No.

IN THE

SUPREME COURT OF THE UNITED STATES

LAROYCE MCFADDEN, Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari

To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a murder conviction based on a 17-year-old boy's statements made to police after he was held incommunicado for over 24 hours, the police ignored his request to stop the interrogation, the police did not provide counsel when he asked for an attorney, and the police explicitly denied his requests to contact his mother to obtain counsel violates the boy's right to due process and against self-incrimination? U.S. Const. amend. V, U.S. Const. amend. XIV; See *Jackson v. Denno*, 378 U.S. 368, 376 (1964)(internal citations omitted)("It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession.")

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The petitioner, LaRoyce McFadden, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Appellate Court (Appendix A) is reported at *People v. McFadden*, 2021 IL App (5th) 170139-U, appeal denied, 127927, 2022 WL 1736845 (Ill. May 25, 2022) and is not published. A copy of order denying rehearing (Appendix B) is not reported. The order of the Illinois Supreme Court denying leave to appeal (Appendix C) is reported at *People v. McFadden*, 127927, 2022 WL 1736845, (Ill. May 25, 2022). On June 1, 2022, the undersigned sought leave to file a motion to reconsider the denial of leave to appeal to the Illinois Supreme Court and requested issuance of a supervisory order in light of its decision in *People v. Salamon*, 2022 IL 126722. As of filing, the court has not ruled on this motion.

JURISDICTION

On September 16, 2021, the Appellate Court of Illinois issued its decision. A petition for rehearing was timely filed and denied on October 26, 2021. The Illinois Supreme Court denied a timely filed petition for leave to appeal on May 25, 2022. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution

No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

Fourteenth Amendment to the United States Constitution

No state shall make of enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On May 2, 2013, police picked up 17-year-old LaRoyce McFadden and took him to a police station for questioning in relation to the shooting death of another teenager the previous evening. (St.Ex. 6a, 50:01; R.6,153,178,209-10) The police took his shoes and placed him alone in a small interrogation room at about 12:20 pm.[1] (St.Ex. 6a, 00:14) Two detectives – Brooks and Koberna – began the interrogation, sitting between LaRoyce and the door, backing him into the corner. (St.Ex. 6a, 7) The police who are visible in the interrogations were white; LaRoyce is Black. (St.Ex. 6a, 7)

About 40 minutes into the first recorded interrogation, LaRoyce pulled his shirt up over his face and mumbled: "give me my lawyer man."[2] (St.Ex. 6a, 40:42-45) Brooks asked, "I'm sorry?"; at the same time, LaRoyce dropped his shirt and added: "I don't wanna talk no more." (St.Ex. 6a, 40:45-55) Koberna interrupted, saying he wanted to "hear what happened" from LaRoyce. (St.Ex. 40:54-57) Brooks paused a few seconds, added, "we wanna get your story" and asked him to start again from the beginning. (St.Ex. 2, 41:00-41:04 41:23-25)

Brooks later asked LaRoyce if he would undergo a gunshot residue test. LaRoyce initially agreed. (St.Ex. 6a, 47:00-08) As Brooks prepared the test, LaRoyce asked, "Can I wait for my lawyer to do this?," adding "Can I get a lawyer? I don't even wanna talk no more." (St.Ex. 6a, 50:16-24) Brooks replied, "well that's up to you." (St.Ex. 6a,

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[1] Appendix contains still photographs depicting LaRoyce during these interrogations.

[2] This first portion of LaRoyce's statement is difficult to discern and has been transcribed to the best of the undersigned's ability after repeated reviews of the exhibit.

50:24) LaRoyce said, "yeah," "I just wanna call my mama and stuff and tell her to get me a lawyer." (St.Ex. 6a, 50:24-37) Brooks asked: "so you don't want to do this then?" (State's Ex 6a, 50:37) LaRoyce said no and that he needed a lawyer; the detectives left. (St.Ex. 6a,50:38-55)

After several minutes, LaRoyce knocked on the door to the interrogation room and asked, "Is my mama here?" and "can y'all call up there and tell her to come?" (St.Ex. 6a, 1:01:16-21) Brooks told LaRoyce "she's not going to be allowed to talk to you right now." (St.Ex. 6a, 1:01:26) The police kept LaRoyce in the interrogation room for almost four more hours before formally arresting him and then kept "him in custody for 24 hours without allowing him access to his mother." *McFadden*, 2021 IL App (5th) 170139-U, ¶¶ 120, 123, J. Wharton dissenting.

The next day, the prosecution charged LaRoyce with first degree murder and aggravated battery with a firearm. (R.C3) Brooks read LaRoyce his arrest warrant while in his jail cell. According to Brooks, LaRoyce then wanted to talk to him "again about the case" (R.242) but that conversation was not recorded. The police brought LaRoyce back into the interrogation room around 4:20 p.m. (St.Ex. 7) When they began that interrogation, LaRoyce still "had not been permitted to speak to his mother and had not been provided with an attorney." *Id.* at ¶ 123. Brooks asked: "you stated that you wanted to speak to me again, is that correct?"; LaRoyce did not respond. (St.Ex. 7, 00:41) LaRoyce shook his head sideways when asked if he had been threatened. (St.Ex. 7, 00:43) When asked if he understood the *Miranda* warnings, there is no audible or visible response. (St.Ex. 7, 00:56, 2:02) He shook his head sideways when asked if he had questions. He then initialed a paper. (St.Ex. 7, 2:00-02, 2:07-42)

Brooks said that LaRoyce had wanted to talk "about this whole deal again." (St.Ex. 7, 2:42-52) LaRoyce did not respond. (St.Ex. 7, 2:52-3:15) After a lengthy pause, Brooks asked what was going through LaRoyce's head. (St.Ex. 7, 3:16) LaRoyce again sat silent; after a pause, he asked: "where do you want me to start?" (St.Ex. 7, 3:17-29) Brooks told him, "obviously, I came back there and read you a warrant for first degree murder." (St.Ex. 7, 3:30-33) Brooks said that LaRoyce's "story" the day before was "not complete" and that he wanted to hear LaRoyce's side. (St.Ex. 3:37-57)

Later, LaRoyce asked, "if I do y'all a favor, y'all could do me a favor?" and saying, "just call my momma." (St.Ex. 7, 19:50-52, 19:57-58) Brooks asked if he wanted them to call her; but LaRoyce asked to talk to her himself. (St.Ex. 7, 20:02-04) Brooks asked: "what do you mean by doing us a favor?" (St.Ex. 7, 20:04-08) Making no apparent response, LaRoyce pressed his elbows down on his legs with his head in his hands and face hidden. (St.Ex. 7, 20:08-17) Skalsky said they could arrange a call. (St.Ex. 7, 20:17-26) Brooks asked if he wanted his mother to come "in here" and talk to him about "what happened." (St.Ex. 7, 20:33) LaRoyce lifted his head and said "yes." (St.Ex. 7, 20:34) Brooks accused LaRoyce of not telling the truth. (St.Ex. 7, 20:34-40) LaRoyce said, "can I just talk to my momma, please." (St.Ex. 7, 20:41) Brooks asked if he was telling the truth; LaRoyce said yes and repeated, "I just wanna talk to my momma." (St.Ex. 7, 20:43-45) He began rocking back and forth in his chair.

Brooks left to "talk to the boss" while Skalsky continued to question LaRoyce. (St.Ex. 7, 20:47-52, 21:22-22:13) LaRoyce repeated: "I just wanna see my family" and muttered, "after that, I'll tell y'all." (St.Ex. 7, 26:33-44) LaRoyce pulled the blanket up to his head and bent over; Skalsky left the room. (St.Ex. 7, 26:48-53) LaRoyce wiped

his eyes with the blanket; the detectives returned. (St.Ex. 7, 27:00-13) Brooks asked what LaRoyce wanted to talk to his mother about. (St.Ex. 7, 27:24) LaRoyce replied, "I just wanted to see my mother before I get shipped off." (St.Ex. 7, 27:28) Brooks said, "I'm sorry?"; LaRoyce again wiped his face with the blanket and in a shaky voice said, "I just wanna see my momma and my brothers before I get shipped off." (St.Ex. 27:28-32) Skalsky asked if LaRoyce believed in God; when LaRoyce nodded yes, Skalsky asked what he thought God would think "right now." (St.Ex. 7, 28:01) LaRoyce again asked if they were going to call his "momma." (St.Ex. 7, 28:42)

The interrogators ignored or denied LaRoyce's continued requests to talk to his mother, brothers, and family, and kept pressing LaRoyce to "tell [them] what happened."[3] (St.Ex. 7, 36:34-38:32, 39:21, 39:53, 43:39-44:01, 1:09:29-46) Skalsky told LaRoyce that he needed to make things right "with God." (St.Ex. 7, 45:34) After continued entreaties from both interrogators, LaRoyce said: "just tell his momma I'm sorry." (St.Ex. 7, 1:04:29) LaRoyce asked again: "can I call my momma, please, can I call my momma." (St.Ex. 7, 1:09:29-46) But Brooks said that they "need[ed] to get the rest of this story." (St.Ex. 7, 1:09:29-46) In between requests to call, talk to, or see his mother, LaRoyce told his interrogators that he had a gun, but he had shot in the air, trying to shoot over the house to scare them into leaving him alone, and was not sure how anyone got hit. (St.Ex. 7, 1:09:29-46, 1:14:58-1:15:50, 1:16:20-34, 1:24:50) After interrogating LaRoyce at the station, police continued the interrogation in a squad car on a drive to the scene of the shooting. (St.Ex. 8, 8a, 8b)

Trial counsel requested more than 20 continuances in the three and a half years

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[3] See Appendix for still frames.

leading up to LaRoyce's jury trial, but he did not file any substantive pretrial motions or object to the admission of the interrogation videos at trial. (R.C23-25,27,29-39,41-51,54; St.Ex. 6, 7, 8; R.14,238,243-45,258-60) The first interrogation was edited to exclude the portions immediately preceding and the hours following LaRoyce's request for an attorney. (St.Ex. 6 and 6a; R.238) The record does not disclose the purpose for the redactions.

The jury convicted LaRoyce of first degree murder, and the trial court sentenced him to 50 years in prison. (R.317-18) On appeal, LaRoyce argued in relevant part that his trial counsel was ineffective for failing to file a motion to suppress his statement or object to admission of the 911 call, improper arguments, and failing to present evidence or arguments. *McFadden*, 2021 IL App (5th) 170139-U, ¶¶ 1, 53, 78, 80, 88. Over the dissent of Justice Wharton, the majority upheld LaRoyce's conviction and sentence. *Id.* at ¶ 116.

REASON FOR GRANTING CERTIORARI

This Court should grant review because LaRoyce McFadden was denied due process and his right against self incrimination when the State of Illinois secured his conviction using involuntary statements made by this 17-year-old with mental health and learning difficulties after he invoked his right to remain silent and to counsel and after the police held him for over 24 hours while actively denying him contact with his family.

The State of Illinois deprived LaRoyce due process of law when it secured his conviction, "in whole or in part," based on his involuntary confession. *Jackson v. Denno*, 378 U.S. 368, 376 (1964). The police in this case flagrantly violated LaRoyce's rights under *Miranda*, ignored his particular vulnerability at age 17, and utilized precisely the coercive police tactics scrutinized in *Miranda* to overcome LaRoyce's will.

In the appellate majority's recitation of the facts, it acknowledged that 17-year-old LaRoyce had invoked his right to cut off questioning about 40 minutes into the video of the first interrogation. *McFadden*, 2021 IL App (5th) 170139-U, ¶¶ 8-9, 60. The police did not honor his invocation at all. *Id.* at ¶ 9. The majority also acknowledged that LaRoyce invoked his right to counsel and reiterated his request to stop the interrogation about ten minutes later; he also specifically asked to call his mother to ask her to get him a lawyer. *Id.* at ¶ 12. The police explicitly told him that he would not be allowed to talk to his mother. *Id.* That the Illinois appellate court recognized these violations yet dismissed them as irrelevant makes this Court's review critically necessary.

Those facts alone show a failure to scrupulously honor LaRoyce's right to cut off questioning and show at least a reasonable probability that a motion to suppress the second interrogation on that basis would have been successful. Particularly so, where LaRoyce also asked for counsel and was denied the ability to contact his mother who could have helped him obtain counsel. *Id.* at ¶¶ 12-13. The police conduct is also in direct conflict with this Court and lower courts' repeated cautions about the coercive nature of custodial interrogations, the particular vulnerability of juveniles, and the critical role of a concerned adult in ensuring that the rights of children are protected. See *J.D.B. v. N. Carolina*, 564 U.S. 261, 269 (2011); *In re G.O.*, 191 Ill. 2d 37, 55 (2000); *People v. Wilson*, 2020 IL App (1st) 162430, ¶ 53; *People v. Westmorland*, 372 Ill. App. 3d 868, 884-886 (2d Dist. 2007); *In re R.T.*, 313 Ill. App. 3d 422, 430 (2000).

The record does not support the majority's assertion that "the detectives stopped questioning" LaRoyce after he asked for counsel. *McFadden*, 2021 IL App (5th) 170139-U, at ¶ 61. When LaRoyce said that he wanted to call his mother "and tell her to get me a lawyer," Brooks still did not immediately halt the interrogation. (People's Ex. 6a, 50:24-37) When LaRoyce reiterated his need for counsel, Brooks made overtures towards halting the interrogation, but he continued to ask additional questions. For example, when collecting LaRoyce's clothes, Brooks asked the intentionally incriminating question, "did you have those [shorts] on whenever you did this?" (People's Ex. 6a, 2:00:00-34)

Even crediting Brooks' isolated comment on the matter, it was Brooks that re-initiated contact with LaRoyce under the guise of reading him the warrant. *Id.*, at ¶ 63. Yet the majority failed to note that this re-initiation made LaRoyce's statements

presumptively inadmissible. *People v. Winsett*, 153 Ill. 2d 335, 349 (1992). Further, Brooks' assertion that LaRoyce asked to talk to him – even if true – does not show that LaRoyce wanted a generalized discussion of the investigation or that he knowingly and intelligently waived his previously invoked rights. *People v. Hicks*, 132 Ill. 2d 488, 493 (1989). Not only would the State bear the burden of both questions at a suppression hearing, but the interrogation video shows that LaRoyce did not do either.

When Brooks asked LaRoyce to confirm that he had said he wanted to talk to Brooks again, LaRoyce did not provide any discernable verbal response, and his head movements were vague at best. (People's Ex.7,00:41-2:59) When Brooks asked LaRoyce what he wanted to talk about, LaRoyce remained silent. (People's Ex. 7, 2:59:00-3:17) After further silence and prompting by Brooks, LaRoyce asked where Brooks wanted him to start. (People's Ex. 7, 3:17-29) As noted by the dissent, the videos confirm that LaRoyce "was extremely uncomfortable during both interrogations," he "gave many answers that were barely audible," frequently "hung his head or slumped in his chair," and "pulled his sweatshirt over his face." *McFadden*, 2021 IL App (5th) 170139-U, ¶ 125, J. Wharton dissenting.

The second interrogation video also shows LaRoyce begging to call his mother, putting his head down and hiding his face, rocking back and forth, pulling a blanket over his head, and repeatedly wiping his face with the blanket. (People's Ex. 7; See Def. Op. Br. at 9-11) These facts are not consistent with a conclusion that LaRoyce initiated a conversation, had a desire to discuss the investigation generally, or knowingly and voluntarily waived his previously invoked rights. Thus, they do not support the appellate majority's holding that the record was insufficient to show ineffective

assistance of counsel.

Critically, how is a 17-year-old with mental health issues and a learning disability supposed to acquire an attorney when the police do not provide one at his request and deny his request to contact his mother to obtain an attorney? The affirmative actions of the police to keep LaRoyce from contacting his mother are a violation of Illinois statute. 725 ILCS 5/103-3.[4] The goal of the statute is to allow a person in custody to contact family, explain the nature of the charge, and thus allow them to arrange "for bail, representation by counsel and other procedural safeguards that the defendant cannot accomplish for himself while in custody." *People v. Prim*, 53 Ill. 2d 62, 69-70 (1972). The Illinois Supreme Court recently held that an adult defendant's statements were involuntary where the police violated this statue by holding him for about 24 hours and repeatedly denying his requests for phone access. *People v. Salamon*, 2022 IL 125722 ¶¶ 96, 102-4, 108.

LaRoyce's case adds more pressing features to this question because he was a teenager with mental health and learning problems, his right to remain silent had already been trampled, and his specific and repeated requests to contact his mother were all denied. When Brooks re-initiated contact with LaRoyce, LaRoyce had already been in custody for over 24 hours without access to a lawyer or contact with any family member. *Id.*, at ¶¶ 6, 13-5, 18. As the majority acknowledged, by that point, the police had already "ignored" LaRoyce's clear and unambiguous invocation of his right to silence and *affirmatively denied* his requests to contact his mother to have her get him

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[4] Last year, the Illinois legislature enacted a new version of this statute with even more stringent requirements. 725 ILCS 5/103-3 (Eff. July 1, 2021)

a lawyer. *Id.* at ¶¶ 12-13, 60. Near the 20 minute mark of the second interrogation, LaRoyce began begging again to contact his mother – and was clearly distressed throughout the remainder of the interrogation. (People's Ex. 7, Def. Op. Br. at 9-12)

The interrogating officers simply ignored most of LaRoyce's requests. Other times, the police used his requests against him to urge him to confess. The police dangled LaRoyce's family in front of him by insisting that his mother and brother had been at the station earlier, that his mother told his brother to tell the truth, and that his brother had done so. (People's Ex. 7, 15:33-19:20-50) Brooks asked if he wanted to talk to his mother about "what happened" and if he would "tell her the truth . . . cause you're not telling, I, I wanna know from you right now." (People's Ex. 7, 20:34:40) At one point Brooks went to "talk to the boss" about a possible phone call for LaRoyce. (People's Ex. 7, 20:47-52) The phone call never materialized. Instead, LaRoyce was again met with questions about what he wanted to talk to her about, why he wanted to talk to her before them, and what he thought God would think "right now." (People's Ex. 7, 26:42-28:01) The police ignored LaRoyce's continued requests for his mother and brothers, and they instead told LaRoyce that he needed to make things right "with God." (People's Ex. 7, 39:21-45:34)

When, after over an hour of interrogation, LaRoyce again begged: "can I call my momma, please, can I call my momma," Brooks told him that they "need[ed] to get the rest of this story." (People's Ex. 7, 1:09:29-46) Both the majority and dissent note that Brooks told LaRoyce that he could not promise him he could see his mother or that he would let LaRoyce speak to his mother even if he told the truth. *McFadden*, 2021 IL App (5th) 170139-U, ¶ 70. As the dissent notes, Brooks told LaRoyce that he did not

want to "make it 'look like' [he] was 'making a promise' or coercing" LaRoyce. *Id.* at ¶ 127, J. Wharton dissenting.

This Court should consider the dissents' apt observation that this comment was not "sufficient to overcome the detectives' repeated statements making it crystal clear" that LaRoyce "would not be permitted to see his mother unless and until he gave a confession." *Id.* Moreover, the majority's analysis ignores the fact that Brook's supposed clarification that he was not promising or coercing LaRoyce was isolated and in the context of Brooks' denial of LaRoyce's additional requests and specific instruction to LaRoyce that they "need[ed] to get the rest of the story first." (People's Ex. 7, 1:09-46) Even after LaRoyce's inculpatory statements and his sojourn with the officers in the squad car to the scene, Brooks still denied him access to his mother. Once back in the interrogation room – LaRoyce then in handcuffs and leg shackles – LaRoyce asked to "get that, um, call now?" (St.Ex. 7a, 1:13-15) Brooks replied that he would have to check with his boss because he had a few more questions for LaRoyce before stopping the interrogation. (St.Ex. 7a, 1:15)

The majority also ignored that LaRoyce – a Black 17-year-old with mental health and learning difficulties "was interrogated by three white detectives and held for 24 hours while police refused to allow him contact with his mother." *Id.* at ¶ 129. This served not only to deny LaRoyce "contact with a concerned family member and assistance in retaining counsel," it "also denied him contact with anyone of his socioeconomic standing, cultural experience, and race." *Id.* This is critically important "context of this intimidating and coercive environment." *Id.* And yet, the majority opinion does not address LaRoyce's race at all. As the dissent notes, when the full

circumstances are considered, it becomes "reasonably probable that the court would have granted a motion to suppress, either on the basis of the detectives' failure to scrupulously honor the defendant's invocation of his right to counsel or on the grounds that the confession ultimately obtained was not voluntary." *Id.* at ¶ 130.

The majority also overlooked significant differences between LaRoyce's case and those it relied upon to conclude that his ultimate statements were voluntary. For example, unlike the defendant in *Murdock*, LaRoyce "had multiple mental health and developmental diagnoses, including a learning disability, attention deficit/hyperactivity disorder, depression, and anxiety." *McFadden*, 2021 IL App (5th) 170139-U, ¶ 124, J. Wharton, dissenting. LaRoyce also "gave many answers that were barely audible." *Id.* at ¶ 125. Moreover, the police employed multiple tactics criticized by our courts. See *Miranda v. Arizona*, 384 U.S. 436, 448-55, 457 (1966); *Corley v. United States*, 556 U.S.303,321 (2009)(noting the "mounting empirical evidence that" the pressures of custodial interrogation alone "can induce a frighteningly high percentage of people to confess to crimes they never committed").

The majority also failed to provide any meaningful analysis of the impact of LaRoyce's youth on either the *Miranda* and voluntariness issues. LaRoyce's age – particularly in combination with his learning and mental health issues – is a critical consideration. See e.g. *People v. Wilson*, 2020 IL App (1st) 162430, ¶ 53 (noting our legislature's recognition that only about 20 percent of juveniles understand the *Miranda* warnings); *J.D.B.*, 564 U.S. at 269. The majority's remark that LaRoyce "was on the older end of the juvenile scale" does not give true consideration to LaRoyce's age and development. *McFadden*, 2021 IL App (5th)

170139-U, ¶ 17.

Finally, the majority did not apply the *Mosley* factors to the second interrogation at all, despite the fact that LaRoyce's repeated invocation of his right to remain silent during the first recorded interrogation impacts the admissibility and voluntariness of the statements made the next day. *Michigan v. Mosley*, 423 U.S. 96, 104 (1975). This Court should grant review because the appellate court majority skipped this crucial step of the analysis, and that oversight impacts both prongs of the *Strickland* test – whether "(1) the unargued suppression motion was meritorious and (2) a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *McFadden*, 2021 IL App (5th) 170139-U, ¶ 52. Given this serious omission, it is fundamentally unfair to require LaRoyce to litigate the entire matter in post-conviction proceedings.

By allowing this erroneous decision to stand, the Illinois Supreme Court has also violated LaRoyce's federal constitutional right to due process. This decision signals a violation of due process that goes to the heart of the basis for the *Miranda* decision and its subsequent progeny. This Court has stated that a defendant has the "constitutional right at some stage in the proceedings to object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession." *Jackson*, 378 U.S. at 376-77. Because of trial counsel's failures, the trial court never made a finding of voluntariness nor was there any evidentiary hearing on this issue. The appellate court majority found LaRoyce's statements voluntary only by ignoring critical steps in the analysis and ignoring the incredibly coercive effect of denying young LaRoyce access

to his family. *McFadden*, 2021 IL App (5th) 170139-U, ¶¶ 125-30, J. Wharton, dissenting.

Because the appellate court's decision was wrong, and the Illinois Supreme Court failed to correct this violation of LaRoyce's right to due process, this Court should grant review.

CONCLUSION

For the foregoing reasons, petitioner, LaRoyce McFadden, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

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