No. 126682

In The Supreme Court Of Illinois

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. HAROLD BLALOCK, Petitioner-Appellant.	On Appeal from the Illinois Appellate Court, First Judicial District, Case No. 1-17-0295. There on Appeal from the Circuit Court of Cook County, Illinois, No. 99 CR 4956. Hon. Vincent M. Gaughan Judge Presiding

BRIEF OF *AMICI CURIAE* THE INNOCENCE PROJECT, THE RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER, AND THE EXONERATION PROJECT IN SUPPORT OF PETITIONER-APPELLANT

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POINTS AND AUTHORITIES

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INTEREST OF *AMICI CURIAE*

The Innocence Project, Inc. ("Innocence Project") was established nearly 30 years ago, in 1992, to provide pro bono representation to individuals who may be able to prove their actual innocence through the development of a post-conviction record. To date, the Innocence Project, together with affiliated organizations, has exonerated 375 people who never committed the offenses for which they had been convicted. In addition to providing pro bono post-conviction legal services, the Innocence Project works to prevent future miscarriages of justice. Relying on data compiled over nearly three decades of exonerations, the Innocence Project has identified the chief risk factors for wrongful convictions and advocates to legislatively or administratively remediate those risk factors. The Innocence Project also participates in cases that are not in the post-conviction phase of litigation—on a consult or co-counsel basis or, as here, as amici curiae—where the outcome of an issue in dispute may create precedent that either significantly aggravates or significantly mitigates one or more risks of wrongful conviction.

The Roderick and Solange MacArthur Justice Center ("RSMJC") is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC fights for civil rights protections in areas including police misconduct, the rights of the indigent in the criminal justice system, compensation for the wrongfully convicted, and the treatment of incarcerated people.

The Exoneration Project provides pro bono representation to innocent people who have been wrongly convicted. By investigating and petitioning courts to reverse wrongful convictions, the Exoneration Project is dedicated to restoring justice. Beyond assisting

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clients with their claims of actual innocence in court, the Exoneration Project also strives to shed light on the problems in the criminal legal system that allow innocent people to be convicted of crimes they did not commit by advocating for greater accountability in the justice system.

False confessions are among the leading causes of wrongful convictions.[1] Police violence or threats of violence during interrogation have induced an alarming number of innocent people to falsely "confess" to crimes which they have not committed. Nowhere is that problem more prevalent than in Chicago, which accounts for an extraordinarily large proportion of the nation's known false confessions.

This case calls upon the Court to determine whether a petitioner who alleges that Chicago Police detectives physically abused and violently threatened him during his interrogation should be granted leave to file a successive post-conviction petition, when he submits newly available evidence to corroborate his claim that he was physically coerced into falsely confessing.

As leading advocates for the wrongfully convicted and those whose rights have been violated by unlawful police violence, amici curiae are deeply invested in ensuring that individuals who confessed during custodial interrogation in response to physical coercion are provided meaningful opportunities to contest the constitutionality of their coerced confession's admission—particularly in cases where, as here, the reliability of a confession is in dispute. Amici are concerned that the decision below, if upheld, would unreasonably foreclose post-conviction scrutiny of confessions made by individuals who were subjected

[1] *See* Innocence Project, DNA Exonerations in the United States, https://innocenceproject.org/dna-exonerations-in-the-united-states/ (August 29, 2021) ("*DNA Exonerations*").

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to police violence and physical coercion. Such a ruling would increase the risk that wrongfully convicted individuals remain in custody.

Accordingly, the undersigned submit this brief to urge this Court to reverse the ruling below and issue an opinion that ensures meaningful judicial scrutiny of post-conviction claims that are substantiated by newly available evidence that corroborates claims of physical violence and coercion during custodial interrogation.

BACKGROUND

False confessions elicited during coercive police interrogations are a leading cause of wrongful convictions, having contributed to nearly one quarter of all wrongful convictions that were later overturned by DNA evidence.[2] False confessions are particularly prevalent in cases like this one—homicide offenses involving young suspects.[3]

Chicago, Illinois has become known as the "false confession capital" of the nation, due largely to the Chicago Police Department's historical use of torture, violence, and threats of violence to coerce confessions from overwhelmingly Black and Latinx subjects of custodial interrogation.[4] A 2006 Special Prosecutor's Report, a 2006 United Nations Committee Against Torture report, an Office of Professional Standards Report, the Illinois

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[2] *See* The National Registry of Exonerations (August 29, 2021), https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (establishing that 129 of the 542 (24%) exonerations involved false confessions).

[3] *Id.* (establishing that over sixty-seven percent (67%) of all known false confessions were elicited from people twenty-four years old or younger who were suspected of, and ultimately charged with, murder); *see also* Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 946–47 (2004) ("*Drizin & Leo*").

[4] *See* Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago (April 24, 2007), https://www.prisonlegalnews.org/media/publications/report%20on%20failure%20to%20investigate%20police%20torture%20in%20chicago-2007.pdf (including over 100 victims of torture, nearly all of whom were Black or Latinx).

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Torture Inquiry and Relief Commission's findings,[5] numerous civil suits, and the criminal prosecution of former Chicago Police Commander Jon Burge have yielded overwhelming evidence "of decades of abuse [by Burge and under Burge's watch] that is unquestionably horrific." *United States v. Burge*, 711 F.3d 803, 808 (7th Cir. 2013); *see also Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring) (noting that a "mountain of evidence indicates that torture was an ordinary occurrence" in the Chicago Police Department under Burge's command).

During his tenure, Burge and Chicago Police detectives under his command employed interrogation tactics that were compared to those used in the "notorious Abu Ghraib facility in Iraq," *Hinton*, 395 F.3d at 822, and included electric shocks, beatings, cigarette burnings, suffocation, kicking, screaming, and threats with assault weapons to secure confessions from often innocent victims.[6] Such torture was both "systematic" and "methodical" and commanders, like Burge, not only knew of the abuse, but actively participated in it.[7]

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[5] In 2009, to address the pervasive use of torture and its lingering consequences, the Illinois Legislature passed the Illinois Torture Inquiry and Relief Commission Act (the "TIRC ACT"), P.A. 96-223, 775 ILCS 40/1 *et seq.* (2009). The TIRC Act established the Illinois Torture Inquiry and Relief Commission, a state agency tasked with documenting instances of torture and coercion. *Id.* at 40/15. Pursuant to its authority under the TIRC Act, the Commission remanded over a dozen cases to Cook County courts for evidentiary hearings. The TIRC's investigations often led to litigation that exonerated innocent people who were physically coerced into falsely confessing, as in the case of Arnold Day, who eventually received over $200,000. *Arnold Day*, The National Registry of Exonerations (Jan. 15, 2020), https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5473.

[6] *See generally* G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. Rev. 329 (2014) ("*Flint Taylor*"); *see also People v. Wilson*, 116 Ill. 2d. 29, 35-41 (1987).

[7] *See* Michael Goldston, *Special Project Conclusion Report*, Off. of Pro. Standards, (Sept. 28, 1990), https://peopleslawoffice.com/wp-content/uploads/2012/02/Goldston-Report-with-11.2.90-Coversheet.pdf, at 18-21; Letter from David M. Hardy, Section Chief,

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In 1993, after nearly two decades of torture and coerced confessions, Burge was fired.[8] Nonetheless, after Burge's removal, the violent, coercive practices employed by Burge and his team persisted.[9] And it was not until June 2010 that Burge was convicted on criminal charges and sentenced to four-and-a-half years in prison.[10]

Here, Petitioner Harold Blalock presented newly available evidence that corroborates his claim that the Chicago Police detectives who interrogated him—namely, James O'Brien, John Halloran, and John Murray, at least two of whom trained under Burge[11]—subjected him to physical and mental abuse during interrogation.

Specifically, Mr. Blalock alleges—and submits newly available evidence that corroborates his claim—that he was physically coerced into confessing responsibility for the death of Veronica Riley, who was shot and killed outside a convenience store in

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Record/Information Dissemination Section, Information Management Division, Dept. of Justice to J. Ader (Nov. 1, 2019), at 275 (on file at https://www.documentcloud.org/documents/6539136-Burge-Litigation-1st-Interim-Release-19-Cv-04048.html#document/p275/a535179).

[8] *See* Natalie Y. Moore, *Payback*, The Marshall Project (Oct. 30, 2018.), https://www.themarshallproject.org/2018/10/30/payback; *see also* Flint Taylor, at 339-40, 363-64, 378-79.

[9] *See, e.g.*, Andy Thayer, *High-Ranking Torture Cop Proteges Sued in Sign that Chicago is Not Over the Burge Era*, Loevy & Loevy (Feb. 8, 2018), https://loevy.com/blog/high-ranking-torture-cop-proteges-sued-sign-chicago-not-burge-era/; Micah Uetricht, *Accused Torturer Jon Burge Died Last Week, But His Legacy of Brutal, Racist Policing Lives On in Chicago*, The Intercept (2018), https://theintercept.com/2018/09/25/jon-burge-chicago-police-torture/ (noting the history of post-Burge police problems in Chicago and concluding that "[t]he broader culture of racism and brutality that he was at the helm of in the Chicago Police Department appears to be firmly intact"). Indeed, the TIRC reports submitted by Mr. Blalock show numerous allegations of physical abuse post-dating Burge's removal against Detectives Halloran and Detective O'Brien alone. (C. 150-159.)

[10] *See* Moore, *supra* note 8.

[11] *See* Thayer, *supra* note 9 (noting that Detectives Halloran and O'Brien, two of Petitioner's interrogating officers, both trained under "the infamous Jon Burge" and continued work on the force past his termination).

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Chicago on January 22, 1999. *See People v. Blalock*, 2020 IL App (1st) 170295, ¶ 3. The day following Ms. Riley's death, Mr. Blalock was arrested after an interested witness, Tara Coleman, implicated him. *Id.* ¶¶ 4, 5.[12] After taking Mr. Blalock into custody, Detectives O'Brien, Halloran, and Murray interrogated Mr. Blalock in a closed, windowless room into early morning hours; between approximately 10:00 p.m. and 4:00 a.m. (TR. A24, A31-34.)[13] At the time of the interrogation, Mr. Blalock had just turned 24, had reading comprehension impediments, and was characterized by at least one judge as "mentally challenged."[14] The interrogation was not recorded.[15] As Mr. Blalock alleged in his unsuccessful pre-trial suppression motion—and consistent with the allegations in the instant petition—the interrogating detectives "slapped, yelled at, threatened [him], and cut his fingernails" during the course of his interrogation. *Blalock*, 2020 IL App (1st) 170295, ¶ 7 (alteration in original) (citation omitted).

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[12] Later investigations revealed that the witness, Tara Coleman, had an incentive to identify Mr. Blalock as the shooter: the father of her child, "Rasu," was present at the scene of the murder, was armed with a firearm, and was observed firing his gun in the area. *Blalock*, 2020 IL App (1st) 170295 ¶ 12. At trial, Coleman recanted nearly the entirety of her prior statements. *Id.* ¶ 11. Additionally, Detective O'Brien, on cross examination at Mr. Blalock's trial, acknowledged that Tara Coleman, despite identifying Mr. Blalock as involved, had never expressly stated that she witnessed Mr. Harold Blalock shoot Ms. Riley. (TR. E32, E34.)

[13] This brief refers to the trial record of proceedings as "TR," the first successive post-conviction proceedings as "PC," and the instant successive post-conviction proceedings as "R" and "C."

[14] *See People v. Blalock*, 2014 IL App (1st) 102685-U, ¶ 21 (noting the trial court's finding that Mr. Blalock was "mentally challenged, but fit to stand trial" and defense arguments that Mr. Blalock was "virtually illiterate with a comprehension level of a sixth grade child") (unpublished) (citation omitted).

[15] Today, Mr. Blalock's unrecorded confession would have been presumptively inadmissible. In 2013, Illinois enacted legislation rendering the use of "[a]n oral, written, or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention" presumptively inadmissible unless "an electronic recording is made of the custodial interrogation; . . . and the recording is substantially accurate and not intentionally altered." *See* 725 ILCS 5/103-2.1 (2017).

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After approximately five hours in the interrogation room, Assistant State's Attorney Clarissa Palermo arrived and continued to interrogate Mr. Blalock. Beginning at approximately 3:00 a.m. the morning following his arrest, ASA Palermo wrote out a handwritten statement that Mr. Blalock signed. (TR. A31-34.) The statement included an admission that Mr. Blalock fired gunshots into the street in close proximity to the scene of Ms. Riley's death, intending to shoot a man he had been fighting with. The statement Mr. Blalock signed stated that he was "treated well" by police and was not threatened nor promised anything in return for his confession. *Blalock*, 2020 IL App (1st) 170295, ¶¶ 5, 8. At the pre-trial suppression hearing, the defense did not present evidence that his interrogating officers have been involved in multiple instances of violence and physical coercion, nor cross-examine the testifying detective regarding his involvement in other misconduct, as such evidence was not readily available to the defense at the time.[16]

At trial—following his attorney's advice not to testify regarding the police abuse due to lack of corroborating evidence, (C. 131)—Mr. Blalock testified that the interrogating officers did not threaten him during the interrogation. (TR. E245.) Contrary to the admissions contained in the statement he signed, Mr. Blalock testified that he fired a gun in self-defense *after* another man on the street began shooting at him. *See Blalock*, 2020 IL App (1st) 170295, ¶ 9. Mr. Blalock testified that he signed the false statement—which did not include a self-defense narrative and was inconsistent with his trial testimony—because

[16] Indeed, much of the evidence that Mr. Blalock attached to the petition at issue here did not exist at the time, for example: TIRC reports regarding Detectives O'Brien and Halloran (C. 150-159); an order of the Circuit Court of Cook County appointing a Special Prosecutor, dated April 11, 2013 (C. 149), the Affidavit of George Anderson, dated April 11, 2011 (C. 167), the Affidavit of Clayborn Smith, dated January 5, 2009 (C. 175-176), and the Affidavit of Michael Taylor, dated February 15, 2011 (C. 178).

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the detectives and the ASA repeatedly accused him of lying and rejected his version of events. *See id.* ¶¶ 10, 31. Ultimately, he complied with their request for a signed statement which conformed to the detectives' narrative. *See id.*

A defense witness largely corroborated Mr. Blalock's trial testimony, (R. 140-43), and years later, Mr. Blalock's self-defense narrative was further corroborated by a sworn affidavit from another witness to the shooting.[17] At trial, the State did not present any forensic evidence that would tend to establish that it was Mr. Blalock—and not the shooter on the street—who fired the fatal shot. Rather, the State relied on Mr. Blalock's signed confession and Ms. Coleman's recanted testimony[18] to convince the jury of Mr. Blalock's guilt.

This case involves Mr. Blalock's second successive post-conviction petition, filed pursuant to the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1(f) (2019). *See Blalock*, 2020 IL App (1st) 170295, ¶ 16.[19] Under the Act, petitioners may file only one post-conviction petition as of right, while successive petitions require leave of court. *See*

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[17] Andre Cross, who witnessed the shooting, averred in a sworn affidavit attached to Mr. Blalock's first post-conviction petition that he had seen a man standing on the street pull a gun from his waistband and fire several shots towards Mr. Blalock as he left the barber shop. *See People v. Blalock*, 2014 IL App (1st) 102685-U, ¶ 15. According to Cross, one of those shots hit a woman who ran into a store. *See id.* Cross further averred that Mr. Blalock fired back at the initial shooter and then drove away from additional gunfire. *See id.* Cross also indicated that he informed police what he saw, and a police officer investigating the case took down his name and contact information, but he was not thereafter contacted by police (PC. 36-37.)

[18] At trial, "Ms. Coleman denied seeing who fired the gunshots, denied identifying defendant as the shooter, and otherwise recanted the statement she made to the Assistant State's Attorney and the detectives." *Blalock*, 2020 IL App (1st) 170295, ¶ 11.

[19] In 2003, a trial court denied Mr. Blalock's first post-conviction petition on the merits. *See Blalock*, 2020 IL App (1st) 170295, ¶ 14. In 2009, the court denied him leave to file a second petition, a decision which the appellate court affirmed. *Id.* ¶ 15. Neither of these post-conviction petitions alleged that Mr. Blalock's confession was physically coerced by the interrogating officers.

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725 ILCS 5/122-1(f). Courts must grant leave where "fundamental fairness requires relaxation of the statutory bar to a successive petition[,]" in that a petition satisfies the two-pronged "cause-and-prejudice test." *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002). To show "cause," the petitioner's successive petition must properly allege an "objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f). In the context of an allegation of a *physically* coerced confession, if sufficient "cause" is established, then a harmless-error analysis does not apply and prejudice is established for purposes of leave to file if the petitioner demonstrates a prima facie showing that the newly available evidence would likely change the result of the suppression hearing. *Accord People v. Wrice*, 2012 IL 111860, ¶ 84.

Attached to his successive *pro se* petition, Mr. Blalock submitted an affidavit detailing the physical violence and threats he was subjected to during his interrogation and documentary evidence that corroborates his claim—much of which post-dates his initial post-conviction petition. Specifically, Mr. Blalock attached to his petition TIRC reports listing nearly 40 allegations of physical abuse against Detective Halloran and Detective O'Brien (C. 150-159), as well as "affidavits from other alleged victims of these detectives, a report from a Special State's Attorney that investigated allegations against these officers, a Chicago Tribune article about the detectives, and police department internal affairs memoranda." *Blalock*, 2020 IL App (1st) 170295, ¶ 16.

The new evidence presents a concerning history of police abuse in interrogations at the hands of Mr. Blalock's interrogating officers. More specifically, Mr. Blalock attached evidence of complaints against Detective Halloran that span a 24-year period from 1990 to

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2014, including two dozen allegations which mirror the claim that Mr. Blalock has made since the time of his pre-trial hearings.[20] For example, Mr. Blalock attached an affidavit from Clayborn Smith, stating that Halloran "smacked [him] in the mouth" and "hit" him (C. 168), "grabbed [him] by [his] head, pulled [his] head down, yanked [him] down" (C. 170), and "kicked [him a couple times.]" (C. 171.)[21] Likewise, Mr. Blalock presented evidence of numerous complaints against Detective O'Brien, ranging from physical abuse to intimidation.[22] In one affidavit Mr. Blalock attached, the affiant states that O'Brien "started slapping [him] in the face," picked up a pipe, placed a telephone book on his side, and "struck the book with the pipe six or seven times." (C. 169.)[23] O'Brien was also named as a defendant in three misconduct lawsuits that collectively cost the City of Chicago over $7 million in settlements.[24] In one of those cases, the plaintiff—who served nine years of his sentence before his conviction was reversed—alleged that O'Brien and other officers verbally threatened and physically attacked him during his interrogation and coerced him

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[20] *See* TIRC database allegations of abuse for Detective John Halloran (C. 155-159). Further, in 1991, for example, Halloran was involved in the violent interrogation of a 15-year-old boy, which left the child with a black eye. *See People v. Tyler*, 2015 IL App (1st) 123470, ¶ 168.

[21] *See also* Maurice Possley, Steve Mills & Ken Armstrong, *Veteran Detective's Murder Cases Unravel*, Chi. Trib., Dec. 17, 2001, http://www.chicagotribune.com/investigations/chi-011217confession-story.html; George Anderson Affidavit (C. 160-167); Michael Taylor Affidavit (C. 177-178); Malik Taylor Affidavit (C. 179-191).

[22] *See* TIRC database allegations of abuse for Detective James O'Brien (C. 150-154). Indeed, Illinois courts have recognized that "[d]etectives O'Brien and Halloran[,] . . . have been identified in other allegations of torture." *People v. Pittman*, 2015 IL App (1st) 132727-U, ¶ 22 (citing cases).

[23] The George Anderson Affidavit (C. 160-167) also includes allegations of physical abuse against Halloran.

[24] *Settling for Misconduct: James O'Brien*, Chi. Rep., http://projects.chicagoreporter.com/settlements/officer/15792/ (last visited Aug. 29, 2021).

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into signing a false confession. *See Wilson v. O'Brien*, No. 07-cv-03994, Dkt. 93 (N.D. Ill.). Further, Detective Murray, along with four other detectives, used threats to coerce an innocent person into providing a false confession.[25]

Although Mr. Blalock presented newly available evidence that corroborated his claim that his confession was physically coerced and thus unconstitutionally admitted into evidence against him, the court denied Mr. Blalock leave to file his successive petition, concluding that his claims of abuse did not satisfy the requisite cause and prejudice test. *Blalock*, 2020 IL App (1st) 170295, ¶ 17 (citing 725 ILCS 5/122-1(f)). The appellate court affirmed. *Id.* ¶ 40. In doing so, the court held that while Mr. Blalock "established 'cause' for not providing at least some of the evidence he now relies upon," he did not establish "cause for failing to [previously] make the claim altogether" because he was inevitably aware of the police abuse since the time it occurred. *Id.* ¶ 27. The appellate court also reasoned that Mr. Blalock's claims of police violence during his interrogation were "rebutted by his own admissions in the record, which [he] made under oath." *Id.* ¶ 32.

SUMMARY OF ARGUMENT

Police violence and threats of violence during interrogations not only grossly violate individuals' constitutional rights, but also may coerce innocent suspects into

[25] The innocent victim of Murray's tactics was charged with murder and held in pre-trial detention for nearly three years until he eventually succeeded in having the false confession suppressed and the murder charges against him dropped, and, thereafter, obtained a $1.2 million settlement. *See* Hal Dardick, *Taxpayers out $13 million in 3 lawsuits*, Chi. Trib. (Dec. 8, 2014), https://www.chicagotribune.com/news/breaking/ct-chicago-legal-settlements-1209-20141208-story.html; *see also Williams v. City of Chicag*o, No. 10-cv-02423, Dkt. 1 (N.D. Ill.).

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providing false confessions, resulting in tragic miscarriages of justice.[26] This problem is particularly acute in Chicago, the country's "false confession capital."[27] Indeed, nearly *twenty-five percent* (25%) of all known false confessions nationwide were elicited from Cook County police interrogations.[28]

In light of the uniquely problematic history of police interrogation violence and resulting false confessions in Illinois, meaningful judicial scrutiny of substantiated claims of police coercion is critical. This Court has long recognized the unconstitutionality of upholding a conviction based, in any part, upon a confession elicited by violence and, accordingly, has upheld a decision granting leave to file where the petitioner adequately pled and presented new evidence corroborating a claim of a physically coerced confession. *See People v. Wrice*, 2012 IL 111860, ¶ 84 (petitioner established the requisite "cause" and "prejudice" where he presented newly available evidence that interrogating officers were implicated in other instances of police violence—namely, the Special State's Attorney, Edward J. Egan's 2006 Report—and holding that the "use of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error.").

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[26] *See DNA Exonerations*, *supra* note 1 (noting that 48 additional crimes, including 25 murders, were committed by the true perpetrators of crimes for which innocent false confessors were wrongfully convicted).

[27] *See, e.g.*, *60 Minutes: Chicago: The False Confession Capital* (CBS television broadcast Dec. 9, 2012), https://www.cbsnews.com/news/chicago-the-false-confession-capital/ (transcript of broadcast); Kevin Davis, *The Chicago Police Legacy of Extracting False Confessions is Costing the City Millions*, A.B.A. J. (July 1, 2018), https://www.abajournal.com/magazine/article/chicago_police_false_confessions.

[28] *See* The National Registry of Exonerations (August 29, 2021), https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx; Janet Moore, *Reviving* Escobedo, 50 Loy. U. Chi. L.J. 1015, 1029 (2019).

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In contrast to this Court's precedent, the appellate court's opinion here threatens to effectively deny petitioners—typically appearing *pro se*[29]—the opportunity to file successive petitions asserting claims of police violence during interrogation if they did not allege physical coercion at every stage of litigation, or if they have previously made a contradictory statement under oath on advice of prior counsel. As explored below, this ruling, if upheld, risks insulating wrongful convictions from judicial review and eliminating potentially innocent petitioners' only path to relief.

To help safeguard against wrongful convictions procured by physically coerced confessions, this Court should hold that a petitioner must be granted leave to file a successive post-conviction petition when the petition is supported by previously unavailable evidence of interrogation violence or misconduct committed by the petitioner's interrogating officers, regardless of whether the petitioner has consistently asserted the claim or previously made contradictory statements under oath. Such a narrow but significant holding—allowing leave to file whenever there is new evidence specifically implicating the officers who interrogated the petitioner, but without modifying the relevant evidentiary burden at any subsequent stage of proceedings[30]—is critical to ensure that courts do not categorically reject successive petitions asserting a viable claim of a physically coerced and, potentially, false confession.

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[29] "[S]uccessive postconviction petitions are typically filed *pro se* and the Act makes no provision for a defendant to be entitled to counsel until after a postconviction petition is docketed." *People v. Bailey*, 2017 IL 121450, ¶ 27.

[30] As this Court has acknowledged, "[s]atisfaction of the ['cause and prejudice'] test merely allows the petition to proceed; it does not relieve the defendant of his evidentiary burden in the postconviction proceeding." *Wrice*, 2012 IL 111860, ¶ 85.

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ARGUMENT

I. POLICE VIOLENCE DURING INTERROGATIONS PLACES INNOCENT PEOPLE AT RISK OF FALSELY CONFESSING AND WRONGFUL CONVICTION.

A. False Confessions are a Leading Cause of Wrongful Convictions.

False confessions are a primary cause of wrongful convictions in the United States, contributing to nearly twenty-four percent (24%) of the convictions underlying all known DNA exonerations.[31] As the United States Supreme Court has recognized, even in the absence of violence or explicit threats of violence, custodial interrogations that are designed to psychologically induce the suspect to confess[32] create "inherently compelling pressures." *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). The Supreme Court has also recognized that "there is mounting empirical evidence that the[] pressures

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[31] *See* The National Registry of Exonerations (August 29, 2021), https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (establishing that 129 of the 542 (24%) exonerations involved false confessions).

[32] Prior to the 1930s, police throughout the country more regularly used physical violence and aggressive confrontational tactics that became known as the "third degree" to force suspects into confessing. Richard A. Leo, *Police Interrogation and American Justice* 66–70 (Harvard University Press 2008). After significant public backlash and reform efforts, most police departments began utilizing new interrogation techniques, most notably the "Reid Technique." Wyatt Kozinski, *The Reid Interrogation Technique and False Confessions: A Time for Change*, 16 Seattle J. for Soc. Just. 301, 306-09 (2017). The "Reid Technique"—named after one of its founders, a former Chicago Police Detective, John E. Reid—is the "most widely publicized and probably most widely used" interrogation method in the United States and is characterized by physical isolation and psychologically manipulative techniques intended to "lead suspects to see confession as an expedient means of escape." Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 7 (2010) ("*Police-Induced Confessions*"). Today, the Reid method—in which psychological manipulation is key—is deemed sufficiently controversial due to its outsized role in producing false confessions that "a consulting group that . . . has worked with a majority of U.S. police departments, said . . . it will stop training detectives in the [Reid] method" and will now "use the Reid technique only to educate police on the risk and reality of false confessions." Eli Hager, the Marshall Project, *The Seismic Change in Police Interrogations* (Mar. 7, 2017), https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20170308-708#.OF0yiMfDd.

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[associated with custodial interrogation] can induce a frighteningly high percentage of people to confess to crimes that they never committed[.]" *Corley v. United States*, 556 U.S. 303, 321 (2009) (citing *Drizin & Leo*, at 906-07). These pressures are even more acute for young suspects under the age of twenty-five.[33] Indeed, nearly sixty-three percent (63%) of all known false confessions were elicited from suspects who, like Mr. Blalock, were twenty-four years old or younger at the time of their interrogation.[34]

These known false confession cases necessarily represent only a fraction of the actual number of innocent people who were coerced into "confessing" and who, consequently, were wrongfully convicted. As leading false confession experts have explained, the available data "most surely represent the tip of an iceberg" given the number of "false confessions that are disproved before trial, many that result in guilty pleas, those in which DNA evidence is not available, those given to minor crimes that

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[33] Neuroscience helps explain why young people falsely confess more frequently than adults. Neuroimaging has revealed that the areas and systems of the brain responsible for future planning, judgment, and decision making—the prefrontal cortex and other regions that make up the "cognitive-control networks"—are not fully developed until the early to mid-twenties, which results in immaturity and cognitive impairments in young adults. *See* Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science,* 16 Current Directions in Psych. Sci. 55, 56 (2007) (explaining that "psychosocial capacities . . . continue to develop" throughout a person's early and mid-twenties); Sara B. Johnson, Robert W. Blum, & Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. Adolescent Health 216 (2009) (noting that the "adolescent brain continues to mature well into the 20s"). Further, scientific research demonstrates that certain aspects of psychosocial development are particularly delayed for young adults who have had "serious" criminal justice contact. Hayley Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice*, 23 Psych. Pub. Pol'y & L. 118, 121 (2017).

[34] The National Registry of Exonerations (August 29, 2021), https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (showing that 221 of the 251 false confession cases involved innocent people who were aged 24 and younger at the time of interrogation).

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receive no post-conviction scrutiny, and those in juvenile proceedings that contain confidentiality provisions."[35]

In light of their inherently biasing impact, once elicited, false confessions have an enormous influence on all parties involved in the case and present a distressingly high risk that the confessor will be wrongfully convicted. False confessions often thwart criminal investigations because of a confession's power to "taint[] the perceptions of eyewitnesses, forensic experts, and others."[36]

The case of Robert Taylor, an exoneree from Cook County, Illinois, exemplifies the overwhelming impact a false confession has on the fair administration of justice—often elevated by factfinders above even scientific evidence of innocence. In 1991, Mr. Taylor, who was just fifteen years old at the time, was arrested with four other young people (later known as the "Dixmoor Five"), and interrogated about the rape and murder of a young girl.[37] Mr. Taylor, along with two other of his co-defendants, signed a handwritten confession to the crime.[38] Before trial, DNA testing of semen recovered from the victim's body revealed the presence of an unidentified male's DNA profile.[39] Although Mr. Taylor

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35 *Police-Induced Confessions*, *supra* note 32, at 3.

36 Saul M. Kassin, *Why Confessions Trump Innocence*, 67 Am. Psych. 431, 436–38 (2012) (noting the high prevalence of additional evidentiary errors, such as mistaken eyewitness identification, when a false confession is involved); *see also* Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am Acad. Psychiatry L. 332, 340 (2009).

37 *Robert Taylor*, National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3828 (last visited Aug 29, 2021).

38 *Robert Taylor*, Innocence Project (2021), https://innocenceproject.org/cases/robert-taylor/ (last visited Aug 29, 2021).

39 *Id.*

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and the other young suspects were all excluded as possible sources of the semen, the young boys were prosecuted and, ultimately, convicted.[40] After spending fourteen years in prison, Mr. Taylor and the rest of the Dixmoor Five were exonerated only after post-conviction DNA testing revealed that the source of the semen found on the victim's body belonged to a serial offender.[41] Mr. Taylor's case is one of several examples of wrongful convictions, caused in part by false confessions, that occurred despite compelling scientific evidence of innocence at the time of trial. Indeed, *twenty-two percent* (22%) of individuals who falsely confessed and were later exonerated by DNA testing, like Mr. Taylor, had exculpatory DNA evidence available at the time of trial but were nonetheless wrongfully convicted.[42]

B. When Interrogating Officers Engage in Violence or Threats of Violence, as Alleged Here, Innocent People are at an Increased Risk of False Confession and Wrongful Conviction.

Police violence and threats of violence place all custodial subjects of interrogation at risk of being unconstitutionally coerced into confessing, and place innocent people at serious risk of falsely confessing and wrongful conviction. Strikingly, two-thirds of all known cases in which police misconduct led to false confessions nationwide involved

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40 *Id.*

41 *Id.*

42 *See DNA Exonerations*, *supra* note 1.

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threatened or actual violence during the relevant interrogations.[43] In Chicago, violence or threats of violence were present in *sixty-eight percent (68%) of known false confessions*.[44]

The related cases of Cory Batchelor and Kevin Bailey are paradigmatic of how violence and coercive tactics used by police can induce false confessions.[45] Mr. Batchelor and Mr. Bailey were convicted of homicide based primarily on confessions extracted by a Burge-era Chicago Police Department detective.[46] Just nineteen years old at the time, and thus at a heightened risk for false confession, Mr. Batchelor was interrogated for more than twenty-four hours and choked, kicked, and slammed against the wall by detectives until he confessed to a crime that he never committed.[47] Mr. Bailey, also nineteen years old and at heightened risk to falsely confess, implicated himself in the crime after a detective, twelve hours into questioning, grabbed him by the neck and threatened him.[48] After spending decades in prison, both men were ultimately exonerated based on exculpatory DNA evidence found at the crime scene.[49]

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43 Samuel Gross et al., *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, Nat'l Registry of Exonerations 31 (2020), https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf.

44 *See* Klara Stephens, *Misconduct and Bad Practices in False Confessions: Interrogations in the Context of Exonerations*, 11 Ne. U.L. Rev. 593, 598 (2019); *see also* Gross, *supra* note 43.

45 *Kevin Bailey*, Innocence Project, https://innocenceproject.org/cases/kevin-bailey/ (August 29, 2021); *see also Kevin Bailey: Other Cook County Exonerations with False Confessions*, The National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5273 (last visited August 29, 2021).

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

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Accepting the "well-pleaded allegations in the petition and supporting affidavits that are not positively rebutted by the trial record . . . as true," *People v. Robinson*, 2020 IL 123849, ¶ 45, Mr. Blalock's interrogation placed him—like Mr. Batchelor and Mr. Bailey—at risk of falsely confessing when the interrogating officers used and threatened violence during the course of a psychologically manipulative interrogation. Mr. Blalock was "physically and mentally abused," during an interrogation in which officers "yelled at him, slapped him in the head, beat and kicked him, bent and split his fingernails, and put a gun to his head, among other things." *Blalock*, 2020 IL App (1st) 170295, ¶ 16.

The interrogating officers engaged in this violence during the course of a psychologically coercive interrogation, in which three homicide detectives interrogated him for a total of approximately five hours in a small, locked, windowless room, with handcuff shackles on the wall. (TR. E17.) The record suggests that, in addition to the allegations of violence, there were several risk factors for false confession at issue in Mr. Blalock's interrogation: namely, Mr. Blalock's relative youth and limited mental capacities, his likely sleep deprivation, and the officer's use of "maximization" and "minimization" techniques, both of which "have been repeatedly present in known cases of false confessions[.]"[50]

The maximization technique "convey[s] the interrogator's rock-solid belief that the suspect is guilty and that all denials will fail."[51] Often used in conjunction with

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[50] Jeffrey Kaplan et al., *Perceptions of Coercion in Interrogation: Comparing Expert and Lay Opinion*s, 26 Psych. Crime & Law 384 (2019); *see also Police-Induced Confessions*, *supra* note 32, at 12.

[51] *Police-Induced Confessions*, *supra* note 32, at 12; *see also* Fred Inbau et al., *Criminal Interrogation and Confessions* 192-93 (2013) (the "Reid Technique" manual, instructing interrogating officers to express "absolute certainty in the suspect's guilt").

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maximization, "minimization" is "designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question."[52] "Using this approach, the interrogator offers sympathy and understanding," and often provides "a choice of alternative explanations—for example, suggesting to the suspect that the murder was spontaneous, provoked, peer-pressured, or accidental."[53] "Research has shown that this tactic communicates by implication that leniency in punishment is forthcoming upon confession," and may "lead innocent people who feel trapped to confess."[54]

During Mr. Blalock's interrogation, the detectives seemingly engaged in "maximization" techniques, by repeatedly rejecting his narrative of events and accusing Mr. Blalock of lying about his guilt in the homicide. (TR. E241-42.) Mr. Blalock testified that he was unable to provide the full and true story because the interrogating detective cut him off and "told him that he was lying right there." (TR. E244-45.) The record also reveals that minimization techniques were used by Detective Murray when he implored Mr. Blalock to confess by minimizing the moral culpability of involvement in the crime, stating: "I know you not a killer you was at the wrong place at the wrong time." (C. 129.)

Furthermore, as noted, at the time of the interrogation, Mr. Blalock had just turned twenty-four years old, had difficulty with reading comprehension, and was described as "mentally challenged." Mr. Blalock was also likely sleep deprived, as his interrogation began late at night and lasted until the early morning, from approximately 10:00 p.m. until well after 4:00 a.m. (TR. A24, A26-34.) Mr. Blalock's youth, mental state, and sleep

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52 *See id.* at 10.

53 *Id.* at 12.

54 *Id.* at 12, 18.

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deprivation all increased his susceptibility to police coercion and placed him at a heightened risk of falsely confessing when officers engaged in psychological and physical coercion.[55]

In cases like Mr. Blalock's, where newly available evidence corroborates Mr. Blalock's allegations of police violence during interrogation, judicial scrutiny is a necessary safeguard against the risk of wrongful convictions caused by physically coerced, false confessions.

II. A PETITIONER SHOULD BE GRANTED LEAVE TO FILE A SUCCESSIVE PETITION WHERE A CLAIM OF POLICE VIOLENCE DURING INTERROGATION IS SUPPORTED BY PREVIOUSLY UNAVAILABLE EVIDENCE THAT IMPLICATES THE RELEVANT INTERROGATING OFFICERS.

"[T]he possibility of unfair and even brutal police tactics poses a real and serious threat to civilized notions of justice." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). To safeguard against the miscarriages of justice that occur when police violently elicit a confession, this Court must provide an avenue for petitioners to fully litigate a post-conviction claim that their confession was coerced, if the claim is supported by previously unavailable evidence demonstrating that the officers involved in their interrogation have engaged in other acts of coercive violence during custodial interrogation. To hold otherwise—despite the now well-documented evidence of the Chicago Police

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[55] *See* Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psych. 63, 71-72 (2018) (noting that there is a "high level of agreement" among the leading experts that sleep deprivation impacts decision making); *see also Police-Induced Confessions*, *supra* note 32 at 15, 21 (noting the prevalence of people with mental illness in the population of known false confessors); Steinberg, *supra* note 33, at 56 (explaining that "psychosocial capacities . . . continue to develop" throughout a person's early and mid-twenties).

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Department's history of systemic torture and physical coercion to induce confessions—undoubtedly places innocent Illinois citizens who falsely confessed at risk of continued wrongful incarceration.

Amici thus urge the Court to hold that a petitioner satisfies the requisite "cause" and "prejudice" test under 725 ILCS 5/122-1(f)—and must be granted leave to file a successive petition—if he presents a properly pleaded claim of police violence during his interrogation based on new, corroborative evidence that implicates the relevant interrogating officers in other acts of physical coercion. As discussed below, inconsistencies or contradictions in the record must not bar relief at this preliminary stage of proceedings. Further, consistent with this Court's precedent and the social science regarding the overwhelmingly prejudicial nature of confession evidence, this Court should hold that if "cause" is established sufficient for leave to file a claim of a physically coerced confession, then "prejudice" is established *per se*. *Accord Wrice*, 2012 IL 111860, ¶ 71.

A. This Court Should Hold That Newly Available Evidence Of Police Misconduct That Specifically Implicates The Petitioner's Interrogating Officers Establishes "Cause."

As noted above, the appellate court here reasoned that while Mr. Blalock had "established 'cause' for not providing at least some of the evidence he now relies upon," he did not establish "cause for failing to make the claim altogether" because (1) he had known of the police abuse since his interrogation in 1999, yet neglected to raise the claim of physical coercion in prior post-conviction litigation, and (2) Mr. Blalock's trial testimony contradicted his current claims. *Blalock*, 2020 IL App (1st) 170295, ¶ 27.

First, this Court should reject the appellate court's purported rule barring successive post-conviction petitions—even those containing new evidence that corroborates a claim

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of physical coercion during interrogation—where petitioners did not consistently allege physical coercion throughout each stage of litigation. Such a rule precludes courts from evaluating significant, newly available evidence tending to show gross constitutional violations and places victims of police violence, including innocent people who were wrongfully convicted, at risk of continued unlawful incarceration without a meaningful post-conviction remedy.

Although the Post-Conviction Hearing Act includes a separate provision for claims of actual innocence to proceed without a showing of "cause," this Court has acknowledged that "[a]n actual innocence claim . . . has proven to be difficult for defendants, and a successful claim of innocence is rare." *People v. Reed*, 2020 IL 124940, ¶ 42; *see also People v. Coleman*, 2013 IL 113307, ¶ 94 (noting that the actual innocence standard is "extraordinarily difficult to meet"). Thus, a successive petition presenting new evidence to corroborate a constitutional violation may be the only avenue of relief for some factually innocent petitioners who were subjected to violent coercion during their interrogation, but who lack forensic or other evidence that could affirmatively establish their innocence. To assure a remedy is available to all who may have been subjected to the Chicago Police Department's pattern and practice of violence, petitioners should be granted leave to file claims of physical coercion during interrogation after new corroborating evidence emerges, regardless of whether they have consistently asserted such a claim.

Indeed, innocent people who were physically coerced into falsely confessing and who, like Mr. Blalock, did not consistently contest the voluntariness of their confession during post-conviction litigation have been exonerated. For example, James Gibson spent over 28 years in prison for a crime he did not commit. In 1989, at just twenty-three years

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old, he became the lead suspect in the murder of two men on the South Side of Chicago.[56] Detectives under the command of Jon Burge physically abused Mr. Gibson for two days until he falsely confessed to the crime. *In re: Claim of James Gibson*, TIRC Claim No. 2013.139-G, at 1 (Ill. Torture Inquiry & Relief Comm'n July 22, 2015) (unpublished). After the interrogation, Mr. Gibson filed a complaint with the Chicago Police Department's Office of Professional Standards (OPS). *Id.* at 5-6. Mr. Gibson stated that officers had slapped, punched, kicked, and physically threatened him. *Id.* at 6. All the detectives submitted affidavits denying any physical abuse occurred, and the investigation found that Mr. Gibson's claim of physical abuse was "not sustained." *Id.* The detectives' supervisor, Commander Jon Burge, agreed with that conclusion. *Id.*

Taking his lawyer's advice, Mr. Gibson did not seek to suppress his statement before trial because his lawyer deemed the statement favorable and exculpatory. *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 1. However, in its finding of guilt, the trial court explained that Mr. Gibson's statement was the lynchpin of the prosecution's case and "of extreme importance." *Id.* (citation omitted). After the appellate court affirmed Mr. Gibson's conviction on direct appeal, he subsequently filed four post-conviction petitions, a petition for relief from judgement, and a federal *habeas corpus* petition. *Id.* at ¶ 26. In all six collateral petitions, *Mr. Gibson did not allege that the officers had physically abused him during the interrogation or that his statement was coerced*. *Id.*

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[56] Megan Crepeau & William Lee, *Man In Prison For 28 Years Could Soon Be Released After Judge Sets Bond of $20,000*, Chi. Trib. (Apr. 18, 2019), https://www.chicagotribune.com/news/breaking/ct-met-inmate-bail-set-jon-burge-20190418-story.html.

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Nonetheless, after additional litigation, in 2019, an Illinois Appellate Court vacated Mr. Gibson's convictions and ordered a new trial on the basis of his false and coerced confession and inadequate legal defense at trial. *See People v. Gibson*, 2019 IL App (1st) 182040-U, ¶¶ 101-110.[57] Despite Gibson's failure to raise the claim in various post-conviction proceedings, the Court held that Gibson's "incriminating statement to the Area 3 detectives" was "the product of police torture" and could "not be introduced as substantive evidence of his guilt." *Id.* ¶ 110. Thereafter, the prosecution dismissed the charges against Mr. Gibson, he was awarded a certificate of innocence, and, ultimately, financial compensation from the State of Illinois.[58]

The appellate court's ruling here could deny innocent petitioners in postures similar to Mr. Gibson the ability to file and litigate successive petitions asserting that they were physically coerced into confessing, merely because they, likely following counsel's advice, declined to consistently contest the voluntariness of their confession in other proceedings. Therefore, this Court should make clear that at the leave-to-file stage, a petitioner's failure to raise the claim in previous post-conviction litigation does not defeat a showing of "cause" based on new corroborating evidence of violence by the petitioner's interrogating officers.

Second, this Court should hold that a petitioner's testimony under oath that contradicts a claim of physical coercion does not undermine a petitioner's prima facie showing of "cause" sufficient to obtain leave to file a successive petition based on newly discovered evidence implicating the interrogating officers. *See Bailey*, 2017 IL 121450, ¶

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[57] *See also James Gibson*, The National Registry of Exonerations (Sept. 21, 2020), https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5550.

[58] *Id.*

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24. Rather, such an inconsistency presents a credibility issue that must be resolved at an evidentiary hearing, if the petition proceeds to that stage. It is not a proper basis for denying leave to file. To hold otherwise would contradict this Court's precedent that "the inquiry applicable at the leave-to-file stage of successive proceedings does not focus on whether the new evidence is inconsistent with the evidence presented at trial." *Robinson*, 2020 IL 123849, ¶ 60. Instead, at the leave-to-file stage, "all well-pleaded allegations in the petition and supporting affidavits that are not positively rebutted by the trial record are to be taken as true." *Id.* ¶ 45. And "[f]or new evidence to be positively rebutted [and thus insufficient to establish "cause"], it must be clear from the trial record that no fact finder could *ever accept the truth of that evidence*, such as where it is affirmatively and *incontestably* demonstrated to be false or impossible." *Id.* ¶ 45 (emphases added).[59]

Here, after considering the new evidence presented by Mr. Blalock, a factfinder could reasonably accept the allegations in Mr. Blalock's petition that: (1) the interrogating officers physically coerced him into signing the confession, but (2) he did not testify about the physical coercion and answered "no" when asked if he was threatened by the officers, because his lawyer advised him to testify in this manner and because, at the time, he lacked corroborative evidence of the coercion. Mr. Blalock's trial testimony therefore does not "affirmatively and incontestably" establish the falsity of his post-conviction claims. *Robinson*, 2020 IL 123849, ¶ 60. Rather, the contradictory trial testimony goes to Mr.

[59] In *Robinson*, the Court explained that evidence was positively rebutted in *People v. Sanders* where "an assertion that the victim had been shot only once . . . was positively rebutted by the autopsy evidence at trial establishing that the victim had been shot twice and died of multiple gunshot wounds." 2020 IL App (1st) 123849, ¶ 59 (citing *People v. Sanders*, 2016 IL 118123, 48).

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Blalock's credibility, an issue that is properly resolved at the *evidentiary* stage of proceedings, and not at the leave-to-file stage. *Id.*

In analogous situations, statements under oath that contradict a post-conviction claim corroborated by newly discovered evidence have not precluded post-conviction relief. *See, e.g.*, *Reed*, 2020 IL 124940, ¶¶ 33, 38 (rejecting the argument that "the record of [prior guilty plea allocution] proceedings positively rebuts any claim of actual innocence"); *Wrice*, 2012 IL 111860, ¶ 53 (noting that "[t]he law is settled that a defendant's assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed"); *People v. Hall*, 217 Ill. 2d 324, 341 (2005) (finding cause and prejudice established based on counsel's ineffective assistance during plea proceedings, despite a plea allocution indicating that petitioner understood what he was charged with and was voluntarily admitting guilt); *People v. Martinez*, 2021 IL App (1st) 190490, ¶¶ 78-79 (holding that a post-conviction petition alleging that an officer coerced witness statements was not affirmatively rebutted by the witnesses' prior testimony that the officer "did not pressure" them and that an evidentiary hearing was warranted).

Moreover, there are numerous examples in which innocent people who "confessed" due to police coercion during interrogation wrongfully admitted guilt under oath. Over twenty percent (20%) of all known DNA exonerees who provided false confessions also pleaded guilty to the crime they were wrongfully convicted of.[60] Like Mr. Blalock's trial testimony regarding his purportedly proper treatment by the interrogation officers, the guilty plea allocutions by these factually innocent people were also untruthful statements,

[60] The National Registry of Exonerations (August 29, 2021), https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx. (showing that 29 of the 129 exonerees that gave false confessions and were exonerated by DNA evidence also pled guilty).

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made under oath, pursuant to advice from counsel, and made in an effort to mitigate the harm caused by a confession elicited by police coercion. Just as a guilty plea cannot foreclose a post-conviction claim of actual innocence, *Reed*, 2020 IL 124940, ¶¶ 33, 38, neither should a petitioner's trial testimony that contradicts a claim of physical coercion bar relief at the leave-to-file stage.

For these reasons, a well-pled petition establishing the existence of previously unavailable evidence that a petitioner's interrogating officers engaged in a pattern or practice of violence during interrogations should establish "cause" sufficient for leave to file a successive petition, regardless of the petitioner's inconsistent litigation strategies or statements under oath.

B. Consistent with *Wrice* and *Robinson*, this Court Should Hold That "Prejudice"—Sufficient for Leave to File—Is Automatically Established When Newly Discovered Evidence Corroborates A Coerced Confession Claim.

As this Court has recognized, the use of a coerced (and possibly false) confession necessarily deprives the accused of due process. *See Wrice*, 2012 IL 111860, ¶ 84 (holding that the "use of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error"). Thus, rather than inquiring whether the suppression of the contested confession evidence would have impacted the result at *trial*, the requisite "prejudice" inquiry for a petition alleging physical coercion is whether the petitioner established that newly presented evidence of police misconduct would have likely changed the result of the *suppression hearing*. *Id.* Typically, the new evidence presented in support of a claim of physical coercion is evidence that would be used to *impeach* the interrogating officers' denials of interrogation violence or to corroborate the petitioner's claims of coercion. Accordingly, new evidence in physical coercion claims typically impact the

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credibility of the interrogating officers' suppression hearing testimony. As noted, at the leave-to-file stage, credibility determinations are improper. *Accord Robinson*, 2020 IL 123849, ¶ 60. This Court's precedent therefore dictates that courts presented with a successive post-conviction petition alleging physical coercion based on newly available evidence of their interrogating officers' misconduct must not engage in a "prejudice" inquiry that analyzes whether the newly available evidence would sufficiently undermine the interrogating officer's credibility. That determination can only be made at an evidentiary hearing. *Id.* Thus, in light of this Court's precedent and to assure that potentially innocent petitioners have an opportunity to seek meaningful remedy, this Court should reaffirm the principles announced in *Wrice* and *Robinson* and clarify that in all cases in which a petitioner sufficiently demonstrates "cause" to file a successive petition based on newly available evidence that their confession was elicited by physical coercion, prejudice is established, *per se*.

As the *Wrice* Court explained, a "bare assertion" of physical coercion will be insufficient to show "cause." *Id.* ¶ 85. But where cause is well-pled and supported by evidence that was not reasonably available at the time of the petitioner's first post-conviction petition, the *per se* rule—that prejudice is automatically established—should "come into play." *Id.* This *per se* rule proposed by amici would be limited to the leave-to-file stage; the State would remain free to challenge a petitioner's ability to satisfy the requisite evidentiary burden at subsequent proceedings.

Such a holding not only is necessary in light of this Court's precedent, but also accords with research demonstrating confessions' profoundly prejudicial nature, discussed above. Through archival analyses and controlled experiments, psychologists who study the

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influence of confession evidence have determined that "confessions have more impact on verdicts than do other potent forms of evidence[,] and . . . people do not adequately discount confessions—even when they are retracted and judged to be the result of coercion."[61] Furthermore, in the vast majority of wrongful convictions where police elicited known false admissions of guilt by demonstrably innocent people, the State presented other erroneous evidence of the confessor's guilt[62]—evidence that, without a *per se* rule as amici propose, could be used to wrongfully conclude that a petitioner was not "prejudiced" by the inability to present corroborating evidence to support his claim of a coerced confession.

CONCLUSION

For the foregoing reasons, the judgment of the appellate court should be reversed, and the case remanded to the trial court with instructions to grant Mr. Blalock leave to file his successive post-conviction petition.

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61 Kassin, *supra* note 36, at 433 (citations omitted); *see also* Saul M. Kassin et al., *Confessions that Corrupt: Evidence From the DNA Exoneration Case Files*, 23 Psych. Sci. 41, 43 (2012) (explaining that confessions have the power to "corrupt[] lay and expert witnesses" and that "[e]xperiments have shown that a confession can bias professional polygraph examiners, fingerprint experts, and mock eyewitnesses").

62 *Confessions that Corrupt*, *supra* note 61. A review conducted in 2012 of false confession cases revealed that additional evidentiary errors were found in seventy-eight percent (78%) of the cases examined. Saul M. Kassin et al., *The Forensic Confirmation Bias*, 2 J. Applied Rsch. Memory & Cognition 42, 46 (2013). Thus, for the vast majority of known false admissions of guilt, the state "corroborated" the false admission by presenting other erroneous evidence.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b), and 345(b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to appended to the brief under Rule 342(a), is 9,071 words.

*/s/ Brian O'Connor*_____
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