SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Appellate Case No. 2018 4813
Ind. No. 2257-15

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

DALEN JOSEPH,

Defendant-Appellant.

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE CAMPAIGN FOR FAIR SENTENCING OF YOUTH, FAIR AND JUST PROSECUTION, THE GAULT CENTER, THE JUVENILE LAW CENTER, YOUTH REPRESENT, SIX CRIMINAL DEFENSE PROVIDERS, FOUR CENTERS ON RACE AND THE LAW, AND SEVEN CRIMINAL AND CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF APPELLANT DALEN JOSEPH

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December 13, 2024

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK, *Respondent*, v. DALEN JOSEPH *Defendant-Appellant*.	Ind. No. 2257-15 Case No. 2018 4813 **Notice of Motion for Leave to File a Brief of Amici Curiae in Support of Defendant-Appellant**

PLEASE TAKE NOTICE, that upon the annexed affirmation of Caitlin Glass dated December 13, 2024, and the accompanying proposed Brief of Amici Curiae in Support of Appellant Dalen Joseph, the undersigned will move this Court upon these papers and without oral argument at the Courthouse located at 27 Madison Avenue, New York, New York, on December 30, 2024, or as soon thereafter as counsel may be heard, for an order granting leave to the Campaign for the Fair Sentencing of Youth, Fair and Just Prosecution, the Gault Center, the Juvenile Law Center, Youth Represent, Six Criminal Defense Providers, and Seven Criminal and Constitutional Law Scholars to file a brief as amici curiae in support of the Appellant. The interests of amici curiae are set forth in Exhibit A, and the proposed Brief of Amici Curiae is annexed hereto as Exhibit B.

Dated: December 13, 2024

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December 13, 2024

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK, *Respondent* v. DALEN JOSEPH *Defendant-Appellant*	Ind. No. 2257-15 Case No. 2018 4813 **Affirmation of Caitlin Glass in support of Motion for Leave to File a Brief of Amici Curiae in Support of Defendant-Appellant**

CAITLIN GLASS, an attorney duly admitted to practice law before the courts of the State of New York, affirms the following under penalties of perjury pursuant to CPLR § 2106:

1. I am counsel for proposed amici curiae, the Campaign for the Fair Sentencing of Youth, Fair and Just Prosecution, the Gault Center, the Juvenile Law Center, Youth Represent, Six Criminal Defense Providers, and Seven Criminal and Constitutional Law Scholars. I am familiar with the facts and circumstances set forth herein and submit this affirmation in support of the proposed amici's Motion for Leave to File a Brief of Amici Curiae in Support of Appellant, Dalen Joseph.

2. Defendant-Appellant Dalen Joseph ("Mr. Joseph") has filed an appeal from a judgment of conviction rendered on March 23, 2018, by the New York Supreme Court, Bronx County, alleging that he was entitled to a jury instruction regarding a justification defense with respect to the charge of felony murder, that his conviction was against the weight of the evidence, and that his sentence was unconstitutional.
3. Proposed amici respectfully request the Court's permission to submit a Brief of Amici Curiae in order to assist this Court's review of Mr. Joseph's claims by highlighting constitutional concerns about New York's felony murder law and its application in this case.
4. Proposed amici are: (a) non-profit organizations that engage in research, education, and/or advocacy related to criminal law, sentencing policies, and racial injustice; (b) criminal defense organizations in New York; (c) law school centers addressing race and the law; and (d) criminal and constitutional law scholars. Accordingly, amici are well-suited to address the concerns that this case raises regarding New York's felony murder law with respect to the rights of the accused to due process, a fair trial, and a constitutional punishment free from racial bias. Furthermore, amici identify law or arguments that might otherwise escape the court's consideration. Granting amici status to file the proposed Brief of Amici Curiae will not in any way

delay or prejudice this proceeding. Proposed amici seek only to submit a brief in support of Defendant-Appellant Mr. Joseph's appeal, which is attached as Exhibit B to the Notice of Motion.

5. Consistent with Rule 500.23(a)(4)(iii), no party's counsel has contributed content to the proposed brief of Amici or participated in the preparation of the brief in any other manner; no party or party's counsel has contributed money that was intended to fund preparation or submission of the brief; and no person or entity, other than the movants or their counsel, has contributed money that was intended to fund preparation or submission of the brief.
6. For the reasons set forth herein, the Campaign for the Fair Sentencing of Youth, Fair and Just Prosecution, the Gault Center, the Juvenile Law Center, Youth Represent, Six Criminal Defense Providers, and Seven Criminal and Constitutional Law Scholars respectfully request an order granting leave to file a Brief of Amici Curiae in support of Appellant Dalen Joseph, in connection with Respondent's Motion for Leave to Appeal to the New York State Court of Appeals.

Dated: December 13, 2024

/s/ Caitlin Glass
Caitlin Glass

EXHIBIT A

IDENTITY AND INTERESTS OF AMICUS CURIAE

A) Non-profit organizations that engage in research, education, and/or advocacy related to criminal law, sentencing policies, and racial injustice.

1. The **Campaign for the Fair Sentencing of Youth** ("CFSY") is a national nonprofit that leads efforts to implement fair and age-appropriate sentences for youth, with a focus on abolishing life without parole and other extreme sentences for children. CFSY engages in public education and communications efforts to provide decision-makers and the broader public with the facts, stories, and research that will help them to fully understand the impacts of these sentences upon individuals, families, and communities. Through partnerships with advocacy organizations, businesses, and other stakeholders, CFSY supports survivors of youth violence, those incarcerated as children who are still serving or have been released, and their respective families and communities.

2. **Fair and Just Prosecution**, a project of the nonprofit Tides Center, brings together elected prosecutors from around the nation as part of a network of leaders committed to a justice system grounded in fairness, equity, compassion, and fiscal responsibility. The dozens of elected prosecutors who work with Fair and Just Prosecution hail from urban and rural areas alike and collectively represent nearly 20% of the nation's population. Fair and Just Prosecution is committed to ensuring the legitimacy of the criminal justice system and is keenly aware of the troubling

racial bias seen in the administration of the felony-murder rule around the nation, the extreme nature of New York's rule that prohibits a defendant to argue self-defense, and the growing consensus among scientists, scholars, and jurists that youth should not be sentenced to life without parole. Because prosecutors depend on the public's trust and faith in the legitimacy of law enforcement and the justice system in order to carry out their responsibilities, Fair and Just Prosecution believes this Court must find that Mr. Joseph was not given a fair trial, that his sentence was disproportionate under the Eighth Amendment, and that he is entitled to relief.

3. **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; decriminalize adolescence, particularly where youth of color are treated disparately; and ensure the constitutional protections of counsel for all young people. Recognizing the significant racial disparities and constitutional deficiencies of felony murder, the Gault Center supports the elimination of felony-murder statutes, particularly as applied to youth and emerging adults. The Gault Center (as the National Juvenile Defender Center) has participated as amicus curiae before the United States Supreme Court and federal and state courts across the country.

4. **Juvenile Law Center** fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

5. **Youth Represent** is a nonprofit legal services and advocacy organization that uses direct legal representation, policy advocacy, peer education, and other tools to build power and opportunity for Black, Latiné, and other youth of color who the criminal legal and family policing systems harm the most. Our mission is founded on the premise that youth are different from adults and must be treated as youth. We advocate for this goal in individual cases, as well as via state legislative reforms including the Youth Justice & Opportunities Act (S.3426) and the Second Look Act (S.321).

B) Criminal Defense Organizations

1. **Appellate Advocates** is a non-profit public defender organization that represents individuals who have been convicted of both felonies and misdemeanors in Brooklyn, Queens, and Staten Island and are assigned to our office by the courts. We are dedicated to protecting our clients' rights to due process and fair treatment. Our primary work is direct appeals, and some of our clients are young adults who have been convicted of homicide offenses.

2. **Brooklyn Defender Services** ("BDS") is a public defender organization that provides multi-disciplinary and client-centered criminal defense, family defense, immigration, and civil legal services. BDS's Criminal Defense Practice currently represents nearly 20,000 people facing criminal prosecution in the criminal courts in Brooklyn. Because representing youth in criminal cases requires specialized knowledge of the young brain and the particular challenges, including racially disparate prosecutions, that young people face, BDS established an Adolescent Representation Team. This team represents approximately 1,300 youth in family court and supreme court. BDS has a strong interest in ensuring that young people are treated fairly and equitably.

3. The **Center for Appellate Litigation** is a non-profit public defender organization that represents individuals who have been convicted of crimes and violations in Manhattan and the Bronx. Our primary work is direct appeals, and some

of our clients are young adults who have been convicted of homicide offenses. Our post-conviction work includes representing young people convicted of homicides on direct appeal as well as challenging the life and functional life sentences imposed on clients when they were youth and emergent adults.

4. The **Bronx Defenders** ("BxD") is a nonprofit provider of innovative, holistic, client-centered criminal defense, family defense, civil legal services, and social work support to indigent people in the Bronx. Each year, BxD defends over 20,000 low-income Bronx residents in criminal, civil, family, and immigration cases and reaches hundreds more through outreach programs and community legal education. Through BxD's criminal defense work, BxD has represented individuals, including young people, charged under New York State's felony murder statute. The felony murder statute implicates fundamental principles of justice and fairness in that it disparately impacts young people of color. Moreover, BxD has a vested interest in ensuring that all individuals who are accused of crimes, including felony murder, can present a full and meaningful defense in accordance with their due process rights.

5. The **Legal Aid Society** has provided free legal services to low-income New York City residents since 1876. As the primary public defender in New York City, Legal Aid provides representation to hundreds of thousands of low-income New Yorkers arrested and accused of crimes in all five boroughs, including young people.

Legal Aid has regularly represented clients who are charged with felony murder at the trial and appellate levels, and has observed racially disproportionate charging and sentencing decisions, with an outsized impact upon youth of color. Amicus has a vested interest in the court's review of the felony murder statute in New York, including its constitutionality. Additionally, Legal Aid has an interest in the court's review of Mr. Joseph's inability to present a justification defense, and a ruling that defendants must be permitted to present a justification defense where there is evidence to support it.

6. **New York County Defender Services** ("NYCDS") is a public defender office serving indigent clients in the borough of Manhattan in New York City since 1997. NYCDS provides comprehensive legal advocacy for its clients facing all manner of criminal charges, including homicide, while promoting systemic reforms to the criminal legal system. Its diverse staff of attorneys, social workers, investigators, paralegals, jail advocates, and support staff is committed to protecting the rights of its clients both inside and out of the courtroom. Amicus bears witness every day to the disproportionate impacts New York's justice system has on people of color, and youth of color in particular. NYCDS joins all calls for a fairer and more just system, including via critical review of the constitutionality and implementation of felony murder statutes in cases involving justification.

C) Centers on Race and the Law

1. The **Aoki Center for Critical Race and Nation Studies** ("Aoki Center") is a legal research and education center housed at the University of California, Davis School of Law. By fostering multi-disciplinary scholarship and practice that critically examine the law through the lens of race, ethnicity, indigeneity, citizenship, and class, the Aoki Center seeks to deepen our understanding of issues that have a significant impact on our culture and society and support initiatives that drive positive change. Our work has a special interest in legal analysis and policy recommendations that include addressing the disproportionate incarceration of Black, Indigenous, and other people of color. The Aoki Center does not represent the official views of the University of California.

2. The **Center for Law, Equity and Race (CLEAR)** was established by Northeastern University School of Law in 2021 to address challenges from the role of the law and legal systems in creating and perpetuating racial inequalities and disparities. CLEAR addresses the challenge by providing interdisciplinary, hands-on advocacy, learning opportunities, research, legislative engagement, and community outreach. As a result, CLEAR has a strong interest in ensuring that there is fair treatment throughout the legal and justice system. The Center for Law, Equity and Race joins this brief to provide important context for the issue of racial disparity

and disproportionality in the treatment and punishment of Black people throughout the criminal legal system. CLEAR does not, in this brief or otherwise, represent the official views of Northeastern University or Northeastern University School of Law.

3. The **Fred T. Korematsu Center for Law and Equality** ("Korematsu Center") is a non-profit organization based at the University of California, Irvine School of Law. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of over 120,000 Japanese Americans, the Korematsu Center works to advance social justice for all. It has a special interest in ensuring fair treatment in our nation's courts. It has filed amicus briefs in state and federal courts to inform courts about race disproportionality in the treatment and punishment of Black people in the criminal legal system. The Korematsu Center does not, in this brief or otherwise, represent the official views of the University of California.

4. **The Gibson-Banks Center for Race and the Law** ("the Gibson-Banks Center") at the University of Maryland Francis King Carey School of Law ("Maryland Carey Law") works collaboratively to reimagine and transform institutions and systems of racial and intersectional inequality, marginalization, and oppression. Through education and engagement, advocacy, and research, the Gibson-Banks Center examines and addresses racial inequality and advances racial justice in a variety of focus areas, including the criminal legal system. This amicus

brief is submitted on behalf of the Gibson-Banks Center and not on behalf of Maryland Carey Law or the University of Maryland, Baltimore.

D) <u>Criminal and Constitutional Law Scholars</u>

1. **Guyora Binder**, SUNY Distinguished Professor at the University at Buffalo School of Law, has also taught at the University of Michigan, Stanford, Vanderbilt, Georgetown and Cornell. He is author of *Felony Murder* (2012) (the only book on that doctrine), *The Oxford Introductions to U.S. Law: Criminal Law* (2016), and a coauthor of *Criminal Law: Cases & Materials* (1996, 2000, 2004, 2008, 2012, 2017, 2021). He has authored articles in leading law reviews on felony murder, homicide, culpability, punishment theory and 8th Amendment law. His works on felony murder and punishment have been cited by appellate courts in Connecticut, Georgia, Illinois, Iowa, Maryland, Massachusetts, Michigan, Ohio, Virginia, and Texas, federal courts in six circuits, and the California legislature. He is a co-author of *Racially Disparate and Disproportionate Punishment of Felony Murder: Evidence from New York*, a study which is cited in this amicus brief and which is forthcoming in the Iowa Law Review.

2. **Alexandra Harrington** is an Associate Professor of Law and Director of the Criminal Justice Advocacy Clinic and the Innocence & Justice Project at the University at Buffalo School of Law. Through her clinical work, she represents clients in post-conviction proceedings in New York State. Previously, her work

focused on representation of people who had been sentenced to long prison terms for crimes committed when they were juveniles. Her scholarship explores the role of second-look mechanisms like parole, resentencing, and clemency in the criminal legal system. She is also a co-author of *Racially Disparate and Disproportionate Punishment of Felony Murder: Evidence from New York*, a study which is cited in this amicus brief and which is forthcoming in the Iowa Law Review.

3. **Alexis Hoag-Fordjour** is an Associate Professor of Law and the Co-Director of the Center for Criminal Justice at Brooklyn Law School. She teaches and writes about criminal law and procedure, with a focus on racial disparities in the criminal adjudication system.

4. **Thomas M. Leith** is an Associate Teaching Professor and Director of the Criminal Defense Clinic at Syracuse University College of Law. Through his clinical work and private practice, he represents clients in the city and county courts in Syracuse, New York. Before joining Syracuse University, Leith was the Managing Attorney of the Criminal and Appeals Programs at Hiscock Legal Aid Society (HLAS) in Syracuse. As Managing Attorney, he oversaw programs at HLAS representing indigent clients in their criminal, Sex Offender Registry Act, and family court appeals, post-conviction advocacy, and indigent parole clients in their hearings and appeals. Leith spent the previous ten years as a trial-level public defender: first with Brooklyn Defender Services in Brooklyn, New York, then with the Law Offices

of the Shelby County Public Defender in Memphis, Tennessee. In his years in the courtroom, he has defended every type of criminal case, from violations and misdemeanors to clients charged with first-degree murder.

5. **Kathryn Miller** is a Professor of Law and Co-Director of the Criminal Defense Clinic at Cardozo University School of Law. She is a legal scholar and practitioner with extensive expertise in criminal punishment, sentencing, and New York criminal law and procedure. As a clinical law professor, she teaches and supervises law students in the representation of individuals charged with crimes in New York Criminal Court.

6. **Jonathan Oberman** is a Clinical Professor of Law and Co-Director of the Criminal Defense Clinic at Cardozo University School of Law. He has also taught Criminal Law and Criminal Procedure, secured exonerations for four people and has extensive expertise in New York criminal law and procedure. As a clinical law professor, he teaches and supervises law students in the representation of individuals charged with crimes in New York Criminal Court, and had previously supervised students briefing and arguing appeals to the Appellate Division, First Department.

7. **Steven Zeidman** is a Professor of Law and Co-Director of the Defenders Clinic and the Second Look Project NY at the City University of New York School of Law. Through his clinical work, he represents clients in post-conviction proceedings in New York State, including in resentencing motions pursuant to New

York Criminal Procedure Law Sections 440.10, 440.20, and 440.47, as well as in parole litigation and clemency applications to the Governor. Prior to becoming a law professor, he was the Executive Director of the Fund for Modern Courts, a non-partisan, statewide court reform organization, and prior to that he was a staff and supervising attorney with the Legal Aid Society in Manhattan where he represented numerous people, including people charged with felony murder. His scholarship focuses on the ethical and constitutional responsibilities of defense attorneys and prosecutors, as well as on foundational evidentiary principles. He is currently a member of the American Bar Association's Criminal Justice Section Council.

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
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December 13, 2024

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici are (a) nonprofit organizations that engage in research, education, and/or advocacy related to criminal law and sentencing, race and the law, and the criminalization and punishment of young people, and (b) legal scholars with expertise in criminal law and constitutional law.[1] Amici submit this brief to highlight significant constitutional concerns arising from the application of New York's felony-murder law. These concerns include stark racial disparities in the application of the law, due process concerns regarding the unavailability of a justification defense to a felony-murder charge, the inapplicability of the law's rationale to young people given what we now know about youth brain development, and its imposition of unconstitutionally severe punishments. This Court's review of this case presents a critical opportunity to prevent the unconstitutional application of the felony-murder doctrine in Dalen Joseph's case and future cases.

INTRODUCTION AND SUMMARY OF ARGUMENT

The felony-murder doctrine is a stark exception to the fundamental principle that criminal liability requires proof of a guilty mind. Rather than being a feature of English common law transmitted to the colonies, felony-murder arose in the United States in the nineteenth century as a distinctly American innovation.[2] Though

[1] Complete statements of interest are included in the accompanying motion seeking leave to file this amicus brief.

[2] Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, New Yorker, (Dec. 11, 2023),

England subsequently developed its own felony-murder rule, the doctrine has since been abolished there and in nearly every other common law country where it existed. Courts and scholars have long criticized felony-murder on doctrinal and constitutional grounds. By permitting the intent to commit a felony to substitute for the *mens rea* generally required for a homicide conviction, the doctrine divorces criminal liability from moral culpability, resulting in disproportionately severe punishments. These punishments are also generally unanticipated by defendants who had no intent to kill, making them ineffective as a deterrent.

Moreover, the application of felony-murder laws is notoriously racialized. Data demonstrate the stark racially disproportionate impact of the felony-murder doctrine in at least fourteen states, including New York. This observed racial disproportionality is due at least in part to the felony-murder doctrine's low burden of proof. By relieving prosecutors of the burden to prove that a person intended to cause a death and directly committed an act resulting in death, the doctrine reduces the number of formal legal elements guiding charging decisions, making these decisions more vulnerable to racial bias.

The manifest injustice that flows from the felony-murder doctrine is put into

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https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws; *see also* Guyora Binder, *The Origins of American Felony Murder Rules*, 57 Stan. L. Rev. 59, 64 (2004) ("The first felony murder rules were enacted not in medieval England, but in nineteenth-century America. They were developed not by common law adjudication but by means of legislation and statutory construction.").

stark relief by the circumstances that Dalen Joseph presents before this Court. At the time of his arrest, Mr. Joseph—a Black teenager—was just seventeen years old, an age at which the law recognizes a reduced cognitive capacity to foresee the potential remote consequences of one's actions. The felony-murder doctrine is premised on the supposed foreseeability of the risk that death might occur from the commission of a felony. But it is difficult to see how Mr. Joseph could have anticipated the tragic cascade of events that would result in him killing a man who came at him with a knife—an act that the jury found constituted self-defense.

Amici seek to assist this Court's review of Mr. Joseph's conviction and sentence by highlighting concerns that the felony-murder doctrine raises regarding racial bias, due process, and unjust punishment. In Part I, amici present data demonstrating stark racial disproportionality among felony-murder convictions in New York, especially with respect to young people. In Part II, amici address the constitutional rights to present a justification defense to the charge of felony-murder, and a heightened concern about the unavailability of a justification defense to charges of felony-murder in light of data demonstrating the racialized application of the felony-murder doctrine. In Part III, amici address the lack of any deterrent justification for the felony-murder doctrine as applied to a young person, and the intersection of the felony-murder doctrine with the racialized criminalization of youth more broadly. In Part IV, amici discuss the disproportionate nature of Mr.

Joseph's sentence of life in prison, with parole eligibility after 15 years, given stark racial disparities in the application of New York's felony-murder law, his acquittal of direct liability murder based on a justification defense, and his youth.

These factors require Mr. Joseph's conviction to be overturned or, in the alternative, for his sentence to be reduced. Further, this Court should interpret *People v. McManus*, 67 N.Y.2d 541 (1986) as permitting an accused person to present a justification defense to a felony-murder charge whenever there is evidence to support it.

ARGUMENT

I. Data demonstrate the racially disparate impact of New York's felony-murder law.

A. Data demonstrate significant racial disparities in the application of New York's felony-murder law.

Data show acute racial disproportionality regarding the administration of the felony-murder doctrine in New York. A study by Professors Alexandra Harrington and Guyora Binder analyzed felony-murder arrest and conviction data and found that "Black New Yorkers were roughly 20 times more likely than White New Yorkers to be arrested for, and to be convicted of, felony-murder, and Hispanic New Yorkers were arrested and convicted of felony-murder at about five-six times the

rate of White people."[3] These racial disparities exceeded those among other felony convictions, and those among other forms of second-degree murder,[4] suggesting that felony-murder offenses raise particular concerns separate from the overall racial disparities that permeate our criminal legal system.

Table 1. Racial Disproportionality Among Second-Degree Murder Convictions, Second-Degree Felony-Murder Convictions, and Second-Degree Non-Felony-Murder Convictions[5]

	Population convicted of Second-Degree Felony-Murder	Population convicted of other types of Second-Degree Murder	Population convicted of all Second-Degree murder
Black	63%	53%	54%
White	13%	17%	17%

Of 246 identified second-degree felony-murder convictions—without an additional conviction for another theory of murder—from 2008-2019, 63% were of Black defendants, compared to 13% of White defendants. The observed racial

[3] Alexandra Harrington & Guyora Binder, *Racially Disparate and Disproportionate Punishment of Felony Murder: Evidence from New York*, 110 Iowa L. Rev. ___ at 6 (forthcoming 2025), available at https://ssrn.com/abstract=4924732.
[4] *Id*.
[5] This data is reflected in Table 23 of Professor Harrington and Professor Binder's article addressing their research findings. The percentages have been rounded to the nearest whole number. In addition to the data reflected in the table, the study looked at people who were identified as Hispanic or Latino and found that this population accounted for 22% of felony-murder convictions, 25% of convictions for non-felony-murder second-degree murder offenses, and 25% of all second-degree murder convictions. Our table does not include this data because our analysis is focused on the racially disproportionate impact of the felony-murder doctrine on Black people specifically.

disproportionality among those convicted of second-degree felony-murder exceeds the racial disproportionality among those convicted of other second-degree murder offenses: 53% of the non-felony-murder second-degree murder convictions from 2008-2019 were of Black defendants, while 17% were of White defendants.[6] These figures are illustrated in the table above. The disparity becomes even more striking when looking at the overall New York population, of which only 18% are "Black alone," 69% are "White alone," and 54% are "White alone, not Hispanic or Latino."[7] Data show similar racial disparities in other jurisdictions, including California,[8] Connecticut, [9] Colorado, [10] Florida, [11] Illinois, [12] Massachusetts, [13] Maine, [14]

[6] *Id*.

[7] *QuickFacts: New York*, United States Census Bureau (July 1, 2023), https://www.census.gov/quickfacts/NY (figures rounded to the nearest whole number).

[8] *Annual Report and Recommendations*, Cal. Comm. On Revision of the Penal Code, at 51 (2021); Catherine M. Grosso, et al., *Death by Stereotype: Race, Ethnicity, and California's Failure to Implement Furman's Narrowing Requirement*, 66 UCLA L. Rev. 1394, 1442 (2019).

[9] *Connecticut Data*, Felony Murder Reporting Project (Mar. 2023), https://felonymurderreporting.org/states/ct/.

[10] *See* David Pyrooz, *Demographics, Trends, and Disparities in Colorado Felony Murder Cases: A Statistical Portrait* (2023), https://ssrn.com/abstract=4527501.

[11] *See* Brief of Antiracism and Community Lawyering Practicum et al. as Amici Curiae in Support of Petitioner at 5-6, *Baxter v. Fl. Dep't of Corrections*, Case No. 23-12275 (11th Cir. 2024).

[12] Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 Miss. L.J. 481, 501-505 (2023).

[13] *See* Brief of Boston University Center for Antiracist Research et al. as Amici Curiae in Support of Petitioner at 8-9, *Commonwealth v. Shepherd*, SJC-12405 (Mass. 2024).

[14] *Maine Data*, Felony Murder Reporting Project (Feb. 2023), https://felonymurderreporting.org/states/me/.

Michigan, [15] Minnesota, [16] Missouri, [17] New Jersey, [18] Pennsylvania, [19] and Wisconsin.[20]

Critically, research illustrates racial disparity in felony-murder prosecutions that is not explainable by differences in the severity of alleged criminal conduct. A Minnesota study compared the facts and outcomes of individual felony-murder cases—including comparisons of co-defendants of different races within the same case—and found that when it comes to felony-murder, "White defendants are frequently punished leniently, while defendants of color receive harsher treatment

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[15] *Michigan Data*, Felony Murder Reporting Project (Mar. 2023), https://felonymurderreporting.org/states/mi/.

[16] *See* Greg Egan, *George Floyd's Legacy: Reforming, Relating, and Rethinking Through Chauvin's Conviction and Appeal Under a Felony-Murder Doctrine Long-Weaponized Against People of Color*, 39 Law & Ineq. 543, 547-56 (2021); Lindsay Turner, *Task Force on Aiding and Abetting Felony Murder*, Rep. to Minn. Legis. (2022), https://mn.gov/doc/assets/Task%20Force%20on%20Aiding%20and%20Abetting%20Felony%20Murder_%20Report%20Executive%20Summary_tcm1089-517326.pdf.

[17] *See* Nazgol Ghandnoosh et al., *Felony Murder: An On-Ramp for Extreme Sentencing*, The Sent'g Project & Fair & Just Prosecution, 5 (2022), https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/. Disturbingly, "[i]n St. Louis, every felony-murder conviction between 2010 and 2022—a total of forty-seven people, according to the State of Missouri—was of a Black person." Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, The New Yorker, Dec. 11, 2023, https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws.

[18] *New Jersey Data*, Felony Murder Reporting Project (Apr. 2023), https://felonymurderreporting.org/states/nj/.

[19] Andrea Lindsay, *Life Without Parole for Second-Degree Murder in Pennsylvania*, Phila. Law. for Social Equity 13-15 (2021), https://plsephilly.org/wp-content/uploads/2021/01/PLSE-Second-Degree-Murder-Audit-Jan-19-2021.pdf; Andrea Lindsay & Clara Rawlings, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment of Race*, Philadelphia Lawyers for Social Equity 4-21 (2021), https://plsephilly.org/wp-content/uploads/2021/04/PLSE_SecondDegreeMurder_and_Race_ Apr2021.pdf.

[20] *Wisconsin Data*, Felony Murder Reporting Project (Mar. 2023), https://felonymurderreporting.org/states/wi/.

even when the facts support opposite outcomes."[21] The study showed that White defendants who were convicted of second-degree felony-murder were more likely to have pled down to that charge, whereas Black defendants convicted of second-degree felony-murder were more likely to have been convicted of the most severe offense with which they were charged, suggesting that White defendants generally receive more favorable plea offers in felony-murder cases.[22]

Similarly, a California study used regression analyses to examine the application of certain felony-murder "special circumstance" enhancements, which impose a sentence of life-without-parole or the death penalty. Controlling for culpability, the researchers found that prosecutors are more likely to charge people of color than White people with such enhancements.[23] The authors called attention to the "cost, in terms of equity, of reliance on felony murder."[24]

[21] Egan, *supra* note 16, at 548.
[22] Egan, *supra* note 16, at 548 (discussing similar finding that Black defendants received harsher plea offers than White counterparts.)
[23] Grosso et al, *supra* note 7, at 1438 (noting that the data findings "suggest[ed] robust patterns of differential charging of aggravators by defendant race"); *id*. at 1440 ("The results overall confirm the heterogeneity of the application of special circumstances, but the disparate treatment model suggests that race and ethnicity affect charging").
[24] *Id*. at 1442.

B. Data demonstrate especially stark racial disparities in the application of New York's felony-murder law with respect to youth.

The Binder and Harrington study found that felony-murder arrest data showed especially pronounced racial disproportionality regarding arrests of young people who, like Mr. Joseph, were between the ages of 15 and 19. The study revealed that "[a]lmost a third of those arrested and about a fourth of those convicted of felony-murder were teen-agers, and teens were about 3 times as likely as adults to be convicted of felony-murder."[25] The researchers found that Black youth in this age group were 23.7 times as likely to be arrested for felony-murder as White youth in this age group, meaning that "the arrest likelihood ratio for Black youths as compared to White youths was about 20% greater than for people of all ages."[26] This phenomenon may be explained in part by research demonstrating the adultification of Black youth in the criminal legal system—that is, the perception that Black youth are older than they really are, and their resulting treatment as adults rather than children.[27]

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[25] Harrington and Binder, *supra* note 3 at 6.

[26] *Id*. at 28.

[27] *E.g.*, Jessica Levin, *A Path Toward Race-Conscious Standards for Youth: Translating Adultification Bias Theory into Doctrinal Interventions in Criminal Court*, 35 Hastings Women's L.J. 83, 104 (2024) ("Due to adultification bias, Black children—and possibly other children of color—may be deprived of the considerations of youth . . . leading them to be overrepresented and more harshly punished."); Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality and Soc. Psych. 526, 539-40 (2014) (finding that Black youth are often viewed as more mature, less innocent, more blameworthy, and less deserving of protection compared to their White peers).

C. The racially disparate impact of New York's felony-murder law stems from its low burden of proof, which invites biased charging and jury determinations.

Stark racial disproportionality among second-degree felony-murder convictions in New York can be explained in part by the low burden of proof that New York's felony-murder law imposes, inviting cognitive biases to influence charging decisions and jury determinations.

Research shows that cognitive racial biases impact criminal legal decision-making through both aversive racism and White favoritism.[28] Aversive racism refers to negative beliefs about another racialized group that contribute to the negative treatment of that group**.** *See Buck v. Davis*, 580 U.S. 100, 121 (2017) (describing the "powerful racial stereotype" that Black men are "violence prone"). White favoritism involves the "association of positive stereotypes and attitudes" with White people, resulting in "preferential treatment" of White people that can likewise drive systemic racial disparities.[29] Where prosecutors are predominantly White,[30] bias towards White defendants can include "in-group favoritism."[31] Both in-group favoritism and

[28] Samuel Gaertner & John Dovidio, *Understanding and Addressing Contemporary Racism: From Aversive Racism to the Common In-group Identity Model*, 61 J. Soc. Issues 615, 618-23 (2005).
[29] Robert Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 Ala. L. Rev. 871, 873-76 (2015).
[30] *Tipping the Scales: Challengers Take On the Old Boys' Club of Elected Prosecutors, Reflective Democracy Campaign* 1 (2019), https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf (finding that 95% of elected prosecutors are White); *see* Alexis Hoag-Fordjour, *Black on Black Representation*, 96 N.Y.U. L. Rev. 1493, 1534 (2021) (noting the prevalence of White prosecutors).
[31] Mona Lynch & Craig Haney, *Looking Across the Empathic Divide: Racialized Decision Making*

aversive racism may manifest through "attribution error," which explains how biases shape our understanding of others' behavior—as connected to social circumstances, on the one hand, or as a reflection of individual moral failure and culpability, on the other.[32] Attribution error bears directly upon prosecutors' charging decisions and, thus, the administration of the felony-murder doctrine.

Because New York's felony-murder law gives prosecutors a wide range of charging options, there is more potential for bias to influence charging decisions. In Mr. Joseph's case, instead of being charged with second-degree felony-murder carrying a 15-life sentence, he could have been charged with robbery alone—particularly given the strength of his justification defense, which the jury accepted. Indeed, given that the evidence of robbery was shaky, and the 17-year-old Mr. Joseph was facing his first contact with the criminal legal system, it would not have been unreasonable to decline to charge him at all. When "wide-ranging homicidal liability . . . exists on strikingly similar facts," the resulting broad prosecutorial discretion may contribute to "inequity in plea negotiations, trials, and sentencings, leaving a system ripe for abuse and incapable of delivering racial equity."[33] Indeed, substantial evidence reflects that "racial disparities in prosecutors' use of discretion" including "in decisions about which homicides to prosecute as felony-murder . . .

on the Capital Jury, 2011 Mich. St. L. Rev. 573, 590 (2011).
[32] Smith et al., *supra* note 29, at 902.
[33] Egan, *supra* note 16, at 551.

directly disadvantages people of color."[34]

The felony-murder doctrine is also susceptible to racial bias because it reduces the elements that the State has to prove, leaving fewer guardrails to guide charging decisions and jury determinations. Under New York's second-degree felony-murder law, the State is not required to prove a defendant's "intent" to cause a death—or even the less culpable mental states of malice or recklessness. Social psychology research shows that racial biases are especially likely to influence decision-making under the precise circumstances presented by New York's felony-murder law—that is, when "decisional criteria are uncertain," and when "decisions. . . involve high levels of discretion or subjectivity."[35] New York's felony-murder law criminalizes a broad range of conduct, creating a greater zone of discretion for prosecutorial charging decisions. Further, since the felony-murder law does not require proof that the defendant intended to cause a death, jurors may operate with little information about the defendant's objectives, a situation which may invite racial bias to influence jury determinations.[36]

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[34] Ghandnoosh et al., *supra* note 17, at 6; *see also* Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Inst. Just. 24 (2020), https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf ("[S]everal studies have found that people of color are often treated less favorably than White people during the plea bargain process.").

[35] Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 Fordham Urb. L. J. 675, 737 (2024).

[36] *See, e.g.*, G. Ben Cohen et al., *Racial Bias, Accomplice Liability, and The Felony Murder Rule: a National Empirical Study*, 101 Denver L. Rev. 65, 75 (2024) ("Unlike the majority of elements in a criminal prosecution, the felony murder rule and accomplice liability doctrine invite jurors to

In sum, substantial research shows how racial biases improperly influence felony-murder convictions and the sentences imposed for these convictions. Such a result creates a significant risk of arbitrary outcomes that serve no penological purpose. This outcome is untenable in a legal system that promises equal justice. *See, e.g.*, *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 221 (2017) (noting an "imperative to purge racial prejudice from the administration of justice"); *Buck*, 580 U.S. at 124 (quoting *Rose v. Mitchell*, 443 U.S. 545, 555 (1979)) ("Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.").

II. The unavailability of a justification defense to a charge of felony-murder violates due process and amplifies the manifest injustice that results from the felony-murder doctrine's racialized application.

Given the racialized application of the felony-murder doctrine, discussed above, it is critical that a person accused of felony-murder be permitted to assert the full panoply of potential defenses to felony-murder charges. Yet Mr. Joseph was deprived of that opportunity. Though the jury acquitted Mr. Joseph of direct liability murder, finding that he acted in self-defense, the jury was not permitted to consider self-defense for the felony-murder charge. Precluded from offering this justification

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engage in an imaginative inquiry whereby both intent and action are inferred."); Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea Bargaining*, 59 B.C. L. Rev. 1187, 1191-98, 1237-38 (2018) (demonstrating empirically that in "low information" cases, Blackness may be used as a proxy for criminality).

defense, Mr. Joseph was convicted of second-degree murder pursuant to a theory of felony-murder and received a mandatory minimum sentence of life in prison with parole eligibility after 15 years—the same mandatory minimum sentence he would have faced if convicted of direct liability murder. This anomalous outcome raises serious concerns regarding due process and the right to present a defense.

The felony-murder doctrine is typically justified as a deterrent for those who intentionally commit dangerous felonies. *See People v. Billa*, 31 Cal.4th 1064, 1070 (Cal. 2003) (confirming that the "primary purpose" of the felony-murder rule is to "deter felons from killing negligently or accidentally by holding them strictly responsible for killings they commit") (citation omitted). Therefore, the doctrine is meant to apply when a person intentionally engages in a felony that could result in a death. *See People v. Stevens*, 272 N.Y. 373 (1936) (affirming a felony-murder conviction for fatally shooting someone during a robbery); *People v. Parks*, 95 N.Y.2d 811, 812 (2000) (same). Here, according to the prosecution's own case, Mr. Joseph attempted to reclaim his property using *non-deadly force*. Further, the prosecution failed to disprove that it was the decedent, not Mr. Joseph, who initiated *deadly force* by taking out a knife that Mr. Joseph ultimately wrested from his hands.[37] The deterrence rationale for the doctrine is thus absent.

[37] Def. Br. at 17.

The Court of Appeals has declared that for any "crime involving the use of force, a charge on justification is warranted whenever there is evidence to support it." *People v. McManus*, 67 N.Y.2d 541, 549 (1986). In *McManus*, the trial court allowed the defendant to offer a justification defense to the intentional murder charge but refused to allow a jury instruction of justification to the depraved indifference murder charge, posing to trial counsel: "How can you have a reckless depraved indifference and say you were justified. I don't think it applies. I decline your request." *Id*. at 545. The jury, permitted to consider justification for intentional murder, acquitted the defendant; the jury, prevented from considering justification for depraved indifference murder, convicted. In reversing, the Court found "no basis for limiting the application of the defense of justification to any particular *mens rea* or to any particular crime involving the use of force" and that "the Legislature has clearly not done so." *Id*. at 547. The Court emphasized that "[t]he introductory provision to article 35 of the Penal Law evinces an intent to give the justification defense the broadest possible scope" because "[i]t states without qualification that the defense is available "[in] *any* prosecution for an offense." *Id*. (citing N.Y. Pen. L. § 35.00).

The Court's reasoning aligns with the U.S. Supreme Court's interpretation of the Sixth Amendment's right to present a defense.[38] The Supreme Court has repeatedly emphasized that the jury trial is the heart of our adversarial system, providing a defendant their basic due process right to be heard. *See Duncan v. Louisiana*, 391 U.S. 145, 156 (1968) (the Sixth Amendment guarantees that "[i]f the defendant prefer[s] the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he [is] to have it"); *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial is, in essence, the right to a fair opportunity to defend against the State's accusations"). And the accused's right to proceed to a jury trial would be meaningless if the jury could not assess the validity of their asserted defense. The Sixth Amendment's specific requirements—to confrontation, to call witnesses, and to assistance of counsel—are supplemented by the Due Process requirement of an accused's opportunity to be heard.

[38] The Supreme Court has not held that any particular affirmative defense must be made available as a matter of constitutional law. *See Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009) (holding that it was not ineffective for counsel to decline to bring an insanity defense, and noting that the Court has "never established" a rule requiring counsel to bring all viable defenses); *Rastafari v. Anderson,* 278 F.3d 673, 693 (7th Cir. 2002) (finding that "the Indiana Supreme Court's reliance on Indiana law stating that self-defense is not an affirmative defense to felony murder" was not "an unreasonable application of" U.S. Supreme Court jurisprudence establishing the right of the accused to present witnesses to establish a defense). However, as discussed above, there is substantial constitutional support for a defendant's right to present their theory of defense.

Clearly established federal law thus guarantees criminal defendants "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984); *see also Crane v. Kentucky,* 476 U.S. 683, 690 (1986) (holding that a state court's exclusion of evidence relating to the circumstances of defendant's confession deprived him of the right to present a defense); *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006) (invalidating a state rule allowing the trial court to exclude defendant's evidence of third-party guilt—the "sort of factual findings that have traditionally been reserved for the trier of fact").

Significant case law establishes that a state court's failure to instruct the jury on a key defense may constitute a due process violation if the evidence strongly supports the defense and the absence of the instruction makes the trial fundamentally unfair. *See Lockridge v. Scribner*, 190 F. App'x 550, 551 (9th Cir. 2006) (holding, even under the Antiterrorism and Effective Death Penalty Act's (AEDPA) deferential standard, that the lower court's refusal "to instruct [the] jury on the law of self-defense was an unreasonable application of clearly-established Supreme Court precedent"); *Taylor v. Withrow,* 288 F.3d 846, 851-52 (6th Cir. 2002) (holding that "the right of a defendant in a criminal trial to assert self-defense is one of those fundamental rights, and that failure to instruct a jury on self-defense when the instruction has been requested and there is sufficient evidence to support such a charge violates a criminal defendant's rights under the due process clause"); *Jackson*

v. Edwards, 404 F.3d 612, 625 (2d Cir. 2005) (holding that a failure to provide a justification instruction that was warranted by the evidence was "nothing short of a 'catastrophic' error" that violated due process) (quoting *Davis v. Strack*, 270 F.3d 111, 131-32 (2d Cir. 2001)); *U.S. ex rel. Means v. Solem*, 646 F.2d 322, 332 (8th Cir. 1980) (holding that "the omission of the requested instruction on self-defense and defense of others [...] so infected the entire trial that the resulting conviction violate[d] due process") (internal citations and quotation marks omitted); *Mercer v. Stewart*, 600 F.Supp.3d 725, 758-59 (E.D.Mich. 2022) (granting habeas relief upon finding that failure to instruct on self-defense where the evidence supported it amounted to a due process violation). These cases recognize the primacy of self-defense justifications as central to the Sixth Amendment and Due Process rights to put forth a defense.

Several state courts similarly recognize that a trial court's failure to instruct the jury on a viable defense may violate the defendant's federal due process rights where doing so undermines the essential fairness of the trial. *See State v. Baker*, 2015 ME 39, ¶ 14, 114 A.3d 214, 218 (Me. 2015); *People v. Kurr*, 654 N.W.2d 651, 656-57 (MI 2002); *State v. Edwards*, 661 A.2d 1037, 1041 (Conn. 1995). These state court decisions align with the federal caselaw discussed above.

The trial court's denial of Mr. Joseph's request for a justification instruction with respect to his felony-murder charge violated his right to present a complete

defense. *See McManus*, 67 N.Y.2d at 549 (making clear that even where a crime like depraved indifference murder does not require intent to use force or cause a death, a defendant is entitled to present a justification defense). Accordingly, this Court should reverse Mr. Joseph's conviction and clarify that, pursuant to *McManus*, an accused person is entitled to present a justification defense to a felony-murder charge when such a defense is supported by the evidence.

III. The felony-murder doctrine is at odds with what we know about the developmental capacity of young people.

Scholarship on youth brain development refutes the assumption that young people can foresee the risk that a felony might result in death, thus undermining any deterrent justification for applying felony-murder laws to youth. Yet the felony-murder doctrine has an outsized impact on young people.

It is critical to recognize children as children because their brains are different than those of adults. Neuroimaging studies demonstrate that the prefrontal cortex, the part of the brain often referred to as the center of "executive function," does not typically mature until late adolescence.[39] During adolescence, the prefrontal cortex develops more white matter as nerve fibers become sheathed in myelin, a white fatty substance. The end result of myelination is faster, more efficient neural connections

[39] Kimberly Davis, *Reckless Juveniles*, 52 U.C. Davis L. Rev. 1665, 1674-1675 (2019) (summarizing the findings of neuroimaging studies and their implications for youth risk assessment).

across brain regions, which in turn facilitate advanced cognitive functions such as making complex decisions, planning ahead, and weighing risks versus benefits.[40] MRI imaging has identified that youth are more likely than adults to engage in reward-seeking behavior, resulting in a "developmental mismatch."[41] Compounding the gulf between youths' immature prefrontal cortex and their propensity towards risky behaviors is that young people are particularly susceptible to the negative effects of stress on decision-making.[42] The end result is that youth are less adept at foreseeing the consequences of their actions than adults.[43]

The U.S. Supreme Court has routinely recognized the diminished culpability of youth in light of information gleaned from developmental brain science. In *Roper v. Simmons*, the Court reasoned that youth possess diminished culpability in part due to their "underdeveloped sense of responsibility." 543 U.S. 551, 569 (2005) (holding that the Eighth Amendment's prohibition on cruel and unusual punishment bars the imposition of the death penalty on youth under 18 years old). Five years later, the

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[40] Brief for Juvenile Law Center et al. as Amicus Curiae supporting Petitioner at 21-22, Petition for Writ of Certiorari, *Howell v. Tenn*., 17-1417 (2018) (citing Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64 (Jacqueline Bhabha ed., 2014)).

[41] Davis, *supra* note 40, at 1676 (citing Katherine L. Mills et al., *The Developmental Mismatch in Structural Brain Maturation During Adolescence*, 36 Developmental Neuroscience 147, 149 (2014)).

[42] Catherine Insel et al., Ctr. for Law, Brain & Behavior at Mass. General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers* 29 (2022), https://clbb.mgh.harvard.edu/wp-content/uploads/CLBB-White-Paper-on-the-Science-of-Late-Adolescence-3.pdf.

[43] Ghandnoosh et al., *supra* note 17, at 12.

Court reaffirmed its reasoning that the fields of psychology and neuroscience "continue to show fundamental differences between juvenile and adult minds" in its decision barring life without parole sentences for juveniles convicted of non-homicide crimes. *Graham v. Florida*, 560 U.S. 48, 68 (2010). And in 2012, the Court expanded criminal sentencing protection for young people, citing the "failure to appreciate risks and consequences" as a hallmark of adolescence. *Miller v. Alabama*, 567 U.S. 460, 477 (2012) (holding that the Eighth Amendment prohibits mandatory life without parole sentences for juvenile offenders).

The cognitive vulnerabilities of youth challenge and undermine the application of the felony-murder doctrine to young people like Mr. Joseph. Underlying one of the primary justifications for the felony-murder doctrine—deterring individuals from engaging in potentially dangerous predicate felonies—is the assumption that people have the capacity to grasp the remote consequences of their actions.[44] The propensity of children towards immediate rewards coupled with deficiencies in effective cost-benefit planning before the commission of a felony frustrates effective deterrence.[45] It is thus both unsurprising and especially disturbing that the felony-murder doctrine has an outsized impact on young people.[46]

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[44] *Id*, at 12.

[45] Katherine Dobscha, *Considering A Juvenile Exception to the Felony Murder Rule*, 70 Case W. Res. L. Rev. 141, 154 (2019) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 834 (1988) (plurality opinion).

[46] Brief of Boston University Center for Antiracist Research et al., *supra* note 13, Addendum B, Letter from Committee for Public Counsel Services Parole Advocacy Unit (noting that 30% of

In the present case, Mr. Joseph could not have foreseen the remote consequences of his decision to confront the decedent. There is no support for the inference that at 17 years old, Mr. Joseph would have had any reason to anticipate a risk of violence in approaching a person who sold him an unusable phone on Craigslist.[47] One minute, Mr. Joseph was a rising senior planning a trip to visit family in Antigua, trying to buy a phone as a favor for his cousin.[48] The next, he was being charged at by a man with a knife. Mr. Joseph's inability to foresee the tragic consequences of his decision to approach Fry is further bolstered by the fact that—as the jury necessarily found when accepting Mr. Joseph's justification defense—Mr. Joseph entered this conversation entirely unarmed.[49]

IV. A mandatory sentence of life in prison with parole eligibility after 15 years for a felony-murder conviction is excessive, particularly under the circumstances presented here.

Dalen Joseph's sentence of 15 years to life in prison is excessive given the stark racial disproportionality in the application of New York's felony-murder law, his acquittal of direct liability murder based on a justification defense, and his youth.

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people convicted of first-degree felony-murder were between the ages of 18 and 20 at the time of their offense); *Life Without Parole and Felony Murder Sentencing in California*, Special Circumstances Conviction Project in collaboration with the Felony Murder Elimination Project and the UCLA Ctr. for the Study of Women, 9 (2023), https://csw.ucla.edu/wp-content/uploads/2023/07/SCCP_Life_Without_Parole_Sentencing.pdf (finding that 18 is the most common age of people serving life-without-parole for felony-murder); Ghandnoosh et al., *supra* note 17, at 13 (noting that most people serving life-without-parole for felony-murder in PA and MN are under 25).

[47] Def. Br. 3, 4.

[48] Def. Br. 5.

[49] Def. Br. 3.

Both the U.S. and New York constitutions prohibit cruel and unusual punishments, including those that are disproportionately severe. *See* U.S. Const., amend. VIII; NY Const, Art. 1, § 5. Accordingly, Mr. Joseph's sentence must be reduced.

First, racial disparities in the administration of New York's felony-murder law further emphasize the cruelty and disproportionality of Mr. Joseph's sentence. As discussed above, the racially disproportionate impact of New York's felony-murder law is facilitated by the low burden of proof the felony-murder doctrine affords prosecutors and the lack of legal factors guiding charging decisions, leaving those decisions susceptible to racial bias. *See supra* Part I.

This evidence of racial bias suggests that, under New York's felony-murder law, people with significant differences in culpability will be sentenced to the same severe sentence, which is being driven, at least in part, by the race of the defendant. Such a practice cannot withstand constitutional scrutiny, as race is a quintessentially arbitrary and pernicious factor that has nothing to do with individual moral culpability. *See State v. Keliher*, 381 N.C. 558, 586-87 (N.C. 2022) (finding that "sentencing a juvenile who can be rehabilitated to life without parole is cruel," in violation of the state constitution, and noting that this holding is "bolstered by empirical data demonstrating that an individual juvenile offender's chances of receiving a sentence of life without parole may be at least partially attributable to factors that are not salient in assessing the penological appropriateness of a sentence,

such as race, socioeconomic status, and geography"); *State v. Gregory*, 427 P.3d 621 (Wash. 2018) (holding that the death penalty violates its cruel punishment clause in part because it is imposed in an arbitrary and racially biased manner); *Dist. Att'y for Suffolk Dist. v. Watson*, 381 Mass. 648, 665 (Mass. 1980) (striking down the death penalty as unconstitutionally cruel punishment in part because "experience has shown that the death penalty will fall discriminatorily upon minorities, particularly blacks"); *see also Buck*, 580 U.S. at 123 **(**explaining that "a basic premise of our criminal justice system" is that the law must "punish[] people for what they do, not who they are.").

Second, Mr. Joseph's sentence is disproportionate and excessive, given that a jury found that he acted in self-defense. While in general the felony-murder doctrine allows for a person to be convicted of murder absent a finding of intent to kill, here the jury made an affirmative finding that Mr. Joseph was justified in causing Fry's death. Carceral sentences are intended to vary in response to the moral culpability and responsibility that society attaches to particular conduct. Here, the jury's finding that Mr. Joseph's acts were justified reflects their rejection of his moral culpability for murder. To make this determination, the jury had to conclude, among other things, that: (1) Mr. Joseph believed that it was necessary to defend himself or someone else from what he believed to be the use or imminent use of such force and that a reasonable person in his position would have held the same belief; (2) Mr.

Joseph was not the initial aggressor in using deadly force; and (3) Mr. Joseph could not have safely avoided using deadly force by retreating. N.Y. Penal L. § 35.15. These findings emphasize the excessiveness of Mr. Joseph's sentence of up to life in prison. *See People v. Hamilton*, 115 A.D.3d 12, 26 (2d Dept. 2014) (citing N.Y. Const., art. I, § 5 which notes that "punishing an actually innocent person is inherently disproportionate to the acts committed by that person, [therefore] such punishment violates the provision of the New York Constitution which prohibits cruel and unusual punishments").

Third, Mr. Joseph's youth further renders his sentence cruelly disproportionate. At the time of this offense, Mr. Joseph was a high school student with no criminal history. A sentence of 15 years to life in prison does not further the penological goal of retribution where a young person has been convicted of felony-murder because—even if that young person were *not* justified in using force, as Mr. Joseph was here—they have what the U.S. Supreme Court has described as "twice diminished moral culpability." *Graham v. Florida*, 560 U.S. 48, 59 (2010) ("[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice- diminished moral culpability").

Twice-diminished culpability in this context arises from a combination of a young person's underdeveloped sense of responsibility, *see supra* Part III, and the young person's lack of intent to kill anyone. *See, e.g.*, *Miller v. Alabama*, 567 U.S.

460, 490 (2012) (Breyer, J. concurring) ("*Graham* recognized that lack of intent normally diminishes the 'moral culpability' that attaches to the crime in question"); *Enmund v. Florida*, 458 U.S. 782, 798, 801 (1982) ("It is fundamental that 'causing harm intentionally must be punished more severely than causing the same harm unintentionally'") (quoting H. Hart, PUNISHMENT AND RESPONSIBILITY 162 (1968)). In turn, diminished culpability reduces the retributive purpose of a punishment. *Tison v. Arizona*, 481 U.S. 137, 149 (1987).

In sum, Mr. Joseph's case is an exemplary illustration of several features of New York's felony-murder law that—individually and together—result in unconstitutionally severe punishments.

CONCLUSION

For these reasons, this Court should reverse Dalen Joseph's conviction or reduce his sentence. Further, this Court should hold that an accused person has the right to present a justification defense to a felony-murder charge when such a defense is supported by the evidence.

Dated: December 13, 2024

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I, Caitlin Glass, certify that this brief complies with the Practice Rules of the Appellate Division 22 NYCRR § 1250.8 (f) and (j). It complies with the type-style requirements because it has been prepared in proportionally spaced typeface, Times New Roman, using Microsoft Word in 14-point font in the body of the brief and 12-point font in the footnotes of the brief. It complies with the type-volume limitation because it contains 6453 non-excluded words.

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On December 13, 2024, I served a copy of this brief on all parties through the e-file system.

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