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Patrick Frazee, Petitioner v. **The People of the State of Colorado,** Respondent	COURT USE ONLY
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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 4718 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 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

When a Department of Human Services (DHS) investigative officer interrogates a person in jail about events that led to their detention, the pressures of incarceration and an uncertain future are intensified by the implicit or explicit threat of losing parental rights. In that situation, the DHS investigative officer asks the same questions as any other law enforcement officer, attempting to uncover facts that are equally relevant to criminal charges as to parental rights and child safety. The interrogee is caught in a bewildering, threatening environment—escapable only by those wealthy enough to post bail. In such a harrowing situation, the DHS investigative officer must advise the interrogee of their legal rights. 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 act as agents of law enforcement and must provide *Miranda* warnings when they interrogate people in jail about facts relevant to the reason for their detention. This conclusion is buttressed by

the coercive nature of DHS interrogations that can ultimately lead to the termination of parental rights—especially for families of color, families without financial resources, and families that include parents with disabilities. Merely ensuring that parents are advised of their rights neither imposes undue burdens on the government nor endangers child safety.

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 a state actor's questions during a custodial interrogation are likely to produce incriminating responses, *Miranda* warnings are required. *See Mathis v. United States*, 391 U.S. 1, 4 (1968) (tax investigations are not immune from *Miranda* requirements because while it "is true that a 'routine tax investigation' may be initiated for the purpose of a civil action rather than criminal prosecution . . . [these investigations] frequently lead to criminal prosecutions"); *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)). 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, e.g.*, 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 a child's safety and investigations into whether a parent committed a crime. DHS investigative officer Mary Longmire's questions to Frazee concerned "whether the child had been exposed to violence, what the custody arrangement between the parents had been, what the child's schedule was when both parents were involved in her care, and whether there were any medical issues that needed to be addressed," Opinion of the Court of Appeals, 20CA0035 (hereinafter "Op."), ¶ 41, all of which were relevant to the criminal investigation.

The court of appeals noted that "Longmire's interview was not focused on eliciting information about Frazee's offenses," and was instead focused on ensuring the child "could be placed somewhere safe on a short-term basis." *Id.* ¶ 48. But the formal purpose of a DHS interrogation is immaterial where, as here, the interrogator elicits facts that will later be used to incriminate the interrogee. 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 his 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).

Likewise here, even if Longmire approached her interviews with a limited purpose, because the contents of the interrogation necessarily overlapped with the crimes of which Frazee was suspected, the fact that Longmire was a DHS investigative officer "rather than […] a police officer, government informant, or prosecuting attorney, is immaterial." *Id.* at 467; *see also 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"). During the interrogation, Frazee "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.

B. DHS's Statutory Relationship with Law Enforcement Requires Treating DHS Investigative Officers as Law Enforcement Agents.

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 that he learned indicating 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). Other mandatory reporters, by contrast, may make reports to the county department or 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). The inextricable relationship between DHS and law enforcement is evident in this case. Longmire asked the chief of police about the investigation before interrogating Frazee. Op. ¶ 43. During the interrogation, Longmire took notes on a form provided by the district attorney. *Id.* ¶ 44. And she later provided her notes to the prosecution. *Id.*

For Frazee—and for similarly situated interrogees—disclosing information to DHS is, in practice, the same as disclosing information to law

enforcement. 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 at 251, and would allow Colorado law enforcement to avoid *Miranda*'s requirements by having DHS investigative officers conduct interrogations and then turn over all the information to law enforcement. Instead, DHS investigative officers must provide the same *Miranda* warnings as other law enforcement officers.

II. DHS Interrogations Are Custodial when Interrogators Question Detained Parents About the Facts that Led to their Detention in Carceral Environments.

The court of appeals applied the wrong test to determine whether Frazee was in custody. The "ultimate inquiry" in determining whether a person was in custody is "whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Stansbury v. California*, 511 U.S. 318, 322 (1994) (quoting *California v. Beheler,* 463 U.S. 1121, 1125 (1983)) (cleaned up).

The court of appeals asserted that the custody test is different for inmates and instead applied a "restriction" standard, requiring additional restraints beyond the carceral environment for an interrogation to be considered custodial. Op. ¶¶ 46–47 (citing *People v. Denison*, 918 P.2d 1114, 1116 (Colo. 1996) and *People v. J.D.*, 989 P.2d 762, 771 (Colo. 1999)).[1] Where—as here—a government investigator interrogates a detainee about the very circumstances for which he is currently detained, the "restriction" standard from *Denison* and *J.D.* does not apply.

A. *Denison* and *J.D.* Did Not Involve Interrogations About the Facts Underlying Detention.

The court of appeals' reliance on *Denison* and *J.D.* is misplaced, because in both cases, detained individuals were interrogated about offenses divorced from the reasons underlying their detention. Here, Frazee was interrogated about facts relevant to the reason for his detention.

[1] This restriction standard is inconsistent with the *Miranda* Court's practical approach to the custody determination. But this Court need not overturn precedent to reach the correct outcome in this case, because the restriction standard is inapplicable where, as here, a detained person is questioned about facts underlying the reason for the detention.

In *Denison*, this Court addressed the question of "whether a person incarcerated for one offense, but who is being questioned for a *separate* offense committed while incarcerated, is 'in custody' during questioning for purposes of *Miranda*." 918 P.2d at 1116 (emphasis added). The Court adopted the Ninth Circuit's "restriction" standard—requiring "a change in the surroundings of the prisoner that results in an added imposition on his freedom of movement"—in the context of an on-the-scene investigation about an offense *different* from the one that led to custody. *Id.* at 1116.

Denison is inapposite here because Frazee was being questioned about the *same* events that led to his custody, *supra,* Section I.A., and Longmire, unlike the *Denison* interrogator, was not "act[ing] in immediate response to recently acquired information in order to determine whether a crime had been committed" in the jail. *Denison*, 918 P.2d at 1117. This Court recognized the limitations of its holding in *Denison* in distinguishing *Denison* from *Mathis v. United States*: "[T]he United States Supreme Court did not address the on-the-scene investigation exception to the *Miranda* requirement. Rather, the *Mathis* court simply held that an Internal Revenue Service agent may not

interrogate a prison inmate about tax matters without first advising him of his *Miranda* rights, and the fact that the defendant was imprisoned on an unrelated matter did not necessarily remove the need for *Miranda* warnings." *Id.*

Here, the court of appeals stated "it is beyond debate that the [*Denison*] restriction standard is not limited to the facts of that case," and cited *J.D.*, 989 P.2d at 771–72. Op. ¶ 48. But *J.D.* also involved questioning about a *separate* offense. There, a teenager was detained "solely in connection with a probation violation in Nevada." 989 P.2d at 765. A detective asked the teenager whether she would speak with him about an armed robbery in Colorado. *Id.* She initially said no, but she later called the detective, and ultimately spoke with him about the robbery. *Id.* at 765–66. This Court held that, while the teenager was detained in Nevada for a parole violation that occurred in Nevada, *Miranda* warnings were not required before questioning her about an armed robbery that occurred in Colorado. *Id.* at 771–72.

This Court articulated the standard from *Denison* as establishing that "a person under detention or incarcerated *for unrelated purposes* is not

necessarily subjected to a '*custodial* interrogation' solely because he or she was questioned while so detained." *Id.* at 768 (citing *Denison*, 918 P.2d 1114) (emphasis added). Thus, when a person in detention is interrogated about the reasons for their detention, the restriction standard does not apply.

Here, *Miranda* warnings were required because Frazee had been formally arrested and detained, and he was then interrogated about the facts underlying his detention.

B. U.S. Supreme Court Precedent Supports Requiring *Miranda* Advisements When Pretrial Detainees Are Interrogated About Facts Underlying Their Detention.

Since *Denison* and *J.D.* were decided, the U.S. Supreme Court has distinguished pretrial detainees whose interrogations may affect their detention from postconviction prisoners being interrogated about different offenses. In *Maryland v. Shatzer*, the U.S. Supreme Court distinguished between "*Miranda* custody" and "incarceration pursuant to conviction." 559 U.S. 98, 114 (2010). Shatzer was interrogated while in prison serving a sentence for an unrelated offense. *Id.* at 101. After the interrogation, Shatzer "was released back into the general prison population," and interrogated again years later. *Id.* at 101. The Court held that there was a break in custody

for *Miranda* purposes, because when Shatzer "returned to his normal life" in prison, the "'inherently compelling pressures' of custodial interrogation ended." *Id.* at 114.

Unlike a post-conviction prisoner, a pretrial detainee "confront[s] the uncertainties of what final charges they [will] face, whether they [will] be convicted, and what sentence they [will] receive." *Id.* at 114. These uncertainties enhance the coercive pressures of an interrogation.

Moreover, if pretrial custody were not "custody" for *Miranda* purposes, police would simply delay their interrogations until their suspect were jailed, and then conduct interrogations without *Miranda* warnings. Additionally, while wealthier suspects could post bail and avoid such *Miranda*-less pretrial interrogations, indigent suspects would be unable to escape these coercive interrogations. Such a rule would run counter to the principles of *Miranda v. Arizona*. *Cf.* 384 U.S. at 472 ("The financial ability of the individual has no relationship to the scope of the rights involved here.").

C. Local Jails Contain Enhanced Trappings of Custody.

This Court has recognized that "[t]he physical conditions of the location where [an] interrogation occur[s]" and a "defendant's mental and

physical condition just prior to the interrogation" affect whether the interrogee's statements were admissible absent a *Miranda* warning. *People v. Medina*, 25 P.3d 1216, 1222–23 (Colo. 2001) (listing *Gennings* factors). Frazee's detention in the Teller County jail after his arrest undoubtedly restrained his freedom of movement to the degree associated with formal arrest.

The dire conditions of local jails across this state make the restrictiveness and coerciveness of the jail environment abundantly clear. The Arapahoe County Jail was built to house 386 inmates, but today houses closer to 1000.[2] As of 2019, "inmates often sle[pt] triple bunked in cells the size of an office cubicle."[3] When the plumbing had to be repaired, inmates were "crowded into an open-air yard during rain or snow because there's

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[2] Max Levy, *Arapahoe County Jail Expansion Will Focus on Inmates with Addiction, Health Problems*, Sentinel (Dec. 4, 2023), https://sentinelcolorado.com/metro/arapahoe-county-jail-expansion-will-focus-on-inmates-with-addiction-health-problems/.

[3] Elise Schmelzer, *Despite Fewer Arrests, Arapahoe County Jail Remains Overcrowded. The Sheriff Has a $462M Solution that Could Mean a Tax Hike*, Denver Post (Jun. 26, 2019), https://www.denverpost.com/2019/06/26/arapahoe-county-jail-crowding-tyler-brown/.

nowhere else for them to go."[4] In 2022, the Adams County Jail had "falling ceiling tiles, broken security cameras, busted pipes . . . bricks falling off the outside of the building, . . . broken cell locks, and mold growing in all corners of the jail."[5] ICE detainees in the Teller County Jail have reportedly been subjected to racist remarks and restrictions on their religious practices.[6] Moreover, inmates face jail personnel's indifference towards their mental

[4] *Id.*

[5] Holly Emery, *The Adams Co. Jail Is Crumbling Around the Inmates and Staff*, WLBT3 (Mar. 24, 2022), https://www.wlbt.com/2022/03/25/adams-co-jail-is-crumbling-around-inmates-staff/.

[6] Conor McCormick-Cavanagh, *ICE Detainees in Teller County Jail Start Hunger Strike Over Conditions*, Westword (Aug. 11, 2020), https://www.westword.com/news/ice-detainees-launch-hunger-strike-in-teller-county-jail-11771600.

and physical health, leading some to gouge their own eyes out,[7] give birth without medical attention,[8] or die after futile attempts to get medical care.[9]

Such inhumane conditions increase the coercive effects of a jailhouse. The interrogee fears continued incarceration in an overcrowded, violent, and unsanitary facility, and is thus less physically and mentally prepared to counter the pressures exerted by custodial interrogation. *Miranda* warnings must be given to counter the coercive jail environment.

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[7] Olivia Prentzel, *Boulder County to Pay $2.5M to Man Who Gouged His Own Eyes Out in Solitary Confinement*, Colorado Sun (Aug. 9, 2023), https://coloradosun.com/2023/08/09/boulder-county-jail-settlement-solitary-confinement/.

[8] Rob Low, *Mother Who Gave Birth in Denver Jail, Son Will Receive $480K in Settlements*, Fox 31 (Aug. 13, 2020), https://kdvr.com/news/problem-solvers/mother-who-gave-birth-in-denver-jail-son-will-receive-480k-in-settlements/; *Sanchez v. City & Cnty. of Denver, Colorado*, No. 19-CV-02437-DDD-NYW, 2020 WL 924607, at *1 (D. Colo. Feb. 26, 2020).

[9] Julia Cardi, *Who's Responsible? Accountability Questions Remain After Denver County Jailhouse Death*, Denver Gazette (Mar. 3, 2023), https://denvergazette.com/news/crime/whos-responsible-accountability-questions-remain-after-denver-county-jailhouse-death/article_f8a7c798-b7c1-11ed-af35-0fae5adf5bc2.html; Jeff Todd, *Lawsuit Claims Jail Could Have Stopped Inmate's Death*, CBS Colorado (Dec. 16, 2016), https://www.cbsnews.com/colorado/news/lawsuit-claims-jail-could-have-stopped-inmates-death/.

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

Miranda warnings are also necessary because, as this Court has rightly recognized, the threat of child removal exerts profoundly coercive pressure on a parent. In *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 at 1226. 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 very purpose of assessing whether removal of a child is necessary.

Child removal traumatizes parents in irreparable ways. *See 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)).[10] 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).

This Court should consider the immense coercive pressures on parent-interrogees in determining whether DHS investigative officers must provide *Miranda* warnings. Moreover, this Court should consider that the coercive nature of the detention and the threat of child removal operate in tandem to increase both the coercion and the trauma faced by the parent. DHS investigative officers should therefore provide *Miranda* warnings before questioning detained parents about the facts underlying their detention.

The coercive pressures exerted by the threat of child removal are amplified for parents of color, indigent parents, and parents with disabilities

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[10] *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.").

who have historically been forcibly separated from their children more often, and who will be disproportionately impacted by this Court's ruling.

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

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.[11] By contrast, 898 American Indian or Alaska Native people, 952 Black people, and 246 Hispanic people were jailed per 100,000 residents of each race.[12] Each group 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.[13] "While parents had legal rights, and were supposed

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

[12] *Id.*

[13] *See generally* Holly Kathryn Norton, *Federal Indian Boarding Schools in Colorado: 1880-1920* (2023),

to provide consent for their children to attend school, the consent was often coerced and ill-informed."[14] And even when boarding schools were plagued with deadly epidemics, parents were prevented from collecting their children, "sowing very deep mistrust" of the government.[15]

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.[16] Various government agencies also sold people directly, through institutions like probate courts, separating children

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https://drive.google.com/file/d/1bbrIXKLIbQlWxQ9sU-9o4ql_Dthq7-C3/view.

[14] *Id.* at 22.

[15] *Id.* at 66.

[16] 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.[17] Enslaved parents "lived with the constant fear that they or their children might be sold away." [18]

Forcible family separation continues. 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."[19] 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

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[17] 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/.

[18] 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.

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

government intervention.[20] For parents of color, whose cultural and familial histories include forcible family separation, DHS interrogations are particularly coercive.

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

People living in poverty are both more likely 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 families living above the poverty line.[21] And incarcerated people on average "earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages."[22]

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[20] 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).

[21] 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.

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

Additionally, those who have experienced poverty know that decisions to withhold information from the government can diminish 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.[23]

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, it is essential that parents be advised of their right to remain silent.

C. 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.[24] And

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[23] *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).

[24] Leah Wang, *Chronic Punishment: The unmet Health Needs of People in State Prisons*, Prison Policy Initiative (June 2022),

parents with disabilities are more likely to be investigated and separated from their children than parents without disabilities.[25] For parents with cognitive or intellectual disabilities, the disparities are even greater.[26]

Parents with cognitive disabilities are also more susceptible to making false confessions, and less likely to understand and invoke their rights.[27] These disparities make *Miranda* advisements even more critical.

IV. 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 parents know their existing rights before they speak

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https://www.prisonpolicy.org/reports/chronicpunishment.html#disability.

[25] *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.

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

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

to a state actor in a coercive situation where they risk losing *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 children's safety. For example, they 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). 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.[28] Child welfare leaders report getting more information from families because the greater transparency reduces "the anxiety of the interaction" between the government and the parent.[29] In this vein, *Miranda* warnings facilitate both justice and information gathering, and should be required when DHS investigative officers interrogate detained people about the facts underlying their detention.

CONCLUSION

For the foregoing reasons, this Court should hold that *Miranda* warnings are required when DHS investigative officers interrogate detained parents about facts underlying their detention.

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[28] 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.

[29] *Id.*

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