No. _____

In The
Supreme Court of the United States

ARTURO NAVARRO-ZUNIGA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Missouri v. Seibert*, 542 U.S. 600 (2004), the Court issued a fractured decision regarding "midstream *Miranda* warnings," *i.e.*, when police question a suspect, elicit a confession, *and then* provide a *Miranda* warning before extracting a second confession. A plurality held that such confessions' admissibility hinges on a five-factor test considering whether the warning remained objectively effective, a question of law. Concurring in the judgment, Justice Kennedy disagreed, opining that the admissibility of such statements hinges on the interrogator subjectively intended to delay a *Miranda* warning until after obtaining a confession

In the two decades since *Seibert*, state and federal appellate courts have diverged on whether the plurality's or Justice Kennedy's test controls. The question presented is, when determining whether a confession made following a midstream *Miranda* warning is admissible, do courts consider the warning's objective effectiveness—a question of law reviewed de novo—or the officer's subjective intent— a factual finding reviewed for clear error.

RELATED PROCEEDINGS

United States v. Navarro-Zuniga,
No. 23-1448, 2025 WL 444431 (9th Cir. Feb. 10, 2025).

United States v. Navarro-Zuniga,
No. 19-MJ-23353-WVG-BTM, 2023 WL 4491737 (S.D. Cal. July 12, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Arturo Navarro-Zuniga respectfully prays that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The panel decision of the court of appeals is available in the Westlaw database at 2025 WL 444431 and reprinted in the Appendix to the Petition ("Pet. App.") at 1a–5a. The Ninth Circuit's order denying en banc review is reprinted at Pet. App. 6a. The decision of the district court affirming the magistrate judge is available at 2023 WL 4491737 and is reprinted at 7a–16a. The oral decision of the magistrate judge is unpublished but is reprinted at 17a.

JURISDICTIONAL STATEMENT

The Court of Appeals first entered judgment on February 4, 2025. On May 2, 2025, following a timely petition, the panel denied rehearing. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V.

INTRODUCTION

In the two decades since the Court issued its fractured decision in *Missouri v. Seibert*, 542 U.S. 600 (2004), appellate courts have disagreed on how to analyze the admissibility of a confession made after a "midstream *Miranda* warning." This type

of warning occurs when officers question a suspect, extract a confession, give a *Miranda* warning, and then ask the individual to repeat the confession, thus ensuring its admissibility in court.

When determining whether to admit such statements, eight circuits apply the test from Justice Kennedy's concurrence, which considers whether an officer deliberately intended to circumvent *Miranda*. That generally is considered a question of fact, reviewed for clear error. By contrast, the Sixth Circuit applies the *Seibert* plurality's objective five-factor test, which focuses on whether a reasonable person would have understood their right to remain silent despite the earlier confession. That is a question of law reviewed de novo. State courts, meanwhile, are almost evenly divided between the two approaches.

To resolve those splits on a fundamental and frequently arising constitutional issue, the Court should grant the Petition.

STATEMENT OF THE CASE

A Border Patrol agent failed to catch a man who ran away from him into Southern California's desert wilderness. Then he found Mr. Navarro hiding in a bush.

The agent yelled at Mr. Navarro to get on the ground. He handcuffed him. After determining the area was safe—and without providing a *Miranda* warning—he interrogated Mr. Navarro, in Spanish.

The agent asked of "what country [Mr. Navarro] was a citizen." Mr. Navarro said, "Mexico." C.A. E.R. 35.[1]

The agent asked if he had "any documents that would allow him to be here or enter the U.S. legally." Mr. Navarro said, "No." *Id.* at 36.

Then the agent asked, "so you are here in the United States illegally; is that correct?" Mr. Navarro said, "Yes." *Id.*

The agent drove Mr. Navarro to a Customs and Border Patrol field station. There, Mr. Navarro spoke to another agent who asked him essentially the same round of questions while collecting Mr. Navarro's fingerprints. Those included:

What was "his nationality?" *Id.* at 67.

What was his "citizenship?" *Id.*

"When [had] he entered" the United States? *Id.*

The agent passed that information to Border Patrol Agent Colores. *Id.* at 67–68. Agent Colores then began his own interrogation of Mr. Navarro around two hours after Mr. Navarro's interview with the fingerprinting agent. Agent Colores began by referencing information obtained from the fingerprinting interview. For example, when Agent Colores advised Mr. Navarro of his right to notify the Mexican consulate of his arrest, he began by stating, in Spanish, "you are not a United States citizen." *Id.* at 114.

Agent Colores then advised Mr. Navarro of his *Miranda* rights, in Spanish. He did not tell Mr. Navarro that his prior answers to the fingerprinting agent could

[1] "C.A. E.R." refers to Appellant's Excerpts of Record filed with the Ninth Circuit.

not be used against him at trial. *Id.* at 115–16. Mr. Navarro confessed to being a foreign national who entered the country illegally.

The government charged Mr. Navarro with unlawfully entering the country outside a port of entry, a misdemeanor. *See* 18 U.S.C. § 1325(a)(1). At a bench trial before a magistrate judge, the prosecution sought to prove guilt with Mr. Navarro's first unwarned confession in the desert and this third confession to Agent Colores. Mr. Navarro argued that those two confessions were inadmissible.

He argued that the first was inadmissible because the agent never advised Mr. Navarro of his *Miranda* rights, despite subjecting him to the custodial pressure of a stationhouse interrogation. *See Howes v. Fields*, 565 U.S. 499, 509 (2012). And Mr. Navarro argued that the third confession was inadmissible because it followed an inadequate "midstream" *Miranda* warning under *Missouri v. Seibert*,42 U.S. 600 (2004). The problem was that he had just confessed to nearly all elements of § 1325(a)(1) when he was questioned during fingerprinting. Because he was not given a *Miranda* warning at *that* interrogation, a reasonable person would have no reason to believe that his prior, unwarned, answers would be inadmissible. Thus, it only made sense to confess, yet again.

The magistrate judge denied the motion to suppress statements following the close of evidence.[2] The judge reasoned that the fingerprinting interrogation did not

[2] The magistrate judge originally declined to rule on the motions to suppress because they were untimely. As a compromise supported by all sides, the court agreed to reserve judgment on the motions until the bench trial's conclusion. *See United States v. Thompson*, 558 F.2d 522, 525 (9th Cir. 1977) (holding that "[a] trial court may, in its discretion, defer a hearing on a motion to suppress made before trial for determination at trial or after the verdict as long as no 'party's right to appeal is adversely affected'" (quoting Fed. R. Crim. P. 12(e)).

taint the final interrogation because there was a "causal disconnection" between the two.[3] Pet. App. 17a. The magistrate judge found Mr. Navarro guilty. Mr. Navarro appealed to the district court, which affirmed. He then appealed to the Ninth Circuit, which also affirmed.

As relevant here, the panel held that the magistrate judge did not "clearly err" in holding that the Border Patrol agents did not deliberately conduct a two-step interrogation under *Seibert* and its progeny. The panel noted that, under Ninth Circuit precedent, it had to "consider 'objective evidence and any available subjective evidence.'" Pet. App. 4a (quoting *United States v. Narvaez-Gomez*, 489 F.3d 970, 974 (9th Cir. 2007)). Because it is so sparse, its full analysis follows:

> The magistrate judge correctly noted the "causal disconnection between the" pre- and post-warning interviews. The interviews occurred at least two hours apart, there is no indication that they occurred in the same room, and the pre-warning interview was a brief booking interview that did not cover where, how, and why Navarro-Zuniga entered the United States. And the agent who conducted the post-warning interview had not even started his shift when the booking interview occurred. *Although Navarro-Zuniga correctly points to substantial overlap in the content of the pre- and post-warning interviews, the magistrate judge's determination was not "illogical, implausible, or without support in the record." United States v. Fitch*, 659 F.3d 788, 797 (9th Cir. 2011) (quoting *United States v. Spangle*, 626 F.3d 488, 497 (9th Cir. 2010)).

Id. (emphasis added). The Ninth Circuit also concluded it was unnecessary to decide if Mr. Navarro's unwarned field interrogation violated *Miranda*. *Id.* at 5a.

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[3] The magistrate judge also ruled that a *Miranda* warning was not required at the fingerprinting interrogation. But he assumed arguendo that he was wrong on that score and then ruled that the second unwarned interrogation did not taint the third under *Seibert*.

Mr. Navarro timely sought rehearing. The panel declined. He now timely petitions the Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. Federal and state courts are baffled over whether to apply the *Seibert* plurality or Justice Kennedy's concurrence.

For the last two decades, federal and state courts have openly acknowledged their confusion and uncertainty over whether to apply the *Seibert* plurality's five-factor objective test or Justice Kennedy's subjective test. Those divergences lead to disparate results in cases with analogous facts, making the outcome of this important constitutional issue a matter of pure happenstance.

In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the Court prohibited the use of statements elicited during custodial interrogation absent "the use of procedural safeguards effective to secure the privilege against self-incrimination." Writing for a four-member plurality in *Seibert*, Justice Souter explained that interrogators undermine these Fifth Amendment safeguards when they delay warnings while pressing for confessions that suspects would not make if they understood their rights at the outset. 542 U.S. at 613. For instance, a suspect given *Miranda* advice shortly after making a confession "would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." *Id.* The plurality opined that courts should examine the warnings' effectiveness in light of five factors: (1) the completeness and detail of the pre-advisal questions and answers; (2) the overlapping content of the two statements; (3) the timing and setting of the first and second rounds; (4) the

continuity of police personnel; and (5) the degree to which the interrogator's questions treated the first and second rounds as continuous. *Id.* at 615. The plurality also weighed whether officers specifically explained to the suspect that their pre-advisal confession would not be used against them if they invoked their *Miranda* rights. *Id.* at 616 n.7.

Concurring in the judgment, Justice Kennedy offered a purportedly "narrower test." *Id.* at 622. He reasoned that post-warning confessions should be inadmissible if officers deliberately used the two-step interrogation to circumvent *Miranda*. *See id.* Even then, the confession might be admissible if officers take "curative measures," such as (1) a lapse of time and change of circumstances between the pre- and post-*Miranda* statements that would enable the accused to distinguish between the two contexts; and (2) an explanation of "the likely inadmissibility of the prewarning custodial statement[.]" *Id.*

At least seven Justices disagreed with Justice Kennedy that the officers' intent should control. According to the plurality, the test must focus on "facts apart from intent that show the question-first tactic at work," since officers will rarely admit to intentionally delaying *Miranda* warnings. *Id.* at 616 n.6.[4] And four Justices in the dissent explained at length that the effect of interrogation on a suspect is unrelated to the officer's subjective intent. *See id.* at 624–27 (O'Connor, J., joined by Rehnquist, C.J., and Scalia and Thomas, JJ.). The dissent emphasized

[4] Though Justice Breyer "join[ed] the plurality's opinion in full," *id.* at 618, he appeared to agree with Justice Kennedy's subjective intent test, stating that "[c]ourts should exclude the 'fruits' of the initial unwarned questioning unless the failure to warn was in good faith." *Id.* at 617.

that "focusing constitutional analysis on a police officer's subjective intent [is] an unattractive proposition that we all but uniformly avoid." *Id.* at 626 (citing *United States v. Leon*, 468 U.S. 897, 922 n.23 (1984)). Following that splintered decision, the courts of appeals have struggled to discern whether—or even if—*Seibert* contained a precedential test regarding midstream *Miranda* warnings.

A. Federal courts are split on whether to apply the plurality's five-factor test or Justice Kennedy's subjective intent test.

In *Seibert*'s wake, eight U.S. courts of appeals—the Second, Third, Fourth, Fifth, Eighth, Ninth, Tenth, and Eleventh Circuits—have held that Justice Kennedy's subjective test represents the governing rule. For instance, the Third Circuit explained that "Justice Kennedy's opinion provides the narrowest rationale for resolving the issues raised by two-step interrogations[.]" *United States v. Naranjo*, 426 F.3d 221, 231–32 (3d Cir. 2005). Similarly, the Eleventh Circuit held that "[b]ecause *Seibert* is a plurality decision and Justice Kennedy concurred in the result on the narrowest grounds, it is his concurring opinion that provides the controlling law." *United States v. Street*, 472 F.3d 1298, 1313 (11th Cir. 2006); *see also United States v. Capers*, 627 F.3d 470, 476 (2d Cir. 2010) (same); *United States v. Mashburn*, 406 F.3d 303, 309 (4th Cir. 2005) (same); *United States v. Courtney*, 463 F.3d 333, 338 (5th Cir. 2006) (same); *United States v. Ollie*, 442 F.3d 1135, 1142 (8th Cir. 2006) (same); *United States v. Williams*, 435 F.3d 1148, 1158 (9th Cir. 2006) (same); *United States v. Guillen*, 995 F.3d 1095, 1114 (10th Cir. 2021) (same); *United States v. Neely*, 124 F.4th 937, 949 (D.C. Cir. 2024) (same). Court's generally

view an officer's intent as a question of fact, which is reviewed for clear error. *See United States v. Stewart*, 536 F.3d 714, 719 (7th Cir. 2008) (collecting cases).

Yet even in those circuits, acceptance of that approach's wisdom is far from universal. One year after *Seibert* (and before the Ninth Circuit adopted Justice Kennedy's rule), Judge Berzon carefully analyzed "what rule, if any, the fractured Supreme Court handed down in *Missouri v. Seibert*." *United States v. Rodriguez-Preciado*, 399 F.3d 1118, 1133 (9th Cir. 2005) (Berzon, J., dissenting in part). Judge Berzon explained that "three of the four Justices in the plurality and the four dissenters decisively rejected any subjective good faith consideration, based on deliberateness on the part of the police." *Id.* at 1139. So "while Justice Kennedy's was the crucial fifth vote for the result," his opinion "embodies a position supported by two Justices, at most." *Id.* at 1140; *see also United States v. Carrizales-Toledo*, 454 F.3d 1142, 1151 (10th Cir. 2006) (noting that the plurality's and Justice Kennedy's tests were "mutually exclusive"); *Reyes v. Lewis*, 833 F.3d 1001, 1008 (9th Cir. 2016) (Callahan, J., joined by O'Scannlain, Tallman, Bea, and Ikuta, JJ.) (dissenting from denial of rehearing en banc) (arguing that Justice Kennedy's test was "expressly rejected by at least seven Justices" and "cannot be elevated to the status of controlling Supreme Court law").

The Sixth Circuit, by contrast, adopted the *Seibert* plurality's position. It held that "*Seibert* did not announce a binding rule of law with respect to the admissibility standard for statements given subsequent to midstream *Miranda* warnings." *United States v. Ray*, 803 F.3d 244, 271–72 (6th Cir. 2015). Determining

that the plurality's approach was superior to Justice Kennedy's, the Sixth Circuit adopted its multi-factor test "as controlling precedent in this Circuit." *Id.* at 272. Thus, in the Sixth Circuit, courts ask "whether 'a reasonable person in the suspect's shoes could have seen the station house questioning as a new and distinct experience, [and whether] the *Miranda* warnings could have made sense as presenting a genuine choice whether to follow up on the earlier admission.'" *Id.* at 272–73 (quoting *Seibert*, 542 U.S. at 616 (plurality opinion)). That is a question of law reviewed de novo. *United States v. Ray*, 690 F. App'x 366, 371 (6th Cir. 2017).

B. State courts also are split on which test to apply.

State courts also are divided on whether and which *Seibert* test to apply. Thirteen states and two U.S. territories apply Justice Kennedy's test.[5] But thirteen more and the District of Columbia apply the plurality opinion or a combination of the two.[6] In states with no high court decision, intermediate appellate courts have

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[5] *See Jackson v. State*, 427 S.W.3d 607, 617 (Ark. 2013); *Verigan v. People*, 420 P.3d 247, 255 (Colo. 2018); *Ross v. State*, 45 So. 3d 403, 422 n.9 (Fla. 2010); *State v. Abbott*, 812 S.E.2d 225, 231 (Ga. 2018); *People v. Angoco*, 2007 Guam 1, 21 (2007); *State v. Wass*, 396 P.3d 1243, 1248 (Idaho 2017); *People u. Lopez*, 892 N.E.2d 1047, 1069 (Ill. 2008); *Jackson v. Commonwealth*, 187 S.W.3d 300, 309 (Ky. 2006); *State v. Nightingale*, 58 A.3d 1057, 1067 (Me. 2012); *Robinson v. State*, 19 A.3d 952, 964-65 (Md. 2011); *State v. Collings*, 450 S.W.3d 741, 755 (Mo. 2014); *State v. Ruiz*, 179 A.3d 333, 342 (N.H. 2018); *El Pueblo de Puerto Rico v. Millán Pacheco*, 182 D.P.R. 595, 634–35 (P.R. 2011); *Carter v. State*, 309 S.W.3d 31, 38 (Tex. Crim. App. 2010); *Secret v. Commonwealth*, 819 S.E.2d 234, 244 (Va. 2018).

[6] *See People v. Krebs*, 452 P.3d 609, 645-46 (Cal. 2019); *State v. Donald*, 157 A.3d 1134, 1143 n.8 (Conn. 2017); *Hairston v. United States*, 905 A.2d 765, 781–82 (D.C. 2006); *Sutherland v. State*, 913 A.2d 570 (Del. 2007); *Kelly v. State*, 997 N.E.2d 1045, 1054-55 (Ind. 2013); *State v. Jones*, 151 P.3d 22, 35 (Kan. 2007); *State v. Juranek*, 844 N.W.2d 791, 803-04 (Neb. 2014); *Carroll v. State*, 371 P.3d 1023, 1034-35 (Nev. 2016); *State v. Filemon V.*, 412 P.3d 1089, 1098–99 (N.M. 2018); *State v. Farris*, 849 N.E.2d 985, 994 (Ohio 2006); *State v. Sabourin*, 161 A.3d 1132, 1141 (R.I. 2017); *State v. Navy*, 688 S.E.2d 838, 842 (S.C. 2010); *State v. Dailey*, 273 S.W.3d 94, 107 (Tenn. 2009); *State v. Brooks*, 70 A.3d 1014, 1019-20 (Vt. 2013).

cast their lots with the plurality,[7] the concurrence,[8] or neither.[9] There is no semblance of consistency or uniformity.

And such division produces an almost comical level of inconsistency. Not only will people in different circuits be subject to different tests, two people in the same state might be subject to different tests based on the sovereign that chooses to prosecute them. For instance, a person given a mid-stream *Miranda* warning who is prosecuted in Kansas state court for being a felon in possession of a firearm would be subject to the plurality's objective test. *See Jones*, 151 P.3d at 35. But the same person who is prosecuted for the same crime in federal court would be subject to Justice Kennedy's subjective test under Tenth Circuit precedent. *See Guillen*, 995 F.3d at 1114. Those anomalies are needless and provide strong grounds for granting the Petition.

II. This case presents a fundamental and recurring constitutional issue.

Rules of interrogation and statement admissibility should not turn on geography or the sovereign that elects to prosecute an offense. Yet in *Seibert* cases, "there is a nontrivial subset of cases in which the outcome rests on determining which test is the law." Barry Friedman, *The Wages of Stealth Overruling (with Particular Attention to Miranda v. Arizona)*, 99 Geo. L. J. 1, 48 (2010) (listing

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[7] *See Crawford v. State*, 100 P.3d 440, 447–50 (Alaska Ct. App. 2004); *People v. Gamez*, 2016 WL 417497, at *11-12 (Mich. Ct. App. Feb. 2, 2016).

[8] *See White v. State*, 179 So. 3d 170, 191 (Ala. Crim. App. 2013); *State v. Zamora*, 202 P.3d 528, 534-35 & n.8 (Ariz. Ct. App. 2009); *State v. Bruce*, 169 So. 3d 671, 678 (La. Ct. App. 2015); *State v. Hickman*, 238 P.3d 1240, 1244 (Wash. Ct. App. 2010).

[9] *See State v. Gomez*, 820 N.W.2d 158 (Iowa Ct. App. 2012); *see also Commonwealth v. Charleston*, 16 A.3d 505, 525 (Pa. Super. Ct. 2011).

cases). For instance, "in cases in which the police were not acting in bad faith-as the applying court understands the concept-yet the suspect was confused nonetheless about the freedom to stay mum after the *Miranda* warnings finally were delivered, the suspect will win under Justice Souter's test and lose under Justice Kennedy's." *Id.* Another scholar has listed circuit cases showing that "the choice between the plurality and Justice Kennedy's approach can yield opposite results.' Joshua I Rodriguez, *Interrogation First, Miranda Warnings Afterward: A Critical Analysis of 16 the Supreme Court's Approach to Delayed Miranda Warnings*, 40 Fordham Urb. L. J. 1091, 1110 (2013).

Persistence of this circuit split also hurts federal and state law enforcement. Without intervention, police cannot ascertain the standard that will determine the lawfulness of an officer's conduct. Prosecutors cannot determine the admissibility of confessions. Forty years ago, this Court explained why such clarity is important for law enforcement, stating that "*Miranda*'s holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible." *Fare v. Michael C.*, 442 U.S. 707, 718 (1979). For the sake of police, prosecutors, judges, and defendants, this Court should grant certiorari to ensure consistent application *Seibert*'s principle.

III. Mr. Navarro's case presents a suitable vehicle to decide the question presented.

Mr. Navarro presents a suitable vehicle for resolving the question presented. First, the *Seibert* issue was raised and preserved below.

Second, the Ninth Circuit and magistrate judge's misreading of *Seibert* may have been dispositive. In ruling that Mr. Navarro's statements were admissible, the magistrate judge noted that there was a "causal disconnection" between the two stationhouse interviews of Mr. Navarro. Pet. App. 17a. In other words, the magistrate judge—like Justice Kennedy—looked to the *intent* of the interviewing officers. The magistrate judge reasoned that because first officer merely intended to book Mr. Navarro while the second officer intended to "obtain[]" Mr. Navarro's statement, there was no *Seibert* problem.

Meanwhile, the Ninth Circuit's focus on the officer's intent also dictated its analysis. The panel acknowledged that it must assess whether the officers acted "deliberate[ly]," a question that considers "objective evidence and any available subjective evidence." Pet. App. 4a. That was a factual question that the Ninth Circuit held must be reviewed for clear error. *Id.* at 2a. Meanwhile, the panel acknowledged that Mr. Navarro "points to substantial overlap in the content of the pre- and post-warning interviews," yet nevertheless held that "the magistrate judge's determination was not 'illogical, implausible, or without support in the record." *Id.* at 4a (quoting *Fitch*, 659 F.3d at 797). That suggests that had it reviewed the effectiveness of the agent's belated advisal de novo—as the *Seibert* plurality teaches—the answer may have been different.

Finally, if the Ninth Circuit had held that the government violated *Seibert*, it may well have reversed his conviction. Admittedly, the Ninth Circuit declined to reach whether Mr. Navarro's unwarned field interrogation violated *Miranda*. But if it had—and deemed that confession inadmissible—there would have been insufficient evidence to convict. Because without an admissible confession, the government would have been left with Mr. Navarro-Zuniga's (1) location of arrest; (2) lack of recreational equipment; and (3) flight. That is insufficient to prove alienage beyond a reasonable doubt.

IV. The Court should clarify that the *Seibert* plurality's objective test controls.

Finally, the Court should grant the Petition to correct the faulty view of eight circuits and numerous states that Justice Kennedy's subjective test controls, both as a procedural and a legal matter. It should hold that the effectiveness of a midstream *Miranda* warning must be assessed objectively as a question of law that appellate courts review de novo.

First, Justice Kennedy's concurrence was not the "narrowest" grounds of agreement because seven Justices disagreed with it. In *Marks v. United States*, 430 U.S. 188, 193 (1977), this Court established the cardinal rule that in a case where no opinion garners support from a majority of the Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds." But here, at least three Justices in the plurality believed that the inquiry must focus on "facts apart from [police] intent." *Seibert*, 542 U.S. at 616 n.6. And Justice O'Connor's dissent—joined by Chief

Justice Rehnquist, Justice Scalia, and Justice Thomas explained at length why an officer's subjective intent should *not* control. *Id.* at 624- 27. Thus, Justice Kennedy's subjective intent test did not represent the "narrowest grounds" on which a majority of Justices agreed. Rather, it represented a "distinct approach[]" that seven Justices rejected. *Carrizales-Toledo*, 454 F.3d at 1151. As a result, eight circuits and dozens of states currently enforce a constitutional rule that only two Justices approved. That simply cannot be not what the Court envisioned with *Marks*.

Furthermore, Justice Kennedy's intent test is not consistent with the Court's longstanding precedent declining to hinge constitutional protections on an officer's motives. Recently, in *Torres v. Madrid*, the Court explained that it "rarely probe[s] the subjective motivations of police officers." 592 U.S. 306, 317 (2021). In *Kentucky v. King*, the Court confirmed that it "has long taken the view that evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." 563 U.S. 452, 464 (2011) (quotations omitted). And in *Whren v. United States*, the Court recognized that it is "unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." 517 U.S. 806, 813 (1996).

This case should be no different. Whether a *Miranda* advisal was effective must be assessed objectively as a question of law.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

Date: July 31, 2025

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