IN THE
SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2023-1614
	:	
Appellant,	:	On Appeal from the
	:	Hamilton County
v.	:	Court of Appeals,
	:	First Appellate District
ISAIAH MORRIS,	:	
	:	Court of Appeals
Appellee.	:	Case No. C-230108

MERIT BRIEF OF AMICI CURIAE THE OHIO INNOCENCE PROJECT AND THE INNOCENCE PROJECT IN SUPPORT OF APPELLEE ISAIAH MORRIS

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STATEMENT OF AMICI INTEREST

Amici curiae are the Ohio Innocence Project and the Innocence Project, non-profit organizations dedicated to providing pro bono legal services to incarcerated people whose innocence may be established through the development of a post-conviction record.

The Ohio Innocence Project at University of Cincinnati College of Law is a free legal clinic which provides legal and investigatory services to indigent clients who are innocent, were wrongfully convicted, and are fighting to secure their freedom. The Ohio Innocence Project has freed 42 innocent people across the state who have together served more than 900 years in prison for crimes they did not commit.

The Innocence Project has served as counsel or otherwise provided assistance in hundreds of successful post-conviction exonerations of innocent persons nationwide. Since its founding in 1992, the Innocence Project has used DNA and other scientific advances to prove innocence. Beginning with Glen Woodall, it has helped free or exonerate 251 people. Collectively, Innocence Project clients have spent more than 3900 years behind bars. The Innocence Project also seeks to prevent wrongful convictions by researching the causes of wrongful conviction and pursuing legislative, administrative, and judicial reform initiatives designed to enhance the truth-seeking functions of the criminal justice system, and to prevent the admission of unreliable evidence in courts around the country. Such reforms include those designed to provide subjects of police

interrogation with adequate rights and safeguards to help prevent against the elicitation of coerced, false confessions—a primary cause of wrongful convictions.

Both the state and federal constitutions guarantee a right to have counsel present during police interrogation. *See State v. Roe*, 41 Ohio St. 3d 18, 27 (1989) (holding that under the Fifth, Sixth, and Fourteenth Amendments as well as Article I of the Ohio Constitution, a criminal defendant has a constitutional right to have counsel present at all "critical stages of his trial"); *State v. Ellison*, 2024-Ohio-1377, ¶ 17 (10th Dist.) ("critical stages" include post indictment interrogations); *accord* U.S. Const. amend. VI; Ohio Const., art. I, § 10.

However, since the United States Supreme Court's ruling in *Montejo v. Louisiana,* 556 U.S. 778, 786 (2009), the federal Constitution no longer mandates that a waiver of the Sixth Amendment right during police interrogation itself be counseled. Here, the Court is presented with the question of whether the federal *Montejo* rule is coextensive with the Ohio Constitution's right-to-counsel provision, or whether state law forbids the police from extracting uncounseled waivers of the right to counsel once that right has attached. As explored below, the federal rule leaves Ohio's most vulnerable citizens open to manipulation by interrogating officers and leaves the innocent at risk of succumbing to the inherently coercive pressures of an uncounseled police interrogation and falsely confessing.

Amici have a compelling interest in urging this Court to hold that, once the right to counsel pursuant to the Ohio Constitution has attached, a defendant cannot validly waive that right during police interrogation without meaningful consultation with, and the presence of, their attorney. Likewise, amici have an interest in urging this Court to hold that police interrogation must cease upon a subject's request for counsel, however ambiguous. Honoring ambiguous invocations of counsel made by individuals under the high stress of police interrogation is especially important to protect those most vulnerable to police coercion, and, consequently, those at a heightened risk of falsely confessing.

INTRODUCTION

In the last several decades, false confessions have been revealed as a leading cause of wrongful convictions, accounting for nearly one-third of all known DNA exonerations,[1] and approximately twelve percent of all known exonerations nationwide.[2] Scientific study of the phenomenon of false confession has revealed that certain psychologically coercive police tactics—including tactics that are commonplace in American police interrogation rooms—can induce the innocent to wrongfully admit guilt

[1] *See* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/ (accessed July 9, 2024).

[2] *See* National Registry of Exonerations, *Exoneration Detail List* https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (accessed July 9, 2024) (of 3,550 exonerations recorded in the database, 450 included a false confession as a factor contributing to the conviction).

to crimes they did not commit. *See generally* Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law & Hum. Behav. 3, 4–7, 16–19 (2010) (discussing common police interrogation tactics that amount to proven "risk factors" for false confession).

The United States Supreme Court has long recognized the "compulsion inherent" in uncounseled police interrogation and the corresponding risk that police "[i]nterrogation procedures may . . . give rise to a false confession[.]" *Miranda v. Arizona*, 384 U.S. 436, 455 n.24, 458 (1966); *see also Corley v. United States*, 556 U.S. 303, 320–21 (2009) ("'[C]ustodial police interrogation, by its very nature, isolates and pressures the individual,' and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed[.]") (internal citation omitted; alteration in original) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)) (citing Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 906–07 (2004)). Accordingly, for more than two decades, the Sixth Amendment to the federal Constitution protected citizens from uncounseled interrogation by police, once the citizen's federal right to counsel attached. *See Michigan v. Jackson*, 475 U.S. 625, 636 (1986), *overruled by Montejo*, 556 U.S. at 797 (establishing a bright-line rule that "if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceeding, of his right to counsel, any waiver of the defendant's right to counsel for that police initiated-interrogation is invalid"); *State* v. *Broom*, 40 Ohio

St. 3d 277, 285 (1988) (recognizing same) (citing, *inter alia*, *Maine v. Moulton*, 474 U.S. 159, 177 n.14 (1985)).

Then, in 2009, the Supreme Court reversed course and, in *Montejo v. Louisiana*, 556 U.S. at 786, held that, even after the Sixth Amendment right to counsel attaches, a defendant can waive that right during a police interrogation without counsel. So long as the accused relinquishes the federal right to counsel voluntarily, knowingly, and intelligently—which can generally be accomplished through the voluntary execution of a *Miranda* waiver—the Sixth Amendment is not violated. *Id.* (reasoning that *Miranda* rights and waiver thereof "include the right to have counsel present during the interrogation . . . even though the *Miranda* rights purportedly have their source in the *Fifth* Amendment," rather than the Sixth Amendment.). Thus, pursuant to federal law under *Montejo,* counsel need not be present for nor advise the accused about whether to waive this right during the interrogation. *Id.* ("[T]he decision to waive need not itself be counseled.").

In this case, Appellee Isaiah Morris was interrogated for two hours by police without his court-appointed counsel present, after his right to counsel had attached. Police began the interrogation by having Mr. Morris execute an uncounseled *Miranda* waiver. After about 45 minutes of questioning, Mr. Morris expressed a desire to speak

with police through counsel,[3] yet the interrogating officers did not stop the interrogation nor provide him with access to his counsel. The interrogation continued and police ultimately obtained a confession from Mr. Morris.[4]

The trial court granted Mr. Morris's motion to suppress his statements, ruling that although Mr. Morris's Sixth Amendment right to counsel under the United States Constitution had not been violated, Article I, § 10 of the Ohio Constitution "prohibits the State from introducing at trial the State's interrogation of a Defendant who was represented by counsel, when the interrogation proceeded without counsel present." (T.d. 60 at 9–10). In addition to holding that the initiation of the interrogation violated Article I, § 10, the trial court held, in the alternative, that Mr. Morris unambiguously invoked his right to counsel during the interrogation when he asked, "[l]ike, I can't talk to a lawyer?", and that all of his statements from that point on accordingly were subject to suppression. (*Id.* at 13–14.)

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[3] More specifically, "the trial court found that Morris asked, 'I can't see a lawyer?' roughly 45 minutes into the interrogation. Detective Glecker replied, '[A]nybody can talk to a lawyer.' And Morris responded, '[Y]eah, cause that's, we goin' to do that cause I don't know what you are talking about.' Detective Glecker continued the interrogation." *State v. Morris*, 2023-Ohio-4105, ¶ 9, (1st Dist.), appeal allowed, 2024-Ohio-763 (alterations in original).

[4] Amici are, of course, in no position to know whether Mr. Morris's statements are in fact true or false, and amici take no position on the veracity of Mr. Morris's statements.

The government appealed both of these rulings ,and the Court of Appeals affirmed the trial court's suppression ruling, holding that, pursuant to the Ohio Constitution, "when an accused's right to counsel has attached and an attorney has been secured, any uncounseled waiver of the defendant's right to counsel in a state-initiated interrogation is deemed invalid." *Morris* at ¶ 55.

This Court is now presented, for the first time,[5] with the question of whether this State's constitutionally enshrined right to counsel is coextensive with the *Montejo* rule, or is more protective of Ohio's citizens. As discussed below, amici submit that the *Montejo* rule places this State's most vulnerable citizens at risk of false confession and, consequently, wrongful conviction. Thus, there is a "compelling reason" to recognize that the Ohio Constitution affords greater protections for Ohioans than the federal Constitution, as the high courts of Kansas, Kentucky, and West Virginia have all concluded under their respective state laws. *See generally infra* Section II.

In addition, to ensure that those most vulnerable to coercive police interrogation have meaningful access to the guiding hand of counsel in the interrogation room, amici submit that this Court should hold that under the Ohio Constitution, when a subject of custodial interrogation makes *any* indication of a desire for an attorney, the police

[5] Although this Court was presented with a related issue in *State v. Taylor*, 2024-Ohio-1752, that case is inapposite, as it dealt only the right to counsel under the Sixth Amendment to the United States Constitution, not the right to counsel under the Ohio Constitution.

questioning must cease, but for any necessary clarification of the invocation, as several states require under state law. *See e.g.*, *State v. Gonzalez*, 249 N.J. 612, 629 (2022) (reasoning that "a suspect need not be articulate, clear, or explicit in requesting counsel; any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel" (quoting *State v. Reed*, 133 N.J. 237, 253 (1993)). Honoring ambiguous requests for counsel made by individuals under the high stress of police interrogation is especially important to protect those who are most vulnerable to police coercion and, consequently, at a heightened risk for false confessions and wrongful convictions. *See generally infra* Section III.

In sum, for the reasons set forth below, amici respectfully urge this Court to interpret the Ohio Constitution in a manner that will best safeguard against the risk posed to wrongfully accused, innocent Ohioans subjected to police interrogation by: (1) prohibiting any waiver of a defendant's right to counsel during custodial interrogation after a suspect's right to counsel has attached, unless counsel is present and is provided an opportunity to consult with the defendant regarding such waiver, and (2) whether or not the right to counsel has already attached, requiring police to cease interrogating a suspect who invokes or makes reference to their right to counsel, even if that invocation or reference is ambiguous.

STATEMENT OF FACTS

Amici rely on the facts as set forth by the parties.

ARGUMENT

I. Widely Used Police Interrogation Tactics Have the Power to Elicit False Confessions from the Innocent; the *Montejo* Rule is an Inadequate Safeguard Against such Coercion, Particularly for Those Most Vulnerable to False Confession.

A. Certain Psychologically Coercive Police Tactics Place Innocent People at Risk of False Confession and, Consequently, Wrongful Conviction.

False confessions are a leading cause of wrongful convictions. Of the first 375 DNA exonerations to have been achieved in the United States, which spanned the period from 1989 to 2020, nearly one-third involved false confessions.[6] And of all exonerations recorded nationwide since 1989, more than twelve percent of those cases involved a false confession.[7] Experts agree that these statistics *underrepresent* the prevalence of false confessions, given that they do not include cases where false confessions were disproven before trial, where there was no DNA evidence available to support an exoneration, where the defendant pleaded guilty, or where there was no post-conviction review. *See* Kassin et al., 34 Law & Hum. Behav. at 3 (describing exonerations as "most surely represent[ing] the tip of an iceberg" in the number of actual false confessions for these

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[6] *See* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/ (accessed July 9, 2024).

[7] *See* National Registry of Exonerations, *Exoneration Detail List* https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (accessed July 9, 2024) (of 3,550 exonerations recorded in the database, 450 included a false confession as a factor contributing to the conviction).

reasons); Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Psychiatry & L. 332, 332 (2009) (similarly describing documented cases of false confessions as "appear[ing] to represent the proverbial tip of the iceberg").

Since the first DNA exoneration in 1989, a robust canon of scientific research has developed, providing empirical data on the factors that can lead innocent people to inculpate themselves. Scientists have determined that there are two categories of such "risk factors": "situational" risk factors that arise from the situation (such as the way law enforcement conduct an interrogation and the environment in which the interrogation takes place) and "dispositional" risk factors involving the person's status and characteristics (such as cognitive impairment, mental health problems, or a history of substance abuse). *See* Kassin et al., 34 Law & Hum. Behav. at 16–23.

Several of the proven "situational" risk factors for false confession are tactics associated with the "Reid Technique" of interrogation. See *id.* at 7. Named after one of its founders, John Reid, the Reid Technique has been the "most widely publicized and probably most widely used" interrogation method in the United States since its inception in the 1960s. Gohara, *Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 Fordham Urb. L. J. 791, 808 (2006). The Reid Technique instructs officers to isolate the suspect in a "small private room, which increases his or her anxiety and incentive to escape." Kassin et al., 34 Law & Hum. Behav.

at 7. Interrogating officers then engage in a nine-step process that is intended to "lead suspects to see confession as an expedient means of escape." *Id.*

Although the Reid Technique is effective in eliciting confessions from custodial subjects, it relies in part on interrogation tactics that pose a risk for "the ultimate failure of the suspect interview process—a false confession from an innocent suspect," and in fact the method's guilt-presumptive, psychologically manipulative tactics have coerced many innocent people to falsely confess. Eastwood & Watkins, *Psychological Persuasion in Suspect Interviews*, 11 Investigative Interviewing Rsch. & Prac. 54, 57 (2021) (noting that "[t]he propensity for Reid-style approaches to create false confessions has been demonstrated within both laboratory paradigms and real-world cases" (citations omitted)).

For example, a common police interrogation tactic known as "minimization"—an umbrella term referring to interrogation techniques "designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question"—is both a situational risk factor for false confession and a core tenet of the Reid Technique. Kassin et al., 34 Law & Hum. Behav. at 12, 18. The Reid Technique instructs officers to "develop a 'minimizing theme' that, among other things, downplays the moral seriousness of the offense." Luke & Alceste, *The Mechanisms of Minimization*, 44 L. & Hum. Behav. 266, 267 (2020). Specifically, the Reid Technique instructs officers that they should propose a binary choice to their suspects—either the suspect committed the crime for an

inexcusable or repulsive reason, or simply because of a mistake or lapse in judgment that reflects only basic human nature. *See* Reid, *Selecting the Proper Alternative Question*, https://reid.com/resources/investigator-tips/selecting-the-proper-alternative-question (accessed July 9, 2024) (explaining that the "choices presented in an alternative question generally contrast an undesirable characteristic of the crime to one that is desirable" but "accepting either choice results in the first admission of guilt"); Inbau et al., *Criminal Interrogations and Confessions* 293–303 (2013) (instructing officers on how to utilize the "alternative question" technique to "weaken the suspect's resistance" to confession and to "impl[y] a rather sympathetic attitude on the part of the investigator"). The Reid trainers offer various examples, such as: "Did you plan this thing out for months in advance, or did it just happen on the spur of the moment?" or, "Did you steal that money to buy drugs and booze, or was it used to help out your family?" Reid, *Selecting the Proper Alternative Question*, https://reid.com/resources/investigator-tips/selecting-the-proper-alternative-question (accessed July 9, 2024).

Through empirical research, the use of such minimization tactics has been directly linked to an increased rate of false confession. Kassin et al., 34 Law & Hum. Behav. at 12, 18. The tactic is powerfully coercive because it communicates falsely and "by implication that leniency in punishment is forthcoming upon confession," and thus may "lead innocent people who feel trapped to confess." *Id.* Specifically, one scientific study has found that the use of minimization techniques significantly increased "the false

confession rate" by as much as 200%. Leo, *Structural Police Deception in American Police Interrogation: A Closer Look at* Minimization *and* Maximization, in 43 *Interrogation, Confession, and Truth* 199 (2020); *see also* Kassin et al., 34 Law & Hum. Behav. at 16–19 (describing dangers of minimization). Experts thus overwhelmingly agree that "[m]inimization tactics that communicate sympathy and moral justification for a crime lead people to infer leniency upon confession" and place them at heightened risk of false confession. Kassin & Redlich, *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psychologist 63, 70–72 (2018).

Minimization tactics are routinely used in conjunction with "maximization" tactics—tactics which function to convince the suspect that the interrogator is sure of the suspect's guilt, such as by citing (real or fictitious) evidence and dismissing the suspect's objections. Kassin et al., 34 Law & Hum. Behav. at 12; see also Inbau et al., *Criminal Interrogation and Confessions* at 164 (instructing interrogating officers to express "absolute certainty in the suspect's guilt"); Amon, *The Enduring Lesson of John Lilburne's Saga: Self-Incrimination in the Criminal Justice System*, 78 Mo. Bar No. 1 (2022) ("If the accused continues to deny culpability, law enforcement is advised to persistently bat away their denials (thus infusing the very atmosphere with assumptions of guilt) until the confession is finally given."), https://news.mobar.org/the-enduring-lesson-of-john-lilburnes-saga-self-incrimination-in-the-criminal-justice-system/. Archival studies of proven false confessions reveal that minimization and maximization "are almost always

present in police interrogations leading to proven false confessions." Leo, *Interrogation, Confession, and Truth* at 199 (emphasis omitted). And, significantly, scientific research has revealed that "the combined use of minimization and maximization techniques increased the false confession rate from 3% to 43%." *Id.* (emphasis and citations omitted). Accordingly, the "experimental studies show that minimization and maximization techniques—especially those that manipulate suspect's perception of tangible negative and positive consequences depending on whether he confesses or continues to deny—substantially increase the risk of eliciting false confessions and substantially decrease the accuracy of confession evidence." *Id.* (emphasis omitted).

Perhaps the most dangerously coercive situational risk factor is the "false evidence ploy"—a tactic that involves presenting the suspect with non-existent evidence of guilt, such as fictional eyewitness identification or fabricated incriminating forensic results. Kassin et al., 34 Law & Hum. Behav. at 28. The false evidence ploy has been "implicated in the vast majority of documented police-induced false confessions." *Id*. at 12; see also Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1097–99 (2010) (describing various cases of innocent people falsely confessing in response to the false evidence ploy). In addition to the myriad real-world examples of the coercive power of the false evidence ploy, laboratory experiments have demonstrated that the tactic can and does induce innocent people to falsely confess to crimes or other misconduct, including, for example, "cheating, in violation of a university honour code[,] . . . stealing money from the 'bank'

in a computerized gambling experiment . . . and recalling past transgressions, including acts of violence." Snook et al., *Urgent Issues and Prospects in Reforming Interrogation Practices in the United States and Canada*, 26 Legal & Criminological Psychol. 1, 10 (2021) (citations omitted). Indeed, the "presentations of false information" are so powerful that they can "substantially alter subjects' visual judgments, beliefs, perceptions of other people, behaviors toward other people, emotional states, . . . self-assessments, memories for observed and experienced events, and even certain medical outcomes, as seen in studies of the placebo effect." Kassin et al., 34 Law & Hum. Behav. at 17 (citing eleven "highly recognized [classic studies] in the field" that "revealed that misinformation renders people vulnerable to manipulation" (citations omitted)); Kassin & Redlich, 73 Am. Psychologist at 70 (misinformation "can alter a person's memory for that event."). Consequently, presentation of false evidence during an inherently stressful interrogation can even produce a "coerced-internalized" false confession—an incriminating admission by an innocent suspect who, persuaded by the interrogators' misrepresentation of the evidence, begins to doubt their memory of the event and wrongfully believe in their own guilt. *See* Kassin et al., 34 Law & Hum. Behav. at 15; *see also* Perillo & Kassin, *Inside Interrogation: The Lie, The Bluff and False Confessions*, 35 Law & Hum. Behav. 327, 328 (2010).

In a similar vein, "bluffing"—a "common and less deceptive alternative to the false evidence ploy" in which "interrogators pretend to have evidence without additionally asserting that this evidence necessarily implicates the suspect"—has been shown to

induce false confessions. Perillo & Kassin, 35 Law & Hum. Behav. at 335. Based on such ploys, the suspect may feel "trapped" and believe that the only option is to cooperate. *See* Kassin et al., 34 Law & Hum. Behav. at 28. Indeed, "[t]o the innocent person, the 'threat' of proof implied by [a] bluff [by law enforcement] represents a promise of future exoneration that, paradoxically, makes it easier to confess." Kassin, *The Psychology of Confessions*, 4 Ann. Rev. L. & Soc. Sci. 193, 207 (2008). In other words, innocent people may be *more* likely to confess in the face of such evidence ploys because they are convinced that they will later be proven innocent, and, paradoxically once again, "innocents are more likely to submit to interrogation because they see no dangers in it," which can place them in a position to be coerced. Nirider et al., Litigator's Handbook of Forensic Medicine, Psychiatry and Psychology § 12:10 (2023).

Because commonly used police interrogation tactics have the power to induce the innocent to falsely confess, it is critical that this Court grant Ohio citizens meaningful access to counsel inside the interrogation room, lest a false confession be elicited and then lead to the tragic injustice of wrongful conviction. Indeed, once a false confession is uttered in an interrogation room, it often biases the investigative process, catalyzing a course of events that lead to the wrongful conviction of the innocent "confessor." A false confession is difficult to detect as false and thus typically shapes the investigators' beliefs about what occurred, s*ee* Leo, 37 J. Am. Acad. Psychiatry & L. at 340 (discussing the "strong biasing effect" of such a confession "on the perceptions and decision-making of

criminal justice officials"), and often leads to investigations being closed or evidence of innocence being overlooked, *see* Kassin, *Why Confessions Trump Innocence*, 67 Am. Psychologist 431, 433 (2012). Various studies have shown that confessions are "potent enough to corrupt other evidence in a case, such as the judgments of experienced polygraph examiners, eyewitnesses, and individuals judging handwriting samples, often resulting in an array of [inaccurate conclusions] and creating the appearance of corroboration." See Appleby & Kassin, *When Self-Report Trumps Science: Effects of Confessions, DNA, and Prosecutorial Theories on Perceptions of Guilt*, 22 Psychol. Pub. Pol'y & L. 127, 137 (2016) (citations omitted). As one troubling example, a study found that fingerprint experts actually *altered seventeen percent of the determinations they had already made* in response to learning that a suspect had confessed, so as to make their conclusions about the fingerprints match the confession. *See* Kassin et al., 34 Law & Hum. Behav. at 23–24. Similarly, eyewitnesses who learn that a suspect has confessed to a crime may change their identifications or may identify a suspect more forcefully than they previously had. *See id.* Finally, a confession—genuine or false—is powerful evidence in front of a jury, and in many cases may be the piece of evidence that convinces the jury to convict. *See* Appleby & Kassin, 22 Psychol. Pub. Pol'y & L. at 127–29 (Compared with other kinds of evidence, "confessions have more impact on verdicts[.]"). In fact, 22% of exonerees whose wrongful convictions were based on confession evidence now known to be false were convicted *despite* the availability of exculpatory DNA evidence at the time

of trial.[8] *See also* Appleby & Kassin, 22 Psychol. Pub. Pol'y & L. at 127–28 (discussing a report analyzing 19 cases in which confessors to rape and/or murder were tried and convicted despite having been exculpated by DNA tests).

B. Individuals Who Are at an Increased Risk of Falsely Confessing to Crimes They Did Not Commit Are Also Likely to Have Diminished Capacity to Understand and Invoke Their *Miranda* Rights Without Counsel.

Although anyone—even an average adult, without cognitive or mental health issues—can succumb to coercive police interrogation tactics and falsely confess, "the risk of undue influence is higher among adolescents, individuals with compliant or suggestible personalities, and those with intellectual impairments or diagnosed psychological disorders." *See* Kassin & Redlich, 73 Am. Psychologist at 75. Indeed, a trove of academic, social science literature, and case law recognizes the increased rates at which individuals with such "dispositional" risk factors are pressured into false confessions. *Id.; see also* Kassin et al., 34 L. & Hum. Behav. at 19–22, 25. Significantly, people with such "dispositional" risk factors generally also have diminished capacity to comprehend their *Miranda* rights and thus are less likely to voluntary waive or invoke such rights without the assistance of counsel.

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[8] *See* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/ (accessed July 9, 2024).

For example, young people are more likely to succumb to interrogation pressure and falsely confess to crimes they did not commit because the human brain is not fully developed until a person's mid-twenties. *See* Insel et al., Center for Law, Brain & Behavior at Mass. Gen. Hosp., *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers* (Jan. 27, 2022), https://clbb.mgh.harvard.edu/white-paper-on-the-science of-late-adolescence/; Steinberg, *Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science*, 16 Current Directions in Psychological Sci. 55, 55–59 (2007) (describing how the prefrontal cortex and other regions involved in planning, making decisions, and exercising judgment are still developing until a person's twenties). Further, the stress of an interrogation is particularly dangerous ground for adolescents, given their comparatively lesser judgment and decision-making ability. *See* Owen-Kostelnik et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 Am. Psychologist 286, 295 (2006); *see also J.D.B.* v. *North Carolina*, 564 U.S. 261, 269 (2011) ("That risk [of false confessions] is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile." (citation omitted)). The exoneration data shows just how dramatic this risk is. A majority of false confessions involve individuals under the age of 25, and of the DNA exonerations

involving false confessions from 1989–2020, 49% of those who falsely confessed were no more than 21 years old, and 31% were no more than 18 years old.[9]

Young people, who are categorically more vulnerable to interrogation coercion, are also less likely to understand their *Miranda* rights compared with adults. *See* Goldstein et al., *Evaluation of* Miranda *Waiver Capacity*, in APA Handbook of Psychol. and Juvenile Justice 467, 475 (Heilbrun ed., 2016); *see also* Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 Calif. L. Rev. 1134, 1152–54 (1980) (describing high rates of misunderstanding of different parts of *Miranda* warnings). Younger individuals "have greater difficulty conceiving of a right as an absolute entitlement that they can exercise without adverse consequences," Feld, *Police Interrogation of Juveniles An Empirical Study*, 97 J. of Crim. L. and Criminology 219, 229–30 (2006), or may fail to appreciate that those rights are relevant to their situation, Kassin et al., 34 Law & Hum. Behav. at 6. Thus, even if those rights have been read to a young suspect, there remains a significant chance that the suspect would not understand them or have capacity to invoke them, absent consultation with appointed counsel, who can fully explain the nature and consequences of the situation and the decision to speak or not to speak with law enforcement.

[9] *See* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, https://innocenceproject.org/dna-exonerations-in-the-united-states/ (accessed July 9, 2024).

Like young people, those with cognitive impairments, mental health issues, or other intellectual disabilities are at heightened risk to be coerced into false confession and, typically, also have diminished capacity to comprehend and invoke *Miranda*. *See e.g.*, Rogal, *Protecting Persons with Mental Disabilities from Making False Confessions: The Americans with Disabilities Act As A Safeguard*, 47 N.M. L. Rev. 64, 66 (2017) (studies reveal that "persons with mental disabilities are particularly susceptible to the methods and pressures of interrogation[,] [and] mental disabilities impair the ability of individuals to understand and invoke their Constitutional rights, which are supposed to protect against coercive interrogations.").

Experts on false confessions overwhelmingly agree that "[i]ndividuals who have intellectual disabilities are particularly vulnerable to the pressures of social influence" which are used by officers during police interrogation. Kassin & Redlich, 73 Am. Psychologist at 72. The United States Supreme Court has acknowledged as much, noting that people with intellectual disabilities have "'a special risk of wrongful execution' because," among other things, "they are more likely to give false confessions[.]" *Hall v. Florida*, 572 U.S. 701, 709 (2014). Justices of this Court have similarly recognized the risk of false confessions with respect to such individuals. *See, e.g., In re T.D.S.*, 2024-Ohio-595, ¶ 78 (Brunner, J., dissenting) (writing that the possibility of a false confession could not be ignored where, among other things, the appellant was young and had a low IQ); *In re M.W.*, 2012-Ohio-4538, ¶ 62 (O'Connor, J., dissenting). This too is borne out by data: of

the DNA exonerations involving false confessions from 1989–2020, 9% of such exonerees suffered from mental health or capacity issues.[10] *See also* Garrett, *Contaminated Confessions Revisited*, 101 Va. L. Rev. 395, 400 (2015) (noting that of the proven false confessions studied, "one-third involved individuals who were mentally ill or had an intellectual disability").

Those with cognitive impairments and intellectual disabilities who are at heightened risk for false confession are less likely to be able to fully understand their *Miranda* rights without consulting counsel. Cloud et al., *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. Chi. L. Rev. 495, 501 (2002) ("[M]entally [disabled] people simply do not understand the *Miranda* warnings. Virtually all of the disabled subjects failed to understand the context in which interrogation occurs, the legal consequences embedded in the rules or the significance of confessing, the meaning of the sentences that comprise the warnings, or even the individual operative words used to construct the warnings."); *see also* Kassin et al., *The Right to Remain Silent: Realities and Illusions*, in The Routledge Int'l Handbook of Legal and Investigative Psychology 5 (Bull et al. eds., 2019) (*Miranda* comprehension "difficulties extend to . . . people with intellectual impairments").

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[10] *See* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, https://innocenceproject.org/dna-exonerations-in-the-united-states/ (accessed July 9, 2024).

Notably, just as average people—those without any "dispositional" risk factors—can give false confessions, average people often do not fully understand their *Miranda* rights. Despite the *Miranda* rule's purpose of providing suspects with the knowledge and rights necessary to prevent or disengage from a coercive interrogation if they so choose, studies reveal that people, particularly when under the stress of interrogation, "continue to harbor misconceptions about the meaning and function of *Miranda* rights." Smalarz et al., *Miranda at 50: A Psychological Analysis*, 25 J. Current Directions in Psychological Sci. 455, 455–60 (2016). Indeed, "[e]ven in favorable conditions, educated adults in the U.S. . . . struggle to fully comprehend their rights . . . ." Kassin et al., *The Right to Remain Silent: Realities and Illusions*, at 4.

The stress associated with police interrogation and accusations of wrongdoing further undermine *Miranda* comprehension, even in adults without cognitive or mental vulnerabilities. *See* Smalarz et al., 25 J. Current Directions in Psychological Sci. at 456; Scherr & Madon, "*Go Ahead and Sign": An Experimental Examination of Miranda Waivers and Comprehension*, 37 Law & Hum. Behav. 208, 209 (2013); Rogers et al., D*ecrements in Miranda Abilities: An Investigation of Situational Effects Via A Mock-Crime Paradigm*, 35 Law & Hum. Behav. 392, 400 (2011). Moreover, police officers often engage in tactics to diminish the importance of the *Miranda* waiver and present the waiver as a benefit to the accused, thereby further decreasing a subject's attention to and comprehension of *Miranda*. *See e.g.*, Kassin et al., *The Right to Remain Silent: Realities and Illusions*, at 6

(discussing police practice of minimizing importance of *Miranda* to extract a waiver); *see also* Scherr & Madon, 37 Law & Hum. Behav. at 214.

Accordingly, those at heightened risk of false confession are the same group of people who are both less likely to comprehend their *Miranda* rights and less likely to assertively or affirmatively invoke their rights, leaving them without adequate protection in the interrogation room. *See, e.g.*, Kassin et al., *The Right to Remain Silent: Realities and Illusions*, at 4–6. The United States Supreme Court's decision regarding the scope of the Sixth Amendment right to counsel in *Montejo*, 556 U.S. at 778, does not account for these realities. As discussed *infra*, this Court, following its tradition of interpreting the Ohio Constitution so as to balance the pursuit of truth with the need to protect the innocent and to ensure fair, just outcomes, should not follow it. *See Kirk v. State*, 14 Ohio 511, 512 (1846) ("[C]areful has been the constitution to secure the pure and impartial administration of criminal justice, and to guard the accused from the possibility of oppression and wrong[.]").

II. Safeguarding Against False Confessions and Wrongful Convictions Is a "Compelling Reason" to Decline to Interpret Article I, § 10 of the Ohio Constitution as Coextensive with the Federal Sixth Amendment Right to Counsel Under *Montejo*.

As discussed *supra*, an uncounseled police interrogation, in which common, yet psychologically coercive tactics are employed, can place the innocent—and especially the innocent who have "dispositional" risk factors—at grave risk of false confession. *Montejo* rescinded the absolute right of criminal defendants, whose federal right to counsel had

attached, to have the advice of counsel during police interrogation. The *Montejo* decision thus removed an important safeguard against false confessions: the mandatory presence of counsel during police interrogation after the right to counsel has attached, and the suppression of any confession that would follow an uncounseled interrogation in such circumstances. As one court has aptly noted, such a rule allows police to "adeptly place a wedge between the accused and his lawyer," thereby "degrad[ing] the right to counsel" and leaving a subject of custodial interrogation without protection against interrogation coercion. *Keysor v. Commonwealth*, 486 S.W.3d 273, 281 (Ky. 2016).

This Court is under no obligation to follow *Montejo* as a matter of state law. It is axiomatic that this Court "reserve[s] the right to adopt a different constitutional standard pursuant to the Ohio Constitution, whether because the federal constitutional standard changes or for any other relevant reason." *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1, 10 (1999). As this Court has explained, particularly when it comes to "individual rights and civil liberties," it is not bound by the United States Supreme Court's interpretation of the federal constitution because "[t]he Ohio Constitution is a document of independent force." *Humphrey v. Lane*, 2000-Ohio-435, (interpreting the Ohio constitution's free exercise protection as broader than the federal corollary). This Court has stressed that it will differ from a federal standard when there is a "persuasive" or "compelling" reason to do so, for example where there are sufficient differences in constitutional text between federal and state constitutional provisions. *Compare State v. Robinette*, 80 Ohio St. 3d 234,

238 (1997) (finding no "persuasive reason for a differing interpretation" where search and seizure text was "virtually identical"), *with State* v. *Williams*, 184 N.E.3d 29, 40 (2021) (Brunner, J., dissenting) ("When considering how Article I, Section 10 may differ from the Sixth Amendment, [this Court] ha[s] stated that [it] look[s] for 'compelling reasons why Ohio constitutional law should differ from the federal law.'" (quoting *State v. Wogenstahl*, 75 Ohio St. 3d 344, 363 (1996))). The science and data on the risk of false confession and, consequently, wrongful conviction, set forth above, provide a compelling reason to differ from *Montejo* and provide Ohio citizens with a robust and absolute right to counsel in the interrogation room, once that right has attached.

Ohio would not be the first state to recognize the reality that *Montejo* leaves a state's most vulnerable citizens at risk of succumbing to coercive police manipulation, and hold that its state laws provide greater protections to its citizens than the Sixth Amendment to the federal Constitution. Notably, of the four states that have considered whether *Montejo* is consistent with their respective state constitutions or laws, three (75%) have ruled that it is not. The highest courts of West Virginia, Kansas, and Kentucky have all rejected *Montejo* under their states' laws and recognized that *Montejo* fails to protect their citizens from the type of police coercion that breeds false confessions and results in

wrongful convictions. *See State v. Bevel*, 231 W.Va. 346 (2013); *State v. Lawson*, 296 Kan. 1084 (2013); *Keysor*, 486 S.W.3d at 273. This Court should do the same. [11]

Specifically, in 2016, the Supreme Court of Kentucky held that "*Montejo's* degradation of the right to counsel is antithetical to our perception of the right to counsel provided under Section 11 of the Kentucky Constitution." *Keysor* at 281.[12] Likewise, the Supreme Court of West Virginia declined to follow the *Montejo* rule, holding instead that "the right to counsel under the Sixth Amendment to the United States Constitution, as interpreted in *Montejo*, [does not] provide the same right to counsel under . . . the West Virginia Constitution[.]" *Bevel* at 355.[13] Similarly, the Supreme Court of Kansas ruled in 2013 that under Kansas's statutory rule, a defendant could not waive counsel at a post-

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[11] Amici are aware of just one state supreme court that has assessed whether the *Montejo* rule applies under its state's right to counsel provision and come to the opposite conclusion: *State v. Delebreau*, 362 Wis. 542, 565 (2015) ("We see no reason to deviate from our prior practice of interpreting the Wisconsin Constitution's right to counsel as coextensive with the right under the federal constitution."). However, the *Delebreau* court reasoned that because Wisconsin's constitutional language was "virtually identical" to the federal Sixth Amendment's language, it was compelled to follow *Montejo*. *See id.* at 562–65 . Ohio's constitutional language on the right to counsel is different than the Sixth Amendment, and thus *Delebreau*'s reasoning does not apply here. *See Robinette*, 80 Ohio St. 3d at 238 ("[W]here the provisions are similar and no persuasive reason for a differing interpretation is presented, this court has determined that protections afforded by Ohio's Constitution are coextensive with those provided by the United States Constitution.").

[12] "In all criminal prosecutions the accused has the right to be heard by himself and counsel[.]" Ky. Const. § 11.

[13] "In all [trials of crimes and misdemeanors], the accused . . . shall have the assistance of counsel[.]" W. Va. Const. art. III, § 14.

indictment interrogation by simply waiving their *Miranda* rights. *Lawson*, 296 Kan. at 1099 ("[T]he district court erred in refusing to suppress the uncounseled statement Lawson made during the police-initiated interrogation after Lawson had invoked his right to the assistance of counsel under K.S.A. 22–4503. Neither the testimony of [the interrogating officer] nor the *Miranda* rights waiver form were sufficient evidence to establish that Lawson knowingly and intelligently waived his statutory entitlement to the assistance of counsel.").[14]

As the Supreme Court of Kentucky wrote: "Constitutional protections were put in place by the framers of the state and federal constitutions to hinder oppressive impulses by retarding the government's ability to incarcerate suspected offenders. Fairness, not expedience, is the touchstone of our criminal justice system." *Keysor* at 279. The *Keysor* court also recognized this concern, and cautioned that following *Montejo* and allowing police to secure confessions from uncounseled defendants risks unreliable confessions: "We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation." *Id.* at 279–80 ((quoting *Escobedo v.*

[14] "A defendant charged by the state of Kansas in a complaint, information or indictment with any felony is entitled to have the assistance of counsel at every stage of the proceedings against such defendant[.]" Kan. Stat. Ann. § 22–4503(a).

Illinois, 378 U.S. 478, 488–89 (1964)). The *Keysor* court grappled with the issue of police abuse in a way that the *Montejo* court did not:

> Away from the watchful eye and pragmatic advice of counsel, police are left with an easy opportunity to adeptly place a wedge between the accused and his lawyer. For example, the police may entice an unsuspecting defendant with favors his attorney cannot obtain, like alluring assurances of better outcomes and offers of leniency in exchange for cooperative waivers. *Montejo's* degradation of the right to counsel is antithetical to our perception of the right to counsel provided under Section 11 of the Kentucky Constitution.

Id. at 281. This is no less true in Ohio than it was in Kentucky.

Just as the Kentucky, Kansas, and West Virginia Supreme Courts recognized, there are dangers inherent in allowing the accused to waive their right to counsel without the advice of counsel. The evidence to support this view, both in terms of data regarding wrongful convictions and social science research, has only become stronger since these courts' rulings. By interpreting Article I, § 10 of the Ohio Constitution to follow the *Jackson* rule[15] rather than *Montejo*, this Court would avoid such dangers and help prevent against the elicitation of false confessions from innocent Ohioans coerced confessions. There can be no more "compelling" a reason to interpret the Ohio Constitution differently from federal law than to help avoid the tragic miscarriage of justice that results from false confession and wrongful conviction.

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[15] As noted, in *Jackson* the U.S. Supreme Court held that, under the Sixth Amendment, waivers of a defendant's right to counsel were invalid unless the accused initiated the communication. *Jackson*, 475 U.S. at 636, *overruled by Montejo*, 556 U.S. at 778.

III. To Help Protect Ohio's Citizens from Interrogation Coercion That Can Lead to False Confessions, This Court Should Hold That, Under the Ohio Constitution, Interrogation Must Cease upon Any Request for Counsel, However Ambiguous.

Under longstanding Fifth and Sixth Amendment precedent, if a suspect invokes the right to counsel at any time during interrogation, questioning must stop. *See e.g.*, *McNeil v. Wisconsin*, 501 U.S. 171, 176–77 (1991); *State v. Knuckles*, 65 Ohio St. 3d 494, 495–96 (1992); *State v. Broom*, 40 Ohio St.3d 277, 285 (1988) ("Under either Fifth Amendment or Sixth Amendment analysis, once an accused has invoked a right to counsel, the state must cease all questioning unless counsel is present."). The United States Supreme Court has held, however, that the Fifth and Sixth Amendments to the United States Constitution do not require the cessation of questioning in response to ambiguous or equivocal invocations of the right to counsel. *Davis v. United States*, 512 U.S. 452, 459 (1994). This Court has recognized the same limit under the federal Fifth Amendment protection against self-incrimination. *State v. Jackson*, 2006-Ohio-1, ¶93 ("Under the Fifth Amendment, an accused must clearly invoke his constitutional right to counsel in order to raise a claim of deprivation of counsel."). Some Ohio courts have also applied the *Davis* rule to the Sixth Amendment right to counsel. *See, e.g.*, *State v. Williams*, 2003-Ohio-7160, ¶ 44 (10th Dist.).

This Court, however, has never squarely addressed whether, under Article I, § 10 of the Ohio Constitution, an ambiguous or equivocal request for counsel—under either the Ohio constitutional protection against self-incrimination or right to counsel—is

sufficient to invoke a suspect's right to counsel, requiring the cessation of questioning by police until counsel is provided. Amici urge this Court to take the opportunity presented by this case to hold that honoring equivocal or ambiguous references to an attorney, made by an individual under the inherent stress of custodial interrogation, properly accounts for the scientifically established reality, discussed *supra*, that most people—and especially people with certain dispositional "risk factors" who are at a heightened risk of falsely confessing—cannot grasp the functional meaning of their *Miranda* rights, and thus are unlikely to invoke their rights unequivocally. For the reasons that follow, this Court should hold that Article I, § 10 of the Ohio Constitution, unlike the Fifth and Sixth Amendments to the United States Constitution, recognizes the validity of even ambiguous and equivocal invocations of the right to counsel. [16]

As noted above, when considering how constitutional provisions (including Article I, § 10) may differ from the federal constitutional standard, this Court has stated that it looks for "persuasive" or "compelling" reasons why Ohio constitutional law should differ from federal law. *See Robinette*, 80 Ohio St. 3d at 238 ("persuasive"); *Wogenstahl*, 75 Ohio St. 3d at 363 ("compelling"). There is ample justification and

[16] Although Amici submit that Mr. Morris's request for counsel in this case was clear and unambiguous, if there was any doubt, Mr. Morris—and all future subjects of interrogation in Ohio—should have their equivocal or ambiguous invocations honored

compelling reasons for Ohio courts to respect a custodial subject's ambiguous and equivocal invocations of the fundamental right to counsel.

Ohio's guarantee of counsel for the accused is a core protection embodied in the text of Article I, § 10 of the Ohio Constitution and listed first among all post-indictment rights afforded to criminal defendants. Ohio Const., art. I, §10 ("In *any* trial, in *any* court, the party accused shall be allowed to appear and defend in person and with counsel . . . ."(emphasis added)). Since the 19th century, this Court has scrupulously and consistently honored the criminal defendant's right to counsel. *See, e.g.*, *Dille v. State*, 34 Ohio St. 617, 619–20 (1878) ("The discretion which the courts of England exercised in the trial of a party accused of felony, when he was entitled to neither witnesses nor counsel, and when the court assumed to act as his counsel, can not be exercised by the courts of this state."). During this period, Ohio trial courts have "been under a frequently augmented duty to inform an accused of his rights under the Constitution of Ohio and under the statutes of Ohio, including his right to have counsel without cost to him if he is indigent." *Conlan v. Haskins*, 177 Ohio St. 65, 67 (1964) (emphasis added). That longstanding history and practice would be circumvented if the police were allowed to ignore a suspect's ambiguous or equivocal invocations of their right to counsel, rather than being required to honor or, at minimum, clarify the suspect's request.

Social science provides yet another independent compelling reason to depart from *Davis* pursuant to Article I, § 10. As discussed above, all individuals, including both

average people and those with certain dispositional risks, are at risk for not fulling understanding, and thus not invoking their rights. Race and sex may also play a role in whether the subject of interrogation feels empowered to use assertive, unequivocal language to invoke their rights. Primus, *The Future of Confession Law: Toward Rules for the Voluntariness Test*, 114 Mich. L. Rev. 1, 19 (2015) ("Social science research establishes that many people, when placed in custodial environments, are intimidated and unlikely to use assertive language. This is particularly true for women and members of certain minority groups, who are more likely to use permissive language." (citations omitted)); *Davis*, 512 U.S. at 470 n.4 (Souter, J., concurring) ("Social science confirms what common sense would suggest, that individuals who feel intimidated or powerless are more likely to speak in equivocal or nonstandard terms when no ambiguity or equivocation is meant.").

The Supreme Court of Connecticut has expressly recognized this social science and concluded that honoring ambiguous invocations of *Miranda* rights is necessary to protect the state's most vulnerable citizens against false confession and police coercion. *State v. Purcell*, 331 Conn. 318, 356–57 (2019) (reasoning that "the *Davis* majority[] fail[ed] to appreciate that its rule would disproportionately disadvantage certain suspect or quasi-suspect classes, who more commonly rely on indirect speech patterns" (citation omitted)). To follow this reasoning would hardly be anomalous. In fact, the "unambiguous invocation" test was the *minority* rule before *Davis*, with over twenty

states and at least seven federal circuits protecting to some degree ambiguous or equivocal invocations. *See* Wright, *How the Supreme Court Delivers Fire and Ice to State Criminal Justice*, 59 Wash. & Lee L. Rev. 1429, 1451 (2002) (collecting cases).

After *Davis*, the highest courts in at least eight states (Hawaii, Oregon, New Jersey, Delaware, Minnesota, Massachusetts, Mississippi, and Connecticut) have refused to follow *Davis* as a matter of state law. See *State v. Hoey*, 77 Hawai'i 17, 36 (1994); *State v. Charboneau*, 323 Or. 38, 54 (1996); *State v. Chew*, 150 N.J. 30, 63 (1997); *Steckel v. State*, 711 A.2d 5, 10–11 (Del. 1998); *State v. Risk*, 598 N.W.2d 642, 648–49 (Minn. 1999); *Commonwealth v. Santos*, 463 Mass. 273, 286–87 (2012*); Downey v. State*, 144 So.3d 146, 151–52 (Miss. 2014); *Purcell* at 321. Additionally, as recently as 2023, an Alaska appeals court declined to follow *Davis* as a matter of Alaska law, though the Alaska Supreme Court has not yet weighed in. *Ridenour v. State*, 539 P.3d 530, 535–37 (Alaska Ct. App. 2023).

This Court should follow suit under its longstanding precedent of scrupulously defending the rights of Ohio criminal defendants and adopt the following rule: "[I]f the words [of an invocation] amount to even an ambiguous request for counsel, the questioning must cease." *State v. Alston*, 204 N.J. 614, 624 (2011). However, "clarification is permitted; if the statements are so ambiguous that they cannot be understood to be the assertion of a right, clarification is not only permitted but needed." *Id.*

CONCLUSION

As this Court has aptly noted, "[a] wrongful conviction achieves justice for no one[.]" *State v. Bunch*, 2022-Ohio-4723, ¶ 51. To provide critical safeguards against coercive interrogations that place innocent people at risk of falsely confessing, and thus at risk of wrongful conviction, this Court should affirm the decision below and hold that: (1) Article I, § 10 of the Ohio Constitution prohibits any waiver of a defendant's right to counsel during custodial interrogation after a suspect's right to counsel has attached unless counsel is present for and provides meaningful consultation with the defendant regarding such waiver, and (2) whether or not the right to counsel has attached, any invocation of, or reference to, the right to counsel by a defendant, however ambiguous, must be honored, and the interrogation must stop and the interrogating officer must elicit clarification as to whether the person being questioned is asking for an attorney before proceeding with the interrogation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2024, a copy of the Merit Brief of Amici Curiae the Ohio Innocence Project and the Innocence Project in Support of Appellee Isaiah Morris was served by e-mail on the following:

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