

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO** : **CASE NO. 2015-0677**  
Plaintiff-Appellee, : On Appeal From The  
 : Montgomery County Court  
 : Of Appeals, Second  
vs. : Appellate District  
 :  
**MATTHEW AALIM** :  
 : **Court of Appeals Case No. 26249**  
Defendant-Appellant,

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**MEMORANDUM IN RESPONSE  
OF APPELLEE, THE STATE OF OHIO**

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### **WHY LEAVE TO APPEAL SHOULD NOT BE GRANTED**

This Court should decline to hear Matthew Aalim's appeal because, while constitutional questions are involved, the court of appeals' resolution of those questions below was founded upon well-established and well-reasoned precedent that needs no further review by this Court. Aalim brings this appeal simply because he disagrees with the court of appeals' decision. This Court, therefore, should not allow this appeal.

### **STATEMENT OF THE CASE AND FACTS**

Matthew Aalim was born on July 27, 1997. On December 3, 2013, a complaint was filed against him in the Montgomery County Juvenile Court alleging that he was delinquent for having committed aggravated robbery with a firearm. The complaint related to a November 14, 2013 incident where Aalim approached two women, pointed a loaded gun at their heads, and robbed them of money and a cell phone. The prosecutor later filed a motion with the juvenile court pursuant to R.C. 2152.10(A)(2)(b), asking that Aalim's case be transferred to the general division so that he could be tried as an adult.

On January 10, 2014, the juvenile court held a probable cause hearing relating to the prosecutor's motion to transfer, after which it made three findings: that Aalim was 16 years of age at the time of the offense; that the alleged offense would be a felony if committed by an adult; and that there was probable cause to believe that Aalim was responsible for commission of the offense. Based on these findings, the juvenile court relinquished jurisdiction and transferred the case to the general division of the common pleas court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b).

On February 10, 2014, Aalim was indicted by the Montgomery County Grand Jury on two counts of aggravated robbery with attendant firearm specifications. He moved to dismiss the

indictment, arguing that Ohio's mandatory-transfer provisions were unconstitutional. The trial court overruled the motion, after which Aalim pleaded no contest to both counts of aggravated robbery, in exchange for the dismissal of both firearm specifications. The trial court accepted Aalim's plea and, on May 7, 2014, sentenced him to concurrent four-year prison terms.

Aalim appealed to the Second District Court of Appeals for Montgomery County, challenging the constitutionality of Ohio's mandatory-transfer laws. The court of appeals affirmed. *State v. Aalim*, 2<sup>nd</sup> Dist. Montgomery No. 26249, 2015-Ohio-892. Aalim now seeks leave of this Court to appeal further.

### **ARGUMENT**

#### **Appellee's First Proposition of Law:**

**The Statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which require juvenile courts, in certain cases, to transfer jurisdiction over juvenile offenders to the general division for trial as an adult do not violate a juvenile's right to due process.**

#### **Appellee's Second Proposition of Law:**

**The Statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which require juvenile courts, in certain cases, to transfer jurisdiction over juvenile offenders to the general division for trial as an adult do not violate a juvenile's right to equal protection.**

Aalim contends that the statutory provisions set out in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which required the juvenile court to transfer jurisdiction over his case to the general division where he was tried as an adult, violate his right to due process by failing to require a meaningful transfer hearing and by failing to incorporate procedural safeguards that take into consideration the offender's youth as mitigating against transfer. Aalim further contends that Ohio's mandatory transfer provisions violate his right to equal protection by treating his "class" of offenders – 16 and 17 year olds who commit serious felonies with a

firearm – different from other juvenile offenders based solely upon their age and the nature of their offenses. But as the court of appeals correctly found below, each of Aalim’s claims have no merit.

### 1. Due Process

Every appellate court that has previously considered the issue has rejected due process and equal protection challenges to Ohio’s mandatory transfer provisions. *See State v. Anderson*, 2<sup>nd</sup> Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶ 66-76; *State v. Lane*, 11<sup>th</sup> Dist. Geauga No. 2013-G-3144, 2014-Ohio-2101, ¶ 51-68; *State v. Kelly*, 3<sup>rd</sup> Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998), at \*8, \*10; *State v. Collins*, 9<sup>th</sup> Dist. Lorain No. 97CA006845, 1998 WL 289390 (June 3, 1998), at \*2. The mandatory transfer provisions do not violate due process, in part, because “[t]here is no constitutional right to be tried as a juvenile.” *State v. Washington*, 2<sup>nd</sup> Dist. Montgomery No. 20226, 2005-Ohio-6546, ¶ 25. Additionally, Ohio’s transfer procedures are merely “procedural prerequisites” rather than substantive or fundamental rights. *State v. Adams*, 10<sup>th</sup> Dist. Franklin No. 12AP-83, 2012-Ohio-5088, ¶ 20, citing *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829, ¶ 17 (holding that retroactive application of the 1997 changes in the juvenile transfer procedures - from all transfers being discretionary to some transfers being mandatory - was permissible because the changes in the law “merely removed the procedural prerequisite of a juvenile-court proceeding”).

Moreover, Aalim offers no direct support for his belief that the mandatory juvenile transfer provisions are unconstitutional. He instead relies on generalities about how courts, over the last forty-five years, have recognized that juveniles are entitled to the same procedural protections as adults. While his generalities of how juvenile jurisprudence has evolved are true,

nothing he offers suggests that Ohio's juvenile transfer provisions, in their current form, are unconstitutional.

Aalim does, however, point this Court to a number of recent United States Supreme Court decisions that have taken up the issue of *punishing* juveniles similarly to adults. *See, e.g., Miller v. Alabama*, \_\_ U.S. \_\_, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (holding that a mandatory sentence of life in prison without parole, when imposed upon juvenile offenders, is cruel and unusual punishment); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (holding that the Eighth Amendment prohibits imposition of a life sentence on a juvenile offender who committed a non-homicide offense); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (holding that the Eighth Amendment forbids the imposition of the death penalty on juvenile offenders). But none of these cases addressed the question at issue here: are mandatory transfer provisions for juveniles of a certain age who commit certain serious offenses unconstitutional. In fact, in the cases Aalim relies upon, the juveniles were charged and tried as adults and the United States Supreme Court never suggested that doing so was improper. *See Miller* at 2461-2462; *Roper* at 557; *Graham* at 53.

Here, the only process that Aalim was due was the process codified in R.C. 2152.10 and 2152.12. This Court has never found this process unjust, but has instead suggested that, in response to court decisions of the 1960s and 1970s, the juvenile laws enacted by the Ohio General Assembly are appropriate to address the lack of due process that once existed. *See, e.g., State v. Hanning*, 89 Ohio St.3d 86, 87-90, 728 N.E.2d 1059 (2000); *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 984, ¶ 7-10. And in particular, this Court has inferred that R.C. 2152.12 (formerly R.C. 2151.26, Am.Sub.H.B. No. 320, 133 Ohio Laws, Part III, 2040, 2049-2050) is a permissible "special measure" for the mandatory transfer of certain juveniles to

adult court based upon the age of the offender and the nature and circumstances of his or her offense. *Hanning* at 89-90.

Because R.C. 2152.10 and 2152.12 do not infringe upon a juvenile's right to due process, and because Aalim's arguments to the contrary are without merit, leave to appeal should not be granted.

## **2. Equal Protection**

Where a statute does not implicate or interfere with a fundamental right, nor operate to the particular disadvantage of a suspect class, the statute will withstand constitutional scrutiny under the Equal Protection Clause if it is rationally related to a legitimate government interest. *Conley v. Shearer*, 64 Ohio St.3d 284, 289, 595 N.E.2d 862 (1992). Under the rational-basis test, a statute must be upheld "if there exists any conceivable set of facts under which the classification rationally furthered a legitimate legislative purpose." *Morris v. Savoy*, 61 Ohio St.3d 684, 689, 576 N.E.2d 765 (1991).

The mandatory transfer of juveniles to the general division pursuant to R.C. 2152.10 and 2152.12 does not implicate or interfere with a fundamental right. *Kelly*, 3<sup>rd</sup> Dist. Union No. 14-98-26, 1998 WL 812238, at \*8 (finding that an amenability determination before transfer is not a fundamental right); *Washington*, 2<sup>nd</sup> Dist. Montgomery No. 20226, 2005-Ohio-6546, at ¶ 25 ("There is no constitutional right to be tried as a juvenile."). Instead, the mandatory transfer of certain juveniles to adult court based upon the age of the offender and the nature and circumstances of his or her offense is a legitimate "special measure" undertaken by the General Assembly for dealing with older and violent offenders. *Hanning*, 89 Ohio St.3d at 89-90, 728 N.E.2d 1059.

Additionally, “age is not a suspect classification under the Equal Protection Clause.” *Gregory v. Ashcroft*, 501 U.S. 452, 470, 111 S.Ct. 452, 115 L.Ed.2d 410 (1991); *State ex rel. Keefe v. Eyrich*, 22 Ohio St.3d 164, 176, 489 N.E.2d 259 (1986). *See also State v. Fortson*, 11<sup>th</sup> Dist. Portage No. 2011-P-0031, 2012-Ohio-3118, ¶ 41 (“Ohio courts have consistently held that juveniles do not constitute a suspect class in the context of equal protection law.”); *In re Vaughn*, 12<sup>th</sup> Dist. Butler No. CA89-11-162, 1990 WL 116936 (Aug. 13, 1990), \*5 (“[J]uveniles have never been treated as a suspect class and legislation aimed at juveniles has never been subjected to the test of strict scrutiny.”).

Moreover, treating the class of juveniles who, like Aalim, are sixteen years of age or older and commit “category two offenses” with a firearm differently than other juveniles “bears a reasonable relationship to a legitimate governmental objective, which is to punish violent juvenile offenders more harshly by denying them the prospect of more lenient treatment in the juvenile system. Such distinctions may be made between different types of offenders, adult or juvenile, without denying persons involved the equal protection of law.” *State v. Ramey*, 2<sup>nd</sup> Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998), \*3. “[T]he legislature’s decision to treat juvenile gun offenders differently than other offenders is a classification that is rationally related to the legitimate government interest of deterring violent juvenile crime.” *Kelly*, 3<sup>rd</sup> Dist. Union No. 14-98-26, 1998 WL 812238, at \*10. *See also Collins*, 9<sup>th</sup> Dist. Lorain No. 97CA006845, 1998 WL 289390, at \*2 (“The obvious purpose of [mandatory juvenile transfer] legislation is to protect society and reduce violent crime by juveniles. Singling out the most dangerous and violent juvenile offenders, those who use firearms, for adult treatment is rationally related to this legitimate governmental purpose.”). And this Court has likewise recognized the legitimacy of these statutes when it described the mandatory transfer of juveniles

as “part of Ohio’s response to rising juvenile crime,” and as “one of the hallmarks of [a] ‘get tough’ approach.” *Hanning*, 89 Ohio St.3d at 89, 728 N.E.2d 1059.

Because the mandatory transfer provisions in R.C. 2152.10 and 2152.12 do not infringe upon substantive rights, do not adversely affect a suspect class, and are rationally-related to a legitimate government interest, they do not infringe upon a juvenile’s equal protection rights. The statutes are constitutional. Leave to appeal, therefore, should not be granted.

### **CONCLUSION**

For the reasons set forth above, the State of Ohio, Appellee herein, respectfully requests that this Court find Matthew Aalim’s propositions of law meritless and deny him jurisdiction to appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum in Response was sent by first class mail, postage pre-paid, to counsel for Defendant-Appellant: Amanda J. Powell, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, on May 22, 2015.

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