

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
Supreme Court of Colorado**

**BRIEF OF *AMICI CURIAE*
OFFICE OF RESPONDENT PARENTS' COUNSEL ET AL.,
IN SUPPORT OF PETITIONERS**

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IDENTITY AND INTEREST OF THE *AMICI CURIAE*

Amici Curiae, listed below, are organizations involved in the legal representation of parents in dependency and neglect cases in Colorado and states across the country:

- ASCEND JUSTICE
- COMMUNITY LEGAL SERVICES OF PHILADELPHIA
- LEGAL SERVICES FOR PRISONERS WITH CHILDREN
- OFFICE OF RESPONDENT PARENTS' COUNSEL
- STILL SHE RISES, TULSA
- WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

Amici Curiae understand how dependency cases are affected by a parent's criminal case, including how the deprivation of fundamental rights in criminal cases significantly reduces the ability of families to be reunified. Because of this, *Amici Curiae* have an interest in the outcome of this case.¹

¹ Pursuant to this Court's Rule 37.2, counsel of record for all listed parties received notice of the *Amici Curiae*'s intention to file this brief at least ten days prior to the brief's due date. Pursuant to Rule 37.6, *Amici Curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than *Amici Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

The present Petition involves two of the most important fundamental rights recognized by this Court – family and personal liberty.² This is not mere hyperbole and, in this case, to protect one is to protect both.

A “dependency and neglect case” refers to a legal case brought by a state or county department of human services (DHS)³ in response to often anonymous allegations that a child is neglected or abused. When DHS investigates the allegations and a parent is incarcerated, the assigned caseworker will commonly question the parent in jail about events that led to their detention. Such questioning can occur before a dependency case is opened, after it is opened, or both. Additionally, the questions asked are often the same questions law enforcement would ask an accused.

In states across the country, once the caseworker receives this information, including any incriminating statements from a parent, the caseworker is legally obligated to provide the information to law enforcement.

² See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.); see also *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ . . . interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.”).

³ DHS is used as the common acronym for the state or county agency responsible for child protection services. Some states utilize different naming conventions, such as Kansas, which calls its agency the Department of Children and Families. See Kan. Stat. Ann. § 38-2201.

In other words, the caseworker is a statutorily-created agent of law enforcement, regardless of the caseworker's intent when questioning the parent.

Despite this affirmative legal requirement, the Colorado Supreme Court recently held that the caseworkers at issue were not agents of law enforcement. As such, they were not required to provide a Miranda warning before questioning the parents.

Colorado's holding improperly circumvents the requirements of *Miranda v. Arizona*. In addition to violating a parent's Fifth Amendment rights, this unconstitutional workaround places incarcerated parents, often the indigent, minorities, and people with disabilities, at substantially increased risk of having their parental rights terminated and their families destroyed.

To properly safeguard parents and families, this Court must adhere to its tenets in *Miranda*. Accordingly, this Court should grant the present Petition and hold that caseworkers must provide a Miranda warning before questioning an incarcerated parent when the caseworker knows, or reasonably should know, of the possibility that their work will become part of a criminal prosecution. A contrary holding will deprive too many parents of their right against self-incrimination as guaranteed by the United States Constitution.

ARGUMENT

I. Armed with the Threat of Child Removal, DHS Caseworkers Are Inherently Coercive When Questioning an Incarcerated Parent. Moreover, They Are Statutorily-Created Agents of Law Enforcement in Colorado and at Least Thirteen Other States.

As this Court has long held, the Fifth Amendment of the federal Constitution “must be accorded liberal construction in favor of the right it was intended to secure.”⁴ The *Miranda* Court highlighted this when it “start[ed] . . . with the premise that [its] holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings.”⁵ The holding in *Miranda* exists for several reasons. Chief among them is the prevention of coerced and false confessions.⁶

These types of confessions are usually procured by the application of psychological pressure on an interrogatee.⁷ The pressure to confess can come from

⁴ *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *see also* *Bram v. United States*, 168 U.S. 532, 543 (1897) (quoting *Russell on Crimes* with approval for the premise that “[a] confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used . . .”).

⁵ *Miranda v. Arizona*, 384 U.S. 436, 442 (1966).

⁶ 384 U.S. at 445-48.

⁷ *See* STEVEN M. SALKY, *THE PRIVILEGE OF SILENCE, FIFTH AMENDMENT PROTECTIONS AGAINST SELF-INCRIMINATION* 23-24 (3rd ed. 2019); Physical coercion remains a possibility but is not as common. *See* Laura Smalarz, Kyle C. Scherr & Saul M. Kassir, *Miranda at 50: A Psychological Analysis*, *CURRENT DIRECTIONS*

multiple sources, and “people who are highly anxious, fearful, depressed, delusional, or otherwise psychologically disordered are often at a heightened risk to confess under pressure.”⁸ Such fear and pressure are easily applied against an incarcerated parent when a caseworker meets them with the implicit or explicit threat that their children will be taken.

Indeed, almost a quarter century ago the Colorado Supreme Court recognized the ability to pressure a parent into an involuntary confession by threatening the removal of their child – even when the parent is not in custody.⁹ And when the threat of child removal is combined with incarceration, the coercive environment a parent faces exponentially increases. These coercive pressures are amplified further still for parents of color, indigent parents, and parents with disabilities who are routinely separated from their children at higher rates than white parents and parents who are not disabled.¹⁰

IN PSYCH. SCI, 5 n.1 (2016).

⁸ Saul M. Kassin, *The Psychology of Confessions*, 4 ANN. REV. L. & SOC. SCI 193, 203 (2008).

⁹ *People v. Medina*, 25 P.3d 1216, 1221 (Colo. 2001) (interlocutory appeal in which the Colorado Supreme Court upheld a trial court’s suppression order of an involuntary confession extorted through the threat of removing the child from the parents).

¹⁰ See e.g., Christopher Wildeman, Frank R. Edwards & Sara Wakefield, *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*, 25 CHILD MALTREATMENT 32 (2019); see also National Council on Disability, *Rocking the Cradle* 77 (Sept. 27, 2012), <https://www.ncd.gov/assets/uploads/reports/2012/ncd-rocking-the-cradle.pdf>.

Along with the ability to apply immense psychological pressure on parents, caseworkers are statutorily-created agents of law enforcement in many states. For example, under Colorado law, reports of known or merely suspected child abuse or neglect, “shall be transmitted immediately by the county department to the district attorney’s office and to the local law enforcement agency.”¹¹ In addition to providing the report, “if the county department reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the local law enforcement agency responsible for investigation of violations of criminal child abuse laws.”¹² In other words, once a caseworker has investigated an allegation and reasonably believes a child was abused or neglected, the information and any statements or admissions gained from the investigation *must* be provided directly to law enforcement. Accordingly, a self-incriminating statement to a caseworker is legally required to be a self-incriminating statement to law enforcement. And notably, the caseworker’s intent while questioning a parent is not relevant to their statutory obligation to provide the information to law enforcement.¹³

However, Colorado is not alone. Indeed, no fewer than thirteen other states have similar laws that statutorily require caseworkers to act as agents of law

¹¹ Colo. Rev. Stat. § 19-3-307(3)(a).

¹² Colo. Rev. Stat. § 19-3-308(5.5).

¹³ [A]gency *by operation of law*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“An agency that arises under circumstances specified by law without mutual consent between the principal and agent . . .”).

enforcement.¹⁴ For example, when there is a report of serious physical harm or deterioration of a child in Kansas and action may be needed to protect the child, “the investigation shall be conducted as a joint effort between the secretary [of DHS]¹⁵ and the appropriate law enforcement or agencies”¹⁶ Moreover, “[i]f a statement of a suspect is obtained by either agency, a copy of the statement shall be provided to the other.”¹⁷ In other words, Kansas has made caseworkers agents of law enforcement by specifically requiring them to turn over all statements made to the caseworkers by

¹⁴ See Cal. Penal Code § 11166(j)(91); Iowa Code Ann. § 232.71B(3)(b); Kan. Stat. Ann. § 38-2226(b); Md. Code Ann., Fam. Law § 5-706(i); Mass. Gen. Laws Ann. ch. 119, § 51B(a), (k); Mich. Comp. Laws Ann. § 722.623(6); Miss. Code Ann. § 43-21-353(1); N.H. Rev. Stat. Ann. § 169-C:38(I.-II.); N.J. Stat. Ann. § 9:6-8.10a(e); N.C. Gen. Stat. Ann. § 7B-307(a); Okla. Stat. Ann. tit. 10A, § 1-2-105(B)(5); S.C. Code Ann. § 63-7-980(B)(1); Wyo. Stat. Ann. § 14-3-206(a)(ii).

Still other states allow law enforcement open access to DHS investigations. See e.g., Neb. Rev. Stat. Ann. § 28-713; N.M. Stat. Ann. § 32A-4-3(E); 23 Pa. Stat. and Cons. Stat. Ann. §§ 6334.1(2), 6365(c).

¹⁵ In Kansas, the Kansas Department for Children and Families responsible for these investigations. See Kan. Stat. Ann. § 38-2201.

¹⁶ Kan. Stat. Ann. § 38-2226(b); see also Kan. Stat. Ann. § 38-2202(ee) (“‘Physical, mental or emotional abuse’ means the infliction of physical, mental or emotional harm *or the causing of a deterioration of a child* and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child’s health or emotional well-being is endangered.”) (emphasis added).

¹⁷ Kan. Stat. Ann. § 38-2226(b).

parents merely suspected of abuse – including unwarned statements.

Likewise, in North Carolina, “[i]f the director [of the county DHS] finds evidence that a juvenile may have been abuse . . . the director shall make an immediate oral and subsequent written report of the findings to the district attorney . . . and the appropriate local law enforcement agency”¹⁸ As such, Colorado, Kansas, North Carolina, and states across the country have established statutory requirements for caseworkers to act as agents of law enforcement. However, under Colorado’s reasoning, caseworkers would likely not be subject to the requirements of *Miranda*, despite this statutory agency.¹⁹

But what of those states in which a caseworker questions an incarcerated parent, yet there is no statutory agency with law enforcement? Under this Court’s precedent, a *Miranda* warning is still required from the caseworker. In *Mathis v. United States*, this Court refused to allow the government to “escape [the] application of the *Miranda* warnings” by arguing that a federal tax agent’s questioning of Mathis while he was incarcerated did not trigger the need for a *Miranda* warning.²⁰ In its analysis, the Court reasoned that despite beginning as a civil matter, “tax investigations

¹⁸ N.C. Gen. Stat. Ann. § 7B-307(a).

¹⁹ Notably, the Colorado Supreme Court did not analyze the statutory agency between caseworkers and law enforcement. See *Densmore v. People*, 563 P.3d 181 (Colo. 2025); *Frazee v. People*, 563 P.3d. 174 (Colo. 2025).

²⁰ *Mathis v. United States*, 391 U.S. 1, 4 (1968).

frequently lead to criminal prosecutions”²¹ The touchstone in the case then was not whether the questioning was initially about a civil matter, but whether the government agent knew of “the possibility during his investigation that his work would end up in a criminal prosecution.”²²

Thirteen years later, this Court reaffirmed that reasoning in a case involving a psychiatrist who was court-appointed for the sole purpose of determining a criminal defendant’s competency.²³ However, the inquiry by the doctor was ultimately used “by the State for a much broader objective that was plainly adverse” to the defendant.²⁴ Under these facts, this Court held the state could not use the inquiry as it sought to absent a *Miranda* warning by the psychiatrist provided before questioning the defendant.²⁵

Caseworkers questioning incarcerated parents in dependency cases is virtually indistinguishable from this precedent. As in *Mathis*, though their investigation may be initiated for civil cases, caseworkers are keenly aware of the possibility that their work will end up in criminal prosecutions.²⁶ Further, as in

²¹ 391 U.S. at 4.

²² *Id.*; see also *Jackson v. Conway*, 763 F.3d 115, 139 (2d Cir. 2014) (“the Court [in *Mathis*] focused on the ‘possibility’ that the IRS agent’s tax investigation would lead to a criminal prosecution, and the agent’s awareness of that possibility during his investigation.”).

²³ *Estelle v. Smith*, 451 U.S. 454, 456–57 (1981).

²⁴ 451 U.S. at 465.

²⁵ *Id.* at 473.

²⁶ See e.g., Cal. Penal Code § 11166(j)(91); Iowa Code Ann.

Estelle, even if the initial questioning of the incarcerated parents is for a “neutral purpose,” once used in a criminal case it is used “by the State for a much broader objective that [is] plainly adverse” to the parent.²⁷ Thus, even absent a statutory agency, case-workers must provide incarcerated parents a Miranda warning prior to questioning them and a failure to do so constitutionally prevents the government from using any incriminating statements to criminally prosecute the parent.

II. Confessions, Including Coerced and False Confessions, Result in Higher Bail Amounts, Inflate the Number and Severity of Criminal Charges, and Boost Conviction Rates. These Implications Substantially Increase a Parent’s Risk of Losing Their Children in a Dependency Case.

A parent’s dependency case and criminal case are deeply intertwined, with the procedures and outcome of the criminal case directly affecting the parent’s dependency case. For example, when a dependency case is brought by DHS and the allegations are sustained, there is almost always a “treatment plan”

§ 232.71B(3)(b); Kan. Stat. Ann. § 38-2226(b); Md. Code Ann., Fam. Law § 5-706(i); Mass. Gen. Laws Ann. ch. 119, § 51B(a), (k); Mich. Comp. Laws Ann. § 722.623(6); Miss. Code Ann. § 43-21-353(1); N.H. Rev. Stat. Ann. § 169-C:38(I-II.); N.J. Stat. Ann. § 9:6-8.10a(e); N.C. Gen. Stat. Ann. § 7B-307(a); Okla. Stat. Ann. tit. 10A, § 1-2-105(B)(5); S.C. Code Ann. § 63-7-980(B)(1); Wyo. Stat. Ann. § 14-3-206(a)(ii); *see also* Petition for Writ of Certiorari, pp. 18-24 (discussing the no fewer than 12 cases from across the country involving evidence used from caseworkers’ investigations in criminal cases).

²⁷ 451 U.S. at 465.

ordered by the court.²⁸ This plan consists of the steps a parent must take to end the government’s involvement with the family. The steps can range from mental health evaluations and treatment to parenting education to visitation with the children.²⁹ A parent’s failure to complete these steps usually results in the breakup of the family, which commonly involves the “death penalty of civil cases,” the termination of parental rights.³⁰ As such, the ability to complete the treatment plan is critical to the survival of the family.

However, while incarcerated, the availability of court-ordered services to the parent is significantly limited. This is true regardless of whether the confinement is pre-trial or post-trial, and whether it is a local, state, or federal facility. Jails and prisons often do not have staff who can complete the court-

²⁸ See e.g., Colo. Rev. Stat. § 19-3-508(1)(e)(I) (“the caseworker assigned to the case shall submit an appropriate treatment plan and the court shall approve an appropriate treatment plan . . .”); see also Jena Blocher, *“The Family Separation Crisis that No One Knows About”: How Our Flawed Legal and Prison Systems Work to Keep Incarcerated Parents from Their Children*, 10 BRANDEIS UNIV. L.J. 53, 58 (2022) (discussing similar “case plans” under the Adoption and Safe Families Act of 1997).

²⁹ See e.g., Colo. Rev. Stat. § 19-3-208.

³⁰ See generally Chris Gottlieb, *The Birth of the Civil Death Penalty and the Expansion of Forced Adoptions: Reassessing the Concept of Termination of Parental Rights in Light of Its History, Purposes, and Current Efficacy*, 45 CARDOZO L. REV. 1319, 1320 (2024) (discussing the history and failures of terminating parental rights in the United States and the “unprecedented policy of [the United States] pressuring states to permanently sever family ties”); see also *In re C.J.V.*, 746 S.E.2d 783, 791 (Ga. 2013) (J. Dillard, concurring fully and specially) (“an order terminating parental rights is the death penalty of civil cases.”).

ordered evaluations. Further, the providers with whom DHS contracts and could complete the evaluation commonly either do not have the needed authorization to enter the facility or refuse to do so. The jail or prison may not have the court-ordered classes available or may not have the capacity for all the parents who need them. And parents are often housed a significant distance away from where their children live, making in-person visitation incredibly difficult or virtually impossible.³¹ These limitations and others severely impede a parent's ability to complete the court-ordered treatment plan, which substantially increases the likelihood of the family being destroyed.³²

Unfortunately, in states across the country, the statutory agency between caseworkers and law enforcement acts as a silent mechanism for keeping parents incarcerated longer, thus keeping these vital resources out of a parent's reach longer. That is because confessions – including coerced and false confessions – often increase the parent's bail amount, increase the number of charges, increase the severity of the charges, and increase conviction rates.³³ All these implications serve

³¹ See Blocher, *supra* note 28 (noting the limited availability of treatment and classes, that “84% of parents in federal prisons are incarcerated more than 100 miles away from their home,” and over “50% of parents do not receive one visit from their child”).

³² The Colorado legislature recently recognized this significant problem and worked to limit the detrimental effects the lack of services has on families. See S.B. 23-039, 2023 Gen. Assem., 74th Sess. (Colo. 2023).

³³ Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 984 (1997) (discussing the increase in bail and additional charges routinely brought in confession cases); see also Paul G. Cassell & Bret S. Hayman, *Police Interrogation in the*

to increase the time a parent is incarcerated and the time a parent does not have access to the needed services.

However, the inability to access services is not the only factor that increases a parent's risk of losing their children the longer they are incarcerated. This already amplified risk grows further due to the Adoption and Safe Families Act of 1997 (ASFA). The ASFA requires states to institute termination of parental rights proceedings when a child has been in foster care for 15 of the past 22 months, absent an exception.³⁴ Accordingly, the longer a parent is incarcerated, the more likely it is that a parent will have their parental rights terminated under the ASFA.

And the increased risk caused by the ASFA is not mere speculation. In the five years after the passage of the ASFA, the rate at which incarcerated parents had their parental rights terminated increased by 250%.³⁵ Even more troubling, from 2006 to 2016, "an estimated 32,000 incarcerated parents had their parental rights terminated without being accused of child abuse, with 5,000 parents losing their rights due only to their incarceration."³⁶

1990s: An Empirical Study of the Effects of Miranda, 43 UCLA L. REV. 839, 905 (1996) (discussing the increase in number and severity of charges in confession cases).

³⁴ 42 U.S.C. § 675(5)(E).

³⁵ Emily K. Nicholson, *Racing Against the ASFA Clock: How Incarcerated Parents Lose More Than Freedom*, 45 DUQ. L. REV. 83, 89 (2006).

³⁶ Tamarie Willis, *Termination of Parental Rights and Child Welfare Public Policy: Barriers for Incarcerated Parents and State-Level Policies to Help Mitigate Them*, 172 CHILD. & YOUTH

As such, the length of time a parent is incarcerated, both pre- and post-trial, directly affects their chances of having their parental rights terminated and their family destroyed. Because confessions, including coerced and false confessions, increase the time a parent is incarcerated, it is critical that the caseworker, often a statutory agent of law enforcement, be required to provide a Miranda warning prior to questioning an incarcerated parent.

III. The Indigent, Minorities, and People with Disabilities Are Most Affected by a Caseworker's Failure to Provide a Miranda Warning.

Criminal and dependency cases sit firmly at the crossroads of poverty, disability, and race. As of 2020, Black adults were imprisoned at five times the rate of white adults.³⁷ People of color are serving more than two-thirds of the country's life sentences, despite making up less than 30% of the population.³⁸ And, while those in poverty make up only 11.1% of the population, a staggering 90% of federal criminal defendants are appointed counsel.³⁹ People with disabilities fare

SERVS. REV. 1 (2025).

³⁷ The Pew Charitable Trusts, *Racial Disparities Persist in Many U.S. Jails* (2023), <https://www.pew.org/en/research-and-analysis/issue-briefs/2023/05/racial-disparities-persist-in-many-us-jails>.

³⁸ Nazgol Ghandnoosh & Celeste Barry, *The Sentencing Project, One in Five: Disparity in Imprisonment – Causes and Remedies* (2023), <https://www.sentencingproject.org/reports/one-in-five-racial-disparity-in-imprisonment-causes-and-remedies/>; United States Census, *Quick Facts United States*, <https://www.census.gov/quickfacts/fact/table/US/PST045224>.

³⁹ United States Census Bureau, *Poverty in the United States*:

no better. Representing only 15% of the United States' population, 66% of those incarcerated in state and federal prisons have a disability.⁴⁰

In dependency cases, the statistics are equally abhorrent. In Colorado, minority parents are involved in 48% of cases in which the ORPC appointed counsel and the parent's race was known, despite making up only 34% of Colorado's population.⁴¹ Likewise, in 46% of the cases in which the ORPC appointed counsel, at least one parent had a disability while people with disabilities represent only 24% of Colorado's population.⁴² And while the indigent are only 9.3% of Colorado's

2023 1, 3 (2024), <https://www2.census.gov/library/publications/2024/demo/p60-283.pdf>; United States Courts, *Criminal Justice Act: Protecting the Right to Counsel for 60 Years* (August 15, 2024), <https://www.uscourts.gov/data-news/judiciary-news/2024/08/15/criminal-justice-act-protecting-right-counsel-60-years>; see also U.S. Bureau of Justice Statistics, *Defense Counsel in Criminal Cases* (2000) (citing 80% court-appointed counsel in state felony cases with violent crime charges).

⁴⁰ Laurin Bixby, Stacey Bevan & Courtney Boen, *The Link Between Disability, Incarceration and Social Exclusion*, 41:10 HEALTH AFF. 1460, 1462 (2022).

⁴¹ Office of Respondent Parents' Counsel Internal Data (ORPC), ORPC Global Statistics CY20-CY24, RESPONDENT PARENT PAYMENT SYSTEM (analyzed June 2025); STATE DEMOGRAPHY OFFICE, COLO. DEPT OF LOCAL AFF., *2023 Population Summary* 5 (2025), <https://tinyurl.com/4pryw5cd>.

⁴² Disability and Health Data System, Center for Disease Control and Prevention, *Colorado Disability Estimates* (2022), <https://tinyurl.com/5arduxnp>; Office of Respondent Parents' Counsel (ORPC) Internal Data, ORPC Global Statistics CY20-CY24, RESPONDENT PARENT PAYMENT SYSTEM, (analyzed June 2025) (in author's possession).

population, 89% of all dependency cases in Colorado had at least one indigent parent.⁴³

Despite being overrepresented in the child welfare system, many of these populations were *under-represented* in reunification with their families. For example, parents with disabilities are 220% more likely to have their parental rights terminated than parents without disabilities.⁴⁴ Another example is incarcerated parents, who are 230% more likely to have their parental rights terminated than those who are not incarcerated.⁴⁵

In short, the poor, minorities, and people with disabilities are far more likely to be incarcerated, far more likely to be involved in the child welfare system, and far more likely to face severe outcomes in both. Accordingly, they are more likely to be questioned by caseworkers while incarcerated and are, therefore, more likely to be affected by a caseworker's failure to provide a Miranda warning. Moreover, when confessions are known to increase the time a parent is incarcerated and caseworkers are allowed to question parents without providing a Miranda warning, the criminal and child welfare systems are complicit in perpetuating

⁴³ United States Census, *Quick Facts Colorado*, <https://www.census.gov/quickfacts/fact/table/CO/PST045224>; ORPC, ORPC Global Statistics CY20-CY24, RESPONDENT PARENT PAYMENT SYSTEM, (analyzed June 2025) (in author's possession); Colo. Judicial Branch, Colo. State Ct. Administrator's Off., State Court Data Access System (analyzed September 2023).

⁴⁴ ORPC, ORPC Global Statistics CY20-CY24, RESPONDENT PARENT PAYMENT SYSTEM, (analyzed June 2025) (in author's possession).

⁴⁵ ORPC, ORPC Global Statistics CY20-CY24, RESPONDENT PARENT PAYMENT SYSTEM, (analyzed June 2025) (in author's possession).

the historical disparities by keeping minorities, the poor, and people with disabilities incarcerated more often and for longer periods.

IV. A Caseworker’s Failure to Provide a Miranda Warning to an Incarcerated Parent Is Deeply Detrimental to Children.

Failing to provide constitutionally-mandated due process affects not only a parent’s life – it affects the lives of their children. Indeed, when “parental imprisonment is common, unequally distributed, and has negative consequences throughout the life course for children, then parental imprisonment contributes not only to greater inequality among adults, but to greater inequality among children as well.”⁴⁶

The United States has the highest incarceration rate in the world.⁴⁷ Moreover, the number of children with an incarcerated parent increased 500% from 1980-2012.⁴⁸ Children whose parents are incarcerated face an increased risk of numerous challenges, including

⁴⁶ Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46:2 DEMOGRAPHY 265, 266 (2009); see also Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, 278 NAT’L INST. OF JUST. J. 1 (2017) (“Family members of incarcerated individuals are often referred to as ‘hidden victims’ – victims of the criminal justice system who are neither acknowledged . . . [nor] heard.”).

⁴⁷ Paola Scommegna, *Parent’s Imprisonment Linked to Children’s Health, Behavioral Problems*, Population Reference Bureau, <https://www.prb.org/resources/parents-imprisonment-linked-to-childrens-health-behavioral-problems/>.

⁴⁸ *Id.*

behavioral and mental health problems,⁴⁹ increased illicit drug use,⁵⁰ increased rates of incarceration,⁵¹ poorer health,⁵² poorer education outcomes,⁵³ and poorer economic outcomes.⁵⁴

Unfortunately, examples of the challenges children of incarcerated parents face abound. For instance, children of incarcerated parents are twice as likely to have a developmental delay, twice as likely to have learning disabilities, three times more likely to face depression, and almost five times more likely to have behavioral or conduct problems.⁵⁵ Similarly, these children are more likely to have difficulties in school, which “is particularly important to consider, given the long-lasting implications of school success for adult adjustment across a variety of domains . . .”⁵⁶ For

⁴⁹ Julie Poehlmann-Tynan & Kristin Turney, *A Developmental Perspective on Children with Incarcerated Parents*, 15(1) CHILD DEV. PERSP. 3, 5 (2021).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Kristin Turney, *Stress Proliferation Across Generations? Examining the Relationship Between Parental Incarceration and Childhood Health*, 55(3) HEALTH AND SOC. BEHAV. 302, 311 (2014).

⁵³ Rebecca Shlafer, Tyler Reedy & Laurel Davis, *School-based Outcomes Among Youth with Incarcerated Parents: Differences by School Setting*, 87(9) J. SCH. HEALTH 7 (“Among youth in public schools, parental incarceration was consistently associated with worse school outcomes.”).

⁵⁴ Martin, *supra* note 46.

⁵⁵ Turney, *supra* note 52 at 311.

⁵⁶ Shlafer et al., *supra* note 53 at 687.

instance, in a sample of children with an incarcerated mother, a staggering 49% of those age 9-14 were suspended from school.⁵⁷ Among a separate sample of adolescents with a mother incarcerated, the children were more likely to fail classes, drop out of school, and have extended absences from school.”⁵⁸

As noted above, confessions, including coerced and false confessions, often extend the time a parent is incarcerated. Considering the devastating collateral effects on children of incarcerated parents, it is evident that anything that extends the time a parent is incarcerated, including the failure of a caseworker to provide a Miranda warning before questioning a parent, harms the children involved. Moreover, because the poor and minorities are incarcerated at higher rates, it is this population of children who will be most affected. By creating the next generation of poor and minority children who are disadvantaged from the beginning, the criminal and child welfare systems are directly and again perpetuating the nation’s historical disparities.

⁵⁷ *Id.* at 688.

⁵⁸ *Id.*

V. Requiring Miranda Warnings for Parents Interrogated by Caseworkers Neither Unduly Burdens the Government Nor Endangers Children.

As this Court noted, *Miranda*'s "holding [was] not an innovation in our jurisprudence, but . . . an application of principles long recognized and applied in other settings."⁵⁹ As such, requiring caseworkers to provide Miranda warnings before conducting custodial interrogations creates no new substantive rights; it merely ensures parents know their existing rights before they speak to a state actor in a coercive situation where they risk losing both their child and their freedom.

Of course, children's safety is of paramount importance to the government and to society at large. But there is neither evidence nor rational argument that informing parents of their already existing rights endangers children. Nor would requiring caseworkers to properly Mirandize parents prior to questioning them unduly burden the government.

As an initial matter, almost 80% of those who receive a Miranda warning waive their rights.⁶⁰ However, should a parent choose to exercise their right to remain silent after receiving a Miranda warning, DHS often has multiple statutory tools to obtain information about children's safety. For example, in Colorado DHS is statutorily authorized to interview or observe a child who is the subject of an abuse or neglect

⁵⁹ 384 U.S. at 442.

⁶⁰ Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 276 (1996).

report.⁶¹ Additionally, Colorado authorizes juvenile courts to issue search warrants to find a child alleged to be dependent or neglected.⁶² With such tools in hand, the safety of the child is protected and the government is not unduly burdened by advising a parent of their already existing rights.

This is further highlighted by the states that already require caseworkers to either Mirandize or provide Miranda-like advisements to parents prior to questioning them. Connecticut, for example, has been providing Miranda-like advisements for a decade.⁶³ Additionally, Texas recently passed legislation requiring caseworkers to provide a Miranda warning in all interrogations, not just those for parents in custody.⁶⁴ Further, while not requiring full Miranda advisement, Washington State requires that caseworkers at least advise a parent about the allegations against them and the legislature looked “to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights”⁶⁵

⁶¹ Colo. Rev. Stat. § 19-3-308(3)(a).

⁶² Colo. Rev. Stat. § 19-1-112.

⁶³ Eli Hager, *Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One*, ProPublica (Oct. 13, 2022), <https://www.propublica.org/article/child-welfare-search-seizure-without-warrants>; *see also* Conn. Gen. Stat. § 17a-103d.

⁶⁴ H.B. 730, 2023 Tex. Leg., 88th Sess. (2023).

⁶⁵ Wash. Rev. Code Ann. § 26.44.100.

Moreover, though perhaps counter-intuitive, it appears that providing Miranda warnings results in DHS receiving *more* information.⁶⁶ For example, the Connecticut Department of Children and Families has reported that, since it began providing Miranda warnings, the agency is getting more information from families than they did prior to implementing the Miranda policy.⁶⁷ Connecticut attributes this change to the greater transparency that accompanies these warnings.⁶⁸ In other words, providing Miranda warnings benefits the parent, the child, *and* the state.

⁶⁶ Hager, *supra* note 63.

⁶⁷ Hager, *supra* note 63.

⁶⁸ Hager, *supra* note 63.

CONCLUSION

For the foregoing reasons, this Court should grant the present Petition and hold that caseworkers who know, or reasonably should know, of the possibility that their work will become part of a criminal prosecution must provide a Miranda warning to an incarcerated parent prior to questioning them.

Respectfully submitted,

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