

No. 22-____

In the Supreme Court of the United States

STATE OF OHIO,

Petitioner,

v.

D.R.,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does the Fourteenth Amendment's Due Process Clause entitle juvenile sex offenders to hearings at which courts have discretion to lift statutorily mandated sex-offender-registration obligations?

LIST OF PARTIES

The petitioner is the State of Ohio.

The respondent is D.R., a juvenile.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *In re D.R.*, Case No. 2021-0934 (Ohio) (decision issued Dec. 16, 2022, reconsideration denied Dec. 30, 2022).
2. *In re D.R.*, Case No. C-190594 (Ohio Ct. App. 1st Dist.) (decision issued May 26, 2021)
3. *In re D.R.*, Case No. 18-901Z (Hamilton County Juvenile Court) (decision issued June 10, 2019)

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INTRODUCTION

Ohio law classifies some juvenile sex criminals as sex offenders. One particular Ohio statute—Ohio Rev. Code §2152.84—requires certain juvenile offenders to continue registering as sex offenders even after they complete their sentences. Ohio Rev. Code §2152.84(A)(2)(b). The law empowers juvenile courts to terminate these offenders’ registration obligations three years after they complete their sentences. *See* Ohio Rev. Code §2152.84(D); Ohio Rev. Code §2152.85(B)(1). But these offenders have no right to have their registration obligations terminated any earlier.

The Ohio Supreme Court held that this prohibition on early terminations violates the Fourteenth Amendment’s Due Process Clause. That clause, the court determined, entitles juveniles like D.R—the respondent here—to a hearing at which juvenile courts may lift their registration obligations *before* the expiration of the statutorily mandated three-year period. Pet.App. 3a–4a, 7a.

The Ohio Supreme Court erred, egregiously. For one thing, the Due Process Clause does not guarantee process for process’s sake. It guarantees processes for protecting substantive rights. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 755–56 (2005). The Ohio Supreme Court, however, found a procedural due-process violation untethered from any substantive right. Under Ohio Rev. Code §2152.84, juveniles like D.R. have no substantive right to have their registration obligations terminated. Therefore, they have no *procedural* due-process right to a termination hearing. Pet.App.19a–20a (Fischer, J., dissenting); Pet.App. 26a–29a (DeWine, J., dissenting).

What is more, the Ohio Supreme Court erroneously concluded that the Due Process Clause entitles juveniles to whatever processes best accord with abstract notions of fairness. In fact, a State’s chosen procedures violate the Due Process Clause only if they “offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Speiser v. Randall*, 357 U.S. 513, 523 (1958) (quotation omitted). Our traditions and conscience do not require juvenile courts to hold hearings on matters of no legal relevance. Thus, even assuming juveniles are entitled to some process with respect to mandatory classifications, they are not entitled to hearings at which they may challenge those classifications.

This Court should summarily reverse the Ohio Supreme Court’s decision. Alternatively, it should grant certiorari and decide this case after full briefing and argument.

OPINIONS BELOW

The Ohio Supreme Court’s decision is published at *In re D.R.*, ___ Ohio St. 3d ___, 2022-Ohio-4493 (2022), and is reproduced at Pet.App.1a.

The decision of Ohio’s First District Court of Appeals is available at *In re. D.R.*, 2021-Ohio-1797 (Ohio Ct. App. 2021), and is reproduced at Pet.App.37a.

JURISDICTIONAL STATEMENT

The Ohio Supreme Court held that Ohio Rev. Code §2152.84(A)(2)(b) violates the procedural due-process guarantees of the Fourteenth Amendment’s Due Process Clause. Its decision is now final, for reasons laid out in greater detail later. *See below* 24–26. This

petition timely invokes the Court's jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following provisions are relevant to this case:

The Fourteenth Amendment to the United States Constitution, which provides, in relevant part: “No State shall ... deprive any person of life, liberty, or property, without due process of law.”

Ohio Rev. Code §2152.84, which is included in the appendix filed with this petition.

STATEMENT

1. The Ohio General Assembly has determined that juveniles who commit certain sexual offenses should be classified as sex offenders. And the General Assembly has imposed reporting and registration requirements on those offenders.

Begin by considering the rules governing the imposition of sex-offender classifications. At the imposition stage, the offender's age matters a great deal. Juveniles who were under the age of fourteen when they committed their offenses do not receive a sex-offender classification. *See* Ohio Rev. Code §2152.83(A)(1)(b) & (B)(1)(b); Ohio Rev. Code §2152.82(A)(2). Juveniles who were either fourteen or fifteen years old when they committed their offenses may, but need not, be classified as Tier I, II, or III sex offenders. (Tier I is the lowest tier, Tier III is the highest.) Courts have discretion, however, not to impose a classification on these offenders at all. Ohio Rev. Code §2152.83(B)(1) & (B)(2)(a). Older juveniles—those who were at least sixteen years old at the time of their offenses—*must*

receive a sex-offender classification. Ohio Rev. Code §2152.83(A)(1).

The juvenile’s repeat-offender status is also relevant at the initial-classification stage. In particular, offenders who were at least fourteen when they committed an offense, and who were previously adjudicated delinquent for committing an earlier sexually oriented offense, must receive a sex-offender classification. Ohio Rev. Code §2152.82(A)(3).

Even when Ohio law requires juvenile courts to impose a sex-offender classification, it gives courts discretion to determine in which of the three registration tiers a juvenile offender should be placed. Ohio Rev. Code §2152.82(B); Ohio Rev. Code §2152.83(A)(2); Ohio Rev. Code §2152.831(A).

Now consider the rules governing the termination of sex-offender classifications. Once a juvenile completes his “disposition”—the word Ohio law uses when referring to juvenile sentences—Ohio juvenile courts have discretion to modify or terminate offenders’ classifications. *See* Pet.App.24a (DeWine, J., dissenting). Age informs this process, just as it informs the initial-classification process. If a juvenile was fourteen or fifteen years old at the time of the offense, then a juvenile court may terminate the sex-offender classification, or reduce the classification to a lower tier, at the end of the juvenile’s disposition. *See* Ohio Rev. Code §2152.84(A)(2)(b)–(c). Juvenile courts may not *terminate* older juveniles’ sex-offender classifications for three years following the completion of the offenders’ dispositions. Ohio Rev. Code §2152.84(A)(2)(b), (D); Ohio Rev. Code §2152.85(B)(1). Courts may *reduce* older juveniles’ classification tiers. Ohio Rev. Code §2152.84(A)(2)(c), (B)(2). But since Tier I offenders

are already at the lowest tier, their registration obligations cannot be reduced. *See id.*

The rules regarding older juvenile offenders are particularly relevant here, and thus worth recapping. (The reader who fully understands the preceding discussion can skip this admittedly repetitive paragraph.) Older juvenile offenders *must be* given a sex-offender classification. Ohio Rev. Code §2152.83(A)(1). Those classifications *cannot* be terminated until three years after the completion of disposition. Ohio Rev. Code §2152.84(A)(2)(b), (D); Ohio Rev. Code §2152.85(B)(1). But, during this three-year period, courts can place offenders in a lower tier *if such a tier exists*. *See* Ohio Rev. Code §2152.84(A)(2)(c), (B)(2). Because Tier I is the lowest tier, offenders in Tier I cannot have their obligations reduced—a reduction would mean a termination, and termination is not permitted within the three-year period.

2. When D.R. was sixteen years old, he sexually assaulted a twelve-year-old friend. Pet.App.4a. The State learned of his offense and charged him as a juvenile. D.R. pleaded guilty. A juvenile court committed him to the Ohio Department of Youth Services until he was twenty-one. But it suspended that commitment and placed him on probation instead. *Id.* It also ordered him to complete a treatment program for juvenile sex offenders. *Id.* As required by statute, the juvenile court imposed a sex-offender classification; it classified D.R. as a Tier I sex offender. *Id.*

After D.R. completed the sex-offender treatment program, the juvenile court held a completion-of-disposition hearing. Pet.App.5a. At that hearing, a juvenile magistrate terminated D.R.'s probation. *Id.*

The magistrate did not terminate D.R.'s sex-offender classification; because D.R. was at least sixteen at the time of the offense, the magistrate had no authority to do so. *Id.*; see also Ohio Rev. Code §2152.85(B)(1). The magistrate indicated that she would have terminated D.R.'s classification if she could have done so legally. Pet.App.53a.

D.R. objected to the magistrate's decision. He argued that the continuation of his sex-offender classification and reporting obligations violated his procedural and substantive due-process rights. See Pet. App.47a. The juvenile court overruled his objection, but only because precedent required it to do so. The court noted that it would have terminated D.R.'s sex-offender classification if it could have; the court "had never been a fan of the way the sex offender registration process works for juveniles." Pet.App.50a–52a. The juvenile court encouraged D.R. to raise his constitutional challenges on appeal. Pet.App.39a.

3. D.R. did just that. On appeal, he argued that Ohio law, by requiring his sex-offender classification to continue into adulthood and depriving the juvenile court of discretion to terminate that classification, violated both the procedural and substantive components of the Fourteenth Amendment's Due Process Clause. See Pet.App.41a, 47a.

The Ohio Court of Appeals for the First District agreed with D.R.'s procedural due-process theory. Treating the due-process protections provided by the United States and Ohio Constitutions as interchangeable, see Pet.App.42a, the court held that the Fourteenth Amendment's Due Process Clause requires giving juvenile courts discretion to determine all aspects of a juvenile's punishment. Pet.App.42a–47a. Ohio

Rev. Code §2152.84(A)(2)(b) deprives courts of that discretion by forbidding them from terminating some juvenile offenders' sex-offender classifications. *Id.* That, the court held, violates the Fourteenth Amendment's procedural due-process guarantees. *Id.*

4. The State appealed to the Ohio Supreme Court, which affirmed in a divided decision. The majority held that "juvenile procedural due-process claims" must be examined "through a framework of fundamental fairness." Pet.App.7a. According to the majority, fundamental fairness requires that juvenile courts be given discretion over all aspects of a juvenile's punishment. *See* Pet.App.13a–14a, 16a. Judicial discretion, the majority said, "is a significant procedural protection in the juvenile-justice system." Pet.App.9a. Thus, "when a statute removes the discretion of the juvenile court at a critical time in the proceedings, it offends fundamental fairness." Pet.App.8a.

Applying this reasoning to the statute before it, the majority held that Ohio Rev. Code §2152.84(A)(2)(b) violated D.R.'s Fourteenth Amendment procedural due-process rights. Rather than requiring "a grounded determination by a juvenile court that" D.R. should continue to register as a sex offender, the statute imposed an "automatic, continued" sex-offender classification. Pet.App.16a. That, the majority held, was "fundamentally unfair." *Id.*

Three justices dissented. Justice Fischer faulted the majority for failing to identify the foundational requirement for any procedural due-process claim: a substantive right with respect to which due process was denied. Pet.App.18a–19a (Fischer, J., dissenting). Emphasizing that "process is not an end in

itself,” Justice Fischer noted that the “majority opinion never point[ed] to any specific constitutionally protected right.” Pet.App.19a–20a (quoting *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983)). Nor did the majority explain how judicial discretion over the continuation of a sex-offender classification “is a protected liberty interest.” Pet.App.20a. Because D.R. had not identified a substantive right that any additional process would protect, the court should have rejected D.R.’s challenge to Ohio Rev. Code §2152.84. Pet.App. 18a–19a.

Justice DeWine also dissented, joined by Justice Kennedy. Justice DeWine noted that D.R.’s constitutional claim, “while framed as a procedural due-process challenge,” was “aimed at the substance of the law itself.” Pet.App.29a (DeWine, J., dissenting). And he interpreted this Court’s cases as “firmly reject[ing]” attempts to “recast a substantive-due-process claim like D.R.’s under the procedural component of the Due Process Clause.” *Id.* (citing *Connecticut Dep’t of Pub. Safety v. Doe*, 538 U.S. 1, 7–8 (2003)). By failing to respect that caselaw, the majority both disregarded binding precedent and created a split with courts around the country, which have consistently rejected claims like the one that D.R. made in this case. Pet. App.31a–32a (DeWine, J., dissenting) (collecting cases). Justice DeWine called on his colleagues to remedy the court’s error, and to “realign [the Ohio Supreme Court’s] interpretation of the Fourteenth Amendment to the United Constitution with that of” the Supreme Court of the United States. Pet.App.35a.

REASONS FOR GRANTING THE WRIT

Does the procedural due-process doctrine entitle juvenile sex offenders to hearings at which courts

have discretion to lift statutorily mandated sex-offender-registration obligations? The Ohio Supreme Court answered this question in the affirmative. It erred. As Justices Fischer and DeWine explained in their dissenting opinions, the Ohio Supreme Court's decision contradicts this Court's precedent and conflicts with the decisions of every court to have considered whether the Fourteenth Amendment entitles juveniles to special courts or procedures. The Court should summarily reverse or, in the alternative, grant certiorari and reverse after full briefing and argument.

I. This Court should summarily reverse the Ohio Supreme Court's judgment.

The Ohio Supreme Court's decision rests on two independent errors. First, the court mistakenly believed that the Due Process Clause guarantees procedures disconnected from any "protected substantive right." Pet.App.19a (Fischer, J., dissenting). Second, the Ohio Supreme Court misunderstood the Due Process Clause as guaranteeing all procedures supported by abstract notions of fairness. See Pet.App.33a–35a (DeWine, J., dissenting). Both errors warrant summary reversal.

A. The Ohio Supreme Court wrongly held that the Due Process Clause guarantees procedures unrelated to any substantive right.

The Due Process Clause of the Fourteenth Amendment says that no State shall "deprive any person of life, liberty, or property, without due process of law." The Court has interpreted the Due Process Clause as having both procedural and substantive components. See *Town of Castle Rock v. Gonzales*, 545 U.S. 748,

755–56 (2005). The Ohio Supreme Court relied on only the procedural components when it accepted D.R.’s constitutional challenge to Ohio Rev. Code §2152.84. Binding precedent from this Court defeats any procedural due-process challenge. Because the Ohio Supreme Court’s decision contradicts that precedent, this Court should summarily reverse.

1. Procedural due process is not “an end in itself.” *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983). It protects only existing rights “that stem from an independent source such as state law” or the Constitution. *Castle Rock*, 545 U.S. at 756 (quotation omitted); *see also Bd. of Regents v. Roth*, 408 U.S. 564, 576–77 (1972). Without an existing right, there can be no procedural due-process violation. *Bd. of Regents*, 408 U.S. at 579; *see also District Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 67 (2009).

The Court has rejected efforts to dress up substantive due-process claims in procedural due-process garb. Consider, for example, *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003). That case involved a procedural due-process challenge to Connecticut’s sex-offender laws. Connecticut law required certain offenders to register as sex offenders based exclusively on the fact of their convictions. *Id.* at 4. The plaintiff in that case argued that he was entitled to additional process—as were all similarly situated juveniles. He claimed that the Fourteenth Amendment required Connecticut, before imposing registration obligations, to hold a hearing regarding his dangerousness. *Id.* at 6.

The Court held that the Constitution required no such hearing. “States are not barred by principles of ‘procedural due process’ from” adopting bright-line

statutory rules—*substantive* rules—about who is required to register as a sex offender. *Id.* at 8 (quoting *Michael H. v. Gerald D.*, 491 U.S. 110, 120 (1989) (plurality op.)). Thus, those “who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme.” *Id.* In Connecticut, dangerousness was legally irrelevant to the question whether sex offenders had to register. The Due Process Clause did not require Connecticut to hold a “hearing to establish a fact that [was] not material” to its registration laws. *Id.* at 7.

2. *Connecticut Department of Public Safety* defeats D.R.’s claim. The Ohio statute he challenged, Ohio Rev. Code §2152.84, left no room for juvenile-court discretion with respect to the termination of D.R.’s sex-offender classification. It required that D.R.’s sex-offender classification continue for at least three years following the completion of D.R.’s disposition. See Ohio Rev. Code §2152.84(A)(2)(b), (D); Ohio Rev. Code §2152.85(B)(1). Thus, just like the plaintiff in *Connecticut Department of Public Safety*, D.R. sought a hearing on a question that was irrelevant as a matter of state law—specifically, whether his *mandatory* registration obligations ought to remain in place. The Fourteenth Amendment confers no right to such a hearing. In holding otherwise, the Ohio Supreme Court contradicted the holding of *Connecticut Department of Public Safety*.

3. The Ohio Supreme Court’s decision conflicts with decisions from courts around the country. Those other courts have consistently rejected claims like the one that D.R. raised in this case. In fact, as far as the State can tell, the Ohio Supreme Court stands alone in holding that procedural due-process guarantees

obligate States to vest juvenile courts with discretion over juvenile offenders' sex-offender classifications and reporting obligations.

Justice DeWine's dissent highlights many cases rejecting the Ohio Supreme Court's approach—cases from the high courts in Kansas and Nevada, and from the intermediate appellate courts in other States. *See* Pet.App.31a–32a. These cases all rejected arguments that juvenile sex offenders are entitled to an individualized hearing before they can be classified as sex offenders. *State v. N.R.*, 314 Kan. 98, 114 (2021) (*per curiam*); *State v. Eighth Judicial Dist. Court*, 129 Nev. 492, 506 (2013); *People in Interest of C.B.B.*, 75 P.3d 1148, 1150–51 (Colo. Ct. App. 2003); *In re J.R.*, 341 Ill. App. 3d 784, 794–800 (Ill. Ct. App. 2003). If juvenile sex offenders are not entitled to a hearing *before* the imposition of registration obligations, then they are not entitled to a hearing *after* the imposition of such obligations, either. D.R.'s arguments would thus fail in these courts.

The Ohio Supreme Court's decision conflicts with federal decisions, too. Federal courts have consistently held that *Connecticut Department of Public Safety* forecloses procedural due-process challenges to mandatory sex-offender-registration requirements, regardless of whether the challenges are brought by juveniles, *see United States v. Juvenile Male*, 670 F.3d 999, 1014 (9th Cir. 2012), or adults, *see Doe v. Moore*, 410 F.3d 1337, 1342 (11th Cir. 2005).

The most significant conflict exists within Ohio's borders. The Ohio Supreme Court's decision conflicts with several decisions from the United States Court of Appeals for the Sixth Circuit, which has rejected procedural due-process challenges like the one D.R.

brought in this case. Even before this Court decided *Connecticut Department of Public Safety*, the Sixth Circuit rejected procedural due-process challenges to Ohio's and Tennessee's mandatory sex-offender registration requirements. It held that there is no protected interest in the freedom from having to register as a sex offender based solely on the fact of conviction. *Cutshall v. Sundquist*, 193 F.3d 466, 478–82 (6th Cir. 1999) (Tennessee); *Bruggeman v. Taft*, 27 F. App'x 456, 458 (6th Cir. 2001) (Ohio). It reaffirmed that conclusion in light of *Connecticut Department of Public Safety*. *Fullmer v. Mich Dep't of State Police*, 360 F.3d 579, 582–83 (6th Cir. 2004). And when a group of juveniles challenged a Michigan law that required them to register as sex offenders based solely on the fact of their convictions, the Sixth Circuit rejected their claims based on the just-discussed precedent. *Doe v. Mich. Dep't of State Police*, 490 F.3d 491, 497–99, 502 (6th Cir. 2007). It reiterated that “[p]rocedural due process challenges to state sex-offender registry statutes that mandate the registration of all convicted sex offenders have been foreclosed by the Supreme Court’s decision in *Department of Public Safety*.” *Id.* at 502. In so holding, it necessarily rejected the individualized-determination requirement that the Ohio Supreme Court imposed in this case. *See* Pet.App.15a–16a.

If the Ohio Supreme Court’s decision is allowed to stand, then identical challenges to Ohio’s juvenile-court system will come out differently depending on whether the suit is filed in state or federal court. This is not an abstract or hypothetical concern. Even after this Court decided *Connecticut Department of Public Safety*, Ohio officials have had to defend themselves against claims brought under 42 U.S.C. §1983

alleging that the State's sex-offender-registration laws violate the Fourteenth Amendment's procedural due-process requirements. Federal courts in Ohio have consistently rejected such claims, and they have not treated juveniles any differently than adults when doing so. *See J.M. v. Henderson*, No. 2:09-cv-855, 2011 WL 4572007 *5 (S.D. Ohio Sept. 30, 2011) (juvenile sex offender); *Valentine v. Strickland*, No. 5:08-cv-00993, 2009 WL 9052193 *6–7 (N.D. Ohio Aug. 19, 2009) (adult sex offender). But while precedent from this Court and the Sixth Circuit will require federal district courts in Ohio to continue rejecting such claims, the Ohio Supreme Court's decision will require state courts to award relief.

B. The Ohio Supreme Court wrongly held that the Due Process Clause incorporates abstract conceptions of fairness.

The Ohio Supreme Court committed a second, independent, and equally indefensible error: it misunderstood and misapplied the “fundamental fairness” standard against which procedural due-process claims like D.R.'s must be judged. Thus, assuming for argument's sake that D.R. had a right to some classification-related procedure upon the completion of his disposition, the Ohio Supreme Court applied the wrong test in determining what that procedure ought to consist of.

1. The Constitution leaves the regulation of local criminal activity “primarily to the States.” *Bond v. United States*, 572 U.S. 844, 848 (2014). The Fourteenth Amendment's Due Process Clause, therefore, has little to say about how States structure their criminal justice systems. Because it is “within the power

of the State to regulate procedures under which its laws are carried out,” the Due Process Clause will not disturb a State’s choices unless they offend “some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Speiser v. Randall*, 357 U.S. 513, 523 (1958) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)); see also *Patterson v. New York*, 432 U.S. 197, 201–02 (1977) (quoting *Speiser*). This standard has sometimes been described as the “fundamental fairness” test. *E.g.*, *Dowling v. United States*, 493 U.S. 342, 352 (1990).

The Court has clarified that vanishingly few laws violate the fundamental-fairness test. *Medina v. California*, 505 U.S. 437, 443 (1992). Other than “the specific guarantees enumerated in the Bill of Rights, the Due Process Clause has limited operation.” *Dowling*, 493 U.S. at 352. A broad reading of the Due Process Clause, the Court has explained, would invite chaos; “the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order.” *Medina*, 505 U.S. at 443.

The “fundamental fairness” test, in other words, was never intended to incorporate into our Constitution personal opinions about what is fair and unfair. Courts may not, in defining procedural due process, impose “their personal and private notions of fairness” and “disregard the limits that bind judges in their judicial function.” *Dowling*, 493 U.S. at 353 (alteration accepted, quotation and citation omitted).

2. The Ohio Supreme Court in this case did the very thing that this Court in *Dowling* said that courts may not do: it recognized a new constitutional right based on its own perceptions of fairness. According to the Ohio Supreme Court, the Fourteenth Amendment requires that a juvenile court have the “ability to individually assess and treat juvenile offenders.” Pet.App. 3a. It held that all punishment decisions must be made by a juvenile court, Pet.App.13a–14a, and that any statute that deprives a juvenile court of the discretion to make such decisions is fundamentally unfair, Pet.App.8a–9a. Where in the country’s “traditions and conscience” can such a requirement be found? The Ohio Supreme Court did not say. Missing from the majority’s decision is *any* discussion of a history or tradition of juvenile-court discretion.

That is because no such history or tradition exists. The Fourteenth Amendment predates “the creation of juvenile courts in Ohio and throughout the United States.” *State v. Aalim*, 150 Ohio St. 3d 489, 495 (2017). The first juvenile courts were not created until decades after the Fourteenth Amendment was ratified in 1868. *In re Gault*, 387 U.S. 1, 14 (1967). And in 1868, most juveniles were treated no differently than other criminal offenders. *See id.* at 15; *see also* 4 William Blackstone, Commentaries on the Laws of England 22–24 (1769); 1 Sir Matthew Hale, The History of the Pleas of the Crown 24–27 (1736). The fact that no State used juvenile courts at the time of the Due Process Clause’s ratification is as good a sign as any that the clause does not require using such courts. *Aalim*, 150 Ohio St. 3d at 495.

Consistent with this history, courts across the country have concluded that the Due Process Clause gives juveniles no right to juvenile-specific

procedures. *State v. Orozco*, 483 P.3d 331, 337–39 (Idaho 2021); *Commonwealth v. Concepcion*, 487 Mass. 77, 84–86 (2021); *State v. Watkins*, 191 Wash.2d 530, 543–46 (2018); *State v. Rudy B.*, 149 N.M. 22, 36 (2010); *State v. Angel C.*, 245 Conn. 93, 124 (1998); *State v. Behl*, 564 N.W.2d 560, 566–68 (Minn. 1997); *People v. Hana*, 443 Mich. 202, 209–14, 221 (1993); *W.M.F. v. State*, 723 P.2d 1298, 1300 (Alaska 1986); *State v. Cain*, 381 So. 2d 1361, 1363 (Fla. 1980); *Stokes v. Fair*, 581 F.2d 287, 289 (1st Cir. 1978); *Woodard v. Wainwright*, 556 F.2d 781, 785 (5th Cir. 1977); *People v. Jiles*, 43 Ill. 2d 145, 148–49 (1969).

Of course, juveniles are still entitled to due process. The Court has held that the same procedural due-process standard that applies in adult criminal proceedings applies in juvenile proceedings as well. *See In re Gault*, 387 U.S. at 13; *In re Winship*, 397 U.S. 358, 359 (1970). But every time the Court has been confronted with a due-process challenge to juvenile-court procedures, the youthful offender has alleged that juvenile proceedings should be *more* like adult criminal proceedings, not less. *See Kent v. United States*, 383 U.S. 541, 551 (1966); *In re Gault*, 387 U.S. at 10; *In re Winship*, 397 U.S. at 359; *McKeiver v. Pennsylvania*, 403 U.S. 528, 530 (1971) (plurality op.). And while the Court has sometimes held that the same criminal due-process standards apply to some stages of juvenile proceedings, *see Kent*, 383 U.S. at 562, at other times it has held that delinquent juveniles are entitled to *fewer* procedural protections than adult criminals, *see McKeiver*, 403 U.S. at 545 (plurality op.). Not once has the Court held that juveniles are entitled to *more* procedural protections than other criminal defendants. The Ohio Supreme Court broke new ground in that respect.

The Ohio Supreme Court reached the conclusion it did only because it misinterpreted and misapplied the Court's decisions in *Kent*, *Gault*, and *McKeiver*, among others. It interpreted those decisions—and its own precedents applying them, *see, e.g., In re C.S.*, 115 Ohio St. 3d 267, 275 (2007)—as recognizing a right to “a system designed to advance rehabilitation over punishment and to shield juveniles from the stigma of their juvenile delinquency.” Pet.App.16a. But while those cases discussed some of the lofty goals of advocates for a separate juvenile-court system, *see Kent*, 383 U.S. at 554–55; *Gault*, 387 U.S. at 14–17; *McKeiver*, 403 U.S. at 550, this Court has never held that the Due Process Clause empowers courts to impose whatever processes they think will best serve those goals. The holdings in the cited cases were much narrower. For all of the purple prose in decisions like *Kent* and *Gault*, the Court held only that sometimes juvenile delinquents are entitled to the same procedural protections that similarly situated adult defendants would receive. *Kent*, 383 U.S. at 562; *Gault*, 387 U.S. at 30–31.

The Ohio Supreme Court elevated this colorful dicta, however, and relied on it to create a novel right to a hearing before a juvenile court with discretion to terminate statutorily mandated registration obligations—a right that no other circuit or state supreme court has ever recognized. *See Angel C.*, 245 Conn. at 110 (holding that there is no “liberty interest in juvenile status” and collecting cases that held the same). This case presents the Court with an opportunity to resolve the newly created conflict regarding proper application of the “fundamental fairness” test, and to clarify that the Due Process Clause does not guarantee any right to be treated or sentenced as a juvenile.

II. This case is a good vehicle for addressing the question presented.

This is a good vehicle for addressing the question presented. The Ohio Supreme Court’s decision is a final decision that invalidated a state statute on the ground that it was “repugnant to the Constitution” of the United States. 28 U.S.C. §1257(a). If the Court does not review the statute’s constitutionality now, it will never have the opportunity to do so.

1. The case presents a clean-cut question of federal constitutional law; the Ohio Supreme Court’s opinion does not rest on an “adequate and independent state law ground[]” that this Court would lack jurisdiction to review. *Espinoza v. Montana Dep’t of Rev.*, 140 S. Ct. 2246, 2262 (2020).

When “a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, [this Court] will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.” *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983). Even citing a separate state-constitutional guarantee as a supplemental basis for a decision is not enough. *Ohio v. Robinette*, 519 U.S. 33, 36–37 (1996). Rather, a state-court decision of this kind will be presumed to rest on federal law unless it “clearly and expressly” says otherwise. *Long*, 463 U.S. at 1041; see also *Florida v. Powell*, 559 U.S. 50, 56–57 (2010) (quoting *Long*).

These principles give the Court jurisdiction in this case. D.R.’s procedural due-process claim rested on the Fourteenth Amendment alone. He did not

advance any argument that the Ohio Constitution “provides different due-process protections than its federal counterpart.” Pet.App.25a–26a (DeWine, J., dissenting). In fact, he affirmatively argued that the Ohio Constitution’s due-process protections are equivalent to those in “the Due Process Clause of the Fourteenth Amendment.” D.R. Br.7–8, *In re: D.R.*, Ohio Supreme Court Case No. 2021-0934, (citing *Adler v. Whitbeck*, 44 Ohio St. 539, 569 (1887)). Following D.R.’s lead, the Ohio Supreme Court cited the Ohio Constitution only in passing and only in connection with the Fourteenth Amendment. Pet.App.7a. That type of passing reference to the Ohio Constitution does not transform a ruling resting on federal law into one resting on state law—and it does not bar this Court’s review. See *Robinette*, 519 U.S. at 36–37. Even if the state constitution provided an “adequate state ground for decision,” it provided no “independent state ground.” *South Dakota v. Neville*, 459 U.S. 553, 556 n.5 (1983) (emphasis in original).

For the same reason, the fact that the Ohio Supreme Court relied on some of its own precedents does not deprive the Court of jurisdiction to consider the question presented. Since citations to state constitutions are insufficient to insulate a state-court ruling from this Court’s review, so too are citations to previous state-court decisions. That is especially true here, because the cited decisions would themselves be reviewable under *Long* and *Robinette*; none of the cited decisions contains a clear or express statement indicating that it rests on state due-process protections rather than the Fourteenth Amendment’s Due Process Clause.

For example, the majority below cited *In re C.P.*, 131 Ohio St. 3d 513, 535–36 (2012), for the principle

that a statute that “removes the discretion of the juvenile court at a critical time in the proceedings” violates the Fourteenth Amendment because “it offends fundamental fairness.” Pet.App.8a. *In re C.P.* involved a challenge to an Ohio statute that imposed an automatic lifetime-registration requirement on juvenile sex offenders. 131 Ohio St. at 513. The Ohio Supreme Court held that the statute violated state and federal prohibitions on cruel and unusual punishment and that it failed to provide juveniles with sufficient procedural due-process protections. *Id.* at 536. The court expressly stated that the Ohio Constitution provided an independent basis for its cruel-and-unusual punishment holding. *Id.* at 529–31. It made no such statement with respect to its procedural due-process holding. *See id.* at 531–36. Put differently, *C.P.*’s due-process holding rests on the Fourteenth Amendment rather than the Ohio Constitution. So the majority’s citing *C.P.* does not provide a clear and unmistakable indication that the decision below rests on the Ohio Constitution rather than the Fourteenth Amendment. Accordingly, the federal issue is fairly presented.

The *C.P.* decision in fact demonstrates why the court has jurisdiction to review the Ohio Supreme Court’s decision in this case. *C.P.*’s cruel-and-unusual analysis, which expressly rests on state law, shows that the Ohio Supreme Court knows how to invoke the Ohio Constitution when state law provides an independent basis for its decisions. If the majority below had wanted to “avoid misunderstanding” about whether the Ohio Constitution provided the basis for its due-process decision, it would have said so. *Robinette*, 519 U.S. at 45 (Ginsburg, J., concurring). It never did.

2. The Court should review the Ohio Supreme Court's decision now, because it will never have another chance. By the time the Ohio Supreme Court issued its decision in this case, the juvenile court already had the discretion to terminate D.R.'s sex-offender classification. The Ohio Revised Code gives juvenile courts discretion to terminate a juvenile's sex-offender classification three years after the juvenile completes his sentence. Ohio Rev. Code §2152.84(D); Ohio Rev. Code §2152.85(B)(1). And more than three years passed between D.R.'s completing his sentence and the Ohio Supreme Court's issuing its decision below. In fact, the three-year time period had nearly elapsed by the time the Ohio Supreme Court heard argument in this case; the juvenile court held its completion of disposition hearing on June 7, 2019, Pet. App.38a, and the Ohio Supreme Court heard argument on May 25, 2022, Pet.App.1a. Thus, regardless of what the Ohio Supreme Court decided, the juvenile court would have had the discretion to terminate D.R.'s sex-offender classification less than two weeks after the Ohio Supreme Court heard argument.

Under normal circumstances, that would make this case moot. The Court's precedents, however, "recognize an exception to the mootness doctrine for a controversy that is 'capable of repetition, yet evading review.'" *Kingdomware Techs, Inc. v. United States*, 579 U.S. 162, 170 (2016) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). The "capable-of-repetition doctrine applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality." *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). Specifically, this exception applies only when "(1) the challenged action is in its duration too

short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Spencer*, 523 U.S. at 17 (alterations accepted, quotation omitted).

This case satisfies both requirements, which the State will address in reverse order.

First, Ohio will again be subject to the statutorily unauthorized hearing that the Ohio Supreme Court ordered. The Ohio Supreme Court has declared that Ohio Rev. Code §2152.84(A)(2)(b) is unconstitutional to the extent that it requires certain juvenile sex offenders to continue to register for at least three years after they complete their juvenile sentences. *See* Pet. App.11a–12a. That means that every time a juvenile court reviews a juvenile sex offender’s status at a completion-of-disposition hearing, the juvenile court will be entitled to terminate the sex-offender classification *without regard to* the fact that Ohio Rev. Code §2152.84(A)(2)(b) explicitly says that juvenile courts may not grant this relief to certain offenders. In effect, the law is permanently enjoined.

Second, the State will never have enough time to fully litigate the question whether Ohio Rev. Code §2152.84(A)(2)(b) violates the Due Process Clause. Recall that Ohio statutes expressly empower juvenile courts to terminate the sex-offender classifications of older juveniles three years after the completion of disposition. *See* Ohio Rev. Code §2152.84(D); Ohio Rev. Code §2152.85(B)(1). Thus, absent an exception to the mootness doctrine, all appeals of the question whether a juvenile is entitled to a termination hearing will be mooted within three years of the completion of disposition. Three years is not enough time to fully litigate

the issue. Indeed, it took Ohio more than three years to litigate this case through the state system. If the Ohio courts could not complete *their* review within three years, then there is little chance that the State will be able, in some future case, to litigate the issue all the way to this Court. See *Montgomery Env'tl. Coal. v. Costle*, 646 F.2d 568, 582 (D.C. Cir. 1980) (“The time for full litigation must include an opportunity for our own procedures of appellate review.”).

The Court has already held that “a period of two years is too short” to fully litigate a claim. *Kingdom-ware*, 579 U.S. at 170 (citing *Southern Pacific Terminal Co. v. ICC*, 219 U. S. 498, 514–16 (1911)). And other courts have held that even longer periods of time are not long enough. The Ninth Circuit, for example, has held that three years is too short a period of time to permit full consideration, see *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1019–20 (9th Cir. 2010); but see *Hamamoto v. Ige*, 881 F.3d 719, 723 (9th Cir. 2018), and the D.C. Circuit has held that four years is not long enough, *Montgomery Env'tl. Coal.*, 646 F.2d at 582. Under either standard, this case would fall within the capable-of-repetition-yet-evading-review exception as a matter of law. But even if the Court is not inclined to adopt a categorical rule along these lines, the history of this case proves that three years is not enough to fully litigate the question presented.

In sum, D.R.’s case falls within the capable-of-repetition-yet-evading-review exception to the mootness doctrine.

3. The just-discussed circumstances make the Ohio Supreme Court’s decision “[f]inal” for purposes of §1257(a).

Section 1257’s finality requirement “is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system.” *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945). But the Court has long refused to enforce §1257(a)’s finality requirement in a “mechanical” way. *See id.* at 125–26. It has instead adopted a “pragmatic approach” to determining finality under the statute. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 486–87 (1975). That approach has led it to recognize at least four categories of cases in which this Court may exercise “jurisdiction without awaiting the completion of ... additional proceedings anticipated in the lower state courts.” *Id.* at 477.

The third category is most relevant here. It applies in cases where a “federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case.” *Id.* at 481.

This case fits neatly into that category, because the federal question that the Ohio Supreme Court decided will not survive remand in this case. As discussed above, Ohio law permits a juvenile court to lift a juvenile sex offender’s classification three years after the juvenile completes his sentence. *See* Ohio Rev. Code §2152.84(D); Ohio Rev. Code §2152.85(B)(1). D.R. completed his sentence more than three years before the Ohio Supreme Court issued its decision in this case. *See* Pet.App.38a. This means the Ohio Supreme Court’s decision—which empowers the juvenile court to terminate D.R.’s registration obligations—did not grant the juvenile court any authority on remand that it would not otherwise have possessed. The juvenile court would have been free to terminate D.R.’s sex-

offender classification *regardless* of the Ohio Supreme Court's decision holding §2152.84(A)(2)(a) unconstitutional. And because Ohio law would permit the juvenile court to terminate D.R.'s sex-offender classification without regard to the Ohio Supreme Court's decision, the State will have no ability, following the completion of the state-court proceedings on remand, to again raise, in this case, the federal question presented. After all, the question whether the Fourteenth Amendment entitled D.R. to a hearing at which his registration obligations could be terminated before the expiration of the statutorily mandated three-year period will have no bearing on the proceedings following remand. Thus, the question will be irrelevant in any later appeal. For purposes of this case, the issue is resolved for good.

CONCLUSION

The Court should grant the petition for certiorari and reverse.

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