No. 15-1086

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 CALIFORNIA COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court below permissibly concluded that petitioner, a ten-year-old minor, validly waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), under the totality of the circumstances in this case.

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JURISDICTION

The judgment of the California Court of Appeal was entered on June 8, 2015. Pet. App. 1a. The California Supreme Court denied discretionary review on October 16, 2015. *Id.* at 41a. The petition for a writ of certiorari was filed on January 14, 2016, and placed on the docket on February 29, 2016. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1257(a), not under 28 U.S.C. § 1254(1) (*see* Pet. 1). Any writ of certiorari would properly issue to the California Court of Appeal, Fourth Appellate District, Division Two, not to the California Supreme Court (*see* Pet. 1; Pet. App. 1a).

STATEMENT

Petitioner, who was ten years old at the time, shot his father in the head in the middle of the night, while his father was asleep on the couch. At the scene and on the way to the police station, petitioner made unprompted statements indicating that he had shot his father and that he knew what he did was wrong. He made similar statements in a later interview with an investigating detective at the police station. In delinquency proceedings, the juvenile court determined, among other things, that petitioner appreciated the wrongfulness of his conduct. It declared petitioner a ward of the court and placed him in the custody of the California Department of Corrections and Rehabilitation's Division of Juvenile Justice (DJJ)—a status that will terminate, in the ordinary course, when petitioner reaches the age of 23.[1] Petitioner challenges the

[1] The Division of Juvenile Justice, also known as the Division of Juvenile Facilities (DJF), oversees the State's (continued...)

juvenile court's judgment on the ground that the court should not have considered, in determining whether petitioner understood that his conduct was wrong, certain statements that petitioner made during the interview at the police station.

1. California juvenile delinquency law has two main goals: to protect and rehabilitate juvenile offenders and to safeguard the public. Cal. Welf. & Inst. Code § 202. The law seeks to hold juveniles accountable for their behavior, but in ways that are appropriate for their individual circumstances and consistent with their best interests, and without any purely retributive objective. *Id.* §§ 202(b), (e). It aims to provide care, treatment, and guidance so that juvenile offenders may become law-abiding and productive members of the community. *Id.* § 202(b).

Delinquency proceedings are held in juvenile court, a division of the California Superior Court. Cal. Welf. & Inst. Code § 246. They are civil in nature and initiated by a delinquency petition filed by the probation office or a prosecuting agency. *Id.* §§ 203, 650; *see id.* § 602 (minors violating laws defining crimes). Juvenile offenders admit or deny allegations in the petition, and adjudication of a petition occurs at a "jurisdiction" hearing. *Id.* § 701; Cal. R. Ct. 5.778. The parties present evidence and argument, and the juvenile court either dismisses or sustains the petition. Cal. Welf. & Inst. Code §§ 701, 702. If the petition alleges that a minor under the age of 14 violated a criminal law, there must be "clear proof" that the minor "appreciate[d] the

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juvenile correctional institutions. DJJ/DJF succeeded the Department of the Youth Authority, or California Youth Authority, in 2005. *See* Cal. Gov't Code §§ 12838(a), 12838.5; Cal. Welf. & Inst. Code § 1710(a).

wrongfulness of her conduct" before the minor may be declared within the court's jurisdiction or a ward of the court. *In re Gladys R.*, 1 Cal. 3d 855, 862 (1970); *see* Cal. Penal Code § 26.

If the court dismisses a petition, the minor is "discharged from any detention or restriction theretofore ordered" and returned to the custody of his or her legal guardian. Cal. Welf. & Inst. Code § 702. If the court sustains the petition, it assumes jurisdiction over the minor and may declare him or her a ward of the court. *Id.* §§ 702, 725. The court sets the terms of wardship at a disposition hearing. *Id.* Available dispositions range from probation with or without supervision by the probation office to commitment with DJJ. *Id.* §§ 727, 730–731; *see also id.* § 202(e).

DJJ provides reformatory and educational programs to juvenile offenders in a highly structured and restrictive environment. Cal. Welf. & Inst. Code §§ 731, 734, 736. DJJ commitments last a minimum of two years and generally cannot continue after an individual reaches age 23. *Id.* § 1769(c); *see also id.* §§ 1800–1802 (extended commitments available for persons proven to be "physically dangerous to the public" because of a "mental or physical deficiency, disorder or abnormality"). Throughout the DJJ commitment period, the juvenile court retains jurisdiction to modify or recall the commitment. *Id.* §§ 734, 779. Early release through parole is also available. Cal. Code Regs. tit. 15, §§ 4951–4957. Consistent with the goals of California's delinquency law, DJJ commitment is intended not to impose "retributive punishment" but rather to pursue "community restoration, victim restoration, and offender training and treatment." Cal. Welf. & Inst. Code § 1700.

2. By all accounts, in his first ten years, petitioner endured a sad, abusive, and traumatic childhood—and was in turn a "difficult child." Pet. App. 3a; *see id.* at 3a–5a. From an early age, he exhibited uncontrollable "outbursts" and engaged in "impulsive and violent behavior towards both children and teachers," as well as other family members. *Id.* at 3a–4a. Petitioner and his sister initially lived with their mother, but were placed with their father after numerous reports of neglect and abuse. *Id.* at 3a. At the time of the shooting, they were living with their father, their stepmother Krista, and three step-siblings. *Id.* Petitioner's father was also substance-addicted and abusive. *Id.* at 4a. Despite therapy and a special education plan designed to help him overcome a learning disability, petitioner was prone to violent outbursts and running out of class. *Id.* He attended at least six different schools before his father and stepmother opted to homeschool him. *Id.*

On April 30, 2011, petitioner's father hosted a meeting of the National Socialist Movement (NSM), an "anti-illegal immigration [group]," at the family's home. Pet. App. 4a–5a. In the early evening after the meeting, petitioner's father left with a friend to give another NSM member a ride home. *Id.* at 5a. He returned home and, after arguing with Krista, fell asleep on the couch. *Id.* In the middle of the night, Krista was awakened by a loud noise from downstairs. *Id.* She went to investigate and discovered petitioner's father lying on the couch with a single gunshot wound to the head. *Id.* at 5a–6a. Petitioner then came downstairs and said, "I shot dad." *Id.* at 5a.

After Krista called 911, police arrived and had everyone leave the house so they could conduct a safety sweep. Pet. App. 5a–6a. Outside the house,

an officer asked Krista what had happened, and petitioner, who was beside Krista, spontaneously responded that he had shot his father. *Id.* at 6a. He explained that his father had been abusive; that he had used his father's gun; and that after the shooting he had put the gun under his bed. *Id.* The police found the gun under the bed. *Id.*

Officers placed petitioner and each of his family members in separate police cars. Pet. App. 6a. Sitting in the back of one car, alone and unrestrained, petitioner was asked no questions but nonetheless made a number of statements. *Id.* He again said he had shot his father, said he wished he had not done so, and indicated he knew it was wrong. *Id.* He described his father's abusive behavior, related recent events and his fear that his father was going to leave his stepmother, and explained how, after his father fell asleep on the couch, petitioner got the gun from his stepmother's bedroom, went downstairs, and shot his father in the head. *Id.* at 6a–7a. Petitioner said he was worried that his sisters would be angry with him. *Id.* at 7a.

At the police station, Detective Roberta Hopewell, who was specially trained to interview young children, interviewed petitioner about the shooting. Pet. App. 7a; R., Vol. 1, at 103. Petitioner sat on a couch beside his stepmother, and he was given food and a blanket. People's Exh. 2 (video recording of petitioner's interview with Detective Hopewell). He was not in handcuffs or otherwise physically restrained. *Id.* Detective Hopewell was the only officer in the room, and she sat in a chair adjacent to petitioner. *Id.* She wore civilian clothing, not a police uniform. *Id.*

Detective Hopewell first asked petitioner a series of questions from a standard "*Gladys R.* questionnaire," designed to ascertain whether an

individual under the age of 14 appreciates the wrongfulness of his or her actions. Pet. App. 14a; *id.* at 7a; *Gladys R.*, 1 Cal. 3d at 862. When Hopewell asked petitioner to give an example of doing something that was wrong, he answered, "Well, I shot my dad." Pet. App. 15a, 95a, 99a–100a. [2] Petitioner's stepmother said nothing during this initial questioning. *Id.* at 98a–101a.

Detective Hopewell then provided petitioner with *Miranda* warnings. Pet. 8–9 (reprinting most of colloquy); Pet. App. 98a–100a (including final questions and answers in which Hopewell asks if petitioner "wants to talk to me and tell me what happened" and petitioner agrees). She gave this advisement in an even, non-threatening tone (*see* People's Exh. 2), and sought to ensure through questions and answers that petitioner understood what she was saying (*see* Pet. App. 98a–100a).

Petitioner then explained again that he had shot his father, and why he did so. Pet. App. 7a. After about 45 minutes of questioning, Detective Hopewell left petitioner and his stepmother alone in the interview room for a few moments. Supp. Clerk's Tr., Vol. 1, at 91. During this break in the interview, petitioner's stepmother told petitioner, "[y]ou don't have to talk to them if you don't want to. But, it's good that you told the truth." *Id.* at 92. When Detective Hopewell returned, the interview continued for a few more minutes, during which time petitioner continued to recount the circumstances of

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[2] The California Court of Appeal's opinion indicates that the juvenile court excluded this statement, while ultimately admitting a different question and answer. Pet. App. 19a & n.10. In fact, the juvenile court admitted this statement and excluded the other question and answer. *See id.* at 69a–70a, 81a–84a.

the shooting. *Id.* at 99–100. The entire interview lasted about one hour. People's Exh. 2.

3. The Riverside County District Attorney filed a delinquency petition alleging that petitioner had committed an act that would be a crime if committed by an adult. Pet. App. 7a. At the jurisdiction hearing, the juvenile court heard testimony from several of the officers and detectives involved in the investigation; petitioner's stepmother, sister, and paternal grandmother; and psychological experts on behalf of both the District Attorney and petitioner. One officer recounted that, as he drove petitioner to the police station, petitioner said that he knew shooting his father was wrong, that he felt guilty about what he had done, that he recognized his sisters would be angry with him for shooting their father, and that he wished he had not gone through with it. R., Vol. 1, at 81–83, 89. The officer testified that petitioner made these statements without prompting. R., Vol. 1, at 82.

Dr. Anna Salter, the District Attorney's psychological expert, also addressed whether petitioner knew that shooting his father was wrong. She concluded that petitioner was able to tell the difference between right and wrong, observing that the consistent message from petitioner's family and his teachers at school was that violence against others was wrong. R., Vol. 4, at 664–665, 706, 714–715, 747–748, 750. She also determined that petitioner committed the murder in a rational state, and that there was no evidence that he was cognitively dislocated or confused when he acted. R., Vol. 4, at 715–716.

Dr. Salter reasoned in part that the circumstances of the shooting themselves demonstrated that petitioner appreciated the wrongfulness of his conduct: petitioner shot his

father in the middle of the night while the rest of his family was sleeping, and then hid the murder weapon under his bed. R., Vol. 4, at 714–715, 750. She listed 47 statements that petitioner made in the 24 hours immediately after the shooting and determined that these statements supported her conclusion that petitioner knew what he had done was wrong. Clerk's Tr., Vol. 1, at 255–257; R., Vol. 4, at 684, 686–687, 707, 709. Only eleven of those statements were made during petitioner's interview with Detective Hopewell at the police station. Supp. Clerk's Tr., Vol. 1, at 60–105.

The court also heard testimony from petitioner's stepmother on the issue of petitioner's ability to appreciate the wrongfulness of his actions. Petitioner's stepmother explained that she had taught petitioner the difference between right and wrong, and that he was punished at home for hurting his sisters. R., Vol. 1, at 134–135, 154–155. She further recounted that petitioner was disciplined at school for his violent outbursts. R., Vol. 1, at 134–135. School records confirmed that petitioner was at times physically restrained, removed from class, and suspended for his misbehavior. Supp. Clerk's Tr., Vol. 1, at 223, 228, 243–249. Petitioner's maternal grandmother also testified that, after petitioner's arrest, petitioner told her that he regretted shooting his father and that he wished he had not done so. R., Vol. 1, at 244.

As part of this evidentiary presentation, the District Attorney sought to introduce statements petitioner made in response to the *Gladys R.* questionnaire and in the ensuing interview with Detective Hopewell. Pet. App. 8a–9a, 15a. The juvenile court sustained an objection to one statement, but overruled petitioner's objections to others. *See id.* at 8a–9a, 15a, 69a–70a, 81a–84a.

Detective Hopewell later testified about her interview with petitioner, and a video of the interview was played for the court. R., Vol. 1, at 227–228.

At the conclusion of the jurisdiction hearing, the juvenile court sustained the petition and declared petitioner a ward of the court. Pet. App. 9a–10a. In making the required finding (by "clear proof") that petitioner knew the wrongfulness of his actions, the court relied on four factors: petitioner's age, the circumstances of the crime, petitioner's upbringing and behavioral history, and petitioner's subjective understanding of his actions on the night of the shooting. Opp. App. 3a.[3]

With respect to age, the court noted that at the time of the shooting petitioner was just under 11 years old. Opp. App. 3a. It acknowledged that children of that age "do not have the maturity of adults" and can be "susceptible to outside pressure, prenatal substance abuse, and severe physical abuse which might affect [their] thinking." *Id.* In the court's view, however, the circumstances of this shooting indicated that petitioner appreciated the wrongfulness of his conduct. The court observed that petitioner waited until his family was asleep and then crept into his parents' room and took his father's gun. *Id.* at 6a. He then "quietly goes downstairs, puts the barrel of the gun against his father's head, and pulls the trigger with both hands. [Petitioner] then retreats to a place of safety—his bedroom—hiding the gun under the bed." *Id.* These actions showed "planning and the understanding of

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[3] Because the juvenile court's ruling on the appreciation-of-wrongfulness issue is not included in the appendix to the petition, respondent has reprinted it as an appendix to this brief.

how [petitioner] could commit the crime without getting caught. . . . [They] show the Court he knew his actions were wrong so he did not want to get caught." *Id.*

The court acknowledged that petitioner suffered from a history of abuse, and that this abuse "had to have an effect on his thought process." Opp. App. 6a. Nonetheless, the court reasoned that petitioner "understood he would be punished for doing wrong and rewarded for doing right. Teachers and family used punishment and reward his entire life. . . . [His stepmother] testified that she taught [petitioner] right from wrong." *Id.* at 7a.

Finally, the court found that petitioner's statements made within the first 24 hours after the shooting, whether "elicited or spontaneous," best reflected petitioner's subjective understanding of his actions. Opp. App. 4a–5a. In that regard, the court relied in part on Dr. Salter's similar conclusion about the probative value of the 47 statements listed in her report. *Id.* at 5a. The court further observed that the record was "replete with [petitioner's] statements to various people about the crime and that he knew it was wrong to kill his father." *Id.* at 8a.

At the later disposition hearing, the juvenile court heard additional evidence regarding an appropriate placement for petitioner. Pet. App. 13a. This included several expert evaluations and other records addressing petitioner's "history of aggressive, assaultive, and violent behavior, his problems with impulse control, his distractibility, as well as his need for special education." *Id.* at 38a. The assigned probation officer, for example, concluded that petitioner "appeared to be beyond the scope of any private or county facilities," because he "posed a serious risk to the community, and because he was in need of a long-term, highly structured, well-

supervised environment." *Id.* at 10a. After extensive consideration (*see id.* at 10a–14a, 35a–40a), the court "found that less restrictive alternatives would be ineffective and inappropriate, and that commitment to the [Department of Juvenile Justice] would be beneficial" in light of the need for a secure facility and DJJ's ability to provide "the intensive services [petitioner] needs." *Id.* at 14a; *see id.* at 38a–39a. The court accordingly ordered petitioner committed to DJJ. *Id.* at 14a.

4. The California Court of Appeal affirmed. Pet. App. 1a–40a. As relevant here, the court agreed with petitioner that Detective Hopewell should have advised him of his *Miranda* rights at the start of the interview. *Id.* at 19a–20a. It concluded, however, that any error in admitting unwarned *Gladys R.* responses was harmless beyond a reasonable doubt because other evidence—principally, the various unchallenged statements petitioner made to the officers who responded to the scene of the shooting—"provided the same information to the trier of fact." *Id.* at 20a–21a.

The court also rejected petitioner's arguments that his post-waiver statements to Detective Hopewell should have been excluded on the grounds that he did not understand the *Miranda* colloquy and his stepmother's presence created a coercive atmosphere, making his *Miranda* waiver involuntary and ineffective. Pet. App. 21a–25a. The court agreed that evaluating whether a *Miranda* waiver is "knowing, intelligent, and voluntary" requires assessing the defendant's state of mind under all of the circumstances. *Id.* at 21a. It also recognized that, because of the differences between adults and minors, "courts must use special care in scrutinizing the record to determine whether a minor's custodial confession is voluntary." *Id.* at 22a. Applying those

principles, however, the court concluded that petitioner's waiver was effective in this case. *Id.* at 24a–25a.

The court reasoned that Detective Hopewell "repeatedly asked [petitioner] if he understood what she was explaining about his rights." Pet. App. 23a–24a. "[W]hen he demonstrated misunderstanding, she provided additional explanation," and petitioner's "responses indicated he understood." *Id.* at 24a. After reviewing video of the interview, the court concluded that petitioner "had no trouble communicating, aside from needing explanation of a few terms," and that Hopewell "was careful to follow up the explanation of his rights with questions to insure he understood what she was explaining[.]" *Id.* As to the argument that the presence of petitioner's stepmother created a coercive atmosphere, the video showed petitioner "frequently look[ing] to his mother for support," so the court was "not persuaded"; and in any event the court saw no evidence of coercion by the police. *Id.* Ultimately, the court viewed the video recording as revealing not that petitioner's statements were coerced or his waiver involuntary, but that "he felt guilty for what he had done." *Id.*

The California Supreme Court denied discretionary review. Pet. App. 41a. Justice Liu filed a dissenting statement, joined by Justice Cuellar, explaining why he believed review should be granted. *Id.* at 41a–53a. Justice Kruger would also have granted review. *Id.* at 41a.

ARGUMENT

Petitioner and his *amici* urge the Court to grant review to address broad questions concerning how the framework of *Miranda v. Arizona*, 384 U.S. 436 (1966), applies to minors, such as whether the Court should adopt a new prophylactic rule barring any

custodial interrogation of a minor without the presence or consent of "competent legal counsel, or at least a competent and unconflicted adult guardian." Pet. 13. This case would not be a good vehicle for considering such questions.

The only judicial determination at issue here is the juvenile court's factual finding that petitioner appreciated the wrongfulness of shooting his father. Even if the statements subject to petitioner's *Miranda* objections had been suppressed, there is no reason to think that either court below would have reached a different conclusion on that issue. Unchallenged evidence, separate from petitioner's statements to Detective Hopewell during his police station interview, is sufficient to support the juvenile court's finding. Accordingly, resolution of the broad questions petitioner seeks to present would not affect the outcome of his case.

This case presents no issue concerning the factual reliability of an unwarned confession, and involves no overbearing or coercive conduct by the police. Moreover, although petitioner now relies heavily on citations to contemporary scientific research, he did not cite this research or make his related scientific arguments in the juvenile court or the state court of appeal. There is thus no developed record on the principal questions petitioner asks this Court to review, and the courts below have not addressed petitioner's arguments in the first instance.

To be clear, the State does not discount the importance or difficulty of the legal and policy issues identified by petitioner and his *amici*. Those issues may well warrant further consideration—perhaps most appropriately in legislative rather than judicial forums. Here, however, they are not well presented for review by this Court.

1. The only judicial determination ultimately at issue in this case is the juvenile court's factual finding that when petitioner shot his father he appreciated that what he was doing was wrong. *See, e.g.*, Pet. 11 n.5; Pet. App. 29a–30a; Cal. Penal Code § 26; *In re Gladys R.*, 1 Cal. 3d 855, 862 (1970). And while petitioner advances broad arguments for the expansion or refinement of *Miranda* with respect to minors, the only statements that he claims should have been suppressed in his case are those he made to Detective Hopewell when she interviewed him at the police station on the morning of the shooting. *See* Pet. 11 n.5. He argues that those statements were "considered critical by the juvenile court" on the appreciation-of-wrongfulness question. Pet. 10.

In fact, petitioner's statements to Detective Hopewell added little to the other, unchallenged evidence underlying the juvenile court's finding. In particular, petitioner spontaneously told the officers who initially responded to the scene that he knew shooting his father was wrong, that he felt guilty about what he had done, and that he wished he had not gone through with it. R., Vol. 1, at 81–83, 89. These statements were even closer in time to the shooting than those made to Detective Hopewell (*id.*), and petitioner does not challenge their admissibility.

Dr. Salter, the District Attorney's psychological expert, pointed to 47 statements made by petitioner during the first 24 hours after the shooting in support of her conclusion that petitioner understood the wrongfulness of his act. Of those statements, only 11 came from the Hopewell interview, and they were largely cumulative of the others. R., Vol. 4, at 684, 686–687, 707, 709; Clerk's Tr., Vol. 1, at 255–257.

Dr. Salter further observed that there was no evidence that petitioner was cognitively dislocated or

confused when he acted, and reasoned that the circumstances of the shooting demonstrated that petitioner knew shooting his father was wrong. R., Vol. 4, at 664–665, 706, 714–716, 747–748, 750. The juvenile court also relied on testimony from petitioner's stepmother that petitioner learned the difference between right and wrong at home (R., Vol. 1, at 134–135, 154–155), and school records showing that he was disciplined for disruptive behavior (Supp. Clerk's Tr., Vol. 1, at 223, 228, 243–249). *See* Opp. App. 7a.[4] After his arrest, petitioner told his grandmother that he regretted shooting his father and that he wished he had not done so. R., Vol. 1, at 244.

On this record, there is no reason to believe that petitioner's statements to Detective Hopewell were critical to the juvenile court in making its appreciation-of-wrongfulness finding, or to the court of appeal in sustaining that finding under a substantial-evidence standard. *See* pp. 9–11, *supra* (describing juvenile court's reasoning); Pet. App. 29a–30a (describing standard of review); Opp. App. 2a–9a. The unchallenged evidence is sufficient to support the judgments below. *See also People v. Lewis*, 26 Cal. 4th 334, 377 (2001) (appreciation of wrongfulness can be inferred from "'attendant circumstances of the crime, such as its preparation, the particular method of its commission, and its concealment'"). This Court should not undertake any sweeping reconsideration of *Miranda* principles as

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[4] It is possible to question the probative value of this evidence, in light of petitioner's intellectual disabilities and history of abuse. The State's point here is only that the juvenile court's finding of appreciation of wrongfulness did not turn on whether or not the record included the particular statements subject to petitioner's *Miranda* challenge.

applied to minors where, as here, any evolution of the law would most likely have no effect on the outcome of the case before the Court.

2. Similarly, this case would not be a good vehicle for considering whether the Court should adopt new, categorical prophylactic rules on the ground that minors are uniquely vulnerable to abuse, unfairness, or the extraction of false confessions during custodial interrogation. Any such consideration would be better informed in a case whose facts involved some question of reliability going to the factual heart of the case; some sort of overbearing or coercive interrogation conduct; or at least some adequate presentation to, and consideration by, the lower courts of the scientific or academic evidence and related policy arguments that petitioner now asks this Court to address in the first instance.

Here, there has never been any question concerning the historical facts of who did what. *See, e.g.*, Pet. 11 n.5. And while the juvenile court's ability to assume jurisdiction over petitioner turned on a finding that petitioner appreciated the wrongfulness of his act, for the reasons discussed above the particular statements affected by petitioner's *Miranda* arguments were not critical to the court's determination of that point. The case thus presents no question concerning whether a lack of special *Miranda* rules for questioning minors might have produced a substantively unreliable result.

It also involves no issue of coercive interrogation or "police overreaching." *See Colorado v. Connelly*, 479 U.S. 157, 170 (1986). When the police initially responded to the scene of the shooting here, no one was formally arrested. R., Vol. 1, at 79. Petitioner spoke freely to the officers who responded.

R., Vol. 1, at 81–82, 88, 101, 103. When petitioner was driven to the police station he was not handcuffed, and he continued to talk about the shooting without any prompting from the police. R., Vol. 1, at 81–83.

During his interview with Detective Hopewell, who was specially trained to interview young children (Pet. App. 7a; R., Vol. 1, at 103), petitioner sat on a couch with his stepmother and was given food and a blanket. People's Exh. 2. He was not in handcuffs or otherwise physically restrained. *Id.* Detective Hopewell spoke in an even, non-threatening tone, and she wore civilian clothing, not a police uniform. *Id.* She told petitioner to stop her if he did not understand, and then explained his rights in a simple, steady, direct manner. Pet. App. 101a; People's Exh. 2 (4:45 ff.). When petitioner seemed confused, she corrected him or rephrased her point in simpler terms. Pet. App. 101a–102a; *see also id.* at 23a–24a (court of appeal's discussion).[5] And at the end of the *Miranda* colloquy she twice sought to

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[5] When petitioner characterized his right to remain silent as a "right to stay calm," Hopewell clarified that "[t]hat means y-you do not have to talk to me." Pet. App. 102a. Petitioner responded, "[r]ight." *Id.* When petitioner initially did not indicate whether he understood his right against self-incrimination, Hopewell explained that it "means that if 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 [petitioner] told me.'" *Id.* After petitioner said "[o]kay," the detective asked again, "[d]o you understand that?" *Id.* Petitioner again answered, "[y]eah." *Id.* When petitioner could not clearly articulate his right to counsel, Hopewell explained that it meant "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. . . . Okay? But it's your choice and it's your mom's choice. Okay?" *Id.* at 102a–103a. Petitioner responded, "[o]kay." *Id.* at 103a.

confirm that petitioner wanted to talk to her about what had happened. *Id.* at 103a.

The questioning of a ten- or eleven-year-old boy undoubtedly involves special considerations (*see, e.g.*, Pet. App. 22a); but the circumstances here do not remotely resemble the kind of "'coercion of a confession by physical violence or other deliberate means calculated to break [defendant's] will'" against which *Miranda*'s prophylactic rule is directed. *See Colorado v. Spring*, 479 U.S. 564, 573–574 (1986). If this Court wishes to consider whether to modify *Miranda* substantially for the juvenile context, it should await a case that more clearly demonstrates a need for new approaches.

Finally, petitioner's core argument is that the Court should adopt new, categorical prophylactic rules for the questioning of minors, or at least provide new guidance in applying a totality-of-the-circumstances test, in light of the evolution in the science of child development. *See, e.g.*, Pet. 12, 14, 30. He contends that this Court "has the position, the expertise and the resources to grapple with the relevant science and constitutional values" (Pet. 12), and that "lower court often do not have the time or resources to engage deeply with the science in the way that this Court can" (Pet. 30). Arguably, such proposals would be better addressed to state legislatures than to the courts. *Cf.* Pet. 25–26 & n.13; Pet. App. 52a–53a (Liu, J., dissenting from denial of review). Indeed, the California legislature is presently considering a bill that would require that an individual under 18 years old consult with counsel before any custodial interrogation. *See* S. 1052, 2015–2016 Leg., Reg. Sess. (Cal. 2016). If, however, arguments such as petitioner's are to be addressed by courts in particular cases, then the lower courts should have the relevant issues and materials fairly

submitted to them for consideration before parties argue to this Court that modern science has not been "appropriately incorporated into [their] judicial assessment[s]." Pet. 33.

Here, petitioner did not present his scientific evidence or arguments to the juvenile court or the court of appeal. *See* Pet. 19 n.11; Pet. App. 22a n.11 (noting awareness of "research suggesting that juveniles . . . are incompetent to waive their *Miranda* rights from a developmental standpoint," but that "no evidence of developmental incompetence was presented at trial and this record is devoid of that evidence"). He articulated them for the first time in his petition for review in the California Supreme Court. *But see* Cal. R. Ct. 8.500(c)(1) & (2) (supreme court normally will not consider issues not raised in court of appeal). There were no proceedings in the lower courts to test the reliability of the cited studies or their applicability to the circumstances of this case, and those courts had no opportunity to reach any findings or conclusions with respect to them.[6] If questions of the sort petitioner seeks to raise are to be addressed by courts rather than by legislatures, it would be better for the exploration to begin in a court of first instance.

3. Petitioner argues in part that the Court should grant review to consider how *Miranda* should

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[6] No one questions that there are differences between children and adults. *See, e.g.*, Pet. App. 22a. That does not mean it is easy to collect and assess the potentially relevant research or to determine whether and how it should inform either the formulation of broad legal rules or the application in particular cases of holistic, fact-specific tests. *See, e.g.*, Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 Notre Dame L. Rev. 89, 146, 148–149, 157 (2009) (discussing difficulties of applying developmental neuroscience research to juvenile court proceedings).

apply to the questioning of a minor where a parent who is present during the questioning has "clear conflicts of interest." Pet. 29; *see* Pet. 28–30. But this issue, too, is one that petitioner never raised before his petition for discretionary review in the California Supreme Court, which was denied.[7] There are accordingly no findings on the allegation of a conflict from the juvenile court, and no discussion of that issue from that court or the court of appeal.

The question whether a parent (or, as here, step-parent) should be regarded as legally "conflicted" in a situation involving a child who may have committed a wrongful act is more complex than petitioner suggests. His arguments (Pet. 29–30) that the proper role of a parent in such situations is to give "disinterested" or "'dispassionate'" advice, and that counseling petitioner to tell the truth about what had happened was "bad advice" under "any view of the circumstances," reflect a distinctively lawyerly perspective on a complex human situation. They embody a plausible approach to thinking about the proper legal framework for dealing with children, parents, and serious misconduct—but surely not the only one, or necessarily the best. *Cf. McNeil v.*

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[7] In the court of appeal, petitioner argued in part that his *Miranda* waiver was involuntary "because his stepmother was present, creating a coercive atmosphere." Pet. App. 15a; *see id.* at 24a; *see also* Appellant's Opening Br. 22, 25, Apr. 17, 2014 (arguing petitioner's waiver was "involuntary" in part because stepmother "was present for the entire interview . . . creating a coercive atmosphere"). But not until his petition for review in the California Supreme Court did he contend that his waiver was invalid because his stepmother had a conflict of interest. *See* Pet. for Review 23–24, Jul. 20, 2015 (arguing that review is warranted because petitioner's stepmother "had significant conflicts of interest that should have precluded her from being present while [petitioner] was interrogated").

Wisconsin, 501 U.S. 171, 181 (1991) ("the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good").[8] Again, these issues would be better positioned for review in a case in which they had been adequately explored in the lower courts.

The decision below is also not "inconsistent with decisions of other States" on any issue of conflicted parents. *See* Pet. 28 & n.15. In *State* ex rel. *A.S.*, 999 A.2d 1136, 1138 (N.J. 2010), the court held that a juvenile suspect's *Miranda* waiver was involuntary where the police "placed [the minor's] mother in the role of their helper from the outset of the interrogation process by making her read the child her rights," "failed to correct the mother's later misstatements about those rights," and "failed to stop the inquiry when [the minor] was making imperfect, child-like efforts to assert her right to silence that were overcome by her mother's badgering of her in the police presence." Here, petitioner's stepmother was never placed in the role of police "helper," was present to support petitioner while Detective Hopewell provided the *Miranda* advisement, and never "badger[ed]" petitioner into answering Hopewell's questions. *See also id.* at 1149–1150 (rejecting "a broad representation requirement that would require the presence of an attorney in every such case," reaffirming a "*totality* of the circumstances analysis," reasoning that the "reassuring presence" of a parent will generally "assist the juvenile in the exercise of his or her rights," and directing primarily that a potentially

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[8] Notably, petitioner's *amici* contend that state courts (and statutes) are "divided on whether the presence of a parent is a protective or coercive factor during interrogation." Juvenile Law Ctr. Br. 3; *see id.* at 3–6.

conflicted parent not be "allowed to assume the role of interrogator").

In *McBride v. Jacobs*, 247 F.2d 595, 595 (D.C. Cir. 1957), the defendant argued that he was not properly advised of his right to counsel before being committed to a training school by the juvenile court. The court agreed, holding that it was insufficient to provide that advice to the defendant's parent. *Id.* at 596. It went on to observe that if a court "finds for any reason the minor is not capable of a waiver the parent may so waive provided the court also finds there is no conflict of interest between them, and of course the waiver by the parent must be an intelligent, and knowing act." *Id.* But the case itself presented no question concerning a putative parental conflict or a consequently invalid waiver.

Finally, *Ezell v. State*, 489 P.2d 781, 783–784 (Okla. Crim. App. 1971), did not involve a conflicted parent at all. *Ezell* held that a minor's *Miranda* waiver was invalid because there was no showing "as to his knowledge of the law and that he fully understood the consequences of the waiver and fully understood the effect thereof." *Id.* at 783. The court rejected the state's argument that the result should be different because the minor was able to consult with his mother and another legal custodian before waiving his rights. *Id.* The decision does not address any argument regarding a conflict of interest between the juvenile and his mother or legal custodian.

4. The facts of this case are tragic. As to the application of *Miranda*, however, the lower courts carefully considered the totality of the circumstances and held that there was no reason to set aside petitioner's waiver of his rights. *See* pp. 9–11, *supra*; Pet. App. 21a–25a. As discussed above, there is no reason for this Court to revisit that determination in

this case, where the challenged statements are not critical to the outcome, there is no issue of factual reliability or police coercion, and no record has been created in the lower courts addressing changes in the science of child development.

The juvenile court here also carefully considered what disposition would best accommodate both the need to protect public safety and the goal of providing petitioner with "the intensive services he needs." Pet. App. 14a; *see id.* at 10a–14a, 33a–40a. Under the resulting judgment, absent exceptional circumstances, petitioner will be released from custody by age 23. *See* Cal. Welf. & Inst. Code § 1769(c), 1800; pp. 2–3, *supra*. In the meantime, the goals of commitment to the Division of Juvenile Justice are treatment and rehabilitation, not retribution; and petitioner's placement with DJJ reflects the juvenile court's considered assessment that petitioner was, at the time of commitment, "in need of a long-term, highly-structured, well-supervised environment"; that "less restrictive alternatives," to the extent available at all, "would be ineffective and inappropriate"; and that "commitment to DJJ would be beneficial" to petitioner, who was "a person with exceptional needs." *See* Pet. App. 10a, 13a–14a; *id.* at 35a–40a (court of appeal describing relevant considerations and reviewing and sustaining commitment decision).

The petition for certiorari does not discuss whether or how having a lawyer or "unconflicted" adult counselor at Detective Hopewell's interview with petitioner would likely have led to some different, practical, and preferable ultimate outcome of the juvenile proceedings in this case. What the record in this proceeding reveals is the police and the state courts doing their best to deal sensitively and

responsibly with a sad and challenging situation. There is no reason for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June 16, 2016

APPENDIX

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Riverside County Superior Court
[Title Omitted in Printing]

[4 RT 830] THE COURT: This is in the matter of Joseph H[.], case [number redacted]. Present at this time are all parties. That would be Mr. Soccio on behalf of the People, Mr. Hardy on behalf of Joseph, and Joseph. Also Probation Officer Post and Probation Officer Robledo are also here. And Detective Rowe is also present as the investigating officer.

* * *

[4 RT 831] At this time the Court heard closing arguments in this case last week. And, again, I appreciate both of the attorneys in this case. I've known both of these attorneys for a long time. And I appreciate and respect what they do and how they do their job and also the fact that they not only are professional, but they have a belief in our system of justice and they act accordingly.

And I appreciate that from both of you.

Remember, everyone in the room, no matter what I do here today, there's no acting out. If you feel like you can't hold it together, just leave the room. Just take -- get [4 RT 832] yourself under control and then come back in. If anybody acts out, if there's any noise, if there's any crying out loud or if there's any yelling or anything else, you will be removed from the courtroom and you can't come back in. So remember that today. I haven't had any problem like that in this case and I really appreciate that.

So at this time the Court will make the following rulings:

Notice has been given --

And let me indicate to you that I've decided that I'm going to read this ruling into the record. I think it would be a better way to handle that so I'm not saying the same thing five times. And I think it will make a clearer record.

Notice has been given as required by law.

The minor's birth date is [redacted].

The county of residence is [redacted].

The minor is a person described in Welfare & Institutions Section 602. The Court denies the defense motion pursuant to Welfare and Institutions Code Section 701.1. After weighing the evidence before the Court, the Court finds that the People have proven each element beyond a reasonable doubt.

The threshold question now is whether or not the minor understood the wrongfulness of his actions pursuant to Penal Code Section 26.

The People have the burden to prove by clear proof that at the time of committing the act charged against him, the minor knew its wrongfulness. The Court finds that the People have met this burden.

[4 RT 833] Dr. Geffner said it well when he pointed out in his report that, quote, "Joseph has a

long history of abuse and neglect, poor role models as parents, a lack of appropriate interventions by agencies that should have recognized the potential risks and dangers, and a lack of adequate services to meet his needs. In reviewing the history of this case, the potential for violence within his family could have been predicted since there were so many warning signs over a long time period."

Even with this sort of background, the Court must look to the evidence and facts in making a PC 26 finding. The Court has considered the evidence in the following order:

The age of the minor;

The circumstances of the crime;

The minor's experience including mental conditioning, teaching, and behavior modeling;

And, finally, his understanding of the crime and what he did.

In considering the age of the minor, the Court considered more than his chronological age, which, at the time of the killing, was 10 years and 11 months.

The Court has also used common sense knowing full well that children do not have the maturity of adults. Minors are susceptible to outside pressure, prenatal substance abuse, and severe physical abuse which might affect thinking. The Court also considered the isolation of this minor and how that might affect his thought process. It is clear that this minor knew more than the average child about guns, hate, violence, yet the [4 RT 834] minor was

punished by his father the day before the killing for pointing a toy gun at some of the guests present at what has been referred to as the "NSM meeting."

The Court considered that the minor began exhibiting violent behaviors at age 18 months. And by age three years, his grandmother could not babysit him. He stabbed and tried to choke people, eventually being expelled from approximately eight schools. This was not a naive little boy unaware of the ways of the world. The minor had made trips to the border, shot guns, and knew about hate.

In considering the circumstances of the crime, the Court considered the minor's behavior, such as flight, concealment, false statements, consciousness of guilt, preparation, and the minor's conduct on the occasion of the crime. The evidence shows that the victim, the minor's father, Jeff, became extremely abusive in about 2009. It appears father was unable to cope with many issues in his life, and the frustration with the minor had reached his limits. The minor appeared to be very frustrated also, and many of the violent episodes during this time occurred around yelling, hitting, and out-of-control methods of punishment for the minor.

The Court cannot know exactly what was in -- what this minor thought at the time of the killing. The only way we can ever ascertain his thought process on the early morning of May 1st, 2011, is to look at his behavior, listen to his comments made in interviews that day, and consider what he told others.

The Court finds that the statements made by the minor within 24 hours of the killing are more

believable and more [4 RT 835] reflective of what really happened on that day. These statements; whether elicited or spontaneous, give the Court a clear picture of whether or not he understood that what he did was wrong.

I agree with Dr. Salter in her statement, to wit, "The first 24 hours is the best window of what is in a minor's mind as compared to the current story and any secondary gains he might reap from changing his story."

The Court considered the interviews with the detective and police officers along with the reports, interviews, and testimony of the doctors in this case. The Court is not going to list all of the 47-plus statements made by the minor regarding his conduct and thought process but does find that the statements made in those first 24 hours were the most believable.

After all, at this point, he thought he would not be charged nor would he spend time in jail. He thought he was going home. The minor told us on many occasions in many ways that he knew what he did was wrong. The only reason one says they are sorry is because they did something wrong.

The Court considered the minor's conduct during this crime. There is evidence that he told his sister that he was going to kill his father some days before the incident. He may have even told her he was going to shoot Dad in the stomach. There is evidence that father was leaving the family and even threatened to burn down the house with the family inside. But on this particular night, there was no screaming or yelling between father and son as there

usually was. Father was on the [4 RT 836] couch asleep, perhaps even passed out. It was 4:00 a.m. in the morning. The house was quiet and family asleep. The minor lay in his bed thinking about killing his father. The minor then sneaks into the master bedroom and he gets the gun. He chose what he called "the bad gun" rather than the BB gun. No one heard him. And there is testimony in evidence that his stepmother, Krista, who was upstairs, had been drinking heavily. Then he quietly goes downstairs, puts the barrel of the gun against his father's head, and pulls the trigger with both hands. The minor then retreats to a place of safety -- his bedroom -- hiding the gun under the bed.

These actions show planning and the understanding of how he could commit the crime without getting caught. This act -- these actions show the Court he knew his actions were wrong so he did not want to get caught.

The Court next considered the minor's experience, including mental conditioning, what he was taught or learned, and behavior modeling. Having worked in the juvenile court in this state for some 20 years both as a lawyer and judge, I wish I could tell you that this case represents the worst physical and emotional child abuse I've ever seen. Sadly, it does not. This is not to say that this minor was not abused and neglected. He was abused, and he was neglected from the womb forward. And this had to have had an effect on his thought process. His father's fascination with the NSM affected the minor and taught him things that children do not normally even think about. The Court is not so naive to think that the NSM website is going to discuss illegal and violent activities [4 RT 837] advocated by this group,

especially when being interviewed by a court-appointed doctor. Defense A, the photo of the minor with the Ku Klux Klan member, and his trips to the border clearly show that he was involved to some degree with his father's activity. This minor knew how to handle guns at a young age because of those contacts and experiences.

Dr. Geffner's testing showed, among other points, that the minor's thinking was concrete, rigid, and literal. This type of thought process coincides with many of the circumstances of the crime. This was not a complex killing. The minor came up with a very concrete and literal idea. He thought about his idea and then he shot his father. He then went upstairs to his room, put the gun under his bed, and then went to bed.

The minor understood he would be punished for doing wrong and rewarded for doing right. Teachers and family used punishment and reward his entire life. The minor often made choices and took the punishment because that allowed him to do what he wanted. Stepmother Krista testified that she taught the minor right from wrong. The evidence shows that father Jeff worked with the schools and his family to instill the proper values in his child. The minor chose his own way and refused to follow the rules.

The minor lived with hate, domestic violence, and child abuse having few, if any, adequate role models. He learned that if you hit me, I will hit you. Or as the minor said, if you want to kill somebody, you shoot them in the head.

Finally, the Court considered the minor's understanding [4 RT 838] of the crime and his

understanding of what he did. The record is replete with the minor's statements to various people about the crime and that he knew it was wrong to kill his father. The Court is satisfied that there is more than sufficient evidence to support this finding.

The Court also considered that the minor was loved by his family. Stepmother Krista testified that the minor could read and write. He received some religious training. And the father went to his schools many times losing time from work to deal with school issues.

The Court heard and viewed various interviews and noted that the minor did not cry after killing. The other family members, including his sister, were sobbing in an audio recording received by the Court. During his interview with Detective Hopewell, the Court saw no tears from the minor. Of course, we all know that people handle pain and sorrow in many ways, but the Court finds this behavior indicative of a person who made and carried out the killing as planned. The killing was not spontaneous but planned. He made a choice between Krista and his father and followed through with that choice.

The Court finds that the district attorney has proved by clear and convincing evidence that Joseph H[.] knew the wrongfulness of the act at the time it was committed for the foregoing reasons.

The minor is a child described by Welfare and Institutions Code Section 602.

The Court finds beyond a reasonable doubt that the minor has committed the following offenses:

[4 RT 839] Paragraph 1 is found true, murder in the second degree, a violation of Penal Code Section 187, subdivision (a).

The Court has considered whether the offense is a misdemeanor or a felony and has determined that the offense would be a felony if committed by an adult.

As to the allegation in paragraph 1, the Court finds that in the commission of the murder, the minor personally and intentionally discharged a firearm and proximately caused great bodily injury and death to another person within the meaning of Penal Code Section 12022.53, subdivision (d) and 1192.7(c)(8).

At this time, Joseph, you are ordered to appear at a dispositional hearing. The statutory date for the dispositional hearing I believe would be the 29th.

* * *