Nos. 126461, 126932

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ET AL.,	)	Appeals from the Appellate Court
	)	of Illinois, Fourth District,
Respondent-Appellees,	)	No. 4-19-0528; and from the
	)	Appellate Court of Illinois,
	)	Second District,
	)	No. 2-18-0526
	)	
v.	)	There on Appeals from the Circuit
	)	Court of Macon County, Illinois
	)	No. 97-CF-1660; and from the
	)	Circuit Court of the 17th Judicial
	)	Circuit, Winnebago County, IL
	)	No. 97-CF-1082
	)	
TORY S. MOORE ET AL.,	)	The Honorable
	)	Thomas E. Griffith,
Petitioner-Appellants.	)	Judge Presiding; and
	)	The Honorable
	)	Joseph G. McGraw,
	)	Judge Presiding.

BRIEF OF *AMICI CURIAE* CHILDREN AND FAMILY JUSTICE CENTER AT NORTHWESTERN PRITZKER SCHOOL OF LAW, ET AL., IN SUPPORT OF PETITIONER-APPELLANTS

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

Page

IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae, **the Children and Family Justice Center**, *et al.*,[1] work on behalf of children, youth, and emerging adults 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 and/or who work to ensure that indigent and vulnerable populations are able to access the courts and other systems to ensure their rights are protected. *Amici* understand that a core characteristic of adolescence is the capacity to change and mature and that adolescent immaturity manifests itself in ways that mitigate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* recognize, as does the United States Supreme Court, that youth, 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. 190 (2016). *Amici* submit that those categorical differences do not disappear when youth turn 18 years old.

In the 17 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

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

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* and *People v. House*, this Court found that research applicable to youth under 18 is similarly relevant to determine the constitutional limits of the sentencing decision for youth over 18, but that there must be evidentiary support in the record regarding whether the science of juvenile maturity and brain development applies to the petitioner. *People v. Harris*, 2018 IL 121932; *People v. House*, 2021 IL 125124. However, developing such evidence is onerous, if not impossible, for the most vulnerable post-conviction petitioners, who likely lack resources and support, and may also be facing mental health challenges, trauma, and/or disabilities that impact their ability to access the courts. *Amici* urge this Court to build upon its reasoning in *Harris* and *House* to allow post-conviction petitioners to raise challenges to the constitutionality of their sentences with minimal pleading and evidentiary requirements. Only then can this Court be certain that the rights of these individuals, whose crimes occurred when they were still in the throes of their youth and immaturity, are protected.

SUMMARY OF ARGUMENT

In *People v. Harris*, this Court held that youthful offenders over 18 at the time of their offenses could challenge the constitutionality of their sentences under *Miller* and the Illinois Constitution. *Harris*, 2018 IL 121932; Ill. Const. 1970, art. 1, § 11; *see also People v. House*, 2021 IL 125124 (remanding for further post-conviction proceedings to develop record in as-applied Illinois proportionality challenge based on *Harris*). Yet *Harris* has been applied inconsistently, with courts failing to clarify what an emerging adult must plead to obtain leave to file a successive post-conviction petition. Petitioners in the instant cases, both of whom were barely 19 years old at the time of the respective offenses which led to their convictions and natural life sentences, were denied leave to file a successive petition. Both argue that, as applied to them, their sentences violate the Eighth Amendment of the U.S. Constitution and the Proportionate Penalties Clause of the Illinois Constitution. At a minimum, they should be permitted to file a successive petition before the circuit court so that they might be able to develop a record sufficient to support their arguments. This Court should permit the Petitioners leave to file and establish that the threshold for pleading a motion to file such a petition should not be particularly onerous.

Historically, courts struggled with how to treat emerging adults in criminal and non-criminal contexts, underscoring that there is no bright line for when a young person should be treated as an adult under the law, especially in light of evolving social and scientific understanding regarding young adults. While the U.S. Supreme Court in its Eighth Amendment jurisprudence has adopted demarcation at the age of 18 (see, *e.g.*, *Miller v. Alabama*, 567 U.S. 460 (2012) (banning mandatory life-without-parole sentences for youth under the age of 18 and requiring consideration of youth-centered factors in sentencing

decisions)), modern neurological research shows that brain development continues well into a person's 20s. Equipped with this understanding, the Illinois Supreme Court and General Assembly have gone even further than *Miller*, considering developmental psychology, neurology, and sociology to more equitably reflect recent research in the law. That accords with the actions of other state courts and legislatures around the country, which have extended protections for emerging adults and youth who commit even serious and violent crimes, partially in response to this modern understanding. The concern courts have expressed for emerging adults should be even more salient for emerging adults who are also part of vulnerable populations such as those with intellectual defects and disabilities, and those without access to attorneys or experts. With no clear guidance, these vulnerable parties, particularly those who are incarcerated, will find it even harder to develop a record at the leave-to-file stage. In other words, if the threshold at the initial stage is insurmountably high, incarcerated *pro se* litigants—by definition, lacking resources and possibly having intellectual deficits—will be denied access to justice when they otherwise could have put forth a successful post-conviction claim. This Court should provide relief in these cases and ensure that post-conviction petitioners at a leave-to-file stage are provided an opportunity to demonstrate the merits of their constitutional claims.

ARGUMENT

I. THERE IS VARIATION IN DEFINING MINOR STATUS.

While it is well-established that children should be treated differently from adults in many aspects of the law, courts have not through much of history established a bright line rule for when a child becomes an adult. The concept has varied, influenced by political ideologies, societal norms, and advancements in understanding the human brain. In fact,

the age of adulthood has fluctuated from "mid-teens to mid-twenties both here and abroad," (Vivian E. Hamilton, *Adulthood in Law & Culture*, 91 TUL. L. REV. 55, 57 (2016)) and in some jurisdictions has at least been stretched to age 30. See Merril Sobie, THE CREATION OF JUVENILE JUSTICE: A HISTORY OF NEW YORK'S CHILDREN'S LAWS 42 (1987).

A. Other State Courts Have Historically Varied in Their Treatment of Youth Charged with Crimes, Extending Protections to Those Aged 30 in Some Cases.

Long before Cook County pioneered the first Juvenile Court in this country, (see David Spinoza Tanenhaus, *Policing the Child: Juvenile Justice in Chicago*, 1870-1925 (photo. reprt. (1999) (1997), English common law courts grappled with how children should be treated in the criminal context. Traditionally, these courts grouped children into three categories—those under the age of 7, those aged 7 to 14 and those aged 14 to 21. See *id.* at 5-8. Children under 7 were immune from prosecution. Children between 7 and 14 enjoyed an infancy defense, and mitigation principles often softened the penalty when the presumption was rebutted. See *id*. at 6. To rebut the presumption, "strong and clear evidence 'beyond all doubt and contradiction'" had to be shown. *Id*. at 6. And although those between 14 and 21 could be convicted, they could not suffer forfeiture, as they could not own property See *id.* at 7-8. Age 18 was not a distinction made for those purposes, but age 21.

In the United States, reform schools were considered predecessors to juvenile courts and the separate resources and protections afforded in these schools were also provided to young adults. See, *e.g.*, *id.* at 21-22. In New York, for example, the Disorderly Child Act gave jurisdiction to the New York houses of refuge to receive the "disorderly

child," after a complaint was made by either a parent or guardian. See Sobie, at 44-45.[2] Although the houses of refuge's jurisdiction were first limited to "all children under the age of sixteen," New York later expanded the house of refuge in 1870 to "the older child and young adult," and thus, included individuals who had committed their first-time offenses between the ages of 16 and 30 to segregate them from the older recidivist population. *Id.* at 45-46.

In Illinois, the Chicago Reform School was the solution to children and young adults up to age 21 involved in the criminal system. See Tanenhaus, at 22. Established in 1855, this reform school provided for "boys, whose only fault was lack of opportunity and education," to prevent those who committed "minor offenses" from becoming part of the "herd of hardened offenders." Phillip M. Hash, *The Chicago Reform School Band: 1862-1872*, J. OF RES. IN MUSIC EDUC., 252–67 (2007), https://www-jstor-org.turing.library.northwestern.edu/stable/pdf/4543124.pdf?refreqid=excelsior%3Aab7edd59e850cc4a8aa9370facef4789&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=.

In the late 1800s and early 1900s, what is now known as Pontiac Correctional Center was the Illinois State Reformatory, where it took youths up to the age of 21. *Pontiac Center Correctional History*, VISITPONTIACILLINOIS.ORG, http://visitpontiac.org/2209/Pontiac-Correctional-Center-History (last visited April 25, 2022). In a biennial report to the Governor (from July 1, 1912, to June 30, 1914), the Board of Managers and Superintendent noted that Illinois was an outlier in only accepting individuals up to the age of 21 at the reformatory, noting "[t]he consensus of opinion among penologists

[2] After the court found a child to be disorderly, the child was committed to a house of refuge. This jurisdiction was later expanded to the "vagrant" child, the distinction being that a vagrant child did not necessarily run away or disobey his parents. See *id*. at n. 135.

is that the age limit should be twenty-five years in reformatories." *Board of Managers [sic] of the Illinois State Reformatory*, BABEL.HATHITRUST.ORG 10, 21 (1914), https://babel.hathitrust.org/cgi/pt?id=mdp.39015074780662&view=1up&seq=1&skin=2021 (last visited April 25, 2022). The legislature responded and under Illinois law in 1917, "[e]very male person between the ages of 16 and 26 years, except in capital cases, may, in the discretion of the court, be sentenced to the reformatory instead of the penitentiary." John L. Whitman, *Operation of the New Parole Law in Illinois*, 9 AM. INST. CRIM. L. & CRIMINOLOGY 385, 388 (May 1918 to February 1919). Thus, Illinois also categorized youth and young adults up to their mid-twenties as deserving of special protection and support and recognized their unique potential for reform.

B. Societal Views on the Age of Majority Have Also Fluctuated in Other Areas of Law and Society.

There are several examples in the civil context in which people over 18 were, and in some cases still are, treated as minors. Until recently, 21 was the age at which one possessed contractual capacity. This doctrine was rooted in "protecting minors from their own poor financial decisions and lack of adultlike judgment." Wayne R. Barnes, *Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent*, 76 MD. L. REV. 405, 405-448 (2017).

The recognition of age 21 as the age of contractual capacity persisted unchanged until political realities in the 1960s and 1970s shifted societal views of maturity from 21 to 18, absent any robust scientific understanding of maturity. Motivated in part by the Vietnam War protests; the need to draft 18-year-old males into the military; and the ratification of the Twenty-Sixth Amendment, which lowered the voting age from 21 to 18 (U.S. Const., amend. XXVI, §1), the demarcation of adulthood at the age of 18 reflected

the vagaries and urgency of that political moment instead of a reasoned study of youthful maturation and development. Indeed, as discussed below, there is robust data suggesting that a line at 18 is plainly insufficient.

Unlike the historical circumstances that led to lowering the voting age by the 1970s, the current scientific understanding that the brain is not fully developed at 18 has led to a higher line of adulthood in other contexts. For example, although the minimum age to rent a car varies by state, giving discretion to companies to decide the minimum age, most companies charge more for younger drivers aged 18-25, even where they set the minimum age to rent from 18. *What Are The Rental Car Age Requirements by State?*, ENTERPRISE.COM, https://www.enterprise.com/en/help/faqs/car-rental-age-requirements-by-state.html (last visited April 28, 2022). Because younger drivers are less experienced and more likely to take risks, insurance rates are higher, justifying an older age to rent a car. See Dustin Hawley, *How Old Do You Have To Be to Rent a Car?*, JDPOWER.COM, (Mar. 15, 2021), https://www.jdpower.com/cars/shopping-guides/how-old-do-you-have-to-be-to-rent-a-car. Additionally, the legal drinking age across all 50 states is 21. See generally, Traci L. Toomey, *et al.*, *The Minimum Legal Drinking Age: History, Effectiveness, and Ongoing Debate*, 20(4) ALCOHOL HEALTH RES. WORLD 213-218 (1996).

It is no wonder that this issue has remained unresolved today. Historically there has been no consensus nor bright line rule which determines at what age children should be treated differently under the law. This uncertainty and variation in treatment can be seen across the country.

II. CURRENT DEVELOPMENTS IN SCIENCE HAVE LED TO CORRESPONDING PROGRESS IN THE LAW ON YOUNG ADULTS WHO COMMIT OFFENSES.

Modern developments in brain science and psychology support providing second look sentencing review to young adults who have committed offenses. Following the path that the Supreme Court charted in *Miller* and its progeny, state courts and legislatures have noted this emerging science on brain development, leading them to reconsider young adult sentencing.

A. Science and Data Show the Distinctness of Young Adults and Their Role in the Criminal Justice System.

1. Brain Development Continues Well Into a Person's 20s.

Modern brain science and psychology support extending second look sentencing review to young adults. Research in neuroscience, sociology, and developmental psychology has produced significant evidence that young adults are a population distinct from adults and children. See *Youth Adults in the Justice System,* FAIRANDJUSTPROSECUTION.ORG, https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf.

Emerging adults, when compared with older adults, typically exhibit diminished capacity for self-control and greater susceptibility to peer pressure, risk-seeking behaviors, excitement, and stress. Emily Morgan & Katy Albis, *Using What We Know About Young Adults to Inform State Justice System Policies*, COUNCIL OF STATE GOVERNMENTS (Sept. 14, 2017), https://issuu.com/csg.publications/docs/bos2017. The "[d]evelopmental research shows that young adults continue to mature well into their 20s and exhibit clear differences from both juveniles and older adults." *Id.* Therefore, even though "young adults are more cognitively developed than youth, compared to older adults, they are more

impulsive, less emotionally mature, and less cognizant of the consequences of their actions." *Id.* Persons 18 to 24 years old compose about 9.5% of the U.S. population, while accounting for 23% of all arrests. *The Legislative Primer Series for Front-End Justice: Young Adults in the Justice System,* NATIONAL CONFERENCE OF STATE LEGISLATURES (Aug. 2019), https://www.ncsl.org/Portals/1/Documents/cj/front_end_young-adults_v04_web.pdf. Young adults also reoffend at higher rates than the general population. *Id.* But their negative behaviors are limited in time.

Researchers have also held that "[t]he neuroscience and social-behavioral science . . . indicate[s] there is no solid basis in science for a line drawn at 18 for criminal jurisdiction." Catherine Insel & Stephanie Tabasheck, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers*, CTR. FOR L., BRAIN, & BEHAV. 43 (2022). Indeed, neuroscientific research suggests that the prefrontal cortex region, which regulates impulse control and reasoning, continues developing well into a person's 20s. Vincent Schiraldi, Bruce Western, & Kendra Bradner, *Community-Based Responses to Justice-Involved Young Adults*, NEW THINKING IN COMMUNITY CORRECTIONS BULLETIN, NATIONAL INSTITUTE OF JUSTICE 3 (Sept. 2015), https://www.ncjrs.gov/pdffiles1/nij/248900.pdf. This biological fact has great import on our worldly reality: "[a]cross person, place, and historical time, data reveals a well-defined age-graded nature of offending characterized by the swift acceleration in adolescence that peaks during the transition to young adulthood and declines precipitously soon thereafter[.]" Elaine Eggleston Doherty & Bianca E. Bersani, *Mapping the Age of Official Desistance for Adult Offenders: Implications for Research and Policy*, J. OF DEVELOPMENTAL & LIFE-COURSE CRIMINOLOGY 517 (Nov. 9, 2018). In other words, people are less

likely to commit crimes once they have matured beyond emerging adulthood into full adulthood. Therefore, "from a deterrence perspective, 'there is little evidence that increases in the length of already long prison sentences yield general deterrent effects that are sufficiently large to justify their social and economic costs.'" *Id*. "From a criminal justice perspective, research indicates that continuing traditional supervision and sentencing practices inadvertently tend to increase recidivism, fail to foster diversion from unwarranted penetration into the criminal justice system, and continue the pattern of disproportionate entanglement of young persons of color." Insel & Tabasheck at 43.

2. The Data Establishes that Second Look Review Does Not Lead to Undue Recidivism.

Expanding sentencing review to young adults would not lead to significant recidivism. Cameron Kimble & Ames Grawert, *Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem*, BRENNAN CENTER (Aug. 6, 2019), https://www.brennancenter.org/our-work/analysis-opinion/between-2007-and-2017-34-states-reduced-crime-and-incarceration-tandem. In California, which in 2016 expanded sentencing review to persons who commit offences before age 26, only 4 of the 791 young adults who had committed offenses released between August 2016 and July 2018 were reconvicted within two years of release. Natalie Behr, *Specialized Parole and Resentencing Laws Focused on Emerging Adults*, EMERGING ADULT JUSTICE PROJECT 2 (Sept. 2020),

https://justicelab.columbia.edu/sites/default/files/content/EAJP_Specialized%20Parole%20and%20Resentencing%20Laws%20Focused%20on%20EAs.pdf.

B. State Courts Have Extended *Miller*-Type Protections to Young Adults and to Other Contexts Beyond Those Squarely Within *Miller's* Reach.

Recognition of recent science on brain development as it pertains to emerging adults has led state courts and legislatures to reconsider sentencing for this population. Several state courts, in some cases extending further than the holdings of this Court, have not confined *Miller* protections to a particular age group or even to circumstances that fit squarely within *Miller's* requirements. Rather, when interpreting their own state constitutions, which often include Eighth Amendment analogues, state courts have applied *Miller* more broadly.

Washington: Just last year, the Washington Supreme Court interpreted its own Eighth Amendment analogue to extend *Miller* protections to criminal defendants under 21, barring mandatory life-without-parole sentences for this age group. *In re Pers Restraint of Monschke* (*Matter of Monschke*), 197 Wash. 2d 305, 328 (2021). In *Monschke*, the petitioners had received mandatory LWOP sentences for offenses committed at 19 and 20 years old. *Id*. at 306. They challenged these sentences as "unconstitutionally cruel when applied to youthful defendants like themselves." *Id*. at 308; see Wash. Const., art. 1, § 14 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.").

The Washington Supreme Court agreed. In so doing, it held that "the Washington State Constitution's cruel punishment clause often provides greater protection than the Eighth Amendment." *Monschke*, 197 Wash. 2d at 311 n.6 (quoting *State v. Bassett*, 428 P.3d 343, 348 (2018)). Applying this broader protection under state constitutional law, the Court held that the petitioners "were essentially juveniles in all but name at the time of

their crimes" and were thus entitled to *Miller* protections under the state constitution. *Monschke*, 197 Wash. 2d at 312.

Massachusetts: Article 26 of the Massachusetts Declaration of Rights prohibits "cruel or unusual" punishment. The Massachusetts Supreme Judicial Court has "inherent authority 'to interpret [S]tate constitutional provisions" like Article 26 "to accord greater protection to individual rights than do similar provisions of the United States Constitution.'" *Diatchenko v. Dist. Att'y for Suffolk Dist.*, 466 Mass. 655, 668 (2013) (alteration in original) (quoting *Libertarian Ass'n of Mass. v. Sec'y of the Commonwealth*, 462 Mass. 538, 558 (2012)). In *Commonwealth v. Watt*, 484 Mass. 742, 755-56 (2020), faced with an 18 year-old defendant's challenge under Article 26 and the Eighth Amendment to the U.S. Constitution to his life-without-parole sentence, the Court remanded the matter for an evidentiary hearing to obtain an "updated record reflecting the latest advances in scientific research on adolescent brain development and its impact on behavior." *Id*. at 756, 764. In so doing, the Court, referencing *Diatchenko*, 466 Mass. at 658-59 (finding that a life-without-parole sentence for an individual under the age of 18 violated Article 26), noted that "[a]s research has progressed since *Diatchenko[]* was decided, it is likely time for us to revisit the boundary between defendants who are seventeen years old and thus shielded from the most severe sentence of life without the possibility of parole, and those who are eighteen years old and therefore exposed to it." *Watt*, 484 Mass. at 755–56.

Iowa: The Iowa Supreme Court has extended *Miller*-like protections to other categories of individuals not strictly protected by *Miller*, even though its state constitution, like the Eighth Amendment, prohibits only "cruel and unusual" punishment. Iowa Const., art. 1, § 17. Soon after the *Miller* decision, the Iowa Supreme Court in a trio of cases relied on

its state constitution to apply *Miller*-type protections broadly. *See State v. Ragland*, 836 N.W.2d 107, 109-10 (Iowa 2013) (applying *Miller* retroactively to a mandatory juvenile LWOP sentence after the Governor commuted the defendant's sentence to a term of years); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (extending *Miller* under the Iowa Eighth Amendment analogue to require "an individualized sentencing hearing to determine the issue of parole eligibility" for juveniles sentenced to long, but less than life, sentences); *State v. Pearson*, 836 N.W.2d 88, 89 (Iowa 2013), *as corrected* (Aug. 27, 2013) (analyzing *Miller* and reversing the imposition of consecutive sentences totaling a thirty-five-year minimum without possibility of parole on a juvenile offender).

A year later, the Court found all juvenile mandatory minimum sentences unconstitutional under the Iowa Constitution. *State v. Lyle*, 854 N.W.2d 378, 380 (Iowa 2014), *as amended* (Sept. 30, 2014). As it noted, "we cannot ignore that over the last decade, juvenile justice has seen remarkable, perhaps watershed, change." *Id.* at 390. "Mandatory minimum sentences for juveniles are simply too punitive for what we know about juveniles." *Id.* at 400. The Iowa Supreme Court also examined a youth's discretionary life sentence with parole eligibility after 60 years (as commuted by Iowa's governor) in *State v. Seats*, 865 N.W.2d 545 (Iowa 2015), *holding modified by State v. Roby*, 897 N.W.2d 127 (Iowa 2017)).

The Court there held that the sentencing court had erred by not considering proper factors when it resentenced the juvenile and had wrongly considered indicia of youth as an aggravating, rather than a mitigating, factor. As it explained, "[t]he question the court must answer at the time of sentencing is whether the juvenile is irreparably corrupt, beyond rehabilitation, and thus unfit ever to reenter society, notwithstanding the juvenile's

diminished responsibility and greater capacity for reform that ordinarily distinguishes juveniles from adults." *Seats*, 865 N.W.2d at 558. One year after *Seats*, the Court held that all juvenile LWOP sentences violate the Iowa Constitution's bar on "cruel and unusual punishment." *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016). It reckoned that parole boards are better suited than courts to "discern whether the offender is irreparably corrupt after time has passed, after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available." *Id.* at 839. In so holding, the Court further recognized its willingness to rely on the Iowa Constitution to go beyond the U.S. Supreme Court's Eighth Amendment jurisprudence. *Id*. at 834 ("Using our independent judgment under article I, section 17, we have applied the principles of the *Roper-Graham-Miller* trilogy outside the narrow factual confines of those cases, including cases involving de facto life sentences, very long sentences, and relatively short sentences.").

U.S. Supreme Court: The actions of these state supreme courts comport fully with Supreme Court guidance, as reflected in *Jones v. Mississippi***,** where the court denied relief to a juvenile sentenced to life without parole. 141 S. Ct. 1307 (2021). While *Jones* imposes *federal* limitations on resentencing for young people, the decision explicitly casts *states* as a prospective source of novel protections: "Determining the proper sentence in such a case [of a juvenile committing a homicide] raises profound questions of morality and social policy. The States, not the federal courts, make those broad moral and policy judgments in the first instance when enacting their sentencing laws." *Id.* at 1322.

C. State Legislatures Have Also Extended or Are Considering Second Look Review for Young Adults.

Since 2017, the Model Penal Code has recommended that states adopt second look sentencing. Model Penal Code: Sentencing § 305.6, https://thealiadviser.org/sentencing/modification-of-long-term-prisonsentences/ (proposing that a judicial panel review applications for sentencing modifications for any person who has served 15 years of a sentence.). Consistent with this guidance, several state legislatures have enacted, and others have proposed or are considering, mandatory sentencing or parole review for young adults who have committed offenses.

Washington D.C.: In January 2021, Mayor Muriel Bowser signed and enacted the "Omnibus Public Safety and Justice Amendment Act of 2020." Ch. 403, sec. 1203, § 24-403, 68 D.C. Reg. 19 (2021). The Act effectively extends *Miller* to young adults who committed crimes while under age 25, allowing them to apply for a new sentence after serving 15 years. *Id.*

California: The California State Legislature has enacted the "Youth Offender Parole Hearing Statute," extending parole hearing eligibility to young offenders who committed an offense while under the age of 26. A.B. 1308, 2017 Reg. Sess. (Cal. 2017) (enacted as CA Penal Code § 3051 and expanding the age to 25); see also S.B. 394, 2017 Reg. Sess. (Cal. 2017) (extending young offender parole hearing eligibility to juvenile life without parole offenders and replacing the word "juvenile" with "youth" in California penal code section 3051).

Colorado: The Colorado General Assembly has proposed legislation establishing parole review after 15 years for young adults aged 24 and under at the time of the offense. S.B. 20-076, 72d Gen. Assemb., Reg. Sess. (Co. 2020).

Florida: The state senate has proposed legislation authorizing resentencing for youth who have committed offenses and allowing for the consideration of mitigating factors. S.B. 1308, Leg., 25th Sess. (Fla. 2020).

Illinois: Finally, here in Illinois, the General Assembly enacted legislation in 2019 providing "that [a] person under 21 years of age at the time of the commission of first degree murder who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences except for those subject to a term of natural life imprisonment . . . ." 730 ILCS 5/5-4.5-115 (West 2019). Additionally, it is worth noting that the General Assembly passed S.B. 3889, which modernized the Children's Mental Health Act of 2003 and requiring the Children's Mental Health Partnership to advise the Governor and the General Assembly on strategies for services for children (who are defined as from birth to age 25). 102d Ill. Gen. Assemb., Senate Bill 3889 (see section (a)) (sent to the Governor, April 27, 2022).

III. THIS COURT SHOULD CLARIFY WHAT IS REQUIRED FOR EMERGING ADULTS TO PUT FORTH A SUCCESSIVE POST-CONVICTION CLAIM.

The Eighth Amendment prohibits mandatory life-without-parole sentences for juveniles. *Miller v. Alabama*, 567 U.S. 460, 469–70 (2012). The Eighth Amendment also "mandate[s]" that sentencers "consider[] an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* at 483. The Illinois Constitution's proportionate penalties clause provides 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. 1, § 11. Together, the jurisprudence surrounding

the Eighth Amendment and the Illinois Constitution in the last 15 years has transformed Illinois' approach to the way it sentences youth and young adults. Indeed, *Miller* has provided a framework for Illinois courts evaluating sentencing procedures as they apply to young adults. *People v. Harris*, 2018 IL 121932, ¶¶ 45-46.

Accordingly, Illinois courts have attempted to evaluate successive post-conviction petitions for evidence that a defendant's youth was properly considered in fashioning the original sentence. However, without sufficient guidance on what the end relief looks like—*i.e.*, what a resentencing hearing should look like—Illinois courts remain deeply inconsistent about what a defendant, particularly an emerging adult over the age of 18 at the time of the offense, must show to even get on the correct procedural ladder to such a hearing. See, *e.g.*, *People v. Ford*, 2021 IL App (5th) 170259, ¶ 40, 41 (Wharton, J., dissenting) ("The *Harris* court provided little guidance as to what evidence must appear in a record to make it adequate for direct review" and noting that "[a]lthough [the standard to reach the second stage of post-conviction hearings] "is a very low threshold . . . it may be difficult for a *pro se* defendant with diminished capacity to meet."). While Illinois courts have attempted to provide guidance regarding the requirements for a sentencing for youth under 18, their approach in evaluating evidence has been inconsistent, leading to confusion for petitioners challenging their sentences in the post-conviction context and particularly, for emerging adults.

First, Illinois courts are inconsistent about the factors that need to be evaluated to comply with *Miller*. Some courts have argued that "mitigating factors" are broader and thus allow a trial court to "search anywhere" for evidence, *People v. Holman*, 2017 IL 120655, ¶¶ 42-44, 91. The lack of specificity regarding what factors must be examined

has, in practice, led to cases in which some courts have denied defendants for not explicitly reciting the correct language. Simultaneously, some reviewing courts have simply presumed that a lower court was doing the correct analysis despite that court not explicitly reciting the correct language, essentially holding *pro se* defendants to a higher standard than the courts. In *People v. Spaulding*, the First District Appellate Court determined that "[a]lthough the lower court did not specifically identify which factors it considered in determining defendant's sentence," it "presumed" that the trial court "properly considered all mitigating factors and rehabilitating potential." 2022 IL App (1st) 172269-UB, ¶¶ 30-34; see also *People v. Lusby*, 2020 IL 124046, ¶ 35 ("we review the proceedings to ensure that the trial court made an informed decision based on the totality of the circumstances that the defendant was incorrigible and a life sentence was appropriate.").

Yet other Illinois courts require more than mere recital of *Miller*-based factors when evaluating the constitutionality of sentences on youth or young adults. In *People v. Wilson*, for example, in reversing the second-stage dismissal of a post-conviction petition, the First District Appellate Court, evaluating the 19 year-old petitioner's claim that his sentence was unconstitutional under the Illinois Constitution, determined that simply "being aware of evidence relevant to the *Miller* factors is wholly distinct from considering those factors as mitigating, or carefully considering the prospect of a defendant's rehabilitative potential." 2022 IL App (1st) 192048, ¶¶ 101-102 (internal quotation marks omitted). In that case, the court found that Mr. Wilson did not receive a *Miller*-compliant sentencing hearing because even though the court had "some relevant information," that was "nothing like the amount [he] . . . could gather for a *Miller* hearing." *Id.* The court's reasoning underscores how

important it is for defendants to know not only what they have to ultimately show at resentencing, but also receive greater latitude to demonstrate those factors with evidence at an appropriate time, presumably with the assistance of counsel.

The issue of which factors to recite becomes even more convoluted for young adults as the courts appear to apply a two-level if not three-level analysis requirement. Specifically, in *People v. Ruiz*, the First District Appellate Court laid out an extensive procedure for young adults raising sentencing claims, essentially requiring a preliminary showing that the petitioner's "individual characteristics require the application of *Miller*." *People v. Ruiz*, 2020 IL App (1st) 163145, ¶¶ 48, 52. If, and only once this showing was made, would the post-conviction court consider whether the initial hearing complied with *Miller*, taking into account the *Holman* factors. *Id*.

Second, Illinois courts are inconsistent about the types of evidence they require and evaluate before granting a successive post-conviction petition for a petitioner to receive a *Miller*-compliant resentencing hearing. The chart below summarizes the types of evidence considered in five Illinois court decisions. In just five court decisions, close to 30 *types* of evidence could be considered. While allowing for many types of mitigation is beneficial at the hearing stage, it is costly, time-consuming, and difficult for a petitioner to collect at the pleading stage when filing a motion for leave to file a successive petition. *Pro se* petitioners in particular would likely lack the resources to adequately collect all of the necessary evidence for an eventual hearing to be *Miller* or Illinois Constitution-compliant. Nonetheless, many Illinois courts have followed the procedure in *People v. Carrion* by affirming the denials of successive post-conviction petitions or motions for leave to file a successive petition, while only evaluating evidence that was largely contained within the presentence

investigation report (PSI)—namely, aggravating evidence and social history. *People v. Carrion,* 2020 IL App (1st) 171001. *Id*. Thus, although *Miller* was based on "developments in psychology and brain science [that] show fundamental differences between juvenile and adult minds" in "parts of the brain involved in behavior control," 567 U.S. at 471–72, Illinois courts have denied petitions without considering scientific articles or relevant expert reports. See *Carrion,* 2020 IL App (1st) 171001.

Types of Evidence[3]	*People v. Hood*, 2022 IL App (1st) 171645-UB	*People v. Spaulding*, 2022 IL App (1st) 172269-UB	*People v. Kennedy*, 2021 IL App (1st) 181344-U	*People v. Carrion,* 2020 IL App (1st) 171001	*People v. Ruiz*, 2020 IL App (1st) 163145
RESULT:	Compliant Hearing	Compliant Hearing	Compliant Hearing	Affirmed Petition Denial; Compliant Hearing	Reversal of Petition Denial
Aggravating Evidence	X	X	X (other offenses)	X	X
Behavioral or Learning Disorders	NC	NC	N/A	NC	NC
Criminal History	NC	NC	X	N/A	NC
Defendant Testimony on remorse	X	NC	NC	NC	NC
Defendant Mitigation Plan	NC	X	NC	NC	NC
Early exposure to Domestic Violence	X	NC	N/A	NC	NC
Early Exposure to Drug or Alcohol Use	X	X	N/A	X	NC

[3] Table Key: X = type of evidence considered or discussed in the court's decision; NC = type of evidence not discussed in the court's decision; and N/A = type of evidence considered but found not present to apply to the court's decision.

Types of Evidence[3]	*People v. Hood*, 2022 IL App (1st) 171645-UB	*People v. Spaulding*, 2022 IL App (1st) 172269-UB	*People v. Kennedy*, 2021 IL App (1st) 181344-U	*People v. Carrion,* 2020 IL App (1st) 171001	*People v. Ruiz*, 2020 IL App (1st) 163145
Early Exposure to Personal Injury	X	NC	NC	NC	X
Early Exposure to Family Death	X	NC	N/A	NC	NC
Early Exposure to Gang Violence	X	X	N/A	N/A	NC
Early Exposure to Parental Neglect	X	NC	NC	X	NC
Early Exposure to Sexual Violence	NC	X	NC	X	NC
Education	NC	NC	X	X	NC
Expert Report	X (psychologist)	NC	NC	NC	NC
Family Life	NC	NC	X (including having children)	NC	X
Family Testimony	NC	X	X	NC	X
Finances/ Job	NC	NC	NC	X	NC
Social History	X	NC	X	NC	X
Oral Argument	X	NC	NC	NC	NC
Psychological Problems	NC	NC	X	N/A	NC
Post-conviction Files	X	NC	NC	NC	NC
Sentencing Memorandum	X	NC	NC	NC	NC
Scientific Evidence	X (Brain images and aggression modeling)	NC	NC	NC	X (social science articles about brain development)

Types of Evidence[3]	*People v. Hood*, 2022 IL App (1st) 171645-UB	*People v. Spaulding*, 2022 IL App (1st) 172269-UB	*People v. Kennedy*, 2021 IL App (1st) 181344-U	*People v. Carrion,* 2020 IL App (1st) 171001	*People v. Ruiz*, 2020 IL App (1st) 163145
Miller-specific report	X	NC	NC	NC	NC
Prison Good Behavior (studying, work, church)	X	X	X	X	NC
Prison Disciplinary Complaints	X	NC	NC	NC	NC
PSI Report	NC	NC	X	X	NC
Rehabilitative Capacity	NC	NC	X	X	X
Victim Impact Statements	X	NC	NC	X	NC

Unlike Illinois, other states have more clearly guided lower courts towards not only what a *Miller* hearing entails, but also in requiring psychological evaluations and stronger scientific evidence requirements. Michigan courts, in particular, have provided sufficient guidance for the Michigan State Appellate Defender's Office to publish sample petitions as well as explicit guidelines on the notices a defendant should file, the factors to consider, what the standard is, who counts as a juvenile, what makes these hearings distinct from other sentencing hearings, what a mitigation specialist would do, what motions to file, what attachments to submit before these hearings, and what objections to raise. See *Short Sentencing Guide for Representing Juveniles Facing First-Degree Murder After* Miller v. Alabama, SADO.org (Oct. 26, 2014), http://www.sado.org/content/mjl/training/10402_jlwop-guide.pdf. These courts have held that juvenile defendants must be afforded opportunity, financial resources, and permission to present evidence of mitigating

factors, including psychological evaluations. See, *e.g.*, *People v Carp*, 496 Mich. 440, 473 (2014) ("[P]sychological and other evaluations relevant to the youthfulness and maturity of the defendants must be allowed, and courts must now embark upon the consideration of aggravating and mitigating evidence offered").

While there may be many possible approaches for Illinois successive post-conviction petitioners seeking to raise a meritorious claim regarding the constitutionality of their sentences, the current landscape is often unnavigable for seasoned attorneys, much less incarcerated individuals, as it is confusing, onerous, and rife with contradiction. This Court should take the invitation presented by these cases to clarify and simplify the pleading standard needed for emerging adults to put forth a successive post-conviction claim that their sentence is unconstitutional.

IV. *PRO SE* LITIGANTS FACE BARRIERS WHEN REQUESTING LEAVE TO FILE SUCCESSIVE POST-CONVICTION PETITIONS THAT DENY THEM ACCESS TO JUSTICE.

A post-conviction petitioner must overcome the three required stages of the Illinois post-conviction process. A successive post-conviction petitioner faces even higher hurdles to relief. Such a litigant must first move for leave to file a successive post-conviction petition. After a court grants a motion for leave to file, the petitioner must still proceed through three stages of review, with unsuccessful petitions being screened out at each stage. As a result, successive post-conviction petitioners seeking constitutional relief from their sentences are faced with barriers that ensure that only meritorious claims benefit from re-sentencing.

In light of these many steps, petitioners should receive a lightened burden at the outset. Vulnerable populations, particularly those who are incarcerated, experiencing issues with their mental or physical health, and/or suffering from trauma or intellectual disabilities, may struggle to navigate past the numerous challenges before them. This Court should accommodate vulnerable populations by setting a low threshold for granting litigants leave to file a successive post-conviction petition, the first of many steps of a process that will ultimately prevent frivolous or unsupportable claims from succeeding. Such an approach is in accord with broader principles by this Court and the United States Supreme Court.

A. Motions for Leave to File Successive Post-Conviction Petitions for Emerging Adults Raising the Constitutionality of Their Sentences Should Not Be Particularly Demanding in Light of the Multi-Level Post-Conviction Process.

The Sixth Amendment right to counsel does not require the state to appoint an attorney for post-conviction petitions for collateral relief. Rather, incarcerated persons who cannot afford private counsel must file their post-conviction petitions *pro se*. *Ross v. Moffitt*, 417 U.S. 600, 600 (1974). In Illinois, once a *pro se* petitioner successfully overcomes the first stage of post-conviction proceedings, the petitioner is entitled to representation by counsel. 725 ILCS 5/122-4 (West 1997).

As reflected in the chart below, a successive petition for post-conviction relief proceeds through four stages. See 725 ILCS 5/122-1, *et seq*. (West 2021).

Table 1: Stages of Judicial Review for Post-conviction Petitions

Stage	Standard of Review	Evidence Needed
Preliminary Stage: Motion for Leave to File Successive Post-conviction Petition	Cause and Prejudice test	Successive petition and supporting documents
Stage One: Summary Dismissal	Petition states the "gist" of a constitutional claim	"a limited amount of detail"
Stage Two: Motion to Dismiss	Substantial Showing of a Constitutional Violation	trial record and affidavits
Stage Three: Evidentiary Hearing	Establishing a substantial showing of petitioner's constitutional rights	affidavits, depositions, oral testimony, or other evidence

For successive post-conviction petitions, petitioners must first move for leave to file a post-conviction petition. 725 ILCS 5/122-1(f) (West 2021). Courts at this preliminary stage decide whether "fundamental fairness" requires the filing of this type of petition, which is defined as the "cause-and-prejudice" test. *People v. Morgan*, 212 Ill. 2d 148, 153; *People v. Pitsonbarger*, 205 Ill. 2d 444, 458-59 ("We hold today that the cause-and-prejudice test is the analytical tool that is to be used to determine whether fundamental fairness requires that an exception be made to section 122-3 so that a claim raised in a successive petition may be considered on its merits.").

A petitioner establishes "cause" by demonstrating that an objective factor, "external to the defense. . . impeded the petitioner's ability to raise a specific claim in the initial post-conviction proceeding." *Pitsonbarger*, 205 Ill. 2d at 462. A petitioner shows "prejudice" where the failure to consider the error so infects the trial that the resulting conviction or sentence violates due process. *Id*. at 464. Courts may decide whether to grant a motion for leave to file a successive post-conviction petition by reviewing the successive petition and supporting documents. *People v. Dorsey*, 2021 IL 123010, ¶¶ 32-33, *reh'g denied* (Nov. 22, 2021).

For stage one of post-conviction proceedings, the summary dismissal stage, petitioners must state the "gist" of a constitutional claim to determine whether the petition is "frivolous or is patently without merit." *People v. Edwards*, 197 Ill. 2d 239, 244 (2001); 725 ILCS 5/122-2.1 (West 2003). At this stage courts look for "a limited amount of detail" to meet the requirements for this stage and all allegations in the petition are taken as true and liberally construed. *People v. Edwards*, 197 Ill. 2d at 244 (2001).

During stage two, the motion to dismiss stage, counsel may be appointed, and petitioners must make a substantial showing of a constitutional violation, (*People v. Coleman*, 183 Ill. 2d 366, 381 (1998)), and may include the trial record and affidavits as supporting documents. 725 ILCS 5/122-2 (West 1964). The State may move to dismiss the petition or answer the petition. 725 ILCS 5/122-5 (West 1983). In stage three, the evidentiary hearing stage, petitioners must establish a substantial showing of the petitioner's constitutional rights. *People v. Moore*, 60 Ill. 2d 379, 384 (1975). Petitioners may support their arguments with affidavits, depositions, oral testimony, or other evidence at this stage. 725 ILCS 5/122-6 (West 1964). If a petitioner prevails at this stage of post-conviction proceedings, the circuit court may grant appropriate relief, such as a resentencing hearing for an individual asserting that the sentence violates the Illinois or U.S. Constitution. In other words, there is little danger that a *pro se* petitioner who succeeds at the "leave-to-file" stage of successive post-conviction proceedings will somehow ultimately waste the court's resources if the claim is ultimately not meritorious. Such a claim is likely to be halted at one of the subsequent stages of the post-conviction process.

B. Courts and Legislators Have Recognized That Vulnerable Petitioners Need Adequate Support and Safeguards to Ensure Their Constitutional Rights are Protected.

Courts have long recognized the need to provide access to justice for the most vulnerable populations, particularly for defendants facing criminal prosecution and sentencing. In both *Gideon v. Wainwright* (right of indigent criminal defendants to counsel) and *In re Gault* (juvenile defendants were entitled to due process of law, including the right to counsel, right to a fair trial, etc.), the U.S. Supreme Court recognized that individuals who are vulnerable, because they lack resources or are youth, are entitled to special protections. See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *In re Gault*, 387 U.S. 1 (1967).

Similarly, the Court acknowledged that indigent defendants should be provided with access to a psychiatrist in cases where expert testimony would be critical to the defense. *Ake v. Oklahoma*, 470 U.S. 68 (1985) (holding that the Constitution requires that the state provide a psychiatrist to a defendant who has a made a preliminary showing that his sanity at the time of the offense will likely be a significant factor at trial). Similarly, in *Griffin v. Illinois*, the Court confirmed that indigent defendants are entitled to adequate appellate review, which they may not properly access without the ability to obtain trial transcripts. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law. There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."). And in *Burns v. Ohio*, the Court found that the lower court's refusal to allow a defendant to file a motion for leave to appeal to the state supreme court without paying fees was unconstitutional and violated the due process and

equal protection clauses of the Fourteenth Amendment. *Burns v. State of Ohio*, 360 U.S. 252 (1959).

The Illinois Supreme Court has similarly recognized that defendants should not be denied the ability to properly defend their cases simply because of a lack of resources. In *People v. Lawson*, this Court found that a defendant was entitled, under a state constitutional right to summon witnesses on the accused's behalf and under statute, to funds to obtain the services of a fingerprint and shoeprint expert. *People v. Lawson*, 163 Ill. 2d 187 (1994). In *People v. Watson*, 36 Ill. 2d 228 (1966), the Court, following *Ake*, found that a defendant had the right to be allotted a reasonable fee to hire an expert document examiner to testify regarding defendant's handwriting.

Additionally, state legislatures across the country, including in Illinois, have recognized that some individuals require support in criminal and in non-criminal contexts to properly access the courts and relief to which they may be entitled. Indeed, Illinois' Post-Conviction Hearing Act reflects that recognition by permitting an indigent petitioner to obtain transcripts and counsel to be appointed if the petition is not dismissed at the first stage. 725 ILCS 5/122-4 (West 1997). Other examples in the criminal and quasi-criminal context include provisions for appointment of counsel in parole proceedings for applicants who were under the age of 21 at the time of the offense (730 ILCS 5/5-4.5-115(e) (West 2019)) and for testing of DNA and ballistics evidence at trial or plea via a simple motion in the circuit court. 725 ILCS 5/116-3 (West 2021).

Outside of the criminal context, it is worth noting that, in educational settings, students with disabilities are often in danger of being excluded from classrooms when schools

refuse to provide accommodations for a student's disability. Each state is, however, required by federal law to develop and implement a method to locate, identify, and evaluate children with disabilities that need special education or any related services. This includes homeless children, children in private schools, migrant children, as well as children who may be advancing from grade to grade. 34 C.F.R. § 300.111; 23 Ill Admin Code §226.100. Thus, students are provided with the ability to access special education services. Parents who believe that their child needs such services may request a case study evaluation. If a school conducts such an evaluation, it must convene a domain meeting to determine the areas in which the student will be tested. Once the educational rights holder consents to testing, the district must complete testing on the student, hold a meeting to determine eligibility and develop an Individualized Education Program if the student is determined to be eligible for special education services. 23 Ill. Admin. Code § 226.110(d). A parent has appeal rights, which include requesting additional evaluations.

Put another way, the student and family are given structure and support to ensure that the child's needs are met. A clear structure and sufficient support are also required here, where vulnerable, incarcerated individuals have little guidance, support, or resources to bring forth even the most meritorious claims that their sentences are unconstitutional.

C. Successive Post-Conviction Petitioners Arguing Their Sentences Are Unconstitutional Should Be Provided With Access to the Courts, with Minimal Requirements to Pursue Potentially Meritorious Constitutional Claims.

Individual petitioners who were in their late teens or early twenties at the time of their offenses and who are seeking relief from their sentences under the Illinois and/or U.S. Constitutions are unlikely to be able to support their claim with record or expert evidence. Because such individuals are—by definition—likely incarcerated, their resources may be

limited. At the motion for leave stage, these petitioners are often unrepresented, if unable to retain private counsel. 725 ILCS 5/122-1(f) (West 2021); 725 ILCS 5/122-4 (West 1997). Moreover, incarcerated individuals serving such sentences, particularly from the time they were in their youth, are also more likely than the general public to have experienced mental health issues, learning disabilities, intellectual disabilities, trauma, and poverty. See *Rasho v. Walker*, No. 07-1298 (C.D. Ill. 2018) (Order noting that the Illinois Department of Corrections in 2018 housed 12,000 mentally ill individuals); Laura M. Maruschak, *et al.*, *Survey of Prison Inmates, 2016: Disabilities Reported by Prisoners*, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS (March 2021) (reporting that 38% of state and federal prisoners had more than one disability); Precious Skinner-Osei, *et al.*, *Justice-Involved Youth and Trauma-Informed Interventions*, JUSTICE POLICY JOURNAL 7 ("An estimated two-thirds of JIY have a diagnosable mental health disorder compared to an estimated 9 to 22 percent of the general youth population.") They may also have dealt with substance abuse, abuse and neglect, and poverty. Skinner-Osei at 7. Such petitioners are also disproportionately Black. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT (2021), 5, 21 (finding that more than half of Illinois' prison population is Black, while Black people comprise 14% of Illinois' population). And because these individuals have been incarcerated since their youth, it is unlikely they would have had access to educational opportunities beyond the high school level and are, therefore, limited in their ability to articulate complex legal arguments with sufficient support.

Thus, the danger of holding such petitioners to a pleading standard that is too high is that those who are most vulnerable, most unable to cogently and comprehensively state

their claims, may actually be those for whom such claims are strongest. Indeed, in *People v. House*, following its reasoning in *People v. Harris*, this Court held that in order for a post-conviction petitioner to survive dismissal in an as-applied constitutional challenge, the record must sufficiently be developed to provide evidence relating to how the evolving science on juvenile maturity and brain development applies to the petitioner's specific facts and circumstances. *People v. House*, 2021 IL 125124, ¶ 29; *People v. Harris*, 2018 IL 121932 ¶¶ 45-46. However, a petitioner whose intellectual deficits situate the person squarely within the category of an adolescent envisioned by *Miller* and its progeny, may be prevented by those very same deficits from adequately presenting such a case.

Take, for example, two potential petitioners, both emerging adults at the time of the offenses that led to their life or de facto life sentences. Both are incarcerated, but only one has the financial means to retain counsel and pay for experts who can examine the petitioner and provide a report indicating that the petitioner's psychological development at the time of the incident demonstrates that the petitioner was functioning at a level similar to youth under the age of 18. That petitioner is then able to attach this report to a motion for leave to file a successive petition and, therefore, have the petition filed and docketed. The other petitioner, if the person has the sophistication to comprehend what *Harris* requires, may only be able provide via his or her own experience or allegation that the youth-centered science applies. Even if—or, more accurately—*especially* if such petitioner suffers from some cognitive delay or deficit that would support a viable constitutional claim, the petitioner would lack the ability to comprehensively plead that claim and would face a greater likelihood of dismissal. Such a result is and should be untenable. Thus, this Court should adopt a low pleading threshold at the leave-to-file stage to permit successive post-

conviction petitioners to more easily raise their claims regarding the constitutionality of their sentences for crimes that occurred when they were emerging adults.

CONCLUSION

In *People v. Harris*, this Court has recognized the opportunity for emerging adults to challenge the constitutionality of their sentences in post-conviction petitions. In so doing, this Court acknowledges—as other state supreme courts and state legislatures have done—that emerging adults embody developmental and neurological attributes akin to juveniles that warrant special consideration and protection under the law. Yet, to ensure that such consideration and protection is meaningful and fully actualized, this Court should clarify and simplify the pleading standard required for emerging adults to advance a successive post-conviction claim that their sentence is unconstitutional. A low pleading threshold is both proper and appropriate for such petitioners. As outlined above, *amici curiae* support Petitioner-Appellants' position in this matter and respectfully request that this Court remand this matter for further post-conviction proceedings.

Respectfully submitted,

By: _____

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Dated: April 29, 2022

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 33 pages.

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CYNTHIA A. GRANT
SUPREME COURT CLERK

Nos. 126461, 126932

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ET AL.,	)	Appeals from the Appellate Court
	)	of Illinois, Fourth District,
Respondent-Appellees,	)	No. 4-19-0528; and from the Appellate
	)	Court of Illinois, Second District,
	)	No. 2-18-0526
	)	
v.	)	There on Appeals from the Circuit
	)	Court of Macon County, Illinois
	)	No. 97-CF-1660; and from the Circuit
	)	Court of the 17th Judicial Circuit,
	)	Winnebago County, Illinois,
	)	No. 97-CF-1082
	)	
TORY S. MOORE ET AL.,	)	The Honorable
	)	Thomas E. Griffith,
Petitioner-Appellants.	)	Judge Presiding; and
	)	The Honorable
	)	Joseph G. McGraw,
	)	Judge Presiding.

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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 April 29, 2022, 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.

By: 

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APPENDIX A: *AMICI* TO THE BRIEF

IDENTITY OF *AMICI* AND STATEMENTS OF INTEREST

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, and immigration and political asylum. In its 30-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 and young adults in the legal system.

Cabrini Green Legal Aid (CGLA) is a public interest law firm that provides legal services for low-income individuals who reside in Cook County, Illinois. CGLA was established in 1973 to serve legal needs arising from the lack of opportunity, criminalization of poverty, and racial inequity experienced within the Cabrini Green community. Since then, CGLA has grown beyond a single neighborhood to become a citywide, countywide, and recognized statewide leader in supporting low-income individuals negatively impacted by the criminal justice system. We are the only legal aid in Illinois exclusively focused on individuals and families impacted by the criminal justice system, providing consult to other legal aids, advocating along the continuum from the point of arrest, throughout incarceration, and fighting the consequential barriers that can last a lifetime.

CGLA has a substantial interest in ensuring that young petitioners, either represented by legal counsel or filing *pro se*, are able to clearly understand and access their legal rights and remedies. In 2018, recognizing the unique challenges and legal needs of young people, CGLA established a separate legal program focused on the emerging adult population. From our representation of emerging adults at their Aftercare (juvenile parole) revocation hearings, criminal defense matters, or other post-conviction proceedings, we have a unique perspective on the burdens that young people have as they navigate through the criminal justice system. We recognize how crucial it is that emerging adults be provided with concrete procedures and guidelines to access their legal rights.

The Center for Law, Brain & Behavior (CLBB) at Massachusetts General Hospital, Harvard Medical School is a multidisciplinary program focused upon bringing accurate, actionable neuroscience to inform law and public policy. Program domains include elder protection, criminal sentencing, immigration/asylum, and juvenile/young adult justice. Activities include "science" amicus briefs, legislative briefings, state and federal judicial training, and educational events. CLBB's interest and specific expertise in this litigation is application of neuroscience and social sciences to inform developmentally aligned approaches to culpability, accountability, and rehabilitation of adolescents and emerging young adults. A decision by the Illinois Supreme Court in this matter will have significant national impact as courts and legislatures consider post-conviction relief for individuals who were emerging young adults (18+) at the time of their offenses.

Chicago Appleseed Center for Fair Courts is a research, education and advocacy organization that works to achieve systemic reform and improve access to justice through promotion of evidence-based policies and practices in courts and government. Chicago

Appleseed is an expert in court systems and barriers to justice for marginalized communities and for unrepresented litigants.

Chicago Council of Lawyers is the only public interest bar association in Cook County and is dedicated to improving the quality of justice in the legal system by advocating for fair and efficient administration of justice. The Chicago Council of Lawyers works as a collaboration partner with the Chicago Appleseed Center for Fair Courts to clarify sentencing procedures and ensure equitable release where appropriate.

Chicago Lawyers' Committee for Civil Rights is a public interest law organization founded in 1969 that 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 grassroots organizations and other advocacy groups to implement community-based solutions that advance civil rights, including in areas of police accountability and criminal justice reform. Chicago Lawyers' Committee for Civil Rights works directly with incarcerated individuals through its voting rights and civic engagement work and advocates on behalf of youth and emerging adults in its education equity practice. 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 Center** 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 ChildLaw 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 Juvenile Justice Initiative (JJI) is a non-profit, non-partisan, inclusive statewide advocacy organization that establishes broad-based collaborations to achieve humane, equitable and sustainable reforms that are consistent with the highest standards of human rights for children and young adults in conflict with the law. JJI's statewide approach to systemic reform begins with research and analysis, following a circular path linking policy development, policy education, network and coalition building, and policy evaluation and implementation assistance.

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition 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 one of the largest criminal defense firms in the United States, with more than 500 attorneys and nearly 700 employees overall, representing tens of thousands of Cook County residents charged with every type of criminal offense and child protection violation. The Public Defender has an annual budget of approximately $80 million and the responsibility to staff courtrooms throughout the Circuit Court of Cook County. The Cook County Public Defender's mission is to protect the fundamental rights, liberties and dignity of each person whose case has been entrusted to the office by providing the finest legal representation.

The **National Association of Social Workers** (NASW), founded in 1955, is the largest association of professional social workers in the United States with 110,000 members in 55 chapters. NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education and enforces the NASW Code of Ethics. In alignment with its mission to ensure the efficacy and quality of practicing social workers, NASW provides resources and develops policy statements on issues of importance to the social work profession. Consistent with those policy statements, NASW and its Illinois Chapter support continuation of the movement toward assisting children and youths who enter the juvenile justice system in a manner commensurate with their age and developmental level and the elimination of the imposition of life sentences without the possibility of parole for juveniles convicted of a capital offense in an adult court. Nat'l Ass'n of Social Workers, Social Work Speaks, Juvenile Justice and Delinquency Prevention, 198-203 (11th ed. 2018-2020)