

**Case No. 23-12275**

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**IN THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT**

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**SADIK BAXTER**  
*Petitioner-Appellant,*

v.

**SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS**  
*Respondent-Appellee.*

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Appeal from the United States District Court for the Southern District of Florida  
Case No. 0:21-cv-62301, The Honorable Beth Bloom

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**BRIEF OF AMICI CURIAE THE ANTIRACISM AND COMMUNITY  
LAWYERING PRACTICUM, THE FRED T. KOREMATSU CENTER FOR  
LAW AND EQUALITY, FAIR AND JUST PROSECUTION, THE NYU  
CENTER ON RACE, INEQUALITY, AND THE LAW, PROFESSOR KAT  
ALBRECHT, AND THE SENTENCING PROJECT IN SUPPORT OF  
APPELLANT SADIK BAXTER**

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August 8, 2024

**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1 through 26.1-3, Amici certify that the following individuals and entities may have an interest in the outcome of this case or appeal.

1. Albrecht, Kat, *Amicus Curiae supporting Petitioner-Appellant*
2. Antiracism and Community Lawyering Practicum, *Amicus Curiae supporting Petitioner-Appellant*
3. Chang, Robert Seungchul, *Attorney for Amici Curiae*
4. Fair and Just Prosecution, a project of the Tides Center, *Amicus Curiae supporting Petitioner-Appellant*
5. Fred T. Korematsu Center for Law and Equality, *Amicus Curiae supporting Petitioner-Appellant*
6. Glass, Caitlin, *Attorney for Amici Curiae*
7. The NYU Center on Race, Inequality, and the Law, *Amicus Curiae supporting Petitioner-Appellant*
8. The Sentencing Project, *Amicus Curiae supporting Petitioner-Appellant*

## **CORPORATE DISCLOSURE STATEMENTS**

Consistent with Federal Rules of Appellate Procedure 26.1 and 29(c)(1), undersigned counsel for amici make the following disclosures:

### **Antiracism and Community Lawyering Practicum**

The Antiracism and Community Lawyering Practicum (ACLP) does not have any parent corporation or issue stock, and consequently, there exists no publicly held corporation that owns 10% or more of its stock.

### **Fred T. Korematsu Center for Law and Equality at Seattle University School of Law**

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## **The Sentencing Project**

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<i>Commonwealth v. Brown</i> , 477 Mass. 805 (2017) .....	18
<i>Enmund v. Florida</i> , 458 U.S. 782 (1982) .....	21
<i>Graham v. Florida</i> , 560 U.S. 48 (2010) .....	20
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012) .....	17, 21
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016) .....	15, 26
<i>Pena-Rodriguez v. Colorado</i> , 580 U.S. 206 (2017) .....	15
<i>Penry v. Lynaugh</i> , 492 U.S. 302 (1989) .....	15
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005) .....	16, 21
<i>Tison v. Arizona</i> , 481 U.S. 137 (1987) .....	21

**STATUTES**

18 Pa. Stat. and Cons. Stat. Ann. § 1102.....17

Ark. Code Ann. § 5-10-101.....18

Cal. SB-1437 .....19

Colo. S.B. 21-124.....19

Colo. Rev. Stat. § 18-3-102.....19

Fla. Stat. Ann. § 775.082.....3, 9

Fla. Stat. Ann. § 782.04.....3, 5

Fla. Stat. Ann. § 782.07.....9

Fla. Stat. Ann. § 810.02.....9

Iowa Code Ann. § 902.1.....17

La. Stat. Ann. § 14:30(C).....17

Minn. H.F. No. 2890/S.F. No. 2909 (2023) .....19

N.C. Gen. Stat. Ann. § 14-17 .....17

N.D. Cent. Code § 12.1-16-01(1)(c) .....18

N.D. Cent. Code § 12.1-32-01(1).....18

N.J. Stat. Ann. § 2C:11-3(a)(3) .....18

N.Y. Penal Law § 125.25(3).....18

Or. Rev. Stat. §§ 163.115; 163.107 (2)(b).....18

S.D. Codified Laws § 22-6-1.....17

Wash. Rev. Code § 9A.32.030 (1)(c).....18



Wash. Rev. Code § 9A.20.021(1)(a).....18

Wash. Rev. Code § 9.94A.540(1)(a).....18

**OTHER AUTHORITIES**

*“I Just Want to Give Back”*: the Reintegration of People Sentenced to Life Without Parole, HUM. RTS. WATCH (2023), [https://www.hrw.org/sites/default/files/media\\_2023/06/usa\\_lwop0623.pdf](https://www.hrw.org/sites/default/files/media_2023/06/usa_lwop0623.pdf)..20, 24

*Advancing the Use of Data in Prosecution*, FAIR AND JUST PROSECUTION 3-10 (2023), <https://fairandjustprosecution.org/wp-content/uploads/2023/10/FJP-Data-Innovations-White-Paper-Oct-2023.pdf>..... 14

Alisa Bierra & Colby Lenz, *Defending Self Defense: A Call to Action*, SURVIVED & PUNISHED (2022), <https://survivedandpunished.org/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf>.....23

Andrea Lindsay & Clara Rawlings, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment of Race*, PHILA. LAW. FOR SOCIAL EQUITY at 1 (2021), [https://plsephilly.org/wp-content/uploads/2021/04/PLSE\\_SecondDegreeMurder\\_and\\_Race\\_Apr2021.pdf](https://plsephilly.org/wp-content/uploads/2021/04/PLSE_SecondDegreeMurder_and_Race_Apr2021.pdf). ..... 13, 14

Andrea Lindsay, *Life Without Parole for Second-Degree Murder in Pennsylvania*, PHILA. LAW. FOR SOCIAL EQUITY (2021), <https://plsephilly.org/wp-content/uploads/2021/01/PLSE-Second-Degree-Murder-Audit-Jan-19-2021.pdf>.7

Barbara Levine & Elsie Kettunen, *Paroling people who committed serious crimes: What is the actual risk?* PRISON POL’Y INITIATIVE (2014), [https://www.prisonpolicy.org/scans/cappsmi/CAPPS\\_Paroling\\_people\\_who\\_committed\\_serious\\_crimes\\_11\\_23\\_14.pdf](https://www.prisonpolicy.org/scans/cappsmi/CAPPS_Paroling_people_who_committed_serious_crimes_11_23_14.pdf) .....24

Bernadine Waller et al., *Caught in the Crossroad: An Intersectional Examination of African American Women Intimate Partner Violence Survivors’ Help Seeking*, 23 TRAUMA VIOLENCE ABUSE 1235 (2022) .....23

Beth Caldwell, *The Twice Diminished Culpability of Juvenile Accomplices to Felony Murder*, 11 U.C. IRVINE L. REV. 905 (2021).....21

Brief of Boston University Center for Antiracist Research et al. as Amici Curiae in Support of Petitioner, *Commonwealth v. Shepherd*, SJ-12405 (Mass. 2024). ...6, 22

Bruce Western et al., *Reducing Racial Inequality in Crime and Justice: Science, Practice, and Policy*, NAT’L ACADS. OF SCIS. (2023) .....22

CAL. COMM. ON REVISION OF THE PENAL CODE, ANNUAL REPORT AND RECOMMENDATIONS (2021).....6, 14

Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea Bargaining*, 59 B.C. L. REV. 1187 (2018) .....11

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 (2019). .....6, 14

Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME AND JUST. 199 (2013). .....25

David Pyrooz, *Demographics, Trends, and Disparities in Colorado Felony Murder Cases: A Statistical Portrait* (2023) .....6

FELONY MURDER REPORTING PROJECT, FELONYMURDERREPORTING.ORG. ....6, 7

G. Ben Cohen, et al., *Racial Bias, Accomplice Liability, and The Felony Murder Rule: a National Empirical Study*, 101 DENVER L. REV. 65 (2024) .....10, 11, 12

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 (2021)....7, 10, 13, 14

Guyora Binder, *The Origins of American Felony Murder Rules*, 57 STAN. L. REV. 59 (2004) .....2

Ian Farrell, *Moral Judgments and Knowledge about Felony Murder in Colorado: An Empirical Study* (Sept. 5, 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4562486](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562486).....25

J.J. Prescott et al., *Understanding Violent-Crime Recidivism*, 95 NOTRE DAME L. REV. 1643 (2014).....25

Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 MISS. L.J. 481 (2023). .....6

*Life Without Parole and Felony Murder Sentencing in California*, UCLA CTR FOR THE STUDY OF WOMEN/STREISAND CTR SPECIAL CIRCUMSTANCES CONVICTION PROJECT (2023), [https://csw.ucla.edu/wp-content/uploads/2023/07/SCCP\\_Life\\_Without\\_Parole\\_Sentencing.pdf](https://csw.ucla.edu/wp-content/uploads/2023/07/SCCP_Life_Without_Parole_Sentencing.pdf). .....22

*Life without Parole Is Death in Slow Motion*, FORT WORTH STAR-TELEGRAM (2016), <https://www.star-telegram.com/opinion/editorials/article100493697.html>. .....20

LILA KAZEMIAN, PATHWAYS TO DESISTANCE FROM CRIME AMONG JUVENILES AND ADULTS: APPLICATIONS TO CRIMINAL JUSTICE POLICY AND PRACTICE, U.S. DEP’T OF JUSTICE, OFFICE OF JUST. PROGRAMS, NATIONAL INSTITUTE OF JUSTICE (November 2021), <https://www.ojp.gov/pdffiles1/nij/301503.pdf>. .....24

LINDSEY 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](https://mn.gov/doc/assets/Task%20Force%20on%20Aiding%20and%20Abetting%20Felony%20Murder%20Report%20Executive%20Summary_tcm1089-517326.pdf) .....7

MANSLAUGHTER, 1 FLA. STANDARD JURY INSTRUCTIONS CRIM. CASES § 7.7.....9

MARIEL ALPER ET AL., 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005-2014), U.S. DEP’T OF JUSTI., OFFICE OF JUST. PROGRAMS, BUREAU OF JUST. STAT. (2018), <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf> .....24

Melissa E. Dichter & Sue Osthoff, *Women’s Experiences of Abuse as a Risk Factor for Incarceration: A Research Update*, NAT’L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN (2015).....23

Mona Lynch & Craig Haney, *Looking Across the Empathic Divide: Racialized Decision Making on the Capital Jury*, 2011 MICH. ST. L. REV. 573 (2011).....9

Nazgol Ghandnoosh et al., *Felony Murder: An On-Ramp for Extreme Sentencing*, THE SENT’G PROJECT & FAIR & JUST PROSECUTION (2022), <https://www.sentencingproject.org/app/uploads/2024/05/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf> .....7, 10, 22, 23

Nelson Roth & Scott Sundby, *The Felony-Murder Rule: a Doctrine at Constitutional Crossroads*, 70 CORNELL. L. REV. 446 (1985).....25

Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 FORDHAM URB. L. J. 679 (2024).....11

Ram Subramanian, et al., *In the Shadows: A Review of the Research on Plea Bargaining*, VERA INST. JUST. (2020), <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf> .....10

Robert Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 ALA. L. REV. 871 (2015) .....8, 9

Samuel Gaertner & John Dovidio, *Understanding and Addressing Contemporary Racism: From Aversive Racism to the Common In-group Identity Model*, 61 J. SOC. ISSUES 615 (2005).....8

Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, NEW YORKER, (Dec. 11, 2023), <https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws> .....2

Savannah Jones, *Ending Extreme Sentencing Is a Women’s Rights Issue*, 23 GEO. J. GENDER & L. 1 (2022).....23

Stuti Kokkalera et al., *Too Young for the Crime, Yet Old Enough to do Life: A Critical Review of How State Felony Murder Laws Apply to Juvenile Defendants*, 4 J. CRIM. JUST. & L. 90 (2021).....21

*Tipping the Scales: Challengers Take On the Old Boys' Club of Elected Prosecutors*, REFLECTIVE DEMOCRACY CAMPAIGN (2019), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> .....8

U.S. CENSUS BUREAU, QUICKFACTS: FLORIDA (July 1, 2023) .....5

U.S. DEP’T OF JUST., RACIAL AND ETHNIC DISPARITY IN JUVENILE JUSTICE PROCESSING (2022), <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity> .....22

## **INTEREST OF AMICI CURIAE**

Amici curiae, the Antiracism and Community Lawyering Practicum, the Fred T. Korematsu Center for Law and Equality, Fair and Just Prosecution, the NYU Center on Race, Inequality and the Law, The Sentencing Project, and Professor Kat Albrecht engage in research, education, and/or advocacy related to criminal law, sentencing policies, and racial injustice.<sup>1</sup> Amici submit this brief to emphasize that life-without-parole sentences for people who did not kill or intend to kill anyone are disproportionate, cruel, and improperly influenced by extralegal factors, including racial bias. As such, these sentences violate the Eighth Amendment.

## **STATEMENT OF THE ISSUE**

Whether a mandatory life-without-parole sentence violates the Eighth Amendment when applied to a person who neither caused nor intended to cause a death.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

The felony-murder doctrine is a stark exception to the fundamental principle of criminal law that someone's culpability depends on their own actions and state of mind. The doctrine allows a person to be punished for deaths they never intended

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<sup>1</sup> Complete statements of interest are included in an appendix to this amicus brief. *See* Appendix A. Pursuant to Fed. R. App. P. 29, amici certify that neither party's counsel authored this brief in whole or in part, nor did any party or party's counsel, other than amici and their counsel, contribute money to fund preparation or submission of this brief. All parties have consented to the filing of this brief.

and that were caused by someone else. Rather than being a feature of English common law transmitted to the colonies, felony-murder arose in the United States in the nineteenth century—“a distinctly American innovation.”<sup>2</sup> Though England subsequently developed its own felony-murder rule, the doctrine has since been abolished there and in nearly every other common-law country.

Courts and scholars have long criticized felony-murder on doctrinal and constitutional grounds. Felony-murder divorces criminal liability from moral culpability, thereby imposing disproportionately severe punishments that are both cruel and ineffective as a deterrent. Additionally, the doctrine is applied in a racially biased manner. Data demonstrate the stark racially disproportionate impact of the felony-murder doctrine in at least thirteen states, including Florida. This observed racial disproportionality is due at least in part to the doctrine’s low burden of proof. Because the felony-murder doctrine relieves prosecutors of their burden to prove that a person intended to cause a death or committed an act that caused a death, charging decisions are guided by fewer formal legal factors and thus are more susceptible to racial bias.

Florida’s first-degree felony-murder law is among the most draconian of all

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<sup>2</sup> Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, NEW YORKER, (Dec. 11, 2023), <https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws> (quoting Guyora Binder, *The Origins of American Felony Murder Rules*, 57 STAN. L. REV. 59, 63, 99-107 (2004)).

felony-murder laws in the country. Florida imposes a mandatory minimum sentence of life-without-parole (LWOP) for so-called “strict-liability” first-degree felony-murder—meaning felony-murder that requires no *mens rea* related to the death. *See* Fla. Stat. Ann. §§ 782.04(1), 775.082(1). The result is that a person can be automatically condemned to die in prison even if they did not kill anyone, intend to kill anyone, participate in a murder, or even foresee the possibility of death. Indeed, petitioner Sadik Baxter faces this exact situation.

In condemning Mr. Baxter to die in prison, Florida is an outlier. Only nine other states mandate such an extreme sentence for strict-liability felony-murder. In six of those states, Mr. Baxter could not have been charged with felony murder because his conduct would not have constituted an eligible underlying offense.

Mr. Baxter presents this Court with the question of whether our constitutional protection against cruel and unusual punishments permits the mandatory death-in-prison sentence of a person who neither killed nor intended to kill anyone. Amici seek to assist the Court’s consideration of this important issue by highlighting the role that racial bias plays in the administration of this doctrine by prosecutors and courts. In Part I, amici present data demonstrating stark racial disparities in Florida felony-murder convictions and discuss how racial bias can influence felony-murder charges and convictions. In Part II, amici illustrate that mandatory LWOP sentences for strict-liability felony-murder convictions are cruel and unusual given the felony-



murder doctrine’s severe punishment of people with diminished culpability—including young people—and the doctrine’s susceptibility to racism. Put simply, death-in-prison sentences for strict-liability felony-murder violate the Eighth Amendment.

## **ARGUMENT**

### **I. Florida imposes mandatory life-without-parole sentences for strict-liability felony-murder—a doctrine shown to be infected with racial bias.**

In Florida, a person can be charged with felony-murder if they were engaged in an enumerated felony and a killing occurred, even if they had nothing to do with that killing. In this respect, the felony-murder doctrine relieves the State of its burden to prove the most clearly defined indicia of culpability: *actus reus* (an act in furtherance of a killing) and *mens rea* (some mental state with respect to that killing), especially when it comes to accomplices.

Florida’s strict-liability felony-murder law invites prosecutors and decision-makers to draw inferences based on subjective, non-legal proxies for culpability that are inherently susceptible to racial bias. The influence of racial bias on LWOP sentences for people who neither killed nor intended to kill anyone renders those sentences unconstitutional.

#### **A. Data demonstrate significant racial disparities in the application of Florida’s felony murder law.**

Data show acute racial disproportionality regarding the administration of the

felony-murder doctrine in Florida.

**Table 1. Racial Disproportionality in Florida Prison Population Convicted of Felony-Murder, Convicted of Other 1<sup>st</sup> Degree Murders, and Total Prison Population<sup>3</sup>**

	Population Convicted of 1st Degree Felony-Murder	Population Convicted of other (non-Felony-Murder) 1st Degree Murder	Prison Population
Black	59%	54%	48%
People of Color (including Black)	64%	59%	61%
White	36%	40%	39%

The magnitude of disproportionality is worse than the potential baseline of other first-degree murder offenses. Of 981 people incarcerated for first-degree strict-liability felony-murder across Florida, 64% are people of color (59% are Black) and 36% are White.<sup>4</sup> The observed racial disproportionality among those incarcerated for first-degree felony-murder exceeds the racial disproportionality among those incarcerated for other first-degree murder offenses: 59% are people of color (54%

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<sup>3</sup> Florida also has second-degree felony-murder, which imposes a sentence of a term not exceeding life, and third-degree felony-murder, which is punished by a term of imprisonment not exceeding 15 years. *See* FLA. STAT. ANN. § 782.04; FLA. STAT. ANN. § 775.082. Among the population convicted of any kind of felony-murder (first, second, or third-degree), 66% are people of color (62% Black) and 33% are White. Florida All-Murder Data (on file with authors and can be provided upon request).

<sup>4</sup> Florida First Degree Murder Data (on file with authors and can be provided upon request).

Black), while 40% are White.<sup>5</sup> It also exceeds the racial disproportionality among the Florida prison population.<sup>6</sup> These figures are illustrated in the table above. The disparity becomes even more striking when looking at the overall Florida population, of which only 17% are Black and 77% are “White alone.”<sup>7</sup>

Data show similar racial disparities in other jurisdictions, including California,<sup>8</sup> Connecticut,<sup>9</sup> Colorado,<sup>10</sup> Illinois,<sup>11</sup> Massachusetts,<sup>12</sup> Maine,<sup>13</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Comparing Florida’s resident and incarcerated populations*, PRISON POL’Y INITIATIVE, [https://www.prisonpolicy.org/graphs/disparities2021/FL\\_racial\\_disparities\\_2021.html](https://www.prisonpolicy.org/graphs/disparities2021/FL_racial_disparities_2021.html) (last visited July 28, 2024).

<sup>7</sup> U.S. CENSUS BUREAU, QUICKFACTS: FLORIDA (July 1, 2023), <https://www.census.gov/quickfacts/fact/table/FL,US/PST045222>.

<sup>8</sup> CAL. COMM. ON REVISION OF THE PENAL CODE, ANNUAL REPORT AND RECOMMENDATIONS, 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).

<sup>9</sup> FELONY MURDER REPORTING PROJECT, Connecticut Data, <https://felonymurderreporting.org/states/ct/> (Mar. 2023).

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

<sup>11</sup> Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 MISS. L.J. 481, 504, 510 (2023).

<sup>12</sup> 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).

<sup>13</sup> FELONY MURDER REPORTING PROJECT, Maine Data, <https://felonymurderreporting.org/states/me/> (2023).

Michigan,<sup>14</sup> Minnesota,<sup>15</sup> Missouri,<sup>16</sup> New Jersey,<sup>17</sup> Pennsylvania,<sup>18</sup> and Wisconsin.<sup>19</sup> Of these states, only Pennsylvania joins Florida in imposing mandatory LWOP for strict-liability felony-murder.

**B. The racially disparate impact of Florida’s strict-liability felony-murder law stems from its unusually low burden of proof, which invites biased charging and jury determinations.**

Stark racial disproportionality among first-degree felony-murder convictions in Florida can be explained in part by the unusually low burden of proof that

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<sup>14</sup> FELONY MURDER REPORTING PROJECT, Michigan Data, <https://felonymurderreporting.org/states/mi/> (2023).

<sup>15</sup> 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); LINDSEY 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](https://mn.gov/doc/assets/Task%20Force%20on%20Aiding%20and%20Abetting%20Felony%20Murder%20Report%20Executive%20Summary_tcm1089-517326.pdf).

<sup>16</sup> 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.” Stillman, *supra* note 2.

<sup>17</sup> FELONY MURDER REPORTING PROJECT, New Jersey Data, <https://felonymurderreporting.org/states/nj/> (Apr. 2023).

<sup>18</sup> Andrea Lindsay, *Life Without Parole for Second-Degree Murder in Pennsylvania*, PHILA. LAW. FOR SOCIAL EQUITY 11-27 (2021), <https://plsephilly.org/wp-content/uploads/2021/01/PLSE-Second-Degree-Murder-Audit-Jan-19-2021.pdf>.

<sup>19</sup> FELONY MURDER REPORTING PROJECT, Wisconsin Data, <https://felonymurderreporting.org/states/wi/> (2023).

Florida’s felony murder law imposes, inviting cognitive biases to influence charging decisions and jury determinations.

Cognitive racial biases impact criminal legal decision-making through both aversive racism and White favoritism.<sup>20</sup> Aversive racism refers to negative beliefs about another racialized group that contribute to 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.<sup>21</sup> Where prosecutors are predominantly White,<sup>22</sup> bias towards White defendants can include “in-group favoritism” manifesting through “attribution error,” which entails “systematically discounting the important social, historical, and situational determinants of behavior (in this case, criminal behavior) and correspondingly exaggerating the causal role of dispositional or individual

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<sup>20</sup> 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 (2005).

<sup>21</sup> Robert Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 ALA. L. REV. 871, 873 (2015).

<sup>22</sup> *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).

characteristics.”<sup>23</sup> The concept of attribution error 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.<sup>24</sup> Attribution error bears directly upon prosecutors’ charging decisions and, thus, the administration of the felony-murder doctrine.

Florida’s felony murder law gives prosecutors a wide range of charging options for offenses involving more than one defendant, creating more potential for bias to influence charging decisions. In Mr. Baxter’s case, instead of being charged with first-degree felony-murder carrying a mandatory LWOP sentence, he could have been charged with burglary alone, or potentially burglary and manslaughter.<sup>25</sup> Manslaughter carries a mandatory minimum sentence of 15 years in prison and burglary of a conveyance carries a maximum five-year penalty—both a far cry from death-by-incarceration. Fla. Stat. Ann. §§ 782.07, 810.02; 775.082(3)(d). When “wide-ranging homicidal liability . . . exists on strikingly similar facts,” the resulting broad prosecutorial discretion may contribute to “inequity in plea negotiations, trials,

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<sup>23</sup> Mona Lynch & Craig Haney, *Looking Across the Empathic Divide: Racialized Decision Making on the Capital Jury*, 2011 MICH. ST. L. REV. 573, 590 (2011).

<sup>24</sup> Smith et al., *supra* note 21, at 902.

<sup>25</sup> See MANSLAUGHTER, 1 FLA. STANDARD JURY INSTRUCTIONS CRIM. CASES § 7.7. <https://www.floridabar.org/rules/florida-standard-jury-instructions/criminal-jury-instructions-home/criminal-jury-instructions/sji-criminal-chapter-7/> (explaining State may prove manslaughter by showing “[t]he death of (victim) was caused by the culpable negligence of (defendant)”).

and sentencings, leaving a system ripe for abuse and incapable of delivering racial equity.”<sup>26</sup> Indeed, substantial evidence reflects that “racial disparities in prosecutors’ use of discretion—in decisions about which homicides to prosecute as felony-murder and how many people to charge as co-defendants—directly disadvantages people of color.”<sup>27</sup>

The felony-murder doctrine is also susceptible to racial bias because it reduces the State’s burden of proof, leaving fewer evidentiary guardrails to guide both charging decisions and determinations of guilt, especially when it comes to accomplices.<sup>28</sup> Under Florida’s strict-liability felony-murder law, the State is not required to prove “intent” to cause a death—or even the less-culpable mental states of malice or recklessness. Nor does the State have to prove that a defendant killed anyone or aided in a killing.

Social psychology research shows that racial biases are especially likely to influence decision-making under the precise circumstances presented by Florida’s

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<sup>26</sup> Egan, *supra* note 15, at 551.

<sup>27</sup> Ghandnoosh et al., *supra* note 16, 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.”).

<sup>28</sup> *See* 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 engage in an imaginative inquiry whereby both intent and action are inferred.”).

felony murder law—that is, when “decisional criteria are uncertain,” and when “decisions. . . involve high levels of discretion or subjectivity.”<sup>29</sup> The application of Florida’s strict-liability felony murder statute to an accomplice leaves prosecutors, judges, and juries especially susceptible to racial biases that affect decision-making.<sup>30</sup>

Felony murder cases involving accomplices can also trigger an additional form of racial bias impacting whether a decisionmaker perceives a defendant as having acted alone or as a member of a group. A recent empirical study indicates that decision-makers may be more likely to infer group liability in cases involving defendants of color yet more likely to treat White defendants as individuals.<sup>31</sup> For that study, researchers used an Implicit Association Test with over 500 jury-eligible participants and found that participants were “more likely to quickly group together

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<sup>29</sup> Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 FORDHAM URB. L. J. 679, 737 (2024).

<sup>30</sup> *See id.* at 729 (“By reducing the legal elements that prosecutors must prove while allowing them to charge a wide range of defendants with murder, we claim that charging decisions in imputed liability murder cases are necessarily less dependent on the law and the evidence, and more apt to be driven by extra-legal factors, than their direct liability murder counterparts.”); *see also* 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).

<sup>31</sup> Cohen et al., *supra* note 28 at 65 (“A national empirical study the authors conducted supports the claim of racialized group liability in the felony murder rule demonstrating that Americans automatically individualize white men, yet automatically perceive Black and Latino men as group members.”).



Black and Latino names with words associated with groups, such as ‘group, pack, crew, them, crowd, folks, bunch,’ and white faces with individuality, such as ‘individual, self, one, solo, single, somebody, character.’”<sup>32</sup>

The degree to which a defendant is seen as an individual impacts their liability in a felony murder case because defendants “who are perceived more as members of groups, and less as individuals, would likely be held more responsible for the crimes of accomplices, whereas defendants who are perceived more as individuals would be likely to be held less responsible for the crimes of accomplices.”<sup>33</sup> These findings raise serious concerns that police, prosecutors, and juries will be more likely to impute liability to Black and Latino defendants.

In sum, substantial research shows how racial biases improperly influence felony murder convictions—especially for accomplices—and the LWOP sentences imposed for these convictions. Such a result creates a significant risk of arbitrary outcomes that serve no penological purpose.

**C. Research refutes the claim that the racially disparate impact of the felony-murder doctrine can be explained by differences in criminal conduct.**

Research illustrates race disparity in felony murder prosecutions that is not explainable by differences in the severity of alleged criminal conduct. A

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<sup>32</sup> *Id.* at 108.

<sup>33</sup> *Id.* at 104.

Pennsylvania study showed that White people convicted of felony murder are more often involved in the most serious underlying felonies and less likely to be accomplices.<sup>34</sup> This data strongly suggests, as the researchers found, that the “statute’s broad application to both principals and accomplices to a felony related to someone’s death has a greater net-widening effect on Black people overall.”<sup>35</sup> Likewise, 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 even when the facts support opposite outcomes.”<sup>36</sup> These studies also showed that White defendants who were convicted of second-degree felony-murder were more likely to have pled down to the charge, whereas Black defendants convicted of second-degree felony-murder were more likely to have been convicted of the top offense with which they were charged, suggesting that White defendants generally receive more favorable plea offers in felony-murder cases.<sup>37</sup>

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<sup>34</sup> Andrea Lindsay & Clara Rawlings, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment of Race*, PHILA. LAW. FOR SOCIAL EQUITY at 1, 5 (2021), [https://plsephilly.org/wp-content/uploads/2021/04/PLSE\\_SecondDegreeMurder\\_and\\_Race\\_Apr2021.pdf](https://plsephilly.org/wp-content/uploads/2021/04/PLSE_SecondDegreeMurder_and_Race_Apr2021.pdf).

<sup>35</sup> *Id.* at 12.

<sup>36</sup> Egan, *supra* note 15, at 548-51.

<sup>37</sup> Lindsay & Rawlings, *supra* note 34 at 19 (inferring from data that prosecutors are more inclined to offer White principals the benefit of pleading down from first-degree murder to second-degree felony-murder, while not offering Black

Similarly, a California study used regression analyses to show that prosecutors are more likely to charge a felony-murder “special circumstances” enhancement, triggering a mandatory life-without-parole sentence, against people of color.<sup>38</sup> The racially disparate impact is particularly pronounced in cases involving a White victim.<sup>39</sup>

Studies on prosecutor charging practices are challenging to conduct because district attorneys’ offices are generally not required to maintain or publish detailed data regarding their charging decisions.<sup>40</sup> This reality makes it difficult, sometimes impossible, for researchers to isolate racial bias as a variable for analysis in felony-murder charges and convictions. But even descriptive statistical analyses of stark racial disproportionality strongly indicate racial bias and should not be ignored, especially considering the historical context and social science research summarized

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accomplices pleas to lesser crimes “and/or that the terms offered [to Black defendants] were [more often] an insufficient incentive to pleading guilty when balanced against perceived probability of conviction at trial.”); Egan, *supra* note 14, at 548 (discussing similar finding that Black defendants received harsher plea offers than White counterparts.)

<sup>38</sup> CAL. COMM. ON REVISION OF THE PENAL CODE, *supra* note 8, at 51 (“[R]ecently published research . . . has uncovered racial disparities in the application of certain special circumstances—such as those involving gangs and felony murder.”); Grosso et al, *supra* note 8, at 1442 (“Adjusted and unadjusted analyses document that the combined felony-murder special circumstance for robbery and burglary applies disproportionately in black and Latinx defendant cases”).

<sup>39</sup> CAL. COMM. ON REVISION OF THE PENAL CODE, *supra* note 8, at 51.

<sup>40</sup> See generally *Advancing the Use of Data in Prosecution*, FAIR AND JUST PROSECUTION 3-10 (2023), <https://fairandjustprosecution.org/wp-content/uploads/2023/10/FJP-Data-Innovations-White-Paper-Oct-2023.pdf>.

above. Any alternative 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 “imperative to purge racial prejudice from the administration of justice”); *Buck*, 580 U.S. at 124 (“Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.”).

Because ample evidence establishes that racial bias impacts strict-liability felony-murder convictions—and, by extension, the LWOP sentences imposed in those cases—those sentences violate the Eighth Amendment.

## **II. Mandatory life-without-parole sentences for strict-liability felony-murder convictions are cruel and unusual, violating the Eighth Amendment.**

The Eighth Amendment prohibits cruel and unusual punishments, including those that are disproportionately severe. *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016). Applying a proportionality analysis, the U.S. Supreme Court has prohibited “a certain category of punishment for a class of defendants because of their status or offense.” *Id.* (quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)). When determining whether to impose a categorical ban on a sentence for a particular class of offenses, courts employ a two-pronged approach: (1) evaluating “objective indicia of society’s standards, as expressed in legislative enactments and state practice” to determine whether there is a “national consensus . . . against” the challenged sentence, and (2) balancing the culpability of those sought to be excluded

from the penalty against the severity of that penalty, and determining whether the challenged punishment is supported by legitimate penological purposes. *Roper v. Simmons*, 543 U.S. 551, 563, 564, 568-72 (2005).

Felony-murder LWOP sentences, typified by Mr. Baxter's case, meet the requirements of both prongs to warrant a categorical ban. Moreover, a categorical ban is supported by the data showing the starkly racist impact of Florida's strict-liability felony-murder law, which speaks to the arbitrariness—and, thus, the cruelty—of the law's application.

**A. Florida law is out of step with a growing consensus that mandatory life-without-parole sentences for strict-liability felony-murder are disproportionately severe.**

There is a growing consensus that mandatory LWOP sentences for strict-liability felony-murder are disproportionately severe. Indeed, only nine states besides Florida impose such a sentence.<sup>41</sup> In six of those nine states, prosecutors could not charge Mr. Baxter with felony murder because his conduct does not qualify as an underlying offense.<sup>42</sup> Hawaii and Kentucky have no felony-murder rule at all, and the remaining 38 states either never mandate LWOP for felony-murder or limit the imposition of mandatory LWOP. Accordingly, Florida's outlier approach to the

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<sup>41</sup> See Appendix B.

<sup>42</sup> Iowa Code Ann. § 902.1; La. Stat. Ann. § 14:30(C); Neb. Rev. Stat. Ann. § 28-105; N.C. Gen. Stat. Ann. § 14-17; 18 PA. C. S. § 1102; S.D. Codified Laws § 22-6-1.

punishment of strict-liability felony-murder is less common than other punishments invalidated by the Supreme Court on Eighth Amendment grounds. *Compare, e.g., Miller v. Alabama*, 567 U.S. 460, 483-84 (2012) (invalidating mandatory LWOP for juveniles convicted of homicide offenses even though 29 jurisdictions allowed the practice).

Florida's first-degree felony-murder rule stands out because it mandates a life-without-parole sentence without requiring any *mens rea* besides intent to commit the underlying felony, and does not limit the punishment of accomplices who did not cause or intend to cause a death. Strikingly, 26 states and the District of Columbia *never* mandate a life-without-parole sentence for felony-murder.<sup>43</sup> An additional 14 states limit the imposition of mandatory LWOP sentences for felony-murder by limiting the punishment to a narrow subset of predicate felonies, requiring a finding of aggravating circumstances, or requiring a finding that the defendant had some *mens rea* pertaining to the death, such as recklessness or extreme indifference.<sup>44</sup> Among states where LWOP is a sentencing option for felony-murder, six offer an affirmative defense to a felony-murder prosecution where the defendant (1) did not commit the killing; (2) was not armed with a dangerous weapon; (3) reasonably believed that no other participant was armed; and (4) reasonably believed that no

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<sup>43</sup> See Appendix B.

<sup>44</sup> See Appendix B.

other participant intended to engage in conduct likely to result in death or serious bodily harm.<sup>45</sup> Florida’s first-degree felony-murder law has no such limitations.

Florida’s draconian treatment of strict-liability felony-murder is also unusual given a wave of changes restricting the scope and punishment of felony-murder offenses in other states. In 2017, the Massachusetts Supreme Judicial Court recognized that a strict-liability felony-murder rule results in disproportionate sentences and amended the rule to require a finding of malice: intent to kill, intent to cause grievous bodily harm, or intent to do an act that a reasonable person would have known created a plain and strong likelihood of death. *See Commonwealth v. Brown*, 477 Mass. 805, 826 n.1 (2017) (Gants, C.J., concurring) (noting that the felony-murder doctrine may “produce a conviction of murder in the first degree that would appear out of proportion to a defendant’s culpability” such that a mandatory LWOP sentence “is not consonant with justice”). In 2018, California redefined felony-murder for accomplices to require that the individual must have either intended to kill or been both a “major participant” in the underlying felony and acted with “reckless indifference to human life” in connection with the killing. *See* Cal. SB-1437. In 2021, Colorado eliminated mandatory LWOP sentences for felony-

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<sup>45</sup> Ark. Code Ann. § 5-10-101; N.J. Stat. Ann. § 2C:11-3(a)(3); N.Y. Penal Law § 125.25(3); N.D. Cent. Code §§ 12.1-16-01(1)(c); 12.1-32-01(1); Or. Rev. Stat. §§ 163.115; 163.107 (2)(b); Wash. Rev. Code § 9A.32.030 (1)(c); 9A.20.021(1)(a); 9.94A.540(1)(a).

murder, replacing the applicable penalty with a sentence of sixteen to forty-eight years in prison. Colo. Rev. Stat. § 18-3-102; Colo. S.B. 21-124. In 2023, Minnesota passed a law similar to California’s, limiting felony-murder convictions to cases with findings that the defendant was a major participant in the underlying felony and acted with extreme indifference to human life. Minn. H.F. No. 2890/S.F. No. 2909 (2023).

These recent changes provide objective indicia of the evolving standards of decency, which reject mandatory death-by-incarceration sentences for people who neither killed nor intended to kill anyone. *See Atkins v. Virginia*, 536 U.S. 304, 315 (2002) (recognizing that, for Eighth Amendment analyses, it is not only the “number of these States that is significant, but the consistency of the direction of change”).

While amici find all felony-murder regimes to be objectionable, Florida’s felony-murder law stands out in its breadth and severity. It is out of step with the growing national consensus on felony-murder sentencing as well as the direction of change reflected in the recent reforms in several states.

**B. Life-without-parole is a disproportionately severe punishment for strict-liability felony-murder.**

Florida’s punishment scheme runs afoul of the Eighth Amendment not only because of the growing national consensus against imposing mandatory LWOP sentences for strict-liability felony-murder, but also because such sentences are disproportionate and serve no legitimate penological purpose.



1. *Life-without-parole is among the most severe punishments available in the criminal legal system.*

The severity of a death-by-incarceration sentence cannot be overstated. “[L]ife without parole is ‘the second most severe penalty permitted by law,’” sharing “some characteristics with death sentences.” *Graham v. Florida*, 560 U.S. 48, 69 (2010). For this reason, life-without-parole has been described as “the ‘slow death penalty’ or ‘death in slow motion.’”<sup>46</sup> Notably, “life-without-parole sentences are virtually unheard of in the rest of the world, and the US holds a shocking 83 percent” of people sentenced to LWOP globally.<sup>47</sup> Irrespective of whether an LWOP sentence is ever proportional, its place at the severe end of the punishment spectrum is undebatable.

2. *Life-without-parole is disproportionately severe as applied to people convicted under Florida’s strict-liability felony-murder statute.*

Life-without-parole is a disproportionately severe sentence as applied to people convicted under Florida’s strict-liability felony-murder statute, including people who neither killed nor intended to kill anyone. Lack of intent diminishes culpability. *See, e.g., Miller v. Alabama*, 567 U.S. 460, 490 (2012) (Breyer, J.

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<sup>46</sup> “*I Just Want to Give Back*”: the Reintegration of People Sentenced to Life Without Parole, HUM. RTS. WATCH 7 (2023), [https://www.hrw.org/sites/default/files/media\\_2023/06/usa\\_lwop0623.pdf](https://www.hrw.org/sites/default/files/media_2023/06/usa_lwop0623.pdf) (citing *Life without Parole Is Death in Slow Motion*, FORT WORTH STAR-TELEGRAM (2016) <https://www.star-telegram.com/opinion/editorials/article100493697.html>).

<sup>47</sup> *Id.* (citation omitted).

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” (quotation & citation omitted)). In turn, diminished culpability reduces the retributive purpose of a punishment. *Tison v. Arizona*, 481 U.S. 137, 149 (1987).

The disproportionate severity of LWOP for strict-liability felony-murder is amplified by the doctrine’s pronounced impacts on young people who, as the U.S. Supreme Court has recognized, are vulnerable to impulsivity and peer pressure and are less likely than older adults to understand the possible consequences of their actions. *Miller*, 567 U.S. at 471; *Roper v. Simmons*, 543 U.S. 551, 569 (2005). Felony-murder laws contribute substantially to the population of young people serving extreme sentences.<sup>48</sup> In Massachusetts, nearly 30% of people serving LWOP for felony-murder were convicted of offenses committed between ages 18 and 20.<sup>49</sup>

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<sup>48</sup> Stuti Kokkalera et al., *Too Young for the Crime, Yet Old Enough to do Life: A Critical Review of How State Felony Murder Laws Apply to Juvenile Defendants*, 4 J. CRIM. JUST. & L. 90, 103 (2021) (concluding “felony murder rule facilitates the sentencing of adolescents who did not commit nor intend the actual act of murder”); Beth Caldwell, *The Twice Diminished Culpability of Juvenile Accomplices to Felony Murder*, 11 U.C. IRVINE L. REV. 905, 907 (2021) (noting “felony murder laws are a driving force behind the high numbers of young offenders in the United States who have been sentenced to spend the rest of their lives in prison”).

<sup>49</sup> Brief for the Boston University Center for Antiracist Research et al., *supra* note 11, Addendum B, Letter from Committee for Public Counsel Services Parole Advocacy Unit.

In California, 18 is the most common age of people sentenced to LWOP for felony-murder.<sup>50</sup> In Pennsylvania and Minnesota, most people serving LWOP for felony-murder were—like Mr. Baxter—25 or younger at the time of offense.<sup>51</sup> Notably, felony-murder LWOP sentences particularly target Black youth, who are disparately policed, prosecuted, and punished, and in turn disparately exposed to felony-murder convictions.<sup>52</sup> The substantial impact of felony-murder laws on young people contributes to the categorical disproportionality of LWOP sentences for felony-murder.

Mandatory LWOP is also a disproportionately severe punishment for strict-liability felony-murder offenses because of the felony-murder law’s impact on survivors of domestic and sexual violence, who may be present during or coerced to participate in their abusive partner’s offense. A California Coalition for Women Prisoners’ survey found that “the majority of their members convicted of felony-

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<sup>50</sup> *Life Without Parole and Felony Murder Sentencing in California*, UCLA CTR FOR THE STUDY OF WOMEN/STREISAND CTR SPECIAL CIRCUMSTANCES CONVICTION PROJECT 9 (2023), [https://csw.ucla.edu/wp-content/uploads/2023/07/SCCP\\_Life\\_Without\\_Parole\\_Sentencing.pdf](https://csw.ucla.edu/wp-content/uploads/2023/07/SCCP_Life_Without_Parole_Sentencing.pdf).

<sup>51</sup> Ghandnoosh et al., *supra* note 16, at 2.

<sup>52</sup> See U.S. DEP’T OF JUST., RACIAL AND ETHNIC DISPARITY IN JUVENILE JUSTICE PROCESSING (2022), <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity> (“Data have shown that youths of color are more likely than white youths to be arrested and subsequently go deeper into the juvenile justice system”); Bruce Western et al., *Reducing Racial Inequality in Crime and Justice: Science, Practice, and Policy*, NAT’L ACADS. OF SCIS., 153-55 (2023) (discussing research on relationship between racial segregation and early exposure to criminalization).

murder were accomplices navigating intimate partner violence at the time of the offense and were criminalized for acts of survival.”<sup>53</sup> Because survivors are frequently not believed about their experiences—or not seen as victims of violence because they did not leave their abusers—they end up further victimized by the state when charged and convicted of felony-murder. This is especially true for Black and brown women, who face additional barriers to leaving abusive situations, putting them at higher risk for felony-murder charges.<sup>54</sup>

These impacts illustrate just a few ways that the strict-liability felony-murder doctrine results in the extreme punishment of people who are criminalized under circumstances that warrant mercy and an opportunity for redemption, not mandatory lifetime incarceration.

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<sup>53</sup> Ghandnoosh, et al., *supra* note 16, at 6; *see also* Savannah Jones, *Ending Extreme Sentencing Is a Women’s Rights Issue*, 23 GEO. J. GENDER & L. 1, 3-4 (2022), <https://tinyurl.com/y4xu8xan> (describing how women may engage in felony conduct to defend themselves from abuse); Melissa E. Dichter & Sue Osthoff, *Women’s Experiences of Abuse as a Risk Factor for Incarceration: A Research Update*, NAT’L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN (2015), <https://tinyurl.com/3rz6ybtp> (describing paths from abuse to incarceration, including use of violence in response to abuse).

<sup>54</sup> *See* Bernadine Waller et al., *Caught in the Crossroad: An Intersectional Examination of African American Women Intimate Partner Violence Survivors’ Help Seeking*, 23 TRAUMA VIOLENCE ABUSE 1235, 1244 (2022); Alisa Bierra & Colby Lenz, *Defending Self Defense: A Call to Action*, SURVIVED & PUNISHED 11 (2022), <https://survivedandpunished.org/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf>.

3. *Life-without-parole sentences for felony-murder serve no legitimate penological purpose.*

Penological objectives do not justify the permanent incarceration of a person convicted of strict-liability felony-murder. A life-without-parole sentence rejects the possibility of rehabilitation, despite countless examples of people serving such sentences who—having received clemency or otherwise been given a second chance—have transformed their lives and contribute meaningfully to their communities.<sup>55</sup> The purpose of incapacitation is undercut by substantial research demonstrating that most people age out of criminal activity,<sup>56</sup> as also demonstrated by research showing that people who have been released from prison with violent convictions have particularly low recidivism rates.<sup>57</sup> Criminological evidence raises

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<sup>55</sup> HUM. RTS. WATCH, *supra* note 47, at 22-48 (illustrating how former lifers who received second chances have, *inter alia*, financially supported others, nurtured relationships, built community ties, contributed to religious organizations, and mentored youth).

<sup>56</sup> *See generally* LILA KAZEMIAN, PATHWAYS TO DESISTANCE FROM CRIME AMONG JUVENILES AND ADULTS: APPLICATIONS TO CRIMINAL JUSTICE POLICY AND PRACTICE, U.S. DEP'T OF JUSTICE, OFFICE OF JUST. PROGRAMS, NATIONAL INSTITUTE OF JUSTICE (November 2021), <https://www.ojp.gov/pdffiles1/nij/301503.pdf>.

<sup>57</sup> *E.g.*, MARIEL ALPER ET AL., 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005-2014), U.S. DEP'T OF JUSTI., OFFICE OF JUST. PROGRAMS, BUREAU OF JUST. STAT. (2018), <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>; Barbara Levine & Elsie Kettunen, *Paroling people who committed serious crimes: What is the actual risk?* PRISON POL'Y INITIATIVE (2014) [https://www.prisonpolicy.org/scans/cappsmi/CAPPS Paroling people who committed serious crimes 11 23 14.pdf](https://www.prisonpolicy.org/scans/cappsmi/CAPPS_Paroling_people_who_committed_serious_crimes_11_23_14.pdf); J.J. Prescott et al., *Understanding Violent-Crime Recidivism*, 95 NOTRE DAME L. REV. 1643 (2014).

doubts about the deterrent value of LWOP sentences.<sup>58</sup> This is especially true regarding mandatory LWOP sentences for strict-liability felony-murder where death is unintended and where most people likely have no idea that they can receive such an extreme sentence without killing anyone.<sup>59</sup>

Accordingly, mandatory death-by-incarceration is an inherently disproportionate punishment for strict-liability felony-murder.

**C. The felony-murder doctrine’s susceptibility to racial bias contributes to the cruelty and disproportionality of life-without-parole sentences for strict-liability felony-murder.**

Evidence of racial bias in the administration of felony-murder laws further emphasizes the cruelty and disproportionality of mandatory LWOP sentences for people convicted of strict-liability felony-murder.

As discussed above, the racially disproportionate impact of the strict-liability felony-murder rule is facilitated by the low burden of proof the doctrine affords prosecutors and the lack of legal factors guiding charging decisions, leaving those

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<sup>58</sup> Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME AND JUST. 199 (2013).

<sup>59</sup> See Ian Farrell, *Moral Judgments and Knowledge about Felony Murder in Colorado: An Empirical Study* (Sept. 5, 2023) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4562486](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562486) (analyzing poll results showing only small fraction of respondents were aware of felony-murder liability and thus could be deterred by it); Nelson Roth & Scott Sundby, *The Felony-Murder Rule: a Doctrine at Constitutional Crossroads*, 70 CORNELL. L. REV. 446, 452 (1985) (“[T]he felony-murder rule can have no deterrent effect if the felon either does not know how the rule works or does not believe a killing will actually result.”).

decisions susceptible to racial bias. *See supra* Part I. This evidence of racial bias suggests that, under Florida’s first-degree felony-murder statute, 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 Buck v. Davis*, 580 U.S. 100, 123 (2017) (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”).

\* \* \*

For these reasons, the disproportionate and racially disparate mandatory LWOP sentences imposed for first-degree, strict-liability felony-murder violate the Eighth Amendment and must be invalidated. *See Montgomery*, 577 U.S. at 202 (requiring retroactive application of *Miller*’s invalidation of LWOP for juveniles, explaining “when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful”).

## CONCLUSION

This Court should hold that mandatory life-without-parole sentences for strict-liability felony-murder convictions are unconstitutional, and that anyone serving such a sentence—including Sadik Baxter—is entitled to a resentencing hearing.

Dated: August 8, 2024

Respectfully submitted,

/s/ Caitlin Glass

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel certifies as follows:

1. This brief contains 6046 words, excluding the parts of the document exempted by Rule 32(f), in accordance with Rule 32(a)(7)(B) and Rule 29(a)(5).
2. This brief complies with the typeface requirements of Rule 32(a)(5) and the and the type-style requirements of Rule 32(a)(6).

August 8, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2024, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

*/s/ Caitlin Glass*

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## APPENDIX A

The **Antiracism and Community Lawyering Practicum (ACLCP)** is staffed by Boston University School of Law students who provide legal support for racial justice projects in collaboration with community partners. As such, the ACLCP has an interest in challenging policies of criminalization and punishment that undermine safety, justice, and healing, and disproportionately harm people of color. The ACLCP joins this brief to share critical context about racial bias in the application of felony murder laws, and to emphasize that life-without-parole sentences for felony murder are unconstitutional. The ACLCP does not, in this brief or otherwise, represent the official views of Boston University.

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.

**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 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. 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 that it is imperative that this Court grant review on the question of whether a mandatory life-without-parole sentence violates the Cruel and Unusual Punishments Clause of the Eighth Amendment.

The **NYU Center on Race, Inequality, and the Law at New York University School of Law** (“Center”) was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. Among the Center’s top priorities is wholesale reform of the criminal legal system, which has, since its inception, been infected by racial bias and plagued by inequality. The Center fulfills its mission through public education, research, advocacy, and litigation, including as amici in numerous federal and state court cases, aimed at

cleansing the criminal legal system of policies and practices that perpetuate racial injustice and inequitable outcomes.

Professor **Kat Albrecht** is an assistant professor in the criminal justice and criminology department at Georgia State University. Professor Albrecht is a nationally recognized expert on racial disparity in sentencing, quantitative data, and felony-murder special circumstance enhancements. Professor Albrecht has conducted substantial research and teaching on this topic and has been admitted as a computational sociology expert to testify about racial disparity in felony-murder enhancements in the state of California.

**The Sentencing Project** is a national nonprofit organization established in 1986 to engage in public policy research, education, and advocacy to promote effective and humane responses to crime. The Sentencing Project has produced a broad range of scholarship assessing the merits of extreme sentences in jurisdictions throughout the United States. Because this case concerns the ability of individuals who did not kill, did not intend to kill, and could not foresee a loss of human life, to challenge their sentence of life imprisonment without the possibility of parole, it raises questions of fundamental importance to The Sentencing Project.

**APPENDIX B**

	States that Impose Mandatory LWOP for Strict Liability Felony Murder <sup>i</sup>	States that never mandate LWOP for Felony Murder <sup>ii</sup>	States that limit the imposition of mandatory LWOP for Felony Murder <sup>iii</sup>
1	Arizona	Alabama	Arkansas
2	Florida	Alaska	California
3	Iowa	Colorado	Connecticut
4	Louisiana	District of Columbia	Delaware
5	Mississippi	Georgia	Idaho
6	Nebraska	Hawaii	Illinois
7	North Carolina	Indiana	Massachusetts
8	Pennsylvania	Kansas	Michigan
9	South Dakota	Kentucky	New Hampshire
10	Wyoming	Maine	New Jersey
11		Maryland	New Mexico
12		Minnesota	New York
13		Missouri	Ohio
14		Montana	South Carolina
15		Nevada	
16		North Dakota	
17		Oklahoma	
18		Oregon	
19		Rhode Island	
20		Tennessee	
21		Texas	
22		Utah	
23		Vermont	
24		Virginia	
25		Washington	
26		West Virginia	
27		Wisconsin	

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<sup>i</sup> ARIZ. REV. STAT. ANN. § 13-1105; FLA. STAT. § 782.04(1), § 775.082(1); IOWA CODE ANN. § 902.1; LA. STAT. ANN. § 14:30(C); MISS. CODE. ANN. § 97-3-21; NEB. REV. STAT. ANN. § 28-105; N.C. GEN. STAT. ANN. § 14-17; 18 PA. STAT. AND CONS. STAT. ANN. § 1102; S.D. CODIFIED LAWS § 22-6-1; WYO. STAT. ANN. § 6-2-101.

<sup>ii</sup> Hawaii and Kentucky have no felony murder law. 24 states and the District of Columbia do not mandate LWOP for felony murder convictions. ALA. CODE §§ 13A-6-2; 13A-5-6; ALASKA STAT. ANN. §§ 11.41.100; 11.41.110; 12.55.125; COLO. REV. STAT. ANN. §§ 18-1.3-406; 18-1.3-401; D.C. CODE §§ 22-2101; 22-2104(a); GA. CODE ANN. § 16-5-1; IND. CODE §§ 35-42-1-1 (1), (2); 35-50-2-3; KAN STAT. ANN. §§ 21-5402; 21-6620(b)(1); ME. STAT. TIT. 17-A, § 202; tit. 17-A, § 1604(1)(A), (3)(A); MD. CODE ANN., CRIM. LAW §§ 2-201(a)(4); 2-201(b)(1), MINN. STAT. §§ 609.185(a); 244.05(4)(b); MO. REV. STAT. §§ 565.021.1(1); 558.011.1(1); 558.019.4(1); MONT. CODE ANN. §§ 45-5-10(1)(b), (2); 45-5-102(2); 46-23-201(4); NEV. REV. STAT. §§ 200.030(1)(b); 200.030(4); N.D. CENT. CODE §§ 12.1-16-01(1)(c); 12.1-32-01(1); OKLA. STAT. TIT. 21, §§ 701.7(B), 701.9(A); OR. REV. STAT. § 163.115(1)(b), (3), (5); 11 R.I. GEN. LAWS §§ 11-23-1; 11-23-2; TENN. CODE ANN. § 39-13-202; 16-3-20(A); TEX. PENAL CODE ANN. §§ 19.02(b)-(c); 12.32(b); UTAH CODE ANN. § 76-5-203(2), (3)(a); VT. STAT. ANN. TIT. 13, §§ 2301; 2303(a)-(b); VA. CODE ANN. §§ 18.2-32; 18.2-10(b); WASH. REV. CODE § 9A.32.030 (1)(c), 9.94A.540(1)(a); W.VA. ANN. CODE §§ 61-2-1; § 61-2-2; 62-3-15; WIS. STAT. § 940.03.

<sup>iii</sup> ARK. CODE ANN. § 5-10-101 (requiring a finding of “extreme indifference to the value of human life”); CAL. PENAL CODE §§ 189; 190.2 (for accomplices, requiring a finding that defendant was a “major participant” who acted with “reckless indifference”); CONN. GEN. STAT. §§ 53a-54c; 53a-35a(2) (mandating LWOP only for arson murder); DEL. CODE. ANN. §§ 636; 4209(a) (requiring finding of recklessness); Idaho Code §§ 18-4003(d); 18-4004 § 19-2515(9)(g) (mandating LWOP only where the death penalty is sought but not imposed and where the jury finds an aggravating circumstance); 730 ILL. COMP. STAT. 5/5-8-1(a)(1)(c) (requiring aggravating circumstances); *Commonwealth v. Brown*, 81 N.E. 3d 1173 (Mass. 2017) (requiring finding of malice); *People v. Aaron*, 409 Mich. 672, 728 (1980) (requiring a finding of “wanton and willful disregard”); N.H. REV. STAT. ANN. §§ 630:1-a; 630:1-b (requiring that defendant acted knowingly); N.J. STAT. ANN. § 2C:11-3(a)(3), (b)(3) (requiring aggravating circumstances); N.M. STAT. ANN. §§ 30-2-1(A)(2); 31-18-14; 31-20A-5 (requiring intent to kill and aggravating circumstances); N.Y. PENAL LAW §§ 125.25(5), 70.00(3)(a)(i)(B) (limiting mandatory LWOP for second-degree felony murder to specified sexual felonies);

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OHIO REV. CODE ANN. § 2903.01(B) (requiring finding that defendant purposefully caused death); S.C. CODE ANN. §§ 16-3-10; 16-3-20(A) (requiring aggravating circumstances).