No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

BERNARD BRANDON,

PETITIONER

V.

STATE OF CONNECTICUT,

RESPONDENT

_____

ON PETITION FOR A WRIT OF CERTIORARI TO

THE CONNECTICUT SUPREME COURT

_____

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A state probation officer, acting at the request of police detectives, directed the petitioner to sit with them for an interrogation at the probation office following a regularly scheduled check-in. The probation office was a locked and secured environment, where freedom of movement was restricted and staff escorts were required. The interrogation took place in a probation supervisor's office where the petitioner had never been before, on a different floor than his probation officer's. The petitioner was not provided a *Miranda* advisement during this interrogation. The interrogation yielded information which ultimately contributed to the petitioner's conviction for the homicide in question. The trial court denied a motion to suppress statements made during that interrogation, and a divided state supreme court affirmed.

In *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), this Court held that the distinct coercive pressures faced by children as a class required courts to undertake a more searching analysis of whether a juvenile suspect would have felt that he or she was not free to terminate police questioning and leave.

The questions presented are:

(1) Whether an interrogation in a secured facility between a probationer who is present on the orders of his probation officer, and armed law enforcement, is custodial for purposes of *Miranda v. Arizona.*

(2) Whether, in accordance with *J.D.B. v. North Carolina*, the coercive pressures unique to probationers and parolees as a class must be given additional weight by courts when determining custodial status for *Miranda* purposes.

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The Petitioner, who was Defendant-Appellant in the State of Connecticut, is Bernard Brandon. The Respondent is the State of Connecticut.

OPINION BELOW

The opinion of the Connecticut Supreme Court in *State of Connecticut v. Bernard Brandon* is reported at 217 Conn. 702, 287 A.3d 71.

JURISDICTION

The judgment of the Connecticut Supreme Court was entered on December 30, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land of naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> No State shall make or 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

I. FACTUAL BACKGROUND

On December 16, 2015, the petitioner, Bernard Brandon, pleaded guilty to a misdemeanor offense of Breach of Peace in the 2nd Degree. He was sentenced to a one-year period of probation, with the standard conditions of probation in Connecticut that he "not violate any criminal law of the United States, this state or any other state or territory" and "[r]eport as the Probation Officer tells you." (App. 102)

On February 16, 2016, the petitioner appeared at the probation office in Bridgeport, Connecticut, for a regularly scheduled interview with his probation officer. The probation office is a secure environment. The initial checkpoint to enter the building included a metal detector staffed by uniformed State of Connecticut Marshals. (App. 96-7) To reach the office, a probationer has to "pass through a metal detector and security check in the first floor lobby in order to access the elevators to the floors occupied by the probation office, which include at least the second and third floors of the building. The offices on the second and third floors are within locked areas; probationers may enter only with the assistance of an escort." *Connecticut v. Brandon*, 217 Conn. 702, 711 (2022).

After passing through the security checkpoint, the petitioner took an elevator to the second floor to check in with Probation Office staff and await an escort into the inner offices of the third floor where the "reporting rooms"—where regular interviews and check-ins take place—are located. (App. 97-8)

His probation officer escorted the petitioner to the third floor "reporting room" and conducted their regular meeting. *Brandon*, 217 Conn. at 711.

At the end of their regular meeting, the probation officer brought the petitioner to the second floor at the request of a supervisor. *Id.* at 19. When the petitioner and his probation officer reached the second floor, the petitioner was met by a Probation Supervisor, who escorted the petitioner to his office. *Brandon*, 217 Conn. at 712-713. These interactions took place within a secured area, behind locked doors, where probationers required an escort.

Unbeknownst to the petitioner and his probation officer, but known to the Probation Supervisor, two Bridgeport police detectives were waiting in the supervisor's office to interrogate the petitioner regarding a homicide which had occurred five days earlier on February 11, 2016. The detectives were in plain clothes with their badges and guns visible. *Brandon*, 217 Conn. at 713. The supervisor left the room after leaving the petitioner with the detectives, and no probation officials returned for the remainder of the meeting, leaving the petitioner alone without an escort with the two detectives, who began their interrogation. *Id.*

For twenty-one minutes, the detectives failed to offer any indication that the petitioner was at liberty to terminate the interview. *Brandon*, 217 Conn. at 752 (D'Auria, J., concurring in part and concurring in the judgment). Then, the petitioner was informed that, while he was free to leave, doing so would result in the detectives seeking a warrant for his arrest on murder charges. *Id.* at 716. As

a probationer, any arrest of the petitioner could be deemed a violation of his condition of probation that he "not violate any criminal law of…this state." Such a violation could result in further incarceration. The petitioner remained in the room, and the detectives continued their interrogation. *Id.* at 717. Around thirty-five minutes into the interrogation, the petitioner substantially changed the original account he gave the detectives. *Id.* at 717-18.

The interrogation in the probation office lasted over ninety minutes in total. At three separate points throughout the interrogation, the officers threatened to obtain an arrest warrant for the petitioner on murder charges if he did not cooperate with their interrogation. *Id.* at 767 (Ecker, J., dissenting). Towards the conclusion of the interview, one of the detectives warrantlessly seized the petitioner's phone. *Id.* at 726. The detectives then requested that the petitioner meet with them later that same day at the police station and ended the first interrogation. *Id.* at 720. The petitioner appeared several hours later at the Bridgeport Police Department as requested. *Id.* at 709. His interrogation continued in an interview room, now with three detectives participating, including the two whom he spoke with earlier at the probation office. (App. 101). Both the interview at the probation office and the one at the police station were recorded. A third interview was conducted in an unmarked police vehicle two days after the first two interrogations. Utilizing the information gleaned from all three interviews, the police obtained a warrant to arrest the petitioner on charges of

murder and criminal possession of a firearm. The petitioner was arrested pursuant to that warrant on April 22, 2016.

II. PROCEDURAL BACKGROUND

Following his arrest, Mr. Brandon was charged with Murder in the 2nd Degree and criminal possession of a firearm. On May 12, 2016, a hearing was held on Brandon's motion to suppress his statements from all three interviews. Citing violations of the Fifth and Fourteenth Amendments, the defense argued that the first interview, conducted at the probation office, was a custodial interrogation, and the failure of the detectives to provide the requisite *Miranda* warning prior to the interview required suppression of those statements. The defense further argued that the second interrogation was irredeemably tainted by the failure to provide *Miranda* warnings during the first interrogation, and therefore was also inadmissible. *Missouri v. Seibert*, 542 U.S. 600 (2004)(holding that the provision of *Miranda* warnings midstream, after a subject had provided incriminating information during a custodial interrogation, was insufficient to correct the failure to advise).

The trial court denied the petitioner's motion to suppress, ruling that the interview at the probation office was not custodial for purposes of *Miranda*. The petitioner was subsequently convicted of the lesser-included offense of Manslaughter in the 1st Degree with a Firearm, and sentenced to twenty-seven years of incarceration. *Brandon*, 217 Conn. at 710.

The petitioner appealed his conviction to the Connecticut Supreme Court, arguing that the trial court improperly denied his motion to suppress statements

from the interview at the probation office. In a split decision issued on December 30, 2022, with four Justices in the majority, one concurring in the result, and two dissenting, the Court upheld the trial court's denial of the motion to suppress. The majority made findings that it was "undeniable that the defendant was questioned in a coercive environment," citing the following factors: (1) the presence of two armed police officers, (2) that the questioning took place in a secured area, (3) that the petitioner was never informed that he was to be interrogated by police, (4) the statements made by the police that the petitioner was their prime suspect, and (5) the warrantless seizure of the petitioner's cellular phone by the police at the conclusion of the interrogation. *Id.* at 725-26. Despite this multiplicity of factors, the majority held that the coercive environment of the interrogation did not rise to a degree where a reasonable person would believe they were not free to leave. *Id.*

The concurrence opined that the interrogation could be bifurcated into two distinct subparts—the time before police informed the petitioner that he could leave, and the time after that advisement—and that the question of whether or not the first part was custodial for *Miranda* purposes was a closer one. Citing this Court's holding in *Minnesota v. Murphy*, 465 U.S. 420 (1984), the concurrence determined that "probation status does not create the level of coercion required to transform a noncustodial interrogation into a custodial one…." *Brandon*, 217 Conn. at 753.

Two Justices dissented in a joint opinion, declaring that the majority failed to recognize that the "coercive environment" of Brandon's interrogation was rife with "intense psychological pressure intended to overbear a suspect's will and to induce him to make self-incriminating statements," which they identified as "the single most important lesson of *Miranda* and its progeny." *Brandon*, 217 Conn. at 761. In so concluding, the dissent took special care to note the following key factors: (1) that the officers had informed the petitioner that he was their "prime suspect," *Id.* at 775; (2) that "it is undisputed that [the petitioner's] freedom of movement was severely restricted" within the "restricted, locked and secured area, not accessible to the public, where he was left in the immediate control of armed police officers," *Id*. at 776-77; and (3) that questioning a probationer in a probation office, while not sufficient by itself to trigger *Miranda* requirements after *Minnesota v. Murphy*, was still a factor that "highlighted the coercive nature" of the interrogation. *Id*. at 778.

REASONS FOR GRANTING THE PETITION

In light of this Court's holding in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) that a specific class of suspect could be treated distinctly under the "reasonable person" standard, law enforcement and lower courts require clear guidance about how to analyze the context in which *Miranda* warnings must be given to probationers and parolees as a class.

J.D.B. v. North Carolina examined how a "reasonable child" would differ from a "reasonable adult" in the context of the custody analysis prescribed in *Thompson v. Keohane*. 564 U.S. at 271-72. The common characteristics of juveniles as a class

led the Court to hold that the age of a person could be relevant to *Miranda*. Notably, the majority found that juveniles on school grounds face a particular set of coercive factors which can affect the custody analysis:

> A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person "questioned in school" is a "minor," the coercive effect of the schoolhouse setting is unknowable.

Id. at 276. At its core, *J.D.B.* acknowledges that certain classes of persons are more susceptible to coercive pressures than others. Though *J.D.B.* dealt specifically with juveniles, the principle that what is "reasonable" for a person to believe depends in no small part on characteristics of that person, and the context in which that person interacts with law enforcement, applies to classes other than children. *See, e.g., United States v. Rogers*, 659 F.3d 74 (1st Cir. 2011)(finding a petitioner subject to military justice was in custody for *Miranda* purposes when ordered home by a superior to be questioned by law enforcement searching his house); *See also Dickerson v. United States*, 530 U.S. 428 (2000)(finding that the Fourteenth Amendment Due Process inquiry in a coerced confession case revolves around whether a petitioner's free will was "overborne" by circumstances surrounding the confession). The instant case provides the Court with an opportunity to give clear guidance to lower courts on how to examine coercive forces faced by probationers and parolees, and when interrogations involving that

class of previously convicted and sentenced persons become custodial for *Miranda* purposes.

Probationers and parolees do not enjoy the same baseline presumption of innocence as persons who have no active sentences. They face the prospect of being returned to incarceration for offenses as minor as infractions. Their liberty has circumscriptions not shared by the general public. *Cf. Oregon v. Mathiason*, 429 U.S. 492, 500 (1977)(Stevens, J., dissenting)(noting "the State surely has greater power to question a parolee about his activities than to question someone else," and that "a parolee is technically in legal custody continuously until his sentence has been served."). These limitations on liberty are hallmarks of probationers and parolees as a class.

Similarly, a reasonable probationer or parolee should not be treated the same as someone who still enjoys a baseline presumption of innocence. A probationer being questioned by police in a probation office is likely to be there under compulsion, either express or implied, with a much greater risk of adverse consequences than a member of the general public should they choose not to cooperate with police. *Cf. Murphy*, 465 U.S. at 435 (holding that an assertion by the state, whether express or implied, that invoking the Fifth Amendment will result in revocation of probation, would render a probationer's answers "compelled and inadmissible in a criminal prosecution.")

Lower federal courts have attempted to reconcile the "reasonable person" standard with issues specific to **parolees** as a class. *See United States v. Ollie*,

442 F.3d 1135 (8th Cir. 2006)(holding a parolee instructed by his parole officer to meet with police was not present voluntarily despite an "absence of resistance"); *United States v. Barnes*, 713 F.3d 1200 (9th Cir. 2013)(holding a parolee was in custody for *Miranda* purposes when ordered by his parole officer to meet with two FBI agents investigating a new offense). *But see United States v. Newton*, 181 F.Supp.2d 157 (E.D.N.Y. 2002)(holding a parolee questioned by a parole officer while handcuffed and in his underwear in his own home during a warrantless search was not in custody for *Miranda* purposes).

Further, issues involving where *Miranda* warnings must be given to **probationers**, who may enjoy a greater degree of liberty than parolees but still less than the general public, have been addressed by the circuit courts since *Murphy,* with varying results. *See, e.g., McKathan v. United States*, 969 F.3d 1213 (11th Cir. 2020)(holding an admission compelled by a probation officer could not be used to prosecute the probationer for a new crime); *accord United States v. Saechao*, 418 F.3d 1073 (9th Cir. 2005). *But see United States v, Saylor*, 705 Fed.Appx. 369 (6th Cir. 2017)(holding a probationer questioned by armed federal agents in a halfway house kitchen was not in custody for *Miranda* purposes); *United States v. Cranley*, 350 F.3d 617 (7th Cir. 2003)(holding that a probationer was not in custody for *Miranda* purposes when questioned at his probation office by a federal agent with his probation officer present); *Chruby v. Gillis*, 54 Fed. Appx. 520 (3rd Cir. 2002)(holding that a probationer questioned by his probation

officer about a new offense during a scheduled meeting was not in custody for *Miranda* purposes).

Murphy provides a helpful benchmark for the petitioner's case that he was indeed in custody while being interrogated by the detectives at the probation office. In *Murphy*, the petitioner, who was also on probation at the time of the events at issue, had admitted to a therapy group that he had committed criminal acts. Murphy's probation officer, upon learning of his admissions in a group setting, called him into her office to address those admissions. In that office, where he regularly met with his probation officer, and with no armed police present, Murphy repeated his confession, and was subsequently arrested and prosecuted. *Murphy*, 465 U.S at 422-25.

The degree of police domination in *Murphy* was far below that faced by the petitioner in the instant matter. In *Murphy*, the petitioner was questioned by his regular probation officer in the office where they normally met. In the instant case, the petitioner was not in a familiar location, but had been taken to an unfamiliar floor and office within the building, handed over to an unfamiliar authority figure, left without an escort, and left in the custody of two armed police detectives who threatened him with arrest if he did not answer their questions. *Brandon*, 217 Conn. at 763-64, 767.

The *Murphy* majority expressly contrasted their fact pattern to one similar to the case *sub judice*. Here, **police officers**, rather than probation officials, questioned a probationer, which the *Murphy* court declared would be "a different

question" than the one they ruled on. *Murphy*, 465 U.S. at 429 n.5 ("We emphasize that Murphy was not under arrest and that he was free to leave at the end of the meeting. A different question would be presented if he had been interviewed by his probation officer while being held in police custody or by the police themselves in a custodial setting.") As the record demonstrates unequivocally, the petitioner was interviewed by the police themselves in a "coercive environment," taking this case beyond the existing bounds of *Murphy* and making the Connecticut Supreme Court's reliance on that decision erroneous. This misapplication of *Murphy* to situations expressly excluded by the opinion should serve to alert this Court of the need for clarification.

This case presents the Court with an opportunity to clarify *Miranda*'s application to the class of suspects who are on probation or parole. The value of *Miranda* lies not just in its protections for defendants, but in its utility to assist law enforcement officers in making constitutionally sound decisions regarding interrogation and detention practices. *See J.D.B. v. North Carolina*, 564 U.S. 261, 286 (2011)(Alito, J., dissenting)("No less than other facets of *Miranda*, the threshold requirement that the suspect be in 'custody' is designed to give clear guidance to the police.")(Cleaned up).

It is proper for this Court to reexamine the state courts' determination regarding the petitioner's custodial status triggering *Miranda* requirements. "[W]hether a suspect is 'in custody,' and therefore entitled to *Miranda* warnings, presents a mixed question of law and fact qualifying for independent review."

Thompson v. Keohane, 516 U.S. 99, 102 (1995). *Thompson v. Keohane* articulated a two-part test to determine custody for *Miranda* purposes: "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." 516 U.S. at 112. *See also Yarborough v. Alvarado*, 541 U.S. 652 (2004). More importantly, lower courts require this Court's guidance as to how to evaluate a suspect's custodial status during interrogation where they are, by function of law, already deprived of some baseline degree of liberty. *See, e.g., Howes v. Fields*, 565 U.S. 499 (2012)(Alito, J.)(concerning the custodial analysis for already-incarcerated suspects).

Miranda warnings exist to guarantee constitutional rights in a captive setting. *Berkemer v. McCarty*, 468 U.S. 420, 433 (1984) ("The purposes of the safeguards prescribed by *Miranda* are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the 'inherently compelling pressures' generated by the custodial setting itself, 'which work to undermine the individual's will to resist,' and, as much as possible, to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary.")(Cleaned up.) Probationers and parolees should be treated as a distinct class, because they are more susceptible to coercive pressures from law enforcement. Given their unique status within the criminal justice system as persons without the presumption of innocence, and as individuals at the mercy of

their supervisors, the Court should use this opportunity to prevent *Murphy* from being applied in the lower courts as a *per se* barrier to protection for that class.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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