No. 20-546

In The
Supreme Court of the United States

THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

v.

LARICCA SEMINTA MATHEWS,

Respondent.

On Petition For A Writ Of Certiorari To The Michigan Court Of Appeals

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Michigan Court of Appeals correctly applied settled law to the particular facts of this case in affirming the suppression of Respondent's statements to law enforcement because Respondent was not adequately informed of her Fifth Amendment rights?

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INTRODUCTION

The law governing this fact-bound case has been settled for more than fifty years. In 1966, this Court held that the Fifth Amendment requires "that an individual held for interrogation . . . be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Miranda v. Arizona*, 384 U.S. 436, 471 (1966). In the proceedings below, the trial court applied that rule to invalidate *Miranda* warnings that failed to include any mention of the right to the presence of counsel during questioning. The Michigan Court of Appeals affirmed on the basis of *Miranda* and its own 1968 holding invalidating a warning that failed to explicitly reference a suspect's "right to have counsel . . . present during questioning." *People v. Mathews*, 324 Mich. App. 416, 438; 922 N.W.2d 371 (2018) (citing *People v. Whisenant*, 11 Mich. App. 432, 437; 161 N.W.2d 425 (1968)); Pet. App. 45. The Michigan Supreme Court then denied discretionary review of the government's interlocutory appeal.

This application of established doctrine to the particular facts presented here does not warrant review. First, the decision below is a correct and straightforward application of *Miranda*'s "hold[ing] that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." 384 U.S. at 471. Second, there is no split of authority requiring this Court's attention. The cases Petitioner cites to portray a conflict simply reached different

results because of the particular facts and circumstances each addressed. Only four are published opinions from either a federal court of appeals or a state court of last resort in the nearly eleven years since this Court's decision in *Florida v. Powell*, 559 U.S. 50 (2010), and only three concern a *Miranda* warning similar to the one used here. Few cases have addressed the kind of warning in this case because, as a matter of well-established practice, law enforcement agencies throughout the country explicitly inform suspects of their right to consult with a lawyer before and during interrogation. Third, because of its procedural posture, this case would be a poor vehicle to address the necessary content of *Miranda* warnings.

The Petition should be denied.

STATEMENT

1. On August 12, 2016, Respondent Laricca Mathews called the police and told the dispatcher that she had shot her boyfriend. The police were dispatched to Respondent's home, where she was arrested. At the police station, Respondent was interrogated twice by different police officers. Pet. App. 2–4, 25.

The first officer orally advised Respondent of her rights as follows:

> [Officer]: Ok, um, I'm going to review these, ok?
>
> [Respondent]: Uh hmm.

> [Officer]: I'm going to read these to you.
>
> [Respondent]: Uh hmm.
>
> [Officer]: Um, before I question, start asking you, you should know that you have a right to remain silent.
>
> [Respondent]: Uh hmm.
>
> [Officer]: Anything you say maybe [sic] used against you. You have a right to a lawyer, if you cannot afford a lawyer, one will be provided for free. Do you understand your rights?
>
> [Respondent]: Yes.
>
> [Officer]: Do you want to talk with me?
>
> [Respondent]: Yeah, we can talk.

Pet. App. 3, 26; Resp. App. 7a–8a.

The officer then passed Respondent a form containing the following information, and instructed her to "just sign there." Resp. App. 8a.

> Before any questions are asked of you, you should know: (1) you have a right to remain silent; (2) anything you say may be used against you; (3) you have a right to a lawyer, and (4) if you cannot afford a lawyer, one will be provided free. I understand what my rights are and am willing to talk.

Pet. App. 2–3, 25–26.

Respondent signed the advice-of-rights form. She informed the officer that she and her boyfriend had

fought, he had attacked her, and she had shot him. Pet. App. 3, 26–27.

Later that day, Respondent was interviewed by a second officer after the following exchange:

> [Officer]: Alright, so um, [the first officer], remember he talked about your rights and everything?
>
> [Respondent]: Uh hmm.
>
> [Officer]: Same thing applies. Um, you don't, you don't have to even talk to me if you don't want to. You can get an attorney um, if you can't afford one, we'll make sure you get one.
>
> [Respondent]: Ok.
>
> [Officer]: So, um, we're just continuing the interview that you started with him.

Pet. App. 4, 27.

The second officer questioned Respondent about her earlier statements and about the state of the crime scene, including the location of the bullet wound. Respondent admitted to shooting her boyfriend accidentally, speculating that the bullet may have ricocheted. Pet. App. 4, 27.

2. Respondent was charged with murder, reckless discharge of a firearm in a building, and two counts of possession of a firearm in the commission of a felony. She moved to suppress her statements to the officers because they did not advise her that she

had a right to a lawyer present during interrogation.[1] The trial court granted Respondent's motion to suppress because the officers "failed to inform defendant that she had the right to have an attorney present before and during the interrogation." See Pet. App. 28, 61, 64–65.

Petitioner filed an interlocutory application for leave to appeal the trial court's suppression ruling, which a divided panel of the Michigan Court of Appeals denied. Petitioner appealed to the Michigan Supreme Court, which, in lieu of granting leave to appeal, remanded to the Michigan Court of Appeals to hear as on leave granted. *People v. Mathews*, 501 Mich. 950; 904 N.W.2d 950 (2018); Resp. App. 3a. See also Pet. App. 28.

After briefing and argument, the Michigan Court of Appeals affirmed the trial court's grant of Respondent's motion to suppress. *Mathews*, 324 Mich. App. at 441; Pet. App. 35. In so doing, the court relied on this Court's instruction that "'as an absolute prerequisite to interrogation, . . . an individual held for questioning must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.'" *Id*. at 440–41 (quoting *Powell*, 559 U.S. at 60); Pet. App. 36. Applying this Court's precedent, the court held that "[i]n this case neither [officer] explained to defendant that she had the right to the presence of counsel" and therefore that, "[b]ecause defendant was not adequately advised of

[1] Respondent also moved the trial court to suppress the statements on the separate basis that she was not advised that she had the right to stop the interrogation at any point. The trial court did not rule on that issue.

her right to the presence of counsel, her subsequent statements are inadmissible at trial." *Id*. at 441 (citing *Miranda*, 384 U.S. at 470); Pet. App. 49. In reaching this conclusion, the court applied and reaffirmed its own five-decade-old holding "that general warnings, such as informing a suspect that he was 'entitled to an attorney,' did not comply with *Miranda* because such warnings did not sufficiently convey a suspect's right to the presence of an attorney during questioning." *Id*. at 433 (quoting *Whisenant*, 11 Mich. App. at 434); see Pet. App. 39. See also *id*. at 438 (citing *Powell*, 559 U.S. at 60; *Miranda*, 384 U.S. at 471).

The court further explained that because "the right to counsel [is] a corollary to the right against compelled self-incrimination," informing a suspect of the right to counsel before and during interrogation is "key" to ensuring that the right "applies before and during the interrogation as opposed to some future point." *Id*. at 439; see Pet. App. 46–47. A reasonable person, the court concluded, would not necessarily understand that "a general reference to 'right to an attorney' " would "include[ ] the right to consult an attorney and to have an attorney present during the interrogation." *Id*.; Pet. App. 47. Accordingly, the court, citing *Powell* and *Miranda*, deemed the warnings Respondent received deficient. *Id*. at 440; see Pet. App. 45, 48.

3. Petitioner sought leave to appeal to the Michigan Supreme Court, which, after ordering supplemental briefing to specifically address the application

of *Powell*,[2] denied Petitioner's request in a two-sentence order. *People v. Mathews*, __ Mich. __; 943 N.W.2d 636 (2020); see Pet. App. 1. Three Justices dissented, explaining that they would have upheld the warnings because, among other reasons, the rule set forth in *Miranda* "lacks a discernable relationship to the actual text and original meaning of the Constitution." *Id*. at 644; Pet. App. 20.

REASONS FOR DENYING THE WRIT

This Court need not review an interlocutory decision of an intermediate state court applying settled law to particular facts that do not regularly arise.

Certiorari should be denied for three specific reasons. First, the decision below is correct. The Michigan Court of Appeals faithfully applied *Miranda*'s "hold[ing] that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." See 384 U.S. at 471. The decision below is also consistent with this Court's subsequent cases

[2] The court directed the parties to address:

> whether the warnings provided to the defendant prior to custodial interrogation "reasonably convey[ed]," *Florida v Powell*, 559 US 50, 60 (2010), to her the "right to consult with a lawyer and to have the lawyer with [her] during interrogation," as required by *Miranda v Arizona*, 384 US 436, 471 (1966).

People v. Mathews, 503 Mich. 882; 918 N.W.2d 530 (2018); Resp. App. 1a–2a.

applying and clarifying *Miranda*. Second, no split warrants this Court's review. In 2010, this Court addressed the necessary content of the specific component of the *Miranda* warnings at issue here, and that decision has not resulted in substantial disagreement requiring the Court to revisit the issue now. Review is particularly unwarranted in this case because the truncated version of the *Miranda* warning given to Respondent does not arise with any frequency. Third, this case would be a poor vehicle to address the question presented because the Petition seeks review of an intermediate state court of appeals decision that followed an interlocutory appeal of a pre-trial evidentiary ruling.

A. The Decision Below Is Correct.

This Court's decisions address the essential components of the *Miranda* warnings that are necessary to protect a defendant's Fifth Amendment rights in the context of custodial interrogation. The decision below correctly applied that precedent.

1. The Michigan Court of Appeals followed *Miranda*'s reasoning and holding. *Miranda* requires "that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Id.* at 471. As this Court explained, such a warning is "an absolute prerequisite to interrogation," and "[n]o amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead." *Id.* at 471–72; see also *id.* at 479

("He must be warned prior to any questioning . . . that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him *prior to any questioning* if he so desires.") (emphasis added).

The Michigan Court of Appeals correctly concluded that the officers' statements did not meet this standard. The warning that Respondent had "a right to a lawyer" did not "clearly inform[ ]" her of "the right to consult with a lawyer and to have the lawyer with [her] during interrogation" because it did not expressly or impliedly reference that right and it entirely lacked any temporal component. *Mathews*, 324 Mich. App. at 434–35, 438–40; see Pet. App. 36, 45–49.

This conclusion is consistent with *Miranda*'s Fifth Amendment rationale. The right to counsel during questioning "protect[s] an accused's Fifth Amendment privilege in the face of interrogation." See *Miranda*, 384 U.S. at 471. "The presence of an attorney, and the warnings delivered to the individual, enable the defendant under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils of the interrogation process." *Id.* at 466. It is thus critical that a suspect understands that the right to counsel applies before and during questioning, and not at some future point.

It is irrelevant whether a person with knowledge of the Fifth Amendment might have been able to infer from the officers' warnings that her "right to a lawyer" included the right to have counsel present, or that

counsel's presence could occur before and during her interrogation. *Miranda* does not permit law enforcement to rely on a suspect's ability to infer her constitutional rights. "The requirement of warnings and waiver of rights is . . . fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation." *Dickerson v. United States*, 530 U.S. 428, 441 (2000) (quoting *Miranda*, 384 U.S. at 479). And in any event, the words used in this case were particularly unclear. The officer warned Respondent "[a]nything you say may[ ]be used against you. You have a right to a lawyer. . . ." See Pet. App. 3, 26. His first warning plainly referred to the possible use of Respondent's statement at a future trial or proceeding, not at the moment the advice was given. Nothing the officer said suggested that the words that immediately followed—"[y]ou have a right to a lawyer"—concerned a right that applied at that very moment.

2. The decision below correctly applied this Court's *Miranda* progeny. *Powell*, *Duckworth v. Eagan*, 492 U.S. 195 (1989), and *California v. Prysock*, 453 U.S. 355 (1981) each reaffirmed the core holding of *Miranda* relevant here, and none sanctioned—or even considered—a warning that omitted the temporal component of the right to counsel.

In *Powell*, this Court reiterated that the right to counsel warning must inform a suspect of her right to counsel before or during interrogation, describing that temporal language as "information *Miranda* required [the officers] to impart." See 559 U.S. at 62. This Court

reiterated that "as 'an absolute prerequisite to interrogation,' . . . an individual held for questioning 'must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.'" *Id.* at 60 (quoting *Miranda*, 384 U.S. at 471). Justice Ginsburg's careful opinion explained that the warning at issue satisfied *Miranda* because it explicitly included the very information that the police failed to convey in this case: it "informed Powell that he had 'the right to talk to a lawyer *before answering any of [the officers'] questions*' and 'the right to use any of his rights *at any time* he wanted *during the interview*.'" *Id.* at 62 (emphases added). The officers' omissions of this or any equivalent language in this case rendered the warning deficient.

Duckworth similarly repeated *Miranda*'s directive that a suspect "must be told that . . . 'he has the right to the presence of an attorney.'" 492 U.S. at 202. This Court approved of the warning at issue there because it too included the temporal component absent here: "[the suspect] had the right to speak to an attorney *before and during questioning*." *Id.* at 203 (emphasis added). Specifically, the defendant had been verbally informed "[y]ou have a right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one." *Id*. at 198. He was also presented with a written form stating: "I have the right to consult with an attorney of my own choice before saying anything, and that an attorney may be present while I

am making any statement or throughout the course of any conversation with any police officer if I so choose. . . . I can stop and request an attorney at any time during the course of the taking of any statement or during the course of any such conversation." *Id*. at 199. The same is true of *Prysock*, which again emphasized the importance of conveying the right to have a lawyer "during interrogation" in approving a *Miranda* warning that told the suspect he had "the right to talk to a lawyer before you are questioned, *have him present with you while you are being questioned, and all during the questioning*." 453 U.S. at 356 (emphasis added).

B. The Petition Does Not Implicate a Genuine Split of Authority Warranting Resolution by This Court.

Certiorari is also unwarranted because the Petition does not present a developed split that merits this Court's review. This Court has previously denied similar petitions, see *Carter v. Colorado*, 138 S. Ct. 980 (2018); *Warren v. United States*, 564 U.S. 1012 (2011), and should do the same here.

Petitioner contends that twelve jurisdictions would have reached a different outcome on these facts, while seven would have reached the same result. See Pet. 15–22.[3] But the cases Petitioner cites involved a range of factual circumstances that differed from one another

[3] While the Petition invokes cases from Louisiana and Massachusetts on both sides of this purported split, it does not attempt to explain this inconsistency.

and from those here. Only four are published opinions from a federal appellate court or state court of last resort that were decided after *Powell*, and only three involved a *Miranda* warning similar to the one used here.

1. The post-*Powell* cases do not demonstrate a mature split of authority. The only published federal appellate decision did not involve a *Miranda* warning similar to the one addressed below. In *United States v. Warren*, a divided panel of the Third Circuit upheld a warning that included key information omitted in this case, including that the suspect had a right to appointed counsel "before any questioning." 642 F.3d 182, 184–87 (3d Cir. 2011). This Court declined certiorari. 564 U.S. 1012.

Nor do the three cases from a state court of last resort create a split requiring review. Only two would have reached an outcome different from the Michigan Court of Appeals, and in one of those cases the court highlighted the rarity of the issue by observing that the police department's written advisement form made three references to the suspect's right to counsel before and during interrogation. See *Carter v. People*, 2017 CO 59M; 398 P.3d 124, 134 (2017) (Hood, J., dissenting) ("You have the right to talk to a lawyer *and have him present with you while you are being questioned*. If you cannot afford to hire a lawyer, one will be appointed to represent you *before questioning*, if you wish. *You can decide at any time to exercise these rights and not answer any questions or make any statements*.") (quoting police department's written advisement form), *cert.*

denied, 138 S. Ct. 980 (2018); see also *State v. King*, __ So. 3d __, No. 2019-01332 (La. April 3, 2020).

2. The remaining pre-*Powell* cases on which Petitioner relies are similarly unavailing. Five were decided in the 1960s or 1970s.[4] Eight were decided by an intermediate state court.[5] And two of those cases have little bearing on the question presented. In *Coffey*, the Texas Court of Appeals applied a state procedural rule that required "additional procedural safeguards" beyond those required by *Miranda*. See 435 S.W.3d at 841 (citing Tex. Code Crim. Proc. Ann. art. 38.22, §§ 2(a), 3 (2013)). The court concluded that the warning was insufficient under both *Miranda* and that more stringent state procedural rule that required "evidence obtained as a result of a custodial interrogation is inadmissible unless the State proves the officer gave proper warnings and shows an affirmative waiver of rights by the accused," *id*. at 840, but nonetheless held that any error was harmless. *Id.* at 842–44. And in *Carlson*, the Arizona Court of Appeals found a *Miranda* violation

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[4] See *United States v. Adams*, 484 F.2d 357 (7th Cir. 1973); *United States v. Lamia*, 429 F.2d 373 (2d Cir. 1970); *Atwell v. United States*, 398 F.2d 507 (5th Cir. 1968); *Eubanks v. State*, 240 Ga. 166; 240 S.E.2d 54 (1977); *Criswell v. State*, 84 Nev. 459; 443 P.2d 552 (1968).

[5] See *Commonwealth v. Lajoie*, 95 Mass. App. Ct. 10; 120 N.E.3d 352 (2019); *State v. Williams*, 144 So. 3d 56 (La. Ct. App. 2014); *Coffey v. State*, 435 S.W.3d 834 (Tex. App. 2014); *State v. Carlson*, 228 Ariz. 343; 266 P.3d 369 (Ariz. Ct. App. 2011); *People v. Martinez*, 372 Ill. App. 3d 750; 867 N.E.2d 24 (2007); *Commonwealth v. Miranda*, 37 Mass. App. Ct. 939; 641 N.E.2d 139 (1994); *State v. Quinn*, 112 Ore. App. 608; 831 P.2d 48 (1992); *People v. Walton*, 199 Ill. App. 3d 341; 556 N.E.2d 892 (1990).

where a detective, rather than giving any *Miranda* warning at all, permitted a defendant to recite his own garbled and "incomplete" understanding of his *Miranda* rights. See 266 P.3d at 372.[6]

Two of Petitioner's cases involved *Miranda* warnings that were deficient because they omitted information about a right other than the right to counsel during interrogation. See *United States v. Anthon*, 648 F.2d 669, 672 (10th Cir. 1981) ("[I]t is uncontested that Anthon was not advised that his right to counsel encompassed the right to appointed counsel in the event he could not afford counsel."); *State of South Dakota v. Long*, 465 F.2d 65, 70 (8th Cir. 1972) ("At most, Long was told he didn't have to say anything and that he could have a lawyer.").

At least four cases involved a *Miranda* warning that included the information omitted here and informed the suspect that the right to counsel existed before interrogation, during, or both. See *Bridgers v. Dretke*, 431 F.3d 853, 856 (5th Cir. 2005) ("You have the right to the presence of an attorney/lawyer prior to any questioning."); *United States v. Vanterpool*, 394 F.2d 697, 698 (2d Cir. 1968) ("I want to advise you that you have a right to an attorney and to consult with a lawyer at this time."); *Atwell*, 398 F.2d at 509 ("[H]e had a right to consult with an attorney, anyone of his

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[6] See also *id*. at 371 ("Given the wholesale absence of a *Miranda* advisory by law enforcement officers here, the precise issue to be decided on this appeal is not, as the state maintains, whether the 'warnings' reasonably conveyed the suspect's rights. The officer conveyed no warnings.").

choosing, at anytime."); *Windsor v. United States*, 389 F.2d 530, 532 (5th Cir. 1968) (suspect informed "he could speak to an attorney or anyone else before he said anything at all; that he could terminate the interview at any time"). In another, the Supreme Court of Nevada concluded that there was no *Miranda* violation during one custodial interrogation in which the suspect made no statement to law enforcement or during a second custodial interrogation in which the suspect was explicitly advised "that he was entitled to have an attorney present." *Criswell v. State*, 84 Nev. 459, 461 (1968).

Petitioner also argues that the Sixth and Ninth Circuits "have issued apparently conflicting decisions holding both ways." See Pet. 18. But none of the cited opinions have acknowledged any inconsistency, and a review of the apparently conflicting decisions confirms there is none. Neither Sixth Circuit case decided the question presented here. See *United States v. Clayton*, 937 F.3d 630, 634, 641 (6th Cir. 2019) (no *Miranda* violation where suspect advised "[y]ou have the right to talk to a lawyer before we ask you any questions"); *United States v. Tillman*, 963 F.2d 137, 137–42 (6th Cir. 1992) (*Miranda* warning deficient where the defendant "was never told any statements that he would make could be used against him"). With respect to the Ninth Circuit, the holdings of the cited cases are not in conflict; in fact, the most recent case dismisses as dictum the section of the prior case on which Petitioner relies. See *United States v. Noti*, 731 F.2d 610, 616 (9th

Cir. 1984) (Choy, J., dissenting) (citing *Sweeney v. United States*, 408 F.2d 121, 124 (9th Cir. 1969)).

3. The dearth of cases that have squarely decided the question presented undermines Petitioner's contention that "[i]t is imperative that this Court resolve the conflict now." See Pet. 5. Since this Court decided *Powell* in 2010, no published federal appellate court decisions—and only three decisions of state courts of last resort—address the question presented.

This is not an instance in which the issue has failed to reach the federal appellate courts or state courts of last resort. Indeed, Petitioner has not shown that this issue arises with any regularity even in Michigan. Until the decision in this case, there had not been a published Michigan Court of Appeals decision on point since the 1970s, and in the nearly three years since the decision below was issued, not a single case—published or unpublished—cites to its holding. Moreover, the Michigan Supreme Court has never decided the issue, see Pet. App. 39, and it declined the opportunity to do so in this case because it was "not persuaded that the question presented should be reviewed by this Court." *Mathews*, 943 N.W.2d at 636; Pet. App. 1. The rarity of this issue in Michigan's own courts further refutes Petitioner's claim that a conflict between the Michigan Court of Appeals and the Sixth Circuit "creates the awkward situation in Michigan where the requirements for officers giving *Miranda* warnings are

now different depending on whether the case ends up in state or federal court."[7] See Pet. 5.

The reason this issue rarely arises is well-documented. In a 2008 survey of more than 900 *Miranda* forms in use nationwide, all but five contained language specifically advising defendants of the right to counsel during questioning. See Rogers et al., The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis, 32 Law & Hum. Behav. 124, 134 (2008). More than 80% of jurisdictions, including 35 states, also provide a "catch-all" provision letting suspects know the right is available "at any time during the interrogation." *Id.* This catch-all provision was standard practice in more than 35 states. *Id.* at 131. And all forms used by the various federal law enforcement agencies explicitly advise the right to the presence of counsel during questioning. See *Powell*, 559 U.S. at 64. The FBI's standard warnings inform suspects that they have a right to "talk to a lawyer for advice before" questioning and to "have a lawyer with [him or her] during questioning." See Fed. Bureau of Investigations, *Legal Handbook for Special Agents* (2003), p. 93, https://vault.fbi.gov/Legal%20Handbook%20for%20FBI%20Special%20Agents/Legal%20Handbook

[7] Even the trial court observed that the warning in this case was uniquely deficient. Resp. App. 6a ("The Court: So you know, after 22 years of presiding over criminal cases, I have a passing relationship with Miranda warnings. . . . That is the cheesiest advice—Miranda advice—that I have ever seen. [Assistant Prosecutor]: I—Judge, I'd—have to agree. . . . Judge, I—I'm not disputing that by any means.").

%20for%20FBI%20Special%20Agents%20Part%201%20of%201/view (last accessed Jan. 14, 2021).

C. This Case Would Be a Poor Vehicle to Review the Question Presented.

Even if this Court were interested in further analyzing the contours of *Miranda*, this case would be a poor vehicle for doing so.

First, the Petition seeks review of an intermediate state court's ruling on an interlocutory appeal in which the state court of last resort denied review. As this Court has long noted, the interlocutory nature of a decision "alone furnishe[s] sufficient ground for the denial" of a Petition for a writ of certiorari. See *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see also *Goldstein v. Cox*, 396 U.S. 471, 478 (1970) ("this Court above all others must limit its review of interlocutory orders."). Denial of the Petition is consistent with this Court's ordinary practice of "await[ing] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Military Inst. v. United States*, 508 U.S. 946, 946 (1993) (opinion of Scalia, J., respecting denial of certiorari); see also *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R. Co.*, 389 U.S. 327, 328 (1967); *Denver v. New York Trust Co.*, 229 U.S. 123, 133 (1913) ("The exceptional power to review, upon certiorari, . . . an appeal from an interlocutory order is intended to be and is sparingly exercised.") (addressing a circuit court of appeals ruling); *The Conqueror*, 166

U.S. 110, 113 (1897) ("certiorari . . . is ordinarily only issued, after a final decree"); *American Construction Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 384 (1893); R. Stern, E. Gressman, & S. Shapiro, Supreme Court Practice § 4.18, pp. 224–26 (6th ed. 1986).

Second and related, the evidentiary issue presented in the Petition may not affect the outcome of this case. The prosecution of Respondent may be resolved short of trial, or the Government may obtain a conviction even if Respondent's statements are excluded. Certiorari is thus unwarranted because the question presented may not be necessary to the resolution of this case.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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22 January 2021

Order

Michigan Supreme Court
Lansing, Michigan

October 24, 2018

Stephen J. Markman,
Chief Justice

158102 & (52)

Brian K Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE
STATE OF MICHIGAN
Plaintiff-Appellant,

v

LARICCA SEMINTA MATHEWS,
Defendant-Appellee. /

SC: 158102
COA: 339079
Oakland CC:
2016-260482-FC

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the May 22, 2018 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order, addressing whether the warnings provided to the defendant prior to custodial interrogation "reasonably convey[ed]," *Florida v Powell*, 559 US 50, 60 (2010), to her the "right to consult with a lawyer and to have the lawyer with [her] during interrogation," as required by *Miranda v*

Arizona, 384 US 436, 471 (1966). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 24, 2018 /s/ Larry S. Royster
Clerk

Order

Michigan Supreme Court
Lansing, Michigan

January 3, 2018

Stephen J. Markman,
Chief Justice

156542 & (14)

Brian K Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE
STATE OF MICHIGAN
Plaintiff-Appellant,

v

LARICCA SEMINTA MATHEWS,
Defendant-Appellee.
/

SC: 156542
COA: 339079
Oakland CC:
2016-260482-FC

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the August 23, 2017 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. The Court of Appeals is directed to consider whether either of the bases for suppression advanced by the defendant in the trial court rendered the warnings in this case deficient

under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 3, 2018 /s/ Larry S. Royster
Clerk

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

PEOPLE OF THE
STATE OF MICHIGAN

vs. Case No.
16-260482-FC

LARICCA SEMINTA MATHEWS,

Defendant. /

MOTIONS

BEFORE THE HONORABLE
PHYLLIS C. McMILLEN, CIRCUIT JUDGE

Pontiac, Michigan – Wednesday, May 24, 2017

APPEARANCES:

For the People:
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For the Defendant:
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Videotape Transcription Provided by:
Gloria M. Brand, CER 8092
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(248) 634-3369

* * *

[3] THE COURT: So let me ask it. So you know, after 22 years of presiding over criminal cases, I have a passing relationship with Miranda warnings.

* * *

[6] THE COURT: That is the cheesiest advice – Miranda advice –

MS. BROWN: I – Judge, I'd –

THE COURT: – that I –

MS. BROWN: – have to agree.

THE COURT: – have ever seen.

MS. BROWN: I, I –

THE COURT: I – that's what – I'm like, oh my God.

MS. BROWN: No. I – Judge, I – I'm not disputing that by any means.

* * *

[Certification Omitted]

People v Laricca Seminta Mathews
PO# 16-37248
Interview with Defendant

LM: Laricca Mathews
DS: Detective Stowinsky

DS: Alrighty, I am Detective Brian Stowinsky.

LM: Uh hmm.

DS: Brian, you can call me. I'm going to call you LaLa, it's easier.

LM: Ok.

DS: Mathews, right?

LM: Uh hmm.

DS: What's your phone number?

LM: [redacted]

DS: Ok, (inaudible), um, I'm going to question you about what happened today.

LM: Uh hmm.

DS: Ok, um, I'm going to review these, ok?

LM: Uh hmm.

DS: I'm going to read these to you.

LM: Uh hmm.

DS: Um, before I question, start asking you, you should know that you have a right to remain silent.

LM: Uh hmm.

DS: Anything you say maybe used against you. You have a right to a lawyer, if you cannot afford a lawyer, one will be provided for free. Do you understand your rights?

LM: Yes.

DS: Do you want to talk to me?

LM: Yeah, we can talk.

DS: Ok. Ok, I'm just going to uh, alright, seven, I'm not sure what time it is, but just sign there to, whatever. Great.
