No. 17-1172

In the Supreme Court of the United States

BRENDAN DASSEY, PETITIONER,

v.

MICHAEL A. DITTMANN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Seventh Circuit committed error when it held that the Wisconsin Court of Appeals reasonably applied this Court's "clearly established" law, 28 U.S.C. § 2254(d)(1), in holding that the three-hour, noncustodial questioning of a 16-year-old, Mirandized suspect, using only standard techniques, was not unconstitutionally "coercive."

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INTRODUCTION

This Petition is a splitless request for error correction, which urges this Court to do what it has told lower federal courts not to: second-guess a state court's reasonable application of a fact-bound, totality-of-the-circumstances test in a case governed by the Antiterrorism and Effective Death Penalty Act (AEDPA). Petitioner's only argument for evading AEDPA deference is criticizing the length of the state court's opinion below, without even mentioning this Court's instruction that "federal courts have no authority to impose mandatory opinion-writing standards on state courts." *Johnson v. Williams*, 568 U.S. 289, 300 (2013). And Petitioner does not point to any division of lower-court authority on any legal question, which is reason enough to deny the Petition.

Even if this Court were inclined to consider Petitioner's error-correction request, the Seventh Circuit committed no error. The Wisconsin Court of Appeals correctly articulated this Court's totality-of-the-circumstances standard for voluntariness and reasonably applied that standard to the facts. Investigators conducted noncustodial questioning of Petitioner, whom they viewed as a potentially helpful witness in the investigation of an innocent woman's murder at the hands of Petitioner's uncle. They began by asking Petitioner's mother for permission to talk to him and by reading him his *Miranda* rights. Throughout the three-hour, noncustodial interview, investigators used only standard techniques such as adopting a

sympathetic tone, encouraging honesty, and challenging his story when they believed he was lying. Less than an hour in, Petitioner unexpectedly confessed to investigators that, at his uncle's urging, he had raped the victim while she was tied up in bed and begging for mercy, and soon thereafter confessed to helping kill her and burn her body. Petitioner now asserts that investigators fed him this confession, but the only plausible source for his admissions was his guilty conscience, as investigators did not even suspect several key aspects of his confession, such as his rape of the victim. As Judge Hamilton explained below, this "was a relatively brief and low-key interview of a Mirandized subject who was not mistreated or threatened, whose creature comforts were satisfied, and whose parent consented"; hardly an egregious case warranting AEDPA relief. App. 175a. Tellingly, Petitioner cannot cite *any* decision, from *any* court, invalidating a confession by a minor in analogous circumstances, even on *de novo* review, let alone after affording AEDPA deference.

What Petitioner and his *amici* are really seeking is a change in the law of juvenile interrogations, based upon "recent" "social-science research." Pet. 2. Respondent respectfully submits that if this Court wishes to consider such a change in law, this Court should await a case where developing new law is a legally available option. Granting review here would inevitably lead to an incomplete consideration of this complex question, given AEDPA's strict limitations.

STATEMENT

A. Petitioner Brendan Dassey and his uncle raped, murdered, and mutilated Teresa Halbach on October 31, 2005. App. 11a. According to Petitioner's own telling, he biked over to his uncle's trailer, where he "could hear" someone "[s]creaming" "help me." App. 384a–85a. His uncle invited Petitioner inside and explained that he had a young woman "chained up" in his bedroom. App. 389a–90a, 393a–96a, 450a. His uncle then offered to let Petitioner rape the victim, and while Petitioner initially declined, he wanted to "see how [sex] felt," so he raped her for several minutes while she "cr[ied]" and pleaded with him to stop. App. 395a–400a, 494a. Shortly thereafter, he and his uncle murdered the victim and disposed of her body. They went back into the bedroom, where his uncle "stabbed" and "choked" her, App. 402a–03a, and Petitioner "cut her" throat under his uncle's instructions, App. 409a–10a. They "tied her up" and carried her to the garage, where Petitioner's uncle shot her. App. 404a, 414a–16a, 421a–22a. They burned her body in a bonfire, App. 379a, 424a, 460a, and then burned the bed sheets and her clothes, App. 432a–33a, cleaned the garage floor with "bleach" and "paint thinner," App. 434a, and hid her car, App. 461a.

Before Petitioner confessed to these horrific acts, investigators viewed him only as a potentially helpful witness. A few days after the victim went missing, police found her car in the salvage yard owned by Petitioner's extended family and so began interviewing

the family. *See* App. 198a–99a. When an officer spoke to Petitioner in early November, Petitioner "went into a[n] inner struggle, physically. He'd sit there, head down, withdrawn, motionless, answers would be muffled." R.19-18:124–25.[1] Petitioner initially told police that there had been no bonfire, but later he acknowledged that this was not true. *See* App. 522a–23a; R.19-21:45, 56–57. Several months later, Petitioner's cousin told investigators that Petitioner had been "acting up lately," "would just stare into space and start crying [ ] uncontrollably," and had lost "about 40 pounds." R.19-18:189–90.

Given the cousin's statements, investigators sought to interview Petitioner again on February 27, 2006; they believed he knew more than he was letting on, but at this point still assumed that he was merely a "witness to something horrific." R.19-19:8–9. Investigators met Petitioner at his school and began by telling him that he was "free to go at anytime" and did not "have to answer any questions," App. 511a, 513a, repeating this later in the conversation, App. 544a. Investigators confirmed that he understood by asking, "[D]id we promise you anything?" to which he responded, "That I could leave whenever . . . and I didn't have to answer any questions." App. 554a. Petitioner said that he had seen "parts of a human body in the fire" and that his uncle "had threatened to hurt him if

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[1] Citations to the district court's docket appear as "R.[ECF Number]:[Page Number]."

he spoke to the police." App. 12a, 512a, 543a. Because the audio recording was poor, investigators asked Petitioner's mother if they could video-record a follow-up interview, to which Petitioner and his mother agreed. R.19-19:6–7. Investigators offered to let Petitioner's mother sit in during this interview, but Petitioner and his mother declined. App. 284a, 332a.[2] Petitioner signed a *Miranda* waiver, App. 562a, even though he was not in custody, App. 331a, and repeated the story that he had told them at school, R.19-30:50; *see* App. 562a–63a. Later that evening, investigators asked Petitioner about a pair of bleach-stained jeans that they had learned about, and Petitioner admitted to helping his uncle clean up a "dark red" stain on the garage floor. App. 12a; R.19-15:194.

Two days later, on March 1, 2006, investigators conducted another interview, during which Petitioner unexpectedly confessed to raping, killing, and mutilating the victim. Investigators obtained permission to talk to Petitioner again from both him and his mother and then drove Petitioner to the police station. App. 343a–45a. They again read *Miranda* warnings, App. 78a, 344a–46a, even though, as the parties have stipulated, App. 331a, Petitioner was not in custody. They questioned him in a "soft" room and "offered food, drinks, restroom breaks, and opportunities to

[2] Petitioner suggests this never happened, Pet. 16 n.5, but this is a factual issue that the state court resolved and so is "presumed" correct on AEDPA review. 28 U.S.C. § 2254(e)(1).

rest." App. 13a. They "spoke in measured tones," "never [ ] raised their voices," "did not threaten," and did not "use intimidating or coercive language." App. 27a, 176a. Instead, investigators used common techniques such as urging Petitioner to "tell the truth," App. 23a, 333a–34a, speaking in a sympathetic tone to achieve a "rapport," App. 30a, 286a, bluffing about what they knew, App. 11a, 286a, and occasionally asking leading questions to confront Petitioner with what they knew, *see* App. 17a. They "made no specific promises of leniency." App. 2a. While they rephrased a common maxim, saying that "[h]onesty is the only thing that will set you free," App. 362a, they had just explained to Petitioner that "[w]e can't make any promises," App. 362a. Petitioner "showed no signs of physical distress" throughout. App. 27a.

Petitioner volunteered "many of the most damning details [ ] in response to open-ended questions," including "what he saw, what he heard, and even what he smelled." App. 2a, 28a, 191a–92a. Petitioner initially told investigators that his uncle called him between six and seven o'clock to ask for help on his car. App. 364a–69a. Investigators pointed out that this account was inconsistent with what they knew and what Petitioner had told them two days earlier and encouraged him to "get the truth out." App. 369a–70a. Petitioner then revised his story, stating that his uncle came to his house to ask for help with something, but then showed him the victim's dead body in the back of her car, explained that he had

"[r]aped her" (the first mention of rape during the interview), and asked for "help [to] get rid of the body." App. 370a–84a. Investigators asked if Petitioner was "there when this happened[.]" App. 384a. Petitioner said no, so they asked whether the victim was dead when his uncle put her in the back of the car. App. 384a. Petitioner quickly answered yes, causing investigators to ask, "How do you know that?" App. 384a. Recognizing that he was caught in a lie, Petitioner admitted, unexpectedly, that he had heard screaming coming from his uncle's trailer two hours earlier, but claimed he simply went home and "watched TV" until his uncle came and asked for him. App. 384a–88a. Investigators challenged him again, explaining that it did not make sense for his uncle to "ask[ ] [Petitioner] to help him unless [he] kn[ew] [Petitioner] kn[ew] something." App. 388a. Petitioner then acknowledged that he went into his uncle's trailer, so investigators asked where the victim was and if "she [was] alive." App. 389a. In response, Petitioner volunteered, out of the blue, that the victim was "handcuffed" to the bed. App. 389a–90a. He then described having a conversation with his uncle about how his uncle had raped her. App. 390a–94a.

Petitioner's interview then took an even more surprising turn, with Petitioner confessing to participating directly in the brutal rape and murder. After Petitioner described his conversation with his uncle, investigators asked, "What happens next?" App. 394a. Petitioner was silent for about six seconds and avoided eye contact. March 1 Recording, Part I at

11:41:10 a.m. to 11:41:16 a.m. They followed up with, "Does he ask you?" and after a similar pause, "He does, doesn't he?" App. 395a. Petitioner then told investigators that his uncle offered to let him "get some," and "took [him] back there" to "show[ ] [him]" "[h]er naked body." App. 395a–96a. Shortly thereafter, investigators asked Petitioner "what did you do?" App. 397a, and, "less than an hour into the interview," App. 15a, Petitioner admitted that he raped the victim, App. 397a–400a, something investigators had no previous reason to suspect he had done, R.19-19:9, 25. When investigators later asked his "reason for doing [this]," Petitioner explained that he "wanted [to] see how it felt." App. 494a. After admitting to raping the victim, Petitioner described helping his uncle kill her and dispose of her body. App. 400a–18a. Investigators spent the rest of the interview going over the remainder of the day and confirming various details. App. 16a–21a, 419a–500a.

Notably, throughout the interview, Petitioner "resisted several lines of inquiry," giving "substantial reason to find that [his] will was not overborne." App. 193a; *see also* App. 28a. Investigators asked at least seven different questions, at four different points in the interview, about whether Petitioner shot the victim himself. App. 412a–13a, 416a, 421a, 458a. They asked at least 15 questions, at six different points in the interview, about who started the fire and when. App. 379a, 417a–18a, 420a, 424a, 457a, 458a–60a. They asked nine questions about whether Petitioner

and his uncle used certain wires in the garage for anything or did other "stuff" to the victim in the garage, App. 471a–73a, and nine questions about what happened to the victim's hair, App. 452a–54a. These were some of the most suggestive questions in the interview, *e.g.*, App. 421a ("We know you shot her too. Is that right?"), yet Petitioner consistently "stuck to his story," App. 28a.

The entire interview lasted about three hours, with a 30-minute break in the middle. App. 15a, 78a.

B. A Wisconsin jury convicted Petitioner of first-degree murder, rape, and mutilation of a corpse after a nine-day trial, based upon the State's overwhelming evidence and the implausibility of Petitioner's defense. The court sentenced him to life in prison with eligibility for release in 2048. App. 89a.

Petitioner's March 1 confession played a central role in the State's presentation, and the State submitted a significant amount of evidence confirming the confession's truthfulness. For example, the State presented evidence that police found the victim's bones and teeth just where Petitioner said that he and his uncle had burned her. R.19-17:69–70, 74, 183–95, 214–32. Petitioner said that the victim was "chained up" in bed with "regular" handcuffs, App. 396a–97a; the police found handcuffs and leg irons in the bedroom, R.19-16:17–18. Petitioner said that his uncle had shot the victim "on the [ ] garage floor," App. 422a; the police found a bullet fragment with her

DNA in the garage, R.19-16:62–66, 203–11; R.19-17:74–76. Petitioner volunteered that he and his uncle used a mechanic's creeper to carry the victim's body to the fire, App. 380a; the police found a creeper in the garage, R.19-16:60. Petitioner said that his uncle used a "shovel and [a] rake" to "push[ ] . . . around" the fire, App. 462a–63a; the police found a charred shovel and rake, R.19-17:190–93. Petitioner explained that his uncle got a "scratch" "[o]n his finger," App. 430a; his uncle did, in fact, have a cut on the middle finger of his right hand, R.19-16:22–23. Petitioner described cleaning up blood stains with "paint thinner" and "bleach," App. 434a–35a; the police uncovered an empty bleach bottle in the bathroom, R.19-16:19–20, paint thinner in the garage, R.19-16:59, and Petitioner's bleach-stained jeans, R.19-15:174–75. Petitioner told investigators that his uncle had placed the victim's car key "[i]n his dresser drawer," App. 427a; the police found the key in the bedroom, R.19-16:106.

The evidence also undermined the implausible story that Petitioner told the jury at trial. Petitioner testified that he only joined his uncle "for the bonfire" (where the police found the victim's bones) and "helped [him] clean up a spill in his garage" (where she was shot), but that he never saw or heard anything and that "none of the incriminating events related in his March 1st confession ever happened." App. 21a–22a. The State, however, introduced a written statement from Petitioner's cousin to investigators that Petitioner had told her he saw the victim

"pinned up in the bedroom." R.19-18:193–94. And in two recorded phone calls to his mother, portions of which were played at trial, Petitioner acknowledged more involvement than he did on the stand. R.19-21:50, 54; R.19-35. Petitioner also testified that he lied to police about the bonfire during the initial investigation. R.19-21:56. And Petitioner had lost weight and cried uncontrollably in the aftermath of the crimes. R.19-18:189–90.

Finally, Petitioner offered no plausible explanation for where he got much of the material for his confession, such as his rape, which investigators had no prior reason to believe had occurred. R.19-19:9, 25. He claimed that he pulled his story from the book *Kiss the Girls*, which he had read three or four years prior, R.19-21:67, but that book has "[n]o scene[ ]" even "remotely similar to the crimes" that he described. App. 22a n.7.

C. Both before and after trial, the trial court rejected Petitioner's request to suppress the statements he made on March 1 as involuntary. *See* App. 296a, 327a. In reaching its decision, the trial court first considered Petitioner's "relevant personal characteristics": He was "16 years of age," had "low average to borderline" IQ, was enrolled in "mostly regular classes, but also in some special education classes," "his only [prior] police contacts" were the interviews early in the investigation, and there was "no evidence that [Petitioner] . . . [was] unusually susceptible or vulnerable to police pressures." App. 330a–31a, 335a. The

court also thoroughly reviewed the circumstances of the interviews. Petitioner signed a *Miranda* waiver, and at the beginning of the first interview on February 27, Petitioner "was told . . . that he didn't have to answer any questions and [ ] was free to go whenever he wanted." App. 331a. Petitioner's mother "agreed" to a second interview on February 27 and when "asked if she wanted to be present," said "it was not necessary." App. 332a. Before the March 1 interview, investigators again "sought and received permission from [Petitioner's] mother." App. 332a. The March 1 interview "lasted approximately three hours," during which Petitioner "was seated on an upholstered loveseat." App. 333a. Investigators used "normal speaking tone[s] with no raised voices, no hectoring, or threats of any kind," and Petitioner never appeared "agitated, upset, frightened, or intimidated." App. 334a. "At various times . . . investigators encouraged [Petitioner] to provide details to them by appealing to his sense of honesty." App. 333a. Investigators "occasion[ally]" "purported to know details which, in fact, were not true or which represented uncorroborated theories of the crime . . . in order to draw information." App. 334a–35a. The court also identified multiple "attempt[s] [by investigators] to achieve a rapport with [Petitioner] and convince him that a

truthful account of events would be in his best interest," but found "[n]o frank promises of leniency." App. 335a.[3]

The Wisconsin Court of Appeals affirmed. The court recited the appropriate test: It "evaluate[d] [the] confession's voluntariness on the totality of the circumstances . . . balancing [Petitioner's] personal characteristics against the police pressures used to induce the statements." App. 285a. The court "[b]ased [its decision] on [the trial court's] findings" and summarized the key points. App. 285a–86a. The court noted that Petitioner was "[s]ixteen-year[s]-old" and had "a 'low average to borderline' IQ but was in mostly regular-track high school classes." App. 284a, 286a (quoting the trial court). The interview lasted for "three[ ] hour[s]," App. 284a, while Petitioner was "seated on an upholstered couch," App. 286a. He "never was physically restrained and was offered food, beverages and restroom breaks." App. 286a. Petitioner "was properly Mirandized," and his mother gave "permission" for the March 1 interview, just two days after "declin[ing] the offer to accompany [Petitioner]" to an interview on February 27. App. 284a, 286a. Investigators "used normal speaking tones, with no hectoring, threats or promises of leniency,"

[3] The above-described analysis comes from the trial court's pre-trial ruling. Post-conviction, the trial court held a five-day hearing, received additional briefing, and then found "nothing" "which would cause it to recede from its [prior suppression] decision." App. 296a–97a, 306a.

and Petitioner "did not appear to be agitated or intimidated at any point." App. 286a. It was not coercive for interrogators to "encourage honesty," to "tell[ ] [Petitioner] that cooperating would be to his [ ] benefit," to "try to achieve a rapport with [Petitioner]," or to "profess[ ] to know facts [investigators] actually did not have." App. 286a.

The Wisconsin Supreme Court then denied the petition for review. App. 281a.

D. On October 20, 2014, Petitioner filed a habeas petition in the Eastern District of Wisconsin, *see* App. 235a, which the district court granted, holding that Petitioner's confession was "so clearly involuntary," App. 276a, that relief was warranted under AEDPA, App. 197a–279a.

A divided Seventh-Circuit panel affirmed. In the panel majority's view, investigators' use of "paternal assurances and relationship building," "pleas for honesty," "implied promises," and claims that they "already knew" certain information were unduly coercive given Petitioner's age and other limitations. App. 123a–62a. The majority also spent page after page, in several parts of its decision, criticizing the Wisconsin Court of Appeals for the brevity of its opinion. App. 91a–93a, 97a–98a, 110a–11a, 113a, 118a–23a. "A state court need not say much, but the less it says," the panel majority chided, "the less a federal court can ascertain that the state actually applied a totality of the circumstances evaluation." App. 120a.

Judge Hamilton dissented, giving many of the same reasons he would offer in his en banc majority opinion. App. 173a–96a. "The majority seems to expect longer, more detailed, and perhaps more anguished opinions from the state courts in such cases," Judge Hamilton explained, but "expectations do not call for habeas relief" because "[f]ederal courts have 'no authority to impose mandatory opinion-writing standards on state courts.'" App. 182a (quoting *Johnson*, 568 U.S. at 300).

The Seventh Circuit granted the State's petition for rehearing en banc and reversed. The en banc majority explained that while factors such as Petitioner's age and "somewhat limited" intellectual faculties "tend[ed] to support" his arguments, "[m]any other factors" supported the Wisconsin Court of Appeals' voluntariness conclusion, and federal courts should not second-guess that reasonable application of the totality-of-the-circumstances test under AEDPA. App. 2a, 26a–29a. Petitioner spoke "with the officers voluntarily and with his mother's knowledge and consent," "was given *Miranda* warnings and understood them," and "showed no signs of physical distress." App. 27a.[4] He was "not subject to physical coercion or any sort of threats"; "[t]he investigators stayed calm and never even raised their voices." App. 27a. He

[4] The en banc majority expressed "reservations about the use of 'suggestibility' as a factor in this analysis, at least on these facts," where Petitioner relied upon a measure of suggestibility that had been "contested" "at trial." App. 10a n.2.

"volunteered" "most of the incriminating details" "in response to open-ended questions," and "resisted" investigators and "stuck to his story" on several topics. App. 27a–28a. Investigators also made no promises of leniency. App. 33a–34a. The "relative brevity of [the Wisconsin Court of Appeals'] opinion" is irrelevant under AEDPA, but in any event the state court considered all the relevant factors, including "endors[ing] detailed findings by the trial court." App. 29a–30a.

Chief Judge Wood and Judges Rovner and Williams dissented, in two separate opinions, for many of the reasons given by the panel majority. App. 40a–70a. Chief Judge Wood's dissent also included a chart that purported to show that Petitioner was not relying upon "his own independent recollection" in his confession, but the only source Chief Judge Wood identified for Petitioner's account of his rape was his discredited reference to the *Kiss the Girls* book. App. 50a. Judge Rovner's dissent, in turn, argued at length that courts should "update" their coercion doctrines in light of "current social science research." App. 58a–70a.

REASONS FOR DENYING THE PETITION

I. As Petitioner Concedes, The Petition Is A Splitless Request For Error Correction

Petitioner concedes that he is merely seeking splitless error correction. Petitioner devotes most of

his argument section to attempting to show that "the decision below is wrong." Pet. 16 (heading for arguments on pages 16 through 30). The Seventh Circuit did not err, *see infra* Part II, but even if it did, that would not justify this Court's review, *see* Sup. Ct. R. 10; Stephen M. Shapiro et al., *Supreme Court Practice* 352 (10th ed. 2013).

While Petitioner does not allege any relevant "conflict" of federal court of appeals or state supreme court authority, Sup. Ct. R. 10, he claims that review is warranted because there has been some divergence as to how "meaningfully" courts have analyzed the vulnerabilities of minors when speaking with law enforcement. Pet. 30–35. The cases that Petitioner cites merely show that different courts have written opinions of different lengths. Nothing in the two federal court of appeals cases that Petitioner praises for conducting what he deems to be sufficiently "detailed" analyses, Pet. 33—*United States v. Preston*, 751 F.3d 1008 (9th Cir. 2014) (en banc), and *Hall v. Thomas*, 611 F.3d 1259 (11th Cir. 2010)—suggests that a state court that takes a more abbreviated approach violates this Court's "clearly established" caselaw under AEDPA. And the cases that Petitioner criticizes for their brevity are almost entirely intermediate state-court decisions. Pet. 31–32.[5] The *only* decision from

[5] The cases that one of Petitioner's *amici* criticizes, *see* Professors Amicus Br. 19–21, are largely intermediate state court or unpublished decisions. The one state supreme court case that the *amicus* critiques, Professors Amicus Br. 19—*Nebraska v.*

a state supreme court that Petitioner faults as too brief, Pet. 31—*Washington v. Unga*, 196 P.3d 645 (Wash. 2008)—conducted an analysis of the suspect's age and circumstances that is no less "detailed," Pet. 33, than the Eleventh Circuit's discussion of the minor's characteristics in *Hall*, which Petitioner singles out for praise. *Compare Unga*, 196 P.3d at 648–54, *with Hall*, 611 F.3d at 1284–90.

Finally, one of Petitioner's *amici* discusses a couple of state supreme court decisions finding that confessions by minors were involuntary, Professors Amicus Br. 20–22, but the egregious facts in those decisions only underscore the deficiencies in Petitioner's challenge, especially given that those cases involved *de novo* review, while this case arises under AEDPA. *Utah v. Rettenberger*, 984 P.2d 1009 (Utah 1999), involved police interrogating a suspect over two days, keeping him in solitary confinement overnight, threatening him with the death penalty ("firing squad"; "[h]anging"), and denying him access to his mother. *Id.* at 1011–12, 1018–19. In *In re J.F.*, 987 A.2d 1168 (D.C. 2010), the officers engaged in "aggressive" late-night questioning of a fourteen-year-old who denied his involvement in the crime 63 times, used "threats of invasive procedures," and "clearly conditioned" the suspect's ability to leave the police

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Goodwin, 774 N.W.2d 733 (Neb. 2009)—involved only the question of whether the officers there made a false promise of leniency during a brief, "25 to 30 minute[ ]" interview. *Id.* at 745–46.

station on his admitting guilt. *Id.* at 1178–79. And in *In re D.L.H., Jr.*, 32 N.E.3d 1075 (Ill. 2015), officers repeatedly told a nine-year-old—whose "cognitive abilities were only at the seven- to eight-year-old level," *id.* at 1091—that "no consequences would attach to an admission," *id.* at 1096. In the present case, investigators read the 16-year-old Petitioner his *Miranda* rights, obtained his mother's consent, and conducted a three-hour-long interview with a break, made no threats or promises, and used only common techniques such as taking a sympathetic tone, encouraging honesty, and challenging him with the holes in his story and what they already knew. *See infra* pp. 23–24.[6]

II. The Seventh Circuit Committed No Error

Even if this Court were inclined to consider Petitioner's splitless request for error correction, the Seventh Circuit's decision is entirely correct.

A. Obtaining federal habeas relief from a state court's application of one of this Court's totality-of-the-circumstances tests is particularly challenging. To receive a writ under AEDPA, a petitioner must

[6] The only case cited by either Petitioner or his *amici* holding that a confession was involuntary under AEDPA involved an overnight, 13-hour interrogation of a minor who was not given any break for the first nine hours. Pet. 31 (citing *Doody v. Ryan*, 649 F.3d 986 (9th Cir. 2011) (en banc), without discussing underlying facts); *see Doody*, 649 F.3d at 1015.

show, as relevant here, that the state-court decision "involved an unreasonable application" of "clearly established" law "as determined by" this Court. 28 U.S.C. § 2254(d)(1). Such relief is available only in the rare instance where the state court's decision was "objectively unreasonable, not merely wrong." *White v. Woodall*, 134 S. Ct. 1697, 1702 (2014) (citation omitted). A state court's application of a totality-of-the-circumstances test is *especially* unlikely to warrant a federal habeas writ because "[t]he more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004).

The present case involves a state court's application of this Court's totality-of-the-circumstances test for voluntariness: When deciding whether a confession is involuntary under the Fifth and Fourteenth Amendments, a court must assess "both the characteristics of the accused and the details of the interrogation" to determine "whether a defendant's will was overborne." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Although a finding of involuntariness can be based upon "coercion" that is "mental as well as physical," *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960), this Court's involuntary-confession cases "all have contained a substantial element of coercive police conduct," *Colorado v. Connelly*, 479 U.S. 157, 164 (1986); *e.g.*, *Brown v. Mississippi*, 297 U.S. 278, 281–82 (1936) (physical coercion); *Ashcraft v. Tennessee*, 322 U.S. 143, 149–50 (1944) (36-hour interrogation); *Davis v. North Carolina*, 384 U.S. 737, 739, 746 (1966)

(16-day detention with limited food); *Beecher v. Alabama*, 389 U.S. 35, 36 (1967) (violent threats). While a specific, false promise can contribute to an involuntariness finding, *see Lynumn v. Illinois*, 372 U.S. 528, 534 (1963), general assurances that "cooperati[on] [ ] would be to [a person's] benefit" are "far from threatening or coercive," even when made to a 16-year-old, *see Fare v. Michael C.*, 442 U.S. 707, 726–27 (1979). Reading a suspect *Miranda* rights is no guarantee of voluntariness, but "cases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite . . . adhere[nce] to the dictates of Miranda are rare." *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984).

Evaluating the voluntariness of juvenile confessions requires "special care," *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality op.), a principle that is simply an implementation of "[t]he totality approach," which incorporates "all the circumstances," including "the juvenile's age, experience, education, background, and intelligence," *see Fare*, 442 U.S. at 725. For example, in *Boulden v. Holman*, 394 U.S. 478 (1969), this Court upheld as voluntary a confession by an 18-year-old with an IQ of 83, conducted late at night, where police told the suspect that he would not get a lawyer until he talked and they denied his father's request to see him. *Id.* at 480–81; *see Boulden v. Holman*, 385 F.2d 102 (5th Cir. 1967). In *Fare*, the police took a 16-year-old into custody, questioned him, denied his request to speak to his probation officer, and told him "that a cooperative attitude would be to

[his] benefit." 422 U.S. at 710–11, 727. This Court held that those statements were "far from threatening or coercive" and the claim of coercion "without merit." *Id*. at 727.

The cases where this Court has held that juvenile confessions are involuntary have involved extreme facts. In *Haley*, this Court found an involuntary confession when police arrested a 15-year-old, interrogated him overnight "for about five hours" using "[f]ive or six" officers, and when "[t]here [wa]s evidence that he was beaten." 332 U.S. at 597–98. The police coerced a confession in *Gallegos v. Colorado*, 370 U.S. 49 (1962), by holding a 14-year-old for five days and denying his mother access. *Id*. at 50, 54. *In re Gault*, 387 U.S. 1 (1967), involved an unusual confession during a juvenile delinquency hearing with "no transcript or recording," where officials denied the minor several due process protections and did not inform him of his right to remain silent. *Id*. at 5–8, 55–56.

B. The Wisconsin Court of Appeals' holding that Petitioner's confession was voluntary falls well within the broad range of reasonableness permitted by AEDPA, especially given the "leeway" that the state court has in applying a totality-of-the-circumstances rule. *See Yarborough*, 541 U.S. at 664.

The state appellate court articulated the proper test: "We evaluate a confession's voluntariness on the

totality of the circumstances, . . . balancing [ ] the defendant's personal characteristics against the police pressures used to induce the statements." App. 285a; *compare Schneckloth*, 412 U.S. at 226. The court noted Petitioner's age, App. 284a ("[s]ixteen-year[s]-old"), and intelligence, App. 286a ("low average to borderline" IQ), and adopted the trial court's findings, App. 286a, which discussed Petitioner's other attributes, *see* App. 331a (Petitioner's "only [prior] police contacts" were the interviews early in the investigation); App. 331a (finding "no evidence that [Petitioner] . . . [was] unusually susceptible or vulnerable to police pressures").

The Wisconsin Court of Appeals then briefly summarized the circumstances of the interview and investigators' techniques, App. 286a, and those circumstances fully support the court's voluntariness holding. Investigators sought permission to conduct the interview, and both Petitioner and his mother consented. App. 12a, 343a. Investigators had offered to let Petitioner's mother participate in an interview just two days earlier, but both Petitioner and his mother declined. App. 284a, 332a; R.19-19:7. Investigators Mirandized Petitioner, App. 12a, 344a–46a, 359a, even though he was not in custody, App. 331a, and Petitioner testified at trial that he understood the *Miranda* warnings, R.19-21:42. *See Berkemer*, 468 U.S. at 433 n.20. They interviewed him for roughly "three hours" in the middle of the day, "repeatedly offer[ing] food, drinks, restroom breaks, and opportunities to rest." App. 13a. Investigators "used normal

speaking tones, with no hectoring [or] threats," App. 286a; they "stayed calm and never even raised their voices," App 27a; *see also* App. 13a. Petitioner "showed no signs of physical distress," App. 27a, "never refused to answer questions, never asked to have counsel or his mother present, and never tried to stop the interview," App. 13a–14a.

Investigators repeatedly encouraged Petitioner to be honest and "challenge[d] . . . details that seem[ed] implausible." App. 28a, 37a, 286a. They occasionally "bluff[ed] about what they knew." App. 11a, 27a–28a, 286a. They made vague assurances that "cooperating would be to [Petitioner's] benefit," App. 286a, but made no "specific promises of leniency," App. 2a, 33a–35a, 286a, warning Petitioner, "[w]e can't make any promises," App. 362a. These are "standard interrogation techniques that courts have routinely found permissible, even in cases involving juveniles." App. 175a.

The recording and transcript also show that none of these routine techniques overcame Petitioner's will. Petitioner "resisted" many of the most suggestive questions, App. 28a—investigators repeatedly challenged Petitioner's answers about whether he shot the victim, App. 412a–13a, 416a, 421a, 458a (*e.g.*, "We know you shot her too. Is that right?"), when the fire started, App. 379a, 417a–18a, 420a, 424a, 457a, 459a–60a (*e.g.*, "Are you tellin' us the truth?"), whether Petitioner and his uncle used some wires in the garage for anything, App. 471a–73a (*e.g.*, "Are you

being honest with me now?"), and what happened to the victim's hair, App. 452a–54a (*e.g.*, "[Y]ou know we'll find it if you [have it]."). Yet Petitioner consistently "stuck to his story," App. 28a, "strongly suggest[ing]" that his will was not overborne, *Minnesota v. Murphy*, 465 U.S. 420, 438 (1984).

Petitioner also demonstrated voluntariness by "provid[ing] many of the most damning details himself in response to open-ended questions," App. 2a, including "what he did, what he saw, what he heard, and even what he smelled," App. 192a. *See Lyons v. Oklahoma*, 322 U.S. 596, 605 (1944). Most significantly, Petitioner provided some details that investigators never asked for. Early on, an investigator challenged Petitioner about "how [he] kn[ew]" a particular detail, and Petitioner, recognizing he had been caught in a lie, changed his story and admitted for the first time that he "hear[d]" the victim "[s]creaming" while he "was outside riding [his] bike." App. 384a. Later, after Petitioner admitted going into his uncle's trailer, investigators asked if the victim was "alive," to which Petitioner responded, "Well she was handcuffed to . . . [t]he bed." App. 389a–90a. At trial, Petitioner's only explanation for many of the details that he provided was that he pulled them from the novel *Kiss the Girls*, R.19-21:67, although "[n]o scenes in either the book or the movie it inspired are remotely similar to the crimes [Petitioner] described," App. 22a n.7. Petitioner has no other explanation as to why he told investigators—to their surprise—that he raped

the victim while she was tied up in bed. *See supra* pp. 7–8.

Nothing about this Court's "clearly established" juvenile-confession caselaw, 28 U.S.C. § 2254(d)(1), calls into doubt the Wisconsin Court of Appeals' conclusion that these tactics did not coerce Petitioner into confessing. Again, investigators engaged in noncustodial questioning of a 16-year-old with an IQ "in the low 80s," App. 40a,[7] for only three hours, with a break, in the middle of the day, obtained permission from his mother to talk to him, and read him his rights. That is a far cry from *Haley*, where this Court found a confession involuntary when police aggressively interrogated the 15-year-old suspect overnight for five or six hours, and may well have beaten him, 332 U.S. at 597–98, and *Gallegos*, where police held a 14-year-old for five days, "during which time the boy's mother unsuccessfully tried to see him and he was cut off from contact with any lawyer or adult advisor," 370 U.S. at 50, 54. And the facts here were *less* coercive than even *Boulden*, where this Court upheld a confession as voluntary even though the 18-year-old suspect had an IQ of 83, and police told him he could not see a

[7] The Petition refers to a "verbal IQ" of 65 from a test in 1996 when Petitioner was six or seven years old. Pet. 6; R.19-12:86. More contemporary testing showed Petitioner's composite score "in the low 80s," *see* R.19-22:23–25, 49, and his "thinking ability" at 93, in the "average range," R.19-20:89. At the time of the interview, Petitioner was in "mostly regular-track high school classes." App. 286a; R.19-20:86–87.

lawyer unless he talked and denied his father access to him. *See* 394 U.S. at 480–81; *Boulden*, 385 F.2d at 104–05.

C. The contrary arguments that Petitioner makes are entirely meritless.

First, Petitioner's only argument for overcoming AEDPA deference rests upon his baseless assertion that the Wisconsin Court of Appeals was not entitled to deference because it only "*recited* [Petitioner's] age and intellectual deficits," but did not include specific-enough language showing that it "conducted [an] 'evaluation' of those attributes." Pet. 16, 20–22, 31. Petitioner does not even attempt to grapple with this Court's admonition that "federal courts have no authority to impose mandatory opinion-writing standards on state courts," *Johnson*, 568 U.S. at 300. For example, in *Early v. Packer*, 537 U.S. 3 (2002) (per curiam), the Ninth Circuit granted a habeas petition after finding that a state court had "failed to apply [a] totality of the circumstances test." *Id.* at 8 (citation omitted). The state-court decision "succinctly described" a particular fact earlier in its opinion, but "did not [ ] mention [it again] in its analysis," so the Ninth Circuit concluded that the state court had "failed to consider" that fact. *Id.* at 8–9 (citations omitted). This Court summarily reversed because it "strain[ed] credulity" to suggest that the state court "failed to consider facts and circumstances that it had taken the trouble to recite." *Id.* at 9 (citations omit-

ted). Petitioner accuses the Wisconsin Court of Appeals of much the same: mentioning youth and other limitations but then failing to discuss them in its totality-of-the-circumstances analysis. Pet. 20–21. Cases such as *Early* and *Johnson* foreclose this argument. Indeed, even if the Wisconsin court had rejected Petitioner's argument with no reasoning, AEDPA deference would still apply. *See Harrington v. Richter*, 562 U.S. 86 (2011).

Petitioner's argument appears to rest upon the meritless assumption that the "special care" language from *Haley*, *Gallegos*, and *Gault* requires state courts to write out a detailed analysis of the voluntariness of juvenile confessions to benefit from AEDPA deference. Pet. 1–2, 16–18, 20–22. But this Court has not imposed any show-your-work requirement on state courts and, to the contrary, has explained that "federal courts have no authority to impose mandatory opinion-writing standards on state courts." *Johnson*, 568 U.S. at 300. Notably, even this Court's more recent juvenile-confession decisions would fail Petitioner's imagined opinion-writing requirement. In *Boulden*, this Court rejected the involuntariness argument of an 18-year-old with an IQ of 83 in a single-sentence cross-reference to the lower courts' decisions. 394 U.S. at 480–81. And *Fare*, this Court's most recent juvenile voluntary confession case, addressed the voluntariness argument in a single, short paragraph. 442 U.S. at 727.

Even if Petitioner were somehow correct that federal courts can require state courts to do more than "recite[ ] Petitioner's age and intellectual deficits" to qualify for AEDPA deference, the Wisconsin Court of Appeals did do more. While the court's opinion included only a somewhat abbreviated discussion, it explained that it was "[b]as[ing]" its holding on the trial court's "findings," just as this Court based its decision on the lower courts' decisions in *Boulden*. App. 286a. The trial court's "findings" were thorough, including a longer discussion of Petitioner's age and developmental characteristics. App. 330a–31a. In all, there is no fair way to read the Wisconsin Court of Appeals' decision as *less* detailed than *Boulden* or *Fare*.

Second, Petitioner argues that his confession was involuntary under *de novo* review, Pet. 23–30, but this claim is not only irrelevant in light of AEDPA, *see supra* pp. 19–20, but wrong on the merits.

None of the tactics that Petitioner criticizes involved "substantial . . . coercive police conduct," *Connelly*, 479 U.S. at 164, nor the sort of extreme misconduct that this Court has found problematic in its juvenile-confession cases. The first "tactic" that Petitioner criticizes is investigators' repeated admonition to "tell the truth." Pet. 24. This Court has never held that encouraging honesty can be coercive, and numerous lower courts have concluded that it is not. *See* 2 Wayne R. LaFave et al., Criminal Procedure § 6.2(c) n.158 (4th ed.). Petitioner next argues that investigators "promise[d] [him] that if he was 'honest,'

he would be 'set . . . free.'" Pet. 24 (quoting App. 362a). The full quote Petitioner refers to is, "[h]onesty is the only thing that will set you free," App. 362a, a paraphrase of a common maxim, *see* John 8:32. That statement came very shortly after investigators told Petitioner that they could not "make any promises." App. 362a. Petitioner also points to investigators' "paternal posture," Pet. 27, but this Court has upheld confessions where police took a "sympathetic[ ]" or "friendly" approach, *see Beckwith v. United States*, 425 U.S. 341, 343, 348 (1976); *Frazier v. Cupp*, 394 U.S. 731, 738–39 (1969).

Petitioner argues that investigators engaged in "fact-feeding," Pet. 24–27, but cites no authority for the proposition that a few leading questions are coercive, even when dealing with minors or those with other mental limitations. Confronting a suspect with what the police already know is often a necessary technique when a suspect repeatedly lies. At most, this Court has found that confessions composed entirely of "yes-or-no" answers are more likely to be involuntary, *Fikes v. Alabama*, 352 U.S. 191, 195, 198 (1957); *see Spano v. New York*, 360 U.S. 315, 322–23 (1959); here, Petitioner "provided many of the most damning details himself in response to open-ended questions," App. 2a; *supra* pp. 6–8, 25–26. Indeed, the only examples of leading questions containing a previously unmentioned detail that the Petition can muster came after Petitioner had *already confessed* to raping the victim, cutting her throat, and burning her

body. *Compare* Pet. 25–27 (citing App. 411a and following), *with supra* pp. 6–8; App. 364a–410a.

Finally, Petitioner argues that his confession was false and that this "falsity" "underscores its involuntariness." Pet. 28–30. This Court has held that voluntariness is "a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth," *Rogers v. Richmond*, 365 U.S. 534, 544 (1961); *Jackson v. Denno*, 378 U.S. 368, 384–85, (1964); *Connelly*, 479 U.S. at 167, and adopting a different approach is not available on AEDPA review.

In any event, the trial evidence demonstrated that Petitioner's confession was, in Judge Hamilton's words, the truthful "product of a guilty conscience." App. 179a. The physical evidence that the State presented to the jury aligned with Petitioner's confession, including the handcuffs found in the bedroom, the bullet fragment with the victim's DNA on it in the garage, and various items Petitioner described using. *See supra* pp. 9–10. The jury had ample reason to disbelieve Petitioner's implausible defense that beside spending time with his uncle at a bonfire (where the victim's body was burning) and cleaning up a dark red stain in the garage, he otherwise saw nothing, heard nothing, and did nothing: Petitioner had lied to police about the bonfire, R.19-21:56, lost significant weight and was seen crying uncontrollably in the months following the crimes, R.19-18:189–90, and told his cousin that he saw the victim "pinned up in the bed-

room," R.19-18:193–94. And Petitioner's *only* explanation for his unexpected confession that he had raped the victim while she begged him to stop was his implausible assertion that he got the story from a book he had read years earlier, even though "[n]o scene[ ]" in that book is even "remotely similar to the crimes" here. App. 22a n.7. So while Petitioner purports to highlight a couple of inconsistencies or other evidentiary issues,[8] the jury reasonably concluded that what he admitted to doing was, in fact, truthful.

III. Given That This Case Arises On Federal Habeas Review, It Is An Exceedingly Poor Vehicle For Considering The Issues That Petitioner And His *Amici* Raise

A. Even if this Court agrees with Petitioner that courts should generally write more detailed opinions

[8] The absence of blood or DNA evidence in the bedroom, for example, Pet. 29–30, is unsurprising given that Petitioner and his uncle burned the victim's body, her clothes, and the bed sheets, App. 416a–18a, 432a–34a, and had four additional days to clean up before police found the victim's car, App. 198a. The fact that Petitioner "'couldn't think of'" his uncle shooting the victim, Pet. 29 (quoting App. 411a), is also easily explained: Investigators' preceding questions had focused Petitioner's mind on what happened in the bedroom, App. 402a–411a, and the shooting occurred later, in the garage, *see* App 421a. And Petitioner did not change his answer about the knife. Pet. 29. He insisted that his uncle *initially* left it in the car, App. 429a, and later guessed that his uncle "[p]robably" moved it back to the kitchen, because "he wouldn't let that knife go," App. 474a.

in juvenile-confession cases, *but see supra* pp. 27–29, this case is not a proper vehicle for addressing that issue. "[F]ederal courts have no authority to impose mandatory opinion-writing standards on state courts." *Johnson*, 568 U.S. at 300. If this Court wishes to instruct *federal* courts to provide more analysis, it should await a proper case.

B. Respondent suspects, however, that the heart of what concerns Petitioner and his *amici* is not the length of the Wisconsin Court of Appeals' decision or even that court's application of this Court's current caselaw to the facts here. What Petitioner and his *amici* want is for this Court to look to "recent" "developments in social-science research," Pet. 2, 15, 18–20, 24, 30, 34–35, and to impose a more restrictive regime governing juvenile interrogations. After all, as Petitioner not-so-subtly reminds this Court, its "last juvenile-voluntariness case" was "nearly forty years" ago, Pet. 2 (citing *Fare*, 442 U.S. 707), and a lot of new research and literature has since been produced. That is also why several of Petitioner's *amici* devote their briefs to criticizing "*prevailing* techniques," Prosecutors Amicus Br. 5–16 (emphasis added), and asking this Court to "provide guidance" on juvenile interrogations, Law Enforcement Instructors Amicus Br. 1, 6, 9, 24. These arguments line up comfortably with Judge Rovner's en banc dissent, "encouraging courts to *update* their understandings of . . . coercion" based upon recent literature. App. 58a (emphasis added).

Whatever the merits of these calls for changes in the law, considering such alterations is not available on AEDPA review. This Court has repeatedly reversed federal courts for purporting to "extend" prior precedent in AEDPA cases. *Woodall*, 134 S. Ct. at 1706; *see, e.g.*, *Kernan v. Cuero*, 138 S. Ct. 4 (2017); *Dunn v. Madison*, 138 S. Ct. 9 (2017); *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017); *Woods v. Etherton*, 136 S. Ct. 1149 (2016); *White v. Wheeler*, 136 S. Ct. 456 (2015); *Woods v. Donald*, 135 S. Ct. 1372 (2015); *Glebe v. Frost*, 135 S. Ct. 429 (2014); *Lopez v. Smith*, 135 S. Ct. 1 (2014). It would send confusing mixed signals, to put it mildly, if this Court were now to contradict these prior pronouncements and use this AEDPA case to develop the law on juvenile confessions.

In any event, several aspects of Petitioner's social science would not support his claims in this case—making clear that what he wants is a particularly onerous regime for juvenile interrogations, based upon a selective interpretation of that literature. For example, Petitioner cites research allegedly showing that minors "rarely fully comprehend [*Miranda*] rights." Pet. 19. Yet Petitioner testified at trial that he did, in fact, understand his *Miranda* rights, R.19-21:42, and he demonstrated his understanding by repeating investigators' warnings in his own words during their first interview with him on February 27, *compare* App. 513a (Investigators: "You're free to go at anytime, [and] . . . you don't have to answer any questions if you don't want to."), *with* App. 554a (Petitioner: "I could leave whenever . . . and I didn't have

to answer any questions."). Petitioner's desired regime would, apparently, *conclusively presume* that minors always fail to understand their rights, even if they later testify in court to the contrary. Similarly, while Petitioner confessed to raping the victim "less than an hour into the interview," App. 15a, and admitted to helping murder her less than 15 minutes thereafter, App. 177a, an article studying known false confessions, co-authored by one of Petitioner's attorneys, concluded that "interrogation-induced false confessions tend to be correlated with *lengthy* interrogations in which the innocent suspect's resistance is worn down," Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 948 (2004) (emphasis added) (reporting that "80% of the false confessors [studied] were interrogated for more than six hours, and 50% . . . for more than twelve hours"); *see also* Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1095 (2010) (finding "[o]nly four" false confessions from interrogations of "less than three hours").

The problems with Petitioner's desired approach do not end there. To take another example, if Petitioner is correct that merely encouraging a juvenile to tell the truth can be deemed impermissibly coercive, Pet. 24, it is not clear what police can do when interviewing a juvenile whom they believe is lying. After all, investigators here took numerous precautions—they Mirandized Petitioner even though he was not in custody, App. 331a, 345a–46a, reminded him of the

warnings, App. 359a, confirmed he understood them, App. 346a, 359a, asked for his mother's consent, App. 343a, offered to let her sit in on one interview, App. 284a, 332a, 562a, "repeatedly offered food, drinks, restroom breaks, and opportunities to rest," App 13a, and "stayed calm and never even raised their voices," App. 27a. If, notwithstanding this careful approach, investigators act unlawfully by telling a suspect that his story does not add up and that the truth is his best option, that would, in Judge Hamilton's words, "pose[ ] troubling questions for police . . . with little gained in terms of justice." App. 175a.

This Court may, someday, adopt the restrictive approach to juvenile confessions that Petitioner and his *amici* favor, concluding that the cost in "terms of justice" that troubled Judge Hamilton is worth imposing because juvenile interrogations are inherently coercive absent truly extraordinary precautions. Or this Court may mandate some more incremental change to its juvenile-interrogation caselaw, reflecting a balance between the need to investigate crime and limiting techniques that research has revealed to be more problematic than previously thought. This Court may even eventually conclude that some of the techniques that Petitioner's *amici* criticize should no longer be permitted in juvenile cases. Precisely because these choices are so consequential and sensitive, this Court should not grapple with them in the context of AEDPA review, where the only proper question is whether the state court unreasonably applied this Court's *current* "clearly established" law.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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