

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

GERQUAN BELTON, *PETITIONER*

v.

STATE OF OHIO, *RESPONDENT*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Ohio's mandatory transfer statute, which requires that certain children be prosecuted as adults and prohibits an individualized determination, violates the Due Process and Equal Protection Clauses of the U.S. Constitution.

**PARTIES TO THE PROCEEDING AND
CORPORATE DISCLOSURE STATEMENT**

There are no parties to the proceeding other than those listed in the caption.

Under SUP. CT. R. 29.6, Petitioner states that no parties are corporations.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerquan Belton asks this Court to issue a Writ of Certiorari to review the judgment of the Supreme Court of Ohio, entered on September 27, 2017, applying the decision in *State v. Aalim*, 83 N.E.3d 883 (Ohio 2017)¹ (holding that Ohio's mandatory transfer statute is constitutional) to the First District, Hamilton County, Court of Appeals's decision, affirming Gerquan's transfer to criminal court for prosecution as an adult.

OPINIONS BELOW

On July 13, 2016, the First District, Hamilton County, Court of Appeals affirmed Gerquan Belton's mandatory transfer from juvenile to criminal court for prosecution as an adult, and his subsequent conviction. The court of appeals held that Ohio's mandatory transfer statute does not violate constitutional due process or equal protection rights. That opinion is available at *State v. Belton*, 2016 Ohio App. LEXIS 2903 (Ohio Ct. App. July 13, 2016).

On September 27, 2017, after applying its decision in *Aalim*, the Supreme Court of Ohio affirmed the court of appeals's decision. That opinion is available at *State v. Belton*, Slip Opinion No. 2017-Ohio-7827 (Ohio 2017).

¹ On December 22, 2016, the Supreme Court of Ohio determined that Ohio's mandatory transfer law was unconstitutional. See *State v. Aalim I*, 83 N.E.3d 862 (Ohio 2016). On January 1, 2017, two justices retired (including the author of *Aalim I*) and were replaced by two new justices. On January 3, 2017, the State of Ohio asked the Supreme Court to reconsider its decision. On May 25, 2017, the Supreme Court granted reconsideration, vacated its December 22, 2016 decision, and issued its new decision holding that the mandatory transfer law was constitutional.

JURISDICTIONAL STATEMENT

On September 27, 2017, the Supreme Court of Ohio affirmed the constitutionality of Gerquan Belton's mandatory transfer from juvenile to criminal court for prosecution as an adult. Gerquan now timely files this petition within 90 days of that decision. This Court's jurisdiction is invoked under 28 U.S.C. § 2101(c).

CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the U.S. Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

STATEMENT OF THE CASE

When he was 16 years old, a complaint was filed in the Hamilton County Juvenile Court alleging that Gerquan Belton was a delinquent child for committing aggravated murder and aggravated robbery, enhanced with firearm specifications. *Belton*, 2016 Ohio App. LEXIS 2903, at *1. Upon the State's request, and after finding probable cause to believe that Gerquan had committed the offenses, the juvenile court transferred Gerquan's case to the Hamilton County Court of Common Pleas, Criminal Division for prosecution as an adult pursuant to Ohio's mandatory transfer statutes. *Id.* at *1-2.

After transfer, grand jury indictment, and trial, Gerquan was convicted of aggravated murder and two counts of aggravated robbery, enhanced with firearm

specifications. *Id.* The criminal court sentenced Gerquan to life in prison with parole eligibility.

On appeal, Gerquan assigned error to the juvenile court's transfer proceedings, among others. *Id.* at *1-8. Specifically, Gerquan argued that the juvenile court's probable cause determination was error and that the mandatory transfer statute violated his constitutional rights to due process and equal protection of the law. *Id.* at *1-2. The court of appeals determined that the State "presented sufficient evidence" to meet the "mere suspicion of guilt" standard necessary for finding probable cause. *Id.* The court of appeals also considered Gerquan's constitutional claims, overruled them, and affirmed the trial court's decisions. *Id.*

On September 27, 2017, after applying its decision in *Aalim*, the Supreme Court of Ohio affirmed the court of appeals's decision. *Belton*, Slip Opinion No. 2017-Ohio-7827. This timely Petition for a Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

"A child's age is far 'more than a chronological fact.'" *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011), quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S.Ct. 869, 71 L.Ed. 2d 1 (1982). Rather, "[i]t is a fact that 'generates commonsense conclusions about behavior and perception.'" *J.D.B.* at 272, quoting *Yarborough v. Alvarado*, 541 U.S. 652, 674, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004). Accordingly, in the last decade, this Court has examined the impact of adolescence on a child's culpability and found that a juvenile's "twice diminished moral culpability" must inform a court's analysis when imposing a

punishment for which adults are also eligible. *Graham v. Florida*, 560 U.S. 48, 50, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 572, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). This is because “juvenile offenders cannot with reliability be classified among the worst offenders” and their offenses are not “as morally reprehensible as that of an adult.” *Graham* at 68, quoting *Roper* at 569. This Court has found that these characteristics “apply broadly to children as a class.” *J.D.B.* at 272.

Despite this precedent, Ohio’s mandatory transfer scheme does not permit juvenile courts to make individualized determinations about whether certain children alleged to be delinquent have the capacity to be rehabilitated in the juvenile system. Instead, it mandates transfer for certain children, based on their age. Not only does this deny children a process in line with this Court’s recognition of the unique place of children in the justice system, but it also creates a sub-class of juveniles whose sole difference from their juvenile counterparts is their age.

In her dissenting opinion urging this Court to review the constitutionality of Ohio’s mandatory transfer law, Supreme Court of Ohio Chief Justice Maureen O’Connor wrote the following:

I do not quarrel with the notion that a juvenile who commits a serious, violent crime should be punished or that transfer to adult court is proper in some instances. But the suggestion that this court is not authorized to invalidate a transfer statute that does not pass constitutional muster offends the doctrines of separation of powers and checks and balances, both hallmarks of our republic. Here, the mandatory-transfer statute is one of those legislative enactments that falls constitutionally short. The majority’s decision ignores that juveniles are entitled to a liberty interest that cannot be arbitrarily deprived, and reduces the role of juvenile court judges, who are elected by the people to determine, among

other things, whether a juvenile is amenable to rehabilitation. For these reasons, and knowing that 'history has its eyes on' us, I cannot give countenance to the majority's decision

(Internal citations omitted.) *Aalim*, 83 N.E.3d at 913-14 (O'Connor, C.J., dissenting).

Since the now debunked super-predator theories of the 1990s, there has been a "dramatic increase in the states' use of mandatory transfer." *See id.* at 903-04 (O'Connor, C.J., dissenting). Yet, this Court "has remained silent" since its 1966 decision in *Kent v. United States*. *See id.* As courts across this country grapple with a new understanding of adolescent development, considering youth as a mitigating factor in punishment, and now, determining the appropriate "procedural and substantive protections juveniles are entitled to prior to transfer to adult court," this Court's guidance is necessary. *See id.* at 913 (O'Connor, C.J., dissenting).

A. Ohio's mandatory transfer statute prohibits an individualized determination, but the discretionary transfer statute requires it.

Since 1937, children in Ohio, who have been charged with violating criminal laws, were statutorily entitled to treatment in the juvenile justice system. *Id.* at 891. Juvenile court judges, with expertise of the juvenile justice system and rehabilitative opportunities, crafted dispositions to "protect the wayward child from 'evil influences,' 'save' [the child] from criminal prosecution, and provide [the child] social and rehabilitative services." *Id.* at 902-03 (O'Connor, C.J., dissenting). In 1969, Ohio added a discretionary transfer scheme to permit juvenile court judges to transfer a child's case to criminal court. *Id.* at 891. Prior to making that decision, a juvenile court judge held an amenability hearing to investigate the child's prospects of rehabilitation in the juvenile system. *Id.*

Then, in 1986, during a “pro-punishment” wave of legislation and “misperceived [] increases in juvenile crime,” Ohio, along with a majority of other states, added a mandatory transfer scheme. *Aalim*, 83 N.E.3d at 903-04 (O’Connor, C.J., dissenting). Although there have been some changes, mandatory and discretionary transfer remain. OHIO REV. CODE ANN. § 2152.10; 2152.12 (LexisNexis 2002). Ohio’s mandatory transfer law requires a juvenile court to transfer a child’s case to criminal court for prosecution as an adult if, like in Gerquan’s case, the child is at least 16 years old and there is probable cause to believe that the child has committed a category one offense, like murder, aggravated murder, or an attempt of either; or a category two offense while using a firearm. OHIO REV. CODE ANN. § 2152.02(AA); 2152.10(A)(1). The juvenile court judge is precluded from considering any facts or circumstances about the child’s family, history, education, mental health, adolescent development, or youth. Conversely, Ohio’s discretionary transfer law *requires* consideration of those circumstances. OHIO REV. CODE ANN. § 2152.12(C), (D), (E).

The following chart details the differences between the procedures and considerations attendant to each type of transfer:

Considerations	Mandatory transfer	Discretionary transfer
Probable cause hearing:	finding of requisite age	finding of requisite age
	finding of mere suspicion of guilt	finding of mere suspicion of guilt
Amenability hearing:		“investigation into the child’s social history, education, family situation, and any other factor bearing on whether the child is

		amenability to juvenile rehabilitation, including a mental examination”
		<p>Consideration of the following factors:</p> <ul style="list-style-type: none"> -the type and amount of harm suffered by the victim; -the child’s relationship with the victim; -whether the victim induced, facilitated, or provoked the act; -whether the child’s participation was gang related; -whether the child was the principal actor, or acted under the influence or coercion of another person; -whether or not the child had a firearm during the act; -whether the child had “reasonable cause to believe that harm of that nature would occur”; -child’s history with the juvenile court system -results of past rehabilitation; -whether or not the child is mature enough for transfer; -whether the child has a mental illness or intellectual disability; and -the amount of time available to rehabilitate the child within the juvenile court system

Compare OHIO REV. CODE ANN. § 2152.12(A) *with* OHIO REV. CODE ANN. § 2152.12(C), (D), (E). After the probable cause standard of “mere suspicion of guilt” is met, the mandatory transfer statute presumes that the 16- or 17-year-old child is as culpable as an adult who commits the same offense. The juvenile court judge has no choice but to transfer the child’s case to criminal court for prosecution as an adult. OHIO REV. CODE ANN. § 2152.12(A)

This Court’s juvenile justice jurisprudence has repeatedly recognized the differences between children and adults, and mandated individualized

determinations. *See, e.g., Roper*, 543 U.S. at 551, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Graham*, 560 U.S. at 48, 130 S.Ct. 2011, 176 L.Ed.2d 825; *J.D.B.*, 564 U.S. at 261, 131 S.Ct. 2394, 180 L.Ed.2d 310; *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). Ohio’s mandatory transfer law “cannot be reconciled with [this Court’s] recent teachings regarding juveniles, nor can it fulfill [this Court’s] declaration with respect to transfer hearings that ‘there is no place in our system of law for reaching a result of such tremendous consequences without ceremony.’” *Aalim* at 902 (O’Connor, C.J., dissenting), quoting *In re Gault*, 387 U.S. 1, 30, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) and *Kent v. United States*, 383 U.S. 541, 554, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). Accordingly, Ohio’s mandatory transfer scheme, which provides only a probable cause hearing, violates due process because it prohibits an individualized determination about a child’s amenability to rehabilitation.

B. Ohio’s mandatory transfer law violates due process because it prohibits an individualized determination about the child’s amenability to rehabilitation in the juvenile system.

The right to due process of law is not limited to adults facing a deprivation of liberty. Rather, it is an essential and eternal promise of the Constitution to all Americans, including our youth. Although a child is too young to vote for their legislators and, in Ohio, their judges, those legislators and judges cannot ignore the constitutional protections safeguarding a child’s liberty.

Aalim at 900 (O’Connor, C.J., dissenting). And, in this year—the 50th anniversary of this Court’s monumental extension of due process to children in delinquency proceedings—a statutory scheme that requires transfer for certain youth harkens back to a time when children received “the worst of both worlds.” *Gault* at 30-31,

n.23, citing *Kent* at 556. Ohio's mandatory transfer law falls woefully short of due process protections guaranteed to children. The law is fundamentally unfair. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971) (determining that the applicable due process standard in juvenile delinquency proceedings is fundamental fairness).

1. *In Kent, this Court recognized that a transfer decision "should not be remitted to assumptions."*

Over five decades ago, this Court held that the transfer from juvenile to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection under the Due Process Clause of the Fourteenth Amendment. *Kent* at 546 (“[Transfer] is, indeed, a ‘critically important’ proceeding.”). In reviewing a District of Columbia juvenile court judge’s application of the discretionary waiver statute, this Court emphasized the need for a statement of reasons supporting the juvenile court’s decision to transfer the child to criminal court, because “[m]eaningful review requires that the reviewing court should review[; and that the decision] should not be remitted to assumptions.” *Kent* at 561.

In reviewing D.C.’s statute requiring a full investigation, this Court held that “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.” *Kent*, 383 U.S. at 554, 86 S.Ct. 1045, 16 L.Ed.2d 84. In order to ensure that a child’s interest in the juvenile court’s protection and rehabilitative opportunities was protected, “full investigation” necessarily meant that the child be given a hearing, access to reports and files, and a statement of

reasons for transfer by the juvenile court judge. *Id.* at 557. The following factors were to be considered by the juvenile court judge pursuant to D.C.'s waiver law:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment.
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Id. at 566-67. Commensurate with the purposes of the juvenile court system, this Court noted that "[i]t is implicit in [the Juvenile Court] scheme that non-criminal treatment is to be the rule—and the adult criminal treatment, the exception which

must be governed by the particular factors of individual cases.” *Id.* at 560-61, quoting *Harling v. United States*, 295 F.2d 161, 165 (App. D.C. 1961).

But, Ohio’s mandatory transfer law *has* remitted the transfer decision to assumption—that a 16- or 17-year-old child is as culpable as and is deserving of the same punishment as a fully-formed adult. Contrary to the juvenile court’s purpose, the scheme makes adult criminal court treatment the rule, and not the exception for 16- and 17-year-old children who are alleged to have committed a category one offense. *Contra J.D.B.*, 564 U.S. at 274, 131 S.Ct. 2394, 180 L.Ed.2d 310 (“[O]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.”).

Unlike this Court’s recognition of the importance of a full investigation in transfer proceedings, Ohio’s mandatory transfer provision prohibits the juvenile court judge from considering individual facts about the child, including circumstances about his background, development, and prospects for rehabilitation. *See Kent* at 566-67 (listing individualized factors to be considered under D.C.’s waiver law). What remains is nothing more than a probable cause hearing. OHIO REV. CODE ANN. § 2152.10(A)(1). Because Ohio’s statute forbids the juvenile court from conducting a meaningful review of all of the facts and circumstances necessary to making a finding of such tremendous consequence, the statute cannot withstand constitutional scrutiny.

2. *Ohio law uses an older child's age as an aggravating factor in prohibiting an individualized determination.*

Ohio law recognizes that an amenability determination is a “critical stage of the juvenile proceeding” which is a “vital safeguard,” but denies this safeguard for 16- or 17-year-old children like Gerquan. *See State v. D.W.*, 978 N.E.2d 894, 899 (Ohio 2012). But, the mandatory transfer laws render amenability irrelevant, and prohibit any judicial inquiry or determination regarding a particular child in the circumstances of an individual case. Instead, because a child is 16 or 17 years old and charged with a certain offense, Ohio law uses the child’s age as an aggravating factor, which arguably stands as a conclusive or irrebuttable presumption in violation of due process. *See* Martin Guggenheim, *Graham v. Florida and A Juvenile’s Right to Age-Appropriate Sentencing*, 47 Harv.C.R.-C.L.L.Rev. 457, 490-91 (2012); *In the Interest of J.B.*, 107 A.3d 1, 2 (Pa. 2014) (holding that the irrebuttable presumption created by Pennsylvania’s SORNA violated the due process rights of juvenile offenders); *Vlandis v. Kline*, 412 U.S. 441, 446, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973) (disfavoring laws that create irrebuttable presumptions).

In *Miller*, this Court held that “a judge or jury must have the opportunity to consider mitigating circumstances [of youth] before imposing the harshest possible penalty for juveniles.” *Miller*, 567 U.S. at 489, 132 S.Ct. 2455, 183 L.Ed.2d 407. *Miller’s* “central intuition” is that “children who commit even heinous crimes are capable of change.” *Montgomery*, 136 S.Ct. at 736, 193 L.Ed.2d 599 (creating a “substantive rule of constitutional law”). Some of the mitigating factors to be considered include: 1) “chronological age and its hallmark features,” including

immaturity, impetuosity, and failure to appreciate risks and consequences; 2) “family and home environment”; 3) circumstances of the offense; 4) incompetencies associated with youth; and 5) reduced culpability due to age and capacity for change. *See Miller* at 479. The factors for transfer set forth in *Kent* and Ohio’s discretionary scheme mimic many of these factors. *Compare Kent*, 383 U.S. at 566-67, 86 S.Ct. 1045, 16 L.Ed.2d 84 and OHIO REV. CODE ANN. § 2152.12(C), (D), (E) *with Miller* at 479. But, under Ohio’s mandatory transfer scheme, the juvenile court is forbidden from considering the mitigating factors of youth before transferring the child’s case to criminal court because the legislature, not a juvenile court judge, has predetermined that a 16- or 17-year-old child who is charged with a category one offense is as culpable as an adult.

Worse yet, Ohio’s mandatory transfer statutes improperly requires the court to treat age as an aggravating, rather than a mitigating factor. *See Penry v. Johnson*, 532 U.S. 782, 787, 121 S.Ct. 1910, 150 L.Ed.2d 9 (2001) (holding that a mitigating factor cannot be “relevant only as an aggravating factor”). This is a particularly egregious presumption in light of the recognized “gaps between juveniles and adults:” 1) “children have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking”; 2) “children are more vulnerable * * * to negative influences and outside pressures,’ including from their family and peers”; 3) “they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings”; and 4) “a child’s character is not as ‘well formed’ as an adult’s” because “his traits are ‘less

fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *State v. Long*, 8 N.E.3d 890, 894 (Ohio 2014), quoting *Roper*, 543 U.S. at 569, 125 S.Ct. 1183, 161 L.Ed.2d 1. But, Ohio used to recognize the importance of amenability for all children.

3. *Under Mathews v. Eldridge, the deprivation of an individualized determination is a due process violation.*

In finding no constitutional violations with Ohio's mandatory transfer law, the Supreme Court of Ohio determined that the legislature can and has set the procedure needed to effect mandatory transfer, and the procedure was followed. *Aalim*, 83 N.E.3d at 894. The court supported its decision with three justifications: 1) there is no substantive due process right to an amenability hearing; 2) *Kent* is distinguishable because it is fact specific; and 3) fundamental fairness is achieved because the legislature's procedure—only a probable cause hearing prior to transfer—was satisfied. *Id.* at 890-94.

But, the majority did not undertake a procedural due process analysis or cite to *Mathews v. Eldridge* in its opinion. As Chief Justice O'Connor explained in the dissenting opinion, "[b]ecause the requirements of due process are 'flexible and call for such procedural protections as the particular situation demands,'" "*Mathews* requires consideration of three distinct factors": 1) "the private interest that will be affected by the official action," 2) "the risk of an erroneous deprivation," and 3) the state's interest. *Aalim* at 907 (O'Connor, C.J., dissenting).

First, this Court has recognized that transfer from juvenile to adult criminal court "is a matter of great significance to the juvenile." *Breed v. Jones*, 421 U.S. 519,

535, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975). The transfer decision not only forever forecloses the child to juvenile court rehabilitation, but it also subjects the child to adult penalties, sanctions, and lifelong collateral consequences. *Aalim* at 907-08 (O'Connor, C.J., dissenting). The child has an enormous interest in his juvenile status. See *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Secondly, Ohio's mandatory transfer scheme only requires a probable cause hearing and prohibits a juvenile court judge from considering any mitigating factors about the child's youth, or the child's home and family circumstances. OHIO REV. CODE ANN. § 2152.12(A). This procedure is in stark contrast to this Court's "recent teachings regarding juveniles." *Aalim*, 83 N.E.3d at 902 (O'Connor, C.J., dissenting). Without an amenability hearing, "there is significant risk of turning a delinquent [child] capable of rehabilitation into a lifelong criminal. Thus, the risk of erroneous deprivation of the child's status as a juvenile offender is substantial." *Id.* at 909 (O'Connor, C.J., dissenting).

And, finally, affording judicial discretion in all transfer cases is not overly burdensome or costly for the State of Ohio. *Id.* As the majority detailed, the addition of the mandatory scheme was not due to procedural hurdles, but rather to address a "misperceived" increase in juvenile rates of offending. *Id.* at 891, 896, 903-04 (O'Connor, C.J., dissenting). The burden on the State of Ohio to conduct investigations into amenability pale in comparison to the child's liberty interest in his juvenile status. *Id.* at 909 (O'Connor, C.J., dissenting). As Chief Justice O'Connor

surmised, “the ‘limited’ process afforded under the mandatory-transfer scheme is fundamentally inadequate and therefore unconstitutional.” *Id.* at 910 (O’Connor, C.J., dissenting).

Due process requires a meaningful opportunity to be heard. *Id.* at 913 (O’Connor, C.J., dissenting), citing *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). A transfer hearing without the ability to consider a child’s youth or prospects for rehabilitation is not meaningful—it is unconstitutional.

C. Ohio’s mandatory transfer statute creates classes of similarly situated children who are treated different, based solely upon their ages.

This Court has held that while children’s constitutional rights are not “indistinguishable from those of adults . . . children generally are protected by the same constitutional guarantees against governmental deprivations as are adults.” *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place and under like circumstances. Fourteenth Amendment to the U.S. Constitution. In order to be constitutional, a law must be applicable to all persons under like circumstances and not subject individuals to an arbitrary exercise of power, keeping “governmental decision[-]makers from treating differently people who are in all relevant aspects alike.” *Nordlinger v. Hahn*, 505 U.S. 1, 10, 120 L.Ed.2d 1, 112 S.Ct. 2326 (1992).

Under Ohio’s mandatory transfer statutes, children who were 14 or 15 at the time they committed a category one offense are subject only to discretionary transfer

if the court finds they are not amenable to rehabilitation in the juvenile system. OHIO REV. CODE ANN. § 2152.10(B); 2152.12(A), (B). But, children who were 16 or 17 at the time they committed the same offense are subject to mandatory transfer and are not entitled to an amenability determination. OHIO REV. CODE ANN. § 2152.10(A)(1)(a); 2152.12(A)(1)(a)(i).

Although the legislature may set more severe penalties for acts that it believes should have greater consequences, the differences in the mandatory and discretionary transfer laws are not based on acts of greater consequence, but simply on the child's age at the time of the offense. Under the rational basis test, if the age-based classification is not rationally related to the State's objective in making the classification, it will be found to be in violation of the Equal Protection Clause. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 315, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976). The age-based distinctions in the mandatory and discretionary transfer laws are not rationally related to the purpose of juvenile delinquency proceedings.

The Supreme Court of Ohio dispensed of this argument and held that "[p]rosecuting older juveniles who commit serious crimes in [adult criminal court] is rationally related to the legitimate state interest of fighting rising juvenile crime because it allows the most serious juvenile offenders to be prosecuted . . . where harsher punishments are available. *Aalim*, 83 N.E.3d at 896.

But, the differential treatment of children under the mandatory and discretionary transfer laws is not supported by empirical evidence, because current

research and jurisprudence recognizes the differences between adults and children, not between older children and younger children who are all under the age of 18. Notwithstanding the lack of scientific support, the mandatory and discretionary transfer laws draw bright-line distinctions between children who were 16 or 17 and those who were 14 or 15 at the time of their offense.

The legislature may impose special burdens on defined classes in order to achieve permissible ends, but equal protection requires that the distinctions drawn are relevant to the purpose for which the classification is made. *Rinaldi v. Yeager*, 384 U.S. 305, 309, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966) (holding that there must be some rationality in the nature of the classes singled out). In five different contexts, this Court has refused to differentiate younger and older children. *Roper*, 543 U.S. at 568-69, 125 S.Ct. 1183, 161 L.Ed.2d 1 (noting that all children under the age of 18 are not as culpable as adults for their conduct, are “more vulnerable or susceptible to negative influences,” and their characters are not as “well formed as that of an adult”); *Graham*, 560 U.S. at 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (issuing a categorical rule that all children under the age of 18 cannot be subject to life in prison without the possibility of parole for non-homicide offenses); *J.D.B.*, 564 U.S. at 272-73, 31 S.Ct. 2394, 180 L.Ed.2d 310 (“[N]o matter how sophisticated, a juvenile subject of police interrogation ‘cannot be compared’ to an adult subject.”); *Miller*, 567 U.S. at 480, 132 S.Ct. 2455, 183 L.Ed.2d 407 (requiring a court “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison”); *Montgomery*, 136 S.Ct. at 724, 193 L.Ed.2d

599 (holding that *Miller* created a substantive rule of constitutional law, and “rendered life without parole an unconstitutional penalty for ‘a class of defendants because of their status’—*i.e.* juvenile offenders whose crimes reflect the transient immaturity of youth”).² In reaching these conclusions, this Court relied on common sense, as well as adolescent brain science research. *See, e.g.*, International Association of Chiefs of Police, *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation* 4 (finding that the part of the brain regulating judgment and decision making is not fully developed until the end of adolescence).

There is no evidence to support the need for disparate treatment under Ohio’s mandatory and discretionary transfer laws. And, Ohio law gives no rationale for treating older children who have committed a category one offense differently from younger children who have committed the same offense. Therefore, Ohio’s mandatory transfer scheme, which allow for similarly situated children to receive disparate treatment without any rational basis whatsoever cannot withstand constitutional scrutiny.

CONCLUSION

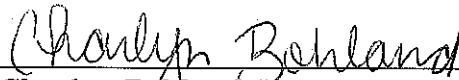
In *Miller* and *Montgomery*, this Court required an individualized determination for a child’s sentence. *Miller* at 461, 489 (noting that none of what this Court has said “about children is crime-specific”); *Montgomery* at 736. This Court

² Christopher Simmons was 17 years old at the time of his offense. *Roper* at 556. Terrance Graham was 16 years old at the time of his offense. *Graham* at 53. J.D.B. was a 13-year-old seventh grader at the time of his offense. *J.D.B.* at 264. Evan Miller and Kuntrell Jackson were 14 years old at the time of their offenses. *Miller* at 465. Henry Montgomery was 17 years old at the time of his offense. *Montgomery* at 723.

reasoned that mandatory sentencing removes the judge's ability to consider child-specific circumstances and forces the judge to "miss[] too much if he treats every child as an adult." *Miller* at 477. The same is true for Ohio's mandatory transfer law. A juvenile court judge, with expertise in juvenile justice research and available treatment and programming, must be given the opportunity to determine whether a child should be subject to adult sanctions or juvenile rehabilitation. For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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