No. 17-

IN THE

Supreme Court of the United States

BRENDAN DASSEY,
Petitioner,
v.

MICHAEL A. DITTMANN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Wisconsin Court of Appeals unreasonably applied this Court's precedent when it held that a confession made by a juvenile with significant intellectual and social limitations was voluntary—and, if so, whether on de novo review the confession was involuntary.

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PETITION FOR A WRIT OF CERTIORARI

Brendan Dassey respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

INTRODUCTION

Whether a defendant's confession was voluntary is evaluated using a totality-of-the-circumstances test. *Withrow* v. *Williams*, 507 U.S. 680, 689 (1993) (citing cases). But this Court has made clear that not every circumstance is equally important. In particular, the Court has long recognized that juveniles and those with intellectual deficits are at particular risk of confessing involuntarily—and often falsely—under the strain of coercive police tactics. The Court has thus held that "the greatest care must be taken to assure that [a mi-

nor's confession] was voluntary." *In re Gault*, 387 U.S. 1, 55 (1967); *accord Gallegos* v. *Colorado*, 370 U.S. 49, 53 (1962) ("special care … must be used"). The Court has similarly made clear that "mental condition is surely relevant to an individual's susceptibility to police coercion," and hence is a "significant factor in the 'voluntariness' calculus." *Colorado* v. *Connelly*, 479 U.S. 157, 164-165 (1986). In short, this Court's precedent "mandates … evaluation of [a] juvenile's age … and intelligence" as part of a voluntariness analysis. *Fare* v. *Michael C.*, 442 U.S. 707, 725 (1979).

In recent years, voluminous social-science research has confirmed the correctness, and importance, of these holdings. That research demonstrates the extent to which minors and those with intellectual limitations are more susceptible to coercive pressures, and consequently more likely to confess falsely. It has also documented many wrongful convictions that resulted from false confessions—convictions that imprison the innocent and leave the guilty free to victimize others.

Yet even as this Court's decisions have been resoundingly validated, lower courts, in resolving challenges to confessions by minors or those with intellectual limitations, have often failed to follow those decisions. Too frequently, courts simply *note* a defendant's age or mental limitations, rather than doing the actual "evaluation" of those characteristics—and how they bear on voluntariness—that this Court's precedent "mandates," *Fare*, 442 U.S. at 725.

Such failures may be explained at least partly by the fact that nearly forty years have passed since the Court's last juvenile-voluntariness case. *See Fare*, 442 U.S. 707. Whatever the reason, reaffirmance of the

Court's holdings, and demonstration of how they are to be properly implemented, is urgently needed.

This case provides an excellent vehicle to do so, because it provides a particularly clear, egregious example of the phenomena described above. Brendan Dassey was sentenced to life in prison after being convicted of rape, murder, and mutilation of a corpse based solely on his confession; no physical evidence linked him to those crimes. He was 16 when he confessed and borderline intellectually disabled. His confession—which was starkly inconsistent with the physical evidence—came only after four separate two-on-one interrogations over a 48-hour period. And during those interrogations, Dassey repeatedly gave wrong answers to questions about the crimes, thereby strongly suggesting he was not involved. Undeterred, the interrogators fed him the "right" answers (*i.e.*, answers consistent with their own thinking), assuring him that he would be "set … free" if only he confirmed what they said. Consistent with his documented susceptibility to suggestion, Dassey did what the interrogators requested: He agreed with *their* statements, thereby confessing to serious crimes. Underscoring his inability to comprehend what the officers had done (and what he had done at their prompting), he then asked if he could return to school for sixth-period class.

The Wisconsin Court of Appeals affirmed Dassey's convictions, rejecting his claim that his confession was involuntary. A federal district court and a divided panel of the Seventh Circuit held that this rejection warranted habeas relief, but by a 4-3 vote, the en banc court of appeals disagreed.

That holding was erroneous because the state court utterly failed to follow (and hence "unreasonably ap-

plied," 28 U.S.C. §2254(d)(1)) the cases discussed above. It *recited* Dassey's age, as well as his "'low average to borderline' IQ." App. 286a. But it afforded those attributes no meaningful analysis, *i.e.*, no actual "evaluation," *Fare*, 442 U.S. at 725, and assuredly not "the greatest care," *Gault*, 387 U.S. at 55. To the contrary, it gave those attributes the same glancing treatment as other facts it deemed equally relevant to voluntariness—like the upholstery on the couch Dassey sat on during questioning. App. 286a. Under an actual "evaluation," Dassey's confession would unquestionably be deemed involuntary, but because of the state court's disregard of that precedent, this juvenile may spend the rest of his life in prison.

Review here would allow the Court to reaffirm lower courts' obligation to follow the Court's precedents, and provide much-needed guidance regarding how to apply those precedents so as to minimize wrongful convictions flowing from false confessions. It would also allow the Court to prevent what the en banc dissenters correctly labeled a "travesty of justice," App. 40a (op. of Wood, C.J.), and "a profound injustice," App. 58a (op. of Rovner, J.).

OPINIONS BELOW

The Seventh Circuit's en banc opinion (App. 1a-70a) is reported at 877 F.3d 297. Its panel decision (App. 71a-196a) is reported at 860 F.3d 933. The district court's opinion (App. 197a-279a) is reported at 201 F. Supp. 3d 963. The Wisconsin Supreme Court's order denying review (App. 281a) is reported at 839 N.W.2d 866 (Wis. 2013) (table). The Wisconsin Court of Appeals' unpublished opinion (App. 283a-294a) is available at 2013 WL 335923. The trial court's order denying post-conviction relief (App. 295a-328a) is unpublished,

as is its pre-trial ruling denying Dassey's suppression motion (App. 329a-342a).

JURISDICTION

The en banc court of appeals entered judgment on December 8, 2017. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides in relevant part:

> No State shall … deprive any person of … liberty … without due process of law.

The Antiterrorism and Effective Death Penalty Act (AEDPA) provides in relevant part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. §2254(d).

STATEMENT

A. Factual Background

1. In 2005 Brendan Dassey's uncle, Steven Avery, was arrested for the murder of Teresa Halbach. App. 198a-200a. Halbach's car and charred remains were found on Avery's property. App. 11a.

Days after Avery's arrest, officers questioned Dassey but did not consider him a suspect. App. 201a, 306a. Months later, however, after Dassey's 14-year-old cousin mentioned that he "had been 'acting up lately,'" officers questioned him again. App. 75a.

Dassey, then 16, suffers from a "speech and language impairment," and received special-education services due to "significantly delayed … language skills." Dist. Ct. Dkt. 19-12, at 66, 90; Dist. Ct. Dkt. 19-20, at 79. On IQ tests, Dassey scored in the "low average to borderline" disabled category, with his verbal IQ score, 65, "well below average." App. 331a; Dist. Ct. Dkt. 19-12, at 86. His "general intellectual ability" scored in the seventh percentile of students his age. *Id.* at 88.

Dassey also demonstrated significant social deficits. He had difficulty comprehending "social aspects of communication" like "non-verbal cues, facial expressions, eye contact, body language, [and] tone of voice." App. 147a. Additionally, he exhibited symptoms of extreme social avoidance and introversion. App. 88a.

Dassey's cognitive and social disabilities rendered him more "vulnerable to suggestion" than ninety-five percent of the population—meaning that, when pressured to "yield[] and shift[]" his responses to questions, he was quite likely to do so. Dist. Ct. Dkt. 19-22, at 55.

2. In three interrogations held on February 27, 2006, Investigator Mark Wiegert and Special Agent Thomas Fassbender questioned Dassey about Halbach's murder. Fassbender assured Dassey at the outset that he was not acting as a "cop[]" or "investigator[]" but as "a father." App. 518a. The officers pressed Dassey about his actions the night Halbach was killed. After he claimed to have helped Avery build a bonfire, App. 515a, they insisted that Dassey must have seen Halbach's "arm[s]," "legs," and "head" in the fire, App. 528a. Consistent with his susceptibility to suggestion, Dassey accepted those assertions, stating—while denying any involvement in the murder—that he had seen almost exactly what the officers said: Halbach's "fingers," "toes," and "forehead." App. 528a-529a.[1]

Two days later, on March 1, Wiegert and Fassbender removed Dassey from school to re-interrogate him at the sheriff's department. App. 343a-345a. Fassbender asserted that Dassey had left "some things … out" of the earlier interviews, but assured him that being "[h]onest[]" would "set [him] free." App. 362a. But when Dassey proved unable to fill in the supposed gaps—repeatedly giving wrong answers to the officers' questions—they simply fed him the right answers. For example, the interrogation included the following exchange as the officers tried to induce Dassey to say that Halbach had been shot in the head, a fact not then publicly known:

> Wiegert: What else did [Avery] do to her? We know something else was done. Tell us, and

[1] Recordings of the March 1 interrogation and one February 27 interrogation are being submitted contemporaneously. Transcripts are at pages 343a-509a and 511a-563a of the appendix.

what else did you do? Come on. Something with the head.

…

Wiegert: What was it? (pause) What was it?

Fassbender: We have the evidence Brendan, we just need you ta, ta be honest with us.

Dassey: That he cut off her hair[?][2]

Wiegert: He cut off her hair? In the house?

…

Wiegert: OK, what else?

Fassbender: What else was done to her head?

Dassey: That he punched her.

Wiegert: What else? (pause) What else?

Fassbender: He made you do somethin' to her, didn't he? So he-he would feel better about not bein' the only person, right? (Brendan nods "yes") Yeah.

Wiegert: mm huh.

Fassbender: What did he make you do to her?

(pause)

Wiegert: What did he make you do Brendan? It's OK, what did he make you do?

Dassey: Cut her.

Wiegert: Cut her where?

Dassey: On her throat.

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[2] Although the transcript has a period here, the video "suggest[s] more a question than a statement." App. 260a.

> …
>
> Wiegert: What else happens to her in her head?
>
> Fassbender: It's extremely, extremely important you tell us this, for us to believe you.
>
> Wiegert: Come on Brendan, what else?
>
> (pause)
>
> Fassbender: We know, we just need you to tell us.
>
> Dassey: That's all I can remember.
>
> Wiegert: All right, I'm just gonna come out and ask you. Who shot her in the head?
>
> Dassey: He did.
>
> Fassbender: Then why didn't you tell us that?
>
> Dassey: Cuz I couldn't think of it.

App. 408a-411a.

A similar pattern—the officers repeatedly trying to elicit incriminating information, Dassey guessing (incorrectly) at the answers they wanted, and the interrogators eventually providing the information themselves—occurred at several other crucial points. These included where Dassey supposedly first saw Halbach (initially on Avery's porch, App. 365a, then in Halbach's jeep, App. 372a, then in Avery's bed, App. 389a-390a), and how many times she was shot (first twice, App. 413a, then three times, App. 415a, then ten times, App. 422a).

As the interrogation concluded, Dassey—having just agreed with the officers' assertions that he had committed horrendous crimes—asked if he could "get

[to school] before one twenty-nine" because he "h[ad] a project due in sixth hour." App. 438a-439a.

B. State Proceedings

1. After being charged, Dassey moved unsuccessfully to suppress his confession as involuntary. App. 336a. At trial, the confession served as the "centerpiece" of the prosecution, because no physical evidence linked him to the crime. App. 228a, 233a. Dassey testified that his confession was "made up," and a forensic psychologist testified that Dassey's extreme social avoidance and introversion made him exceptionally susceptible to suggestion. App. 231a; *see supra* p.6.

The jury convicted Dassey of murder, sexual assault, and mutilating a corpse. The trial court denied post-conviction relief, App. 327a, and sentenced Dassey to life imprisonment, App. 234a.

2. The Wisconsin Court of Appeals affirmed, rejecting Dassey's claim that his confession was involuntary. Applying a totality-of-the-circumstances test that "balanc[ed] … [Dassey's] personal characteristics against the police pressures used," App. 285a, the court summarized the trial court's relevant findings:

> Dassey had a "low average to borderline" IQ but was in mostly regular-track high school classes; was interviewed while seated on an upholstered couch, never was physically restrained and was offered food, beverages and restroom breaks; was properly Mirandized; … the investigators used normal speaking tones, with no hectoring, threats or promises of leniency; prodded him to be honest as a reminder of his moral duty to tell the truth; and told him

> they were "in [his] corner" and would "go to bat" for him[.]

App. 286a. Without giving particular consideration to any of these findings, the appellate court deemed them not clearly erroneous, and rejected Dassey's voluntariness argument with the following analysis:

> Based on those findings, we … conclude that Dassey has not shown coercion. As long as investigators' statements merely encourage honesty and do not promise leniency, telling a defendant that cooperating would be to his or her benefit is not coercive conduct. Nor is professing to know facts they actually did not have. The truth of the confession remained for the jury to determine.

Id. (citations omitted).

The Wisconsin Supreme Court denied review. App. 281a.[3]

C. Habeas Proceedings

1. In 2014 Dassey sought federal habeas relief. App. 197a. The district court granted the writ, holding Dassey's confession "so clearly involuntary" that the Wisconsin Court of Appeals' decision constituted "an

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[3] Before trial, the trial court found "no evidence that [Dassey] suffered from any emotional disorder which made him unusually susceptible or vulnerable to police pressures." App. 331a. But after an expert testified at trial that Dassey was more vulnerable to suggestion than ninety-five percent of people, App. 75a; *supra* pp.6-7, both the trial court's post-conviction ruling and the state court of appeals acknowledged Dassey's suggestibility, App. 314a, 285a.

unreasonable application of clearly established federal law" under 28 U.S.C. §2254(d)(1). App. 276a.[4]

In its analysis, the district court first explained that under this Court's precedent, Dassey's youth mandated "special care" in evaluating voluntariness. App. 251a; *see supra* p.2. The court also explained that Dassey's borderline intellectual disability rendered him particularly "susceptible to coercive pressures." App. 266a. But the state court, the district court explained, had simply recited Dassey's youth and intellectual limitations, without meaningfully addressing them. App. 274a. That failure, the district court concluded, constituted "an unreasonable application of clearly established law." App. 276a. Indeed, the court stated that Dassey's case "represent[ed] the sort of 'extreme malfunction[]' … that federal habeas corpus relief [under AEDPA] exists to correct." App. 277a.

2. A divided panel of the Seventh Circuit affirmed. App. 71a. The majority explained that by merely "list[ing]" Dassey's relevant characteristics rather than actually "*evaluat[ing]*" them, the state court had failed to do what "the Supreme Court requires," which is "to use 'special caution' when assessing the voluntariness of juvenile confessions." App. 91a-92a. Failure to "consider the interaction of the interrogation techniques with Dassey's youth, intellectual limitations, [and] suggestibility," the panel continued, disregarded this Court's direction to scrutinize the voluntariness of minors' confessions with the greatest care. App. 122a. And that failure was not excused by the state court's recitation of the totality-of-the-circumstances standard. App. 119a. "Applying a rule," the majority wrote,

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[4] This ruling was issued by a magistrate judge, with both parties' consent. App. 235a; 28 U.S.C. §636(c).

"does not require much, but it requires more than just parroting [its] words." *Id.* If "merely stat[ing] the generic Supreme Court rule without any analysis" sufficed to preclude habeas relief, the panel emphasized, relief would effectively never be available. App. 92a.

Judge Hamilton dissented. He concluded that although the state court "could have been much more thorough in its discussion" of Dassey's voluntariness claim, App. 196a, its ruling "was within the bounds of reason" and thus could not be disturbed under AEDPA, *id.*

3. On rehearing en banc, the court of appeals (with two judges not participating) reversed the district court by a 4-3 vote.

The majority held that under AEDPA, "[t]he state courts had … leeway here, and … that leeway is decisive." App. 7a; *see also* App. 3a (state court's voluntariness conclusion was "reasonable," albeit "not beyond fair debate"). It acknowledged that several factors supported Dassey's involuntariness claim, including his "you[th]," his isolation from his mother or an attorney, and his "somewhat limited intellect[]," as well as the interrogators' "leading and suggestive questions." App. 26a. When considered alongside the "confusion and contradictions in Dassey's account," the majority explained, these factors "len[t] support to the view that his confession was the product of suggestions and/or a desire to tell the police what they wanted to hear." App. 26a-27a.

Nonetheless, the majority stated, "other factors" suggested "that Dassey's confession was indeed voluntary." App. 27a. These included that Dassey was Mirandized, the "comfortable setting" of the interrogation room, and the lack of "physical coercion or any sort of

threats." *Id.* The majority also characterized some of the interrogation tactics as unremarkable, asserting that "deception is a common interview technique." *Id.* Finally, the majority pointed to Dassey's occasional efforts to resist the officers' suggestions, even where they "pushed harder." App. 28a. Given all this, the majority concluded, the state court's ruling was not so unreasonable as to satisfy AEDPA. *Id.*

The majority further reasoned that this Court has not "require[d] courts to detail at length the weight they have assigned to all factors and how the presence of one factor affects … other[s]." App. 29a. Nor, the majority concluded, had the state court violated the "requirement that [it] take 'special care' in analyzing juvenile confessions," because it supposedly "consider[ed] Dassey's age" and "intellectual capacity." App. 30a. Finally, the majority cited *Fare* and *Boulden* v. *Holman*, 394 U.S. 478 (1969), in which this Court held confessions voluntary. App. 31a-32a. Although the majority acknowledged that those cases were distinguishable—Boulden was an adult, for example—it deemed them insufficiently distinct to render "the Wisconsin courts' decision … unreasonable" under §2254(d)(1). App. 32a.

Chief Judge Wood dissented, joined by Judges Rovner and Williams. She stated that the Wisconsin Court of Appeals' "brief mention … of Dassey's age and mental capabilities" failed to satisfy the requirement to review Dassey's confession with "special care." App. 41a. And she faulted the majority for "[t]urning a blind eye to the[] glaring faults" in the state court's opinion. App. 40a. In particular, she wrote, the majority's attempt to "leverage[]" the "state court's silence" into an "assurance that [it] went the extra mile required by" this Court had "no support in the record." App. 42a.

Judge Rovner dissented separately (joined by the other dissenters), similarly asserting that "Supreme Court precedent" required the state court to "include within its evaluation of the totality of the circumstances the impact of coercive interrogation techniques upon the particular vulnerabilities of the individual subject." App. 58a. In her view, the state court's failure to "comply with the command of the Supreme Court"—and the en banc court's failure to correct that fundamental error—"worked a profound injustice." *Id.*

REASONS FOR GRANTING THE PETITION

This Court has repeatedly held that courts must employ special care when analyzing the voluntariness of a juvenile's confession, including doing an actual evaluation of the juvenile's age and mental state. Those repeated holdings have since been thoroughly validated—and their importance underscored—by extensive social-science research, advances in DNA and related technology, and post-conviction exoneration efforts. Those developments collectively make clear that coercive police tactics are especially likely to elicit involuntary, false confessions when applied to minors, particularly those (like Dassey) with intellectual and social deficits.

At the same time, however, lower courts have often failed to follow this Court's holdings, perhaps because it has been decades since the Court last ruled in this area. These circumstances warrant the Court's attention. And this case is the right vehicle: The state court's departure from the Court's holdings was stark and egregious. There is no serious doubt, moreover, that Dassey's confession was involuntary under a proper analysis, or that without the confession there was no case against him. Dassey should not spend his entire adult

life in prison under these circumstances. The Court should grant review.

I. THE DECISION BELOW IS WRONG

Brendan Dassey was 16 when officers interrogated him four times over a two-day period. He had no attorney and, for all but the brief third interrogation, no parent present either.[5] Dassey's age and intellectual limitations made him highly susceptible to the officers' tactics—including their repeated feeding of key incriminating facts. Given the interplay between the officers' tactics and Dassey's vulnerabilities, his confession was not voluntary in any meaningful sense of the word.

The Wisconsin Court of Appeals' contrary conclusion flowed from an objectively unreasonable application of this Court's precedent. The state court utterly failed, as part of its totality-of-the-circumstances analysis, to afford Dassey's confession the "special care" this Court requires for juvenile confessions, *Gallegos*, 370 U.S. at 53—care that is most critical when, as here, the minor is borderline intellectually disabled, *see Connelly*, 479 U.S. at 164. The court *recited* Dassey's age and intellectual deficits, but never conducted the "evaluation" of those attributes that this Court's precedent "mandates," *Fare*, 442 U.S. at 725. Given this Court's clear holdings, that was objectively unreasonable—as is clear from the paper-thin rationales the en banc Seventh Circuit embraced in denying relief. Because Dassey's confession was involuntary under a proper analysis, this Court should grant review and reverse.

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[5] Dassey's mother gave officers permission to speak to him on March 1, but asserts she was "never asked" if she "wanted to be present." App. 78a.

A. This Court's Precedent "Mandates" An Actual "Evaluation" Of A Juvenile's Characteristics When His Confession Is Challenged As Involuntary

1. It is "axiomatic that a defendant … is deprived of due process … if his conviction is founded … upon an involuntary confession." *Jackson* v. *Denno*, 378 U.S. 368, 376 (1964). Voluntariness "turns … on whether the techniques for extracting the statements, as applied to *this* suspect," were unduly coercive. *Miller* v. *Fenton*, 474 U.S. 104, 116 (1985). Courts evaluating voluntariness thus consider "all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Dickerson* v. *United States*, 530 U.S. 428, 434 (2000).

As explained, however, this Court has recognized that "special concerns … are present when young persons, often with limited experience and education and with immature judgment, are involved." *Fare*, 442 U.S. at 725. That is because many minors are "easy victim[s] of the law." *Haley* v. *Ohio*, 332 U.S. 596, 599 (1948) (plurality); *see also J.D.B.* v. *North Carolina*, 564 U.S. 261, 289 (2011) (Alito, J., dissenting) ("[O]ur pre-*Miranda* cases were particularly attuned" to the "reality" that minors are "more susceptible to police pressure than the average adult."). Most minors both "lack the experience, perspective, and judgment to … avoid choices that could be detrimental to them," *Bellotti* v. *Baird*, 443 U.S. 622, 635 (1979), and "are more … susceptible to … outside pressures" than adults, *Roper* v. *Simmons*, 543 U.S. 551, 569 (2005). As a result, interrogation tactics that "would leave a man cold and unimpressed can … overwhelm a lad in his early teens." *J.D.B.*, 564 U.S. at 272.

These concerns are magnified when, as here, the juvenile has cognitive and social disabilities. What "might be utterly ineffective against an experienced criminal," this Court has explained, "would be overpowering to the weak of will or mind." *Stein* v. *New York*, 346 U.S. 156, 185 (1953), *overruled on other grounds by Jackson*, *supra*; *accord Reck* v. *Pate*, 367 U.S. 433, 442 (1961). Indeed, "as interrogators have turned to more subtle forms of psychological persuasion, … mental condition" has become "a more significant factor in the 'voluntariness' calculus." *Connelly*, 479 U.S. at 164.

Given all this, this Court has held that assessing the voluntariness of minors' confessions requires "special caution" and "special care"—indeed, "the greatest care." *Gault*, 387 U.S. at 45, 55; *Gallegos*, 370 U.S. at 53. This precedent, which applies with special force when a juvenile has intellectual and social deficits, "mandates … evaluation of [a] juvenile's age … and intelligence" as part of a voluntariness analysis. *Fare*, 442 U.S. at 725.

2. Recent social-science research confirms the correctness of these decisions, demonstrating that minors and persons with mental deficits are at a heightened risk of providing involuntary (and frequently false) confessions.

There is "strong evidence," for example, that minors are relatively likely to confess falsely—and of course false confessions are almost always involuntary. Kassin et al., *Police-Induced Confessions*, 34 Law & Hum. Behav. 3, 19 (2010). Juveniles are more susceptible than adults to external influences, and more compliant toward authority figures. Scott-Hayward, *Explaining Juvenile False Confessions*, 31 Law & Psy-

chol. Rev. 53, 69 (2007). Minors' decision-making is also hampered by immature judgment that engenders impulsiveness, pursuit of immediate gratification, and difficulty perceiving long-term consequences. Owen-Kostelnik et al., *Testimony and Interrogation of Minors*, 61 Am. Psychologist 286, 292-293 (2006); Cauffman & Steinberg, *(Im)maturity of Judgment in Adolescence*, 18 Behav. Sci. & L. 741, 744-745 (2000). Research likewise demonstrates that minors rarely fully comprehend abstract rights—such as *Miranda*—making it easy for officers to induce surrenders of those rights. Feld, *Police Interrogation of Juveniles*, 97 J. Crim. L. & Criminology 219, 228-233 (2006). Given these vulnerabilities, tactics that might constitute "acceptable and useful tools to obtain *reliable* confessions" from adults "seem to increase the likelihood of *false* confessions" among minors. Scott-Hayward, *supra*, at 69 (emphases added).

Similarly, research shows that intellectually disabled persons are predisposed to confess falsely. Gould & Leo, *One Hundred Years Later: Wrongful Convictions After a Century of Research*, 100 J. Crim. L. & Criminology 825, 847 & n.119 (2010). Those with cognitive and social deficits are frequently unable to communicate or process information quickly enough to advocate for themselves during interrogations. Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 919-920 (2004). They also display an "exaggerated tendency … to try to accommodate the perceived wishes of authority figures." Cloud, *Words Without Meaning*, 69 U. Chi. L. Rev. 495, 515 (2002). And in the emotionally intense environment of an interrogation room, they may falsely confess simply "because they want[] to end the questioning … or go home." Redlich et al., *Self-Reported False Con-*

fessions and False Guilty Pleas Among Offenders with Mental Illness, 34 Law & Hum. Behav. 79, 87 (2010).

In short, social-science research strongly supports this Court's "special concer[n]" about confessions by juveniles and people with intellectual limitations. *Fare*, 442 U.S. at 725. The Court has repeatedly relied on similar recent research in explaining the vulnerabilities associated with youth and intellectual disability in other criminal-justice contexts. *See Graham* v. *Florida*, 560 U.S. 48, 68 (2010); *Roper*, 543 U.S. at 569; *Miller* v. *Alabama*, 567 U.S. 460, 472 n.5 (2012); *Atkins* v. *Virginia*, 536 U.S. 304, 318 (2002). Here, the research underscores the need to ensure that lower courts adhere to this Court's precedent.[6]

B. The Wisconsin Court Of Appeals Unreasonably Applied This Court's Precedent

1. Under AEDPA, the relevant decision is that of the Wisconsin Court of Appeals. *See Greene* v. *Fisher*, 565 U.S. 34, 40 (2011). That court's rejection of Dassey's involuntariness claim unreasonably applied the cases cited above.

To begin with, the court never mentioned this Court's requirements that "special care" be taken given Dassey's youth, *Gallegos*, 370 U.S. at 53, and that an actual "evaluation" of Dassey's age and intelligence be done, *Fare*, 442 U.S. at 725. The court did recite the general voluntariness standard, App. 285a, and it repeated Dassey's contention that the officers' tactics

[6] To be clear, the argument is not that the research—which of course does not establish federal law—warrants habeas relief. The research instead demonstrates the *correctness*, and importance, of clearly established federal law (this Court's holdings), which the state courts unreasonably applied here.

"overbore his will … due to his age, intellectual limitations and high suggestibility," *id.* But stating a standard and repeating a defendant's argument is not "evaluation," *Fare*, 442 U.S. at 725, let alone the "greatest care," *Gault*, 387 U.S. at 55.

Similarly, although the court quoted the trial judge's finding that Dassey "had a 'low average to borderline' IQ," App. 286a, it gave that determination no special consideration. To the contrary, it recounted the finding, and Dassey's age, as part of a list that included, among other apparently salient facts, that Dassey was "interviewed while seated on an upholstered couch." *Id.*

After concluding that none of the findings was "clearly erroneous," the court offered this voluntariness analysis:

> Based on those findings, we also conclude that Dassey has not shown coercion. As long as investigators' statements merely encourage honesty and do not promise leniency, telling a defendant that cooperating would be to his or her benefit is not coercive conduct. Nor is professing to know facts they actually did not have. The truth of the confession remained for the jury to determine.

Id. (citations omitted). This analysis lacks any reference to Dassey's age or intellectual and social limitations, in conflict with this Court's holding that the totality test for the voluntariness of a juvenile's confession "mandates … evaluation of the juvenile's age … and intelligence," *Fare*, 442 U.S. at 725. The state court did not, for example, evaluate whether Dassey's youth and limitations affected his ability to withstand the officers' tactics, *i.e.*, made the officers' "techniques for extract-

ing the statements, as applied to *this* suspect," unduly coercive, *Miller*, 474 U.S. at 116. Nor did the court analyze whether Dassey's verbal and mental limitations shaped his understanding of the officers' questions or motivations, or affected his ability "to understand the rights he was waiving, or … the consequences of that waiver," *Fare*, 442 U.S. at 726. Finally, the court did not address either the absence of an attorney or other adult in the interrogation room, or that Dassey had never had more than passing contact with police, *compare id.* (holding a minor's statements voluntary partly because he had "considerable experience with the police").

Instead, the court simply stated that "telling a defendant that cooperating would be to his … benefit is not coercive conduct, … [n]or is professing to know facts th[at] [interrogators] actually did not have." App. 286a. That analysis, unmoored from Dassey's particular vulnerabilities, is so far from the "special care" and "greatest care" that this Court's precedent requires—and from an actual "evaluation" of Dassey's age and intelligence, which this Court also requires—that it is objectively unreasonable.

2. The en banc Seventh Circuit's contrary conclusion is untenable. The court addressed this issue largely in a single paragraph, App. 30a—one in which it repeatedly *asserted* that the state court had considered Dassey's age and intellectual limitations, but provided nothing to support those assertions. For example, immediately after claiming that the state court "consider[ed] Dassey's age" and "intellectual capacity," the majority moved on to discuss the separate point that Dassey received *Miranda* warnings. *Id.* Similarly, immediately after reiterating that the state court considered Dassey's "vulnerabilities," the majority shifted

to noting that the court "did not limit its inquiry to only whether the most abusive interrogation tactics were used." *Id.* In this same paragraph, moreover (which, again, was purportedly about the special-care requirement), the majority included such points as the state court having noted that Dassey "sat on a sofa and was offered food, drink, and restroom breaks." *Id.* There is simply nothing in the paragraph—or elsewhere in the majority's opinion—showing that the state court provided the actual evaluation of age and intelligence that this Court's precedent mandates.

The majority also cited *Boulden* and *Fare*. App. 31a-32a. But Boulden was an adult (eighteen years old) rather than a minor, and was not borderline intellectually disabled. *See Boulden* v. *Holman*, 385 F.2d 102, 104-105 (5th Cir. 1967), *vacated*, 394 U.S. 478 (1969). The juvenile in *Fare*, meanwhile, showed no mental limitations, and he had—as the Court repeatedly emphasized—significant prior experience with law enforcement. *See* 442 U.S. at 726. Neither case justifies the Wisconsin court's objectively unreasonable application of this Court's precedent.

C. Dassey's Confession Was Involuntary

1. When as here a state-court decision satisfies §2254(d)(1), federal courts review the habeas claim de novo, *i.e.*, "unencumbered by the deference AEDPA normally requires." *Panetti* v. *Quarterman*, 551 U.S. 930, 948 (2007). Such review leaves no doubt that Dassey's confession was involuntary.

The voluntariness inquiry first requires consideration of "the characteristics of the accused." *Dickerson*, 530 U.S. at 434. As discussed, Dassey was 16 when he confessed, had no significant experience with law-

enforcement, and suffered from intellectual and social disabilities that rendered him exceedingly vulnerable to suggestion. The social-science research discussed above—and this Court's precedent, *see infra* p.34—makes clear that such an individual is particularly prone to submit involuntarily to police efforts to elicit a confession, even if that means confessing falsely.

The voluntariness inquiry next mandates consideration of "the details of the interrogation," *Dickerson*, 530 U.S. at 434, because "coercive police activity is a necessary predicate to [an involuntariness] finding," *Connelly*, 479 U.S. at 167. Here, the interrogators employed several tactics to minimize the range of responses Dassey could provide. For example, when Dassey made wrong guesses, they using warnings like "tell the truth" as "code for 'guess again.'" App. 125a. And when he guessed again in a manner more consistent with the officers' preconceived narrative—often guided by their fact-feeding—they provided positive feedback like "that makes sense" and "now we believe you," as "code for 'that's what we want to hear.'" App. 125a. The officers also used promises, telling Dassey that if he was "honest," he would be "set … free." App. 362a. As Judge Rovner expounded, App. 124a-147a, this combination of steering language and promises of release constituted a "perfect example of operant conditioning," App. 124a-125a.

As just mentioned, moreover, the officers also engaged in repeated fact-feeding, effectively asking Dassey to confirm "facts" rather than provide his own account. *See Spano* v. *New York*, 360 U.S. 315, 323 (1959) (confession involuntary where the defendant "did not make a narrative statement, but was subject to the leading questions of a skillful prosecutor in a question and answer confession"). Time after time, they tried to

get Dassey to provide information about particular points (while telling him they "already knew," App. 378a), repeatedly engaging in "ghoulish games of '20 Questions,' in which … Dassey guessed over and over again before he landed on the 'correct' story (*i.e.*, the one the police wanted)," App. 40a.

The officers did this with the key facts that Halbach had been shot and that the shots were to the head—non-public facts that Dassey never guessed correctly but was instead fed. *See supra* pp.7-9. They did it regarding what happened to the license plate on Halbach's vehicle: Dassey could not say what happened, so the officers just gave him their answer and let him agree. *See* App. 426a (Q: "[T]he license plates were taken off the car, who did that?" A: "I don't know." … Q: "Did Steve do that?" A: "Yeah."). They did it regarding where on Avery's property Halbach was shot: Dassey initially stated she was shot outside, App. 411a-412a, but that was inconsistent with the shell casings recovered from Avery's garage, App. 157a. So the officers pressured Dassey to move the shooting into the garage. App. 416a-421a. Once Dassey did so, Wiegert said: "That makes sense. Now we believe you." App. 422a. And they did it regarding evidence that Halbach's car battery had been disconnected. When their questions failed to prompt Dassey to admit that, the officers simply said it themselves so that Dassey could again just agree:

> Fassbender: OK, what else do, he did somethin' else, you need to tell us what he did, after that car is parked there. It's extremely important. (pause) Before you guys leave that car.
>
> Dassey: That he left the gun in the car.

> Fassbender: That's not what I'm thinkin' about. He did something to that car. He took the plates and he, I believe he did something else in that car. (pause)
>
> Dassey: I don't know.
>
> Fassbender: OK. Did he, did he, did he go and look at the engine, did he raise the hood at all or anything like that? To do something to that car?
>
> Dassey: Yeah. … I don't know what he did, but I know he went under [the hood].

App. 427a-428a. Here again, Dassey demonstrated ignorance of a key fact, guessed wrongly at what the officers wanted (no gun was found in Halbach's vehicle), and finally had to be told what the "right" answer was.

With each of these fact-feedings—and there are more—the officers gave Dassey two options: (1) keep guessing at what answer they wanted (and ultimately agree with the answer they provided) in an effort to end the interrogation and return to school, or (2) profess a lack of knowledge and generate negative feedback from his interrogators.

Dassey's passivity and acquiescence continued even when the officers fed him *false* facts to gauge his truthfulness. For example, they asked Dassey about a tattoo they knew Halbach did not have. Rather than refute the officers' assertion, Dassey second-guessed himself into agreement:

> Fassbender: OK. (pause) We know that Teresa had a, a tattoo on her stomach, do you remember that?
>
> Dassey: (shakes head "no") uh uh[.]

> Fassbender: Do you disagree with me when I say that?
>
> Dassey: No but I don't know where it was.
>
> Fassbender: OK.

App. 493a. Although the en banc majority presented this as an example of Dassey pushing back against his interrogators, App. 28a, it demonstrates the opposite. Even when confronted with an affirmatively false assertion, Dassey acquiesced, hedging his response until he received the officers' confirmation.

Whether all these tactics would have overborne the will of an adult or someone without Dassey's susceptibility to suggestion is not the issue. Voluntariness turns on "the techniques for extracting the statements, as applied to *this* suspect." *Miller*, 474 U.S. at 116. And Dassey, again, was a juvenile with no experience with police and with substantial intellectual and social deficits. The officers exploited these vulnerabilities, by striking an artificially paternal posture throughout the interrogations. Fassbender, for example, told Dassey on February 27 that he was not acting as a "cop[]" but as a "father" who wanted "nothing … more than to come over and give [Dassey] a hug." App. 518a. The officers continued with this protective theme on March 1, reminding Dassey that they were "in [his] corner" and "on [his] side," App. 360a, and repeatedly touching his knee to foster an intimate connection, App. 148a; *see also Spano*, 360 U.S. at 323 (1959) (confession involuntary where interrogator "played this part of a worried father" and defendant "yielded to his false friend's entreaties"). The officers performed these paternal roles so convincingly that, when the interrogation ended, they felt it necessary to remind Dassey (in explaining why he could not return for sixth period but instead

would be arrested) that they were "obviously … police officers." App. 498a.

Put simply, the interrogators took advantage of Dassey's youth and mental limitations to convince him they were on his side, ignored his manifest inability to correctly answer many of their questions about the crimes, fed him facts so he could say what they wanted to hear, and promised that he would be set free if he did so. The resulting confession was more theirs than his. *See Miranda* v. *Arizona*, 384 U.S. 436, 455 (1966) (noting interrogation tactic of having a suspect "merely confirm[] the preconceived story the police seek to have him describe"). Extracted through the use of psychologically coercive tactics leveraged against his personal vulnerabilities, it was assuredly not the product of Dassey's free will. As Dassey himself said to his mother just moments after the interrogation ended: "They got to my head." App. 503a.

2. The unreliability (*i.e.*, likely falsity) of Dassey's confession underscores its involuntariness. Although reliability and voluntariness are distinct, *Jackson*, 378 U.S. at 376, they are obviously related, *see Miranda*, 384 U.S. at 455 & n.24 (officers may "trade[] on the weakness of [an] individual[]" in a manner that "give[s] rise to a false confession"). Here, the officers' tactics and Dassey's vulnerabilities produced a confession that was both internally contradictory and inconsistent with the physical evidence at the scene.

First, Dassey was unable to describe how the murder for which he is serving a life sentence was committed. As explained, the officers tried to get him to say that Halbach was shot in the head. But with guess after guess, he failed to do so—even after they steered him to talk about her head. *See supra* pp.7-9. When

Dassey finally gave up, Wiegert all but blurted out the answer, asking: "Who shot her in the head?" Dassey then confirmed Wiegert's fact-feeding, responding that "[Avery] did." App. 411a. When asked why he had not provided that answer himself, Dassey gave a response that would be wholly implausible had he actually known the truth: He just "couldn't think of it." *Id.*

Even when Dassey tried to answer questions about peripheral details of the crime, his descriptions (which underwent repeated revisions) suffered from random inconsistencies. For example, he initially said he could not remember what Halbach was wearing. App. 366a. Then he said she was wearing a white t-shirt. App. 378a. Then a black button-up. *Id.* Then both. App. 379a. Likewise, Dassey first said the knife allegedly used to stab Halbach was left in her jeep. App. 429a. Later he said it had been placed in a drawer in Avery's kitchen. App. 474a. And while Dassey initially said no fire was burning when he arrived at Avery's, App. 369a, he changed his story after Fassbender said, "[w]e know the fire was going," *id.* Dassey's narrative lurched so haphazardly that the officers frequently had to walk him through past statements to clear up inconsistencies their questions had produced. *See* App. 374a ("Let's[] stop there … I want to back up just a bit."), 390a ("Let[']s back up again[.]"), 440a ("Talk to us about what happened there cuz the time periods aren't addin' up[.]").

Nor can Dassey's confession be squared with the physical evidence—save in regard to "widely publicized" facts, App. 51a; *see also id.* (noting that the media reported before Dassey's interrogations that Halbach's blood was found in her car). Whereas Dassey said, for example, that Halbach was handcuffed to the bed, there were no scratches on the bedposts. App.

168a. Whereas he said her hair had been cut inside Avery's home, not one strand was found there. App. 139a. Whereas he said Halbach had been stabbed, cut, and choked, there was no blood in Avery's bedroom. App. 168a. And of the hundreds of items tested (from multiple crime scenes), not one produced a match for Dassey's DNA. Dist. Ct. Dkt. 19-23, at 88.

In sum, Dassey's confession—riddled with inaccuracies and impossibilities—was as unreliable as it was involuntary. And as noted, the confession was basically the entire case against Dassey; no physical evidence tied him to the crime.[7]

II. LOWER COURTS COMMONLY FAIL TO FOLLOW THIS COURT'S PRECEDENT IN THE SAME WAY THE STATE COURT DID HERE

The Wisconsin Court of Appeals' departure from this Court's precedent is no isolated incident. Since this Court decided *Gallegos*, *Gault*, and *Fare*, lower courts have often failed to follow those decisions. The consequences of those failures have been illustrated not only by research (discussed above) demonstrating how vulnerable juveniles and intellectually disabled persons are to police interrogation tactics, but also by data on wrongful convictions resulting from false confessions. Certiorari is warranted here not only to reaffirm this Court's holdings (and lower courts' obligation to follow them), but also to provide guidance on how to apply those holdings so as to minimize false confessions—which not only lead to innocent people being jailed but also leave the perpetrators free to victimize others.

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[7] That an intellectually challenged minor like Dassey would give a false confession is unsurprising. *See supra* pp.18-20; *infra* p.34 (citing *J.D.B.* and *Atkins*).

A. Lower courts' failure to follow this Court's precedent typically takes one of two forms.

First, some courts—as in this case—mention a defendant's youth and intellectual deficits, but conduct no actual evaluation of those factors. In one case, for example, a state court acknowledged that the defendant "was sixteen years old, had a low intellect, a learning disability, and mental health issues," but ignored these facts in analyzing voluntariness. *Herring* v. *State*, 359 S.W.3d 275, 281-282 (Tex. App. 2012) (subsequent history omitted); *accord People* v. *Baker*, 28 N.E.3d 836, 851-853 (Ill. App. Ct. 2015); *State* v. *Moses*, 702 S.E.2d 395, 402 (S.C. Ct. App. 2010); *State* v. *Anderson*, 2014 WL 4792558, at *6-8 (Ohio Ct. App. Sept. 26, 2014) (unpublished); *State* v. *Unga*, 196 P.3d 645, 649-651 (Wash. 2008); *People* v. *Macias*, 36 N.E.3d 373, 387-390 (Ill. App. Ct. 2015). As the panel below explained, just listing a defendant's particular characteristics—rather than meaningfully engaging with them—does not satisfy this Court's "special care," "greatest care," and actual "evaluation" requirements. App. 91a-92a; *accord Doody* v. *Ryan*, 649 F.3d 986, 1015 (9th Cir. 2011) (en banc) (reversing denial of habeas petition because state court "dismissed each relevant fact seriatim without considering whether Doody's juvenile will was overborne").

Second, courts misconstrue arguments to take a defendant's specific vulnerabilities into account as a claim that those vulnerabilities *preclude* a voluntariness determination. Once the courts (correctly) reject that proposition, they then fail to assess the vulnerabilities meaningfully, instead jumping to the conclusion that the confession was voluntary. The Louisiana Court of Appeals, for example, stated that one minors's age did not undermine the voluntariness of his confession be-

cause "there is no … constitutional basis for invalidating an otherwise valid confession simply because the defendant has not quite reached the age of 17." *State* v. *Fisher*, 87 So. 3d 189, 196 (La. Ct. App. 2012); *see also In re Joel I.-N.*, 856 N.W.2d 654, 661-662 (Wis. Ct. App. 2014) (because there is no "*per se* rule requiring parental consultation before a juvenile is questioned[,] … the police['s] failure to contact [defendant's] parents [did] not weigh against a finding that his statement was voluntary"); *State in Interest of P.G.*, 343 P.3d 297, 302 (Utah Ct. App. 2015) (defendant's "age [did] not render his confession involuntary," because the court had held even younger people to have confessed voluntarily).

B. Lower courts' failure to follow this Court's relevant precedent cannot be justified on the ground that it is impossible (or even impractical) to follow. Other cases belie that notion.

For example, in *In re Elias V.*, 188 Cal. Rptr. 3d 202 (Ct. App. 2015), *as modified* (June 24, 2015), the court considered a thirteen-year-old boy's confession to sexually abusing a three-year-old child, *id.* at 204. The trial court denied the boy's suppression motion on the grounds that the interrogating officer "was 'gentle' and 'calm,' her questions 'were short,' not 'convoluted,'" and that "[i]t was only a 20-minute interview." *Id.* at 207-208. The appellate court reversed, highlighting "the need for extreme caution in applying [police interrogation tactics] to juveniles," and invoking this Court's lessons from *Gallegos* and *J.D.B.* that concerns over false confessions run "deepest in cases involving the custodial interrogation of juveniles." *Id.* at 217. The court also reviewed the research demonstrating minors' vulnerability to false confessions, and noted the similarities between the techniques used in that case and those critiqued in *Miranda*. *Id.* at 210-212.

Similarly, in *United States* v. *Preston*, 751 F.3d 1008 (9th Cir. 2014) (en banc), the court held involuntary the confession of an eighteen-year-old with a 65 IQ. The court began its analysis by considering the defendant's "reduced mental capacity, a factor that is critical because it may render him more susceptible to subtle forms of coercion." *Id.* at 1020 (quotation marks and alterations omitted). The court then explained that the interrogators' methods exploited the defendant's vulnerabilities. *Id.* at 1028. In view of the defendant's suggestibility, eagerness to please authority figures, and inability to understand legal consequences, the court concluded that the officers' tactics of asking loaded questions, making false promises, and eliciting (frequently false) factual admissions by embedding them in questions overbore the defendant's will. *Id.* at 1024-1028.

Proper application of this Court's precedent does not, of course, mean that a confession will necessarily be deemed involuntary. For example, in *Hall* v. *Thomas*, 611 F.3d 1259 (11th Cir. 2010), the court considered the confession of a fifteen-year-old who "was in the 'low intelligence segment of the population,'" *id.* at 1281. Although the court rejected the defendant's voluntariness challenge, *id.* at 1290, it did so after a detailed analysis, explaining that the transcript and recording of the confession provided "no indication whatsoever that [the defendant] was confused or misunderstood the seriousness of the interrogation or the questions he was being asked," *id.* at 1288. The court also noted there was no evidence that the defendant had been "tricked," "fed facts by the officers," or "frightened into confessing." *Id.* at 1289. Considering all these factors together, the court held that the confession was voluntary. *Id.* at 1290.

C. At the same time that courts have not followed this Court's "special care" and related mandates, developments in social-science research show how frequently coercive interrogation tactics lead to false confessions, especially when applied to minors or individuals with intellectual or emotional limitations. *See J.D.B.*, 564 U.S. at 269 (recent studies "illustrate the heightened risk of false confessions from youth"); *Atkins*, 536 U.S. at 320 & n.25 (highlighting "the possibility of false confessions" by intellectually disabled persons); *see also* Gross et al., *Exonerations in the United States: 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 545 (2005); *supra* pp.18-20. A study, for example, found that juvenile exonerees were nearly four times more likely to confess falsely than their adult counterparts, and that exonerees with mental illness or intellectual disability were nearly eight times more likely to falsely confess than those without. National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Confessed*, *available at* goo.gl/4xmZS2 (visited Feb. 20, 2018).

These findings are borne out by specific examples of false confessions.

Jeffrey Deskovic was a sixteen-year-old with mental-health issues when he confessed to murder. Snyder et al., *Report on the Conviction of Jeffrey Deskovic* 1, 14-16 (June 2007), *available at* goo.gl/JXBKDt. Without discussing his age or mental health, an appellate court held his confession voluntary. *People* v. *Deskovic*, 607 N.Y.S.2d 957, 958 (App. Div. 1994). DNA evidence exonerated him after sixteen years in prison. Snyder et al., *supra*, at 31-32.

In another case, seventeen-year-old Marty Tankleff was interrogated the day he found his parents murdered.

People v. *Tankleff*, 848 N.Y.S.2d 286, 289 (App. Div. 2007). He confessed after detectives falsely told him his father had accused him before dying. *Id.* An appellate court rejected Tankleff's challenge to the admission of his confession, *People* v. *Tankleff*, 606 N.Y.S.2d 707, 708 (App. Div. 1993) (subsequent history omitted)—having not afforded him "special care," *cf. id.* at 711 (O'Brien, J., dissenting). After seventeen years in prison, the court vacated his conviction because of new evidence incriminating others. *Tankleff*, 848 N.Y.S.2d at 303.

These examples—just two of many—starkly demonstrate the reality that minors and people with intellectual and social limitations are prone to confess falsely, and hence be wrongly imprisoned. That reality confirms that lower courts' departure from this Court's precedent regarding the need to closely scrutinize the voluntariness of confessions by such people warrants correction. It warrants correction not only to reaffirm lower courts' obligation to adhere to precedent, but also because it contributes to juveniles and those with mental impairments serving prison sentences for crimes they did not commit.

D. This Court has granted review—including in AEDPA cases—in similar circumstances, *i.e.*, to provide further guidance to lower courts regarding the proper application of previously announced but relatively capacious standards. It has repeatedly done so, for example, with the standard for ineffective assistance of counsel. *See Wiggins* v. *Smith*, 539 U.S. 510, 521, 523, 528 (2003); *Porter* v. *McCollum*, 558 U.S. 30, 39 (2009) (per curiam). It has also done so with regard to the standard for impermissible race-based exclusion of jurors. *See Miller-El* v. *Dretke*, 545 U.S. 231, 240-241, 253 (2005). Particularly given the length of time since the Court has decided a juvenile-confession case, it should do so again here.

III. THIS CASE IS AN EXCELLENT VEHICLE

For three reasons, this is an excellent vehicle to reiterate and apply the requirements for assessing the voluntariness of juvenile confessions.

First, because the entire March 1 interrogation was recorded, there are no relevant factual disputes; the video transforms what could be a muddled factual inquiry into a cleanly presented legal question. Unlike a transcript, moreover, the video shows physical movements, facial expressions, tone, and pacing. *See* App. 148a ("Wiegert repeatedly touched Dassey's knee."), 13a (describing the volume of the officers' questioning), 134a-135a (noting the pauses between questions and answers). That would allow for more extensive guidance from the Court.

Second, "Dassey's confession was, as a practical matter, the entir[e] … case against him." App. 278a. Indeed, as the panel below explained, "[d]espite the intensity of the investigation, … no one ever found a single hair, a drop of blood, a trace of DNA or a scintilla of physical evidence [implicating] Dassey." App. 170a-171a; *see also* App. 233a (prosecution failed to offer "any DNA evidence connecting Dassey to the crimes despite extensive testing"). Consequently, there is no doubt that Dassey's confession—"probably the most probative and damaging evidence that can be admitted," *Arizona* v. *Fulminante*, 499 U.S. 279, 296 (1991)—drove the jury's guilty verdict.

Finally, the disagreement between the en banc and panel majorities and dissents turned on how to interpret the Wisconsin Court of Appeals' silence with respect to the "special caution" required by Dassey's age and intellectual and emotional deficits. Because the degree of scrutiny applicable to the state court's cursory voluntar-

iness analysis was dispositive, this case would allow the Court to provide guidance both to state and federal courts applying its precedent in the first instance, and to habeas courts addressing claims under AEDPA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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