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Case No. 2023SC81

Colorado Court of Appeals
Case No. 2018CA1304

Boulder County District Court
Case No. 2017CR530

Adam Douglas Densmore,

Petitioner

v.

The People of the State of Colorado,

Respondent

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AMICI CURIAE BRIEF OF ACLU OF COLORADO AND OFFICE OF RESPONDENT PARENTS' COUNSEL IN SUPPORT OF PETITIONER

CERTIFICATE OF COMPLIANCE

I hereby certify that this Amicus Curiae brief complies with all requirements of C.A.R. 28(a)(2), 28(a)(3), 29(c), and 32. The undersigned specifically certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 29(d). It contains 4723 words. I acknowledge this brief may be stricken if it fails to comply with any requirement of the foregoing rules.

/s/ *Laura Moraff*

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IDENTITY AND INTEREST OF AMICI CURIAE

The ACLU is a nationwide, non-partisan, non-profit organization with almost 2 million members, dedicated to safeguarding the principles of civil liberties enshrined in the federal and state constitutions for all Americans. The ACLU of Colorado, with over 45,000 members and supporters, is a state affiliate of the ACLU. Because the ACLU of Colorado is dedicated to the constitutional rights and civil liberties of all Coloradans, the organization has an interest in guaranteeing the rights of people subject to custodial interrogation by DHS investigative officers.

The ORPC's mission is to protect the fundamental right to parent, and this right is protected when dedicated legal advocates hold the state to its burden. CJD 16-02 (I). When a caseworker interrogates a parent without providing a *Miranda* advisement, parents are subjected to a fundamentally unfair system and face greater risk of permanent family separation. For these reasons, the ORPC has an interest in the outcome of this case.

INTRODUCTION

To a person in custody being interrogated about issues related to their family relationships, domestic violence, substance abuse, poverty, or disability, the particular government agency that employs their interrogator is likely last on their list of concerns. Facing not only the threat of criminal charges but also the threat of losing their children, the interrogee is wholly at the mercy of the state. This case does not concern the substantive rights of the interrogee or the government's substantive power to interrogate. The only question is whether the interrogee must be advised of their existing rights not to answer, to speak to an attorney, and to be informed that anything they say can be used against them in court. The answer to that question should not depend on which government agency pays the interrogator. Any person being interrogated by a Department of Human Services (DHS) investigative officer about information that could be used to incriminate them must be *Mirandized*. A contrary holding would deprive too many parents—particularly parents of color, parents living in poverty, and parents with disabilities—of their right against self-incrimination as guaranteed by the federal and state constitutions.

ARGUMENT

DHS investigative officers conducting custodial interrogations must be treated as agents of law enforcement for *Miranda* purposes because they (1) ask the same types of questions as law enforcement officers and (2) routinely inform and collaborate with law enforcement, as required by law. As agents of law enforcement, they must provide *Miranda* advisements.

This conclusion is buttressed by the coercive nature of DHS interrogations that can ultimately lead to the termination of parental rights. The risk of termination is heightened for parents of color, parents without financial resources, and families that include parents with disabilities.

Ensuring that parents are advised of their rights neither imposes undue burdens on the government nor endangers child safety; it merely ensures parents are aware of their existing rights—as guaranteed by the Fifth Amendment and Article II, Section 18—when they face the threat of criminal charges and the debilitating threat of losing their children.

I. DHS Investigative Officers Act as Agents of Law Enforcement When Interrogating Parents in Jail.

A. DHS Investigative Officers Elicit Much of the Same Information Law Enforcement Officers Do.

When an agent of the state's questions during a custodial interrogation are likely to produce incriminating responses, *Miranda* warnings are required. Such is the case when DHS investigative officers interrogate detained parents because there is substantial overlap between 1) grounds for filing a petition in dependency and neglect seeking to authorize government interference with parental rights; and 2) grounds for a criminal charge.

For example, a DHS investigative officer's elicitation of facts about a parent's failure to intervene when their child was being abused could lead to a loss of custody *and* to criminal penalties. *See* C.R.S. § 19-3-102(1)(a) (child is dependent or neglected if parent fails to take steps to prevent child abuse from recurring); C.R.S. § 18-6-401(1)(a) (providing for criminal charges where a child is "unreasonably placed in a situation that poses a threat of injury to the child's life or health"). Questions about substance use are likewise relevant to assessments of a child's safety *and* likely to elicit incriminating information. *See* 12 C.C.R. 2509-4 § 7.304.3(D)(1) (conditions

that could place a child at imminent risk of out-of-home placement include substance abuse and infants exposed to substances); C.R.S. § 18-6-401(1)(c)(I) (knowingly possessing particular substances in child's home with intent to manufacture controlled substance constitutes criminal child abuse).

The facts of this case further illustrate the substantial overlap between investigations into the safety of a child and investigations into whether a parent committed a crime. The DHS investigative officer here, Jessica Punches, asked Densmore if he "knew where the mother" of Densmore's child was, Opinion of the Court of Appeals, 18CA1304 (hereinafter "Op."), ¶ 20, a question central to the investigation of the alleged murder of the mother. Punches also inquired about Densmore's "substance abuse, domestic violence, family support, discipline, and parenting services," *id.*, all of which were relevant to the criminal investigation. And Densmore did, indeed, incriminate himself during the DHS interrogation by telling Punches that he and the homicide victim had "a massive fight," and that he "slapped her." *Id.* ¶ 21.

The court of appeals reasoned that Punches was not acting as an agent of law enforcement because the *purpose* of her child welfare investigations "is not to obtain incriminating information." *Id.* ¶ 32. But the interrogator's formal purpose for an interview does not change the way the interrogation is experienced by the interrogee—and it is not determinative of whether the person conducting it is acting as an agent of law enforcement. *See Mathis v. United States*, 391 U.S. 1, 4 (1968) (Although "a 'routine tax investigation' may be initiated for the purpose of a civil action rather than criminal prosecution," a revenue agent's tax interrogations were not immune from *Miranda* requirements because "tax investigations frequently lead to criminal prosecutions," and "there was always the possibility during his investigation that [the interrogator's] work would end up in a criminal prosecution.").

The U.S. Supreme Court has held that, where a doctor conducted a psychiatric evaluation of a defendant "for the limited, neutral purpose of determining his competency to stand trial," but the doctor later testified against the defendant at trial and their statements were used "for a much

broader objective that was plainly adverse to respondent," the doctor's "role changed and became essentially like that of an agent of the State recounting unwarned statements made in a postarrest custodial setting." *Estelle v. Smith*, 451 U.S. 454, 465, 467 (1981); *see also Jackson v. Conway*, 763 F.3d 115, 139 (2d Cir. 2014) (statements to child protective services investigator made without *Miranda* advisements were not admissible where investigator "objectively 'should have known' that her questions were 'reasonably likely to evoke an incriminating response.'" (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)); *State v. Helewa*, 537 A.2d 1328, 1333 (N.J. Super. Ct. App. Div. 1988) (child welfare worker "must be equated with a law enforcement officer for purposes of *Miranda* when conducting a custodial interview of a defendant charged with or suspected of committing a criminal offense").

The same logic applies to DHS interrogations. Because DHS investigative officers elicit sensitive information that is often intertwined with criminal activity and later used to incriminate interrogees, DHS investigative officers interrogating people in custody should be treated as agents of law enforcement. Here, even if the initial, stated purpose of Punches' interrogation was not to elicit evidence of criminality, she knew

that the information she elicited could be used for a much broader objective, plainly adverse to Densmore.

During the interrogation, Densmore "assuredly was 'faced with a phase of the adversary system' and was 'not in the presence of [a] perso[n] acting solely in his interest.'" *Estelle*, 451 U.S. at 467 (quoting *Miranda v. Arizona*, 384 U.S. 436, 469 (1966)). He therefore should have been advised of his constitutional rights. The fact that Punches was a DHS investigative officer "rather than […] a police officer, government informant, or prosecuting attorney, is immaterial." *Id.*

B. DHS's Close Relationship with Law Enforcement Requires that DHS Investigative Officers Be Treated as Law Enforcement Officers.

Interrogators who work closely with law enforcement officers and routinely exchange information with them must be treated as law enforcement officers for *Miranda* purposes. *See People v. Robledo*, 832 P.2d 249, 251 (Colo. 1992) (counselor was an agent of the state where he had access to police reports and was obligated to inform the district attorney of information he learned that indicated a person was at risk of—or had

suffered—bodily harm); *cf. People v. Aguilar*, 897 P.2d 84, 86 (Colo. 1995) (tow truck operator who was "acting informally in concert with [a] police officer" was an agent of the state).

As a matter of law, making a self-incriminating statement about abuse or neglect to a DHS investigative officer *is* a statement to law enforcement, because DHS investigative officers (like the counselor in *Robledo*) are legally obligated to forward the information to law enforcement. C.R.S. § 19-3-307(3)(a) (DHS must immediately send reports of child abuse or neglect to their local law enforcement agency and district attorney's office); C.R.S. § 19-3-308(5.5) (DHS must immediately notify local law enforcement if it reasonably believes abuse or neglect has occurred); Okla. Stat. Ann. tit. 10A, §1-2-102(3) (requiring DHS to forward "a report of its assessment or investigation and findings to any district attorney's office which may have jurisdiction to file a petition."). Other mandatory reporters, by contrast, may make their reports to the county department or the child abuse hotline instead of reporting directly to law enforcement. C.R.S. § 19-3-304(1)(a).

DHS and local law enforcement agencies also "develop and implement cooperative agreements to coordinate duties of both agencies in connection with the investigation of all child abuse or neglect cases." C.R.S. § 19-3-308(5.5); *see also* 12 C.C.R. 2509-7 § 7.601.2(A) (requiring county departments to develop "cooperative agreements" with law enforcement agencies including "[p]rotocols for cooperation and notification between parties on abuse and/or neglect referrals" and "[j]oint law enforcement investigation and human or social service assessment procedures"). The law also strongly encourages joint investigations. C.R.S. § 19-3-308(4)(a) (providing that DHS's investigations into intrafamilial abuse or neglect should be conducted "in conjunction with the local law enforcement agency, to the extent a joint investigation is possible and deemed appropriate."). And in some situations, law enforcement agencies have concurrent jurisdiction with DHS to investigate reports of child abuse. C.R.S. § 19-3-308(5).

DHS investigative officers also frequently obtain information from law enforcement agencies about their investigations. *See* 12 CCR 2509-2-7.104.32. Indeed, Colorado law requires DHS to confer with local law enforcement

agencies before conducting interviews under certain circumstances. *See* C.R.S. § 19-3-308(4)(c) (requiring conferral prior to interviewing a third-party alleged to be responsible for abuse or neglect related to human trafficking).

The inextricable relationship between DHS and law enforcement is evident in this case. Punches was called to the scene of Densmore's arrest to take custody of his child. Op. ¶ 17. Before interviewing Densmore, Punches spoke with a Boulder detective. *Id.* ¶ 18. An FBI agent was present during Punches' interrogation of Densmore for "safety." *Id.* ¶ 19. The jail recorded the interview. *Id.* Later, Punches provided recordings of her conversations with Densmore to a Boulder detective. *Id.* ¶ 23.

For Densmore—and for similarly situated interrogees—disclosing information to DHS is, in practice, the same as disclosing information to law enforcement. Accordingly, the same *Miranda* warnings are required.

Moreover, Article II, Section 18 of the Colorado Constitution may demand even more robust safeguards than the Fifth Amendment does to ensure that the uniquely intertwined relationship between Colorado's DHS and Colorado law enforcement agencies does not practically extinguish the

right against self-incrimination under the state constitution. *Cf. People v. Briggs*, 709 P.2d 911, 915 (Colo. 1985) ("It is a longstanding principle in this state that article II, section 18 of the Colorado Constitution 'was not intended to merely protect a party from being compelled to make confessions of guilt, but protects him from being compelled to furnish a single link in a chain of evidence by which his conviction of a criminal offense might be secured.'" (quoting *Tuttle v. People,* 33 Colo. 243, 255 (1905)); *People v. Schneider*, 133 Colo. 173, 179 (1956) ("Courts have been and ever should be zealous to preserve the constitutional guarantees of th[e] [state constitutional] provision against self-incrimination."). While *Miranda* jurisprudence applies across the country, this Court can tailor its interpretation of Article II, Section 18 to protect against threats unique to Colorado. *See People v. McKnight*, 2019 CO 36, ¶ 40.

An unduly formalistic approach requiring *Miranda* warnings only when the interrogator is paid by a traditional law enforcement agency would be contrary to law, *see Mathis,* 391 U.S. at 4; *Robledo*, 832 P.2d 251, and would allow Colorado law enforcement to avoid *Miranda*'s requirements by having

DHS investigative officers conduct interrogations and then turn over the information to law enforcement. Colorado DHS investigative officers' particular roles demand that they inform people of their right against self-incrimination before interrogating them in custody.

II. Threat of Child Removal Makes DHS Interrogations at Least As Coercive as Law Enforcement Interrogations.

Miranda's holding springs from a concern that "the process of in-custody interrogation [by state actors] of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda*, 384 U.S. at 467. DHS investigative officers exert at least as much coercive pressure on interrogees as law enforcement does, because their interrogations have enormous consequences—many parents would rather face criminal proceedings than lose their children.

In determining whether parents must be advised of their rights, this Court should consider the profoundly coercive pressures on parents under interrogation by DHS investigative officers. The threat of removing a

parent's child and the coercive nature of detention operate in tandem to increase both the pressure and the trauma faced by the parent. This pressure is amplified for parents of color, low-income parents, and families that include parents with disabilities—all of whom have historically faced greater risk of forcible separation at the hands of the government. DHS investigative officers should therefore provide *Miranda* warnings before questioning detained parents.

A. The Threat of Losing a Child Is Debilitating to a Parent Under Interrogation.

This Court has rightly recognized the immensely coercive power exerted on a parent by the threat of removal of their child in the Fifth Amendment context. In *People v. Medina*, this Court concluded that when a detective threatened to take away Medina's baby if Medina did not confess to hurting the baby, Medina's statement was involuntarily given. 25 P.3d 1216, 1226 (Colo. 2001). The threat of child removal was so psychologically coercive that it overpowered the parent's free will. Surely, then, the minimal protections of *Miranda* warnings apply to interrogations of detainees about

the facts underlying their detention conducted for the purpose of assessing whether to remove a child.

Miranda warnings are particularly necessary when the threat of family separation is present because child removal traumatizes parents in irreparable ways. *J.P. v. Sessions*, No. LACV1806081JAKSKX, 2019 WL 6723686, at *10 (C.D. Cal. Nov. 5, 2019) ("For parents, the sudden and forcible separation from their children could represent a traumatic event leading to acute and severe psychological distress.") (quoting Expert Declaration of Jose Hidalgo ¶ 14, *J.P. v. Sessions* (No. LACV1806081JAKSKX)).[1] Indeed, "an order terminating parental rights is the death penalty of civil cases." *In re C.J.V.*, 746 S.E.2d 783, 791 (Ga. 2013) (J. Dillard, concurring fully and specially).

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[1] *See also* Karen Broadhurst & Claire Mason, *Child Removal as the Gateway to Further Adversity: Birth Mother Accounts of the Immediate and Enduring Collateral Consequences of Child Removal*, 19 Qualitative Soc. Work 15, 15 (2020) (Parents whose children are removed from their home often descend into immediate psychosocial crisis, with high rates of suicidality); Shanta Trivedi *The Harm of Child Removal*, 43 N.Y.U. Rev. L & Soc. Change 523, 528 (2019) ("[C]hildren suffer considerable trauma when they are separated from their parents.").

Because DHS investigative officers hold the power to inflict such trauma on interrogees and their families, the "potentiality for compulsion" in their interrogations requires that parents be advised of their rights against self-incrimination. *See Miranda*, 384 U.S. at 457.

B. Parents of Color, Indigent Parents, and Parents with Disabilities Would Be Disproportionately Impacted if DHS Investigative Officers Were Exempt from *Miranda* Requirements.

While the threat of family separation is a grave one for all families, parents of color, indigent parents, and parents with disabilities are particularly likely to experience DHS questioning as highly coercive. Race, poverty, and disability are inextricably linked,[2] and each informs the ways in which a person experiences an interrogation.

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[2] White children make up 55% of Colorado's child population, but only 7% of children living in poverty. *Compare* U.S. Dep't. of Health and Human Servs., *Children's Bureau, Child Welfare Outcomes Report Data: Colorado Context Data* (2017-2021), *with* America's Health Rankings, *Children in Poverty in Colorado*, https://www.americashealthrankings.org/explore/measures/ChildPoverty/CO?population=ChildPoverty_multiracial#. Black children comprise 4% of Colorado's child population, but 23% of children living in poverty. *Id.* Similar inequities exist for Native American and Latino children. *Id.* And disability is both a cause and a consequence of poverty. Robyn M. Powell,

1. The History of Forced Family Separation Makes DHS Interrogations of Parents of Color Particularly Coercive.

This country—and Colorado specifically—has a long and troubling history of forcibly separating parents of color from their children.[3] Officers of various agencies have long wielded the power of the state to tear children apart from their parents. Such violations can lead parents to believe they have no rights at all when it comes to DHS investigative agents asking about their children.

This Court's ruling in this case will disproportionately impact parents of color, as people of color are disproportionately incarcerated. In 2019, for every 100,000 white residents of Colorado, 195 were in Colorado jails.[4] By contrast, 898 American Indian or Alaska Native people, 952 Black people,

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Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach, 33 YALE J.L. & FEMINISM 37, 94.

[3] *See, e.g., Fort Lewis Indian School*, C-SPAN (Sept. 24, 2020), https://www.c-span.org/video/?508923-2/fort-lewis-indian-school-1892-1911 (lecture of Dr. Majel Boxer, Associate Professor of Native American and Indigenous Studies at Fort Lewis College, Colorado); Rukmini Callimachi, *Lost Lives, Lost Culture*, N.Y. Times (Jul. 19, 2021), https://www.nytimes.com/2021/07/19/us/us-canada-indigenous-boarding-residential-schools.html.

[4] Prison Policy Initiative, *Colorado Profile*, https://www.prisonpolicy.org/profiles/CO.html.

and 246 Hispanic people were jailed per 100,000 residents of each race.[5] Each of these groups has its own history of forced family separation.

The federal government has an extensive history of forcibly separating Native children from their parents and sending them to "Indian Boarding Schools" to be involuntarily assimilated into Anglo-American culture—including in Colorado.[6] "While parents had legal rights, and were supposed to provide consent for their children to attend school, the consent was often coerced and ill-informed."[7] When government agents failed to coerce consent from Indigenous parents, they sometimes resorted to removing their children by force.[8]

In the 1890s, U.S. Indian agents reported that the Ute Tribe in southwest Colorado "had 'an overabundance of affection' for their children,

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[5] *Id.*

[6] *See generally* Holly Kathryn Norton, *Federal Indian Boarding Schools in Colorado: 1880-1920* (2023), History Colorado, https://drive.google.com/file/d/1bbrIXKLIbQlWxQ9sU-9o4ql_Dthq7-C3/view.

[7] *Id.* at 22.

[8] *Id.* at 22, 25.

and would not be parted from them."[9] Eventually, the Bureau of Indian Affairs opened a boarding school near the Ute reservation, and seventeen Ute children attended the school, along with children from other tribes.[10] Soon after the school opened, a tuberculosis epidemic broke out.[11] Ute parents who attempted to collect their children from the institution were prevented from doing so, "sowing very deep mistrust among the Ute."[12]

Forced family separation was also a key feature of slavery. The federal government, through fugitive slave laws and other rules defining African Americans as property, maintained a system in which enslaved Black parents had no rights to parent their children and no ability to prevent them from being forcibly removed.[13] Various government agencies also sold people directly, through institutions like probate courts, separating children

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[9] *Id.* at 64.
[10] *Id.* at 65–66.
[11] *Id.* at 66.
[12] *Id.*
[13] Jeffrey Robinson, *America Was in the Business of Separating Families Long Before Trump*, ACLU (Jul. 6, 2018), https://www.aclu.org/news/racial-justice/america-was-business-separating-families-long-trump.

from their parents as divisible assets.[14] Enslaved parents "lived with the constant fear that they or their children might be sold away."[15] After enslaved children were forcibly taken from their parents, enslaved Black parents and children and their descendants struggled to find each other.[16]

Forcible family separation continues. Hispanic/Latino parents are routinely separated from their children by the federal government at the country's southern border. In 2018, under the Department of Justice's "zero tolerance" policy, "[u]ndocumented asylum seekers were imprisoned, and any accompanying children under the age of 18 were handed over to the U.S. Department of Health and Human Services (HHS), which shipped them miles away from their parents and scattered them among 100 Office of

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[14] Kelly L. Schmidt & Cecilia Wright, *St. Louis Probate Court Ordered Slave Sales*, St. Louis Integrated Database of Enslavement (2022), https://sites.wustl.edu/enslavementstl/st-louis-probate-court-ordered-slave-sales/.

[15] DeNeen L. Brown, *'Barbaric': America's Cruel History of Separating Children from their Parents,* Washington Post (May 31, 2018), https://www.washingtonpost.com/news/retropolis/wp/2018/05/31/barbaric-americas-cruel-history-of-separating-children-from-their-parents/?noredirect=on.

[16] *Id.* (describing the efforts of Black enslaved and formerly enslaved families to locate each other after separation through sale).

Refugee Resettlement (ORR) shelters and other care arrangements across the country."[17] Family separation at the border and pervasive anti-immigrant rhetoric have changed how some Hispanic/Latino families speak to their children about the government, deportation, and potential separation, and increased levels of fear regarding government intervention.[18]

For parents of color, whose cultural and familial histories include forcible family separation, DHS interrogations are even more coercive than for white parents who lack this history.

2. Parents Living in Poverty Are Disproportionately Impacted by DHS Investigative Officers Interrogating Them Without Providing *Miranda* Advisements.

People living below the poverty line are more likely both to be incarcerated and to have their children removed. Families living below the poverty line are 22 times more likely to have child welfare involvement than

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[17] *Family Separation – A Timeline*, Southern Poverty Law Center (Mar. 23, 2022), https://www.splcenter.org/news/2022/03/23/family-separation-timeline.

[18] Fernanda Lima Cross, Deborah Rivas-Drake & Jasmin Aramburu, *Latinx immigrants raising children in the land of the free: Parenting in the context of persecution and fear*, 21(3) Qualitative Soc. Work 559, 559 (2022).

families living above the poverty line.[19] And incarcerated people on average "earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages."[20]

Additionally, those who have experienced poverty know that a decision not to provide information to the government can have drastic consequences on their family's ability to survive and remain intact. For example, low-income individuals often cannot access healthcare without providing a substantial amount of personal information—far more than those who can afford private insurance must provide.[21] And in the context of low-income survivors of domestic violence, "the need for shelter, public

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[19] Martin Guggenheim & Vivek S. Sankaran, *Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders*, 1, 17 (2015); *See also If I Wasn't Poor, I Wouldn't Be Unfit,* Human Rights Watch (Nov. 17, 2022), https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare.

[20] Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty*, Prison Policy Initiative (Jul. 9, 2015), https://www.prisonpolicy.org/reports/income.html.

[21] *See, e.g.*, Khiara M. Bridges, *Towards A Theory of State Visibility: Race, Poverty, and Equal Protection*, 19 Colum. J. Gender & L. 965, 968 (2010); Khiara Bridges, *The Poverty of Privacy Rights* 5 (2017).

benefits, and medical care prompts intrusive levels of questioning as a condition of receiving resources."[22]

Divulging information to government employees is often a requirement for receiving state assistance. In situations where the information divulged will instead be used to incriminate a person and terminate their parental rights, parents must be alerted to the fact that they have a legal right to not provide the information to a DHS investigative officer.

3. This Court's Ruling Will Have an Outsized Impact on Parents with Disabilities.

People with disabilities are both detained and investigated by DHS at disproportionate rates. Roughly 40% of people in state prisons have disabilities, whereas only 15% of people in the general population do.[23] And parents with disabilities are more likely to be investigated and separated

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[22] Jane K. Stoever, *Mirandizing Family Justice*, 39 Harv. J. L. & Gender 189, 195 (2016).

[23] Leah Wang, *Chronic Punishment: The unmet Health Needs of People in State Prisons*, Prison Policy Initiative (June 2022), https://www.prisonpolicy.org/reports/chronicpunishment.html#disability.

from their children than parents without disabilities.[24] For parents with cognitive or intellectual disabilities, the disparities are even greater.[25]

Parents with cognitive disabilities are also even more susceptible to making false confessions, and less likely to understand and invoke their rights.[26] These disparities make *Miranda* advisements even more critical.

III. Requiring *Miranda* Warnings for Parents Interrogated by DHS Investigative Officers Neither Unduly Burdens the Government Nor Endangers Children.

Requiring DHS investigative officers to provide *Miranda* warnings before conducting custodial interrogations creates no new substantive rights; it merely ensures that parents know what their existing rights are before they speak to a state actor in one of the most high-pressure, high-

[24] *See* National Council on Disability, *Rocking the Cradle* 77 (Sept. 27, 2012), https://www.ncd.gov/assets/uploads/reports/2012/ncd-rocking-the-cradle.pdf.

[25] *Id*. at 78 (parents with intellectual disabilities face removal rates between forty and eighty percent when targeted for investigation in a child welfare case).

[26] *See* Samson J. Schatz, *Interrogated with Intellectual Disabilities*, 70 Stan. L. Rev. 643, 645 (2018).

stakes situations imaginable—one in which they may lose *both* their child and their freedom.

Of course, children's safety is of paramount importance to the government and to society at large. But there is no evidence or rational argument that informing parents of their rights endangers children.

Nor would requiring DHS investigative officers to *Mirandize* parents unduly burden the government. Should a parent choose to exercise their right to remain silent after receiving a *Miranda* warning, DHS investigative officers have multiple statutory tools to obtain information about the safety of children.

For example, DHS investigative officers may interview or observe a child who is the subject of a report of abuse or neglect. C.R.S. § 19-3-308(3)(a). If a DHS investigative officer cannot obtain access to the child's home, a juvenile court can order the parent to allow the interview, examination, and investigation of the reported abuse or neglect. C.R.S. § 19-3-308(3)(b). If the parent refuses to comply with the order, the juvenile court can hold immediate contempt proceedings and jail the person, without bond, until

they produce the child for an interview. *Id.* To protect the parent's rights, the parent can be granted use immunity against the use of statements made in such a hearing. *Id.* Additionally, C.R.S. § 19-1-112 allows juvenile courts to issue search warrants to find a child alleged to be dependent or neglected. These are powerful tools that preserve the ability of DHS to ensure children's safety.

In some states, DHS investigative officers (or their analogs) provide *Miranda*-style warnings to all parents who are interviewed—not just parents who are incarcerated—either voluntarily or pursuant to state statute. Connecticut, for example, has been providing these types of advisements for a decade.[27] Child welfare leaders report getting more

[27] Eli Hager, *Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One*, ProPublica (Oct. 13, 2022), https://www.propublica.org/article/child-welfare-search-seizure-without-warrants; *see also* Conn. Gen. Stat. § 17a-103d. Texas also passed legislation requiring a family *Miranda* warning in all interrogations by DHS investigative officers, not just those for parents in custody. Texas House Bill 730 2023, https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00730F.pdf#navpanes=0.

information from families because the greater transparency reduces "the anxiety of the interaction" between the government and the parent.[28]

Moreover, courts analyzing the application of other Constitutional protections in the child welfare context have rejected arguments that child welfare investigative officers are somehow exempt from these requirements. For example, in analyzing whether the Fourth Amendment's bar against unreasonable searches and seizures applied to a DHS investigative officer's home visit, the Pennsylvania Supreme Court determined that "there is no 'social worker exception' to compliance with constitutional limitations." *Interest of Y.W.-B.*, 265 A.3d 602, 627 (Pa. 2021).

Lika all law enforcement agents, DHS investigative officers must comply with constitutional requirements when they interrogate detained people.

CONCLUSION

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[28] *Id.*

For the foregoing reasons, this Court should hold that *Miranda v. Arizona* applies when a DHS investigative officer conducts a custodial interrogation.

Respectfully submitted this 22nd day of April, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that, on April 22, 2024, a true and correct copy of the foregoing **AMICI CURIAE BRIEF OF ACLU OF COLORADO AND OFFICE OF RESPONDENT PARENTS' COUNSEL IN SUPPORT OF PETITIONER** was served via the Colorado Courts E-Filing system, which notifies all counsel of record.

/s/ *Mahima Chaudhary*