

No. 24-6933

In the
Supreme Court of the United States

MIKAL MAHDI,
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

**On Writ of Certiorari to Supreme Court of the
State of South Carolina**

**BRIEF OF AMICI CURIAE THE GAULT CEN-
TER, THE JUSTICE POLICY INSTITUTE ET AL.
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

Amici are academics and service providers who advocate for juvenile criminal justice reform. They promote policies that remedy the effects of solitary confinement and address juvenile-justice issues. Amici have a particular interest in this case because it raises significant questions about the effects of solitary confinement, particularly on youths. Amici include the Criminal Practice Clinic at University of South Carolina Joseph F. Rice School of Law; the Gault Center; the Justice Policy Institute; the Juvenile Defender Clinic at Emory Law School; the National Religious Campaign Against Torture; Time Served; Unlock the Box Campaign; John H. Blume, Director of the Cornell Juvenile Justice Project; and Amber Baylor, Director of the Criminal Defense Clinic at Columbia Law School.²

SUMMARY OF ARGUMENT

By the time Mikal Mahdi was old enough to vote, he had suffered years of physical and emotional abuse, been diagnosed with severe depression that long went untreated, and been subjected to violent

¹ Counsel for *amici curiae* hereby certifies, pursuant to Rule 37.6 of this Court, that no party or counsel for a party has authored any part of the foregoing brief nor has any party or counsel for a party made a monetary contribution to fund the filing of this brief. However, counsel for *amici curiae* notes that counsel of record and certain listed co-counsel were counsel of record for petitioner at earlier stages of his post-conviction proceedings. No person other than the *amici curiae* or their counsel has made a monetary contribution to its preparation or submission.

² Appendix A to this brief describes each Amicus party in detail and their interest in the litigation. Reference to educational institutions with which the amici are affiliated are for purposes of identification only.

and restrictive treatment in the criminal-justice system, including an extended period isolated in solitary confinement. Given new research on the effects of solitary confinement on youths, this tragic history warrants reconsideration of Mikal’s death sentence, as that research challenges the appropriateness of imposing the death penalty on a defendant subjected to those conditions at such a young age.

From his earliest days, Mikal was physically and mentally abused and witnessed others being abused. When he was just eight years old, he was already demonstrating signs of severe depression and suicidal ideation.³ When he was nine, Mikal was diagnosed with Major Depressive Disorder after being hospitalized for a suicidal threat, but his severe depression went untreated.⁴ In the fifth grade, at age

³ Petition for Writ of Certiorari in *Mikal D. Mahdi v. State of South Carolina*, Case No. 24-6933 (Supreme Court of the United States) (referenced herein as “Petr. Br.”), at 11–13 (discussing findings of Malcolm H. Woodland, PhD, in his evaluation of Mikal’s personal trauma, traumatic experiences, and childhood psychiatric symptoms); *see also* 2025APP 1649–72 (The citations throughout this amicus brief to 2025APP __ refer to the Appendix filed alongside Petitioner’s Brief). While he was largely kept out of school by his father, during a brief period of school when he lived with an aunt and uncle, Mikal asked an elementary school official: “Why doesn’t someone shoot me? If I had a gun, I would shoot myself.” 2025APP 1654. The school recommended psychiatric treatment, which Mikal did not receive. *Id.*

⁴ 2025APP 1655, 1662. When Mikal was living with his aunt, he called the police to report that his aunt was beating him. 2025APP 1654. When the police arrived, Mikal told an officer that he wanted to take his gun and shoot himself. *Id.* Mikal was hospitalized for nearly two months where he received the diagnosis. *Id.* At the hospital, Mikal told a psychiatrist that he wanted to jump off a bridge. 2025APP 1490. But after he was

11, Mikal’s teachers tried to get him extra support because of the emotional difficulties he was having. But instead of allowing the added help for his son, Mikal’s father pulled him from school, kept Mikal at home, and subjected him to several years of paranoid, survivalist “home schooling.” Mikal would never return to the school system. Shortly after he turned 14, Mikal entered the juvenile-justice system and spent most of the rest of his childhood in custody, often kept isolated and alone.

Although the facts about his experiences in the juvenile-justice system were known and presented at the time of Mikal’s last evidentiary court proceeding, which concluded in 2012, subsequent scientific developments have shed new light on the significance of those experiences. In particular, recent research has revealed the long-term physical, psychological, and social effects of solitary confinement and similar restrictive measures on youths. That research includes compelling mitigating evidence that ought to be considered by a capital sentencing court or jury as it evaluates the appropriateness of imposing the death penalty on a defendant who was harmed by those conditions.

Mikal was first arrested in 1997, shortly after turning 14; at that time, he was charged with theft, detained, and ultimately committed to the Virginia Department of Youth and Family Services (“DYFS”) in December 1997 for more than six months.⁵ During those months, corrections officials punished Mikal for uncooperative and disruptive conduct by physically

released from the hospital, Mikal was not provided further evaluation or treatment suggested by the hospital. 2025APP 1655.

⁵ 2025APP 1656.

restraining and isolating him.⁶ Just two months after his release in June 1998, Mikal was committed to DYFS again, this time because he was present during a standoff between the police and his father.⁷ Mikal remained confined in DYFS from August 1998 until May 2000, when he was 17 years old.⁸

During that second commitment, Mikal continued to act out—failing to comply with uniform rules, making verbal threats, fighting, and destroying property—and DYFS often responded by physically restraining him and physically forcing him to the ground.⁹ All the while, Mikal’s mental health deteriorated, as he began exhibiting severe depression and was repeatedly placed on suicide watch. Even so, the severity of the penalties for his behavior increased.¹⁰ DYFS responded to Mikal’s suicidal threats and his inability to control his behavior with even more physical restraint and isolation.¹¹ From the ages of 14 to 17, Mikal spent over 1800 hours—more than 75 days—in solitary confinement.¹² After months of going in and out of solitary confinement, Mikal was released in May 2000—abruptly ending the few weeks

⁶ *Id.*

⁷ *Id.*

⁸ 2025APP 1656–57.

⁹ 2025APP 1656.

¹⁰ 2025APP 1656–57.

¹¹ *Id.* On October 11, 1999, Mikal tried to electrocute himself in his cell. He was placed on suicide watch and remained there until October 20, 1999. 2025APP 1657. He was returned to suicide watch after threatening to hang himself with his bedsheet on November 16, 1999. *Id.*

¹² Petr. Br. at 17.

of therapy he had received while in custody.¹³ Years later, as a late adolescent, Mikal returned to prison on an assault conviction and again faced solitary confinement. Between the ages of 18 and 21, he spent over 6000 hours—nearly eight months—in isolation.¹⁴

New scientific research has demonstrated the significant, long-term harmful effects of restrictive punishments and solitary confinement on youths like Mikal. And there is an emerging consensus at both the state and federal levels that, because of these deleterious effects, there should be strict limitations on the use of solitary confinement and similar measures on youths.

ARGUMENT

I. Newly Developed Research Demonstrates the Heightened Physical, Psychological, and Social Impact of Solitary Confinement on Youths.

a. Youths are particularly vulnerable to the physical and psychological health effects of solitary confinement.

In the years since Mikal’s 2012 state post-conviction review proceedings concluded, additional scientific and sociological research has led to a new understanding of the particularly harmful effects of solitary confinement on youths. This new research has shown that youths—who are still developing

¹³ 2025APP 1657. Within months, still as a teenager, Mikal returned to custody again, first in jail and then prison in Virginia until May 2004. 2025APP 1658–59. As a result, Mikal spent 86% of his life from ages 14 to 21 in state correctional facilities. Petr. Br. at 20.

¹⁴ Petr. Br. at 20.

physically, psychologically, and neurologically—often experience irreversible cognitive and behavioral impairment when subject to solitary confinement. The American Academy of Child and Adolescent Psychiatry released its first statement on this issue just months after Mikal’s habeas proceeding in 2012, stating the group’s position that, “[d]ue to their developmental vulnerability[,] juvenile offenders are at particular risk” of possible adverse psychiatric consequences from “prolonged solitary confinement.”¹⁵

Scientific advancements in brain-imaging technology, neurobiology, and brain chemistry have yielded evidence that now demonstrates an association between solitary confinement and *physical* changes in neural pathways, morphology, and neurochemistry of the brain that adversely affect the nature and functioning of the brain.¹⁶ In fact, continued research supports that “subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and

¹⁵ Juvenile Justice Reform Committee, *Solitary Confinement of Juvenile Offenders*, Am. Acad. Child Adolescent Psych. (Apr. 2012), https://www.aacap.org/aacap/policy_statements/2012/solitary_confinement_of_juvenile_offenders.aspx.

¹⁶ See Carol Schaeffer, “*Isolation Devastates the Brain*”: *The Neuroscience of Solitary Confinement*, Solitary Watch (May 11, 2016), <https://solitarywatch.org/2016/05/11/isolation-devastates-the-brain-the-neuroscience-of-solitary-confinement/>; Jean Cassella & James Ridgeway, *Scientists Discover How Social Isolation Damages Young Brains*, Solitary Watch (Sept. 18, 2012), <http://solitarywatch.com/2012/09/18/>; Manabu Makinodan et al., *A Critical Period for Social Experience Dependent Oligodendrocyte Maturation and Myelination*, 337 Science, no. 6100, 2012, at 1357–60.

physical pathologies.”¹⁷ The physiological changes caused by prolonged solitary confinement can negatively affect the structure and functioning of the hippocampus and amygdala, brain areas important for emotion regulation and memory.¹⁸ Social isolation also increases activation of the brain’s stress system,¹⁹ which eventually kills brain cells and “rewire[s]” the

¹⁷ David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Pub. Health 18, 21 (2015); Samantha K. Brooks et al., *The psychological impact of quarantine and how to reduce it: Rapid review of the evidence*, 395 Lancet 912–920 (Mar. 14, 2020), [https://doi.org/10.1016/S0140-6736\(20\)30460-8](https://doi.org/10.1016/S0140-6736(20)30460-8).

¹⁸ See Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Sci. Am. (Nov. 9, 2018), <https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/>; Bruce S. McEwen et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 *Neuropsychopharmacology* 3, 12–14 (2016), <https://www.nature.com/articles/npp2015171>.

¹⁹ See, e.g., Lasse Brandt et al., *The effects of social isolation stress and discrimination on mental health*, *Transl Psychiatry* 12(1):398, at 2 (Sept. 21, 2022), doi: 10.1038/s41398-022-02178-4 (“A large body of evidence from human clinical studies provides convincing evidence that an early adverse caregiving environment [including social isolation] is associated with multiple profound and long-lived neurostructural, neurofunctional and neurochemical changes at the level of neural circuits that are implicated in the mediation of stress responses and emotion regulation, as well as changes in physiological regulation systems (i.e., the neuroendocrine, autonomic, and immune systems) as well as changes at the molecular level of gene regulation”); Tom Salomon et al., *Brain volumetric changes in the general population following the COVID-19 outbreak and lockdown*, *NeuroImage* 239:118311 (2021) (finding that social isolation caused by COVID-19 lockdowns contributed to changes in the amygdala that are commonly associated with stress and anxiety).

brain.²⁰ A 2015 review of scientific literature supports the finding that toxic stress can impede development of the hippocampus, making the youth less able to de-escalate stress.²¹ These alterations may “result[] in difficulties in memory, mood regulation and contextual learning, which includes learning to differentiate dangerous situations from safe ones.”²²

b. Youths are particularly vulnerable to social impacts of solitary confinement.

In addition to being more susceptible to the physical harms of solitary confinement, research now highlights youths’ heightened sensitivity to its social harms. People who are incarcerated and placed in a general-population wing may leave their cells throughout the day, during which time they can interact with other inmates, accept visits from friends or family, and access prison resources such as libraries, religious services, and recreational programs.²³

²⁰ See Schaeffer, *supra* note 7.

²¹ Richard G. Dudley, Jr., *Childhood Trauma and Its Effects: Implications for Police*, New Persp. in Policing, U.S. Dep’t Just., Nat’l Inst. Just. 5 (2015), <https://perma.cc/VMY8-JT35>.

²² *Id.* at 5–6.

²³ See Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, at 22 (Oct. 10, 2012), <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united> (compared to the general population, young incarcerated people who were subjected to solitary confinement reported that they were deprived of a significant level of access to: physical and mental health care services; recreation or physical exercise; education, reading, or writing materials; visits, calls, correspondence, or contact with family members and loved ones; and other rehabilitative and developmentally-appropriate programming);

Maintaining family and community connections is helpful for youths' rehabilitation and reentry outcomes,²⁴ especially given that adolescence is a developmental period characterized by heightened social reward.²⁵ In fact, research suggests a relationship between weekly visitation by family members and maintaining good behavior and improved school performance for incarcerated youth.²⁶ These positive environmental and social interactions are unavailable to youths in solitary confinement. Solitary confinement removes young inmates from staff interactions and programming that is crucial in developing

Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 388 n.12 (2018) (same); *Brown v. Or. Dep't of Corr.*, 751 F.3d 983, 985 (9th Cir. 2014) (comparing the length of time out of cells for the general population versus solitary confinement population in Oregon State Penitentiary).

²⁴ See Sandra Villalobos Agudelo, *The Impact of Family Visitation on Incarcerated Youth's Behavior and School Performance*, Vera Inst. Just. (Apr. 2013), <https://www.vera.org/downloads/publications/impact-of-family-visitation-on-incarcerated-youth-brief.pdf> (finding a positive correlation between weekly visitation by family members and the incarcerated youth's good behavior and improved school performance).

²⁵ Lucy Foulkes & Sarah-Jayne Blakemore, *Is there heightened sensitivity to social reward in adolescence?*, 40 Current Opinion in Neurobiology 81–85 (Oct. 2016), <https://doi.org/10.1016/j.conb.2016.06.016>.

²⁶ See Sandra Villalobos Agudelo, *The Impact of Family Visitation on Incarcerated Youth's Behavior and School Performance*, Vera Inst. Just. (Apr. 2013), <https://www.vera.org/downloads/publications/impact-of-family-visitation-on-incarcerated-youth-brief.pdf>.

awareness and necessary skills to control problematic behavior in the future.²⁷

Indeed, recent research shows that the psychological deterioration experienced by youths often meets the criteria for emotional abuse under state child-abuse laws due to the lack of interaction with others.²⁸ In South Carolina, child-abuse laws include both “physical or mental injury,” and they define mental injury as “an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child’s ability to function.”²⁹ According to the South Carolina Department of Social Services, signs of emotional abuse in youths can include “anxiety, destructive or anti-social behaviors; [and] suicidal thoughts or behaviors.”³⁰ These behaviors have been observed and documented in youths who were subjected to solitary confinement, including Mikal.³¹

²⁷ Jason Szanyi, *Testimony of the Center for Children’s Law and Policy for the House Legislative Oversight Committee of the South Carolina General Assembly*, Ctr. Child.’s L. & Pol’y (May 18, 2016), [https://www.scstatehouse.gov/CommitteeInfo/SenateSpecialStudyCommitteeOnDJJ/August312016Meeting/083116%20Testimony%20of%20the%20Center%20for%20Children's%20Law%20and%20Policy%20\(002\).pdf](https://www.scstatehouse.gov/CommitteeInfo/SenateSpecialStudyCommitteeOnDJJ/August312016Meeting/083116%20Testimony%20of%20the%20Center%20for%20Children's%20Law%20and%20Policy%20(002).pdf)

²⁸ Andrew Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, 45 J. Am. Acad. Psych. L. 350, 355 (2017).

²⁹ S.C. Code Ann. § 63-7-20(17).

³⁰ Report Child Abuse and Neglect, S.C. Dep’t Social Services, <https://dss.sc.gov/child-well-being/report-child-abuse-and-neglect/> (last visited on Nov. 15, 2023).

³¹ Tamar R. Birckhead, *Children in Isolation: The Solitary Confinement of Youth*, 50 Wake Forest L. Rev. 11–12 (2015).

What is more, developing youths tend to perceive and experience time differently than adults,³² which may exacerbate the mental and physical health consequences of social isolation of youths compared to adults. As neuroscientist Patricia Costello of Walden University explains:

Children’s working memory, attention and executive function are all undergoing development at the neural circuit level[.] Their neural transmission is in effect physically slower compared to adults. This in turn affects how they perceive the passage of time. By the time we are adults, our time circuits are done wiring and we have learned from experience how to correctly encode the passage of time.³³

In other words, extended periods of isolation are likely to cause even greater, lasting harm on developing youths who are left alone without social interaction for what to them feels like forever.

³² Nicole Spector, “*Why our sense of time speeds up as we age—and how to slow it down*,” NBC News (Nov. 26, 2018); *see also* Fangbing Qu et al., *Development of Young Children’s Time Perception: Effect of Age and Emotional Localization*, 12:688165 Frontiers in Psychology 7 (June 8, 2021).

³³ Nicole Spector, “*Why our sense of time speeds up as we age—and how to slow it down*,” NBC News (Nov. 26, 2018).

II. Youths Diagnosed with Mental Illness or Who Are Members of Minority Racial Groups Are Particularly Vulnerable to the Harms of Solitary Confinement.

a. Solitary Confinement Is Especially Harmful for Youths Diagnosed with Mental Illness.

Youths who have been diagnosed with mental illness are particularly vulnerable to the physiological, psychological, and social harms of solitary confinement. In 2016, the American College of Correctional Physicians described a clear medical consensus that there is a particular risk of harm from solitary confinement for people with mental illness:

prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment There is a consensus among clinicians that placement of many or most inmates with serious mental illness in these settings is contraindicated because their psychiatric conditions will clinically deteriorate or not improve.³⁴

As the research explains, individuals diagnosed with a mental illness already exhibit deficits in their brain structure or biochemistry, so they are less resilient to negative stimuli than those without mental illness.³⁵ It follows that solitary confinement can

³⁴ *Restricted Housing of Mentally Ill Inmates*, Am. Coll. Corr. Physicians, https://acpm.org/restricted_housing_of_mentally.php#:~:text=The%20Society%20of%20Correctional%20Physicians,tenets%20of%20mental%20health%20treatment (last visited Nov. 14, 2023).

³⁵ See, e.g., Sarah Boukezzi et al., *Exaggerated amygdala response to threat and association with immune hyperactivity in*

exacerbate those preexisting conditions in youths who are already battling mental illnesses—and who, because they are incarcerated, may receive little if any treatment.³⁶ Studies also show that solitary confinement can result in “re-traumatization” of youths with a high exposure to adverse childhood experiences, such as abuse and neglect.³⁷ Those individuals are even more susceptible to significant and long-lasting trauma from social isolation than those without a mental illness.

depression, Brain Behav Immun 104:205-212, at 9–10 (Aug. 2022) (finding individuals with depression experience exaggerated amygdala and inflammatory responses to stress compared to individuals without depression); Nat'l Comm'n on Corr. Health Care, Position Statement, Solitary Confinement (Isolation), (Apr. 2016), <https://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf> (“It is well established that persons with mental illness are particularly vulnerable to the harms of solitary confinement.”); *see also* American Psychological Association, Position Statement on Solitary Confinement (Restricted Housing) of Juveniles (May 2018), <https://www.psychiatry.org/File%20Library/AboutAPA/Organization-Documents-Policies/Policies/Position-2018-Solitary-ConfinementRestricted-Housing-of-Juveniles.pdf>.

³⁶ See Laura A. Gallagher, *More Than a Time Out: Juvenile Solitary Confinement*, 18(2) UC Davis Journal of Juvenile Law & Policy 250-51 (June 5, 2014); Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, at 32–36 (Oct. 10, 2012), <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united>.

³⁷ Tamar R. Birckhead, *supra* note 29, at 14–15.

b. Racial Minority Youth Are More Likely to Harmed by—and More Likely to Be Placed in—Solitary Confinement.

Youths who are racial minorities are especially susceptible to the detrimental effects of solitary confinement both because they are more likely to have a heightened reaction to solitary confinement and because they are also more likely to be placed in solitary confinement.

Solitary confinement itself is an adverse childhood experience and thus has a compounding effect on the mental health of youths who have already experienced adverse childhood experiences, such as psychological abuse, physical abuse, divorce or separation, family member in prison, deprivation or lack of care, parental mental illness, parental substance abuse, or feeling unloved by family.³⁸ A 2023 study published in the *American Journal of Psychiatry* explains that these types of adverse experiences may act as toxic stressors to regions of the brain related to threat-processing and that this exposure to adverse experiences is disproportionately seen in Black youths.³⁹ Compared to white Americans, Black Americans are disproportionately exposed to childhood adversity.⁴⁰

³⁸ See Elizabeth M. Rademacher, Note, *The Beginning of the End: Using Ohio's Plan to Eliminate Juvenile Solitary Confinement as a Model for Statutory Elimination of Juvenile Solitary Confinement*, 57 Wm. & Mary L. Rev. 1019, 1028 (2016); see also Birckhead, *supra* note 29, at 15–16.

³⁹ Nathalie M. Dumornay et al., *Racial Disparities in Adversity During Childhood and the False Appearance of Race-Related Differences in Brain Structure*, Am. J. Psych. (Feb. 1, 2023), <https://doi.org/10.1176/appi.ajp.21090961>.

⁴⁰ See *id.*

That disparity may contribute to race-related differences in brain structures involved in regulating the emotional response to stress, such as the amygdala, hippocampus, and prefrontal cortex, much like the scientific research discussed herein.⁴¹

Youths who are racial minorities are also disproportionately likely to experience solitary confinement once incarcerated. In 2021, the Correctional Leaders Association and The Arthur Liman Center for Public Interest Law at Yale Law School conducted a nationwide survey of restrictive housing in the U.S. prison system. The survey demonstrates that Black youths are more likely than white youths to receive solitary confinement.⁴² Thus, the harmful effects of solitary confinement on racial minorities are doubly exacerbated: the racial discrimination they experience

⁴¹ See *supra* Section I.A.; see also Yin Paradies et al., *Racism as a determinant of health: A systematic review and meta-analysis*, 10:e0138511 PLoS One 23–27 (Sept. 23, 2015) (meta-analysis indicating an association between racism and poorer mental health outcomes such as depression, anxiety, and psychological stress); Joaquim Radua et al., *What causes psychosis? An umbrella review of risk and protective factors*, 17 World Psychiatry 58–61 (2018) (finding that discrimination and a lack of social support can also contribute to the increased risk of psychosis for individuals with a visible minority status); Leonie Varchmin et al., *Traumatic events, social adversity and discrimination as risk factors for psychosis—An umbrella review*, Front Psychiatry 12:665957 (Oct. 22, 2021) (same); Tania Josiane Bosqui et al., *A systematic review and meta-analysis of the ethnic density effect in psychotic disorders*, 49 Soc. Psychiatry Psychiatr. Epidemiol. 526–29 (Apr. 2014) (finding a lower incidence of psychotic disorders for ethnic minorities in high ethnic density areas compared to the ethnic majority and to low ethnic density areas).

⁴² 2021 CLA Liman RH Report, at 27–34, https://law.yale.edu/sites/default/files/area/center/liman/document/time_in_cell_2021.pdf.

before incarceration weakens their defenses to the harms of solitary confinement, and they are disproportionately likely to be subjected to solitary confinement.

III. There Is a Growing Legislative Consensus to Curtail the Solitary Confinement of Youths.

Given the overwhelming and uncontradicted evidence that solitary confinement negatively affects youths, the U.S. Department of Justice issued a Report and Recommendations Concerning the Use of Restrictive Housing in January 2016.⁴³ In the report, the DOJ recommended ending the practice of solitary confinement for youths held pursuant to federal charges, citing the growing consensus of the risk of significant mental, physical, and psychological harm that solitary confinement poses for them.⁴⁴ When issuing an executive order adopting this recommendation, President Obama noted that solitary confinement could cause “devastating, lasting psychological consequences.”⁴⁵ In December 2018, Congress passed the First Step Act, which codified the stringent restrictions on the use of solitary confinement as a punishment for youths in the federal system.⁴⁶ The Act

⁴³ U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing, Final Report (Jan. 2016), <https://www.justice.gov/archives/dag/file/815551/download>.

⁴⁴ *Id.* at 114.

⁴⁵ Laura Wagner, *Obama Bans Solitary Confinement For Juveniles In Federal Prisons*, NPR (Jan. 25, 2016), <https://www.npr.org/sections/thetwo-way/2016/01/25/463891388/obama-announces-reforms-to-solitary-confinement-in-federal-prisons>.

⁴⁶ S. 3747, 115th Cong. (2017); codified at 18 U.S.C. § 5403.

sharply limited room confinement to instances when a youth's behavior poses a risk of immediate physical harm that cannot be de-escalated and, even in those circumstances, limited solitary confinement to a maximum of three hours.⁴⁷

Many states have also begun to curtail the use of solitary confinement for youths. As of July 2022, 24 states and the District of Columbia have enacted statutes limiting or prohibiting solitary confinement of youths, and other states have limited its use through administrative code, policy, or court rules.⁴⁸

For example, both Virginia and South Carolina have proposed or enacted limitations on the use of solitary confinement for youths. In Virginia, where Mikal was subjected to solitary confinement as a youth, in 2021 the Virginia Department of Corrections ("VADOC") formally ended restrictive housing and adopted a restorative housing program for all inmates who require enhanced security and programming opportunities.⁴⁹ And in 2023, Virginia enacted legislation requiring that VADOC inmates in restrictive

⁴⁷ *Id.*

⁴⁸ Anne Teigen, *States that Limit or Prohibit Juvenile Shackling and Solitary Confinement*, Nat'l Conf. State Legislatures (last updated July 8, 2022), <https://www.ncsl.org/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement>.

⁴⁹ Virginia Department of Corrections, *Restorative Housing in the Virginia Department of Corrections FY2023 Report*, at 4 (Oct. 1, 2023), <https://vadoc.virginia.gov/media/1931/vadoc-restorative-housing-report-2023.pdf#:~:text=On%20August%202021%2C%20VADOC%20formally%20adopted,who%20require%20enhanced%20security%20and%20programming%20opportunities>.

housing units have at least four hours outside of their cells every day.⁵⁰ The law also requires VADOC facility administrators to develop and publish plans for individuals in restrictive housing to transition back into general population.⁵¹

South Carolina, too, has recently adopted meaningful limitations on the use of solitary confinement for youths. On February 5, 2020, the DOJ issued a report on the dangers to youth housed at the South Carolina Department of Juvenile Justice's ("SCDJJ") Broad River Road Complex ("BRRC").⁵² That report found that there was "reasonable cause to believe" that SCDJJ "seriously harms youth[s] by using isolation for punitive rather than legitimate purposes and by placing youth[s] in isolation for lengthy periods."⁵³ The report noted that staff members used isolation as a deterrent tool or as a punishment on "a large number of youth[s]" for "minor misbehaviors that posed no threat to safety," such as using profanity towards officers, having playing cards, and being unable to urinate to complete a drug test.⁵⁴ The report also stated that staff members did not know of alternative strategies or interventions to address these behaviors. And

⁵⁰ *Id.* at 4; Va. Code Ann. § 53.1-39.2(B)(5).

⁵¹ Va. Code Ann. § 53.1-39.2(C).

⁵² Letter from Eric S. Dreiband, Assistant Attorney General, U.S. Dep't Just., Investigation of South Carolina Department of Juvenile Justice's Broad River Road Complex (Feb. 5, 2020), chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.justice.gov/opa/press-release/file/1245181/download.

⁵³ U.S. Department of Justice and United States Attorney's Office District of South Carolina, Investigation of South Carolina Department of Juvenile Justice's Broad River Road Complex ("BRRC Report"), at 4 (Feb. 5, 2020).

⁵⁴ *Id.* at 10.

the report found that extended isolation without appropriate psychiatric treatment had caused a number of youths to harm themselves and even attempt suicide.⁵⁵ One youth who was interviewed, identified as W.X., was isolated 19 times for a total of *71 days*; W.X. reported that he “started going insane”: he could not stay calm or stop panicking.”⁵⁶ The facility responded by withholding W.X.’s recreation time, which only exacerbated the youth’s anxiety and stress.⁵⁷

On April 14, 2022, the DOJ filed a complaint in federal court against SCDJJ over the dangers to the youths housed at BRRC.⁵⁸ The complaint alleged that BRRC violated youths’ constitutional and statutory rights by, among other things, “using prolonged isolation for punitive purposes.”⁵⁹ In a report accompanying the complaint, the DOJ found that, in 2017, BRRC “isolated 232 youth at least once,” the average length of isolation was three days, and the longest single stay in isolation “extended to 225 days.”⁶⁰ These practices, in addition to “[t]he failure of DJJ to establish alternatives to placements for youth[,] … contribute[d] to the unconstitutional use of isolation.”⁶¹

Immediately after DOJ filed the complaint, DOJ and SCDJJ filed an agreement to resolve the

⁵⁵ *Id.* at 11–12.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.*

⁵⁸ Complaint, *United States v. S.C. Dep. Juv. Just.*, No. 3:22-cv-01221, ECF No. 1 (Apr. 14, 2022), <https://www.justice.gov/opa/press-release/file/1494666/download>.

⁵⁹ *Id.* ¶ 13.

⁶⁰ BRRC Report, *supra* note 54, at 10.

⁶¹ *Id.* at 11.

claims. In that agreement, state officials agreed to revise their policies, including policies for solitary confinement for youths.⁶² SCDJJ officials agreed to embrace alternative policies and practices, such as rehabilitative programming and staff de-escalation training, that reduce the need for restrictive punishments like solitary confinement.⁶³ The agreement also included significant limits on the use of solitary confinement and enacted safeguards against harm to youths when solitary confinement is used.⁶⁴ And SCDJJ agreed to implement more evidence-based protocols to prevent behaviors that may lead to the use of isolation, including rehabilitative programming, incentive-based behavior management systems, and alternative response and intervention systems to help manage inappropriate behaviors.⁶⁵ While SCDJJ's

⁶² Agreement between the United States and the South Carolina Department of Juvenile Justice (Apr. 13, 2022), chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.justice.gov/opa/press-release/file/1494671/download.

⁶³ *Id.* ¶¶ 28, 38, 39, 43, 60.

⁶⁴ *Id.* ¶¶ 56 (committing to revising procedures for investigating allegations of improper use of isolation), 58 (committing to review of allegations of improper use of isolation); *see also* State of South Carolina Department of Juvenile Justice, *Isolation of Youth: Policy and Procedures*, Policy No. 323, at 6–9, 11 (Effective Nov. 15, 2023) (requiring exhaustion of de-escalation techniques before isolation, authorization of isolation by Shift Supervisor, and in-person examination of the youth by a qualified mental health professional after isolation).

⁶⁵ Monitoring Report, Settlement Agreement Between the United States and the South Carolina Department of Juvenile Justice, at 35–45, 160–62 (Oct. 2023), <https://djj.sc.gov/sites/djj/files/Documents/October%202023%20Monitoring%20Report%20FINAL%2012.22.23.pdf>; *see also* State of South Carolina Department of Juvenile Justice, *Isolation of Youth: Policy and Procedures*, Policy No. 323, at 3 (Effective Nov.

compliance with policy changes outlined in the agreement has been spotty, its formal, written commitment to implementing these policies reflects the evolution of standards in this state’s criminal justice system in light of the growing body of scientific literature demonstrating that youths are particularly vulnerable to the harms of solitary confinement.⁶⁶

Scientific research in the years following the conclusion of Mikal Mahdi’s sentencing and state post-conviction hearings has demonstrated the severe impact of solitary confinement on youths. Those effects are particularly acute on youths who are members of racial minority groups and who, like Mikal, have been diagnosed with a mental illness. In recognition of that recent research on the consequences of solitary confinement on youths, juvenile justice systems across the country have sharply curtailed its use.

CONCLUSION

The Court should grant the petition.

15, 2023) (requiring alternative less restrictive techniques to be used *before* isolation).

⁶⁶ See, e.g., *International Guiding Statement on Alternatives to Solitary Confinement*, Physicians for Hum. Rts. Isr. & Antigone, at 4–13 (May 2023) (outlining international standards for the use of solitary confinement, drafted by two leading international human rights organizations—the Italian Associazione Antigone and Physicians for Human Rights Israel—with input from experts in mental health, prison law and conditions, and practitioners from around the globe, including the United States); Richard Blaustein, *America’s Changing Solitary Confinement Landscape*, 48 The Champion 26, 28 (Jan./Feb. 2024) (detailing evolving state legislative changes regarding solitary confinement in the 2020s).

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APPENDIX A

LIST OF AMICI¹

The mission of the **Criminal Practice Clinic at the University of South Carolina Joseph F. Rice School of Law** is to serve justice and advance the law through engaged learning, teaching, scholarship, and service. The Criminal Practice Clinic is dedicated to representing and advocating for indigent clients' criminal and post-disposition matters.

The Gault Center, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in the defense of youth in delinquency proceedings. Through systemic reform efforts, training, and technical assistance, the Gault Center seeks to disrupt the harmful impacts of the legal system on young people, families, and communities; eliminate racial and ethnic disparities; and ensure the constitutional protections of counsel for all young people.

Formed in 1997, the **Justice Policy Institute** is a policy development and research body which promotes effective and sensible approaches to America's justice system.

¹ Reference to educational institutions with which the amici are affiliated are for purposes of identification only.

The Juvenile Defender Clinic at Emory Law School is a legal clinic dedicated to providing holistic legal representation for children in delinquency and status offense proceedings. The Juvenile Defender Clinic is part of the Barton Center, which promotes and protects the legal rights and interests of children involved with the juvenile court, child welfare, and juvenile justice systems.

The National Religious Campaign Against Torture (NRCAT) mobilizes people of faith to end torture in U.S. policy, practice, and culture. An interfaith membership organization based in Washington, DC, NRCAT is comprised of more than 300 religious organizations from national denominations to local-level houses of worship. NRCAT works to end the use of torture in U.S. prisons, jails and detention facilities, in particular the use of prolonged solitary confinement. NRCAT is engaged in supporting communities of faith nationwide to participate in campaigns to stop the torture of solitary confinement, partnering with survivors of solitary confinement, their loved ones, and representatives from the international human rights, legal, medical and mental health fields.

Time Served is a nonprofit legal organization located in South Carolina. Founded in 2023, Time Served's mission is to improve the lives of currently and formerly incarcerated people in the state through legal services and advocacy. Through its services and support, Time Served works to dismantle extreme sentencing in South Carolina, with a particular focus on vulnerable populations whose involvement in the criminal legal system is rooted in a history of injustice or trauma. Time Served represents both clients whose system-involvement began as children, as well as clients who have experienced periods of solitary

confinement. As such, Time Served has an interest in the meaningful consideration of the harmful effects of such restrictive conditions of confinement.

Unlock the Box is a national advocacy campaign aimed at ending solitary confinement in all U.S. prisons, jails, detention facilities, and juvenile facilities in the United States. It pursues this goal by working simultaneously on national, state, and local levels with solitary survivors, family members, advocates, community and faith groups, legislators, and others dedicated to ending state-sponsored torture.

John H. Blume is the Samuel F. Leibowitz Professor of Trial Techniques at Cornell Law School and the Director of the Cornell Juvenile Justice Project, signing in his individual capacity and does not purport to present any institutional views of Cornell Law School. The Cornell Juvenile Justice Project is a multi-dimensional project at Cornell Law School, which conducts empirical research on the psychological and physical effects of the long-term incarceration of juveniles; advocates for parole or clemency on behalf of juveniles sentenced to life imprisonment with and without parole; and represents juveniles in legal proceedings charged with murder and other serious felonies.

Amber Baylor is the Director of the Criminal Defense Clinic at Columbia Law School, signing in her individual capacity and does not purport to present any institutional views of Columbia Law School. The Criminal Defense Clinic at Columbia Law School provides pro bono legal representation to individuals in criminal courts and organizations working on criminal law-related projects around the country. In its legal representation, the Clinic is committed to

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investigation of systemic harms, including conditions of confinement and solitary confinement, and advocacy that is attendant to the impact of trauma.