Juvenile Law Center
Fighting for the rights and well-being of youth

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June 13, 2019

The Honorable Tani Cantil-Sakauye, Chief Justice
California Supreme Court
350 McAllister St.
San Francisco, CA 94102

Re: **Amicus Curiae Letter in Support of Petition for Review per Rule 8.500(g)**
People v. Steve M., Case No. S256032

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rule of Court 8.500(g), we write on behalf of Juvenile Law Center to request that the Court review the opinion in *People v. Steve M.* Juvenile Law Center requests review to ensure this Court gives proper weight to both the research and common sense implications of Steve's youth and learning challenges on his ability to comprehend and validly waive his *Miranda* rights and provide a voluntary statement in the face of coercive police tactics. Accordingly, this Court should recognize the importance of providing juvenile suspects the opportunity to consult with counsel before waiving *Miranda* rights. We also ask the Court to review whether a youth's implied waiver can ever be voluntary.

This case epitomizes the particular vulnerability of children who come in conflict with the law. Upholding the waiver or the confession ignores the clear constitutional mandate that juveniles' developmental status—particularly their impulsivity, poor judgment, and susceptibility to police coercion—is relevant to the Fifth Amendment analysis. It rejects the decisive research demonstrating that a 17-year-old is highly unlikely to fully understand and appreciate the nature of his *Miranda* rights, the long-term consequences of the on-the-spot decision to waive them, or the repercussions of a confession. This is particularly true for a youth like Steve with trouble comprehending and processing information.

Interest of Juvenile Law Center

Juvenile Law Center advocates for rights, dignity, equity, and opportunity for young people 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 young people advance racial and economic equity and are rooted in research, consistent with the unique developmental characteristics of youth and young adults, and reflective of international human rights values. Juvenile Law Center has written extensively on the issue of constitutional protections for children who are subjects of interrogation in both state and federal courts. Juvenile Law Center authored the *amicus* brief in the United States Supreme Court case, *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), on behalf of 28 individuals and organizations, arguing for special consideration of age in the custodial analysis under *Miranda v. Arizona*.

Reasons Why Review Should Be Granted

Steve M. was barely 17-years-old when he was arrested for attempting to take a bicycle in December of 2016. He was ultimately charged and pled guilty to the offense. (Pet. for Review at 11-13.) Significantly, Steve's most recent individualized education program ("IEP") documents explained "when listening and being asked questions, Steve needed as an accommodation, 'extended time for processing (30-40 seconds).'" (*Id.* at 12.) Steve also admitted to smoking marijuana earlier that night. (*Id.* at 13.) During his interrogation, the officer quickly read Steve his *Miranda* rights and completed the Investigative Action Form without asking Steve the fifth and final question about an express waiver. (*Id.* at 14.) Despite this omission, the officer checked the box on the Form that indicated Steve had expressly waived his *Miranda* rights. (*Id.*) He also lied to Steve about the existence of video evidence showing Steve's involvement in the offense. (*Id.*)

The Court should grant review to clarify that youth are entitled to special protections during interrogations, that there was no valid *Miranda* waiver, and that the confession was involuntary.

Youth Are Entitled To Special Protections During Interrogations

The Supreme Court has repeatedly affirmed the importance of heightened protections for adolescents during interrogations. *Haley v. Ohio*, 332 U.S. 596, 599 (1948); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) ("[N]o matter how sophisticated," a juvenile subject of police interrogation "cannot be compared" to an adult subject). In *In*

re Gault, the Court further explained that "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." 387 U.S. 1, 55 (1967). More recently, the Court concluded that the defendant's age is relevant to the *Miranda* custody analysis. *See J.D.B. v. North Carolina*, 564 U.S. 261 (2011). The Court rooted its conclusion in emerging research, clarifying that "the [social science] literature confirms what experience bears out," *id.* at 273 n.5, and thus that developmental attributes of children must be considered in examining how a child will experience custodial interrogation. *See id.* at 274-75. Similarly, "a court should consider a juvenile's age for purposes of analyzing whether the juvenile has unambiguously invoked his or her right to counsel." *In re Art T.*, 234 Cal. App. 4th 335, 354 (Cal. Ct. App. 2015).

The Court has also cautioned 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). Thus, age and the "wealth of characteristics and circumstances attendant to it" must be given meaningful consideration in cases involving adolescent defendants. *See Miller v. Alabama*, 567 U.S. 460, 476 (2012); *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 of *Haley*, *Gallegos*, and *J.D.B.*, these cases emphasize that "children are constitutionally different from adults" and thus are entitled to special protections. *See Miller*, 567 U.S. at 471.

These protections are even more vital for youth like Steve, with language or learning challenges. "There is a strong consensus among psychologists, legal scholars, and practitioners that juveniles and individuals with cognitive impairments or psychological disorders are particularly susceptible to false confession under pressure."[1] That Steve was intoxicated at the time of the confession further undermined his ability to make reasoned decisions about his waiver or his confession. These considerations strongly weigh against the lower court's decision not to suppress Steve's statements.

Steve M. Did Not Waive His Miranda *Rights Knowingly, Voluntarily, And Intelligently*

The State bears the burden of proving by a preponderance of evidence that the defendant waived his *Miranda* rights voluntarily, knowingly, and intelligently. *People v. Williams*, 233 P.3d 1000, 1017 (Cal. 2010). *See also Miranda v. Arizona*, 384 U.S. 436, 475 (1966). The suspect must have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). There is a threshold presumption against finding a waiver of

[1] Lindsay C. Malloy, et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & HUM. BEHAV. 181, 191 (2014) (quoting Saul M. Kassin, et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 30 (2010)).

Miranda rights. *People v. Cruz*, 187 P.3d 970, 995 (Cal. 2008) (citing *North Carolina v. Butler*, 441 U.S. 369, 373 (1979)).

Moreover, the determination of waiver must take into account the age as well as the language and learning abilities of the suspect. "[T]he determination of whether an accused has knowingly and voluntarily waived his or her *Miranda* rights requires consideration of the totality of the circumstances to determine the accused's subjective state of mind." *In re Art T.*, 234 Cal. App. 4th at 352 (citing *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979)). Specifically,

> [a] minor can effectively waive his constitutional rights . . . but age, intelligence, education and ability to comprehend the meaning and effect of his confession are factors in that totality of circumstances to be weighed along with other circumstances in determining whether the confession was a product of free will and an intelligent waiver of the minor's Fifth Amendment rights.

In re T.F., 16 Cal. App. 5th 202, 214 (Cal. Ct. App. 2017). Having lower cognitive ability "is significantly related to poorer decision-making competence, and the impact of these cognitive limitations on *Miranda* waiver capacities is especially pronounced among youth in mid-adolescence." Naomi Goldstein et al., *Waving Good-bye to Waiver: A Developmental Argument Against Youths' Waiver of Miranda Rights*, 21 N.Y.U.J. LEG. & PUBLIC POL. 1, 28 (2018).

Because youth—and particularly youth with learning disabilities—have deficits in their ability to understand and appreciate these rights relative to adults and are more susceptible to coercion than adults, any analysis of waiver must account for a youth's developmental status and give due care to ensure that the juvenile has the opportunity to consult with a competent adult or an attorney prior to any waiver. *See In re Elias V.*, 237 Cal. App. 4th 568, 587-88 (Cal. Ct. App. 2015); *In re Art. T.*, 234 Cal. App. 4th at 354 (holding "a court should consider a juvenile's age for purposes of analyzing whether the juvenile has unambiguously invoked his or her right to counsel").

A youth like Steve, barely seventeen, under the influence of marijuana, and learning disabled, is particularly in need of counsel during interrogation to explain the significance of these rights and ensure comprehension. He had difficulty following along and the interrogating officer seemed to recognize as much, asking: "Are you, are you following me here? Are you with me? 'Cause it doesn't seem like you are." (1 PEX 2:41:39-2:42:44.) As the interrogation concludes, an officer tells Steve to put his hands in his front pockets. (1 PEX 2:51:11.) Steve immediately puts his hands behind his back. The officer repeats, "in your front pockets." (1 PEX 2:51:13.)

Steve's waiver was also invalid because it was implied rather than express. Because developmental status shapes the legal protections given during interrogation, the implied waiver doctrine established for adults by the U.S. Supreme Court thirty-eight years ago in *North Carolina v. Butler*, 441 U.S. 369 (1979) is not applicable to 17-year-old Steve. A waiver by a juvenile suspect should be explicit and clear. As the Delaware Supreme Court has held, "where there is any ambiguity about whether a juvenile defendant has h[im]self waived h[is] *Miranda* rights voluntarily and knowingly, the interrogating officer has an obligation to clarify the ambiguity contemporaneously on the record before continuing with the interview." *Rambo v. State*, 939 A.2d 1275, 1280 (Del. 2007). Here, Steve did not unambiguously waive his rights as the interrogating officer skipped the relevant question on the form about whether Steve wanted to explicitly waive his rights and continue the questioning without an attorney.

Steve's Statements Were Not Voluntary

Even if the lower court was correct that there was a valid *Miranda* waiver, Steve's statements could not have been voluntary, since they were the product of coercive police behavior. The importance of protecting vulnerable youth from police coercion is grounded in police best-practices, supported by social science research, and recognized by decades of Supreme Court case law.

In *Haley*, the Supreme Court explained that an adolescent during interrogation "needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him." *Haley*, 332 U.S. at 600. Without the support of an attorney, Haley was an "easy victim of the law" and a "ready victim of [police] inquisition." *Id.* at 599. In *J.D.B. v. North Carolina,* the Court similarly emphasized adolescent susceptibility to police coercion. "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." *J.D.B.*, 564 U.S. at 269 (second alteration in original) (internal quotations and citations omitted).

Social science research confirms that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures" when being interrogated by the police. 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* LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES 172-73 (1984). *See also* Fiona Jack, Jessica Leov, & Rachel Zajac, *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses*, 28 APPLIED COGNITIVE PSYCHOL. 30, 30 (2014); Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 440 (2012) (Children and adolescents are more suggestible than adults

and have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures."). For that reason, courts must be responsive to adolescent development and use "extreme caution" when applying "aggressive, deceptive, and unduly suggestive" interrogation techniques. *In re Elias V.* 237 Cal. App. 4th at 587, 591.

Here, the officers further coerced Steve by falsely claiming they had video evidence. Despite Detective Gallego's falsehood, the lower court failed to suppress Steve's coerced statements.

For the foregoing reasons, Juvenile Law Center requests that the Court grant the pending petition for review.

Respectfully,

/s/ Jessica R. Feierman
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Marsha L. Levick
Katrina Goodjoint
JUVENILE LAW CENTER
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Philadelphia, PA 19107

cc: See attached Proof of Service

DECLARATION OF SERVICE BY MAIL

Re: *In re Steve M.*, S256032

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Philadelphia, Commonwealth of Pennsylvania. My business address is 1315 Walnut Street, 4th Floor, Philadelphia, PA 19107. On June 13, 2019, I have caused to be served a true copy of the attached AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW (CAL. RULES OF COURT, RULE 8.500(g)) on each of the following, by placing same in an envelope(s) addressed as follows:

Araceli Carraso
Eastlake Juvenile Courthouse
1600 Eastlake Ave., Rm J
Los Angeles, CA 90033

Jackie Lacey
District Attorney of Los Angeles
211 W. Temple St., #1200
Los Angeles, CA 90012

Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice each envelope would be deposited with the United States Postal Service in Philadelphia, Pennsylvania, on that same day in the ordinary course of business. Additionally, each of the following were served via the TrueFiling system:

Mary E. Sanchez
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Samantha Buckingham
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Counsel for Petitioner

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 13, 2019 at Philadelphia, Pennsylvania.

/s/ Jessica R. Feierman
Declarant