

No. 23-972

IN THE

Supreme Court of the United States

ANGELA GERMAINE SPENCER, BY AND THROUGH
NEXT FRIEND AND MOTHER OF A.S., A MINOR,

Petitioner,

v.

THE COUNTY OF HARRISON, TEXAS,

Respondent.

*On Petition for a Writ of Certiorari to
the United States Court of Appeals for the Fifth Circuit*

**BRIEF OF *AMICI CURIAE*
COUNCIL OF PARENT ATTORNEYS AND
ADVOCATES, TEXAS CIVIL RIGHTS PROJECT,
DISABILITY RIGHTS TEXAS, INTERCULTURAL
DEVELOPMENT RESEARCH ASSOCIATION,
AND TEXAS APPLESEED**

Leslie Salzman
Counsel of Record
Rebekah Diller
BENJAMIN N. CARDOZO
SCHOOL OF LAW
55 Fifth Avenue, 11th Floor
New York, New York 10003
646-592-6570
salzman@yu.edu
rebekah.diller@yu.edu

(Additional Counsel Continued on the Reverse)

April 5, 2024

Amelia T.R. Starr
Henry G. Goldberg
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
212-450-4516
amelia.starr@davispolk.com
henry.goldberg@davispolk.com

Selene Almazan-Altobelli
Legal Director
COUNCIL OF PARENT ATTORNEYS
AND ADVOCATES, INC.
P.O. Box 6767
Towson, Maryland 21285
844-426-7224 ext.702
selene@copaa.org

Counsel for Amici Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I. SHACKLING HARMS CHILDREN INVOLVED IN THE JUVENILE JUSTICE SYSTEM	6
A. Shackling Causes Psychological and Physical Harm to Children	7
B. Shackling Interferes with Fair Juvenile Courtroom Procedures	14
II. SHACKLING CHILDREN IS CONTRARY TO THE REHABILITATIVE PURPOSE OF THE JUVENILE JUSTICE SYSTEM	17

	<i>Page</i>
III. THE DELETERIOUS CONSEQUENCES OF SHACKLING DISPROPORTIONATELY IMPACT CHILDREN WITH DISABILITIES AND CHILDREN OF COLOR BECAUSE OF THEIR OVERREPRESENTATION IN THE JUVENILE JUSTICE SYSTEM.....	19
A. Children with Disabilities are Overrepresented in the Juvenile Justice System	19
B. Children of Color are Overrepresented in the Juvenile Justice System	21
C. The Practice of Indiscriminate Shackling Must be Viewed in the Context of the School-to-Prison Pipeline That Negatively Impacts Children with Disabilities and Children of Color	22
CONCLUSION.....	26

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Deck v. Missouri</i> , 544 U.S. 622 (2005).....	4, 5, 7, 14, 15, 16, 17
<i>Endrew F. v. Douglas County School District RE-1</i> , 137 S. Ct. 988 (2017).....	2
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Statutes

Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.	1
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Rules	
Sup. Ct. R. 37.6.....	1
Sup. Ct. R. 37.2(a).....	1
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INTEREST OF *AMICI CURIAE*¹

Amici curiae are civil rights and disability rights organizations interested in ensuring that children in juvenile proceedings are treated fairly and appropriately, and that the juvenile justice system rehabilitates, rather than unnecessarily traumatizes, children.

Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization that provides resources, training, and information for parents of children with disabilities, their attorneys, and advocates, to assist in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq. COPAA and its attorney members represent children in civil rights matters and efforts to safeguard the civil rights guaranteed under federal laws, including 42 U.S.C. § 1983, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (ADA).

¹ Pursuant to Rule 37.6, the undersigned certifies that: (A) there is no party or counsel for a party who authored the *amicus* brief in whole or in part; (B) there is no party or counsel for a party who contributed money that was intended to fund preparing or submitting the brief; and (C) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *amici*, their members, and counsel. Counsel of record for all parties received notice of *amici*'s intent to file at least ten days prior to this brief's due date. See Sup. Ct. R. 37.2(a).

COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has previously filed as *amicus curiae* in numerous cases involving the rights of children with disabilities in this Court, including in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017), and in numerous cases in the United States Courts of Appeals.

The Texas Civil Rights Project (TCRP) is a non-profit organization that advocates for the civil rights of all Texans. For more than thirty years, TCRP has litigated and advocated to advance the rights of the state's most vulnerable populations. TCRP's Criminal Injustice Program works to remedy injustices in Texas' criminal legal system for adults and children suffering inside and outside of jails and prisons. TCRP submits this brief in support of the Petition for Certiorari because fair court proceedings are of the utmost importance to TCRP's work in seeking equitable administration of justice in the state and federal criminal legal systems. Further, TCRP's work in the courts and with impacted communities has repeatedly demonstrated the devastating effects that early criminalization can have on a child's life. The question presented here directly affects the cases, and the lives, of those on whose behalf TCRP regularly advocates.

Disability Rights Texas (DRTx) is a nonprofit organization mandated to protect the legal rights of

people with disabilities by the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6001 et seq., the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 1081 et seq., and the Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794(e). DRTx is the designated “protection and advocacy” system for the State of Texas. In accordance with its federal mandate, DRTx has the authority to, among other things, pursue administrative, legal, and other appropriate remedies to protect the rights of persons with disabilities. 42 U.S.C. § 6042(2); 42 U.S.C. § 10805(a)(1). A significant portion of DRTx’s work is representing children with disabilities in zealously advocating for their freedom from unlawful discrimination.

The Intercultural Development Research Association (IDRA) is an independent, non-profit organization dedicated to achieving equal educational opportunity for every child through strong public schools. Since its founding in 1973, IDRA has worked with families, students, and education leaders to advocate for smart, fair, and effective public policy, including ensuring that schools do not push students out of the classroom through school policing and exclusionary discipline, which limit student success, are costly, and disproportionately harm Black students, Latino students, students with disabilities, and LGBTQ students.

Texas Appleseed is a public interest justice center that is based in Austin and works with community

organizations across the state of Texas. Using data-driven research and local partnerships, Texas Appleseed advocates for changes to laws and policies that disproportionately burden historically underserved Texans. For more than 15 years, Texas Appleseed has built significant expertise in the fight to dismantle the school-to-prison pipeline; Texas Appleseed has published numerous reports that highlight how centuries-long draconian educational practices, exclusionary discipline, and school policing detrimentally affect Black & Brown children, LGBTQ young people, and kids with disabilities.

SUMMARY OF ARGUMENT

This case has serious implications for the rights and well-being of young people involved in the juvenile justice system as well as for the fairness and effectiveness of juvenile proceedings. In *Deck v. Missouri*, 544 U.S. 622 (2005), this Court affirmed a due process right to appear in court during the penalty phase of a capital trial without shackles unless the restraints are justified by an essential state interest specific to the defendant on trial. *Id.* at 624. The Court was concerned that indiscriminate shackling during court proceedings would undermine “the presumption of innocence and the related fairness of the factfinding process,” diminish defendants’ ability to participate in their own defense, and compromise the dignity and seriousness of purpose of the proceedings. *Id.* at 630–32. The same concerns about fairness and respect for

defendants that animated *Deck* apply at least as forcefully in the juvenile context. Recognizing the harms of shackling, multiple jurisdictions in the last two decades have eliminated the indiscriminate shackling of juveniles in court proceedings. *See* Pet. Cert. 10–14.

Yet, in a select number of jurisdictions, children in juvenile proceedings continue to be indiscriminately shackled—i.e., restrained with leg irons, belly chains, and/or handcuffs—without an individualized assessment of whether the child poses a flight or safety risk. Shackling causes significant harm to young people’s psychological and physical health, interferes with their ability to communicate with counsel, and degrades the dignity of the juvenile justice system while undermining its rehabilitative purpose. The harms of indiscriminate shackling are borne most acutely by children with disabilities and children of color, who are disproportionately represented in the juvenile justice system and suffer particularized harms from being subject to such restraints. These harms must be understood in the context of a school-to-prison pipeline that funnels children with disabilities and children of color into the juvenile justice system for minor infractions or conduct that is a consequence of a child’s disability.

While many states have ended the practice of indiscriminate shackling of children in juvenile proceedings, the practice continues in other states, where it causes unnecessary harm and traumatizes children in a system designed to encourage rehabil-

itation. The issue of indiscriminate shackling of juveniles is an important federal question that warrants this Court's intervention and guidance. This Court should grant the petition and reverse in order to establish definitively that indiscriminate shackling during juvenile proceedings, in any jurisdiction, violates due process.

ARGUMENT

I. SHACKLING HARMS CHILDREN INVOLVED IN THE JUVENILE JUSTICE SYSTEM.

Shackling harms the psychological and physical well-being of children and impedes their ability to participate in fair, unbiased legal proceedings. These harms outweigh any generalized safety or flight concerns offered to justify the indiscriminate use of shackles on children in juvenile proceedings. For these reasons, groups such as the American Bar Association, the National Council of Juvenile and Family Court Judges, the American Academy of Child and Adolescent Psychiatry, the National Juvenile Defender Center, the Child Welfare League of America, and the National Center for Mental Health and Juvenile Justice have called for an end to indiscriminate shackling of juveniles.²

² See Jim Felman & Cynthia Orr, Resolution & Report to the House of Delegates, ABA Sec. Crim. Just. (2015), [hereinafter ABA Resolution & Report], <https://www.defendyouthrights.org/wp-content/uploads/2014/09/ABA-Report-Resolution-2015-107A-Revised-Approved.pdf>; Nat'l Council of Juv. and Fam.

A. Shackling Causes Psychological and Physical Harm to Children.

Shackling has long been recognized to be an inherently humiliating experience. *See Deck*, 544 U.S. at 630–31 (citing *State v. Roberts*, 86 N.J. Super. 159 (App. Div. 1965) (quoting 2 William Hawkins, *Pleas of the Crown*, ch. 28, § 1 at 308 (1716)). For children, being shackled before family members, court personnel and others is especially humiliating, shameful and stigmatizing.³ Children

Ct. Judges, Resolution Regarding Shackling of Children in Juvenile Court (2015) [hereinafter NCJFCJ Resolution] [<https://perma.cc/9KKF-2NRH>]; Am. Acad. of Child and Adolescent Psychiatry, Policy Statement on Mandatory Shackling in Juvenile Court Settings (2015) [<https://perma.cc/S63Q-3APY>]; Nat'l Juv. Def. Ctr., Campaign Against Indiscriminate Juvenile Shackling (2014) [hereinafter NJDC Campaign], https://www.defendyouthrights.org/wp-content/uploads/2016/01/NJDC_CAIJS_Issue-Brief.pdf; Child Welfare League of Am., Policy Statement on Juvenile Shackling (2015) [<https://perma.cc/4R4T-FAMA>]; Nat'l Ctr. for Mental Health and Juv. Just., Policy Statement on Indiscriminate Shackling of Juveniles in Court (2015) [hereinafter NCMHJJ Policy Statement] [<https://perma.cc/99LR-FUP7>].

³ See Affidavit of Dr. Gwen Wurm ¶ 11 (Jan. 7, 2015) (“Wurm Aff.”); Affidavit of Dr. Marty Beyer ¶¶ 9, 10 (Jan. 15, 2015) (“Beyer Aff.”); Affidavit of Dr. Donald Rosenblitt ¶ 11 (Jan. 6, 2015) (“Rosenblitt Aff.”); Affidavit of Dr. Robert Bidwell ¶ 11, (Feb. 12, 2015) (“Bidwell Aff.”), collectively *available at* <https://www.defendyouthrights.org/issues/shackling>. These affidavits from experts on adolescent physical and mental health were collected by the National Juvenile Defender Center (now the Gault Center) as part of a campaign to end the indiscriminate shackling of juveniles and have

interviewed about their experiences report feeling like animals or criminals when shackled in court. See Bernard P. Perlmutter, “*Unchain the Children*”: *Gault, Therapeutic Jurisprudence, and Shackling*, 9 Barry L. Rev. 1, 19–20 (2007); Nat’l Juv. Just. Network, *Unchain the Children: Policy Opportunities to End Shackling of Youth in Court* 1, 2 (Sept. 2014) [<https://perma.cc/7ATF-VZNW>]. Being visibly restrained and shackled can exacerbate feelings of uncertainty, embarrassment, and shame and have a detrimental effect on children’s developing identities. See ABA Resolution & Report, at 7–8.

The psychological harms of shackling young people are particularly significant because, as this Court has recognized, their brains are still developing. See *Graham v. Florida*, 560 U.S. 48, 68 (2010) (recognizing that “parts of the brain . . . continue to mature through late adolescence”). Adolescence is a time of development and neural plasticity that makes the brain particularly susceptible to environmental stressors. See Lisa Eiland & Russell D. Romeo, *Stress and the Developing Adolescent Brain*, 249 Neuroscience 162, 162–71 (Sept. 26, 2013), [<https://perma.cc/Z6WL-REKM>] (reviewing research on stress and the adolescent brain). During the critical period of adolescent identity formation, shackling’s message that the shackled juvenile is dangerous and less than human can profoundly

been widely cited in discussions of shackling’s impacts. See, e.g., *In re D.M.*, 139 A.3d 1073, 1082 n.4 (Md. Ct. Spec. App. 2016).

damage a youth's emerging self-esteem and lead to problematic behaviors. *See* Rosenblitt Aff. ¶ 14; Bidwell Aff. ¶ 11; MacArthur Found., *Juvenile Justice in a Developmental Framework: A 2015 Status Report* 29 (2015) [hereinafter 2015 MacArthur Status Report] [<https://perma.cc/GAV2-K9TZ>]. The shameful experience “of appearing in front of strangers and family alike in shackles can have a damaging and even permanent effect on a young person’s concept of self.” Wurm Aff. ¶ 11. If a young person perceives that court personnel and others in positions of authority believe that they are violent, dangerous, and untrustworthy, then the child may come to believe that about themselves as well. *See* Bidwell Aff. ¶¶ 11, 12; *see also* 2015 MacArthur Status Report 29 (quoting child who had been shackled describing how she believed the court viewed her as dangerous and inhuman and came to view herself that way too).

The experience of shackling can also be traumatizing for children involved in court proceedings. The experience of going through an arrest, a court proceeding, and potentially incarceration is inherently fraught, but the added stress of being restrained can impose even greater psychological distress. *See* Anita Nabha, Note, *Shuffling to Justice: Why Children Should Not Be Shackled in Court*, 73 Brook. L. Rev. 1549, 1575–80 (2008). Trauma can have a significant impact on a young person’s emotional and cognitive well-being. Marty Beyer, *A Developmental View of Youth in the Juvenile Justice System*, in *Juvenile Justice: Advancing*

Research, Policy, and Practice 1, 9–10 (Francine Sherman & Francine Jacobs, eds. 2011).⁴ Trauma can slow development (both physically and psychologically), interfere with the child’s functioning, and cause emotional dysregulation. *Id.* Juveniles who have experienced trauma can also develop increased behavioral issues, such as impulsivity and combativeness. *Id.* In fact, research has shown that children who experience trauma are at greater risk of future justice system involvement. *See* Phelan Wyrick & Kadee Atkinson, *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System*, 283 Nat’l Inst. of Just. J. 29, 34–35 (October 2021).

The experience of being shackled can be especially harmful for children who have experienced past trauma, which is the case for most children in the juvenile justice system. *See* NCMHJJ Policy Statement. Such re-traumatization is painful, interferes with the ability to recover from the original trauma, and increases the likelihood of future problematic conduct. Rosenblitt Aff. ¶ 12; *see also* Bidwell Aff. ¶ 9 (noting that when shackling resembles a past traumatic event, children can experience physical symptoms including abdominal pain, nausea, vomiting, sweating, chest pain, and a pounding heart). In addition, the experience of trauma places children “at increased risk of behaviors that may lead to legal problems.” Gordon R.

⁴ Available at https://www.martybeyer.com/sites/default/files/beyer-juvjus_chapter.pdf.

Hodas, M.D., Pennsylvania Office of Mental Health and Substance Abuse Services, *Responding To Childhood Trauma: The Promise And Practice Of Trauma Informed Care* 1, 20 (2006) [<https://perma.cc/YFV8-7RKT>]. For all these reasons, exposing juveniles to the trauma of unnecessary shackling in a courtroom proceeding is counterproductive and only increases their risk of school suspensions, contact with law enforcement, and justice-system involvement in the future. *See* Child and Adolescent Mental Health Coalition, *Statement of Child and Adolescent Mental and Behavioral Health Principles* 1,⁵ 10 (Apr. 14, 2023) [<https://perma.cc/99LR-FUP7>]; Hodas, *supra*, at 20.

The psychological effects of physical restraints are particularly severe for children with disabilities, especially those who have preexisting mental health conditions that may be exacerbated by the use of restraints. *See generally, e.g.*, Karen M. Abram, et al., *Post-Traumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 Archives Gen. Psychiatry 403, 408–09 (2004) (discussing impact of use of restraints, including handcuffs, on mental health of pretrial juvenile detainees with diagnosed or suspected post-traumatic stress disorder).

⁵ These principles were endorsed by numerous professional organizations including the American Academy of Pediatrics, American Psychiatric Association, American Psychological Association, National Association of Pediatric Nurse Practitioners, and National Association of School Psychologists.

der). Studies of children with disabilities restrained in schools have concluded that the use of physical restraints causes psychological trauma. See, e.g., U.S. Gov't Accountability Off., GAO-09-719T, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* 1, 8 (2009) [<https://perma.cc/2PDK-MNHG>]; David L. Westling et al., *Use of Restraints, Seclusion, and Aversive Procedures on Students with Disabilities*, 35 *Rsch. & Prac. Pers. Severe Disabilities* 116, 120 tbl.1, 124 (2010) (finding in survey of parents and guardians of children with disabilities that over 90% of respondents whose child had been subjected to restraints, seclusion or other aversive procedures reported resulting emotional trauma). When a child experiences trauma, it exacerbates pre-existing emotional and behavioral conditions. “The child who is already compromised in coping and overall development by a preexisting mental health problem is at greater risk to respond negatively to traumatic exposure.” Hodas, *supra*, at 9; see also Westling, *supra*, at 125. In addition to causing trauma, the use of physical restraints on children with disabilities has been associated with increased rates of problem behaviors. See Sandy K. Magee & Janet Ellis, *The Detrimental Effects of Physical Restraint as a Consequence for Inappropriate Classroom Behavior*, 34 *J. Applied Behav. Analysis* 501, 502–03 (2001) (finding in small observational study that use of physical restraints to address problem behaviors of children with developmental disabilities

is generally contraindicated and may increase problem behavior).

Shackling also has particularly acute and unique psychological effects on children of color. Shackling practices evoke comparisons to the subordination of slavery and dehumanizing treatment of Black individuals on chain gangs. *See* Kim Taylor-Thompson, *Gideon at Fifty – Golden Anniversary or Mid Life Crisis*, 11 Seattle J. for Soc. Just. 867, 880–81 (2013); Candace Johnson & Mae C. Quinn, *Chaining Kids to the Ever Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement*, 73 Wash. & Lee L. Rev. Online 159, 165 (2016). Putting enslaved persons into shackles was a way to not only exert control, but also to signal an inferior status. *See* Johnson & Quinn, *supra*, at 165. Shackling children of color with these visible symbols of bondage also sends a clear message to them and to those who pass by that the children are violent and dangerous and must be restrained using the most severe methods. *Id.*; Wurm Aff. ¶ 10. Thus, because of its dehumanizing history and symbolism, shackling has significant negative psychological impacts on children of color.

In addition to psychological damage, shackling children has been shown to cause physical harm. *See* Perlmutter, *supra*, at 6–7. Children subject to shackling and other physical restraints can sustain injuries such as cuts, bruises, and nerve or vessel damage. *See id.* at 6 (quoting interviewee who had been shackled as recounting “[t]hey cut through your skin, they rip it and when you take them off,

you have a permanent dent in there of the shackles”); Wurm Aff. ¶ 16; *cf.* Lanette Suarez, Comment, *Restraints, Seclusion, and the Disabled Student: The Blurred Lines Between Safety and Physical Punishment*, 71 U. Miami L. Rev. 859, 877 (2017) (describing physical injuries from the use of restraints in schools).

B. Shackling Interferes with Fair Juvenile Courtroom Procedures

Shackling children in court also interferes with their constitutional right to fair judicial proceedings. First, shackles impede the ability to communicate with judges and attorneys and participate in legal proceedings. *See Deck*, 544 U.S. at 631 (recognizing that shackles interfere with a defendant’s ability to communicate with counsel and participate in their own defense). Specifically, putting children in physical restraints during court proceedings can impair their motor coordination, impede their ability to interact with and write messages to counsel during the hearing, and severely restrict their ability to take the stand in their own defense. *See* Perlmutter, *supra*, at 36–39; ABA Resolution & Report, at 5. This difficulty communicating with counsel puts juveniles at a considerable disadvantage in courtroom proceedings. ABA Resolution & Report, at 5. Even when juveniles are not shackled, their communication with counsel can often be strained. *See Graham*, 560 U.S. at 78 (noting that general juvenile mistrust of adults and limited understanding of the

role of defense counsel impairs the ability of children to effectively participate in their own defense). Thus, when shackled, children have even greater difficulties advocating for themselves and obtaining meaningful assistance from counsel, ultimately leading to increased adverse judicial outcomes.

In addition, shackling interferes with juveniles receiving fair trials because shackles negatively influence how children are perceived by others, including courts. *See* ABA Resolution & Report, at 4 (discussing how shackles affect the public perception of juveniles in legal proceedings); Johnson & Quinn, *supra*, at 165. In *Deck*, the Court highlighted how the appearance of a defendant in shackles jeopardized the presumption of innocence by making the accused appear guilty and dangerous. *Deck*, 544 U.S. at 630–31. *Deck* underscored that “given [shackling’s] prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case.” *Id.* at 632. While the *Deck* Court was specifically discussing shackling in the context of appearances before a jury, the same concerns apply to proceedings with judicial factfinders as well; “judges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder.” *People v. Best*, 979 N.E.2d 1187, 1189 (N.Y. 2012); *see also* Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124, 1146–48 (2012). Thus, shackling compromises the presumption of innocence that must apply in

juvenile proceedings even if those proceedings are not before a jury. ABA Resolution & Report, at 4; *see also* Carlos J. Martinez, *Policy Report: Unchain the Children: Five Years Later in Florida*, Law Offices of the Public Defender, 11th Cir. FL 1, 5 (Dec. 2011) [<https://perma.cc/WTQ2-9EA3>].

In *Deck*, this Court also expressed concern that the use of shackles “affront[s]” the “dignity and decorum of judicial proceedings that the judge is seeking to uphold.” *Deck*, 544 U.S. at 631–32 (internal citation omitted). Courtrooms are considered sacrosanct spaces where judges can educate the public and “promote[] confidence in the fair administration of justice.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (citation omitted). To maintain the sanctity of the judicial process, both civil and criminal matters must be adjudicated in a courtroom that carries out its functions with appropriate solemnity. *Sheppard v. Maxwell*, 384 U.S. 333, 350–51 (1966) (internal citation omitted). *See Sefick v. Gardner*, 164 F.3d 370, 373 (7th Cir. 1998) (noting the importance of maintaining the courthouse lobby in a manner that reinforces the seriousness of the judicial project).

As *Deck* recognized, preservation of the courtroom process helps ensure that a proceeding appears fair and is fair. Discussing the importance of maintaining a dignified court process, *Deck* explains:

The courtroom’s formal dignity, which includes the respectful treatment of defend-

ants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve. The routine use of shackles . . . would undermine these symbolic yet concrete objectives.

Deck, 544 U.S. at 631–32. These concerns about the fairness and dignity of court proceedings that animated this Court's decision in *Deck* should apply with equal force to juvenile proceedings.

II. SHACKLING CHILDREN IS CONTRARY TO THE REHABILITATIVE PURPOSE OF THE JUVENILE JUSTICE SYSTEM.

Youth rehabilitation, as opposed to crime control and punishment, is the primary goal of juvenile courts. *In re Gault*, 387 U.S. 1, 16 (1967); *Kent v. United States*, 383 U.S. 541, 554 (1966); NCJFCJ Resolution. Shackling runs directly counter to this mission because it “promotes punishment and retribution over the rehabilitation and development of children under the court's jurisdiction.” NCJFCJ Resolution, at 1; Kim M. McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, 38 Wash. U. J. L & Pol'y 213, 215, 222, 237 (2012). In

addition, as the National Council of Juvenile and Family Court Judges has recognized, indiscriminate shackling contravenes the system's goal of reducing recidivism and developing "competent and productive citizens." NCJFCJ Resolution, at 1.

Accordingly, in limiting indiscriminate shackling, several state appellate courts have explicitly recognized that it undercuts the rehabilitative purpose of juvenile courts. In *In re D.M.*, the intermediate appellate court noted that juvenile courts "fashion a plan of supervision, treatment, and rehabilitation appropriate to the juvenile," rather than seeking primarily to punish, and reasoned that a presumption against shackling "would more closely serve those objectives, while indiscriminate shackling threatens them." *In re D.M.*, 139 A.3d 1073, 1081–82 (Md. Ct. Spec. App. 2016). In *Tiffany A. v. Superior Court*, the court explained that "[t]he use of shackles in a courtroom absent a case-by-case, individual showing of need creates the very tone of criminality juvenile proceedings were intended to avoid." *Tiffany A. v. Superior Ct.*, 59 Cal. Rptr. 3d 363, 375 (Cal. Ct. App. 2007); see also *In re R.W.S.*, 728 N.W. 2d 326, 330 (N.D. 2007); *In re Millican*, 906 P.2d 857, 860 (Or. Ct. App. 1995) (extending the right to remain unshackled during juvenile proceedings is consonant with the rehabilitative purposes of Oregon's juvenile justice system). Automatically and routinely shackling children in court is an intrusive and ineffective practice that does not promote respect for the legal system or reduce recidivism. 2015 Status Report, *supra*, at 29.

Therefore, shackling children is not compatible with the fundamental rehabilitative principles underlying the juvenile justice system.

III. THE DELETERIOUS CONSEQUENCES OF SHACKLING DISPROPORTIONATELY IMPACT CHILDREN WITH DISABILITIES AND CHILDREN OF COLOR BECAUSE OF THEIR OVERREPRESENTATION IN THE JUVENILE JUSTICE SYSTEM.

A. Children with Disabilities are Overrepresented in the Juvenile Justice System.

Students with disabilities are referred to law enforcement authorities and subjected to juvenile arrests in disproportionate numbers. According to the Department of Education's Office for Civil Rights, while students with disabilities represent just 17% of the pre-school through twelfth-grade school population, they represent 28% of students who are subjected to school-related arrests. U.S. Dep't of Educ. Off. for C.R., *Referrals to Law Enforcement and School-Related Arrests in U.S. Public Schools During the 2020-21 School Year* (Nov. 2023) [<https://perma.cc/6CU7-Y68G>]. Looking at the larger population of all youth incarcerated in juvenile correctional facilities, at least one in three are individuals with disabilities. *Locked Out: Improving Educational Outcomes for Incarcerated Youth*, CSG Just. Ctr. (Nov. 2015) [<https://perma.cc/P35G-MVWN>] (finding that at least one in three young

people sent to juvenile correctional facilities are identified as having or needing special education); *see also* Sarah E. Redfield & Jason P. Nance, *American Bar Association: Joint Task Force on Reversing the School-to-Prison Pipeline*, 47 U. Mem. L. Rev. 1, 84 (2016) (estimating that 28–50% of incarcerated youth offenders have learning disabilities).

Studies have shown a significant correlation between mental health disabilities, in particular, and involvement in the juvenile justice system. A 2007 report of the National Center for Mental Health and Juvenile Justice noted that studies consistently show that 65 to 70% of juvenile justice involved youth have at least one diagnosable mental health condition. Kathleen Skowrya & Joseph Cocozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Justice Department*, Nat'l Ctr. for Mental Health and Juv. Just. 1, 8 (2007) (citations omitted) [<https://perma.cc/L2FG-5CY7>]. Researchers have also documented how children with “internalizing” disorders, including anxiety, depression, and somatic disorders, are more likely to become justice system involved. *See* Kaitlyn Sill, PhD, *A Study of the Root Causes of Juvenile Justice System Involvement*, Crim. Just. Coordinating Council 5, 46–48 (2020) [<https://perma.cc/4ZZW-MES3>].

B. Children of Color are Overrepresented in the Juvenile Justice System.

Children of color, particularly Black children, are overrepresented in the juvenile disciplinary system at every stage. *See* Off. of Juv. Just. and Delinquency Prevention, *Literature Review: Racial and Ethnic Disparity in Juvenile Justice Processing* (last updated Mar. 2022) [<https://perma.cc/22PE-4JJV>] (gathering studies in “scope of the problem” section). They are more likely than white children to be arrested, to be referred to court, to have their cases handled formally with a petition for adjudication of delinquency, and to be placed in a juvenile detention center or other facility. *Id.* The disparities are also reflected in school discipline that leads to arrest; while Black students represent just 15% of the pre-school through twelfth-grade school population, they represent 22% of students who are subjected to school-related arrests. U.S. Dep’t of Educ. Off. for C.R., *Referrals to Law Enforcement and School-Related Arrests in U.S. Public Schools During the 2020-21 School Year* (Nov. 2023) [<https://perma.cc/6CU7-Y68G>].⁶ Involvement in the

⁶ OCR explicitly cautioned readers to consider the impact of the COVID-19 pandemic, with its high percentage of hybrid and remote teaching, when comparing the 2020-21 Civil Rights Data Collection (CRDC) to previous CRDC data. U.S. Dep’t of Educ. Off. for C.R., 2020-21 Civil Rights Data Collection A First Look: Students’ Access to Educational Opportunities in U.S. Public Schools, 2, 3 (Nov. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-educational-opportunities-report.pdf>. Accordingly, the previous 2017-18

juvenile justice system, in turn, makes it more likely that children will again be involved in the criminal legal system in the future. *See From Youth Justice Involvement to Young Adult Offending*, Nat'l Inst. of Just. (Mar. 10, 2014) [<https://perma.cc/Z56E-YJTJ>].

C. The Practice of Indiscriminate Shackling Must be Viewed in the Context of the School-to-Prison Pipeline That Negatively Impacts Children with Disabilities and Children of Color.

The practice of indiscriminate shackling must be viewed against the backdrop of the existing school-to-prison pipeline that disciplines children—disproportionately children with disabilities and children of color—through suspensions, expulsions, and referrals to law enforcement for minor infractions or conduct that is a consequence of a child's disability. *See* Edward W. Morris & Brea L. Perry, *The Punishment Gap: School Suspension and Racial Disparities in Achievement*, 63 Soc. Probs. 68, 70 (2016); Daniel J. Losen & Jonathan Gillespie,

CDRC data showing that Black students accounted for almost 32% of the reported arrests while accounting for only 15% of the total student population might be more reliable than the 2020-21 numbers. U.S. Dep't of Educ. Off. for C.R., *Referrals to Law Enforcement and School-Related Arrests in U.S. Public Schools* (Jan. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/referrals-and-arrests-part-5.pdf>.

Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School 1, 13-14 (2012) [<https://perma.cc/5QQ6-SSZH>]. This school-to-prison-pipeline pushes students out of the classroom and into the juvenile and criminal legal systems, increasing the risk for numerous negative outcomes including poor academic performance, higher dropout rates and future contact with the criminal justice system. See Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 Wash. U.L. Rev. 919, 923 (2016). Researchers have found that any school suspension during grades seven through twelve increases the logged odds of incarceration in young adulthood by 288%. Paul Hemez et al., *Exploring the School-to-Prison Pipeline: How School Suspensions Influence Incarceration During Young Adulthood*, 18 Youth Violence Juv. Just. 235, 245 (2020). As explained below, government data establishes that children with disabilities and Black children are pushed into the school-to-prison pipeline through suspensions and expulsions at particularly high rates. As a result, these groups are at heightened risk of involvement in the juvenile justice system, and therefore more likely to be shackled in juvenile proceedings and experience its negative impacts.

Children with disabilities are channeled into the school-to-prison pipeline in part because inadequately trained and under-resourced staff fail to appropriately address disability-related behaviors and instead treat them as deliberate acts of defiance justifying disciplinary action. See generally

Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y.L. Sch. L. Rev. 909 (2010); cf. David Weissbrodt et al., *Applying International Human Rights Standards to the Restraint and Seclusion of Students with Disabilities*, 30 Law & Ineq. 287, 288 (2012) (“The students who most often suffer the ill effects of restraint are children with disabilities, whose behaviors are often misunderstood and whose needs are often not accommodated.”). Government data on suspensions and expulsions demonstrates that discipline is disproportionately meted out to students with disabilities. For example, while students with disabilities represented approximately 16% of the student population, they represented 28% of those students subjected to out-of-school suspensions and 25% of students expelled from school. U.S. Dep’t of Educ. Off. for C.R., *Suspensions and Expulsions of Students with Disabilities in Public Schools* (Aug. 2022) [<https://perma.cc/G882-MQFJ>].

Children of color are also funneled into the school-to-prison pipeline in disproportionate numbers for a host of complex reasons including the impact of implicit racial biases on disciplinary decisions. See, e.g., Laura S. Abrams et al., *The Criminalization of Young Children and Overrepresentation of Black Youth in the Juvenile Justice System*, 13 Race and Soc. Probs. 73, 74–75 (2021); Sarah E. Redfield & Jason P. Nance, *American Bar Association: Joint Task Force on Reversing the School-to-Prison Pipeline*, 47 U. Mem. L. Rev. 1, 93 (2016). Government data indicates that Black stu-

dents were suspended at rates more than twice their share of overall enrollment. U.S. Dep’t of Educ. Off. for C.R., *An Overview Of Exclusionary Discipline Practices In Public Schools For The 2017-18 School Year*, Civil Rights Data Collection, 16 (June 2021) [<https://perma.cc/5JN5-MFG7>]. In addition, Black children were also nearly two times more likely than their white counterparts to be expelled in public schools from kindergarten through grade twelve. U.S. Dep’t of Educ. Off. for C.R., *2020-21 Civil Rights Data Collection Student Discipline and School Climate in U.S. Public Schools*, 7 (Nov. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-school-climate-report.pdf>.

The excessive discipline imposed on children with disabilities and Black children is further illustrated by Department of Education statistics on the use of mechanical restraints in schools, gathered as part of an agency effort to investigate the inappropriate use of restraint and seclusion. U.S. Dep’t of Educ. Off. for C.R., *The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools, 2017–18 Civil Rights Data Collection*, 3 [hereinafter 2017–18 Civil Rights Data Collection] [<https://perma.cc/6KB8-RCCG>].⁷ For example, in 2017–18, while students with disabilities educated under the IDEA represented only 13% of the student population, they represented 41% of children subjected to

⁷ A mechanical restraint is defined as “any device or equipment to restrict a student’s freedom of movement.” 2017–18 Civil Rights Data Collection at 4.

mechanical restraints in school. *Id.* at 1, 6–7. Among this group of students with disabilities, the situation was even worse for students with disabilities who are Black. Black students represented 18% of students educated under the IDEA but represented 34% of those children subjected to mechanical restraints in school. 2017–18 Civil Rights Data Collection, at 10–11.

Thus, the harms of indiscriminate shackling are especially concerning as they are experienced within the context of the school-to-prison pipeline that already disadvantages children with disabilities and children of color by subjecting them to exclusionary discipline in disproportionate numbers, with serious negative consequences for their future success and well-being.

CONCLUSION

For all the reasons set forth above, the decision of the Court of Appeals for the Fifth Circuit undermines the due process rights of children in the juvenile justice system, particularly children of disabilities and children of color, and jeopardizes their well-being. Because the Fifth Circuit’s decision raises an important federal question with serious implications for our nation’s children, the Court should grant certiorari and reverse that decision.

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Respectfully submitted,

Leslie Salzman
Counsel of Record
Rebekah Diller
BENJAMIN N. CARDOZO
SCHOOL OF LAW
Counsel for Amici Curiae
55 Fifth Avenue, 11th Floor
New York, New York 10003
646-592-6570
salzman@yu.edu
rebekah.diller@yu.edu

Amelia T.R. Starr
Henry G. Goldberg
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
212-450-4516
amelia.starr@davispolk.com
henry.goldberg@davispolk.com

Selene Almazan-Altobelli
Legal Director
COUNCIL OF PARENT ATTORNEYS
AND ADVOCATES, INC.
P.O. Box 6767
Towson, Maryland 21285
844-426-7224 ext.702
selene@copaa.org