No. 17-1172

IN THE
Supreme Court of the United States

BRENDAN DASSEY,
Petitioner,
v.
MICHAEL A. DITTMANN,
Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF AMICI CURIAE JUVENILE LAW CENTER, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, CAMPAIGN FOR YOUTH JUSTICE, CENTER FOR LAW, BRAIN AND BEHAVIOR, CIVITAS CHILDLAW CENTER, NATIONAL JUVENILE JUSTICE NETWORK, PHILLIPS BLACK PROJECT, ROBERT F. KENNEDY HUMAN RIGHTS, W. HAYWOOD BURNS INSTITUTE, AND YOUTH LAW CENTER IN SUPPORT OF PETITIONER

MARSHA L. LEVICK*
*Counsel of Record for *Amici*
Jessica Feierman
Karen Lindell
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Telephone: (215) 625-0551
Facsimile: (215) 625-2808
Email: mlevick@jlc.org

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INTEREST OF AMICI[1]

Amici Juvenile Law Center *et al.*[2] work on juvenile justice, criminal justice, and children's rights. *Amici* have a unique perspective on the interplay between the constitutional rights and developmental psychology of children involved in the juvenile and criminal justice systems.

This Court has repeatedly made clear that legal reasoning that fails to consider age can lead to "fallacious reasoning." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); *see also Graham v. Florida,* 560 U.S. 48 (2010). More specifically, this Court established that confession cases "turn" on the "youth of the accused," *Gallegos v. Colorado*, 370 U.S. 49, 52-53 (1962), and that adolescents are particularly susceptible to pressure during police interrogations. *See J.D.B. v. North Carolina* 564 U.S. 261 (2011); *In re Gault,* 387 U.S. 1 (1967). Nonetheless, the Wisconsin Court of Appeals failed to take age into account when determining the constitutionality of Brendan Dassey's confession. *Amici* share a deep concern that permitting courts to conduct the analysis set forth by the Wisconsin Court of Appeals would leave scores of children subject to coercive interrogations, heighten the likelihood of false confessions, and undermine the truth-seeking function that properly performed interrogations serve.

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[1] Pursuant to Rule 37.2 counsel of record received timely notice of the intent to file this brief. Written consent of all parties has been provided. Pursuant to Rule 37.6, 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.

[2] For a full list of *amici*, please see the Appendix.

Amici join together in support of Petitioner's Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

More than 50 years ago, this Court clearly established that children being questioned by police need "protection" in light of their "unequal footing" with interrogators. *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). The Court noted that an adolescent "is not equal to the police in knowledge and understanding" and will not know "how to protest his own interests" or get the benefit of his own constitutional rights during an interrogation. *Id.* The Court has also clarified that certain interrogation tactics, such as "'paternal' urgings" by officials, might sway adolescents into confessing, calling into question the trustworthiness of juvenile confessions. *In re Gault*, 387 U.S. 1, 51-52 (1967). Courts therefore must exercise "the greatest care" to ensure that juvenile confessions are voluntary. *Id.* at 55.

This Court's caution that constitutional standards must be calibrated to take adolescence into account permeates its jurisprudence. Indeed, this Court has been clear that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham v. Florida,* 560 U.S. 48, 76 (2010); *see also Miller v. Alabama*, 567 U.S. 460, 473-74 (2012); *Roper v. Simmons,* 543 U.S. 551, 569 (2005). This Court has grounded its conclusions that youth merit distinctive treatment under the law not only in "common sense," but also in scientific research showing that teenagers are more impulsive, more susceptible to coercion, less mature, and more capable of change than adults. *See J.D.B. v. North Carolina* 564 U.S. 261, 272-73, 280 (2011); *Graham,* 560 U.S. at

68-69; *see also Miller*, 567 U.S. at 471-72; *Roper,* 543 U.S. at 569-70. And it has recognized that these traits are relevant in the context of police interrogations, where youth "lack the experience, perspective, and judgment to . . . avoid choices that could be detrimental to them." *J.D.B.*, 564 U.S. at 272.

This precedent places beyond dispute that the voluntariness inquiry requires meaningful evaluation of a juvenile's age and developmental characteristics. By failing to give *any* consideration to Brendan Dassey's age—much less exercise the special care required by these cases—the Wisconsin Court of Appeals violated clearly established law.

ARGUMENT

I. THIS COURT SHOULD GRANT THE WRIT TO ENSURE THAT LOWER COURTS COMPLY WITH CLEARLY ESTABLISHED LAW REQUIRING CONSIDERATION OF A SUSPECT'S AGE IN DETERMINING THE VOLUNTARINESS OF A CONFESSION

Brendan Dassey was only 16 at the time of his interrogation, yet the Wisconsin Court of Appeals failed to give any consideration to his age when assessing whether his confession was voluntary. The Wisconsin court's holding flies in the face of this Court's long-established law that confessions cases turn on the age of the suspect and this Court's more recent opinions reinforcing the importance of age and developmental status to constitutional analysis.

A. This Court Has Clearly Established that Adolescent Confessions Require Special Care to Ensure They Are Voluntary

This Court has repeatedly held that the "greatest care" must be taken when questioning children to ensure that their confessions are voluntary. *In re Gault,* 387 U.S. 1, 55 (1967); *see also Haley v Ohio,* 332 U.S. 596, 599-600 (1948); *Gallegos v. Colorado* 370 U.S. 49, 54 (1962); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *J.D.B. v. North Carolina* 564 U.S. 261, 281 (2011). More than 50 years ago, a majority of this Court held unconstitutional the confession of a 14-year-old boy, emphasizing that "cases of this kind turn" on the youth of the accused. *Gallegos,* 370 U.S. at 52-53. According to the Court, "a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police." *Id.* at 54. That the confession "came tumbling out" as soon as he was arrested was irrelevant because the youth "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." *Id.* To disregard this reality would be "in callous disregard of this boy's constitutional rights." *Id.*

The *Gallegos* Court adopted the reasoning of *Haley v. Ohio*, in which a plurality of this Court held that "the youth of the suspect was the crucial factor." *Id.* at 52-53. Noting that "[a]ge 15 is a tender and difficult age" marked by the "great instability which the crisis of adolescence produces," the *Haley* plurality concluded that adolescents "cannot be judged by the more exacting standards of maturity" used for adults.

Id. at 53. "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens," the plurality explained, and "we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic." *Id.*

This Court again called for caution in *In re Gault*, recognizing that coercion will often look different for a child than an adult. The Court emphasized that "the greatest care must be taken to assure" that any admission "was voluntary, in the sense not only that is was not coerced or suggested, but also that it was not the product of ignorance of rights or adolescent fantasy, fright or despair." 387 U.S. at 55 (holding that the privilege against self-incrimination applies to children). The Court noted that children might be "induced to confess by 'paternal' urgings on the part of officials," and that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children." *Id.* at 51-52.

These cases underscore that a mechanistic recognition of a suspect's age is not sufficient—rather, a court must meaningfully evaluate the impact of age on a child's decision-making process and capacity to make a voluntary confession. In *Gallegos,* for example, the Court rejected the argument that the confession was voluntary because the suspect had been advised of his right to counsel but did not ask for either a lawyer or his parents. The Court emphasized that an adolescent simply cannot make the same kinds of decisions as an adult. "[W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions

and answers being recorded and who is unable to know how to protest his own interests or how to get the benefits of his constitutional rights." *Gallegos,* 370 U.S. at 54. Similarly, in *Haley*, the plurality made clear that a formulaic nod to constitutional procedure would not suffice. The confession was not voluntary even though the suspect had been advised of his right to remain silent and that he was under no force, duress, or compulsion. To understand that warning as sufficiently protective, according to the Court,

> Assumes . . . that a boy of fifteen, without the aid of counsel, would have a full appreciation of that advice and that . . . he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them.

Haley, 332 U.S. at 601.

The touchstone question in analyzing juvenile confession cases is *coercion*, not physical pressure. In *In re Gault,* for example, this Court emphasized that certain pressures might cause "a person, especially one of defective mentality or peculiar temperament" to falsely confess because "the untrue acknowledgement of guilt is at the time the more promising of two alternatives between which he is obliged to choose." 387 U.S. at 44-45. In *Haley,* Justice Frankfurter, concurring, explained:

> It would disregard standards that we cherish as part of our faith in the strength and well-being of a rational, civilized society to hold that a confession is 'voluntary' simply because the confession is the product of a sentient choice. 'Conduct under duress involves a choice,' and conduct devoid of physical pressure but not leaving a free exercise of choice is the product of duress as much so as choice reflecting physical constraint.

Haley, 332 U.S. at 606 (Frankfurter, J., concurring) (citation omitted). After recognizing that the "very purpose" of the police procedure was to "exercise pressures upon Haley to make him talk," Frankfurter concluded that protracted questioning without the aid of counsel undermined the "fundamental notions of fairness and justice in the determination of guilt or innocence which lie embedded in the feelings of the American people and are enshrined in the Due Process clause of the Fourteenth Amendment." *Id.* at 606-607.

Even when it has determined that a juvenile confession was voluntary, this Court has emphasized that the voluntariness determination requires a rigorous analysis of a juvenile's age and developmental characteristics. In *Fare v. Michael C.*, the Court held that the constitutional analysis "mandates . . . inquiry into all the circumstances surrounding the interrogation," including "evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him,

the nature of his Fifth Amendment rights, and the consequences of waiving those rights." 442 U.S. at 725. Indeed, the Court reasoned that a *per se* rule for juveniles was unnecessary because of the comprehensive nature of the voluntariness inquiry, which can "take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved." *Id.*

This Court has further recognized that, while unique protections are important for all youth, they are particularly vital for youth with cognitive or mental health problems. In one case the *Gault* Court highlighted, a child diagnosed as schizophrenic "would admit 'whatever he thought was expected so that he could get out of the immediate situation.'" *In re Gault,* 387 U.S. at 52. His confession was specific in detail, but also contained inconsistencies. Accordingly, this Court endorsed the state court's determination that the "confessions were products of the will of the police instead of the boys." *Id.*

In *J.D.B. v. North Carolina,* this Court reiterated what it had already established in several earlier cases—that children are uniquely susceptible to pressure during police interrogations:

> By its very nature, custodial police interrogation entails 'inherently compelling pressures.' Even for an adult, the physical and psychological isolation of custodial interrogation can 'undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely.' Indeed the pressure of custodial interrogation is

> so immense that it 'can induce a frighteningly high percentage of people to confess to crimes they never committed.' That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.

564 U.S. at 269 (citations omitted). As a result, this Court held that even under the objective analysis of whether an individual is entitled to Miranda warnings, a "reasonable child" standard must apply. *Id*. at 271-72; s*ee also Miller v. Alabama,* 567 U.S. 460, 477-479 (2012) (sentencing an adolescent without proper consideration of age is unconstitutional in part because of the "incompetencies associated with youth," including an "inability to deal with police officers.").[3]

J.D.B. did not establish new law; the opinion rested its decision on a long legal history of recognizing distinctions between youth and adults. According to the Court, "[t]ime and again, this Court

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[3] The Seventh Circuit's reliance on *Yarborough v. Alvarado* is inapposite. In *Yarborough,* this Court concluded, in the *habeas* context, that it was not clearly established under federal law that the *Miranda* custody analysis required consideration of age. *Yarborough v. Alvarado*, 541 U.S. 652, 666 (2004). Justice O'Connor, concurring, noted that a suspect's age may sometimes be relevant to the custody determination, but that the law was not clear in the case a suspect almost 18 at the time of questioning. *Id.* at 669 (O'Connor, J., concurring). In *J.D.B.,* this Court resolved the issue conclusively, determining that a "reasonable child" standard must apply in the objective custody determination. 564 U.S. at 276. Here, the Wisconsin Court of Appeals was bound by the clearly established law set forth in *Gallegos* and *Gault.*

has drawn these commonsense conclusions for itself." *J.D.B.*, 564 U.S. at 272.

> [C]hildren 'generally are less mature and responsible than adults,' *Eddings v. Oklahoma,* 455 U.S. 104, 115-16 (1982); . . . they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,' *Bellotti v. Baird,* 443 U.S. 622, 635 (1979) (plurality opinion); and they 'are more vulnerable or susceptible to . . . outside pressures' than adults.

Id. (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005). The Court noted that these conclusions are "far from unique" as our legal history is "'replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults." *Id.* at 273-274 (quoting *Eddings,* 455 U.S. at 115-16, and referring to common law limitations on children's capacity and tort law recognition that childhood is relevant to the reasonable person determination).

Even the dissent in *J.D.B.* reinforced the importance of considering age in the voluntariness analysis. The dissent did "not dispute that many suspects who are under 18 will be more susceptible to police pressure than the average adult," and that the Court's earlier cases were "particularly attuned to this 'reality' in applying the constitutional requirement of voluntariness in fact." 564 U.S. at 289 (Alito, J., dissenting). Relying on *Haley,* the dissent emphasized that "'special care' must be exercised in applying the voluntariness test where the confession of a 'mere

child' is at issue." *Id.* at 297. It underscored that the response should be to "rigorously apply the constitutional rule against coercion to ensure that the rights of minors are protected." *Id.* at 297-98.

The facts of this case demonstrate precisely why such special care is necessary. Brendan Dassey's confession is a textbook example of improper coercion in juvenile interrogations. The reassuring statements from interrogators ("I promise I will not let you high and dry, I'll stand behind you." (Pet'r's App. 518a)), the feeding of "right" answers ("I'm just gonna come out and ask you. Who shot her in the head?" (*Id.* at 411a)), the "paternal urgings" ("I'm a father that has a kid your age too." (*Id.* at 518a)), and veiled promises of leniency ("Honesty is the only thing that will set you free." (*Id.* at 362a)) caused Brendan—a 16-year-old with cognitive and social limitations and no prior justice involvement—to do what the police wanted: agree with their statements. As a result, he is currently serving a life sentence based solely on a confession riddled with inconsistencies and in conflict with the physical evidence. In the words of Justice Frankfurter, "[i]t would disregard standards that we cherish as part of our faith in the strength and well-being of a rational, civilized society" to hold such a confession voluntary. *See Haley*, 332 U.S. at 606.

B. Courts Must Calibrate Constitutional Standards to a Child's Developmental Status

1. This Court Has Consistently Relied on Developmental Status in Establishing Constitutional Standards

In *J.D.B.,* this Court relied not only on "common sense," but also on both social science and neuroscience research to conclude that youth are uniquely vulnerable to coercion during interrogations. According to the Court, "[a]lthough citation to social science and cognitive science authorities is unnecessary" to establish children's unique decision-making approaches, "the literature confirms what experience bears out." 564 U.S. at 273 n.5. The Court pointed to "developments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds" to conclude that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *Id.* at 272, 273 n.5 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

This reliance on adolescent development research was not new to the Court; in a series of Eighth Amendment cases, this Court has held that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham,* 560 U.S. at 76. Thus, age and the "wealth of characteristics and circumstances attendant to it" must be given meaningful consideration in cases involving adolescent defendants. *See Miller*, 567 U.S. at 476; *see also Montgomery v. Louisiana*, 136 S. Ct.

718, 733 (2016); *Roper v. Simmons*, 543 U.S. 551, 569-70(2005). Building upon the longstanding framework developed in *Gault*, *Haley*, and *Gallegos*, these cases all emphasize that "children are constitutionally different from adults" and thus are entitled to special protections. *See Miller*, 567 U.S. at 471. For example, a life without parole sentence will be unconstitutional if it "precludes consideration of" an adolescent's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477.

These cases emphasize key characteristics that distinguish adolescent decision-making and behavior. Beginning with *Roper v. Simmons,* the Court explained that "juveniles are more vulnerable or susceptible to negative influences and outside pressures" in part because they "have less control, or less experience with control, over their own environment." *Roper*, 543 U.S. at 569-70 (citing Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)). The Court has also noted that adolescents lack maturity and have an "underdeveloped sense of responsibility" that can lead to "impetuous and ill-considered actions and decisions." *Id.*; *see also Graham*, 560 U.S. at 68 ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."); *Miller*, 567 U.S. at 472 (concluding that adolescents' "transient rashness, proclivity for risk, and inability to assess

consequences" lessen their moral culpability and increase their capacity to reform).

The Court's focus on developmental characteristics when assessing children's constitutional rights extends to other contexts as well. For example, in the First Amendment context, the Court has recognized that exposure to obscenity may be harmful to minors even when it would not harm adults. *Ginsburg v. New York*, 390 U.S. 629, 636 (1968); *see also Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727, 743 (1996). It has emphasized children's susceptibility to social pressure and immaturity when determining whether prayers at public high school graduation ceremonies violate the Establishment Clause. *Lee v. Weisman*, 505 U.S. 577, 593 (1992). And, in the Fourth Amendment context, the Court has considered the impact of age when considering the reasonableness of a strip search. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 379 (2009) (relying on the unique vulnerability of adolescents to hold a suspicionless school strip search unconstitutional).

2. Neuroscience and Social Science Research Demonstrate that Juveniles Are Uniquely Susceptible to Coercion

These cases recognize what neuroscience confirms: as a group, adolescents make decisions differently than adults, in part because of developmental differences in a variety of brain regions. *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 83-92 (2008). The prefrontal cortex, which controls executive

functioning, matures late in adolescence. S. Blakemore & S. Choudhury, *Development of The Adolescent Brain: Implications For Executive Function And Social Cognition,* 47 J. CHILD PSYCHOL & PSYCHIATRY 296, 301 (2006). Developmental changes within this brain region are essential to developing higher-order cognitive functions, such as foresight, weighing risks and rewards, and making decisions that require the simultaneous consideration of multiple sources of information. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. OF CLINICAL PSYCHOL. 459, 466 (2009). As a result, adolescents have difficulty assessing potential long-term consequences and tend to assign less weight to consequences that they *have* identified. *See* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008). At the same time, the parts of the brain responsible for social-emotional regulation are highly active during adolescence, leading to reward-seeking impulses and heightened emotional responses. Steinberg, *Adolescent Development and Juvenile Justice*, *supra*, at 466; *see also* Lindsay C. Malloy et al., *Interrogations, Confessions, And Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & HUM. BEHAV. 2, 182 (2014). Thus, adolescents experience an imbalance in developing brain systems: one highly active system involved in social-emotional processes leads to emotional volatility, while immature executive functioning hinders behavior control and decision making. Steinberg, *Adolescent Development and Juvenile Justice*, *supra*, at 466; *see also* Nitin Gogtay et al., *Dynamic Mapping of Human Cortical*

Development During Childhood Through Early Adulthood, 101 PROCEEDINGS NAT'L ACAD. SCI. U.S. 8174, 8174 (2004).

Of particular relevance to interrogations, a significant body of neuroscience and social science research demonstrates that youth are highly susceptible to outside influence and particularly compliant toward authority figures. *See* Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 L. & PSYCHOL. REV. 53, 69 (2007). Leading researcher Thomas Grisso has found that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement." Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 357 (2003); *see also* Elizabeth Scott & Larry Steinberg, RETHINKING JUVENILE JUSTICE, at 440 (Harvard University Press, 2008) (concluding that adolescents have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures" than adults). Juveniles acquiesce more readily to suggestion during questioning by authority figures and tend to seek interviewers' approval, and when under the stress of a lengthy interrogation may impulsively confess—even falsely—rather than consider the consequences.

Barry Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J. L. & PUB. POL'Y 395, 411 (2013); *see also* Allison Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 950-951 (2010) ("[A]lmost all of the youths were viewed as 'too acquiescent, passive, or naïve–compared to most adults–in their approach to decisions about pleas'").

These characteristics of adolescent development place teenagers at high risk of false confessions. Under stress or other intense stimuli, such as interrogations, youth are more likely to act emotionally and impulsively, seeking short-term gratification without engaging in a formal decision-making process. *See* Grisso, *supra*, at 361 (noting that developmental immaturities "may affect a young person's decisions, attitudes, and behavior in the role of defendant" in ways that may affect "how they make choices [and] interact with police"). Adolescents may therefore decide to speak with police or offer an incriminating statement impulsively—perhaps for the short-term reward of ending the interrogation or to comply with an authority figure's suggestions—without consideration of the long-term consequences of that decision. *See* Redlich, *supra,* at 953 ("Many traits of adolescence, such as a foreshortened sense of future, impulsiveness, and other defining characteristics of youth . . . help to explain why juveniles falsely confess to police."); *see also* Malloy, *supra*, at 182 ("[J]uveniles' legal decisions, including those related to admissions of guilt, may reflect poor legal abilities/understanding, inappropriate reasoning . . . and/or developmental immaturity").

In light of these characteristics, it is unsurprising that juveniles are grossly

overrepresented in proven false confession cases. *See* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944 (2004). "Archival analyses of false confessions, surveys, and laboratory experiments have shown that juveniles are at increased risk of falsely confessing" when compared to adults. Christian A. Meissner et al., *Improving the Effectiveness of Suspect Interrogations*, 11 ANN. REV. L. & SOC. SCI. 211, 214 (2015) (citations omitted). Many of these studies attribute this phenomenon to adolescents' developmental characteristics, particularly their immature judgment, difficulty understanding long-term consequences of conduct, and tendency to comply with authority figures. *See, e.g.*, Grisso, *supra*, at 333; Gisli H. Gudjonsson et al., *Custodial interrogation, false confession and individual differences: A national study among Icelandic youth*, 41 PERSONALITY & INDIVIDUAL DIFFERENCES 49 (2006); Ingrid Candel et al., *"I hit the Shift-key and then the computer crashed": Children and false admissions*, 38 PERSONALITY & INDIVIDUAL DIFFERENCES 1381, 1386 (2005). And, while all youth are at risk, youth with cognitive disabilities are even more vulnerable to false confessions than their peers. *See* Morgan Cloud et al., *Words Without Meaning: The Constitution, Confessions, And Mentally Retarded Suspects,* 69 U. CHICAGO L. REV. 495, 509, 512-15 (2002) ("[T]he increased vulnerability of a mentally disabled suspect, and his or her naiveté, ignorance, confusion, suggestibility, delusional beliefs, extraordinary susceptibility to pressure, and similar considerations may make it possible for law enforcement officers to induce an involuntary" waiver

of constitutional rights "by using techniques that would be acceptable in cases involving mentally typical suspects.").

In short, the developmental research confirms what this Court has long recognized—"that children cannot be viewed simply as miniature adults," *J.D.B.*, 564 U.S. at 274, that their developmental characteristics must be taken into account, and that courts must exercise "special care" when assessing the voluntariness of their confessions, *Haley*, 332 U.S. at 599-601. Importantly, the research did not change or amend this Court's distinctive application of certain constitutional provisions to youth, but rather expanded and enriched the Court's vocabulary for describing this entrenched practice of constitutional interpretation.

II. THE WISCONSIN COURT OF APPEALS VIOLATED CLEARLY ESTABLISHED FEDERAL LAW WHEN IT FAILED TO MEANINGFULLY CONSIDER BRENDAN DASSEY'S AGE OR INDIVIDUAL CHARACTERISTICS IN THE VOLUNTARINESS EVALUATION

Contrary to decades of clear guidance from this Court, the Wisconsin Court of Appeals conducted no meaningful analysis of Brendan Dassey's age or developmental characteristics when assessing the constitutionality of his interrogation. The court failed to even *mention* Brendan's age in its voluntariness analysis, gave no meaningful consideration to any of his individual characteristics, and analyzed coercion using an adult framework contradicted by both the developmental research and this Court's precedent.

Indeed, when analyzed under the correct framework, the circumstances relied upon by the court actually *support* the conclusion that Brendan Dassey's confession was coerced. The Wisconsin Court of Appeals conclusion to the contrary is therefore an unreasonable application of Supreme Court precedent.

As discussed above, this Court has made clear that courts must evaluate age as part of the voluntariness analysis. *See Fare*, 442 U.S. at 725. Indeed, the "greatest care" is required when assessing the voluntariness of a juvenile confession. *In re Gault,* 387 U.S. at 55. Yet the only mention of age in the Wisconsin Court of Appeals opinion is in the summary of the parties' arguments. During its own analysis of voluntariness, the court did not acknowledge that Brendan was a juvenile, much less discuss the impact age and developmental characteristics might have on the voluntariness of the confession.[4] The court also failed to reference any of this Court's precedents describing the significance of age in the inquiry, instead relying on adult voluntariness cases to summarily conclude that the investigators' statements were not coercive. *See State v. Dassey*, 346 Wis. 2d 278 ¶ 7 (Wis. Ct. App. 2013). Such cursory treatment is not simply an issue of "brevity" or "terse[ness]," as characterized by the Seventh Circuit. *See Dassey v. Dittmann*, 877 F.3d 297, 314 (7th Cir. 2017) (en banc). Rather, the Wisconsin Court of

[4] Nor did the trial court conduct such analysis. Although the trial court's oral ruling includes a finding of fact that Brendan was 16 years old at the time of the confession, there is no discussion of how that fact might affect the voluntariness of his confession. (*See* Pet'r's App. 330a-336a.)

Appeals' failure to mention Brendan's age—despite discussing other specific details of his interrogation—demonstrates a lack of any consideration of the impact of his juvenile status on the voluntariness inquiry. Such a failure cannot amount to "special care" under any reasonable interpretation of this Court's precedent.[5] *See Haley*, 332 U.S. at 599-601.

Age is not the only relevant factor the state appellate court ignored; the court did not meaningfully consider *any* of Brendan Dassey's personal characteristics. As this Court explained in *Fare*, "[t]he totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation," including "age, experience, education, background, and intelligence." 442 U.S. at 725. Yet, other than noting that Brendan had a "'low average to borderline' IQ but was in mostly regular-track high school classes," *Dassey*, 346 Wis. 2d at ¶ 6, the Wisconsin Court of Appeals did not note any of Brendan's personal characteristics, much less meaningfully consider them. Rather, the court's analysis focuses entirely on police conduct and other

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[5] The en banc panel of the Seventh Circuit concluded that the court satisfied the "special care" requirement because "[t]he court assessed coercion in relation to Dassey's vulnerabilities, including his 'age, intellectual limitations and high suggestibility.'" *Dassey*, 877 F.3d at 314. That conclusion is not supported by the language of the opinion. The quoted language referencing age—which does not even mention that he was a juvenile—is disconnected from the court's analysis of voluntariness, appearing only in the summary of the parties' arguments. The court never returns to those facts when discussing the trial court's findings or when reaching its conclusion. It is therefore hard to see how the court could be said to have "assessed coercion in relation to" those facts.

details of the interrogation. For instance, the court describes the couch Brendan was sitting on, emphasizes that he was not restrained, and notes that the investigators used normal speaking tones, but it never considers how Brendan's individual characteristics might affect his response or reaction to those details, misapplying the totality of the circumstances test.[6] *See Miller v. Fenton*, 474 U.S. 104, 116 (1985) ("[T]he admissibility of a confession turns as much on whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means as on whether the defendant's will was in fact overborne.").

Moreover, when the current totality of the circumstances inquiry is properly applied—using the "greatest care" and considering Brendan's individual characteristics—many of the facts the court *does* mention point the other way, suggesting that Brendan's confession was indeed coerced. For instance, given Brendan's age, cognitive limitations, and lack of experience with the justice system, the facts that he was "seated on an upholstered couch,"

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[6] In fact, some of the court's legal conclusions reflect this misunderstanding. For example, the court states that "[a]s long as investigators' statements merely encourage honesty and do not promise leniency, telling a defendant that cooperating would be to his or her benefit is not coercive conduct." *Dassey*, 877 F.3d at 312. This categorical approach, which implies that particular types of statements from investigators can never be coercive, contradicts multiple statements from this Court explaining the totality of the circumstances inquiry. *See Miller v. Fenton*, 474 U.S. 104, 116 (1985); *Schneckloth v. Bustamonte* 412 U.S. 218, 226 (1973).

had access to food and drinks, and was questioned during school hours could easily have led him to underestimate the stakes of the interrogation, fail to appreciate the official nature of the questioning and to not fully understand its potential long-term consequences. Further, his compliance toward authority figures and desire to please suggest that he might be inclined to tell investigators what they want to hear, even falsely—particularly when those investigators "try to achieve a rapport with [him] and to convince him that being truthful would be in his best interest," facts the Court of Appeals found to suggest the confession was *not* coerced. *Dassey,* 346 Wis. 2d at ¶ 6.

And although it is true that Brendan received *Miranda* warnings, that fact does not suggest that his confession was voluntary if, due to his age and cognitive limitations, he had limited "capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *See Fare*, 442 U.S. at 725; *see also Gallegos*, 370 U.S. at 54 (rejecting the argument that a juvenile confession was voluntary because the young person had been advised of his right to counsel).

When these facts are properly considered in accordance with this Court's precedent and combined with the abundant additional evidence of coercion—such as the inconsistencies in the confession, assurances of leniency, and leading questioning—the conclusion that Brendan's confession was coerced is inescapable. The Wisconsin Court of Appeals' conclusion to the contrary is based on an analysis that ignores Brendan's age and individual characteristics, and thus amounts to an unreasonable application of this Court's precedent.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court grant Brendan Dassey's petition for a *writ of certiorari*.

Respectfully Submitted,

Marsha L. Levick*
**Counsel of Record*
Jessica Feierman
Karen Lindell
JUVENILE LAW CENTER
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

March 22, 2018

APPENDIX

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The **Campaign for the Fair Sentencing of Youth (CFSY)** is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Our vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under age eighteen. We are advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009, the CFSY

uses a multi- pronged approach, which includes coalition-building, public education, strategic advocacy and collaboration with impact litigators—on both state and national levels—to accomplish our goal.

The **Campaign for Youth Justice** is a national initiative dedicated to ending the prosecution, sentencing, and incarceration of youth under 18 in the adult criminal justice system. We believe and research supports that courts should consider the social, psychological, and neurological development of adolescents when determining the appropriate jurisdictional venue, treatment, and sentencing of youth. Without this consideration, youth are more likely to end up in placements and with sentences that put them at a higher risk of abuse, suicide, and recidivism rather than rehabilitation.

The **Center for Law, Brain and Behavior (CLBB)** of the Massachusetts General Hospital is a nonprofit organization whose goal is to provide responsible, ethical and scientifically sound translation of neuroscience into law, finance and public policy. Research findings in neurology, psychiatry, psychology, cognitive neuroscience and neuroimaging are rapidly affecting our ability to understand the relationships between brain functioning, brain development and behavior. Those findings, in turn, have substantial implications for the law in general, and criminal law, in particular, affecting concepts of competency, culpability and punishment, along with evidentiary questions about memory, eyewitness identification and even credibility. The Center, located within the MGH Department of Psychiatry, seeks to inform the discussion of these issues by drawing upon the

collaborative work of clinicians and researchers, as well as a board of advisors comprising representatives from finance, law, academia, politics, media and biotechnology. It does so through media outreach, educational programs for judges, students and practitioners, publications, a "Law and Neuroscience" course at the Harvard Law School, and amicus briefs. A particular focus of CLBB has been the question of what constitutes responsible and legal behavior in children and adolescence.

The **Civitas ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and child-serving professional to advocate for the well-being of youth in their professional careers, with an ultimate goal of promoting justice for children, adolescents and young adults. For a decade, The ChildLaw Center served as the lead entity for juvenile justice reform in Illinois as part of the MacArthur Foundation's Models for Change initiative. That initiative worked to promote a more effective, fair and developmentally sound juvenile justice system. As part of its work with Models for Change, the Civitas ChildLaw Center advocated for protections for youth during questioning while in police custody consistent with the letter and values of the Fifth Amendment. Those are the same procedures and values that are at the heart of the Dassey case.

The **National Juvenile Justice Network (NJJN)** leads a movement of state and local juvenile justice organizations all of whom seek policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises fifty-three

member organizations in forty-three states and the District of Columbia and a growing cadre of graduates of its Youth Justice Leadership Institute, all of whom seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are still developing, are fundamentally different from adults and should be held accountable in a developmentally appropriate manner that gives them the tools to make better choices in the future and become productive citizens. Youth are especially prone to making false confessions due to psychological interrogation techniques that exploit their developmental vulnerabilities. Studies of wrongful convictions have found that youth falsely confess with great frequency—children are two to three times more likely to falsely confess during interrogation than adults. In order to ensure a fair result, the special vulnerabilities of youth to police interrogation must be recognized by courts in reviewing their cases.

The **Phillips Black Project** is a nonprofit public-interest law office dedicated to providing the highest quality of legal representation to prisoners in the United States sentenced to the severest penalties under law, in particular, capitally sentenced defendants and juveniles serving life-without-parole sentences. Phillips Black represents persons across the nation and has been at the forefront of research and scholarship concerning the punishment of juveniles facing life in prison.

Robert F. Kennedy Human Rights is a nonprofit organization that was founded in 1968 to carry on Robert F. Kennedy's commitment to creating a more just and peaceful world. The organization works alongside local activists to ensure lasting positive change in governments and corporations. Its

team includes leading attorneys, advocates and entrepreneurs united by a commitment to social justice. Whether in the United States or abroad, the organization's programs have pursued strategic litigation on key human rights issues, educated millions of students in human rights advocacy and fostered a social good approach to business and investment. Its advocacy and litigation program seeks to ensure that the United States respects, protects, and fulfills its international human rights obligations with respect to its juvenile and criminal justice systems, including providing enhanced protections for children in conflict with the law, ending discriminatory police practices, curbing the over reliance on incarceration, and eliminating unjust and inefficient cash bail and pre-trial detention policies that disproportionately affect the poor and communities of color. Robert F. Kennedy Human Rights has organized thematic hearings before the Inter-American Commission on Human Rights on impunity for police killings and excessive use of force by the police in the United States. In addition to holding the United States accountable before international human rights mechanisms, Robert F. Kennedy Human Rights works with domestic activists to reform the criminal justice system via policy change, innovative disruptions that bolster the case for reform and public engagement and mobilization.

The **W. Haywood Burns Institute (Bl)** is a San Francisco-based national nonprofit organization with a mission to protect and improve the lives of youth of color, poor youth and the well-being of their communities by reducing the adverse impacts of public and private youth-serving systems to ensure fairness and equity throughout the juvenile justice

system. BI works with local juvenile justice systems to reduce racial and ethnic disparities in the juvenile justice system. Using a data driven, consensus based approach, BI works in sites across the country to bring officials from law enforcement, legal systems and child welfare together with community leaders, parents and children to change policies, procedures and practices that result in the detention of low-offending youth of color and poor youth. In addition, through the Community Justice Network for Youth, BI supports local organizations to build their capacity to hold local juvenile justice systems accountable, reduce the overuse of detention, and promote the use of community alternatives to detention. The BI has worked in more than 40 jurisdictions nationally and achieved significant results in reducing racial and ethnic disparities.

The **Youth Law Center (YLC)** is a public interest law firm that advocates to transform juvenile justice and foster care systems across the nation so that every child and youth can thrive. YLC has long worked to ensure that the juvenile and criminal justice systems are informed by research on adolescent development and responsive to the particular needs and vulnerabilities of youth. Since 1978, our lawyers have been involved in public policy discussions, legislation and court challenges involving the treatment of juveniles in the juvenile and criminal justice systems. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research,

training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every state.