No. 14-9504

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN WATSON, Petitioner,
v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON PETITION FOR WRIT OF *CERTIORARI*
TO THE APPELLATE COURT OF ILLINOIS

JUVENILE LAW CENTER AND NORTHWESTERN UNIVERSITY SCHOOL OF LAW'S CHILDREN AND FAMILY JUSTICE CENTER *AMICUS* BRIEF SUPPORTING PETITION FOR WRIT OF *CERTIORARI*

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INTEREST OF *AMICI*[1]

Founded in 1975, *Amicus Curiae* Juvenile Law Center is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to align justice policy and practice—including state criminal laws on sentencing—with modern understandings of adolescent development and time-honored constitutional principles of fundamental fairness. Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

Amicus Curiae The Children and Family Justice Center (CFJC), part of Northwestern University Law School's Bluhm Legal Clinic, was established in 1992 as a legal service provider for children, youth and families, as well as a research and

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[1] Parties received timely notice of *amici*'s intention to file. The written consent of counsel for all parties is on file with the Court. *See* enclosures delivered under separate cover to the Clerk of Court on May 28, 2015. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici,* their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

policy center. Currently, clinical staff at the CFJC provide advocacy on policy issues affecting children in the legal system, and legal representation for children, including in the areas of delinquency and crime, immigration/asylum, and fair sentencing practices. In its 23-year history, the CFJC has served as *amici* in numerous state and United States Supreme Court cases based on its expertise in the representation of children in the legal system.

Amici join together to urge the Court to grant *certiorari* in the case of *Watson v. Illinois* and hold that a statutory scheme that mandates that fifteen and sixteen year-old youth who are charged with murder be tried in adult court and then subject to mandatory adult sentences upon conviction violates the Eighth and Fourteenth Amendments of the United States Constitution.

SUMMARY OF ARGUMENT

This case raises a question of exceptional importance regarding the application of this Court's recent Eighth Amendment jurisprudence, most notably *Graham v. Florida*, 560 U.S. 48, 68 (2010), to children. Specifically, this case asks the Court to consider whether Illinois statutes that require fifteen and sixteen year-olds charged with first degree murder to be tried in adult court, and consequently to be subject to mandatory adult sentences upon conviction, are unconstitutional when considered as a whole.

In this case, Petitioner was 15 years-old when he was charged with first degree murder. (Pet'r's Br. at 5.) Pursuant to Illinois' statute[2], Petitioner was automatically excluded from the jurisdiction of the juvenile court and tried in adult court; he had no opportunity to move for a return to juvenile court nor to be sentenced as a juvenile following conviction in adult court. Once convicted, Petitioner was subject to the same mandatory sentencing scheme as an adult, including imposition of a mandatory minimum term and mandatory firearm enhancement.[3] Petitioner

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[2] 705 ILCS 405/5-130 (2009) (excluded jurisdiction).

[3] Upon his conviction for murder, the court was required to sentence Petitioner to no less than 20 years and no more than 60 years in prison. 730 ILCS 5/5-4.5-20(a) (2009). In addition, because the jury found that Petitioner discharged the firearm that proximately caused death, the court was required to add on 25 years to life. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (2009). Therefore, the sentencing court was mandated to impose a sentence of no

was subsequently sentenced to 60 years in prison with no opportunity for early release. (*Id.* at 7.) Thus, under Illinois statutes, the court neither had the discretion to transfer the Petitioner to juvenile court, nor to sentence Petitioner to a term of years below the mandatory minimums or impose a juvenile court sentence upon his conviction, nor to allow the Petitioner the opportunity to reduce his sentence in the future by earning good conduct credit in prison.

This Court repeatedly has held that youth are categorically less culpable and more amenable to treatment and rehabilitation than adults for the purposes of sentencing. *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012); *Graham*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 570 (2005). The Court also has recognized that while all youth are categorically less blameworthy than adult offenders, youth mature at dissimilar rates and, therefore, there are differences in the degree of culpability among individual youth charged with crimes. *See Graham*, 560 U.S. at 68 (quoting *Rope*r, 543 U.S. at 573) (noting a distinction between "'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'").

"An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account *at all* would be flawed." *Graham*, 560 U.S. at 76 (emphasis

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less than 45 years. Finally, Petitioner's sentence cannot be reduced through the earning of good conduct credit. 730 ILCS 5/3-6-3(a)(2)(i) (2009)

added). In *Graham*, the Supreme Court found problematic a sentencing statute which "denie[d] the juvenile offender a chance to demonstrate growth and maturity." *Graham*, 560 U.S. at 73. Thus, this Court's jurisprudence instructs that each juvenile must be given an opportunity to show the capacity to change—not only at the time of sentencing but over the course of the youth's lifetime.

The Illinois transfer and sentencing scheme at issue in this case is constitutionally infirm precisely because it "fail[s] to take defendant['s] youthfulness into account *at all"* and "denies the juvenile offender a chance to demonstrate growth and maturity." *Id.* at 76, 73. Together the transfer and mandatory sentencing statutes create an irrebuttable presumption regarding culpability and capacity for change and rehabilitation; they do not allow for individualized sentencing of minors transferred to adult court and convicted of murder. Consequently, youth such as Petitioner are subject to the same mandatory sentences as adults without an individualized determination by a court that takes into account the youth's age, developmental level, degree of culpability and capacity for change. Such a result is untenable under the United States Constitution.

ARGUMENT

THIS COURT SHOULD GRANT THE PETITION FOR *CERTIORARI* BECAUSE AUTOMATIC EXCLUSION FROM JUVENILE COURT OF CERTAIN YOUTH CHARGED WITH MURDER WHEN COMBINED WITH THE IMPOSITION OF WITH MANDATORY SENTENCES IS UNCONSTITUTIONAL

It is a biological fact that children are expected to develop, mature, and change. In recent years, this Court has given constitutional significance to this biological fact. Beginning with *Roper* in 2005, and with striking consistency, the Court has issued a series of watershed opinions delineating the primacy of the principle that children are constitutionally different. *See Roper v. Simmons*, 543 U.S. 551, 575 (2005) (holding that imposition of death penalty on minors violates Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 75 (2010) (ruling that imposition of life without possibility of parole for minors for non-homicide crimes violates Eighth Amendment); *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011) (a child's age is a "reality that courts cannot simply ignore" in *Miranda's* custody analysis); *Miller v. Alabama*, 132 S. Ct. 2445, 2470 (2012) (holding that mandatory sentence of life without possibility of parole for minors violates Eighth Amendment). This Court has clarified that, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham*, 560 U.S. at 76. Now is the time for this Court to apply the logic and holdings of these decisions to automatic transfer and mandatory sentencing schemes, in which children are

not given individualized consideration, their youthfulness is not taken into account, and they are essentially treated as miniature adults.

I. This Court's recent cases, and the science that undergirds these holdings, establish that youth are fundamentally different from adults in constitutionally relevant ways.

As this Court has consistently recognized, a youth's age "is far more than a chronological fact"; "[i]t is a fact that generates commonsense conclusions about behavior and perception" that are "self-evident to anyone who was a child once himself, including any police officer or judge" and are "what any parent knows—indeed, what any person knows—about children generally." *J.D.B. v. North Carolina,* 131 S. Ct. 2394, 2403 (2011) (citations and internal quotations omitted). In the last eight years, this Court has issued a series of opinions that reinforce the primacy of this principle. *See, e.g., Miller*, 132 S. Ct. at 2470 (holding that mandatory sentence of life without possibility of parole for minors violates the Eighth Amendment); *Graham*, 560 U.S. 48, 75 (2010) (ruling that imposition of life without possibility of parole for non-homicide crimes violates Eighth Amendment); *Roper*, 543 U.S. 551, 575 (2005) (holding that imposition of death penalty on minors violates Eighth Amendment). In addition to being "commonsense conclusions," the Court's findings on the lesser level of maturity, decision-making capacity and culpability of minors as compared to adults, as well as their greater capacity for change, are buttressed by a body of development research and

neuroscience demonstrating significant psychological and physiological differences between youth and adults.

"First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Miller*, 132 S. Ct. at 2464 (internal citations, quotation marks, and brackets omitted). *Accord Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. Research demonstrates that adolescents, as compared to adults, generally have less decision-making capacity and judgment, particularly in stressful situations. Psychosocial factors that influence adolescents' perceptions, judgments and abilities to make decisions limit their capacities for autonomous choice. Kathryn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency*, 32 L. & HUM. BEHAV. 78, 79-80 (2008); Elizabeth Cauffman & Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325 (Thomas Grisso & Robert G. Schwartz eds., 2000). Recent research on adolescent decision-making suggests that youth are heavily influenced by these social and emotional factors. Marsha Levick *et al., The Eighth Amendment Evolves: Defining Cruel And Unusual Punishment Through The Lens Of Childhood And Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012) (citing Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. RES. ON ADOLESCENCE 211, 217 (2011) (explaining that "socioemotional stimuli" has an impact on adolescent decision-

making)).[4] Advances in neuroscience confirm the lesser decision-making capacities of youth as compared to adults. The parts of the brain controlling higher-order functions—such as reasoning, judgment, and inhibitory control—develop after other parts of the brain controlling more basic functions (e.g., vision, movement), and do not fully develop until an individual is in their early 20s.[5]

"Second, children are more vulnerable... to negative influences and outside pressures, including

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[4] Thus, for example, adolescent decision-making is characterized by sensation- and reward-seeking behavior. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 217 (2010) [hereinafter "Steinberg, *A Dual Systems Model"*]. Greater levels of impulsivity during adolescence may stem from adolescents' weak future orientation and not anticipating the consequences of decisions. Laurence Steinberg *et al.*, *Age Differences in Future Orientation and Delay Discou*nting, 80 CHILD. DEV. 28, 29-30 (2009).

[5] Specifically, the prefrontal cortex – the brain's "CEO" that controls important decision making processes – is the last to develop. Abigail A. Baird *et al.*, *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 195, 197 (1999); Nitin Gogtay *et al., Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. 8174, 8174 (2004); K. Rubia *et al.*, *Functional Frontalisation with Age: Mapping Neurodevelopmental Trajectories with fMRI*, 24 NEUROSCIENCE & BIOBEHAV. REVS. 13, 18 (2000). Because the prefrontal cortex governs so many aspects of complex reasoning and decision making, it is possible that adolescents' undesirable behavior -- risk-taking, impulsivity, and poor judgment -- may be significantly influenced by their incomplete brain development. Steinberg, *A Dual Systems Model* at 217.

from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. at 2464. *Accord Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. That teenagers are more susceptible to peer pressure is widely confirmed in the social science literature. Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003). "Peer influence affects adolescent judgment both directly and indirectly. In some contexts, adolescents make choices in response to direct peer pressure to act in certain ways. More indirectly, adolescents' desire for peer approval—and fear of rejection—affect their choices, even without direct coercion." *Id.*

"And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." *Miller*, 132 S. Ct. at 2464. Indeed, "[t]he personality traits of juveniles are more transitory, less fixed." *Roper*, 543 U.S. at 569-70. They "are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults," such that "a greater possibility exists that a minor's character deficiencies will be reformed." *Graham*, 560 U.S. at 68. Developmental research reaches the same conclusions. It is well known that "[adolescence] is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships." Levick *et al.* at 297 n.81 (quoting

Elizabeth S. Scott & Laurence Steinberg, RETHINKING JUVENILE JUSTICE 31 (2008)). The research confirms that "many of the factors associated with antisocial, risky, or criminal behavior lose their intensity as individuals become more developmentally mature." Levick *et al.* at 297 (citing Steinberg, *A Dual Systems Model* at 216-17; *Less Guilty by Reason of Adolescence* at 1011).

As a consequence of these unique developmental attributes, "juveniles have lessened culpability" and "are less deserving of the most severe punishments." *Graham*, 560 U.S. at 68 (citing *Roper*, 543 U.S. at 569-70). A juvenile's wrongdoing—regardless of whether the transgression is extremely serious or petty—"is not as morally reprehensible as that of an adult." *Id.* "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Roper*, 543 U.S. at 570.

As this Court has articulated, these fundamental differences are constitutionally relevant to the application of criminal procedure laws to children. At a minimum, they dictate that youth such as Petitioner must have the opportunity for a hearing in which a judge is charged with making an individualized determination as to whether the youth should be prosecuted in juvenile or criminal court, and, if the youth is convicted, the discretion to fashion an appropriate sentence without the constraint of adult mandatory sentencing laws.

II. The Illinois automatic transfer and mandatory sentencing statutes violate the Eighth and Fourteenth Amendments because they do not permit a sentencing court to consider the individual maturity and degree of culpability of each youth convicted of murder.

Illinois statutes run afoul of this Court's holdings as described above because they mandate that minors 15- and 16-years old be tried in adult court and receive the same mandatory sentence as an adult based exclusively on a prosecutor's decision to charge them with first-degree murder. *See People v. King*, 948 N.E.2d 1035, 1041 (Ill. 2011) (noting that under the Illinois statutes at issue in Petitioner's case, the government's charging instrument alone controls whether youth such as Petitioner have the right to proceed in juvenile court). The lessons of constitutional jurisprudence establish that

> [a] state sentencing statute that requires, regardless of the defendant's age, that a certain sentence be imposed based on the conviction violates a juvenile's substantive right to be sentenced based on the juvenile's culpability. When the *only* inquiry made by the sentencing court is to consult the legislature's mandatory punishment for the crime, without any further inquiry into whether the punishment is appropriate for a juvenile, for no other reason than it is appropriate for an adult, the Constitution requires more.

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) (citing *Graham*, 560 U.S. at 88 (Roberts, C.J., concurring) ("[J]uvenile offenders are *generally*—though not necessarily in every case—less morally culpable than adults who commit the same crimes."); *id.* at 109 (Thomas, J., dissenting) ("[J]uveniles can sometimes act with the same culpability as adults and ... the law should permit judges and juries to consider adult sentences—including life without parole—in those rare and unfortunate cases.")).

Essentially, Illinois's statutory scheme creates "a non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act." Guggenheim at 491. But this Court has struck down statutes creating such irrebuttable presumptions as they "have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." *Vlandis v. Kline*, 412 U.S. 441, 446 (1973). For example, in *Stanley v. Illinois*, the Court held unconstitutional an Illinois law that authorized the removal of children from the custody of their unwed fathers without requiring any showing of the father's unfitness. 405 U.S. 645, 649 (1972). The statute was "constitutionally repugnant" as it relied upon the non-rebuttable presumption that unwed fathers were unfit. *Id.* "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him . . . ." *Id.* Similarly, in *Carrington v. Rash*, 380 U.S. 89, 96 (1965), the Court overturned a Texas statute that presumed that all service people

stationed there were not residents and therefore could not vote. "'By forbidding a soldier ever to controvert the presumption of nonresidence,' the State, we said, unjustifiably effected a substantial deprivation. *It viewed people one-dimensionally (as servicemen) when a finer perception could readily have been achieved by assessing a serviceman's claim to residency on an individualized basis*." *Stanley*, 405 U.S. at 655 (quoting in part *Carrington*, 380 U.S. at 96) (emphasis added). *See also Vlandis*, 412 U.S. at 452 (holding that due process forbids a state to deny an individual the resident tuition rate at a state university "on the basis of a permanent and irrebuttable presumption of nonresidence, *when that presumption is not necessarily or universally true, in fact, and when the State has reasonable alternative means of making the crucial determination*") (emphasis added); *Cleveland Bd. of Educ. v. Chesterfield County School Bd.*, 414 U.S. 632, 644 (1974) (holding that school board maternity leave policies requiring pregnant female teacher to terminate employment at the fourth or fifth month violated due process; provision was conclusive presumption that every pregnant teacher who had reached such stage of pregnancy was physically incapable of continuing to work and the teacher was not given an opportunity to present countervailing medical evidence).

Illinois's automatic transfer statute in concert with mandatory sentencing laws are unconstitutional because they presume that all youth of a certain age charged with a certain offense do not possess the attributes of youth consistently recognized by this Court, i.e., that they individually possess different levels of maturity, decision-making ability, culpability

and capacity for change and growth. In other words, these laws working in tandem create an irrebutable presumption of adulthood and adult capacities. This statutory framework "impermissibly allows the state to forgo having to prove material facts—the propriety of punishing a juvenile based on the same combination of deterrence, incapacitation and retribution which is appropriate." Guggenheim at 491-92. This Court's irrebuttable presumption cases instruct that "as a matter of due process of law, [Petitioner] was entitled to a hearing," *Stanley, supra*, to rebut the presumption that she is as culpable and incapable of change as adults who are convicted of murder, as that "presumption is not necessarily or universally true … and the State has reasonable alternative means of making the crucial determination." *Vlandis, supra.* Indeed, "'[b]y forbidding [Petitioner] ever to controvert the presumption of [the same level of culpability]', the State … unjustifiably effected a substantial deprivation. It viewed [Petitioner] one-dimensionally [as an adult] when a finer perception could readily have been achieved by assessing [the youth's] claim to [lesser culpability and greater capacity to change than an adult] on an individualized basis." *Stanley, supra* (citing *Carrington*).

Constitutional doctrine embedded in the irrebuttable presumption cases and recent sentencing cases demonstrates that the transfer and sentencing statutes at issue violate due process, as youth are denied the opportunity to a hearing in which the court makes an individualized determination upon evidence of, *inter alia*, the youth's age, developmental status, and degree of culpability. The recent sentencing cases also confirm that these statutes violate the Eighth

Amendment because "[a]n offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account *at all* would be flawed." *Graham*, 560 U.S. at 76 (emphasis added).

Finally, it should be noted that the Court's jurisprudence "does not rule out the possibility that juveniles and adults may receive identical sentences but merely requires consideration of the differences between juveniles and adults prior to sentencing." Guggenheim at 499. "What is impermissible … however, is a legislature's choice to impose an automatic sentence on children that is the same sentence it imposes on adults for the same crime." *Id.*at 489.

CONCLUSION

For the foregoing reasons, and any others that may appear to this Court, *Amici* respectfully request that the Court grant's Petitioner's petition for *certiorari.*

Respectfully Submitted,

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DATED: May 28, 2015

CERTIFICATION OF WORD COUNT

Pursuant to Supreme Court Rule 33.1(h), I certify that the enclosed Brief of *Amici Curiae* Juvenile Law Center *et al.*, in Support of Petition For A Writ of *Certiorari* in the case *Watson v. Illinois*, 14-9504, contains 3,645 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

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Executed on May 28, 2015

CERTIFICATE OF SERVICE

I, Lourdes Rosado, Esq., do hereby certify this 28th day of May, 2015, pursuant to Supreme Court Rule 29, that copies of the *Amicus* Brief of Juvenile Law Center, *et al.*, in Support of Petition for a Writ of *Certiorari* in the case of *Watson v. Illinois*, 14-9504, have been served via Federal Express on all counsel of record in this appeal as follows:

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