No. 125124

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate
	)	Court of Illinois, First District,
Plaintiff-Appellant,	)	No. 1-11-0580
	)	
	)	There on Appeal from the Circuit
v.	)	Court of Cook County, Illinois
	)	No. 93-CR-26477
	)	
	)	
ANTONIO HOUSE,	)	The Honorable
	)	Kenneth J. Wadas,
Defendant-Appellee.	)	Judge Presiding.

BRIEF OF ***AMICI CURIAE*** CHILDREN AND FAMILY JUSTICE CENTER ET AL. IN SUPPORT OF DEFENDANT-APPELLEE

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E-FILED
12/22/2020 9:30 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

IDENTITY AND INTEREST OF *AMICI CURIAE*

The **Children and Family Justice Center** (CFJC), part of Northwestern Pritzker School of Law'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 28-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.

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

The **Center for Law, Brain and Behavior (CLBB)** is a nonprofit academic center based at Massachusetts General Hospital. CLBB's mission is to promote the responsible, ethical, and scientifically sound translation of neuroscientific research into the legal arena.

CLBB has a distinguished faculty of neuroscientists and legal scholars and provides expert training, tools, and counsel to help members of the legal community understand and apply the most relevant brain science to the cases, courtroom procedures, and policies. Founded in 2008, CLBB has demonstrated the clear benefits of accurately applied neuroscience through education, training, public symposia, and scholarly publications.

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 firms. 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.

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.

Marc Kadish is the Pro Bono Advisor at Mayer Brown. He was the Director of Pro Bono Activities and Litigation Training at the firm for 16 years. Before joining the

firm, he was a Clinical Professor at Chicago-Kent College of Law for 20 years where he worked with students on criminal defense matters and taught Evidence. He has been involved with inmate civil rights issues and reforms in the criminal justice area regarding the extreme sentencing of youth and emerging adults throughout his 52-year career as an attorney.

Amici curiae work on behalf of children and youthful offenders involved in the child welfare, juvenile, and criminal justice systems. *Amici* are advocates, researchers, and advisors who have a wealth of experience and expertise in litigating issues regarding the application of the law to youth in the juvenile and criminal justice systems. *Amici* understand that a core characteristic of adolescence is the capacity to change and mature and that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *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 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* submit that those categorical differences do not disappear when youth turn 18 years old.

In the 15 years since *Roper*, sentencing practices, legislative enactments, and empirical research have continued to evolve, increasingly blurring the line between younger and older adolescents. Research shows that the distinctive attributes of youth

persist even among youth over 18, whose brains continue to evolve until their mid-20s in ways that affect their culpability and our understanding of proportionate punishment. Meanwhile, Illinois law and jurisprudence have similarly evolved to more fully recognize that the protections afforded to youth in criminal and non-criminal contexts apply with equal force to young people over the age of 18. In *People v. Harris*, this Court left open the possibility that research applicable to youth under 18 is similarly relevant to determine the constitutional limits of the sentencing decision for an 18-year-old youth. 2018 IL 121932. *Amici* urge this Court to build upon its reasoning in *Harris* and hold that Antonio House and those similarly situated to him should receive a proportionate sentence that reflects a full consideration of their youth, development, and age-related factors.

SUMMARY OF ARGUMENT

In *Miller v. Alabama*, the United States Supreme Court ruled that mandatory life without parole sentences are unconstitutional for youth who were under 18 at the time of their offenses under the Eighth Amendment's prohibition on cruel and unusual punishment. 567 US 460, 465 (2012). The Court, relying on the same underlying scientific research used to bar the death penalty for youth, held that children are less culpable than their adult counterparts because of their immaturity, impetuosity, susceptibility to peer influence, and greater capacity for change. *Id*. at 465, 470–72. Further research now indicates that young people retain these characteristics beyond age 18. Because these emerging adults possess the same adolescent characteristics that the Supreme Court has determined reduce criminal culpability, mandatory life without parole sentences for this population are also disproportionate under the proportionality clause of the Illinois Constitution. Indeed, in recognition of the current developmental research, jurisdictions around the country are

increasingly raising the age of adulthood above age 18 in situations that implicate the developmental characteristics relied upon in *Miller*. This trend challenges antiquated sentencing practices that wrongly turn on the arbitrary boundary of age 18. Further, as courts around the country have considered age and its attendant characteristics in sentencing even older adolescents, they have consistently found them less deserving of the harshest available penalties. Culpability is further diminished for individuals such as Antonio House who were convicted based on an accountability theory of liability and had minimal participation in the offense. Based on these considerations, this Court should affirm the Appellate Court's judgement that Antonio's mandatory life sentence was unconstitutional and remand his case for a new sentencing hearing.

ARGUMENT

I. THE MANDATORY IMPOSITION OF LIFE WITHOUT PAROLE ON EMERGING ADULTS IS UNCONSTITUTIONAL UNDER THE UNITED STATES AND ILLINOIS CONSTITUTIONS DUE TO THEIR DIMINISHED CULPABILITY.

Settled constitutional law holds that young people under the age of 18 are developmentally different than adults and thus less deserving of the harshest punishments meted out to adults who have reached full neuroscientific and cognitive development. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (banning the death penalty for individuals convicted of murder under age 18); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (banning life without parole sentences on juveniles convicted of non-homicide offenses); and *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (banning mandatory life without parole sentences for juveniles convicted of homicide).

In *Roper* and its progeny, the Supreme Court relied on three developmental

characteristics of youth under the age of 18 to establish their diminished culpability: (1) impulsivity, impetuosity and lack of maturity; (2) susceptibility to outside influences, and (3) capacity for change. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller*, 567 U.S. at 471). Because of these documented developmental differences, young people are less culpable, their "conduct is not as morally reprehensible as that of an adult," *Roper*, 543 U.S. at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion)), and they are "less deserving of the most severe punishments." *Miller*, 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68).

Research now shows that older adolescents share these physiological and psychological traits even beyond age 18. Sentencing practices must likewise reflect this emerging science; older adolescents are also less culpable and less deserving of the harshest punishments in the criminal justice system, including mandatory life without parole sentences, such as the one imposed on then 19-year-old Antonio House.

A. Research Shows Emerging Adults Share Developmental Characteristics with Youth as Neurodevelopmental Growth Continues Beyond Age 18.

In both *Roper* and *Miller*, the Court cited a 2003 study by Laurence Steinberg and Elizabeth Scott in setting the line between childhood and adulthood at 18. *See Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 570); *see also* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1014 (2003). Researchers have more recently established that the circuits in the brain associated with the characteristics relied on in *Roper* continue to mature beyond age 18. *See* Kathryn L. Mills et al., *Structural Brain Development Between Childhood and Adulthood: Convergence*

Across Four Longitudinal Samples, 141 NEUROIMAGE 273, 276 (2016); Christian K. Tamnes et al., *Development of the Cerebral Cortex across Adolescence: A Multisample Study of Inter-Related Longitudinal Changes in Cortical Volume, Surface Area, and Thickness*, 37 J. NEUROSCIENCE 3402, 3410 (2017).

Dr. Steinberg himself has published numerous papers in the 17 years since the study relied upon in *Roper* and *Miller*, and his contemporary papers universally conclude that the parts of the brain implicated in impulse control, propensity for risky behavior, and susceptibility to peer pressure are still developing even at age 21. *See* Laurence Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J. MED. & PHIL. 256, 259-61, 263 (2013); *see also* Elizabeth S. Scott, Richard J. Bonnie, & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 FORDHAM L. REV. 641, 642 (2016) ("Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority."). For example, in recent testimony before the United States District Court for the District of Connecticut in *Cruz v. United States*, Dr. Steinberg explained that "we didn't know a great deal about brain development during late adolescence" until recently, but now he is "[a]bsolutely certain" that the developmental characteristics underpinning *Roper*, *Miller*, and *Graham* also apply to 18-year-olds. *Cruz v. United States*, No. 3:11-CV-00787, 2018 WL 1541898, at *16, *25 (D. Conn. Mar. 29, 2018) (quoting Transcript of September 13, 2017 Hearing at 14:20–25, 71:6), *vacated and remanded on other grounds*, 826 F. App'x 49 (2d Cir. 2020) (Summary Order).

Indeed, it is now widely accepted that the characteristics cited by the Supreme Court in the youth sentencing cases persist far later than was previously understood and certainly beyond age 18. *See, e.g.*, Andrew Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 N.Y.U. REV. L. & SOC. CHANGE 139, 142 n.20, 163 (2016) (citing to research that found antisocial peer pressure was a highly significant predictor of reckless behavior in emerging adults 18 to 25); Alexander Weigard et al., *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 DEVELOPMENTAL SCI. 71, 72 (2014) (finding that a propensity for risky behaviors, including "smoking cigarettes, binge drinking, driving recklessly, and committing theft," exists into early adulthood past 18, because of a young adult's "still maturing cognitive control system"); Kathryn Monahan et al., *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 CRIME & JUSTICE 577, 582 (2015) (finding that the development of the prefrontal cortex which plays an "important" role in regulating impulse control, decision-making, and pre-disposition towards risky behavior, extends into early adulthood). Post-*Miller* studies comparing emerging adults aged 18 to 25 to younger adolescents aged 13 to 17 reveal that 18 to 21-year-olds are more developmentally similar to 13 to 17-year-olds than 22 to 25-year-olds. *See* Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 PSYCHOL. SCI. 549, 550, 559–60 (2016); Marc D. Rudolph et al., *At Risk of Being Risky: The Relationship Between "Brain Age" Under Emotional States and Risk Preference*, 24 DEVELOPMENTAL COGNITIVE NEUROSCIENCE 93, 102–03 (2017). A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that "the unique period of brain

development and heightened brain plasticity . . . continues into the mid-20s," and that "most 18-25 year-olds experience a prolonged period of transition to *independent* adulthood, a worldwide trend that blurs the boundary between adolescence and 'young adulthood,' developmentally speaking." NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, & MEDICINE, THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH 22 (Richard J. Bonnie & Emily P. Backes, eds., 2019) (second alteration in original). The report concludes that it would be "arbitrary in developmental terms to draw a cut-off line at age 18." *Id.*

Researchers have found specifically that two important parts of the brain develop at different times, leading to a maturational imbalance in middle to late adolescence. B. J. Casey, *Beyond Simple Models of Self-Control to Circuit-Based Accounts of Adolescent Behavior*, 66 ANN. REV. PYSCH. 295, 299 (2015). The area of the brain responsive to heightened sensations kicks into high gear around the time of puberty, and brain responsivity to rewards peaks in late adolescence. *See* Barbara R. Braams et al., *Longitudinal Changes in Adolescent Risk-Taking: A Comprehensive Study of Neural Responses to Rewards, Pubertal Development, and Risk-Taking Behavior*, 35 J. NEUROSCIENCE 7226, 7234–36 (2015). This is, in part, due to changes in the function of dopamine, a neurotransmitter that coordinates movement and reward-driven behavior. Adriana Galvan, *Adolescent Development of the Reward System*, 4 FRONTIERS HUMAN NEUROSCIENCE 1, 2, 7 (2010). There is a high concentration of dopamine in the brain during adolescence, which stabilizes during early adulthood, and then the amount of dopamine receptors decreases until age 30. Bart Larsen et al., *Maturation of the Human Striatal Dopamine System Revealed by PET and Quantitative MRI*, 11 NATURE COMM. 1, 2 (2020).

The high number of dopamine receptors during adolescence and emerging adulthood has been linked to increased sensation seeking and risk taking in youth and emerging adults. Samuel W. Hawes et al., *Modulation of Reward-Related Neural Activation on Sensation Seeking Across Development*, 147 NEUROIMAGE 763, 763 (2017).

Conversely, the part of the brain that regulates behavior—self-control, thinking ahead, evaluating the rewards versus the costs of a risky act, and resisting peer pressure—is still developing well into the mid-twenties, creating this maturational imbalance. *See e.g.* Kathryn L. Mills et al., *The Developmental Mismatch in Structural Brain Maturation During Adolescence*, 36 DEVELOPMENTAL NEUROSCIENCE 147, 157 (2014); Michaels, *supra*, at 163; Weigard et al., *supra*, at 72; Monahan et al., *supra*, at 582; Elizabeth P. Shulman et al., *Sex Differences in the Developmental Trajectories of Impulse Control and Sensation-Seeking from Early Adolescence to Early Adulthood*, 44 J YOUTH & ADOLESCENCE 1, 1 (2015) (finding that male adolescents have greater levels of sensation-seeking and lower levels of impulse control than female adolescents, and that the development of impulse control in male adolescents is more gradual than in female adolescents). Overall, emerging adults are more prone to risk taking and impulsivity—traits that likely influence their criminal conduct—and are not yet mature enough to anticipate the future consequences of their actions. *See* Scott et al., *supra*, at 644; Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 35 (2009).

For youth and emerging adults, these lags in impulse control and a heightened propensity for risk-taking behavior are particularly pronounced in emotionally charged situations. Psychologists distinguish between "cold cognition," which refers to thinking

and decision making under calm circumstances, and "hot cognition," which refers to thinking and decision making under emotionally arousing circumstances. Scott et al., *supra*, at 652. Relative to adults, adolescents' deficiencies in judgment and self-control are greater under "hot" circumstances in which emotions are aroused than they are under calmer "cold" circumstances. Cohen et al., *supra*, at 559; Rudolph et al., *supra*, at 100–02. In circumstances of "hot cognition," brain function among 18- to 21-year-olds resembles that of 13- to 17-year-olds. Scott et al., *supra*, at 650.

The presence of peers may also lead to greater risk-taking behavior as emerging adults face the same susceptibility to peer pressure as youth. *See* Karol Silva et al., *Adolescents in Peer Groups Make More Prudent Decisions When a Slightly Older Adult is Present*, 27 PSYCH. SCI. 322, 322, 327 (2016). Another study revealed that the presence of peers makes youth ages 13 to 22 years old more likely to take risks and more likely to make risky decisions than adults over 24 years old. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study,* 41 DEV. PSYCHOL. 625, 632, 634 (2005). Moreover, the presence of friends doubles risk taking among adolescents, increases it by fifty percent among young adults (referred to as "youths" in the study, with a mean age of 20), but has no effect on older adults. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78, 90–91 (2008). And, more recently, studies have confirmed that "exposure to peers increases young adults' preference for immediate rewards" and their "willingness to engage in exploratory behavior." Scott et al., *supra*, at 649. This peer influence on risky behavior is accentuated with male only triads, suggesting that boys appear more susceptible to the influence of peers on risk-taking behavior than girls. Anouk

de Boer et al., *An Experimental Study of Risk Taking Behavior Among Adolescents: A Closer Look at Peer and Sex Influences*, 37 J. EARLY ADOLESCENCE 1125, 1125 (2017).

Existing scientific research also addresses differences in brain development with respect to specific activities. This research suggests that there is more delayed development in the brain functions of emerging adults regarding impulse control, hot cognition, and susceptibility to peer pressure than for activities involving informed decision-making and logical reasoning, such as voting. Thus, the legal age of "adulthood" is context specific. *See e.g.*, Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMPLE L. REV. 769, 786-87 (2016) (defining "young adulthood" at 18 to 21 years and finding that young adulthood is characterized by diminished cognitive capacity and ability to "overrid[e] emotionally triggered actions," which "may be relevant for evaluating appropriate age cutoffs relevant to policy judgments relating to risk-taking, accountability, and punishment"). As Dr. Steinberg explains:

> [t]o the extent that we wish to rely on developmental neuroscience to inform where we draw age boundaries between adolescence and adulthood for purposes of social policy, it is important to match the policy question with the right science. . . . For example, although the APA was criticized for apparent inconsistency in its positions on adolescents' abortion rights and the juvenile death penalty, it is entirely possible for adolescents to be too immature to face the death penalty but mature enough to make autonomous abortion decisions, because the circumstances under which individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals' abilities.

Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 Am. Psych. 739, 744 (2009); *cf. Roper*, 543 U.S. at 620 (Scalia, J., dissenting) (questioning why the age for abortion without parental involvement "should be any different" given that it is a "more complex decision for a young person than whether to kill

an innocent person in cold blood").

Moreover, emerging adults, like their younger counterparts, also have greater potential for reform and rehabilitation. Researchers today continue to recognize that identity formation occurs in the latest stages of youth. Jeffrey Jensen Arnett, *Identity Development from Adolescence to Emerging Adulthood: What We know and (Especially) Don't Know*, *in* 1 THE OXFORD HANDBOOK OF IDENTITY DEVELOPMENT 53, 54 (Kate C. McLean & Moin Syed eds., 2015). The changes in the learning system that occur during adolescence and emerging adulthood suggest that individuals in this developmental window are more amenable to intervention and rehabilitation. *See, e.g.*, Ronald E. Dahl et al., *Importance of Investing in Adolescence from a Developmental Science Perspective*, 554 NATURE 441, 441 (2018); David Scott Yeager & Carol S. Dweck, *Mindsets That Promote Resilience: When Students Believe That Personal Characteristics Can Be Developed*, 47 EDUC. PSYCH. 302, 312 (2012).

B. Because Emerging Adults Possess the Same Developmental Characteristics As Adolescents, They Cannot Be Subject to Mandatory Life Without Parole Sentences Under United States Supreme Court Precedents and Illinois Law.

The juvenile sentencing jurisprudence developed by the United States Supreme Court as well as the Illinois Constitution prohibit mandatory life without parole for emerging adults whose developmental characteristics mirror those of adolescents.

1. Mandatory Life Without Parole Sentences Are Unconstitutional for Emerging Adults Under the United States Supreme Court's Decisions in *Roper* and its Progeny.

In striking the death penalty and substantially limiting life without parole sentences for juveniles, the Supreme Court has emphasized that, "[b]ecause juveniles have diminished culpability and greater prospects for reform, . . . 'they are less deserving of the

most severe punishments.'" *Miller*, 567 US at 471 (quoting *Graham*, 560 US at 68). Its decisions relied on "what 'any parent knows'" and the science regarding adolescent development. *Id.* (quoting *Roper*, 543 US at 569). The scientific research confirms that emerging adults must likewise be included in this protected class.

The Supreme Court's own evolving interpretation of the proscriptions of the Eighth Amendment illustrate why emerging adults over 18 must now be included in this framework. In its first ruling protecting youthful offenders from the death penalty, the Court protected only youth who were under the age of 16. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (plurality opinion). The Court reasoned that, "inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." *Id.* at 835. The Court then held in *Roper*:

> [A] plurality of the [*Thompson*] Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age. We conclude *the same reasoning* applies to all juvenile offenders under 18.

543 U.S. at 570–71 (emphasis added) (internal citation omitted). The developmental differences between juveniles under the age of 18 and adults "render[ed] suspect any conclusion that a juvenile falls among the worst offenders. . . . for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570.

The Court once again relied on these distinct attributes of youth in holding mandatory life without parole unconstitutional in *Miller* as "the mandatory penalty schemes . . . prevent the sentencer from taking account of these central considerations." 567 U.S. at 474. Therefore, "[b]y removing youth from the balance," mandatory life

without parole sentences contradicted the Court's precedent, that forbade the imposition of the harshest penalties on juveniles, by treating them as though they were miniature adults. *Id.* "[N]one of what [the Court] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." *Id.* at 473. As the more current research teaches, it is also not specific to those under 18. It has become increasingly indefensible to exclude emerging adults from the required individualized sentencing and consideration of the mitigating qualities of youth when their brains have such similar decision-making architecture as younger teens.

This extended protection is in line with the Court's other Eighth Amendment jurisprudence which has also evolved to reflect emerging research in evaluating sentencing practices. *Hall v. Florida* is instructive. In *Hall*, the Court held that a Florida rule was unconstitutional that limited evidence of qualifying intellectual disability to proof that the individual had an I.Q. of 70 or lower under *Atkins v. Virginia*, 536 U.S. 304 (2002). *Hall v. Florida*, 572 U.S. 701, 710–14, 721–24 (2014). While acknowledging the important role of the medical community in defining and diagnosing the intellectual disability, the Court struck down the "rigid rule" concerning I.Q. scores because it "creates an unacceptable risk that persons with intellectual disability will be executed." *Id.* at 704, 724. Just as "[i]ntellectual disability is a condition, not a number," *id.* at 723, "youth [also] is more than a chronological fact." *Miller*, 567 U.S. at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). Youth is also a "condition of life"—"a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness'" that creates an unacceptable risk of a disproportionate sentence when disregarded. *Id.* (alteration in original) (first quoting *Eddings*, 455 U.S. at 115; then quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). Like a fixed IQ score,

drawing the line at age 18 "creates an unacceptable risk" of a disproportionate sentence.

2. Mandatory Life Without Parole Sentences Are Unconstitutional for Emerging Adults Under Illinois Law.

Illinois jurisprudence involving the sentencing of youth over 18 has also continued to evolve following *Roper* and has recognized the relevance of a youth-centered analysis for these young people under the Illinois Constitution. The Illinois Constitution provides greater protections than the Eighth Amendment by ensuring proportionality and the important role of rehabilitation under the proportionate penalties clause, which requires that "[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. 1970, art. I, § 11; *see People v. Clemons*, 2012 IL 107821, ¶ 40 (concluding that proportionate penalties clause of the Illinois Constitution provides greater protections than Eighth Amendment).

In *People v. Harris*, building on the U.S. Supreme Court's decision in *Miller* and its own decisions on the sentencing of youth, this Court left the door open for an as-applied challenge for youth over the age of 18 under the proportionate penalties clause of the Illinois Constitution. *People v. Harris*, 2018 IL 121932, ¶¶ 46–48, 52 (finding petitioner's as-applied challenge to his sentence as an 18-year-old "premature" under the proportionate penalties clause of the Illinois Constitution and noting that "facial and as-applied constitutional challenges are not interchangeable"); *see also People v. Thompson*, 2015 IL 118151, ¶ 44 (concluding that a post-conviction petition, and not a petition filed under section 2-1401, was the appropriate vehicle for 19-year-old to raise an as-applied challenge under *Miller*). In so doing, this Court required the petitioner to develop a trial record

"contain[ing] evidence about how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to defendant's specific facts and circumstances" for an as-applied challenge. *Harris*, 2018 IL 121932, ¶ 46.

Meanwhile, Illinois appellate courts, including the appellate court in this case, have recognized that adolescence may extend beyond age 18. The appellate court in this case observed that though "*Roper* delineated the division between juvenile and adult at 18, we do not believe that this demarcation has created a bright line rule" and that the idea "that after age 18 an individual is a mature adult appears to be somewhat arbitrary." *People v. House*, 2019 IL App (1st) 110580-B, ¶¶ 54–55 (citing *Roper*, 543 US at 574), appeal allowed, 125124 (Jan. 29, 2020); *see also People v. Minniefield*, 2020 IL App (1st) 170541, ¶¶ 38–39, 43–44 (19-year-old defendant established prejudice under *Harris*, where "Illinois law treats persons under age 21 differently than adults" and the court noted that this Court in *Harris* held that the proper vehicle for a young adult between 18 and 21 to challenge a *de facto* life sentence is in a post-conviction proceeding). Likewise, in *People v. Savage*, the First District Appellate Court recognized that "recent and traditional legislative enactments support the view that 'youthful offender[s]' are those under the age of 21." 2020 IL App (1st) 173135, ¶ 68 (alteration in original); *see also People v. Franklin*, 2020 IL App (1st) 171628, ¶ 61 ("Defendant argues that Illinois law treats young adults under 21 years of age differently than adults, and that is correct."); *People v. Bland*, 2020 IL App (3d) 170705, ¶ 14 (finding that 19-year-old defendant had pled sufficient facts to warrant further post-conviction proceedings with respect to his as-applied constitutional challenge under *Miller*).

As the research conclusively shows, the age of 18 is no longer an acceptable proxy for developmental maturity and adult-like culpability. Emerging adults like Antonio who commit criminal acts are developmentally indistinguishable from their slightly younger peers. Therefore, mandatory imposition of a sentence of life without parole on a 19-year-old defendant, without any opportunity for a sentencing court to consider the "mitigating qualities of youth," is unconstitutional under both *Miller* and related Illinois jurisprudence.

II. MANDATORY LIFE WITHOUT PAROLE IS UNCONSTITUTIONAL FOR EMERGING ADULTS CONVICTED UNDER AN ACCOUNTABILITY THEORY OF LIABILITY.

Antonio's culpability is additionally diminished due to the minimal role he played in the offense. He was convicted of murder under Illinois' broad accountability statute for his role as a mere lookout; he did not directly participate in the murders and therefore did not "kill, intend to kill, or foresee that life will be taken." *Graham*, 560 U.S. at 69; 720 ILCS 5/5-2 (West 2010). Given the developmental similarities between emerging adults and youth under 18, *supra* Part IA, Antonio's life sentence should also be deemed unconstitutional based on the United States Supreme Court's reasoning in *Graham*, that "when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a *twice diminished moral culpability*" and is "categorically less deserving of the most serious forms of punishment." 560 U.S. at 69 (emphasis added). Furthermore, Antonio's sentence as an accomplice is disproportionate under the proportionate penalties clause of the Illinois Constitution, which provides greater protection than the Eighth Amendment. *Clemons*, 2012 IL 107821, ¶ 40.

Illinois' accountability statute is "expansive," leaving both youth and emerging adults particularly susceptible to prosecution and conviction under the statute. Brooke

Troutman, *A More Just System of Juvenile Justice: Creating a New Standard of Accountability for Juveniles in Illinois*, 108 J. CRIM. L. & CRIMINOLOGY 197, 200 (2018). Under the statute, individuals, including those under 18, can be convicted of murder under an accomplice-type liability premised on the natural and probable consequences doctrine. *Id*. at 211–12; 720 ILCS 5/5-2 (West 2010). An individual may be convicted of an underlying offense if "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she . . . aids . . . [the] other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). In 2008, the Illinois legislature added the "common design rule" to the accountability statute, providing that "any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design . . . and all are equally responsible for the consequences of those further acts." *Id.* Moreover, a person's presence at the crime scene, along with circumstantial evidence, may result in a conviction for the underlying offense. *Id*. Indeed, Illinois has been "highlighted for upholding convictions that illustrated some of the most liberal and expansive uses of accountability theory." Troutman, *supra,* at 212. For example, Illinois courts have extended the scope of common design to "'any acts in the furtherance of that common design' committed by any party that was privy to the original plan." *Id.* at 215 (quoting *People v. Williams*, 2016 IL App (1st) 133459, ¶ 46). Accordingly, Illinois' accountability statute includes "an incredibly expansive mechanism for convicting offenders of criminal acts in which they did not partake and never intended to partake." *Id.*

Given the recognized developmental limitations of emerging adults as fully discussed in Part IA, this statute is particularly problematic for this group who, like younger

youth, seem "more likely to co-offend in comparison to their adult counterparts," are more susceptible to peer pressure, and fail to anticipate consequences. Victoria Sabo, Social Relationships in Young Offenders: Relevance to Peers, Poverty, and Psychological Adjustment 5, 10 (2017) (M.A. thesis, The University of Western Ontario), https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=6097&context=etd; *see also Miller,* 567 U.S. at 477. Neuroscientific advances on the impact of peer influence in reward mechanisms in adolescents and emerging adults undermine the central premise of the doctrine of accountability: that individuals participate in the group primarily because of their intent around a shared criminal enterprise and its outcome. The accountability doctrine misconceives and criminalizes a central feature of adolescent motivation—the desire to be part of a group and the outsized influence of those group members on risk taking. Inclusion or participation in the group enterprise *is itself* a salient reward to teenagers and late adolescents, independent of future benefits. Samuel. W. Hawes et al., *supra*, at 768-69 (explaining that enhanced responses to rewards in the brain are linked to sensation seeking, risk taking, and risky health behaviors in youth and emerging adults). This developmental reality creates an unacceptable constitutional risk of disproportionality in the law's treatment of youth and emerging adults as equally culpable as fully mature adults under a common design theory of accountability.

Coupled with the other developmental characteristics they share with youth under 18 such as their immaturity, emerging adults often find themselves liable for crimes under the Illinois accountability statute, even if they did not intend certain crimes, and in fact, are unable to anticipate those crimes or outcomes as a possible consequence.

Indeed, the instant case aptly illustrates this conundrum. Antonio was only 19 years old at the time of his offense. He did not directly participate in the murders and was not even present at the scene—he merely acted as a lookout and was taking orders from higher ranking gang members. *People v. House*, 2015 IL App (1st) 110580, ¶ 89, *appeal denied, judgment vacated*, 111 N.E.3d 940 (Ill. 2018). Antonio's participation in these activities plainly shows his "immaturity," "failure to appreciate risks and consequences," and vulnerability to peer pressure—all traits which render mandatory juvenile life without parole sentences unconstitutional for individuals like Antonio under *Miller* and the Illinois Constitution. 567 U.S. at 477.

III. THERE IS A GROWING LEGISLATIVE CONSENSUS IN ILLINOIS AND ACROSS THE COUNTRY THAT THE LINE BETWEEN CHILDHOOD AND ADULTHOOD SHOULD BE SET ABOVE 18.

Since *Roper,* state laws and societal norms now mirror the scientific research to extend the line demarcating childhood and adulthood past 18 years old. These laws reflect the scientific consensus that the developmental drivers of risky and impulsive behaviors in children do not disappear on a youth's 18th birthday.

A. Criminal Laws in Illinois and Elsewhere Provide Emerging Adults Special Privileges and Protections.

In recognizing the key developmental differences between youth and adults, states and the federal government have acknowledged that emerging adults are also different than fully mature adults and have created an array of policies that reflect these differences in their criminal justice systems. 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. 72, 79 (2017). In 2014, the United States Department of Justice published a report

recommending that legislators raise the age for criminal court to at least 21, explaining that "young adult offenders age 18-24 are, in some ways, more similar to juveniles than to adults." NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, YOUNG OFFENDERS: WHAT HAPPENS AND WHAT SHOULD HAPPEN 2 (2014), https://www.ncjrs.gov/pdffiles1/nij/242653.pdf. States have enacted policies for emerging adults such as special sentencing options, special accountability courts, separate and more rehabilitative facilities for emerging adults, and greater opportunities for expunging or sealing their criminal records. Stamm, *supra*, at 80-97.

Illinois, in particular, has long been at the forefront of the juvenile justice reform movement. In 1899, Illinois passed the Juvenile Court Act, establishing the nation's first juvenile court as a separate court system that emphasized rehabilitation. LINDSAY BOSTWICK, ILL. JUVENILE JUSTICE COMM'N, POLICIES AND PROCEDURES OF THE ILLINOIS JUVENILE JUSTICE SYSTEM 1 (2010), http://www.icjia.state.il.us/assets/pdf/ResearchReports/IL_Juvenile_Justice_System_Walkthrough_0810.pdf. Given the state's historic role as a leader in juvenile justice reform and the rehabilitative goal set forth in the proportionate penalties clause of the Illinois Constitution, it is unsurprising that Illinois has been a leader in passing laws that address the developmental characteristics of youth and emerging adults.

Recent Illinois legislative enactments recognize that the age of adulthood extends past 18. The Legislature's recent and groundbreaking decision to reinstate parole for emerging adults under 21, passed with bipartisan support, expressly acknowledges the role of adolescent brain science by providing more rehabilitation and early release opportunities for emerging adults. Pub. Act 100-1182 (eff. June 1, 2019) (amending 730 ILCS 5/5-4.5-

110); Pub. Act 101-288, § 5 (eff. Jan. 1, 2020) (amending 730 ILCS 5/5-4.5-110(b) and renumbering as 730 ILCS 5/5-4.5-115(b)). The bill's supporters noted that it "acknowledges research showing young people's brains are not fully developed and that they lack the decision-making abilities of adults." Dan Petrella, *Gov. J.B. Pritzker Signs Law Creating Parole Review for Young Offenders with Lengthy Sentences*, CHICAGO TRIBUNE (Apr. 1, 2019), https://www.chicagotribune.com/politics/ct-met-jb-pritzker-parole-reform-20190401-story.html. Urging the bill's passage, House Majority Leader and co-sponsor Barbara Flynn Currie argued that those under 21-years old are "young people" who "do not always have good judgment." *People v. Savage*, 2020 IL App (1st) 173135, ¶ 68 (citing 100th Ill. Gen. Assem., House Proceedings, Nov. 28, 2018, at 48–49) (statements of Representative Currie).

Even in juvenile court, jurisdiction extends until a youth reaches the age of 21 and a person between the ages of 18 and 21 may still be legally considered a minor under the Juvenile Court Act. 705 ILCS 405/5-755(1) (West 1999), 705 ILCS 405/1-3(10) (West 2019), 705 ILCS 405/1-3(2) (West 2019), 705 ILCS 405/5-105(10) (West 2015). A youth designated as a "Habitual Juvenile Offender" or a "Violent Juvenile Offender" must be committed through the juvenile system until age 21. 705 ILCS 405/5-815(f) (West 2014), 705 ILCS 405/5-820(f) (West 2014). Illinois also shields youth under 21 years of age from harsher Class X sentencing for recidivist offenders. 730 ILCS 5/5-4.5-95(b) (West 2019).

Further, local and statewide initiatives offer sentencing alternatives to emerging adults, given their distinctive rehabilitative potential, and demonstrate that the law already recognizes that adulthood is not magically reached at age 18. The Cook County Circuit Court launched a pilot project, the Young Adult Restorative Justice Community Court in

North Lawndale, in August 2017, to offer a restorative justice approach to emerging adults aged 18 to 26 charged with nonviolent felonies and misdemeanors. KAREN U. LINDELL & KATRINA L. GOODJOINT, JUVENILE LAW CENTER, RETHINKING JUSTICE FOR EMERGING ADULTS: SPOTLIGHT ON THE GREAT LAKES REGION 29 (2020). Cook County has also established the Sheriff's Anti-Violence Effort (SAVE) program, where incarcerated individuals aged 18-24 live in separate dorms and engage in classes and therapy while in adult detention. *Id.* Statewide, in 2018, Illinois established a pilot First Time Weapon Offender Program for first-time youthful offenders under 21 years of age who are charged with nonviolent weapons offenses and are eligible for community-based alternatives to incarceration. 730 ILCS 5/5-6-3.6 (West 2018).

Many jurisdictions across the country treat emerging adults differently from other adults and acknowledge their similarities with juveniles. States like Indiana and Missouri have enacted special sentencing provisions for emerging adults which expressly recognize their youthful characteristics and allow judges to craft individualized sentences to reflect these characteristics. Stamm, *supra*, at 80–87. Forty-eight of the 50 states allow the juvenile justice system to retain some jurisdiction over youth past their 18th birthday. JUVENILE JUSTICE GEOGRAPHY, POLICY, PRACTICE & STATISTICS, U.S. AGE BOUNDARIES OF DELINQUENCY 2016 2 (2017), http://www.ncjj.org/pdf/JJGPS%20StateScan/JJGPS_U.S._age_boundaries_of_delinquency_2016.pdf. Thirty-six of those states, including Illinois, extend jurisdiction up to age 21, and 9 states extend jurisdiction even further, in some cases through age 24. *Id.*; 705 ILCS 405/5-755(1) (West 1999).

B. Illinois and Other Jurisdictions Also Extend Protections to Emerging Adults in Non-Criminal Contexts that Implicate the Age-Related Characteristics Described in *Miller*.

In Illinois and around the country, state and local laws regulating substance abuse, driving, and the transfer of property, among other activities, recognize the impulsivity of emerging adults. These laws restrict emerging adults' access to risky or dangerous activities to reflect the current understanding that emerging adults are less mature and exercise poorer judgment in stressful or emotionally charged situations than fully mature adults. Consistent with the research, these regulations postpone full access or exercise of the right until age 21. *See* SELEN SIRINGIL PERKER ET AL., COLUMBIA JUSTICE LAB, EMERGING ADULT JUSTICE IN ILLINOIS: TOWARDS AN AGE-APPROPRIATE RESPONSE 3 (2019). Indeed, as the same report found, "youth from the age of 18 to 25 have a different maturity level from that of adults over that age, and that should affect their treatment within the justice system." *Id*. at 10 (quoting ILLINOIS PARENT-TEACHER ASSOCIATION, REPORT TO 2017 ILLINOIS PTA CONVENTION ON YOUNG ADULTS INVOLVED IN THE JUSTICE SYSTEM (2017)). Thus, the report recognizes that one way to address this group's developmental needs is to extend the juvenile jurisdiction up to age 25. *Id*. It notes that, "many areas of public policy increasingly recognize emerging adulthood as a distinct developmental stage and, as a result, laws and policies have been crafted to specifically protect this age group from harmful conduct." *Id.* at 3.

Regarding controlled substance use, Illinois and other states have taken a protective approach toward youth and young adults. Illinois has drawn a line at the age of 21 to regulate possession and use of such substances, prohibiting the sale of alcohol, 235 ILCS 5/6-16(a)(i) (West 2015), tobacco products, electronic cigarettes, and alternative nicotine

products, 720 ILCS 675/1(a) (West 2019), wagering tickets, 230 ILCS 10/18(b)(1) (West 2019), and cannabis, 410 ILCS 705/10-15 (West 2019). As the Illinois public-health director stated, "adolescents and young adults are *more susceptible* to [tobacco's] effects *because their brains are still developing*." *The Age to Buy Tobacco is Now 21*, ILLINOIS DEPARTMENT OF PUBLIC HEALTH (July 2, 2019) (emphasis added), http://www.dph.illinois.gov/news/age-buy-tobacco-now-21. Numerous other states and localities nationwide have passed similar legislation raising the legal age to purchase tobacco products from 18 to 21. *See*, e.g., N.Y.C. Admin. Code § 17-706 (West 2018); Cal. Penal Code § 308 (West 2018) and Cal. Bus. & Prof. Code § 22963 (West 2020); Haw. Rev. Stat. Ann. § 712-1258 (West 2018); Chi., Ill., Code of Ordinances § 4-64-190 (2017); Kansas City, Mo., Code of Ordinances § 50-235 (2017); St. Louis County, Mo., Code of Ordinances § 602.367 (2017); Cleveland, Ohio, Code of Ordinances § 607.15 (2016). *See also* CAMPAIGN FOR TOBACCO FREE KIDS, STATE AND LOCALITIES THAT HAVE RAISED THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf.

Illinois has also joined other states and the federal government to impose restrictions on the use of firearms and explosives for youth under 21 years old. Illinois prohibits gun ownership for those under 21 years old who lack parental consent. 430 ILCS 65/4(a)(2)(i) (West 2019); *see also People v. Mosley*, 2015 IL 115872, ¶ 38 (concluding that ban on handgun possession by persons under 21 does not violate Second Amendment). Illinois also requires that anyone seeking a license to possess, use, purchase, transfer, or dispose of explosive materials be at least 21 years old. Ill. Admin. Code tit. 62,

§ 200.98(a)(1) (2013). Moreover, Illinois requires a minimum age of 21 to operate fireworks or other pyrotechnic displays. 225 ILCS 227/35(d)(1) (West 2018). Federal law similarly bars licensed dealers from selling handguns to youth under 21, 18 U.S.C. § 922(b)(1) (2015), and 18 states, including nearby Michigan and Ohio, set the minimum age at 21 to purchase at least some types of guns. *Minimum Age to Purchase & Possess*, GIFFORDS LAW CENTER, https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/ (last visited December 8, 2020).

Illinois and federal law have also imposed driving restrictions for emerging adults over the age of 18 that recognize their impulsivity and the need to protect them (and others) from their risky decision-making. Illinois requires a person to be at least 21 years of age to drive a school bus, 625 ILCS 5/6-106.1 (West 2020), drive for a religious organization, 625 ILCS 5/6-106.2 (West 2015), transport senior citizens, 625 ILCS 5/6-106.3 (West 2015), and drive for for-profit ridesharing purposes, 625 ILCS 5/6-106.4 (West 2015). These regulations are consistent with research demonstrating that the propensity to drive recklessly persists past age 18 because of an emerging adult's "still maturing cognitive control system." Weigard et al., *supra*, at 72. Federal law also prohibits individuals under age 21 from driving most commercial vehicles across state lines. 49 C.F.R. § 391.11(b)(1) (1998). Though not statutory, most rental car companies limit or bar rentals to individuals under age 25, recognizing the increased risk posed by this age group. *See, e.g.*, *Can You Rent a Car Under 25 in the US and Canada?*, ENTERPRISE, https://www.enterprise.com/en/help/faqs/car-rental-under-25.html (last visited December 8, 2020).

Similarly, Illinois law also acknowledges the limitations of emerging adults to make

autonomous decisions regarding property, healthcare, and guardianship given their immaturity and failure to appreciate consequences. State property law defines youth under 21 as "minors" and limits their ability to manage property like other adults. *See* 760 ILCS 20/2 (West 2000) (defining "minor" as "an individual who has not attained the age of 21 years" and adult as one "21 years of age" or older). Illinois law prohibits the transfer of property to a "minor" without the supervision of a custodian, 760 ILCS 20/4 (West 1986), and restricts youth under 21 from obtaining credit cards without a cosigner unless the credit card issuer confirms that the youth has an independent ability to make the required minimum periodic payments. 815 ILCS 140/7.2 (West 2010). Illinois also extends foster care services to its youth up to age 21, 20 ILCS 505/5(n-1) (West 2019), allows courts to reinstate wardship to a parent or guardian of a youth up to age 21, 705 ILCS 405/2-33(2) (West 2019), and permits extended guardianship and adoption subsidies for youth up to age 21. ILL. DEP'T OF CHILDREN & FAM. SERVS., POLICY GUIDE 2018.02 ADOPTION ASSISTANCE 10 (2018), https://www2.illinois.gov/dcfs/aboutus/notices/Documents/Policy_Guide_2018.02.pdf; ILL. DEP'T OF CHILDREN & FAM. SERVS., POLICY GUIDE 2018.03 SUBSIDIZED GUARDIANSHIP PROGAM 11 (2018), https://www2.illinois.gov/dcfs/aboutus/notices/Documents/Policy_Guide_2018.03.pdf. Regarding behavioral and mental health, new legislation effective in 2020 made Illinois the first state to require private insurers to cover multi-disciplinary mental health care for young adults up to age 26. *Governor Signs Children & Young Adult Mental Health Crisis Act*, THRESHOLDS (Aug. 26, 2019), http://www.thresholds.org/governor-signs-children-young-adult-mental-health-crisis-act/.

IV. INTERNATIONAL LAW ALIGNS WITH EVOLVING SCIENCE ON EMERGING ADULTS AND TREATS THEM DIFFERENTLY IN THE JUSTICE SYSTEM.

Around the world, other countries provide special consideration for emerging adults in the justice system and are instructive for U.S. courts in evaluating evolving social norms. The United States Supreme Court often considers international consensus in evaluating evolving standards of decency, using the "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*, 487 U.S. at 830–31 n.31 (explaining that "we have previously recognized the relevance of the views of the international community in determining whether a punishment is cruel and unusual"); *see generally* Michael J. Shultz, *Finding Consensus While Footnoting the "Opinions of Mankind": Roper v. Simmons and the Proper Role of International Consensus in United States Eighth Amendment Jurisprudence*, 45 WASHBURN L.J. 233, 235 (2005) (arguing that "international consensus" should play an even more central role in future decisions after *Roper* "by incorporating it into the 'evolving standards of decency' that guide Eighth Amendment jurisprudence.").

Consistent with the U.S. Supreme Court's jurisprudence that international consensus is relevant to Eighth Amendment "evolving standards of decency," the appellate court in this case considered international laws and standards in determining Antonio's as-applied challenge to his sentence under the Illinois proportionate penalties clause. *House,* 2019 IL App (1st) 110580-B, ¶ 56 (discussing articles showing that several European countries have already included young adults in the juvenile justice system). The court's

consideration of international consensus under Illinois' proportionate penalties clause is proper and consistent with that provision's broader protections compared with the Eighth Amendment. *See Clemons*, 2012 IL 107821 at ¶¶ 38–40; *see also People v. Miller*, 781 N.E.2d 300, 307 (Ill. 2002) ("A statute may be deemed unconstitutionally disproportionate if . . . the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community."). Thus, consideration of international law as it pertains to mandatory life sentences for youth over the age of 18 is also relevant here.

Criminal and juvenile laws in many countries provide discretion to judges to consider youthful characteristics for young offenders over 18 in sentencing. Since 1953, courts in Germany have been able to choose to sentence emerging adults aged 18 to 21 under either juvenile or adult law. KANAKO ISHIDA, JUVENILE JUSTICE INITIATIVE, YOUNG ADULTS IN CONFLICT WITH THE LAW: OPPORTUNITIES FOR DIVERSION 2 (2015). Judges may apply juvenile law if "a global examination of the offender's personality and of his social environment indicates that at the time of [the offense] the [emerging adult's] moral and psychological development was like a juvenile." *Id.* (quoting TRANSITION TO ADULTHOOD ALLIANCE, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES 3 (2011), https://www.t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf). In fact, the Supreme Federal Court in Germany has ruled that an emerging adult "has the maturity of a juvenile if his or her personality is still developing." TRANSITION TO ADULTHOOD ALLIANCE, *supra*, at 3. Similarly, in Sweden, courts consider youth as a distinct factor in sentencing and may disregard any statutory minimum sentence in sentencing offenders under the age of 21. *Id.* Swedish courts also

consider the offender's age directly in determining what proportion of the adult sentence the offender should serve, permitting emerging adults aged 18 to 21 to have a graduated reduction of the applicable "normal term" for that offense based on their age. *Id.* Likewise, the Netherlands allows emerging adults aged 18 to 21 to be sentenced under juvenile law. Eva P. Schmidt, et al., *Young Adults in the Justice System: The Interplay Between Scientific Insights, Legal Reform and Implementation in Practice in The Netherlands,* YOUTH JUSTICE 2 (2020), https://journals.sagepub.com/doi/pdf/10.1177/1473225419897316. Further, after 2014, Dutch courts allowed juvenile sentencing to extend up to age 23. *Id.*

Additionally, European countries' laws that allow for transfer of young adults to the juvenile system and apply protections of the juvenile system to young adult offenders reflect the growing international shift to draw the line for "adulthood" above 18 years old. In Germany, all young adults aged 18 to 21 are transferred to the juvenile courts. TRANSITION TO ADULTHOOD ALLIANCE, *supra*, at 3. Likewise, in Croatia, judges may apply juvenile sentencing and court procedures to emerging adults up to age 23. Sibella Matthews et al., *Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System*, JUSTICE EVALUATION JOURNAL 18 (2018), https://justicelab.columbia.edu/sites/default/files/content/Youth%20Justice%20in%20Europe%20Experience%20of%20Germany%20the%20Netherlands%20and%20Croatia%20in%20Providing%20Developmentally%20Appropriate%20Responses%20to%20Emerging%20Adults%20in_0.pdf. In both Sweden and Switzerland, emerging adults can be tried in juvenile court and treated as juveniles until they turn 25. TRACY VELÁSQUEZ, YOUNG ADULT JUSTICE: A NEW FRONTIER WORTH EXPLORING 6 (2013),

https://imprintnews.org/wp-content/uploads/2013/05/Young-Adult-Justice-FINAL-revised.pdf; TRANSITION TO ADULTHOOD ALLIANCE, *supra*, at 3.

Further, countries outside Europe also provide special consideration for emerging adults in the justice system. Emerging adults under 19 in South Korea receive limited sentences and are sent to juvenile courts and juvenile detention centers. Bae Eun-joo, Opinion, *Preventing Juvenile Crimes*, THE KOREA TIMES, http://koreatimes.co.kr/www/news/opinon/2017/09/137_237099.html (last visited Dec. 8, 2020). In Japan, those under the age of 20 are sent to juvenile court and juvenile detention centers, even if tried as adults. Editorial, *Juvenile Crime and Punishment*, THE JAPAN TIMES (May 28, 2015), https://www.japantimes.co.jp/opinion/2015/05/28/editorials/juvenile-crime-and-punishment/.

Along with individual countries, international organizations have long sought increased protections for emerging adults in criminal law. Notably, the United Nations in 1985 adopted standardized rules that outlined procedural rights for juveniles and young adults, sought to ensure that the "reaction to [the offense] shall always be in proportion to the circumstances of both the offender[] and the offense," and recommended that emerging adults receive the same rights and treatment as juveniles. G.A. Res. 40/33, Standard Minimum Rules for the Administration of Juvenile Justice, at 3.3, 5.1 (Nov. 29, 1985). Additionally, in 2003, the European Convention on Human Rights, comprised of 47 nations, recognized the need for criminal laws to "reflect[] the extended transition to adulthood," and thus recommended that young adults under the age of 21 be treated like juveniles, subject to the same interventions, whenever the judge determines "that they are not as mature and responsible for their actions as full adults." ISHIDA, *supra*, at 2 n.4.

Following this recommendation, as of 2018, only 7 of 35 European countries lack some special young-adult prosecution or sentencing structure. Matthews et al., *supra*, at 6. For years, many countries in the international community have acknowledged that it is disproportionate to punish emerging adults as fully mature adults when they have not reached the same levels of maturity, decision-making, and ability to appreciate consequences. Similarly, under the proportionate penalties clause of the Illinois Constitution, Illinois should join other jurisdictions around the globe in treating emerging adults as juveniles.

CONCLUSION

The United States Supreme Court has long recognized that youth are constitutionally different than adults for sentencing purposes. *Roper,* 543 U.S. at 569; *Miller*, 567 U.S. at 476. The same scientific research that the Court relied on in *Roper* now establishes that emerging adults share those developmental differences as key areas of their brains are still maturing well into their mid-20s. In light of these research findings, this Court should conclude that a mandatory life sentence for Antonio is disproportionate under the proportionate penalties clause of the Illinois Constitution. As outlined above, *amici curiae* support Defendant-Appellee's position in this matter and respectfully request that this Court affirm the appellate court's judgment and remand the case for a new sentencing hearing.

Respectfully submitted,

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Dated: December 14, 2020

CERTIFICATE OF COMPLIANCE

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) table of contents and 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 35 pages.

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No. 125124

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate
	)	Court of Illinois, First District,
Plaintiff-Appellant,	)	No. 1-11-0580
	)	
	)	There on Appeal from the Circuit
v.	)	Court of Cook County, Illinois
	)	No. 93-CR-26477
	)	
	)	
ANTONIO HOUSE,	)	Honorable
	)	Kenneth J. Wadas,
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. On December 14, 2020, the Brief for *Amicus Curiae* was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause and was served by email using the court's electronic filing system. The undersigned will also send 13 paper copies of the Brief for *Amicus Curiae* to the Clerk of the above Court.

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