

No. 18-

IN THE
Supreme Court of the United States

Felix Saldierna,
Petitioner,

v.

North Carolina,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
NORTH CAROLINA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

W. Rob Heroy
Counsel of Record
Goodman Carr, PLLC
301 S. McDowell St.,
Ste. 602
Charlotte, NC 28204
RHeroy@goodmancarr.net
Ph: (704)372-2770

QUESTIONS PRESENTED

Whether the North Carolina Supreme Court erred in finding a juvenile confession to be voluntary where a 16-year-old juvenile with limited English skills was pressured to proceed with an interrogation despite a request to call his mother before proceeding?

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PETITION FOR A WRIT OF CERTIORARI

Felix Saldierna respectfully petitions for a writ of certiorari to review the judgment of the North Carolina Supreme Court.

INTRODUCTION

The North Carolina Supreme Court erred in concluding that Mr. Saldierna had knowingly, voluntarily, and intelligently waived his *Miranda* rights. Its decision bears none of the hallmarks of the “special care” that this Court has mandated in evaluating the voluntariness of juvenile confessions under the United States Constitution. *Haley v. Ohio*, 332 U.S. 596, 599 (1948).

Here, 16-year old Felix Saldierna was arrested on breaking and entering charges. During the arrest process, he made a number of attempts to call his mother. Officers took him to an interview room at a local adult detention center where a detective and three officers conducted an interrogation. The arresting officers noted to the detective that Saldierna’s English was “questionable.”

The detective reviewed *Miranda* warnings with Saldierna. His oral responses to the questions are unclear. However, he did initial each line of the *Miranda* waiver form. Prior to the commencement of the interrogation he told the officers that he wanted to speak to his mother and attempted to call her. He was not able to reach her.

Instead of ensuring that he wished to proceed with the interview, the lead detective immediately told Saldierna that he would need to comply with the interview without delay, and proceeded to coax him into providing a confession by downplaying the gravity of the events. She told him, “this is not a huge deal...you weren’t looking to hurt anybody or anything like that.” *State v. Saldierna*, __ N.C. __, __, 817 S.E.2d 174, 177 (2018). Then, instead of ensuring that he wished to continue without speaking to his mother, she informed him, “I just want to hear your side of the story. We can start off.”

The decision at issue is that of a divided North Carolina Supreme Court finding that Saldierna’s confession was knowing and voluntary. The decision marks the second occasion in which the state supreme court struck down a unanimous decision from the North Carolina Court of Appeals finding Saldierna’s waiver was invalid.

In reversing the state court of appeals, the state supreme court recited Saldierna’s arguments regarding precedent established by this Court. *Id.* at 183. However, other than a blanket statement that it applied a “totality of the circumstances test,” neither the court’s analysis nor its conclusions suggest that it, or the trial court judge whose decision it affirmed, actually considered the factors set forth for consideration by this Court. The state supreme court brushed aside the factors noted as significant by the state court of appeals, including Saldierna’s age, education, experience, development, and level of understanding. *See State v. Saldierna*, __ N.C. App. __, __, 803 S.E.2d 33, 40 (2017)).

The state supreme court thus failed to apply

precedent set forth by this court in finding that the State met its burden in establishing voluntariness. *See e.g., Haley v. State of Ohio*, 332 U.S. 596, 599 (1948), *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

This federal question of law has received disparate treatment by reviewing courts nationwide, and even in its resolution by courts of review during the progress of *Saldierna's* case.

Moreover, the issue of whether to treat an ambiguous assertion of rights by a juvenile in the same manner as the same assertion by an adult, as occurred here, was resolved in the opposite fashion by California courts. *See e.g., In re: Art T.*, 234 Cal. App.4th 335 (2015). Unlike the California appeals courts, the North Carolina Supreme Court determined that the rule from *Davis v. United States*, 512 U.S. 452, 459 (1994) regarding ambiguous invocations of rights should apply with equal force to juvenile defendants. *State v. Saldierna*, __ at __, 817 S.E.2d at 180.

The degree of disagreement between state and federal courts of review illustrates the need for guidance from this court on the appropriate standard for waivers of rights by adolescents.

OPINIONS BELOW

The North Carolina's Supreme Court's ultimate opinion¹ is reported at __ N.C. __, 817 S.E.2d 174 (2018); (App. p. 1a). The underlying North Carolina Court of Appeals is reported at __ N.C. App. __, 803 S.E.2d 33 (2017); (App. p. 14a). The initial North Carolina Supreme Court opinion is reported at 368 N.C. 356, 776 S.E.2d 846 (2016) (App. p. 25a). The original North Carolina Court of Appeals opinion is reported at 242 N.C. App. 347, 775 S.E.2d 326 (2015); App. p. 35a. The trial court's order denying *Saldierna's* motion to suppress is unpublished. (App.

¹ *Saldierna* refers to the opinions below chronologically, referring to the first opinion issued by the North Carolina Court of Appeals as *Saldierna I* (*State v. Saldierna*, 242 N.C. App. 347, 775 S.E.2d 326 (2015)), the subsequent opinion by the North Carolina Supreme Court as *Saldierna II* (*State v. Saldierna*, 368 N.C. 356, 776 S.E.2d 846 (2016)), the subsequent North Carolina Court of Appeals opinion on remand as *Saldierna III*, (*State v. Saldierna*, __ N.C. App. __, 803 S.E.2d 33 (2017)), and the immediate underlying opinion by the North Carolina Court of Appeals as *Saldierna IV*, (*State v. Saldierna*, __ N.C. __, __ S.E.2d __ (2018)).

295a-328a).

JURISDICTION

The North Carolina Supreme Court filed its decision on August 17, 2018. Mandate issued twenty days later, on September 6, 2018, pursuant to N.C. R. App. Pro. 32(b). This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part, “no person shall be...compelled in any criminal case to be a witness against himself.”

The Fourteenth Amendment to the U.S. Constitution provides in relevant part, “no State shall ... deprive any person of ... liberty ... without due process of law.”

STATEMENT

A. Factual Background

On January 9, 2013, police arrested Defendant Felix Saldierna at his home in Fort Mill, South Carolina, and took him to the Moss Justice Center in York County, South Carolina. (App. p. 50a). Saldierna had turned 16 on August 18, 2013. (App. 107a). Four officers were present for the interrogation, although it was conducted primarily by Detective Aimee Kelly with the Charlotte-Mecklenburg Police Department. (App. p. 51a). Kelly suspected Saldierna was involved in a series of breaking or entering incidents from December 2012. (App. p. 49a).

Saldierna informed Detective Kelly that he could speak and read English, but that he read Spanish better than English, and that he “might have some issues understanding English as it is spoken.” *Saldierna III* at ___, 803 S.E.2d at 40. He indicated that despite his age, he had only completed the eighth grade. (App. pp. 52a, 107a). The detective and other

officers acknowledged that Saldierna's English was limited. *Saldierna III* at __, 803 S.E.2d at 41; Audio CD at 2:50. Throughout the *Miranda* rights review, Saldierna became confused regarding simple requests, such as properly signing and initialing the rights form. *See Saldierna III* at __, 803 S.E.2d at 41.

Detective Kelly subsequently had Saldierna sign a Juvenile Waiver of Rights Form and began a custodial interrogation. (App. p. 52a). The detective stated that the waiver form was printed in Spanish and English although the copy introduced by the State contained only warnings in English. (App. p. 107a). Kelly reviewed his rights with him orally. She had him initial that he wished to answer questions without a lawyer, parent, guardian, or custodian present. *Id.* His spoken answers to the questions were, however, largely unintelligible. *See Saldierna III* at __, 803 S.E.2d at 41.

Shortly after signing the form, Saldierna asked if he could call his mother at work. The following exchange occurred:

[Felix]: Um, Can I call my mom?

K[elly]: Call your mom now?

[Felix]: She's on her um. I think she is on her lunch now.

K[elly]: You want to call her now before we talk?

K[elly] [to other officers]: He wants to call his mom.

Saldierna III at __, 803 S.E.2d at 39; App. p. 109a.

Saldierna stepped out of the room and attempted to call his mother, but he was unable to reach her. *See Saldierna IV* at __, 817 S.E.2d at 177, App. p. 113a. When he stepped back into the interrogation room, the detective immediately resumed the interrogation:

K[elly]: Alright Felix, so, let's talk about this thing going on. Like I said a lot of your friends have been locked up and everybody's talking. They're telling me about what's going on and what you've been up to. I'm not saying you're the ringleader of this here thing and some kind

of mastermind right but I think you've gone along with these guys and gotten yourself into a little bit of trouble here. This is not something that's going to end your life. You know what I'm saying. This is not a huge deal. I know you guys were going into houses when nobody was home. You weren't looking to hurt anybody or anything like that. I just want to hear your side of the story. We can start off.

Id.

Statements made by other law enforcement officers indicate Saldierna had made previous unsuccessful attempts to call his mother prior to the start of the interview. *Saldierna III* at ___, 817 S.E.2d at 42.

Following a lengthy interrogation by the detective, Saldierna made a number of inculpatory statements. *Saldierna I* at 350, 775 S.E.2d 328.

B. Proceedings Below

1. After being charged with criminal offenses related to a series of break-ins, Saldierna moved unsuccessfully to suppress his confession as involuntary. *Saldierna I* at 348, 775 S.E.2d at 348. Following the denial of his motion to suppress, Saldierna entered a conditional guilty plea in which he was permitted to reserve his right to appeal the denial of his motion to suppress. (App. p. 107a).

2. He appealed the trial court's denial of his motion to suppress to the North Carolina Court of Appeals. That court overturned the trial court's suppression order and Saldierna's conviction in a unanimous published decision dated July 21, 2015. *Saldierna I*. The court held that the trial court erred in admitting the confession because "Saldierna's ambiguous statement required [Detective] Kelly to clarify whether he was invoking his right to have a parent present during the interview." *Id.* at 356, 775 S.E.2d at 332.

3. A divided North Carolina Supreme Court

allowed the State's petition for discretionary review and subsequently reversed the decision of the North Carolina Court of Appeals on December 21, 2016. *Saldierna II*. That court determined that *Davis v. United States*, 512 U.S. 452, 459 (1994) should be read to address ambiguous invocations of rights by juveniles, as well as adults, finding that with respect to ambiguous invocations by juveniles, "police have no duty to ask clarifying questions." *Saldierna II* at 408, 74 S.E.2d at 479. The court, however, declined to make a ruling on the admissibility of the confession at the time, and remanded to the appeals court to resolve the question of whether Saldierna "knowingly, willingly, and understandingly waived his rights." *Id.* at 410, 794 S.E.2d 474.

4. On remand, the North Carolina Court of Appeals, in a unanimous published opinion, considered all the factors surrounding the interrogation and concluded that Saldierna had not "knowingly, willingly, and understandingly waived his statutory and constitutional rights," and again ordered suppression of Saldierna's confession. *Saldierna III* at ___, 803 S.E.2d at 34. The decision is dated July 18, 2017.

5. The State again sought review with the North Carolina Supreme Court, and that court again granted discretionary review. *Saldierna IV* at ___, 817 S.E.2d at 175.

On review, a divided state supreme court again overturned the decision of the state court of appeals on August 17, 2018. *Id.* at ___, 817 S.E.2d at 186. That court found that "the trial court did not err by concluding that defendant had knowingly, voluntarily, and understandingly waived his juvenile rights." *Id.*

The dissent stated that the majority had erred because Saldierna's request should have been treated as an "unambiguous invocation," such that "law enforcement should have immediately ceased questioning." *Id.* at ___, 817 S.E.2d. at 187.

REASONS FOR GRANTING THE PETITION

This Court has repeatedly held that courts must employ special care when analyzing the voluntariness of a juvenile's confession, including evaluation of a juvenile's age, experience, background and intelligence. *See Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). The Court has grounded its treatment of adolescents in social science research recognizing the cognitive differences between children and adults. *See Roper v. Simmons*, 543 U.S. 55, 567 (2005); *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011); *Graham v. Florida*, 560 U.S. 48, 67 (2010); *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012). This Court's precedent and the developmental research it relies on make clear that coercive or careless police tactics are especially likely to elicit involuntary confessions from minors, who are particularly susceptible to outside pressures.

Nonetheless, lower courts frequently conflict in resolution of similar federal questions or flat-out fail to follow this Court's holdings that youth confessions require "special care." The circumstances present in Saldierna's case warrant the Court's attention. Here, the North Carolina courts ping-ponged the case back and forth, with the tribunals repeatedly disagreeing as to the application of precedent from this Court, with the ultimate decision in stark departure from this Court's prior holdings.

Moreover, the issue of whether to treat an assertion of rights by a juvenile in the same manner as the same assertion by an adult, as occurred here, was resolved in the opposite fashion by California courts. *See e.g., In re: Art T.*, 234 Cal. App.4th 335 (2015).

Finally, this case presents an ideal vehicle for resolution of this unresolved question. Petitioner seeks review on direct appeal of a cleanly presented legal question involving no significant factual dispute.

The Court should grant review.

I. THE DECISION BELOW IS WRONG

Felix Saldierna was 16 years old at the time of his

interrogation. He was unable to pass the ninth grade. (App. pp. 52a, 107a). He was taken into custody at his home, and hauled to an adult detention facility, where he was placed into an interrogation room and outnumbered by four law enforcement officers. (App. p. 51a). Moreover, he had no familiarity with the law enforcement system and had significant limitations, including his ability to speak and understand English. (App. pp. 108a-09a); *Saldierna III* at __, 803 S.E.2d at 41; Audio CD at 2:50.

Before the interview began, Saldierna stated that he wanted to call his mother. (App. pp. 52a-53a, 109a). He was permitted to do so, but his mother did not answer. At this point, the detective immediately increased the pressure on Saldierna and coaxed him into submitting to the interrogation. She told him the whole thing was “not a huge deal” and “she just wanted to hear his side of the story.” (App. p. 110a). Instead of clarifying his desire to proceed without speaking to his mother, she told him, “I want to hear your side of the story. We can start off.” *Id.*

The officers’ tactics in light of Saldierna’s vulnerabilities rendered his confession involuntary.

The North Carolina Supreme Court’s contrary conclusion flowed from an analysis inconsistent with this Court’s precedent. That state court utterly failed, as part of its totality-of-the-circumstances analysis, to afford Saldierna’s confession the “special care” this Court requires for juvenile confessions, *Gallegos*, 370 U.S. at 53.

That court *recited* Saldierna’s arguments regarding his age and his language deficits, as well as what the state appeals court termed Saldierna’s “last ditch effort to call his mother (for help) after his prior attempt to call her had been unsuccessful.” *Saldierna IV*, __ N.C. at __, 817 S.E.2d at 186 (quoting *Saldierna III*, __ N.C. App. At __, 803 S.E.2d at 42). However, it failed to actually conduct an “evaluation” of those factors as this Court’s precedent “mandates.” *Fare*, 442 U.S. at 725. Instead, the state supreme court simply held that there existed sufficient evidence to

justify the trial court's decision to deny Saldierna's motion to suppress. *Saldierna IV* at ___, 817 S.E.2d at 186. The trial court had, however, made no mention of critical factors including defendant's age, experience, background, education, or intelligence. (App. pp. 112a-14a).

Because the state supreme court declined to perform the thorough evaluation required by this Court, the opinion below is in error. Moreover, Saldierna's confession was involuntary and this Court should grant review and reverse.

A. This Court's precedent mandates an actual evaluation of a juvenile's characteristics when his confession is challenged as involuntary.

A voluntary confession must be the product of "rational intellect and a free will." *Blackburn v. Alabama*, 361 U.S. 199, 208 (1960). Courts evaluating voluntariness should consider "all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Dickerson v. United States*, 530 U.S. 428, 434 (2000).

With regard juvenile Fifth Amendment rights, "the greatest care must be taken to assure that the admission 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 recognized that "special concerns ... are present when young persons, often with limited experience and education and with immature judgment, are involved." *Fare*, 442 U.S. at 725. That is because many minors are "easy victim[s] of the law." *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality); see also *J.D.B. v. North Carolina*, 564 U.S. 261, 289 (2011) (Alito, J., dissenting). Minors "lack the experience, perspective, and judgment to ... avoid choices that could be detrimental to them," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979), and "are more ... susceptible to ... outside pressures" than adults. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

In *Roper*, this Court noted that youths under 18

“categorically” exhibit special vulnerability to “influences and outside pressure.” *Id.* at 567; *See also*, *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011); *Graham v. Florida*, 560 U.S. 48, 67 (2010). This is why a juvenile confession demands special scrutiny: it simply takes less to overwhelm a child’s will. *See Also Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (“no matter how sophisticated,” a juvenile subject to police interrogation “cannot be compared” to an adult.)

Thus, “special care” is required in the evaluation of juvenile confessions. *Haley* at 599. Such an evaluation “mandates” “inquiry into all the circumstances surrounding the interrogation,” including consideration of “the juvenile’s age, experience, education, background, and intelligence,” and “capacity to understand the warnings given [to] him.” *Fare* at 724-25. In other words, a reviewing court must perform a totality of the circumstances evaluation in determining the voluntariness of a juvenile confession. *Id.*

B. Saldierna’s Confession Was Involuntary

Review of the North Carolina Supreme Court’s decision should occur under a *de novo* standard. *See e.g. J.D.B.* at 277. Such review should lead to the conclusion that Saldierna’s confession was involuntary.

The voluntariness inquiry first requires consideration of “the characteristics of the accused.” *Dickerson*, 530 U.S. at 434.

a. Saldierna’s age, lack of experience and education, and difficulties with the English language made him particularly vulnerable to police tactics.

Saldierna had recently turned 16, and was unable to pass the 9th grade. *Saldierna IV* at ___, 817 S.E.2d at 181, App. p. 107a. He was taken into custody at his home and brought to the York County Jail—an adult detention facility. (App. p. 50a). There, he was placed

in an interview room where he was outnumbered by four law enforcement officers. *Id.*

Unlike the defendant in *Fare*, who was a street-wise youth with years of experience with police, there is no evidence to indicate Saldierna had any familiarity whatsoever with the criminal justice system. *Fare* at 726, *Saldierna III* at ___, 803 S.E.2d at 41. The *Fare* defendant was on probation, had a record of several arrests over a period of years, and had served time in a youth camp. *Id.*

Saldierna had other disadvantages as well. Detective Kelly stated that Saldierna indicated to her that his native language was Spanish, that he could not write in English, and that he may have stated he had difficulty understanding her. (App. pp. 51a-52a). He stated on multiple occasions during the interview that he did not understand the detective's questions. *See Saldierna III* at ___, 803 S.E.2d at 41; App. p. 108a-09a). Although he initialed the waiver form, his responses to the detective's questions regarding his rights were unclear, and indicated a lack of understanding of the questioning, including simple yes or no questions. *See Saldierna III* at ___, 803 S.E.2d at 41. Other officers has also noted to the detective that the Defendant's English was questionable. *Saldierna III* at ___, 803 S.E.2d at 41; Audio CD at 2:50.

Much like in *Haley* (332 U.S. at 599), the State failed demonstrate that the circumstances in their totality supported a conclusion that the interrogation was voluntary. The same standards as apply to adults were used to find Saldierna's confession was voluntary.

b. *The detective's response to Saldierna's request to speak to his mother was insufficient to ensure voluntariness, and her coaxing and minimization factor against a finding of voluntariness.*

The greatest departure from *Fare* however is reflected in law enforcement's response to the juvenile's request to speak to his mother. In *Fare*, after the defendant asked to see his probation officer and was told he would not be able to see him, officers made clear to the defendant that he would not need to continue with the interview. However, that defendant verbally indicated not only that he understood that he would not be required to continue but that he wished to continue. *Fare* at 711.

The scenario differs significantly from Saldierna's case. Saldierna plainly asked the detective, "[c]an I call my mom now?" (R. p. 26). Once Saldierna makes the statement that he wants to call his mother, the detective makes no effort to ensure that he desired to proceed without a parent present when he was unable to reach her. Here, the moment Saldierna walks back into the room from trying to call his mother, the detective begins coaxing him into continuing to talk. (App. p. 110a). The detective actually minimized the seriousness of the interrogation in order to coax him into confessing, telling him that the break-ins were "not a huge deal" and she recognized he "wasn't looking to hurt anybody." *Id.* In contrast, the *Fare* opinion noted it was significant that the police did not engage in improper interrogation techniques or trickery. *Fare*. at 726. While the statement from the detective contained kernels of truth, it was trickery as the detective asked the questions with the goal of extracting a confession leading to his conviction of a felony.² (App. pp. 106a-07a).

² See e.g. *In re: Elias*, 237 Cal. App. 4th 568, 581, 583 (2015), describing the Reid technique, in which an officer should "minimize the moral seriousness of the offense," and use minimization tactics to "communicate[] by implication that leniency in punishment is forthcoming upon confession." (quoting, Kassin, Saul, *Police-Induced Confessions: Risk Factors and Recommendations* (2010) 34 Law & Hum. Behav. 3, 12) See Also, *The Reid Technique of Interviewing and Interrogation*, John. E. Reid (2015 ed.), p. 48 (suggesting the officer "contrast what the subject did to something much worse."); Hager, Eli, *The Seismic Change in Police*

Finally, it is significant that *Fare* was decided prior to the developmental jurisprudence established by this Court in *Roper* (543 U.S. at 569-70), *Graham* (560 U.S. at 68), *Miller* (567 U.S. at 471), and *J.D.B.* (564 U.S. at 269).

c. The North Carolina Court of Appeals was correct to twice overturn Saldierna's convictions because the State failed to demonstrate voluntariness based on the totality of the circumstances.

The trial court concluded that Saldierna “knowingly, willingly, and understandably waived his juvenile rights,” and that “none of Defendant’s State or Federal rights were violated.” (App. pp. 112a-14a). However, it failed to adequately consider Saldierna’s decision-making abilities based upon his age and experience, as well as his limitations with the English language, the conditions of confinement, the subtle skillfulness of the detective’s interview tactics, and his obvious hesitation as reflected by his “last-ditch attempt” to call his mother. *Saldierna III*, __ N.C. App. At __, 803 S.E.2d at 42. These facts were not lost on the North Carolina Court of Appeals, which found that the trial court had failed to conduct a proper analysis, and that the totality of the circumstances supported a finding that the State had failed to meet its burden. *Id.* at __, 803 S.E.2d at 41.

In rubber-stamping the trial court’s decision, the state supreme court glossed over the importance of the factors noted as significant by the court of appeals. The trial court had not considered the totality of the circumstances and made no mention of the relevance of defendant’s age, experience, background, education,

Interrogations, March 7, 2017, (available at: <https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations>) (noting that a number of police departments have moved away from Reid interrogations due to exonerations and the risk of false confessions).

or intelligence. In deferring to the trial court's inadequate findings, the state supreme court ignored the premise that courts of review are not to "shut our minds to the plain significance of what here transpired." *Watts v. State of Ind.*, 338 U.S. 49, 54 (1949). The court of appeals had applied the proper standard. In consideration of Saldierna's age, his lack of experience with law enforcement, his limited English abilities, his clear hesitation to proceed without talking to his mother, and the detective's clear lack of interest in clarifying his wishes, the State failed to meet its burden in demonstrating voluntariness.

Moreover, the guidance from this Court regarding the vulnerabilities of juveniles and the social-science research discussed below make clear that a court should not simply fall back on the existence of a signed waiver when evaluating a juvenile's decision in similar circumstances. Voluntariness turns on "the techniques for extracting the statements, as applied to *this* suspect." *Miller*, 474 U.S. at 116. The state supreme court erred in failing to consider the circumstances of the interrogation including Saldierna's age and experience, in finding that the State met its burden in the face of evidence indicating his hesitation in proceeding and the detective's response to Saldierna's concerns.

The evidence in its totality demonstrates that this Court should find the record did not contain sufficient evidence from which to determine that Saldierna knowingly, voluntarily, and intelligently waived his privilege against self-incrimination.

C. The North Carolina Supreme Court failed to apply precedent from this Court

The North Carolina Supreme Court, when faced with a scenario where a juvenile had indicated he was not prepared to go forward within an interrogation,

should have found the State failed to meet its burden in demonstrating voluntariness, particularly where the detective, instead of clarifying the juvenile's request to speak to a parent, pressured him to proceed with the interrogation.

The North Carolina Supreme Court recited relevant precedent but failed to follow it. As the unanimous court of appeals panel correctly found, the trial court had failed to apply precedent or consider the panoply of circumstances required by this Court, and the interrogating officer should have clarified whether the juvenile was voluntarily proceeding instead of forcing an interview. *Saldierna III* at __, 803 S.E.2d at 41-42.

Following the initial remand to reevaluate voluntariness, the state appeals court performed a thorough evaluation covering “all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation,” (*Dickerson* at 434), and consideration of “the juvenile’s age, experience, education, background, and intelligence.” (*Fare* at 724). That court correctly noted that, “there are factors in the record in the instant case which indicate defendant did not fully understand (or might not have fully understood) Detective Kelly’s questions.” *Saldierna III* at __, 803 S.E.2d at 40-41.

The state court of appeals panel found that under the totality of the circumstances, the State failed to carry its burden in establishing voluntariness. *Saldierna II* at __, 803 S.E.2d at 42. It noted significant factors that weighed heavily on the inquiry, including that Saldierna’s actions demonstrated sufficient “uncertainty” about going forward with the interview to “call into question, whether, under all the circumstances present in this case, the waiver was (unequivocally) valid.” *Id.* The court rightfully placed particular significance on Saldierna’s attempt to call his mother, and the detective’s subsequent decision to proceed without further clarification. *Id.* The court also evaluated and found particularly significant Saldierna’s non-responsiveness to certain questions from the *Miranda*

waiver, his age and experience, and the detective's actions in downplaying the gravity of the interrogation. *Id.* The panel found, based on the totality of the circumstances, and in consideration of the "unique vulnerabilities" of juveniles, that the State had not established a knowing, willing, and understanding waiver of rights.

In reversing the court of appeals a second time, the state supreme court recited Saldierna's arguments regarding precedent established by this Court. *Saldierna III* at ___, 817 S.E.2d at 186. However, other than a blanket statement that "the trial court's findings of fact have adequate evidentiary support," neither the court's analysis nor its conclusions suggest that the court actually considered factors relating to Saldierna's understanding and voluntariness addressed by the appeals court. *Id.* at ___, 817 S.E.2d at 185. In fact, that court failed to engage in a totality of the circumstances test, and brushed aside the only decision that had applied such a test. *Id.* Instead it relied only on the fact that the detective reviewed Saldierna's rights with him in English and written Spanish, and that Saldierna answered that he understood. *Id.*

The state supreme court also recited its conclusion that *Davis v. United States*, 512 U.S. 452, 459 (1994) should be read to address ambiguous invocations of rights by juveniles, as well as adults, finding that with respect to ambiguous invocations by juveniles, "police have no duty to ask clarifying questions." (*Saldierna II* at 408, 74 S.E.2d at 479). The conclusion however does not draw support from precedent from this Court.

This Court has held that "the greatest care must be taken to assure that [a minor'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"). The North Carolina Supreme Court failed to apply such care and disregarded this test in reversing the North Carolina Court of Appeals.

D. Social science research supports the premises underlying the Court's decisions.

Minors lack the ability to appreciate the long-term consequences of their actions and are at a heightened risk of providing involuntary confessions. They are also more susceptible than adults to external pressures, particularly in custodial situations.

Social scientists have demonstrated that the developmental characteristics of juveniles “undermine[s] their decision-making capacity, impairing their ability to assess the long-term consequences of their wrongful acts or to control their conduct in the face of external pressures.” See Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 438 (2012). Moreover, this Court has relied on their research in deciding cases that touch up on the decision-making process of a juvenile. See e.g., *Roper* at 569-70, *J.D.B.* at 269.

Empirical studies confirm the conclusion that “the vast majority of juveniles are simply incapable of understanding their *Miranda* rights and the meaning of waiving those rights.” Meyer, Trey, Comment, *Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts*, 47 U. Kan. L.Rev. 1035, 1050–51 (1999). Juveniles, more than adults, place significant weight on immediate short-term gains over long-term consequences. Custodial interrogations exacerbate those impairments, meaning “adolescents’ already skewed cost-benefit analyses are vulnerable to further distortion.” Owen-Kostelnik, Jessica, et. al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 Am. Psychol. 286, 295 (2006).

These deficits in decision-making result from both developmental factors and incomplete brain development. The brain regions responsible for cognitive control develop slowly across adolescence, leaving juveniles developmentally unable to engage in the same decision-making processes as adults. See Steinberg, Laurence, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459,

464-70 (2009). Juveniles are also more suggestible than adults and have “a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures.” *See* Fiona Jack, Jessica Leov, & Rachel Zajac, *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses*, 28 *Applied Cognitive Psychol.* 30, 30 (2014); Cauffman & Steinberg, 7 *Victims & Offenders* at 440. Police, however, are equally likely to use coercive techniques with juveniles as with adults. Hayley M. D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40(3) *Law and Human Behavior* 270, 272, 281 (2016); N. Dickon Reppucci, et al., *Custodial Interrogation of Juveniles: Results of a National Survey of Police*, in *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations* 67, 76-77 (G. Daniel Lassiter & Christian A. Meissner eds., 2010); Kohlman, Abigail *Kids Waive the Darndest Constitutional Rights: The Impact of JDB v. North Carolina on Juvenile Interrogation*, 49 *Am. Crim. L. Rev.* 1623, 1635 (2012) (“it seems clear that interrogation techniques used by law enforcement officers have a particularly powerful impact on children.”).

In short, social-science research strongly supports this Court’s “special concer[n]” about whether juveniles have truly voluntarily and understandingly waived their rights. *Fare*, 442 U.S. at 725. The Court has repeatedly relied on similar recent research in explaining the vulnerabilities associated with youth and intellectual disability in other criminal-justice contexts. *See e.g.*, *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper*, 543 U.S. at 569; *Miller v. Alabama*, 567 U.S. 460, 472 n.5 (2012); *Atkins v. Virginia*, 536 U.S. 304, 318 (2002).³

³ Juvenile interrogations present a particular danger with regard to the very real possibility of false confessions. *See, e.g.*, *J.D.B.*, 564 U.S. at 269 (recent studies “illustrate the heightened risk of false confessions from youth”). One study, for example, found that juvenile exonerees were nearly four times more likely to confess falsely than their adult counterparts. National Registry of Exonerations, *Age and Mental Status of Exonerated*

The research underscores the need to ensure that lower courts adhere to this Court's precedent.

II. The state court decision presents an important question of federal law that should be settled by this Court.

The North Carolina Supreme Court's departure from this Court's precedent is no isolated incident. Since the Court last addressed the voluntariness of juvenile confessions in 1979 (*Fare v. Michael C.*, 442 U.S. 707 (1979)), state courts have frequently failed to follow those decisions. The consequences of those failures is illustrated by research demonstrating how vulnerable juveniles are to police interrogation tactics. Moreover, discussions of these issues entered the mainstream with the airing of *Making a Murderer* and the complexities that factored into judicial review of Brendan Dassey's confession.

However, not all courts have come down the same way in evaluating potentially ambiguous invocations of rights by juveniles. In *In re: Art T.*, 234 Cal. App.4th 335 (2015), the California Court reached a contrary conclusion on a similar fact pattern—finding that the determination of whether an unambiguous request for counsel has occurred mandates consideration all circumstances known to the officer, “including the juvenile's age.” *Id.* at 339.

Certiorari is warranted here not only to reaffirm this Court's holdings (and lower courts' obligation to follow them), but also to provide guidance on how to apply those holdings.

A. Lower courts frequently fail to engage in the analysis required by this Court in evaluating the voluntariness of juvenile confessions.

Frequently, lower courts mention a defendant's youth and intellectual capabilities, but conduct no actual evaluation of those factors. In one case, for

Defendants Who Confessed, available at goo.gl/4xmZS2 (visited October 9, 2018); *See also*, *People v. Tankleff*, 848 N.Y.S.2d 286, 289 (App. Div. 2007).

example, a state court acknowledged that the defendant “was sixteen years old, had a low intellect, a learning disability, and mental health issues,” but ignored these facts in analyzing voluntariness. *Herring v. State*, 359 S.W.3d 275, 281-282 (Tex. App. 2012); accord *People v. Baker*, 28 N.E.3d 836, 851-853 (Ill. App. Ct. 2015); *State v. Moses*, 702 S.E.2d 395, 402 (S.C. Ct. App. 2010); *State v. Anderson*, 2014 WL 4792558, at *6-8 (Ohio Ct. App. Sept. 26, 2014) (unpublished); *State v. Unga*, 196 P.3d 645, 649-651 (Wash. 2008); *People v. Macias*, 36 N.E.3d 373, 387-390 (Ill. App. Ct. 2015).

Other courts have simply declined to even acknowledge age as a factor in determining voluntariness. The Louisiana Court of Appeals, for example, stated that one minor’s age did not undermine the voluntariness of his confession because “there is no ... constitutional basis for invalidating an otherwise valid confession simply because the defendant has not quite reached the age of 17.” *State v. Fisher*, 87 So. 3d 189, 196 (La. Ct. App. 2012); see also *In re Joel I.-N.*, 856 N.W.2d 654, 661-662 (Wis. Ct. App. 2014) (because there is no “*per se* rule requiring parental consultation before a juvenile is questioned[,] ... the police[’s] failure to contact [defendant’s] parents [did] not weigh against a finding that his statement was voluntary”); *State in Interest of P.G.*, 343 P.3d 297, 302 (Utah Ct. App. 2015) (defendant’s “age [did] not render his confession involuntary,” because the court had held even younger people to have confessed voluntarily).

Listing a defendant’s particular characteristics as the state supreme court did—rather than meaningfully engaging with them—does not satisfy this Court’s “special care,” “greatest care,” and actual “evaluation” requirements. *In re Gault* at 55; accord *Doody v. Ryan*, 649 F.3d 986, 1015 (9th Cir. 2011) (*en banc*) (reversing denial of habeas petition because state court “dismissed each relevant fact seriatim without considering whether Doody’s juvenile will was overborne”).

- B. *The state supreme court's decision presents an important federal question that conflicts with precedent from the California Court of Appeals.*

The state supreme court's interpretation represents a division as to the appropriate standard for youth waivers during interrogation. Here, the North Carolina Supreme Court stated that the *Davis* test enunciated by this Court (*Davis v. United States*, 512 U.S. 452, 459 (1994)) should be applied to juvenile invocations as adult invocations. *See Saldierna IV*, __ N.C. at 180 (quoting *Saldierna II* at 408, 794 S.E.2d at 479). The state supreme court held that “the rule applies to juveniles,” and an assertion of rights by juvenile must be “ambiguous” in order to be given effect. *Saliderna II* at 411, 794 S.E.2d at 480.

The courts of appeal in California have taken an opposite tact. In *In re: Art T*, 234 Cal. App.4th 335 (2015), the California Court of Appeals for the Second District reached a contrary conclusion on a similar fact pattern—finding that the determination of whether an unambiguous request for counsel has occurred mandates consideration all circumstances known to the officer, “including the juvenile’s age.” *Id.* at 799. In its decision, that court found that while the statement, “could I have an attorney? Because that’s not me,” might be equivocal in other contexts, it was “an unequivocal request for an attorney” when coming from a 13 year old. *Id.* at 355.

While the Second District is not the highest court in the California system, the case did not reach a higher court and constitutes binding precedent. *See e.g. Sarti v. Salt Creek Ltd.*, 167 Cal. App.4th 1187, 1193 (2008). Moreover, the *Art T*. decision draws from a California Supreme Court decision in *People v. Nelson*, 53 Cal.4th 367, 376 (2012) that determined an objective test was necessary to determine whether a statement from a juvenile was or was not ambiguous. *See Art T.* at 352-53. While the *Nelson* court decided that the relevant invocation by a fifteen-year-old remained ambiguous under an objective test (*Nelson* at 384), the Second District stated that it made its ruling based on precedent from *Nelson*. *Art T.* at 353.

In addressing the split in application of the *Davis* test to juvenile invocations, and citing *Nelson*, *Art T.*, and *Saldierna*, Professor Paul Marcus wrote, “since *Davis* and *Thompkins*, a number of cases have been litigated exploring the reach of the decisions. Many of them involve minors. The rulings here are utterly inconsistent.” Marcus, Paul, *The Miranda Custody Requirement and Juveniles*, 85 Tenn. L. Rev. 251, 268 (2017).

Given the variance within districts as to voluntariness and *Davis* tests, as well as the length of time since the Court has decided a juvenile-confession case, it should do so here.

III. THIS CASE IS AN EXCELLENT VEHICLE

Saldierna’s case provides an excellent vehicle to clarify that current precedent and developments in social science research require that the courts apply a different standard for invocations by juveniles.

First, the factual disputes are minimal. The waiver, invocation, and interview were recorded. The case thus presents a cleanly presented legal question. Second, the question of the admissibility of the confession is the single issue present in the case. The State permitted Mr. Saldierna to plead guilty but to reserve appeal regarding the trial court’s denial of his motion to suppress. App. p. 117a. Consequently, there are no issues relating to harmless error analysis. Moreover, the case is on direct appeal and not complicated by deference issues present in habeas review challenges.

Federal questions regarding voluntariness with regard to juvenile confessions have received disparate treatment by reviewing courts nationwide, and even in their resolution by courts of review within *Saldierna’s* case. The fact pattern of an arguable assertion of a desire not to proceed with an interview, followed by a lack of clarification on the part of law enforcement, provides a fact pattern not previously addressed by this Court.

Moreover, the issue of whether to treat an assertion of

rights by a juvenile in the same manner as the same assertion by an adult was resolved in the opposite fashion by California courts. The degrees of disagreement would allow the Court to provide guidance both to state and federal courts applying its precedent in the first instance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, this the __ day of November, 2018.

W. Rob Heroy
Attorney for Defendant
N.C. State Bar #35339
Goodman Carr, PLLC
301 S. McDowell St., #602
Charlotte, NC 28204
RHeroy@GoodmanCarr.net
Ph: (704)372-2770