

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

B.T.D.

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE ALABAMA COURT OF CRIMINAL APPEALS*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Seventeen-year-old B.T.D. was involved in a Sunday afternoon fight in a Walmart parking lot. Although B.T.D. had no prior juvenile delinquency adjudications, the State automatically transferred his case to adult court for prosecution by obtaining an indictment for Assault in the Second Degree, claiming that the victim sustained a “serious physical injury.” The trial court dismissed the case, holding that the automatic transfer provision under which B.T.D. was charged (§ 12-15-204(a)(4) Ala. Code 1975) violated substantive and procedural due process, and was unconstitutionally vague. The Alabama Court of Criminal Appeals reversed, holding that since the legislature created juvenile court jurisdiction, the legislature could extinguish it by adopting an automatic transfer statute.

The questions presented are:

- I. Does a child have due process rights to a judicial determination of whether his/her case should remain in juvenile court or should be transferred to adult criminal court?
- II. Is the language of § 12-15-204(a)(4) Ala. Code 1975: “a felony which has an element thereof the causing of ... serious physical injury” unconstitutionally vague?

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The opinion of the Alabama Court of Criminal Appeals in *State of Alabama v. B.T.D., B.T.D. v. State of Alabama*, Case No. CR-17-1171, 2019 WL 2262700 (Ala. Crim. App. May 24, 2019), has not yet been reported and is attached as Appendix A. The Order of the Alabama Supreme Court denying a petition for a writ of certiorari to review the judgment of the Alabama Court of Criminal Appeals, *Ex parte B.T.D.*, Case No. 1180807 (Ala. October 11, 2019), has not been reported and is attached as Appendix B.

The August 30, 2018 Order of the Circuit Court of Tuscaloosa County Alabama in CC-2017-3009 is unreported and is attached as Appendix C.

JURISDICTION

The Circuit Court of Tuscaloosa County Alabama entered an *Order of Dismissal and Order Declaring § 12-15-204(a)(4) Unconstitutional* on August 30, 2018. The State timely appealed and B.T.D. timely cross-appealed. The Alabama Court of Criminal Appeals reversed the circuit court's decision on May 24, 2019. *State of Alabama v. B.T.D., B.T.D. v. State of Alabama*, Case No. CR-17-1171, 2019 WL 2262700 (Ala. Crim. App. May 24, 2019). That court overruled a timely Application for Rehearing on June 28, 2019. The Alabama Supreme Court denied B.T.D.'s timely Petition for Writ of Certiorari on October 11, 2019. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, *inter alia*:

No person shall ... be deprived of life, liberty, or property, without due process of law;

The Fourteenth Amendment to the United States Constitution provides, *inter alia*:

... No State shall ... deprive any person of life, liberty, or property, without due process of law;

§ 12-15-114(a) Ala. Code 1975 provides, *inter alia*:

A juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged to have committed a delinquent act

§ 12-15-102(3), Ala. Code 1975 defines a “child” as follows:

An individual under the age of 18 years, or under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday.

§ 12-15-204(a)(4) Ala. Code 1975 provides for the automatic transfer of a child from juvenile court delinquency jurisdiction to adult criminal court jurisdiction, *inter alia*:

- (a) Notwithstanding any other provision of law, any person who has attained the age of 16 years at the time of the conduct charged and who is charged with the commission of any act or conduct, which if committed by an adult would constitute any of the

following, shall not be subject to the jurisdiction of juvenile court but shall be charged, arrested, and tried as an adult:

....

- (4) A felony which has as an element thereof the causing of death or serious physical injury.

STATEMENT OF THE CASE

Seventeen year old B.T.D. was involved in a fight in a Walmart parking lot on a Sunday afternoon in rural, west-central Alabama. During the altercation, the alleged victim sustained a broken leg. (C. 1232). In other words, this was an example of typical adolescent behavior – the “meat and potatoes” of an archetypal juvenile delinquency docket. B.T.D. has never been adjudicated delinquent in the juvenile justice system and has no current pending juvenile or other adult court proceedings. (C. 15).

The prosecution was initiated by a delinquency petition in Tuscaloosa County Juvenile Court issued at the behest of law enforcement on July 17, 2017. (C. 1232). On August 25, 2017, the State sought and obtained an adult criminal indictment charging B.T.D. with one count of Assault in the Second Degree, under § 13A-6-21, Ala. Code 1975 – a Class C felony, punishable by: a minimum of 1 year and 1 day up to a maximum sentence of 10 years; a fine of up to \$15,000; restitution; plus court costs and other financial assessments and fees.

On September 8, 2017, the state filed a Motion to Dismiss the juvenile delinquency petition. (C. 1233). The Juvenile Court Judge dismissed the

delinquency charge on September 19, 2017. (C. 1234). B.T.D. was detained in the Tuscaloosa County Juvenile Detention Facility from July 17, 2017 until September 8, 2017, when he was arrested on the “adult” indictment and was transferred to the Tuscaloosa County Jail. (C. 37).

B.T.D. filed a *Motion to Dismiss Indictment and Motion to Declare §12-15-204 Unconstitutional* on December 6, 2017. (C. 15-19). Circuit Judge James H. Roberts, Jr., set that matter for hearing on June 25, 2018. (C. 27. & R. 1-53). Judge Roberts entered an *Order of Dismissal and Order Declaring §12-15-204(a)(4) Unconstitutional* on August 30, 2018. (C. 1238-1253).

The State timely appealed to the Alabama Court of Criminal Appeals and B.T.D. cross-appealed. The Alabama Court of Criminal Appeals reversed the circuit court. B.T.D. timely sought certiorari review by the Alabama Supreme Court, which was declined.

REASONS FOR GRANTING THE PETITION

Introduction

This Court should grant the petition for writ of certiorari because the decision of the Alabama Court of Criminal Appeals is incompatible with established constitutional principles regarding the prosecution of youth in adult criminal courts.

B.T.D. was only seventeen years old at the time of the incident that gives rise to his adult court prosecution. Although Alabama law recognizes that B.T.D. was still a child, *see* § 12-15-102(3), Ala. Code 1975 (defining child as an individual

under the age of 18 years), it did not allow him to be treated as one in its justice system. *See* § 12-15-204(a)(4), Ala. Code 1975. Alabama's automatic treatment of B.T.D. as an adult in the criminal justice system unconstitutionally infringes upon his due process rights.

Alabama's juvenile justice system is grounded in the principles of providing "care, protection, and discipline" to children to ensure that they can become "responsible, productive member[s] of society." *See* § 12-15-101 Ala. Code 1975. § 12-15-204(a)(4) of the Alabama Code removes juvenile court jurisdiction for a subset of young people — youth ages 16 and 17 who are alleged to have committed certain offenses — creating an unconstitutional and vague exception to the juvenile justice system. This removal of juvenile jurisdiction relegates young people like B.T.D. to the harsh consequences of the adult criminal justice system without a hearing or any procedural protections to determine whether jurisdiction in the adult criminal court is appropriate. The trial court correctly recognized that the developmental differences between children and adults warrant additional procedures before young people are prosecuted in the adult court.

The Alabama Juvenile Justice Act of 2008 was adopted "to facilitate the care, protection, and discipline of children who come under the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security." §12-15-101(a), Ala. Code 1975. The touchstone of the Act is that it "shall be liberally construed to the end that each child coming under the jurisdiction of the juvenile court shall receive the care, guidance, and control,

preferably in his or her own home, necessary for the welfare of the child and the best interests of the state.” §12-15-101(d), Ala. Code 1975.

Two different statutes provide a mechanism for the transfer of a child from the delinquency jurisdiction of juvenile court to the criminal jurisdiction of an adult circuit court. § 12-15-203, Ala. Code 1975 prescribes the procedure for the discretionary transfer of a child from 14 years through 17 years of age after compliance with a thorough procedure that considers a myriad of factors, requires proof by clear and convincing evidence and a determination by a juvenile court judge after an adversarial hearing. On the other hand, § 12-15-204, Ala. Code 1975, provides a device for the automatic transfer of a 16 or 17 year old child at the whim of a prosecutor and/or the cop on the beat.

Appalled by the reality of children facing lengthy prison sentences and exposure to “hardened adult criminals,” early juvenile justice advocates were “profoundly convinced that society’s duty to the child could not be confined by the concept of justice alone.” *In re Gault*, 387 U.S. 1, 16 (1967). Accordingly, state legislatures created juvenile courts to function as “civil” not “criminal” judicial entities. *Id.* at 17. Based upon the fundamental purposes of juvenile court, it is the law’s policy “to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.” *Id.* at 24.

Fifty-three years ago, this Court held that that the transfer from juvenile court to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection under the due process clause of the 14th Amendment.

Kent v. United States, 383 U.S. 541, 546 (1966) (transfer is a “critically important” action determining vitally important statutory rights of the juvenile). The *Kent* decision directs that a series of factors must be considered by a juvenile court in the process of a discretionary transfer proceeding. The Alabama legislature enacted a discretionary transfer statute in 1982, attempting to comply with *Kent*. Indeed, Alabama appellate courts have endorsed the importance of *Kent*. *Ex parte W.T.K.*, 586 So.2d 850 (Ala. 1991); *O.M. v. State*, 595 So.2d 514 (Ala. Crim. App. 1991).

Unfortunately, in the 1990s, overreacting to the fear that American children were becoming “superpredators” who would sharply increase violent crime rates, state legislatures throughout the country, including Alabama’s, enacted “automatic transfer” statutes mandating that children be tried as adults in a myriad of instances. See Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestine, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Office of Juvenile Justice and Delinquency Prevention National Report Series Bulletin P. 1-27 (Sept. 11, 2011). Alabama’s original automatic transfer statute was adopted in 1994. The present version was adopted in 2008. § 12-15-204, Ala. Code 1975. The superpredator hype turned out to be “fake news,” however. The wave of superpredator children frankly never materialized. Indeed, the leading researcher who advanced the theory recanted his original predictions. Elizabeth Becker, *As Ex-Theorist on Young “Superpredators,” Bush Aide Has Regrets*, New York Times (Feb. 9, 2001).

This Court's youth-oriented jurisprudence of the past fifty plus years has culminated in a series of five decisions this century that can distilled down to two words: "youth matters."

I. THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE ALABAMA COURT OF CRIMINAL APPEALS' HOLDING THAT § 12-15-204(a)(4) IS CONSTITUTIONAL ON PROCEDURAL AND SUBSTANTIVE DUE PROCESS GROUNDS.

A. Protections of Youth in the Justice System.

This case involves a quintessential example of adolescent behavior – a Sunday afternoon fight in a Walmart parking lot, and highlights how Alabama's automatic transfer statute at Section 12-15-204(a)(4) unjustly punishes young people with adult consequences for youthful behavior without any procedural protections.

This Court should accept certiorari to explicitly advance the rights of children in the Alabama justice system as well as many other states, in line with this Court's juvenile justice jurisprudence. The Alabama Court of Criminal Appeals erroneously and too narrowly interpreted this Court's well-established caselaw prescribing the rights of young people in the court system.

The Alabama Court of Criminal Appeals held that because the legislature established juvenile court jurisdiction by statute, they can take away the jurisdiction without even the slightest notion of due process. (App. A. p. 20). The Alabama Court further reasons that there is a rational basis for the automatic transfer statute because prosecuting children as adults is related to the legitimate

governmental interests of retribution and deterrence of serious crimes. (p. 46, 49, 50, 53, 55). That conclusion ignores this Court's juvenile justice jurisprudence and its underpinnings in this century's neuroscientific child-developmental research. *Roper v. Simmons*, 543 U.S. 551, 578, (2005) (8th Amendment), *Graham v. Florida*, 560 U.S. 48, 82, (2010) (8th Amendment), *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (5th & 14th Amendments), *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (8th Amendment); and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) (8th Amendment). “[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state's duty towards children.” *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring) (a child-custody case).

A child's age is far "more than a chronological fact." *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); accord, *Gall v. United States*, 552 U.S. 38, 58, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007); *Roper v. Simmons*, 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Johnson v. Texas*, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). It is a fact that "generates commonsense conclusions about behavior and perception." *Alvarado*, 541 U.S., at 674, 124 S.Ct. 2140, 158 L.Ed.2d 938 (Breyer, J., dissenting). Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children "generally are less mature and responsible than adults," *Eddings*, 455 U.S., at 115-116, 102 S.Ct. 869, 71 L.Ed.2d 1; that they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979) (plurality opinion); that they "are more vulnerable or susceptible to . . . outside pressures" than adults, *Roper*, 543 U.S., at

569, 125 S.Ct. 1183, 161 L.Ed.2d 1; and so on. See *Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (finding no reason to "reconsider" these observations about the common "nature of juveniles"). Addressing the specific context of police interrogation, we have observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Haley v. Ohio*, 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948) (plurality opinion); see also *Gallegos v. Colorado*, 370 U.S. 49, 54, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962) [180 L.Ed.2d 324] ("[N]o matter how sophisticated," a juvenile subject of police interrogation "cannot be compared" to an adult subject). Describing no one child in particular, **these observations restate what "any parent knows" -- indeed, what any person knows -- about children generally.** *Roper*, 543 U.S., at 569, 125 S.Ct. 1183, 161 L.Ed.2d 1.

Our various statements to this effect are far from unique. **The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.** See, e.g., 1 W. Blackstone, *Commentaries on the Laws of England* *464-*465 (explaining that limits on children's legal capacity under the common law "secure them from hurting themselves by their own improvident acts"). Like this Court's own generalizations, the legal disqualifications placed on children as a class-- e.g., **limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent -- exhibit the settled understanding that the differentiating characteristics of youth are universal.**

J.D.B. v. North Carolina, 564 U.S. 261, 272-274 (2011) (emphasis added) (establishing special 5th and 14th Amendment standards for a child's custodial interrogation).

The myriad of special legal protections afforded children by this Court mandate a principle that states cannot automatically treat young people like adults in the criminal justice system and laws that do so are unconstitutional. The instant case affords the Court the opportunity to make explicit that the rights of children

under the 5th and 14th Amendments require that youth receive process before being subject to the adult criminal system.

Because there is no judicial recourse for Alabama children who are thrust into the adult criminal justice system at the whim of a law enforcement officer or prosecutor, Alabama's automatic transfer law is unconstitutional. The legislative scheme that sanctioned the unilateral removal of 17-year-old B.T.D. from the protections and rehabilitative atmosphere of the juvenile justice system without due process cannot stand in light of this Court's articulations of the rights of youth.

This Court should grant certiorari to hold that B.T.D.'s automatic transfer to the adult system via §12-15-204(a)(4) violates this Court's requirement that criminal procedure laws consider a "defendant's youthfulness" and that courts must make individualized considerations before subjecting children to the consequences of the adult system. *Graham v. Florida*, 560 U.S. 48, 76 (2010); *Miller v. Alabama*, 567 U.S. 460, 489 (2012).

Consideration of the distinct characteristics of youth, which has driven this Court's sentencing and interrogation decisions, is no less essential at the transfer stage. The decision to prosecute a child in the adult justice system is one of the most "critically important" steps that youth face in the justice system. *Kent v. United States*, 383 U.S. 541, 555 (1966). Legislatures cannot foreclose individualized considerations of youth and its attendant circumstances through automatic transfer statutes. *See, e.g. Miller*, 567 U.S. at 466 (importance of individualized sentencing decisions).

During the last fifteen years, at least nineteen (19) states have modified their transfer laws.¹ The statutory developments demonstrate that, of the states that

¹ In 2011, Arizona expanded a judge's ability to hold "reverse remand" hearings for youth under the age of 18 transferred to the adult justice system from specifically delineated sex offenses to a wide array of criminal offenses. S.B. 1191, 15th Leg., Reg. Sess. (Ariz. 2011).

Between 2015 and 2018, California passed three juvenile justice laws. One eliminates direct file and statutory exclusion entirely, while another allows judges the discretion to consider a broader range of factors, based on *Miller v. Alabama*, when granting a transfer waiver. The Public Safety and Rehabilitation Act of 2016 (Gen. Elec. (Nov. 8, 2016) Prop. 57) (Cal. 2016); S.B. 382 (Cal. 2016).

In 2012, Colorado narrowed direct file eligibility by age and offense; provided all youth facing trial in adult court the option to seek a "reverse transfer" hearing during which a judge decides in which system, juvenile or adult, the youth's case belongs; and eliminated mandatory minimum sentencing for youth convicted of crimes of violence. H.B. 12-1271, 68th Gen. Assemb., 2d Reg. Sess. (Colo. 2012). Youth ages 14 to 15 can now only be considered for adult court in hearings presided over by juvenile court judges. *Id.* Youth ages 16 to 17 that are direct filed as adults can request a reverse transfer hearing presided over by adult court judges to decide whether the case should be transferred to juvenile court. *Id.*

In 2015, Connecticut ensured that children charged with a class B felony are provided with a hearing on their amenability to treatment in the juvenile court prior to being transferred to the adult criminal docket; raised the age for transfer from 14 to 15 years of age; and raised the age of a "child" from 16 to 18 concerning certain protections afforded to an admission, confession, or statement by such child. H.B. 7050, Gen. Assemb., Reg. Sess. (Conn. 2015).

Delaware limited the number of youth automatically transferred to adult court for robbery charges in 2005. S.B. 200, 143rd Gen. Assemb., Reg. Sess. (Del. 2005). In 2018, Delaware also raised the minimum age that a youth is statutorily excluded from juvenile court for possession of a firearm during the commission of a felony from 15 to 16 and provided that 16 and 17-year-olds shall be tried as an adult for a firearm offense only following an evidentiary hearing. H.B. 306, 149th Gen. Assemb., Reg. Sess. (Del. 2018).

In 2015, Illinois raised the minimum age of automatic transfer from 15 to 16 years of age and limited transfer eligible offenses to only serious felonies. H.B. 3718, Gen. Assemb., Reg. Sess. (Ill. 2015).

Indiana passed laws between 2015 and 2018 that altered the transfer of juveniles to adult court. One provides that the adult court may waive a youth back to juvenile court in certain cases, S.B. 160, Gen. Assemb., Reg. Sess. (Ind. 2016), and another requires the annual publication of demographic data on youth statutorily excluded and transferred to the adult system, H.B. 1228, Gen. Assemb., Reg. Sess. (Ind. 2018).

Kansas substituted a law that allowed juveniles to be tried as adults for "good cause" with a law that creates a presumption that a juvenile is a juvenile that must be rebutted by a preponderance of the evidence. The law also removed presumptions that a juvenile is excluded from the juvenile court based on certain factors like age and severity of the crime and raised the overall age of transfer. S.B. 367, 2015-16 Leg. (Kan. 2016).

Maryland expanded its reverse waiver provisions, allowing more children an opportunity to return to the juvenile court system from the adult system, and created a governor-appointed Task Force on juvenile court jurisdiction to study practices that result in youth being charged as adults automatically. S.B. 0515, Gen. Assemb., Reg. Sess. (Md. 2014); H.B. 0786, Gen. Assemb., Reg. Sess. (Md. 2013).

Nebraska passed a law in 2014 that incrementally allowed children charged with misdemeanors and felonies to have their charges originate in the juvenile court. L.B. 464, 2014 Leg. (Neb. 2014). By 2015, all cases in which a youth 16 or under was accused of committing a misdemeanor originated in the juvenile court and by 2017, that age increased to children 17 and under. *Id.* The law provided that the juvenile court has original jurisdiction over all cases of children under 14 accused of a felony. *Id.* In 2017, another law gave children the ability to appeal a transfer order within 10 days of a juvenile court judge's decision. L.B. 464, 2017 Leg. (Neb. 2017).

Nevada raised the threshold age at which a child may be certified as an adult under presumptive certification from 14 years of age to 16 years of age in 2009. A.B. 237, 2009 Leg., 75th Sess. (Nev. 2009). In 2013, the state went even further by limiting transfer to youth 16 and older and charged with specified felonies. A.B. 202, 2013 Leg., 77th Sess. (Nev. 2013).

New Jersey increased the minimum age of adult prosecution from 14 to 15, limited transfer and incarceration to only the most serious and violent crimes and required prosecutors to submit a written analysis of the reasons why they believed transfer necessary, subject to judicial approval in 2015. S.B. 2003, 2015 Leg., 216 Sess. (N.J. 2015).

In 2011, Ohio required a juvenile court judge to hold a probable cause hearing for all "bind overs" – children eligible to be transferred to the adult court – and preventing a child from being bound over to the adult court if probable cause is not found. Moreover, the law required that some children that are automatically bound over to the adult system are returned to the juvenile system for an assessment of their amenability to treatment in the juvenile system prior to sentencing in their adult court case. H.B. 86, 129th Gen. Assemb., Reg. Sess. (Ohio 2011).

In 2018, Rhode Island ended mandatory transfer of 17-year-olds charged with murder, first degree sexual assault and other violent crimes. H.B. 7503, 2018 Gen. Assemb., Reg. Sess. (2018 R.I.).

In 2018, Tennessee passed a law that limits transfer of children under 14 to the adult system to only cases involving criminal homicide or attempted homicide. The law also limits transfer eligible offenses for children 14 and older, to a limited number of specified, serious, offenses. H.B. 2271, 110th Gen. Assemb., Reg. Sess. (Tenn. 2018).

Texas passed S.B. 888 in 2015, a law that gives a juvenile the ability to appeal a juvenile court's waiver decision before trial. S.B. 888, 89th Leg., Reg. Sess. (Tex. 2015).

In 2010, Utah passed laws that allow an adult court judge with jurisdiction over a child to transfer the matter to the juvenile court "if the justice court judge determines and the juvenile court concurs that the best interests of the child would be served by the continuing jurisdiction of the juvenile court." H.B. 14, 2010 Leg., Gen. Sess. (Utah 2010). In 2015, Utah passed another law limiting the jurisdiction of the district court to youth who have committed one of a limited number of violent felonies. S.B. 167, 2015 Leg., Gen. Sess. (Utah 2015).

In 2016, Vermont eliminated prosecutorial discretion to file certain juvenile charges in the adult system. H.B. 95, Gen. Assemb., Reg. Sess. (Vt. 2016).

In 2011, Washington passed a law requiring a hearing before a child could be prosecuted in adult court. The law also permits a juvenile, the prosecutor, or the judge to request or set a hearing, at any time prior to sentencing, to determine whether adult court jurisdiction is in the best interest of the juvenile or the public when a juvenile's case is filed or transferred to adult court. H.B. 1289, 61st Leg., 2d Spec. Sess. (Wash. 2011). The state also eliminated the "once an adult, always an adult" rule when a child is found not guilty in the adult system. S.B. 5746, 61st Leg., Reg. Sess. (Wash. 2009).

allowed children to be charged as adults in any manner, almost half eliminated entirely or limited the scope of such laws. While this legislative trend does not directly address the constitutionality of automatic transfer laws, it confirms a national trend to return discretion to juvenile court judges to decide which children are amenable to treatment and rehabilitation in the juvenile system, rather than punishment in the adult criminal justice system.

This Court has articulated broad protections for youth in the justice system which require courts to consider the attendant characteristics of youth before treating children like adults. Transfer from juvenile to adult court is a “critically important” step. *Kent*, 383 U.S. at 555 (1966). The Alabama Court of Criminal Appeals erred in holding that transfer decisions do not require procedural protections. It is vital that this Court grant certiorari to correct their erroneous holding and find §12-15-204(a)(4) unconstitutional.

B. § 12-15-204(a)(4) of the Alabama Code Violates the Due Process Protections Guaranteed by the United States Constitution by Automatically Treating Children as Adults in the Criminal Justice System.

§ 12-15-204(a)(4) unjustly curtails B.T.D.’s constitutional right to due process protections before prosecution in adult court. The trial court correctly reasoned that a series of juvenile sentencing and interrogation cases decided by the United States Supreme Court protect B.T.D. from automatically being treated like an adult in the justice system. Children are developmentally and neurologically less mature than adults, and therefore require the developmentally appropriate structure of the

juvenile justice system. Due process requires a set of protections prior to the removal of a private interest—in this case B.T.D.’s interest in prosecution and disposition in the juvenile court system. *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976). Taken together, this Court’s rulings setting forth a standard for juvenile jurisprudence and due process uphold the principle that states may only exercise adult criminal court jurisdiction over young people when appropriate procedural protections are in place. Alabama’s law permitting the mandatory and automatic removal of juvenile court jurisdiction unconstitutionally impedes B.T.D.’s, and all children’s rights under the due process clause because it provides no procedures or consideration of relevant factors before jurisdiction is conferred upon the adult criminal court.

Under *Mathews*, to determine whether the procedural protections in place are sufficient, a court must review (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 US. at 335.

(1) Children Have A Significant Interest In Remaining In The Juvenile Justice System.

B.T.D. has an interest in both the rehabilitative resources of the juvenile justice system and protection from the harsh consequences associated with adult criminal court prosecution. Removal of juvenile court jurisdiction results in B.T.D.

suffering the “grievous loss” of both these interests, which triggers due process protections. *See Goldberg v. Kelly*, 397 U.S. 254, 263 (1970).

Children are Developmentally Different from Adults.

Young people like B.T.D. have a significant interest in remaining in the juvenile justice system because their unique developmental needs are better served in the rehabilitative atmosphere of juvenile courts and facilities.

B.T.D. is seventeen years old. His “youth is more than a chronological fact;” it is a “time and condition of life” marked by particular behaviors, perceptions, and vulnerabilities. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). The trial court expressly relied upon this Court’s cases that held that youth are developmentally different from adults. (C. 1241-43.) Because of these differences, the law must be calibrated to adjust for youth status. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 578 (2005) (imposing the death penalty on individuals convicted as juveniles violates the Eighth Amendment’s prohibition against cruel and unusual punishment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (imposing life without parole sentences on juveniles convicted of non-homicide offenses is unconstitutional); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011) (a child’s age must be taken into account for the purposes of the *Miranda* custody test); and *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (a mandatory life without parole sentence for a juvenile convicted of homicide is unconstitutional).

This Court has articulated three developmental distinctions between youth and adults. First, “children have a ‘lack of maturity and an underdeveloped sense of

responsibility,” which makes them more reckless, impulsive, and likely to engage in heedless risk-taking. *See Montgomery v. Louisiana*, 577 U.S. __, 136 S. Ct. 718, 733 (2016) (quoting *Miller*, 567 U.S. at 471). Second, youth are more susceptible to pressure from their peers, families, and other external influences; they have “limited ‘contro[ll] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller*, 567 U.S. at 471, (alteration in original) (quoting *Roper*, 543 U.S. at 569). Finally, young people have a greater capacity for reform and rehabilitation than their adult counterparts because their character and traits are not as “well formed,” are “less fixed” and less likely to be “evidence of irretrievabl[e] deprav[ity].” *Id.* (quoting *Roper*, 543 U.S. at 570).

The adult criminal justice system is not designed or suited to serve these unique developmental characteristics or needs of youth. By removing young people from the juvenile justice system, § 12-14-204(a) trounces their interest in remaining in a developmentally appropriate justice system.

The Juvenile Justice System Provides Necessary Protections for Young People.

The Alabama juvenile justice system is better equipped to handle the unique needs of youth than its adult criminal justice system. The express goals of the Alabama juvenile court system include treatment, rehabilitation, and helping youth become more “responsible, productive member[s] of society.” *See* §12-15-101(b)(4), Ala. Code 1975. In its adjudicative function, the juvenile courts are to consider the “age, education, mental and physical condition, and background of the child” in

holding children accountable for their actions, implicating youth's developmental maturity and susceptibility to peer pressure. §12-15-101(b)(7), Ala. Code 1975.

Even more importantly, maintaining jurisdiction in the juvenile court system protects young people from the harsh realities of adult prosecution. When young people are prosecuted in the adult court system, numerous negative consequences attach. Not only are young people subject to longer sentences in adult court, adult criminal records can only be expunged in very limited circumstances *See* § 15-27-2, Ala. Code 1975. Trying youth in the adult system also increases the risk of reoffending, thus jeopardizing public safety. Youth transferred to the adult system "reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system." Jason J. Washburn *et al.*, *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERVICES 965, 972 (2008). This increase in recidivism may result from a lack of age-appropriate treatment, programming and education in adult facilities, as adult corrections personnel do not have specialized training to meet the educational and mental health needs of young people, and adult facilities fail to address their rehabilitative potential. CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 7 (2007). Youth incarcerated in adult jails and prisons are also extraordinarily vulnerable to victimization. *See* Marty Beyer, *Experts for Juveniles at Risk of Adult Sentences in MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND*

SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE 18-20 (P. Puritz, A. Capozello & W. Shang eds., 2002). One study showed that youth in adult facilities were five times more likely to be sexually assaulted while incarcerated and two times more likely to be assaulted with a weapon than were youth in the juvenile justice system. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, JUVENILE JUSTICE BULLETIN, June 2010, at 7.

Adult prosecution places B.T.D. at risk of physical harm, a harsh adult sentence, and a punitive records law that will likely limit his educational and employment opportunities. Considering these numerous negative consequences, B.T.D. has a significant interest in remaining in the rehabilitative and protective atmosphere of the juvenile justice system.

(2) In the Absence of Procedural Protections, § 12-15-204(a)(4) Creates a Substantial Risk of the Erroneous Deprivation of a Youth's Interest in Remaining in the Juvenile Justice System.

B.T.D. did not receive a single procedural protection or consideration before he lost the protections of the juvenile court. § 12-15-204(a)(4) prevented a juvenile court from considering his background, maturity, rehabilitation potential, or the circumstances around his alleged actions. B.T.D. was prosecuted in the adult justice system solely because of his age and alleged offense.

This total lack of process is clearly problematic under the second prong of the *Mathews* test which requires that courts review the “fairness and reliability” of the existing procedures in place to determine whether additional safeguards are

necessary. *Mathews*, 424 U.S. at 343. In B.T.D.’s case, it is readily apparent that not only are existing procedures not fair and not reliable, they are nonexistent.

An essential procedure required before deprivation of a significant interest is “notice and opportunity for hearing appropriate to the nature of the case.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). *See also Alabama Republican Party v. McGinley*, 893 So. 2d 337, 344 (Ala. 2004) (explaining that “[t]he hallmarks of procedural due process are notice and ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” (quoting *Mathews*, 424 U.S. at 333)).

This Court’s more recent juvenile jurisprudence reinforces that young people cannot automatically be treated like adults in the justice system. In *J.D.B. v. North Carolina*, this Court relied on developmental research regarding the immaturity and vulnerability of children to hold that a child’s age must be considered in determining whether they were in custody for purposes of the administration of *Miranda* warnings. 564 U.S. at 272-74. In reviewing the adequacy of *Miranda* warnings, courts must give special consideration to the differences between adults and children. In regard to sentencing, in *Miller*, the Court specifically noted six characteristics that should be considered in light of the differences between children and adults: (1) the youth’s chronological age related to “immaturity, impetuosity, and failure to appreciate risks and consequences;” (2) the juvenile’s “family and home environment that surrounds him;” (3) the circumstances of the

offense, including extent of participation in the criminal conduct; (4) the impact of familial and peer pressures; (5) the effect of the offender's youth on his ability to navigate the criminal justice process; and (6) the possibility of rehabilitation. 567 U.S. at 477-78. None of these factors — indeed, no factors at all — were considered to determine whether B.T.D.'s background or circumstances justified treating him like an adult.

In *Kent*, this Court set forth factors to consider before the “critically important” step of transferring a juvenile to the criminal court, including: (1) the seriousness of the offense and whether the protection of the community requires waiver; (2) “[w]hether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;” (3) whether the offense was against persons or property; (4) “[t]he prosecutive merit of the complaint;” (5) the desirability of trial and disposition in one court if there are adult associates of the crime; (6) “[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;” (7) “[t]he record and previous history of the juvenile;” and (8) “[t]he prospects for adequate protection of the public and the likelihood of reasonable rehabilitation.” *Kent v. United States*, 383 U.S. 541, 565-67, app. (1966). § 12-15-204(a)(4) prevents the court from considering the *Miller* and *Kent* factors to the detriment of young people like B.T.D.

Throughout its due process and juvenile justice jurisprudence, this Court has repeatedly emphasized the necessity of procedural protections for young people,

especially those protections that precede considerations of their maturity and rehabilitative capacity. These procedures allow the courts to ensure young people are only transferred to the adult justice system if they cannot be served by the juvenile justice system. By denying young people any procedural protections under § 12-15-204(a)(4), the risk of erroneously removing a child to the adult justice system is manifest.

(3) No Government Interests are Unduly Burdened in Providing a Hearing Before Removing Juvenile Jurisdiction.

Finally, *Mathews* requires the court to consider what government and public interests are implicated by the additional procedures, including the burdens and costs associated with more hearings. 424 U.S. at 347. Providing individualized hearings prior to removal of juvenile jurisdiction not only improves public safety by reducing recidivism, but also imposes minimal burden on the state.

Alabama law already provides for hearings in some cases where juvenile jurisdiction is removed. § 12-15-203, Ala. Code 1975. Pursuant to § 12-15-203, a prosecutor can seek to remove juvenile jurisdiction for children over 14 years of age, but before the transfer, the juvenile court must conduct a hearing and consider the maturity of the child, their delinquency history, their demeanor, and the interests of the community. *Id.* Providing similar hearings to all youth subject to adult court jurisdiction imposes a limited additional burden on the state. Universal transfer hearings ensure that before children are subject to the lingering or life-long consequences of the adult justice system, there has been sufficient consideration of

whether adult prosecution is necessary and advances the interests of the child and the community.

B.T.D. has a significant interest in remaining in the Alabama juvenile justice system which more readily serves the unique developmental needs of children like himself. Because § 12-15-204(a)(4) allows Alabama to take away this interest from young people without any procedural protections, it is unconstitutional under the due process clause.

II. THIS COURT SHOULD ACCEPT REVIEW AND HOLD § 12-15-204(a)(4) UNCONSTITUTIONALLY VAGUE .

The Juvenile Justice Act's purpose is to "facilitate the care, protection and discipline of children" and provide "the necessary treatment, care, guidance, and discipline to assist him or her in becoming a responsible, productive member of society." Ala. Code. §§ 12-15-101(a) & 12-15-101(b)(4) (1975). The legislative purpose permeates the *Alabama Juvenile Justice Act*, with one exception -- § 12-15-204, which requires automatic removal of juvenile jurisdiction. Specifically, § 12-15-204(a)(4) conflicts with the goals and purpose of the *Act*. Other states' statutes have similar provisions. This Court should accept certiorari to resolve this conflict, by holding that § 12-15-204(a)(4) is unconstitutionally vague.

It is well established that the government violates its guarantees of due process by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. *Kolender v. Lawson*, 461 U.S.

352, 357-58 (1983). These constitutional principles of fair play apply not only to statutes defining elements of crimes, but also to sentencing statutes. *Johnson v. United States*, 135 S.Ct. 2551, 2557 (2015); *United States v. Batchelder* 442 U.S. 114, 123 (1979).

The language of § 12-15-204(a)(4) invites arbitrary decisions by the cop on the beat and overly zealous prosecutors. This arises from the language any “felony which has as an element thereof the causing of . . . serious physical injury”.

“Serious physical injury” is defined in §13A-1-2(14), Ala. Code 1975 as a physical injury which “creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.” Alabama courts have struggled to establish clear parameters for prosecution under this provision. The definition provides little guidance and results in a quagmire subject to the whim of the district attorney’s office. The statute has been construed to **not** include:

1. Fractured sinus and facial wounds requiring plastic surgery. *Wilson v. State*, 695 So. 2d 195, 196-97 (Ala. Crim. App. 1996).
2. A gunshot wound to the chest. *Cowan v. State*, 540 So. 2d 99, 100-01 (Ala. Crim. App. 1988).
3. A gunshot wound to the arm. *Vo v. State*, 612 So. 2d 1323, 1325-26 (Ala. Crim. App. 1992).
4. A gunshot wound to the shoulder. *M.T.R. v. State*, 620 So. 2d 753 (Ala. Crim. App. 1993).
5. A gunshot wound to the abdomen. *Westbrook v. State*, 722 So. 2d 788, 790 (Ala. Crim. App. 1998).

6. A gunshot wound to the leg. *Lee v. State*, 727 So. 2d 887, 888 (Ala. Crim. App. 1998).
7. Separate gunshot wounds to the hand and the arm. *Davis v. State*, 467 So. 2d 265, 266 (Ala. Crim. App. 1985).

In B.T.D.'s case, the allegations involve a Sunday afternoon fight in the parking lot of the Northport Walmart during which the alleged victim sustained a broken leg. Considering Alabama appellate court precedent that injuries involving facial wounds requiring reconstructive surgery and gunshot wounds are not serious bodily injuries, it is nonsensical that a broken leg would meet the definition.

This Court recently struck down the government's imposition of an increased sentence based upon a vague statute. *See Johnson v. United States, supra* (statutory sentence enhancement provision for a defendant with three prior convictions for a "violent felony that otherwise involves conduct that presents a serious potential risk of physical injury" was unconstitutionally vague). *See also United States v. Davis*, 588 U.S. ___, 139 S.Ct. 2319 (June 24, 2019) (statute requiring longer sentences for "crime of violence" with a firearm is unconstitutionally vague); *Sessions v. Dimaya*, 584 U.S. ___, 138 S.Ct. 1204 (2018) (statute requiring deportation for an "aggravated felony" that includes a "crime of violence" is void for vagueness). Certainly, subjecting a child to the enhanced consequences of adult criminal prosecution is equivalent to a sentence enhancement.

The Alabama Court of Criminal Appeals' opinion affords law enforcement and prosecutors with unfettered discretion in the automatic transfer of 16- and 17-

year-old children to adult court under §12-15-204(a)(4) for a crime against a person resulting in *any* sort of physical injury by simply alleging that it is serious, without impartial judicial review. In other words, the “seriousness” of the injury is in the eye of the beholding prosecutor or arresting officer. That is patently arbitrary.

With the enactment of vague language in §12-15-204(a)(4), the Alabama legislature has abrogated its policy-making responsibility to prosecutors and police. A vague law impermissibly delegates basic policy matters to law enforcement officers and prosecutors for resolution on an *ad hoc* and unconstitutionally subjective basis. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). *See also Sessions v. Dimaya*, *supra* (J. Gorsuch, concurring) (“Under the Constitution, the adoption of new laws restricting liberty is supposed to be a hard business, the product of an open and public debate among a large and diverse number of elected representatives.”). It also the rule of lenity’s teaching that ambiguities about a criminal statute’s breadth should be resolved in a defendant’s favor. *United States v. Davis*, *supra*.

Prosecutors and police do not act in the open and accountable forum of a legislature. A critical aspect of the vagueness doctrine is the requirement that a legislature establish guidelines to govern law enforcement and “keep the separate branches within their proper spheres.” *Sessions v. Dimaya*, *supra* (J. Gorsuch, concurring), citing *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) and *Smith v. Goguen*, 415 U.S. 566, 575 (1974).

In *Johnson*, the court reviewed a section of the Armed Career Criminal Act of 1984, where a defendant with a felony conviction for felon in possession of a firearm faces more severe punishment if he has three or more prior convictions for a “violent felony,” a term defined to include any felony that “involves conduct that presents a serious potential risk of physical injury to another.” *Johnson*, 567 U.S. at __, 135 S.Ct. at 2555 quoting 18 U.S.C. § 924(e)(2)(B). This Court reasoned that the definition was unconstitutionally vague because it leaves uncertainty about how to estimate the risk posed by a crime, without tying the judicial assessment of risk to real world facts or statutory elements. *Id.* at 2557. This language is markedly similar to language in §12-15-204(a)(4) of a felony with an element of “causing serious physical injury.”

Vague laws such as §12-15-204(a)(4) leave judges, prosecutors, defense lawyers, law enforcement, and others to attempt to construe and apply the statute. How they do that was aptly questioned by Justice Scalia: “[a] statistical analysis of the state reporter? A survey? Expert evidence? Google? Gut instinct?” *Johnson*, 576 U.S. at __, 135 S. Ct. at 2557 citing *United States v. Mayer*, 560 F.3d 948, 952 (9th Cir. 2009) (Kozinski, C.J., dissenting from denial of rehearing en banc).

The effect of the vague language of §12-15-204(a)(4) is that a child may be unilaterally charged as an adult without judicial review – without any sort of “check and balance.” The State’s decision to charge B.T.D. with an automatically transferred felony implicates constitutional rights not present in the average charging decision of an adult. The consequences of over-charging an adult are

readily buffered by a trial resulting in an acquittal or conviction of a lesser-included offense. Conversely, there is no such judicial review for a child automatically transferred under §12-15-204(a)(4). Meaningful judicial review as a “check and balance” is markedly absent in §12-15-204(a)(4).

The trial court correctly analyzed the inherent problems with the language of §12-15-204(a)(4) in light of the vagueness doctrine. The trial court held, *inter alia*, that §12-15-204(a)(4) was unconstitutionally void for vagueness as a whole, and not merely as applied to B.T.D. (Appendix C). The wisdom of the trial court is due to be reinstated.

III. This Case is the Ideal Vehicle to Address these Far-Reaching Questions of Substantial Importance to Children in Most States.

The majority of states have transfer laws that result in youth being prosecuted as adults based upon the unfettered discretion of prosecutors or the whim of arresting officers, without recourse or any vestige of due process.² The allegations against B.T.D. provide the Court with a useful example of adolescent behavior, demonstrating the transient immaturity of youth.

² See Ala. Code 1975 § 12-15-204; Alaska Stat. § 47.12.030; Conn. Gen. Stat. § 46b-127; D.C. Stat. § 16-2301; Fla. Stat. §985.557; Idaho Code § 20-509; 705 ILCS 405/5-130; Ind. Code § 31-30-4; KY Rev. Stat. Tit. LI § 635.020; La. Children’s Code, Tit. III, Ch. 4, Art. 305; Mass Gen. Laws, Ch 119 §§ 54, 74; Mich. CL §§ 712A.2, 600.606; Minn. Stat. §§ 260B.007, 260B.101 & 260B.125; Nev. Rev. Stat. §§ 62B.330, 62B.390; N.H. Rev. Stat. Tit. XII §§ 169-B:2, 169-B:24(IV); N.J.S. § 2A:4A-26; N.M. Stat. 1978 §§ 32A-1-8, 32A-2-3; N.Y. Crim. Proc. L. §§ 720.10, 722.23(2); N.C. Gen. Stat. § 7B-1604; Ohio Rev. Code Titl. XXI, §§ 2152.10, 2152.12; R.I. Gen. Laws §14-1-7.2(c); S.C. Code Ann. §§ 63-19-20, 63-19-1210; S.D. Cod. Laws § 26-11-3.1; Utah Code § 78A-6-701, 702; Vt. Stat. Ann, Tit. 33, §§ 5203, 5204; Va. Code § 16.1-269.1; Wash. Rev. Code §§ 13.04.020, 13.40.030; W. Va. Code § 49-4-710(d); Wisc. Stat. §§ 938.12, 938.183; Wyo. Stat. § 14-6-203.

Thus, this case affords an ideal vehicle to address the issue. First, the constitutional questions are squarely presented. B.T.D. successfully raised his Fifth and Fourteenth Amendment issues in the trial court. Every court below definitely ruled on the questions. Second, the questions presented are outcome-determinative of B.T.D.'s case: a holding in B.T.D.'s favor will result in the trial court's dismissal of the charge becoming final. Third, this case involves quintessential adolescent behavior – a fight in a Walmart parking lot on a Sunday afternoon. Fourth, a holding for B.T.D. would firmly establish that states cannot automatically transfer youth from juvenile court jurisdiction to the adult criminal justice system without first affording a due process consideration of the various factors related to the transient immaturity of youth. Finally, a finding that the vagueness of § 12-15-204(a)(4), Ala. Code 1975 improperly delegates the transfer decision to the whim of law enforcement officers and prosecutors and thus obfuscates a youth's due process rights will serve to educate judges, lawyers, law enforcement, and state legislators.

CONCLUSION

For the foregoing reasons, Petitioner prays that this Court grant a writ of certiorari to review the decision of the Alabama Court of Criminal Appeals.

Respectfully submitted on this the 3rd day of January, 2020.

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