

No. _____

IN THE
Supreme Court of the United States

SHAUN KAREEM BURNEY, *Petitioner,*

v.

RONALD BROOMFIELD, WARDEN, *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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CAPITAL CASE

QUESTION PRESENTED

Where an accused's "will has been overborne" by circumstances of the interrogation, a confession is deemed involuntarily given. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973). In determining the voluntariness of a confession, courts examine the totality of the circumstances to determine if an accused's due process rights are violated, including the characteristics of the accused being interrogated and the interrogation techniques used by police. *Withrow v. Williams*, 507 U.S. 680, 689, 693 (1993).

When law enforcement officers, investigating a potentially capital murder charge, conduct a lengthy and high-pressure interrogation of an 18-year-old with the mentality of a 15-year-old, who sobs, asks for his mother, and changes his story repeatedly, can a resulting confession be deemed voluntary and reliable under the totality of the circumstances?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the court whose judgment is sought to be reviewed were Petitioner, Shaun Kareem Burney, and Respondent, Ronald Broomfield, the former warden at California State Prison at San Quentin, the facility at which Burney was previously imprisoned. The current acting warden of the Richard J. Donovan Correctional Facility, where Burney is currently confined, is Mario Ramirez.

There are no associated stock ticker symbols.

LIST OF PRIOR PROCEEDINGS

United States Supreme Court

Shaun Kareem Burney v. California, Case No. 09-8244, petition for writ of certiorari denied March 1, 2010.

United States Court of Appeals for the Ninth Circuit

Shaun Kareem Burney v. Ronald Broomfield, Case No. 22-99002, judgment affirming denial entered May 7, 2026.

United States District Court for the Central District of California

Shaun Kareem Burney v. Robert L. Ayers, Case No. CV 10-00546 FLA, judgment entered February 8, 2022.

California Supreme Court

People v. Shaun K. Burney, Case No. S042323, direct appeal opinion affirming conviction and sentence entered July 30, 2009.

In re Shaun Kareem Burney, Case No. S133439, petition denied December 17, 2009.

In re Shaun Kareem Burney, Case No. S190968, petition denied August 17, 2016.

Orange County Superior Court

People v. Shaun Kareem Burney, Case No. C94692, judgment entered September 16, 1994.

TABLE OF CONTENTS

	Page(s)
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
LIST OF PRIOR PROCEEDINGS	iii
INDEX TO APPENDIX	vi
TABLE OF AUTHORITIES	viii
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE	4
I. The offense	4
II. The trial.....	6
A. The guilt phase	6
B. The penalty phase.....	7
III. Burney’s postconviction proceedings	8
REASONS FOR GRANTING THE WRIT.....	12
I. The Court should grant certiorari because the Ninth Circuit’s decision conflicts with this Court’s authority.....	12
II. Burney’s capital conviction was obtained in violation of his due process rights.	13
A. The evidence was overwhelming that Burney’s will was overborne in his interrogation.	13

TABLE OF CONTENTS

	Page(s)
B. The Ninth Circuit's finding that Burney's confession was voluntary is in conflict with this Court's precedents.....	17
CONCLUSION.....	20

INDEX TO APPENDIX

	Page(s)
Ninth Circuit Court of Appeals Per Curiam Opinion, Case No. 22-99002 (May 7, 2026).....	Pet. App. A, 1–52
United States District Court Judgment Case No. 10-cv-00546-FLA (February 8, 2022)	Pet. App. B, 53
United States District Court Order Denying Petition for Writ of Habeas Corpus Case No. 10-cv-00546-FLA (February 8, 2022)	Pet. App. C, 54–117
Supreme Court of California Order Denying Petition for Writ of Habeas Corpus Case No. S190968 (August 17, 2016)	Pet. App. D, 118
Supreme Court of California Order Denying Petition for Writ of Habeas Corpus Case No. S133439 (December 17, 2009)	Pet. App. E, 119
Supreme Court of California Order Affirming Judgment on Appeal Case No. S042323 (July 30, 2009)	Pet. App. F, 120–206
Exhibits to Petition for Writ of Habeas Corpus Volume 10 of 11, Exhibit 83 Case No. S190968 (January 31, 2018)	Pet. App. G, 207
Petition for Writ of Habeas Corpus Claim VIII Case No. S133439 (January 31, 2018)	Pet. App. H, 208–223
Exhibits to Petition for Writ of Habeas Corpus Volume 1, Medical declarations Case No. S133439 (January 31, 2018)	Pet. App. I, 224–259

INDEX TO APPENDIX

	Page(s)
Excerpts of Clerk's Transcript Vol. 3 of 8 Burney Redacted Interview Transcript Superior Court of Orange County, Case No. C-94692	App. J, 260–322
Excerpts of Clerk's Transcript Vol. 7 of 8 Superior Court of Orange County, Case No. C-94692	Pet. App. K, 323
Excerpts of Clerk's Transcript Vol. 8 of 8 Superior Court of Orange County, Case No. C-94692	Pet. App. L, 324–359
Excerpts of Reporter's Transcript Vol. 6 of 11 Superior Court of Orange County, Case No. C-94692	Pet. App. M, 360
Excerpts of Reporter's Transcript Vol. 7 of 11 Superior Court of Orange County, Case No. C-94692	Pet. App. N, 361
Excerpts of Reporter's Transcript Vol. 8 of 11 Superior Court of Orange County, Case No. C-94692	Pet. App. O, 362–367
Excerpts of Reporter's Transcript Vol. 9 of 11 Superior Court of Orange County, Case No. C-94692	Pet. App. P, 368–372
Excerpts of Reporter's Transcript Vol. 10 of 11 Superior Court of Orange County, Case No. C-94692	Pet. App. Q, 373–395
Excerpts of Reporter's Transcript Vol. 11 of 11 Superior Court of Orange County, Case No. C-94692	Pet. App. R, 396–410
Trial Exhibit BBB Burney Unredacted Interview Transcript Superior Court of Orange County, Case No. C-94692	Pet. App. S, 411–478

TABLE OF AUTHORITIES

	Page(s)
Supreme Court Opinions	
<i>Berghuis v. Thompson</i> , 560 U.S. 370 (2010)	10
<i>Brecht v. Abrahamson</i> , 507 U.S. 619 (1993)	19
<i>Bruton v. United States</i> , 391 U.S. 123 (1968)	7
<i>Colorado v. Connelly</i> , 479 U.S. 157 (1986)	10
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011)	13
<i>Miller v. Fenton</i> , 474 U.S. 104 (1985)	13
<i>Mincey v. Arizona</i> , 437 U.S. 385 (1978)	12, 17
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	10
<i>Rhines v. Weber</i> , 544 U.S. 269 (2005)	9
<i>Rogers v. Richmond</i> , 365 U.S. 534 (1961)	12
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973)	i, 12, 17
<i>Withrow v. Williams</i> , 507 U.S. 680 (1993)	i, 12, 13, 18
Federal Court Opinions	
<i>Burney v. Broomfield</i> , 175 F.4th 1089 (9th Cir. 2026)	1
<i>Cook v. Kernan</i> , 948 F.3d 952 (9th Cir. 2020)	13
<i>Doody v. Ryan</i> , 649 F.3d 986 (9th Cir. 2011)	12, 19
<i>McKinney v. Ryan</i> , 813 F.3d 798 (9th Cir. 2015)	18

TABLE OF AUTHORITIES

	Page(s)
State Cases	
<i>People v. Aranda</i> , 63 Cal. 2d 518 (1965)	7
<i>People v. Burney</i> , 47 Cal. 4th 203 (2009)	2
Supreme Court Rules	
Sup. Ct. R. 10(c)	12
Sup. Ct. R. 13	2
U.S. Constitution	
Fourteenth Amendment to the United States Constitution	2
United States Code	
28 U.S.C. § 1254(1)	2
28 U.S.C. § 2253	2
28 U.S.C. § 2254 (a), (d)	3
28 U.S.C. §§ 1291	2
28 U.S.C. §§ 2241	2

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT**

Petitioner Shaun Kareem Burney respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

On May 7, 2026, the Ninth Circuit affirmed the district court's denial of relief in a published opinion, which is reported at *Burney v. Broomfield*, 175 F.4th 1089 (9th Cir. 2026). (*See* Petitioner's Appendix (Pet. App.) A, 1–52.)

The district court denied Burney's unreliable confession claim by order dated February 8, 2022. (Pet. App. C, 54–117.) The district court entered judgment against Burney on the same date. (Pet. App. B, 53.)

The California Supreme Court summarily denied Burney's first habeas petition, case number S133439, on December 17, 2009. (Pet. App. E, 119.) The exhaustion petition, case number S190968, was denied on August 17, 2016. (Pet. App. D, 118.) Both petitions included the involuntary confession claim at issue here.

The California Supreme Court denied Burney's direct appeal in a reasoned opinion on July 30, 2009. *People v. Burney*, 47 Cal. 4th 203 (2009). (Pet. App. F, 120–206.) The involuntary confession issue was not raised in that proceeding.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The Ninth Circuit had jurisdiction under 28 U.S.C. §§ 1291 and 2253. The Ninth Circuit's opinion affirming the denial of habeas relief was filed on May 7, 2026. Burney timely filed in this Court an Application for Extension of Time to File Petition for Writ of Certiorari, seeking 60 additional days in which to file his petition for writ of certiorari, which was received by the Court on July 20, 2026, and granted by Justice Kagan on July 24, 2026, extending the time to file to October 4, 2026. (*See* Application No. 26A110.) The current petition is therefore timely. (*See* Supreme Court Rule 13.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2254 (a), (d)

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

I. The offense

Shaun Kareem Burney was eighteen years old, with no prior convictions, when he was charged with capital murder. He was tried jointly in 1994 with two older men—Allen Burnett and Scott Rembert—for the June 1992 killing of Joseph Kondrath in Orange County, California.

The state's case, resting largely on the statements the three codefendants made to the police, indicated the following. On June 10, 1992, the three men left Burnett's and Rembert's apartment. (Pet. App. L, 343–44.) Burney had been staying with Burnett and Rembert because his mother had recently kicked him out of his house after her new husband moved in. (Pet. App. Q, 395; Pet. App. R, 396–97.) Burnett and Rembert wanted to steal a car stereo from someone they knew, Ron Hussar, and Burney joined them at their request. (Pet. App. L, 343–44, 349, 353.)

Hussar's car was not, however, parked where Burnett and Rembert expected it to be. (Pet. App. L, 345–46.) At this point the three men came across Kondrath, Burnett and Rembert's neighbor, who was sitting in his car getting ready to head to work. (Pet. App. L, 346.) A brief discussion occurred about stealing Kondrath's car stereo. (Pet. App. N, 361.) The three men approached Kondrath. Kondrath was ordered out of the car. Kondrath's

wallet was stolen and he was ordered to get into the trunk of his car. (Pet. App. A, 6.) Burnett and Rembert then demanded that Burney drive them around Orange County so that Burnett and Rembert could commit various violent acts against people who had wronged Burnett. Specifically, Burnett wanted to shoot at the home of his ex-girlfriend, Cynthia Melson, and fire guns in a rival gang's territory.¹ (Pet. App. L, 351–52; Pet. App. M, 360, 371.)

The night ended with the three men returning the car close to where they had first come across it. After parking the car, Burnett ordered Burney to shoot Kondrath. (Pet. App. L, 357, 359.) Burney told Burnett that they should leave Kondrath unharmed in his trunk. (Pet. App. L, 339, 354–55.) But Burnett insisted that Burney kill Kondrath because Burnett was afraid that Kondrath would be able to identify him, since he and Kondrath lived in the same neighborhood. (Pet. App. L, 340, 342, 357.) Eventually Burney acquiesced to Burnett's demands. (Pet. App. L, 356.) He cracked open the trunk partway, and while looking away, fired a single shot into it. (Pet. App. L, 358.) That shot proved fatal.

¹ Burnett and Rembert were members of the same gang. Members of a rival gang had assaulted Burnett earlier in the year. (Pet. App. 335; Pet. App. O, 362–67.) Burney was not a gang member.

II. The trial

A. The guilt phase

The prosecution's case against Burney rested on two main theories: felony-murder, with robbery, kidnapping for robbery, and kidnapping serving as the predicate felonies; and premeditated and deliberate murder. (Pet. App. P, 368–70.) The two special circumstances were robbery-murder and kidnapping-murder.

The prosecution built its case on redacted statements the three men gave to police. In their statements, Burnett and Rembert minimized their role in the night's events and painted Burney as the driving force behind shooting the victim. (*See, e.g.*, Pet. App. L, 347–48.) In Burney's statement to the police, Burney emphasized how, up until the shooting, he played a peripheral role in the crimes. He repeatedly maintained that he did not want to shoot the victim and told the police he only did so because he feared a drunken, armed Burnett would shoot him instead. (Pet. App. L, 359.) He expressed—through tears—great remorse for the crime. (Pet. App. K, 323, 327.)

Because the defendants were offering antagonistic statements and none of them was going to testify, Burney's trial counsel moved to sever Burney's trial. (Pet. App. F, 145–48.) The trial court rejected the motion. (Pet. App. F, 144.) Attempts were made to redact the defendants' statements to comply

with *People v. Aranda*, 63 Cal. 2d 518 (1965), and *Bruton v. United States*, 391 U.S. 123 (1968). But as the California Supreme Court (“CSC”) would later hold on direct appeal, those attempts failed. (Pet. App. F, 162.) In Burnett’s and Rembert’s statements, Burney was easily identifiable as the person Burnett and Rembert were blaming for the victim’s death.

The jury returned a general verdict against Burney. (Pet. App. Q, 373–74.)

B. The penalty phase

At penalty, the prosecution introduced evidence of domestic violence incidents between Burney and a former girlfriend when Burney was a juvenile, and an incident shortly before Burney’s arrest involving his stepfather, Lee Thomas. No incidents were charged. Four victim family members testified about the impact of Kondrath’s death. (Pet. App. F, 133–34.)

The defense presented only a brief glimpse of Burney’s life. Several of his friends and relatives testified about their relationship with Burney. Two mental health experts rendered opinions about Burney’s mental state prior to the shooting and the impact of his traumatic background. Sheriff deputies testified about Burney’s positive adjustment in custody. (See (Pet. App. F, 134.)

Burney introduced his unredacted statement to police—something the defense tried to do in the guilt phase to aid in a duress defense. (Pet. App. S, 411–78.) The unredacted statement made clear to the jury that Burney acted at the behest of Burnett. It was Burnett who stole the victim’s wallet (Pet. App. L, 324–26, 328), Burnett who stopped at a friend’s house to get a shotgun (Pet. App. L, 326–28), Burnett who shot up a rival gang’s neighborhood (Pet. App. L, 350), and Burnett who pressured Burney to “kill him” (Pet. App. L, 330–31). As Burney told police through tears, he “did everything” and only shot into the trunk—while looking away—because he was afraid that Burnett would shoot him. (Pet. App. L, 331, 336–37.) He sobbed throughout the interrogation, asked for his mother, and repeatedly apologized for the victim’s death. (Pet. App. L, 331, 333.)

The jury recommended death, and the trial judge later accepted that recommendation. (Pet. App. R, 400–10.)

III. Burney’s postconviction proceedings

Burney filed his opening brief on direct appeal on February 19, 2003, and the CSC affirmed his convictions and sentence in a reasoned decision on July 30, 2009. (Pet. App. F, 120–206.)

On April 25, 2005, while his direct appeal was pending, Burney filed a petition for writ of habeas corpus before the CSC (hereinafter “initial petition”). The claim at issue in this petition was raised therein as Claim

VIII. (Pet. App. H, 208–23.) The CSC summarily denied the initial petition on December 17, 2009. Claim VIII was denied on the merits and also barred procedurally. (Pet. App. E, 119.)

Immediately thereafter, on December 19, 2009, Burney filed in this Court a petition for writ of certiorari, presenting questions related to the introduction of inadequately-redacted codefendant statements at trial, and to California’s imposition of a death sentence where the existence of aggravating factors was not found beyond a reasonable doubt. Certiorari was denied on March 1, 2010.

Burney filed his operative federal petition for writ of habeas corpus on March 1, 2011. (Pet. App. C, 54–55.) The district court subsequently granted a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), allowing Burney to exhaust claims that prior counsel neglected to present in state court. Burney filed a second habeas petition before the CSC on February 28, 2011 (hereinafter “exhaustion petition”). The CSC summarily denied that petition on August 17, 2016, denying the relevant claim solely on procedural grounds. (Pet. App. D, 118.)

After the stay in the federal action was lifted and the merits of the claims and applicability of procedural bars were fully briefed, the district court issued an order on July 14, 2020 that dismissed certain claims as procedurally barred and denied selected claims on the merits. The court

denied the remainder of the claims, including the instant claim, on February 8, 2022. (Pet. App. C, 54–117.) It issued a certificate of appealability (“COA”) only as to Burney’s claim of judicial misconduct. (Pet. App. C, 116–17.)

Burney appealed the district court’s judgment to the Ninth Circuit. Burney raised the certified claim of judicial misconduct and two uncertified claims, including the instant claim that his confession was involuntary and thus inadmissible.² The court denied a COA, opining that the merits are sufficiently clear against Burney that the COA standards are not met:

We conclude that a fairminded jurist could agree with the state court that Burney’s confession was voluntary, and we believe that such conclusion is not debatable. Nor do we think it debatable that a fairminded jurist could agree that it was not objectively unreasonable for the state court to decide that Burney had failed to make a *prima facie* showing that his confession was involuntary, and thus he was not entitled to further state court proceedings such as an evidentiary hearing.

(Pet. App. A, 33–34.)

The court concludes that “The totality of the circumstances show that Burney’s confession was voluntary. There was no inherently coercive police activity. The detectives did not use threats, violence, promises, or deception

² Burney also argued that his confession was inadmissible under the Fifth Amendment on the basis that his waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), was also involuntary, as the voluntariness of a *Miranda* waiver is subject to the same standard as the due process inquiry into the voluntariness of a confession. *See Colorado v. Connelly*, 479 U.S. 157, 169–70 (1986); *Berghuis v. Thompson*, 560 U.S. 370, 385 (2010)). The Fifth Amendment argument is not raised here.

to obtain Burney’s confession.” (Pet. App. A, 35.) Though the court acknowledges that the transcript of Burney’s interrogation spans 63 pages, “we found nothing in the record showing that the duration of the interrogation was lengthy.” (Pet. App. A, 36.) In addition, the court finds that “the record defeats Burney’s claim that his youth and mental deficits rendered the detectives’ questioning coercive.” (Pet. App. A, 36.) “While it is true that Burney’s IQ scores showed that—at age 18—Burney had the mental age of a 15-year-old, the transcript of the interrogation nevertheless demonstrates that Burney’s will was not overborne.” (Pet. App. A, 36.)

The court not only ignores indicia of coercion in the record, it turns them around to portray the interrogators as caring. “At the start of the interrogation, for example, they offered Burney something to drink and a blanket. When Burney became emotional, the detectives offered him a tissue... .” (Pet. App. A, 36.) Finally, “[t]hat Burney did not agree to the detectives’ suggestions [about how the crime went down] supports that his confession was deliberate and ‘the product of a free and rational will.’” (Pet. App. A, 38.)

The court finds that no reasonable jurist could disagree, so a certificate of appealability is denied. As discussed below, the Ninth Circuit’s analysis does not withstand scrutiny, and fails to support its determination that there can be no debate that the state court’s denial of relief was reasonable.

REASONS FOR GRANTING THE WRIT

I. The Court should grant certiorari because the Ninth Circuit's decision conflicts with this Court's authority.

Under Rule 10(c), certiorari is appropriate if a United States court of appeals “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Here, the Ninth Circuit decision in *Burney* flouts this Court's clearly established precedent applying due process protections to vulnerable suspects undergoing harsh, contextually coercive interrogations in high-pressure cases, particularly when the ultimate result could be a sentence of death. Certiorari is appropriate to protect the due process rights guaranteed by the Constitution.

Due process precludes admission of a confession where the accused's “will was overborne” by circumstances of the interrogation. *Schneckloth*, 412 U.S. at 226; *Mincey v. Arizona*, 437 U.S. 385, 401-02 (1978). If an accused's will is overborne, a confession is deemed involuntarily given. *Rogers v. Richmond*, 365 U.S. 534, 544 (1961); *see also Doody v. Ryan*, 649 F.3d 986, 1021 (9th Cir. 2011) (“any confession obtained through the overbearance must be suppressed.”). In determining the voluntariness of a confession, courts examine the totality of the circumstances to determine if an accused's due process rights are violated. *Withrow*, 507 U.S. at 689. Among the relevant circumstances to consider are the length of the interrogation and the

characteristics of the accused being interrogated, including but not limited to his maturity, education, physical condition, and mental health. *Withrow*, 507 U.S. at 693. Also relevant to the inquiry are the interrogation techniques used by police. *Id.*: see also *Miller v. Fenton*, 474 U.S. 104, 109 (1985) (“certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect” are relevant to the due process inquiry). Coercive police activity can be the result of psychological pressure. *Cook v. Kernan*, 948 F.3d 952, 968-69 (9th Cir. 2020).

II. Burney’s capital conviction was obtained in violation of his due process rights.

A. The evidence was overwhelming that Burney’s will was overborne in his interrogation.

Shaun Burney’s statement to police on June 16, 1992, was key evidence that the prosecution relied on in securing his conviction. The combination of Burney’s well-documented mental impairments and the improper interrogation techniques meant that Burney’s statement adduced from the interrogation should not have been introduced at trial. No fairminded jurist could disagree. *Harrington v. Richter*, 562 U.S. 86, 98 (2011).

The central foundation to the prosecution’s case against Shaun Burney was his statement in his June 16, 1992, interrogation by Detectives Paul

Gallagher and Georgia Erickson of the Anaheim Police Department. (Pet. App. J, 260–322.) At the time of Burney’s arrest, he was eighteen years old and suffering from, *inter alia*, symptoms of bipolar disorder and post-traumatic stress disorder (PTSD). (See Pet. App. Q, 393–94 (psychologist trial testimony about Burney’s bipolar disorder diagnosis and suicidal ideation); Pet. App. I, 224–26 (Dr. Vicary, declaration); Pet. App. R, 398–99 (psychiatrist Dr. Stephen Wells trial testimony about Burney’s depression and suicidal ideation as a young child); Pet. App. G, 207, and Pet. App. I, 227 (Dr. Wells, declaration about Burney’s 83 verbal IQ score); Pet. App. I, 229–59 (psychologist in state habeas proceeding describing Burney’s PTSD due to persistent abuse, neglect, and abandonment through his life).) As Dr. Wells opined, Burney was functioning at the intellectual level of a fifteen-year-old child at the time of the shooting and his subsequent arrest and interrogation. (Pet. App. I, 243.)

Practically, this meant that Burney could not handle complex social situations, conflict, or stress. (See Pet. App. Q, 391 (describing Burney as “pretty much a child” at the time of the crime given his “intellectual development, social maturity, [and] psychological functioning”).) His profound trauma history—including estrangement from his father, frequent beatings from his mother, periods of homelessness, early drug use at ten years old, and childhood suicidality that prompted intervention in elementary school—meant

that he had no coping abilities or even use of sound judgment. (Pet. App. I, 234–53.) These deficits were compounded by his adolescent brain, making him less mature and more susceptible to influence than adults. As a result of these impairments, Burney was more susceptible to being persuaded with suggestive facts and vulnerable to pressure to change his recollection when prompted by adults. (Pet. App. H, 212.)

It was this vulnerable teenager who found himself sitting in an interrogation room with Detectives Erickson and Gallagher. To start, Burney’s interrogation with the detectives was the longest of the three accused. (*See* Pet. App. J, 260–322 (63-page Burney transcript); the transcript of Burnett’s interrogation is 40 pages long, while Rembert’s interrogations over two different days fill 56 pages of transcript.) In his interrogation, the detectives took Burney through the sequence of events at least six different times from start to finish. (Pet. App. J, 260–322.) Throughout the questioning, the detectives pressured Burney to agree to answers that fit the police version of events. (*See* Pet. App. J, 279 (detective: “We know the whole story. Okay? And this is not the right story. It’s a piece of the story, but it’s not the right story, okay?”); Pet. App. J, 267 (detective: “you’re not remembering quite right [. . .] Wednesday morning about 3:00, you leave Allen’s apartment.”).)

When Burney failed to give the detectives the “right” answers, the detectives pressured Burney by repeating the questions over and over and

then embedding the desired answer into the question until Burney parroted that answer back to them. By this tactic, for example, they extracted from Burney an admission that Burnett and Rembert went over to Howard's house to retrieve the shotgun. (*See* Pet. App. J, 279 (after Burney consistently answered that he did not know why Burnett and Rembert went to Howard's house, the detectives primed Burney: "And the reason that you went over to [Howard's] house was to pick up the shotgun, straight out.")) This repeated pressure is also how the detectives extracted a statement that Burnett and Rembert were "looking for Watergate Crips" gang members to shoot up that night. (*Compare* Pet. App. J, 296 (Burney answering he did not know anything about looking for rival gang members) *with* Pet. App. J, 296, 311 (after detectives asked, "Did he go looking for some Watergate Crypts [*sic*]?", Burney responded, ". . . and I guess you could say we . . . we were looking for Watergate, okay?").)

The effect on Burney of the detectives' pressure and coercion was powerful. Burney started crying about a third of the way into the interrogation, with the transcript noting his sobbing throughout the procedure. (*See, e.g.*, Pet. App. J, 280–81, 305 (noting that Burney did not answer several questions because he was "Crying.")) The detectives frequently had to stop the interrogation because of Burney's sobs. (*See, e.g.*, Pet. App. J, 305 (detective: "Let's take a minute and let him get himself together."; "Now,

take a minute to compose yourself.”; “Okay, man. Try and pull yourself together.”; “Shaun, do you need some . . .”).)

So too does the transcript note Burney’s stuttering, reflecting a panicked inability to get his words out. (*See, e.g.*, Pet. App. J, 281 (“I don’t . . . I don’t even know how . . . how he got involved in it. That’s . . . that’s just . . . that’s it.”; “I wasn’t . . . I wasn’t even really talking ‘cause I was . . . I was . . . I was . . . I was . . . I was mad.”).) At one point, the detective showed Burney pictures and Burney responded: “The only thing I want to do is call my mom.” (Pet. App. J, 305.) When Burney took responsibility for the shooting, he kept repeating how sorry he was to the detectives. (*See* Pet. App. J, 305 (“I did it. Please you just don’t all goddamn, I’m so fucking sorry.”); Pet. App. J, 313–14 (“All I can say is I’m sorry and I know sorry don’t help.”).)

B. The Ninth Circuit’s finding that Burney’s confession was voluntary is in conflict with this Court’s precedents.

The combination of Burney’s mental impairments and the detectives’ interrogation techniques resulted in an unconstitutionally obtained statement that was not given knowingly, voluntarily, and intelligently. The Ninth Circuit was presented with a record that demonstrated Burney’s will was overborne. *Mincey*, 437 U.S. at 401-02. *Schneckloth* required the court to consider the totality of the circumstances present, including consideration of factors such as

youth, low intelligence, lack of advice, and repeated and prolonged questioning. *Schneckloth*, 412 U.S. at 226. *Withrow* mandated an analysis that factored in the length of the interrogation, and the suspect's education, physical condition, and mental health. *Withrow*, 507 U.S. at 693.

The court here was presented with evidence of Burney's well-documented symptoms of mental illness, his mental, emotional, and psychological immaturity, and his eighteen-year old brain. (Pet. App. Q, 391–92.) This constellation of impairments and traits made him vulnerable to stress, overwhelmed by complex situations like a police interrogation for a serious crime, and prone to being influenced through questioning by two adults in law enforcement and persuaded to adopt a story they shaped. (Pet. App. H, 212–15.) Indeed, Burney's sobs and desperate request to call his mother reflect his vulnerability during the interrogation.

Additionally, the court was required to apply the dictates of *Schneckloth* here to evaluate the coercive interrogation as a factor in the voluntariness of Burney's statement. *McKinney v. Ryan*, 813 F.3d 798, 811 (9th Cir. 2015). When Burney answered repeatedly that he did not know the answer to a specific question, detectives embedded the answer in their questions until Burney parroted it back to them to get them to stop. (Pet. App. J, 279.) Detectives pressured Burney to agree to answers that fit in with the police narrative, insisting to Burney that he was not "remembering quite right" and

then advanced their narrative. (Pet. App. J, 267.) When applying the law to these facts, no fairminded jurist could disagree that the totality of the circumstances confirms that Burney's statement was involuntary.

This violation of Burney's due process rights had a substantial and injurious effect or influence on the verdict, rendering the trial fundamentally unfair. *See Brecht v. Abrahamson*, 507 U.S. 619, 638 n.9 (1993). Burney's statement was emphasized repeatedly in both opening and closing statements to prove the prosecution's theory of murder—indeed, Burney's statement meant that the prosecution and both Rembert's and Burnett's counsel argued in closing that Burney was the planner and actual “slayer” that night. (*See* Pet. App. P, 372); *see also Doody*, 649 F.3d at 1021-23 (on habeas review, citing the lack of physical evidence and emphasis of the statements in closing argument to show how seriously the petitioner was harmed).

In the end, Burney was the only one of the three young men on trial to be sentenced to death. The striking severity of the sentence illustrates the constitutional violation; had Burney's will not been overborne into providing a confession, or had the statement been suppressed on the basis of his extreme vulnerability, the outcome would likely have differed. This Court should grant certiorari to reinstate the due process protections against unconstitutionally coercive interrogations that the courts below have set aside.

CONCLUSION

Based on the foregoing, Burney respectfully requests that this Court grant his petition for certiorari.

Respectfully submitted,

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