

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 A WRIT OF CERTIORARI TO
THE COLORADO SUPREME COURT

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

This Court should grant certiorari to resolve division in the lower courts over when child-protection caseworkers conducting custodial interrogations are subject to *Miranda v. Arizona*, 384 U.S. 436 (1966). While Respondent, the State of Colorado, downplays the depth of the split, Respondent ultimately admits that there is “variation among courts in their approach to this question.” Opp.36. And Respondent does not deny its importance. That is reason enough to grant review.

In fact, the division in the lower courts is far more extensive than Respondent acknowledges. Respondent says no court “categorically” holds that *Miranda* applies to mandatory reporters like caseworkers. Opp.29. But Petitioners are *not* asking the Court to hold that “child protection caseworkers are always, and categorically, *per se* agents of law enforcement” because they are mandatory reporters or otherwise. Opp.19. Rather, Petitioners ask this Court to resolve how to treat a caseworker who is interrogating suspects in custody about matters relating to the offense and has a statutory duty to report incriminating statements to law enforcement. At least six courts would apply *Miranda* in such circumstances. In contrast, the Colorado Supreme Court and several others would not, because they instead prioritize whether the caseworker subjectively intended to advance the prosecution.

On the merits, Respondent largely attacks the *per se* rule that no one advocates. Beyond attacking strawman arguments, Respondent does little to

defend the subjectively driven rule the decisions below applied. By considering—and worse, emphasizing—a caseworker’s supposedly neutral purpose, these decisions ignore the lesson of *Mathis v. United States*, 391 U.S. 1 (1968), and *Estelle v. Smith*, 451 U.S. 454 (1981), and this Court’s *Miranda* jurisprudence more broadly: What matters are the objective facts and function of the interrogation, not the interrogator’s subjective beliefs.

Finally, Respondent speculates that Petitioners may ultimately lose on harmless-error grounds. But that is an issue that can be dealt with on remand. It is no obstacle to this Court’s resolution of the recurrent and important legal question presented: whether *Miranda* applies in the first place when a caseworker interrogates a suspect in custody about matters relating to the offense and has a statutory duty to report incriminating statements to law enforcement. There can be no dispute that the lower courts would benefit from clarity on this question. So would parents and children, whose relationships and welfare are put at risk in these unwarned, incredibly high-stakes interrogations.

ARGUMENT

I. Courts Are Deeply Divided Over How To Treat Custodial Interrogations Conducted By Child-Protection Caseworkers.

Nothing in the Opposition changes the reality that review by this Court is vitally needed to resolve entrenched division in the lower courts over when child-protection caseworkers are subject to *Miranda*.

Although Respondent asserts the split in authority “is not as deep as [Petitioners] claim,” even Respondent admits that, for years, there has been “variation among [the] courts in their approach to this question.” Opp.28, 36; *see* Opp.29. Indeed, the lower courts have coalesced around two distinct approaches to determining whether child-protection caseworkers must adhere to *Miranda*’s requirements: an objective, duty-focused approach and a subjective-oriented approach that pays little or no heed to the duty to report.

Simply saying, as Respondent does, that no court has adopted a “categorical” rule that caseworkers are subject to *Miranda* overlooks this critical difference in approaches and its practical ramifications. Opp.29; *see* Opp.33. (It also misstates Petitioners’ position. *Infra* 7-8.) Petitioners myopically argue that all courts “undertake a fact-specific analysis.” Opp.30. But the courts materially differ over *which* facts are salient in deciding this important issue, with some courts incorrectly prioritizing subjective purpose and others appropriately focusing on objective factors, namely, whether the caseworker has a duty to report and is interrogating a suspect regarding criminal allegations likely to trigger that duty. Pet.16-24. To say that all courts look at multiple factors abstracts away the real, entrenched division over which factors matter (or do not).

That is just the kind of dispute this Court regularly resolves, including in the *Miranda* context. For instance, “the *Miranda* custody analysis” turns on “the circumstances surrounding the interrogation,” but this Court “granted certiorari to determine whether [that] analysis includes consideration of a

juvenile suspect’s age.” *J.D.B. v. North Carolina*, 564 U.S. 261, 268, 270-71 (2011) (citation omitted).

Notably, Respondent cannot deny that the lower courts’ different approaches yield inconsistent outcomes. Take Respondent’s example of the *Buster* cases from Kentucky. Opp.30-31. The Kentucky Supreme Court deemed a caseworker equivalent to law enforcement for *Miranda* purposes because he interviewed the suspects with permission from police in circumstances likely to yield incriminating information and then reported that incriminating information to police. Opp.30-31; see Pet.18-19. The same is true of the caseworker in *Jackson v. Conway*, 763 F.3d 115, 122, 139 (2d Cir. 2014), where the Second Circuit found a *Miranda* violation. Pet.18; Opp.34. The facts are also the same in Petitioners’ cases, yet the Colorado Supreme Court held the caseworkers here were not subject to *Miranda*, principally because the caseworkers’ purpose was to protect the welfare of the children, see Pet.13-16—a factor that does not carry the day in Kentucky, the Second Circuit, Oklahoma, Rhode Island, Maine, Massachusetts,¹ and is irrelevant under Petitioners’ rule. See Pet.18-21.

¹ Contrary to Respondent’s contention (at Opp.35), *Commonwealth v. Howard*, 845 N.E.2d 368 (Mass. 2006), absolutely did “rely on a duty to report,” and not the caseworker’s non-prosecutorial purpose. See 845 N.E.2d at 372-73; Pet.20. True, *Howard* is a Sixth Amendment case, as the Petition acknowledges. But Respondent offers no argument why *Howard*’s conclusion that the caseworker was engaged in “the equivalent of direct police interrogation” for purposes of the defendant’s right to counsel, *id.* at 373, would be any different under the Fifth

The Colorado Supreme Court’s prioritization of subjective purpose and its minimization of the objective duty to report is, however, consistent with how Texas and Louisiana (and other jurisdictions) address the issue. *See* Pet.21-24. Indeed, at the same time Respondent denies that purpose is paramount in those jurisdictions, Respondent proves otherwise. *See* Opp.31 (stating that the Texas “court made clear that ‘[a]t bottom, the inquiry is: Was this custodial interview conducted ... for the primary purpose of gathering evidence or statements to be used in a later criminal proceeding against the interviewee?’” (quoting *Wilkerson v. State*, 173 S.W.3d 521, 531 (Tex. Crim. App. 2005)); Opp.33 (quoting the statement in *State v. Bernard*, 31 So. 3d 1025, 1035 (Ky. 2010), that “whether the primary purpose of the investigator’s visit was to elicit a confession” is one of the “most important factors”). Petitioners, then, have not “mischaracterize[d]” these cases (or any other case). Opp.31. Rather, it is Respondent who has misunderstood both Petitioners’ position and how the courts are divided.

The other cases Respondent cites (at Opp.29) confirm the depth of the division in the lower courts. Respondent highlights *People v. Keo*, 253 Cal. Rptr.3d 57 (Cal. Ct. App. 2019). There, an intermediate

Amendment, where the defendant has a right to be advised of the right to counsel. Neither the earlier discussion in *Commonwealth v. Adkinson*, 813 N.E.2d 506, 513-14 (Mass. 2004), nor the subsequent decision of a lower court in *Adoption of Ursa*, 224 N.E.3d 491, 504-05 (Mass. App. Ct. 2023), could abrogate this part of *Howard*, not least because neither was even about *Miranda* rights.

California court said in no uncertain terms: “Neither does it affect our analysis that the interviewer is a mandatory reporter,” because his “purpose” “was to determine the best interests of” the children and their placement. *Id.* at 67-68. And the court expressly aligned itself with the courts in Texas, Louisiana, and Ohio. *Id.* at 68-69 (citing *Wilkerson*, 173 S.W.3d at 531; *Bernard*, 31 So. 3d at 1035; and *State v. Jackson*, 116 N.E.3d 1240, 1247-48 (Ohio 2010)); see Pet.24 (discussing Ohio’s *Jackson* case); accord *State v. Pearson*, 804 N.W.2d 260, 271 (Iowa 2011) (cited at Opp.29) (“We therefore conclude [the caseworker] was not an agent or stalking horse for the Waterloo police; she had her own reasons, as [defendant’s] caseworker, to interview him.”).

In a final attempt to minimize the split, Respondent cites four cases purportedly proving that courts considering subjective purpose still apply *Miranda* when warranted. Opp.33. But only one comes from a state court of last resort, and it shows the opposite: In *Boles v. State*, 887 S.E.2d 304 (Ga. 2023), the Georgia Supreme Court relied on subjective purpose to find the caseworker was *not* covered by *Miranda* in one interrogation, Pet.23, and for the second interrogation, the court simply assumed without deciding that *Miranda* applied because any error was harmless. 887 S.E.2d at 315-16.

Similarly unhelpful to Respondent is *State v. Flower*, 539 A.2d 1284, 1289 (N.J. Super. Ct. Law Div. 1987), where a New Jersey trial court found a *Miranda* violation only after giving *no* weight to the caseworker’s subjective intent to “assist in the treatment of” the abused child. *Id.* (relying instead on the

role the caseworker objectively played, namely, that she asked the suspect about the crime and conveyed his incriminating responses to the prosecution, as she was required by statute to do). The other two intermediate appellate cases from New York and North Carolina demonstrate that, if subjective purpose is relevant at all, it cannot outweigh the objective circumstances showing caseworkers are advancing the prosecution—an approach that is fundamentally at odds with that of Colorado and the other courts that give caseworker intent dispositive weight.

II. The Decisions Below Are Wrong.

Respondent defends the decisions below by attacking a sweeping rule that no one is advocating and by pressing an approach this Court has rejected.

The Opposition misstates Petitioners’ position, insisting that Petitioners contend *Miranda* applies “categorically” to all “mandatory reporters.” Opp.11; *see supra* 1, 3. Petitioners do not argue that *Miranda* “always, and categorically” applies to child-protection caseworkers, not even when they have a duty to report. Opp.19; *contra* Opp.14 (“Petitioners’ ultimate conclusion [is] that a duty to report is the only dispositive factor.”); Opp.18-19 (“[A] duty to report is both the beginning and end of [Petitioners’] analysis.”). So Respondent’s principal merits arguments, that this Court has never “categorically” required non-law-enforcement officers to issue warnings, Opp.12, and that a duty to report cannot alone trigger *Miranda*’s

requirements, Opp.17-19,² attack strawmen and entirely miss the point.

Rather, our point is that *Miranda* should apply when child-protection caseworkers ask questions likely to elicit incriminating information about the alleged crime *and* the caseworker is obligated by law to report that information to law enforcement. *E.g.*, Pet.1-2, 16. Under those circumstances, caseworkers are effectively acting as law enforcement, regardless of whether they intend to. Pet.28-29. The same is not true when the caseworker is merely asking a parent in custody about a child’s “severe allergies,” “life-saving medications” or other needs—questions that do not trigger a legal duty to report to law enforcement. Opp.23. *Miranda* would also not apply to mandatory reporters like doctors and teachers who are exceedingly unlikely to conduct custodial interrogations of criminal suspects, let alone on matters relating to a suspected crime that implicate their duty to report. *Contra* Opp.19. Nor do those other mandatory reporters exert the same coercive pressure on detained parents as caseworkers, who serve a critical role in determining a child’s placement and the future of the parent-child relationship. Pet.29.

The Colorado Supreme Court below erred in considering—and worse, privileging—the subjective

² In the course of making this nonresponsive argument, Respondent relies on *Ohio v. Clark*, 576 U.S. 237 (2015). But *Clark* was not a *Miranda* case about jailhouse interrogations of adult suspects, it was about the Confrontation Clause and classroom conversations with young children who might be crime victims.

purpose of the caseworker (to protect children rather than aid the criminal investigation) over objective factors that show those caseworkers are in fact aiding the criminal investigation. Pet.25-27; *see* Opp.13 (Respondent pressing purpose-centric argument). As the Petition explains, *Mathis*, 391 U.S. 1, and *Estelle*, 451 U.S. 454, confirm that a government official’s subjective purpose in conducting a custodial interview plays little, if any, role in the analysis of whether *Miranda*’s protections apply.

The best Respondent can do to dispute that is to cite the Colorado Supreme Court’s own mischaracterization of *Mathis* and *Estelle*, Opp.16-17; *see* Pet.15-16, 27-28, and to imply that these precedents should be overruled. Opp.12-13. At a minimum, Respondent urges those cases be limited to their facts because “any concerns about the use of compelled statements” that were present there “are not present here.” Opp.17; *see* Opp.13-17, 21-22. That is simply wrong. The concern in *Mathis*, *Estelle*, and the other cases is “that the danger of coercion results from the interaction of custody and official interrogation.” *Illinois v. Perkins*, 496 U.S. 292, 297 (1990). That risk is heightened when suspects face not just physical incarceration but legal (and perhaps permanent) separation from their children. Because caseworker-interrogators “control the suspect’s fate” and also their children’s fate, they “create mutually reinforcing pressures” that “weaken the suspect’s will.” *Id.*

Mathis and *Estelle* aside, Colorado’s reliance on subjective purpose clashes with the purely objective approach this Court takes toward other *Miranda* inquiries, like whether a suspect is in custody and

whether an interrogation has occurred. *J.D.B.*, 564 U.S. at 271; *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980); *see also New York v. Quarles*, 467 U.S. 649, 655-56 & n.6 (1984) (officer's subjective motivation irrelevant in considering whether public-safety exception to *Miranda* applies); Pet.28.

As this Court has long recognized, “[t]he benefit of [an] objective” analysis is that it “give[s] clear guidance” to those involved. *J.D.B.*, 564 U.S. at 271. That is the real-life lesson of states like Texas and Connecticut, which (as a matter of legislative grace) require *Miranda*-style warnings before child-protection case-workers interrogate parents. Pet.30. In those states, warnings improve information gathering and benefit children. *Id.* Similarly, a clear rule resting on the distinction between questioning relevant only to the child’s safekeeping and questioning reaching the parent’s alleged criminal conduct would clarify the case-worker’s role in the interview, not “confus[e]” it. Opp.22.

In a state where warnings are not required by statute, if caseworkers believe issuing *Miranda* warnings in particular cases would “hamper their ability to gather time-sensitive and vital information about a child,” Opp.22-23, they can refrain from asking questions that implicate the criminal allegations against the parent and solely focus on the child’s needs. There is no “ignor[ing] the requirements of the law” in that context, Opp.22 n.6, for *Miranda* is not implicated at all.

Miranda is implicated only when the caseworker chooses to elicit incriminating statements they are

obligated to relay to law enforcement conducting a related criminal investigation. If the caseworker makes that choice and also fails to follow *Miranda*, they may still ask their questions but the answers cannot be used against the defendant at trial—a result that appropriately balances the public’s interest in protecting children and the constitutional rights of the accused. Pet.29-30.

III. No Obstacle Prevents The Court From Resolving The Important Question Presented.

Respondent does not deny that the Question Presented is important or that its resolution will make a difference in countless cases. Pet.30-31. Instead, Respondent contends this is an “unsuitable vehicle because any errors were harmless beyond a reasonable doubt.” Opp.10. But the Question Presented is whether there was error to begin with—an antecedent issue that Respondent does not deny is cleanly presented in these cases.

On remand, the state courts can address harmlessness in the first instance. After all, this is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). And “this Court often leaves harmless-error questions to the [lower courts] when the issue was not addressed below.” *Erlinger v. United States*, 602 U.S. 821, 861 (2024) (Kavanaugh, J., dissenting); see, e.g., *McFadden v. United States*, 576 U.S. 186, 197 (2015) (“The Government contends that any error in the jury instructions was harmless Because the Court of Appeals did not address that issue, we remand for that court to consider it in

the first instance.”). That is particularly prudent where, as here, the harmless-error questions are “fact-intensive and require painstaking analysis of a large record.” *Erlinger*, 602 U.S. at 861 (Kavanaugh, J., dissenting). Indeed, much of the supposedly “overwhelming” evidence of Petitioners’ guilt was highly contested or far less definitive than Respondent suggests. Opp.23.³

Respondent’s attempt to minimize the consequences of the *Miranda* violations here distorts the records of these cases and certainly cannot justify failing to resolve the important *Miranda* question that has deeply divided courts across the country. As an initial matter, Petitioners’ statements to the caseworkers were central in both criminal prosecutions. Both caseworkers testified. Pet.9, 12. The prosecution emphasized Frazee’s statements to Longmire in its opening statement, closing argument, and rebuttal closing, highlighting Frazee’s inconsistency to attack his credibility. Pet.12; Frazee Colo. S. Ct. Reply Br. 35. As for Densmore, it is undisputed that the only direct evidence that Densmore physically harmed Mead the night of her disappearance came from his statements to Punches. Pet.9; Opp.24. Accordingly, the prosecutor relied on Densmore’s statements to Punches in closing arguments, playing portions of the interview and reminding the jury he admitted to hitting Mead. Pet.9; Opp.26. Having featured this

³ For instance, the supposed evidence of human remains from Frazee’s property (Opp.28) was never conclusively shown to be, in fact, human. See Frazee Colo. S. Ct. Reply Br. 32-33. The prosecution’s forensic evidence at Berreth’s condominium was also inconclusive. *Id.* at 32.

evidence so prominently, Respondent cannot now credibly claim it did not matter. In any event, that is an issue that can be addressed below when this Court remands the case.

CONCLUSION

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

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