No. 17-1172

IN THE
Supreme Court of the United States

BRENDAN DASSEY,

Petitioner,

v.

MICHAEL A. DITTMAN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE AMERICAN PSYCHOLOGICAL ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, NATIONAL ASSOCIATION OF SOCIAL WORKERS, AND AMERICAN ACADEMY OF PSYCHIATRY AND LAW AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Nathalie F.P. Gilfoyle
Deanne Marie Ottaviano
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street, NE
Washington, DC 20002
(202) 336-5500

Beth S. Brinkmann
Counsel of Record
Megan A. Crowley
Daniel G. Randolph
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
bbrinkmann@cov.com
(202) 662-6000

MARCH 26, 2018

Counsel for Amicus Curiae American Psychological Association
Additional Counsel Listed on Inside Cover

Aaron M. Panner
Collin R. White
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, PLLC
Sumner Square
1615 M Street, NW
Suite 400
Washington, DC 20036
(202) 326-7900

Counsel for Amici Curiae
American Psychiatric
Association &
American Academy of
Psychiatry and Law

Anne B. Camper
General Counsel
NATIONAL ASSOCIATION OF
SOCIAL WORKERS
750 First Street, NE
Suite 800
Washington, DC 20001
(202) 336-8271

Counsel for Amicus Curiae
National Association of
Social Workers

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INTERESTS OF *AMICI CURIAE*[1]

The American Psychological Association is the leading association of psychologists in the United States. A non-profit scientific and professional organization, the Association has approximately 115,000 members and affiliates. The Association has an institutional interest in increasing and disseminating knowledge regarding human behavior, and fostering the application of psychological learning to important human concerns.

The American Psychiatric Association, with more than 37,800 members, is the nation's leading organization of physicians who specialize in psychiatry. Members of the Association are physicians engaged in treatment, research, and forensic activities, and many members regularly perform roles in the criminal justice system.

The American Academy of Psychiatry and the Law ("AAPL"), with more than 1,900 psychiatrist members, is the leading national organization of physicians who specialize in forensic psychiatry. AAPL is dedicated to excellence in practice, teaching, and research in forensic psychiatry. AAPL members

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. The parties were timely notified of the intent to file this brief and consented to its filing.

evaluate defendants in all aspects of the criminal justice system, adhere to the principle of honesty, and strive for objectivity.

The National Association of Social Workers ("NASW") is a professional membership organization with approximately 120,000 social workers in chapters in fifty states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and Guam. Since 1955, NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education, and enforces the NASW Code of Ethics.

Amici and their members have developed extensive research in areas that are central to this dispute, including on false confessions, juveniles, and individuals with low intelligence. For example, the American Psychological Association's Division 41 (American Psychology-Law Society) has published a comprehensive analysis of research on confessions.[2] And the Association's Council of Representatives has adopted a "Resolution on Interrogations of Criminal Suspects," to draw attention to the problem of false confessions and wrongful convictions.[3] Similarly, the American Psychiatric Association has drawn attention to the importance of juvenile justice reform based on advances

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[2] Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3 (2010).

[3] American Psychological Association, Resolution on Interrogations of Criminal Suspects (2014).

in the neurobehavioral understanding of adolescent development.[4]

The above organizations have frequently filed briefs as *amici curiae*, including briefs that have been cited by this Court. *See, e.g.*, *Moore v. Texas*, 137 S. Ct. 1039, 1051 (2017); *Hall v. Florida*, 134 S. Ct. 1986, 1994–95, 2000–01 (2014). However, their participation at the certiorari stage is rare. *Amici* have chosen to support the petition in this case because the opinion below is contrary to decades of research that confirms this Court's clearly established precedent on voluntariness.

INTRODUCTION AND SUMMARY OF ARGUMENT

Judges and jurors harbor the stubborn belief that "innocent people do not confess."[5] People often find it difficult to fathom that an innocent person would falsely confess to a crime, absent physical force.[6] Indeed, a false confession can contain suggestions of veracity, including non-public details about the crime.

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[4] *See* American Psychiatric Association, Position Statement on Trial and Sentencing of Juveniles in the Criminal Justice System (July 2016).

[5] *See, e.g.*, Iris Blandón–Gitlin et al., *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions*, 17 Psychol. Crime & L. 239, 256 (2011).

[6] *See* Danielle E. Chojnacki et al., *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 Ariz. St. L.J. 1, 32 (2008); Linda A. Henkel et al., *A Survey of People's Attitudes and Beliefs About False Confessions*, 26 Behav. Sci. & L. 555, 578 (2008).

But such details can become known to the individual before or during the interrogation through second-hand exposure to facts about the crime and other techniques.[7]

The fact is that there are individuals who confess to crimes that they did not commit. Among the first 347 exonerations in the United States that were based on DNA evidence, false confessions contributed to 28% of those wrongful convictions.[8] Among 1,927 cases in the National Registry of Exonerations, 13% of those wrongfully convicted had falsely confessed.[9] And "the overwhelming majority of false confessions . . . occur in murder cases."[10]

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[7] *See* Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1053 (2010); Sara C. Appleby et al., *Police-Induced Confessions: An Empirical Analysis of Their Content and Impact*, 19 Psychol. Crime & L. 111, 116 (2013).

[8] Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psychologist 63, 63 (2018).

[9] *Id.* Compared to others who are wrongfully convicted, false confessors may also be more likely to plead guilty, thereby increasing barriers to appeal. Katie Wynbrandt, Comment, *From False Evidence Ploy to False Guilty Plea: An Unjustified Path to Securing Convictions*, 126 Yale. L.J. 545, 553 (2016). Thus, exonerations data may underrepresent the prevalence of false confessions.

[10] Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 946 (2004) (81% of 125 proven false confessions occurred in homicide cases).

False confessions are highly likely to be involuntary, as this Court has acknowledged.[11] Indeed, "[t]he primary reason that innocent defendants confess is that they are coerced into doing so."[12]

Decades of psychological research demonstrate that certain techniques, known as *maximization* (exaggerating or fabricating the strength of evidence against the accused) and *minimization* (downplaying the seriousness of an offense through reassurance or excuses), are psychologically coercive. These techniques, both of which were used in the interrogation of petitioner Brendan Dassey, increase the rate of confessions that turn out to be false. *See infra* section I.

The risk of involuntary false confessions is of particular concern in cases involving juveniles.[13] Studies

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[11] *See, e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (citing risk of false confession as frequent consequence of coercion); *Jackson v. Denno*, 378 U.S. 368, 385–86 (1964) (instructing that due process "forbids the use of involuntary confessions [in part] because of the probable unreliability of confessions that are obtained in a manner deemed coercive"); *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960) (considering "the unreliability of the confession" in evaluating voluntariness).

[12] Samuel R. Gross & Michael Shaffer, *Exoneration in the United States, 1989–2012: Report by the National Registry of Exonerations*, at 57 (reporting that 60% of false confessions [82 out of 135] were "clearly coerced"), https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf.

[13] This brief uses the terms "juvenile" and "adolescent" interchangeably to refer to individuals aged 12 to 17. Similarly, the research discussed in this brief applies to adolescents under age 18, including older adolescents, unless otherwise noted.

based on real-world and experimental data demonstrate conclusively that juveniles—because they lack mature judgment and are especially vulnerable to pressure—are far more likely than adults to make false confessions. *See infra* section II. Research demonstrates the same tendency in individuals with intellectual deficits, for similar but distinct reasons. In particular, individuals with low intelligence have high suggestibility as well as difficulty comprehending legal rights and consequences, both of which render them especially vulnerable to making false confessions under pressure of coercive questioning. *See infra* section III. Research confirms that "[i]n any discussion of dispositional risk factors for false confession, the two most commonly cited concerns are a suspect's age . . . and mental impairment."[14]

This Court recognized these precise risks of coercion decades ago. In 1966, the Court made clear that "coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Miranda v. Arizona*, 384 U.S. 436, 448 (1966) (quoting *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960)). The Court also identified types of interrogation techniques that may "undermine[] [the] will to resist," and "even give rise to a false confession." *Id.* at 455 & n.24. The Court highlighted the practice of "posit[ing]" a suspect's guilt "as a fact," as well as the technique of "minimiz[ing] the moral seriousness of [an] offense," such as by "cast[ing] blame on the victim or on society." *Id.* at 450.

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[14] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 19.

The Court also established long ago that the voluntariness of a confession, *i.e.*, whether the confession was given freely or as a result of coercion, depends upon "the techniques for extracting the statements, as applied to *this* suspect." *Miller v. Fenton*, 474 U.S. 104, 116 (1985). The Court recognized that juveniles and individuals with low intelligence are particularly vulnerable to psychologically manipulative techniques—directing that "the greatest care must be taken to assure that the admission was voluntary" in the case of a juvenile, *In re Gault*, 387 U.S. 1, 55 (1967), and that a suspect's "mental condition" be weighed as a "significant factor in the 'voluntariness' calculus," *Colorado v. Connelly*, 479 U.S. 157, 164 (1986). *See also Reck v. Pate*, 367 U.S. 433, 442 (1961) (citing "subnormal intelligence" of youth as basis for invalidating confession).

Petitioner's case exemplifies all three of these significant risk factors. Law enforcement officers used psychologically coercive interrogation techniques when questioning petitioner, who was a juvenile with low intelligence. And the purported confession that resulted from that interrogation "furnished the only serious evidence supporting his murder conviction." *See* Pet. App. 40a (Wood, C.J., dissenting).

Review is warranted because the opinion below is contrary to this Court's clearly established precedent on voluntariness determinations, as illuminated by decades of psychological research. And this case is not unique. Exoneration studies establish that false confessions in jurisdictions around the country are responsible for an unsettlingly high proportion of wrongful convictions, and that juveniles and those

with low intelligence are overrepresented among those who are wrongly convicted based on false confessions. Denial of review would have far-reaching harmful consequences, because it would sanction the continued widespread misapplication of this Court's clear standards on voluntariness determinations. *See* Pet. Br. 30–35.

ARGUMENT

I. Psychological Research Demonstrates That Certain Interrogation Techniques Are Psychologically Coercive And Increase the Risk Of False Confessions—Even Among Adults

Psychological research confirms what this Court recognized in the landmark case of *Miranda*—that "coercion can be mental as well as physical." *Miranda v. Arizona*, 384 U.S. 436, 448–455 (1966). The Court explained that certain interrogation techniques "undermine[] [the] will to resist," and "may even give rise to a false confession." *Id.* at 448, 455 & n.24.

Research verifies that psychologically coercive techniques make false confessions more likely. In particular, the *Miranda* Court noted with disfavor the practice of "display[ing] an air of confidence in the suspect's guilt," which is often "posited as a fact." *Id.* at 450. That is a *maximization* technique. Such techniques often include the use of false evidence, which studies have linked to false confessions. The Court also cited disapprovingly the technique of "minimiz[ing] the moral seriousness of [an] offense," such as by "cast[ing] blame on the victim or on society." *Id.*

Numerous studies have demonstrated that *minimization* techniques also substantially increase the rate of false confessions. Law enforcement officers used both techniques during their interrogation of petitioner.

A. Maximization Techniques, Especially False Evidence Tactics, Increase the Risk of False Confessions

Maximization refers to "a cluster of tactics designed to convey the interrogator's rock-solid belief that the suspect is guilty and that all denials will fail."[15] It may involve "making an accusation, overriding objections, and citing evidence, real or manufactured, to shift the suspect's mental state from confident to hopeless."[16]

Officers repeatedly used maximization techniques when they interrogated petitioner. For example, the officers told petitioner: "[W]e know, we reviewed those tapes . . . . We pretty much know everything that's why we're . . . talking to you again today." Pet. App. 15a; *see also* Pet. App. 65a (collecting more than twenty similar maximization examples during petitioner's interrogation).

Research has shown that "maximization communicates an implicit threat of punishment."[17] In a

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[15] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 12.

[16] *Id.*

[17] Saul M. Kassin, *The Psychology of Confession Evidence*, 52 Am. Psychologist 221, 224 (1997). For example, when subjects reviewed transcripts of interrogations that employed maximization techniques, they expected the interrogated suspect to receive a

survey of 87 experts in confessions and interrogations, 94% confirmed that "[p]resentations of false incriminating evidence during interrogation increase the risk that an innocent suspect [will] confess to a crime he or she did not commit."[18]

The use of false evidence is a particularly potent form of maximization directly linked to the risk of false confessions. In a seminal psychological study about false confessions, students participated in a computer typing exercise where each participant was instructed not to strike a particular keyboard key.[19] Later, when the participant's computer shut down (as it was programmed automatically to do), the participant was accused of having caused the crash by striking the forbidden key. The participant was then confronted with false evidence of his guilt: An actor working for the experimenter claimed to have seen the participant strike the prohibited key.[20] The use of that "false evidence nearly doubled the number of students who signed a written confession, from 48 to 94%."[21] Other computer-crash studies have also

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harsher sentence. Saul M. Kassin & Karlyn McNall, *Police Interrogations and Confessions: Communicating Promises and Threats By Pragmatic Implication*, 15 L. & Hum. Behav. 233, 240 (1991).

[18] Kassin et al., *General Acceptance, supra* note 8, at 70, 72.

[19] Saul M. Kassin, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 Psychol. Sci. 125 (1996).

[20] *Id.* at 126.

[21] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 17.

found high false confession rates caused by the introduction of false evidence, even where the confession was said to bear a financial consequence.[22]

Other paradigms have revealed similar results. In one study, participants completed a computerized gambling task, and later were falsely accused of cheating by stealing "money" from a fictional bank.[23] Half of the participants were told there was a videotape proving their theft; the other half were shown such a (doctored) video.[24] Remarkably, after either one or two requests to do so, *all* participants in *both* groups signed a false confession.[25]

In light of the strength and consistency of the research in this area, the American Psychological Association's "Resolution on Interrogations of Criminal Suspects" draws special attention to the "risks of eliciting a false confession by interrogations that involve the presentation of false evidence."[26]

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[22] *See, e.g.*, Robert Horselenberg et al., *Individual Differences and False Confessions: A Conceptual Replication of Kassin and Kiechel (1996)*, 9 Psychol. Crime & L. 1, 5 (2003) (82% of participants signed a false confession, despite being told they would lose their $10 participation payment).

[23] Robert A. Nash & Kimberley A. Wade, *Innocent But Proven Guilty: Eliciting Internalized False Confessions Using Doctored-Video Evidence*, 23 Applied Cognitive Psychol. 624, 625, 627–28 (2008).

[24] *Id.* at 625, 628.

[25] *Id.* at 629–30.

[26] American Psychological Association Resolution, *supra* note 3.

B. Minimization Techniques Increase the Risk of False Confessions

"[M]inimization tactics are designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question."[27] An interrogator employing minimization techniques "offers sympathy and understanding," or "normalizes and minimizes the crime."[28]

Officers used minimization techniques on petitioner when they reassured him with warm, fatherly gestures. *See* Pet. App. 14a. Officers told him not "to worry about things," *id.*, and that he had "done nothing wrong," Pet. App. 530a. The officers also repeatedly told petitioner "it was not his fault," shifting blame to petitioner's uncle. *See* Pet. App. 66a (collecting several examples).

Minimization undermines a confession's voluntariness because it frequently operates as a promise of leniency that "may well lead innocent people who feel trapped to confess."[29]

One recent study examined minimization in the context of the computer-crash paradigm discussed above.[30] Again, participants were accused of causing

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[27] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 12.

[28] *Id.*

[29] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 18.

[30] Jessica R. Klaver et al., *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 13 Legal & Crim. Psychol. 71 (2008).

their computers to crash by hitting a forbidden key. But for some participants, the experimenters blamed the incident on overly sensitive keys, or told the participants not to "worry" because "[i]t was just an accident."[31] The participants subjected to these minimization techniques were more likely to sign false confessions.[32]

Another recent study applied a different model but achieved the same basic result. Students were partnered with a confederate (an actor working for the experimenter) for a problem-solving activity, and they were instructed to work alone for certain problems.[33] For some participants, the confederate asked for help on problems designed for individualized work, thereby suggesting that the participant break the rules. Later, the experimenter claimed that the pair had suspiciously arrived at the same wrong answer, and accused the participant of cheating—an act with serious consequences in the university setting. The participant was then confronted with (1) an explicit offer of leniency ("things could probably be settled pretty quickly"); (2) minimization (*i.e.*, a combination of sympathy and face-saving excuses); (3) neither; or

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[31] *Id.* at 77–78.

[32] *Id.* at 81.

[33] Melissa B. Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 Psychol. Sci. 481 (2005).

(4) both.[34] The explicit promise and the minimization both increased the rate of false confessions.[35]

This Court has cited leniency offers as an indicator of coercion. *See Lynumn v. Illinois*, 372 U.S. 528, 534 (1963). And in the survey of 87 experts referenced above, 91% agreed that "[m]inimization tactics that communicate sympathy and moral justification for a crime lead people to infer leniency upon confession."[36]

In one study illustrating how minimization communicates leniency, participants read transcripts of interrogations.[37] In some transcripts, interrogators explicitly promised the suspects they would receive a lighter sentence if they confessed. In other transcripts, interrogators used minimization techniques—for example, blaming the victim or morally excusing the crime. After reviewing the transcripts, participants were asked how severe they expected the suspect's sentence to be in the event of a confession.[38] In general, "subjects expected more lenient sentencing in both the minimization and promise conditions" as compared to the control group. In other words, both minimization and promises communicated leniency.[39]

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[34] *Id.* at 483.

[35] *Id.* at 484.

[36] Kassin et al., *General Acceptance, supra* note 8, at 69, 70, 72.

[37] Kassin & McNall, *supra* note 17, at 240.

[38] *Id.* at 241.

[39] *Id.*

The American Psychological Association's "Resolution on Interrogations of Criminal Suspects" specifically warns of "the risks of eliciting a false confession [by interrogations] that involve minimization 'themes' that communicate promises of leniency."[40]

II. Psychological Research Supports the Clear and Longstanding Mandate That Purported Confessions By Juveniles Be Evaluated With the "Greatest Care" To Determine Whether They Were Voluntary or, Rather, the Result of Coercion

A large body of research in developmental psychology and neuroscience demonstrates the need to use the greatest care when assessing the voluntariness of inculpatory statements by juveniles. That research resoundingly confirms this Court's clearly established law. Seventy years ago, this Court observed that events that might "leave a man cold and unimpressed" could "overawe and overwhelm a lad." *Haley v. Ohio*, 332 U.S. 596, 597–99 (1948). The Court has since warned that "the greatest care must be taken to assure that [a juvenile's confession] was voluntary." *In re Gault*, 387 U.S. 1, 55 (1967); *accord Gallegos v. Colorado*, 370 U.S. 49, 53 (1962) ("special care . . . must be used").

This Court has expressly recognized that juveniles are more likely than adults to confess falsely and against their will. *See, e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (noting "troubling" and "acute" risk of juvenile false confessions). The Court

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[40] American Psychological Association Resolution, *supra* note 3.

has referenced particular qualities—namely, immaturity and vulnerability—that render adolescents especially prone to involuntary confession. *See, e.g.*, *id.* at 272–73 (collecting Court's "commonsense conclusions" about relative immaturity and fragility of youth in face of police interrogation); *see also Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (in sentencing context, recognizing that juveniles are "more vulnerable" and subject to immature "risk-taking") (quoting *Miller v. Alabama*, 567 U.S. 460, 471 (2012)).

A. Juveniles Are Far More Likely Than Adults to Confess Falsely and Against Their Will

Psychological research establishes conclusively that juveniles are far more likely than adults to falsely confess. A survey of 873 exoneration cases from 1989 through 2012 found that roughly 15% of exonerees had falsely confessed, and that percentage jumped to 42% for juveniles—a nearly three-fold increase.[41] Earlier exoneration studies likewise reported elevated rates of false confessions among juveniles.[42] One seminal study of 125 false confessions found that juveniles were significantly over-represented among those who

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[41] Gross & Shaffer, *supra* note 12, at 60.

[42] *See, e.g.*, Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L. Rev. 887, 904 (2010) (31.1% of juvenile exonerees confessed, compared to 17.8% of adults).

had falsely confessed, constituting one-third of false confessors.[43]

Results of research studies are consistent with these real-world findings. One study applying the computer-crash paradigm found that false confession rates varied significantly based on age. When presented with false evidence, 78% of twelve- and thirteen-year-olds and 72% of fifteen- and sixteen-year-olds confessed in writing that they had "hit the ALT key and caused the computer to crash," when they had not, in fact, done so. But that dropped to 59% for young adults (aged eighteen to twenty-four).[44] Nearly two-thirds of the twelve- and thirteen-year-olds and nearly one-half of the fifteen- and sixteen-year-olds "simply picked up the pen and signed without saying a word."[45]

"Self-report studies"—which use interviews and surveys to collect large quantities of data about suspects' interrogation experiences—also demonstrate above-average false confession rates for juveniles. One study gathered information from 23,771 juveniles in seven European countries. Of those juveniles who had been interrogated by police, roughly 14% reported

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[43] Drizin & Leo, *supra* note 10, at 944.

[44] Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 L. & Hum. Behav. 141, 146, 148 (2003).

[45] *Id.* at 151.

confessing falsely[46]—a rate "substantially higher" than is found among older individuals.[47] Similarly, of 193 fourteen- to seventeen-year-old males incarcerated in the United States, 17.1% reported giving a false confession at some point in the past.[48] And an Icelandic self-report study found that, of roughly 1,900 individuals who had been interrogated by police, 9% of juveniles had falsely confessed, compared to only 5.7% of young adults.[49]

B. Juveniles Are Prone to False Confession Because They Lack Mature Judgment and Are Vulnerable to Pressure

Juveniles are prone to make false confessions for two primary reasons. *First*, juveniles' "lack of maturity," *Montgomery*, 136 S. Ct. at 733 (quoting *Miller*, 567 U.S. at 471), prevents them from understanding fully the negative consequences of their actions and, thus, leads them to engage in greater risk-taking behavior. As a result, adolescents are often willing to pay dearly—in the form of protracted legal proceedings, a criminal record, and prison time—in return for

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[46] Gisli H. Gudjonsson et al., *Interrogation and False Confessions Among Adolescents in Seven European Countries*, 15 Psychol. Crime & L. 711, 715 (2009).

[47] Saul M. Kassin, *False Confessions*, WIREs Cognitive Sci. 1, 5 (2017).

[48] Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & Hum. Behav. 181, 186 (2014).

[49] Gisli H. Gudjonsson et al., *Custodial Interrogation, False Confession, and Individual Differences: A National Study Among Icelandic Youth*, 41 Personality & Individual Differences 49, 54–55 (2006).

a much less significant but more immediate benefit. This may induce them to falsely confess. *Second*, compared to adults, juveniles "are more vulnerable to negative influences and outside pressures," *Montgomery*, 136 S. Ct. at 733 (quoting *Miller*, 567 U.S. at 471), which places them at greater risk for making a false confession.

1. Immaturity of Judgment

Research establishes that juveniles make decisions differently: "[A]dolescents use a risk-reward calculus that places relatively less weight on risk, in relation to reward, than that used by adults."[50] One study observed reward-seeking and risk-avoidance behaviors among roughly 900 individuals, ranging from 10 to 30 years old, as they engaged in a gambling exercise.[51] While adolescents were drawn to bets with the best rewards, adults sought to avoid the worst losses. Researchers concluded that "[w]hereas adolescents may attend more to the potential rewards of a risky decision than to the potential costs, adults tend

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[50] Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1012 (2003); *see also* Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 350–53 (1992) (summarizing evidence that adolescent recklessness relates to poor "probability reasoning").

[51] Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 Developmental Psychol. 193, 193 (2010).

to consider both, even weighing costs more than rewards."[52]

More specifically, juveniles are attuned to *immediate* rewards, exhibiting much steeper "temporal discounting" than adults.[53] The converse is also true: Adolescents generally struggle to envision and plan for consequences that are *not* immediate.[54] One study compared more than 1,000 subjects and found that 17-year-olds scored lower than adults on measures of "perspective," which included "the ability to see short and long term consequences."[55]

Neuroscience research is consistent with the above findings, and suggests a possible physiological basis for juveniles' skewed preference for immediate reward. Early adolescence coincides with major changes in the brain's incentive processing system, which involves neurotransmitters like dopamine.[56] These changes have been tied to "reward-directed activity" among adolescents, especially the willingness

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[52] *Id.* at 204, 206.

[53] Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, 40–41 (2009).

[54] *See* Jari-Erik Nurmi, *How Do Adolescents See Their Future? A Review of the Development of Future Orientation and Planning*, 11 Dev. Rev. 1, 28–29 (1991).

[55] Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 748, 754 & tbl. 4 (2000).

[56] *See, e.g.*, Dustin Wahlstrom et al., *Developmental Changes In Dopamine Neurotransmission in Adolescence*, 72 Brain & Cognition 146, 150–151 (2010).

to engage in risky behavior.[57] During adolescence and well into early adulthood, the brain undergoes physical changes that permit better cost-benefit decision-making—including synaptic "pruning" and myelination (the insulation of neural pathways with fatty tissue called myelin).[58]

Juveniles' strong preference for immediate benefit—even at serious long-term cost—contributes to their tendency to falsely confess. It is well understood that "compliant [*i.e.*, coerced] false confessions" generally result from a suspect's desire "to escape a stressful situation, avoid punishment, or gain a promised or implied reward," usually based on the belief "that the short-term benefits of confession relative to denial outweigh the long-term costs."[59] Surveying cases, one researcher has specifically noted the following examples of "instrumental gain" that are often sufficient to induce false confessions, including among *adults*: ending the interview; visits from family; and

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[57] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 Brain & Cognition 160, 161 (2010).

[58] On the process of pruning, see Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proc. Nat'l Acad. Sci. 8174, 8178 (2004). On the myelination process, see Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 144 (2001).

[59] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 14.

being released from custody to attend to basic physiological needs, such as to feed a drug habit.[60]

The above cost-benefit decision-making principles apply to all interrogation subjects, regardless of age. But the "impulsive tendenc[y]" to accept heavy costs (*e.g.*, prison time) in return for paltry rewards (*e.g.*, ending the interview) is "especially evident in juvenile populations."[61] The authors of a seminal false confessions study observed that "one of the most common reasons [for confessing] cited by teenage false confessors is the belief that by confessing, they would be able to go home."[62]

Petitioner is a classic illustration of this phenomenon. After providing the interrogators with inculpatory statements, petitioner asked about returning to his sixth period at school because he was concerned about a class assignment. *See* Pet. App. 18a.

Juveniles also lack knowledge of *what* the future consequences are likely to be. One recent study concluded that "juveniles, irrespective of their maturity levels, appear mired in *Miranda* misconceptions," based on findings that "82.8% [of 64 juvenile study

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[60] Gisli H. Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook* 121, 195–96 (Graham Davies & Ray Bull eds. 2003), *available at* http://www.al-edu.com/wp-content/uploads/2014/05/Gudjonsson-The-Psychology-of-Interrogations-and-Confessions.pdf.

[61] Kassin et al., *Police-Induced Confessions*, *supra* note 2, at 15.

[62] Drizin & Leo, *supra* note 10, at 969.

participants] exhibit[ed] 10 or more erroneous beliefs that could potentially compromise their decisions regarding their *Miranda* rights."[63] Another study evaluated 927 juveniles and 466 young adults using a standard measure of competence to stand trial.[64] On a metric designed to gauge comprehension of legal rights and procedures, "11- to 13-year-olds performed significantly worse than the 14- to 15-year-olds, who performed significantly worse than" older age groups.[65]

2. Vulnerability to Pressure

Research establishes that adolescents are more susceptible than adults to external pressures and negative environmental influences, which can lead to false confessions. Juveniles are "more easily intimidated by police power, persuasion, or coercion," and "less likely to possess the psychological resources to resist the pressures of accusatorial police questioning."[66] They are "more easily pressured, manipulated,

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[63] Richard Rogers et al., *Mired in* Miranda *Misconceptions: A Study of Legally Involved Juveniles at Different Levels of Psychosocial Maturity*, 32 Behav. Sci. & L. 104, 116 (2014).

[64] Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003).

[65] *Id.* at 339–40, 343.

[66] Drizin & Leo, *supra* note 10, at 944.

and persuaded to make or agree to false statements."[67]

Neuroscience research demonstrates that adolescents are less equipped to manage heightened emotions, like fear: "[W]ell into late adolescence" there is "an increase in connections not only among cortical areas but between cortical and subcortical regions," which is "especially important for emotion regulation."[68] The vulnerability of youth also has a social component. Research has confirmed that requests from adults can be interpreted by children as commands.[69] And, "expectations of obedience to authority and children's lower social status make them more vulnerable than adults during interrogation."[70]

The computer-crash study referenced above measured the relationship between false confession rates and *suggestibility—i.e.*, a form of vulnerability that measures how likely one is to accept suggestions of another, such as through leading questions.[71] The

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[67] Richard A. Leo, *Interrogation and Confessions*, in *Reforming Criminal Justice* 233, 248 (2015), *available at* http://academyforjustice.org/wp-content/uploads/2017/10/9_Reforming-Criminal-Justice_Vol_2_Interrogation-and-Confessions.pdf.

[68] Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 Am. Psychologist 739, 743 (2009).

[69] Gerald P. Koocher, *Different Lenses: Psycho-Legal Perspectives on Children's Rights*, 16 Nova L. Rev. 711, 715–16 (1992).

[70] Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. Crim. L. & Criminology 219, 230 (2006).

[71] Redlich & Goodman, *supra* note 44, at 143.

study found that "[p]articipants who were more likely to yield to misleading questions were also more likely to sign" a written confession.[72] In other words, because adolescents are more likely to be suggestible, they may be more vulnerable to false confession.[73]

III. Research Confirms That Individuals With Low Intelligence Are At Higher Risk For False Confession

A recent in-depth analysis of 245 exonerations involving false confessions determined that 25.7% of false confessors showed "indicia of intellectual disability"—a figure significantly greater than the estimated 1% to 3% of such individuals in the general population.[74] Earlier exoneration studies similarly found that the intellectually disabled are overrepresented among populations of false confessors.[75]

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[72] *Id.* at 149, 151.

[73] *See* Kassin, *False Confessions*, *supra* note 47, at 3 (connecting youth and suggestibility as risk factors for false confession).

[74] Samson J. Schatz, Note, *Interrogated with Intellectual Disabilities: The Risks of False Confession*, 70 Stan. L. Rev. 643, 681–82 (2018).

[75] *See, e.g.*, Drizin & Leo, *supra* note 10, at 920 n.155 (noting that "at least 22% (27/125) of the proven false confessors in our study were mentally retarded," a "figure [that] surely underestimates the actual percentage," since IQ records were often unavailable).

Research in psychology shows that individuals with low intelligence—like petitioner[76]—are prone to falsely confess for two main reasons.

First, due to the cognitive deficits of individuals with low intelligence, such individuals struggle and often fail to comprehend legal rights and consequences. For example, after watching a fictional interrogation video, 38% of participants with low IQs (ranging from 60 to 75) thought the suspect would be allowed to go home to await trial, compared to 5% of those with average intelligence. Only 52% of low-IQ participants thought the suspect should obtain legal advice if innocent, compared to 90% in the average intelligence group.[77]

The connection between low intelligence and low comprehension of legal rights is well-documented among juveniles. Numerous studies have demonstrated that both "age and intelligence [are]

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[76] Petitioner had "received special education services, and [his] IQ had been measured at various times between 74 and 81"—well below the 100 average—but he was not diagnosed as intellectually disabled. Pet. App. 75a. Intellectual disability, the preferred term for what was formerly called "mental retardation," is a diagnosis with three criteria, one of which is "significantly subaverage intellectual functioning." *Hall v. Florida*, 134 S. Ct. 1986, 1994 (2014) (outlining criteria for intellectual disability).

[77] Isabel C. H. Clare & Gisli H. Gudjonsson, *The Vulnerability of Suspects with Intellectual Disabilities During Police Interviews*, 8 Mental Handicap Res. 110, 120–21 (1995).

associated with adolescents' understanding of the *Miranda* warning."[78] One study that evaluated more than 900 juveniles across the United States found that "juveniles of below-average intelligence are more likely than juveniles of average intelligence" to have diminished understandings of legal rights.[79]

Second, individuals with low intelligence are more likely to falsely confess because they tend to be more suggestible in the face of leading questions. There is a "significantly negative relationship between interrogative suggestibility and intellectual functioning," such that "subjects with IQs well below average . . . tend to be markedly more suggestible."[80] That tendency has been linked to false confessions. In a study of three groups—alleged false confessors, alleged true confessors, and resisters (*i.e.*, those who had never confessed)—alleged false confessors had the lowest IQs and highest suggestibility scores.[81]

This wealth of psychological research demonstrates the higher risk of false confessions from persons with limited intellectual capability. And it is consistent with this Court's repeated observation of the low intelligence of an accused when invalidating a

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[78] Lori H. Colwell et al., *The Influence of Psychosocial Maturity on Male Juvenile Offenders' Comprehension and Understanding of the Miranda Warning*, 33 J. of Am. Acad. of Psychiatry & L. 444, 451 (2005).

[79] Grisso et al., *supra* note 64, at 356.

[80] Gudjonsson, *The Psychology of Interrogations*, *supra* note 60, at 382.

[81] Gisli H. Gudjonsson, *The Effects of Intelligence and Memory on Group Differences in Suggestibility and Compliance*, 12 Personality & Individual Differences 503, 504 (1991).

confession as involuntary. *See, e.g.*, *Culombe v. Connecticut*, 367 U.S. 568, 620 (1961); *Reck v. Pate*, 367 U.S. 433, 443 (1961); *Payne v. Arkansas*, 356 U.S. 560, 562 n.4, 567 (1958); *Fikes v. Alabama*, 352 U.S. 191, 196 (1957).

CONCLUSION

For the reasons set forth above and in the petition, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Nathalie F.P. Gilfoyle
Deanne Marie Ottaviano
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street, NE
Washington, DC 20002
(202) 336-5500

Beth S. Brinkmann
Counsel of Record
Megan A. Crowley
Daniel G. Randolph
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
bbrinkmann@cov.com
(202) 662-6000

Additional Counsel Listed on Inside Cover

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