No. 25-6520

In The

Supreme Court of The United States

STEVEN GEORGE MORGAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

In the Eleventh Circuit, an agent can now nullify a suspect's *Miranda* invocation of his right to silence and counsel with a single false sentence: "I'm not trying to interrogate you or ask you any questions about the case." *United States v. Morgan*, 143 F.4th 1264, 1270 (11th Cir. 2025). As described below, these same words would produce different constitutional results in at least five other circuits.

The government concedes that physical fruits of involuntary statements are inadmissible under the Fifth Amendment. *United States v. Patane*, 542 U.S. 630 (2004). The discrete question presented here is whether an officer's assurance that a question is "not about the case"—delivered moments after a *Miranda* invocation and immediately contradicting the warning—can render a statement involuntary.

The Eleventh Circuit answered "No," because the statement constitutes merely a "misrepresentation of fact" about the officer's motive, not a "misrepresentation of law." *Morgan*, 143 F.4th at 1278. Other circuits answer "Yes," because the officer's conduct corrupts the suspect's ability to weigh whether speaking will help or harm him. Only this Court can resolve that conflict.

This reply proceeds in four parts. First, the case presents a legal question, not a fact-bound determination. Second, a genuine circuit split exists on the governing legal standard. Third, on the merits, under this Court's established framework for evaluating police deception, Gaviria's false assurance rendered Morgan's statement involuntary under the Fifth Amendment. Because *Patane* applies only to statements

that are genuinely voluntary, the statement here—coerced by Gaviria's false promise—falls outside *Patane*'s exception, and the physical fruits must be suppressed. Fourth, Morgan's case is an ideal vehicle.

1. *Fact-boundness.* The government urges this Court to deny certiorari, characterizing the case as "highly fact-bound." (BIO 13–15). But the Eleventh Circuit applied a categorical legal framework, not a fact-bound conclusion. The Eleventh Circuit's legal rule is that an officer's statement about her motive to question a suspect is a mere "misrepresentation of fact," never "law," and therefore categorically cannot affect Fifth Amendment voluntariness—regardless of timing, context, or the suspect's actual understanding.

Regardless, the facts are undisputed. The parties agree on Gaviria's precise words and Morgan's response. The disagreement is purely doctrinal—whether such a statement affects voluntariness analysis. The Eleventh Circuit classified those undisputed words on one side of a doctrinal line that other circuits draw on the other side. This is a circuit split on law, not fact.

2. *Split.* Five federal circuits apply a functional analysis to leniency and confidentiality promises; only the Eleventh Circuit adopts a categorical rule excluding these assurances from the analysis. The Third, Fourth, Fifth, Seventh, and Ninth Circuits ask a single question: Did the officer's conduct distort the suspect's rational assessment of the consequences of speaking? This functional test—not categorical labels—is the unified approach these circuits share.

a. In *United States v. Walton*, 10 F.3d 1024, 1027 (3d Cir. 1993), agents

told a suspect he could speak "off the cuff." The Third Circuit held the assurance was "equivalent to [a] promise that what he said would not be used against him." *Id.* at 1029. The court emphasized that immunity promises are "uniquely influential" and "may be the most significant factor in assessing voluntariness." *Id.* at 1030.

Crucially, the Third Circuit framed the legal question functionally, not as a categorization exercise. It asked whether the assurance "deprived [defendant] of his ability to make an unconstrained, autonomous decision to confess" and "to make an intelligent choice between exercising and waiving that privilege." *Id.* at 1030–31. This approach—functionally analyzing whether conduct corrupts rational choice-making—is precisely what sister circuits do. The Eleventh Circuit rejected this approach in favor of categorical classification.

In *Walton*, the temporal gap between the *Miranda* warning and contradictory assurance was substantial—a full day and separate meeting intervened. Despite this gap, the Third Circuit found involuntariness. Morgan's case is materially stronger. Gaviria's assurance came moments after the warning and invocation, making the logical contradiction far sharper.

b. The *en banc* Ninth Circuit in *United States v. Preston*, 751 F.3d 1008 (9th Cir. 2014), distinguished permissible "intrinsic deception" about evidence from impermissible "extrinsic deception" about use of statements. *Id.* at 1027–28. Unlike the Eleventh Circuit's approach, this framework focuses on functional effect, not categorical labels.

In *Preston*, officers told the suspect that his statements "would never leave the U.S. Attorney's file." *Id.* at 1014. The court recognized that the police "suggested falsely that if he confessed, his admissions would not be used against him. *Id.* at 1027. The court recognized that the statement "primarily related to considerations extrinsic to the suspect's guilt or innocence…." *Id.* at 1026–1027. This conduct "interjected the type of extrinsic considerations more likely to distort an otherwise rational choice of whether to confess or remain silent." *Id.* at 1027 (citation modified). Ultimately, the court held the false promises, among other facts, demonstrated that the defendant's "will was overborne and his statement involuntary." *Id*. at 1027–1028.

Here, Gaviria told Morgan that "she wasn't trying to interrogate him or ask him any questions about the case." *Morgan*, 143 F.4th at 1270. The message she conveyed is similar to the one made in *Preston*—his answer would not be used in a prosecution against him. *Preston* identified this type of false assurance as impermissible and relevant in assessing voluntariness. In the Eleventh Circuit, Gaviria's false promise is considered a permissible "misrepresentation of fact" that cannot be considered. *Id*. at 1278.

c. The Fourth Circuit in *United States v. Giddins*, 858 F.3d 870 (4th Cir. 2017), also rejected categorical exclusions from voluntariness analysis. The court held that affirmative deceit about whether a suspect was "in trouble"—when the officer possessed an arrest warrant—rendered the *Miranda* waiver involuntary. *Id.* at 884. The Fourth Circuit applied a functional analysis, asking whether the conduct deprived the suspect of understanding true consequences of speaking.

d. The Fifth Circuit in *Hopkins v. Cockrell*, 325 F.3d 579 (5th Cir. 2003), held that an officer cannot read *Miranda* rights and then assure a suspect his statements will remain confidential. *Id.* at 584. The court emphasized that such assurances directly contradict the warning that statements can be used. Like Gaviria's assurance that she is "not asking about the case," the confidentiality promise conveys that answers will not be used in prosecution, directly contradicting *Miranda*'s warning that "anything you say can and will be used against you in a court of law."

e. The Seventh Circuit likewise applies a functional test to deceptive interrogation tactics and recognizes that false promises can render statements involuntary by corrupting a suspect's rational deliberation.

In *Sprosty v. Buchler*, 79 F.3d 635 (7th Cir. 1996), the Seventh Circuit established a key principle: an "empty prosecutorial promise could prevent a suspect from making a rational choice by distorting the alternatives among which the person under interrogation is being asked to choose." *Id.* at 646. The court emphasized whether the promise corrupted the suspect's ability to weigh the consequences of speaking—not categorical labels—controls. Like *Walton, Preston, Giddins, and Hopkins*, the Seventh Circuit recognized that the critical question is whether the officer's conduct distorts the suspect's rational choice-making about whether to speak.

f. The split is meaningful. The Third, Fourth, Fifth, Seventh, and Ninth Circuits all apply a functional test. These circuits ask whether the officer's conduct corrupted the suspect's rational decision-making about whether to speak. Only the

Eleventh Circuit does not. It applies a categorical classification (fact versus law) and stands alone in the federal judiciary.

Because the Eleventh Circuit applied a categorical prohibition while other circuits apply a functional analysis, this Court must choose the governing framework. The answer is clear. This Court's precedents—*Frazier v. Cupp*, 394 U.S. 731 (1969); *Lynumn v. Illinois*, 372 U.S. 528 (1963); and *Arizona v. Fulminante*, 499 U.S. 279 (1991)—all employ functional analysis, asking whether the officer's conduct corrupted the suspect's rational deliberation about whether to speak. Morgan's case presents the analysis in its sharpest form.

3. *Merits*. Under this Court's precedents, Gaviria's false assurance rendered Morgan's statement involuntary.

a. *Patane* does not authorize admission of involuntary statements. The government relies on *Patane* for the proposition that physical fruits of *Miranda*-violating, but voluntary statements, are admissible. Agreed. But *Patane* applies only to statements that are voluntary. Where an officer's false promise, alone or in combination with other circumstances, renders a statement involuntary under the Fifth Amendment, *Patane* does not apply.

This Court has established that a waiver of *Miranda* is valid only when the suspect demonstrates a "voluntary, knowing, and intelligent" waiver and possesses a "full awareness of the consequences of the waiver," including how the State will use statements obtained. *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The determination whether a waiver is valid does not turn on abstract knowledge of rights, but on

whether the suspect's actual decision to waive was made with full understanding of how their statements will be used against them.

Gaviria's assurance directly undermines this constitutional requirement. After warning Morgan that "anything you say can and will be used against you in a court of law," Gaviria told him she "wasn't trying to interrogate him or ask him any questions about the case." This contradiction deprived Morgan of the "full awareness" *Burbine* requires. Morgan could not possess both a full awareness that his statements will be used in court, and an unqualified assurance that she is not asking about the case. These are logically incompatible. An officer cannot simultaneously warn that answers will be used and promise that answers are not being sought on the matter for which they will be used.

The question is whether this deprivation of full awareness is relevant to determine the voluntariness of Morgan's statement. The Eleventh Circuit's "fact" vs. "law" distinction misconstrues this Court's cases about deceptive police conduct. This Court has established a line between deceptions about the evidentiary basis for prosecution, permissible under *Frazier*, and deceptions about what legal consequences will follow, impermissible under *Lynumn* and *Fulminante*.

In *Frazier*, officers falsely told the suspect that a co-defendant had confessed. *Frazier*, 394 U.S. at 739. Therefore, the police deception operated on the suspect's assessment of *factual circumstances*—what evidence existed. *See Oregon v. Elstad*, 470 U.S. 298, 317 (1985) (noting that a suspect does not have to have "a full and complete appreciation of all of the consequences flowing from the nature and the

quality of the evidence in the case" to waive his rights). Critically, the officer's false statement in *Frazier* did not tell the suspect what *consequences* would follow from his own speaking.

Lynumn did address that situation. Officers told a mother her children would be taken if she did not cooperate. *Lynumn*, 372 U.S. 528. This statement operated on the suspect's understanding of *what would happen if she spoke or remained silent*—the legal consequences of her choice. By falsely suggesting cooperation would prevent horrifying consequences, the deception fundamentally distorted her incentive to speak. This is categorically different from the *Frazier* deception.

Agent Gaviria's assurance is like *Lynumn*, not *Frazier*. Consider the undisputed sequence. Gaviria warned Morgan that "anything you say can and will be used against you in a court of law." Morgan immediately invoked both his right to silence and right to counsel, demonstrating he understood the consequences. When asked about the phones, Morgan hesitated and said "not sure"—clearly grasping the incriminating nature of the question and attempting to exercise his right to remain silent. Gaviria then stated she "wasn't trying to interrogate him or ask him any questions about the case." Only after this assurance did Morgan answer about phone ownership.

The necessary inference is clear. If Gaviria is not asking "about the case," then the warning (that his answer will be used "in the case") does not apply to this answer. A reasonable person in Morgan's position—a person who has just been warned, just invoked rights, just hesitated to answer—must understand this as a legal

consequence shifting from "will be used" to "will not be used about the case." This transformation from refusal to compliance—with only Gaviria's assurance changing between them—proves causation and demonstrates the assurance was coercive. Morgan did not reconsider his decision to speak based on new facts or external circumstances; he possessed identical information about the phones and the same consequences warned about before and after the assurance. Only Gaviria's false promise caused Morgan to shift from refusal to compliance, proving the assurance was the operative cause of his decision to answer.

b. Such promises are "uniquely influential" because they corrupt rational deliberation in a way other deceptions do not by inverting the fundamental *Miranda* calculus. *Walton*, 10 F.3d at 1030. Speaking appears safer because the officer promised no consequences will follow. The promise has not provided new evidence about what the suspect faces (like *Frazier*) or provided new information about external circumstances (like *Burbine*). Instead, the agent provided a *false legal assurance* that inverts the very risk-calculus *Miranda* warns about. Immunity promises corrupt the capacity to make rational choice at all. This is why they have been treated as inherently coercive at least since *Lynumn* and *Fulminante*.

Gaviria's implicit promise operated identically, she promised Morgan that answering would carry no legal detriment. For a suspect who had just invoked both *Miranda* rights and understood the danger, this promise corrupted his entire deliberative framework. This is precisely what the Fifth Amendment and *Miranda* exist to prevent.

c. *Burbine* does not apply to contradictions of legal consequence. *Burbine* established that deceptions about *external facts*—facts outside the suspect's constitutional rights—do not per se render a waiver involuntary. The police conduct in *Moran*—withholding information about an attorney's attempts to reach the suspect—involved an external circumstance the suspect could independently discover or about which he could ask. The suspect's right to counsel remained unaffected.

By contrast, Gaviria's statement operates at the intersection of the suspect's rights and their consequences. She told Morgan, immediately after warning him that "anything you say can and will be used against you," that she "wasn't trying to interrogate him or ask him any questions about the case." This *affirmatively contradicts the legal warning just given*—not through omission, but through direct contradiction.

The critical distinction is between deceptions about external circumstances (*Moran*) and deceptions that *logically negate the substance of the warning*. If "anything you say will be used against you" is the *Miranda* rule, and an officer then says, "your answer is not about the case," a reasonable suspect necessarily understands the officer to carve out an exception to that rule. This is not a mere omission of external fact; it is an affirmative misrepresentation about legal consequence.

Burbine emphasized that a valid waiver requires "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* at 421. When an officer's statement is reasonably understood as negating the

consequences spelled out in the Miranda warning, the suspect cannot achieve requisite "full awareness of... the consequences." The suspect's decision is made on the basis of false assurance, not true understanding of consequences.

d. The Eleventh Circuit's categorical approach is irreconcilable with this Court's precedent. Gaviria's assurance is unambiguously an impermissible deception about legal consequences—what will happen if Morgan spoke. She conveyed, unqualifiedly and immediately after the *Miranda* warning, that Morgan's answer would not be used "about the case," directly contradicting the warning that anything he says will be used in court.

The Eleventh Circuit conflated two separate inquiries. First, did the officer violate *Miranda* by continuing to question after invocation? Yes. Second, did the officer's conduct render the statement involuntary under the Fifth Amendment? The court never asked this question.

Instead, the majority held that because Gaviria's statement was a "misrepresentation of fact" (not "law"), Morgan's statement could not be involuntary. But this categorical approach never addressed whether Gaviria's assurance corrupted Morgan's ability to make a free choice.

This undisputed sequence shows a suspect who invoked his rights, recognized danger, and was actively attempting to remain silent—then an officer who, moments after warning him his words will be used against him, provided a contradictory assurance that undermined his invocation. The Eleventh Circuit held that Gaviria merely misrepresented her motive. This misses the functional reality: what the

statement communicates to a reasonable suspect in that moment is that answering the specific question carries no legal consequence contrary to the warning. This is an implied promise of immunity.

4. *Vehicle.* This case presents the voluntariness question in its purest and most compelling form.

a. The Record is Undisputed. The parties agree on every material fact. Gaviria's precise words are memorialized in the trial transcript. Morgan's response before reassurance ('not sure') and after ('only the iPhone') are documented. The causal chain—from disavowal to abandonment finding to warrantless search to incriminating evidence at conviction—is entirely uncontested. The government does not argue waiver or a preservation issue.

b. The Facts Could Not Be More Favorable to the Defendant. Morgan invoked both his right to silence and right to counsel, demonstrating unambiguous comprehension of those rights. He hesitated when asked about the phones, demonstrating his recognition of the incriminating nature of the answer and his active exercise of the right to remain silent. Gaviria's false assurance came moments after the Miranda warning and invocation—not hours or days later, but immediately. There is no temporal gap to dissipate any coercive effect. There is no intervening event to break the causal chain. There is no competing evidence of voluntariness. Every circumstance points to one conclusion: Morgan's statement was coerced.

c. The Vehicle is Ideal. If Morgan cannot obtain relief in this case, then no defendant can. This case presents precisely the vehicle this Court seeks—a clean

record, a clear legal question, undisputed facts that compel a single answer, and a stark circuit split. Certiorari is warranted, and reversal is required.

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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