No._____

In the Supreme Court of the United States

[redacted]

Petitioner,

v.

[redacted]

Respondent.

On Petition for Writ of Certiorari to

the Indiana Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A confession, the product of a custodial interrogation, must be voluntarily given and not the mere product of police psychological coercion in order to be admissible at the trial of the accused as proof of the crime under both the Self-Incrimination Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, same of which must be proved by the prosecution by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489, 92 S.Ct. 619, 626-27, 30 L.E.d.2d 618, 627 (1972). A confession is involuntary if it is obtained by overbearing a person's free will, and as such, the voluntariness of a confession is to be determined by the totality of the circumstances without any consideration of the reliability or probable truth or falsity of the confession. *Rogers v. Richmond*, 365 U.S. 534, 81 S.Ct.735, 5 L.Ed.2d 760 (1961). These standards noted, where the un-refuted expert testimony of social scientist [redacted] established that [redacted] confession was obtained only through the application of a precise psychologically coercive police interrogation technique, whereby confession was consistently linked by the interrogating police officer with help and minimal punishment, and denial of the crime with imprisonment and maximum punishment, regardless of guilt or innocence, as the only polarized choices and outcomes of the custodial interrogation, thereafter leading to confession, is such interrogation tactic a violation of the Self-Incrimination Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment?

LIST OF PARTIES

All parties to this matter are enumerated in the caption of this Petition for a Writ of Certiorari.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, [redacted] respectfully prays that a Writ of Certiorari issue to review the judgment below of the Indiana Court of Appeals.

I. Opinions Below.

The Memorandum Decision (unpublished) of the Indiana Court of Appeals on the merits of the certified (by the trial court) and accepted (by the Indiana Court of Appeals) issues for interlocutory appeal appears at Appendix "A". Indiana Rule of Appellate Procedure 14(B). Additionally, the order denying transfer for discretionary review by the Indiana Supreme Court of this Memorandum Decision appears at Appendix "C". Indiana Rule of Appellate Procedure 57(B),(H).

II. Jurisdiction.

The date on which the highest Indiana state court, namely the Indiana Court of Appeals, decided this case was on [redacted] (Appendix "A"). A copy of the Memorandum Decision on the certified and accepted interlocutory appeal appears at Appendix "A". Indiana Rule of Appellate Procedure 52(A)(2). A timely Petition to Transfer to the Indiana Supreme Court for discretionary review was filed, and same was denied on [redacted] Indiana Rule of Appellate Procedure 57(C)(1).

The Court's jurisdiction to review this case is invoked pursuant to 28 U.S.C. § 1257(a) and United States Supreme Court Rule 10, [redacted] having asserted below, and asserting herein, deprivation of rights secured by the United States Constitution.

III. Constitutional Provisions Involved.

A. Amendment V.

"No person…shall be compelled in any criminal case to be a witness against himself…"

B. Amendment XIV.

"No…State [may] deprive any person of life, [or] liberty…without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV. Statement.

A. Factual Background Incident to Confession.

On [redacted] was a licensed daycare operator, running Guardian Angel Childcare from her home in [redacted] (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). [redacted] Wilson was one of the nine children enrolled, and in attendance, at her daycare that day. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

[redacted] was a little fussy when his mother, Heather Wilson, brought him to daycare this day. (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). During the morning hours, [redacted] has maintained that she laid [redacted] down on the couch in her living room, and turned to go back to the room where [redacted] bed was located to get a diaper. *Id.* Then [redacted] heard [redacted] "hit the floor". *Id*. She turned and ran back to him, and he appeared to have stopped breathing. *Id.* [redacted] performed blow-by rescue breathing and called 911. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]

Emergency personnel arrived, and [redacted] was transported by ambulance to Riverview Hospital and then to St. Vincent Hospital. (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). [redacted] was then requested to come to the [redacted] Police Department the same evening to be interviewed. (Appendix of Appellant for the Indiana Court of Appeals at p. [redacted]). She complied, was *Mirandized*, and the interview started at about 6:30 p.m. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

During this custodial interrogation, [redacted] steadfastly maintained that [redacted] rolled off the couch, and that she took appropriate action by performing rescue breathing and calling 911. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]). This was despite [redacted] interrogation technique, at least at the outset, whereby [redacted] indicated that if [redacted] admitted to the crime she would get help and minimal punishment, and if she continued to deny, she would get the maximum punishment. In the course of same, [redacted] sought [redacted] input on whether she should have counsel, and he responded and linked obtaining counsel to the interrogation dichotomy itself, wherein if she did so, he would not be able to help her (and presumably the "bad" outcome would result). (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). [redacted] simply wanted her to confess to shaking [redacted] (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). Ultimately, [redacted] agreed to confess to what ever [redacted] wanted her say: "I'll say I shook him but I didn't. I'll tell you that if that's what you want me to tell you." *Id.* She confessed. *Id.*

B. Trial Court Suppression Motion, Hearing, and Denial.

Based on the confession, the matter was then referred to the [redacted] Prosecutor's Office, and or about [redacted] was charged with Battery, a Class B Felony, and Neglect of a Dependent, a Class B Felony. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]). Thereafter, on [redacted] filed her Motion to Suppress her confession. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]). The central thesis of her Motion to Suppress was that her confession was psychologically coerced and involuntarily given during the custodial interrogation. *Id.*

The matter came before the trial court for hearing on the Motion to Suppress on [redacted] and again on [redacted] (Appendix of Appellant for Indiana Court of

Appeals at pgs. [redacted]). At the hearing of [redacted] testified that the confession obtained from [redacted] whether true or false, and despite any environmental factors, such as IQ, time and duration of the interrogation, threats and/or promises (these were not necessary under voluntariness analysis as developed herein), was obtained only by utilizing an overwhelming psychologically coercive police interrogation technique (which he precisely identified and analyzed thereat), all such that [redacted] had no effective choice but to confess to the crime. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

At the hearing on [redacted] the police officers assigned to the case, [redacted] and lead investigator, [redacted] testified to [redacted] mental acuity on the day of the alleged crime and at the time of her statement, which was later the same day. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

C. Interlocutory Appeal of Suppression Denial.

By its Order of [redacted] the trial court denied [redacted] Motion to Suppress. (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). The issues regarding suppression were then certified for an interlocutory appeal, and the Indiana Court of Appeals accepted same. (Appendix "A"). On [redacted] the Indiana Court of Appeals handed down its Memorandum Decision (not published), affirming the trial court's denial of the Motion to Suppress. (Appendix "A").

The Indiana Court of Appeals applied the totality test to determine whether [redacted] free will was overborne and the confession involuntary. (Appendix "A", at p. [redacted] of Memorandum Decision). In the Memorandum Opinion, the Indiana Court of Appeals found that there was no coercive police conduct. *Id.* It further determined that [redacted] was effectively impeached because he had never spoken to [redacted] before the time he met her

at the suppression hearing, and that the trial court was free to disregard this sole expert's testimony. (Appendix "A", at pgs. [redacted] of Memorandum Decision). Finally, under the given evidentiary standard, the Indiana Court of Appeals found substantial, probative evidence of voluntariness under the Due Process Clause. *Id.* Precisely, it reached this legal holding that the confession was voluntary under the totality test because (1) the total interrogation was less than two hours, (2) there was no violence or threats, (3) [redacted] was *Mirandized*, (4) [redacted] had been a business woman for several years, and (5) there was no evidence of any mental impairment at the time of the confession. (Appendix "A", at pgs. [redacted] of Memorandum Decision).

D. Denial of Transfer to Indiana Supreme Court for Discretionary Review.

[redacted] timely sought discretionary transfer and review of the Indiana Court of Appeals Memorandum Decision–Not for Publication on [redacted] Indiana Rule of Appellate Procedure 57(B)(2). On [redacted] the Indiana Supreme Court denied transfer. (Appendix "C"). Based on the foregoing, [redacted] now seeks Certiorari, all within the time limitations of the Supreme Court of the United States. Supreme Court of the United States Rule 30.1.

V. Reasons for Granting the Petition.

A. The History of Confessions Eschews Coercion.

Perhaps as late as the time of the formation of the original colonies, a confession, despite if obtained by torture, was treated as a conviction. *See, e.g.,* Richard P. Conti, *The Psychology of False Confessions*, Vol. 2, No. 1, Journal of Credibility Assessment and Witness Psychology (1999). Slowly over the course of decades and centuries, physically and otherwise obtained, confessions, the sole product of coercion, have become disfavored in varying degrees. *Id.*

Recognizing torture as a bright-line form of coercion, this Court has stated "[t]he rack and torture chamber may not be substituted for the witness stand." *Brown et al. v. Mississippi*, 297 U.S. 278, 285, 286, 56 S.Ct. 461, 465, 80 L.Ed. 682 (1936). Custodial interrogations are now assessed for voluntariness by the totality-of-the-circumstances test.

Since *Chambers v. State of Florida*, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716 (1940), this Court has recognized that coercion can be psychological in nature: ". . . .coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn v. State of Alabama*, 361 U.S. 199, 206 80 S.Ct. 274, 279, 4 L.Ed.2d 242 (1960).

In *Miranda v. Arizona*, 384 U.S. 436, 444 86 S.Ct. 1602, 16 L.Ed2d 694 (1966), this Court found that the mere reliance on the totality-of-the-circumstances test alone raised the risk of overlooking an involuntary custodial confession, a risk that this Court found unacceptably great when the confession is offered in the case in chief to prove the defendant's guilt. The Court found that something more than the totality test was necessary and adopted the *Miranda* warnings. *Id.*

Under the present state of this Court's jurisprudence, where evidence of custodial confession is sought to be admitted at trial where *Miranda* warnings have been given and voluntariness is still at issue, a totality-of-the-circumstances test must demonstrate by a preponderance of the evidence showing that the self-incriminating statement was not "compelled" under the Self-Incrimination Clause of the Fifth Amendment or the Due Process Clause Fourteenth Amendment. This Court has noted, however, that "[c]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare."

Berkemer v. McCarty, 468 U.S. 420, 433, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

Despite this Court's evolution of the law of confessions and careful balancing of the legal system's need to use confessions, against the countervailing constitutional right of a defendant not to have a "compelled" confession used against him, even given the added protections afforded by *Miranda*, legal scholars and researchers still report substantial instances of suspects who give self-incriminating (sometimes false) statements during custodial interrogation under coercive questioning. Under coercive questioning, two (2) types of false errors are possible in custodial interrogation: false negatives, in which guilty suspects fail to confess, and false positives, in which an innocent persons confess.

The false negative, arguably, is not particularly problematic and is addressed through the trial process and ability of the state to make its case by other evidence. False positives presumably pose a far greater problem and issue of concern for America's courts and our system of justice. Fortunately, in such an instance, the voluntariness test is available to defendants, and requires the prosecution to establish by a preponderance of the evidence that the confession was voluntary and not "coerced," all in the highly fact-sensitive nature of cases where false confession is alleged. Albeit a difficult burden post-*Miranda* as noted by this Court, this protection nonetheless is available.

In the final analysis, for a confession to be properly utilized and admitted to effectively establish guilt, there must be a choice to admit or deny, and the voluntariness test must embrace all relevant operational facts and dynamics to redress false positives. [redacted] submits that the modern interrogation technique has evolved, and is being refined to such a point, that the *Miranda* warnings and the totality test are insufficient to prevent and detect coerced confessions. Moreover, [redacted] submits that the facts of her case bear testament to the erosion of the

effectiveness of these two (2) showings/tests to ensure a voluntary confession, all given the evolution of certain modern interrogation techniques. Correspondingly, there is a need for judicial refinement of these mechanisms to protect the constitutional rights under the Fifth and Fourteenth Amendments.

B. Identification of the Interrogation Technique(s) that are Inherently Structured to Coerce a Confession Involuntarily.

Perhaps the most renowned vocal advocate, expert, and educator regarding present-day interrogation techniques that are so inherently flawed and structured as to coerce a confession, despite guilt or innocence, is [redacted] is a Professor Emeritus at the University of California Berkeley and Fellow at the Center on Wrongful Convictions at Northwestern University School of Law. (Suppression Transcript of [redacted] at p. [redacted]).

[redacted] has worked extensively with both the government and defense at the state and federal levels on the confession doctrine, and has identified a very small percentage of police interrogations as psychologically coercive to such an extent that it results in involuntary confessions in a high number of cases, despite guilt or innocence. Such custodial interrogations result in involuntary confessions because the interrogation technique only links confession with minimal punishment and denial with maximum punishment, with no alternatives, and plays this scenario over and over again until a confession is obtained.

Stated differently, it is the precise interrogation technique's linkage through polar opposites of admission and help, and denial with maximum punishment, with no other alternatives, that is so inherently flawed as to be psychologically coercive to the extent to render choice and alternative scenarios, wholly outside of the computation. [redacted] has written

extensively about this precise phenomena, and lectured on this topic to others in the field, the bench, bar, and law enforcement communities.

At the suppression hearing, [redacted] testified numerous times how this interrogation mechanism worked generally, an example of which as follows:

> The problem with hooking up confessing to minimal punishment and hooking up denial with, with severe punishment is simply that it transforms the situation into one in which an innocent person is made to feel hopeless, confronted with the threat of perhaps life in prison if they don't confess and offer a benefit such as going to traffic school if you do confess is going to find that confession under those circumstances appears to be the logical thing to do even if they didn't commit the crime. Because of the magnitude, a gap between the punishment for continuing to deny and the consequence of confessing is so great that truth no longer matters and an upset, anxious, confused, manipulated individual who did not commit a crime may grab at this offer of leniency and therefore decide to give a confession (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

Why does this interrogation technique ultimately lead to violation of the Self-Incrimination Clause of the Fifth Amendment and Due Process Clause of the Fourteenth Amendment? This is because when the confession is ultimately sought to be admitted at trial to establish guilt, any voluntariness challenge by application of the totality test will not be revealed and establish that the confession was indeed involuntary. This is because through this sophisticated and refined interrogation technique structured solely to elicit confession, psychological coercion itself is couched in terms of a valid and lawful interrogation technique–the technique itself, regardless of operational and contextual facts, forces admission, as [redacted] made clear on cross-examination:

> Q. So then do you, does your study offer any distinction between those who will succumb to what you classify as the tactics. Who will succumb to that and confessions, be it true or be it false to those who won't?
>
> A. That's a separate issue. There's a whole field of study about the vulnerability of individuals having to do with the likelihood that a particular person possesses certain characteristics is more, is like likely to confess in the face of an interrogation of any degree of intensity, coercion, and so on. They're two

> separate issues. It's widely known that people who are intellectually handicapped are easier to get to confess even if the interrogation is not extreme. Because of the difficulties in their lives due to the fact of their mental retardation. There's, it's an entirely separate area of study from the question of what tactics that the interrogator used to set up the understanding that you would receive leniency if you cooperate and receive harsh punishment if you do not. (Trial Court Transcript of Suppression Hearing of [redacted] at p. [redacted]).

In fact, in discussion of evidence ploys, even those based on fabricated evidence, [redacted] took time and was precise on cross-examination to identify that contextual matters, such as the time and stress of the custodial interrogation, were not factors in technical and precise interrogation techniques structured to be inherently psychologically coercive to obtain a confession, despite guilt or innocence:

> A. I didn't testify that it was inappropriate even if they're making it up. My understanding is that that's a perfectly legitimate tactic and I have no quarrel with it.
> Q. So if it is indeed, let us assume that that, all that information is truthful, then would you agree that that is appropriate to disclose that to the individual that you're interviewing.
> A. I believe that it is appropriate as I understand the controlling case law to disclose it, even if you're making it up. So therefore, if it happens to be true, that's equally appropriate.
> Q. And do you still count that as coercive then when we disclose the truth to an individual?
> A. I never said that it was coercive. You will not find me ever referring to the use of evidence ploys as coercive. I reserve the term coercive to something that is very particular, all of the unpleasantness or the strain or stress of any interrogation, I simply refer to it as unpleasantness, stress and strain. It's an unpleasant experience. I've never called it coercive. (Trial Court Transcript of Suppression Hearing of [redacted] at p. [redacted]).

In summary, the motivational tactic of the interrogation technique is psychological coercion in itself, although cast in terms of a constitutional interrogation process, much like torture was connected to its outcome by physical injury and pain (Suppression Transcript of [redacted] at p. [redacted]). This interview technique itself is the ill that the totality test seeks to mitigate or eliminate, but for which the test is not structured to address.

C. Trial and Appellate Courts' Responses to Interrogation Technique.

There is a great chasm of disconnect between the actual applied use of this profoundly psychologically coercive police interrogation technique by law enforcement, as identified by [redacted] and the judicial response thereto to date. This area of the law of confessions has not been well developed to date for three (3) central reasons.

First, and central to the fundamental understanding of this interrogation technique, psychological coercion itself is inextricably linked to involuntary confession vis-a-vie the narrow circumstance wherein there is only a high-low linkage interrogation: admit and get help and deny and receive maximum punishment. As noted herein, this precise distinction and interrogation technique has not been clearly articulated (and presumably not understood nor developed) by the trial courts and reviewing courts across the United States. Stated differently, the precise and wholly psychologically coercive interrogation technique identified by [redacted] is not in any way linked with time of interrogation, intelligence of the suspect, or other environmental factors. It is an independent, determinative cause of involuntariness in the confession.

Second, where this technique maybe understood, trial courts for the large part have not been able to get beyond exclusion of expert testimony about same at trial under *Daubert* analyses. *See, Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 49 (1993). In fact, a re-occurring pattern/theme regarding this custodial interrogation technique found in the reported cases on this precise interrogation technique (across the country from New Jersey to Utah) is exclusion of testimony from [redacted] at a trial court level, a conviction, and, thereafter, reversal in appellate courts due to impairment of the defense. For instance and by way of example, in *United States v. Hall*, 93 F.3d 1337, (7th Cir. 1996), the Seventh Circuit Court of Appeals reversed Hall's conviction for kidnaping a child for purposes

of sexual gratification and transporting her across state lines. It did so because the district court excluded [redacted] testimony, without making a full *Daubert* inquiry. *Id.* at [redacted]. Likewise in [redacted] own home state, Ronnie G. Miller was convicted of murder and criminal deviate conduct in 1995. *Miller v. State*, 770 N.E.2d 763, 773 (Ind. 2002). The trial court excluded [redacted] proffered testimony. *Id.* at [redacted]. The Indiana Supreme Court reversed, finding that excluding the proffered testimony in its entirety deprived the defendant of the opportunity to present a defense and reversed. *Id.* at [redacted].

Third, in deference to the difficult job of trial and appellate courts in precisely identifying this high-low interrogation technique in the vast sea of highly sensitive facts and legal variables with regard to any given confession, let alone consideration of admission of proffered testimony under the *Daubert* test, even clear cases are difficult to manage and analyze from a legal standpoint. This is self-evident from the limited caselaw and scholarly writing on this topic because ultimate consideration of voluntariness with use of this high-low technique is determined by default under the totality test. There is no other analytical scheme to test such interrogation technique, save for the totality test. Unfortunately, when force-tested by the totality test for voluntariness, it reduces this precise interrogation technique to one of many factors/variable of consideration in the voluntariness of the confessing (this is the exact error made by the Indiana Court of Appeals in [redacted] case). In fact, the presence of this interrogation technique is effectively determinative–any confession brought about by same is involuntary, much like confessions obtained through torture. The central difference between the two (2) interrogation techniques (e.g., high-low interrogation and torture interrogation), and perhaps the difference between the high-low linkage technique from all other components/factors of a confession from custodial interrogation, is that the totality test is manifestly insufficient in

all ways in determination of same. Mental state, duration of the interrogation, illness, and any and all other environmental factors of the totality test play no role in analysis of the voluntariness of the confession. Stated differently, [redacted] posits that this interrogation technique (and any other formulated or evolving interrogation technique that circumvents detection under the totality test) is not an element of voluntariness that the government has to overcome by a preponderance of the evidence, it is independent evidence so overwhelming that the burden of voluntariness cannot be met–same is *per se* involuntary. All confessions obtained through this mechanism are cloaked in presumptive violations of the right against self-incrimination and due process of law.

D. Application to [redacted] Case.

The foregoing raw and rank psychological coercion cast in terms of an interrogation technique precisely identified, with its clear constitutional harms, and the difficult time American courts have had in redressing same, [redacted] now demonstrates how this precise interrogation technique was applied to her in the custodial interrogation underlying this Petition to the sole end of eliciting her confession, despite guilt or innocence.

However, before doing so, given the sophistication of this specific interrogation technique, it is well for [redacted] to again re-state the interrogation concepts and operational dynamics that have been identified by [redacted] made it very clear in his testimony that the factual underpinnings of the case had no bearing on his analyses or findings. This is a separate showing and line of attack to voluntariness. Stated differently, the motivational interrogation technique employed against [redacted] by [redacted] linking admission with help and denial with imprisonment, had no consideration of the factual backdrop of the matter and in [redacted] professional opinion that [redacted] confession was made

only in response to the high-low dichotomy utilized by [redacted] as follows:

> Q. Again, the question, sir, would be, you have no evidence to show that the Defendant is particularly susceptible to anything that [redacted] did?
> A I had no need to inquire into that; therefore, I have no information about it like I have no information about the bulk of [redacted] life. I'm studying what happened in the interrogation, the theme, the motivational tactic that was introduced by the detective, the promises and threats that were utilized by the detective leading to the compliance demonstrated by [redacted] (Trial Court Transcript of Suppression Hearing of [redacted] at p. [redacted]).

In application of these high-low interrogation options, [redacted] succinctly explained the interrogation effect of this precise linkage several times during the hearing on suppression in the trial court:

> The problem with hooking up confessing to minimal punishment and hooking up denial with, with severe punishment is simply that it transforms the situation into one in which an innocent person is made to feel hopeless, confronted with the threat of perhaps life in prison if they don't confess and offer a benefit such as going to traffic school if you do confess is going to find that confession under those circumstances appears to be the logical thing to do even if they didn't commit the crime. Because of the magnitude, a gap between the punishment for continuing to deny and the consequence of confessing is so great that truth no longer matters and an upset, anxious, confused, manipulated individual who did not commit a crime may grab at this offer of leniency and therefore decide to give a confession (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

Regarding [redacted] case, [redacted] analyzed [redacted] specific evidence ploys and motivational tactics to extract the confession from [redacted]

> Q. Does the model you just laid out and described on the, on the board behind the prosecution table apply to this case?
> C. Yes.
> Q. Are there evidence ploys utilized in this case?
> A. Yes.
> Q. Have you identified a motivational tactic used in the interrogation?
> A. Yes.
> Q. Where, would you locate the motivational tactic you identified in terms of the model you presented?
> A. The tactic used in this interrogation is the tactic of psychologically coercing compliance from [redacted] by linking up continual denial to being categorized as a vicious, intentional child injurer, someone who should be in jail for life on

the one hand and the receipt of help and the possibility of simply getting anger management counseling or a far better result at a minimum in exchange for confessing to the crime in terms of the scenario that the interrogator lays out. (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

It is at this juncture in [redacted] analysis that it makes clear that [redacted] technique was intended, systematic, and planned only with the intent of shifting [redacted] position from a strong assertion of innocence to that of guilt based solely on the psychological linkage, again, without concern for guilt or innocence:

Q. What do you classify as psychologically coercive motivational tactic or is a psychologically motivational coercive motivational tactic.
A. Because the interrogator constantly makes reference to threats and constantly makes reference to offers to help and links up the consequences of denial to severe punishment and the consequences of compliance to lenient treatment.
Q. Now, [redacted] is there evidence in the record that you reviewed that [redacted] understood the motivational tactic that you've talked about?
A. Yes.
Q. Is there evidence in the record that the detective promised that she would receive lenient treatment if she confessed and would be treated harshly if she continued to deny?
A. Yes. (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]).

What makes the case a violation of the Self-Incrimination Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the extent admitted to prove the crime is the noted actual shift in [redacted] behavior based on the coercion of the interrogator based on this linkage:

Q. Is there evidence in the record that she acted upon this threat, this offer, the threat and the offer of leniency?
A. Yes. [redacted] identification, use, and shift in [redacted] behavior based on the severe police coercion is then plotted by [redacted]
Q. Now, [redacted] can you go through the record with precision and show the Court and us step-by-step exactly how the motivational tactic was developed and delivered by the detective, number one. And number two, where [redacted] demonstrates an understanding of this tactic and number three, where [redacted] reveals that she acted upon the detective's promise of lenient treatment. . . . . (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

At this juncture of the suppression hearing, [redacted] then methodically traced the applied coercive motivational technique of the high-low linkage under the interrogation transcript with the various evidence ploys. More specifically, [redacted] tracked the

motivational tactic (admit and minimal punishment to deny and maximum punishment) from its first appearance, and the laying of its foundation by the interrogator, through its last reference. In doing so, [redacted] noted eight (8) specific excerpts from the interrogation transcript that establish and demonstrate the high/low alternatives in crime and punishment. It is in this course of communication that [redacted] drew the clear line of demarcation between accidental injury and an intentional act on [redacted] part. *Id*

Moreover, that [redacted] notes that this precise interrogation technique diverged in fundamental ways from the commonly accepted methodology for obtaining an accurate confession, and becomes psychologically coercive in nature as he defines the term under the precise technique applied:

> The development of the distinction starts from a typical interrogation strategy taking the position that it's certain that the suspect committed the crime and then directs the interrogation to the question of why the subject did it. The two categories the detective introduces are associated with different outcomes. [redacted] is told that there is a range of possible outcomes that range from counseling to time in jail. The possibility of getting counseling rather than jail time is linked to someone's being willing to confess. "Being willing to tell the truth." The person must help the police "help us to get through it together. Help us solve the problem. A person who confesses qualifies for getting counseling and will maybe get some counseling." [redacted] is assured "not everyone needs to go to jail, you know,–" (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]).

With regard to systematically proceeding through the noted excerpts from the interrogation transcript, [redacted] repeatedly identifies and highlights the laying of the either/or

alternatives. Simply put, [redacted] was placed in a dichotomy whereby she could admit to an "accident" and "get counseling" or deny and go to prison:

> So in these first statements, let's just start with excerpt one. The interrogator's initially starting to talk about or lay a foundation for the idea that this could have been a loss of control by asking the question: "Have you ever injured a child out of anger, ever done something like that, lost your temper?" He sets up, he introduces the idea of intentionally hurting a child and also restates or re-mentions the idea of a loss of temper in excerpt two. And I'll just read the highlighted part, "not necessarily intentionally but you know, could maybe lose their temper and injure a child like that?" In excerpt three, the interrogator is laying foundation for his willingness to endorse an accident story. Which is what this strategy entails. He says, "I don't believe you did anything intentionally." In excerpt four, he's now setting up the two alternatives that he will pressure [redacted] to chose between when he says, "I know either this was a deliberate act against this baby or it was an accident. I know that one of the two has to be." He says later in that passage, "I'm not suggesting that you did anything on purpose but I know something happened." So he's continuing to set up the bad alternative that this was a deliberate violent act and set up a more understandable explanation, the more sympathetic and the explanation that will gain leniency of simply losing control. In excerpt five, he repeats the dichotomy he's setting up, "I know that this was either number one, a violent act against the baby or was an accident." In excerpt seven, he begins to link the two alternatives to their consequences. He says, again reading only the highlighted areas, "once in a while you and I as hard-working, decent people, we make the wrong decision. We do something without really thinking it through. That doesn't mean that we're a bad person. That doesn't mean we're a violent criminal. That doesn't mean that we're somebody that just needs to be locked up and put away." So the association between being categorized as a bad person, a violent criminal and being locked up and put away is now being strengthened. He continues, "unfortunately, some times these choices have a consequence. Now the consequence in my line of work can be a whole range of things. It could be somebody needs to go to prison for the rest of their life," defining the high end of the punishment structure "or it could be somebody needs help. Maybe somebody needs some anger management counseling. Somebody needs, you know, some help." That somebody who has made a mistake needs help and help and anger management counseling are associated. "Part of my job," the interrogator continues, "part of my job is to find out what happened. To find out if I'm dealing with this group over here, which is hardworking, decent, honest citizens that have made a bad choice. That have made a mistake. That have done something they shouldn't do. If I can determine that yes, that's a good person, yes they made a bad mistake, yes they are willing to tell the truth and face the problems and help us go through this together, help us solve the problem, maybe get some counseling, maybe, you know, whatever the remedy, the appropriate remedy is, if I can get a person to do that and be completely honest with me, we're all ahead of the game. Then we've solved the problem. And not everyone needs to go to jail, you know. My job as a detective is to try to solve these problems and help people. So the person who

> cooperates, the person who confesses, the person who does that, will get help. Help could be anger management counseling. The person who is classified as a career criminal is going to go to prison" In eight the interrogator asks the question, "was it an accident or did you hurt him on purpose?" (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]).

From this point on in the interrogation, [redacted] pushed only the A or B theme to [redacted] (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]). With the "A" theme [redacted] promised he would help [redacted] cover up/explain away the crime (App. [redacted]). The "B" theme was being branded as a child abuser and prison (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]). [redacted] drives home the two choices by using several analogies, such as a festering wound to demarcate the choices (Appendix of Appellant for Indiana Court of Appeals at pgs. [redacted]). Ultimately, this linkage worked, because it operates in a vacuum of any other choices. [redacted] breaks and agrees to admit to what ever [redacted] wants: "I'll say I shook him but I didn't. I'll tell you that if that's what you want me to tell you" (Appendix of Appellant for Indiana Court of Appeals at p. [redacted]).

Before doing so, and in an unequivocal example of how this technique excises the Fifth and Fourteenth Amendments from any suspect's constitution protections, when [redacted] recognized that the interrogation was in some way incongruous with reality, she asked her interrogator for his opinion if she needed counsel. The interrogator then linked even this right, for which *Miranda* was decided in the first instance, to the continuum, wholly dismissing this right. Certainly, [redacted] was not going to seek counsel and get the "bad" outcome:

> [redacted] If you were me would you want an attorney right now?
>
> [redacted] I cannot answer that. All I can tell you is if you ask for one I can't talk to you about this anymore. I can't share with you any evidence we have. If you ask for an attorney, and that's fine, that's your right to do that. But if

> you are, if you do, then I can't share with you the evidence that I have and I can't talk to you about this and we can't try to get it resolved. And I can guarantee you that this is gonna be the easiest and the best way for you. Now, if you don't believe me, if you don't . . . . (Appendix of Appellant for Indiana Court of Appeals at p. [redacted])

Thus, at this point in her Petition for Writ of Certiorari, [redacted] believes she has articulated her belief in this Court's long commitment to and development of the right to ensure that every citizen is free from involuntary confessions, both as a right found in the Self-Incrimination Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment.

She also believes that she has demonstrated that the primary way to protect the right against involuntary, coerced confessions at present is by police officers' administration of *Miranda* right before any custodial interrogation begins, and in those circumstances where a confession is sought to be suppressed for being involuntary, requiring the government to show voluntariness by a totality test under a preponderance of the evidence, is no longer effective to protect these rights given application of at least this specific type of interrogation.

This, coupled with the profound confusion in trial and appellate courts evidenced in reported opinions, albeit very few up to this point in time, including her own case, wherein she had no effective choice but to confess regardless of her right against self incrimination and due process of law, necessitates further refinement of tools to protects these rights.

For these reasons, the highest court of this land, the Supreme Court of the United States, should grant her Writ of Certiorari, reverse the decision of the Indiana Court of Appeals, and issue an additional test/standard to ensure the continued integrity and protections of the right

against self-incrimination and due process.

E. Standard Proposed.

The foregoing begs the question: "How is this accomplished?" [redacted] certainly does not suppose to have the requisite insight to consider the magnitude and scope of any refinement of the voluntariness requirements of the Fifth and Fourteenth Amendments. Clearly, the totality test and *Miranda* warnings have served the general populous well and have fostered the notion of inherent fairness in our system of law. Therefore, [redacted] submits that this Court adopt an independent prong of the totality test to consider the situation where an interrogation technique may be so coercive as to stand alone as a manifestation of psychological coercion in itself, perhaps with a higher burden of proof as exists in some state-court venues. Alternatively, a *per se* rule of involuntariness may rectify this and related interrogation techniques.

CONCLUSION

For the foregoing reasons, the Supreme Court of the United States should grant [redacted] Petition for Writ of Certiorari.

Respectfully submitted,

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