

No. 24-1267

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 Writ of Certiorari to the
Colorado Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

After Petitioners were arrested and detained for murdering the mothers of their respective children, the children were left in the custody of the state Department of Human Services (“DHS”).

As part of their routine job duties, child protection caseworkers employed by DHS interviewed each Petitioner in jail to gather information about each child, find safe placements for them, and ensure they received any necessary services. While DHS caseworkers have a statutorily mandated duty to report instances of abuse and neglect to law enforcement, neither of the caseworkers here coordinated their questioning with law enforcement, reviewed police reports before questioning, or sought to assist law enforcement in developing evidence for a criminal prosecution. Rather, their purpose when speaking with Petitioners—as evidenced by the questions they asked—was to ensure the children’s welfare. Because these conversations were not “custodial interrogations,” neither caseworker provided advisements under *Miranda v. Arizona*, 384 U.S. 436 (1966).

The question presented is as follows:

Whether this Court should categorically expand *Miranda* to non-law enforcement personnel who are mandatory reporters, even where they do not act as agents of law enforcement and no Fifth Amendment privilege is implicated?

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STATEMENT OF THE CASE

Adam Densmore. Densmore and the victim, Ashley Mead, lived together in Boulder, Colorado with their thirteen-month-old daughter, W.M. Pet. App. 24a. By late January 2017, Mead told Densmore she no longer wanted to be in a relationship. TR 04-12-18, pp 80-83, 127-28.

Mead was last seen alive in Boulder on the evening of February 12. TR 04-19-18, p 235:16-20. That night, Densmore and W.M. drove from Colorado to his parents' house in Louisiana, arriving on February 13. Pet. App. 24a-25a; TR 04-16-18, pp 39:11-18, 45-56, 66-69; TR 04-17-18, pp 112-13; EX Jury Trial, EX 101, pp 88-118. The next day, Densmore and W.M. were alone at his parents' house for several hours and then drove to his grandmother's house in Arkansas that afternoon. See TR 04-16-18, pp 70-73; TR 04-17-18, pp 121-22, 180-84, TR 04-18-18, pp 76-77, 81-82, 85:4-5; EX Jury Trial, EX 101, pp 118-20. On February 15, Densmore and W.M. began driving back to Colorado. TR 04-16-18, pp 74-76; EX Jury Trial, EX 101, pp 121-41.

Meanwhile, Mead's work supervisor reported her missing on February 14. Pet. App. 24a. As Densmore was driving through Oklahoma on February 15, he called the investigating Colorado detective and told him that on February 12, he and Mead had "the worst argument they had ever had." Pet. App. 25a.

The detective alerted the local authorities that Densmore was in Oklahoma, and they arrested him. Pet. App. 25a.

Because W.M. was with Densmore and no other caregiver was readily available, law enforcement

called the Oklahoma DHS. Pet. App. 5a. Caseworker Jessica Punches took custody of W.M. and began trying to locate an appropriate placement for her. Pet. App. 6a. She briefly talked to the Colorado detective, who told her that Densmore was being held for a suspected custody violation, Mead's whereabouts were unknown, and they did not know if Mead was alive. Pet. App. 6a.

Punches interviewed Densmore in jail to learn more about W.M. and find an appropriate placement for her. Pet. App. 6a. Law enforcement had previously given Densmore two *Miranda* advisements, and he had invoked his right to counsel. Pet. App. 6a. Punches did not give Densmore a *Miranda* advisement. Pet. App. 6a. During Punches's interview, a task force officer sat behind Punches for her "safety" and at her request; the officer did not participate in the interview. Pet. App. 7a.

Punches asked Densmore if he knew where Mead was, because she wanted to place W.M. with a parent if one was available. Pet. App. 7a. Densmore told Punches he had last seen Mead the previous Sunday, when they had fought. Pet. App. 7a. When Punches asked if the fight was physical, Densmore said he had slapped Mead. Pet. App. 7a.

Meanwhile, a gas station attendant discovered a suitcase containing a female torso, later identified as Mead's, in the gas station's dumpster. Pet. App. 25a; TR 04-19-18, pp 30-38; Env., Trial, EXS 229-30. Surveillance footage showed Densmore placing something resembling the suitcase in the dumpster earlier in the day. Pet. App. 25a. Officers learned that Densmore had stopped at several gas station dumpsters between

Arkansas and Oklahoma, but no other remains were ever recovered. Pet. App. 25a. At Densmore's parents' house, law enforcement later found a reciprocating saw with blood on the blade, which DNA testing confirmed was Mead's. Pet. App. 25a. DNA testing also showed Densmore's DNA on the saw's handle. TR 04-20-18, pp 20-23, 85-87, 97:14-24; EX Jury Trial, EX 331, p 398.

The day after her first conversation with Densmore, after learning that law enforcement found Mead's torso and that Densmore was being held on suspicion of first-degree murder, PUNCHES called Densmore on the telephone for a "child safety meeting." Pet. App. 8a. She did not provide a *Miranda* advisement before this call. Pet. App. 8a. During this conversation, Densmore said there had not been domestic violence between him and Mead, and PUNCHES confronted him with his prior statement that he had slapped Mead during their fight. Pet. App. 8a-9a.

PUNCHES created a report documenting her conversation (excluding information from the child safety meeting, which the parties agreed to treat as confidential) and shared it with the district attorney. Pet. App. 9a. Several months later, PUNCHES shared a copy of the recorded interview with a Colorado detective when the detective requested it; PUNCHES was initially unsure if she could share the information without a court order but did so after her supervisor indicated she could share the requested information. Pet. App. 9a-10a.

Densmore moved to suppress the statements he made to PUNCHES because she did not give him a *Miranda* advisement. See Pet. App. 78a-81a. The trial

court denied the motion on the grounds that PUNCHES was not a law enforcement agent. Pet. App. 78a-81a.

DENSMORE was convicted of first-degree murder, tampering with a deceased human body, tampering with physical evidence, and abuse of a corpse. Pet. App. 10a-11a.

Patrick FRAZEE. FRAZEE dated the victim, KELSEY BERRETH, for about three years and in October 2017 they had a daughter together, K.F. Pet. App. 105a. FRAZEE simultaneously had an on-and-off affair with KRISTAL LEE. Pet. App. 105a. LEE lived in Idaho but frequently visited FRAZEE in Colorado. Pet. App. 105a.

In September and October 2018, FRAZEE asked LEE three separate times to kill BERRETH. Pet. App. 105a. LEE refused. Pet. App. 105a.

On Thanksgiving Day 2018, FRAZEE drove to BERRETH's condo. Pet. App. 105a-106a. Inside, FRAZEE blindfolded BERRETH using a ruse that he wanted her to guess the smell of scented candles. Pet. App. 106a. He then bludgeoned her to death with a baseball bat. Pet. App. 106a. Afterwards, he took BERRETH's cell phone, put BERRETH's body in a black plastic tote in the back of his truck, washed his clothes, and then drove back home with K.F. and had Thanksgiving dinner while BERRETH's corpse sat in his truck bed. Pet. App. 106a.

That night, FRAZEE called LEE repeatedly and told her she had a "mess" to clean up and to come to Colorado right away. Pet. App. 106a. LEE drove from Idaho to BERRETH's Colorado condo, and when she arrived, saw blood everywhere. Pet. App. 106a. She cleaned the condo with bleach for several hours and filled six trash bags with bloody items. Pet. App. 106a. Afterwards,

Frazee confessed to Lee what he had done. TR 11-06-19, pp 246:9-18, 247:8-25.

Frazee and Lee then retrieved the tote containing Berreth's body, placed it and the trash bags in a large water trough filled with wood pallets on Frazee's mother's ranch, doused everything with gasoline, and set it on fire. Pet. App. 106a.

Lee returned to Idaho with Berreth's cellphone and sent a text from it to Berreth's boss, telling him she would not be at work the next week. Pet. App. 106a-107a. She then burned Berreth's phone. Pet. App. 107a.

When law enforcement confronted Lee about Berreth's disappearance, Lee eventually confessed. Pet. App. 107a. She showed law enforcement the location where they burned Berreth's body, and law enforcement found melted black plastic and a human tooth fragment. TR 11-08-19, pp 198-203, 212; TR 11-12-19, pp 222-229. She also took law enforcement to Berreth's condo to show them where she cleaned up blood, and law enforcement found small traces of blood, including blood soaked into the living room floorboards. Pet. App. 115a. After pleading guilty to tampering with a deceased human body, Lee ultimately testified against Frazee at trial. Pet. App. 107a. Frazee was arrested for Berreth's murder on December 21, 2018. Pet. App. 88a. After Frazee's arrest, a Colorado DHS caseworker, Mary Longmire, took legal custody of K.F.

and began determining an appropriate placement for her.¹ Pet. App. 88a.

Five days after Frazee's arrest, Longmire interviewed him at the jail. Pet. App. 89a. Longmire did not notify the police department that she planned to interview Frazee, and they did not ask her to interview him. Pet. App. 89a. She knew from law enforcement and the news that Frazee was arrested for Berreth's murder and that Berreth had been missing since the Thanksgiving time period, but she did not know specific details. Pet. App. 89a; Pet. App. 155a; TR 08-23-19, pp 29-30, 54. She was not a law enforcement officer and had not been trained in law enforcement interrogation techniques. Pet. App. 89a; Pet. App. 157a.

Longmire opened the conversation by telling Frazee that given the charges against him, she would understand if he did not want to answer some of her questions. But she did not give him a formal *Miranda* advisement. Pet. App. 89a-90a.

Longmire asked questions about K.F. and her development, as well as K.F.'s family history, K.F.'s relationship with her parents, and Frazee's relationship with Berreth. Pet. App. 90a.

Frazee told Longmire that when he picked K.F. up the day before Thanksgiving, Berreth was "heated" during a discussion about their relationship, and they decided to "go[] their separate ways." TR 11-14-19, pp

¹ While Petitioners mention that Longmire testified at trial that she was asked to "assess the allegations" against Frazee, they neglect to mention that it was her supervisor, not law enforcement, who asked her to do so. TR 11-14-19, p 55:17-21.

64-66. He picked K.F. up as arranged on Thanksgiving, and on Friday and Saturday Berreth asked Frazee to keep K.F. TR 11-14-19, pp 66-68. They had another “heated” conversation on Saturday afternoon where Berreth “lost it,” and he decided to keep K.F. “until the storm blew over.” TR 11-14-19, pp 68-69. He got a text from Berreth saying “Do you even love me?” and responded, “Of course I do,” but received no reply. TR 11-14-19, pp 70-71.

Longmire provided portions of an “assessment summary” to the district attorney’s office, after consulting with the county attorney about whether she was required to disclose her assessment documentation.² TR 08-23-19, pp 49-50, 53-54; CF, pp 758-59.

Frazee moved to suppress his statements to Longmire. The trial court denied the motion, concluding that *Miranda* advisements were not required because Longmire was not an agent of law enforcement. Pet. App. 152a-160a.

Frazee was convicted of two counts of first-degree murder, three counts of solicitation to commit first-degree murder, and tampering with a deceased human body. Pet. App. 94a-95a.

² Petitioners suggest Longmire disclosed portions of her assessment summary because “it was, in her words, ‘a joint investigation.’” Pet. 11. That characterization is inaccurate. Rather, Longmire testified that, generally speaking, if DHS concludes an allegation of abuse or neglect is founded, they “are required to forward those to the DA’s office, and to law enforcement if there’s been a joint investigation.” TR 08-23-19, p 53:13-17. She did not testify that there was a joint investigation *in Frazee’s case*.

Colorado Appellate Proceedings. After the Colorado Court of Appeals affirmed Petitioners’ convictions, the Colorado Supreme Court granted Petitioners’ petitions for writs of certiorari and unanimously affirmed both cases. *Densmore v. People*, 2025 CO 6, ¶¶ 1-3; Pet. App. 4a, 22a; *Frazee v. People*, 2025 CO 7, ¶¶ 1-3; Pet. App. 87a-103a.

The court first rejected Petitioners’ request to adopt a bright-line rule “that whenever a caseworker conducts a custodial interrogation that involves current or unsolved allegations that a reasonable caseworker should know are criminal, *Miranda* applies.” *Densmore*, ¶ 1, Pet. App. 4a; *accord Frazee*, ¶¶ 1-3; Pet. App. 87a-88a. The court reasoned that Petitioners had “offered no persuasive reason for extending *Miranda* to custodial interrogations conducted by people who are neither law enforcement officers nor agents of law enforcement.” *Densmore*, ¶ 32; Pet. App. 16a, *accord Frazee*, ¶ 38; Pet. App. 99a-100a.

The court also declined Petitioner’s alternative argument to limit its agency analysis to “objective” factors that did not include the interrogator’s intent to assist law enforcement. *Densmore*, ¶ 33; Pet. App. 16a, *accord Frazee*, ¶¶ 31-32; Pet. App. 97a. It concluded this limitation was not warranted by Colorado caselaw or “any other case of which we are aware,” and that Petitioners’ proposed approach “would, in some cases, preclude consideration of relevant facts, contrary to a totality of the circumstances analysis.” *Densmore*, ¶ 33; Pet. App. 16a.

Rather, the court articulated a non-exhaustive list of factors to consider, such as the investigator’s job duties; whether the investigator was a law enforcement

officer; the investigator's purpose; whether the police directed, controlled, or participated in the investigation or gave input into the questioning; and the extent of the investigator's contact with police before beginning the investigation. *Densmore*, ¶¶ 30-31; Pet. App. 14a-15a; *Frazee*, ¶ 31; Pet. App. 96a-97a. Applying these factors to Petitioners' cases, the court determined that neither caseworker acted as an agent of law enforcement and affirmed the convictions.³ *Densmore*, ¶¶ 46-47; Pet. App. 21a, *Frazee*, ¶¶ 2-3; Pet. App. 87a-88a.

SUMMARY OF THE ARGUMENT

This Court should deny the petition for certiorari because: (1) the case below was properly decided; (2) this case is an unsuitable vehicle for deciding the question presented; and (3) the alleged split, which is minimal, does not warrant this Court's intervention.

First, the Colorado Supreme Court reached the correct result. This Court has never categorically expanded *Miranda* to apply to non-law enforcement personnel based solely on their status as mandatory reporters, nor does this Court's precedent support such an extension. Rather, the totality-of-the-circumstances framework adopted by Colorado is consistent

³ Thus, the court did not reach the question of whether Frazee was in *Miranda* custody (the trial court and Colorado Court of Appeals both concluded he was not). Pet. App. 101a, 103a, 123a-127a, 160a. And given its conclusion that Panches was not a law enforcement agent, the trial court did not reach Densmore's arguments that his statements were involuntary. Pet. App. 78a, 81a-83a. Accordingly, if this Court grants the petition and ultimately reverses, a remand would be necessary to resolve these outstanding issues.

with this Court's disapproval of bright-line rules in the *Miranda* context as well as how courts historically have evaluated questions of agency. Further, this totality approach adequately identifies those situations where an individual acts as an agent of law enforcement, and is thus subject to *Miranda*'s requirements, without unnecessarily encompassing those who are not. Indeed, Petitioners' desired categorical approach would have significant and dire consequences for caseworkers to gather information about, and act in the best interests of, the very children they are meant to protect.

Second, this case is an unsuitable vehicle because any errors were harmless beyond a reasonable doubt. In both cases, the challenged statements were cumulative of properly admitted statements made to others and were less prejudicial than many of those properly admitted statements. Plus, the evidence of guilt in both cases was overwhelming. Petitioners' convictions were surely unattributable to any error in admitting the statements made to the child protection caseworkers.

Third, courts are not deeply divided on this issue. When examining the twelve cases cited by the Petitioners, nine use a totality of the circumstances analysis—as Colorado did—to resolve whether the caseworker should have given *Miranda* advisements. Only two arguably turn on a caseworker's duty to report. When the jurisdictional analysis expands, an additional nine states favor a factor-based approach. This is hardly the entrenched divide Petitioners claim, and there is no need for this Court's intervention.

REASONS FOR DENYING THE PETITION

I. The Colorado Supreme Court decisions reached the correct result.

This Court should decline review because the decision below was correct. *Miranda*, by its plain language, does not categorically apply to non-law enforcement personnel such as child protection caseworkers, and the Colorado Supreme Court’s factor-based, totality-of-the-circumstances test appropriately ensures that those who act as agents of law enforcement must provide *Miranda* advisements.

A. *Miranda* does not categorically apply to non-law enforcement personnel solely because they are mandatory reporters.

The essence of Petitioners’ argument is that the requirements of *Miranda* apply to all child protection caseworkers because of their statutorily mandated duty to report known or suspected child abuse or neglect to law enforcement. Pet. 1-3, 25-30. They are incorrect.

To uphold the Fifth Amendment privilege against self-incrimination, officers must provide certain advisements to suspects prior to a “custodial interrogation.” *Miranda*, 384 U.S. at 444. “Custodial interrogation” is “questioning initiated by *law enforcement officers* after a person has been taken into custody.” *Id.* (emphasis added). The *Miranda* advisement “was meant to preserve the privilege during ‘incommunicado interrogation of individuals in a *police-dominated* atmosphere,’” which is said to generate “‘inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so

freely.” *Illinois v. Perkins*, 496 U.S. 292, 296 (1990) (citing *Miranda*, 384 U.S. at 445, 467) (emphasis added). “Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated.” *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

Miranda, by its own terms, applies only to the actions of law enforcement officials. 384 U.S. at 444; *see, e.g., Vega v. Tekoh*, 597 U.S. 134, 141-142 (2022); *United States v. Birnstihl*, 441 F.2d 368, 370 (9th Cir. 1971); *People v. Chastain*, 733 P.2d 1206, 1213 (Colo. 1987).

This Court has never expanded *Miranda* to categorically apply to non-law enforcement officers, even those who are mandatory reporters. *Cf. Perkins*, 496 U.S. at 297 (“We reject the argument that *Miranda* warnings are required whenever a suspect is in custody in a technical sense and converses with someone who happens to be a government agent.”). Nor does questioning by non-law enforcement personnel implicate the concerns underpinning that decision. *See Berkemer*, 468 U.S. at 435-36; *cf. United States v. Parr-Pla*, 549 F.2d 660, 663 (9th Cir. 1977) (“*Miranda* does not apply to purely private interrogation.”); *Boynton v. Casey*, 543 F.Supp. 995, 997 & n.4 (D. Me. 1982) (declining to extend *Miranda* to questioning by school officials “in furtherance of their disciplinary duties”).

Perhaps recognizing the limitations of *Miranda*’s language, Petitioners do not appear to assert that child protection caseworkers *are* law enforcement officers falling within the ambit of that opinion. Nor

could they, given the distinct duties and responsibilities of a caseworker. See *Densmore*, ¶ 45 (“[C]hild welfare specialists . . . serve a critical role that is entirely separate and distinct from any criminal proceedings, namely, ensuring child safety and finding an appropriate placement for a child.”); Pet. App. 21a. While police officers interview suspects to gather evidence against the suspect at a future criminal trial, child protection caseworkers interview parents to serve their children’s immediate needs, and ultimately the children’s best interests. Thus, *Miranda*’s language itself undercuts Petitioners’ argument.

Rather, Petitioners seize on court decisions applying *Miranda*’s procedural protections to the *agents* of law enforcement (thus preventing officers from circumventing *Miranda* requirements by directing third parties to act on their behalf). See, e.g., *Densmore*, ¶ 29; Pet. App. 14a; *State v. Bolan*, 271 N.E.2d 839, 842 (Ohio 1971); cf. 2 Wayne LaFave et al., *Crim. Proc.* § 6.10(c) (4th ed. Nov. 2024 update) (noting that “courts have generally held that government agents not primarily charged with enforcement of the criminal law are under no obligation to comply with *Miranda*”).

Within this agency framework, Petitioners rely on *Mathis v. United States*, 391 U.S. 1 (1968), and *Estelle v. Smith*, 451 U.S. 454 (1981), to argue that the agent-of-law-enforcement analysis is “objective” only and does not consider the subjective intentions of the purported agent, here the child protection caseworkers. Pet. 25-30.

But neither *Mathis* nor *Estelle* support the weight Petitioners place on them. This Court has subsequently limited those opinions, and, in any event, both

are factually distinguishable. And even if they have some application here, they still do not support Petitioners' ultimate conclusion that a duty to report is the only dispositive factor.

In *Mathis*, a tax investigator for the Internal Revenue Service ("IRS") interviewed the defendant in connection with a tax investigation while the defendant was in state prison for a separate offense. Notably, the investigator asked the defendant to sign a waiver of the statute of limitations on his tax returns. 391 U.S. at 2-4 & n.2. The defendant contended that the statements were inadmissible under *Miranda*. *Id.* at 3. The prosecution argued *Miranda* was inapplicable because: (1) these questions were asked as part of a "routine tax investigation where no criminal proceedings might even be brought," and (2) the defendant was incarcerated for an "entirely separate offense" and had not "been put in jail by the officers questioning him." *Id.* at 4.

This Court rejected these arguments, concluding the differences were "too minor and shadowy" to justify departing from *Miranda* "with reference to warnings to be given to a person held in custody." *Id.* This Court noted that, while tax investigations could be initiated for the "purpose of a civil action rather than criminal prosecution," such investigations "frequently lead to criminal prosecutions, just as the one here did" several days after the agent's last visit to question the defendant. *Id.* In these circumstances, this Court declined to conclude that "tax investigations are immune from the *Miranda* requirements for warnings to be given a person in custody." *Id.*

In *Estelle*, the trial court sua sponte ordered a psychiatrist to conduct a competency examination of an in-custody defendant during an existing criminal proceeding. 451 U.S. at 456-57. Despite being initially designated by the court “to conduct a neutral competency examination,” the psychiatrist later “testified for the prosecution at the penalty phase [of the trial] on the crucial issue of [the defendant’s] future dangerousness,” which was based on information derived from the defendant’s competency examination (and which specifically discussed the defendant’s “account of the crime”). *Id.* at 464, 467. Because the psychiatrist’s role changed and he had essentially become “like that” of an agent of law enforcement, this Court found a Fifth Amendment violation, in part, because of the failure to administer the defendant a *Miranda* advisement prior to the examination. *Id.* at 467-69.

Neither *Mathis* or *Estelle* delineated a broadly applicable framework for determining when an individual acts as an agent of law enforcement for purposes of *Miranda*, nor, in light of that fact, did they indicate that only “objective” factors are pertinent to the analysis.⁴ See, e.g., *State v. Bernard*, 31 So. 3d 1025, 1030 (La. 2010) (noting that this Court in *Mathis* “was *not* called upon to decide whether the IRS employee was a

⁴ The soundness of both opinions with respect to the applicability of *Miranda* is also questionable given the brevity of its reasoning and the lack of necessity to address the issue, respectively. See *Mathis*, 391 U.S. at 5-8 (White, J., dissenting) (characterizing the case as an “unexplained extention [sic]” of *Miranda*; *Estelle*, 451 U.S. at 474-76 (Rehnquist, J., concurring) (noting that it was unnecessary to consider Fifth Amendment issues given resolution of the Sixth Amendment issue in that case).

‘law enforcement agent,’ as the government apparently ceded that point” (emphasis in original)); *State v. Jackson*, 116 N.E.3d 1240, 1246 (Ohio 2018) (same); *United States v. Graham-Wright*, 715 F.3d 598, 602 (6th Cir. 2013) (noting that *Estelle* applies to capital sentencing proceedings and its holding “was limited to ‘the “distinct circumstances” of that case” (citation omitted)). Petitioners’ attempts to extrapolate such a framework from these decisions thus prove too much.

Additionally, this Court has limited the reach of both *Mathis* and *Estelle* in the years since they were announced. For instance, in *Howes v. Fields*, 565 U.S. 499, 506-07 & n.4 (2012), this Court held that “the holding in *Mathis* is simply that a prisoner who otherwise meets the requirements for *Miranda* custody is not taken outside the scope of *Miranda* by either of the two factors on which the Court of Appeals had relied,” namely that “[a] criminal investigation had not been commenced at the time of the interview, and the prisoner was incarcerated for an ‘unconnected offense.’” And in *Penry v. Johnson*, 532 U.S. 782, 795 (2001), this Court observed that “our opinion in *Estelle* suggested that our holding was limited to the ‘distinct circumstances’ presented there,” and noted that “we have never extended *Estelle*’s Fifth Amendment holding beyond its particular facts.” As these cases demonstrate, the holdings in *Mathis* and *Estelle* are narrow in scope and necessarily tethered to the particular factual circumstances presented by those cases.

Finally, *Mathis* and *Estelle* are also factually distinguishable. Contrary to Petitioners’ contentions, both cases are “premised upon the fact that the primary purpose of the state-agent interviewer was the

collection of evidence to be used against the interviewee in a criminal prosecution.” *Wilkerson v. State*, 173 S.W.3d 521, 527 n.17 (Tex. Crim. App. 2005); *accord Densmore*, ¶¶ 41, 44; Pet. App. 18a-20a. Both cases considered and answered different questions than whether a child protection caseworker was subject to *Miranda*’s requirements, or whether a duty to report brought them within *Miranda*’s orbit. Unlike here, the IRS agent in *Mathis* worked for the same organization that launched the criminal investigation of the defendant, thereby blurring any non-law enforcement-related purpose on the part of the agent, as the investigations were necessarily intertwined. *See* 391 U.S. at 6 n.2 (White, J., dissenting). And, unlike *Estelle*, the child protection caseworkers were not ordered by the court to interview Petitioners without their or their attorneys’ consent; thus, any concerns about the use of compelled statements are not present here. 451 U.S. at 467-68.

Accordingly, *Mathis* and *Estelle* are both legally and factually distinguishable from Petitioners’ cases and do not support the proposition that an “objective” only agency analysis governs the application of *Miranda* to non-law enforcement personnel.

But even to the extent *Mathis* and *Estelle* do inform the agency analysis to some extent, they do not support Petitioners’ logical leap that a statutory duty to report is the dispositive factor. Indeed, neither case premised its holding on a duty to report. In *Mathis*, only the dissent alluded to a duty to report and even still would have concluded that *Miranda* did not apply. 391 U.S. at 6 n.2 (White, J., dissenting). And this

Court expressly noted in *Estelle* that its Fifth Amendment concerns did not extend to all court-ordered examinations, which necessarily would involve a duty to report to the court on the part of the examiner. 451 U.S. at 469 n.13.

Moreover, in the Confrontation Clause context, this Court has disclaimed the mere status of a duty to report as transforming the purpose of an interview into a “law enforcement mission aimed primarily at gathering evidence for a prosecution,” even if such duty “had the natural tendency to result in [the defendant’s] prosecution.” *Ohio v. Clark*, 576 U.S. 237, 249-50 (2015). This conclusion is especially apt here where the pertinent caselaw, statutes, and regulations make clear that the overriding purpose of a child protection caseworker’s role is the best interest and safety of the child, not criminal prosecution and punishment. *See L.G. v. People*, 890 P.2d 647, 654-55 (Colo. 1995); Okla. Admin. Code § 340:75-3-220; *cf. Wilkerson*, 173 S.W.3d at 529 (noting that child protection caseworkers and police officers generally “run on separate parallel paths,” with the former focused on “investigating family placement and safety matters,” and the latter focused on “investigating criminal matters”).

And despite Petitioners’ assertion that objective factors guide the analysis, they in actuality focus on only one factor—a duty to report—and in so doing create a binary, bright-line rule that subsumes any other considerations or concerns. In other words, a duty to

report is both the beginning and end of their analysis.⁵ Under Petitioners' view, child protection caseworkers are always, and categorically, *per se* agents of law enforcement. While Petitioners focus their argument on child protection caseworkers, their reasoning would appear to apply equally to *any* mandatory reporter of known or suspected criminal activity, *see, e.g.*, Colo. Rev. Stat. § 19-3-304 (listing physicians, school officials, counselors, and numerous others as mandatory reporters of child abuse or neglect), which would exponentially expand the scope of *Miranda* under the guise of a "duty to report" litmus test that is absent from *Miranda*'s language itself. *See Wilkerson*, 173 S.W.3d at 529 ("This is clearly not the law, and it was certainly not the purpose of the prophylactic *Miranda* warnings.").

In sum, neither the language of *Miranda* itself nor *Mathis* or *Estelle* support Petitioners' argument for either an "objective" only agency analysis or the effective categorical expansion of *Miranda* to child protection caseworkers. Accordingly, the Colorado Supreme Court did not run afoul of this Court's existing precedent.

⁵ In Colorado, for instance, child protection caseworkers must report known or suspected child abuse or neglect to law enforcement. C.R.S. §§ 19-3-307(3); -308(5.5). The Colorado legislature has also indicated its intent that law enforcement agencies and county DHS offices develop and implement cooperative agreements to coordinate the duties of each agency in child abuse or neglect investigations with a focus on ensuring "the best protection for the child," and to provide for the potential of one agency assisting the other as well as joint investigations by both agencies. § 19-3-308(5.5).

B. The Colorado Supreme Court’s test ensures that those who act as agents of law enforcement must provide *Miranda* advisements.

Although *Miranda* does not categorically apply to child protection caseworkers, that does not mean caseworkers can never be agents of law enforcement, and therefore subject to *Miranda*’s requirements. Rather, that determination must be made on a case-by-case basis considering the totality of the circumstances, which includes both objective *and* subjective factors. *See Densmore*, ¶¶ 32-34; Pet. App. 15a-16a; *Wilkerson*, 173 S.W.3d at 529 (“The term ‘agency’ denotes a *consensual* relationship which exists between two persons or parties where one of them is *acting for or on behalf of the other*.” (emphases added)).

The totality framework adopted by the Colorado Supreme Court strikes an appropriate balance by ensuring that those actually acting as agents of law enforcement are required to abide by *Miranda* without unnecessarily subjecting all child protection caseworkers to its requirements. Indeed, considering the innumerable potential factual permutations involved when a child protection caseworker interviews a parent in custody—which may or may not involve underlying criminal behavior of child abuse or neglect—a flexible approach that can weigh factors differently based on the particular circumstances of the case is well-founded. *See, e.g., Jackson*, 116 N.E.3d at 1245 (“[W]hether someone is acting as an agent of law enforcement is dependent upon the unique circumstances of each case.” (citation omitted)); *cf., e.g., Vroegh v. Iowa Dep’t of Corrs.*, 972 N.W.2d 686, 707

(Iowa 2022) (“Whether a party serves as another’s agent is ordinarily a question of fact.”).

Such an approach is consistent with this Court’s *Miranda* jurisprudence, which has long eschewed bright-line rules for determining when *Miranda* applies. See, e.g., *Howes*, 565 U.S. at 506-08 (rejecting categorical rule for determining when a prisoner is in custody for purposes of *Miranda*); *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010) (same); *Berkemer*, 468 U.S. at 435-42 (rejecting categorical application of *Miranda* to traffic stops); cf. *Michigan v. Chesternut*, 486 U.S. 567, 572-74 (1988) (stating no bright-line rule applicable to all investigatory pursuits can be fashioned).

It is also consistent with the well-established framework for determining agency, which considers the relationship between the parties and the level of control exercised by the principal over the agent. See, e.g., *Vroegh*, 972 N.W.2d at 707 (an agency relationship exists when there is (1) “manifestation of consent by one person, the principal, that another, the agent, shall act on the former’s behalf and subject to the former’s control,” and (2) “consent by the latter to so act” (citation omitted)) cf. *Wilkerson*, 173 S.W.3d at 529 (“The law does not . . . presume an agency relationship.”).

Further, contrary to Petitioners’ contentions, interviews by child protection caseworkers—who are not police officers, do not investigate crimes, and do not have the authority to arrest or detain anybody—do not create either the same coercive interrogation atmosphere at which *Miranda* was directed or the same risk of “exposure” as if the interview had been conducted

by law enforcement, further illustrating why Petitioners' bright-line approach is ill-suited to these types of interactions.⁶ Nor is the "pressure" on a defendant even more "amplified" because of the risk of losing access to a child when a caseworker conducts an interview in custody, Pet. 29, because, by that point, the defendant has already lost custody of, and access to, their child due to the fact of the detention or incarceration.

Finally, if *Miranda* were categorically applied to caseworkers as Petitioners desire, the consequences could be dire. It could result in confusion or a catch-22 for defendants, given that, in Colorado, for instance, an invocation of the right to remain silent can be used against a respondent parent in a dependency and neglect proceeding. See *Romero v. Colo. Dept. Of Hum. Servs.*, 2018 COA 2, ¶¶ 37-57. Thus, a categorical *Miranda* application could pit the defendants' best interests in their criminal cases against their best interests with respect to their children in civil proceedings. Perhaps most importantly, categorically requiring *Miranda* advisements from caseworkers will inevitably hamper their ability to gather time-sensitive and vital

⁶ Petitioners also insinuate, in an attempt to minimize the real-world impact of their position, that caseworkers can simply choose to ignore *Miranda*'s requirements (assuming *Miranda* applies) at the expense of sacrificing in a criminal trial any statements falling within the scope of a duty to report. Pet. 29-30. Not only does this position demonstrate that Petitioners believe the effects of applying *Miranda* to caseworkers will likely be detrimental—otherwise, why would caseworkers need to ignore *Miranda*'s requirements in the first place—but it is also not credible to believe caseworkers would routinely knowingly and willingly choose to ignore the requirements of the law.

information about a child—*e.g.*, whether a child suffers from severe allergies, requires life-saving medication, or needs a specific nutritional regimen—from those that know the child best, should and when a defendant chooses to remain silent. And this concern is even more pronounced in cases like Petitioners', where no other parent was available and the children were too young to communicate this information themselves.

In sum, the Colorado Supreme Court's totality test adequately identifies those individuals who are acting as agents of law enforcement and should be subject to *Miranda*'s requirements and is consistent both with this Court's disapproval of bright-line rules in this context and agency analyses historically. Moreover, categorical application of *Miranda* to child protection caseworkers would have significant and dire consequences. Further review is therefore unnecessary.

II. Petitioners' cases are unsuitable vehicles for addressing the question presented because any errors were harmless beyond a reasonable doubt.

Even if Petitioners' statements should have been suppressed, these alleged errors were harmless beyond a reasonable doubt for three reasons. First, their statements were cumulative of other, properly admitted statements. Second, the challenged statements were not important to the prosecution's cases. And finally, the evidence of guilt was overwhelming.

A constitutional error is not reversible if it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24 (1967). An error is harmless

beyond a reasonable doubt when the guilty verdict was “surely unattributable to the error.” *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993); accord *Harrington v. California*, 395 U.S. 250, 254 (1969).

First, the challenged statements in both cases were cumulative of other, often more damaging, statements Petitioners made to others.

In Densmore’s case, Densmore told a detective on a recorded phone call that he had a “massive fight” with Mead on the day she disappeared, characterized it as probably the worst fight they had ever been in, and told Mead “I hate you and I hope you die.” Pet. App. 25a; Env., Trial, EX 245, 0:23-0:43. Densmore made similar statements about getting into an argument with Mead to multiple family members. TR 04-17-18, pp 117-18 (father), 186:2-6 (sister); TR 04-18-18, p 83:7-13 (grandmother).

The jury also heard about Densmore’s acrimonious relationship with Mead from multiple sources, including his own journal entries and messages he sent to a friend where he discussed violence towards Mead and wanting her gone, as well as his “absolute hatred” of her. EX Jury Trial, EX 239, pp 432-56; EX Jury Trial, EXS 284-305, pp 333-61; TR 04-17-18, p 198:12-15.

And while Densmore only explicitly made the statement about slapping Mead to Punches, he admitted to his father that he “did something stupid” and that he had a “knock-down, drag-out” argument with Mead, which effectively conveyed the same information. TR 04-17-18, pp 117-19.

Likewise, Frazee’s statements to Longmire were cumulative of statements he made to others.

Frazee's accomplice Krystal Lee testified that on December 3—before his arrest—Frazee told Lee “the story that he had told [his attorney], that [he and Berreth] had gotten into it and she told him that she needed space and he told her—she had told him that she wanted him to keep custody of [K.F.], and he just reiterated the story he had told to [Berreth's mother] when [she] called.” TR 11-06-19, pp 284-285. Berreth's mother testified that Frazee told her the same thing when she called him on December 2 asking about Berreth's whereabouts. TR 11-01-19, pp 256-260. And several law enforcement officers testified that Frazee told them the same story before his arrest. TR 11-04-19, pp 144-161, 171-177; TR 11-05-19, pp 85-116.

Furthermore, the prosecution introduced far more prejudicial statements Frazee made to others, including Frazee's three separate solicitations for Lee to murder Berreth, his detailed confession to Lee, his disparaging comments about Berreth made to several acquaintances and clients, and his statement to a friend that he had thought of a way to kill Berreth, where he told him, “No body, no crime.” TR 11-06-19, pp 152-153, 157-158, 176-180, 188-189, 206:17-21, 246-270; TR 11-08-19, pp 277-280; TR 11-12-19, pp 326-328, 333-335. The prosecution also discovered mid-trial that Frazee solicited a fellow inmate to have the inmate's prison gang kill several witnesses, including Lee. Pet. App. 136a. The inmate testified about this request at trial, and the prosecution admitted handwritten notes Frazee had given to the inmate to corroborate this account. Pet. App. 136a; EX, pp 251-82.

Accordingly, in both cases, Petitioners' challenged statements were cumulative of other, properly admitted statements.

Second, Petitioners' statements to the child protection caseworkers did not play a significant role in their trials.

In Densmore's statements to Punches, he never admitted to killing Mead, causing her disappearance, or even knowing her whereabouts. And these statements constituted a small portion of the three-week trial in which hundreds of exhibits were admitted and over three dozen witnesses testified. *See* CF, pp 1808-22; TR 04-18-18, pp 154-60, 163-72; Env., Trial, EX 250. Although the prosecution referenced or played a portion of Densmore's statements to Punches during closing arguments, *see* TR 04-24-18PM, pp 29-30, 52-53, 86-87, those references were brief and often intertwined with discussions of similar statements Densmore made to others.

Longmire's testimony also played a minor role in Frazee's three-week trial. Like Densmore's case, the statements Frazee made to Longmire were not particularly incriminating, as Frazee did not confess to killing Berreth, soliciting her murder, or ever hurting her or K.F. Instead, he repeated his story that Berreth abandoned him and K.F. after their break-up. TR 11-14-19, pp 64-72.

Third and finally, the evidence of Petitioners' guilt was overwhelming.

Densmore was seen on surveillance footage placing a suitcase in an Oklahoma gas station dumpster containing Mead's torso. Pet. App. 25a; TR 04-19-18,

pp 30-38; Env., Trial, EXS 229-30. The forensic examination of Mead's torso showed numerous injuries inflicted before her death—physical evidence more damaging than Densmore's limited admission of a slap. TR 04-23-18AM, pp 80:2-19, 83-85. DNA testing revealed Mead's blood and Densmore's DNA on a reciprocating saw at Densmore's parents' house. Pet. App. 25a; TR 04-20-18, pp 85-87, 97:14-24; EX Jury Trial, EX 331, pp 393, 398. Densmore drove to his parents' house in Louisiana, stayed a single day (mostly alone with W.M.), leaving behind a bathroom smelling strongly of bleach, before driving to his grandmother's house in Arkansas and then back towards Colorado. Pet. App. 24a-25a; TR 04-17-18, pp 121-22, 129-31, 154-56, 180-84, 201-02. And Densmore took steps to cover his tracks, calling Mead's phone shortly after beginning his cross-country drive and again several hours later, and texting her over the next several days asking about her whereabouts—despite knowing where her body was the whole time. TR 4/16/18, pp 47:2-19, 51:2-5; TR 4/19/18, pp 257-64; EX Jury Trial, EX 101, pp 91, 100; EX Jury Trial, EXS 314-18, pp 370-75.

In Frazee's case, the prosecution presented significant evidence corroborating Lee's testimony, including surveillance footage and cell phone location data. TR 11-05-19, pp 92-93, 254-255, 282:12-18, 292-296; TR 11-06-19, pp 12-79; EX, pp 97-149, 481, 485-86, 491-94. Law enforcement also recovered Berreth's gun in Idaho, where Lee had given it to a friend. TR 11-12-19, pp 57-62; TR 11-13-19, pp 54-55.

Law enforcement found small blood stains and evidence of cleaning with bleach at Berreth's condo, including blood soaked into the living room floorboards. *See, e.g.*, TR 11-15-19, pp 34-35; EX, pp 385-423. A trained bloodhound alerted to the smell of human decomposition in the hayloft where Lee said Frazee hid the tote containing Berreth's body. TR 11-06-19, pp 255-258; TR 11-08-19, pp 21-37.

Lee also showed law enforcement where she and Frazee burned Berreth's body. The burn site was covered with fresh earth, and beneath that earth was melted black plastic, an oily substance consistent with burned human body oil, motor oil, or both, and a human tooth fragment. TR 11-08-19, pp 198-203, 206-207, 211-212; TR 11-12-19, pp 222-229; TR 11-13-19, pp 189-199, 269-277.

The guilty verdicts in Petitioners' cases were surely unattributable to any error in admitting the statements they made to the child protection caseworkers. Because any errors were harmless beyond a reasonable doubt, these cases are a poor vehicle for addressing the question presented.

III. Petitioners' purported split is not as deep as they claim, and most courts follow Colorado's approach.

Finally, Petitioners argue that "an entrenched 6 to 6 division" exists in the lower courts, with six courts favoring an approach that turns squarely on the existence of a caseworkers' duty to report abuse and neglect information to law enforcement; and six courts, including Colorado, "exempt[ing]" caseworkers from *Miranda* despite a duty to report. Pet. 16-24.

Contrary to Petitioners' assertions, at least 18 jurisdictions (including Colorado) have adopted a factor-based approach. And of the six jurisdictions Petitioners claim support their position, only two arguably do—but none of them categorically expand *Miranda* to non-law enforcement personnel who have a duty to report.

The majority of jurisdictions to have considered this issue are consistent with Colorado. In addition to the six cases Petitioners reference, another seven have adopted a factor-based analysis for determining whether *Miranda* applies to DHS caseworkers. See *People v. Keo*, 253 Cal. Rptr. 3d 57, 68-69 (Cal. Ct. App. 2019) (California); *State v. Pearson*, 804 N.W.2d 260, 270-71 (Iowa 2011) (Iowa); *People v. Porterfield*, 420 N.W.2d 853, 855 (Mich. Ct. App. 1988) (Michigan); *State v. Flower*, 539 A.2d 1284, 1289 (N.J. Super. Ct. Law Div. 1987) (New Jersey); *People v. Texidor*, 896 N.Y.S.2d 234, 236 (N.Y. App. Div. 2010); *People v. Wilhelm*, 822 N.Y.S.2d 786, 792-94 (N.Y. App. Div. 2006) (New York); *State v. Morrell*, 424 S.E.2d 147, 153 (N.C. Ct. App. 1993) (North Carolina); and *Commonwealth v. Saranchak*, 866 A.2d 292, 302 (Pa. 2005) (Pennsylvania).

For example, in *Keo*, the California court of appeals was presented with similar facts and decided, after a substantive analysis, that the caseworker was not an agent of law enforcement because she did not discuss the facts of the case with the police or prosecutor prior to interviewing the defendant; she did not inform the police or prosecutor that she intended to interview the defendant; and the prosecutor did not obtain a copy of the defendant's interview until a year

later, in response to a subpoena. 253 Cal. Rptr. 3d at 69.

Two other jurisdictions have adopted a factor-based analysis for other non-law enforcement personnel, such as counselors, who are mandatory reporters. *See State v. Tibiatowski*, 590 N.W.2d 305, 311 (Minn. 1999) (Minnesota); *State v. Olson*, 449 N.W.2d 251, 254-255 (S.D. 1989) (South Dakota).

And a close reading of the cases Petitioners cite in their favor reveal that most of them undertake a fact-specific analysis encompassing more than just a duty to report, or don't undertake a meaningful analysis of the agency question at all. *See Buster v. Commonwealth*, 364 S.W.3d 157, 164-65 (Ky. 2012) ("*Buster I*"); *Buster v. Commonwealth*, 406 S.W.3d 437, 440 (Ky. 2013) ("*Buster II*"); *Blanton v. State*, 172 P.3d 207, 211 (Okla. Crim. App. 2007); *State v. Gouin*, 182 A.3d 28, 30, 33 (R.I. 2018); *State v. Harper*, 613 A.2d 945, 949 n.4 (Me. 1992);⁷ *see also Saranchak v. Beard*, 616 F.3d 292, 303-05 (3d Cir. 2010) (case cited by Petitioners in footnote).

For instance, neither of the *Buster* cases support a bright-line rule; both considered more than just the caseworker's duty to report. *See Buster I*, 364 S.W.3d at 164-65 (caseworker's investigation "appears to have been indistinguishable from the police investigation because [caseworker] was turning over all his information to the police. *And, importantly*, his discussion with Appellant was conducted with the permission of the police while she was in custody." (emphasis

⁷ *Harper*, 613 A.2d at 949, n.4, is not instructive either way as the state conceded agency.

added)); *Buster II*, 406 S.W.3d at 440 (caseworker “was turning over to the police the information he had gathered in his interview with Appellant. His interrogation of Appellant was clearly ‘likely [to] result in disclosure of information which would lead to facts that would form the basis for prosecution.’” (citation omitted)).

Petitioners further mischaracterize the factor-based cases they cite. See *Wilkerson*, 173 S.W.3d at 528-31; *Bernard*, 31 So. 3d at 1033-35; *Boles v. State*, 887 S.E.2d 304, 315-16 (Ga. 2023); *Clark v. State*, 40 So. 3d 531, 541 (Miss. 2010); *Jackson*, 116 N.E.3d at 1246.

For example, *Wilkerson* did not hold that it “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.” Pet. 22. To the contrary, the court made clear that “[a]t bottom, the inquiry is: Was this custodial interview conducted (explicitly or implicitly) on behalf of the police for the primary purpose of gathering evidence or statements to be used in a later criminal proceeding against the interviewee?” 173 S.W.3d at 531. To answer this question, the court instructed lower courts to examine the entire record, including three specific areas: (1) whether the relationship between police and the potential agent is an “attempt[] to use the interviewer as its anointed agent”; (2) information “concerning the interviewer’s actions and perceptions” to establish whether “the interviewer believe[d] that he was acting as an agent of law enforcement”; and (3) “evidence of the defendant’s perceptions of the encounter” to establish whether “a

reasonable person in defendant's position [would] believe that the interviewer was an agent of law enforcement." *Id.* at 530-31. In context, *Wilkerson* identified factors for courts to weigh in analyzing custodial statements elicited by a caseworker, rather than a bright-line rule requiring *Miranda* advisements only when the police, the caseworker, and the defendant all agree that the caseworker is an agent.

Similarly, Petitioners also mischaracterize *Bernard* because it did not "expressly rely" on *Wilkerson*'s approach but rather followed its own precedent from three prior cases which declined to apply *Miranda* "where the interrogator is neither a law enforcement official nor acting as an agent of law enforcement." 31 So. 3d at 1031-35 (citing *State v. Hathorn*, 395 So. 2d 783 (La. 1981), *State v. Phillips*, 444 So. 2d 1196 (La. 1984), and *State v. Perry*, 502 So. 2d 543 (La. 1986)).

After analyzing its precedential cases, *Bernard* rejected the defendant's argument that child protection caseworkers are per se agents of law enforcement for purposes of *Miranda*:

After studying the cases concerning this issue, we clearly and quickly see the proper resolution of this issue is a fact-driven determination. Simply stated, one size does not fit all; there is no bright line rule to be applied. Each case must be decided under its own set of facts. Trial courts will have to consider the unique circumstances of each case and balance the defendant's *Miranda* rights against both the necessity for a child protection officer to obtain a complete and clear record of the alleged child abuse or neglect and

the Constitutional rights of a defendant who has been taken into custody.

Id. at 1033.

Furthermore, while *Bernard* quotes *Wilkerson* at length, that is only because the court found “the list of factors in this Texas case worthy of mentioning.” *Id.* at 1034. The court then re-emphasized that “courts must consider the totality of circumstances in each case” and stated that “the most important factors are those discussed in [*Perry*]: whether the investigator discussed the case with police prior to the interview, whether the interview was conducted at the police’s request, and whether the primary purpose of the investigator’s visit was to elicit a confession while in cahoots with law enforcement.” *Id.* at 1035. “In short, police may not circumvent *Miranda* by using OCS investigators (or anyone else) as stand-ins to conduct interrogations in their stead.” *Id.*

Petitioners suggest that the factor-based approach utilized by these courts “exempt[s]” caseworkers from *Miranda*. Pet. 21-24. Not so. These cases simply decline to categorically apply *Miranda* to caseworkers. But where the balance of factors on a case-specific level requires it, courts have not hesitated to classify caseworkers as agents of law enforcement subject to *Miranda*’s requirements. *See, e.g., Flower*, 539 A.2d at 1289-90; *Wilhelm*, 822 N.Y.S.2d 786, 792-94; *Morrell*, 424 S.E.2d at 153; *Boles*, 887 S.E.2d at 315-16. That determination, though, must be made on a case-by-case basis.

This leaves only two jurisdictions that provide arguable support for Petitioners’ position; but neither have adopted Petitioners’ categorical approach.

None of the cases on which Petitioners rely categorically expand Miranda. As discussed above, four of the six cases Petitioners cite do not actually support their position. The other two, *Jackson v. Conway*, 763 F.3d 115, 139-40 (2d Cir. 2014), and *Commonwealth v. Howard*, 845 N.E.2d 368, 372-73 (Mass. 2006), are distinguishable.

In *Jackson v. Conway*, defendant was arrested for sexually assaulting his wife, ex-wife, and minor daughter multiple times. 763 F.3d at 121-22. The caseworker interviewed the defendant the day he was arrested, aware that his purported crimes involved an offense against his minor child. *Id.* at 122. On these facts, the court found the case fell within the ambit of *Mathis*, because the caseworker, as in *Mathis*, was a mandatory reporter and was aware of a “possibility” that her investigation would lead to a criminal prosecution. *Id.* at 139 (citing *Mathis*, 391 U.S. at 4). Thus, under *Mathis*, the *Jackson* court considered both the caseworker’s duty to report, as well as her awareness that her civil investigation could lead to a criminal prosecution, in opining that the civil nature of her investigation did not matter. *Id.* at 139.

Jackson is therefore inapt because it did not turn solely on the caseworker’s duty to report, but also on her awareness that her civil investigation could lead to criminal charges. *Id.*

In *Howard*, the defendant sexually assaulted and impregnated his teenage niece. 845 N.E.2d at 369. As in *Jackson*, the caseworker interviewed the defendant, aware the criminal allegations involved a minor child with whom he lived. *Id.* at 370-71. But here, the defendant raised a Sixth Amendment violation to the

caseworker's interview because his right to counsel had attached and the caseworker interviewed him without his lawyer. *Id.* at 369-71. Relying on *Massiah v. United States*, 377 U.S. 201 (1964), and *Commonwealth v. Hilton*, 823 N.E.2d 383 (Mass. 2005), the court found the caseworker's interview constituted the equivalent of direct police interrogation because she admitted to being part of a joint investigative team working directly with the district attorney and local law enforcement, she knew her reports would be shared with the broader team, and her questions were directed solely toward the issue of defendant's guilt. *Howard*, 845 N.E.2d at 371-73.

Howard is distinguishable because it has notably different facts and was evaluated under the Sixth Amendment, rather than *Miranda*. Regardless, the court did not rely on a duty to report in concluding the caseworker was acting as an extension of law enforcement.

Moreover, both before and after *Howard*, in closely related contexts, the Massachusetts Supreme Court twice analyzed whether Department of Social Services caseworkers were acting as agents of the prosecution and found they were not, emphasizing instead that they were engaged in a cooperative effort intended to support the best interest of the child. *See Commonwealth v. Adkinson*, 813 N.E.2d 506, 513-14 (Mass. 2004) (Department of Social Services denied defendant's expert an interview with defendant's children in preparation for defendant's criminal trial); *Adoption of Ursa*, 224 N.E.3d 491, 504-05 (Mass. App. Ct. 2023) (defendant asked the court to infer that the department intended to elicit incriminating evidence,

and that anything she said to department's social worker would be used against her in the criminal case). These cases call into question whether *Howard* supports Petitioners' argument that child protection caseworkers are per se agents of law enforcement based solely on their duty to report.

There is no need for this Court's intervention.

While there is some variation among courts in their approach to this question, it is not as stark or pervasive as Petitioners assert. And despite the fact that these variations have existed for almost six decades, this Court has never intervened. Because there is no indication that the system is failing to properly function with respect to *Miranda's* applicability to caseworkers, there is no true controversy for this Court to resolve. The Colorado Supreme Court's ruling in this case should stand.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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