NO. _____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM 2020

ANTONIO LOPEZ,
Petitioner,

v.

THE STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a threat to arrest, or a promise not to arrest, a member of a suspect's family, depending only on his willingness to confess to a crime, renders his ensuing confession involuntary if he would not have confessed but for the threat or promise.

2. Whether the existence of probable cause to arrest Petitioner's wife for capital murder, if it existed, was sufficient to excuse threats to arrest and charge her with capital murder if Petitioner did not confess to it himself.

3. Whether truthful statements made to Petitioner by police detectives during their interrogation of him were sufficient to excuse threats to arrest and charge his wife with capital murder if he did not confess to it himself.

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TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

COMES NOW Petitioner Antonio Lopez and prays that a writ of certiorari issue to review the judgment or order of the Texas Court of Criminal Appeals described herein below.

OPINIONS AND ORDERS IN THE CASE

After a trial by jury, Petitioner was convicted of murder and sentenced to thirty-five years in prison pursuant to a judgment of the 171st District Court of El Paso County, Texas, on February 8,

2017. Petitioner's conviction was affirmed on direct appeal by the Texas Court of Appeals for the Eighth Supreme Judicial District in an unpublished opinion on August 14, 2019. *Lopez v. State*, 2019 WL 3812377 (Tex. App. – El Paso 2019). The Texas Court of Criminal Appeals granted discretionary review and issued an opinion affirming Petitioner's conviction in a published opinion on November 4, 2020. *Lopez v. State*, 610 S.W.3d 487 (Tex. Crim. App. 2020).

JURISDICTION OF THIS COURT

The opinion of the Texas Court of Criminal Appeals affirming Petitioner's conviction for capital murder was delivered on November 4, 2020. This petition is timely filed within 90 days of that date by placing it in the United States mail on or before February 2, 2021. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions, statutes, and rules involved in this case are, verbatim, in pertinent part, as follows:

1. *United States Constitution, Amendment XIV*: ". . . nor shall any state deprive any person of life, liberty, or property without due process of law[.]"

2. *United States Constitution*, *Amendment V*: "nor shall any person . . . be compelled in any criminal case to be a witness against himself[.]"

STATEMENT OF THE CASE

Petitioner was arrested and prosecuted for the capital murder of his infant foster child. The child died as a result of blunt-force trauma to her abdomen. At the time the fatal injury was inflicted, Petitioner was one of up to eleven people, all gathered together in a small townhouse where Petitioner lived with his wife and two young children. Others present included Petitioner's mother-in-law and four of her own foster children, a thirteen-year-old foster child placed temporarily with Petitioner and his wife, and a twelve-year-old foster child placed temporarily with Petitioner's mother-in law. The latter child had a history of life-threatening assaults on other foster children in homes where she had previously been placed. Those assaults were later repeated by her in a foster home where she was subsequently placed following the death of the foster child whom Petitioner was convicted of murdering.

Throughout the day, Petitioner was principally responsible for supervision of the deceased infant in the master bedroom of the townhouse, but he spent much of his time in a walk-in closet that he had converted to a home office. All others present in the home had access to the master bedroom while there. In the early afternoon, Petitioner came out of his office to check on the infant and discovered her in distress. He called his wife for help, and they soon realized that the child's condition was serious. Emergency medical assistance was called for, and the child was rushed to the hospital, but did not survive the trip.

While awaiting the results of a post-mortem examination, detectives interviewed Petitioner and his wife, both of whom denied knowing of anything that might have caused the infant's death.

But a few days later, after the medical examiner determined that the manner of death was homicide, the detectives again interrogated Petitioner for several hours, this time aggressively insisting throughout the interview that he must have murdered the child because he was the one charged with her care. Each time he denied culpability, the detectives confronted him with the alternative that his wife must therefore be guilty of the crime, eventually telling him that they would both be charged and their children taken from them if he did not confess. During the interview, one of the detectives left the room for a time to confront Petitioner's wife in a nearby waiting room with the same ultimatum.

When Petitioner persisted in his denials late into the night, the detectives released him. On their way home, Petitioner's wife broke down in tears over the threats of the detectives. Frightened that they would make good on their promises to charge her if he did not confess, Petitioner told his wife that he would call the detectives when they got home, return to the police station, and admit his guilt. After his wife dropped him off at their townhouse, she left with their children to stay with her mother. Petitioner called the number given him by one of the detectives, was picked up at his home by a uniformed police officer, and returned to police headquarters, where he confessed in a short final interview to causing the death of his foster child by stomping her with his foot.

The entire interrogation of Petitioner by the detectives was captured by audio and video recording equipment and transcribed into the appellate record. On no fewer that seventeen occasions, the detectives who interrogated Petitioner responded to his denials of guilt with a simple declaration that his failure to admit culpability meant that his wife was guilty. The clear implication was that his

willingness to accept blame would avoid any charges brought against her. Accordingly, contrary to the CCA's implication, the statements of the detectives were unmistakably threats to charge her with capital murder if Petitioner did not confess, and promises not to do so if he did. The detectives meant him to understand it that way, and he did understand it that way, as did his wife. Indeed, taken as a whole, it is impossible for any rational person to understand it otherwise.

Prior to his trial for capital murder, Petitioner moved to suppress his confession on the ground that it was not voluntary, and thus obtained in violation of the Due Process Clause. (Appendix E) The trial court held a hearing in which both of the detectives who interviewed Petitioner testified, and in which a recording of the interview, including both audio and video, was played and transcribed by the court reporter. (Appendix F) Petitioner's wife also testified to her conversation with one of the detectives during Petitioner's long interrogation, and to her conversation with Petitioner on their drive home. After hearing this evidence, the trial court denied Petitioner's motion to suppress (Appendix A) and made findings of fact and conclusions of law in support of its order. (Appendix B) Petitioner was subsequently tried by a jury for the capital murder of the deceased infant, during which his recorded confession was played in open court.

No other evidence connected Petitioner with the crime. There were no witnesses, and no forensic science. The detectives did not investigate the background of, nor did they interview, the foster child who had a history of aggravated assaults on other children. Quite literally, there was nothing of any kind offered to support conviction other than Petitioner's confession, excepting only his closer physical proximity to the deceased child throughout the day than any of the other eleven

people, also in house, each of whom had easy access to the child when the fatal injuries were probably inflicted.

On direct appeal, Petitioner renewed his complaint that his confession was not voluntary. The Texas Eighth Court of Appeals, relying mainly on its own precedent and a handful of federal court opinions, held that the conduct of the detectives during their interrogation of Petitioner did not compel his confession. (Appendix C) But it is not clear from the Court's written opinion whether it thought Petitioner's confession to be voluntary or instead believed that the detectives were justified in compelling it. The Court conceded that the detectives had threatened Petitioner, and did not deny that those threats led to his confession, but nevertheless concluded "that the statements were supported by probable cause and that the police did not engage in any overreaching or misconduct in making the statements." *Lopez v. State*, 2019 WL 3812377, *7 (Tex. App. – El Paso 2019).

The Texas Court of Criminal Appeals (CCA) agreed to review this decision. Although it eschewed the test applied by the Eighth Court of Appeals, it nevertheless held that Petitioner's confession was voluntary, or at least not impermissibly coerced, under a totality-of-the-circumstances test. (Appendix D) But the dispositive circumstances identified by the CCA in its opinion did not actually differ in any meaningful way from those relied upon by the lower court. Thus, the CCA characterized the declarations of the detectives who interrogated Petitioner, not as threats to arrest his wife if Petitioner did not confess, but only as true statements about "how things might unfold." *Lopez v. State*, 610 S.W.3d 487, 497 (Tex. Crim. App. 2020). The Court then observed that, because there was probable cause to suspect Petitioner's wife of the murder, things

might have unfolded with her arrest. *Id*. And finally, the Court concluded that the repeated claims of the detectives that his wife could be arrested did not imply a *quid pro quo* that she would not be arrested if Petitioner confessed to the crime himself. *Id*. at 498. Having decided that there was no error in the admission of Petitioner's confession, the Texas Court of Criminal Appeals did not reach the question whether its admission was harmless under the rule of *Chapman v. California*, 386 U.S. 18 (1967). See *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991).

It is thus clear that the only circumstances deemed relevant by the CCA to the question whether Petitioner's confession was voluntary were the very same as those relied upon by the Eighth Court of Appeals – that there was probable cause to arrest his wife, that telling Petitioner she could be arrested was a true statement, and that reminding Petitioner of that fact every time he denied committing the murder himself was not actually a threat to arrest her if he did not confess, or a promise not to arrest her if he did. Although the last of these circumstances has the look of a factfinding, it is actually not a finding of historical fact, but a ruling on the mixed question of how the law should be applied to the historical facts in this case, which are undisputed. In such circumstances, the question of voluntariness under the Due Process Clause is a matter subject to "plenary federal review." *Miller v. Fenton*, 474 U.S. 104, 112, 106 S. Ct. 445, 450, 88 L. Ed. 2d 405 (1985). See also *Malinski v. New York*, 324 U.S. 401, 404, 65 S.Ct. 781, 783, 89 L.Ed. 1029 (1945); *Ashcraft v. Tennessee*., 322 U.S. 143, 147–48, 64 S.Ct. 921, 923, 88 L.Ed. 1192 (1944).

REASONS FOR ALLOWANCE OF THE WRIT

Since 1897, this Court has made clear that the Fifth Amendment's prohibition against compelled self-incrimination applies to inquisitorial interrogation techniques of law enforcement officers. *Bram v. United States*, 168 U.S. 532, 18 S. Ct. 183, 187, 42 L. Ed. 568 (1897). A confession obtained in this way is admissible against the accused in a criminal trial " if, and only if, it was, in fact, voluntarily made." *Ziang Sung Wan v. United States*, 266 U.S. 1, 14, 45 S. Ct. 1, 3, 69 L. Ed. 131 (1924). Long before this prohibition of the Fifth Amendment was applied to the states, it was held to be required by the Due Process Clause of the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 6, 8, 84 S.Ct. 1489, 1492-93, 12 L.Ed.2d 653 (1964); *Payne v. Arkansas*, 356 U.S. 560, 561, 78 S.Ct. 844, 847, 2 L.Ed.2d 975 (1958); *Brown v. Mississippi*, 297 U.S. 278, 286, 56 S.Ct. 461, 465, 80 L.Ed. 682 (1936).

Inculpatory statements to the police need not be volunteered by an accused to satisfy the requirements of due process. But they must be the product of a free choice. "When a suspect speaks because he is overborne, it is immaterial whether he has been subjected to a physical or a mental ordeal." *Watts v. Indiana*, 338 U.S. 49, 53, 69 S.Ct. 1347, 1350, 93 L.Ed. 1801 (1949). It doesn't matter whether his inculpatory statements are true. It doesn't matter whether other evidence is sufficient to convict him. What matters is whether his confession was voluntary in fact. To decide this question requires consideration of all relevant circumstances to determine whether there was a causal connection between police conduct and the confession. *Colorado v. Connelly*, 479 U.S. 157, 163–64, 107 S.Ct. 515, 520, 93 L.Ed.2d 473 (1986). Such conduct might involve violence or brutality. But it need not. Deprivation of creature comforts, exploitation of youth or mental disability,

psychological pressure, threats, promises, or other inducements that prevail upon a suspect, who would not otherwise do so, to admit culpability, might also be employed to coercive effect. *Haynes v. Washington*, 373 U.S. 503, 514, 83 S.Ct. 1336, 1343, 10 L.Ed.2d 513 (1963); *Gallegos v. Colorado*, 370 U.S. 49, 54, 82 S.Ct. 1209, 1212, 8 L.Ed.2d 325 (1962); *Payne v. Arkansas*, 356 U.S. at 567, 78 S.Ct. at 849–50.

These simple rules reflect the foundations upon which coerced confessions have been held by this Court for over a hundered years to deny due process of law – that such confessions are unreliable when obtained in this way, that they are inconsistent with fundamental principles of adversarial process, and that they are offensive to basic decency and fairness. *Jackson v. Denno*, 378 U.S. 368, 385–86, 84 S.Ct. 1774, 1785, 12 L.Ed.2d 908 (1964); *Blackburn v. Alabama*, 361 U.S. 199, 206–07, 80 S.Ct. 274, 280, 4 L.Ed.2d 242 (1960); *Spano v. New York*, 360 U.S. 315, 320–21, 79 S.Ct. 1202, 1205–06, 3 L.Ed. 2d 1265 (1959). The critical issue is whether the suspect would have confessed absent the police conduct. *Culombe v. Connecticut*, 367 U.S. 568, 602, 81 S.Ct. 1860, 1879, 6 L.Ed.2d 1037 (1961). It is has nothing to do with whether the pressure exerted by the police was justifiable. Indeed, there is no such thing anywhere in this Court's jurisprudence as justifiable police pressure that overbears a suspect's will to deny culpability.

To import into these rules, as the Texas Court of Criminal Appeals did in this case, a qualification that threats which the police have the power to carry out do not count as coercion within the meaning of the Due Process Clause undermines entirely these foundational principles. Indeed, the qualification is fully an exception to the rule because it permits the receipt in evidence

of confessions that are unquestionably involuntary, as a matter both of law and of common understanding, whenever it appears, in the opinion of a trial court, that the police should be allowed to overbear the subject's will because they are speaking the truth to him or because they have the power or authority to carry out their threats.

In reaching their conclusion that the police were justified to threaten Petitioner in this case, the Texas courts drew inspiration from a handful of opinions in the United States Courts of Appeals, most of which do not actually support the conclusion. See *Contreras v. State*, 312 S.W.3d 566 (Tex. Crim. App. 2010). Thus, in *United States v. Braxton*, the Fourth Circuit reversed an order of the United States District Court suppressing Braxton's confession to "making false statements in connection with the purchase of firearms" because, among other things, such confession was induced by statements of ATF agents that he could face "five years jail time" for not "coming clean" with them. 112 F.3d 777, 780 (4th Cir. 1997). But, because the statements themselves were clearly intended only to impress upon Braxton that false answers given to the agents during their investigation carried the possibility of a criminal penalty, such statements did not constitute a threat to arrest Braxton if he refused to cooperate or a promise not to arrest him if he did. *Id*. at 783.

United States v. Nash involved a prosecution for conspiring and attempting to import cocaine into the United States. 910 F.2d 749 (11th Cir. 1990). Nash confessed to that offense during an interview with a Customs Service agent who stated that he could not guarantee an outcome for Nash but that cooperating defendants normally received more lenient treatment, and that he would make the United States Attorney aware of Nash's cooperation. *Id*. at 751. Nash later claimed that these

statements amounted to "illegal inducments," rendering his confession involuntary. Of course, the Circuit Court disagreed, noting only that "noncoercive" advice concerning "realistically expected penalties," coupled with encouragement to tell the truth, is not coercive, citing *United States v. Ballard*, 586 F.2d 1060, 1063 (5th Cir. 1978), which is to much the same effect. *Id*. at 753.

Likewise, in *United States v. Gallardo-Marquez*, the defendant asserted that, when arrested at home early in the morning for multiple felony offenses, the police "told him that he was going to jail for life, and that he should cooperate with the government to reduce his jail time." 253 F.3d 1121, 1123 (8th Cir. 2001). He claimed later that these statements, among other things, rendered his confession involuntary. Again, however, the Circuit Court properly regarded the statements as "accurate representations of Gallardo-Marquez's predicament" and were not "the sort of coercion necessary to impair his capacity for self-determination." *Id.*

Finally, in *United States v. Phillips*, wherein the defendant was charged and ultimately convicted of various child pornography and sexual-exploitation-of-a-minor offenses, the Circuit Court refused to find that statements made by FBI agents during their interrogation of Phillips, although "unnecessary and inappropriate," rendered his confession involuntary. 230 Fed. Appx. 520, 524 (6th Cir. 2007). Evidently, one of the agents referred to Phillips as a "monster" and wondered whether he should be sentenced to life in prison or treated more leniently. *Id*. But Phillips did not explain how these statements affected the voluntariness of his confession and, unlike the instant case, the statements themselves did not "imply that, if Phillips would confess, the agents would think him less of a monster, [or] would be lenient in their investigation of him[.]" *Id*.

None of these federal cases holds that a threat which actually overcomes or impairs a defendant's will can be excused under the Due Process Clause of the Fourteenth Amendment because it includes accurate statements of fact about what legal consequences may follow from the commission of a crime. But some other cases from the United States Courts of Appeals do hold that a threat to arrest one's relatives, such as was the case here, is permissible under the Due Process Clause when there is probable cause or other legal authority to carry out the threat. The most categorical expression of this view is found in *Allen v. McCotter*, 804 F.2d 1362 (5th Cir. 1987). There, Allen was arrested for aggravated robbery. During police interrogation the next day, he was told that "because his wife was directly involved in the robbery, charges could be filed against her . . . [but] that if he confessed, the police would not [do so]." *Id*. at 1363. He later claimed that his ensuing confession was involuntary because of the threat, but the Circuit Court held, citing two earlier circuit court opinions, that his confession was not rendered involuntary "by reason of his desire to extricate his wife from a possible good faith arrest." *Id*. at 1364. See also *States v. Hall*, 711 Fed.Appx. 198 (5th Cir. 2017), which contains the surprising claim that law enforcement officers have unilateral "discretion" to bargain with codefendants for the release of others whom they have probable cause to believe committed capital murder. *Id*. at 202.

The two precedents upon which the Court relied in *McCotter* are *United States v. Diaz*, 733 F.2d 371 (5th Cir. 1984), and *United States v. Mullens*, 536 F.2d 997 (2nd Cir. 1976). But *Mullens* does not remotely support the holding that probable cause to arrest vitiates the coercive nature of a threat. Indeed, in *Mullens*, there was not even the suggestion of a threat. The defendant merely

claimed that, following the arrest of his parents, his "filial affection left him no choice" but to confess. And *Diaz*, while it is analogous to *McCotter*, involved a claim that the defendant's guilty plea, not his confession, was involuntary because induced by threats to prosecute members of his family. The Court rejected this claim because no such threats were actually made, and then observed in *dicta* that "threatening prosecution of a third party family member [during plea negotiations] is not itself legally wrong[,]" citing *United States v. Nuckols*, 606 F.2d 566 (5th Cir. 1979). 733 F.2d at 375.

Nevertheless, a few opinions of the United States Courts of Appeals since *McCotter* have reached the same or a similar result. Thus, in *United States v. Johnson*, as here, the police effectively promised not to prosecute the defendant's wife if he confessed, and they kept that promise when he did. 351 F.3d 254 (6th Cir. 2003). The Circuit Court conceded that Johnson had been threatened and that "the threat was a crucial motivating factor in [his] decision to confess." *Id*. at 262. But the Court nevertheless held that the threat was not "objectively coercive." Reasoning from multiple lines of cases, involving threats or promises of leniency directed on the one hand against the defendant and on the other against his relatives, the Circuit Court first deduced that "promises of leniency [made to the defendant] may be coercive if they are broken or illusory." *Id*. at 262. The Court then examined cases in which the police threatened to prosecute a relative of the defendant if he did not confess and concluded that such threats are not "objectively coercive" if "the threat could have been lawfully executed." *Id*. at 263.

Similarly, in *Thompson v. Haley*, 255 F.3d 1292 (11th Cir. 2001), a detective interrogating

Thompson promised to release from custody a woman, already under arrest, who had assisted Thompson in the commission of murder. In fact, her culpability for the murder was already clear from her own statement to the detective. The Circuit Court, conceding that this Court had not spoken to the issue, analogized to one of its own cases on the voluntariness of a guilty plea, and held without further explanation that "whether a threat to prosecute a third party [is] coercive depends upon whether the state had probable cause to believe that the third party had committed a crime at the time that the threat was made." *Id*. at 1297.

In *Newland v. Hall*, 527 F.3d 1162 (11th Cir. 2008), Newland confessed after being told that his girlfriend, Margaret Beggs, who was being held in custody for aggravated assault, was about to be charged with murder because the victim had died in the hospital. Newland had earlier been told by the officer interrogating him that, if the victim died, he would be charged with murder and Beggs would be charged as an accessory. *Id*. at 1185. Noting the opinions in *McCotter* and *Johnson*, the Court suggested that federal case law might not support a claim that Newland's confession was involuntary. *Id*. at 1189. In the end, however, the Court rejected Newland's claim because, while his confession might have been motivated by his desire to shield Beggs from prosecution, the police did not threaten him with Begg's arrest or promise not to arrest her if he did confess. *Id*. at 1190.

Finally, a more thoughtful and nuanced approach is found in *United States v. Hufstetler*, 782 F.3d 19 (1st Cir. 2015). Hufstetler was an active participant in negotiations with FBI agents interrogating him about a bank robbery. The agents believed they had enough evidence to prosecute him but were concerned to know what role his girlfriend had in the robbery. *Id*. at 20. Although the

agents played upon Hufstetler's concern for her culpability and suggested that different consequences might follow for her, depending on his explanation, they insisted that they could not "make any guarantee or promise in exchange for his cooperation." *Id*. at 21. For his part, Hufstetler actively participated in what he evidently considered to be a negotiation for his confession, and seemed willing to confess his crime, but not without some concessions where his girlfriend was concerned. *Id*.

Sensitive to the potentially coercive nature of any interrogation in which potential consequences for a relative of the defendant are discussed, the *Hufstetler* Court engaged in a comprehensive review of precedent, ultimately concluding that the agents did not make any improper threat or promise. *Id*. at 23-24. They "never lied, exaggerated the situation, or conditioned either individual's release on Hufstetler's willingness to speak . . . [but noted only] that Craig was a suspect and unless new information came to light to discount her culpability she would continue to be criminally liable." *Id*. at 25. Although the Court's calculus included the existence of probable cause to arrest Hufstetler's girlfriend, the case was undoubtedly analyzed and decided correctly under applicable precedent of this Court because it focused on whether Hufstetler's confession was an intelligent exercise of his free will, not on whether coercing his confession was excused because of probable cause to arrest his girlfriend.

When the same analysis is applied to the facts of Petitioner's case, it yields an entirely different conclusion. Unlike Hufstetler, Petitioner was persistently threatened and browbeaten. He did not negotiate with the detectives. Rather, he was the object of unilateral threats to prosecute his

wife for capital murder if he did not confess. In contrast to Hufstetler, he was obviously frightened and shocked by the aggressive manner of the detectives and by the allegations they were making against him and his wife. Unquestionably, his ultimate decision to confess was, unlike Hufstetler's, not "the product of a rational intellect and a free will." *Lynum v. Illinois*, 372 U.S. 528, 534 (1963).

Nevertheless, in light of *McCotter* and *Johnson*, an aberrant, minority view is percolating in the United States Courts of Appeals, and relied upon by the courts of Texas, that threats to prosecute and promises not to prosecute are not "objectively coercive" or that coercion is excused if the officers making the threats or promises have probable cause or some other legal authority to carry out the threats or to fulfill the promises. On its face, this view is either a legal fiction or contrary to the settled precedent of this Court. But its influence has come to the point where it has affected appellate court analysis of involuntariness claims in ways that are, at least facially, inconsistent with this Court's jurisprudence.

The so-called "penalty" cases confirm this inconsistency. Thus, when public employees or licensees are made to choose between "los[ing] their means of livelihood or . . . pay[ing] the penalty of self-incrimination [it] is the antithesis of free choice to speak out or to remain silent." *Garrity v. New Jersey*, 385 U.S. 493, 497, 87 S.Ct. 616, 618, 17 L. Ed.2d 562 (1967); *Spevack v. Klein*, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967). See also *Lefkowitz v. Cunningham*, 431 U.S. 801, 806, 97 S.Ct. 2132, 2136, 53 L.Ed.2d 1 (1977); *Sanitation Men v. Commissioner of Sanitation*, 392 U.S. 280, 283–284, 88 S.Ct. 1917, 1919–1920, 20 L.Ed.2d 1089 (1968); *Gardner v. Broderick*, 392 U.S. 273, 278–279, 88 S.Ct. 1913, 1916–1917, 20 L.Ed.2d 1082 (1968).

In such contexts, not involving a criminal prosecution immediately, it is sometimes a matter of sharp disagreement on this Court how serious the consequences must be before it can be said that an accused was compelled to incriminate himself. *McKune v. Lile*, 536 U.S. 24, 122 S.Ct. 2017, 153 L. Ed. 2d 47 (2002) (plurality opinion). But the degree of compulsion is not a serious issue here. Lile was a prison inmate in a sex offender rehabilitation program, who was required to admit the crime for which he was imprisoned and to disclose others that he had committed in the past, lest his prison classification level and privileges be reduced or curtailed. Petitioner in this case was a free man when police detectives required him to admit committing capital murder lest his wife also be charged with that offense and his children placed in foster care. Nor is this a case in which Petitioner's failure to assert his privilege against self-incrimination during a non-custodial interview with police detectives rendered his confession voluntary. No such assertion is required when the police coerce a confession in violation of the Due Process Clause. *Salinas v. Texas*, 570 U.S. 178, 185 (2013).

It is now commonplace for law enforcement officers to rely routinely on interrogation techniques, such as the one persistently employed in this case, that include open threats to arrest and prosecute the family and friends of interrogation subjects if they do not confess. But the majority jurisprudence of this Court does not provide so much as a hint that such practices are consistent with the Due Process Clause or that an involuntary confession might nevertheless be received in evidence against an accused over his objection at trial if the threats or promises that induced it were within the power or authority of law enforcement interrogators to make or were founded upon true statements of fact. *Lynumn v. Illinois*, 372 U.S. 528, 531, 534, 83 S.Ct. 917, 919, 920, 9 L.Ed. 2d

922 (1963). On the contrary, it is clear from this Court's case law that, so long as inducements to confess actually amount to threats or promises that overbear the will of an accused to resist, as they unquestionably did in this case, then their receipt in evidence over objection at trial is a violation of the Fourteenth Amendment under long-standing, unambiguous jurisprudence of this Court. *Rogers v. Richmond*, 365 U.S. 534, 535–36, 81 S.Ct. 735, 737, 5 L.Ed.2d 760 (1961). The Texas courts erred to hold otherwise.

CONCLUSION

For the foregoing reasons, a writ of certiorari in this cause should be allowed to review the judgment of the Texas Court of Criminal Appeals described herein above.

Respectfully submitted,

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