

**IN THE SUPREME COURT OF THE COMMONWEALTH OF
PENNSYLVANIA**

No. 3 WAP 2024

COMMONWEALTH OF PENNSYLVANIA,

v.

DEREK LEE,

Petitioner.

**BRIEF OF *AMICI CURIAE* AVIS LEE, GHANI SONGSTER, FELIX
ROSADO, RICKY LEE OLDS, PAULETTE CARRINGTON, AND
TERRELL “RELL” CARTER IN SUPPORT OF PETITIONER**

On Appeal from the Judgment of the Superior Court of Pennsylvania at No. 1008
WDA 2021 dated June 13, 2023, Affirming the Judgment of Sentence of the Court
of Common Pleas of Allegheny County at CP-02-CR-16878-2014, dated
December 19, 2016

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INTEREST OF THE AMICI CURIAE

Amici Curiae Avis Lee, Ghani Songster, Felix Rosado, Ricky Lee Olds, Paulette Carrington, and Terrell “Rell” Carter (along with many others) were previously incarcerated in the Commonwealth of Pennsylvania. The Commonwealth convicted each individual and subsequently sentenced them to life in prison without the possibility of parole (“LWOP”), also known as “death by incarceration.” However, *Amici* were later released after re-sentencings or commutations of their sentences in the wake of the U.S. Supreme Court’s rulings in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). As detailed below, since their release, *Amici* have dedicated a substantial portion of their lives to giving back to their respective communities by seeking to reduce crime and recidivism through restorative justice and other means.

The Court should find Petitioner Lee’s mandatory LWOP sentence to be a violation of the Eighth Amendment to the United States Constitution and of Article I § 13 of the Pennsylvania Constitution because the punishment is disproportionate to the crime. The *Amici* understand the Court considers policy factors when assessing questions of constitutional import. *See Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991). Accordingly, *Amici* respectfully submit their perspectives as individuals who were sentenced to LWOP as a result of their convictions and who

were given the atypical chance to rehabilitate and take accountability for their actions outside of prison walls. In sum, *Amici* observe that LWOP sentences are ineffective and, as they are applied in a manner grossly disproportionate to individual culpability, capacity for rehabilitation, and public safety demands, serve no legitimate penological purpose. As explained below, *Amici* demonstrate that genuine accountability and rehabilitation is most attainable outside of prison walls.

RULE 531(B)(2) CERTIFICATION

Pursuant to Rule 531(b)(2), *Amici* certify that no person or entity was paid in whole or in part to prepare this brief. Only *pro bono* counsel authored this brief.

DISCUSSION

I. Experience confirms that people who were sentenced to LWOP are capable of rehabilitation and are better able to demonstrate accountability for their crimes upon their release from prison.

Avis Lee, Ghani Songster, Felix Rosado, Ricky Lee Olds, Paulette Carrington, and Terrell “Rell” Carter were each formerly incarcerated serving LWOP sentences. Each of their stories demonstrate that LWOP is ineffective for achieving the penological purposes of rehabilitation and accountability.

A. Avis Lee

Ms. Avis Lee served over 40 years in prison for second degree homicide in an incident where Ms. Lee did not participate in the altercation that led to the victim’s death. Nor did Ms. Lee intend to cause the victim bodily harm. In 1979, when she was just 18 years old, Ms. Lee was in Pittsburgh with her older brother and a neighbor when those two decided to rob someone. They asked Ms. Lee to serve as a “lookout” and whistle if she saw the authorities. As they confronted the victim, Ms. Lee saw a physical altercation and heard gunfire. She then saw her brother and neighbor run away, leaving Ms. Lee in her “lookout” post as the victim laid bleeding on the sidewalk.

Instead of running from the scene, Ms. Lee quickly alerted a city bus driver that someone had been shot and asked him to call the paramedics. Even after the bus driver called 911, Ms. Lee remained on the bus to ensure that the victim received

appropriate treatment. She waited for the paramedics to arrive and repeated that she believed the victim had been shot so that the victim would be properly cared for.

Notwithstanding Ms. Lee's lack of physical participation in the altercation and her help in quickly getting the victim medical aid, Ms. Lee was convicted of second-degree homicide and sentenced to death by incarceration. Ms. Lee vividly recalls the moment the judge rendered the sentence. The judge had to repeat her sentence three times because Ms. Lee could not wrap her mind around what a death-by-incarceration sentence truly meant. Even once she arrived at prison, Ms. Lee continued to believe that there must have been some mistake and that someone—the court, her lawyer—would “fix” this grossly unjustified sentence.

As the years passed by in prison, Ms. Lee's status as a “lifer” continued to have disproportionate consequences. She was treated differently by the prison administration, guards, and fellow prisoners. As Ms. Lee put it, the prison authorities' attitude towards “lifera” was that they were “never leaving prison unless they left in a body bag.” In practice, this led to the denial of various opportunities that would have been available to Ms. Lee but for her life without parole sentence. For instance, Ms. Lee sought enrollment into the very programs that are designed to promote her rehabilitation (e.g., educational programs, anger management, stress management) but was often denied. Ms. Lee had to repeatedly “beg” for admission

to these programs, and sometimes years would pass before Ms. Lee was allowed to participate.

Despite these obstacles, Ms. Lee remained undeterred. A dedicated philomath, Ms. Lee pursued her education from within the prison walls, earning various degrees and certificates from Pennsylvania State University, Commonwealth University – Bloomsburg, and the Pennsylvania Business Institute. She also founded various advocacy groups while in prison such as *Let's Get Free – the Women and Trans Prisoner Defense Committee*, a cause that Ms. Lee continues to work on today. She worked in drug and alcohol treatment programs to help other women, and Ms. Lee even learned braille and transcribed books for individuals with visual impairments. Despite her death-by-incarceration sentence and disparate treatment in prison, Ms. Lee never lost hope that she would one day be released. When that day eventually arrived in 2021—more than 40 years after her conviction in 1979—Ms. Lee made sure she was prepared.

Since being released, Ms. Lee has reflected on her time in prison and her treatment by the criminal justice system, where the penological goals of rehabilitation and deterrence are supposed to guide public policy, and where even prison terms designed strictly to punish or incapacitate must do so in proportion to an individual's culpability, capacity for change, and the demands of public safety.

Not so in Ms. Lee's case. To this day, she remains disturbed by the injustice of a death-by-incarceration sentence and believes that it is manifestly unfair for anyone who hasn't committed homicide or intended to commit homicide to be doomed to spend the rest of their life in prison.

On the "outside," Ms. Lee has taken accountability for her peripheral participation in the crime by many orders of magnitude, has remained gainfully employed since her release, and attained homeownership. She is a fierce advocate for criminal justice reform, particularly ensuring that no one else in Pennsylvania is sentenced to death by incarceration for second-degree homicide. She continues to lead the *Let's Get Free* program that she started in prison and widely shares her story, writing to state and local politicians to make her case for changing Pennsylvania law. But, in Ms. Lee's view, her most impactful work is talking to at-risk youth in her community about her experience so that they don't repeat her mistakes.

According to Ms. Lee, the vast majority of "lifers" are ready to be released. However, they need hope and the opportunity to participate in the programs that are designed to rehabilitate them. With over 5,000 "lifers" still serving a death-by-incarceration sentence in Pennsylvania state prisons, one can't help but look at the impact Ms. Lee has had on her community since being released and wonder "what

if.” As Ms. Lee’s experience shows, an “out of mind, out of sight” approach to incarceration is untenable and Pennsylvanian communities are worse off for it.

B. Ghani Songster

Ghani Songster grew up in a Jamaican immigrant household in Brooklyn, New York. At the age of fifteen and just before finishing ninth grade, Mr. Songster ran away from home to Philadelphia with a friend of the same age. The two joined a gang of Caribbean immigrant youth selling drugs in a Philadelphia rowhouse—a difficult life for a teenager, rife with disputes over food shortages and income. In 1987, one such dispute led to a fight involving Mr. Songster, killing one of those involved. A week later, fifteen-year-old Mr. Songster was arrested on suspicion of homicide and tried as an adult.

As a juvenile, Mr. Songster could not comprehend the severity of the situation in which he found himself. He was offered a plea deal, but once in the holding cell with his friend, the two teenagers rejected it. “I couldn’t see that far ahead. Ten years seemed like forever. The term ‘life without the possibility of parole’—my brain couldn’t even compute what that meant when the lawyers were telling us, even when they were saying it meant the rest of our lives.” With the rest of his life ahead of him, the court convicted Mr. Songster and sentenced him to LWOP—a sentence tantamount to death by incarceration.

In the initial days of his incarceration, Mr. Songster still could not fathom the implications of his sentence. With each passing minute, it slowly began to dawn on him that what he knew to be normal about life—and about himself—had been forever altered. As days turned to weeks, months, and eventually years, Mr. Songster tried to make the best of his situation by working and contributing to prison society. However, his status as a “lifer” frustrated those efforts. He started working in the kitchen and doing small similar jobs, but the death-by-incarceration sentence did not allow Mr. Songster to engage in work that had any rehabilitative potential.

It’s prison policy that [“lifera”] can’t work in certain correctional institutions. For example, the barbershop. They don’t let you work there and learn how to cut hair, because you’re [a “lifer”]. What do you need the skill for? You won’t need it. Same with the forklift program and other things like that.

If one of the purposes of this Commonwealth’s justice system is to rehabilitate offenders, that policy certainly does not apply to those sentenced to death by incarceration. Without the opportunity to engage in productive work, their carceral experience is designed to be nothing more than a waste of time.

Despite these systemic obstacles, Mr. Songster persevered to achieve as much as he could by taking advantage of programs to which he had access. During his time in prison, Mr. Songster received his HVAC certification, enrolled in Villanova University’s bachelor’s program, and earned enough credits for an associate’s degree. Over time, Mr. Songster started programs aligning with his values in order

to foster cultural enhancement and awareness. He realized other young people were being incarcerated with poor senses of self-image as he had, so he wanted to create a program using history and culture as a means to strengthen personal identity for youth.

At one point, Mr. Songster noticed there were four father-son pairs on his cell block. All eight of them had LWOP sentences. Disturbed by this intergenerational incarceration, Mr. Songster cofounded the organization *Fathers and Children Together* to reconnect incarcerated individuals with their children on the outside—even though he was not a father himself. “I learned how much more likely children would be incarcerated because of [their fathers’ incarcerated status].”

Shortly before his release, Mr. Songster also founded the *Ubuntu Philadelphia* program. Inspired by the post-genocide courts of Rwanda and by the post-Apartheid reconciliation in South Africa, Mr. Songster wanted to provide people a forum through which they could ask forgiveness for what they had done, and to atone.

Nonetheless, Mr. Songster believes the condemnation to LWOP inhibited his positive contribution to society while incarcerated. “I always felt I would get an opportunity to make things better. But still I knew that I was condemned and there would be no opportunity, that it would have to be by some miracle that I got out.”

In 2012, after Mr. Songster had served twenty-five years of an endless sentence, the U.S. Supreme Court issued its opinion in *Miller v. Alabama*, allowing cases like Mr. Songster’s—where minors were sentenced to LWOP—to have their sentences reconsidered. Mr. Songster was now forty years old. Unfortunately, it would be another five years before his own case came up for reconsideration. When the court finally granted Mr. Songster a hearing to reconsider his sentence, Mr. Songster had the opportunity to demonstrate direct accountability to the victim’s family (except for the victim’s mother, who had since passed).

I came face-to-face with [the victim’s] father and sister. I was allowed to give an allocution. By the time I sat down I couldn’t stop apologizing . . . then his sister said ‘I believe you.’ She asked for my contact information and wanted to stay in touch. *Something restorative happened that day.*

Thirty years in prison did not lead to such justice. Rather, the opportunity for Mr. Songster to meet the victim’s family—coming face-to-face with those suffering from the consequences of his actions and having a chance to confront what he had done—led to restorative justice.

Buoyed by his opportunity to finally engage in restorative justice, Mr. Songster’s release provided him with an opportunity to take accountability for his crime and to rehabilitate himself by contributing to society. He obtained a position at the *Amistad Law Project* as a “Healing Justice Organizer” and developed seven seasons of a podcast for Amistad called *Moving Forward*. Eventually he transitioned

to the position of Program Manager for Philadelphia’s first restorative justice youth program, *Healing Futures*, where Mr. Songster received referrals from the District Attorney to help young people directly confront the harm they had done and how they had impacted people and the community. Most recently, Mr. Songster joined the *Campaign for Fair Sentencing of Youth* as a “Transformative Healing and Restorative Justice Manager.”

Mr. Songster’s trajectory proves that true accountability and rehabilitation do not come from inside prison walls—they require action and opportunity that can only occur on the outside.

Accountability can only rise from inside of the individual, from that individual’s own desire and agency. You can put someone in a prison cell, for the rest of their lives, sure. They can sit there and vegetate. But that’s not accountability because they don’t have to do anything. Accountability is exercising your own agency to bring balance back. When you account for what you have done, you have to live that.

Mr. Songster has been able to take accountability for the harm he caused only because he received the opportunity to do so outside of prison walls. He understands the irreversible nature and irreparable harm of his actions such that he wants to contribute to the world on a bigger scale, especially since he was never able to apologize to the victim’s mother for the pain he caused her. These opportunities came only after his release.

Additionally, Mr. Songster started the program *Right 2 Redemption* while in prison and continued working with the program post-release. Together with a fellow “lifer,” Terrell Carter (see section D below), and a professor at the Drexel University School of Law, Mr. Songster published a piece in the *Northwestern University Law Review* arguing that the right to redemption is a human right based on international law, a right that sentences like LWOP deny, since redemption cannot occur unless people receive the opportunity to redeem themselves. Indeed, once outside, Mr. Songster worked with a coalition of organizations that eventually presented in front of the United Nations. As a result, the United Nations Human Rights Council issued a statement recommending a moratorium on LWOP sentences in the United States.

There is global consensus for the very distinct human capacity for redemption—that is the impact we made. Based on what the UN is saying, the global community believes that. We want the Court to consider that, and to consider what the rest of the world is saying.

C. Felix Rosado

As a child, Mr. Rosado was known as the “smart kid” on the block. As a “straight A” student, everyone in his family thought he would be the first to attend college. But then everything changed. Mr. Rosado participated in an armed robbery that led to a victim’s death. At only eighteen years old, he was facing a mandatory death-by-incarceration sentence.

Like many other young people facing LWOP sentences, Mr. Rosado had little

understanding of what his life would look like the next month or year, much less what life in prison would entail. So, when the judge sentenced Mr. Rosado to LWOP, he still thought he was getting out in ten to twenty—that’s what he thought a life sentence meant. It was only when Mr. Rosado arrived at Graterford Prison at the age of nineteen that he realized he was sentenced to die on the “inside.”

The first ten years of Mr. Rosado’s sentence were dark. The implications of his sentence had finally sunk in and weighed him down to the point where he spent most of his time in his prison cell, losing the will to live. It was at this point that Mr. Rosado had an “awakening.” He thought to himself, “something needs to change, or else I’m going to die here.”

Mr. Rosado honed his focus. He was going to do something with his life, whether it was inside or outside of the prison walls. He acknowledged responsibility for his crime and committed himself to do everything in his power to right his wrongs. He began working at the Catholic chapel in the prison, which quickly led to an opportunity to work with youth serving time in a nearby juvenile detention facility. At that first session with the youth, as Mr. Rosado began sharing his story, his strong urge to help prevent others from returning to a life of crime was “undeniable.” He had “found his gift.” After this, Mr. Rosado’s life of service and purpose “skyrocketed”—he was on fire.

Mr. Rosado enrolled in a restorative justice course at Temple University through the “Inside-Out Prison Exchange Program.” This was another “revolutionary” moment for Mr. Rosado, leading him to co-found his own restorative justice program in prison called *Let’s Circle Up*, which, to this day, empowers individuals to practice restorative justice principles to account for past harms and prevent future harm. While in prison, Mr. Rosado also served as a program coordinator in the *Alternatives to Violence Project*, where he helped facilitate conflict resolution workshops for fellow inmates. Additionally, Mr. Rosado was involved in *Just Listening*, a program that helps participants strengthen their communication skills as a tool to promote personal, organizational, and social change.

Furthermore, Mr. Rosado regularly served as a hospice volunteer as part of the prison’s hospice caregiving team, steadfastly accompanying fellow inmates in the final moments of their death-by-incarceration sentences. He also earned his bachelor’s degree from Villanova University in 2016 while incarcerated, still never losing hope that he would one day be able to use his degree and new-found talents on the outside.

Despite all his contributions to prison life, Mr. Rosado still yearned for a life outside prison walls. He would regularly go to the prison law library, reading case

law “until his eyes burned and his head pounded,” searching for any glimmer of hope that would give him a chance to serve society outside of prison. Mr. Rosado knew that he could not demonstrate full accountability for his crimes while incarcerated; his dream was to give back to his community in Reading, Pennsylvania, where he had committed his crime as a youth. With Mr. Rosado’s determination and persistence, and after multiple appeals, hearings, and applications spanning decades, Mr. Rosado was one of the very few to be granted clemency. After spending nearly thirty years in prison, Mr. Rosado could finally fully contribute his gifts to the world.

Since his release, Mr. Rosado has dedicated himself to helping prevent youth from falling into a life of crime and zealously advocating for those currently serving death-by-incarceration sentences. Just one week after his release, Mr. Rosado became the program manager at *Healing Futures*, a position that was created specifically for him. To this day, Mr. Rosado supervises a team of facilitators that organize encounters between young offenders (pre-charge) and the people they hurt, help them create a plan of action to account for their missteps, and pave a path forward toward a more positive future. In his role, Mr. Rosado helps youth experience accountability, healing, and transformation all at once, all without spending time in prison. Once a youth completes this rehabilitative program, the Philadelphia District Attorney’s Office ensures that no charges are filed against

them.

A staunch advocate against death-by-incarceration sentences and for restorative justice approaches, Mr. Rosado has become the *de facto* authority on the topic in the city. He serves as an adjunct professor at Chestnut Hill College, teaching young people the immense benefits of restorative justice. Mr. Rosado has been asked to speak at virtually every college in and around Philadelphia and has offered his perspective at dozens of conferences. Now, he finds himself somewhere in the city speaking on the topic nearly once a week. Additionally, Mr. Rosado is heavily involved in the *Coalition to Abolish Death by Incarceration* (“CADBI”), where he fights for thousands of other inmates who are currently condemned to die in prison without getting a second chance at life.

The transformation Mr. Rosado experienced is nothing short of miraculous. But Mr. Rosado wouldn’t have been able to fully account for his crimes if he was still confined on the “inside.” In his own words:

Prison is the antithesis of accountability. You never once have to deal with the harm you committed. Prison prevents restorative justice, incentivizes deceit, and punishes truth-telling. If you’re completely isolated from the world, you can’t do anything to right the wrongs you did to your community.

Now, Mr. Rosado is able to share his gifts with the world and assist young people in creating a meaningful future for themselves. He is able to account for his crime and, by sharing his story, contribute fully to the same community that was

impacted by his actions as a youth.

D. And Many More

Ricky Lee Olds was just fourteen years old when he was condemned to die in prison for a shooting he maintains he did not commit. Still, despite entering prison as a child unable to comprehend the nature of his sentence, he believed that he would someday be free. Mr. Olds stayed positive and surrounded himself with likeminded people. While incarcerated, Mr. Olds also was able to obtain various certifications, despite having to jump through many hoops because many of these programs were closed to those serving LWOP.

After spending nearly forty years behind bars, Mr. Olds was finally released. Upon his release, Mr. Olds could have chosen to take things slow and keep to himself as an older man. But he felt that he still had something to give to the world. In his words, “life in prison was all about dying, but life [outside] is about living.” Mr. Olds attended college and subsequently earned his master’s degree in applied psychology. He also founded a nonprofit organization called *House of Life, Pittsburgh*, a reentry program that brings together law enforcement, legal professionals, and returning citizens with a focus on rehabilitation and restorative justice. Moreover, despite feeling betrayed by the criminal justice system responsible for incarcerating him for a crime he maintains he did not commit, he

works for the Pennsylvania courts today.

Paulette Carrington could not comprehend the severity of her sentence after she was convicted at the age of seventeen. Yet, notwithstanding the fact that she was condemned to die in prison, she never lost hope that she would one day be free. Over her four decades inside prison walls, Ms. Carrington continued to better herself and the environment around her, always staying “motivated to do the right thing.” She participated in various groups, including Prison Society, a group that connects former inmates with current ones, helping the latter to recognize their inherent human dignity and offering them meaningful support. Additionally, despite the stigma she faced and the opportunities she was denied because of her status as a “lifer,” Ms. Carrington was still motivated to earn her college degree. Although she had to overcome many obstacles in the process, she did.

After forty years of incarceration, Ms. Carrington was released. Today, she is a staunch advocate for those still serving time and is involved in a whole host of advocacy organizations, including *CADBI*, *Human Coalition*, *Let’s Get Free*, and the *Campaign for the Fair Sentencing of Youth*. She’s also still involved in *Prison Society*, except this time *she* is the one empowering incarcerated women to stay engaged and have faith that one day they will be able to share their talents with the world beyond the prison walls.

Ms. Carrington is confident that most women serving death-by-incarceration sentences would be as engaged in their communities as she is now, if they were given a second chance at life. In her own words:

They would be doing the same things that I'm doing; they *want* to do the same thing I'm doing—to help others when they come home. I know for sure that they are different people after serving time, they are not the same individuals who walked in the [prison] doors.

Terrell "Rell" Carter did not understand the ramifications of his sentence when he was sentenced to LWOP at the age of twenty-three. He had never considered himself to be bad person, and so he always wondered "how [he] ended up in a space where [he] was responsible for bringing such irreversible pain into the world." However, it was this moment of forced self-reflection that propelled him to consciously choose a path forward that included a better version of himself—not a version where he was "imprisoned [physically and metaphorically] with the worst expressions of who [he] was." This realization led Mr. Carter to pursue various educational opportunities, earning his bachelor's degree and pursuing his master's degree while a prisoner.

After serving thirty years behind bars, Mr. Carter's sentence was commuted, and he was released. Yet, Mr. Carter's urgent need to transform both inwardly and outwardly didn't stop at the prison doors; he knew there was still work left to do to account for his crime. In his own words:

There is a debt owed to the communities that we hail from. In order to redeem oneself to atone for past transgressions, it is imperative that that atonement be allowed to take place where the harm was committed, which will allow an opportunity for healing. This has been my life's mission since I was released, to put myself in a position to be able to give back to the community that I once had taken so much from.

With this mantra in mind, Mr. Carter has co-taught courses at Drexel University School of Law and worked in one of the law clinics. He is also part of the Anti-Drug Anti-Violence Network (PAAN). Mr. Carter regularly speaks to children on the verge of making bad choices, “in hopes of trying to deter them from making the mistakes that I made.” Additionally, Mr. Carter has co-authored several articles about rehabilitation, accountability, and restorative justice, which have been published in various law review journals across the country. One of these articles includes the aforementioned piece published in the *Northwestern University Law Review*, co-written with fellow former “lifer,” Ghani Songster, and a professor at the Drexel University School of Law. In this article, Mr. Carter argues that the right to redemption is a human right based on international law, a right that sentences like LWOP deny, since redemption cannot occur unless people receive the opportunity to redeem themselves.

CONCLUSION

This Court should overturn Pennsylvania's mandatory LWOP sentence for first-and second-degree murder. All six *Amici* persevered through their death-by-incarceration sentences and hoped that they would one day be able to contribute positively to the communities their actions impacted decades earlier. All these individuals were determined to rehabilitate and exercise accountability inside and outside of prison, and each hoped to share their stories to prevent others from falling into crime and recidivism. Through a mix of determination and luck, they succeeded. This Court should enable others serving LWOP sentences the opportunity to follow in their footsteps and contribute to society outside of prison.

Dated: April 26, 2024 _____ Respectfully submitted,

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CERTIFICATION OF WORD COUNT

I hereby certify that this brief contains 4,751 words, exclusive of cover, tables and appended certifications, as determined by the word-count feature of Microsoft Word, the word-processing program used to prepare this brief.

Dated: April 26, 2024

/s/ Kyle Bady
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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 127

I hereby certify, pursuant to Pa.R.A.P. 127, that this filing complies with provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: April 26, 2024

/s/ Kyle Bady
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of *Amicus Curiae* was served via email this 26th day of April 2024 upon the following parties of record:

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