitled cause to the Clerk of the above Court; and three (3) copies to the Attorney General of Illinois, the Cook County State's Attorney, and the Office of the State Appellate Defender, by placing the documents in envelopes bearing sufficient postage and depositing them in a U.S. mail box in Chicago, Illinois on January 10, 2018.

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