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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

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STATE OF WASHINGTON,
Respondent,

v.

KEVIN J. BOOT,
Appellant.

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# BRIEF OF FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY AS AMICUS CURIAE IN SUPPORT OF APPELLANT

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## IDENTITY AND INTEREST OF AMICUS CURIAE

The identity and interest of amicus curiae are set forth in the motion for leave to file brief of amicus curiae, filed contemporaneously.

## INTRODUCTION

Youth of color are treated more harshly by the criminal legal system than are similarly situated white youth. One of the drivers of this disparate treatment is that courts have failed to consider race-based trauma in assessing culpability for sentencing. This Court has the opportunity to fix this and, in doing so, to address one of the contributors to race disproportionality in the criminal legal system.

## SUMMARY OF ARGUMENT

When conducting *Miller* hearings, courts often improperly gravitate away from the consideration of mitigating factors and towards considerations that emphasize retribution and incapacitation. Mr. Boot's resentencing under the *Miller* fix statute, RCW 10.95.035, is a clear example of this error. The *Miller*[1] factors direct courts to consider the ways in which the mitigating factors of youth reduce the culpability of the child being sentenced. These factors fall into two categories: age-related, and trauma-related. *See id.* at 477-78. The sentencing court's failure to

[1] *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)

*meaningfully*[2] consider the age-related mitigating factors in Mr. Boot's case merits resentencing.

But the sentencing court's failure to focus on mitigation is also erroneous because it gave no mitigating weight to the trauma-related factors, including the race-based trauma Mr. Boot experienced. He grew up in Spokane, a predominately white community which "felt like a racially hostile environment" where he and his family felt they "were safe from no one." CP 2792 (Decl. of Tyson Marsh). When considering trauma related factors, Washington Courts must consider the trauma that occurs both within the home, as contemplated by *Miller*, but also the trauma that BIPOC youth experience in a racialized society. *See* Letter to the Legal Community from Washington State Supreme Court, June 4, 2020 (recognizing institutional racism against Black people and the "harms that are caused when meritorious claims go unaddressed due to systemic inequities or the lack of…systemic support), http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf.

The enhanced protection provided by article I, section 14, obligates Washington courts to look beyond children's home environments to consider *all* childhood trauma experienced by a juvenile offender. *See*

[2] *State v. Delbosque*, 195 Wn.2d 106, 121, 456 P.3d 806 (2020) (quoting *State v. Ramos*, 187 Wn.2d 420, 434-35, 387 P.3d 650 (2017)).

*State v. Bassett*, 192 Wn.2d 67, 82, 428 P.3d 343 (2018) (holding article I, section 14 provides greater protection in juvenile sentencing context). While children may not frequently experience racial discrimination within their own homes, studies have shown that for some children of color, experiences of racial discrimination outside the home are "ubiquitous." Alex Pieterse et al., *Perceived Racism and Mental Health Among Black American Adults: A Meta-Analytic Review*, 59 J. Counseling Psychologist 1, 6 (2012). In addition to the enumerated *Miller* factors, Washington courts must consider that experiencing race discrimination during childhood negatively affects the neurological and emotional development of children, thereby reducing their culpability.[3]

## ARGUMENT

### I. FIDELITY TO *MILLER V. ALABAMA* REQUIRES SENTENCING COURTS TO APPROACH *MILLER* HEARINGS THROUGH THE LENS OF DIMINISHED CULPABILITY RATHER THAN INCAPACITATION OR RETRIBUTION.

Washington has "continually recognized that children are different from adults for the purpose of sentencing." *Delbosque*, 195 Wn.2d at 110. Proper consideration of the mitigating factors of youth requires courts to approach juvenile sentencing with a focus on the reduced culpability of

[3] Both *Miller* and the statute requires courts to consider both diminished culpability and capacity for change. As Mr. Boot himself demonstrates, the childhood trauma that lessens his culpability does not impact his capacity for change. *See* Br. of App. at 29-30.

juvenile offenders, as "the distinctive attributes of youth diminish the penological justifications" of retribution and incapacitation in cases involving juveniles. *Miller,* 567 U.S. at 472. Because the rationale behind retribution is based on an offender's blameworthiness "the case for retribution is not as strong with a minor as an adult." *Graham v. Florida*, 560 U.S. 48, 71, 130 S. Ct. 2011 176 L. Ed. 2d 825 (2010) (quoting *Roper v. Simmons*, 543 U.S. 551, 571, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)). Similarly, the rationale behind incapacitation in the life-without-parole context is incorrigibility, which the Court has said is "inconsistent with youth." *Id.* at 73; *Bassett*, 192 Wn.2d at 88 ("It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." (quoting *Roper*, 543 U.S. at 573)). The ineffectiveness of these rationales in dictating appropriate sentences for youth underscores the need for individualized consideration of each youth's unique circumstances at sentencing. The *Miller* factors provide a framework for juvenile sentencing that is grounded in biology, social science, and "common sense." *Miller*, 567 U.S. at 471.

The Washington Constitution goes beyond what *Miller*[4] and the

[4] The *Miller* decision specifically lists "the character and record of the individual offender [and] the circumstances of the offense"; "the background and mental and emotional development of a youthful defendant"; a youth's "chronological age and its

Eighth Amendment require by providing heightened protection against cruel punishment in the juvenile sentencing context. *Bassett*, 192 Wn.2d at 82. This heightened protection requires Washington courts to consider all types of trauma that may mitigate culpability any time they are sentencing a juvenile—even when life without parole is not being considered—provided there is an adequate evidentiary record. *See, e.g.*, *State v. Houston-Sconiers*, 188 Wn.2d 1, 9, 391 P.3d 409 (2017). As part of this determination, courts must consider two categories of factors during juvenile sentencing hearings: age-related factors and trauma-related factors. *See Miller*, 560 U.S. at 477-78.

### A. *Miller* Requires Courts to Consider Age-Related Mitigating Factors.

Age-related factors contemplated by *Miller* are biological in nature and are inherent to the definition of adolescence. Such factors include juveniles' "immaturity, impetuosity and failure to appreciate risks and consequences" as well as their "inability to deal with police officers or

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hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; "the family home and environment that surrounds" the youth, "and from which he cannot usually extricate himself—no matter how brutal or dysfunctional"; the circumstances surrounding the offense, "including the extent of his participation in the conduct and the way familial and peer pressure may have affected" the youth; whether the youth "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth," for example the youth's relative inability to deal with police and prosecutors or to assist his own attorney; and the youth's potential for rehabilitation given that most youth are prone to change and mature for the better. 560 U.S. at 477-78.

prosecutors...[or] assist [their] own attorneys." *Id*. at 477-78. As the Supreme Court has noted, "'developments in brain science continue to show fundamental differences between juvenile and adult minds'—for example, in 'parts of the brain involved in behavior control.'" *Id*. at 471-72 (quoting *Graham*, 560 U.S. at 68). The age-related mitigating qualities shared by all youth—"rashness, proclivity for risk, and inability to assess consequences"—stem from fundamental, physical differences between juvenile and adult brains. *Id*. These differences mean that children are categorically less culpable than their adult counterparts, *Bassett*, 192 Wn.2d at 87, and "courts 'must *meaningfully* consider how juveniles are different from adults, how those differences apply to the facts of the case, and whether those facts present the uncommon situation where a life-without-parole sentence for a juvenile homicide offender is constitutionally permissible.'" *Delbosque*, 195 Wn.2d at 121 (quoting *Ramos*, 187 Wn.2d at 434-35). Under the *Miller*-fix statute, juvenile offenders do not bear the burden of proving that their crimes were the result of these differences, or that their crimes were a result of their "transient immaturity." *Id*. at 124; *see* RCW 10.95.030(3)(b).

Unfortunately, as in Mr. Boot's case, courts do not always consider youth as a mitigating factor as required by *Miller* and *Delbosque*. Instead of focusing on the reduced culpability inherent to Mr. Boot's age at the

time he committed his offense, the sentencing court claimed that Mr. Boot "was not a child," stating that because "he was essentially the age of majority" there was "no finding of impetuousness, emotion or impulsiveness." CP 175-76 (Findings of Fact and Conclusions of Law). In his case, the trial court misapplied the fundamental premise of *Miller*—that youth, in and of itself, reduces culpability.

B. *Miller* Requires Courts to Consider Trauma-Related Mitigating Factors.

Unlike age-related factors, trauma-related factors contemplated by *Miller* stem from individual life experiences and include "the family and home environment...familial and peer pressures," abuse, and exposure to parental drug use or alcoholism. *Miller*, 567 U.S. at 477. Social science not only demonstrates that these experiences are traumatic for children, but also that exposure to trauma during childhood can have profoundly negative effects on a person's neurological and social development. Judith Baer & Tina Maschi, *Random Acts of Delinquency: Trauma and Self-Destructiveness in Juvenile Offenders*, 20 Child & Adolescent Soc. Work J. 85 (2003). As with the age-related factors identified in *Miller*, sentencing courts sometimes fail to properly consider the mitigating effects of trauma-related factors.

In Mr. Boot's case, the court did not properly consider the mitigating effects of Mr. Boot's childhood trauma. Mr. Boot's cousin, Tyson Marsh, described Mr. Boot's early life as "traumatic and neglectful." CP 2791. From the beginning, he went without the presence and caregiving of his parents. *Id.* at 2790. When Mr. Boot was an infant, his mother was addicted to drugs and his father was in prison. CP 175. The resulting neglect Mr. Boot suffered was obvious. Once, after picking Mr. Boot up from his mother, his grandparents changed his diaper and "a whole layer of skin came off." CP 2791-92.

Eventually, Mr. Boot went to live with his grandparents who were in their sixties. CP 2791. Both worked while they attempted to care for three of their grandchildren and multiple foster children. *Id*. Many of the children Mr. Boot's grandparents fostered had been sexually abused and sometimes abused one another. *Id*. Despite living in a crowded home, Mr. Boot's childhood was a lonely one. *Id*. Mr. Marsh recounted how a young Mr. Boot once said that he wished he had a talking "Rainbow Bright" toy because then he would have "someone to talk to." *Id*.

Though Mr. Boot was in a gang, the court failed to consider the possible influence of peer pressure on his actions, instead focusing on the idea that he "chose to join a gang." CP 175. Mr. Marsh believed that the

reason Mr. Boot joined a gang was because he "want[ed] to feel safe and hav[e] people around him he trusted." CP 2792.[5]

The court also placed a disproportionate emphasis on the circumstances of Mr. Boot's crime. Even juveniles who are convicted of terrible crimes have a constitutional right to a hearing where the court *meaningfully* considers the effect any relevant *Miller* factors may have had on their culpability. *Delbosque*, 195 Wn.2d at 120-21. Despite having stated it in *Ramos*, our Supreme Court in *Delbosque* had to remind lower courts of their duty to *meaningfully* consider mitigating evidence, ensuring that the focus remains on factors that affect culpability, not the seriousness of the crime committed. *Miller*, 567 U.S. at 477. While the facts of a crime resulting in a *Miller* hearing may be shocking, "none of what is said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime specific." *Id*. at 473. While *Miller* lists the "circumstances of the offense" as one of the *mitigating* factors a court can consider, the court in Mr. Boot's case instead considered the circumstances of the case as an aggravating factor allegedly supporting the imposition of a harsher sentence. *See id*. at 475; CP 175.

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[5] Studies have shown that a lack of parental supervision and low levels of maternal "warmth" are associated with increased rates of juvenile gang involvement. Emma Alleyne & Jane L. Wood, *Gang Involvement: Social and Environmental Factors*, 60 Crime & Delinq. 547, 549 (2011); Jeremiah Jaggers et al., *Predictors of Gang Involvement: A Longitudinal Analysis of Data From the Mobile Youth Survey*, 4 J. Soc'y Soc. Work & Res. 277, 285 (2013).

In order to fully evaluate a juvenile offender's level of culpability, courts should carefully consider the juvenile's unique lived experience, including consideration of all forms of trauma they have experienced—both inside and outside of the home. In Mr. Boot's case, a full consideration of the trauma he experienced requires consideration of the community environment in which he was raised. While Mr. Boot was growing up there, Spokane "felt like a racially hostile environment." CP 2792. Mr. Boot's cousin recalled cross burnings in Spokane and the surrounding communities when he and Mr. Boot were young. *Id*. Because of this environment of racial animosity, Mr. Boot and his cousin felt they "were safe from no one." *Id*.

Studies have shown that racial discrimination like Mr. Boot experienced is a form of trauma similar to many of the factors identified in *Miller* as contributing to the reduced culpability of juvenile offenders. *See* Vanessa Nyborg et al., *The Impact of Perceived Racism: Psychological Symptoms Among African American Boys*, 32 J. Clinical Child & Adolescent Psychol. 258, 264 (2003).

## II. RACE-BASED TRAUMA IS PART OF THE CUMULATIVE TRAUMA THAT *MILLER* RECOGNIZES AS DIMINISHING THE CULPABILITY OF JUVENILE OFFENDERS.

Youth is a time when "a person may be most susceptible to influence and to psychological damage." *Eddings v. Oklahoma*, 455 U.S.

104, 115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982). Accordingly, "the background and emotional development of a youthful defendant must be duly considered" during sentencing. *Id.* at 116. As outlined by the Court in *Miller*, this consideration involves weighing mitigating factors, including many forms of trauma included in what have come to be known as adverse childhood experiences or "ACEs"[6] studies.[7]

Studies of childhood trauma in the form of ACEs provide convincing evidence that such experiences can have serious effects on later behavior.[8] *See, e.g.*, Felitti, *supra* at 245. A growing body of research confirms that experiences of racial discrimination can be traumatic and—like other ACEs—have serious negative effects on a person's mental and emotional health. Janet E. Helms et al., *Racism and Ethnoviolence as*

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[6] Researchers in various fields frequently refer to experiences of childhood trauma as adverse childhood experiences (ACEs). The ACEs terminology came into use following an influential study by the Centers for Disease Control and Prevention and Kaiser Permanente which examined the long-term effects of different types of ACEs. Vincent Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 14 Am. J. Preventative Med. 245 (1998).

[7] For example, the *Miller* court specifically discusses physical abuse, neglect, and exposure to parental drug and alcohol abuse, all of which were included in the Philadelphia ACE study. *Miller*, 567 U.S. 460, 479, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012); Public Health Management Corporation, Findings from the Philadelphia Urban ACE Survey 2, 5-6 (2013).

[8] The original ACE study conducted by Kaiser Permanente and the Centers for Disease Control and Prevention found a "strong dose response relationship between the breadth of exposure to abuse or household dysfunction during childhood and multiple risk factors for several of the leading causes of death in adults." Felitti, *supra* at 251. These include risky behaviors like smoking, alcohol or drug abuse, overeating, and promiscuity. *Id.* at 252-53.

*Trauma: Enhancing Professional and Research Training*, 18 Traumatology 65, 68 (2012). Given this research, it is critical that courts consider experiences of racial discrimination as a potential mitigating factor when sentencing juvenile offenders.

A. Childhood Trauma Negatively Impacts Social and Neurological Development, Further Exacerbating the Deficits of the Juvenile Brain.

By requiring courts to consider childhood trauma during the sentencing of juvenile offenders, the Supreme Court has recognized that the reduced culpability inherently associated with still-developing juvenile brains is further reduced by experiences of childhood trauma.[9] *Miller*, 567 U.S. at 476. Ample social science supports the *Miller* Court's legal recognition that traumatic childhood experiences can exacerbate the inherent limitations of juvenile brains in ways that impact an offender's culpability. *See id*.

[9] In the context of trauma-related disorders like PTSD, the DSM-5 considers trauma-inducing stressors to be "exposure to actual or threatened death, serious injury, or sexual violence." American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders § 309.81, 5th ed. 2013 (DSM-5). This "exposure" can involve directly experiencing the traumatic event; witnessing the event as it occurs to others; learning that a close friend or family member experienced the event; or experiencing repeated or extreme exposure to details of the event. *Id*. Given the limitations on which stressors meet the clinical definition of trauma-inducing, many social scientists emphasize that experiences of racial discrimination result in trauma *symptoms* even if those experiences do not fit the clinical restrictions required to diagnose a trauma-related disorder. Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 Counseling Psychologist 13, 16 (2007).

For example, the original ACEs study considered seven categories of adverse childhood experiences and gave participants an ACE "score" based on the number of ACEs the participant reported experiencing as a child. Felitti, *supra* at 250. The study found a strong "graded relationship" between a participant's ACE score and multiple risk factors for several of the leading causes of death in adults.[10]

Other studies of childhood trauma, while not always framed explicitly as ACEs research, are consistent with the central ACE study findings and expand our understanding of the various stress responses caused by childhood trauma. Many of these studies have found a link between childhood trauma and PTSD or PTSD-like symptoms. *See, e.g.*, Kristine Buffington et al., *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, 61 Juv. & Fam. Ct. J. 13 (2010).

Childhood trauma can detrimentally impact both neurological and social development. *See, e.g.*, Baer, *supra* at 85. Experiences of trauma can impede the brain's "information processing, social learning, and self-regulation" functions and can cause traumatized youth to "perceive and encode social cues differently than non-traumatized individuals." *Id*. Consequently, trauma can cause individuals to become more aggressive

[10] Compared to an ACE score of zero, having four adverse childhood experiences was associated with a 700% increase in alcoholism, and a 1200% increase in attempted suicide. Felitti, *supra* at 252-53.

and to "over-perceive aggression by others." *Id*. at 87. Children who experience trauma may develop a "variety of developmental problems" and "experience developmental risks for inadequate maturation and adaption later in life." Nicholas Perez et al., *A Path to Serious, Violent, Chronic Delinquency: The Harmful Aftermath of Adverse Childhood Experiences*, 64 Crime & Delinq. 3, 4 (2018).

Because of the way trauma can affect a child's development, experiences of trauma can lead to "highly maladaptive behaviors, such as serious, violent and chronic (SVC) delinquency." *Id.* at 3. Studies have found a correlation between childhood trauma and "aggression, impulsivity, deviant peer imitation, school difficulties, substance abuse problems, and mental illness." *Id*. at 9. Unsurprisingly, 75-93 percent of youth entering the juvenile justice system have experienced some form of childhood trauma. Michael Baglivio et al., *The Relationship Between Adverse Childhood Experiences (ACE) and Juvenile Offending Trajectories: A Juvenile Offender Sample*, 43 J. Crim. Just. 229, 230 (2015). Some studies have shown that rates of PTSD in juveniles who are involved with the justice system are close to the rates found in soldiers returning from war. Buffington, *supra* at 14.

This relationship between childhood trauma and subsequent maladaptive behaviors makes clear that such trauma, like the "distinctive

attributes of youth," diminish the penological justifications of retribution and incapacitation in cases involving juveniles.

### B. Racism Is a Trauma That Causes Stress Responses Similar to the Stress Responses Caused by Other Childhood Traumas, and Therefore Courts Should Consider It Like They Do Other Traumas that Reduce Culpability.

Researchers working with the original CDC-Kaiser ACEs study recognized that the experience of childhood trauma may look different depending on the population studied. A subsequent study, the "Philadelphia Urban ACE Survey," continued ACEs research by examining the impact of childhood trauma in a more diverse city. Public Health Management Corporation, Findings from the Philadelphia Urban ACE Survey 2 (2013). While prior ACEs studies had surveyed primarily white, middle class, and highly educated individuals, a majority of the Philadelphia survey respondents were people of color who had never attended college. *Id*. at 2, 4. The Philadelphia study expanded the definition of ACE to include, "being treated badly or unfairly because of your race or ethnicity." *Id*. at 7. The study found that 34.5 percent of survey respondents—and one out of every two Black survey respondents—reported experiences of perceived racial discrimination. *Id*. at 13. Like the Kaiser report before it, the Philadelphia study found a correlation between ACEs and risky health behaviors. *Id*. at 24.

The inclusion of racial discrimination as an ACE in the Philadelphia study is consistent with significant research establishing that experiencing racial discrimination is traumatic and, like other forms of trauma, can have significant consequences on an individual's mental and emotional wellbeing. Hector Myers et al., *Cumulative Burden of Lifetime Adversities: Trauma and Mental Health in Low-SES African American and Latino/as*, 7 Psychol. Trauma: Theory, Res., Prac., & Pol'y 243, 244 (2015); Carter, *supra* at 14-15; Thema Bryant-Davis et al., *Racist Incident-Based Trauma*, 33 Counseling Psychologist 479 (2005).

Studies have shown that "day-to-day" experiences of racial discrimination—even if not in the form of a stressor the DSM-5 would classify as trauma inducing—can result in trauma symptoms. Myers, *supra* at 248. Race-based stressors have been shown to produce psychological and emotional injury similar to other events—like combat or natural disasters—that can result in PTSD. Carter, *supra* at 28. Individual responses to race-based stressors include extreme emotional distress, hypervigilance, and avoidance behaviors—all symptoms normally associated with PTSD. *Id*. at 65.

A meta-analysis of 138 studies published between 1996 and 2011 found that, among African Americans, "negative psychological responses to racism carry many features associated with trauma" including

significant negative psychological and physical symptoms. Pieterse, *supra* at 6. The analysis further found that not only is the experience of racial discrimination among African Americans "ubiquitous," but it is reliably shown to be associated with psychological distress. *Id*.

Children who experience racial discrimination are likely to feel more depressed; report greater levels of stress, anxiety, hopelessness and loneliness; and are less likely to have a positive self-image. Nyborg, *supra* at 264; Myers, *supra* at 252. A study of the effects of perceived personal and institutional racism on African American boys aged ten to fifteen found that such experiences were related to anger and various forms of delinquency. Nyborg, *supra* at 264. The children who participated in the study also reported "feelings of inadequacy, somatic complaints, and low self-esteem" correlated with perceived experiences of racial discrimination. *Id*. Perhaps not surprisingly, adolescent experiences of racial discrimination are closely associated with engagement in "risky behaviors" including substance abuse, smoking cigarettes, shoplifting, and vandalism. *Id*. at 264; Elma Lorenzo-Blanco, *Profiles of Bullying Victimization, Discrimination, Social Support, and School Safety*, 86 Am. J. Orthopsychiatry 37, 38 (2016).

The symptoms associated with childhood experiences of racial discrimination closely mirror the findings of the ACE studies where

childhood trauma was shown to be closely linked with smoking, alcohol and drug abuse, depression, and suicidal behavior in adults. Felitti, *supra* at 252-53. The correlation between experiences of racial discrimination and engagement in risky health behaviors suggests that, like the other forms of childhood trauma considered by *Miller*, racial discrimination causes trauma that negatively impacts a juvenile's ability to consider long-term consequences and make well-reasoned decisions.

Even if a child has not experienced a single overt instance of blatant racism, the effects of racial discrimination, like other forms of trauma, can accumulate over a person's lifetime, increasing the likelihood that individuals who regularly experience racial discrimination will develop trauma symptoms. Nicholas Sibrava et al., *Posttraumatic Stress Disorder in African American and Latinx Adults: Clinical Course and the Role of Racial and Ethnic Discrimination*, 74 Am. Psychologist 101, 108 (2019). A recent study on the impact of racial discrimination on African American and Latinx individuals supported the idea of cumulative trauma. *Id*. The study found that the frequency with which an individual experiences discrimination is significantly correlated with important indicators of mental and emotional wellbeing. *Id*. at 16.

Even subtle and unintentional forms of discrimination can have a serious negative impact on the mental health of individuals. Kevin Nadal

et al., *The Impact of Racial Microaggressions on Mental Health: Counseling Implications for Clients of Color,* 92 J. Counseling & Dev. 57, 62 (2014). Research has shown that individuals who experience racial abuse are more "likely to exhibit negative mental health symptoms including depression, anxiety, and a lack of behavioral control." *Id*. These negative mental health symptoms exacerbate the already limited capacity of developing juvenile brains.

In *Miller*, the Supreme Court recognized that courts should consider the mitigating effect of the "family and home environment" that surrounds juvenile offenders on the offender's culpability. 567 U.S. at 477. While the *Miller* court focused primarily on the home and family environment, trauma-related mitigating factors do not exist solely within the four walls of a juvenile offender's home. The impact of adverse childhood experiences—including racial discrimination—which occur outside of a child's home environment can result in trauma symptoms that are indistinguishable from those caused by experiences in the home.

The effects of racial discrimination are similar to those of other trauma-related mitigating factors, and those effects are often cumulative. Because of the negative effect this cumulative trauma can have on a juvenile's development, and therefore their culpability, it is imperative that experiences of racial discrimination—no matter where they happen—

be considered during *Miller* sentencing hearings. Failure to do so will mean that courts are making sentencing decisions without a full understanding of the mitigating factors at play.

## CONCLUSION

By providing guidance requiring the consideration of trauma caused by racial discrimination during sentencing, this Court has the opportunity to refocus *Miller* hearings in Washington on the mitigating effects of youth and experiences of childhood trauma. Doing so is necessary to ensure that juvenile offenders are afforded the consideration of their individual culpability required under *Miller* and article I, section 14 of the Washington Constitution. Doing so will address a contributing factor to race disproportionality in the criminal legal system.

RESPECTFULLY SUBMITTED this 4th day of August, 2020.

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## DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on August 4, 2020, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 4th day of August, 2020.

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