Colorado Supreme Court
STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

Certiorari to the Court of Appeals, 2011CA434
District Court, Douglas County, 98CR264
The Honorable Nancy A Hopf and
The Honorable Richard B. Caschette

THE PEOPLE OF THE STATE OF COLORADO,

Respondent,

v.

NATHAN GAYLE YBANEZ,

Petitioner.

▲ COURT USE ONLY

Supreme Court
Case No:
2014SC190

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Brief of *Amici Curiae* Juvenile Law Center, *et al.* on Behalf of Petitioner Ybanez

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STATEMENTS OF INTEREST

Founded in 1975, **Juvenile Law Center** is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Colorado Juvenile Defender Center (CJDC)** is a non-profit organization dedicated to excellence in juvenile defense and advocacy, and justice for all children and youth in Colorado. A primary focus of CJDC is to reduce the prosecution of children in adult criminal court, remove children from adult jails, and reform harsh prison sentencing laws through litigation, legislative advocacy, and community engagement. CJDC works to ensure all children accused of crimes receive effective assistance of counsel by providing legal trainings and resources to attorneys. CJDC also conducts nonpartisan research and educational policy campaigns to ensure children and youth are constitutionally protected and treated

in developmentally appropriate procedures and settings. Our advocacy efforts include the voices of affected families and incarcerated children.

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 the 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 **National Juvenile Defender Center** is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. The National Juvenile Defender Center responds to the critical

need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a permanent and enhanced capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination.

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. 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. In particular, the Youth Law Center has worked to assure that every youth involved in juvenile court

proceedings has competent representation. Center attorneys helped to develop the *National Juvenile Defense Standards* (National Juvenile Defender Center, 2012). The Center also served as the lead agency for California's participation in the Juvenile Indigent Defense Action Network, a multi-year, multi-state initiative sponsored by the John D. and Catherine T. MacArthur Foundation, and authored a law review on contracts in indigent defense in California. Center attorneys have provided expert testimony on ineffective representation in trial and appellate cases, and have presented on ineffective representation at professional conferences. The issues in this case, involving the right to conflict-free counsel, fit squarely within the Center's long-term interests.

STATEMENT OF FACTS

Amici adopt the Statement of Facts as articulated in the brief of Defendant-Petitioner Ybanez.

SUMMARY OF ARGUMENT

The Sixth Amendment right to counsel is the most critical of a defendant's rights; it is through counsel that the defendant most effectively asserts all other rights at trial. *United States v. Cronic*, 466 U.S. 648, 654 (1984). The right to counsel is particularly important for juveniles, whose youth and susceptibility to coercion require that they have access to the "guiding hand of counsel" when they come into conflict with the law. *See In re Gault*, 387 U.S. 1, 36 (1967) (citation and internal quotation marks omitted). The lawyer may be the child's only ally, and is duty-bound to provide the child with diligent, unbiased and effective representation as he would any other adult client.

Representation by counsel hindered by a conflict of interest is a violation of the Sixth Amendment. *Wood v. Georgia*, 450 U.S. 261, 271 (1981) ("Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest."). Consequently, to guarantee a defendant's right to effective counsel, the decision to waive a conflict must be made knowingly, voluntarily and intelligently, and free from any source of coercion, including the child's parent. *See, e.g.*, National Juvenile Defense Center, National Juvenile Defense Standards 19 (2012) (asserting

that an attorney's primary responsibility is to elicit and represent a child client's stated interests, as codified in Standard 1.2).

Moreover, to sufficiently protect a defendant's Sixth Amendment right to effective counsel, a court must *sua sponte* inquire into a conflict when the court knows or reasonably should know that a particular conflict may exist. *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980).

Nathan Ybanez was deprived of his right to counsel under the Sixth Amendment. His attorney was hired by his father, who was accused of abusing Nathan and called as a prosecution witness in Nathan's trial for first-degree murder. The nature of this conflict should have been evident to the judge. Children's susceptibility to coercion from parents is well-established in law and policy, as is the principle that the state must intervene when the parent's interests are potentially harmful to the child.[1] Thus the facts warranted a *sua sponte* inquiry by the court. Thus, *Amici* urge this Court to hold that Nathan was deprived of his Sixth Amendment right to counsel.

[1] Moreover, under Colorado law, a conflict of interest that interferes with the basic integrity and fairness of the judicial process cannot be waived. *People v. Nozolino*, 298 P.3d 915, 920 (Colo. 2013).

ARGUMENT

I. JUVENILES HAVE A CONSTITUTIONALLY PROTECTED RIGHT TO CONFLICT-FREE COUNSEL

A. The Right to Conflict-Free Counsel is Essential to Due Process and Fairness

The right to counsel is vital to due process and the American system of justice: "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." *United States v. Cronic*, 466 U.S. 648, 654 (1984) (citation and internal quotation marks omitted). The right to counsel plays a key role in ensuring that defendants are accorded fairness and justice in the trial process. "'The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution.'" *West v. People*, 341 P.3d 520, 525 (Colo. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668, 685 (1984)).

It is not sufficient that a lawyer merely appear alongside a client in court; the Sixth Amendment requires that the lawyer's representation meet constitutional standards of effectiveness. *Strickland*, 466 U.S. at 685–86. The United States Supreme Court has explained that to hold otherwise "could convert the

appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment." *Avery v. Alabama*, 308 U.S. 444, 446 (1940). *See also Kent v. United States*, 383 U.S. 541, 561 (1966) ("The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.").

Effective representation must be free from any conflict that adversely affects representation. Representation by counsel hindered by a conflict of interest is a violation of the Sixth Amendment right to effective assistance of counsel. *Wood*, 450 U.S. at 271 ("[w]here a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest"); *People v. Castro*, 657 P.2d 932, 943 (Colo. 1983) ("This right may be violated . . . by representation that is intrinsically improper due to a conflict of interest") (citations omitted), *overruled on other grounds by West v. People*, 341 P.3d 520, 528 (Colo. 2015) (holding that Sixth Amendment right to effective assistance of counsel is violated when "(1) that counsel had a conflict of interest and (2) that conflict of interest adversely affected the representation.").

Because the role of counsel is so vital, Colorado requires that a decision to waive the right to conflict-free counsel be made knowingly, voluntarily, and intelligently. *People v. Nozolino*, 298 P.3d 915, 921 (Colo. 2013). As Nathan's opening brief explains to this Court, Nathan made no such waiver here.[2]

Amici write separately here to underscore that courts have an independent duty to inquire about conflicts of interest when the court knows or reasonably should know that a particular conflict presents a serious risk of injustice, threatening the defendant's Sixth Amendment right to effective counsel. *See Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980) (stating that the court's intervention is necessary to ensure that "a defendant charged with a serious offense has counsel

[2] Even if Nathan had attempted to waive the conflict, the waiver would not have been valid under Colorado law. When the conflict of interest interferes with the basic integrity and fairness of the judicial process, the court should not permit waiver. When determining whether to accept a waiver, the court undertakes a three-part balancing test: "(1) the defendant's preference for particular counsel; (2) the public's interest in maintaining the integrity of the judicial process; and (3) the nature of the particular conflict." *Nozolino*, 298 P.3d at 920 (citing *People v. Harlan*, 54 P.3d 871, 877 (Colo. 2002)). As *Amicus* discusses in Part II.B., *infra*, the nature of the conflict in Nathan's case is particularly egregious: a parent with adverse interests to those of his child is directing that child's defense when the child faces life in prison. In addition, the public's interest in maintaining the integrity of the judicial process is particularly acute here, given the unique protections due to juveniles under Colorado law and the U.S. Constitution. So, even if Nathan had expressed a preference for counsel and an intent to knowingly waive the conflict, the conflict would still be unwaivable because these factors far outweigh any alleged preference Nathan had for his counsel.

able to invoke the procedural and substantive safeguards that distinguish our system of justice" and to prevent "a serious risk of injustice [that] infects the trial itself."). Due to their relative developmental and emotional immaturity, the court's duty to *sua sponte* inquire into the nature of a potential conflict is particularly vital for juveniles, especially when parents' adverse interests undercut their traditional protective role. The facts of this case clearly demonstrate that the court below knew or reasonably should have known that the continued involvement in Nathan's representation by his father, who was a victim of the crime, a witness for the prosecution, and who was paying for Nathan's attorney, would give rise to a conflict that could affect the quality of Nathan's defense.[3] Allowing the representation to proceed posed a serious risk of injustice and violated Nathan's Sixth Amendment right to effective assistance of counsel.

B. The Right to Counsel is Particularly Important for Juveniles

The United States Supreme Court has recognized that the right to counsel is critical for juveniles charged with criminal conduct:

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The

[3] *See* Briefs of Petitioner and law professors serving as *amici curiae* on the analysis of this conflict under the Colorado Rules of Professional Conduct.

> child 'requires the guiding hand of counsel at every step in the proceedings against him.'

In re Gault, 387 U.S. 1, 36 (1967) (internal citations omitted) (holding that the Due Process Clause of the Fourteenth Amendment entitles children to counsel during the adjudicatory stage of delinquency proceedings, and if they are unable to afford counsel, counsel must be appointed for them). The right to counsel for children is particularly vital because they may lack the cognitive and educational ability to understand legal proceedings: "The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot." *Id.* at 39 n.65.

Because of their developmental and legal status, juveniles are particularly susceptible to coercion,[4] and are thus uniquely in need of representation by

[4] *See, e.g., Roper v. Simmons*, 543 U.S. 551, 569–70 (2005) (juveniles "are more vulnerable or susceptible to negative influences and outside pressures"); *Miller v. Alabama*, 132 S. Ct. 2455, 2464 n.5 (2012) (the parts of the brain that govern reasoning and impulse control are not fully developed in juveniles); *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401–05 (2011) (concluding that a teenager was particularly vulnerable to the "inherently coercive nature" of interrogation because of his youth). *See also People v. Austin M.*, 975 N.E.2d 22, 40 (Ill. 2012) (holding that the type of "counsel" which due process requires be afforded juveniles in delinquency proceedings "is that of defense counsel, that is, counsel which can only be provided by an attorney whose singular loyalty is to the defense of the juvenile.").

effective counsel. Indeed, the United States Supreme Court has consistently recognized the protective role of an attorney in guarding a juvenile against coercion. In *Haley v. Ohio*, decided in 1948, the Supreme Court held that the confession of a 15-year-old boy was obtained in violation of his due process rights, in part because the youth was without counsel.

> He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him. […] No lawyer stood guard to make sure that the police went so far and not farther, to see to it that they stopped short of the point where he became the victim of coercion.

Haley v. Ohio, 332 U.S. 596, 599–600 (1948). The Court further elaborated on the importance of an attorney's presence in *Gallegos v. Colorado*, decided in 1962, holding that a 14-year-old boy's confession was obtained in violation of his due process rights when he had been held for five days without officers sending for his parent or ensuring that he had a lawyer to guide him. *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). The Court explained the need for both an attorney and the youth's parents to provide him with "adult advice" to put him on "less unequal footing with his interrogators." *See id*. at 54; *see also Gault*, 387 U.S. at 38-39

(citing the President's Crime Commission's conclusion that counsel for juveniles was necessary "wherever coercive action is a possibility.").[5]

Colorado law also recognizes that legal representation of children is a "critical element" of the legal system. § 13-91-102(1)(a), C.R.S. (2015). For instance, Colorado requires the appointment of counsel for juveniles in cases where the juvenile and his or her parents are found to be indigent or "the juvenile's parents, guardian, or other legal custodian refuses to retain counsel for the

[5] The importance of protecting children from coercion in government systems is deeply rooted in Constitutional law in a wide variety of contexts. In school prayer cases, for example, the United States Supreme Court has repeatedly observed that younger children will be particularly susceptible to the coercion inherent when prayers are conducted on school grounds or at school events. *See, e.g., Lee v. Weissman,* 505 U.S. 577, 592 (1992) (observing that "[a]s we have observed before, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools," and finding unconstitutional school prayer at graduation ceremonies). *See also, e.g., Sch. Dist. of Abington v. Schempp,* 374 U.S. 203, 307 (1963) (Goldberg, J., concurring); *Edwards v. Aguillard,* 482 U.S. 578, 584 (1987); *Bd. of Ed. of Westside Community Schs. (Dist. 66) v. Mergens,* 496 U.S. 226, 261–62, (1990) (Kennedy, J., concurring). Similarly, in holding the death penalty unconstitutional as applied to juveniles, the United States Supreme Court has relied largely on belief that young people are particularly susceptible to coercion. *See, e.g., Roper v. Simmons,* 543 U.S. 551, 569 (2005) (observing that "juveniles are more vulnerable or susceptible to negative influences and outside pressures" and should not therefore be subject to the death penalty); *Thompson v. Oklahoma,* 487 U.S. 815, 835 (1988) (plurality opinion) (finding unconstitutional the death penalty for juveniles under age 15 because "inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult").

juvenile…." § 19-2-706, C.R.S. (2015). The presumption of indigence serves not only to protect juveniles from the "systemic pressures to admit [to] rather than contest the charges" they may face without representation: evidence suggests that "when the family bears the cost of representation, an attorney is more likely to defer to the juvenile's parents with respect to the direction of the litigation, creating a potential conflict of interest." Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 Wash. U. J.L. & Pol'y 53, 86 (2012). This potential conflict of interest is compounded "when the parent or other family member is the complaining witness in the case." *See id*. Because Nathan's father is not only a victim to the crime but also a witness for the prosecution, the potential conflict of interest is particularly acute here.

II. NATHAN'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED BECAUSE THERE WAS A CONFLICT OF INTEREST WHICH COULD NOT BE WAIVED

Nathan's trial attorney had a conflict of interest: he was paid by Nathan's father, who was a victim, a prosecution witness, and who was also accused of abusing Nathan. Defendant-Appellant's Opening Brief at 7-11, 14-16.[6] Nathan's father also continued to be actively involved in Nathan's representation. Petitioner

[6] All citations to briefs, unless otherwise specified, are to the briefs filed in the Court of Appeals.

argues that this constituted an actual conflict under Colorado law. Defendant-Appellant's Opening Brief at 42–44. Respondent contends that any conflict was validly waived. People's Answer Brief at 36–42. As Petitioner has argued, any waiver of conflict was invalid as it wasn't voluntary, intelligent and knowing and was not on the record, and in the alternative, it was unwaivable. Defendant-Appellant's Reply Brief at 32; Cert. Pet. at 14–17. *Amici* write separately to emphasize that in light of the unique characteristics of juveniles, the dynamics of the parent child relationship, and the egregious nature of the conflict, there was a Sixth Amendment violation.

A. Divergent Legal Interests between Parent and Child Deserve Special Scrutiny Because of the Unique Influence Parents Have Over Their Children

Because the state assumes that parents are acting in the best interests of their children,[7] a child is doubly disadvantaged when his or her attorney has a conflict

[7] The law consistently reinforces parents' control over their children; with few limitations, the United States Supreme Court has consistently established that parents have a fundamental liberty interest in the care, custody, and control of their children that deserves the protection of our laws. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion) (holding that mother had a "fundamental liberty interest[]" in the "care, custody, and control" of her child such that a state statute allowing courts to grant child's grandparents visitation rights against mother's express wishes violated her due process rights); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (holding that unmarried father had a substantial private interest "in the children he ha[d] sired and raised" such that due process required a hearing before he could lose parental rights after death of children's mother); *Pierce v. Society of*

involving the parent.[8] The child cannot turn to either the parent or counsel for guidance. Moreover, the child may experience unique pressure to comply with the parent's choice of counsel The nature of the parent/child relationship, including the child's legal, financial, and emotional dependence on parents, requires attorneys and courts to be particularly attentive to the risk of conflict.

Colorado law typically assumes that parents will safeguard the rights of their children in legal proceedings. *See, e.g.*, § 19-2-511(1), C.R.S. (2015) (statements resulting from a juvenile's custodial interrogation are inadmissible unless a parent, guardian, or legal or physical custodian of the juvenile was present at such

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Sisters, 268 U.S. 510, 534–35 (1925) (holding that parents had a protected liberty interest in "direct[ing] the upbringing and education of children under their control" such that a state statute mandating that all children attend public schools violated parents' due process rights); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that parents' liberty interest in "control[ling] the education of their own" included the right to have children receive instruction in parents' native tongue such that due process precluded a state statute banning the teaching of modern languages in public schools). "It is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme Court]," *Troxel*, 530 U.S. at 65. "The child is not the mere creature of the [s]tate; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

8 *See* discussion of attorney's critical role as a dedicated and zealous advocate tasked with representing the child's stated interests as opposed to a guardian *ad litem* who acts in the child's best interests in *People v. Austin M.*, 975 N.E.2d 22, 42 (Ill. 2012) ("[T]he interests of justice are best served by finding a *per se* conflict when minor's counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*.").

interrogation and has been advised of the juvenile's rights or the juvenile has his or her lawyer present); *id.* at § 19-2-511(5) (a juvenile cannot waive the right to have a parent or guardian present without prior consultation with his or her parent guardian). Indeed, throughout Colorado's Rules of Juvenile Court Procedure the parent or guardian has many of the same rights as the juvenile: "[a]t the juvenile's first appearance after the detention hearing, or at first appearance on summons, the juvenile and parent, guardian, or other legal custodian shall be fully advised by the court, and the court shall make certain that they understand…." Colo. R. Juv. P. 3. The parent's protective role is assumed: "[t]he parent is there to assure the juvenile is provided with parental guidance and moral support, as well as some assurance that any waiver of the juvenile's rights is made knowingly and intelligently." *People in Interest of J.F.C.*, 660 P.2d 7, 8 (Colo. Ct. App. 1982) (holding that "of critical significance" to any knowing and intelligent waiver of a constitutional right by a juvenile is the presence of the parent."). Finally, this Court has held that parental presence or involvement in an interrogation is a relevant factor for *Miranda* custody analysis. *People v. J.D.*, 989 P.2d 762, 768 (Colo. 1999) ("In the criminal or delinquency context involving a juvenile, a trial court may also consider, as one circumstance among the totality of circumstances, whether the juvenile's parents were present or had knowledge of the interrogation.").

In a variety of legal contexts, however, Colorado law also recognizes that the presumption that a parent will serve in a protective role may prove incorrect. To remedy such a deficiency, Colorado has instituted specific protections to ensure that the conflict between the parent and child does not interfere with the child's right to legal representation, and that the child is protected from coercion at the hands of parents. For example, Colorado law allows the juvenile court judge to accept a waiver of counsel only after finding on the record that the juvenile "has not been coerced by any other party, including but not limited to the juvenile's parent, guardian, or legal custodian, into making the waiver." § 19-2-706, C.R.S. Under Colorado law, a parent who files a criminal complaint against a child cannot choose the child's attorney. *Selby v. Jacobucci*, 349 P.2d 567 (Colo. 1960) ("[A]ny person proceeded against in a court is entitled to counsel of his or her own choosing, and the selection of such counsel cannot be dictated by those who instigated the action."). Because of allegations of abuse or neglect, the court appoints a guardian *ad litem* to protect the child's best interest in all dependency cases. § 19-1-111(1), C.R.S. (2015). And, if a child is made a party in a paternity action, "the child's mother or father may not represent the child as guardian or otherwise", *id.*, because "the interests of a parent may conflict with those of the child." *People in Interest of E.E.A. v. J.M.*, 854 P.2d 1346, 1348 (1992).

Colorado case law has specifically recognized the importance of protecting young people from parental coercion in the context of the waiver of rights. For example, a parent cannot hold or waive a privilege on behalf of the child when their interests conflict. *L.A.N. v. L.M.B.*, 292 P.3d 942, 948 (Colo. 2013) (parent cannot hold therapist/patient privilege on behalf of a very young or incompetent child when the parent's interest may give them "incentive to strategically assert or waive the child's privilege in a way that could contravene the child's interest in maintaining the confidentiality."); *People v. Marsh*, 2011 WL 6425492, at *10 (Colo. Ct. App. Dec. 22, 2011) (mother could not waive her daughter's privilege when mother's "natural affection and affinity for her child and her father were in direct conflict" because of sexual abuse allegations against maternal grandfather). Although the presence of a parent is generally significant in determining whether the waiver of a right by a juvenile was "knowing and intelligent," the parent's presence is not sufficient "if the parent's interests are adverse to that of the child." *People in Interest of J.F.C.*, 660 P.2d 7 (Colo. Ct. App. 1982). Colorado courts have made it clear that just having an adult or parent present is not sufficient to protect children's rights: the person appearing with the child during the interrogation is expected to "act on the side of the juvenile" and "keep their best

interest uppermost in mind." *People v. Maes*, 571 P2d 305, 306 (Colo. 1977); *see also People v. Raibon*, 843 P.2d 46 (Colo. Ct. App. 1992).

Social science research further confirms the heightened susceptibility of juveniles to coercion by their parents. Because children are naturally dependent on their parents, coercion is at its height when exercised by a parent. *See* Barry Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 Minn. L. Rev. 141, 182 (1984) (rather than creating an environment where children are less susceptible to the pressures of interrogation, parents can and do frequently coerce their children into waiving fundamental rights, such as the right to silence); *see also* Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Human Behavior 333 (2003) (finding that, compared to young adults, adolescents tend to make choices that reflect compliance with authority). When parents are involved, children "may not have the legal freedom, nor perceive the psychological freedom, to choose…. [C]hildren respond to adult influence most frequently with compliance." David G. Scherer & N. Dickon Reppucci, *Adolescents' Capacities to Provide Voluntary Informed Consent: The Effects of Parental Influence and Medical Dilemmas*, 12 Law & Human Behavior 123, 126 (1988). A study of children making medical decisions for themselves, subjected to

varying levels of parental coercion, showed that children were likely to yield to parental coercion, citing unwillingness to deal with family discord and stress that would result from rejection of the parent's preferred course. *Id.* at 133. Although these trends were more pronounced in situations of low consequence, children tended towards adopting their parents' preferred course even in high consequence trials, such as when the children were prompted to make a decision about a kidney donation. *Id.* Similarly, evidence of parental coercion in the abortion context[9] has prompted Colorado to enact legal protections that support minors in making reproductive health decisions without parental involvement, particularly when there are allegations of abuse or neglect. *See* § 12-37.5-107, C.R.S. (2015); *see also Bellotti v. Baird*, 443 U.S. 622, 647 (1979) (recognizing parents' power to obstruct both an abortion and [a pregnant minor's] access to court); *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 526 (1990) (Blackmun, J., dissenting) (remarking on "the minor's emotional vulnerability and financial dependency on her parents") (internal citations omitted).

[9] In one study, nearly a fifth of pregnant minors whose parents found out about their pregnancy reported that their parents were making them have an abortion, despite the fact that initially many of these girls reported wanting to continue the pregnancy. Henshaw & Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Family Planning Perspectives 196, 213, 207 (1992).

B. The Nature of the Conflict of Interest In This Case Was Especially Egregious

Due to the active involvement of Nathan's father in his defense representation, the "nature of the conflict" of interest here is egregious.[10]

First, in the present case, the conflict involved a single attorney rather than a larger entity or office. This Court recently held that the public defenders' simultaneous representation of the defendant and a complaining witness in an unrelated matter, simultaneous representation of the defendant and a potential alternate suspect in an unrelated matter, and successive representation of defendant and a prosecution witness in an unrelated matter could each raise conflicts of interest implicating Sixth Amendment rights. *West*, 341 P.3d at 520. These conflicts could arise even though they concerned the public defender's office as an entity, not an individual attorney engaged in the simultaneous and successive representation of those parties. *Id.*

[10] A defendant's Sixth Amendment rights are violated when (a) there is a conflict of interest and (b) the conflict of interest "adversely affects" counsel's representation. *West*, 341 P.3d at 528. "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief." *Cuyler*, 446 U.S. at 349–50, (1980). Both Petitioner and the law professors serving as *Amici Curiae* have provided in-depth arguments on why Nathan need not show prejudice and how the ineffective assistance of counsel adversely affected Nathan's representation.

Other facts here exacerbate the potential for conflict. Nathan and his father had explicit – not hypothetical – divergent legal interests, and there were allegations of abuse that had potential relevance to Nathan's defense. Under the law, Nathan's father was a victim of the crime. Defendant-Appellant's Opening Brief on the Merits at 9. When Nathan was initially arrested, his father referred to him as a "sick little fuck" and said he wanted to "beat the shit out of him." *Id.* at 9. The father actively participated in the trial as the main witness for the prosecution; the father testified that Nathan was a "bad" child who did not suffer any abuse, Cert. Pet. at 3, yet Nathan's attorney had copious evidence that Nathan was physically and emotionally abused by his father. In fact, the father himself informed the attorney that he had slammed his son against a wall and destroyed his possessions. Defendant-Appellant's Opening Brief on the Merits at 16, 28. These facts countermand the traditional presumption that Nathan's father had Nathan's best interests in mind.

Despite these clear divergent interests, Nathan's attorney allowed Nathan's father to participate actively in Nathan's representation and to continue guiding Nathan in discussions about how Nathan should proceed with the case. Nathan's father communicated with Nathan on behalf of the lawyer and advised Nathan on whether to waive his right to testify. Cert. Pet. at 4.

Nathan's youth increased his susceptibility to coercion from his father. Nathan had no source of financial support other than his father; if he is ever released, he will be sent home with his father. From Nathan's point of view, he may have seen no alternative to following his father's recommendations with regard to trial strategy.

Undoubtedly, there are many cases where a parent's involvement in a child's defense, especially where the child is facing especially serious consequences, would be welcome and constructive, and waiving a potential conflict even where the parent hired the child's attorney would be actually be ethically appropriate. This is not one of those cases. When the parent's interests are so plainly adverse to the child, the parent's continued involvement in the child's representation unconstitutionally compromises the fairness and integrity of the judicial process.

Nathan faced trial for murder, with a possible life without parole sentence if convicted, with neither a supportive parent nor independent counsel. He did not receive effective assistance of counsel, as guaranteed by the Sixth Amendment. His right to counsel was fatally compromised.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center, et al. respectfully request that this court overturn the decision of the Appellate Court and find Nathan Ybanez' was deprived of his right to the effective assistance of counsel under the Sixth Amendment.

Respectfully Submitted,

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Dated: June 26, 2015

Colorado Supreme Court STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203 Certiorari to the Court of Appeals, 2011CA434 District Court, Douglas County, 98CR264 The Honorable Nancy A Hopf and The Honorable Richard B. Caschette THE PEOPLE OF THE STATE OF COLORADO, Respondent, v. NATHAN GAYLE YBANEZ, Petitioner.	▲ COURT USE ONLY Supreme Court Case No: 2014SC190
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CERTIFICATE OF COMPLIANCE	

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28 and 32. It contains 5,803words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

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CERTIFICATE OF SERVICE	

I, Marsha Levick, Esq., hereby certify that I have served a true and correct copy of the foregoing document via U.S. mail on this 26th day of June, 2015 to:

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