

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 2022

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THOMAS R. ALT,

Petitioner,  
vs.

UNITED STATES OF AMERICA,

Respondent.

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Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Seventh Circuit

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PETITION FOR WRIT OF CERTIORARI  
AND APPENDIX TO PETITION

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QUESTIONS PRESENTED

This Petition presents an Issue that meets the requirements for Supreme Court Review.

I. The Seventh Circuit has recently indicated, in its Decision in this present matter, that Defendant's question during custodial interrogation as to whether or not there was an appointed lawyer available did not constitute an invocation of his right to counsel. This, after he had been provided his Miranda warnings. He had been in custody at the time. This custodial status is not in dispute. However, after having been provided his Miranda warnings, the interrogating officer had indicated that if the Defendant wanted a lawyer, then the interrogation would stop. In response, the Defendant had immediately asked that interrogating officer "...And, real quick, on the uh, appointed lawyer, do you have a lawyer here?" The officer responded "No ... that would be appointed at your initial appearance." Based upon this colloquy, Defendant had clearly, and unequivocally, indicated that he wanted an attorney prior to any interrogation. His question as to the availability of an attorney clearly indicated that he wanted such an attorney. This, during his interrogation. He had asked this question prior to any actual questioning, and immediately after the interrogating officer had indicated to him that he could stop questioning if he wanted an attorney. The context of this question, as well as the question itself, conveys this invocation. The Defendant's subsequent interrogation was illegal, unconstitutional,

and impermissible.

Further, the interrogating officer's response the Defendant's question as to whether or not a lawyer was present had been misleading. That officer, instead of ceasing any further communication with the Defendant, had illegally misrepresented that right to counsel.

Nevertheless, the Seventh Circuit had indicated that Defendant's question "...on the, uh, appointed lawyer, do you have a lawyer here?" was equivocal. The Seventh Circuit had indicated that this question had merely indicated that Alt was still undecided about whether he wanted a lawyer. According to the Seventh Circuit, this question had, at best, indicated that he might want to speak with an attorney. However, this conclusion ignores the context that Alt had asked this question immediately in response to the officer's statement that if the Defendant wanted a lawyer, then the questioning would stop. Alt had never indicated that he was undecided. Contrary to the Seventh Circuit, he had never indicated that he might want to speak with an attorney. He had clearly indicated that he had wanted an attorney prior to any questioning. Although his question refers to the availability of an attorney, there is no other reasonable interpretation of this question other than that he had immediately wanted an attorney. Here, he had inquired of the availability of counsel, prior to any interrogation, immediately after having been informed of that right to counsel. Clearly, he had wanted counsel prior to the continued interrogation. Hence, this question unequivocally indicates that he

wanted an attorney.

Furthermore, this present Seventh Circuit Decision conflicts with relevant decisions of this very Court. This Decision has decided an important federal question in conflict with case law from this Court. Specifically, this present Decision conflicts with other Decisions of this Court, such as Davis vs. United States, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994); Smith vs. Illinois, 469 U.S. 91, 105 S. Ct. 490, 83 L.Ed.2d 488 (1984); and McNeil vs. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991). Invocation of the Miranda right to counsel requires at the minimum some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney. McNeil vs. Wisconsin, 501 U.S. 171 at 178. Although a suspect need not speak with the discrimination of an Oxford don, he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. Davis vs. United States, 512 U.S. 452 at 459. Here, no other reasonable interpretation can exist as to Defendant's intent than that he had unequivocally invoked his right to counsel. As previously indicated, he had reasonably conveyed to the interrogating officer that he wanted counsel prior to any interrogation.

As indicated, the Seventh Circuit had concluded that Alt's question as to the availability of counsel had been equivocal. He had been undecided. However, under the circumstances and language of his request, as discussed, his question had indicated that he

had unequivocally wanted counsel prior to any further interrogation. This, based upon the cited case law from this Court. Hence, the Seventh Circuit Decision has decided an important federal question in a way that conflicts with relevant Decisions of this Court.

Accordingly, the question presented for review is:

WHETHER A SUSPECT'S QUESTION AS TO THE AVAILABILITY OF APPOINTED COUNSEL, IN IMMEDIATE RESPONSE TO HAVING BEEN ADVISED OF HIS RIGHT TO COUNSEL PRIOR TO CUSTODIAL INTERROGATION, IS A REASONABLE INTERPRETATION OF AN UNEQUIVOCAL INVOCATION OF THAT RIGHT TO COUNSEL, UNDER THOSE PRESENT CIRCUMSTANCES.

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The Petitioner, Thomas Alt, respectfully prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit rendered January 25, 2023.

OPINION BELOW

The Decision and Order of the United States Court of Appeals for the Seventh Circuit has been published. The citation is 58 F.4th 910 (7<sup>th</sup> Circuit, 2023). It is also printed in the Appendix. (A 1 - A 23).

The relevant portions of the record, to consist of the District Court's written Decision before the United States District Court for the Central District of Illinois, is printed in the Appendix. The date of this Decision is April 30, 2021. (A 24-A 32).

JURISDICTION

Petitioner seeks review of a Decision and Order of the United States Court of Appeals for the Seventh Circuit entered January 25, 2023. That Decision and Order affirmed the final Judgment of Conviction imposed and entered by the United States District Court for the Central District of Illinois on September 21, 2021.

Jurisdiction of the United States Supreme Court to review the Decision and Order of the Seventh Circuit is derived from 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

Defendant Thomas Alt was originally charged in a two Count Indictment dated November 19, 2019. Defendant was the only

Defendant charged in this Indictment. The Indictment charged Defendant with Count One, on or about November 1, 2019, in Peoria County in the Central District of Illinois, using facilities of interstate commerce, that is a Samsung Galaxy Tablet 8, connected to the Internet, did knowingly attempt to persuade, induce, entice, and coerce an individual who had not attained the age of 18 years, to engage in any sexual activity for which any person can be charged with a criminal offense, in violation of Title 18 U.S.C.A. 2422(b). The Indictment had also contained a forfeiture notice.

Defendant had filed a Pretrial Motion to Suppress Evidence. He had filed this Motion on April 13, 2021. By this Motion, he sought an Order suppressing all statements, whether written or oral, that he had provided to law enforcement on November 1, 2019. He had indicated that he had been taken into custody on November 1, 2019. Later, he had been interviewed by the F.B.I. on that same day. The interview had been recorded, and had been attached as Exhibit A. Within seconds of the interview starting, Defendant had inquired of the F.B.I. agent "should I have a lawyer?" The interviewing agent had then stated that he would read the Defendant his rights. The rights included:

"...You have the right to talk to a lawyer for advice before we ask questions. You have the right to have a lawyer with you during the questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish...."

Immediately thereafter, according to the Motion to Suppress and its attachment, Defendant had indicated "Real quick. On the

appointed lawyer, do you have a lawyer here?" The F.B.I. agent responded, "No. So that would be appointed at your initial appearance." Defendant then read and signed a Miranda waiver and commenced speaking to the F.B.I. Defendant had indicated in this Motion that his comment asking about the availability of an appointed attorney had constituted an unequivocal invocation of his Fifth Amendment right to counsel. The agent's refusal to honor this invocation had rendered any subsequent statements by the Defendant inadmissible, with suppression mandatory. Further, the Motion had indicated that the agent had provided incorrect 'advice,' using impermissible diversionary tactics, that an attorney would not be appointed until the initial appearance. Defendant had then inculpated himself.

The Government had filed its Response to Defendant's Motion to Suppress Statements. The Government had filed this Response on April 23, 2021. In this Response, the Government had essentially indicated that Defendant's question concerning the availability of counsel had been ambiguous, thereby not constituting an unequivocal invocation of the right to counsel. The Response had not disputed that the Defendant had been in custody at the time of this invocation and interrogation.

On April 30, 2021, the District Court had issued a written Decision denying Defendant's Motion to Suppress Statements. The Decision had clearly indicated that Defendant had been in custody at the time of his invocation of his right to counsel. However, the court had indicated that, in context, Defendant's comment as to

whether or not an appointed lawyer was present had been equivocal and ambiguous. This, by also considering that after this invocation, the agent had indicated "no," to which the Defendant had replied "...so I would have to schedule something," to which the Agent replied, "So that would be appointed at your initial appearance." (A 24 - A 32).

However, the April 30, 2021 Decision ignores that Defendant's comment, by itself, as to whether or not an appointed lawyer was present was sufficient to unequivocally invoke a right to counsel. This comment clearly indicates, to any reasonable person, that Defendant presently had desired an attorney. This, prior to any custodial interrogation. Hence, this comment constitutes an unequivocal invocation by Defendant of his right to counsel. Any discussion and/or questioning after that invocation had been impermissible. Further, any such post-invocation discussion had been irrelevant to any trial court consideration of whether or not Defendant had unequivocally invoked his right to counsel. Based upon Defendant's question alone, law enforcement should have immediately ceased any further questioning and/or discussion.

Defendant had then proceeded to jury trial. The jury found the Defendant guilty of the one Count in the Indictment.

The sentencing hearing occurred on September 20, 2021. The District Court sentenced Defendant to 120 months, with fifteen years of supervised release.

Defendant filed his Notice of Appeal on September 20, 2021.

In a Panel Decision dated January 25, 2023, the Panel had

denied Defendant's appeal. (A 1 - A 23).

On February 17, 2023, the Seventh Circuit had issued a written Order denying the Defendant's Petition for Rehearing with Suggestion of En Banc.

REASON FOR GRANTING THE PETITION

I. CONTRARY TO THE SEVENTH CIRCUIT, DEFENDANT HAD UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL IMMEDIATELY AFTER THE PROVIDING OF HIS MIRANDA WARNINGS. THE SEVENTH CIRCUIT'S DECISION AFFIRMING THE TRIAL COURT RAISES A FEDERAL QUESTION THAT IS IN CONFLICT WITH DECISIONS OF THIS SUPREME COURT. THE FEDERAL QUESTION AT ISSUE IS WHETHER A SUSPECT IN CUSTODY HAS UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL WHEN INQUIRING ABOUT THE AVAILABILITY OF COUNSEL, THEREBY UNEQUIVOCALLY INDICATING A DESIRE FOR COUNSEL, IMMEDIATELY AFTER HAVING BEEN ADVISED OF HIS RIGHT TO COUNSEL.

The Seventh Circuit's Decision in this Present Case Has Decided a Federal Question that is in Conflict with Other Decisions from this Court.

When an individual in custody states that he wants an attorney, the investigation must cease until an attorney is present. Miranda vs. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated questioning even if he has been advised of his rights. An accused, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him. Edwards vs. Arizona, 451 U.S. 477, . 101 S.Ct.

1880, 68 L.Ed.2d 378 (1981). This rule requires two distinct inquiries. First, courts must determine whether the suspect actually invoked his right to counsel. Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right that he had invoked. Smith vs. Illinois, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) (citing Edwards, 451 U.S. at 485, 486, N.9).

The question as to when an individual in custody actually invokes his right to counsel is an objective inquiry. Davis vs. United States, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). The suspect must make, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney in dealing with custodial interrogation by the police. The rule of Edwards applies when the suspect "has expressed" his wish for the particular sort of lawyerly assistance that is the subject of Miranda. McNeil vs. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991). Although a suspect need not speak with the discrimination of an Oxford don, the suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. Davis vs. United States, 512 U.S. 452 at 459.

"Maybe I should talk to a lawyer" is not a clear request for counsel. Id. at 462.

The Seventh Circuit has indicated that "Can I have a lawyer" and "Can I talk to a lawyer" are unequivocal requests for an attorney requiring that police halt the interrogation. U.S. vs. Wysinger, 683 F.3d 784 (7<sup>th</sup> Cir. 2012); Lord vs. Duckworth, 29 F.3d 1216 (7<sup>th</sup> Cir. 1994).

Here, contrary to the District Court and the Seventh Circuit Decisions, Defendant had unequivocally invoked his right to counsel. This, with his unequivocal question "...on the appointed lawyer, do you have one here?" There is no reasonable interpretation for such a question except to conclude that Defendant had immediately wanted counsel. This, prior to any interrogation. He did not ask if he should get counsel. He had indicated that he had immediately wanted counsel. Otherwise, and contrary to the District Court and the Seventh Circuit, why would he have asked such a question, especially at that specific time? The specific time had been immediately after the interrogating officer had advised the Defendant of his right to counsel, and that all questioning would cease should he make such a request. Hence, such a question reflected on the Defendant's inquiry into his present ability to obtain counsel. Thereby, Defendant had reasonably articulated his desire for counsel prior to continuing with any custodial interrogation. Contrary to the District Court and the Seventh Circuit, Defendant had clearly and unequivocally indicated that he had wanted an attorney. He did not waiver or reflect any indecision. His language had been specific, as legally required. He did not ask for the F.B.I. Agent's advice on whether

or not the Defendant should have an attorney. The Defendant had simply inquired upon the availability of appointed counsel now, not whether or not he desired to have counsel. He had clearly expressed this immediate desire for counsel. All that he had wondered about was the availability at the present time. Based upon the relevant and applicable case law of this Court, his question had reasonably constituted a clear and unequivocal assertion of his right to counsel.

As further indicated in such relevant and applicable case law, law enforcement had been required to cease any further interrogation whatsoever. This, based upon the Defendant's unequivocal assertion of his right to counsel, as argued above. Hence, the F.B.I. Agent had been precluded from answering the Defendant's question. Where nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, all questioning must cease. Courts should only consider prior context when determining whether a Defendant unambiguously invoked his right to counsel. Smith vs. Illinois, 469 U.S. 91 at 98.

Here, Defendant had unequivocally invoked his right to counsel. This, by his question as to the presence of an attorney "here" immediately following the interrogating officer's advising the Defendant of his right to counsel and that, should he invoke this right, all questioning would cease. A reasonable person would understand that, under the circumstances and based upon this timing, the Defendant had unequivocally invoked his right to

counsel. This Court's relevant case law supports such a conclusion. Hence, the Seventh Circuit's Decision has decided an important federal question that conflicts with this Court's case law. Petitioner respectfully requests that this United States Supreme Court resolve this conflict by determining what is the appropriate standard for such a situation as presented here.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the decision and opinion of the Court of Appeals for the Seventh Circuit.

RESPECTFULLY SUBMITTED, at Waukesha, Wisconsin, this 2nd day of March, 2023.

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CERTIFICATION FOR THE PETITION FOR WRIT OF CERTIORARI  
FOR THE PETITIONER THOMAS R. ALT

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The attached Petition for Writ of Certiorari complies with all page and Petition requirements of Federal Rules of Supreme Court Procedure Rules 13, 14, 33, and 34.

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Mark S. Rosen  
Attorney for Petitioner

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