No.

In the Supreme Court of the United States

JOSEPH H.,
Petitioner,

v.

STATE OF CALIFORNIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner, a ten-year-old child with developmental disabilities, was interrogated by police after shooting his abusive father, a regional leader of the Neo-Nazi movement. The California Court of Appeal held that Petitioner voluntarily, knowingly and intelligently waived his *Miranda* rights in a custodial interrogation, despite demonstrating a manifest misunderstanding of those rights characteristic of a child his age, and despite the fact that the only adult guidance he had came from his stepmother — who was laboring under a serious conflict of interest, and who ultimately testified for the prosecution. The questions presented are:

1. Whether a ten-year-old child in a custodial interrogation can give a voluntary, knowing and intelligent waiver of his rights against self-incrimination and to legal counsel in a criminal case, without further constitutional protections such as mandatory access to legal counsel or an unconflicted adult guardian.

2. Whether the presence of Petitioner's conflicted stepmother during his interrogation tainted his purported waiver.

3. Whether Petitioner voluntarily, knowingly and intelligently waived his rights under the circumstances.

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OPINIONS BELOW

The opinion of the Court of Appeal is reported at 237 Cal. App. 4th 517. *See* Petition and Supplemental Appendices ("App.") 1a-40a. The order of the Supreme Court of California denying review, and Justice Goodwin Liu's dissent, are unreported. *Id.* at 41a-53a.

JURISDICTION

The Court of Appeal filed its opinion denying all of Joseph H.'s ("Joseph" or "Petitioner") assignments of error in his direct appeal on July 8, 2015. App. 1a; *see* Cal. R. Ct. 8.264(b). On October 16, 2015, the Supreme Court of California denied Joseph's petition for review, ending its path through the California courts and rendering the Court of Appeal's decision final. App. 41a; Cal. R. Ct. 8.528(b)(2). This Court has jurisdiction from the Supreme Court of California's denial of review under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides, in relevant part, "[n]o State shall . . . deprive any person of life, liberty, or property without due process of law." U.S. Const. amend XIV, § 1.

The Fifth Amendment provides, in relevant part, that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend V.

INTRODUCTION

In a series of important recent decisions, this Court has acknowledged the settled scientific consensus that minors "characteristically lack the capacity to exercise

mature judgment" that the law expects from fully responsible adults, and that the Constitution requires special consideration of those unique incapacities in various criminal law contexts. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (age of child must be considered when determining whether interrogation was custodial); *see also*, *e.g.*, *Miller v. Alabama*, 132 S. Ct. 2455, 2464, 2468 (2012) (no mandatory life without parole for children, who generally have an "inability to deal with police officers or prosecutors"); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (life without parole for minors unconstitutional for non-homicide offenses); *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (capital punishment for minors unconstitutional). But the Court has never, in the modern era, addressed the implications of that scientific consensus for determining whether a child's purported waiver of constitutional rights in a custodial interrogation was valid. Instead, courts around the country routinely apply the "totality of the circumstances" standard mandated by this Court with no real understanding or recognition of the modern science, and find purportedly voluntary, knowing and intelligent waivers of rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), by young children.

As Justice Goodwin Liu explained in a rare dissent from the California Supreme Court's denial of review, this case raises "several questions worthy of . . . review" implicating important legal issues that "affect[] hundreds of cases each year." App. 49a, 52a. The tragic underlying events, and Petitioner's treatment by the California courts, have been widely reported and have attracted significant national public

and academic concern.[1] On May 1, 2011, Joseph, then ten years old, shot and killed his father at their home in Riverside, California. Joseph's father, Jeffrey H. ("Jeffrey"), was a regional leader of the Neo-Nazi movement. Joseph had endured substantial mental and physical abuse at the hands of his parents and stepparents, and suffered from significant developmental disabilities.

After the shooting, the police extracted a confession from Joseph in an interrogation conducted without counsel and in the presence of his stepmother, Krista M. ("Krista") — who faced significant conflicts of interest because her husband was the victim and her own conduct was implicated in the shooting. Krista ultimately pled guilty to a child endangerment charge in connection with the offense and testified for the prosecution against Joseph. Although Joseph was negatively affected by Krista's presence, and although his responses to questions during the interrogation demonstrated a profoundly childlike and constitutionally insufficient understanding of the warnings given by police (for example, he understood the "right to remain silent" as the "right to stay calm"), the California courts held that under the "totality of

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[1] *See, e.g.*, Bob Egelko, *Confession of boy, 10, raises doubts over grasp of Miranda rights*, San Francisco Chron. (Oct. 25, 2015), http://www.sfchronicle.com/news/article/Confession-of-boy-10-raises-doubts-over-grasp-6589676.php; Erwin Chemerinsky, *Court gets it wrong with boy who killed neo-Nazi dad*, Orange Cnty. Register (Oct. 22, 2015), http://www.ocregister.com/articles/court-688579-boy-rights.html; *see also* Amy Wallace, *A Very Dangerous Boy*, GQ Magazine (Nov. 4, 2013), http://www.gq.com/story/joseph-hall-murders-neo-nazi-father-story.

the circumstances" his waiver of his *Miranda* rights was voluntary, knowing and intelligent.

That holding resolved important federal issues in a manner that conflicts with decisions in other States, and that cannot be reconciled with this Court's recent jurisprudence. Sup. Ct. R. 10(b), (c). Review should be granted to provide much-needed guidance to State and federal courts nationwide on a number of issues.

First, experience has shown that the *Miranda* warnings and the "totality of the circumstances" standard do not, by themselves, adequately protect the rights of children in custodial interrogations. *Miranda* itself rested on a recognition that a strict prophylactic warning rule was necessary to ensure that constitutional rights would be respected, as a real and practical matter, in interrogation rooms across the country. Those warnings cannot fulfill such a role when delivered to children who are too young to understand and appreciate the real significance of interrogation, and who lack appropriate adult guidance.

Justice Liu opined that "there [may be] an age below which the concept of a voluntary, knowing and intelligent [*Miranda*] waiver has no meaningful application" without additional constitutional safeguards. App. 49a. This Court should grant review to announce a prophylactic rule that a purported waiver by a ten-year-old child without legal counsel or other appropriate adult guidance is invalid. Although this Court would of course be free to frame its holding more broadly or narrowly, extending such a rule to all children as old as fifteen would be substantially justified under the prevailing scientific consensus that such children are uniquely impaired in the interrogation setting. Appointing counsel, or involving

an appropriate adult guardian, before subjecting such children to inherently coercive interrogations will not unduly burden law enforcement and is essential if important rights are to be respected.

Second, this Court has never addressed how the presence of a conflicted parent or guardian at an interrogation of a child ought to impact judicial consideration of a child's waiver. There is considerable evidence that in custodial interrogations, parents often are unable or unwilling to advise in their child's best interest, and this case presents an unusually good vehicle to address that issue. Joseph's stepmother had important conflicts of interest, and the role she played in the interrogation should have precluded any finding that Joseph's waiver was voluntary, knowing and intelligent. This Court should grant review to make clear that police, and reviewing courts, should be much more careful about how parents with potentially conflicting interests are involved in the inherently coercive interrogations of their children.

Third, at a minimum this Court should grant review to apply the "totality of the circumstances" analysis to the facts of Joseph's case, in light of the modern science of child development that it has discussed in decisions like *Miller* and *J.D.B.* An opinion from this Court addressing these issues would provide much-needed clarity and structure to judicial decisions around the country that at present are too often uninformed, haphazard, and arbitrary.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. Joseph's Childhood and Family

Jeffrey was a leader of the Neo-Nazi movement in Southern California. *See* R., Vol. 2, at 335, 387-88.[2] Joseph was born during Jeffrey's first marriage, but Jeffrey later had three additional children with Krista, his second wife, who served as one of Joseph's primary caregivers.[3] *Id.*, Vol. 1, at 103-04.

California Child Protective Services issued 23 reports concerning allegations of abuse, poor living conditions and neglect for households where Joseph had lived. *Id.*, Vol. 2, at 303. Jeffrey was addicted to drugs including methamphetamine, was "frequently violent towards both Krista and Joseph" and "would . . . beat[] on Joseph." App. 4a. Despite the rampant abuse, the authorities never took remedial action. R., Vol. 1, at 161.

B. The Incident

On April 30, 2011, Jeffrey held a Neo-Nazi meeting at his home; approximately a dozen people attended.

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[2] Record references are made to the State's compiled record below. References to the Trial Reporter's Transcript are denoted by "R.," then the volume. References to the Trial Clerk's Transcript, and the Supplemental Trial Clerk's Transcript, are denoted by "Clerk's Tr." or "Supp. Clerk's Tr.," respectively, followed by the volume. The majority of the record was filed under seal. The Supplemental Appendix to this Petition contains such material and is concurrently lodged under seal before this Court.

[3] Joseph moved in with Krista and Jeffrey after leaving the home of his biological mother, who had previously exposed him to drugs in utero. R., Vol. 2, at 303-05, 320.

R., Vol. 1 at 140. Jeffrey left in the evening to give a young woman a ride home and did not return until the early hours of the next morning, after which he fell asleep on the couch. App. 5a. Krista testified that, while she slept, Joseph took Jeffrey's gun from her bedroom and went downstairs. *See* R., Vol. 1, at 146-49, 168-70. Krista said she then heard a "crash" and found that Jeffrey had been shot. *Id.*

C. The Investigation

Police arrived at the residence at approximately 4:04 a.m., and all occupants exited. App. 5a. The children were taken into police vehicles. *Id.* at 6a. Joseph spontaneously said he had "grabbed the gun and shot his dad in the ear" because "his father had beaten him and his mother." *Id.* In the police car, Joseph told an officer that Jeffrey "had abused him and other members of the family repeatedly, and that the previous night, his father had threatened to remove all the smoke detectors and burn the house down, while the family slept." *Id.* Around the same time, Joseph asked police, "How many lives do people usually get?" *See* Supp. Clerk's Tr., Vol. 2, at 360:7.

Joseph was then taken into custody and interviewed for more than an hour in the presence of Krista. Roberta Hopewell, a child specialist detective, proceeded to ask Joseph questions from what is known as the Penal Code section 26 "*Gladys R.* Questionnaire," which expressly states: "To be filled out on all arrestees under 14 years of age after Miranda Rights have been waived." App. 95a.[4]

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[4] Under California law, the State must prove in its case-in-chief that a child under fourteen knows and appreciates the

However, Detective Hopewell neglected to advise Joseph of his rights prior to administering the *Gladys R.* Questionnaire. In fact, Detective Hopewell did not attempt to administer warnings until roughly two minutes into the interrogation, at which point she and Joseph had the following exchange:

> **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. Okay? If you don't understand something, w-when I state something. I want you to tell me. I don't know what you're talking about or I don't understand.
>
> **JOSEPH**: All right.
>
> **HOPEWELL**: Okay? All right. Right now, you know you're here because of what happened to your dad?
>
> **JOSEPH**: Yeah.
>
> **HOPEWELL**: All right. So, you have the right to remain silent. You know what that means?
>
> **JOSEPH**: Yes, that means that I have the right to stay calm.
>
> **HOPEWELL**: That means y-you do not have to talk to me.
>
> **JOSEPH**: Right.
>
> **HOPEWELL**: Okay? And, anything you say, will be used against you in a court of law. Do you know what that means? [no response] That means that if

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"wrongfulness" of a crime in order to be found liable. *See* Cal. Pen. Code § 26 ("P.C. 26").

we have to go to court and tell the judge what, what you did, that whatever you're gonna tell me today, I can tell the judge, "This is what Joseph told me." Okay?

JOSEPH: Okay.

HOPEWELL: You understand that?

JOSEPH: Yeah.

HOPEWELL: Okay. And, you have the right to talk to a lawyer and have a lawyer here with you – an attorney – before I ask you any questions. Do you understand that? And, you shake your head upside uh what does that . . .

JOSEPH: Yes.

HOPEWELL: . . . mean? What does that mean to you?

JOSEPH: It means, don't talk until that means to not talk till the attorney or . . .

HOPEWELL: That means, you have the choice. That you can talk to me with your mom here or you can wait and have an attorney before you talk to me.

JOSEPH: Okay.

HOPEWELL: Okay? But it's your choice and it's your mom's choice. Okay?

JOSEPH: Okay.

HOPEWELL: All right. And, if you can't afford one – 'cause I know you don't have a job, no money – um, the court will appoint one, an attorney for you. Before I talk to you about anything. Do you understand that?

JOSEPH: Yeah.

Id. at 46a-48a (quoting *id.* at 101a-03a). From that point, Detective Hopewell extracted information

considered critical by the juvenile court to the question of whether Joseph knew and appreciated the wrongfulness of his act under P.C. 26. *See infra* n.5. Throughout the remaining interrogation, Krista continuously encouraged Joseph to answer questions. *See* Supp. Clerk's Tr., Vol. 1, at 91:34.

II. PROCEDURAL BACKGROUND

A. The Delinquency Proceedings

On May 3, 2011, the State filed a wardship petition charging Joseph with second degree murder under California Penal Code Section 187(a).

Throughout trial, the court received evidence of physical and mental abuse, poor living conditions and neglect. *See, e.g.*, R., Vol. 2, at 312:4-11. The juvenile court rejected Joseph's argument that his *Miranda* rights were violated during the interrogation, admitting the vast majority of the statements Joseph made to Detective Hopewell. App. 69a-74a, 82a-84a. It then accepted the State's allegations on the wardship charge, concluding that Joseph's statements within the first 24 hours after the incident — including statements made during the lengthy interrogation — were the most probative of his P.C. 26 *mens rea*, *i.e.*, that he knew and appreciated the wrongfulness of his conduct. *See* R., Vol. 4, at 835:5-15; *see also* App. 87a-94a.

B. The Court of Appeal Affirms and the Supreme Court of California Denies Review

Joseph appealed. App. 2a. The Court of Appeal held that Detective Hopewell's failure to advise Joseph of his rights during the initial minutes of the interrogation and prior to administering warnings was

improper, but it held that such error was harmless because Joseph previously admitted to the commission of the offense.[5] *See id.* at 20a-21a. The court also held that Joseph's *Miranda* waiver, once the warnings were given, was valid under the totality of the circumstances, despite his age, disabilities and the presence of his conflicted stepmother at the interrogation. *Id.* at 21a-25a. The court gave little weight to Joseph's age in its analysis, noting only that "[a]ge *may* be a factor in determining the voluntariness of a confession." *Id.* at 22a (emphasis added). It also did not focus on Joseph's disabilities, instead reasoning that "[n]othing in the record supports the premise that [Joseph] was confused or suggestible" during the interrogation. *Id.* at 24a.

The Supreme Court of California denied Joseph's petition for review by a vote of 4-3 on October 16, 2015. However, Justice Liu penned a dissent from the denial, explaining that review was warranted because the case "raises an important legal issue that likely affects hundreds of children each year." *Id.* at 42a. As Justice

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[5] The court's harmless-error analysis is inapplicable to the errors raised by Joseph's Petition, because those errors cover the evidence elicited from the entire interrogation — not just the first few minutes. In any event, the Court of Appeal's analysis was erroneous. Virtually all of the statements cited by the court to demonstrate harmlessness went to whether Joseph *committed* the act, not whether he *appreciated the wrongfulness* of it, which was Joseph's key defense at trial under P.C. 26 and the focus of his *Miranda* arguments. *See* App. 20a-21a. Joseph never contested the fact that he pulled the trigger. And of course this Court would be free to leave any harmless error issues to the State courts on remand. *See, e.g.*, *Hurst v. Florida*, No. 14-7505, 2016 WL 112683, at *8 (U.S. Jan. 12, 2016) (U.S. Jan. 12, 2016) ("not reach[ing] the State's assertion that any error was harmless").

Liu explained, "waivers by juveniles present special concerns" that should be reconsidered in light of this Court's "affirm[ance of] the commonsense conclusion that children generally are less mature and responsible than adults; that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them; [and] that they are more vulnerable or susceptible to . . . outside pressures than adults." *Id.* at 43a (omission in original) (citations and internal quotation marks omitted).

REASONS FOR GRANTING THE WRIT

This Court has repeatedly recognized the modern science showing that children are different, in terms of their cognitive capacities and their abilities to appreciate the significance of their actions and decisions, and has held that the criminal law must take account of those differences. But the Court has never explained the legal significance of these issues to the evaluation of whether a child has given a valid waiver of important constitutional rights in custodial interrogations. In the absence of such guidance, courts around the country apply a vague "totality of the circumstances" test in a manner that systematically undervalues the particular incapacities and limitations of childhood. It is not realistic or appropriate to expect that the solution to that problem will emerge from the lower courts, bottom-up. This Court has the position, the expertise and the resources to grapple with the relevant science and constitutional values and to articulate the appropriate path forward. This case presents a compelling opportunity and vehicle to address these important questions.

First, Petitioner respectfully submits that a ten-year-old child subjected to custodial interrogation

needs the assistance of competent legal counsel, or at least a competent and unconflicted adult guardian, before any waiver of *Miranda v. Arizona* rights may be accepted. 384 U.S. 436 (1966). Such assistance is necessary, as a practical matter, to ensure that the child's rights are respected and that whatever testimony given is not the product of inappropriate coercion. This Court should articulate a clear prophylactic rule which should encompass all children at least up to age fifteen — before which the research demonstrates that children lack capacity to exercise *Miranda* rights[6] — although the Court would of course be free to frame its holding more broadly or narrowly as it believes appropriate.

Second, this Court should grant review to explain how police and reviewing courts should approach the presence at a child's interrogation of parents who may have a conflict of interest or be otherwise incompetent to provide meaningful consultation with the child. This issue arises frequently, and there is a strong scholarly consensus that such facts pose serious dangers to a child's rights in interrogations. The Court has never addressed these issues, and this case would be an unusually good opportunity to explore them. Joseph's stepmother was not an appropriate guardian of his interests, and the role she played during his interrogation should have precluded a finding that Joseph's waiver was voluntary, knowing and intelligent.

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[6] *See, e.g.*, Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice*, 83 N.C. L. Rev. 793, 817 (2005) (research shows fifteen to be a defining age in psychological development).

Third, at a minimum, review should be granted to apply the "totality of the circumstances" standard to the facts here, in light of the modern science of child development as explained in this Court's recent case law. Only an opinion from this Court can ensure that the principles recognized in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), are appropriately incorporated into the waiver analysis by the lower courts. This case provides a unique opportunity for the Court to offer much needed guidance on an issue of great importance nationwide.

I. THE MODERN SCIENCE OF CHILD DEVELOPMENT RECOGNIZED BY THIS COURT SHOULD BE APPLIED TO THE *MIRANDA* WAIVER DOCTRINE

In several areas of the criminal law, this Court has acknowledged the growing body of research recognizing that "children are constitutionally different from adults" and need special protections. *Miller*, 132 S. Ct. at 2464. That jurisprudence arises from a recognition, rooted in the common law and supported by modern neuro-scientific research, that the social, psychological and neurological differences between children and adults highlight "incompetencies associated with youth" such as the "inability to deal with police officers or prosecutors" and "to assess [criminal] consequences." *Id.* at 2468, 2464-65; *see also Graham*, 560 U.S. at 68 ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."). These differences often serve as a substantial factor in procuring convictions of children. *See Miller*,

132 S. Ct. at 2468 (child may "have been charged and convicted of a lesser offense if not for incompetencies associated with youth").

Nearly five years ago in *J.D.B.*, this Court addressed these issues in deciding whether an interrogation should be considered "custodial," and hence inherently coercive, for purposes of whether *Miranda* warnings are required at all. And it recognized that the "custody" question could not sensibly be evaluated without careful consideration of the age of the defendant. The Court discussed the scientific evidence that "children characteristically lack the capacity to exercise mature judgment," and held that "to ignore the very real differences between children and adults . . . would be to deny children the full scope of . . . procedural safeguards that *Miranda* guarantees." *J.D.B.*, 131 S. Ct. at 2403, 2408. It held that children are categorically different "as a class" from adults for purposes of *Miranda*'s application. *See id.* at 2403-04.

J.D.B. did not consider whether and how the defendant's age should affect the evaluation of whether he has given a valid waiver. But the Court expressly acknowledged that there are "question[s of] whether children of all ages can comprehend *Miranda* warnings" and whether "additional procedural safeguards may be necessary to protect . . . *Miranda* rights." *Id.* at 2401 n.4.

For five decades, waivers of *Miranda* rights have been judged under a standard that asks, for adults and children alike, whether the defendant voluntarily, knowingly and intelligently waived his rights under the totality of the circumstances. *Id.* at 2401. A waiver "must be [1] voluntary in the sense that it was the

product of a free and deliberate choice rather than intimidation, coercion, or deception, and [2] made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Berghuis v. Thompkins*, 560 U.S. 370, 382-83 (2010) (citations and internal quotations marks omitted). In theory, that standard is flexible enough to take account of the unique limitations and incapacities of childhood.[7] But the Court has not provided meaningful guidance about how it should be understood and applied in cases involving minor defendants, in the modern era.

As a result, decisions in the lower courts remain ad hoc, unstructured, largely uninformed by the modern science of child development and distressingly arbitrary. A few courts have concluded that young children inherently may not understand *Miranda* warnings. *See, e.g.*, *In re Joshua David C.*, 698 A.2d 1155, 1162-63 (Md. Ct. Spec. App. 1997) (questioning whether a ten-year-old can waive his rights).[8] But

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[7] Some of this Court's older cases indicate that age should be a significant factor. *See In re Gault*, 387 U.S. 1, 3, 55-57 (1967) (confession of fifteen-year-old involuntary); *Gallegos v. Colorado*, 370 U.S. 49, 53-55 (1962) (confession of fourteen-year-old involuntary); *Haley v. Ohio*, 332 U.S. 596, 600-01 (1948) (plurality) (confession of fifteen-year-old involuntary; "a boy of fifteen, without aid of counsel, [cannot be assumed to] have a full appreciation of [his rights]"); *cf. Fare v. Michael C.*, 442 U.S. 707, 726 (1979) (sixteen-year-old's waiver held constitutional). In support of Petitioner's arguments, even if implicitly, the foregoing decisions demonstrate fifteen years of age as the line at which this Court has concluded minors are impaired in custodial contexts. *See infra* Section II.

[8] *See also In re Elias V.*, 237 Cal. App. 4th 568, 588-89, 600 (2015) (considering exhaustive scientific research, and finding no

most courts, like the Court of Appeal below, invoke purported consideration of the "totality of the circumstances" as a substitute for meaningful scrutiny and systematically undervalue the significance of age in the constitutional analysis.

Although the nature of the issue does not permit identification of a crisp "split," there are many cases finding valid waivers by very young children (often with additional impairments). *See, e.g.*, *W.M. v. State*, 585 So. 2d 979, 983 (Fla. Dist. Ct. App. 1991) ("Despite the child's age of being ten (10) years old and despite the fact that the child attended [Specific Learning Disability] classes, the Court finds that the child was able to understand and comprehend the Miranda warnings."); *see also* Barry C. Feld, *Juveniles' Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel*, *in Youth on Trial: A Developmental Perspective on Juvenile Justice* 105, 113 (Thomas Grisso & Robert G. Schwartz eds., 2000) ("Courts readily admit the confessions of . . . juveniles with I.Q.s in the sixties whom psychologists characterize as incapable of abstract reasoning.").[9] Those decisions

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waiver of thirteen-year-old in light of deficits); *accord A.M. v. Butler*, 360 F.3d 787, 799-800, 801 n.11 (7th Cir. 2004) (finding "no reason to believe that [eleven]-year-old could understand the inherently abstract concepts of . . . *Miranda* rights and what it means to waive them").

9 *See also, e.g.*, *State ex rel. A.W.*, 51 A.3d 793, 795, 807 (N.J. 2012) (thirteen-year-old waived his rights); *State ex rel. Juvenile Dep't of Marion Cty. v. L.A.W. (In re L.A.W.)*, 226 P.3d 60, 64, 66 (Or. Ct. App. 2010) (reversing the trial court's finding that a twelve-year-old, who only responded "yeah" when asked if he understood his rights, was unable to comprehend the *Miranda* warnings, citing the "youth's age, intelligence, education, and demonstrated cognitive ability to track with and respond to the

reflect a grave injustice that this Court should correct. *See* Martin Guggenheim & Randy Hertz, J.D.B. *and the Maturing of Juvenile Confession Suppression Law*, 38 Wash. U. J.L. & Pol'y 109, 166 (2012) ("If the lower courts apply *J.D.B.*'s 'general presumptions' about the nature of youth fully and faithfully, surely most juvenile waivers of *Miranda* rights will not withstand constitutional scrutiny.").

Simply put, the "growing body of scientific research that . . . assess[es] differences in mental capabilities between children and adults" (App. 50a) has not been incorporated into real judicial decision-making in far too many courtrooms across this country. Many prominent scholars have pointed out that *Miranda* waiver decisions in the lower courts are not appropriately reflecting the science discussed by this Court in *J.D.B.* (and in the Eighth Amendment decisions like *Miller*) about child defendants. *See, e.g.*, Note, *Juvenile* Miranda *Waiver and Parental Rights*, 126 Harv. L. Rev. 2359, 2363-64 (2013) ("[T]he 'evolution of juvenile justice standards' has not made its way to [the] waiver doctrine." (citation omitted)); Elizabeth S. Scott, *"Children Are Different": Constitutional Values and Justice Policy*, 11 Ohio St. J. Crim. L. 71, 89 (2013) (jurisprudence holding that

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detective's questions"); *State ex rel. Juvenile Dep't of Clatsop Cty. v. Cecil (In re Cecil)*, 34 P.3d 742, 743-44 (Or. Ct. App. 2001) (admitting custodial statements of a twelve-year-old, who had an IQ of 73 and testified that he did not understand that he could choose not to speak to the police, even where psychologist testified that the child likely did not have the capacity to assert his rights); *In re Ronald Y.Z.*, 10 Misc. 3d 1067(A), at *4 (N.Y. Fam. Ct. 2005) (eight-year-old waived his rights); *In re Goins*, 738 N.E.2d 385, 389 (Ohio Ct. App. 1999) (eleven-year-old waived his rights).

"children are different" has broad "constitutional implications" (citation omitted)).

Guidance from this Court is necessary to elucidate how the modern science it has discussed in cases like *Miller* and *J.D.B.* should inform the waiver inquiry. Every year, tens of thousands of ten- to twelve-year-olds, and hundreds of thousands of children under fifteen, are arrested in the United States.[10] The issues presented here are of great importance to the administration of justice nationwide and merit review by this Court.

II. THE COURT SHOULD ADOPT A PROPHYLACTIC RULE REQUIRING THE PRESENCE OF, AND MEANINGFUL CONSULTATION WITH, AN ATTORNEY OR APPROPRIATE ADULT FOR YOUNG CHILDREN IN CUSTODIAL INTERROGATIONS

This Court should grant review to hold that no waiver by a ten-year-old child like Joseph may be accepted if the child has not been provided meaningful adult guidance, whether from appointed legal counsel or at least a non-conflicted parent or guardian competent to advise the child about waiver. That rule should be extended to all children fifteen and under, although of course this Court will frame its holding as broadly or as narrowly as it thinks appropriate.[11]

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[10] *See generally* Howard N. Snyder & Joseph Mulako-Wangota, Bureau of Justice Statistics, Arrest Data Analysis Tool, http://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm# (last visited Jan. 9, 2016).

[11] Joseph argued for a bright-line rule of this nature in his petition to the Supreme Court of California, but not before the

A. Overwhelming Scientific Research Supports a Finding That Ten-Year-Olds Cannot Waive Their *Miranda* Rights without Adult Guidance

"Developmental psychologists report a significant drop-off in the cognitive and judgment abilities of youths fifteen years of age and younger," which are critical to understanding criminal justice concepts like *Miranda*. Barry C. Feld, *Kids, Cops, and Confessions: Inside the Interrogation Room* 87 (2013); *see* Barry C. Feld, *Juveniles' Competence to Exercise* Miranda *Rights: An Empirical Study of Policy and Practice*, 91 Minn. L. Rev. 26, 48 (2006) ("For youths fifteen years of age and younger, these disabilities [*e.g.*, the capacity to exercise *Miranda* rights] emerge clearly in the research."); *see also*, *e.g.*, Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333, 356 (2003) ("[J]uveniles aged [fifteen] and younger are significantly more likely than older adolescents and

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Court of Appeal. A holding along these lines would, however, have been fairly embraced by his arguments that he lacked capacity to give a knowing and intelligent waiver due to his age and developmental maturity. *See, e.g.*, App. 23a-24a, 72a. Litigants may always advance additional arguments on appeal in support of a claim that was properly pressed below. *See Yee v. City of Escondido*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim."). Regardless, the California courts are limited by the State constitution from adopting exclusionary rules not required by the federal Constitution as interpreted by this Court. Cal. Const., art. I, § 28(f)(2). This Court is therefore the first forum in which Joseph can effectively advocate for a change in the "totality of the circumstances" standard this Court has previously articulated.

young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.").

First, children "manifest[] significantly inferior comprehension of the meaning and importance of *Miranda* warnings." Scott & Grisso, *Developmental Incompetence*, *supra*, at 825; Feld, *Kids*, *supra*, at 73 (study found that "the majority of younger juveniles . . . exhibited [a] significant lack of understanding" of their *Miranda* rights) (citing Jodi Viljeon et al., *Adjudicative Competence and Comprehension of* Miranda *Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 Behav. Sciences & the Law 1 (2007))); *see also* Abigail Kay Kohlman, Note, *Kids Waive the Darndest Constitutional Rights: The Impact of* J.D.B. v. North Carolina *on Juvenile Interrogation*, 49 Am. Crim. L. Rev. 1623, 1636 (2012) (more than a high school education necessary for an adequate comprehension of *Miranda*); Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134, 1160 (1980) (age weighs heavily in misunderstanding *Miranda* warnings). Few if any children as young as Joseph have a satisfactory understanding of *Miranda* warnings. *See* Richard Rogers et al., *Comprehensibility And Content Of Juvenile* Miranda *Warnings*, 14 Psychol. Pub. Pol'y & L. 63, 78 (2008) (children in Joseph's age range "are simply unlikely to grasp key *Miranda* components").

Similarly, because the decision to waive *Miranda* requires an appreciation of "the tactical and strategic ramifications of relinquishing rights," and because children are impulsive and make decisions more rashly, a decision to waive may not be knowing and intelligent

even if the words of warning spoken are understood. *See* Feld, *Kids*, *supra*, at 82 ("Delinquent youth share . . . characteristics . . . that impair *Miranda* understanding."); *see also* 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, 435-36 (2006) ("[C]hildren do not think and reason like adults because they cannot."). Thus, even with the "appearance of comprehension[,] . . . an affirmation of understanding [and an] absence of signs of confusion . . . may reflect compliance with authority or passive acquiescence rather than true understanding." Feld, *Kids*, *supra*, at 90. Most children simply "are more likely to believe that they should waive their rights and tell what they have done," not due to adequate comprehension, but "because they are still young enough to believe that they should never disobey authority." Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law & Hum. Behav. 3, 8 (2010).

Second, for a waiver to be "voluntary," it must be "the product of a free and deliberate choice." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). But a child's ability to effect a voluntary waiver is impaired by an "[unformed] sense of time, lack of future orientation, labile emotions, calculus of risk and gain, and vulnerability to pressure." Kohlman, *Kids Waive*, *supra*, at 1636 (quoting King, *Waiving Childhood Goodbye*, *supra*, at 436 (internal quotation marks omitted)). These characteristics amplify the coerciveness of an interrogation, and may be aggravated by officers who deceptively downplay the seriousness of the situation. *See J.D.B.*, 131 S. Ct.

2403-04.[12] In fact, a child's particular vulnerabilities in this respect create a serious "risk [that] interrogation[s] will produce [] false confession[s]" in a "significantly greater [amount] for [children] than for adults." *Elias V.*, 237 Cal. App. 4th at 588; *see* Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 544-45 (2005) (study of 340 exonerations, finding that minors were more likely to give a false confession than adults); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 Law & Psychol. Rev. 53, 61 (2007) ("[Y]oung people are especially prone to confessing falsely.").

J.D.B. itself reaffirmed that the physical and psychological pressures of a custodial interrogation — which "can undermine the individual's will to resist" and "compel him to speak" — are "so immense that [they] can induce a frighteningly high percentage of people to confess to crimes they never committed." 131 S. Ct. at 2401 (citations and internal quotations marks omitted). "That risk is all the more troubling . . . [and]

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[12] This Court has recognized that the police typically resort to "[k]indness, cajolery, entreaty, [and] deception" to "unbend [suspects'] reluctance" to incriminate themselves. *Culombe v. Connecticut*, 367 U.S. 568, 571-72 (1961) (plurality). In that spirit, lower courts have questioned whether common and permissible interviewing techniques for adults are coercive for minors. *See Boyd v. State*, 726 S.E.2d 746, 750 (Ga. Ct. App. 2012) (interviewing techniques for adults "may be ill-advised when interviewing a juvenile"); *see also State v. Unga*, 196 P.3d 645, 653 (Wash. 2008) ("[A] friendly relationship might tend to indicate coercion if it is employed to cause the suspect to relax and confide in the officer.").

acute . . . when the subject of custodial interrogation is a juvenile." *Id.*

B. The "Totality of the Circumstances" Inquiry Does Not Protect the Rights of Children without Additional Safeguards, Such as the Mandatory Appointment of an Attorney or Unconflicted Adult

The research discussed above, together with the research relied upon by this Court in cases like *Miller* and *J.D.B.*, makes clear that the framework established by *Miranda* does not sufficiently protect the rights of children in custodial interrogations. Petitioner respectfully submits that the science and constitutional considerations support a prophylactic rule that no waiver should be accepted from a ten-year-old child unless he has been provided with an attorney, or at least a competent and unconflicted adult guardian, who can understand the warnings and their significance and give objective advice.

Scholars overwhelmingly support a categorical rule along the lines recommended by this Petition. *See, e.g.*, Ellen Marrus, *Can I Talk Now? Why* Miranda *Does Not Offer Adolescents Adequate Protections*, 79 Temp. L. Rev. 515, 528 (2006) ("[I]t would be easier for the courts and for law enforcement personnel to adhere to a bright-line per se rule rather than the amorphous totality of the circumstances test."); Grisso, *Juveniles' Capacities*, *supra*, at 1143 (recommending "per se exclusionary rules . . . to protect" children, and in particular those under fifteen, from involuntary confessions); Kimberly Larson, Note, *Improving the "Kangaroo Courts": A Proposal for Reform in Evaluating Juveniles' Waiver of* Miranda, 48 Vill. L.

Rev. 629, 631, 661 (2003) ("[The L]egal community must re-evaluate the safeguards afforded to juveniles during interrogations if the law is to coincide with current psychological research."); Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 Am. Crim. L. Rev. 1277, 1312 (2004) ("[P]roviding juveniles with a mandatory non-waivable right to counsel in the pre-interrogation setting is the surest way to insure the protections aspired to in both *Miranda* and *Gault*."). Indeed, many commentators argue that only a mandatory appointment of an attorney can supply the required safeguards. *See*, *e.g.*, Thomas Grisso & Melissa Ring, *Parents' Attitudes toward Juveniles' Rights in Interrogation*, 6 Crim. Just. & Behav. 211, 224 (1979) (parental guidance is an inadequate "substitute for the advice of trained legal counsel"); Feld, *Kids*, *supra*, at 44-45, 187-89 (presence of parents at an interrogation is detrimental); Rogers et al., *Comprehensibility*, *supra*, at 66 ("[P]arental motivations ... may not serve to protect juvenile suspects.").

Moreover, a significant minority of States have adopted applicable rules, by statute or judicial decision, which in many instances require that children have access to appropriate adult guidance in interrogations, and/or that counsel or a parent must consent to a waiver.[13] Although those statutes and decisions may

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[13] *See* N.M. Stat. Ann. § 32A-2-14(f) (no confessions admissible against children under thirteen); W. Va. Code § 49-4-701(*l*) (statement by child under fourteen inadmissible unless counsel present); N.C. Gen. Stat. § 7B-2101(b) (confessions inadmissible against children under sixteen unless parent, guardian, custodian, or attorney present); Okla. Stat. tit. 10A, § 2-

implement State law, they reflect widespread awareness of a problem that has serious federal constitutional dimensions. And a prophylactic rule that children cannot waive their vital Fifth Amendment rights without appropriate adult guidance finds support in longstanding principles of common law and family law, which preclude children from binding themselves to a wide variety of potentially life-altering decisions without adult assistance and/or consent.[14]

2-301(A) (same); Conn. Gen. Stat. § 46b-137(a) (no confessions admissible against children under sixteen unless parent or guardian present); Colo. Rev. Stat. § 19-2-511(1) (same, for all children); Kan. Stat. Ann. § 38-2333(a) (confessions inadmissible against children under fourteen prior to consultation with attorney or parent before waiver); N.D. Cent. Code § 27-20-26(1) (children under eighteen must be represented by counsel or their parent, guardian, or custodian); Ind. Code § 31-32-5-1 (waiver requires consent of child and counsel or guardian); 705 Ill. Comp. Stat. 405/5-170 (counsel required for minors under thirteen for certain offenses); Iowa Code § 232.11(2) (parental consent required for waiver of child under sixteen); Mont. Code Ann. § 41-5-331(2) (parent, guardian, or counsel must consent to waiver for child under sixteen); Tex. Fam. Code Ann. § 51.095(a)(1)(B) (procedures requiring a child to give statements before a magistrate, outside of the presence of law enforcement); *Commonwealth v. A Juvenile (No. 1)*, 449 N.E.2d 654, 657 (Mass. 1983) ("[State] should show that a parent or an interested adult was present, understood the warnings, and had the opportunity to explain his rights to the juvenile so that the juvenile understands the significance of waiver of these rights."); *State v. Presha*, 748 A.2d 1108, 1115-17 (N.J. 2000) (parent generally required where child under fourteen is subject to custodial interrogation); *In re E.T.C.*, 449 A.2d 937, 939-40 (Vt. 1982) (requiring consultation with an adult who "is not only genuinely interested in the welfare of the juvenile but completely independent from and disassociated with the prosecution").

[14] *See, e.g.*, *Bellotti v. Baird*, 443 U.S. 622, 637 (1979) (plurality) ("The State commonly protects its youth from adverse

At bottom, the Fifth Amendment aims to reduce the inequality between the suspect and the police in the interest of basic fairness, and there can be no real dispute that a child like Joseph, at *ten years old*, could not exercise his vital rights without appropriate adult guidance. *Haley*, 332 U.S. at 599-600 ("[A] lad of tender years is [no] match for the police . . . ."). Nevertheless, the decision below reflects the reality that the vast majority of States have no clear rule that children must be given access to an appropriate adult who can protect their interests. For the reasons explained above, that conflict has nationwide federal constitutional implications that should be addressed and resolved by this Court. A regime in which children are interrogated without appropriate guidance ensures that the rights of those children will be systematically violated.

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governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors."). Children have long been protected from the economic perils of commercial contracting. *See, e.g.*, Cal. Fam. Code §§ 6500, 6710; Colo. Rev. Stat. § 13-22-101(1)(a); N.Y. Gen. Oblig. § 3-101. They are also frequently limited in other areas of the law, such as the inability to consent to marriage, *see, e.g.*, Cal. Fam. Code § 301; N.Y. Dom. Rel. § 7, consent to sexual activity, *see, e.g.*, Tex. Penal Code Ann. § 22.011(a)(2), (c)(1), incur liability for torts, *see* Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 136 (2d ed.), Westlaw (database updated June 2015), and "vot[e]" or "serv[e] on juries," *Roper*, 543 U.S. at 569.

III. THIS COURT SHOULD GRANT REVIEW TO CONSIDER HOW THE PRESENCE OF JOSEPH'S CONFLICTED STEPMOTHER AT HIS INTERROGATION SHOULD AFFECT THE WAIVER ANALYSIS

As Justice Liu explained, Joseph's case also presents an excellent vehicle to explore whether there are "conditions [where] a [conflicted] parent or guardian would be unable to play [a] role" in a child's waiver decision. App. 49a. This Court has never addressed that issue, and both the lower courts and law enforcement need guidance about how to approach the common circumstance in which a parent's conflict of interest may impair his or her ability to protect a child's rights. The decision below is inconsistent with decisions of other States, which have held that a child's waiver is invalid if facilitated by a parent laboring under a conflict of interest.[15] As explained, there is a strong scholarly consensus that in many circumstances a parent's involvement impairs a child's ability to understand the situation and give a valid waiver, especially if the parent has a conflict. *See generally* Farber, *supra*, at 1291 (conflicts often affect an adult's ability to act in the child's best interest). In such

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[15] *See, e.g.*, *State ex rel. A.S.*, 999 A.2d 1136, 1150 (N.J. 2010) ("[When] a parent has competing and clashing interests . . . , the police minimally should take steps to ensure that the parent is not allowed to assume the role of interrogator . . . ."); *Ezell v. State*, 489 P.2d 781, 783-84 (Okla. Crim. App. 1971) (confession inadmissible despite presence of mother and legal guardian; no showing that either was "capable of protecting defendant's constitutional rights"); *cf. McBride v. Jacobs*, 247 F.2d 595, 596 (D.C. Cir. 1957) (parent may waive child's rights if waiver is "intelligent [and] knowing" and "there is no conflict of interest between them").

circumstances, or if the parent or guardian is unavailable, counsel should be provided for a child during an interrogation, or a resulting waiver should be deemed invalid.

In Joseph's case, the parental figure present during his interrogation, his stepmother Krista, had clear conflicts of interest. Krista's husband (Jeffrey) had just been killed. She immediately faced criminal charges of her own for her involvement in the offense after Joseph was questioned. And ultimately, she testified as one of the prosecution's key witnesses against Joseph at trial. Despite all this, the detective wrongly instructed Joseph, who was already confused, that he shared his *Miranda* rights with Krista, and went so far as to advise that Krista could answer for him. *See* App. 46a (quoting App. 101a) ("[S]he'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."); *id.* at 48a (quoting App. 103a) ("[I]t's your choice and it's your mom's choice."). Unsurprisingly, Krista encouraged Joseph to continue answering questions, urging him that everything would be fine "as long as you told . . . about . . . [w]hat you did." Supp. Clerk's Tr., Vol. 1, at 91:34. Under any view of the circumstances, this was bad advice.

The Court of Appeal entirely discounted the significance of Krista's presence, holding that the interrogation was not coercive *because* "Joseph frequently looked to his stepmother for support." App. 24a. But that entirely misses the point — Krista could not provide disinterested advice because she "was plainly not in a position to [do so] with only [Joseph's] interests in mind, especially on the day of the murder," despite the fact that Joseph viewed her as his guiding

counsel. *Little v. Arkansas*, 435 U.S. 957, 959 (1978) (denying certiorari) (Marshall, J., dissenting). Indeed, Joseph frequently looked to her for affirmation of the accuracy of his own admissions during the interrogation. *See* Supp. Clerk's Tr., Vol. 1, at 87:8 ("What did my mom say?"); *id.* at 91:28 ("[D]id everything I says [sic] was right?"). At a time when "she was supposed to be giving dispassionate advice," Krista could not. *Little*, 435 U.S. at 960 (Marshall, J., dissenting) ("[A] child's waiver on the ground that she received parental advice is surely questionable when the parent has two obvious conflicts of interest, one arising from the possibility that the parent herself is a suspect, and the other from the fact that she is 'advising' the person accused of killing her spouse.").

IV. THE COURT SHOULD GRANT REVIEW TO EXPLAIN HOW THE MODERN SCIENCE OF CHILD DEVELOPMENT SHOULD INFORM THE "TOTALITY OF THE CIRCUMSTANCES" INQUIRY

At a minimum, the Court should grant review in order to assess the validity of Joseph's purported waiver under the "totality of the circumstances" test, as informed by the modern science of child development and this Court's recent jurisprudence. Guidance from this Court about the application of that standard in circumstances like these would have enormous value, in part because lower courts often do not have the time or resources to engage deeply with the science in the way that this Court can.

Joseph, like the typical ten-year-old, viewed his custodial interrogation and his rights through a fundamentally different lens than an adult would. He was unable to and did not appreciate the significance of

his purported waiver. Notably, when Joseph attempted to verbalize his understanding of his *Miranda* rights, his explanations were unintelligible. When Detective Hopewell asked him if he understood the right to remain silent, Joseph incorrectly replied, "Yes, that means that I have the right to stay calm." App. 46a (quoting App. 102a). Joseph was articulating his childlike understanding of what it means to be "silent" — that is, to be quiet, stay calm, and listen to authority, not that he had the option not to incriminate himself. The continued questioning of Joseph as if he were an adult who understood his rights and appreciated the significance of surrendering those rights is fundamentally at odds with *Miranda*, as a key purpose of the warnings is to ensure that the suspect will understand that he *does not have to speak with police*. *See* 384 U.S. at 445.

Likewise, Detective Hopewell's attempt to explain Joseph's right to counsel was met with a completely incoherent response, in which Joseph explained that he understood the right to mean, "don't talk until that means to not talk till the attorney or . . ." App. 47a (quoting App. 102a). When Detective Hopewell asked if he knew what it meant that "anything you say, will be used against you in a court of law," as demonstrated from the interrogation video, Joseph initially did not respond at all. *Id.* He had no appreciation of the fact that the State was going to use his statements, as it did, to establish criminal liability against him at trial.

When faced with Joseph's obvious lack of understanding, Detective Hopewell made some effort to rephrase her rigidly legalistic explanations in an attempt to correct Joseph's confusion. But this was an empty gesture because she never ensured that Joseph

understood her rephrased description of his rights. Joseph could not possibly have had a real understanding of his rights and the importance of a waiver in response to a few leading questions, requiring "yes" or "no" responses, immediately following a manifest demonstration of misunderstanding. *See* Feld, *Kids*, *supra*, at 90 (appearance of comprehension not enough to ensure it).

Joseph's failure to appreciate his rights and the impact of continuing with the interrogation is further evidenced by his later comments during the interview, when he explained that he "thought he was going home" afterwards. R., Vol. 4, at 835; *see* Supp. Clerk's Tr., Vol. 1, at 94:27-28 (Joseph asking, "When we get home . . . could we see if there's anything good there that we can [do] to . . . get all this out of my mind[?]").[16] Joseph, like other minors his age, simply indicated a desire to comply with police and his stepmother. Supp. Clerk's Tr., Vol. 1, at 91:28 (Joseph asking Krista after a portion of the interview, "did everything I says [sic] was right?").

Despite his complete failure to appreciate the *Miranda* warning administered, the Court of Appeal upheld Joseph's waiver, lauding Detective Hopewell's approach and minimizing the importance of Joseph's age and demonstrated confusion. App. 23a-24a. The court inaccurately stated that "[a]ge *may* be a factor in determining the voluntariness of a confession," and it manifestly gave that factor no meaningful weight. *Id.* at 22a (emphasis added).

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[16] Even before the interrogation, Joseph demonstrated a fantastical view of the situation, asking police, "How many lives do people usually get?" *See* Supp. Clerk's Tr., Vol. 2, at 360:7.

Joseph also suffered from "borderline intellectual functioning and other cognitive deficits" including pervasive Attention Deficit Hyperactivity Disorder ("ADHD") and low average intelligence, such that his real level of comprehension was substantially lower than that expected for his chronological age. *See* App. 23a (citation and internal quotation marks omitted); *see also* R., Vol. 2, at 350-74; Clerk's Tr., Vol. 2, at 487-88. The Court of Appeal likewise disregarded these facts, finding that, although it was "possible" Joseph was affected by his disabilities, his responses to Detective Hopewell's questions demonstrated that he "understood" the warnings. App. 23a-25a. Thus, in addition to the disregard of Joseph's age, the court neglected adequately to consider his disabilities. *See* Feld, *Juveniles' Competence to Exercise* Miranda, *supra*, at 80 n.175 (discussing the impact of developmental disabilities in minors' interrogations); Rogers et al., *Comprehensibility*, *supra*, at 79 (low intelligence and mental disorders are likely to have "catastrophic effects on *Miranda* comprehension").

In recent years, this Court has held repeatedly that decisions about children in the criminal justice system must be informed by a scientific understanding of how a child's cognitive and decisionmaking capacities differ from those of an adult. The decision below illustrates that those principles have not been appropriately incorporated into judicial assessment of whether *Miranda* waivers by children were voluntary, knowing and intelligent. This Court has never addressed that issue, its guidance is urgently needed, and this case presents an excellent vehicle to provide it.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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