

NO. SCWC-23-0000376

IN THE SUPREME COURT OF THE STATE OF HAWAII

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Supreme Court
SCWC-23-0000376
21-MAR-2025

STATE OF HAWAII,

Respondent / Plaintiff-Appellee

v.

CHARLES ZUFFANTE,

Petitioner / Defendant-Appellant

ORIGINAL PROCEEDINGS

CASE NO. 3CPC-22-0000376

CAAP-23-0000376

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DK. 13 BAM

INTERMEDIATE COURT OF APPEALS

The Honorable Katherine G. Leonard,
Acting Chief Judge

The Honorable Sonja M.P. McCullen

The Honorable Clyde J. Wadsworth

BRIEF OF *AMICI CURIAE* THE HAWAII INNOCENCE PROJECT AND THE INNOCENCE
PROJECT IN SUPPORT OF PETITIONER

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I. INTRODUCTION

False confessions—untrue admissions of guilt by factually innocent people during police interrogations—are a leading cause of wrongful convictions. Over three decades ago, when this Court ruled that the Hawai‘i Constitution’s due process clause does not require video recording of all custodial interrogations where feasible, *see State v. Kekona*,¹ the phenomenon of false confessions was not well understood. Indeed, the number of proven false confessions in our country has increased over *twenty fold* since this Court’s ruling in *Kekona*. *See Exoneration Detail List*, Nat’l Registry of Exonerations, <https://bit.ly/3Rihwj0> (last visited Mar. 21, 2025) (documenting that in 1994, there were 21 proven wrongful convictions based on false confessions, and today there are over 450). Moreover, in the last thirty years, an entire field of scientific study dedicated to understanding the causes of false confessions and false confessions’ impact on the adjudicatory process has developed and become, in recent years, “a mature subdiscipline of psychology[.]” Saul M. Kassin, *False Confessions: How Can Psychology So Basic Be So Counterintuitive?*, 72 Am. Psych. 951, 954 (2017). As a result of the discovery of hundreds of proven false confessions and relevant scientific research, mandatory recording of custodial interrogations by police has been shown to be a critical tool to prevent, identify, and remedy false confessions.

Video recording—an easily obtained, objective record of the precise context under which the confession was elicited—reduces the risks posed by false confessions in two ways: (1) it prevents convictions based on false confessions, by helping judges and juries recognize indicia of falsity, and (2) it prevents false confessions themselves, by deterring the most coercive police conduct that poses the gravest risks of false confession. Saul M. Kassin et al., *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, L. & Hum. Behav., at 32 (2025 advance online publication), <https://bit.ly/4hHcxDc>. Preserving an accurate record of interrogations also avoids distorted or unreliable trial testimony resulting from the natural decay of human memory over time or implicit, unconscious biases held by testifying officers. *Id.* at 16–27. Today, in recognition of the importance of creating contemporaneous, objective records of interrogations, a recording requirement has been adopted into law in the majority of the United States.

¹ 77 Haw. 403, 409, 886 P.2d 740, 746 (1994).

The instant case exemplifies the need for such mandates. Here, police arrested Petitioner Charles Zuffante after a traffic stop and took him to the Kona police station, where Hawai‘i Police Department Officer Justin Gaspar interrogated him. (Ap. Dkt. 40 at 5-6). Gaspar did not video or audio record the interrogation, nor make any contemporaneous record of the interrogation by any means; he did not even take notes. (Ap. Dkt. 40 at 6, 17–18). It was not until a week later that Gaspar attempted to memorialize his account of what Petitioner had said by drafting a written police report. (*Id.*). An additional fifteen months went by before he testified at trial about incriminating statements made by Petitioner under interrogation. (Ap. Dkt. 45 at 8–9). At trial the jury was thus left with an undoubtedly imperfect—and potentially inaccurate—recollection of what Petitioner said, what the officer said, and the interrogation tactics used to elicit Petitioner’s statements. As explained below, such details of the interrogation are precisely what is necessary to meaningfully assess the reliability of confession evidence.

The presentation at trial of *unrecorded* custodial confessions seriously erodes a defendant’s due process right to a fair trial as it puts innocent, wrongfully accused people at risk of wrongful conviction by allowing factfinders to consider a singularly persuasive form of evidence—a confession—without adequately equipping them to assess its reliability. *Amici* urge this Court to consider the overwhelming evidence, discussed below, that video recording of custodial interrogations meaningfully reduces the risk of wrongful convictions caused by false confessions. Because any wrongful conviction of an innocent person is a manifest injustice, due process under the Hawai‘i Constitution dictates that reasonable measures to effectively limit the risk of such convictions—like the recording of all custodial interrogations where feasible—be required.

II. ARGUMENT

- a. **Requiring the Electronic Recording of Police Interrogations is a Critical Safeguard Against False Confessions, a Leading Cause of Wrongful Convictions**
 - i. **False Confessions are a Leading Cause of Wrongful Convictions**

As noted, false confessions are a leading cause of wrongful convictions. Of 375 DNA exonerations tracked between 1989 and 2020, about one-third involved false confessions. *DNA Exonerations in the United States*, Innocence Project, <https://bit.ly/41CQqrN> (last visited Mar. 21, 2025). And of all known exonerations nationwide, nearly thirteen percent involved false confessions. *Exoneration Detail List*, Nat’l Registry of Exonerations, <https://bit.ly/3Rihwj0> (last

visited Mar. 21, 2025).² Archival studies of proven false confession cases reveal that “most documented false-confession cases are not [recorded].” Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Psychiatry & L. 332, 337 (2009).

As a result of decades of scientific research, experts have identified various factors associated with an increased risk that innocent people will falsely inculcate themselves in response to police interrogation. These risk factors are categorized broadly into the “dispositional” characteristics of the confessor (such as youth or cognitive disability) and the “situational” circumstances of the interrogation itself (such as the police interrogation tactics or the environment in which the interrogation occurred). See Saul Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 3–4 (2009). Many of the recognized “situational” risk factors are interrogation tactics associated with the “Reid Technique” of interrogation. See *id.* at 7.

Named after one of its creators, 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. Miriam S. 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. (2009), *supra*, at 7. After an initial interview involving “behavior-provoking questions” in which investigators look for responses thought to be indicative of guilt, suspects undergo an accusatorial interrogation process designed to produce confessions of presumed-guilty suspects through psychologically manipulative or deceptive tactics. *Id.*; Joseph Eastwood & Kerry Watkins, *Psychological Persuasion in Suspect Interviews*, 11 Investigative Interviewing Rsch. & Prac. J. 54, 56–57 (2021). For example, Reid-trained investigators may minimize a crime’s moral seriousness, supply justification, or dishonestly imply the existence of incriminating evidence—all methods that have been proven to increase the risk of false confessions. Kassin, et al. (2025), *supra*, at 10–12;

² The Innocence Project tracks only cases in which DNA testing was central to the exoneration, while the National Registry of Exonerations maintains data of all known exonerations, regardless of the type of exculpatory evidence that led to the exoneration. The National Registry of Exonerations is a well-recognized source of reliable data concerning wrongful convictions that has been cited in more than 30 court cases, as well as by a Justice of the U.S. Supreme Court, see *Jordan v. Mississippi*, 585 U.S. 1039, 1043 (2018) (Breyer, J., dissenting from the denial of certiorari); *Glossip v. Gross*, 576 U.S. 863, 911 (2015) (Breyer, J., dissenting).

Gohara, *supra* at 808–13. When the interrogation is not recorded, such tactics can be neither observed nor assessed by a defense attorney, a false confession expert, the judge, or jurors.

Such common, yet coercive, interrogation techniques are particularly effective on people with “dispositional” risk factors, such as adolescents or people with cognitive disability. Kassin, et al. (2025), *supra*, at 13–16. Paradoxically, innocent people are also especially vulnerable to coercion precisely *because of* their innocence. Owing to a “naive belief in the exonerating power of their own innocence,” they are more likely than guilty suspects to waive their *Miranda* rights and submit to questioning. *Id.* at 12–13. Combined with the stress of coercive interrogation, the power of this belief can then prompt innocent suspects, confident in future exculpation, to confess. *Id.* at 13.

The absence of an objective, contemporaneous record of an interrogation is acutely detrimental to innocent people who falsely confess. Research developed in the last three decades has repeatedly demonstrated the highly counterintuitive nature of false confessions: humans intuitively trust confessions and struggle to detect false ones, such that jurors have a difficult time relating to the idea that an innocent person would “admit” to having committed a crime. *See e.g., id.* at 19; Mark Costanzo et al., *Juror Beliefs About Police Interrogations, False Confessions, and Expert Testimony*, 7 J. Empirical Legal Studies 231, 238–39 (2010). As such, the consequences of an undetected false confession being admitted at trial are grave: “[C]onfessions have more impact on verdicts” than most other forms of evidence, including even eyewitness identification. Sara C. Appleby & Saul M. Kassin, *When Self-Report Trumps Science: Effects of Confessions, DNA, and Prosecutorial Theories on Perceptions of Guilt*, 22 Psych. Pub. Pol’y & L. 127, 127 (2016); Steven A. Drizin & Richard A. Leo, *The Problem of False Confession in the Post-DNA World*, 82 N.C. L. Rev. 891, 962 (2004). Even when *compelling evidence of innocence is present*, a false confession admitted at trial creates a significant risk of wrongful conviction. Appleby & Kassin, *supra*, at 127–29. Indeed, among exonerees whose wrongful convictions were based on confession evidence, 22% were convicted despite the availability of exculpatory DNA evidence at the time of trial. Innocence Project, *supra*; *see also* Appleby & Kassin, *supra*, at 127–28. Stated simply, jurors repeatedly credit false confession evidence over valid, objective scientific evidence of innocence. Without a contemporaneous recording of the interrogation that elicited the false confession—which allows for a nuanced, objective assessment of the conditions under which the

confession was elicited—jurors are highly unlikely to detect a confession as false and acquit an innocent “confessor.”

ii. **Since this Court Last Considered This Issue, There is Now Overwhelming Consensus That Recording of Interrogations Can Meaningfully Prevent Wrongful Convictions**

Over the past two decades, legal and academic experts on the phenomenon of false confessions have consistently recommended mandatory video recording as the most critical and effective means of preventing wrongful convictions based on false confessions. In 2009, a team of scholars, led by Saul Kassin,³ published a comprehensive report on police-induced false confessions—the first “White Paper” or “Scientific Review Paper” ever published on the topic—and provided recommendations for addressing them. Kassin et al. (2009), *supra*. The report indicated that from 1989 to 2009, over two hundred wrongfully convicted individuals were exonerated through post-conviction DNA testing and subsequently released from prison. *Id.* at 4. Fifteen to twenty percent of these wrongful convictions involved police-induced false confessions. *Id.* In 2009, the “most essential recommendation” to address the injustice of wrongful convictions obtained through false confessions was to “lift the veil of secrecy” from law-enforcement interrogations. *Id.* at 25. Specifically, the scholars wrote that all custodial interviews and interrogations of felony suspects should be videotaped, in their entirety, from a neutral camera angle. *Id.*

Fifteen years later, much has developed in the legal and academic landscape of false confessions. Thirty states now require video recording of custodial interrogations pertaining to some or all crimes; nearly one quarter of these states have imposed this requirement through judicial decision, rather than statute. See Brandon Garrett, *Jurisdictions that Record Police Interrogations*, Wilson Ctr. for Sci. & Just. (2024). Additional studies conducted since 2009 have further demonstrated the importance of video recording police interrogations, with research that demonstrates how recording “provides a more accurate account” and therefore “improve[s] factfinding.” See Kassin et al. (2025), *supra*, at 26-27. In light of these legal and scientific developments, the recommendation of experts in this field—as indicated in the second ever

³ Saul Kassin, whose work is cited throughout this brief, is a Distinguished Professor of Psychology at the John Jay College of Criminal Justice in New York and Professor Emeritus at Williams College in Massachusetts. Dr. Kassin is one of the pioneers of the scientific study of false confessions and has received a Presidential Citation Award from the American Psychology-Law Society, in addition to other awards in recognition of his work. *Saul Kassin Biography*, Williams College Department of Psychology, <https://bit.ly/4kHAVre> (last visited Mar. 21, 2025).

“Scientific Review Paper” on police-induced false confessions, published earlier this year—has remained remarkably consistent: The “most essential” recommendation is still that “all custodial interviews and interrogations of felony suspects should be videotaped in their entirety and with a camera angle that focuses equally on the suspect and interrogator.” *Id.* at 26.

iii. The Foregoing Expert Recommendations are an Outgrowth of Science and Archival Study of False Confessions

Such expert recommendations are born out of science and archival study of false confessions that demonstrate video recordings of interrogations are critical to preventing wrongful convictions. Experts recommend video recording of interrogations for three primary, evidence-based reasons: 1) contemporaneous recording during interrogations preserves an accurate and objective record, unimpeded by officers’ bias or tunnel vision; 2) video recordings serve as an effective deterrent for particularly egregious coercive police conduct during interrogations; and 3) complete video recordings of interrogations are the only way to properly assess the reliability of a confession in light of the “contamination” phenomenon.⁴

(a) *Contemporaneous Recording Is Necessary to Have an Accurate, Objective Record Unimpeded by Bias or Tunnel Vision*

Recording police interrogations in their entirety ensures that judges’ and jurors’ assessment of highly prejudicial confession evidence is not reliant on human memory—a fallible source of information that is inevitably impacted by unconscious bias. Not only does memory deteriorate over time, but studies have likewise shown that memories of conversations can be imbued with bias and marred with inaccuracies. One study of forensic interviewers of alleged child abuse victims revealed that interviewers often “neglected to report their own utterances in their verbatim notes, citing the children, not their own prompting questions, as the source of details.” Kassin et al. (2025), *supra*, at 27.

Furthermore, video recording of interrogations provides an objective record untainted by bias. See Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction*, in G. D. Lassiter & C. A. Meissner (eds.), *Police Interrogations and*

⁴ To be complete, a recording must be of the entire custodial interaction, without any pauses or stops in the video at any point. Indeed, some states impose a suppression remedy for confessions elicited in response to interrogations that are not fully recorded. See e.g., *See Flores v. State*, No. PD-1189-15, 2018 WL 2327162, at *1 (Tex. Crim. App. May 23, 2018) (unpublished) (finding that confession evidence was inadmissible because the recordings were “an inaccurate representation of the conversation between the peace officers and appellant due to the absence of over thirty minutes of the interview[,]” in violation of Tex. Code Crim. Proc. art. 38.22; art. 2.32).

False Confessions: Current Research, Practice, and Policy Recommendations, at 23–25, Am. Psych. Assoc. (discussing tunnel vision and confirmation bias in relation to false confession evidence). Experts have recognized that “even professional examiners can be tainted by confessions.” Kassin et al. (2025), *supra*, at 19 (“[T]he National Academy of Sciences published a scathing assessment of the forensic sciences, concluding that there are problems with standardization, reliability, accuracy and error, and the potential for contextual bias.”). Video recording ensures an unbiased record of both the details and timeline of interrogations that human memory cannot.

(b) *Recording Is a Deterrent for Egregiously Coercive Police Conduct*

Empirical research demonstrates that the presence of a video camera during interrogations serves as an “accountability cue,” deterring some officers from using egregiously coercive tactics that risk the elicitation of false confessions. See Kassin et al. (2025), at 26. Conversely, recording dissuades frivolous claims of coercion by subjects of interrogation. *Id.* Even absent such coercive tactics or disingenuous defenses, interrogations that have been captured by video recording will discourage disputes over how confessions were elicited. Indeed, police departments that have been required to record interrogations typically report positive responses. For example, an officer who worked in Washington, D.C., before and after a mandate to record interrogations was implemented wrote that when the mandate was “first forced upon us, . . . we fought it tooth and nail. Now, . . . we would not do it any other way.” Kassin et al. (2009), *supra* at 27.

(c) *Complete Recordings Are the Only Way to Reliably Detect “Contamination” of Confessions*

Confession contamination is a phenomenon by which police officers, intentionally or unintentionally, prompt suspects on how the crime happened, which causes innocent individuals who lack any knowledge of the crime to “parrot back an accurate-sounding narrative.” Brandon Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1053 (2010) (citing Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U. L. Rev. 979, 1119 (1997) (developing the concept of confession “contamination”)). The vast majority of false confessions involve contamination, which occurs when innocent suspects adopt facts or narratives of which they have no personal knowledge, but which have been suggested to them by police. See *id.* at 1080–82. Such contaminated false confessions often contain descriptions of narratives and motivations behind the crime, including

“statements about jealousy, revenge, sexual frustration, alcoholic intoxication, peer pressure, and other possible crime motives.” Sara C. Appleby, et. al., *Police-induced Confessions: An Empirical Analysis of Their Content and Impact*, 19:2 Psych., Crime, & L. 111, 125 (2013).

Individual cases demonstrate the potential for such contamination to occur, however unintentionally. In one instance, a detective discussing a suspect who had confessed to a crime but was later exonerated recalled reviewing the recording of the interrogation and discovering that because of his personal (incorrect) belief in the suspect’s guilt, he had unwittingly showed the innocent suspect evidence and disclosed details that the suspect later incorporated into her false confession. Kassin et al. (2025), *supra*, at 27. If this interrogation was not recorded and analyzed, such contamination would have been essentially impossible to detect.

Christopher Tapp’s case is also instructive. In May of 1998, Tapp was convicted and sentenced to life in prison for the June 1996 murder of Angie Dodge in Idaho Falls, Idaho. Initially, Tapp told the police that he and Hobbs were not involved in Dodge’s death, and that Tapp himself did not have any knowledge of her death. However, over the course of seven polygraph examinations and psychologically coercive interrogations, Tapp’s account changed, with him later claiming that Hobbs had killed Dodge alone, that Hobbs had raped and murdered Dodge with one accomplice, that Hobbs had done so with a different accomplice, and then finally that Tapp himself was involved in the assault and murder of Dodge. When DNA testing completed during the investigation contradicted Tapp’s statements that various individuals had been involved in the rape of Dodge, Tapp altered his account again and again.

Many of Tapp’s interrogations and polygraph tests were video recorded. During the trial, one detective testified that Tapp knew what Dodge had been wearing *before* he was shown photographs of the crime scene. However, post-conviction examination of the video recordings of police interrogations revealed that Tapp never mentioned what Dodge had been wearing until *after* police showed him crime scene photographs. In 2016, Tapp’s lawyers filed a motion for post-conviction relief, relying on videotapes demonstrating that he had been coerced and deceived throughout the interrogations, and that his confession was unreliable, given that the police provided Tapp with the relevant details about the crime. Ultimately, in 2019, after spending over two decades wrongfully incarcerated, Tapp’s murder conviction was vacated, due in part to video recordings of his interrogations. *See Christopher Tapp*, Innocence Project, <https://bit.ly/4c26g3R> (last visited Mar. 21, 2025). Without recordings, detailed, yet false, contaminated confessions are

likely to go undetected in post-conviction proceedings and may prevent exoneration of innocent people who falsely confessed.

b. To Help Prevent Wrongful Convictions, this Court Should Hold that Electronic Recordings of Police Interrogation Are Required Under Hawaii’s Due Process Provision or, in the Alternative, Via Its Supervisory Powers

“The due process guarantee of the Hawai‘i Constitution serves to protect the right of an accused in a criminal case to a fundamentally fair trial.” *State v. Glenn*, 148 Haw. 112, 119–20, 468 P.3d 126, 133–34 (2020) (quoting *State v. Matsumoto*, 145 Haw. 313, 328, 452 P.3d 310, 325 (2019)). The requirement of fundamental fairness means that “[t]he trial court has the ‘ultimate obligation to promote justice in criminal cases.’” *Glenn*, 148 Haw. at 125, 468 P.3d at 139 (quoting *State v. Haanio*, 94 Haw. 405, 414, 16 P.3d 246, 255 (2001), overruled on other grounds by *State v. Flores*, 131 Haw. 43, 314 P.3d 120 (2013)). And “the doctrine of stare decisis is subordinate to legal reasons and justice.” *Robinson v. Ariyoshi*, 65 Haw. 641, 653 n.10, 658 P.2d 287, 297 n.10 (1982). Thus, this Court “should not be unduly hesitant to overrule a former decision when to do so would bring about what is considered manifest justice.” *Id.*

Every wrongful conviction represents a manifest injustice. “Nothing undermines our criminal justice system more than the conviction of innocent defendants based on unreliable evidence.” *State v. Cabagbag*, 127 Haw. 302, 320, 277 P.3d 1027, 1045 (2012) (Acoba, J., dissenting in part). A wrongful conviction is especially unjust when it could have been prevented by an interrogating officer simply recording the interrogation and “confession” using available equipment or even an app on their cell phone. Over thirty years ago, when the scientific study of false confessions was in its infancy, this Court ruled that the Hawai‘i Constitution’s due process clause does not require video recording of all custodial interrogations where feasible. *Kekona*, 77 Haw. at 409, 886 P.2d at 746. As detailed *supra*, the overwhelming consensus of experts in the field today is that mandated recording of interrogations can prevent both false confessions and wrongful convictions. Overturning *Kekona*—a decision rendered *before* the phenomenon of false confessions was understood or comprehensively studied—is compelled by modern scientific consensus. Such consensus regarding the effectiveness of a simple measure that will prevent wrongful convictions is an appropriate “impetus for a change in [this Court’s] approach.” *Cabagbag*, 127 Haw. at 313, 277 P.3d at 1038.

Moreover, “[i]n an adversarial system, the right to a fair trial may be compromised when the defendant is required to build a defense based upon the State’s investigation.” *State v. Tetu*, 139 Haw. 207, 220, 386 P.3d 844, 857 (2016). Criminal defendants, facing an interrogating officer’s hearsay testimony, must either let their own purported confession go un rebutted or waive their right against self-incrimination and take the stand to try to explain why they confessed falsely. But there is no need for this Hobson’s choice. Modern police departments have the resources to record interrogations whether in the field or the precinct. Even if that technology fails, every police officer carrying a cell phone can use it to record a custodial interrogation. And “increasing the evidence available to both parties[] enhances the fairness of the adversary system.” *Id.* (quoting *State v. Pond*, 118 Haw. 452, 464, 193 P.3d 368, 380 (2008)).

Even if this Court declines to recognize a due process protection in this context, it should—in the alternative—exercise its supervisory powers to adopt a new procedural requirement consistent with the foregoing rule. *Cf. Cabagbag*, 127 Haw. at 315, 277 P.3d at 1040 (“This court has previously invoked its supervisory powers to adopt new procedural requirements to prevent error in the trial courts”). Implementation of such a requirement will increase public confidence in both law enforcement and the criminal legal system, since the public will know that judges and jurors were able to evaluate confessions directly, rather than through the filter of an officer’s testimony. Courts will no longer need to entertain the “swearing contests” arising as challenges to unrecorded confessions. Just as it protects suspects from conviction based on false confessions, the transparency created by interrogation recordings will protect against untrue claims of officer misconduct. And because this Court’s rule would govern the conduct of all Hawai‘i law enforcement agencies, a unified policy would ensure that the rights of criminal defendants are equally respected across the state. No matter the doctrinal path it chooses, because maintenance of the present rule works a fundamental injustice to criminal defendants’ due process rights, *amici* submit that adoption of the proposed rule is appropriate.

III. CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court rule in favor of Petitioner on the second question presented and hold that, pursuant to this State’s due process provision, police must record all custodial interrogations, where feasible.

Honolulu, Hawai'i, March 21, 2025

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CERTIFICATE OF PROOF OF SERVICE

The undersigned hereby certifies that on this date, March 21, 2025, one copy of the foregoing document and this certification of proof of service were duly served upon the following via JEFS addressed to:

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