

No. 17-634

In the
Supreme Court of the United States

PARISH RAMON CARTER,

Petitioner,

v.

STATE OF COLORADO,

Respondent.

**On Petition for Writ of Certiorari
to the Colorado Supreme Court**

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

CYNTHIA H. COFFMAN
Attorney General

L. ANDREW COOPER
Deputy Attorney General

FREDERICK R. YARGER
Solicitor General
Counsel of Record

ELIZABETH ROHRBOUGH
Senior Assistant Attorney
General

GLENN E. ROPER
Deputy Solicitor General

Office of the Colorado
Attorney General
1300 Broadway
Denver, Colorado 80203

Fred.Yarger@coag.gov
(720) 508-6000

Counsel for Respondent

QUESTION PRESENTED

Petitioner argues that this case implicates a split among lower courts as to whether *Miranda v. Arizona*, 384 U.S. 438 (1966), is violated when a law enforcement officer advises a suspect of the right to counsel without providing any information about when the right attaches. Here, however, the detective did provide Petitioner information about when his right to counsel attached. The detective told Petitioner that he was required to be advised of his right to an attorney “*before I can even talk to you.*” As the Colorado Supreme Court held below, this advisement reasonably conveyed what the Constitution requires—that Petitioner had the right to request counsel before or during police questioning.

The question presented is therefore as follows:

Does a law enforcement officer’s statement that “before I can even talk to you ... [y]ou have the right to have an attorney” satisfy *Miranda*’s requirement that a suspect be informed he has a right to an attorney before or during police questioning?

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	5
I. This case does not implicate the question framed in the Petition.	6
II. This case does not implicate any genuine post- <i>Powell</i> split of authority requiring resolution by this Court.	8
A. <i>Powell</i> resolved a jurisdictional debate over whether <i>Miranda</i> requires explicit temporal language regarding the right to counsel.	9
B. Cases decided after <i>Powell</i> do not present a split of authority.	12
CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<i>Atwell v. United States</i> , 398 F.2d 507 (5th Cir. 1968).....	10
<i>California v. Prysock</i> , 453 U.S. 355 (1981)	4
<i>Coffey v. State</i> , 435 S.W.3d 834 (Tex. App. 2014).....	16
<i>Duckworth v. Eagan</i> , 492 U.S. 195 (1989).....	4
<i>Florida v. Powell</i> , 559 U.S. 50 (2010)	passim
<i>Miranda v. Arizona</i> , 384 U.S. 438 (1966)	passim
<i>State v. Carlson</i> , 266 P.3d 369 (Ariz. App. 2011).....	15
<i>State v. Figueroa</i> , 146 A.3d 427 (Me. 2016).....	15
<i>State v. Harris</i> , 98 So. 3d 903 (La. Ct. App. 2012).....	15
<i>State v. McNeely</i> , 398 P.3d 146 (Idaho 2017)	15
<i>State v. Shipley</i> , No. 2009 KA 2143, 2010 WL 1838316 (La. Ct. Ap. May 7, 2010).....	12, 15
<i>United States v. Adams</i> , 484 F.2d 357 (7th Cir. 1973).....	10
<i>United States v. Anthon</i> , 648 F.2d 669 (10th Cir. 1981).....	10
<i>United States v. Burns</i> , 684 F.2d 1066 (2d Cir. 1982).....	10
<i>United States v. Caldwell</i> , 954 F.2d 496 (8th Cir. 1992).....	10
<i>United States v. Frankson</i> , 83 F.3d 79 (4th Cir. 1996).....	10

<i>United States v. James</i> , No. 12 CR 6, 2012 WL 2200476 (N.D. Fla. June 15, 2012).....	14
<i>United States v. Lambrose</i> , No. 13-CR-556, 2014 WL 559560 (D. Utah Feb. 13, 2014).....	14
<i>United States v. Maddox</i> , No. 09 CR 45, 2010 WL 4683531 (E.D. Tenn. Oct. 28, 2010)	15
<i>United States v. Nelson</i> , No. 12-CR-2024 2013 WL 1899832 (N.D. Iowa May 7, 2013) ...	12, 14
<i>United States v. Noti</i> , 731 F.2d 610 (9th Cir. 1984).....	10
<i>United States v. Tillman</i> , 963 F.2d 137 (6th Cir. 1992).....	10
<i>United States v. Warren</i> , 642 F.3d 182 (3d Cir. 2011).....	13
<i>Warren v. United States</i> , 564 U.S. 1012 (2011).....	14
Statutes	
TEX. CODE CRIM. PROC. ANN. art. 38.22, §§ 2(a), 3	16
Other Authorities	
Adam Bazelon, Comment, <i>Adding (Or Reaffirming) A Temporal Element To The Miranda Warning ‘You Have The Right To An Attorney,’</i> 90 MARQ. L. REV. 1009 (2007)	10
Daniel J. Croxall, Comment, <i>Inferring Uniformity: Towards Deduction and Certainty in the Miranda Context</i> , 39 MCGEORGE L. REV. 1025 (2008)	11
Daria K. Boxer, Comment, <i>Miranda with Precision: Why the Current Circuit Split</i>	

<i>Should Be Solved in Favor of a Uniform Requirement of an Explicit Miranda Warning of the Right to Have Counsel Present During Interrogation</i> , 37 SW. U. L. REV. 425, 425 (2008)	10
Martin J. McMahon, <i>Necessity that Miranda Warnings Include Express Reference to Right to Have Attorney Present During Investigation</i> , 77 A.L.R. Fed. 123 (1968).....	11

STATEMENT OF THE CASE

Factual background. This case arose in the aftermath of a deadly shooting. An eyewitness to the shooting identified Petitioner's stepbrother as the perpetrator. Pet. App. 30a. Petitioner—seeking to prevent the eyewitness from testifying at his stepbrother's murder trial—approached the eyewitness in a sports bar and, in an encounter recorded by a security camera, made threats against him. *Id.* at 30a–31a. The following night, the eyewitness and his fiancée were ambushed and shot to death. *Id.*

Immediately after the eyewitness and his fiancée were murdered, the eyewitness's friends told the police about the incident at the sports bar. Pet. App. 30a–31a. Investigators recovered the security video, identified Petitioner as the man who approached the eyewitness at the bar, and obtained an arrest warrant. *Id.* at 31a.

After Petitioner was arrested, he was interviewed by two law enforcement officers. Pet. App. 3a, 32a–33a. At the outset of the interview, a detective advised Petitioner of his *Miranda* rights:

Since you're in custody, *before I can even talk to you*, I have to do the formal little rights things, okay? So you have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney. If you cannot afford to hire a[n] attorney, one will be appointed to you without cost.

Id. at 3a, 32a (emphasis added).

After indicating that he understood this advisement, and without invoking his right to counsel, Petitioner responded to the officers' questions. When confronted with an image from the security footage, Petitioner admitted that he had been in the sports bar on the date in question but denied that he had made any threats to the eyewitness. Pet. App. 4a, 33a. He also denied any association with the other suspects in the eyewitness's murder. *Id.* at 4a. The interview, which was videotaped, was stopped when Petitioner chose to invoke his right to counsel after two hours of questioning. *Id.* at 33a.

Proceedings in the trial court. The defense filed a motion to suppress the statements Petitioner made in his videotaped police interview, claiming that his *Miranda* advisement was insufficient. Pet. App. 2a–3a. After receiving evidence and hearing the arguments of counsel, the trial court denied the motion to suppress, concluding that the detective had adequately advised Petitioner of his rights under *Miranda*. *Id.* at 3a. At trial, the videotape of the police interview was admitted into evidence. *Id.* at 4a–5a.

The jury acquitted Petitioner on counts of first degree murder after deliberation and bribing a witness but found him guilty on counts of conspiracy to commit first degree murder after deliberation, intimidation of a witness, and distribution of a controlled substance. Pet. App. 31a. He was

sentenced to incarceration for a total of 70 years. *Id.* at 31a.

Proceedings in the Colorado Court of Appeals. On direct appeal, Petitioner raised various challenges to his convictions, including that his *Miranda* advisement was inadequate. A divided panel of the Colorado Court of Appeals affirmed the convictions, with each of the three judges writing separately. Pet. App. 28a–29a.

One judge concluded that the advisement was inadequate and was grounds for reversal. Pet. App. 50a.

A second judge agreed that the advisement was inadequate because, in the judge’s view, the advisement “contained no temporal element.” Pet. App. 40a (internal quotation marks omitted). But the judge nonetheless concluded that the admission of the videotaped interview into evidence was harmless beyond a reasonable doubt, given the “ample other evidence tying [Petitioner] to the charged crimes.” *Id.* at 39a–45a.

The third judge concurred in the judgment, stating that he would not have addressed the *Miranda* issue because it had not been adequately raised in the trial court. Pet. App. 47a–48a. The judge observed that the written motion challenging the *Miranda* advisement was perfunctory, containing only three sentences. *Id.* at 48a. And, at the hearing on the motion, defense counsel did not argue “that the substance of any of the four warnings required by *Miranda* was incorrect or incomplete.” *Id.*

Proceedings in the Colorado Supreme Court.

The Colorado Supreme Court granted certiorari and affirmed in a five-to-two decision, holding that “the *Miranda* advisement of [Petitioner] reasonably conveyed that he had a right to consult with counsel, both before and during any interrogation by the police.” Pet. App. 2a. In arriving at that conclusion, the majority examined this Court’s decisions in *Florida v. Powell*, 559 U.S. 50 (2010); *Duckworth v. Eagan*, 492 U.S. 195 (1989); and *California v. Prysock*, 453 U.S. 355 (1981). Pet. App. 8a–11a. It concluded that *Powell* is “perhaps the closest of the three to this case” because in *Powell*, the defendant was “warned of his right to talk to a lawyer before answering questions.” *Id.* at 9a.

But Petitioner’s advisement, the majority held, even more clearly comported with *Miranda* because “[u]nlike the advisement in *Powell*, the specific advisement of [Petitioner’s] right to counsel in this case did not include any temporal limitation that might even colorably be misunderstood to restrict the exercise of that right relative to interrogation by the police.” Pet. App. 9a. And, as in *Powell*, “it would be highly counterintuitive for a reasonable suspect in a custodial setting, who has just been informed that the police cannot talk to him until after they advise him of his rights to remain silent and to have an attorney, to understand that an interrogation may then proceed without permitting him to exercise either of those rights.” *Id.* at 10a.

The two dissenting justices would have held that the advisement was inadequate under *Miranda*. Despite the temporal language the detective used in

prefacing the advisement, the dissent believed the advisement did not sufficiently explain that Petitioner had the right to counsel “before and during questioning.” Pet. App. 27a.

REASONS FOR DENYING THE PETITION

The question framed in the Petition rests on a purported jurisdictional split regarding the constitutional adequacy of *Miranda* advisements that contain no information about when the right to counsel may be invoked. Pet. i, 10–17. But this case does not implicate that purported split. Here, the detective’s advisement provided a clear indication that the right to counsel attached “*before I can even talk to you.*” Thus, Petitioner’s claim that the advisement in this case contained no “temporal information at all,” Pet. 17, is contrary to the record.

Nor is the asserted split, as Petitioner characterizes it, pertinent to this case. In *Florida v. Powell*, this Court resolved a split in authority that existed in pre-2010 cases. The Petition’s reliance on those pre-2010, pre-*Powell* court decisions is therefore irrelevant. And any differences in the outcomes of post-2010 cases appear to be due to different underlying facts or state procedural rules. They do not demonstrate any confusion about the constitutional requirement of *Miranda* in the wake of *Powell* that could be resolved by granting certiorari here.

I. This case does not implicate the question framed in the Petition.

The question framed in the Petition is based on the premise that Petitioner’s *Miranda* advisement lacked “any information about *when* the suspect has a right to an attorney.” Pet. i. This premise appears throughout the Petition. The Petition claims that this case is about a situation in which “the police merely tell the suspect that he has the right to a lawyer, without telling him *when* he has the right to a lawyer.” *Id.* at 2. The Petition asserts, over and over, that Petitioner was given “*no details* as to when” he had a “right to a lawyer.” *Id.* at 3 (emphasis added); *id.* at 9 (asserting that this case is about “a bare advisement [of the right to counsel] ... without *any information as to when*” the right to counsel arose (emphasis added)); *id.* at 17 (claiming that Petitioner was “not given any temporal information *at all*” (emphasis added)); *id.* at 19 (claiming that the detective “said *nothing* about when” the right to counsel arose (emphasis added)); *id.* at 20 (claiming that the advisement “included *no information* about whether [Petitioner] had a right to counsel at the interrogation or merely at some later time” (emphasis added)).

This characterization of the record ignores a key portion of the advisement. The detective began the advisement with the words, “before I can even talk to you.” This prefacing remark expressly and unambiguously notified Petitioner that the *Miranda* warnings that followed—and the rights referenced in those warnings—were a prerequisite to the interview. Pet. App. 10a. And that preface was paired

with a substantive advisement phrased in the present tense; the detective told Petitioner, “You have the right *to have* an attorney.” *Id.* at 3a (emphasis added); *see also id.* at 9a–10a (concluding that the use of present tense, in the context of the entire advisement, further indicated compliance with *Miranda*). Petitioner may believe that the temporal aspect of his *Miranda* advisement was inadequate, but he overlooks the record when he rests his Petition on the claim that the advisement here was given “*without any information* about *when* [he had] a right to an attorney.” Pet. i (first emphasis added).¹

Petitioner attempted to use the same strategy below, “prefer[ring] to ignore the detective’s prologue to [the *Miranda* advisement], which expressly notified him that the warnings that followed were a prerequisite to any interrogation.” Pet. App. 10a. The Colorado Supreme Court rejected that strategy as contrary to the record. *Id.* This Court should deny the Petition for the same reason—it is based on an attempt to “ignore” the full text of the actual advisement Petitioner received. *Id.* If an appropriate case arises in which the record discloses that a *Miranda* advisement was in fact given without “any

¹ Petitioner emphasizes that his *Miranda* warning departed from a scripted, standardized advisement the detective had available to her. *E.g.*, Pet. 3–4, 20. The relevant question, however, is whether the *Miranda* advisement Petitioner actually received was “sufficiently comprehensive and comprehensible when given a commonsense reading,” not whether it was “the *clearest possible* formulation of *Miranda*’s right-to-counsel advisement.” *Powell*, 559 U.S. at 63.

temporal information *at all*,” Pet. at 17 (emphasis added), this Court can decide then whether that set of facts raises a constitutional question appropriate for certiorari.²

II. This case does not implicate any genuine post-*Powell* split of authority requiring resolution by this Court.

In *Florida v. Powell*, this Court addressed whether a *Miranda* advisement must contain explicit “temporal language” specifying that the suspect has a right to counsel both before and during questioning. See 559 U.S. at 63–64. The Court acknowledged that some jurisdictions had been requiring such explicit temporal language, but it rejected the invitation to

² In addition to the fact that the question framed in the Petition is not presented by the record, this case suffers from another shortcoming that makes it a poor vehicle to create new case law under *Miranda*. Namely, at least one court of appeals judge affirmed Petitioners’ convictions on the separate basis that any *Miranda* violation was harmless beyond a reasonable doubt in light of the strong evidence of Petitioner’s guilt. Pet. App. 44a–45a (citing the security video, the testimony of those who witnessed Petitioner’s threats against the eyewitness, and Petitioner’s incriminating statements to his prison cellmates). Given that conclusion, addressing Petitioner’s *Miranda* arguments is unnecessary to affirm his conviction.

adopt that approach as a nationwide constitutional mandate. *Id.* That is, the Court declined to prescribe a “precise formulation necessary to meet *Miranda*’s requirements.” *Id.* at 64. Resolving the then-existing jurisdictional split, the Court held that a *Miranda* advisement is constitutional if—under “a commonsense reading”—it conveys the “essential message” that the right to counsel exists before and during questioning. *Id.* at 63, 64.

Here, Petitioner’s purported split of authority as to the requirements of the temporal aspect of a *Miranda* advisement relies substantially on cases decided before *Powell*. And although Petitioner cites various post-*Powell* decisions, any differences in outcomes among those cases arise not from a genuine legal disagreement with the decision below but from different underlying facts or state procedural rules that depart from *Powell* itself.

A. *Powell* resolved a jurisdictional debate over whether *Miranda* requires explicit temporal language regarding the right to counsel.

The Petition relies heavily on cases decided before *Powell* in asserting that this case presents a jurisdictional split warranting certiorari. Pet. 10–16. And indeed, before *Powell*, the federal circuits were divided as to whether an adequate *Miranda* warning requires some explicit verbal formulation explaining that the right to counsel exists before and during interrogation. See *Powell*, 559 U.S. at 63 (“*Powell*

points out that most jurisdictions in Florida and across the Nation expressly advise suspects of the right to have counsel present both before and during interrogation.”).

During the pre-*Powell* era, the Fifth, Sixth, Ninth, and Tenth Circuits had held that *Miranda* required an explicit temporal reference. See *United States v. Tillman*, 963 F.2d 137, 141 (6th Cir. 1992); *United States v. Noti*, 731 F.2d 610, 615 (9th Cir. 1984); *United States v. Anthon*, 648 F.2d 669, 672–74 (10th Cir. 1981); *Atwell v. United States*, 398 F.2d 507, 510 (5th Cir. 1968). Meanwhile, the Second, Fourth, Seventh, and Eighth Circuits had held that a *Miranda* warning could be sufficient without an explicit temporal reference. See *United States v. Frankson*, 83 F.3d 79, 81–82 (4th Cir. 1996); *United States v. Caldwell*, 954 F.2d 496, 499–504 (8th Cir. 1992); *United States v. Burns*, 684 F.2d 1066, 1074 (2d Cir. 1982); *United States v. Adams*, 484 F.2d 357, 361–62 (7th Cir. 1973).

That split prompted student comments published in 2007 and 2008 urging this Court to side with jurisdictions requiring *Miranda* warnings to include specific “temporal element[s].” See Adam Bazelon, Comment, *Adding (Or Reaffirming) A Temporal Element To The Miranda Warning ‘You Have The Right To An Attorney,’* 90 MARQ. L. REV. 1009 (2007); Daria K. Boxer, Comment, *Miranda with Precision: Why the Current Circuit Split Should Be Solved in Favor of a Uniform Requirement of an Explicit Miranda Warning of the Right to Have Counsel Present During Interrogation*, 37 SW. U. L. REV. 425, 425 (2008); Daniel J. Croxall, Comment, *Inferring*

Uniformity: Towards Deduction and Certainty in the Miranda Context, 39 MCGEORGE L. REV. 1025 (2008); see also Martin J. McMahon, *Necessity that Miranda Warnings Include Express Reference to Right to Have Attorney Present During Investigation*, 77 A.L.R. Fed. 123 (1968).

In *Powell*, this Court directly responded to these suggestions. It reiterated that *Miranda* requires only a warning that “reasonably convey[s]” to the suspect his right to counsel. *Powell*, 559 U.S. at 60 (quotations and alterations omitted). Thus, no particular explicit temporal reference is required for an advisement to be sufficient. *Id.* at 64.

Petitioner asserts that this Court did not in fact resolve the long-simmering jurisdictional split that predated *Powell*. Pet. 16. But this argument falls back on Petitioner’s old strategy: ignoring the record. Petitioner claims that this case falls outside of *Powell* because Petitioner was “not given any temporal information at all” and was “told that [he had] a right to counsel, but nothing more.” *Id.* at 17. As the Colorado Supreme Court observed below, that is simply not the case. Pet. App. 10a (observing that Petitioner “would prefer to ignore” the actual text of the *Miranda* advisement in this case).

Petitioner’s argument also ignores the basic message of *Powell* and the legal principles it reaffirmed: officers need not use any magic words. See *Miranda*, 384 U.S. at 476. Instead, an advisement suffices if, “given a commonsense reading,” it clearly informs the suspect of his rights. *Powell*, 559 U.S. at 60, 63. The Colorado Supreme

Court gave the record in this case just the kind of “commonsense reading” that *Powell* prescribed as the means of reconciling the competing pre-2010 jurisprudence. *Id.* at 63–64. This case therefore does not present a jurisdictional split distinct from the one this Court considered, and resolved, in *Powell*.³

**B. Cases decided after *Powell*
do not present a split of
authority.**

The Petition cites eleven cases decided after *Powell*. Those cases also do not establish a genuine split of authority bearing on this case; they involved different underlying facts and, in one instance, state

³ Petitioner cites two unreported cases, one federal and one state, for the proposition that *Powell* left the split unresolved. Pet. 16 (citing *United States v. Nelson*, No. 12-CR-2024, 2013 WL 1899832 (N.D. Iowa May 7, 2013), and *State v. Shipley*, No. 2009 KA 2143, 2010 WL 1838316 (La. Ct. Ap. May 7, 2010)). Those cases, however, again involve the situation Petitioner claims this case presents but does not: *Miranda* warnings that lacked “any reference to when a defendant may exercise [the] right [to counsel].” *Nelson*, 2013 WL 1899832, at *4–*5 (acknowledging the lack of any temporal reference in the warnings at issue but nonetheless holding that “viewed ... in their entirety” those warnings satisfied the Constitution); *Shipley*, 2010 WL 1838316, at *5–*6 (observing that *Powell* did not decide whether the kind of “minimal language” at issue in *Shipley*, which included no temporal information at all, was constitutionally sufficient but, in any event, holding that any error was harmless). Whether or not *Powell* shed light on cases like *Nelson* or *Shipley* is irrelevant, given that the *Miranda* warnings those cases analyzed were significantly different from the one in this case.

legal rules that go beyond what *Powell* itself requires.

The Petition cites only one federal circuit court decision after *Powell*, *United States v. Warren*, 642 F.3d 182 (3d Cir. 2011). Pet. 10–16. In that case, the Third Circuit confronted a *Miranda* warning that lacked any temporal information at all. The warning said only “you have the right to an attorney.” *Id.* at 185–86. For that reason, the case is distinguishable from this one and presents distinct issues. But, in any event, the court applied *Powell*, rejecting the notion that a *Miranda* warning must include an express reference to a right’s “temporal durability.” Instead, the court concluded that the focus should be on whether a particular advisement incorrectly suggests that the right to counsel is in some way limited to a particular time period:

[A]s the *Powell* decision underscores ... , attention must be focused upon whether anything in the warning “suggested any *limitation* on the right to the presence of appointed counsel different from the clearly conveyed rights to a lawyer *in general*, including the right to a lawyer before [the suspect is] questioned, ... while [he is] being questioned, and all during the questioning.”

Warren, 642 F.3d at 185 (quoting *Powell*, 559 U.S. at 61) (internal quotation marks omitted and emphasis added). The Third Circuit upheld the *Miranda* warning at issue, *id.*, and this Court denied

certiorari. *Warren v. United States*, 564 U.S. 1012 (2011).

The Petition also cites four unpublished federal district court decisions issued after *Powell*. Each are factually distinguishable. In the first, the *Miranda* advisement—unlike the one here—lacked “any reference to when a defendant may exercise [the] right [to counsel],” but the court considered the advisement as a whole to conclude that it comported with *Powell*. *Nelson*, 2013 WL 1899832, at *4–*5; see also *supra* n.3. In the second, the prosecution conceded that the *Miranda* advisement failed to convey the right to have counsel present during questioning. *United States v. Lambrose*, No. 13-CR-556, 2014 WL 559560, *6 (D. Utah Feb. 13, 2014) (“The Government concedes that the incomplete warning given to Mr. Lambrose forecloses its ability to use his statements against him during the Government’s case-in-chief.”). In the third, the advisement—“You have the right to talk to a lawyer for advice”—again lacked any temporal information whatsoever, and the court held that it was insufficient for that reason. *United States v. James*, No. 12 CR 6, 2012 WL 2200476, at *1–2 (N.D. Fla. June 15, 2012) (noting that the advisement at issue omitted words similar to the temporal prefacing statement here: “[b]efore we ask you any questions, you must understand”). In the fourth federal district court case, the *Miranda* warning once again, unlike the one at issue here, “did not contain any language that remotely suggested to defendant that he had a right to hire a lawyer, or to have a lawyer appointed for him, *before undergoing any questioning, or that he*

had a right to that lawyer during the questioning itself.” United States v. Maddox, No. 09 CR 45, 2010 WL 4683531, at *1 (E.D. Tenn. Oct. 28, 2010) (emphasis in original).

Nor do the post-*Powell* state court decisions cited in the Petition demonstrate a split. Their outcomes are again explained by their facts and circumstances, which differ from those here. For example, one case found a *Miranda* violation where a detective, rather than giving an advisement, permitted a defendant to recite his own garbled and “incomplete” understanding of his *Miranda* rights. *State v. Carlson*, 266 P.3d 369, 372 (Ariz. App. 2011). In another, a *Miranda* advisement was held inadequate because the detective vaguely advised a suspect he had the right to have an attorney “[t]o help you with—stuff.” *State v. McNeely*, 398 P.3d 146, 149–50 (Idaho 2017). In another, the police officer could not remember the form of the advisement he gave, but what he could remember contained no temporal information at all. *State v. Harris*, 98 So. 3d 903, 914 (La. Ct. App. 2012); *see also Shipley*, 2010 WL 1838316, at *5–*6 (analyzing the sufficiency of a “minimal” advisement that contained no temporal information).

Two other state court cases cited in the Petition simply have no bearing on this one. In *State v. Figueroa*, the suspect’s attorney had explicitly consented to a police interview outside of the lawyer’s presence. 146 A.3d 427, 429–30 (Me. 2016). In the “context of [those particular] surrounding circumstances” the *Miranda* warning given to the suspect was sufficient. *Id.* at 432. Finally, in *Coffey v.*

State, the Texas Court of Appeals applied a state procedural rule that requires “additional procedural safeguards” beyond those required by *Miranda*. 435 S.W.3d 834, 841 (Tex. App. 2014) (citing TEX. CODE CRIM. PROC. ANN. art. 38.22, §§ 2(a), 3). The court determined that the advisement was insufficient under both *Miranda* and that more stringent procedural rule, but it nonetheless held that any error was harmless. *Id.* at 842–44.

This collection of factually and legally distinguishable cases does not demonstrate a post-*Powell* jurisdictional split that implicates the facts of this case. Here, Petitioner’s advisement included temporal information about when the right attached. The Colorado Supreme Court analyzed that advisement based on a commonsense reading, concluding that it adequately explained when the right to counsel attached and therefore comported with *Powell*. Pet. App. 9a–10a. There is no need for this Court to revisit that decision.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

CYNTHIA H. COFFMAN
Attorney General

L. ANDREW COOPER
Deputy Attorney General

FREDERICK R. YARGER
Solicitor General
Counsel of Record

ELIZABETH ROHRBOUGH
Senior Assistant
Attorney General

GLENN E. ROPER
Deputy Solicitor General

Office of the Colorado
Attorney General
1300 Broadway
Denver, Colorado 80203

Fred.Yarger@coag.gov
(720) 508-6000

Counsel for Respondent

January 16, 2018