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

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA,  
RESPONDANT,

V.

NICHOLAS HAYEK,  
PETITIONER.

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

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PETITION FOR A WRIT OF CERTIORARI

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APPENDIX

*United States v. Nicholas Hayek*, \_\_\_\_ F. 3d \_\_\_\_ (6th Cir. 2024)  
(opinion affirming district court judgment)

*United States v. Nicholas Hayek*, No. 2:18-cr-00160-1 (E.D. Tennessee February 25, 2022)

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Manuel B. Russ  
340 21<sup>st</sup> Avenue North  
Nashville, Tennessee 37203  
(615) 329-1919

## **QUESTIONS PRESENTED**

**A. THE DISTRICT COURT ERRED WHEN IT DENIED MR. HAYEK'S MOTION TO SUPPRESS HIS STATEMENT AND THE SIXTH CIRCUIT ERRED WHEN IT AFFIRMED THE DISTRICT COURT**

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## **I. OPINIONS BELOW**

The reported opinion of the Court of Appeals for the Sixth Circuit and the judgment of conviction in the United States District Court for the Eastern District of Tennessee are attached to this petition as the Appendix.

## **II. JURISDICTION**

The judgment of the Court of Appeals for the Sixth Circuit was entered on May 7<sup>th</sup>, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), the petitioner having asserted below and asserting in this petition the deprivation of rights secured by the United States Constitution.

## **III. STATUTORY PROVISIONS INVOLVED**

This matter involves violations of the United States Code, specifically, 18 U.S.C. § 1470, 18 U.S.C. § 2251(a), 18 U.S.C. § 2252A(a)(2) & (4), and 18 U.S.C §2422(b).

## **IV. STATEMENT OF THE CASE**

### **A. Procedural Background**

The matter was briefed for the Sixth Circuit Court of Appeals and, after considering the matter on the briefs and oral argument, the Court issued an Opinion, with a concurring Opinion from Judge Readler, dated May 7<sup>th</sup>, 2024, denying all relief, which has been appended to this Petition below. Mr. Hayek now makes this timely application.

## **B. Statement of Facts**

Mr. Hayek has confined his application to the issue of the denial of his motion to suppress and the facts presented here are summaries of the trial testimony from both the defense and the Government relating to the issue of the circumstances of his inculpatory statement. Both the Government and the defense presented substantially more proof at trial that is not summarized below but has been summarized in the Sixth Circuit's Opinion that is appended below.

### **i. Nicholas Nassif Hayek**

When being interrogated by Agent Bisceglia, one of the investigating agents in this case, Mr. Hayek described the situation with multiple armed agents in his family's home as terrifying. (R.173, Trial Transcript Vol. III, PageID#983) The evening prior, to celebrate his father's beginning in the auto repair business, Mr. Hayek stated that he began drinking vodka the night before the search at about 11 P.M. (R.173, Trial Transcript Vol. III, PageID#1000) He stated he consumed a large, but indeterminate amount of vodka that evening. (R.173, Trial Transcript Vol. III, PageID#1003-1004) This took him approximately four hours though he was not entirely sure of the time and he was not entirely sure what time he took the Nyquil. (R.173, Trial Transcript Vol. III, PageID#1006-1008) When he combined Nyquil with the alcohol, he became lethargic but there had been occasions when he had done this and participated in school the following day. (R.173, Trial Transcript Vol. III, PageID#1009-1011)

The next morning he was surprised by law enforcement and he had a “panic attack”. (R.173, Trial Transcript Vol. III, PageID#986-987) One of the female agents said she needed to talk to him and, when he requested a lawyer, she refused. (R.173, Trial Transcript Vol. III, PageID#988) When he attempted to leave his bedroom, he was struck on the side of the head, his glasses broke and he was forced to remain in his bedroom. (R.173, Trial Transcript Vol. III, PageID#989) He stated that there were officers that had body cameras that he saw. (R.173, Trial Transcript Vol. III, PageID#991) Mr. Hayek stated that Agent Bisceglia was aware that his family immigrated from Lebanon and Mr. Hayek was left with the clear impression that if he did not cooperate, the agents could create immigration problems for his family, particularly his mother, and this was in light of his father’s prior deportation. (R.173, Trial Transcript Vol. III, PageID#991-993) He stated that, when he refused to sign the waiver forms prior to making a statement, the agents signed them for him regardless. (R.173, Trial Transcript Vol. III, PageID#993)

During the interrogation, Mr. Hayek described being weak kneed, barely able to stand and his brain was “clogged” when he was awoken in his room. (R.173, Trial Transcript Vol. III, PageID#1013) Mr. Hayek said he asked the agents for an attorney multiple times. (R.173, Trial Transcript Vol. III, PageID#1016) He stated he recalled hearing the recording of his interview with law enforcement and in it he might have been asked about telephone numbers and accounts he had on the internet. (R.173, Trial Transcript Vol. III, PageID#1017-1018) He reiterated that he was never allowed to leave his bedroom during the interview and references in the

interview to the contrary were inaccurate. (R.173, Trial Transcript Vol. III, PageID#1020) Mr. Hayek stated, again, that he saw “ICE” agents in his room and believed that if he did not cooperate, there would negative immigration consequences for his family. (R.173, Trial Transcript Vol. III, PageID#1021-1022) He also stated that the contents of his statement were not his own and he was told what to say prior to the recording beginning and, further, the statement was involuntarily obtained. (R.173, Trial Transcript Vol. III, PageID#1022-1024) This was accomplished by the agents writing statements on their phone, showing this to Mr. Hayek, and having him repeat it for the recording. (R.173, Trial Transcript Vol. III, PageID#1025-1026) Mr. Hayek’s recollection of the interview was unclear, but he did recall the agents prompting him on what to say. (R.173, Trial Transcript Vol. III, PageID#1030) He did not agree that he had been adding detail and information beyond the scope of the agents’ inquiry, but, alternatively, Mr. Hayek made certain statements that were not scripted which he thought would be useful to the agents out of fear for his family. (R.173, Trial Transcript Vol. III, PageID#1032-1039)

## **ii. Brian Bisceglia**

When Agent Bisceglia interrogated Mr. Hayek, he took him to an isolated portion of the residence and conducted a recorded interview with another agent. (R.172, Trial Transcript Vol. II, PageID#803-804) The recording device was clearly visible and Mr. Hayek did not request an attorney nor did he decline to speak with them. (R.172,



Trial Transcript Vol. II, PageID#804-805) The audio recording was played for the jury. (R.172, Trial Transcript Vol. II, PageID#806-808)

When he interrogated Mr. Hayek, Agent Bisceglia had not previously spoken with him, or with alleged minor victim, and he denied Mr. Hayek asked for counsel prior to the interview beginning. (R.173, Trial Transcript Vol. III, PageID#825-826) He said he was unaware that Mr. Hayek's father had previously been deported from the United States prior to the interview. (R.173, Trial Transcript Vol. III, PageID#827) The search warrant was executed early in the morning before light with multiple agencies involved and many officers wearing tactical vests. (R.173, Trial Transcript Vol. III, PageID#828-829) Mr. Hayek's entire family was placed in a central location within the residence, but Agent Bisceglia did not recall any law enforcement member drawing their firearm. (R.173, Trial Transcript Vol. III, PageID#831-833) He did not recall any officers wearing a body camera during the search. (R.173, Trial Transcript Vol. III, PageID#833-834)

Agent Bisceglia did not check Mr. Hayek for impairment prior to the interview other than observing him. (R.173, Trial Transcript Vol. III, PageID#835-836) He was also unaware that Mr. Hayek had been awake until 3 A.M. the previous night consuming alcohol. (R.173, Trial Transcript Vol. III, PageID#838) He identified a bottle in Mr. Hayek's bedroom that purportedly contained juice and an alcoholic beverage and, had he known that, Agent Bisceglia would have inquired about it prior to the interview. (R.173, Trial Transcript Vol. III, PageID#840-842) He agreed that

the bottle of juice was not preserved after the investigation. (R.173, Trial Transcript Vol. III, PageID#847)

Mr. Hayek never told Agent Bisceglia that he was intoxicated during their interview and he did not believe him to be intoxicated during the interview. (R.173, Trial Transcript Vol. III, PageID#849-850) He was also unaware that, in the transcript of Mr. Hayek's interview, he was deemed "unintelligible" on thirty-seven different occasions. (R.173, Trial Transcript Vol. III, PageID#851)

## **V. STANDARDS OF REVIEW**

When a defendant seeks appellate review of the District Court's denial of a motion to suppress evidence, the Sixth Circuit "review[s] the district court's findings of fact under the clear-error standard and its conclusions of law de novo." *United States v. Quinney*, 583 F.3d 891, 893 (6th Cir. 2009). "A factual finding is clearly erroneous when, although there may be evidence to support it, the reviewing court, utilizing the entire evidence, is left with the definite and firm conviction that a mistake has been committed." *United States v. Sanford*, 476 F.3d 391, 394 (6th Cir. 2007)

## **VII. SUMMARY OF ARGUMENT**

The District Court erred when it determined that the Mr. Hayek's pretrial statement to law enforcement was lawfully obtain in keeping Constitutional requirements when it was, in fact, procured while Mr. Hayek was both partially intoxicated and in a state of panic making his waiver involuntary and he did not know

the full ramifications of the waiver when he gave it. The Sixth Circuit erred when it affirmed this decision.

## VIII. ARGUMENT

### A. THE DISTRICT COURT ERRED WHEN IT DENIED MR. HAYEK'S MOTION TO SUPPRESS HIS STATEMENT AND THE SIXTH CIRCUIT ERRED WHEN IT AFFIRMED THE DISTRICT COURT

The Fifth Amendment of the United States Constitution guarantees the right against self-incrimination. The Government must use procedural safeguards to insure that an accused is informed of his/her rights under the Fifth Amendment prior to any custodial interrogation by law enforcement. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602 (1966). *Miranda* also stated that these safeguards were triggered when a suspect was taken into custody or he was “otherwise deprived of his freedom of action in any significant way”. *Id.* at 444.

Specifically, *Miranda* further provides:

[Accordingly,] [h]e must be warned *prior to any questioning* that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

*Miranda* 384 U.S. at 478–79, 86 S.Ct. 1602; see also *Rhode Island v. Innis*, 446 U.S. 291, 298, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). “A *Miranda* violation does not constitute coercion but rather affords a bright-line, legal presumption of coercion, requiring suppression of all unwarned statements.” *Oregon v. Elstad*, 470 U.S. 298,

306 n. 1, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985) “[C]onvictions following the admission into evidence of confessions which are involuntary, i.e., the product of coercion, either physical or psychological, cannot stand.” *Rogers v. Richmond*, 365 U.S. 534, 540, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961); see also *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)

A person is in custody if he/she has either been formally arrested, or there is a “restraint on freedom of movement of the degree associated with a formal arrest.” *California v. Beheler*, 463 U.S. 1121 1125, 103 S.Ct. 3517 3520, 77 L.Ed.2d 1275 (1983) In reviewing the circumstances surrounding an interrogation “courts must consider the totality of the objective circumstances surrounding the interrogation, ‘not the subjective views harbored by either the interrogating officers or the person being questioned.’” *Id.*, 511 U.S. at 322-23, 114 S.Ct. at 1529; quoting *Stansbury v. California*, 511 U.S. 318, 322-323, 114 S.Ct. 1526, 1529, 128 L.Ed.2d 293 (1994); see also *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

The defendant’s waiver of rights must be voluntary, knowing and intelligent to be valid:

First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.

*Colorado v. Spring*, 479 U.S. 564, 573, 107 S.Ct. 851, 93 L.Ed.2d 954 (1987); quoting *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986) The

question of whether a *Miranda* waiver was knowing and intelligent is a separate question from whether it was voluntary. *Clark v. Mitchell*, 425 F.3d 270, 283 (6th Cir. 2005). In determining the voluntariness, the reviewing court should consider the “age, experience, education, background, and intelligence, and ... capacity to understand the warnings give him, the nature of the Fifth Amendment rights, and the consequences of waiving those rights” as part of its analysis. *United States v. Montgomery*, 621 F.3d 568, 573 (6th Cir. 2010) Further, “[e]vidence that a defendant suffered, at the relevant time, from a condition or deficiency that impaired his cognitive or volitional capacity is never, by itself, sufficient to warrant the conclusion that his confession was involuntary for purposes of due process; some element of police coercion is always necessary.” *United States v. Newman*, 889 F.2d 88, 94 (6th Cir. 1989).

Once a defendant has invoked his/her rights, the police are required “to end the interrogation at once.” See *Michigan v. Mosley*, 423 U.S. 96, 103, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975); citing *Miranda*, 384 U.S. at 474, 86 S.Ct. 1602). The invocation of these rights do not need to be express, but may also be “inferred from the actions and words of the person interrogated.” *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). Law enforcement “must ‘scrupulously hono[r]’ this ‘critical safeguard’ when the accused invokes his or her ‘right to cut off questioning.’” *Mosley*, 423 U.S., at 103, 96 S.Ct. 321.

Mr. Hayek’s pretrial statement to law enforcement was played for the jury at his trial and it contained numerous statements that could be considered inculpatory,

therefore, its admission at trial engendered prejudice. The statement Mr. Hayek gave to law enforcement was recorded and, prior to making it, he received *Miranda* warnings. However, the District Court took note that the officers entered Mr. Hayek's residence at approximately 6:15 A.M. but the recorded interview did not begin until 7:06 A.M., a time span of approximately fifty minutes and, during that time, Mr. Hayek stated that the interrogating agents talked to him for "approximately an hour" prior to the beginning of the recorded interview attempting to convince him to give a statement. (R.103, Order Denying Motion to Suppress, PageID#246&251&254)

Mr. Hayek testified that the waiver of his *Miranda* rights was not voluntary because, when he signed the waiver, law enforcement had entered his room and three of agents had weapons pointed at him. (R.110, Transcript of Suppression Hearing, PageID#297) Mr. Hayek testified that this induced a "panic attack" and, at the time he signed the waiver, he was still under the influence of having consumed alcohol the night before. (R.110, Transcript of Suppression Hearing, PageID#298) Despite, Mr. Hayek "repeatedly" telling law enforcement that he wanted an attorney, none was ever provided prior to signing the waiver, or during the interview. (R.110, Transcript of Suppression Hearing, PageID#298) Additionally, Mr. Hayek testified that officers interrogating him were aware his family had immigrated to the United States from Lebanon and informed him that if he refused to talk, they would be required to look through his "family's papers" which he took to be a veiled threat against his family

and stating this was the primary inducement leading him to giving a statement. (R.110, Transcript of Suppression Hearing, PageID#299-300)

The Circuit Court acknowledges that, for *Miranda* purposes, Mr. Hayek was in custody when he was interrogated. See Opinion, *United States v. Nicholas Hayek*, 22-5177, P.5 (6th Cir. May 7<sup>th</sup>, 2024) However, the District Court was erroneous when it determined Mr. Hayek's waiver of rights was voluntary and that his waiver was knowingly and intelligently given and this Court should accept his application to provide guidance to courts throughout the nation in interpreting these issues.

## **ii. Voluntariness of the Waiver**

Mr. Hayek also did not waive his rights voluntarily. “[C]oercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.” *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). A three-step test has been developed in the Sixth Circuit to assist in determining if a statement was induced by police coercion: “(i) the police activity was objectively coercive; (ii) the coercion in question was sufficient to overbear the defendant’s will; (iii) and the alleged police misconduct was the crucial motivating factor in the defendant’s decision to offer the statements.” *United States v. Mahan*, 190 F.3d 416, 422 (6th Cir. 1999).

In Mr. Hayek’s case, he testified clearly that he believed law enforcement when they told him if he did not cooperate, they would investigate his family more

thoroughly which was prefaced by the acknowledgement that his family were immigrants. These were threats against his family's immigration status and this was the inducement for him to waive his rights under the Fifth Amendment. (R.110, Transcript of Suppression Hearing, PageID#299-300). Under *Rogers* and *Mahon*, these facts demonstrate the police coercion used in the interrogation of Mr. Hayek was sufficient to overbear his will and that the coercion was the catalyst for the statement. Further, though subtle, the statements of law enforcement were "objectively coercive". Mr. Hayek testified his father had previously been deported and had only recently returned to the United States and, since he was asked about the immigration status of his family as residents of the United States by law enforcement prior to the waiver, there could be no other legitimate reason for this inquiry by law enforcement, particularly when it was linked to the "need" to get a statement from him, other than an insinuation that his failure to give a statement would have a negative impact on his family. Mr. Hayek's waiver was not voluntarily given. (R.110, Transcript of Suppression Hearing, PageID#299-300)

### **iii. Knowing and Intelligent Waiver**

Mr. Hayek did not agree to waive his rights knowingly and intelligently due to his state at the time he did so. "[W]aivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege". *Edwards v. Arizona*, 451 U.S. 477, 482, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) The defendant bears the burden of showing, under the totality of the circumstances, that his/her waiver was not knowingly and intelligently



given. *Clark*, 425 F.3d at 283. The Court must determine if the “suspect [knew] that he [could] choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue talking at any time.” *Spring*, 479 U.S. at 574. A waiver is knowingly and intelligently given when it is “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran*, 475 U.S. at 421; see also *United States v. Ramamoorthy*, 949 F.3d 955, 965 (6th Cir. 2020).

Mr. Hayek noted that, into the early hours of the morning the day that law enforcement interrogated him, he had consumed a significant amount of vodka and took Nyquil. (R.110, Transcript of Suppression Hearing, PageID#295-297) Various cases note that intoxication is a factor used to determine if a waiver was either knowing and intelligent, or voluntary. *Montgomery*, 621 F.3d at 573. Additionally, Mr. Hayek testified to being in a state of panic at the time he agreed to waive his rights, both because of the situation and out of fear for his family. The totality of the circumstances support the contention that his waiver was not knowingly and intelligently given. Without question, Mr. Hayek’s statement was highly prejudicial for him and the error in admitting it could not have been harmless. For all of these reasons, Mr. Hayek is entitled to relief in the form of a new trial and this Court should grant his petition in order to provide guidance to lower courts on these issues.

### CONCLUSION

For the aforementioned reasons, Mr. Hayek prays that this Honorable Court will grant his request for a writ of certiorari in order to review the question presented relating the erroneous and prejudicial factual and legal rulings by the District Court, affirmed by the Circuit Court, that created reversible error. This issue is one that presents an important issue that this Court grant review.

Respectfully submitted,

/s/ Manuel B. Russ

Manuel B. Russ  
340 21<sup>st</sup> Avenue North  
Nashville, Tennessee 37203  
(615) 329-1919

### CERTIFICATE OF SERVICE

I certify that the foregoing writ of certiorari and the accompanying appendix has been served via electronic mail upon counsel for the Respondent, Assistant United States Attorney Ms. Meghan Lynn Gomez Office of the U.S. Attorney 220 W. Depot Street Suite 423 Greeneville, TN 37743, and Ms. Elizabeth Prelogar, Acting Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington D.C. 20530-0001, this 18<sup>th</sup> day of July, 2024.

/s/ Manuel B. Russ

Manuel B. Russ