NO. 15-1086

IN THE

Supreme Court of the United States

Joseph H.,
Petitioner,
v.
California,
Respondent.

On Petition For Writ Of Certiorari To The Court of Appeal of California For The Fourth Appellate District, Division Two

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER AND THE CENTER ON WRONGFUL CONVICTIONS OF YOUTH IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI*[1]

Amici Juvenile Law Center and the Center on Wrongful Convictions of Youth work on issues of child welfare, juvinle justice, and children's rights. *Amici* have a uniue perspective on the interplay between the constitutional rights and developmental psychology of children involved in the juvenile and criminal justice systems. Petitioner's vulnerability as a 10-year-old child subjected to a police interrogation presents a critically important issue as this Court continues to address this interplay between research and law, and its impact on children's rights. See attached appendix 1A for an individual statement from each organization.

SUMMARY OF THE ARGUMENT

This year marks the 50th anniversary of *Miranda v. Arizona*, 384 U.S. 436 (1966). As scholars and practitioners around the country discuss the significance of the landmark decision, this case presents this Court with an opportunity to answer a question left open by *Miranda* and its progeny: whether additional protections must be provided to juveniles to ensure that any decision to speak to police is "truly the product of [their] free choice." *Miranda,* 384 U.S. at 457.

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[1] Pursuant to Rule 37.2, counsel of record received timely notice of the intent to file this brief. The consent of counsel for all parties is on file with this Court. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici,* their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

This question must be considered in light of this Court's long-held recognition that children are constitutionally different from adults, as well as more recent developmental and scientific research that confirms juveniles' deficits in comprehending the *Miranda* rights, susceptibility to coercion and pressure from authority figures, and relative ineptitude with the life-altering decisions often involved in the waiver of the rights to silence and to counsel.

Amici also ask this Court to accept the question posed by Justice Gordon Liu in his dissent from the California Supreme Court's denial of review below: "what role parents, guardians, or counsel should play in aiding a valid waiver decision by [very young] children, and under what conditions a parent or guardian would be unable to play that role." App. to Pet. Cert. 49a. A half a century after *Miranda* transformed the landscape of custodial interrogations, it is time for this Court to evaluate how *Miranda* should be applied to juvenile suspects who are uniquely vulnerable not only to police intimidation, but also, as illustrated in the instant case, to the potentially coercive effect of parental authority.

The appellate court's ruling that Joseph H, a ten-year-old child, voluntarily, intelligently, and knowingly waived his rights only underscores the urgency of action by this Court. *Amici* urge this Court to accept this case and to address whether a ten-year-old can ever knowingly and intelligently waive his *Miranda* rights without the presence of counsel or a meaningful opportunity to consult with counsel.

ARGUMENT

I. THE QUESTION OF WHAT PROTECTIONS ARE DUE TO CHILDREN DURING *MIRANDA* CUSTODIAL INTERROGATIONS IS IMPORTANT AND UNSETTLED.

In *J.D.B. v. North Carolina,* the Court clarified that the defining characteristics of youth are relevant to the *Miranda* test, and explicitly left open the question of whether children's immaturity and vulnerability require additional safeguards to ensure that they can comprehend and effectively exercise their *Miranda* rights. *J.D.B. v. North Carolina,* 564 U.S. 261, 131 S. Ct. 2394, 2401 n. 4 (2011). State case law makes clear the need for guidance on this issue.

Some state courts have recognized that an adolescent needs an attorney or another adult's support prior to making a valid *Miranda* waiver. *See, e.g.*, *Commonwealth v. A Juvenile,* 449 N.E.2d 654 (Mass. 1983); *In re B.M.B.*, 955 P.2d 1302, 1312-13 (Kan. 1998). Still others have upheld waivers as valid even in the absence of such supports. *McKoon v. State*, 465 S.E.2d 272, 274 (Ga. 1996); *Quick v. State*, 599 P.2d 712, 719-20 (Alaska 1979).

State case law is also clearly divided on whether the presence of a parent is a protective or coercive factor during interrogation. Some state courts affirm the presence of a parent or interested adult as a protective factor. *See, e.g.*, *Commwealth v. Smith*, 28 N.E.3d 385, 389 (Mass. 2015); (expanding the rule under which juveniles must be afforded the opportunity to consult with an interested adult as a prerequisite to a valid *Miranda* waiver to include 17 year olds); *M.A.C. v. Harrison Cty. Family Court*, 566

So. 2d 472, 474 (Miss. 1990); *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982) (holding a *Miranda* waiver per se invalid under Vermont's constitution if the juvenile suspect did not have the opportunity to consult with an adult who is genuinely interested in his or her welfare, independent from the prosecution, and informed of the juvenile's rights); *State v. Mears*, 749 A.2d 600, 604 (Vt. 2000) (confirming *E.T.C.* is still controlling precedent); *In re Steven T.*, 499 S.E.2d 876, 884 (W. Va. 1997) (requiring parental presence for interrogations of juveniles under sixteen).

Indeed, in some states, courts have admitted confessions into evidence even when parents encourage young people to confess. *See*, *e.g.*, *State ex rel. Q.N.,* 843 A.2d 1140, 1147 (N.J. 2004) (finding that a juvenile's confession was voluntary even though the mother urged her son to confess and left interrogation room); *United States v. Erving L.,* 147 F.3d 1240, 1250 (10th Cir. 1998) (juvenile suspect's confession was voluntary because his will was overborne by the actions of his parents who encouraged him to cooperate and not officers); *McNamee v. State,* 906 So. 2d 1171, 1175 (Fla. Dist. Ct. App. 2005) (juvenile's statement was voluntary and admissible despite his father encouraging him to tell the truth); *Commonwealth v. Quint Q.,* 998 N.E.2d 363, 365-66 (Mass. App. Ct. 2013) (overturning the lower court's holding that a juvenile's statement was involuntary due to his mother's domineering and coercive presence during the interrogation).

In contrast, a number of state courts have recognized that parental presence can weigh against the validity of a waiver or admissibility of a confession. *See, e.g.*, *In re A.S.*, 999 A.2d 1136, 1138

(N.J. 2010) (holding a juvenile's confession inadmissible where her adoptive mother, whose grandson was the victim of the offense, misstated the juvenile's rights when police had her read them to the juvenile, badgered the juvenile in front of police, and "became a de facto agent of the police"); *State ex rel. J.E.T.*, 10 So. 3d 1264, 1275 (La. Ct. App. 2009) (parents with an "obvious conflict" could not provide competent advice and were not sufficiently independent to serve as someone interested in the suspect's welfare); *In re D.W.*, 440 N.E.2d 140, 141 (Ill. App. Ct. 1982) (upholding the trial court's finding that the juvenile's confession was involuntary where his mother "was used as an agent of the police" and insisted he tell the police what occurred).

State statutory schemes are varied as well. Texas and West Virginia establish a right to counsel at interrogation. *See, e.g.*, Tex. Fam. Code. Ann. § 51.09 (West 2016) (waiver of a juvenile's rights must be made by a child and the attorney for the child); W. Va. Code Ann. § 49-4-701(l) (West 2016) (statements of juveniles under 14 years of age are inadmissible unless made in the presence of an attorney).[2] The majority of states, however, do not afford such a right.

In many states, legislation weighs the presence of a parent as a protective factor, presuming that the presence of a parent makes up for what a juvenile lacks in maturity or intelligence. *See* Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile*

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[2] New Mexico is even more protective for younger youth, excluding all statements by juveniles under thirteen and presumes that statements by thirteen and fourteen year olds are inadmissible, regardless of the presence of an attorney. N.M. Stat. Ann. § 32A-2-14(F) (West 2016).

Custodial Interrogations: Friend or Foe?, 41 Am. Crim. L. Rev. 1277, 1286 (2004); Conn. Gen. Stat. Ann. § 46b-137 (West 2016) (statements of a child under 16 are inadmissible unless made in the presence of a parent or guardian who has been advised of the child's rights); Miss. Code. Ann. § 43-21-303 (West 2016) (requiring police to invite a parent or guardian to be present for a child's interrogation). Many states require the presence of parent *or* counsel. *See, e.g.*, Colo. Rev. Stat. Ann. § 19-2-511 (West 2016) (a juvenile's statements are inadmissible unless counsel or a parent or guardian who is apprised of the child's rights is present); Ind. Code Ann. § 31-32-5-1 (West 2016) (a child cannot waive his or her right to counsel without counsel or a parent or guardian who has meaningfully consulted with the child and has no adverse interest); N.C. Gen. Stat. Ann. § 7B-2101 (West 2016) (statements of juveniles less than 16 are inadmissible unless a parent, guardian, or counsel is present); N.D. Cent. Code Ann. § 27-20-26 (West 2016) (requiring that a juvenile be represented by a parent, guardian, or counsel during custodial interrogation); Okla. Stat. Ann. tit. 10A, § 2-2-301 (West 2016) (requiring presence of a parent, guardian, attorney, adult relative, adult caretaker, or legal custodian for waiver to be valid).

The patchwork of state provisions and case law summarized above establish the utter lack of uniformity on this issue nationwide. Yet the question of what protections are due to juveniles at interrogation is of utmost importance to ensure a functioning justice system. Once youth waive their *Miranda* rights they are at particular risk of offering coerced or unreliable confessions. Because children and adolescents are "less equipped to cope with

stressful police interrogation and less likely to possess the psychological resources to resist the pressures of accusatorial police questioning," they are grossly over-represented among proven cases of false confession. *See* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 9444 (2004). Children and adolescents are more suggestible than adults, *see* 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), and have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures." Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 440 (2012). Indeed, studies demonstrate that approximately one quarter of youth, and particularly the youngest adolescents, believe they would definitely falsely confess in response to commonly used interrogation techniques. *See* Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions,* 10 Assessment 359, 365 (2003). Nonetheless, police are just as likely to use coercive techniques with youth as with adults. N. Dickon Reppucci, et al., *Custodial Interrogation of Juveniles: Results of a National Survey of Police, in* Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations 67, 76-77 (G. Daniel Lassiter & Christian A. Meissner eds., 2010). Not only does this practice place vulnerable youth at risk, it also has public safety consequences. When coercive tactics lead a juvenile

to falsely confess, the person who actually committed the offense remains at large.

II. THIS COURT SHOULD GRANT THE PETITION FOR CERTIORARI TO ENSURE THAT VULNERABLE CHILDREN RECEIVE THE FIFTH AMENDMENT PROTECTIONS TO WHICH THEY ARE ENTITLED.

This Court has repeatedly made clear that children's developmental status is relevant to constitutional interpretation of their rights. *See, e.g.*, *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (striking down the mandatory imposition of life without parole sentences for juveniles); *Roper v. Simmons*, 543 U.S. 551 (2005) (striking down the juvenile death penalty as unconstitutional); *Graham v. Florida,* 560 U.S. 48 (2010) (striking down the imposition of life without parole sentences for juveniles convicted of non-homicide offenses); *Montgomery v. Louisiana*, 136 S. Ct. 718, (2016) (holding *Miller* retroactive); *J.D.B.*, 131 S. Ct. 2394. The case law and recent social science research regarding children's capacity all point to one conclusion: children need the "guiding hand of counsel" to protect them from coercive interrogations. *See In re Gault*, 387 U.S. 1, 36-37 (1967) (establishing juveniles' constitutional right to counsel in delinquency proceedings).

A. This Court Has Repeatedly Held That Constitutional Standards Must Account For Juvenile Status.

In a series of decisions over the past decade, this Court has recognized three key characteristics that distinguish children from adults: "[a]s compared to

adults, juveniles have a 'lack of maturity and an undeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well-formed.'" *Graham,* 560 U.S. at 68 (quoting *Roper,* 543 U.S. at 569-70). Five years ago in *J.D.B. v. North Carolina*, this Court clarified that these defining developmental attributes of children must also be considered in the *Miranda* custody determination. 131 S. Ct. 2394. The *J.D.B.* Court relied on the "commonsense reality" that a reasonable child will experience custody differently from a reasonable adult. *See id.* at 2398-99. Thus, the objective determination of whether a child viewed his interrogation as coercive must take the individual's age into account. To hold a child's age irrelevant to the custody analysis, this Court acknowledged, would be "nonsensical;" it would "ignore the very real differences between children and adults [and] deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults." *Id.* at 2405, 2408.

J.D.B. also relied on this Court's venerable precedent that a child's age must be accounted for when applying constitutional standards to juvenile suspects during interrogation. Almost seventy years ago, in *Haley v. Ohio*, 332 U.S. 596, 601 (1948), this Court held that admission of a 15-year-old's confession violated his due process rights because he would not have had "a full appreciation" of his rights. Likewise, in 1962, this Court held that failing to account for "youth and immaturity" when assessing a 14-year-old's confession would be in "callous disregard of this boy's constitutional rights." *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). *J.D.B.* breathed new

life into *Haley*'s and *Gallegos*'s presumption that teenage defendants require unique protections at interrogation.

B. *Miranda's* Prophylactic Rule Requires Distinct Protections For Youth, Who Are Uniquely Vulnerable To Coercion.

The prophylactic nature of the *Miranda* rule makes clear why special protections are needed for children. In *Miranda*, the Court emphasized that the due process voluntariness test alone was insufficient to protect individuals from coercive police practices. Rather, a person being subjected to police interrogation needs a "protective device" to safeguard him from interrogation practices designed to "subjugate the individual to the will of his examiner." *Miranda*, 384 U.S.. at 465, 457. For adults, notification of the right to remain silent and of access to counsel would combat the "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Id.* at 467.

The solution devised for adult defendants in *Miranda*—informing a suspect of his rights—cannot be mechanistically applied to children. Mere notification is an insufficient "protective device" to youthful suspects who do not understand the standard *Miranda* warnings, or who are too easily pressured by police into giving their rights up.

Recent social science confirms what the Court has long recognized: youth lack an adult understanding of *Miranda* rights. *Miranda* warnings vary from elementary to post-graduate reading levels, and somewhat paradoxically, warnings written

specifically for juveniles are often more complex. *See* Hayley M. D. Cleary & Sarah Vidal, *Miranda in Actual Juvenile Interrogations: Delivery, Waiver, and Readability*, 41 Crim. Just. Rev. 98, 100-102 (2016). Multiple studies have established that youth, particularly those under age 15, do not properly understand *Miranda* rights. Jodi L. Viljoen et al., *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards,* 25 Behav. Sci. & L. 1, 2, 9 (2007). Younger children are even more vulnerable: the vast majority of youth ages 11-13 have shown impairments in understanding their *Miranda* rights or appreciating how those rights apply during interrogation. *Id.* at 9.[3] This lack of understanding translates into a diminished capacity to knowingly and intelligently waive *Miranda* rights. In fact, "nearly all" youth – approximately 90% – waive their *Miranda* rights, a rate much higher than adult waiver. Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 Cornell J. L. & Pub. Pol'y 395, 429 (2013).[4]

Juvenile suspects also need more than mere notification of rights to prevent involuntary confessions because of their unique vulnerability to police coercion. This Court has long recognized that

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[3] Research on *Miranda* comprehension generally does not include children as young as 10, but as comprehension tends to decrease with age, 10-year-olds would presumably have even more-impaired comprehension than the 11-13-year olds included in these studies.

[4] Video-taping *Miranda* waivers and interrogation of youth may help courts identify involuntary or unknowing/unintelligent waivers, but will do nothing to improve youth comprehension or decrease vulnerability to coercion.

vulnerability. In *J.D.B.,* the Court explained "childhood yields objective conclusions . . . that children are 'most susceptible to influence' and 'outside pressures.'" *J.D.B.*, 131 S. Ct. at 2404-05 (citations omitted). As a result, "[n]either officers nor courts can reasonably evaluate the [coercive] effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances." *Id.* at 2405. Similarly, in *Haley v. Ohio,* the Court recognized that a 15-year-old murder suspect was more deserving of heightened protections from the overpowering presence of police during custodial interrogations than any "mature man." *See Haley*, 332 U.S. at 599. The Court noted:

> [Haley's custodial interrogation] would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.

Id.

Significantly, in *Haley*, the Court gave little weight to the fact that Haley's interrogators had read him his constitutional rights before he confessed:

> But we are told that this boy was advised of his constitutional rights before he

> signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.

Id. at 601.

In 1962—still prior to this Court's landmark ruling in *Miranda*—in *Gallegos,* 370 U.S. 49, the Court again took little comfort in the fact that the authorities had read the 14-year-old boy his rights. In reversing the 14-year-old's murder conviction and finding that his confession was "involuntary," the Court stated:

> [A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protest his own

> interests or how to get the benefits of his constitutional rights.

Id. at 54.

Recent social science research affirms children's unique vulnerability to coercion. Social scientists have demonstrated that youths' propensity toward impulsivity, underdeveloped cognitive capacities critical for information processing, difficulty weighing options, and tendency to over-emphasize short-term gains over possible long-term consequences leave them disadvantaged when making complex decisions like waiver of *Miranda* rights. *See* Cauffman, *supra* at 432-33 (2012). Stressful situations like custodial interrogations exacerbate impairments in child and adolescent decision making, meaning "adolescents' already skewed cost–benefit analyses are vulnerable to further distortion." Jessica Owen-Kostelnik et al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 Am. Psychol. 286, 295 (2006). These deficits in youth decision making result from incomplete brain development: the brain regions responsible for cognitive control develop slowly across childhood and adolescence, leaving youth developmentally unable to engage in the same decision-making processes as adults. *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 47, 53-59 (2009). And, as discussed in Section I *supra*, youth's distinctive characteristics lead to extraordinarily high rates of false confession.

Relying on a verbal warning which a youth may not understand, in a highly coercive atmosphere, fails to provide a sufficient "protective device" for children being interrogated. What children need to protect

them against unknowing, unintelligent, and involuntary waivers and involuntary confessions is the assistance of counsel.

C. Children Cannot Waive *Miranda* Rights Absent A Meaningful Opportunity To Consult With Counsel.

This Court"s jurisprudence emphasizes that assistance of counsel provides the constitutional protections and safeguards necessary for juveniles who come into conflict with the law. In another landmark decision almost fifty years ago, this Court recognized in *In re Gault* 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 child 'requires the guiding hand of counsel at every step in the proceedings against him.'

In re Gault, 387 U.S. at 36 (footnote 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 case law also highlights a juvenile's need for an attorney during custodial interrogations. In *Haley,* the Court explained that an adolescent during interrogation:

> 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 no farther, to see to it that they stopped short of the point where he became the victim of coercion.

Haley, 332 U.S. at 600. Without the support of an attorney or other adults, Haley was an "easy victim of the law" and a "ready victim of [police] inquisition." *Id.* at 599. This Court reinforced the importance of an attorney's presence during interrogations in *Gallegos,* explaining that a 14-year-old needed a lawyer or adult friend to provide him with "adult advice" so that he would be on "less unequal footing with his interrogators." *See* 370 U.S. 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").

The psychiatric and psychological communities have recognized that youth cannot validly waive *Miranda* rights without the assistance of counsel. The American Academy of Child and Adolescent Psychiatry, for example, asserts that "juveniles should have an attorney present during questioning by police or other law enforcement agencies." American Academy of Child & Adolescent Psychiatry, Policy Statement on Interviewing and Interrogating Juvenile Suspects (Mar. 7, 2013), *available at* https://www.aacap.org/aacap/policy_statements/20

13/Interviewing_and_Interrogating_Juvenile_Suspects.aspx [hereinafter "AACAP Policy Statement"]. Similarly, the American Psychological Association Resolution on Interrogations of Criminal Suspects recommends that youth be "provided special and professional protection during interrogations such as being accompanied and advised by an attorney or professional advocate." American Psychological Association, Resolution on Interrogations of Criminal Suspects (2014), *available at* http://www.apa.org/about/policy/interrogations.aspx. Scholars agree. *See,* Feld, *supra*, at 457 (advocating attorney consultation for youth under 15); Saul M. Kassin et al., Police-Induced Confessions: Risk Factors & Recommendations, 34 Law & Hum. Behav. 3, 30 (2010) (calling for attorney presence during interrogation of youth under 16); Goldstein, *supra*, at 368 (calling for attorney presence for youth under 15); Thomas Grisso, Juveniles' Capacities to Waive *Miranda* Rights: An Empirical Analysis, 68 Cal. L. Rev. 1134, 1166 (1980) (advocating for per se exclusion of waivers made without legal counsel); Owen-Kostelnik, *supra*, at 295 (same).

The case law and social science research both make clear that for children, the *Miranda* warnings cannot suffice; children need the assistance of legal counsel—or at minimum consultation with counsel prior to interrogation—to prevent coercion.

III. PARENTS DO NOT PROVIDE ADEQUATE PROTECTION FOR CHILDREN BEING INTERROGATED, PARTICULARLY WHERE THE PARENT HAS A CONFLICT OF INTEREST.

Police repeatedly informed J.H. that he could rely on his step-mother to help him in the interrogation. Pet. Cert. 8-9. This approach is misguided: research and case law reveal that even in the absence of a conflict of interest, parents or other adults frequently misunderstand the law, urge children to confess, and even act as agents of law enforcement. *See* Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children From Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights,* 2006 Wis. L. Rev. 431, 467-69 (2006). When, as in this case, the parent has a conflict of interest with the child, their presence can be particularly damaging.

A. Parental Presence Does Not Provide Adequate Protection To Ensure A Valid *Miranda* Waiver.

The right to have a parent or other "interested" adult present during the custodial interrogation is perhaps the most common protection given to children. *See* Farber, *supra*, at 1285-86; King, *supra,* at 462-63. In fact, courts regularly uphold waivers when parents are present. King, *supra* at 462-63.

On the surface, parental presence seems to satisfy the concern of the Court in *Haley* and *Gallegos* that adult guidance is the solution to ensuring that juvenile suspects' rights are protected. However, parental presence is often inadequate to protect

children's rights during interrogation, and can in fact prove detremental for number of reasons. *See* King, *supra*, at 467-69.

First, the goals of effective parenting, including moral, disciplinary, and socialization goals, rarely align with sound legal advice. *See* King, *supra* at 468 ("the good parent may be a lousy source of guidance for the protection of the child's constitutional rights"). Parents typically view their role as moral guardians rather than legal counselors, even in the interrogation room, and moral guidance is often against the child's legal interests. *See, e.g.*, *J.E.T.*, 10 So. 3d at 1273 (noting that parents "probably could not fully alert [their child] about the consequences of a confession" because "they spoke in their role as moral guardians rather than as legal counselors" (quoting Lucy S. McGough and Kerry Triche, Louisiana Children's Code Handbook, 372-76 (2007)). For example, parents are prone to encourage their child to cooperate and "tell the truth" in order to teach their child a lesson about taking responsibility for one's actions or showing respect for authority figures. King, *supra*, at 468-69. *See also Erving L.,* 147 F.3d at 1243 (13-year-old's mother encouraged him to talk because "it would help him to clear his conscience" and if he did speak to police, "'whatever [was] ailing him inside would come out' and he would feel better"); *McNamee,* 906 So. 2d at 1175 (child submitted to police questioning after his father encouraged him to "tell the truth"). Similarly, parents may encourage their child to speak to the police in an effort to be a good citizen and help solve the crime, without considering that their child may incriminate him or herself. King, *supra,* at *468; Quint Q.,* 998 N.E.2d 367-68 (juvenile's "domineering" mother began asking questions in the interrogation

seeking to solve the crime). By encouraging a child to speak, the parent implicitly, or often explicitly, encourages the child to waive his or her *Miranda* rights.

Indeed, the International Association of Chiefs of Police training materials recognize that this approach by parents may contribute to false confessions:

> While the presence of a parent or guardian is an important part of ensuring that a statement will be admissible in court, care should be taken that the parent does not exert too much pressure on the child. A well-meaning parent can actually help procure a false statement by discounting the child's adamant denials and demanding that the child tell the police "the truth." The child may then admit false guilt in order to comply with the orders of the parent. If a parent appears to be overreaching, the interview should be paused for a moment so that the parent can calm down, rather than letting the parent create a pressure-filled and problematic environment.

International Association of Chiefs of Police, Inc., Training on Interview and Interrogation of Juveniles 1, 3 (2011), *available at* http://njdc.info/wp-content/uploads/2013/12/Training-Key-652-Interview-and-Interrogation-of-Juveniles-1-1.pdf.

The American Academy of Child and Adolescent Psychiatry affirms this principle:

> While the Academy believes that juveniles should have a right to consult with parents prior to and during questioning, parental presence alone may not be sufficient to protect juvenile suspects. Moreover, many parents may not be competent to advise their children on whether to speak to the police and may also be persuaded that cooperation with the police will bring leniency. There are numerous cases of juveniles who have falsely confessed with their parents present during questioning.

AACAP Policy Statement.

Decades of research on adult comprehension of Miranda rights suggests that parents often may not understand the Miranda warnings themselves. *See* Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual and Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. Youth & Adolescence 685, 694 (2008); *see also* Grisso, *supra*, at 1153. Accordingly, the Massachusetts Supreme Court has observed that Massachusetts' interested adult requirement is not satisfied where it should have been reasonably apparent to officials that the adult who was present "lacked capacity to appreciate the juvenile's situation and to give advice." *Commonwealth v. Philip S.,* 611 N.E.2d 226, 231 (Mass. 1993) (citing *Commonwealth v. Berry,* 570 N.E.2d 1004, 1008 (Mass. 1991). Moreover, even where parents may have the cognitive abilities necessary to comprehend the meaning of the *Miranda* warnings, they often lack experience with and understanding of the criminal justice system to

fully and adequately advise their children of the risks and consequences of waiving *Miranda* rights. King, *supra* at 467.

Additionally, while not at as great a risk as their children, parents are also vulnerable to the psychologically coercive tactics used by police in the interrogation room. As the U.S. Supreme Court recognized in *Miranda v. Arizona* in 1966, the "heavy toll" of custodial interrogation may result in false confessions even from adult suspects. 384 U.S. at 455, n.24. This means that parents are often overborne by the same police tactics used with their child, and thus fail to provide any meaningful protection. In this way, parents are all too often coopted by police and utilized as yet another tool of coercion. *See, e.g.*, FRED INBAU, JOHN REID, JOSEPH BUCKLEY, BRIAN JAYNE, CRIMINAL INTERROGATION AND CONFESSIONS, 252 (5th ed. 2013) (Reid technique training manual) (police officers are trained to marginalize parents from the interrogation process, e.g., encourage parents to tell their child to cooperate and seat the parent away from the child's view).

B. Meaningful Consultation With Counsel Is Essential When The Legal Interests Of Parent And Child Diverge.

Where a parent has a conflict of interest with his or her child, the presence of the parent in the interrogation room is not an adequate—or any—protection. Conflicts of interest can arise between parents and children for any number of reasons, including parental distress, shame about their child's potential involvement in a crime, or personal reasons unrelated to the crime, such as estrangement or family feuds. The most striking case examples,

however, involve parents who are victims of the crime, are also suspects in the crime, have lost a loved one as a result of the crime, or a combination of all of these factors. Some state courts have found that such apparent conflicts negate the presumption of parental protection. *See, e.g.*, *Steven William T.*, 499 S.E.2d at 886 (vacating conviction based on 14-year-old's confession in part because the court concluded the "adverse interests" of his custodian "cannot be ignored"); *A.S.*, 999 A.2d 1136 (vacating confession in part because the interested adult was also the grandmother of victim); *J.E.T.*, 10 So. 3d at 1274 (holding "the presumption [of parental interest] can be negated if the parent is found to lack concern for the child's welfare necessary to genuinely advise the child.")

A rule requiring the presence of counsel affords far greater protection to juveniles than a rule requiring the presence of an interested adult. Such a rule would help ensure that the "greatest care [was] taken to assure that the admission . . . was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *In re Gault*, 387 U.S. at 55. Where a parent has a conflict of interest, the importance of meaningful consultation with an attorney is particularly acute.

The danger of assuming a parent's protective role is clear here where 10-year-old J.H.'s interrogator, Detective Hopewell, identifies J.H.'s stepmother as the person responsible for advice and guidance during the interrogation.

> HOPEWELL: Okay. Now, I'm going to read you something and it's – it's called your Miranda Rights. And, I know you

> don't understand really what that is. But that's why your mom's here. Okay? And she's gonna listen to it and then, she's going to give me your answers. Okay? If you want to answer for you, that's great too.

Pet. Cert. 8. Even setting aside the stepmother's clear conflict of interest—she is a victim of the crime and facing potential criminal charges herself—Detective Hopewell's instruction to J.H. that his stepmother has the authority to answer for him is particularly problematic. Hopewell signals to J.H. that he is not the sole holder of his *Miranda* rights. Any 10-year-old in J.H.'s situation would have felt subject to the authority of not only the interrogating detective but his stepmother as well.

Even in the best case scenario, parental advice will not adequately protect children against the uniquely coercive effect of custodial interrogations. When the parent has a conflict of interest, the need for an alternate "protective device" is even clearer. For a child to be given the full benefit of his or her *Miranda* rights, every child must be provided with access to counsel, or at a minimum, the opportunity to meaningfully consult with counsel before he or she is allowed to waive the fundamental rights to silence and counsel.

CONCLUSION

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

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APPENDIX

STATEMENT OF INTEREST OF AMICI CURIAE

Juvenile Law Center, founded in 1975, 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 **Center on Wrongful Convictions of Youth** ("CWCY") is a joint project of the Northwestern University School of Law Bluhm Clinic's Children and Family Justice Center and Center on Wrongful Convictions with a unique mission of uncovering and remedying wrongful convictions of youth, as well as promoting public awareness and support for nationwide initiatives aimed at preventing future wrongful convictions. Much of the CWCY's research and work focuses on how young people react to police interrogation, specifically how adolescents' immaturity, vulnerability to external pressure, and diminished ability to weigh risks and long-term

consequences negatively impacts their ability to comprehend and validly waive their *Miranda* rights and renders them uniquely susceptible to making false confessions or unreliable statements when interrogated in a custodial setting.