No. 17-1172

IN THE

Supreme Court of the United States

BRENDAN DASSEY,

Petitioner,

v.

MICHAEL A. DITTMANN,

Respondent.

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

BRIEF OF CURRENT AND FORMER PROSECUTORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are current and former state and federal prosecutors who have dedicated many years of service to the criminal justice system and maintain a continuing interest in preserving the fair and effective administration of justice. *Amici* understand that a prosecutor's duty is not that the government "shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). We submit this brief to emphasize that fundamental to vindicating this pursuit is ensuring that lower courts provide a meaningful check on convictions secured through juvenile confessions.

Confessions serve an important role in our criminal justice system. But only when they are voluntary and reliable. After all, an involuntary or unreliable confession heightens the risk of convicting the innocent, leaving the guilty free to victimize again. That is why many prosecution offices across the country have created Conviction Integrity Units, which have helped exonerate hundreds of individuals wrongfully convicted, including many juveniles who falsely confessed to crimes they did not commit. Through the work of CIUs, as well as many organizations and individuals, one thing is now beyond dispute: juveniles are at particular risk of confessing involuntarily, and often falsely, under the stress and strain of police interrogation.

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[1] No counsel for a party authored this brief in whole or in part and no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received the required notice of this brief and have filed blanket letters of consent. A full list of *amici* appears in the Appendix to this brief.

Amici believe that one reason for this phenomenon is that common interrogation techniques—practices that can lead to voluntary and reliable confessions with average adult suspects—can inadvertently lead to involuntary and unreliable false confessions when applied to juveniles. Review here would reaffirm and revitalize a needed check on juvenile confessions secured through such techniques.

Amici also believe that review would help stem the tide of juvenile false confessions in the future by spurring broader adoption of interrogation "best practices" that take into account the unique vulnerabilities of children. In *amici*'s experience, when this Court speaks, prosecutors and law enforcement listen, and develop policies that seek to adhere to this Court's precedents and guidance. It has been nearly forty years since the Court last spoke in a juvenile voluntariness case. Reaffirming that the totality-of-the-circumstances test mandates a meaningful "evaluation" of the age and intelligence of juveniles will not only be heard loudly by lower courts, but also in stationhouses and prosecution offices throughout the nation.

INTRODUCTION AND SUMMARY OF ARGUMENT

"People who are innocent don't confess." So said the State's attorney to the jury that sentenced sixteen-year-old, intellectually-disabled Brendan Dassey to life in prison. Dist. Ct. Dkt. 19-23, at 144:13 (closing argument). But as every experienced prosecutor knows, sometimes innocent people *do* confess. And because of their age and mental development, children are particularly susceptible to falsely confessing. That is why this Court has long held that juveniles need to be treated with special care, and that courts must

evaluate their confessions in light of their age and intelligence.

Unfortunately, in the workaday of the criminal justice system, that message has been lost in the lower courts, which have often failed to adequately account for the age and mental deficits of juveniles who confess to crimes. The proof is in the numerous DNA and other exonerations of wrongly convicted adolescents who lost their childhoods after courts found their false confessions to be voluntary and reliable.

The present case presents a particularly egregious and high-profile example of the problem. The state courts gave only glancing consideration of petitioner's young age and low IQ in the face of multiple interrogations over forty-eight hours—interrogations in which two investigators asked "questions to which the police furnished the answers," promised that petitioner's responses would "set him free," and engaged in "games of '20 Questions,' in which Brendan Dassey guessed over and over again before he landed on the 'correct' story." App. 40a, 46a (Wood, C.J., dissenting).

The interrogations of Dassey aptly illustrate one of the core reasons why courts must be ever vigilant in evaluating confessions by juveniles: the often toxic interaction of standard police interrogation techniques with minors' unique vulnerabilities. While a leading law enforcement association has proposed best practices for interrogating juveniles, most jurisdictions employ one-size-fits-all interrogation techniques for adults and juveniles alike. But techniques that can effectively produce voluntary and reliable confessions for an average adult can have devastating, unintended consequences when applied to kids.

Here, those standard techniques led a learning-disabled sixteen-year-old to believe that he would be free to return to his sixth period class at school after he confessed to rape, murder, and mutilation of a corpse—a confession starkly at odds with the physical evidence. When Dassey's mother later asked him how he came up with details in the confession, he said, "I guessed." Chided by his mother, "You don't guess with something like this, Brendan," Dassey replied, "Well, that's what I do with my homework." Dist. Ct. Dkt. 19-46. The awkwardly silent, intellectually and socially vulnerable teenager with no past prior criminal record told his mom: "They got to my head." App. 503a.

Review is needed to revitalize a critical check on convictions secured through these interrogation techniques on our most vulnerable citizens. Doing so will have the ancillary effect of helping deter coerced and unreliable confessions on the front end by encouraging law enforcement to adopt juvenile interrogation best practices. The result will be fewer innocent kids getting locked up, and fewer guilty individuals free to victimize again.

Finally, *amici* submit that review of this particular case is needed to restore the public's confidence in the justice system. Millions of Americans watched the video of Dassey's interrogations in the award-winning documentary *Making a Murderer*, prompting a public outcry over the obvious failure of the system. The dissenters in the closely divided 4-3 decision below likewise found that the interrogation video "speaks for itself," and decried this case a "travesty of justice," App. 40a, 67a (Wood, C.J., dissenting), and "a profound miscarriage of justice," *id.* at 70a (Rovner, J., dissenting).

This Court has long recognized that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *In re Murchison*, 349 U.S. 133, 136 (1955) (citation omitted). Only this Court can restore the appearance—and reality—of justice here.

ARGUMENT

I. REVIEW WILL HELP ENSURE THAT LOWER COURTS ADEQUATELTLY EVALUATE JUVENILE CONFESSIONS

A. Prevailing Interrogation Techniques Do Not Account for Juveniles' Age and Mental State

No one could reasonably dispute that "minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979), and are thus "more vulnerable or susceptible to negative influences and outside pressures," *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

Yet as a leading professional organization of law enforcement has observed, police interrogation training "typically does not cover the developmental differences between adults and youth nor does it cover recommended techniques to be used on youth versus adults. This often leads law enforcement practitioners to use the same techniques on youth as with adults." Int'l Ass'n of Chiefs of Police, *Reducing Risks*: *An Executive's Guide to Effective Juvenile Interview and Interrogation* 1, U.S. Dep't of Justice, Office of Justice Programs (2012).

Developmental and behavioral research shows that tactics that are "acceptable and useful tools to obtain reliable confessions" from adults "seem to increase the

likelihood of false confessions" from minors. *E.g.*, Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 Law & Psychol. Rev. 53, 69 (2007).[2]

The majority below based its decision in part on the fact that the interrogation tactics used on Brendan Dassey were unremarkable, asserting that "deception is a common interview technique." App. 27a. But the majority failed to conduct the necessary "evaluation" of Dassey's age and mental state with respect to those techniques in accordance with this Court's clearly established law; the same error committed by the Wisconsin state courts.

Reaffirming that lower courts must specifically evaluate juvenile confessions would revitalize this important check on juvenile interrogations.

1. Prevailing Techniques Do Not Account for Juveniles' Suggestibility

In the interrogation setting, suggestibility is "the tendency of an individual's account of events to be altered by misleading information and inter-personal pressure within interviews." K.K. Singh & Gisli H. Gudjonsson, *Interrogative Suggestibility Among Adolescent Boys and Its Relationship with Intelligence, Memory, and Cognitive Set*, 15 J. of Adolescence 155,

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[2] *Accord* Allison D. Redlich et al., *Police Interrogation of Youth*, *in The Mental Health Needs of Young Offenders: Forging Paths Toward Reintegration and Rehabilitation* 68 (C.L. Kessler et al. eds., 2007) ("[P]olice interrogators are trained to treat youths and adults the same—this fact cannot be overemphasized because it stands in the face of 100 years of developmental theory and knowledge, and in the face of the 20 or so years of child victim/witness research, which has determined the ways children should and should not be interviewed.").

155 (1992). A highly suggestible suspect is more likely to falsely confess to a crime than one who is less suggestible. *See* Saul M. Kassin, *Internalized False Confessions*, *in* 1 The Handbook of Eyewitness Psychology: Memory for Events 175-76 (Michael P. Toglia et al. eds., 2007); Jessica Owen-Kostelnick et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 Am. Psychologist 286, 291 (2006) (discussing effects of pressure). Key here, there is a strong correlation between a person's age and level of suggestibility. G. Richardson et al., *Interrogative Suggestibility in an Adolescent Forensic Population*, 18 J. of Adolescence 212, 215 (1995). Studies further show that older children are likely to be as suggestible as younger children, sometimes more so. *See* Owen-Kostelnick et al., *supra*, at 291.

Intelligence also correlates with suggestibility; low-IQ individuals are generally more suggestible than individuals of ordinary intelligence. *E.g.*, Caroline Everington & Solomon M. Fulero, *Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation*, 37 Mental Retardation 212, 212 (1999).

Suggestibility can interact noxiously with common police interrogation tactics. Most police departments are influenced by a standardized set of interrogation procedures known as the "Reid Technique." *See* Fred E. Inbau et al., *Criminal Interrogation and Confessions* (5th ed. 2013). Two important components of the Reid Technique involve interrogators exuding unwavering confidence in the suspect's guilt and engaging in deception—often informing a suspect that police possess physical or other evidence implicating him, even if such evidence does not actually exist.

Id. at xi (explaining that "psychological tactics and techniques that may involve deception . . . are not only helpful but frequently indispensable in order to secure incriminating information from the guilty"); *see also* Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U. L. Rev. 979, 1008-1041 (1997) (surveying transcripts of interrogations that used evidence ploys).

While these techniques can be effective to secure voluntary confessions in average adults, they can prompt false confessions when used against highly suggestible juveniles.[3] A suggestible individual may absorb details revealed during questioning and then "internalize that narrative and repeat it, possibly becoming convinced of his own guilt." Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1064 (2010). Police might also unintentionally provide a suggestible individual details of the crime only to have them "parrot back an accurate-sounding narrative." *Id.* at 1053.

Thus, "[t]he use of deception . . . may cause an innocent juvenile—even one who initially had a clear recollection of not committing a crime—to mistrust his memory, accept that the 'evidence' proves his guilt,

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[3] The Reid Handbook provides general guidance about using deception on children, but sends mixed signals about how to treat juveniles. *Compare* Inbau, *supra*, at 254-55 (advising interrogators not to use "active persuasion" on children under the age of ten or use fabricated evidence on teens with "low social maturity"), *with id.* at 250-54 (encouraging interrogators to play on juveniles' insecurities about family relationships), *and id.* at 419 (advising that in most jurisdictions "the interrogation of juvenile suspects may be conducted in essentially the same way as for adults").

and eventually confess to a crime that he did not commit." Chiefs of Police, *supra*, at 9. In a leading study, for instance, juvenile participants were falsely told that they had crashed a computer. Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 Law & Hum. Behav. 141 (2003). The study found that 78% of the twelve- and thirteen-year-old subjects and 72% of the fifteen- and sixteen-year-old subjects signed a statement admitting to crashing the computer, despite playing no role in the event and even though admission meant they would have to spend ten hours assisting with data entry as punishment. *Id*. at 146-48. A third of the participants not only signed the statement but also displayed "total internalization" of the belief that they had crashed the computer. *Id*. at 149.

Of course, "[t]aking responsibility for crashing a computer is qualitatively different than confessing to an actual crime." *Id.* at 151. But numerous studies of juvenile offenders, as well as child witnesses and victims, confirm that juveniles are likely to provide false or unreliable information in response to suggestive questioning. *See* Owen-Kostelnick et al., *supra*, at 291 (summarizing extensive body of studies on juvenile suggestibility and interrogation).

2. Prevailing Techniques Do Not Account for Juveniles' Struggle with Delayed Gratification and Perceiving Time

Juveniles are more likely than adults to struggle with delaying gratification. *See, e.g.*, Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence*, 18 Behav. Sci. & L. 741, 745 (2000); Leonard Green et al., *Discounting of Delayed*

Rewards: A Life-Span Comparison, 5 Psych. Sci. 33, 35 (1994). "Adolescents tend to discount the future more than adults do, and to weigh more heavily short-term consequences of decisions—both risks and benefits—in making choices." Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 814 (2003); *see also* Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. Crim. L & Criminology 137, 164 (1997). That is why juveniles are likely to waive important rights during an interrogation if exercising those rights delays some reward, such as ending the interrogation or being able to return home. *See* Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333, 334-35 (2003).

Children also perceive intervals of time as lasting longer than adults. Psychologists relate this perception to the development of the prefrontal cortex, an area of the brain that does not fully mature until adulthood. *See* Sylvie Droit-Volet, *Children and Time*, 25 Psychologist 586, 588 (2012).

The combination of the desire for immediate gratification and distorted time perception runs headlong into standard interrogation techniques. The Reid Technique employs "minimization" and "maximization" strategies to influence suspects to confess. *See* Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law & Hum. Behav. 3, 12 (2010); Allison D. Redlich et al., *The Police Interrogation of Children and Adolescents*, *in* Interrogations, Confessions, and Entrapment 107, 119 (G. Daniel Lassiter ed., 2004). Minimization can induce suspects to confess by downplaying the moral

harm or consequences of the offense; maximization can frighten the suspect into thinking he must confess by insinuating that the evidence is airtight and the punishment for silence harsh. *See Police-Induced Confessions*, *supra*, at 7, 12 ("[T]he interrogator offers sympathy and moral justification, introducing 'themes' that minimize the crime and lead suspects to see confession as an expedient means of escape."). The Reid Technique also allows interrogations to last up to four hours for adults and juveniles. *See* Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 Law & Hum. Behav. 381, 392 (2007).

A juvenile's distorted perception of time—coupled with the reward of potentially being able to end the interrogation "if they tell the police what they want to hear"—can have a disproportionate impact on juvenile suspects, who may seize an opportunity to exit an uncomfortable interrogation that, to them, seems never-ending. *See The Police Interrogation of Children and Adolescents*, *supra*, at 119; *see also* Richard A. Leo, *Police Interrogation and American Justice* 233-34 (2009) (noting that juveniles are "less capable of withstanding interpersonal stress and thus more likely to perceive aversive interrogation as intolerable"). "An innocent youth might jump at such a chance and falsely confess out of a desire to return home, believing that his innocence will be straightened out later." Chiefs of Police, *supra*, at 9.

3. Prevailing Techniques Do Not Account for Juveniles' Compliance with Authority Figures

Psychologists have defined compliance as "acquiescence to a social influence attempt in order to achieve some immediate instrumental gain." Saul M. Kassin

& Lawrence S. Wrightsman, *Confession Evidence*, *in* The Psychology of Evidence and Trial Procedure 67, 77 (1985). In an interrogation setting, potential "instrumental gains" can include "ending the interview, being allowed to go home, or avoiding being locked up; basically the suspect wants to escape from the stressful situation he or she is in." Scott-Hayward, *supra*, at 55. Some individuals exhibit higher levels of acquiescence to social influences than others, and these individuals are more likely to falsely confess in pursuit of these objectives. *See* Jessica R. Klaver et al., *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 13 Leg. & Criminological Psych. 71, 80 (2008) (individuals who signed false confession scored higher on measures of compliance than non-signing individuals in controlled experiment).

Children tend to be more compliant than adults to begin with, and many common interrogation techniques can inadvertently distort the power disparity between child and investigator. *See* Kimberly Larson, *Improving the "Kangaroo Courts": A Proposal for Reform in Evaluating Juveniles' Waiver of* Miranda, 48 Vill. L. Rev. 629, 657-58 (2003). "Social expectations of obedience to authority and children's lower social status make them more vulnerable than adults during interrogation." Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. Crim. L. & Criminology 219, 230 (2006); *see also* Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Psych. L. 332, 336 (2009). In this context, positive signals from authority figures (reinforcement) can affect juveniles' propensity to falsely confess. One study found that young children were more likely to falsely confess to stealing a toy or to incriminate a

classmate where the interviewer asked leading questions and made positively reinforcing comments in response to the answers ("Great! You're being a real help."). F. James Billings et al., *Can Reinforcement Induce Children to Falsely Incriminate Themselves?*, 31 Law & Hum. Behav. 125, 133 (2007).

Negative feedback from an interrogator can also lead to increased pressure and a false confession. Under the Reid Technique, interrogators not only are trained to use deception, but also to look for signs of lying, such as fidgeting, slouching, and lack of eye contact. Inbau, *supra*, at 196. But children typically exhibit such behavior even when they are not lying. The result can be an interrogator who pushes harder, convinced the minor is lying, and a child more apt to comply with suggestions of guilt:

> [The child's] reactions, combined with his powerless speech patterns, lead police to believe he is lying. They close off alternative theories, heightening the pressure on the kid about whose guilt they are now convinced. They make real evidence sound more inculpatory than it is, they deceive him into believing there is still more inculpatory evidence against him, they appeal to his self-interest, and they hammer away at him for hours. Young, isolated, cut off from family and friends, fearful, and rightly seeing no way out, he confesses. Falsely.

Andrew E. Taslitz, *Wrongly Accused: Is Race a Factor in Convicting the Innocent?*, 4 Ohio St. J. Crim. L. 121, 132 (2006). In the pressure-cooker setting of the interrogation room, juveniles' heightened compliance makes them more likely to falsely confess. *See The Influence of Age and Suggestibility*, *supra*, at 152.

This risk is particularly pronounced in the case of low-IQ juveniles, who may "eagerly assume blame in an attempt to please or curry favor with their accuser. This phenomenon of 'cheating to lose' may give rise to unfounded confessions." James W. Ellis & Ruth A. Luckasson, *Mentally Retarded Criminal Defendants*, 53 Geo. Wash. L. Rev. 414, 430 (1985); *see also* Morgan Cloud et al., *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. Chi. L. Rev. 495, 511-12 (2002).

B. The Dassey Interrogation Videos Exemplify the Problems with Using Standard Interrogation Techniques on Kids

With respect to the interrogations of Brendan Dassey, "[m]any of the officers' tactics appear to be drawn from the 'Reid Technique.'" App. 43a (Wood, C.J., dissenting); App. 66a (Rovner, J., dissenting). And as the video of the interrogations makes clear, the two investigators did not modify those techniques to account for Dassey's age and obvious cognitive and social limitations that made him highly susceptible to psychological coercion.

The investigators questioned Dassey on multiple occasions, four of which took place over a forty-eight-hour period. They assured Dassey that, although they were police officers, they were acting as his "father." App. 518a; Pet. 27-28; *see* Feld, *supra*, at 230 (juveniles more compliant toward authority figures).

In one of the initial interrogations, the investigators' questions provided Dassey details of the crime, telling him he must have seen the victim's "flesh," "arm[s]," "legs," and "head" in a bonfire—details that Dassey later parroted back nearly verbatim, telling them that he had seen the victim's "flesh," "toes," and "forehead"

in the fire. App. 527a-529a; *see* Pet. 7-9 (additional examples of Dassey parroting); Garrett, *supra*, at 1053 (juveniles frequently parrot back police-fed narratives).

Two days later, the investigators removed Dassey from school and questioned him for four hours, without a parent or attorney present. The investigators employed classic Reid "maximization" and "minimization" techniques. They used maximization by falsely accusing Dassey, repeatedly telling him, "We already know, don't lie to us now . . . ." *E.g.*, App. 392a, 402a; App. 65a (Rovner, J., dissenting) (identifying at least 21 similar instances of maximization during Dassey interrogations). They used minimization and implied leniency by repeatedly saying things like, "I'm thinkin' you're all right. OK, you don't have to worry about things"; "by you talking with us, it's, it's helping you." *Id.* at 361a-362a. "Honesty," they said, "is the only thing that will set you free." *Id.* at 362a; *see also id.* at 66a (Rovner, J., dissenting); *Police-Induced Confessions*, *supra*, at 18 (minimization heightens risk of false confessions from juveniles).

During one critical exchange, the investigators attempted to elicit a statement from Dassey concerning the manner of the victim's death. Only the police knew that the victim may have been shot in the head. They repeatedly warned Dassey to "[t]ell . . . the truth" each time he told them something that did not match their theory or said he "d[id]n't know." App. 399a; Pet. 24-25.

With mounting frustration, the investigators guided Dassey's narrative by asking him what his uncle had done "with the head" of the victim, repeatedly assuring him that "[w]e have the evidence." App. 408a. Dassey first guessed that his uncle "cut off [the victim's] hair."

Id. When that did not yield a positive response from investigators, Dassey said, "[t]hat he punched her." *Id.* at 409a. Irritated, one investigator asked, "He made you do somethin' to her, didn't he? So he-he would feel better about not bein' the only person, right?" *Id.* The video shows Dassey struggling to think of something else, and he tells the officers that he cut the victim "[o]n her throat." *Id.*

And in a now famous portion of the interrogation, after Dassey repeatedly guessed incorrectly what happened to the victim's head, one of the investigators blurted, "I'm just gonna come out and ask you. Who shot her in the head?" *Id.* at 411a. Dassey acquiesced: "He did." When asked, "[t]hen why didn't you tell us that?" Dassey said, "Cuz I couldn't think of it." *Id.*; Pet. 8-9, 28-29; *see The Influence of Age and Suggestibility*, *supra*, at 149 (leading questioning with juveniles often results in false admissions).

Consistent with the Reid Technique, the officers reinforced and praised Dassey when he answered their questions "correctly," *see* App. 99a, telling him "you're doing a good job," *id.* at 386a, "you're doin' a real good job," *id.* at 419a; *id.* at 549a, 559a (similar); *see* Billings, *supra*, at 133-34 (juveniles more likely to respond falsely if given positive reinforcement).

The interrogation video shows that Dassey did not grasp the seriousness of confessing and wanted to get out of the situation. After telling officers that he had committed a bloody murder, rape, and mutilation of a corpse—events inconsistent with the absence of any blood and the physical and forensic evidence (*see* Pet. 29-30, 36)—Dassey asked them, "Do you think I can get [back to school] before one twenty-nine" to turn in "a project due in sixth hour." App. at 438a-439a. Later, he told his mom, "They got to my head." *See* App. 503a.

II. REVIEW WILL HELP STEM THE TIDE OF JUVENILE FALSE CONFESSIONS

Prosecutors do not want convictions based on false confessions. When false confessors are incarcerated, the actual perpetrators remain at large and "constitute a palpable threat to public safety." James R. Acker, *The Flipside Injustice of Wrongful Convictions: When the Guilty Go Free*, 76 Alb. L. Rev. 1629, 1631, 1633 (2013). For instance, among DNA exonerations since 1989, the real perpetrators were later convicted of 150 additional violent crimes, including 35 murders, 80 sexual assaults, and 35 other violent crimes. *DNA Exonerations in the United States*, Innocence Project, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/. "Had they been apprehended in a timely fashion, rather than the innocent persons accused in their place, their future victims would have been spared death, injury, and the related pernicious consequences of criminal violence." Acker, *supra*, at 1632.

Review here will help prevent wrongful convictions based on involuntary and unreliable juvenile confessions in at least two ways. *First*, reaffirming the duty of lower courts to meaningfully "evaluate" a juvenile's age and intelligence will underscore that the totality-of-the-circumstances inquiry requires more than a fleeting reference to a child's age, and would provide guidance on how to apply this Court's precedents. That such guidance is needed is reflected in the numerous wrongful convictions—and subsequent DNA and other exonerations—of juveniles who falsely confessed to crimes they did not commit.

According to the National Registry of Exonerations, since 1989 there have been 2,187 exonerations of adults and juveniles wrongfully convicted of crimes. *See % Exonerations by Contributing Factor*, https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx (last visited Mar. 22, 2018). Wisconsin, the state that prosecuted Dassey, has an unusually high rate of exonerations, placing it among the highest in the country. *See* Mark Abadi, *The Number of Wrongfully Convicted Prisoners Being Exonerated Is Skyrocketing*, Business Insider (May 13, 2016).

More than 12% of these wrongful convictions involve false confessions. *% Exonerations by Contributing Factor*, *supra*. A third of these false confessors (32%) were juveniles. *Facts and Figures*, False Confessions, http://www.falseconfessions.org/fact-a-figures. In 2017 alone, "[t]wenty-nine exonerations involved false confessions, another record." National Registry of Exonerations, Report, *Exonerations in 2017* at 2 (Mar. 14, 2018).

Juveniles are overrepresented in the number of false confessions. A study of exonerations found that 42% of all juvenile exonerations involved a false confession, compared to just 8% of adult exonerations. National Registry of Exonerations, Report, *Exonerations in the United States, 1989 – 2012* at 60 (June 2012).

Exonerations secured by prosecutorial Conviction Integrity Units reveal the earmarks of juvenile false confessions. CIUs have been credited with helping secure 269 exonerations of wrongly convicted

individuals,[4] including at least twelve juveniles who falsely confessed.[5]

Similar to Brendan Dassey, the kids in these CIU exonerations were told details of the crimes that then found their way into the confessions.[6] They believed they could go home if they confessed.[7] They were interrogated outside the presence of a parent or attorney.[8] They did not seem to grasp the seriousness of giving a false confession.[9] And tragically, in at least one of these cases, the real perpetrator identified by DNA evidence went on to kill and rape again while the juvenile spent twenty-one years in prison for a crime he did not commit.[10] Review will revitalize lower court review that will help prevent similar wrongful convictions in the future.

Second, review will promote best practices for juvenile interrogations in stationhouses across the

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[4] *Exonerations in 2017*, *supra*, at 2.

[5] *See Exoneration Detail List*, National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Group&FilterValue1=CIU&FilterField2=FC&FilterValue2=8_FC.

[6] *See Adam Gray*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5131.

[7] *See Sharrif Wilson*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4372; *Christopher Abernathy*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4640.

[8] *See LaShawn Ezell*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5099.

[9] *See David McCallum*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4524.

[10] Stephanie Clifford, *Man Jailed in '92 Killings and Later Cleared Sues New York City*, N.Y. Times (Feb. 3, 2015).

country. Over the past several years, "most exonerations were produced by . . . prosecutorial Conviction Integrity Units (CIUs) and Innocence Organizations," often working together. *Exonerations in 2017*, *supra*, at 1. CIUs do not just focus on correcting past wrongful convictions, but also preventing them in the future. To that end, a goal of CIUs is "training and education of police officers." Center on the Administration of Criminal Law, *Establishing Conviction Integrity Programs in Prosecutors' Offices* 36 (2012).

The International Association of Chiefs of Police has proposed best practices for interrogating juveniles, but most jurisdictions still employ the same interrogation techniques for juveniles and adults alike. Chiefs of Police, *supra*, at 1, 7-12. Most officers have "expressed a desire for more training on how to question youth" and "endorse[] the development of standardized juvenile questioning procedures. Yet most officers ha[ve] received fewer than 10 hours of juvenile interview and interrogation training over their entire careers." *Id.* at 14.

Having this Court reiterate the importance and need for special care with respect to juveniles can only help promote best practices. "[W]hen binding appellate precedent specifically *authorizes* a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities." *Davis v. United States*, 564 U.S. 229, 241 (2011).

Review by this Court thus could spur departments to adopt juvenile-specific interrogation techniques, including having a "friendly adult" present during questioning and allowing for breaks in the questioning to account for juveniles' distorted perception of time. Chiefs of Police, *supra*, at 8.

In addition, the recommended best practices include "avoid[ing] the use of deception," "avoid[ing] promises of leniency," "ensuring that the suspect understands the consequences of confessing," and "refrain[ing] from suggesting that you can help the suspect if he confesses." Chiefs of Police, *supra*, at 7-11. For instance, "many juvenile false confessors have explained that they confessed under the mistaken belief that they would be able to end the interrogation and immediately go home. To that end, interrogators must take special care to ensure that nothing they say could be interpreted as suggesting that the juvenile can go home if he confesses." *Id.* at 9. These best practices offer guidance for avoiding common pitfalls, such as using leading questions that could "inadvertently educat[e] [the juvenile] about how the police think the crime took place," which can be parroted back to investigators. *Id.* at 11 (providing detailed Do's and Don'ts for interrogators). These best practices were developed based on social science and lessons learned from past wrongful convictions of juveniles. And, critically, they run counter to standard Reid Techniques and the actual interrogations of Brendan Dassey.

III. THIS CASE IS EXCEPTIONALLY IMPORTANT

This Court has long held that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *In re Murchison*, 349 U.S. at 136 (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)); *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 811 (1987) (similar). Only this Court can restore the appearance of justice here.

When the public first got a glimpse of the video of Brendan Dassey's interrogations in late 2015—from

the documentary *Making a Murderer*—it prompted a national outcry. "Fury—by telephone, email and on social media . . . ."[11]

Since then, millions have watched the questioning of Dassey.[12] It prompted rallies,[13] books,[14] and petitions[15] about the perceived injustice. And, notably, it affected the way everyday Americans view our justice system. "The series sparked controversy and outrage across America,"[16] and made citizens "more cynical on how the justice system works" and "more skeptical about the legal system."[17] It spurred a national conversation, from the pages of major newspapers and

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[11] Monica Davey, *'Making a Murderer' Town's Answer to Netflix Series: You Don't Know*, N.Y. Times (Jan. 28, 2016).

[12] *E.g.*, Jason Lynch, *Over 19 Million Viewers in the U.S. Watched Making a Murderer in Its First 35 Days*, Adweek (Feb. 11, 2016).

[13] Associated Press, *'Making a Murderer' Protest in Wisconsin*, YouTube (Jan. 29, 2016), https://www.youtube.com/watch?v=nhkLddNGqac.

[14] Jerome F. Buting, *Illusion of Justice: Inside Making a Murderer and America's Broken System* (Harper 2017); Michael D. Cicchini, *Convicting Avery: The Bizarre Laws and Broken System Behind "Making a Murderer"* (Prometheus 2017).

[15] Lisa Respers France, *White House Responds to 'Making a Murderer' Petition*, CNN (Jan. 8, 2016).

[16] Steve Helling, *Making a Murderer One Year Later: How Life Has Changed for Steven Avery and Brendan Dassey*, People (Dec. 21, 2016).

[17] David Barden, *How Making a Murderer Will Change the Way We Think About Justice*, Huffington Post (Mar. 30, 2016).

magazines,[18] to social media,[19] to workplace watercoolers nationwide.[20]

"As much anger and conflict as the 10-part series generated about the conviction of the central figure, Steven Avery, there was virtual consensus that his nephew, Dassey, was screwed."[21] Even critics of the documentary singled out the problem with Dassey's confession: "Most people find it impossible to imagine why anyone would confess to a crime he didn't commit, but, watching Dassey's interrogation, it is easy to see how a team of motivated investigators could alternately badger, cajole, and threaten a vulnerable suspect into saying what they wanted to hear."[22]

As Chief Judge Diane Wood (joined by Judges Rovner and Williams) found in her dissent, Dassey's "confession was coerced, and thus it should not have been admitted into evidence. And even if we were to overlook the coercion, the confession is so riddled with input from the police that its use violates due process. Dassey will spend the rest of his life in prison because of the injustice this court has decided to leave

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[18] Daniel Victor, *Court Rules Against Brendan Dassey, Subject of 'Making a Murderer'*, N.Y. Times (Dec. 8, 2017); Kashmira Gander, *'Making a Murderer': Could Brendan Dassey Soon Be Freed?*, Newsweek (Feb. 21, 2018).

[19] *See*, *e.g.*, #FreeBrendanDassey; #BrendanDassey; #IStand WithBrendanDassey; #Nevergivingup.

[20] Anna Lewis, *Making a Murderer Season 2: Everything We Know So Far*, Cosmopolitan (Feb. 26, 2018); Paul Tassi, *Why 'Making a Murderer' Is Netflix's Most Significant Show Ever*, Forbes (Jan. 3, 2016).

[21] James Warren, *The Tragic, Real-Life Epilogue to Netflix's "Making a Murderer"*, Vanity Fair (Dec. 11, 2017).

[22] Kathryn Schulz, *How "Making a Murderer" Goes Wrong*, New Yorker (Jan. 25, 2016).

unredressed." App. 40a. And, as aptly summarized by Judge Ilana Rovner in her separate dissent, "Dassey was subjected to myriad psychologically coercive techniques but the state court did not review his interrogation with the special care required by Supreme Court precedent. His confession was not voluntary and his conviction should not stand, and yet an impaired teenager has been sentenced to life in prison." *Id.* at 67a, 70a. Review here will revitalize a longstanding and critical judicial check on juvenile confessions and inspire best practices in the station-house. It will also help restore the public's faith in our justice system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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