No.

IN THE
Supreme Court of the United States

ARI MISHA LIGGETT,

Petitioner

v.

STATE OF COLORADO,

Respondent.

On Petition For A Writ Of Certiorari To
The Supreme Court of Colorado

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Thirty-three years ago, in *James v. Illinois*, 493 U.S. 307 (1990), this Court ruled that the impeachment exception to the exclusionary rule allows the prosecution in a criminal proceeding to introduce illegally obtained evidence to impeach the defendant's own testimony, but not to impeach the testimony of all defense witnesses. Over a vigorous dissent, the Colorado Supreme Court ruled that the prosecution may use as substantive evidence a defendant's unconstitutionally-obtained statements to rebut the defendant's insanity defense — even if the defendant does not testify.

The question presented is:

> Whether the Colorado Supreme Court's radical expansion of the narrow impeachment exception this Court adopted in *Harris v. New York,* 401 U.S. 222 (1971) and expressly limited in *James v. Illinois* is inconsistent with the balance of values underlying this Court's previous applications of the exclusionary rule?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ari Misha Liggett respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Colorado in this case.

OPINION AND ORDER BELOW

The Supreme Court of Colorado's opinion (Pet., Appx. A), *Liggett v. People*, 2023 CO 22, is published at 529 P.3d 113. The written order of the trial court (Pet., App. B) is unpublished.

JURISDICTION

The judgment of the Supreme Court of Colorado was entered on May 15, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the U.S. Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right … to have compulsory process for obtaining witnesses in his favor.

The Fourteenth Amendment to the U.S. Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

The present case satisfies this Court's criteria for certiorari. It concerns an issue upon which there is now a split, with the Colorado Supreme Court on one side and other state and federal courts –including this Court -- on the other. The issue was fully preserved and reached on the merits by the Colorado Supreme Court. And the issue is worthy of this Court's review—indeed, it is about how to interpret *James v. Illinois*, 493 U.S. 307 (1990), which involved a fundamental question of federal constitutional law.

This case arrives in this Court free of distractions. The salient facts are not in dispute. There is no dispute about whether Ari Liggett killed his mother. He did. There is no dispute about whether, during custodial police interrogation, he requested counsel. He did. There is no dispute that officers, in response to Ari's request, that it was "impossible" to have counsel present, nor any dispute about the fact they continued the interrogation and obtained inculpatory statements in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. Finally, there is no dispute about whether those inculpatory statements were voluntarily made. The Colorado Supreme Court so ruled, *People v. Liggett*, 2014 CO 72, 334 P.3d 231 (Colo. 2014)(*Liggett I*)(Pet., Appx. E), and that issue is not involved in the narrow question presented here.

The question presented here concerns what limits are placed on a State's use of such statements at trial. Again, there is much agreement. Ari Liggett does not

dispute that, had he testified, those statements could have been used to impeach his testimony under the "impeachment exception" to the exclusionary rule. His disagreement with the Colorado Supreme Court is its reckless expansion of the impeachment exception to impeach *other* witnesses – not solely the defendant.

It is no comfort to Ari Liggett that the Colorado Supreme Court's expansion of the impeachment exception applies (so far) only when a defendant raises a mental status defense such as Colorado's Insanity Defense – because it is also undisputed that Mr. Liggett has suffered from severe mental illnesses and mental disorders for his entire life. His only viable defense was the Not Guilty by Reason of Insanity defense. When the trial court (and later, the Colorado Supreme Court) expanded this Court's impeachment exception to permit, in NGRI cases, a State Psychologist to review and base an opinion on the statements elicited by police after Mr. Liggett indisputably requested counsel, the court effectively eviscerated Mr. Liggett's only defense, removing his only hope of living the rest of his years confined in a treatment facility under Colorado's insanity acquittee commitment statute and instead consigning him to life in prison without parole.

The Court should grant certiorari.

STATEMENT OF THE CASE

I. Mr. Liggett's NGRI Defense was viable, and it was his only defense.

Mr. Liggett's only defense was the Colorado affirmative defense of Not Guilty by Reason of Insanity (NGRI), and it was legitimate. He had suffered psychological problems since his birth. Beginning at age three, Ari had been diagnosed and treated by a lifelong series of physicians, psychologists, psychiatrists, developmental experts, and other professionals.

Ari received many diagnoses over the years and many medicinal regimens had been tried to combat his mental disorders. While there was an occasional lull in Ari's behavioral symptoms, the respite was always short lived. Ari drifted through his years with no apparent emotional connection to the world around him. He had no relationships with anyone outside of his mother, father, and sister.

Family members testified that while Ari could "hold it together" for short periods of time enough to obtain a driver's license or navigate public transportation, he was not grounded in reality and that his thought process was not logical. When Ari was not consistently taking his medication or when the medication he was taking was no longer working, he would pace rapidly, talk to himself, talk to people who were not there, and laugh as if he were in a "completely different world."[1]

[1] That is, by all accounts, how he remains to this day in his prison cell.

Despite these severe psychological issues, Ari graduated from high school and enrolled in college about an hour away from his family home. He was assigned to a dormitory with a roommate, but that situation quickly disintegrated. In an attempt to keep him in school, his parents set him up with his own apartment. Because of concerns his parents had with his ability to cope and care for himself, they eventually called police for a welfare check. When they entered the apartment, they discovered broken glass everywhere, there were propane tanks lined up everywhere, the place was a "mess" and Ari had not showered in some time. His father described Ari as being "scary looking." He was taken to a mental health facility for a 72-hour hold. When released, he was brought home to live with the family again.

Family members testified that Ari lived in his own fantasy world. He fixated on ideas that were not true. He believed his mother had Munchausen by proxy and that is why she thought he was ill, when there was nothing wrong with him. He believed he was sexually abused as a child. Ari would pace around the house continuously muttering to himself or sit on the sofa but suddenly burst out laughing.

By September 2012, Ari's symptoms were getting worse. He would stand and stare at the walls for hours, accuse family members of "shape shifting" and pace through the house at a high-speed, contorting his body as if he were interacting with someone. It was about a month later that he poisoned his mother

with cyanide, dismembered her body, packed her remains into plastic containers, put the plastic containers in the trunk of her car, and drove erratically around until two days later when police found and arrested him, took him to the station, and obtained statements in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). On the way, Ari told officers it was all right for him to break the law because people were "demons" who could "shape change" but he could not. He said "the world" was against him and asked whether the fact he is insane could prevent his arrest.

II. The District Court Proceedings.

Mr. Liggett entered a plea of NGRI and was evaluated by an expert employed by the State of Colorado, Dr. Hal Wortzel. Dr. Wortzel, relying in part on Mr. Liggett's suppressed statements (before they were ruled inadmissible because of the *Miranda* violation), found Mr. Liggett to be legally sane. Because Dr. Wortzel had relied on the suppressed statements, a new evaluation was ordered with instructions that the second evaluator should not rely on those statements. The second evaluator reached the same conclusion.

Mr. Liggett moved to prevent the use of the first evaluation by Dr. Wortzel. The court ruled that the prosecution could not present Dr. Wortzel's evaluation in its case in chief but if Mr. Liggett presented evidence of his mental condition, the

People would be permitted in rebuttal to present Dr. Wortzel's testimony and introduce the suppressed statements.

Even though an entire lifetime of experts would have been available to support his insanity defense, Mr. Liggett's attorneys could not present them. Mr. Liggett was left to develop this defense through the cross-examination of family members, which was no match for the expert testimony of the prosecution's second evaluator. Neither Mr. Liggett nor Dr. Wortzel testified.

The jury rejected the NGRI defense and found Mr. Liggett guilty. In Colorado, his first-degree murder conviction means imprisonment in the Colorado Department of Corrections, i.e. in prison for his natural life with no possibility for parole. See §18-1.3-401(1)(a)(V)(A), C.R.S.

Had Mr. Liggett been found not guilty by reason of insanity, he would have been committed to the custody of the Colorado Department of Human Services and held in a mental hospital for treatment for his natural life, provided that he continues to meet commitment criteria. See §16-8-105.5(4)(b), C.R.S.

III. The Appeal.

Mr. Liggett's public defender filed an appeal on his behalf. Within months of his incarceration, however, his symptoms had taken over. When (communicating largely in "word salad") he asked his appointed appellate attorneys to dismiss his appeal so he could pursue "other remedies," his attorneys asked the Colorado Court of Appeals (the intermediate court) for a limited

remand to allow the lower court to make a factual determination of whether Mr. Liggett was competent to waive counsel and dismiss his appeal. In *Liggett II*, the Court of Appeals granted the request, and the trial court entered an order finding Mr. Liggett not competent to make such a waiver. *People v. Liggett,* 2018 COA 94M, 490 P.3d 405 (Colo. App. 2018)(*Liggett II*) (Pet., Appx. D). The Court of Appeals ordered steps be taken to "restore Mr. Liggett to competency" but ruled that the appeal should go forward unless Mr. Liggett could make a knowing voluntary and intelligent waiver of counsel and his right to appeal. Mr. Liggett remained incompetent to proceed throughout the appellate process and remains in that status today.

In *Liggett III*, the Colorado Court of Appeals affirmed the conviction. It found no error in the trial court allowing the prosecution to use the doctor's testimony and sanity opinion to rebut any psychiatric evidence that defendant presented to show his insanity at the time of the killing, even though the doctor's opinions were based in part on the statements Mr. Liggett made after his request for counsel during interrogation was denied by law enforcement. *People v. Liggett*, 2021 COA 51, 492 P.3d 356 (Colo. App. 2021)(*Liggett III*) (Pet., Appx. C).

In *Liggett IV*, the Colorado Supreme Court affirmed the Colorado Court of Appeals and ruled that, when a defendant enters a NGRI plea and presents any evidence supporting that defense, he opens the door to the admission of his

voluntary but non-*Miranda*-compliant statements. *Liggett v. People*, 2023 CO 22, 529 P.3d 113 (Colo. 2023) (*Liggett IV*). (Pet., Appx. A).

REASONS FOR GRANTING THE PETITION

One of the crucial functions served by the exclusionary rule is to deter unconstitutional police conduct during police interrogations. By barring the use of illegally obtained statements of a defendant, courts reduce the temptation for police officers to skirt their constitutional obligation to honor an accused's request for counsel during a custodial interrogation.

By definition, application of the exclusionary rule deprives the prosecution of probative evidence. This deprivation is tolerated in order to disincentivize future police misconduct and to safeguard the most fundamental of rights possessed by citizens. Here, the exclusionary rule was needed to protect two of those fundamental rights: an accused's right, when confronted alone with police, to have an attorney during police questioning, and the accused's right to present a defense at trial.

The Colorado Supreme Court's failure to protect either of these fundamental rights, by effectively adopting a "mental health" exception to the exclusionary rule and radically reshaping this Court's jurisprudence, requires this Court's intervention.

I. The Colorado Supreme Court did not scrupulously respect the narrow boundaries of the impeachment exception to the exclusionary rule this Court adopted in *James v. Illinois,* 493 U.S. 307 (1990).

Despite the important role played by the exclusionary rule in discouraging and ultimately preventing police misconduct in violation of an accused's Fifth Amendment right to remain silent, this Court has recognized a limited exception. The "impeachment exception" prevents a defendant from exploiting the exclusionary rule as a shield while presenting false testimony at trial. The "impeachment exception" has been narrowly tailored, though, to preserve the fundamental values protected by the exclusionary rule. The defining feature of the impeachment exception is that the unconstitutionally obtained statements are admissible only to directly contradict the defendant's own testimony. *Walder v. United States*, 347 U.S. 62 (1954); *Harris v. New York*, 401 U.S. 222 (1971); *Oregon v. Hass*, 420 U.S. 714 (1975); *United States v. Havens*, 446 U.S. 620 (1980). This balance respects the core protection afforded by the Self–Incrimination Clause -- the prohibition on compelling a criminal defendant to testify against himself at trial. Thus, statements obtained unlawfully when police refuse to provide counsel as requested during the interrogation are admissible for impeachment only, not as substantive rebuttal evidence.

In *James v. Illinois*, 493 U.S. 307 (1990), this Court rejected the argument that defense witnesses—rather than the defendant himself—can be impeached with illegally obtained evidence. This Court reasoned that such an expansion of

the "impeachment exception" would go too far in dissuading defendants "from presenting their best defense and sometimes any defense at all— through the testimony of others." *Id*. at 314-315. While a defendant should not be allowed to exploit exclusion of evidence to present perjury, this Court ruled, the State should not be allowed to "brandish such evidence as a sword with which to dissuade defendants from presenting a meaningful defense through other witnesses." *Id*. at 317.

This Court has scrupulously guarded this critical distinction between impeachment and substantive evidence: permitting unconstitutionally obtained statements to be used as impeachment but barring their use as substantive evidence. Almost thirty years after *James v. Illinois*, Justice Scalia reiterated the importance of the limitations on the impeachment exception: it gives officers a "significant incentive to ensure that they and their informants comply with the Constitution's demands, since statements lawfully obtained can be used for all purposes rather than simply for impeachment." *Kansas v. Ventris*, 556 U.S. 586, 593 (2009).

For nearly 70 years, this Court has followed a simple, categorical rule applicable to evidence such as Mr. Liggett 's illegally obtained statements. If the government obtains evidence illegally, then the illegally obtained evidence is inadmissible as substantive evidence. This exclusionary rule applies equally to physical evidence (as in *Walder v. United States*, *supra,* 347 U.S. at 65) as it does

to a defendant's custodial statements (as the Court specifically stated in *Oregon v. Elstad*, 470 U.S. 298, 307 (1985)). In *Harris* and *Hass*, the Court recognized a limited exception to the exclusionary rule, allowing the prosecution to impeach a defendant's perjurious testimony with illegally obtained statements, but (as it had in *Walder*) reiterated that the illegally obtained statements still are "unavailable to the prosecution in its case in chief." *Harris*, 401 U.S. at 225-26; *Hass*, 420 U.S. at 722-24. *Harris* even recognized that the categorical bar on introduction of illegally obtained evidence during the prosecution's case-in-chief is the source from which the exclusionary rule's "deterrence flows." 401 U.S. at 225. In *Havens*, the Court again applied the impeachment exception while reiterating (as it had in *Walder*, *Harris*, and *Hass*) that "evidence that has been illegally obtained ... is inadmissible on the government's direct case ..." 446 U.S. 620, 628 (1980). In *Elstad*, the Court found *Miranda* inapplicable to the case facts, but stated that even "voluntary statements taken in violation of *Miranda* must be excluded from the prosecution's case." 470 U.S. at 307 (emphasis original). In *Michigan v. Harvey*, the Court again confirmed that the prosecution can impeach a defendant's false or inconsistent testimony with illegally obtained evidence, but (similar to *Walder, Harris, Hass*, *Havens*, and *Elstad*) also confirmed the steadfast rule that the "prosecution must not be allowed to build its case against a criminal defendant with evidence acquired in contravention of constitutional

guarantees and their corresponding judicially created protections." 494 U.S. 344, 351 (1990).[2]

Colorado Supreme Court Justices Márquez and Hart agree. In their strong dissent, they meticulously review this Court's development of the impeachment exception and articulate the reasons why the majority's ruling "distorts the impeachment exception to allow the prosecution to use the defendant's illegally obtained statements made to police as substantive evidence to rebut the defendant's insanity defense." (Pet., Appx. A, ¶¶ 66, 68, 83-90). The dissent traces the error back to an earlier Colorado Supreme Court case, *Dunlap v. People,* 173 P.3d 1054 (Colo. 2007) and takes issue with the holding and, more important, the later misinterpretation of that holding. (Pet., Appx. A, ¶¶ 77-90). Rebuttal evidence, the dissent accurately explains, is part of a party's case in chief. (Pet., Appx. A, ¶78). Instead of correcting the errors the Colorado Supreme Court made in *Dunlap* and restoring the proper contours of the impeachment exception, the *Liggett* majority "repeat[s] and compound[s] its errors," (Pet., Appx. A, ¶83), and causes "the precise harm" foretold in *James*:

> By ignoring the *James* court's 'carefully weighed' limitations on the impeachment exception, the majority's ruling enables the precise harm that those limitations were designed to prevent: dissuading defendants from presenting their best defense or from presenting any defense at all. In the majority's own words, *this is exactly what happened in this case.*

[2] In Colorado, once any evidence of insanity is introduced, the Government has the burden of proving sanity beyond a reasonable doubt. § 16-8-105.5, C.R.S.

(Pet., Appx. A, ¶90) (emphasis added).

II. The Colorado Supreme Court stands alone.

Until now, lower courts have had no trouble understanding and applying the *James* Rule.

In *United States v. Hinckley*, 672 F.2d 115 (D.C. Cir. 1982), the government advanced the same "testimony-by-proxy" argument adopted by the Colorado Supreme Court – that if Mr. Liggett presented any evidence on his sanity, the Government should then be allowed to use his illegally obtained statements to rebut that defense. In *Hinckley, supra,* the government argued that "if in the course of an insanity plea the defense puts forth testimony by expert witnesses on the defendant's mental state, that testimony is tantamount to the defendant taking the stand himself" and therefore the illegally obtained evidence is, in effect, "impeachment" evidence. *Id*. at 134. Saying "this theory cuts too wide a swath," the D.C. Circuit soundly rejected that argument:

> We … find no reason for countenancing a broad exception to the Supreme Court's clearly enunciated policy against the use of tainted evidence simply because that evidence will be used to counter an insanity defense. Were we to curtail the exclusionary rule in the drastic manner the government urges, we would provide little or no deterrence of constitutional violations against defendants whose sanity is the principal issue in the case. The government would be able, under the guise of rebuttal, to use any illegally obtained evidence relevant to the principal issue in the case—insanity.

Ibid. The Court also found no discernible reason the insanity defense should be "single[d] out … for application of the testimony-by-proxy theory" to curtail the exclusionary rule while other affirmative defenses are not.

Other jurisdictions addressing the use of a defendant's statements obtained in violation of *Miranda* have placed strict limits on the prosecution's use of those statements, even when a mental status defense is raised: the narrow impeachment exception must involve statements made by a defendant that do, in fact, contradict or impeach other statements made by the defendant. The *Miranda*-noncompliant statements cannot be used as rebuttal evidence.

In *Wilkes v. United States*, 631 A.2d 880, 889 (D.C. 1993) the defendant raised an NGRI defense. The defendant's psychiatric expert testified about her opinion of the defendant's sanity. She based her opinions on what the defendant told her which differed dramatically from the defendant's lengthy, detailed unwarned custodial statements. The Court let the psychiatrist be cross-examined on those unwarned statements, reasoning that the excluded statements directly contradicting what Wilkes had told the psychiatrist provided the most relevant information available to probe the factual basis of the doctor's opinion.

The California Court of Appeals reached the same conclusion. *People v. Edwards*, 217 Cal. Rptr. 3d 782, 789 (Cal. Ct. App. 2017). There, the California Court clarified that the defendant's unwarned statements were not being used as substantive evidence of guilt but were being used to impeach the defendant's

statements to the psychiatrist and thus promoted "the same truth-seeking function of a criminal trial as the impeachment exception of a defendant who testifies" by "prevent[ing] the defendant from turning the exclusionary rule into a 'a shield against contradiction of his untruths.'" Ibid (*quoting Harris, supra*, 401 U.S. at 224 (*quoting Walder v. United States*, *supra,* 347 U.S. at 65)). The court determined that "admission of the suppressed statements [would not] have a chilling effect on a defendant's ability to present a defense" because "[d]efendants could avoid impeachment of the testimony of expert witnesses by not providing these witnesses with statements that contradict the suppressed statements." *Edwards*, *supra*, 217 Cal. Rptr. 3d at 789–90.

The Supreme Court of Appeals of West Virginia placed similar limits on the use of a defendant's voluntary but illegally obtained statements. In *State v. DeGraw*, 470 S.E.2d 215 (W.Va. 1996), the defendant, whose statements to the police were suppressed because of a *Miranda* violation, raised a diminished capacity defense. As in *Wilkes*, the defendant told his expert he had no memory of the offense but told the police otherwise. The court allowed the expert to be cross-examined with these illegally obtained statements. The Court noted that, while the *James* decision does not let the prosecution use a defendant's illegally obtained statements to impeach the credibility of a defense witness, here the statements were being used to "impeach the contradictory statements made to

the witness." *DeGraw*, 470 S.E.2d at 222. The same result was reported in a persuasive opinion issued by the Wisconsin Court of Appeals:

> Courts have made a narrow exception to the *Harris/James* rule in cases where the defendant uses an insanity defense. In these types of cases, the psychiatrist's testimony/opinions are based on statements made to him or her by the defendant; therefore, the statements that are actually being impeached are those of the defendant and not the witness.

State v. Garcia, 2021 WI 76, ¶ 13 n. 16, 951 N.W. 2d 631, 638 n. 16 (Wis. Ct. App. 2020), *affirmed by an equally divided court*, 399 Wis.2d 324, 964 N.W.2d 342 (Mem), *cert. denied*, 142 S. Ct. 1442, 212 L. Ed. 2d 538 (2022) (citing *United States v. Rosales-Aguilar*, 818 F.3d 965, 970 (9th Cir. 2016) and *Wilkes,* 631 A.2d at 889-90).

In *Rosales-Aguilar, supra*, the defendant made certain statements to a retained psychiatrist who, relying on those statements, concluded that the defendant did not have the necessary *mens rea* to be convicted of the charged offense. The government sought to introduce the defendant's voluntary but non-*Miranda*-compliant statements which contradicted the statements the defendant made to the psychiatrist. The district court allowed the statements to be introduced. In upholding the district court's ruling, the Ninth Circuit held that the situation before it was closer to *Harris v. New York* and *Oregon v. Haas* than it was to *James v. Illinois:*

> Insofar as Rosales's statements to Dr. Carroll differ from the ones he made to the Border Patrol officers, the inconsistencies cast doubt on his veracity, not Dr. Carroll's. They were thus properly admitted to impeach Rosales's account of the events under dispute.

Rosales-Aguilar, 818 F.3d at 970. *See also State v. Kozlov*, 2012 UT App 114, ¶ 72, 276 P.3d 1207, 1230 (Utah Ct. App. 2012):

> We agree with the District of Columbia Court of Appeals [in *Wilkes, supra*], which determined that when a defendant presents an expert opinion that 'is based, to any appreciable extent, on statements made to the expert by the defendant,' *id*., the prosecution may use the defendant's statements taken in violation of *Miranda* to challenge that expert's opinion.

Every jurisdiction that has addressed this issue has reached a result contrary to the one reached by the Colorado Supreme Court. Every jurisdiction addressing the issue -- except Colorado -- limits the use of a defendant's illegally obtained statements to counter other statements by the defendant that contradict those earlier statements. *Only Colorado* has held that by presenting evidence supporting a mental health defense the prosecution may then introduce the defendant's illegally obtained statements to rebut that defense.

III. The Colorado Supreme Court's ruling offends the balance of values underlying this Court's previous applications of the exclusionary rule.

"The occasional suppression of illegally obtained yet probative evidence has long been considered a necessary cost of preserving overriding constitutional

values." *James v. Illinois, supra*, 493 U.S. at 311. The Colorado Supreme Court's opinion offends the delicate balance struck in *James*. As recognized in *James*, expanding the class of impeachable witnesses from the "defendant alone to all defense witnesses would create different incentives affecting the behavior of both defendants and law enforcement officers." *Id*., at 313.

This Court need look no further than the facts of Ari Liggett's case to recognize that the Colorado Supreme Court's expanded exception "significantly undermine[s] the deterrent effect of the general exclusionary rule." *Id*., at 313-14. The specific misconduct to be deterred is the police lying to an accused who asks for counsel during a police interrogation, telling him "*it's impossible*" to have counsel with him during questioning. This was no technical violation. It was a transgression that struck at the heart of the relationship between an accused in a police interrogation room and his interrogators. This is exactly the type of egregious misconduct that the exclusionary rule exists to deter.

The Colorado Supreme Court's exception not only gives these bad actors a pass; it signals to future potential violators that, when dealing with a person who has an obvious mental illness, police may throw the constitution out the window. Arguably, an accused who has a mental illness is in greater need of protection, yet the Colorado Supreme Court ensures that these suspects are to be treated as the least among us when it comes to compliance with their fundamental rights during custodial police interrogation.

Another foundational principle offended by Colorado's too-wide swath is the defendant's fundamental right for "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984). As this Court explained some thirty-seven years ago, this constitutional right has deep roots:

> Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, *Chambers v. Mississippi,* 410 U.S. 284 (1973) or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, *Washington v. Texas,* 388 U.S. 14, 23 (1967); *Davis v. Alaska,* 415 U.S. 308 (1974), the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' *California v. Trombetta,* [*supra*].

Crane v. Kentucky, 476 U.S. 683, 690 (1986). The fear that an accused facing a "testimony-by-proxy" impeachment exception would be chilled from presenting their best defense was a paramount concern to the *James* Court: "expanding the impeachment exception to encompass the testimony of all defense witnesses likely would chill some defendants from presenting their best defense and sometimes any defense at all—through the testimony of others." *James v. Illinois*, at 314-315. As the thoughtful dissent of Justices Márquez and Hart well articulates, the Colorado Supreme Court's majority opinion "all but eviscerates the protections of the Fifth Amendment and the exclusionary rule for defendants who rely on mental capacity defenses." (Pet., Appx. A, ¶ 65; *see also id.*, ¶ 89).

When defining the "precise scope" of the exclusionary rule, courts "must focus on systemic effects of proposed exceptions to ensure that individual liberty from arbitrary or oppressive police conduct does not succumb to the inexorable pressure to introduce all incriminating evidence, no matter how obtained, in each and every criminal case." *James v. Illinois*, at 319–20. The Colorado Supreme Court failed to heed this bedrock rule. Its radical departure threatens not only Ari Liggett, but future citizens who may someday find themselves alone in an interrogation chamber, seeking but denied counsel by their police interrogators.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

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