

No. 21-5095

IN THE
Supreme Court of the United States

MELISSA ELIZABETH LUCIO,

Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of the United States**

**BRIEF OF THE INNOCENCE PROJECT AND
INNOCENCE NETWORK AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

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INTERESTS OF *AMICI CURIAE*¹

The Innocence Project, Inc. (“Innocence Project”) was established nearly 30 years ago, in 1992, to provide *pro bono* representation to those who may be able to prove their actual innocence through post-conviction record development. The Innocence Network (“Network”) is an association of organizations (of which the Innocence Project is a member) who likewise seek to prove the actual innocence of wrongfully convicted people through post-conviction proceedings. The 68 current members of the Network represent people with innocence claims in all 50 states and the District of Columbia and Puerto Rico, as well as Australia, Argentina, Brazil, Canada, Ireland, Israel, Italy, the Netherlands, the United Kingdom, and Taiwan.

Since 1989, the National Registry of Exonerations has documented 2,839 exonerations. See National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx>. The Innocence Project and the Network have represented hundreds of these exonerees, proving actual innocence in 268 cases with irrefutable DNA evidence. In approximately half of

¹ The parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, counsel for *amici* certifies that no counsel for a party authored this brief in whole or in part, and no party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, its members, or its counsel made a monetary contribution to this brief’s preparation or submission.

these cases, the exoneration litigation helped reveal the true perpetrators.

The Innocence Project also participates in cases outside of the post-conviction phase of litigation—on a consult or co-counsel basis or, as here, as *amicus curiae*—in cases where the outcome of an issue in dispute may create precedent that either significantly aggravates or significantly mitigates one or more risks of wrongful conviction.

In addition to providing *pro bono* legal services, the Innocence Project works to prevent future miscarriages of justice.

The work of the Innocence Project and the Network helps to ensure a more just and safer society by enhancing the truth-finding function of our courts.

As leading national advocates for the wrongfully convicted, *amici curiae* have a compelling interest in ensuring that due process and rights to present a complete defense are meaningfully safeguarded, particularly in cases where the reliability of a confession is fairly in dispute.

Relying on nearly three decades of exoneration data, the Innocence Project has identified the chief risk factors for wrongful convictions and advocates to legislatively and administratively remediate them. False confessions are among the leading causes of wrongful convictions. See Innocence Project, *DNA Exonerations in the United States*, <https://innocenceproject.org/dna-exonerations-in-the-united-states/> (hereinafter “*DNA Exonerations*”). *Amici curiae* are deeply invested in protecting

innocent people from wrongful convictions that were secured by coerced and false confessions. Our decades of experience with prosecuting post-conviction cases and advocating for reforms to improve the reliability of confession evidence makes clear that women accused of infanticide are particularly susceptible to the psychological pressures of interrogations and at heightened risk for falsely confessing.

Here, the Fifth Circuit's sharply divided *en banc* decision held that the exclusion of reliable, expert testimony relevant to the credibility of Melissa Lucio's confession was not in violation of any clearly established federal right to present a complete defense. In so holding, the Fifth Circuit did not comply with this Court's decisions in *Crane v. Kentucky*, 476 U.S. 683 (1986) and *Chambers v. Mississippi*, 410 U.S. 284 (1973), and profoundly aggravates the already significant wrongful conviction risk posed by the sort of confession evidence at issue here.

Accordingly, the undersigned submit this brief to urge the Court to grant review.

SUMMARY OF ARGUMENT

Crane and *Chambers* clearly established that a defendant's right to present a complete defense is violated if a state court: (i) excludes evidence critical to the defense, *Crane*, 476 U.S. at 689, 691; *Chambers*, 410 U.S. at 302, and (ii) provides an arbitrary reason for such exclusion, *Crane*, 476 U.S. at 689, 690–91; *Chambers*, 410 U.S. at 296 & n.8, 302.

Contrary to the majority of federal circuit courts, the Fifth and Ninth Circuits have held that the right to present a complete defense applies only when a state court excludes evidence based on categorical evidentiary rules. *See Lucio v. Lumpkin*, 987 F.3d 451, 470–73 (5th Cir. 2021) (plurality opinion); *id.* at 489–90 (Southwick, J., concurring); *Moses v. Payne*, 555 F.3d 742, 758–60 (9th Cir. 2009).

Yet this Court has never restricted its holdings in the complete-defense right cases to such a limiting principle. Review by this Court is therefore necessary to resolve this conflict among the circuits as to the application of *Crane*, *Chambers* and their progeny.

Review is also necessary to ensure the availability and admissibility of reliable, expert testimony concerning false confessions. Police interrogation may sometimes psychologically pressure even innocent people to confess to crimes they did not commit. When the interrogated suspect is a battered woman, as she was in this case, such risks are heightened, Lenore E. A. Walker, *The Battered Women Syndrome* 457–60 (2017), and the need for expert testimony to explain these risks to lay juries are more acute.

ARGUMENT

I. The Right to Present a Complete Defense is Clearly Established as a Matter of Federal Law

A. This Court Has Consistently Held that the Accused Must Be Allowed to Present a Complete Defense

“[T]he Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” *Crane*, 476 U.S. at 690 (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). With roots in both the Compulsory Process Clause of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment, *id.*, this guarantee embodies the Constitution’s commitment to ensuring criminal defendants may contest their guilt or demonstrate their innocence, *see Chambers*, 410 U.S. at 294 (“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.”); *Washington v. Texas*, 388 U.S. 14, 19 (1967) (“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense.”); *In re Oliver*, 333 U.S. 257, 273 (1948) (“A person’s right to . . . an opportunity to be heard in his defense . . . [is] basic in our system of jurisprudence . . .”).

The ability to introduce evidence critical to the accused’s defense is core to the Constitution’s complete-defense right. *See Crane*, 476 U.S. at 690; *see also Chambers*, 410 U.S. at 302 (“Few rights are more fundamental than that of an accused to present

witnesses in his own defense.”); *Washington*, 388 U.S. at 23 (“The Framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure the attendance of witnesses whose testimony he had no right to use.”).

Of course, this right does not entitle the accused to introduce any and all evidence to the court’s and the jury’s attention. *Rock v. Arkansas*, 483 U.S. 44, 56 (1987) (“The right [to present relevant testimony] ‘may in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.’” (footnote omitted) (quoting *Chambers*, 410 U.S. at 295)). Rather, this Court has held that only exclusions that “‘infring[e] upon a weighty interest of the accused’ and are ‘arbitrary’ or ‘disproportionate to the purposes [of the evidentiary rules] they are designed to serve’” deprive criminal defendants of their complete-defense right. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (alteration in original) (quoting *United States v. Scheffer*, 523 U.S. 303, 308 (1998)). Accordingly, the Constitution requires that courts allow defendants to present “competent, reliable evidence” that is “central to the defendant’s claim of innocence” notwithstanding any States’ otherwise valid evidentiary rules. *Crane*, 476 U.S. at 690 (“That opportunity [to present a complete defense] would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant’s claim of innocence.”); *Green v. Georgia*, 442 U.S. 95, 97 (1979) (per curiam) (holding that the exclusion of hearsay evidence that “was highly relevant to a critical issue”

and bore indicia “to assume its reliability” violated the defendant’s complete-defense right).

This Court has held that trial courts abridge defendants’ complete-defense right not only by applying “arbitrary” rules to exclude evidence, *Holmes*, 547 U.S. at 325, but also by “mechanistically” applying otherwise rational evidentiary rules to exclude reliable and relevant evidence that is key to the defense, *Chambers*, 410 U.S. at 302 (“[W]here constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.”).

B. The Sharply Divided Fifth Circuit *En Banc* Decision Must Be Reversed and Ms. Lucio’s Case Should Be Remanded

By wrongly deriving a limiting principle from the *Chambers* line of cases, the sharply divided *en banc* decision of the Fifth Circuit conflicts with this Court’s precedent, as well as with rulings of the majority of federal circuit courts interpreting that precedent.² The Fifth Circuit determined that the state habeas court’s adjudication of Ms. Lucio’s complete-defense claim is neither “contrary to” nor an “unreasonable application” of *Crane* and *Chambers* because the state trial court’s exclusion of evidence was “not pursuant to some idiosyncratic, arbitrary, archaic, and

² The Fifth Circuit also diverges from its own precedent in *Kittelson v. Dretke*, 426 F.3d 306, 321 (5th Cir. 2005), in which it held that a state trial court’s discretionary limitation on cross-examination was an unreasonable application of this Court’s clearly established complete defense precedents.

indefensible rule.” *Lucio*, 987 F.3d at 473–74 (plurality opinion). In the Fifth Circuit’s view, the complete-defense right cases do not extend to discretionary decisions to exclude evidence. *See id.* at 490 (Southwick, J., concurring) (“*Crane* overrides any blanket evidentiary rule that prevented introduction in the particular case of reliable, competent evidence central to the defense.”); *see also id.* at 474 (plurality opinion). The plurality would require a showing of the application of a “mechanistic, *per se* rule,” rather than a “mechanistic application” of any otherwise valid evidentiary rule, which is what this Court required in *Chambers*. *Id.* at 471 (citing *Loza v. Mitchell*, 766 F.3d 466, 485 (6th Cir. 2014)).

But the Constitution does not guarantee the right to present a complete defense only based on an evidentiary rule that categorically prohibits certain evidence. Rather, as nearly all other federal circuits recognize, *Chambers* and its progeny stand for the fundamental principle that violations of the complete-defense right occur when trial courts exclude reliable and relevant defense evidence by either applying “arbitrary” evidentiary rules or by “mechanistically” applying otherwise rational evidentiary rules. *See, e.g., Fortini v. Murphy*, 257 F.3d 39, 47 (1st Cir. 2001); *Scrimo v. Lee*, 935 F.3d 103, 115–16 (2d Cir. 2019); *Gov’t of Virgin Islands v. Mills*, 956 F.2d 443, 445 (3d Cir. 1992); *Barbe v. McBride*, 521 F.3d 443, 460 (4th Cir. 2008); *Ferensic v. Birkett*, 501 F.3d 469, 475–76 (6th Cir. 2007); *Smith v. Brookhart*, 996 F.3d 402, 417 (7th Cir. 2021); *Paxton v. Ward*, 199 F.3d 1197, 1214 (10th Cir. 1999); *Pittman v. Sec’y Fla. Dep’t. of Corr.*, 871 F.3d 1231, 1248 (11th Cir. 2017). Consistent with this Court’s clearly established precedent, these

courts of appeals recognize that the complete-defense right may be implicated by discretionary decisions to exclude evidence.

By contrast, the Fifth Circuit, in accord only with the Ninth Circuit, requires that critical defense evidence be excluded pursuant to a categorical evidentiary rule before recognizing a complete-defense right.³ See *Lucio*, 987 F.3d at 470; *Moses*, 555 F.3d at 760 (concluding the exclusion of evidence under Rule 702 did not violate clearly established Supreme Court precedent because “the Supreme Court’s precedents do not establish a principle for evaluating discretionary decisions”).

The Fifth Circuit’s holding below deepens the split among the circuits and must be corrected.

³ Although the plurality purported to identify four circuits that shared its approach, see *Lucio*, 987 F.3d at 470–71 (citing *Gagne v. Booker*, 680 F.3d 493, 516 (6th Cir. 2012) (en banc); *Rucker v. Norris*, 563 F.3d 766, 770 (8th Cir. 2009); *Grant v. Royal*, 886 F.3d 874, 957, 959–60 (10th Cir. 2018); *Troy v. Sec’y, Fla. Dep’t. of Corr.*, 763 F.3d 1305, 1307, 1315 (11th Cir. 2014)), none of the cases the court cited expressly limited the application of the complete-defense right cases to categorical evidence rules.

Other appellate courts that have considered this issue, including the *en banc* court’s 10-7 ruling in *Lucio*, have issued splintered decisions. See, e.g., *Gagne*, 680 F.3d 493 (6th Cir. 2012); *Brown v. Luebbers*, 371 F.3d 458 (8th Cir. 2004).

II. False Confessions Are a Leading Cause of Wrongful Conviction

A. Certain Interrogation Practices and Circumstances Are Known to Create a Higher Risk of False Convictions

Conventional wisdom suggests that confessions are unquestionably indicative of guilt. And while that is often the case, extensive research and over 35 years of exonerations demonstrate that false confessions are far more prevalent than most expect. *See, e.g.*, Saul M. Kassin & Lawrence Wrightsman, *Confession Evidence*, in *The Psychology of Evidence and Trial Procedure* 67–94 (S. Kassin & L. Wrightsman eds., 1985); Gisli H. Gudjonsson, *The Psychology of Interrogations and Confessions* 217–243 (2003).

Nearly 30% of all DNA-based exonerations tracked by the Innocence Project involve false confessions. *DNA Exonerations, supra*. And, as many scholars caution, these numbers dramatically understate the incidence of false confessions. False confessions may be disproved pretrial; resolved by guilty (or *Alford*) pleas; involve cases where DNA evidence is unavailable; or happen in cases that receive no post-conviction scrutiny. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 *J. Am. Acad. Psychiatry L.* 332, 332 (2009).

While innocent people may falsely confess for a variety of reasons, scholars have documented that interrogation tactics and circumstances—as well as certain dispositional factors of the interrogated, including adolescence, mental illness, and traumatic

life experiences—increase the risk of false confession. See, e.g., Gudjonsson, *supra*, at 141–151; Saul M. Kassin et al., *Police Interviewing and Interrogation*, 31 L. & Hum. Behav. 381, 389–390 (2007); Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 27–31 (2010) (hereinafter “*Police-Induced Confessions*”); Gisli H. Gudjonsson & John Pearse, *Suspect Interviews and False Confessions*, 20 Current Directions Psych. Sci. 33, 33–36 (2011).

B. Circumstances and Interrogation Practices Known to Create a Higher Risk of False Convictions Exist in Ms. Lucio’s Case

Law enforcement officers are trained to use a standardized set of psychological techniques to induce responses in an interviewee to elicit a confession, some of which place innocent people at risk of falsely confessing. Deborah Davis & Richard A. Leo, *Commentary: Overcoming Judicial Preferences for Person-Versus Situation-Based Analyses of Interrogation-Induced Confessions*, 38 J. Am. Acad. Psychiatry & L. 187, 188 (2010); see also Fred E. Inbau et al., *Criminal Interrogation and Confessions* 185–328 (5th ed. 2013) (describing interrogation techniques). These tactics include, among others, maximization and minimization. *Police-Induced Confessions, supra*, at 12, 18–19.

“Maximization” occurs when the interrogator makes strong assertions of guilt and forceful rejections of claims of innocence. The interrogator disregards the suspect’s explanations or alibis, and insists law enforcement both already knows and has

conclusive evidence of the individual's guilt—all of which is intended to amplify feelings of anxiety, helplessness and isolation. *See id.* at 12.

“Minimization,” by contrast, entails displaying sympathy for the accused, minimizing the suspect's culpability and offering leniency in exchange for a confession. Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 Psych. Sci. Pub. Int. 33, 55 (2004). Individuals are made to feel it is in their “best interest” to confess, and may be tempted to heed the demands of the interrogator. *Police-Induced Confessions, supra*, at 12, 18.

Although these tactics may be effective in inducing honest confessions from those who have actually committed offenses, they can also prompt false confessions from the factually innocent—particularly when used on suggestible individuals. *See Kassin & Gudjonsson, supra*, at 51.

This is a case in point. Ms. Lucio's interrogators relied on precisely such high risk tactics with the goal of eliciting a confession. For example, consistent with the technique of “maximization,” the officers appeared to approach the questioning with a presumption of her guilt and repeatedly rejected Ms. Lucio's insistence on innocence and Ms. Lucio's explanation for her daughter's injuries (her daughter, Mariah, had fallen down the stairs outside her apartment two days before she died). (Cert. Pet. 8.) Instead, officers pushed their version of events, while showing Ms. Lucio photographs of her recently deceased daughter, and pressed her to confess, until Ms. Lucio finally acquiesced and said, “I guess I did it.” (*Id.* at 8–9.)

The officers likewise interspersed minimization techniques, impliedly conveying to Ms. Lucio that it was in her best interests to confess. They told Ms. Lucio that they were there to “help [her] along,” pressured her to “explain everything . . . [and] . . . [a]dmit to this,” and told her that if she did, “God’s gonna forgive you.” (*Id.* at 8.)

When officers use tactics like maximization and minimization on individuals during a lengthy interrogation, or when the suspect is sleep deprived, the risk of false confession is further increased. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 948 (2004) (“[I]nterrogation-induced false confessions tend to be correlated with lengthy interrogations in which the innocent suspect’s resistance is worn down, coercive techniques are used, and the suspect is made to feel hopeless, regardless of his innocence.”). As an interrogation progresses in time, “the individual’s resistance is worn down through fatigue, uncertainty, and despair, which then impairs cognitive judgment.” Walker, *supra*, at 457.

Sleep deprivation adds to false confession risk in that it “heighten[s] susceptibility to influence, and impair[s] decision-making abilities[,] . . . the ability to sustain attention, [and] flexibility of thinking[.]” *Police-Induced Confessions*, *supra*, at 16. A sleep-deprived suspect may become more desperate to end a seemingly interminable interrogation, and may take steps to do so, including potentially confess to a crime she did not commit. Davis & Leo, *supra*, at 188 (observing “wide[] agree[ment] that the decision to confess falsely is typically the result of the inability to

bear up under the continuing stresses of detention and the interrogation”).

Here, the circumstances of the interrogation were also of the type that lead people to offer confessions, including false confessions. Ms. Lucio had been awake for roughly 14 hours before her five-hour interrogation began. (Cert. Pet. at 8.) She was not allowed to sleep, as the questioning continued until 3:15 a.m. (*Id.* at 10.)

Inevitably exhausted and anxious, and in the shock of fresh grief, Ms. Lucio was shown a doll and asked by officers to demonstrate how she had caused Mariah’s injuries. (*Id.*) The officers instructed her to “do it real hard.” (*Id.*) One officer performed his own demonstration, modeling how the injuries must have been caused. (*Id.*) Using photographic evidence of Mariah’s injuries, the officers directed Ms. Lucio to specific bruises and coached her to spank the doll in those areas to show how the injuries would have been caused. (*Id.*)

Similar interrogation tactics have been used in numerous false confession cases. In the case of Adrian Thomas, officers interrogated Mr. Thomas about the circumstances of his three-year-old’s fatal brain injury over the course of nine hours, divided between two sessions that were separated by 15 hours. Brief for The Innocence Network as *Amicus Curiae* at 26–29, 58, *People v. Thomas*, 8 N.E.3d 308 (N.Y. 2014) (hereinafter “*Thomas Br.*”). Although Mr. Thomas recalled accidentally dropping his son five or six inches into his crib 10 to 15 days prior to the injuries, Mr. Thomas stated his child had not been harmed and repeatedly denied intentionally injuring the child. *Id.*

at 42; *see also Thomas*, 8 N.E.3d at 312. The officers threatened to arrest his wife if he did not confess and committed him to a mental hospital in between interrogations. *Thomas* Br. at 58, 61. Hours into his interrogation, an officer told him that he felt betrayed by Mr. Thomas's untruthfulness and represented that only Mr. Thomas could forestall criminal charges by explaining how he had caused the injuries. *Id.* at 67. And, like Ms. Lucio's interrogators, who used a doll, Mr. Thomas's interrogators pressured Mr. Thomas to use a binder to demonstrate how he may have thrown his son. *Id.* at 80. Ultimately, Mr. Thomas submitted and confessed to forcibly throwing his son, and he demonstrated how he did so using the binder in the manner the officer suggested. *Id.* at 44. At trial, Mr. Thomas was not allowed to introduce expert testimony on false confessions and was convicted for killing his child. *Thomas*, 8 N.E.3d at 309–10. Finding his confession involuntary, the New York Court of Appeals vacated the conviction and ordered a new trial where Mr. Thomas was subsequently acquitted. *Id.* at 310; Maurice Possley, *Adrian Thomas*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4449> (last updated Nov. 20, 2016).

The case against Jasmine Eskew tells a similar story. On September 18, 2012, officers interrogated Ms. Eskew about injuries sustained by her six-month-old daughter. Maurice Possley, *Jasmine Eskew*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5267> (last updated Jan. 25, 2018). During the interrogation, Ms. Eskew admitted

she had “rocked” the baby but denied suggestions that she had shaken the child. Officers insisted that they already knew what had happened, so she should admit to intentionally shaking her daughter to death. As in this case, the officers gave Ms. Eskew a doll to demonstrate what she had done to the child. When she showed them how she had rocked her baby, the interrogators insisted she do it differently to “make the doll’s head rock!” *Id.* After four hours of interrogation, Ms. Eskew acquiesced and confessed to have shaken her baby. At trial, Ms. Eskew was not allowed to present an expert on false confessions and was subsequently convicted for felony assault of a child. In 2017, the Montana Supreme Court reversed her conviction and ordered a new trial that excluded Ms. Eskew’s confession, and prosecutors subsequently dismissed the case. *State v. Eskew*, 390 P.3d 129, 136 (Mont. 2017).⁴

In addition to interrogation practices, dispositional factors—characteristics or identities of the accused—can render certain individuals more vulnerable to police coercion and, therefore, at a heightened risk of false confession. See Gisli H. Gudjonsson et al., *Custodial Interrogation: What Are the Background Factors Associated with Claims of False Confession to Police?*, 18 J. of Forensic Psych.

⁴ Additional examples include Michelle Murphy, who falsely confessed to killing her 15-week-old son after an eight-hour interrogation, and Sabrina Carpenter, who falsely confessed to punching her nine-month-old son after her interrogators intimidated her and insisted that she killed him. National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx>; see also (Cert. Pet. 38).

266 (2007); *Police-Induced Confessions*, *supra*, at 19–22. For example, children and individuals with cognitive deficiencies and certain mental illnesses are, categorically, more vulnerable to coercion, suggestion, and appeasement, and hence more prone to falsely confess. *Id.* at 19–21; Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 *Am. Psych.* 63 (2018) (hereinafter “*General Acceptance of Confessions Research*”). Suggestibility and compliance are traits commonly associated with an individual’s increased vulnerability to false confession. See Henry Otgaar et al., *The Link Between Suggestibility, Compliance, and False Confessions: A Review Using Experimental and Field Studies*, 35 *Applied Cognitive Psych.* 445 (2020).

Women with abuse histories, like Ms. Lucio, often present traits of suggestibility and compliance, making them particularly vulnerable to false confessions. Battered Women Syndrome is a subcategory of post-traumatic stress disorder (PTSD) that describes the pattern of “signs and symptoms that have been found to occur after a woman has been physically, sexually, and/or psychologically abused in an intimate relationship, when the partner . . . exerted power and control over the woman to coerce her into doing whatever he wanted, without regard for her rights or feelings.” Walker, *supra*, at 49–50. See generally U.S. Dep’t of Justice, *Practice Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges* 30 (2009) (noting that 75% of battered women experience severe anxiety and 64% suffer from PTSD). Battered Women Syndrome manifests in specific ways, including, as relevant here: (1) “[i]ntrusive recollections of the

trauma event(s)”; (2) “[h]yperarousal and high levels of anxiety”; (3) “[a]voidance behavior and emotional numbing usually expressed as depression, dissociation, minimization, repression, and denial”; and (4) “[n]egative alterations in mood and cognition.” Walker, *supra*, at 50.

Battered women may be more “easily subjected to influence from authority figures, especially those whose abusers had subjected them to a long history of being told what to do and say.” *Id.* at 458. Some abuse victims “[are] unable to focus on long-term consequences and [in the context of police interrogation,] confessing may have served as an immediate way of getting out of a very stressful situation.” *Id.* Moreover, “[b]attered women, like intellectually disabled people, may more easily succumb to leading and misleading questions especially if they get approval, which they need.” *Id.*

Coercive interrogation can lead abused women to acquiesce to the interrogative pressure and assume a submissive role to comply with authority figures. *Id.* A trauma history involving battery may lead to memory disturbances and dissociative states, such that women may not remember the entire incident about which they are being interrogated, may be confused about the details, and may be more susceptible to internalizing guilt and assuming responsibility for the crime.

For example, one study found that women with a reported history of abuse often develop internalizing behaviors, such as anxiety and depression, which lead to a higher risk of false confessions. Martha Gault-Sherman et al., *Gender and the Associated*

Impairments of Childhood Sexual Abuse: A National Study of Icelandic Youth, 69 Soc. Sci. & Med. 1515, 1522 (2009). Other studies have identified a direct effect between physical or psychological adolescent trauma and reported false confessions in female adolescents. Kim E. Drake et al., *Gender Differences in the Interplay Between Exposure to Trauma and Parental Disturbances Within The Home, Stress-Sensitivity and Reported False Confessions in Adolescents*, 87 Personality & Individual Differences 282, 285 (2015) (“[R]eported false confessions correlate significantly with . . . *physical/psychological trauma* (witnessing and experiencing physical violence and the death of a parent or sibling).”)

Individuals who have experienced trauma—such as trauma resulting from physical abuse or the death of a child—are more prone to coercion and therefore more likely to confess falsely. *Police-Induced Confessions, supra*, at 22; Kim E. Drake, *Interrogative Suggestibility: Life Adversity, Neuroticism, and Compliance*, 48 Personality & Individual Differences 493, 496 (2010) (“[E]xperiencing frequent [negative life events] may . . . lead to a lesser resilience to questioning and a tendency to be accepting of misleading information.”). The traumatic experience of a child’s death likely places an individual at heightened vulnerability to police coercion. Accordingly, false confessions are prevalent in cases involving child victims. Keith A. Findley et al., *Shaken Baby Syndrome, Abusive Head Trauma, and Actual Innocence: Getting it Right*, 12 Hous. J. Health L. & Pol’y 209, 257–260 (2012) (“Confessions are particularly problematic in the child abuse area,” especially when “these interrogations occur

immediately after a child's death . . . when distraught parents . . . may be particularly vulnerable to suggestion, manipulation or memory lapses.”).

A substantial percentage of women who were wrongfully convicted of killing a child were coerced into falsely confessing. Of the 67 women listed on the National Registry of Exonerations who were exonerated after a murder conviction, over one quarter (17/67) involved false confessions, and nearly one third (20/67) involved child victims. *See* Detailed View, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx>.⁵

Ms. Lucio possessed several dispositional traits that made her prone to making a false confession. A social worker was prepared to testify based on her expertise that Ms. Lucio was predisposed to acquiescing to male authority figures due to her history of abuse by her stepfather and husbands. (Cert. Pet. at 12.) A psychologist was prepared to testify that Ms. Lucio exhibited the hallmark traits of a battered woman and would have concluded that Ms. Lucio's "psychological characteristics," in conjunction with a prolonged interrogation in isolation, meaningfully increased the risk that her confession was untrustworthy. (*Id.* at 16.) Yet the state trial court prevented the jury from hearing this critical testimony, even though it was central to the jury's

⁵ Of the 1,020 men listed on the National Registry of Exonerations who were exonerated after a murder conviction, over one fifth (224/1,020) involved false confessions, and over one sixth (176/1,020) involved child victims. *See id.*

assessment of the veracity of Ms. Lucio's confession and key to her defense.

C. Confession Evidence Is Uniquely Powerful and Defendants Challenging its Reliability Must Be Permitted to Provide Relevant Expert Testimony

Juries place tremendous weight on confessions. Saul M. Kassin & Katherine Neumann, *On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 L. & Hum. Behav. 469, 479 (1997). Studies of mock juries show that "confessions have more impact on verdicts than do other potent forms of evidence." Saul M. Kassin, *Why Confessions Trump Innocence*, 67 Am. Psych. 431, 433 (2012). Especially in light of the great weight juries accord confession evidence, any meaningful right to present a complete defense must allow reliable, relevant expert testimony where a confession is disputed.

Expert testimony regarding false confessions, like all admissible expert testimony, rests "on a reliable foundation." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993); *see also General Acceptance of Confessions Research, supra*, at 70 tbl. 2, 71-72, 72 tbl. 4 (noting an agreement rate of at least 80% on many findings, including a heightened risk of false confessions when certain interrogation techniques are used and when the accused has a suggestible personality or is diagnosed with a psychological disorder). Experts testifying on interrogation techniques and/or the accused's dispositional attributes often base their opinions on personal examinations of the accused, a review of the

accused's history and a reliable foundation of peer-reviewed studies and articles that present results based on empirical data and statistical tests that can be replicated and scrutinized.⁶ Danielle E. Chojnacki et al., *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 Ariz. St. L. J. 1, 12-19 (2008) (describing the role and scope of expertise of false-confessions expert witnesses); see also *Police-Induced Confessions*, *supra*, at 14–23 (summarizing literature on false confessions).

It is difficult for jurors to understand even the possibility that someone would confess to a crime they did not commit. See Richard A. Leo & Brittany Liu, *What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?*, 27 Behav. Scis. & L. 381, 395 (2009) (noting that participants in their study generally “did not appear to believe that psychological interrogation techniques were likely to elicit false confessions”). Without expert explanations, juries are unlikely to allow for the possibility that a confession might have been false.

Experts help juries understand the phenomenon of false confessions and, therefore, can help safeguard

⁶ With respect to the experts in Ms. Lucio's case, Ms. Norma Villanueva and Dr. John Pinkerman, though not “false confession” experts *per se*, would have provided testimony relevant to the veracity of Ms. Lucio's confession. Ms. Villanueva, a social worker trained in mental health diagnosis, intended to base her testimony on standard methods in her field and a review of Ms. Lucio's history, and Dr. Pinkerman, a psychologist, intended to base his testimony on a personal assessment of Ms. Lucio, a review of evidence from the case and a review of the literature on Battered Woman Syndrome and false confessions. (Cert. Pet. 11–13.)

against miscarriages of justice. For example, an expert can explain that not all confessions are honestly made and identify dispositional and situational factors that may lead to a false confession. Experts may explain the ways in which interrogation tactics influence and solicit confessions, which would not otherwise be apparent to the average juror, who is unlikely to recognize these tactics. An expert is therefore an indispensable aid to the jury in evaluating the legitimacy of a confession. *Id.* at 397 (“If we cannot be sure that what potential jurors believe about false confessions is accurate, then we cannot be sure that real jurors will make an accurate determination of the reliability of confession evidence without the additional assistance provided in the testimony of an expert witness.”)

Failure to permit expert testimony as to disputed confessions is likely to lead to wrongful convictions of innocent people in the future, as was the case with Ms. Eskew and Mr. Thomas, *supra*, at 14–16. In view of the weight placed on confession evidence, the lack of familiarity among jurors of the prevalence and causes of false confessions, and the reliable expert evidence in this field, the complete-defense right requires that defendants challenging the reliability of their confession must have the opportunity to submit relevant expert testimony.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant Petitioner’s request for a writ of certiorari.

Respectfully Submitted,

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