No. 23-1250

IN THE

Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERENCE B. TEKOH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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INTRODUCTION

Petitioner asks the Court to grant certiorari to review a garden-variety ruling on the admissibility of expert testimony. The petition does not accurately characterize the decision below. The Court of Appeals corrected an abuse of discretion by the trial court based on the particular facts of this case, no more, no less, without creating new standards regarding the admission of evidence or the constitutional standards for coerced confessions.

There is no conflict in the Circuits about what was decided in this case. The decision does not require the admission of coerced confession expert testimony or even the admission of all of Dr. Blandón-Gitlin's expert testimony in this case on remand. The decision does not create a presumption for the admission of such testimony. Nor does the decision alter the substantive standards applicable to Respondent's Fifth-Amendment claims in any way. Indeed, the decision does not even prevent the district court from considering limitations on Dr. Blandón-Gitlin's expert testimony on remand. Thus, the petition is premature before there is a decision on the scope of her testimony.

All the decision does is reverse the district court's erroneous, categorical exclusion of Dr. Blandón-Gitlin's highly relevant expert testimony in this case. Nothing about the decision below fits within the criteria for review in this Court under Rule 10.

There is a wealth of scientific research about how interrogation techniques may under certain circumstances lead to coerced, false confessions, the issue at the heart of Respondent's claim. Expert testimony based on this scientific evidence is relevant, and also frequently admitted consistent with Federal Rule of Evidence 702, as interpreted by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny.

To the extent the petition challenges the validity of expert testimony relating to coerced, false confessions, this case is not an appropriate vehicle to resolve that issue. The district court voiced no issue with the scientific basis or reliability of the proposed testimony. The issue in this appeal is confined to the application of well-established relevance principles to the proposed testimony of an expert witness under Fed. R. Evid. 702. All other issues can be considered on remand.

The dissenting judges from the denial of *en banc* review suggest that the panel decision was in response to being reversed by this Court in *Vega v. Tekoh,* 597 U.S. 134 (2022). There is no basis to ascribe such a hidden agenda to the panel majority, nor is such speculation an appropriate basis for review in this Court. The Court of Appeals simply reached a claim for reversal Respondent had raised throughout the case and the appeal, and that the panel explicitly declined to resolve in its initial decision.

The petition should be denied.

STATEMENT OF THE CASE

I. Respondent Is Interrogated by Petitioner in a Windowless Soundproof Room for Approximately an Hour and Then Is Prosecuted Based on His Alleged Statements.

Respondent was a twenty-five-year-old immigrant from Cameroon working as a Certified Nursing Assistant in the radiology department at LAC + USC Medical Center in Los Angeles. He was performing routine patient transportation duties, wheeling a heavily sedated female patient, who had just experienced stroke-like symptoms and undergone an emergency MRI, to her hospital room. He was never alone with the patient. After she emerged from her stupor a few hours later, the patient claimed Respondent touched her improperly during this transportation, a claim that was not credited initially by the nurses.

Petitioner, a deputy sheriff, spoke briefly with the patient, identified Respondent as the "male black" who transported her, and then interrogated him in a small windowless, soundproof room used by doctors to read images and dictate reports. Petitioner did not give *Miranda* admonitions. According to Respondent and several co-workers, after about an hour in the room with the door shut, Respondent wrote a brief vague, apologetic confession that contained no details.

The accounts of what happened during the interrogation diverge entirely. While Petitioner insists that the statements Respondent gave were voluntary and immediate, Respondent testified to the use of both physical and psychological coercion by Petitioner during his interrogation leading to a false confession. The jury heard testimony of varying conduct by Petitioner, including that he denied Respondent a lawyer when he asked for one, that Petitioner rested his hand on his firearm, that he threatened Respondent and his family with reports to immigration, referring to him as a jungle n-word, and used minimization techniques, such as falsely suggesting that Respondent's actions could be excused because he was not presently in a relationship.

Respondent was prosecuted in state court for an alleged sexual assault based principally on the written confession obtained during his interrogation. After Petitioner testified about Respondent's statements, the first criminal trial ended in a mistrial because of the prosecution's failure to turn over DNA evidence that derived from a male other than Respondent. Petitioner testified again at Respondent's second criminal trial about the confession and other alleged statements made by Respondent in the course of his interrogation.

Dr. Blandón-Gitlin was deemed an expert on coerced confessions and testified in Respondent's second criminal trial that the confession itself contained scientifically recognized indicia of coercive techniques used by Petitioner during the interrogation

that rendered Respondent's "confession" unreliable. The criminal jury rejected the confession, as well as the identification by the alleged victim, and acquitted Respondent.

II. Respondent Sues and the District Court Bars Testimony from Dr. Blandón-Gitlin on the Ground That it Is Irrelevant.

After his acquittal, Respondent brought this 42 U.S.C. § 1983 civil-rights action against Petitioner for causing the use of the alleged coerced statements against Respondent in his criminal trial. The district court declined to instruct the jury on Respondent's Fifth-Amendment claim and refused to allow Dr. Blandón-Gitlin to offer expert testimony about how the various aspects of the interrogation, as testified to by Respondent, could coerce a false confession. The district court did not dispute that Dr. Blandón-Gitlin's testimony was reliable or scientifically-based, the sole basis for exclusion was relevance and that her testimony would only improperly vouch for Respondent's credibility.

After the jury rendered a verdict for Petitioner the district court granted Respondent's motion for a new trial based on the failure to instruct on Respondent's Fifth-Amendment claims. In the second civil trial the district court rejected Respondent's proposed Fifth-Amendment jury instruction based on the failure to provide *Miranda* admonitions. Instead, the district court gave an instruction based on a totality of circumstances test to determine whether

Respondent's alleged statements were voluntary or coerced. Petitioner again moved to exclude Dr. Blandón-Gitlin entirely, citing Fed. R. Evid. 702, 703, and 402, but not Rule 403. 3 EOR 449, 451-52, 6 EOR 1300; *see also* 1 EOR 203:23- 1 EOR 204:3.[1] The district court again refused to allow Dr. Blandón-Gitlin to testify as an expert witness about Petitioner's coercive interrogation techniques, excluding the testimony as irrelevant under Rule 702.

Dr. Blandón-Gitlin is a professor of Psychology who received her doctorate in 2005. At the time she had qualified to testify as an expert in 37 cases in California. 1 EOR 79-80. She is an author of several peer reviewed publications and studies related to coercion and false confessions, some with preeminent psychologists in the field. 3 EOR 475-80, 514; *see* Pet. 27, 32.

Dr. Blandón-Gitlin would have testified about the psychological effects that the police interrogation techniques alleged to have occurred here can have and how they can contribute to a coercive interrogation. 1 EOR 82-83. This includes the effects of evidence ploys as well as minimization and maximization techniques. 1 EOR 83-84. Dr. Blandón-Gitlin would have testified that the language in Respondent's

[1] The district court also did not rule on admissibility under Rule 403, nor did the Court of Appeals. Pet. App. 65a, 4a. Petitioner's assertion that the district court ruled on Rule 403 grounds, Pet. 14 (citing App. 29a), is not correct. App. 29a. The district court cited Fed. R. Evid. 702, the principal ground on which Petitioner moved and not Fed. R. Evid. 403, on which he did not move. App. 29a.

confession reflected and was consistent with the use of minimization techniques and other forms of coercion. 1 EOR 81.

Deprived of critical testimony from Dr. Blandón-Gitlin, the jury rendered a verdict for Petitioner in the second trial.

III. The Court of Appeals Reverses.

The Court of Appeals reversed the judgment on the ground that a government actor introducing un-*Mirandized* statements to prosecute Respondent in the prosecution's case-in-chief was sufficient in itself to establish a Fifth-Amendment violation so long as the jury found that Respondent was subjected to custodial interrogation. The Court of Appeals expressly did not decide the second issue raised on appeal, whether Dr. Blandón-Gitlin was excluded erroneously. *Tekoh v. Cnty. of Los Angeles*, 985 F. 3d 713, 726 (9th Cir. 2021).

After this Court reversed the Court of Appeals in *Vega v. Tekoh*, 597 U.S. 134 (2022), holding that a *Miranda* violation alone did not give rise to liability under 42 U.S.C.§1983, Respondent requested that the Court of Appeals reach his alternative ground for reversal: that the refusal to allow Dr. Blandón-Gitlin's expert testimony was an abuse of discretion. After supplemental briefing, the panel majority agreed that the categorical exclusion of Dr. Blandón-Gitlin's testimony was an abuse of discretion requiring reversal. Judge Miller dissented from this decision.

The panel majority reversed the district court because it abused its discretion by failing to conduct a proper relevance inquiry to determine whether Dr. Blandón-Gitlin's testimony could "help the trier of fact understand the evidence." Fed. R. Evid. 702 (a). The panel majority noted Petitioner did not dispute Dr. Blandón-Gitlin's testimony was scientific and based on reliable principles, determining only whether it would be relevant. Pet. App. 2a n. 1. As the panel majority noted, Rule 702(a) is "in essence a relevance inquiry." Pet. App. 2a (quoting *Hemmings v. Tidyman's Inc*, 285 F 3d 1174, 1184 (9th Cir. 2002)). The panel majority did not require that Dr. Blandón-Gitlin's testimony be received in its entirety as proposed and left open the district court's discretion to limit her testimony for other reasons. Pet. App. 4a, 65a, 70a-71a.

Petitioner sought rehearing *en banc*, which was denied on January 25, 2024. Judge Collins wrote a dissent from the denial on behalf of ten judges. While acknowledging that the panel majority did not mandate the admission of expert testimony on coerced confessions in this or any other case the dissenters stated they were concerned that the decision "could be read as effectively requiring" admission. Pet. App. 72a (Collins, dissenting). Judge Miller did not join the dissent from en banc review.

Judges Wardlaw and Murgia, the panel majority, joined by Judge Gould, wrote a concurrence in response to the dissent stating in detail the reasons why the district court abused its discretion and correcting the

dissent's mischaracterization of the panel majority decision. Pet. App. 59a-71a. The concurrence responds directly to Petitioner's concerns and denies that the panel majority requires admission of such expert testimony in all cases. Pet. App. 69a-71a.

As the panel majority noted, the district court's opinion that Dr. Blandón-Gitlin's scientific testimony was not *relevant* and lacked any potential to assist a trier of fact was error. Pet. App. 2a & n. 1, 67a. That decision ignored the fact that the testimony was relevant to whether the techniques Respondent alleged were coercive. Pet. App. 66a-67a. It also ignored that Dr. Blandón-Gitlin's testimony was relevant because the jury could find the parties partially credible and that any combination of these techniques occurred, and Dr. Blandón-Gitlin's testimony would provide context for the jury to assess the coercive impact of techniques the jury found that Petitioner employed. Pet. App. 66a-67a. The panel majority found that Dr. Blandón-Gitlin's expert testimony was relevant. However, the decision allows the district court to address Petitioner's other arguments to limit her testimony on remand. Pet. App. 4a, 69a-71a.

REASONS FOR DENYING THE WRIT

The petition should be denied for at least three reasons. First, there is no conflict among the Circuit courts on the principles applicable to the admission of expert testimony relating to coerced confessions. There is no question that, as a general matter, such testimony is relevant expert testimony. It is frequently

admitted based on well-established standards. The panel majority did not purport to change these standards.

Even Petitioner's primary case, *United States v. Benally*, 541 F. 3d 990, 994 (10th Cir. 2008), recognizes that expert testimony about coerced confessions may be appropriately admitted in some circumstances. The principles governing the admission of such testimony under Fed. R. Evid. 702 are well established and the opinion below breaks no new ground in the application of those principles.

Second, the district court clearly abused its discretion in categorically rejecting all of Dr. Blandón-Gitlin's testimony. The issue under Fed. R. Evid. 702 was whether Dr. Blandón-Gitlin's testimony would have assisted the jury in making its own conclusions under a totality-of-the-circumstances test. It is obvious that knowing about the science of false confessions and coercive interrogation techniques would have been helpful to the jury in evaluating the trial evidence concerning Respondent's interrogation and in deciding whether Respondent's confession was coerced.

The proffered testimony was not improper credibility vouching testimony. Of course, expert testimony often has the effect of favorably impacting the presentation of the party offering it. It is no bar to expert testimony that it might cause the jury to see the factual circumstances in the way the proffering party hopes. Very little expert testimony would be admitted if that were the rule.

Here the proffered expert testimony would have explained how certain interrogation techniques can sometimes coerce innocent people to confess to crimes they did not commit, a counterintuitive fact for the ordinary juror, although one supported by extensive scientific research. Respondent's confession and the circumstances surrounding it were crucial issues in the case. Excluding this testimony put the district court's thumb on the side of the Petitioner's position. The jury should have received information about the coercive effects of the interrogation techniques Respondent claimed were used against him to weigh the totality of circumstances surrounding Respondent's interrogation. There is no longer any dispute about the substantive standards applicable to Respondent's Fifth Amendment claim.

Third, because the decision below breaks no new ground and is based on well-established principles governing the admission or exclusion of expert testimony, there is no nationwide risk to police practices inherent in the decision below. Indeed, only one unpublished case has cited the panel's decision in the last year and no case has cited the opinions issued after *en banc* review was denied. The decision does not purport to alter police interrogation practices in any way. Coerced confessions violate the Fifth Amendment under well-established standards derived from this Court's decisions. Nothing in the decision below changes those. Allowing jurors access to the science relating to the coercive effects of certain interrogation techniques does not amount to a ban on any particular technique.

In short, the panel majority's routine decision is unlikely to have much of an impact on any court or police agency, much less the dramatic, catastrophic impacts Petitioner and his *amici* claim.

I. There Is No Circuit Split.

Petitioner's primary argument for review is that the Court of Appeals' decision created a conflict among the Circuits. This argument is based on a mischaracterization of the decision, which does not impose a mandate to admit this kind of expert testimony in every case. Instead, where the scientific validity or reliability of the proposed testimony is not at issue, the panel majority found that the district court abused its discretion in deciding that the proposed testimony was not relevant under accepted Rule 702 analysis and categorically excluding it.

The Court did not hold more. Pet. App. 4a, 65a-66a, 70a-71a. It did not conduct a Rule 403 analysis. *Id.* Indeed, even Judge Miller, the dissent in the panel opinion, did not view the panel decision as raising any of the purported prejudice that is the basis of this Petition or the en banc dissent, or anything other than a decision on the facts of this case under Rule 702a or purported vouching. Pet. App. 5a-7a. Judge Miller also did not join the dissenters from the denial of en banc review. Pet. App. 71a.

Petitioner's primary case is *United States v. Benally*, 541 F. 3d 990 (10th Cir. 2008), a criminal case in which the Tenth Circuit affirmed the exclusion of an

expert witness on false confessions. However, the proposed witness had not examined the defendant and was not planning to testify about the actual circumstances surrounding the defendant's confession. She was planning on testifying more generally, including about conditions (e.g. confessions under torture) not at issue in that case. As a result, the trial court concluded that the prejudicial effect of the testimony under Fed. R. Evid. 403 outweighed its minimal probative value. The district court in this case did not conduct a Rule 403 balancing and Petitioner did not raise one or move on the issue.

Benally's exercise of discretion was tied directly to the particular facts of that case and the specific expert testimony proffered. The Tenth Circuit did not purport to establish any new legal principles regarding the admission of expert testimony and, as noted above, and even *Benally*, despite its critical approach to coerced confession testimony, recognized that "a district court may not exclude all expert testimony of this variety . . . ." 541 F. 3d at 994. The district court in this case did engage in a blanket exclusion of this highly relevant testimony.

By contrast here, the core of Dr. Blandón-Gitlin's proffered testimony was directed to the particular circumstances and issues involved in this case and was designed to help jurors understand the fact that sometimes innocent people confess to crimes they have not committed because of coercive interrogation techniques.

Similarly, this case is nothing like the Second Circuit's decision in *Nimely v. City of New York*, 414 F. 381 (2d Cir. 2005). In *Nimely,* the Court rejected a police expert's testimony that the defendant police officers in a civil excessive force case would have no reason to lie about the alleged excessive force in the case. *Nimely* held that the exclusion of the expert's opinion about the credibility of the police officers' testimony was not a close case. The expert "rejected" the possibility that the officers had lied and gave reasons why officers have no incentive to lie in excessive-force cases. *Id*. at 388. Such direct credibility assessments by an expert are plainly inadmissible under Rules 403 and 702. Nothing in the Court of Appeals' decision below is in conflict with that principle or with the reasoning in *Nimely*.

The district court could have limited Dr. Blandón-Gitlin's testimony to preclude opinions that Respondent was credible or his confession false. That was not its purpose. Instead, her testimony was intended to provide the jury with the scientific research relating to the kinds of interrogation techniques that sometimes lead to coerced, false confessions. This is a separate question from whether either Petitioner or Respondent was a credible witness about what actually happened between them. Dr. Blandón-Gitlin was not going to testify about who the jury ought to believe. Instead, she would have explained how even innocent people might make a false confession when subjected to the kinds of interrogation techniques alleged by Respondent. Excluding this testimony left the jurors with the

common-sense, though sometimes erroneous, belief that innocent people do not confess to crimes they did not commit. This decision unfairly weighted the evidence in Petitioner's favor and he exploited this unfairness during the trial.

The state cases cited by Petitioner, Pet. 17, are based on an outdated view of the science of coerced confessions. The Pennsylvania Supreme Court excluded false confession expert testimony in *Commonwealth v. Alicia*, 625 Pa. 429 (2014), because it believed that the phenomenon of false confessions was not beyond the common sense or experience of jurors. *Id.* at 446-47. This assumption is plainly wrong in light of the science.

Similarly, *State v. Cobb*, 30 Kan. App. 2d 544 (2002), reflects an outdated approach to the science of false confessions. The state appellate court based its decision in large part on prior Kansas Supreme Court cases excluding eyewitness expert testimony. *Id.* at 567. That justification was overruled. *State v. Carr*, 300 Kan. 1 (2014) (finding automatic rules of exclusion for such testimony unwarranted), *rev'd and remanded on other grounds* 577 U.S. 108 (2016). The science and jurisprudence of expert eyewitness testimony has changed since 2002 and such expert testimony is now frequently admitted in criminal cases. *See, e.g.*, THE PSYCHOLOGY AND SOCIOLOGY OF WRONGFUL CONVICTIONS: FORENSIC SCIENCE REFORM (Wendy J. Koen & C. Michael Bowers eds., 2018); THE WRONGFUL CONVICTIONS READER (Russell D. Covey & Valena E. Beety eds., 2018); GISLI H. GUDJONSSON, THE

PSYCHOLOGY OF FALSE CONFESSIONS: FORTY YEARS OF SCIENCE AND PRACTICE (2018); Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 AM. PSYCH. 63 (2018); GISLI H. GUDJONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK (2003); Saul M. Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 15 (2010) The science and jurisprudence relating to false confessions has similarly evolved in the last decades and such testimony is no longer excluded categorically, as the district court did in this case. *Benally*, *Alica* and *Cobb* reflect an outdated approach to the science of false confessions. The decision below recognizes the science and its relevance to a totality-of-circumstances analysis.

Petitioner's reference to *United States v. Griffin*, (C.A.A.F. 1999) is misleading. The reference to acting as a "human lie detector" related to the exclusion of the expert's opinion that the confession at issue was false. Dr. Blandón-Gitlin was not going to opine on the falsity of the confession. Moreover, the expert testimony in *Griffin* was based on testimony the military judge, as trier of fact, had already found to be "not cr edible and not believable." *Id.* at 285. Finally, the court noted that even the proposed expert had uncertainty about the science on which he relied on. *Id.* In the twenty-five years since *Griffin*, the scientific evidence underlying Dr. Blandón-Gitlin's testimony is far more extensive and reliable which explains why the district court at no point challenged the scientific reliability, as opposed to the relevance, of her testimony.

The exclusion of experts in such criminal cases, moreover, is based on concerns that do not necessarily apply in civil cases. In criminal cases, such exclusions have been tied the fact that the experts' opinions go to whether a confession is actually false – and thus that the defendant's account of events underlying the action in fact true. *E.g. Griffin*, 50 M.J. at 284 (citations omitted); *Benally*, 541 F.3d at 995.

Dr. Blandón-Gitlin's testimony concerning the significance of interrogation tactics would not do this. Such testimony would simply state that *if* what Respondent said was true, the tactics alleged could have certain psychological effects as accepted science shows. Unlike in a criminal case, this opinion testimony does not go to whether a party's account of the events at issue is true or more likely. Such testimony in a civil case would go to whether Plaintiff had a legal claim under the totality of circumstances test – if the trier of fact believed what he said to have occurred. That is not vouching: it is what every expert does. Experts frequently assume one version of contested facts to be true and opine about it. *See, e.g.*, *Williams v. Illinois*, 567 U.S. 50, 57 (2012) ("Under settled evidence law, an expert may express an opinion that is based on facts that the expert assumes, but does not know, to be true.").

Several of the other cases cited by Petitioner to demonstrate a conflict among lower courts actually contain holdings and reasoning in alignment with the decision below. *See People v. Kowalski*, 492 Mich. 106, 129 (2012) (rejecting the methodology of the proffered

expert but finding that expert testimony relating to the science of false confessions could be relevant and admissible because it was beyond the common knowledge of the ordinary person); *Nunez v. BNSF Railway, Co.*, 730 F.3d 681, 684 (expert can testify that the witnesses' account could have occurred but not that their testimony was accurate in fact); *State v. Rafay*, 168 Wash. App. 734, 789 (2012) (expert witness testimony excluded where it was debatable whether it would have been helpful); *United States v Diaz*. 876 F. 3d 1194 (9thCir. 2017) (expert witnesses' testimony did not substitute expert's judgment for the jury).

In sum, there is no conflict between the holdings in *Benally* or *Nimely* and the decision below that merits review in this Court. These cases simply reflect courts applying well-established legal standards to the varying facts and circumstances of the cases coming before them.

II. The Court of Appeals' Decision Was Based on Settled Law.

The Court of Appeal's decision, though limited in scope, was also correct in finding that it was error to exclude all of Dr. Blandón-Gitlin's testimony on relevance grounds.

A. The Importance of Expert Testimony Concerning Coerced, False Confessions

As Justice White recognized more than fifty years ago, a confession is "probably the most probative and damaging evidence that can be admitted." *Bruton v. United States*, 391 U.S. 123, 139 (1968) (White, J., dissenting). For this reason, false confessions are one of the principle causes of wrongful convictions. *See generally*, Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confessions and Wrongful Conviction*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS 9 (G. Daniel Lassiter & Christian A. Meissner eds., 2010). Indeed, "[t]he percentages of miscarriages of justice involving false confessions range from 14% to 60%." *Id*. at 12. Respondent was almost the victim of a wrongful conviction. Fortunately, Dr. Blandón-Gitlin was permitted to testify in his criminal trial, leading to his acquittal.

One reason for the powerful impact of false confessions in the criminal justice process is that they are counter-intuitive because there is a commonly held presumption that innocent people do not confess to crimes they did not commit. Linda A. Henkel et al., *A Survey of People's Attitudes and Beliefs About False Confessions*, 26 BEHAV. SCI. & L., 555, 556 (2008). In studies, people routinely assert that it would be "incredible" for someone to confess to a crime they did not commit. WELSH S. WHITE, MIRANDA'S WANING

PROTECTIONS: POLICE INTERROGATION PRACTICES AFTER DICKERSON 139 (2001).

The point is that there is a substantial body of scientific evidence about the use of psychologically coercive interrogation practices and their impact on securing false confessions and wrongful convictions by undermining a person's ability to resist confession. *See, e.g.*, Deborah Davis & William T. O'Donohue, *The Road to Perdition: "Extreme Influence" Tactics in the Interrogation Room*, in HANDBOOK OF FORENSIC PSYCHOLOGY: RESOURCES FOR MENTAL HEALTH AND LEGAL PROFESSIONALS, 897 (William T. O'Donohue & Eric R. Levensky eds. 2004); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997).

This scientific evidence was plainly relevant to the decisions the jury was asked to make under the totality of circumstances test.

B. Expert Testimony About Coerced, False Confessions Is Frequently Admitted.

Numerous cases support the admission of false confession expert testimony. For example, Professor Richard Leo, Dr. Blandón-Gitlin's mentor, was approved in a leading Ninth Circuit § 1983 case arising from coercive interrogation tactics that elicited false confessions. *Crowe v. Cnty. of San Diego*, 608 F.3d 406, 431 (9th Cir. 2010); *see also United States v. Preston*, 751 F.3d 1008, 1022 (9th. Cir. 2014) (en banc)

(citing with approval Mr. Leo's book POLICE INTERROGATION AND AMERICAN JUSTICE (2008), and his articles *The Problem of False Confessions in the Post-DNA World,* 82 N.C. L. REV. 891 (2004), and *One Hundred Years Later: Wrongful Convictions After a Century of Research*, 100 J. CRIM. L. & CRIMINOLOGY 825 (2010)); *see also Rohr v. State*, 523 P.3d 549 (Nev. 2023) (error to limit Mr. Leo's testimony).

Similarly, in *Lunbery v. Hornbeak*, 605 F.3d 754 (9th Cir. 2010), Judge Hawkins explained the need for such expertise, observing in relation to Mr. Leo's collaborator Richard Ofshe, Ph.D, that the accused "had confessed and it is hard to imagine anything more difficult to explain to a lay jury," that people "confess to crimes they did not commit," and that among "hundreds of persons exonerated of serious crimes through DNA testing are numerous individuals who earlier confessed." *Lunbery,* 605 F.3d at 765 (Hawkins, J., concurring). As Judge Hawkins further explained:

> [J]urors would have been better equipped to evaluate [the declarant's] credibility and the confession itself had they known of the identified traits of stress-compliant confessions and been able to compare them to her testimony. Reversing a conviction where the trial court excluded the testimony of the very expert involved here, the Seventh Circuit noted that Dr. Ofshe's testimony went to the heart of the defense, and had it been admitted, it "would have let the jury know that a

> phenomenon known as false confessions exists, how to recognize it, and how to decide whether it fit the facts of the case being tried."

Id. at 765 (quoting *United States v. Hall*, 93 F.3d 1337, 1345 (7th Cir. 1996)).

The Ninth Circuit is not alone in these conclusions. In *United States v. Hall*, 93 F.3d 1337, 1341 (7th Cir. 1996), a criminal defendant proffered expert testimony to establish that his admissions were not reliable. The district court barred the testimony in language similar to the district court here, that the expert "would add nothing to what the jury would know from common experience" and "the jury could appreciate whether police interrogation techniques were suggestive by themselves." *Id.* The Seventh Circuit reversed, noting that "[p]roperly conducted social science research often shows that commonly held beliefs are in error." *Id.* at 1345.

The Fourth Circuit addressed the exclusion of an expert who would have testified, similarly to Dr. Blandón-Gitlin, that false confessions do occur, "that various techniques used by law enforcement agents, such as false accusations and false promises can influence a person's decision to confess," and that particular characteristics of the person interrogated affect the likelihood of a false confession. *United States v. Belyea*, 159 F. App'x 525, 530 (4th Cir. 2005). Again, a district court excluded the expert's testimony, and again the Court of Appeals reversed, in part because

"the phenomenon of false confessions is counterintuitive." *Id.* at 529-30; *see also United States v. Roark*, 753 F.2d 991, 994 (11th Cir. 1985) (reversible error to exclude testimony of expert psychologist "designed to help the trier of fact determine whether it was more or less probable that [the person interrogated] was somehow psychologically coerced into making the inculpatory statements."); *accord Boyer v. State*, 825 So. 2d 418, 420 (Fla. Ct. App. 2002) ("It is for the jury to determine the weight to give to Dr. Ofshe's testimony, and to decide whether they believed his theory or the more commonplace explanation that the confession was true."); *Rohr*, 523 P.3d (finding it error to exclude Mr. Leo from testifying as to the impacts of particular interrogation techniques).

Thus, the introduction of expert testimony about coerced confessions and the techniques that cause them is supported by well-established standards. The point is not that the admission of such testimony is mandatory in all circumstances or forms. No decision, including the decision below, says this. Nor may such expert testimony be categorically excluded. The Court of Appeals grounded its decision under these well-established standards.

C. The Relevance of Dr. Blandón-Gitlin's Proposed Expert Testimony

Dr. Blandón-Gitlin is an expert in the field of coercive interrogation techniques and false confessions. She has testified in numerous trials,

including Respondent's own criminal trial, on these issues. The district court did not challenge her expertise or the scientific basis for her opinions or their reliability.

The main point of Dr. Blandón-Gitlin's expert opinions was to provide the jury with scientific research concerning the phenomenon of false confessions resulting from coercive interrogation techniques to counteract the otherwise unrebutted common assumption that innocent people do not confess to crimes they did not commit and to provide the jury with the science regarding coercive interrogation techniques. Dr. Blandón-Gitlin would have testified about the coercive effects of the following techniques, alleged to have been employed by Petitioner. Under the district court's totality of circumstances jury instruction, Dr. Blandón-Gitlin's testimony was clearly relevant to the decisions the jury was asked to make.

1. The Evidence Ploy

According to Dr. Blandón-Gitlin's Fed. R. Civ. P. 26(a)(2) expert report, "[t]he evidence of record suggests various factors that are known in psychological science to influence the reliability of confession evidence." 1 EOR 81. One is the "evidence ploy," in which suspects are presented with fake evidence to convince them that they are caught and that denials will not help get them out of the situation. 1 EOR 83-84. As Dr. Blandón-Gitlin would have testified, the science shows that in nearly all cases in

which people have been impelled to falsely confess, an evidence ploy has been used. *Id.*

Here, according to Respondent, Petitioner used an evidence ploy by asserting there was video of him touching the patient when there was none. Dr. Blandón-Gitlin would have also explained that a false video evidence ploy could contribute to an innocent person feeling compelled to create a false confession, believing there would be no harm because the video would be exonerating. 1 EOR 91. With the benefit of Dr. Blandón-Gitlin's expert testimony, the jury could have concluded that to be precisely what happened here.

2. The Minimization Tactics

Dr. Blandón-Gitlin would have informed the jury about the possible impact of Petitioner's "minimization tactics." She would have testified that minimization tactics are face-saving excuses created by an interrogator to explain why the person committed the act, and to imply accepting such an excuse could result in leniency and a way out of the situation. 1 EOR 84. She could have testified that minimization tactics are another situational risk factor associated with police-induced false confessions. *Id.*

Dr. Blandón-Gitlin would have explained that Respondent's written confession reflects an interrogator's use of minimization tactics: that his written confession stating "I am single and currently don't have a girlfriend and became excited" (an untrue

statement according to Respondent's trial testimony and that of his girlfriend) would be a textbook example of minimization tactics and theme development by an interrogator. 1 EOR 90. Underscoring the effect of such minimization tactics, Respondent thought he would return to his job after he wrote the statement. 2 EOR 379-80.

3. The Maximization Tactics and Threats

Dr. Blandón-Gitlin also would have explained the potential impact of Petitioner's "maximization tactics." 1 EOR 90. Dr. Blandón-Gitlin could have testified that maximization tactics suggest a more serious situation, as an alternative to the minimization scenario. 1 EOR 84. She would have testified that the idea is to "suggest a bad theme (e.g., you are a sexual predator) along with the good theme (e.g., people make mistakes, you are a human) with the goal that the suspect selects the good scenario and implicates himself." 1 EOR 84.

Dr. Blandón-Gitlin could have noted the circumstances alleged here (including yelling, derogatory language, threats of deportation, or stepping on Respondent's toes) exceeded customary maximization scenarios in policing, and so could have had a particularly pronounced effect. 1 EOR 90.

Dr. Blandón-Gitlin would have also explained that as a resident alien Respondent was more vulnerable to maximization tactics. 1 EOR 85-87. A

person who is a foreigner and has a lack of knowledge of the legal system and police investigation process can be particularly sensitive to coercion, especially in the absence of *Miranda* admonitions. *Id.*[2]

D. Dr. Blandón-Gitlin's Testimony Was Relevant.

The district court categorically excluded Dr. Blandón-Gitlin's testimony as irrelevant, holding that if one believed all of the facts stated by Respondent then a jury could "pretty much" determine that Petitioner had coerced a confession, and if a jury believed Petitioner, then they would find his acts were not coercive. 1 EOR 183, 217.

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[2] Petitioner criticizes this testimony by misrepresenting it. Pet. 9. Dr. Blandón-Gitlin could have testified to how Respondent's having been from a different culture, Cameroon, could affect his interactions with and fear of the police, if the jury believed Petitioner had leveraged that fear. 1 EOR 84-87. Dr. Blandón-Gitlin did not simply testify that "being a foreigner" or "not a member of the dominant" culture increases the risk of false confession. *Id.* The reliability and validity of this sort of testimony, moreover, was in no way refuted below to the extent Petitioner seeks to do so here. Finally, Dr. Blandón-Gitlin's testimony would not "resolve the credibility contest between Vega and Tekoh." Pet. 9. As described above such testimony would only address the significance of what occurred if the jury believed Respondent's recitation of events. This testimony would not require that the jury resolve any credibility dispute in one party's favor or the other.

As the panel majority recognized, the jury had to decide what interrogation techniques were actually used and the possible coercive impact of the techniques they found. The jury had choices about what occurred beyond the binary choice that the district court assumed.[3] Pet. App. 66a-67a.

The legal issue in this case was whether Petitioner used tactics that coerced Respondent into confessing rather than the confession being voluntary. The jury was instructed that it should consider whether an officer uses techniques which "undermine a person's ability to exercise his or her free will." 1 EOR 12. The jury was instructed that in determining whether this occurred, it must consider "the objective totality of all the surrounding circumstances," which "depends on the details of the interrogation." *Id.*

Whether an environment can overbear a person's will has long been determined by the totality of the circumstances. *E.g. Reck v. Pate*, 367 U.S. 433, 440 (1961) ("In resolving the issue all the circumstances attendant upon the confession must be taken into account. . . ."); *Leyra v. Denno*, 347 U.S. 556, 558 (1954) (similar); *Miranda v. Arizona*, 384 U.S. 436, 534-535 (White, J., dissenting) (noting that various factors have "all been rightly regarded as important data bearing on the basic inquiry . . . ."); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

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[3] The jury also received jury instructions that they may pick whatever aspects they found plausible from each party's testimony about what happened to Respondent. 1 EOR 9.

Dr. Blandón-Gitlin's testimony would have helped the jury evaluate the conflicting evidence presented and the "totality of all the surrounding circumstances." The jury was entitled to its own conclusion on each disputed fact, believing any combination of facts to which witnesses testified, such as the length of time and whether the door was closed, or whether Petitioner was accusatory, used an evidence ploy, or threatened to report Plaintiff and contributed to a coercive environment. At a minimum, Respondent should have been allowed to use Dr. Blandón- Gitlin's testimony about evidence ploys, "minimization" and "maximization" tactics to explain his own behavior.

Rule 702 permits expert testimony if it would help the trier of fact to understand the evidence, or determine any fact at issue, Fed. R. Evid. 702(a), and it is based in sound data, principles, and application to the facts of the case. Fed. R. Evid. 702(b)-(d). In essence, expert testimony must have some relevance and be reliable. *E.g. Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999); *Daubert v. Merrel Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993) ("Pertinent evidence based on scientifically valid principles will satisfy those demands."). Relevance to a case, or the ability to help the trier of fact determine any fact, is not a high standard; indeed it is satisfied testimony would be of any help to a trier of fact; it need not even "appreciably" help them. Fed. R. Evid. 702 Advisory Cmmtee Notes (2023 Amendment); *Daubert*, 509 U.S. at 591 (noting the condition that expert testimony help a jury "goes primarily to relevance. 'Expert testimony

which does not relate to any issue in the case is not relevant and, ergo, non-helpful.'") (citation omitted). Relevance is that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Daubert*, 509 U.S. at 587 (citing Rule 401 and noting that the standard of relevance "is a liberal one."). As addressed above and as the Court of Appeals held, Dr. Blandón-Gitlin's testimony was plainly relevant to a consideration of the totality of circumstances surrounding Respondent's interrogation.

How minimization and maximization tactics, evidence ploys and threats undermine a person's will may also not be understood by jurors who have never been interrogated, and who might therefore assume that no one would confess falsely to a crime. Without Dr. Blandón-Gitlin's testimony jurors were left with the common sense view that someone in Respondent's position would not have confessed to something he did not do and thus would be inclined to accept Petitioner's version of the interrogation, unfairly prejudicing Respondent.

Dr. Blandón-Gitlin's expert testimony would explain how people can be coerced into unreliable confessions without physical abuse, testimony that was especially important given defense counsel's arguments throughout trial, such as the opening statement: "Mr. Tekoh will testify that he was not handcuffed. Nobody pointed a gun at him. Nobody punched him, kicked him." 2 EOR 235. Defense

counsel added "the evidence will show, and Respondent's co-workers will all testify, that they did not hear any yelling. They did not hear any screaming. They did not hear any crying. They didn't hear any cries for help coming from that room." 2 EOR 233; *see also, e.g.,* 2 EOR 298-300 (eliciting extensive testimony as to whether Respondent was beaten, pepper sprayed, tasered, or shot).

Had Dr. Blandón-Gitlin been permitted to testify, Respondent would have countered these arguments with expert testimony that tactics such as evidence ploys, minimization and maximization techniques, and implicit threats can contribute to an environment overcoming the ability to exercise free will during a police interrogation without physical violence.

On one hand, Petitioner testified that he asked no questions before Respondent "[j]ust sat there and wrote his letter." 2 EOR 372-73. According to Respondent, Petitioner used what Dr. Blandón-Gitlin identified as a classic evidence ploy, claiming to have a video of the incident, leading Respondent to conclude that he could sign off without consequences because what turned out to be a non-existent video would exonerate him. 2 EOR 279. Respondent testified that Petitioner insisted on his guilt and "kept pounding on me and wouldn't take no for an answer." 2 EOR 233. Then Petitioner switched to minimization tactics, for example telling Respondent, "We're going to start by showing the remorse to the judge," and offering excuses for the behavior, such as lacking a girlfriend,

2 EOR 284, *Tekoh*, 985 F.3d at 715, alternating with direct threats. 2 EOR 282.

Dr. Blandón-Gitlin would have described the content of Respondent's written confession as a textbook example of theme development by the interrogator's minimizing tactics, and an absence of reliability indicators, such as details of the crime (for example, no location in the hospital for the alleged assault was given) that one would expect in an confession without coercive tactics. 1 EOR 90.

Defense counsel's trial arguments underscored the prejudice. In closing, he argued that "Mr. Tekoh had no corroborating evidence." 2 EOR 403. "[T]here is no corroborating evidence to support his claim." 2 EOR 404. Defense counsel reviewed the written confession word-by-word arguing that the text proved the absence of any coercive tactics. 2 EOR 401. Again, had Dr. Blandón-Gitlin been permitted to testify, she would have been able to explain how, according to the science, the text shows that certain tactics occurred, and how they could have in the totality of circumstances contributed to a coercive environment.

E. Dr. Blandón-Gitlin's Additional Testimony Was Not Vouching, or Impermissible. Moreover the District Court Can Address Purportedly Inappropriate Testimony on Remand.

As addressed above, Dr. Blandón-Gitlin's testimony is not impermissible "vouching." Petitioner

makes much of aspects of isolated phrases in Dr. Blandón-Gitlin's report, deeming some impermissible vouching. Pet. 23-24. For example, Petitioner argues that Dr. Blandón-Gitlin's testimony is vouching since she would have testified that Respondent's confession was unreliable "because Mr. Tekoh's accounts of events' were corroborated by his co-worker's testimonies . . . ." Pet. 23 (quotation marks omitted). That is not what Dr. Blandón-Gitlin stated. Her opinion was that the science shows confessions made under the circumstances that Respondent and his coworkers alleged can be unreliable, and the conditions can contribute to a coercive environment (science which was never contradicted below). 1 EOR 81.

Nor, obviously, would Dr. Blandón-Gitlin testify that the statement was unreliable because the interrogation was not recorded. Pet. 23. She describes her opinions above, after which she states what is a true fact. "The interrogation was not recorded." 1 EOR 81. Nothing about this is vouching.

Additionally, Petitioner takes issue with the fact that Dr. Blandón-Gitlin's analysis of incidents alleged by Respondent assumes that those incidents occurred. Pet. 23 (stating that Dr. Blandón-Gitlin's testimony vouches because it "assumes the veracity" of Respondent's allegations). Dr. Blandón-Gitlin's testimony addressed the science relating to facts testified to by Respondent – had they occurred. 1 EOR 80-81. There is nothing inappropriate about this and it is not vouching. To the extent any of Dr. Blandón-Gitlin's testimony verged on vouching the district court

could have and still can limit the testimony on remand.

Similarly, Petitioner suggests the panel majority's decision holds that Dr. Blandón-Gitlin could simply testify that Respondent's confession was in fact coerced. Pet. 23-24. The decision does not state this. Pet. App. 4a, 70a-71a. Dr. Blandón-Gitlin could explain the scientific evidence about the psychological effects of the various interrogation techniques without stating a legal conclusion about unconstitutional coercion.

In any event, the Court of Appeals' decision left whether any of these statements were admissible to be addressed on remand. Indeed, even prior to the appeal counsel had offered to have Dr. Blandón-Gitlin provide limited testimony, and to omit certain portions with which the district court took issue. 6 EOR 1458-61.

Given the multiple reasons for the relevance of Dr. Blandón-Gitlin's testimony to the jury's understanding of the facts and circumstances of this case, it was an abuse of discretion to categorically exclude her testimony.

III. The Decision Poses No Risk to Law Enforcement.

The Court of Appeals' decision will not undermine law enforcement conduct. Law enforcement is already prohibited from engaging in coercive interrogations.

Initially, the decision does not mandate the admission of such expert testimony in all cases. Pet. 31. Nor does it decide that any particular interrogation technique is inherently or unconstitutionally coercive. The decision leaves Fifth-Amendment standards where they are.

The decision holds only that the complete exclusion of Dr. Blandón-Gitlin's testimony on the basis of relevance was an abuse of discretion. Pet. App. 4a. *Id.* The panel majority did not require Dr. Blandón-Gitlin's testimony to be admitted in full. *Id; see also* Pet. App. 65a-66a, 70a-71a (noting some or all of Dr. Blandón-Gitlin's testimony may be inadmissible).

Nothing about the decision is "astounding," "radical," "pernicious," "dangerous" or "profoundly novel," as Petitioner would describe it. Pet. 31-32, 34. As noted above, Rule 702 permits expert testimony if it could help determine any fact at issue, i.e. was relevant. The panel majority broke no new ground – let alone imperilled police officers – in finding that Dr. Blandón-Gitlin's testimony was relevant in this case. As addressed above, her testimony could bear on the totality of circumstances. Pet. App. 3a-4a, 66a-70a.

Whether any particular testimony should be excluded for the other reasons Petitioner advances has not yet been determined. Fed. R. Evid. 403; Pet. App. 65a (Wardlaw, Murgia, and Gould, concurring) (citing Fed. R. Evid. 403). As the panel majority stated, if

Petitioner's concerns are valid, they can be addressed on remand. Pet. App. 69a-70a.

In short, the Court of Appeals' decision does not hold what Petitioner claims and it will not disrupt routine police work, broadly or otherwise.

Petitioner cites an unpublished memorandum disposition, *United States v. Pinedo*, No. 21-50242, 2024 WL 2011970, *3 (9th Cir. May 7, 2024), for the proposition that the panel majority opinion threatens to change how coerced confession evidence is evaluated in criminal trials. Pet. 33. *Pinedo* allowed admission of a detective's expert testimony concerning law enforcement investigations of online pedophiles where the criminal defendant contested the investigation's adequacy. *Pinedo*, 2024 WL 2011970 at *3. Whether law enforcement expert witness testimony should be admitted is subject to the same standards and those standards are not altered by the decision below. Petitioner could offer expert testimony to counter Dr. Blandón-Gitlin's testimony if he wishes and that proffered testimony would be subject to the same well-established standards. Competing expert testimony is the norm not the exception.

Petitioner also argues that under the "guise" of making the evidentiary ruling above, the Court of Appeals has altered the substantive law of what constitutes unconstitutional coercion under the Fifth Amendment: finding that maximization and minimization techniques constitute coercion as a matter of law. Pet. 31-32. The decision simply does not

hold this.[4] All the decision does is affirm the relevance of such expert testimony to a consideration of the totality of circumstances, the issue the jury was asked to decide.

Review is not appropriate to address the argument that the decision below "implies" a "view" of a topic the Court of Appeals did not actually decide. Pet. 32. The decision does not suggest that any particular technique is inherently or unconstitutionally coercive. Petitioner repeats throughout that the Court of Appeals holds basic interrogation techniques are "classic coercion" that violate the Fifth Amendment. Pet. 4, 11, 24, 27. That is not what the opinion states. The opinion states that *Dr. Blandón-Gitlin* "planned to testify that the text of Tekoh's statement demonstrated minimizing tactics – classic coercion – to elicit incriminating admissions." Pet. App. 2a-3a. That is Dr. Blandón-Gitlin's testimony. It was unrefuted below.

Petitioner makes much of the Court of Appeals' statement in the decision that minimizing and maximization techniques or asking questions "can be" coercive. As addressed above, whether an interrogation is unconstitutionally coercive depends on the totality of the circumstances. *E.g. Reck*, 367 U.S. at 440; *Miranda*, 384 U.S. at 534-535 (White, J., dissenting).

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[4] Neither the panel majority nor the en banc dissenters understood the decision below to have changed the substantive law. Pet. App. 1a-7a. Both the majority and dissent described it as a narrow ruling concerning Rule 702. *Id.*; Pet. App. 65a-66a, 70a-71a.

Any technique can be used in a coercive manner. *See, e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 268 (2011) (citation omitted) ("Any police interview of an individual suspected of a crime has 'coercive aspects to it.'"); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). The issue is whether minimization or maximization techniques are "unconstitutionally coercive . . . ." *E.g.* Pet. App. 4a. The Court of Appeals' decision does not answer this.

The decision also does not hold that expert testimony is permitted whenever minimization or maximization techniques are used. Whether such testimony will be admissible depends on several factors, such as whether: (1) science in fact reliably establishes that these techniques in fact contribute to the overbearing of a person's will, and (2) even if all this is true, particular testimony is admissible, including under Rule 403. The Court of Appeals did not decide these issues.

Maximization or minimization techniques, alone, and in combination with the other facts a jury could find present here, can have a significant effect on a person's ability to resist confessions. "[T]here is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States,* 556 U.S. 303, 321 (2009). False confessions from police interactions happen with disturbing frequency and are corroborated by law enforcement statistics and many studies. *See generally* Viviana Alvarez-Toro & Cesar A. Lopez-Morales,

Revisiting the False Confession Problem, 44 J. AM. ACAD. PSYCH. & L. 34 (2018); Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051 (2010); Edwin D. Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42 (1968).

There is significant literature on how police interrogators can use minimization to elicit false confessions. *See* Saul M. Kassin & Karlyn McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 L. & HUM. BEHAV. 233 (1991). The same is true for maximization techniques. Deborah Davis & William T. O'Donohue, *The Road to Perdition: "Extreme Influence" Tactics in the Interrogation Room*, in HANDBOOK OF FORENSIC PSYCHOLOGY: RESOURCES FOR MENTAL HEALTH AND LEGAL PROFESSIONALS 897 (William T. O'Donohue & Eric R. Levensky eds., 2004); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997); Eza Bella Zakirova, *Is it Rational or Not?: When Innocents Plead Guilty in Child Sex Abuse Cases*, 82 ALB. L. REV. 815 (2019).

Thus, the exclusion of such testimony Petitioner seeks risks even more wrongful convictions. Allowing such expert testimony, based as it is on extensive scientific evidence, strikes an appropriate balance between these concerns and legitimate law enforcement concerns. Juries can be trusted to apply this Court's totality of the circumstances test after receiving such expert testimony and any opposing testimony offered by law enforcement.

CONCLUSION

For all the foregoing reasons the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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