No.

IN THE

Supreme Court of the United States

ADAM DENSMORE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

PATRICK FRAZEE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COLORADO SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Miranda v. Arizona, 384 U.S. 436 (1966), bars the admission in criminal trials of statements elicited in custodial interrogations unless defendants were advised of their rights to remain silent, to counsel, and against self-incrimination. To ensure that *Miranda* is not circumvented, this Court has held that its requirements are not limited to law enforcement officials.

The Question Presented is:

Is custodial interrogation by a child-protection caseworker subject to *Miranda*'s requirements where the interrogation concerns matters that may trigger the caseworker's legal duty to report to law enforcement?

PARTIES TO THE PROCEEDING BELOW

Petitioners were the petitioners below. They are Adam Densmore and Patrick Frazee.

Respondent is the People of the State of Colorado, represented by the Colorado Attorney General's Office.

RELATED PROCEEDINGS

Densmore v. People, No. 23SC81 (Colo.) (judgment issued Feb. 10, 2025)

People v. Densmore, No. 18CA1304 (Colo. Ct. App.) (judgment entered Nov. 23, 2022)

People v. Densmore, No. 17CR530 (Colo. Dist. Ct.) (judgment entered Apr. 26, 2018)

Frazee v. People, No. 23SC85 (Colo.) (judgment issued Feb. 10, 2025)

People v. Frazee, No. 20CA0035 (Colo. Ct. App.) (judgment entered Dec. 29, 2022)

People v. Frazee, No. 18CR330 (Colo. Dist. Ct.) (judgment entered Nov. 18, 2019)

TABLE OF CONTENTS

Page

Densmore

Frazee

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

INTRODUCTION

This Court has long recognized the immense psychological pressure on criminal suspects to incriminate themselves when they are subjected to custodial interrogations. *See Miranda v. Arizona*, 384 U.S. 436, 467 (1966). To alleviate that pressure, interrogators must advise suspects of their rights to remain silent and consult counsel, among others. *Id.* When they do not, the statements they elicit cannot be used against the accused at trial. *Id.* at 479.

The pressure is even greater—and the need for protection more urgent—when the jailhouse interrogator, asking questions about the suspected crime, is a child-protection caseworker who has control over the suspect's child and the future of the parent-child relationship.

Petitioners Adam Densmore and Patrick Frazee were in just this situation in their separate cases.[1] They were each held in custody, suspected of murdering the mothers of their children. In prosecuting both Petitioners, the State of Colorado relied on unwarned incriminating statements child-protection caseworkers elicited from Petitioners while they were in custody. These caseworkers, like those in other states, have a statutory duty to investigate and report information to law enforcement where it may implicate the child's welfare. And here, the caseworkers were

[1] Petitioners Adam Densmore and Patrick Frazee file this single petition for a writ of certiorari because the judgments at issue are from the same court and "involve identical or closely related questions." S. Ct. Rule 12.4.

initially contacted by police, interrogated Petitioners while they were in police custody, asked questions related to the domestic-violence crimes, and then relayed to law enforcement incriminating statements they elicited about those crimes. Yet neither caseworker issued either Petitioner *Miranda* warnings before interrogating them.

The Colorado Supreme Court nonetheless held that admission of Petitioners' unwarned, incriminating statements did *not* violate *Miranda*. In doing so, that court flouted this Court's precedent and deepened division in the lower courts.

In line with five other courts, the Colorado Supreme Court put special emphasis on the fact that the caseworkers were not subjectively intending to aid the criminal investigation, but rather to protect the children. And the court used that subjective consideration to minimize the critical objective facts that the caseworkers were asking the person in custody questions directly related to the suspected crime and that they had a legal duty to investigate and report information directly relevant to the criminal investigation. The rule applied in Colorado and the five other courts permits caseworkers to ask questions relating to the charged crime even if the person being held in custody has invoked their rights to remain silent or consult counsel, as both Petitioners here did.

At least six federal appellate courts and state courts of last resort recognize that this approach and the results it produces are untenable. These six courts have suppressed statements given to child-protection caseworkers—even when the caseworker's aim was

not to assist the prosecution—where the caseworker is obligated by law to investigate and to report information to law enforcement obtained during interviews conducted in the context of ongoing criminal investigations.

The objective, duty-focused approach of these six courts, and not the subjective-oriented approach of Colorado and the five other courts that likewise exempt caseworkers from *Miranda*, accords with this Court's precedent and the Fifth Amendment. Indeed, this Court has repeatedly held that criminal suspects can be subjected to unconstitutional self-incrimination even when their interrogator is not a police officer and even when the interrogator's goal is not to advance a criminal investigation. *See, e.g.*, *Mathis v. United States*, 391 U.S. 1, 4 (1968) (IRS agent); *Estelle v. Smith*, 451 U.S. 454, 465 (1981) (court-appointed psychiatrist).

Had Petitioners' interrogators been police officers, their incriminating statements would have been suppressed. As *Mathis* and *Estelle* make clear, the result should not be different simply because the interrogators were child-protection caseworkers whose aim was not to aid the prosecution. Indeed, the compulsion is greater and the constitutional concern heightened here, for at stake is not just the accused's freedom but the fate of their children and the accused's relationship with them.

OPINIONS AND ORDERS BELOW

The published decisions of the Colorado Supreme Court in *Densmore* (Pet. App. 1a-21a) and *Frazee* (Pet.

App. 85a-102a) are reported, respectively, at 563 P.3d 181 and 563 P.3d 174. The unpublished opinions of the Colorado Court of Appeals in *Densmore* (Pet. App. 23a-55a) and *Frazee* (Pet. App. 104a-151a) are reported, respectively, at 2022 WL 22925734 and 2022 WL 22928885. The trial court decision in *Densmore* is reproduced at Pet. App. 56a-84a, and in *Frazee* at Pet. App. 152a-161a.

JURISDICTION

The Colorado Supreme Court entered judgments in both cases on February 10, 2025. Pet. App.1a, 85a. On April 23, 2025, this Court extended the due date for petitions for a writ of certiorari to June 10, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

U.S. Const. amend. V.

STATEMENT OF THE CASE

Child-Protection Caseworkers Have A Duty To Investigate And Report To Law Enforcement Allegations Of Child Endangerment

Child-protection caseworkers in every state have a duty to investigate and report suspected child abuse or neglect, as well as to investigate matters related to child welfare when a child is in the state's custody. U.S. Dep't of Health & Human Servs., *Making and Screening Reports of Child Abuse and Neglect* 1 (2021), https://tinyurl.com/37krrhw3. In most states, caseworkers share reports of child abuse and neglect with law enforcement departments and prosecutors' offices. U.S. Dep't of Health & Human Servs., *Cross-Reporting Among Agencies that Respond to Child Abuse and Neglect* 1 (2021), https://tinyurl.com/y8na3mn9.

For example, in Colorado, caseworkers must immediately report child abuse (which includes exposure to domestic violence) to law enforcement agencies and district attorney's offices. *See* Colo. Rev. Stat. § 19-3-307(3)(a); *id.* § 19-3-308(5.5); *id*. § 19-3-102(1)(c); *id.* § 19-1-103(1)(a). Caseworkers not only have a duty to report to law enforcement; they also have an ongoing duty to work with law enforcement affirmatively to "develop and implement cooperative agreements to coordinate duties of both agencies in connection with the investigation of all child abuse or neglect cases." Colo. Rev. Stat. § 19-3-308(5.5); Pet. App. 5a (Colorado caseworker's job "involved investigating the safety of children and reporting information that could endanger a child's welfare.").

Petitioners Were Convicted Based On Unwarned Custodial Statements Elicited By Child-Protection Caseworkers

Petitioner Adam Densmore

In February 2017, Ashley Mead was reported missing. Pet. App. 4a-5a. Mead had been living in Colorado with her ex-boyfriend, Petitioner Adam Densmore, and their young daughter. Pet. App. 4a-5a. Police suspected that Densmore was responsible for Mead's disappearance.

The police arrested Densmore in Oklahoma. Pet. App. 5a. In addition to taking Densmore into custody and detaining him in jail, the arresting officers called the Oklahoma Department of Human Services to take custody of Densmore's daughter, who was with Densmore at the time of the arrest. Pet. App. 5a. Child welfare specialist Jessica Punches was assigned to the case and took custody of Densmore's daughter. Pet. App. 5a. Like other caseworkers, Punches had a statutory duty to investigate matters related to the child and to report suspected child endangerment. Pet. App. 5a, 17a.

Punches spoke to law enforcement agents at the scene and later at the jail, who relayed that Mead was missing and that they suspected Densmore of being involved in her disappearance. Pet. App. 6a; Pet. App. 27a; Densmore Suppression Hr'g Tr. 101-02.

Punches then questioned Densmore while he was being held in custody in jail. Pet. App. 6a. By this point, police already had twice advised Densmore of

his *Miranda* rights, and both times Densmore had specifically asked for an attorney. Pet. App. 6a. That request halted all questioning by the police and FBI. But it did not stop Punches from questioning Densmore.

An FBI agent joined Punches and Densmore in the interview room in the jail, where video equipment recorded the 30-minute questioning session. Pet. App. 7a-8a; Pet. App. 27a. Neither Punches nor the agent issued *Miranda* warnings before questioning Densmore. Pet. App. 6a-7a.

Punches began her questioning by telling Densmore she had custody of his daughter, whom she warned would be placed in foster care. *See* Densmore Colo. S. Ct. Opening Br. 8 (citing record). During her questioning, Punches asked Densmore where Mead was, when he had last seen her, why Densmore had left Colorado, and what his "plan[]" was. Pet. App. 6a-7a; Trial Ex. 250, Video Clip 1. When Densmore told Punches that he had left Colorado because he and Mead had a "massive fight," she asked why they were fighting and whether the fight got physical. Pet. App. 28a; *see* Pet. App. 7a; Trial Ex. 250, Video Clip 1, 2. Densmore explained that Mead had started seeing someone new, Mead had recently threatened to take his daughter away from Densmore forever, and Densmore had been drinking. Trial Ex. 250, Video Clip 2, 5. And, in response to Punches' questioning, Densmore admitted that he slapped Mead during the fight. Pet. App. 7a.

Punches recounted the details she elicited from Densmore in a report she filed with the district

attorney. Pet. App. 9a. And she later provided the videorecording of the interview to Boulder police. Pet. App. 9a-10a.

The next day, Punches again questioned Densmore while he was being held in custody. Pet. App. 8a. Beforehand, Punches spoke again with an FBI agent and a Boulder detective, who told her that some of Mead's remains had now been found, additional evidence implicated Densmore, and he was now being held for first-degree murder. Pet. App. 8a; Densmore Suppression Hr'g Tr. 141-42. Punches again did not issue any *Miranda* warnings before proceeding with her custodial questioning. Pet. App. 8a.

During this second round of questioning, Punches again asked Densmore whether he had ever been violent toward Mead. Pet. App. 9a. When he said no, Punches confronted Densmore with his statement from the day before, admitting to hitting Mead. Pet. App. 9a.

Densmore was subsequently charged with First-Degree Murder-Domestic Violence, among other offenses. Pet. App. 58a. He moved to suppress his unwarned statements to Punches, arguing that they were elicited by an agent of law enforcement while he was in custody and after he had invoked his right to counsel. Pet. App. 78a. The trial court denied the motion, concluding that Punches was not acting as the equivalent of "an agent of the state" because Punches "had a different purpose … than to aid law enforcement in investigating the present case." Pet. App. 81a.

At trial, the prosecution contended that Densmore killed Mead in Colorado the night of the fight and disposed of her body out of state. Pet. App. 26a. But there was little evidence of how Mead died. *See* Densmore Colo. S. Ct. Opening Br. 3. And the only evidence that Densmore physically harmed Mead came from the custodial statement elicited by Punches, where Densmore admitted to hitting Mead. *Id.* The prosecution featured that evidence at trial, *see* Pet. App.11a, putting Punches on the stand, playing clips of the first round of questioning, and emphasizing Densmore's statements to Punches in their closing argument. Pet. App. 29a; Densmore Colo. S. Ct. Opening Br. 44 (citing trial transcript).

Densmore was convicted. He appealed, renewing his argument that his unwarned statements to Punches should have been suppressed under *Miranda*. Pet. App. 24a, 31a. The intermediate appellate court disagreed and affirmed the conviction, concluding that Punches "was not acting as a law enforcement agent when she spoke with Densmore." Pet. App. 34a.

Petitioner Patrick Frazee

In 2018, Petitioner Patrick Frazee was accused of murdering Kelsey Berreth, the mother of his young daughter. Pet. App. 88a. The police arrested Frazee in Colorado, after an informant told police that Frazee had killed Berreth while their daughter was present in the next room. Pet. App. 88a; Pet. App. 105a-107a.

Frazee's daughter was with him when he was arrested, and the police called in the county's

Department of Human Services (DHS) to take custody of her. Pet. App. 88a; Pet. App. 153a.

DHS caseworker Mary Longmire met with Frazee in jail the day of his arrest to tell him that his child was in DHS custody and to explain what that meant going forward. Pet. App. 88a.[2]

Several days later, and one day before a hearing about the child's placement, Longmire again met with Frazee while he was detained in jail. Pet. App. 89a. Longmire was obligated by law to investigate and make a recommendation about the child's placement. Pet. App. 99a; Pet. App. 121a. Pursuant to that duty, she had to investigate allegations of abuse and neglect, including whether the child had been exposed to violence. Pet. App. 121a; Pet. App. 155a.

Before the second custodial meeting, Longmire contacted the police to inquire about the investigation. Pet. App. 121a-122a. Police told Longmire that Frazee was accused of murdering Berreth and that Berreth had been missing for a month. Pet. App. 121a; Pet. App. 89a. According to Longmire, she was asked to "assess the allegations" against Frazee. Trial Tr. Nov. 14, 2019, at 55. At the time, Longmire was aware that Frazee was represented by counsel. Pet. App. 122a; Frazee Colo. S. Ct. Opening Br. 11 (citing Longmire's testimony).

At no point before or during the second meeting, which lasted 60 to 90 minutes, did Longmire advise

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[2] Frazee did not move to suppress any statements arising from this exchange. Pet. App. 89a.

Frazee of his *Miranda* rights or otherwise tell him that he had a right to have his counsel present. Pet. App. 89a, 92a. Nor did she inform Frazee's lawyer of the meeting.

Longmire instead began the meeting by telling Frazee that his child did not have a caregiver and that her questions would bear on the child's placement. Pet. App. 89a. Longmire then began her questioning of Frazee. Among other things, she asked Frazee a series of questions about Frazee's history with Berreth. Pet. App. 90a. Longmire specifically asked what happened around Thanksgiving when Berreth went missing. Pet. App. 91a. She explained that this information was important because it was relevant to whether the child had been exposed to violence or an otherwise dangerous environment. Pet. App. 91a.

In response to Longmire's questioning, Frazee provided his timeline of the events around Thanksgiving, Pet. App. 91a-92a, including that he and Berreth had a "heated" conversation about their relationship and custody of the child the day before Thanksgiving. Trial Tr. Nov. 14, 2019, at 65. Longmire elicited further details, including that Frazee had several conversations with Berreth in the days following Thanksgiving about Frazee keeping the child with him "until the storm blew over." Pet. App. 91a-92a.

Longmire recorded the information she elicited from Frazee on a form she turned over to law enforcement because it was, in her words, "a joint investigation." Mot. to Suppress Hr'g Tr. Aug. 23, 2019, at 53:15-17; Pet. App. 93a, 101a; Pet. App. 122a. Longmire also had Frazee sign a form informing him that

her documentation and the information she gathered would be shared with the other agencies, including law enforcement (and later the Public Defenders). Pet. App. 93a; Mot. to Suppress Hr'g Tr. Aug. 23, 2019, at 43-44, 49. Longmire described it as, among other things, facilitating the finding of "services" for Frazee (though none were ever provided). Mot. to Suppress Hr'g Tr. Aug. 23, 2019, at 43-44.

Two days later, the State formally charged Frazee with murder, among other offenses. Frazee moved to suppress his statements to Longmire as obtained in violation of *Miranda*. Pet. App. 93a; Pet. App. 153a. The trial court denied the motion on the grounds that Longmire was not acting as an agent of law enforcement and Frazee was not in custody, so *Miranda* did not apply. Pet. App. 160a.

Longmire testified at trial for the prosecution, detailing the statements she elicited from Frazee. Pet. App. 94a. The prosecution emphasized Frazee's statements to Longmire in their closing arguments. *See* Frazee Colo. S. Ct. Opening Br. 51 (citing trial transcript). Frazee was convicted of first-degree murder, among other offenses. Pet. App. 94a-95a.

Frazee appealed, renewing his argument that his statements to Longmire should have been suppressed under *Miranda*. Pet. App. 95a; Pet. App. 119a. The Colorado Court of Appeals affirmed, concluding that Frazee was not in custody and so no warnings were required. Pet. App. 127a.

The Colorado Supreme Court Holds Child-Protection Caseworkers Are Not Subject To Miranda*, Based Principally On Their Purpose To Safeguard Children*

Densmore and Frazee separately petitioned for review in the Colorado Supreme Court, and the court granted review in both cases. Pet. App. 22a; Pet. App. 103a.

Both Densmore and Frazee argued that, when a caseworker conducts a custodial interrogation and asks questions that a reasonable caseworker should know relate to the criminal investigation regarding the defendant and could trigger a legal duty to report incriminating information to law enforcement, that caseworker is effectively acting as an agent of law enforcement and any statements given without *Miranda* warnings must be suppressed. Pet. App. 4a; Pet. App. 87a; Densmore Colo. S. Ct. Opening Br. 20; Frazee Colo. S. Ct. Opening Br. 13. Both argued that, at minimum, the test for whether a caseworker is an agent of law enforcement under *Miranda* should turn solely on objective factors, and should not consider the caseworker's subjective purpose or intent in undertaking the interrogation. Pet. App. 4a, 16a; Pet. App. 87a; Frazee Colo. S. Ct. Opening Br. 1-2, 14.

The Colorado Supreme Court disagreed, holding that courts must consider the "totality of the circumstances, including both objective and subjective factors." Pet. App. 4a; Pet. App. 97a. The court's application of this totality test in both cases shows that the test is heavily weighted toward the caseworker's subjective purpose and intent.

In Densmore's case, the court held that Punches was not acting as a law enforcement agent because "Punches did not intend through her questioning to assist law enforcement in investigating any crimes or to obtain incriminating information. Rather, her purpose was to gather information to ensure the child's welfare and to find a safe placement for the child." Pet. App. 17a. It did not matter that Punches shared what she learned in the interrogation with law enforcement and even provided a recording because doing so "did not change her role or purpose" into one aimed at "gather[ing] incriminating information." Pet. App. 17a-18a. It was likewise of little significance that a law enforcement officer was present during the interview because Punches' reason for having him there was to protect her safety. Pet. App. 17a.

The court did acknowledge that Punches "was paid by the state and had duties to investigate and interview individuals and to report certain information that she had learned," but stated that doing so was "not necessarily for law enforcement purposes." Pet. App. 16a-17a.

Finally, the court noted that Punches lacked the authority to "apprehend, detain, or handcuff individuals," and that the police had neither provided her written materials about the investigation beforehand nor directed her interview or investigation. Pet. App. 16a-18a.

"Guided by the principles announced in *Densmore*," the Colorado Supreme Court in Frazee's case concluded that caseworker Longmire was likewise not an agent of law enforcement for *Miranda*

purposes. Pet. App. 87a-88a. As in *Densmore*, the *Frazee* court included a caseworker's duty to report and investigate in the general list of "nonexclusive list of factors that courts may consider." Pet. App. 97a. But in applying the test, the court brushed that factor aside because "Longmire's purpose for the interview was not to uncover violations of law, to develop evidence in a criminal case, or to enforce criminal law" but "[ra]ther, her purpose was to learn about the child's needs, development, and relationships so that she could place the child in an appropriate home and ensure her safety." Pet. App. 98a-99a. The court also stressed that law enforcement officials did not direct, control, or participate in the interview, and that Longmire did not have the same authority and experience as police, though the court acknowledged that police had shared their theory of the case with Longmire. Pet. App. 98a.[3]

In both cases, too, the Colorado Supreme Court rejected Petitioners' argument that the question is controlled by this Court's precedents holding that *Miranda* applies to non-law enforcement officials, relying again on the caseworker's ostensible purpose and intent. The court reasoned that *Estelle v. Smith*, 451 U.S. 454 (1981), where this Court held that a psychiatrist performing a court-ordered competency evaluation was subject to *Miranda*, was inapt because the psychiatrist "had spoken to the defendant … for the purpose of a pending criminal proceeding." Pet. App.

[3] Because it held that Longmire was not acting as an agent of law enforcement, the court did not reach the question whether Frazee was in custody when Longmire elicited the incriminating statements. Pet. App. 101a.

18a-19a. The Colorado Supreme Court similarly distinguished this Court's decision in *Mathis v. United States*, 391 U.S. 1 (1968), on the ground that the "purpose" of the IRS agent in conducting a civil tax investigation was "to enforce federal tax laws," while Punches' purpose was "to determine how to care for and where to place Densmore's child." Pet. App. 20a; *id.* (stating that the *Mathis* interrogation "served a predominantly law enforcement purpose").

REASONS FOR GRANTING THE WRIT

This Court should grant review to resolve an entrenched 6 to 6 division in the federal courts of appeals and state courts regarding when custodial interrogations conducted by child-protection caseworkers in connection with ongoing criminal investigations are exempt from *Miranda*. There is no question that police officers and other law enforcement officials are subject to *Miranda*, and that statements elicited by them without respecting *Miranda*'s protections are generally barred from trial. Six appellate courts would apply the same rules to custodial interrogations conducted by child-protection caseworkers, recognizing that the caseworker has a legal duty to report incriminating information to law enforcement that could reasonably be expected to overlap with the criminal charges. In contrast, six other courts, including the Colorado Supreme Court, exempt caseworkers from *Miranda*, giving little or no consideration to the legal duty to report. Like the Colorado court here, those courts often prioritize subjective considerations (such as the purported purpose of the caseworker) over objective factors (such as the legal duty to report). This Court should reject the

approach applied in these cases, and adopt an objective test that protects the rights of accused parents, who are particularly vulnerable to governmental coercion.

I. Courts Are Deeply Divided Over How To Treat, For *Miranda* Purposes, Custodial Interrogations Conducted By Child-Protection Caseworkers In Connection With Ongoing Criminal Investigations.

The lower courts are deeply divided over whether and when custodial interrogations conducted by child-protection caseworkers in connection with ongoing criminal investigations are subject to *Miranda*'s protections. At least six courts—including the Second Circuit, and the highest courts in Kentucky, Oklahoma, Massachusetts, Maine, and Rhode Island—recognize that such interrogations should generally be treated the same as those conducted by the police or FBI, relying primarily on caseworkers' duty to report incriminating information to law enforcement.

By contrast, six other courts—including the highest courts in Texas, Louisiana, Georgia, Mississippi, Ohio, and Colorado—generally immunize such interrogations from *Miranda*, even when the caseworkers are obligated to relay incriminating information to law enforcement, with most of these courts instead focusing on caseworkers' subjective purpose to safeguard children.

A. Six courts look principally to the objective duty to report to hold *Miranda* applies to caseworkers.

On one side of the entrenched divide, six courts recognize that custodial interrogations by child-protection caseworkers are to be treated the same as custodial interrogations by the police when the interrogations relate to the suspected crime and are likely to trigger the caseworker's duty to report incriminating statements to law enforcement (for instance, where suspects are detained on suspected crimes against children or involving domestic violence). To these courts, it matters little—or not at all—whether the caseworker intended to aid the criminal investigation.

The **Second Circuit**, for instance, held on habeas review that the custodial statements elicited by a caseworker who interviewed a suspect accused of sexually abusing his child should have been suppressed under *Miranda* because the caseworker was required to report any alleged sexual abuse to local law enforcement. *Jackson v. Conway*, 763 F.3d 115, 139-40 (2d Cir. 2014). It did not matter that the caseworker's "investigation was civil in nature." *Id.* at 139.

The **Kentucky** Supreme Court has similarly deemed a child-protection caseworker equivalent to a police officer for *Miranda* purposes where the caseworker turned over to police incriminating information he elicited from interviews of defendants accused of child sex abuse. *Buster v. Commonwealth*, 364 S.W.3d 157, 164-65 (Ky. 2012); *Buster v. Commonwealth*, 406 S.W.3d 437, 440 (Ky. 2013). It made

no difference to the court that the caseworker's role was to investigate on behalf of the welfare agency, not the police. 364 S.W.3d at 164; 406 S.W.3d at 440.

Oklahoma's highest criminal court has likewise focused on the caseworker's duty to investigate and report to law enforcement in excluding custodial statements elicited by a child-protection caseworker when the caseworker was brought into a criminal investigation that overlapped with the caseworker's duties. In *Blanton v. State*, the court held that, although the "primary purpose" of the caseworker's investigation was "the protection of the child," the unwarned custodial statements should have been excluded, noting that caseworkers in Oklahoma, as in other states, are required to investigate allegations of child abuse and report findings to the district attorney. 172 P.3d 207, 211 (Okla. Crim. App. 2007).

Along similar lines, the **Rhode Island** Supreme Court has held that a caseworker acted as a police agent for purposes of the Fifth Amendment because she "communicated with the police about [the] defendant and was statutorily obligated to report any incriminating information to them." *State v. Gouin*, 182 A.3d 28, 33 (R.I. 2018). "The fact that she interviewed defendant for reasons other than prosecutorial purposes" did not exempt the caseworker from the Fifth Amendment's protections. *Id.*

Maine's highest court is in accord. The court held that a child-protection caseworker who questioned a detained suspect accused of murder should be treated as "a government agent." *State v. Harper*, 613 A.2d 945, 949 (Me. 1992). The court reached that

conclusion even though the caseworker was motivated by her "concern[] about what was going to be happening with the kids" if the defendant were convicted. *Id.* at 948.

Massachusetts's highest court has adopted similar reasoning in a closely related context, holding that admission of incriminating statements elicited by a social-services investigator violated the Sixth Amendment. The court emphasized that its "primary concern was, and remains, with the constitutional implications of questioning on matters concerning pending charges posed by persons whose official duties direct them to interact with a defendant and who may be required to turn any incriminating responses over to the police and prosecutor." *Commonwealth v. Howard*, 446 Mass. 563, 569 (2006). And the court stressed: "A department investigator is a government official, and there can be no question that [the investigator's] interview of the defendant, even though conducted in furtherance of her responsibilities for the care and protection of children, was prohibited governmental interrogation and constituted the equivalent of direct police interrogation." *Id.*[4]

[4] In dicta, the Third Circuit has aligned itself with these courts. In *Saranchak v. Beard*, the court found no *Miranda* violation or constitutional problem where a caseworker interviewed a man, who was being held on charges of murdering two adults, about visitation with his children. 616 F.3d 292, 303-05 (3d Cir. 2010). The court emphasized that the caseworker's questions about the murders was "not made with the purpose of soliciting information … about the crimes." *Id.* at 303-04. But the court went out of its way to signal the result would be different for a

If Petitioners' cases had been heard in any of those jurisdictions, the custodial questioning by caseworkers Punches and Longmire, related to the suspected offenses, would be deemed subject to *Miranda* and Petitioners' incriminating statements would have been suppressed. There is no question that in both Petitioners' cases, the suspects were questioned in custody by caseworkers about matters relating to the offenses, where the caseworkers had a statutory duty to report their incriminating statements to law enforcement. Not only did the caseworkers not issue *Miranda* warnings, Densmore had earlier requested counsel, Pet. App. 6a, and the caseworker in Frazee's case knew that he had counsel, Pet. App. 122a. If police did this, every jurisdiction would recognize *Miranda* violations; and in these six jurisdictions, the result is no different simply because caseworkers conducted the custodial questioning.

B. Six other courts exempt caseworkers from *Miranda*, notwithstanding their duty to report.

Rather than applying *Miranda* and suppressing unwarned custodial statements elicited by child-protection caseworkers, as the Second Circuit and the highest state courts in Kentucky, Maine, Massachusetts, Oklahoma, and Rhode Island would have done, the Colorado Supreme Court here joined at least five

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"[caseworker] interview of a person *charged with offenses involving children*," because that is the sort of situation that "may lead to a criminal inquiry," *id.* at 304—an objective analysis unconcerned with the caseworker's subjective aim.

other courts of last resort in approving the admission of such statements at trial, paying little, if any, heed to the caseworker's statutory duty to investigate and report to law enforcement and instead often prioritizing the caseworkers' subjective purpose.

In **Texas**, as in Colorado, purpose is paramount. Texas's highest criminal court will only bar the custodial statements elicited by a caseworker when the police, the defendant, and the caseworker themselves believe the caseworker is acting as an agent of the police. *See Wilkerson v. State*, 173 S.W.3d 521, 528-31 (Tex. Crim. App. 2005); *id.* at 530 ("Central to this evaluation are the actions and perceptions of the parties involved…."). Rather than focusing on a legal duty to report, in Texas a key question is "did the interviewer believe that he was acting as an agent of law enforcement," and the answer turns (among other things) on the "interviewer's primary reason[ing] for questioning the person" and whether "the interviewer [was] pursuing some other goal or performing some other duty" than "'build[ing] a case.'" *Id.*; *see also Edwards v. State*, 691 S.W.3d 703, 722-23 (Tex. App. 2024) ("Ultimately, to be an agent for law enforcement for the purpose of custodial interrogation, [the caseworker] had to interview [the defendant] 'for the primary purpose of gathering evidence or statements to be used in a later criminal proceeding against [appellant].'" (quoting *Wilkerson*, 173 S.W.3d at 531)).

Expressly relying on Texas's approach in *Wilkerson*, the **Louisiana** Supreme Court similarly holds that, among the "most important factors" regarding *Miranda*'s application is "whether the primary purpose of the investigator's visit was to elicit a

confession while in cahoots with law enforcement." *State v. Bernard*, 31 So. 3d 1025, 1033-35 (La. 2010) (quoting *Wilkerson* at length). The court observed in passing that the caseworker in *Bernard* "was bound by law to forward her reports to the police" (about the defendant's cocaine use) but did not factor that into its analysis. *Id.* at 1034; *see id.* at 1035-36. Instead, it was "[m]ost important[]" that there was "no evidence [that] the police purposefully used, manipulated, or were in cahoots with [the caseworker] for purposes of conducting the interview on their behalf." *Id.* at 1035.

The **Georgia** Supreme Court in *Boles v. State*, 887 S.E.2d 304, 315 (Ga. 2023), also like the Colorado Supreme Court here, approved the admission of unwarned custodial statements elicited by a child-protection caseworker, even though the caseworker summarized the interrogation for law enforcement. The court did not even bother to discuss whether the caseworker had a duty to render that report, instead highlighting the caseworker's testimony that her purpose was to determine the proper placement for the defendant's child. *Id.*

In a similar vein, the highest court in **Mississippi** has repeatedly held that, "although [a child-protection caseworker] [i]s under a duty to investigate child abuse and report it to law enforcement," the caseworker should not be treated as "a law enforcement officer" for purposes of *Miranda* because the caseworker "has no power to arrest." *Clark v. State*, 40 So. 3d 531, 541 (Miss. 2010) (citing *Hennington v. State*, 702 So. 2d 403, 409 (Miss. 1997)).

The **Ohio** Supreme Court has likewise rejected the central relevance of the duty to report. In *Ohio v. Jackson*, the court held that "[a] social worker's statutory duty to cooperate and share information with law enforcement with respect to a child abuse investigation does not render the social worker an agent of law enforcement for purposes of the Fifth and Sixth Amendments to the United States Constitution when the social worker interviews an alleged perpetrator unless other evidence demonstrates that the social worker acted at the direction or under the control of law enforcement." 116 N.E.3d 1240, 1246 (Ohio 2018).

The dissenting justice in *Ohio v. Jackson* expressly noted that the majority's ruling conflicted with the Second Circuit's otherwise "strikingly similar" decision in *Jackson v. Conway*. *Id.* at 1251 (DeGenaro, J., dissenting). The State of Ohio, too, in its briefing, acknowledged the division of authority, contrasting states like Texas, Louisiana, and Oklahoma that "look to a variety of factors," including the interrogator's "primary reason for questioning the person," with the more "bright line" approach of other courts. Ohio's Merits Br., *Ohio v. Jackson*, No. 2017-145, 2017 WL 5556833, at *12-15 (Nov. 9, 2017). Indeed, Ohio and the other courts are in direct conflict with the courts that focus on more objective considerations, such as the duty to report, rather than subjective considerations such as the caseworker's ostensible purpose and intent in conducting the interview.

II. The Decisions Below Are Wrong.

The Colorado Supreme Court's decisions below put Colorado on the wrong side of the split on the question presented. Like other courts on that side (*supra* § I.B.), the Colorado Supreme Court relied principally on the caseworkers' supposedly non-prosecutorial purpose to hold they were not agents of law enforcement subject to *Miranda*. Pet. App. 17a-18a; *see* Pet. App. 98a-99a; *supra* 13-16. Worse, the court used that purpose to minimize—and effectively render irrelevant—the caseworkers' legal duty to report to law enforcement. Pet. App. 17a. That was error under this Court's decisions.

A. This Court's precedents make clear that a government official's subjective purpose in conducting a custodial interrogation plays little, if any, role in the analysis of whether *Miranda*'s protections apply.

In *Mathis*, this Court held it was impermissible to use unwarned statements elicited by an Internal Revenue Service (IRS) agent conducting a civil tax investigation of a prisoner incarcerated for unrelated state offenses. 391 U.S. at 5. The government had argued that the statements, while unwarned, were admissible in a subsequent federal prosecution because the agent was not questioning the defendant with the goal of aiding a "full-fledged criminal investigation," as one had not yet begun, but merely "as part of a routine tax investigation where no criminal proceedings might even be brought." *Id.* at 4.

This Court, however, declined to adopt the purpose-centric test the government proposed. The Court

acknowledged "that a 'routine tax investigation' may be initiated for the *purpose* of a civil action rather than criminal prosecution." *Id.* (emphasis added). But it rejected the notion that this purpose was dispositive. What mattered instead was the obvious link between the civil investigation and potential criminal proceedings. As "tax investigations frequently lead to criminal prosecutions," there was "the possibility" from the very beginning that the questioning "would end up in a criminal prosecution." *Id.* Indeed, the investigator was "required, whenever and as soon as he finds 'definite indications of fraud or criminal potential,' to refer a case to the Intelligence Division for investigation by a different agent who works regularly on criminal matters." *Id.* at 6 n.2 (White, J., dissenting). In these circumstances, the Court held that the IRS civil agent was a law enforcement agent required to provide *Miranda* warnings before questioning.

This Court's subsequent decision in *Estelle v. Smith* confirms that status as a law enforcement agent does not turn on the interrogator's "purpose" in questioning the defendant. 451 U.S. at 465. *Estelle* involved a court-appointed psychiatrist who conducted a psychiatric examination of the defendant to determine his competency to stand trial in a capital case. *Id.* at 456-57. After the guilt phase, the psychiatrist testified at the death-penalty phase of the trial regarding the defendant's statements during that examination, to prove future dangerousness. *Id.* at 459-60.

The Court acknowledged that the psychiatrist's interrogation had a "neutral purpose." *Id.* at 465. But the "Fifth Amendment privilege was implicated"

nonetheless, because "the results of that inquiry were used by the State for a much broader objective that was plainly adverse" to the defendant, namely, to secure the death penalty. *Id.* at 465-66. It was "immaterial" that the interrogator was originally a "neutral" person because "his role changed and [he] became essentially like that of an agent of the State" in using elicited statements against the defendant to prove future dangerousness. *Id.* at 467.

While this Court has sometimes "refuse[d] to extend *Miranda*" in the years since *Mathis* and *Estelle*, *Vega v. Tekoh*, 597 U.S. 134, 152 (2022) (holding no § 1983 action lies for violations of *Miranda*), at other times, it has recognized the need "for expansion," *id.* at 146. And most importantly, the Court has *never* doubted *Miranda*'s ongoing importance, especially not when a case falls in *Miranda*'s heartland, like this case does. Indeed, in *Vega*, this Court reaffirmed that *Miranda* and subsequent cases continue to "provide … protection for the Fifth Amendment right against compelled self-incrimination" by requiring the "exclusion of unwarned statements." *Id.* at 152. That is just what is required when interrogators, by virtue of their legal duties, act like law enforcement, regardless of their job titles.

B. The Colorado Supreme Court misread *Mathis* and *Estelle* when it distinguished those cases on the ground that the interrogators there, unlike here (supposedly), intended to aid law enforcement. Pet. App. 18a-20a; *supra* 15-16. In fact, this Court specifically stressed that the interrogators in *Mathis* and *Estelle* had other purposes, proving that the protection

against self-incrimination cannot turn on that "immaterial" subjective element.

And rightly so. It should not matter whether interrogators intend their interviews to aid a criminal investigation when the law takes that decision out of their hands. That is just what a duty to report to law enforcement does. It "change[s]" a caseworker into "essentially … an agent of the State," *Estelle*, 451 U.S. at 467, obliged to help initiate or further criminal proceedings, whether the caseworker subjectively intends to or not.

C. Colorado's purpose-heavy test is also in tension with this Court's admonition that suspects in custody are entitled to "an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of police." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (holding that "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions … that the police should know are reasonably likely to elicit an incriminating response from the suspect"). The reporting requirement for child-protection caseworkers means that caseworkers' interviews are likely to lead to incriminating responses when, as is often the case, the criminal investigation overlaps with suspected child abuse or neglect. In these circumstances, defendants who are questioned by child-protection caseworkers face just the same "exposure" as if they had incriminated themselves to the police directly. *In re Gault*, 387 U.S. 1, 49 (1967) (holding that "the availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature

of the statement or admission and the exposure which it invites"). Standard warnings are therefore essential to protecting and preserving the Fifth Amendment privilege.

Indeed, the need for *Miranda* warnings is more urgent during custodial questioning by a child-protection caseworker in connection with a suspected crime. The pressure inherent in a standard custodial interrogation is amplified by the threat that the caseworker will cut off the parent's access to their child, place the child in foster care, or terminate parental rights.

Rejecting attempts to exempt caseworkers from *Miranda* will not frustrate the important role served by the caseworker. The caseworker can choose whether to provide the person in custody the warnings. But if they do not, statements subject to a duty to report to law enforcement must be excluded from the criminal trial, just as they would be if law enforcement elicited the statements themselves—although evidence derived from the statements could still be admissible, again just as if the interrogator were law enforcement. *See United States v. Patane*, 542 U.S. 630, 633-34 (2004). If focused only on the welfare of the child, the caseworker can choose to tell the person in custody that their statements will not be used against them in the criminal proceeding. *See Estelle*, 451 U.S. at 468 (noting that the competency examination "could have proceeded upon the condition that the results would be applied solely for" the competency determination). In those circumstances, the caseworker may still share information with law enforcement who are building a criminal case and may

even introduce the statements in civil proceedings—just not at a criminal trial. *See Jackson*, 763 F.3d at 140 n.26; *see also Blanton*, 172 P.3d at 211 n.8.

Recent state experience also indicates that choosing to provide warnings may very well advance the child-welfare mission of caseworkers. Greater transparency about the purposes and possible uses of an interview may reduce anxiety and increase a parent's willingness to share information concerning their children. In part for these reasons, Connecticut and, more recently, Texas both require *Miranda*-style warnings before child-protection caseworkers interrogate parents, even when the parents are not in custody. *See* Conn. Gen. Stat. § 17a-103d; Tex. Fam. Code Ann. § 261.307. Child-services officials in Connecticut, which has followed this procedure for over a decade, report greater success at getting information from families since the rule's adoption. Eli Hager, *Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One*, ProPublica (Oct. 13, 2022), https://tinyurl.com/2y4d9ukk.

III. This Petition Presents An Ideal Vehicle For Resolving The Important And Recurring Question Presented.

A. The question presented is an important and recurring one. Because child-protection caseworkers in most states have similar, broad legal duties to report to law enforcement, the issue in this case can arise across the country. *Supra* 5 (describing duties). Under the rule of the Colorado Supreme Court and the other courts on the same side of the split, a caseworker can interrogate the suspect about the criminal

accusations against them and report their responses to the police for direct use in the criminal trial, even if the accused has already invoked their right to remain silent with the police (as Petitioner Densmore did) and even if the caseworker knows the accused has counsel (as Petitioner Frazee did). The decisions below, and others in accord, thereby give states a glaringly obvious way to circumvent the privilege against self-incrimination and dramatically curtail Fifth Amendment protections.

B. These two cases present an ideal vehicle for resolving the question presented. The question was fully raised and is fully preserved in both cases. The record contains testimony from the caseworkers about their interrogations of Petitioners and their interactions with law enforcement before and after their interrogations, and the courts below addressed the issue in fulsome decisions.[5]

Petitioners would prevail under the test they urge. The caseworkers were initially contacted by the police, and they interrogated Petitioners in jail. The

[5] While the State disputed below whether Frazee was in custody for purposes of the caseworker's interview, and the Colorado Court of Appeals affirmed denial of Frazee's suppression motion on that ground, it is undisputed that Frazee had been formally arrested, was in pretrial detention, and was being questioned about the allegations underlying his detention in that interview. He therefore was in custody for purposes of the Fifth Amendment. *See, e.g.*, *Illinois v. Perkins*, 496 U.S. 292, 296-97 (1990). In any event, as the Colorado Supreme Court squarely addressed the question presented without reaching the issue of Frazee's custodial status, this issue does not pose a barrier to this Court's review of Frazee's case, and certainly has no bearing on Petitioner Densmore. *See* Pet. App. 101a.

caseworkers were aware that Petitioners were under suspicion related to the possibly violent disappearances of their children's mothers. The caseworkers had a specific duty to question Petitioners about the circumstances of these disappearances: the whereabouts of the mothers were relevant to the child's custody determination, and any potential domestic violence in the home had to be investigated as possible child abuse. As with the psychiatric examiner in *Estelle*, while the initial purpose of this inquiry may have been the neutral one of determining child-custody arrangements, the incriminating statements the caseworkers elicited played an important role in convicting Petitioners. And, critically, as with the IRS civil investigator in *Mathis*, this ultimate use of Petitioners' statements was reasonably likely: The caseworkers had a statutory duty to report to law enforcement any evidence of endangerment to the welfare of a child and, in these kinds of cases, it is not unusual that questions of criminal liability and child welfare will overlap.

In these circumstances, *Miranda* warnings are just as vital—if not more so—than when police interrogate suspects. This Court should therefore grant review to ensure the constitutional rights of vulnerable parents are uniformly protected.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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